



# SELLER'S GUIDE

SELLING YOUR PROPERTY,  
STEP BY STEP

**BERKSHIRE  
HATHAWAY**  
HOMESERVICES<sup>MC</sup>

QUÉBEC

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# SELLER'S GUIDE

This guide will take you through all the steps of selling a property with confidence with the help of a real estate broker.

## SELLING YOUR PROPERTY, STEP BY STEP

Ready to buy a property? Even if this is not your first purchase, this guide will help you make sure you have all the information you need.

### Overview of the guide

This guide, the result of many years of experience in answering your questions, is intended to be concrete and practical. It summarizes what you need to know at each step and in the most common situations when buying or selling a residential property, in the form of clear, simple and direct answers.

The guide is divided into three clearly identified sections:

### BEFORE

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Making sure you are well prepared

### DURING

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The steps to selling your property

### AFTER

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The steps following a Promise to purchase



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# BEFORE



## MAKING SURE YOU ARE WELL PREPARED

Selling a property is a complex undertaking. It is therefore important to be well informed and supported. By choosing to do business with a real estate broker, you are protected under the Real Estate Brokerage Act.

To make sure you are well prepared, we recommend that you first learn about a broker's role, and more specifically his duties and obligations when it comes to the sale of your property.

The next step will be to sign an Exclusive Brokerage Contract – Sale, and, with your broker's help, to complete the mandatory form Declarations by the seller of the immovable (or the version of this form concerning a divided ownership property).

It is your broker's responsibility to inform and advise you properly throughout the process, in accordance with his skills and his **code of ethics**. You may ask him any question that comes to mind; that's what he's there for!

### For example :

- What is the purpose of the form Declarations by the seller of the immovable?
- What are my options when I receive a Promise to purchase?

Armed with this information and support, you will be able to make the right decisions and to sell your property with complete confidence.

### NO BROKER?

Carrying out a real estate transaction on your own or with the help of a for-sale-by-owner company is a matter of choice. However, be aware that in both cases, you will be acting without the safety net of the Real Estate Brokerage Act. To find out more, read the section entitled "**Duties and obligations of a real estate broker**" in this guide.

# BEFORE



## THE ROLE OF THE REAL ESTATE AND MORTGAGE BROKER

In order to establish a bond of trust with your real estate broker at all stages of the transaction, it is important to understand his role.

Once he has completed his basic training and obtained his licence, a broker must continue to update his knowledge and skills. The OACIQ also supervises his practice by providing him with mandatory forms designed to standardize real estate transactions.

### DUTIES AND OBLIGATIONS OF A REAL ESTATE BROKER

- **Inform and verify**
- **Act with transparency**
- **Disclose**
- **Be loyal to you**
- **Advise you properly**
- **Be available**
- **Use OACIQ forms**
- **Protect your interests**



# BEFORE



## INFORM AND VERIFY

Your broker must be able to demonstrate the accuracy of the information he provides to the buyer using relevant documentation. He must:

- validate the information you provide about your property, including measurements, municipal taxes, any renovation work done, age and components of the building, municipal evaluation, municipal and school taxes, zoning, compliance of use, income and any other information regarding the building or the lot;
- verify whether the property is subject to any servitudes or easements, indicated on the **certificate of location**;
- take steps to discover any factor that could unfavourably affect the immovable; this includes the municipality's conditions to connect a lot to utilities (e.g. : **water supply**);
- inform you of any potential problem (**pyrite, radon, dry rot, cannabis**, water quantity and quality, contaminated soils, septic systems, etc.) and the impact this could have on the sale;
- for a divided or undivided co-ownership property, verify co-ownership documents such as the declaration of co-ownership and the by-laws of the immovable. With your collaboration, he will ask the syndicate of co-owners for all documentation deemed useful regarding the immovable (e.g. minutes of meetings of co-owners and boards of directors).



