



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-FOURTH LEGISLATURE

Bill 153

Real Estate Brokerage Act

Introduction

Introduced by
Madam Louise Robic
Minister for Finance

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EXPLANATORY NOTES

This bill proposes a complete revision of the Real Estate Brokerage Act (R.S.Q., chapter C-73). It specifies the framework and conditions governing the pursuit of the activities of real estate broker and real estate agent.

The bill retains certain rules contained in the present Act, in particular the obligation for agents to act for a single broker, the obligation for brokers to keep a trust account and to take out civil liability insurance, and other rules relating to certain real estate brokerage contracts.

The bill introduces provisions concerning compulsory disclosure by brokers and agents and the release of information held by them, and also contains provisions to allow a real estate broker to pursue his activities within a multidisciplinary firm governed by the Act respecting market intermediaries (R.S.Q., chapter I-15.1).

The bill provides for the creation of the Association des courtiers et agents immobiliers du Québec, whose role will be to ensure the protection of the public by the enforcement of rules of professional ethics and by the professional inspection of its members. In this respect, the bill grants regulatory powers to the Association and provides for the setting up, within the Association, of a professional inspection committee and a discipline committee, and the appointment of a syndic.

The bill contains, in addition, provisions relating to the powers of the Inspector General of Financial Institutions and the regulatory powers of the Government, and provides for penal offences.

Lastly, the bill enacts transitional and consequential amendments.

ACT REPLACED BY THIS BILL:

- Real Estate Brokerage Act (R.S.Q., chapter C-73).

ACTS AMENDED BY THIS BILL:

- Act respecting market intermediaries (R.S.Q., chapter I-15.1);
- Act respecting the Ministère de l'Habitation et de la Protection du consommateur (R.S.Q., chapter M-15.3);
- Act respecting labour standards (R.S.Q., chapter N-1.1).

Bill 153

Real Estate Brokerage Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE

1. For the purposes of this Act, a person who, for compensation and for others, engages in a brokerage transaction relating either to the purchase, sale, lease or exchange of immovable property, to promises to purchase or sell immovable property, to the purchase or sale of such promises, to a loan secured by immovable hypothec, or to the sale, as a whole; of a stock-in-trade, except a transaction involving a security within the meaning of the Securities Act (R.S.Q., chapter V-1.1), is pursuing the activity of real estate broker.

2. The following persons are not subject to this Act, unless they use a title the use of which is restricted:

(1) advocates and notaries who, in the course of their practice, engage in a transaction mentioned in section 1;

(2) liquidators, sequestrators, trustees in bankruptcy, sheriffs and bailiffs who, in the performance of their duties, engage in a transaction mentioned in section 1;

(3) tutors, curators, testamentary executors, trustees and fiduciaries who, in the performance of their duties, engage in a transaction mentioned in section 1;

(4) forestry engineers, with regard to a transaction mentioned in section 1 relating to forest property or timber limits;

(5) authorized members of a professional corporation of accountants mentioned in Schedule I to the Professional Code (R.S.Q., chapter C-26), with regard to a loan secured by hypothec or the sale, as a whole, of a stock-in-trade;

(6) chartered administrators, with regard to immovable property managed by them, when leasing such property or engaging in a transaction relating to a loan secured by hypothec;

(7) provisional administrators appointed under the Act respecting insurance (R.S.Q., chapter A-32), the Savings and Credit Unions Act (R.S.Q., chapter C-4.1), the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01) or the Securities Act who, in the performance of their duties, engage in a transaction mentioned in section 1;

(8) trust companies with regard to immovable property held or managed by them for others;

(9) banks, savings and credit unions, insurance companies, mutual insurance associations, mutual benefit associations, savings companies and trust companies with regard to loans secured by a hypothec in their own names or their client's name;

(10) any employee who, in the course of his principal occupation, engages in a transaction mentioned in section 1 on behalf of his employer when the latter is not a broker.

CHAPTER II

REAL ESTATE BROKERAGE

DIVISION I

PRACTICE

3. No person may pursue the activity of real estate broker or use the title of real estate broker unless he is the holder of a real estate broker certificate issued by the Association des courtiers et agents immobiliers du Québec.

4. A real estate broker certificate shall be issued to any person or partnership meeting the conditions prescribed by this Act or by a regulation thereunder.

5. A real estate broker must, subject to the terms and conditions prescribed in the by-laws of the Association, take out civil liability insurance or, in the cases prescribed in the by-laws of the Association, provide security or a guarantee in lieu thereof.

6. The certificate of a real estate broker who fails to comply with the provisions of section 5 is suspended by operation of law.

The broker whose certificate is thus suspended may, subject to the conditions prescribed in the by-laws of the Association, obtain the reinstatement of his certificate once he again complies with the provisions of the said section.

7. No partnership or legal person may be the holder of a real estate broker certificate unless it is represented for the purposes of this Act by a natural person having the qualifications required to be the holder of a real estate broker certificate and who devotes himself on a full-time basis to the activities of the undertaking concerned.

8. The certificate of a partnership or legal person that fails to comply with the provisions of section 7 for more than 60 consecutive days is suspended by operation of law.

The real estate broker whose certificate is thus suspended may, subject to the conditions prescribed in the by-laws of the Association, obtain the reinstatement of his certificate once he again complies with the provisions of the said section.

9. The certificate of a real estate broker who is bankrupt is cancelled by operation of law.

10. Any sum of money received on behalf of others by a broker in the course of his duties must be deposited into a trust account, in accordance with the conditions prescribed in the by-laws of the Association.

Interest generated by the sums of money held in trust, unless claimed by the client, must be paid into the financing fund established under the second paragraph of section 73, on the conditions and in the manner prescribed in the by-laws of the Association.

