

## REGULATION TO AMEND THE REGULATION RESPECTING THE PURSUIT OF ACTIVITIES AS A REPRESENTATIVE

Act respecting the distribution of financial products and services  
(chapter D-9.2, ss. 200, par. (8), 202 and 202.1, par. (1))

1. Section 2 of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10) is amended:

(1) by deleting “, except in connection with brokerage activities relating to loans secured by immovable hypothec” in subparagraph 7 of the first paragraph;

(2) by replacing the second paragraph by the following:

“Notwithstanding the first paragraph, the pursuit of activities or professions referred to in any of the subparagraphs hereinbelow is not incompatible with the activities mentioned to in such subparagraph:

(1) the activity or profession referred to in subparagraph 5 or 6 of that paragraph: the activities of a claims adjuster and financial planner;

(2) the activities referred to in subparagraph 7 of the first paragraph: the activities of a mortgage broker, provided the representative pursues activities only in the sector of mortgage brokerage.”.

2. The Regulation is amended by inserting the following after the heading for Division III:

“§ 1. — *General rules*”.

3. The Regulation is amended by inserting the following after section 5:

“§ 2. — *Rules specific to representatives in insurance of persons, group insurance representatives and financial planners*”.

4. The Regulation is amended by inserting the following after section 9.1:

“§ 3. — *Rules specific to mortgage brokers*

“9.2. A mortgage broker who receives or collects an amount referred to in paragraph 2 of section 4 must give the party from whom he receives or collects the amount a receipt containing the information indicated in section 28.2 of the Regulation respecting firms, independent representatives and independent partnerships (chapter D-9.2, r. 2).

“9.3. A mortgage broker must, before services are rendered, make a written disclosure of his method of remuneration to the client, indicating:

(1) the compensation claimed for the services he renders to the client, if applicable, and the conditions on which the compensation may be claimed;

(2) the fact that he receives remuneration from the mortgage lender or any person for the services he renders to him, if applicable.

A mortgage broker must forthwith make a written disclosure to the client of any change in his method of remuneration.

**“9.4.** When a mortgage broker proposes a loan secured by immovable hypothec to a client, he must make a written disclosure of the following information to the client:

(1) the nature of the remuneration or any other benefit that he will receive if the loan is made, if applicable;

(2) the nature of any other remuneration or benefit that he may receive with respect to the proposed loan, as well as the conditions under which it may be claimed; and

(3) the fact that he intends to share his commission, if applicable, and the name of the person sharing the commission.

**“9.5.** When a mortgage broker refers a client, he must disclose in writing to the client that he may receive a share of a commission, if applicable.

**“9.6.** A mortgage broker must forthwith make a written disclosure of the following information to the client:

(1) separately, the number of lenders that made loans secured by immovable hypothec for which:

(a) he engaged in a brokerage transaction in the previous 12 months; and

(b) the firm or independent partnership on behalf of which he acts, if applicable, engaged in a brokerage transaction in the previous 12 months;

(2) 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 or independent partnership on behalf of which the mortgage broker acts, engaged in a brokerage transaction in the previous 12 months.

**“9.7.** A mortgage broker must, before proposing a loan secured by immovable hypothec, collect and record in a dated document the information pertaining to the identification of the client’s needs and the assessment of the client’s financial situation, including, in particular, the features and terms and conditions of the proposed loan, the immovable that will be charged with the hypothec and the client’s credit history, income, ability to repay the loan and level of financial knowledge.

**“9.8.** A mortgage broker must give a written report of his recommendations to the client.

**“9.9.** A mortgage broker must identify and ascertain the identity of the borrower, the mortgage lender and, if applicable, the surety and other parties to the proposed transaction.

He must record the information relating to the identity of the borrower.

**“9.10.** A mortgage broker must verify and ascertain the legal capacity of the borrower or the borrower’s representative to enter into the proposed transaction and the legal capacity of the mortgage lender and, if applicable, the surety and other parties to the transaction.

**“9.11.** A mortgage broker may not engage in a brokerage transaction relating to a loan secured by reverse immovable hypothec unless he receives from the borrower a written statement, signed by a lawyer or a notary, stating that the lawyer or notary has given the borrower independent legal advice concerning the proposed loan.