# BEFORE



## ACT WITH TRANSPARENCY

Your broker must act with transparency and integrity at all times, including by:

- completing the appropriate version of the form Declarations by the seller of the immovable with you;
- informing you in writing of any remuneration sharing agreement he has concluded with other brokers who may be involved in the transaction;
- collaborating with other brokers and providing fair treatment to unrepresented buyers;
- keeping you and the buyer informed of any factor that could unfavourably affect the transaction;
- recommending to a **buyer who is not represented by a broker to have a complete inspection carried out by a professional or a building inspector**. He may also recommend that you have a pre-sale inspection carried out if an earlier inspection report included negative points that you have since remedied.

## DISCLOSE

Your real estate broker must avoid placing himself in a **conflict of interest**. If a conflict cannot be avoided, he must disclose it in writing without delay to all the parties involved in the transaction. For instance:

- he must tell you if he is also representing the buyer where he is bound to the buyer by a brokerage contract involving remuneration;
- he must **inform you if he receives a financial (or other) benefit of any kind for referring you to a third party (e.g. an evaluator or a financial institution)**.

# BEFORE



## BE LOYAL TO YOU

Your real estate broker is bound by a strict obligation of loyalty towards you, his client. He must promote your interests and protect your rights, while acting fairly towards all parties to a real estate transaction, for example:

- if the property has known defects, by recommending that you obtain written quotes to find out how much it would cost to fix the problem prior to putting your property on the market;
- by presenting you with all promises to purchase received as soon as possible;
- by not **disclosing confidential or strategic information concerning you to a prospective buyer (e.g. your financial situation, the fact that you must move to another city quickly to take up a new job, etc.).**

## ADVISE YOU PROPERLY

Your real estate broker has a duty to advise and inform you objectively. For instance:

- He must explain all the clauses of the contracts and forms he fills out with you (Exclusive Brokerage Contract – Sale, Declarations by the seller of the immovable, Counter-proposal, etc.);
- He must make sure the content of the forms reflects your wishes;
- When a Promise to purchase is received, he must advise you on the content, including the price offered and the conditions.



# BEFORE



## BE AVAILABLE

Your broker must be available to represent you. He must make sure all communications received are dealt with and followed up on by:

- responding to any communication from you within a reasonable time frame. If he is not available to respond, he must designate another broker to replace him. The executive officer of his agency can also take over for him;
- conveying all important information to you as soon as possible, including when a Promise to purchase is received or a visit is requested.

## USE OACIQ FORMS

To protect your interests, the OACIQ has designed some 50 **forms and contracts** which all brokers are required to use. When a broker presents you with an OACIQ form (bearing the OACIQ logo), you may be assured that this form has been validated at every stage and is constantly being updated.

## PROTECT YOUR INTERESTS

A broker's duties and obligations are all aimed at one thing: protecting your interests in a transaction. They also include the following:

- Your broker must inform you of the protections available to you from the OACIQ;
- Each broker must be covered by **professional liability insurance** in case of fault, error or omission in the course of a transaction;
- And finally, all brokers must pay into the Real Estate Brokerage Indemnity Fund, or **FICI**, which protects you in case of fraud, dishonest tactics or misappropriation of funds by a broker or agency.

# BEFORE



## PREPARING TO SELL YOUR PROPERTY

There are so many things to consider when selling a property that some can be easily overlooked. Here are a few:

### **Your mortgage**

When you decide to sell your property, it is important to check what impact this will have on your mortgage. For example, in most cases you will need to repay your mortgage loan and have the hypothec discharged. Repaying your mortgage early may carry a penalty that you will be required to pay at the time of selling. A mortgage broker can help shed light on this process.

### **Real estate agency, agency executive officer, real estate broker: there is a difference**

**A real estate agency:** legal person or a company that carries out a brokerage transaction through a real estate broker.