11. Any agreement authorizing a broker to take his remuneration out of funds held in trust by him is null.

12. Every place of business must be managed by a natural person having the qualifications required of a person to be the holder

of a broker certificate. That person must, in the cases prescribed in the by-laws, of the Association, devote himself exclusively to his managerial duties.

In each place of business, there must be one natural person who possesses the aforementioned qualifications and acts as assistant to the person managing the place of business for every group of 25 agents, and for any remaining group of less than 25, working at the same place of business.

These persons cannot be employed by another broker or pursue their activities at another place of business.

For the purposes of this Act, place of business means the place where the broker keeps the records, books and registers determined by the Association in its by-laws.

13. Every broker must assign to a place of business the real estate agents in his employ.

14. No person may carry out on behalf of a broker any transaction mentioned in section 1 or use the title of real estate agent unless he is the holder of a real estate agent certificate issued by the Association.

15. The real estate agent certificate shall be issued to every natural person who meets the conditions prescribed by this Act or by a regulation thereunder.

16. The certificate of an agent who ceases to be employed by a broker is suspended by operation of law.

The agent whose certificate is thus suspended may, subject to the conditions prescribed in the by-laws of the Association, obtain the reinstatement of his certificate once he is again employed by a broker.

17. Every agent must, in accordance with the by-laws of the Association, report to the place of business to which he is assigned and transmit to the person who manages the place of business all information necessary for the keeping of the records, books and registers determined in the by-laws of the Association.

18. No agent may at any one time be employed by more than one broker.

19. In addition to the activities prohibited by government regulation, no broker or agent may pursue the following activities:

(1) the activity of agent or broker in damage insurance or insurance of persons or that of claims adjuster or financial planner within the meaning of the Act respecting market intermediaries (R.S.Q., chapter I-15.1);

(2) the activity of dealer or adviser in securities within the meaning of the Securities Act, or of representing such persons, except where, with respect to the activity of dealer in securities or of representing such a dealer, the activity is limited to distributing the securities of a limited partnership pursuing real estate activities.

This section shall not prevent the pursuit of activities referred to in the fourth paragraph of section 14 of the Act respecting market intermediaries.

20. Personal information obtained by an agent or broker in carrying on his activities, unless required by a person or body having the power to compel its release, shall not be disclosed except, in each case, with the specific written authorization of the person concerned.

The authorization shall indicate to whom and for what purpose the information is to be disclosed, subject to the conditions prescribed by government regulation.

DIVISION II

COMPULSORY DISCLOSURE

21. Every broker or agent, whether in the course of his duties or not, who holds or intends to acquire, directly or indirectly, an interest in immovable property referred to in section 31 that is being purchased, sold or exchanged must, without delay and in writing, disclose his quality as broker or agent to the prospective contracting party, in the manner prescribed in the by-laws of the Association.

In case of failure to do so, the person entitled to such information may, as long as the contract evidencing the transaction has not been signed by the parties, withdraw, without penalty, from any offer or promise, whether accepted or not, concerning the immovable property, by sending or giving a written notice to the other party.

22. The broker or agent must transmit to the Association a copy of the contract referred to in section 21 and of every other contract that may be related thereto.

23. Any remuneration agreement in favour of a broker or agent which may place the interest of the broker or agent in conflict with that of his client must be disclosed in writing to the client.

DIVISION III

MULTIDISCIPLINARY FIRMS AND SHARING OF COMMISSIONS

24. A broker may pursue his activities as a member of a multidisciplinary firm within the meaning of section 42 of the Act respecting market intermediaries.

25. A broker may share his remuneration only with a market intermediary, another broker or with a broker pursuing his activities outside Québec under another jurisdiction.

26. A broker who shares his remuneration with a market intermediary must disclose that fact in writing to his client and record the sums of money thus received in a register kept for that purpose in the manner provided in the by-laws of the Association.

27. Any remuneration paid to a broker for having referred a person to a market intermediary or to another broker is deemed to constitute a sharing of remuneration.

DIVISION IV

ADVERTISING AND REPRESENTATION

28. The services or goods provided by a broker or agent must conform to the statements or advertisements made by him; the statements or advertisements are binding on the agent or broker.

29. No broker or agent may, by whatever means, make false, misleading or incomplete representations to a person using his services, in particular with regard to his level of competence or to the scope or effectiveness of his services and of those generally offered by members of the Association.

30. No broker or agent may falsely, by whatever means,

- (1) ascribe any special advantage to services or goods;
- (2) claim that financial gain will result from the use or acquisition of services or goods;
- (3) claim that services or goods meet a determined standard;

(4) ascribe to services or goods certain performance characteristics.

CHAPTER III

RULES RELATING TO CERTAIN REAL ESTATE BROKERAGE CONTRACTS

31. This chapter applies to every contract between a natural person and a broker under which the broker undertakes to act as intermediary for the sale, leasing or exchange

(1) of part or all of a chiefly residential immovable containing less than five dwellings;

(2) of a fraction of a chiefly residential immovable subject to a declaration of co-ownership under articles 441*b* to 442*p* of the Civil Code of Lower Canada.

32. The contract is formed when both parties have signed it.

33. The broker must give a duplicate of the contract to the natural person who signed it.

The natural person is bound to perform his obligations only from the time he is in possession of a duplicate of the contract.

34. The contract must set out

(1) the name and address of the parties in legible script;

(2) the date of the contract and the address of the place where it was signed;

(3) the nature of the transaction involved;

(4) the cadastral designation of the immovable property involved and the address of any building erected thereon, if any;

(5) if such is the case, its irrevocability;

(6) if such is the case, its exclusivity;

(7) the date and time of its expiry;

(8) the price of sale, exchange, or, as the case may be, leasing of the immovable property;

(9) the nature and manner of payment of the broker's remuneration;

(10) where applicable, any obligation on the part of the broker to send the particulars of the contract to a multiple listing service or a similar service of a real estate board or of any other agency for the purpose of distributing them to members subscribing to such a service;

(11) any other particulars determined by government regulation.

