

THIRD SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 87

An Act to amend the Real Estate Brokerage Act

First reading
Second reading
Third reading

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et institutions financières

L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTES

This bill proposes amendments to the Real Estate Brokerage Act.

The bill introduces amendments particularly with regard to persons subject to the act. Thus, it exempts from the application of the act the builder who sells, through his employees, the houses he has built, and allows any employee to carry out a real estate transaction on behalf of his employer without holding a salesman's permit, when the employer is not a broker. Moreover, this bill provides for the integration of builders acting as brokers into the existing permit regime for brokers, and therefore puts an end to the special registration regime for builders.

This bill also proposes measures designed to facilitate the administration of this act. Thus, it provides that the salesmen's permits, which presently expire on 30 November each year, will henceforth be valid for two years and will expire on the date of the holder's birthday. The bill also provides for creation of the post of deputy-superintendent of the Service du courtage immobilier du Québec and proposes that the Superintendent's signature may be affixed mechanically to certain documents.

The bill sets up a mechanism of appeal from the Superintendent's decisions regarding refusals, suspensions or revocations of permits.

Furthermore, the bill amends the provisions regarding the amount of the security to be supplied by the brokers and their salesmen by empowering the Lieutenant-Governor in Council to fix, by regulation, the amount of that security, which will be subject, in the case of brokers, to variations according to the categories of holders he determines. The bill also specifies that the object of the security is to guarantee the reimbursement of the moneys to be deposited, according to the act, in a trust account.

Finally, the bill proposes that the word "vendeur" be replaced, in the French text, by the word "représentant" considered

more adequate, and that the word “permit”, where related to salesman, be replaced by the word “certificate”.

Sec. 1. The amendment proposed to paragraph b of section 1 of the act provides that the word “représentant” will henceforth be used in the French text to designate a broker’s employee who carries out a real estate transaction.

Paragraph e of section 1 presently reads as follows:

“(e) “permit” means a broker’s or salesman’s permit issued under this act;”.

Paragraph f of section 1 presently reads as follows:

“(f) “registered” indicates a person holding a registration certificate issued under this act;”.

Sec. 2. The amendment proposed to section 1a of the act provides for the creation of the post of deputy-superintendent of the Service du courtage immobilier du Québec and the manner of his appointment and remuneration.

Bill 87

An Act to amend the Real Estate Brokerage Act

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

R.S.,
c. 267,
s. 1, am.

1. Section 1 of the Real Estate Brokerage Act (Revised Statutes, 1964, chapter 267), amended by section 1 of chapter 75 of the statutes of 1966/1967, is again amended:

(a) by replacing paragraph *b* by the following paragraph:

"sales-
man";

"(b) "salesman" means any person who, employed by a broker, carries out a real estate transaction;";

(b) by replacing paragraph *e* by the following paragraph:

"permit";

"(e) "permit" means a broker's permit issued under this act;";

(c) by replacing paragraph *f* by the following paragraph:

"certifi-
cate";

"(f) "certificate" means a salesman's certificate issued under this act;".

R.S.,
c. 267,
s. 1a,
replaced.

2. Section 1a of the said act, enacted by section 2 of chapter 75 of the statutes of 1966/1967, is replaced by the following section:

Body
established.

1a. An administrative body is established in the Ministère des consommateurs, coopératives et institutions financières, under the name of "Service du courtage immobilier du Québec"; it shall consist of a Superintendent, a deputy-superintendent and such other functionaries and employees as are deemed necessary.

Appoint-
ment and
remunera-
tion.

The Superintendent, the deputy-superintendent and such other functionaries and employees shall be appointed and remunerated in accordance with the Civil Service Act (1965, 1st session, chapter 14)."

Sec. 3. *Sections 1b and 1c are new law.*

Sec. 4. *The proposed amendment is for concordance.*

Sec. 5. *Section 2 of the act presently reads as follows:*

“2. No person shall assume the title of real estate broker or act as broker or salesman unless he holds a permit.

Nevertheless a builder may act as a broker if he is registered.”

Sec. 6. *The proposed amendment is for concordance.*

Sec. 7. *Paragraph j of section 4 of the act presently reads as follows:*

“4. Prohibition to do anything contemplated in section 3 [*dealing with real estate brokerage*] does not apply

(j) to a regular employee who, in the exercise of his principal occupation, carries out a real estate transaction on behalf of his employer when the latter is not a broker or a registered builder.”

R.S.,
c. 267,
ss. 1b, 1c,
added.

3. The said act is amended by inserting, after section 1a, the following sections:

Deputy-
superin-
tendent.

“1 b. The powers of the Superintendent may be exercised by the deputy-superintendent to the extent determined by the Minister.

Automatic
device.