**Agency executive officer:** When you do business with a broker who is affiliated with an agency, you are also doing business with the agency's executive officer (AEO). The AEO is responsible for making sure your transaction goes smoothly. He can act as mediator in case of disagreement with your broker, or refer you to other resources if necessary. Do not hesitate to contact the AEO if you wish to clarify something, if you can't get a hold of your broker, or in case of emergency.

**A real estate broker:** the person who will handle your transaction, working on his own account or on behalf of an agency.



# BEFORE



## PREPARING TO SELL YOUR PROPERTY

### CHOOSING A BROKER

- Does the broker have a valid OACIQ licence?
- How many properties has he sold in your sector in the last year?
- How do his services differ from those of other brokers?
- How does he plan to promote your property?
- Does his record contain administrative references or has he been the subject of disciplinary action?
- Does he know your sector?
- Is he available?
- What costs should you expect to pay?

### GOOD TO KNOW

To help you choose a broker, verify the validity of a broker's licence and his history using the tool **Check a broker's record** on the [oaciq.com](http://oaciq.com) website. There you can see a broker's areas of expertise and whether he has ever been the subject of a disciplinary decision or a licence suspension.

### REMUNERATION

A broker's rate or percentage of remuneration is not set by the Real Estate Brokerage Act or the OACIQ, or by any other legislation.

A broker's remuneration, called a commission, is based on free competition. It is generally set as a percentage of a property's selling price and normally paid out at the signing of the deed of sale. It can also be a lump sum or an hourly rate, and paid as soon as the services are rendered. This is something you will discuss with your broker, as this information must be spelled out right from the start in your contract.

# BEFORE



## PREPARING TO SELL YOUR PROPERTY

### GOOD TO KNOW

The broker undertakes to share his remuneration with the buyer's broker, if the buyer is represented.

**If the buyer has also opted to do business with a broker**, remuneration sharing conditions will be discussed. A portion of the remuneration amount indicated on your brokerage contract will be paid to the buyer's broker. This information must be included in your brokerage contract.

**If the buyer is not represented by a broker**, your broker will not be required to share his remuneration, since he is acting as intermediary between you and the buyer. Your broker must provide fair treatment to the buyer, while fulfilling his obligation of loyalty to you.

For more details, please see the **Buyer's Guide**.

### EXPENSES TO PLAN FOR

The following table will help you calculate the various expenses you need to plan for when selling your property, including the cost of any necessary repairs prior to the sale, a new certificate of location if yours is no longer valid, moving costs, etc.

Broker remuneration	
Evaluation (if applicable)	
Notary (mortgage cancellation fees, etc.)	
Early mortgage repayment (penalty)	
Mortgage discharge	
Adjustment of various applicable taxes	
Rent (if occupying after sale)	
Other expenses, if applicable (e.g.: certificate of location)	
Preparation costs (systems verification, cleaning, painting, maintenance and repairs)	
<b>Total selling expenses</b>	

# BEFORE



## THE EXCLUSIVE BROKERAGE CONTRACT – SALE

When you choose to do business with a broker for the sale of your property, you must sign an Exclusive Brokerage Contract – Sale. The reason for this is simple: this contract, like all the forms produced by the OACIQ, is designed for your protection, to ensure that your transaction is carried out in compliance with the Real Estate Brokerage Act.

Your broker must use one of the following brokerage contract to sell forms, depending on the type of property, and clearly explain its content to you:

**Exclusive brokerage contract – Sale – Chiefly residential immovable containing less than 5 dwellings excluding co-ownership;**

**Exclusive brokerage contract – Divided co-ownership – Fraction of a chiefly residential immovable held in divided co-ownership;**

**Exclusive brokerage contract – Undivided co-ownership – Share of a chiefly residential immovable held in undivided co-ownership;**

**Exclusive brokerage contract – Sale – Mobile home situated on leased land**

### **These forms state, among other things:**

- that your broker will be the sole intermediary with whom you will do business for the sale of your property for the term of the contract;
- your rights and obligations and those of your broker;
- that the broker will be remunerated for his work once you accept a Promise to purchase and all conditions are fulfilled (except the signing of the deed of sale).