35. Where there is no stipulation as to the date and time of expiry of the contract, the contract shall expire 30 days after being concluded.

36. No contract may contain a stipulation for automatic renewal.

37. Any agreement binding a natural person, for a fixed period after the expiry of the contract, to remunerate the broker even if the sale, leasing or exchange of an immovable property is effected after such expiry, is null.

The first paragraph does not apply if the agreement provides that remuneration is due where

(1) the contract is exclusive;

(2) the sale, leasing or exchange is made with a person who became interested in the immovable property while the contract was in force;

(3) the transaction occurs not more than 180 days after the date of expiry of the contract and during that period, the natural person did not enter into an exclusive contract for the sale, leasing or exchange of the immovable property with another broker.

38. The contract must specify that the broker has an obligation to submit to the natural person every promise to purchase, lease or exchange the immovable property in question.

39. Notwithstanding any stipulation to the contrary, the natural person may, at his own discretion, cancel the contract within the three days which follow the day on which he receives a duplicate of the contract signed by both parties, unless a waiver is written in its entirety by the person and signed.

The contract is cancelled by operation of law from the sending or giving of a written notice to the broker.

40. The broker may claim no remuneration following the cancellation of a contract in accordance with section 39, unless a sale, leasing or exchange which meets the conditions specified in section 37 occurs.

41. No contract may be cancelled on the sole ground that one of its provisions contravenes this chapter.

42. No natural person may, by special agreement, waive the rights conferred on him by this chapter.

CHAPTER IV

FONDS D'INDEMNISATION DU COURTAGE IMMOBILIER

DIVISION I

ESTABLISHMENT AND ORGANIZATION

43. The fund known as the "Fonds d'indemnisation du courtage immobilier", constituted by the Real Estate Brokerage Act (R.S.Q., chapter C-73), is hereby continued; it shall exercise such powers as are provided by this Act.

44. The fund shall have its head office at the place determined by the Government. A notice of the location or of any change of location of the head office shall be published in the *Gazette officielle du Québec*.

45. The fund shall be administered by a board of directors composed of seven members including a chairman and vice-chairman appointed for two years by the Government.

Four members shall be chosen from among holders of certificates issued by the Association, after consultation with the latter.

Three members shall be persons who, by reason of their activities, are capable of making a significant contribution to solving problems in the field of real estate brokerage. One of these members shall be designated by the Minister.

46. At the expiry of their terms, the members of the board of directors shall remain in office until reappointed or replaced.

47. The members shall not be remunerated, except in the cases, on the conditions and to the extent determined by the Government. They are, however, entitled to the reimbursement of expenses incurred in the course of their duties, on the conditions and to the extent determined by the Government.

48. If the chairman is unable to act, the vice-chairman shall exercise the functions of the chairman.

49. The fund may appoint a secretary and any other employee necessary for the carrying out of its functions.

50. The secretary and other employees shall be appointed and remunerated in accordance with the standards, scales and staffing plan established by by-law of the fund.

The by-law shall come into force on the date of its approval by the Government.

51. The board of directors may hold its sittings anywhere in Québec.

The quorum at sittings of the board is constituted by a majority of its members.

In the event of a tie, the chairman shall have a casting vote.

52. The fund shall adopt rules for its internal management.

The rules shall come into force on the date of their approval by the Government.

53. A decision signed by all members of the board of directors has the same effect as if it were made at a sitting.

DIVISION II

PURPOSE, FUNCTIONS AND POWERS

54. The purpose of the fund is to administer the sums of money deposited into it to guarantee any liability that may be incurred by a broker or agent owing to fraud, a dishonest transaction, or the misappropriation of funds or other property which, under this Act, must be deposited in a trust account.

To this end, the fund may, on the conditions, in the manner and in accordance with the rules determined by government regulation,

- (1) rule on the admissibility of claims against a broker or agent;
- (2) authorize any payment or disbursement to be made out of the fund;
- (3) invest the sums of money deposited into the fund.

55. The fund shall consist of

- (1) the contributions paid by members of the Association in accordance with government regulation;
- (2) sums recovered by way of subrogation from a broker or agent;
- (3) interest earned on the sums of money deposited into the fund, subject to government regulation;
- (4) any increase in the fund's assets.

The Minister may, on the conditions prescribed by government regulation, authorize the fund to use the interest earned on the sums of money deposited into the fund for purposes related to the real estate brokerage sector and to further the protection of the public.

56. The fund is subrogated in all the rights of a compensated person or partnership up to the compensation paid.

57. The fiscal year of the fund ends on 31 December.

DIVISION III

DOCUMENTS, ACCOUNTS AND REPORTS

58. No deed, document or writing shall bind the fund unless signed by the chairman or the secretary.

59. Any document or copy of a document emanating from the fund or forming part of its records, if signed or certified true by a person referred to in section 58, is authentic.

60. The fund shall submit to the Inspector General of Financial Institutions, on or before 30 April each year, its financial statements and a report of its activities for the preceding fiscal year. The financial statements and the report of activities must contain all the information required by the Inspector General.

61. The fund must also provide the Inspector General with all the information and documents he requires concerning its activities.

62. The books and accounts of the fund shall be audited by the Auditor General each year and also whenever the Government so orders. However, the Government may designate another auditor.

The report of the Auditor General or of the auditor designated by the Government must accompany the report of activities and financial statements of the fund.

