

## **Notice relating to the regulatory framework applicable to mortgage brokerage**

This document explains the regulatory framework applicable to mortgage brokerage.

On May 1, 2020, holders of a real estate broker's licence authorizing them to engage in mortgage brokerage transactions and holders of a mortgage broker's licence, both previously subject to the *Real Estate Brokerage Act*, CQLR, c. C-73.2 and the regulations of the *Organisme d'autoréglementation du courtage immobilier du Québec* (the "Organization"), will become representatives within the meaning of section 1 of the *Act respecting the distribution of financial products and services* (the "Distribution Act"). Likewise, holders of a mortgage agency licence and holders of a real estate agency licence authorizing them to engage in mortgage brokerage transactions will become mortgage brokerage firms. As of that date, they will have to comply with the Distribution Act and its regulations.

The regulatory framework established under the Distribution Act has been amended to incorporate the mortgage brokerage sector into the framework applicable to other sectors and to add, where required by the specificities of mortgage brokerage, rules particular to that sector. The amendments made to the regulatory framework will come into force on May 1, 2020.

This document reiterates some of the explanations that were provided by the Autorité des marchés financiers (the "Authority") during the regulatory consultation held from October 3 to November 16, 2019 relating to the mortgage brokerage sector, highlights the changes that have made since then, and addresses some of the comments or questions that were submitted during the consultation period.

For more information regarding [supervision of the mortgage brokerage sector](#), see the Authority's website.

For ease of reading, the term "firm" is used to also mean, where applicable, an independent partnership.

### **Introduction**

Section 11.1 of the Distribution Act states that a mortgage broker is a natural person who, for others and in return for remuneration that is contingent on the making of a loan secured by immovable hypothec, engages in a brokerage transaction relating to such a loan. Therefore, anyone who wishes to act as or purport to be a mortgage broker or receive remuneration that is contingent on the making of a loan secured by immovable hypothec must hold a mortgage broker certificate issued by the Authority and comply with the provisions of the Distribution Act and its regulations.

When mortgage brokers engage in a brokerage transaction relating to a loan secured by immovable hypothec, they must perform all the acts involved in the mortgage brokerage transaction and fulfill all their obligations under the Distribution Act and its regulations. They must, among other things, collect and record in the client record the information pertaining to the identification of the client's needs and his or her financial situation, appropriately advise the client, and offer a mortgage loan suited to the client's situation and needs. Furthermore, mortgage brokers must be able to offer clients a mortgage financing solution from a range of solutions available on the mortgage market and offered by different lenders that do not belong to the same financial group.

These requirements do not apply to the persons referred to in section 11.2 of the Distribution Act, which specifies that certain people are not mortgage brokers when, in very specific situations described in that section, they engage in a brokerage transaction.

For example, a financial institution's employees or exclusive representatives who engage in a mortgage brokerage transaction on behalf of their institution or another institution that is part of the same financial group benefit from an exception that allows them to engage in such brokerage transactions without holding a mortgage broker certificate, provided that they do so within the context set out in section 11.2.

In other words, a person engages in a mortgage brokerage transaction and:

- he or she holds a mortgage broker certificate and complies with the provisions of the Distribution Act and its regulations, including the obligation to propose the loans of several mortgage lenders to his or her clients; or
- he or she is in, and only when he or she is in, one of situations for which an exception is provided in section 11.2 of the Distribution Act and he or she is not a mortgage broker and therefore does not hold a mortgage brokerage certificate.

### ***1. Regulation respecting the issuance and renewal of representatives' certificates***

This regulation stipulates that candidates who wish to obtain a certificate from the Authority in the sector of mortgage brokerage must satisfy the same conditions of eligibility that apply to other sectors under the Distribution Act. They must therefore complete the minimum qualifications in mortgage brokerage, pass the examination of the Authority, successfully complete the probationary period, submit an application for a certificate, and satisfy the other requirements and conditions of issuance of a certificate.

Under the regulation, candidates who apply for a certificate must, among other things, have successfully completed a 12-week probationary period. The objective of the probationary period is for the person to apply, in an actual work setting and under the supervision of an experienced mortgage broker, who may supervise no more than 5 candidates at any one time, the knowledge and hard and soft skills needed to engage in a mortgage brokerage transaction. In other words, during this period, under the guidance of a supervisor, mortgage brokerage trainees gradually perform the various acts that make up a mortgage brokerage transaction.

For more information about the examinations, the probationary period and the right to practise, see the Authority's website, under the [Becoming a professional](#) tab.