# BEFORE



## THE EXCLUSIVE BROKERAGE CONTRACT – SALE

### TALK IT OVER WITH YOUR BROKER

Before completing the brokerage contract, ask your broker about the ways in which he will promote your property to maximize visibility. These include advertising (e.g. newspapers, magazines, websites), signs, open houses, and listing with a dissemination service between agencies and brokers. Don't hesitate to make suggestions!

### GOOD TO KNOW

A broker may not modify a mandatory residential brokerage form published by the OACIQ to remove mandatory statements such as that regarding remuneration sharing conditions for brokers involved in the transaction. He also cannot make changes that would result in reducing his obligations towards you. However, he may make changes to the contract over time, for example to extend the term of the contract, modify the selling price or add new elements relating to the immovable in the Declarations by the owner of the immovable form. In this case, changes must be made using an Amendments form.

### DOCUMENTS TO BE PROVIDED TO YOUR BROKER

At the time of signing of the brokerage contract, or as soon as possible afterwards, you must provide your broker with:

- **the certificate of location describing the immovable's current condition;**
- **your deed of sale;**
- **invoices for any work carried out on the property (roof, windows or other renovations);**
- **electricity and gas statements and school and municipal tax accounts;**
- **any document relevant to the property, for example concerning the septic or water supply systems;**

# BEFORE



## THE EXCLUSIVE BROKERAGE CONTRACT – SALE

For a co-ownership property, the declaration of co-ownership, financial statements, minutes of recent meetings, and information regarding the contingency fund.

For an income property, copies of current leases.



# BEFORE



## THE DECLARATIONS BY THE SELLER OF THE IMMOVABLE

**The form Declarations by the seller of the immovable** provides the buyer with details on the condition of your property. Your broker will complete it with your help, at the time of signing of the brokerage contract. **This document will form an integral part of your brokerage contract, to which it must be annexed.** It is a guarantee of safety both for you – to avoid legal action down the road – and for the buyer, allowing him to make an informed decision regarding your property. If you refuse to complete or sign this form, the broker will simply not be able to carry out the brokerage contract with you. In fact, this form will need to accompany any Promise to purchase.

The following information must be provided on this form, in good faith and to the best of your knowledge:

- **year of construction and year of purchase of your property;**
- **current mortgage status;**
- **servitudes;**
- **water infiltrations;**
- **soil contamination;**
- **presence of pyrite, radon, dry rot, asbestos, etc.;**
- **condition of the roof, plumbing, heating;**
- **any repair or renovation work done, with documentation if possible;**
- **income (for an income property).**

### GOOD TO KNOW

Your broker must make this form available to any buyer interested in making a Promise to purchase (making sure to protect your personal information). In fact when you receive a Promise to purchase from a prospective buyer, he must sign the form Declarations by the seller of the immovable and attach it to his promise to purchase. Your broker will also give a copy to any broker, to the building inspector, and to any other person involved in the transaction.



# BEFORE



## THE DECLARATIONS BY THE SELLER OF THE IMMOVABLE

### **DECLARATIONS BY THE SELLER OF THE IMMOVABLE – DIVIDED CO-OWNERSHIP**

When the purchase concerns a co-ownership property, the mandatory form **Declarations by the seller of the immovable – Divided co-ownership** must be completed. Your broker will include information on the contingency fund, the inclusions in your private portion, the property's common services, etc. This will ensure an optimal transaction while protecting you against legal action down the road.

### **CONTINGENCY FUND OR ANY OTHER CO-OWNERSHIP FUND**

The brokerage contract forms concerning divided and undivided co-ownership properties make mention of the co-ownership's contingency fund. This fund is set up by the co-owners to deal with future expenses. The money in this fund is strictly reserved for major repairs and replacements in the common portions, and not for regular maintenance costs.