CHAPTER V

ASSOCIATION DES COURTIERS ET AGENTS IMMOBILIERS DU QUÉBEC

DIVISION I

ESTABLISHMENT AND POWERS

63. The “Association des courtiers et agents immobiliers du Québec” is hereby instituted.

64. The Association is a corporation within the meaning of the Civil Code.

65. The role of the Association is to ensure the protection of the public by the enforcement of rules of professional ethics and the professional inspection of its members, and in particular by seeing to it that its members pursue their activities in accordance with the Act and the regulations.

It may also dispense continuing education courses to its members and award the titles referred to in section 75.

66. Every person holding a real estate broker certificate or a real estate agent certificate issued under this Act is a member of the Association.

67. The Association shall adopt rules for its internal management.

68. The head office of the Association shall be in Québec at the place determined in its rules of internal management.

A notice of the location of the head office of the Association or of any change in its location shall be published in the *Gazette officielle du Québec*.

69. The Association shall hold a general meeting of its members at least once a year on the date and at the place fixed in its rules of internal management.

70. The Association may hold special general meetings of its members as often as its business so requires.

Every special general meeting shall be called in the manner prescribed in the rules of internal management, upon a resolution of the board of directors or a requisition by not fewer than 50 members of the Association.

If the special general meeting is not called within ten days after the resolution or requisition, a member of the board or one of the signatories of the requisition may call the meeting.

The rules of internal management referred to in section 67 and the by-laws referred to in sections 74 and 75 shall be adopted at a special general meeting of the members.

71. Fifty members constitute a quorum at a general meeting.

72. Decisions are made by a majority of the votes cast by the members present.

With regard to the rules of internal management, the decision shall be made by two-thirds of the votes cast by the members present.

73. The board of directors, by by-law subject to government approval, shall determine

- (1) the limits of the regions referred to in section 85;
- (2) the various categories of certificates the Association may issue and the conditions and restrictions attached to each;
- (3) the period of validity of a certificate;
- (4) the terms and conditions governing the issue, renewal, suspension, cancellation or reinstatement of a certificate;
- (5) the information and documents a member must submit when applying for the issue, renewal or reinstatement of a certificate;

(6) the particulars a certificate must contain;

(7) the terms and conditions subject to which civil liability insurance must be taken out and the conditions thereof, and the cases in which a security or guarantee may replace such insurance and the conditions thereof;

(8) the conditions applicable to the carrying on of the activity of real estate broker;

(9) the rules stating the conditions, obligations and, where applicable, prohibitions concerning advertising, customer solicitation or representations by a member;

(10) the rules relating to the disclosure of the sharing of a broker's remuneration with a market intermediary;

(11) the manner in which disclosure is made under section 21;

(12) the nature, form and tenor of the books and registers that must be kept by members;

(13) the rules relating to the setting up and maintenance of a trust account;

(14) the rules relating to the application of the first paragraph of section 12;

(15) the rules relating to the application of section 17;

(16) the rules relating to the preservation, use and destruction of the records, books and registers that must be kept by members;

(17) the content, form and use of the mandatory forms designated by government regulation;

(18) the rules relating to the preparation of examinations to be taken by persons wishing to obtain a certificate prescribed under this Act;

(19) the means of communication permitting members of the board of directors who are not present at a sitting of the board of directors, to vote to allow decisions to be made, and the conditions subject to which they may do so.

The board of directors must also, by by-law subject to government approval,

(1) establish a fund to finance activities relating to professional inspection and, if funds are sufficient, discipline. This fund shall consist of the interest generated by the sums of money held in trust;

(2) determine the rules governing the administration of the financing fund and the terms and conditions of payment into the fund of the interest generated by the sums of money held in trust.

The board of directors, in exercising its regulatory power, may establish various categories of members and prescribe appropriate rules for each, or for only one, category.

No by-law may be adopted under this section unless the secretary of the Association, at least 30 days before the date scheduled for its adoption by the board of directors, submits the text of the by-law to all the members of the Association.

74. The Association must determine, by by-law subject to government approval,

(1) the rules of professional ethics applicable to its members;

(2) the fees to be charged for the issue, renewal or reinstatement of a certificate.

75. The Association may determine, by by-law subject to government approval, the various specialist's titles that a member may use and the conditions and manner on or in which such titles may be obtained or withdrawn.

76. The Government, 60 days after serving on the board of directors or the Association a formal notice enjoining it to adopt by-laws under section 73, 74 or 75, may exercise that regulatory power.

Such a by-law is deemed to be a by-law of the board of directors or of the Association and the board or the Association may amend it. Any by-law so amended is subject to government approval.

77. The Government shall approve with or without amendment any by-law submitted to it for approval.

78. Every person who wishes to obtain a certificate provided for in this Act must pass an examination prepared by the Association. Such an examination must have received the approval of the Inspector General of Financial Institutions.

79. The affairs of the Association shall be administered by a board of directors composed of 11 members appointed for a term of two years.

80. The Government, after consulting various socio-economic groups, shall appoint two members of the board of directors who are neither brokers nor agents.

The members of the Association shall elect from among their number the other members of the board of directors, in the manner provided in sections 84 and 85.

81. Votes for the election of directors shall be taken in the manner prescribed in the rules of internal management of the Association.

82. At least 15 days before the date fixed for the closing of the poll, the secretary of the Association shall send the following documents to each member who is entitled to vote, advising him at the same time of that date,

(1) a ballot paper certified by the secretary, stating the names of the candidates for the office of director in the region in which each member may exercise his right to vote and an envelope in which to insert the ballot paper, bearing the words "BALLOT PAPER DIRECTOR";

(2) for the election of the chairman, a certified ballot paper stating the names of the candidates for the office of chairman and an envelope in which to insert the ballot paper, bearing the words "BALLOT PAPER CHAIRMAN";

(3) an envelope addressed to the secretary of the Association bearing the word "ELECTION", the name of the voter, his address and the name of the region in which he may exercise his right to vote;

(4) any other document prescribed in the rules of internal management of the Association, where that is the case.