### ***2. Regulation respecting the compulsory professional development of mortgage brokers***

Under this regulation, mortgage brokers must take part in professional development activities recognized by the Authority and accumulate at least 24 professional development units ("PDUs") during each reference period. Of the 24 PDUs, at least 21 must be accumulated in optional subjects (referred to in the list provided in section 4 of the Regulation) and at least 3 must be related to training activities pertaining to compliance with standards, ethics and professional conduct or professional practice pertaining to the pursuit of mortgage brokerage activities (section 4).

Mortgage brokers who act as responsible officers or are registered as independent representatives must, in addition, accumulate at least 6 PDUs in specific optional subjects (listed in section 5 of the Regulation).

For the first reference period, which runs from May 1, 2020 to April 30, 2022, the transitional provisions of the regulation specifies that holders of a real estate broker's licence obtained before May 1, 2010 authorizing them to engage in mortgage brokerage transactions who became mortgage brokers on May 1, 2020 must accumulate, from among (not in addition to) the 24 PDUs, 6 PDUs pertaining specifically to mortgage brokerage.

### ***3. Regulation respecting the registration of firms, representatives and independent partnerships***

#### **i. Information to be provided to the Authority**

When registering or maintaining their registration, firms or independent representatives must disclose specific information to the Authority concerning their activities, including their business relationships, the lenders whose products are offered by them or the types of financing solutions proposed, and the number of brokerage transactions they engage in.

The Authority uses this information to maintain its knowledge and understanding of the mortgage market.

For more information about [registration and maintenance of registration](#), see the Authority's website.

#### **ii. Separate account**

Amounts held on behalf of others may be composed, for example, of commissions paid by a lender but intended for a third party or amounts set aside for the payment of suppliers involved in a transaction. Advances on remuneration received by the representative must be deposited in the separate account until they belong to the mortgage broker.

### ***4. Regulation respecting the pursuit of activities as a representative***

#### **i. Disclosing remuneration and incentives**

Mortgage brokers must provide their clients with the explanations they need to understand the mortgage broker's remuneration.

The regulation requires that, before services are rendered, mortgage brokers make a written disclosure of their method of remuneration to the client. If they receive remuneration from the mortgage lender, they must disclose that fact, and if they claim compensation from the client, they must indicate the conditions on which such compensation may be claimed.

When mortgage brokers propose a loan, they must make a written disclosure of the following information to clients: the nature of the remuneration or any other benefit that they will receive if the loan is made and the nature of any other remuneration or any other benefit that they may receive with respect to the proposed loan. Consequently, if they take part in a contest or may receive a bonus, for example, they must disclose this to their clients. However, they do not have to specify the conditions on which these incentives may be claimed.

For more information about the [payment of remuneration](#) and the [sharing of commissions](#) or [client referrals and commission sharing](#), see the Authority's website.

**ii. Disclosing the number of mortgage lenders**

The Authority recognizes that consumers who use the services of a mortgage broker need to have access to mortgage financing solutions from more than one mortgage lender.

Section 9.6 of the Regulation respecting the pursuit of activities as a representative requires that the number of mortgage lenders with which the mortgage lender has engaged in a mortgage brokerage transaction in the previous 12 months be disclosed to clients by the mortgage broker. The same information must be disclosed about the firm on behalf of which the mortgage broker is acting.

It also requires that mortgage brokers disclose to their clients the name of the lender that, if applicable, made more than 50% of the total number of loans secured by immovable hypothec or loan renewals for which the mortgage broker, or the firm on behalf of which the mortgage broker is acting, engaged in a brokerage transaction in the previous 12 months.

**iii. Collecting and recording information**

Mortgage brokers must collect and record in the client record the information pertaining to the identification of the client's needs and the client's financial situation. In fact, they must collect all the information they need to fulfill their obligations, including their suitability obligations to clients with whom they engage in brokerage transactions and their duty to advise them.

**iv. Making recommendations to clients**

Mortgage brokers must appropriately advise their clients and give them all such information as may be necessary or useful. In particular, they must explain their recommendations to the client. Although it is not mandatory to provide the client with a written report of their recommendations, the recommendations must be inscribed in the client record in accordance with section 21.1 of the Regulation respecting firms, independent representatives and independent partnerships, as they constitute information concerning the services rendered to the client.