“1 c. The Lieutenant-Governor in Council may, on the conditions he determines, allow the signature of the Superintendent to be affixed by an automatic device to the documents he determines.

Facsimile.

The Lieutenant-Governor in Council may also allow a facsimile of such signature to be engraved, lithographed or printed on the documents he determines; in such case, the facsimile has the same value as the signature itself if the document is countersigned by a person authorized by the Minister.”

R.S.,
c. 267,
Div. II,
tit. re-
placed.

4. The title of Division II of the said act is replaced by the following title:

“PERMITS AND CERTIFICATES”.

R.S.,
c. 267, s. 2,
replaced.

5. Section 2 of the said act is replaced by the following section:

Permit
required.

“2. No person may assume the title of real estate broker or act as a broker unless he holds a permit.

Certifi-
cate re-
quired.

No person may act as a salesman unless he holds a certificate.”

R.S.,
c. 267, s. 3,
replaced.

6. Section 3 of the said act is replaced by the following section:

Acting as
broker or
salesman.

“3. A person acts as a broker or salesman when

(a) on behalf of another and for remuneration he carries out or offers or attempts to carry out a real estate transaction or shows or advertises an immoveable with a view to such a transaction; or

(b) he offers, promises or attempts to act as a broker or salesman, or, in any manner, allows it to be believed that he is authorized to act in either of such capacities.”

R.S.,
c. 267, s. 4,
am.

7. Section 4 of the said act, amended by section 3 of chapter 75 of the statutes of 1966/1967, is again amended by replacing paragraph *j* by the following paragraph:

“(j) to an employee who carries out a real estate transaction on behalf of his employer when the latter is not a broker.”

Sec. 8. *The amendment proposed to subsection 1 of section 5 is for concordance.*

The effect of the amendment proposed to subsection 2 of section 5 is to determine the object of the security and to strike out provisions of the act concerning the amount of the security; this amount will henceforth be fixed by regulation of the Lieutenant-Governor in Council as provided by section 18 of this bill.

The amendment proposed to subsection 5 of section 5 is designed to replace, the word "representative" in subparagraph b by the word "person", which is for concordance with the French text, where henceforth "représentant" is to be used to designate a broker's employee who carries out a real estate transaction, as proposed by section 1 of this bill.

Sec. 9. *The proposed amendment is for concordance.*

Sec. 10. *The proposed amendment is for concordance.*

Sec. 11. *The amendment proposed to section 8 of the act provides that a broker's permit will henceforth expire on 31 May of each year instead of on 30 November and that a salesman's certificate, which replaces the salesman's permit presently expiring on 30 November of each year, will henceforth expire on the date of the holder's birthday in the second year following its issue.*

Moreover, the proposed amendment provides, as a transitional measure, that a permit which, by virtue of new provisions in section 8, would expire on 31 May 1980, will expire only on 31 May 1981.

R.S.,
c. 267, s. 5,
am. **8.** Section 5 of the said act, amended by section 4 of chapter 75 of the statutes of 1966/1967, is again amended:

(a) by striking out the word "registration" in the second line of subsection 1;

(b) by replacing subsection 2 by the following subsection:

Security. "(2) The object of such security is to guarantee the reimbursement of the moneys which must be deposited in the trust account provided for in section 10.";

(c) by replacing subsection 5 by the following subsection:

Firm or
corpora-
tion.

"(5) A firm or corporation applying for a permit shall

(a) provide the Superintendent with proof of its registration or incorporation, as the case may be, and

(b) appoint to represent it, for the purposes of this act, a person who must possess all the qualifications required to obtain a permit and engage actively in the real estate transactions of the firm or corporation."

R.S.,
c. 267, s. 6,
replaced. **9.** Section 6 of the said act, amended by section 5 of chapter 75 of the statutes of 1966/1967, is replaced by the following section:

Salesman's
certifi-
cate.

"**6.** (1) No person can obtain a salesman's certificate unless he is in the employ of a broker holding a permit.

Cessation
of em-
ployment.

(2) The cessation of such employment shall of itself suspend the certificate. The Superintendent, on request, may reinstate the certificate when the salesman is again in the employ of a broker."

R.S.,
c. 267, s. 7,
replaced. **10.** Section 7 of the said act, amended by section 6 of chapter 75 of the statutes of 1966/1967, is replaced by the following section:

Cessation
of em-
ployment.

"**7.** Every broker shall communicate forthwith to the Superintendent the name and address of every salesman who ceases to be in his employ, and also the cause of cessation of the employment."

R.S.,
c. 267, s. 8,
replaced. **11.** Section 8 of the said act is replaced by the following section:

Expiry of
permit.

"**8.** Every permit expires on 31 May each year.