83. All ballot papers and envelopes to be used at an election must be in the same form and as nearly alike as possible.

Each ballot paper shall contain, on the right of the name of each candidate, a square space reserved for voting.

84. The members of the Association shall elect the chairman of the board of directors from among the brokers and agents who have

pursued that activity in Québec for five years before the date of the election.

85. The members of the Montréal region shall elect as directors four members having their place of business in the Montréal region.

The members of the Québec city region shall elect as director one member having his place of business in the Québec city region.

The members in the other regions of Québec shall elect as directors three members having their place of business in the other regions of Québec.

86. At the end of his term, every member shall remain in office until his replacement is elected.

87. No member of the board of directors may hold any remunerated position within the Association.

88. Any member of the board of directors who has a direct or indirect interest in an undertaking which places his personal interest in conflict with the interest of the Association must, on pain of forfeiture of office, disclose his interest and abstain from participating in any decision concerning the undertaking in which he has an interest. Moreover, he must withdraw from the meeting for the duration of deliberations relating to it.

89. The members of the board of directors shall elect a vice-chairman and a treasurer from among their number. They shall appoint a secretary.

90. The powers and duties of the chairman, the vice-chairman and the secretary shall be determined in the rules of internal management of the Association.

91. If the chairman is unable to act, the vice-chairman shall exercise the functions of the chairman.

92. Any vacancy occurring on the board of directors shall be filled for the unexpired portion of the term by the appointment by the Government or by the board of directors, as the case may be, of a person having the qualifications prescribed in section 80, 84 or 85, according to the position to be filled.

93. The Association may hire the personnel required for the pursuit of its activities.

94. A majority of its members constitutes a quorum at sittings of the board of directors.

95. The decisions of the board of directors are made by a majority of the votes cast by the members present or members voting on the issue by a means of communication and on the conditions prescribed in the by-laws of the Association.

In the case of a tie, the chairman has a casting vote.

DIVISION II

FINANCING, BOOKS, REGISTERS AND AUDIT OF THE ASSOCIATION

96. The Association shall finance its activities out of the fees which must be paid to it by members under paragraph 2 of section 74.

97. The Government may, subject to the terms and conditions it determines, authorize the Minister of Finance to grant the Association one or more loans for any amount considered necessary for the attainment of its objects.

The sums required for the carrying out of this section shall be taken out of the consolidated revenue fund.

98. The expenses incurred for the carrying out of this Act, which are determined each year by the Government, shall be borne by the Association.

99. The Association shall keep a register of brokers and agents. The register shall contain the surname and given names of every member and the titles that he is entitled to use, the address where he carries on his activities, the period for which the certificate he holds is valid and the restrictions it includes, if any.

Where the broker is a partnership or legal person, the register shall contain its firm name and corporate name, the address of its head office, the period for which the certificate held is valid, the restrictions it includes, if any, and the names of the agents through whom it pursues its activities.

The register shall also contain any other information the Association considers appropriate.

100. The Association shall preserve the register of brokers and agents and open it for examination by the public during regular office hours.

101. The Association must cause its books and accounts to be audited every year by an auditor.

If it fails to do so, the Inspector General may cause the audit to be made and shall designate an auditor for that purpose; the remuneration of the auditor shall be borne by the Association.

102. The auditor shall have access to all the books, registers, accounts and other accounting records of the Association and to supporting documents. Every person having custody thereof shall facilitate their examination.

The auditor may require the administrators, representatives or employees of the Association to provide the information and documents needed for the performance of his duties as auditor.

103. The auditor may require that a meeting of the board of directors be held on any question relating to his duties as auditor.

104. The fiscal year of the Association ends on 31 December.

105. Within four months after the end of each fiscal year, the Association shall transmit to the Inspector General its audited annual report showing its financial position and activities for the preceding fiscal year.

The report shall contain any other information which the Inspector General may require.

106. The Association must, in addition, transmit to the Inspector General, at his request, on the dates and in the form he determines, the statements, statistical data, reports, documents and other information he considers appropriate for the purposes of this Act.

CHAPTER VI
PROFESSIONAL INSPECTION AND DISCIPLINE

DIVISION I

PROFESSIONAL INSPECTION COMMITTEE

107. A professional inspection committee shall be established within the Association.

108. The function of the committee is to supervise the carrying on of the professional activities of the members of the Association, with the exception of professional competence, in particular by auditing their records, accounts, books and registers.

109. The professional inspection committee may make any recommendation it considers appropriate to the member who is the object of inspection.

If it becomes aware that an offence under this Act or the regulations has been committed, it shall notify the syndic thereof.

110. The professional inspection committee shall be composed of not less than three members, including a chairman, appointed by the board of directors of the Association from among its members for a term of one year.

111. At the expiry of their terms, the members of the committee shall remain in office until reappointed or replaced.

112. If a member of the committee is unable to act, he shall be replaced by a person appointed by the board of directors for as long as the member is incapacitated.

113. The professional inspection committee may, with the authorization of the board of directors, hire the personnel necessary for the carrying out of its functions.

114. An inspection may be carried out at the request of the Association or on the initiative of the professional inspection committee.

115. Any person making an inspection under this division may

(1) enter, at any reasonable time, the establishment of any member whose business is being inspected;

(2) examine and make copies of the books, registers, accounts, records and other documents relating to the activities of the member concerned;

(3) require any information or document relating to the carrying out of this Act and the regulations made thereunder.

Every person having custody, possession or control of the books, registers, accounts, records and other documents shall, at the request of the person making the inspection, allow him access to them and facilitate his examination thereof.

116. The person making an inspection shall identify himself on request and produce an attestation of his capacity, signed by a person authorized to do so who sits on the professional inspection committee.