The brokerage contract specifies that the sums invested in the contingency fund (or other co-ownership fund) are not recoverable when you sell your property.



# DURING



## THE STEPS TO SELLING YOUR PROPERTY

It goes without saying: to sell your home, you need a buyer! The future owner of your property can contact you in two ways.

### **Potential buyer represented by a real estate broker**

When this is the case, except in certain situations (when the buyer is bound by a brokerage contract to purchase), the buyer does not need to remunerate his broker directly, as the broker will be paid from the money you will pay to your own broker, in accordance with the terms of your brokerage contract to sell.

### **Potential buyer not represented by a real estate broker**

If **a buyer is not represented by a real estate broker**, note that your broker is bound to you through his obligation of loyalty: this means that he cannot disclose confidential or strategic information concerning you to a prospective buyer. However, your broker has an obligation to act fairly toward this buyer, and to inform and advise him objectively.

### **The first step toward the sale of your property**

If a buyer is interested in your property following a visit, he may ask to see it again. Then, if the buyer is represented by a broker, he will draft a Promise to purchase with his broker, spelling out the conditions under which he is prepared to purchase your property. At that point you may either accept the promise to purchase, or make a counter-proposal.

In all situations, you will have an opportunity to ask any questions to your broker or to the OACIQ in order to make an informed decision.

# DURING



## YOU RECEIVE A PROMISE TO PURCHASE

The Promise to purchase is a form used by the broker representing a prospective buyer to notify you of his client's desire to purchase your property under certain clearly defined conditions.

### **When you receive such a promise, you have three options:**

- Accept the offer (in this case the Promise to purchase will be used to notify the buyer that you undertake to sell him your property);
- Refuse the offer;
- Respond with a Counter-proposal.

Your broker must use one of the Promise to purchase forms published by the OACIQ for this purpose:

**Promise to purchase – Chiefly residential immovable containing less than five dwellings excluding co-ownership**

**Promise to purchase – Undivided co-ownership – Share of a chiefly residential immovable held in undivided co-ownership**

**Promise to purchase – Divided co-ownership – Fraction of a chiefly residential immovable held in divided co-ownership**

**Promise to purchase – Mobile home situated on leased land**

### **GOOD TO KNOW**

Your broker could be called upon to complete a prospective buyer's Promise to purchase if the latter is not represented by a broker. However, since the broker representing you must **be loyal** to you, he must protect and promote your interests. He may not disclose to the buyer any confidential or strategic information concerning you.

Your broker may complete the buyer's Promise to purchase and advise him objectively, including by recommending the inclusion of the usual clauses regarding inspection and financing.

# DURING



## YOU RECEIVE A PROMISE TO PURCHASE

A Promise to purchase is an offer from a potential buyer. You may receive several promises to purchase. In that case, your broker must present these offers to you as soon as possible after they are received, and inform the other brokers or potential buyers of the existence of any new promise to purchase, but without disclosing the content thereof. During this process, you may receive an enhanced offer from one of the buyers who have already submitted a Promise to purchase. As long as the initial offer is not accepted, expired or refused, a potential buyer may amend his offer to make it more attractive!

Learn more on this by reading the article **Receipt of several promises to purchase**.

### TALK IT OVER WITH YOUR BROKER

Several elements of the Promise to purchase must be fulfilled within a given time frame (for example the deadline by which to accept the Promise to purchase and, following your acceptance, the time frames in which the buyer must fulfil his conditions). Your broker must make sure you understand these time frames and make the necessary follow-up.

These are the main clauses of the Promise to purchase to which your broker will pay close attention. Make sure you understand them and don't hesitate to ask for clarification.