Expiry of
certificate.

Every certificate expires on the holder's birthday in the second year following its issue.

Sec. 12. *The proposed amendment is for concordance.*

Sec. 13 to 16. *The proposed amendments are for concordance.*

Renewal. The permit or certificate may be renewed on the conditions prescribed by the regulations.

Expiry of permit. A permit that, by virtue of the first paragraph, would expire on 31 May 1980, does not expire until 31 May 1981."

R.S.,
c. 267,
s. 11,
replaced.

12. Section 11 of the said act is replaced by the following section:

Provisions applicable. **11.** Any other person carrying out a real estate transaction for another and for remuneration is also subject to sections 9 and 10."

R.S.,
c. 267,
s. 12, am.

13. Section 12 of the said act is amended:

(a) by replacing subparagraph *a* of the first paragraph by the following subparagraph:

"(a) any person who acts as a broker or salesman contrary to this act;";

(b) by replacing subparagraph *c* of the first paragraph by the following subparagraph:

"(c) any broker who, directly or indirectly, pays or promises to pay a remuneration to any person who does not hold a permit or certificate to act as or assume the title of broker or salesman;";

(c) by replacing subparagraph *d* of the first paragraph by the following subparagraph:

"(d) any broker who obtains the payment or the promise of a remuneration for acting as such from a broker who does not hold a permit or a salesman who does not hold a certificate;";

(d) by replacing subparagraph *e* of the first paragraph by the following subparagraph:

"(e) any broker who employs, for the purposes of a real estate transaction, a salesman in the employ of another broker or a salesman who does not hold a certificate, or who pays or offers or promises to pay him a remuneration;";

(e) by replacing subparagraph *f* of the first paragraph by the following subparagraph:

"(f) any salesman who takes part in a real estate transaction on behalf of a broker other than his employer, or who agrees to receive a remuneration from such broker;";

(f) by replacing subparagraph *g* of the first paragraph by the following subparagraph:

"(g) any corporation or firm holding a permit that acts as a broker through a person other than the person contemplated in

paragraph *b* of subsection 5 of section 5, a salesman in its employ or a broker holding a permit;";

(*g*) by replacing the words " , registered builder or salesman" in the first and second lines of subparagraph *h* of the first paragraph by the words "or salesman";

(*h*) by replacing the words " , registered builder or salesman" in the first and second lines of subparagraph *i* of the first paragraph by the words "or salesman".

R.S.,
c. 267,
s. 13,
replaced.

14. Section 13 of the said act, amended by section 7 of chapter 75 of the statutes of 1966/1967, is replaced by the following section:

Persons
involved.

"13. (1) When an offence is committed, the broker, and the salesman, director, manager, officer, partner or employee or the person contemplated in paragraph *b* of subsection 5 of section 5 who participated therein is guilty of the offence to the same extent as the person who committed it.

Presump-
tion.

(2) When a director, manager, officer, partner, employee or salesman of a broker has been found guilty of an offence, the latter and the person contemplated in paragraph *b* of subsection 5 of section 5 are presumed guilty thereof.

Proof.

(3) As regards the broker and the persons referred to in subsection 1, the books, accounts, records and other documents of the broker are proof *prima facie* of their contents for the purposes of any proceedings taken under this act and any decision reached by the Superintendent."

R.S.,
c. 267,
s. 13*a*,
am.

15. Section 13*a* of the said act, enacted by section 8 of chapter 75 of the statutes of 1966/1967, is amended by striking out the word "registration" in the first line.

R.S.,
c. 267,
s. 14, am.

16. Section 14 of the said act, amended by section 9 of chapter 75 of the statutes of 1966/1967, is again amended:

(*a*) by replacing the first three lines of the first paragraph by the following:

Suspension
or can-
cellation of
permit, etc.

"14. The Superintendent may suspend or cancel the permit or certificate of a broker or salesman who";

(*b*) by replacing subparagraph *b* of the first paragraph by the following subparagraph:

"(*b*) has ceased to be qualified to hold his broker's permit or salesman's certificate;".

R.S.,
c. 267,
ss. 14*a*-
14*k*,
added.

17. The said act is amended by inserting, after section 14, the following sections:

Appeal. **"14a.** Every person whose application for a permit or certificate is refused or whose permit or certificate is suspended, revoked or not renewed, may appeal from the decision of the Superintendent before a judge of the Provincial Court of the district of his domicile or head office,

(a) if the grounds, either of fact or of law, alleged in support of the decision are manifestly erroneous;

(b) if there is any serious irregularity in the proceedings followed;

(c) if the decision has not been rendered impartially.

Motion. **"14b.** The appeal is brought by a motion served upon the Superintendent. Such motion must be filed in the office of the Provincial Court, within sixty days after the mailing of the notice of the decision of the Superintendent to the applicant.