117. No person may hinder the work of a person making an inspection, in particular by misleading him.

118. The professional inspection committee shall, each year, submit a report of its activities to the Association, at the date and in the form the latter determines.

DIVISION II

SYNDIC

119. The board of directors shall appoint a syndic from among the members of the Association who have carried on the activity of broker or agent for at least five years and, where necessary, one or more assistant syndics from among the members who have pursued either activity for at least three years.

120. Where the syndic has grounds to believe that an offence under this Act or the regulations thereunder has been committed by a member of the Association, he shall carry out an investigation and, if expedient, file a complaint with the discipline committee.

121. No syndic or assistant syndic, as the case may be, may, while in office, act as broker or agent.

122. Where the syndic or an assistant syndic is unable to act, he may be replaced by a member appointed by the board of directors for as long as he is incapacitated.

123. The syndic may be removed from office by a vote of two-thirds of the members of the board of directors.

124. The syndic, with the authorization of the board of directors, may hire the personnel necessary for the carrying out of his duties.

125. The syndic shall transmit each year to the Association, on the date and in the form it determines, a report of his activities.

126. Sections 115, 116 and 117 apply to the syndic when making an investigation.

The syndic shall have the powers and immunity of a commissioner appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

DIVISION III

DISCIPLINE COMMITTEE

127. A discipline committee is hereby established within the Association.

128. The discipline committee shall be seized of every complaint filed against a member of the Association for an offence under this Act or the regulations thereunder.

129. Where a breach of discipline is attributable to a legal person, a complaint may be filed against those of its directors, officers or agents who participated in or consented to the breach.

130. The discipline committee shall be composed of not less than three members appointed for a term of three years.

The chairman shall be appointed by the Government, after consultation with the Barreau du Québec, from among advocates having at least ten years of practice.

In addition, the Government shall, in the same manner, appoint a substitute to act when the chairman is unable to do so.

The other persons shall be appointed by the board of directors from among the members of the Association.

131. A member of the discipline committee may be recused in the cases provided for in article 234 of the Code of Civil Procedure (R.S.Q., chapter C-25), except paragraph 7 of the said article.

Articles 234 to 242 of the said Code, adapted as required, apply to such a recusation.

132. At the end of their terms, the members of the discipline committee shall remain in office until they are replaced or reappointed.

133. Any vacancy on the discipline committee shall be filled for the unexpired portion of the term in the manner prescribed for the appointment of the member to be replaced.

134. The board of directors shall appoint the secretary of the discipline committee.

The secretary shall, in particular, see to the preparation and preservation of the records of the committee.

135. Sections 126 to 161 of the Professional Code relating to the filing and trial of complaints and to the related decisions and penalties apply, adapted as required, to complaints received by the disciplinary committee.

136. An appeal lies to the Court of Québec from decisions of the discipline committee, in accordance with sections 366 to 377 of the Act respecting insurance, adapted as required.

137. The secretary of the discipline committee must forward, to each member of the Association, notice of any final decision of the discipline committee or the Court of Québec, as the case may be, which entails the suspension or cancellation of his certificate and, where applicable, notice of a judgment of the Court rectifying or reviewing that decision. The notice must state the name of the member found guilty, the place where he mainly carried on his activities and the address of that place, the category of certificate held by him, the date and nature of the offence committed, and with the date and a summary of the decision.

In addition, the secretary must cause a notice to be published in the newspaper circulated in the locality where the member mainly carried on his activities, unless dispensed from so doing by the discipline committee.

138. The notice provided for in the first paragraph of section 137 is deemed to be validly transmitted to each member if it is published or inserted in any official or regular publication sent by the Association to each of its members. When such a notice is published, it must be presented in a box covering at least two columns, with the title "NOTICE OF SUSPENSION OR REVOCATION OF CERTIFICATE".

139. The secretary of the discipline committee must transmit to the fund any decision made following a complaint filed against a member by reason of fraud, fraudulent transaction or misappropriation of funds or other property which, under this Act, must be deposited in a trust account.

140. The discipline committee shall transmit each year to the Association, at the date and in the form it determines, a report of its activities.

The report must indicate the number and nature of the complaints received, the number of complaints rejected, and the number and nature of condemnations.

CHAPTER VII

INSPECTOR GENERAL OF FINANCIAL INSTITUTIONS

141. The Inspector General shall make an inspection of the business of the Association, or cause such an inspection to be made, whenever he considers it appropriate for the purposes of this Act.

142. Any person making an inspection may, for the purposes of his inspection,

(1) enter, at any reasonable time, the head office of the Association;

(2) examine and make copies of the books, registers, accounts, records and other documents relating to the activities of the Association;

(3) require any information or document relating to the carrying out of this Act and the regulations thereunder.

Every person having custody, possession or control of the books, registers, accounts, records and other documents shall, at the request of the person making the inspection, allow him access to them and facilitate his examination thereof.

143. Any person making an inspection shall, on request, identify himself and produce a certificate of his capacity, signed by the Inspector General.

144. No person may hinder the work of a person making an inspection, in particular by misleading him.

145. The Inspector General may, whenever he is of the opinion that public interest so requires, order that an inquiry be held on any matter within his jurisdiction.

The Inspector General and any person he authorizes in writing shall have the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions, except the power to order imprisonment.

146. Where, in the opinion of the Inspector General, the Association is engaged in a course of action contrary to this Act or a regulation thereunder, he may order it to alter its course of action and remedy the situation.

147. The order issued by the Inspector General shall set out the reasons on which it is based and be transmitted to each person for whom it is intended. It shall become effective on its date of service or on any later date indicated therein.

Before issuing an order, the Inspector General shall serve on the Association a prior notice of not less than 15 days stating the reasons which appear to justify the order, the date on which it is to take effect and the possibility for the Association to be heard.