### NEW OR ON-PLAN CONSTRUCTION

If you are selling a new residential property that is built or on plans, the Civil Code of Québec requires the use of a **preliminary contract** in lieu of the Promise to purchase, which is used by brokers for resale transactions. Your broker has a duty to require the use of a preliminary contract where appropriate. When this type of contract is drafted, he must also make sure that the form **GST-QST New Housing Rebate Application: Rebate Granted by a Builder** is duly completed.

# DURING



## THE COUNTER-PROPOSAL

As a seller, you have a right to accept or refuse any Promise to purchase presented to you. You may also choose to make a counter-proposal to the buyer. The first purpose of the counter-proposal is to signify to the buyer that you have rejected his Promise to purchase as drafted. To do so, your broker must use the mandatory form **Counter-proposal to a promise to purchase** designed by the OACIQ.

The Counter-proposal allows you to accompany your refusal by a new proposal that would be acceptable to you:

**by including or excluding certain items (or by making a minor clarification);**

**by changing the selling price or timelines, such as the date of occupancy.**

In turn, the buyer may make a Counter-proposal in response to your counter-proposal, and so on. A counter-proposal has the effect of cancelling all previous counter-proposals made by either the buyer or the seller.

### GOOD TO KNOW

Your broker will ensure that the last Counter-proposal includes all the inclusions and exclusions that are not mentioned in the initial Promise to purchase (regardless of any previous counter-proposals).

The agreement that will bind you to the buyer consists in the Promise to purchase as amended by the last Counter-proposal, without regard to any previous counter-proposals.

### CONDITIONS OF ACCEPTANCE

As for the Promise to purchase, this clause specifies the deadline (date and time) by which the potential buyer must accept your counter-proposal. You may not withdraw your counter-proposal during this period. This deadline is important, because if it is not respected, the Counter-proposal is cancelled.

As is the case for the Promise to purchase, you may withdraw your counter-proposal between the time when you sign it and the time when it reaches the buyer. A cancellation that reaches the buyer before the Counter-proposal renders the latter null and void.

# AFTER



## THE STEPS FOLLOWING THE PROMISE TO PURCHASE

Once the Promise to purchase or the Counter-proposal to the promise to purchase has been accepted and all the conditions have been fulfilled, the next step is to make the transaction official.

There are two main components at this stage:

- **Title examination (documents attesting to such things as ownership title, measurements, zoning, charges and servitudes, etc.);**
- **Deed of sale. Under the Civil Code of Québec, the property transfer requires the participation of a notary.**

### GOOD TO KNOW

When two or more real estate transactions are interrelated (for example when you sell in order to purchase another home), your real estate broker has a duty to allow **a reasonable time frame** between the dates of signing of the deeds of sale for the various transactions to take place.

# AFTER



## YOUR APPOINTMENT AT THE NOTARY'S

**The notary plays an important role** in the successful completion of a real estate transaction, including by examining the titles. One of the notary's main responsibilities is to draw up the deed of sale and the deed of loan.

To this end, the notary will verify, among other things, whether:

- **you, the seller, are the real owner;**
- **you have the right and the ability to sell;**
- **your spouse or another person must consent to the sale;**
- **the lot measurements are accurate;**
- **any rights-of-way exist, etc.**

### GOOD TO KNOW

If the buyer **does not show up at the notary's** on the appointed date, the reasons for this will need to be investigated. If the buyer simply no longer wishes to purchase, recourses are available to you. In this situation, you may seek legal advice.

Once the deed of sale is signed by all the parties, the notary will register the transaction at the **Bureau de la publicité des droits**. He will retain the funds until this step is completed, after which he will pay you the balance after deducting such sums as his professional fees, the amount due to discharge the hypothec, and any unpaid taxes or co-ownership fees.

# AFTER



## BEFORE VACATING YOUR PROPERTY

When you leave your property, make sure that everything which was included in the Promise to purchase is there and working properly.

### **TALK IT OVER WITH YOUR BROKER**

If you have any doubts, don't hesitate to talk to your broker, who must accompany you at every step of your transaction.





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