**v. Explaining the costs involved in obtaining a mortgage loan**

Mortgage brokers must explain to their clients the nature of the fees associated with the loan secured by immovable hypothec that they may have to pay in addition to the interest on the loan. Clients must know that there are costs to pay other than interest if they enter into a mortgage loan to buy a home. However, the broker does not have to inform the client of the amount of such fees. Examples of costs that should be explained by the broker include notary fees, land surveyor fees (if a certificate of location is required), and the mortgage insurance or title insurance premium that might be charged by the mortgage lender.

**vi. Verifying identity and legal capacity**

To contribute to the fight against fraud in the mortgage sector, mortgage brokers must, among other things, verify and ascertain the identity of the borrower and, if applicable, of the surety or any other party to the mortgage transaction.

Mortgage brokers must also verify the legal capacity of the borrower or borrower's representative to ensure that the person is legally authorized to enter into a loan. The regulation does not create a requirement for mortgage brokers to verify whether or not borrowers are fit to give their consent for the purposes of obtaining a mortgage loan.

That being said, if mortgage brokers encounter a situation where a client does not appear to understand the explanations they receive or how the decision they are about to make will impact their financial situation, they may refer to [\*Protecting vulnerable clients – A practical guide for the financial services industry\*](#) which offers various solutions and resources.

#### **vii. Reverse hypothecs**

Mortgage brokers who propose a loan secured by reverse immovable hypothec (reverse hypothec) to a client must, as with any other mortgage loan, ensure that the loan suits the client's situation and needs, particularly in comparison with other mortgage financing solutions available on the market. They must also appropriately advise their clients and explain, among other things, the advantages and disadvantages of the loan, including the penalties applicable in the event of failure to comply with the terms of the loan agreement. Mortgage brokers must also take into account the limits of their skills when considering proposing such a loan.

A reverse hypothec is a financial product with unique characteristics and may have specific, significant financial consequences for the clients and his or her succession. Mortgage brokers who recommend such a loan must consequently inform the client of the importance of obtaining the opinion of a lawyer or notary. Clients must be properly informed so that they can make an informed decision.

The Authority's website has a page devoted to [Reverse mortgages – advantages and disadvantages](#).

#### **viii. Acting as a mortgage broker and mortgage lender**

The regulation does not include any specific provisions for firms or mortgage brokers that also act as lenders with clients. In cases where a client retains the services of a mortgage broker (or a firm) to engage in a brokerage transaction and the mortgage broker also wishes to act as a mortgage lender with the client, the broker or firm must comply with their obligations under the Distribution Act and its regulations, especially their ethical obligations.

Accordingly, under the regulation, not only must mortgage brokers propose loans that are suited to the client's situation and needs, but they must also not place themselves in a conflict of interest and must act with independence and in the best interests of the client.

Mortgage brokers must therefore not use the relationship of trust developed with a client in connection with their services as a mortgage broker to recommend to the client that he or she enter into a loan with the mortgage broker or the firm on whose behalf the mortgage broker is acting. The information obtained by mortgage brokers in connection with their services must never be used to the detriment of a client's interests. Finally, no mortgage broker may exert undue pressure on a client or use fraudulent tactics to induce a client to purchase a financial product or service.

In this context in particular, the Authority considers it a good practice to inform clients that they may consult another mortgage broker.

**ix. Offering clients benefits and gifts**

The regulations do not contain any specific provisions concerning gifts to clients. When mortgage brokers or their firm offer clients gifts or benefits, they must do so in line with the Distribution Act and its regulations.

In particular, mortgage brokers must not place themselves in a conflict of interest. They may share a commission, through their firm, only with a person who is authorized to receive such a share of a commission under section 100 of the Distribution Act. Brokers must therefore ensure that the gifts they give their clients cannot be related to such sharing of a commission.

The Authority has initiated a review of the standards governing sales incentive management practices and may, upon completion of the review, propose amendments to the framework with respect to this matter.

**5. Regulation respecting firms, independent representatives and independent partnerships**

**i. Posting interest rates**

Mortgage brokers and firms must post Interest rates in accordance with the rules governing advertising. No mortgage firm or broker may, by any means whatsoever, make false, misleading or deceptive representations. They must not appear to promise results that they are unable to provide, and the service they render must comply with their representations and advertising. For example, registrants who offer an interest rate from which only a small number of people may benefit would not be in compliance with the rules governing representations and advertising.

Specifically, the financial service offered must be described without emphasizing its advantages to the detriment of its disadvantages.

Furthermore, registrants or representatives who post an interest rate must obtain authorization to do so from the lender.

**Additional Information**

Further information is available by calling:

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