148. The Inspector General may, however, without prior notice, issue a provisional order, valid for a period of not more than 15 days, if he is of the opinion that any delay in the holding of a hearing may be detrimental.

The order must include the reasons on which it is based and shall take effect on its date of service on the person for whom it is intended. The person may, within six days of receiving the order, apply in writing to the Inspector General for a hearing.

149. The Inspector General may revoke any order issued under this chapter.

150. The Inspector General may, by motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act or any regulation made for its carrying out.

A motion for injunction is a proceeding in itself.

The procedure provided for in the Code of Civil Procedure applies to such a proceeding, except that the Inspector General shall not be required to give security.

151. Where the Association neglects to exercise the responsibilities conferred on it by this Act or where, as a result of its action, the protection of the public is not ensured or the requirements of this Act or of the regulations made thereunder are not met, the Inspector General may exercise all or part of the powers held by the Association and prohibit it from exercising those powers to the extent and for the period he determines.

Before rendering his decision, the Inspector General shall notify the Association and give it an opportunity to be heard. The Association may appeal from the decision of the Inspector General to the Superior Court, within 30 days.

152. Each year the Inspector General shall submit to the Minister a report on the activities of both the Association and the Fonds d'indemnisation du courtage immobilier.

The report shall include any other information which the Inspector General considers appropriate or which the Minister may require.

CHAPTER VIII

REGULATIONS

153. The Government may, by regulation, determine

(1) the qualifications required to hold a real estate broker certificate or a real estate agent certificate;

(2) the activities which no real estate broker or real estate agent may pursue;

(3) the conditions which must be met by a market intermediary in insurance in order to hold a certificate allowing him to pursue the activity mentioned in the fourth paragraph of section 14 of the Act respecting market intermediaries;

(4) the provisions of this Act to which the holder of a certificate referred to in paragraph 3 is not subject;

(5) the forms whose form is mandatory;

(6) the rules relating to the protection of personal information obtained by a member of the Association in the pursuit of his activities, and the rules relating to the release of information in his possession;

(7) the terms and conditions subject to which a person having done business with a member of the Association is entitled to have access to and reproduce any documents and information concerning him which are in the possession of that member;

(8) the conditions of admissibility of claims and the terms and conditions applicable to claims made to and compensations paid by the Fonds d'indemnisation, which may vary according to whether the claim or compensation pertains to fraud or a fraudulent transaction or to a misappropriation of funds or other property which, under this Act, must be deposited in a trust account;

(9) the maximum amount of compensation that the Fonds d'indemnisation may pay with regard to the same claim, such maximum amount varying according to whether the claim pertains to fraud or a fraudulent transaction or to a misappropriation of funds or other property which, under this Act, must be deposited in a trust account;

(10) the rules governing the administration and investment of the sums of money paid into the Fonds d'indemnisation;

(11) the contributions to be paid by members of the Association to the Fonds d'indemnisation, according to the categories of certificates they hold and, in particular, the date on which they registered with the Association, and the terms of payment of the contributions;

(12) the minimum amount of working capital which must be maintained by the Fonds d'indemnisation;

(13) the conditions allowing the Minister to authorize the Fonds d'indemnisation to use the interest generated by the sums of money deposited in the fund for purposes related to the real estate brokerage sector and furthering the protection of the public;

(14) the other particulars which must be included in a contract referred to in section 34;

(15) those provisions, among the provisions of regulations made under this Act, the violation of which constitutes an offence.

CHAPTER IX

PENAL PROVISIONS

154. No person may, in any manner whatever, hold himself out as being a real estate broker or a real estate agent, use a title leading

others to believe that he is such, pursue the activity of a real estate broker or of a real estate agent, claim to be entitled to pursue such activities or act in a manner leading others to believe that he is so entitled, unless he holds the certificate required by this Act.

155. Every person who contravenes the provisions of section 29 or section 30 is guilty of an offence.

156. Every person who hinders the work of a person making an inspection under section 141 is guilty of an offence.

157. Every person convicted of an offence under any of sections 154 to 156 is liable to a fine of not less than \$500 and not more than \$10 000 in the case of a natural person, or to a fine of not less than \$1 000 and not more than \$25 000 in the case of a legal person.

Every person convicted of an offence under a regulatory provision determined pursuant to paragraph 15 of section 153 is liable to a fine of not less than \$100.

In determining the fines, the court shall take into account, in particular, the injury suffered and benefits derived from the offence.

158. Where an offence under any of sections 154 to 156 or under a regulatory provision determined pursuant to paragraph 15 of section 153 is committed by a legal person, every director, executive officer, or representative who knowingly authorized, encouraged, ordered or advised the commission of the offence is guilty of an offence and is liable to the fine prescribed in section 157.

159. Proceedings under this Act shall be instituted by the Attorney General or by any person he authorizes specially or generally, in writing, for that purpose.

160. If a person repeats an offence under any of sections 154 to 156 or a regulatory provision determined pursuant to paragraph 15 of section 153, the Attorney General may apply to the Superior Court for an interlocutory writ of injunction enjoining that person or, as the case may be, his directors, executive officers or representatives to cease the commission of the offence until final judgment is pronounced in penal proceedings.

After pronouncing the judgment, the Superior Court shall itself render final judgment on the application for an injunction.

The Attorney General shall be dispensed from the obligation to give security. In all other respects, the provisions of the Code of Civil Procedure respecting writs of injunction apply.

CHAPTER X

MISCELLANEOUS PROVISIONS

161. The rights and obligations of the Association de l'immeuble du Québec, constituted on 9 March 1973 by letters patent issued under Part III of the Companies Act (R.S.Q., 1964, chapter 271) are transferred to the Association des courtiers et agents immobiliers du Québec and the former association is dissolved by operation of law.