Record transmitted. Upon reception of the notice of appeal, the Superintendent shall transmit to the clerk of the Provincial Court the record relating to the decision concerned.

Powers, etc., of the judge. **"14c.** The judge is vested, on an appeal, with the powers and immunity granted to a commissioner appointed under the Public Inquiry Commission Act (Revised Statutes, 1964, chapter 11).

Decision not suspended. **"14d.** The appeal does not suspend the execution of the decision of the Superintendent, unless the judge orders otherwise in case of urgency.

Notice of hearing. **"14e.** The judge must give the parties, in the manner he deems appropriate, notice of at least five clear days of the date and time when and place where they may be heard.

Party absent, etc. If a party so summoned does not appear or refuses to be heard at the sitting fixed for such purpose or, if such sitting is adjourned, at the resumption thereof, the judge may proceed in the absence of such party.

Proof. **"14f.** The judge may admit a copy or extract of a document as proof, if the original is not available.

Examination. **"14g.** During the proof and hearing, each party may examine the witnesses and state his arguments.

Assistance of an advocate. Every party is entitled to be represented or assisted by an advocate.

Privileges and immunity of witnesses. **"14h.** Every person who testifies before the judge has the same privileges and immunity as a witness before the Superior

Sec. 18. *The amendment proposed to subparagraph a of section 18 of this act empowers the Lieutenant-Governor in Council to make regulations in order to determine the amount of the security exigible from salesmen and brokers or the categories of brokers he indicates as well as the form, terms and conditions of the security.*

The amendments proposed to subparagraphs d, e, f and g of the first paragraph of section 18 are for concordance.

The last paragraph of section 18 presently reads as follows:

“The regulations shall come into force on their publication in the Québec Official Gazette or on such later date as is fixed therein.”

Court, and articles 307 to 310 of the Code of Civil Procedure apply thereto, *mutatis mutandis*.

Exercise
of
jurisdiction.

“14*i*. The judge has all the powers necessary for the exercise of his jurisdiction and he may, in particular, make any order he deems appropriate to safeguard the rights of the parties.

Decision
confirmed,
etc.

“14*j*. The judge may confirm or quash any decision submitted to him.

Judgment
in
writing
and sub-
stantiated.

The judgment must be set down in writing and signed by the judge who rendered it. It must contain, in addition to the conclusions, the grounds of the decision.

Decision
trans-
mitted.

“14*k*. A certified copy must be transmitted by registered mail to each party by the clerk of the Provincial Court.

Original.

The original shall be kept at the office of the Provincial Court.”

R.S.,
c. 267,
s. 18, am.

18. Section 18 of the said act, amended by section 12 of chapter 75 of the statutes of 1966/1967, is again amended:

(a) by replacing subparagraph *a* of the first paragraph by the following subparagraphs:

“(a) the qualifications required of any person applying for a permit or certificate or a renewal, the conditions he must comply with, the financial statements and information he must produce, the examination he must undergo and the fees he must pay;

“(a') the amount of the security exigible from salesmen and brokers or the categories of brokers he indicates as well as the form and the terms and conditions of such security;”;

(b) by replacing subparagraph *d* of the first paragraph by the following subparagraph:

“(d) the manner of keeping the books, accounts and records of brokers and their inspection by the Superintendent;”;

(c) by replacing subparagraph *e* of the first paragraph by the following subparagraph:

“(e) the occupations or professions that a broker or salesman may engage in;”;

(d) by replacing subparagraph *f* of the first paragraph by the following subparagraph:

“(f) the information and documents that a broker or salesman must give to the parties to any real estate transaction;”;

(e) by replacing subparagraph *g* of the first paragraph by the following subparagraph:

“(g) the advertising of brokers.”;

Sec. 19. *The proposed amendment is for concordance.*

(f) by replacing the last paragraph by the following paragraphs:

Prior
notice of
regulations.

"The regulations shall not be made unless they have been the subject of a prior notice of thirty days published in the *Gazette officielle du Québec* reproducing the text of the draft regulations.

Coming
into force.

The regulations come into force on the date of their publication in the *Gazette officielle du Québec* or on such later date as is fixed therein."

R.S.,
c. 267,
s. 19, am.

19. Section 19 of the said act, replaced by section 13 of chapter 75 of the statutes of 1966/1967, is amended by replacing the word "vendeur" by the word "représentant" in the fifth line of the second paragraph of the French text.

Coming
into force.

20. This act comes into force on the day of its sanction, except section 1, sections 4 to 16, subparagraphs *a* to *e* of section 18 and section 19, which will come into force on the date to be fixed by proclamation of the Government.