**“9.12.** A loan secured by reverse immovable hypothec is a loan secured by immovable hypothec that meets the following conditions:

(1) the money advanced does not have to be repaid until the occurrence of one or more of the following events:

(a) the borrower’s death or, if there is more than one borrower, the death of the last surviving borrower;

(b) the acquisition by the borrower or the last surviving borrower, as the case may be, of another immovable to use as his principal residence;

(c) the sale of the immovable charged with the hypothec;

(d) the borrower’s or last surviving borrower’s vacating the immovable charged with the hypothec in order to live elsewhere with no reasonable prospect of returning;

(e) payment default; and

(2) one or more of the following conditions applies while the borrower or last surviving borrower, as the case may be, continues to occupy the immovable charged with the hypothec as his principal residence and otherwise complies with the terms of the loan:

(a) no repayments of the principal or interest are due or capable of becoming due;

(b) although interest payments may become due, no repayment of all or part of the principal is due or capable of becoming due;

(c) although interest payments and repayment of part of the principal may become due, repayment of all of the principal is not due or capable of becoming due.

**“9.13.** A mortgage broker whose services have been retained by a client for the purpose of engaging in a brokerage transaction may not, for a period of 12 months from the date on which his services were rendered, also act as a lender in respect of the client.

**“9.14.** A mortgage broker may not provide his client with any gifts or benefits.

A mortgage broker may, however, provide a gift or benefit if the gift or benefit is non-pecuniary, of a promotional nature and of low value or if he provides it also to all of his clients. The mortgage broker must inform the firm or independent partnership on behalf of which he acts of this fact so it may provide in the register the information specified in section 28.1 of the Regulation respecting firms, independent representatives and independent partnerships (chapter D-9.2, r. 2), where applicable.”.

**5.** The Regulation is amended by inserting the following after section 16:

**“DIVISION V.1**

**“RULES OF CONDUCT OF MORTGAGE BROKERS**

**“16.1.** Mortgage brokers must take reasonable measures to ensure that the persons authorized to act on their behalf in the pursuit of their activities as a mortgage broker comply with the provisions of the Act respecting the distribution of financial products and services (chapter D-9.2) and its regulations, including those of this subdivision.

**“16.2.** Mortgage brokers must act with respect and integrity.

They must also act with prudence, diligence, objectivity and discretion.

**“16.3.** Mortgage brokers must act with competence. They must therefore develop and maintain their knowledge and skills.

**“16.4.** Mortgage brokers must take into account the limits of their skills and of the means at their disposal. When they do not have the necessary skills, they must not act on behalf of a client without obtaining the appropriate assistance.

**“16.5.** Mortgage brokers must act with independence in respect of their clients and in their clients’ best interests.

To that end, they must subordinate their personal interests and the interests of any other person or company to their clients’ interests and must not let their judgment be subject to any pressure whatsoever.

**“16.6.** Mortgage brokers must not place themselves in a conflict of interest.

**“16.7.** Mortgage brokers must be transparent in respect of their clients.

They must, in particular, explain the nature and scope of their services and, if applicable, the services provided by the firm or independent partnership on behalf of which they act, to enable clients to understand and evaluate their services.

**“16.8.** Mortgage brokers must appropriately advise their clients and give them all such information as may be necessary or useful.

They must fully and clearly explain to their clients the costs involved in obtaining the proposed loans secured by immovable hypothec and the nature, features, advantages and disadvantages of the loans secured by immovable hypothecs that they propose to their clients, including the penalties applicable in the event of failure to comply with the terms of the loan agreement.

**“16.9.** Mortgage brokers must ensure that the loan secured by immovable hypothec that they propose is suited to the client’s situation and needs.

**“16.10.** Mortgage brokers must respect and ensure the confidentiality of all information obtained about their clients.

They must only use the information for the purposes for which it was obtained and may not use it for personal purposes.

Mortgage brokers may not be relieved of these obligations without the client’s consent or unless otherwise permitted by a provision of a law or an order of a court.

**“16.11.** Mortgage brokers must provide their clients with the explanations that they need to understand their remuneration.

**“16.12.** The compensation claimed by the mortgage broker must be fair and reasonable given the services rendered.

**“16.13.** Mortgage brokers must not make any false or misleading representations.

**“16.14.** Mortgage brokers must not advise, encourage or in any way assist in the commission of an illegal or fraudulent act, such as the illegal pursuit of activities as a mortgage broker or mortgage fraud.

They must cease to act on behalf of a client when the client asks them to take an action that is in contravention of this rule.

**“16.15.** Mortgage brokers must cooperate with the Authority in a transparent and diligent manner and must not mislead it.

Mortgage brokers must not induce a person to not cooperate with, nor induce a person to mislead, the Authority.

**“16.16.** Mortgage brokers who are informed that their conduct is the subject of a complaint filed with or an investigation conducted by the Authority must not communicate with the complainant or the person who requested the investigation.”.

**6.** This Regulation comes into force on 1 May 2020.