162. The Government shall determine the amount to be paid annually by the Association to the Inspector General for the purposes of this Act.

163. The filing of a sworn declaration of a member of the personnel of the Association is proof, before a court of justice, of the signature and capacity of the signatory.

164. The Inspector General may, on his own initiative and without notice, intervene in any civil proceedings relating to a provision of this Act or the regulations thereunder to take part in the proof and hearing as if he were a party thereto. The same rule applies to the Association in respect of the rules coming under its administration.

CHAPTER XI

AMENDING AND TRANSITIONAL PROVISIONS

165. This Act replaces the Real Estate Brokerage Act (R.S.Q., chapter C-73).

166. Section 14 of the Act respecting market intermediaries, enacted by section 14 of chapter 48 of the statutes of 1989, is amended by replacing the words "place hypothecary loans" in the second and third lines of the fourth paragraph by the words "pursue the activity of a real estate broker with regard to a loan secured by the hypothec of an immovable".

167. Section 42 of the said Act, enacted by section 42 of chapter 48 of the statutes of 1989, is amended by adding, after the first paragraph, the following paragraph:

“For the purposes of this section, a real estate broker governed by the Real Estate Brokerage Act is deemed to be a market intermediary whose activities are governed by the Government.”

168. Section 44 of the said Act, enacted by section 44 of chapter 48 of the statutes of 1989, is amended

(1) by inserting the words “or a person holding a certificate issued under the Real Estate Brokerage Act” after the word “intermediary” in the fourth line of the first paragraph;

(2) by inserting the words “or a person holding a certificate issued under the Real Estate Brokerage Act” after the word “intermediary” in the second line of the second paragraph.

169. Section 7 of the Act respecting the Ministère de l’Habitation et de la Protection du consommateur (R.S.Q., chapter M-15.3) is amended by striking out the words “, real estate brokerage” in the second line of the second paragraph.

170. Section 77 of the Act respecting labour standards (R.S.Q., chapter N-1.1), amended by section 28 of chapter 73 of the statutes of 1990, is again amended by replacing paragraph 3 by the following paragraph:

“(3) a real estate agent within the meaning of the Real Estate Brokerage Act (*insert here the chapter number of this Act in the volume of statutes for 1991*) remunerated entirely by commission;”.

171. The personnel of the Superintendent of Real Estate Brokerage become, without other formality, the staff of the Inspector General.

172. The records, other documents and equipment of the Superintendent of Real Estate Brokerage become the records, documents and equipment of the Inspector General.

173. The Government shall appoint the eleven members of the first board of directors of the Association and shall designate its chairman.

The term of office of five of the members of the board of directors shall be three years and of the six remaining members, two years.

174. The first board of directors of the Association shall adopt rules of internal management which shall remain in force until

replaced by the rules of internal management adopted in accordance with section 175.

175. The Association must, within three months of the coming into force of this section, hold a general meeting of persons holding permits and registration certificates issued by the Superintendent of Real Estate Brokerage, in order to adopt the rules of internal management prescribed in section 67 and the by-laws prescribed in sections 74 and 75, where applicable. Notwithstanding section 73, the general assembly shall also adopt the by-laws prescribed in that section.

Sections 176 to 178 apply with regard to the convening and holding of such a meeting.

176. Persons holding permits or certificates mentioned in section 175 shall be convened by the secretary by way of a written notice sent by mail, to their last known address, at least 30 days before the date scheduled for the meeting. The notice shall be sent together with an agenda and shall indicate the date, time and place at which the meeting is to be held.

Any involuntary failure to transmit the notice to one of the holders or the fact that a holder did not receive the notice does not invalidate the meeting or any resolution adopted during the meeting.

177. The chairman of the Association shall preside at the general meeting. If he is unable to act, the vice-chairman shall exercise the functions of the chairman.

178. A partnership or legal person shall vote at the meeting through a representative, who shall bear a power of attorney. The power of attorney shall be remitted to the secretary of the Association before the beginning of the meeting.

179. Persons who, on *(insert here the date of the day preceding the date of coming into force of this section)*, hold a real estate broker's or real estate agent's permit issued by the Superintendent of Real Estate Brokerage are deemed to hold a real estate broker certificate or a real estate agent certificate, as the case may be, issued by the Association.

Their certificate will expire on the expiry date fixed on the broker's or agent's permit, as the case may be.

180. Builders who, on *(insert here the date of the day preceding the date of coming into force of this section)*, are registered with the

Superintendent of Real Estate Brokerage are deemed to hold a real estate broker certificate issued by the Association.

Their certificate will expire on the expiry date fixed on the registration certificate.

181. The Government may, by a regulation made within 12 months of the coming into force of this section, enact transitional measures for the carrying out of this Act.

CHAPTER XII

FINAL PROVISIONS

182. Any sum received by the Superintendent of Real Estate Brokerage for the permits issued by him and in force on (*insert here the date of the day preceding the day on which this section comes into force*) is deemed to have been received on behalf of the Association in proportion to the period covered by the permit and shall be remitted to the Association after the amounts payable as loans granted under section 97 have been deducted.

[[183. The sums required for the carrying out of this Act for the fiscal years 1991-92 and 1992-93 shall be taken out of the consolidated revenue fund to the extent determined by the Government.]]

184. The Minister shall, on or before (*insert here the date occurring five years after the date of coming into force of this section*), make a report to the Government on the carrying out of this Act and subsequently, every five years, on the advisability of maintaining it in force and, where applicable, of amending it.

The report shall be tabled before the National Assembly within the following 15 days if it is in session or, if it is not sitting, within 15 days of resumption.

185. The Inspector General is entrusted with the carrying out of this Act.

186. The Government shall designate the minister responsible for the administration of this Act.

187. The provisions of this Act will come into force on the date or dates to be fixed by the Government.