

**NON-EXCLUSIVE BROKERAGE CONTRACT – SALE
FRACTION OF A CHIEFLY RESIDENTIAL IMMOVABLE HELD
IN DIVIDED CO-OWNERSHIP**

NEW FORM – HIGHLIGHTS

The mandatory form that had to be completed previously by the licensee representing the seller in a divided co-ownership transaction was the form *Exclusive brokerage contract – Divided co-ownership – Fraction of a chiefly residential immovable held in divided co-ownership* (exclusive BCD). However, it was always possible to make this contract non-exclusive by using the standard clauses. Like the non-exclusive brokerage contract for residential immovables containing less than 5 dwellings, and in order to present consumers with both available options simultaneously, it was decided, in addition to the exclusive BCD, to introduce the *Non-exclusive brokerage contract – Sale – Fraction of a chiefly residential immovable held in divided co-ownership* (NEBCD) form.

A mandatory note inserted at the beginning of each type of BCD summarizes the nature of the other type of contract and provides for the seller's obligation to initial his choice of contract.

Certain clauses apply only under the exclusive BCD (e.g. the 180-day clause, exclusivity regarding visits and advertising, etc.) or under the non-exclusive BCD (e.g. the seller's obligation to notify the licensee if he enters into another brokerage contract with a licensee, the availability of the seller's declarations to all licensees who have entered into a non-exclusive BCD with that seller).

Whether it is an exclusive or non-exclusive BCD, the seller retains the right to market his unit by himself. The exclusivity concept applies only between licensees.

Under the non-exclusive BCD, remuneration is due only if the immovable is sold during the term of the contract and the licensee identified in the contract is the efficient cause of the sale.

NOTE

A mandatory note inserted at the beginning of the *Non-exclusive brokerage contract* form summarizes the main features of this contract and those of the *Exclusive brokerage contract*. **The licensee shall read the text of this note to the selling client.** The seller must initial his choice of contract.

CLAUSE 2.1 – OBJECT AND TERM OF CONTRACT

Clarifications have been made in this clause as to the reasons for the termination of the contract. The brokerage contract is for the provision of services (art. 2125, 2126, C.C.Q.) Thus, the client may terminate such a contract without reason. The licensee, who is the service provider, may not terminate the contract unilaterally except for a serious reason, and never at an inopportune moment.

Elimination of waiver of the right to cancel

Since June 13, 2019, a client who is a party to a brokerage contract may no longer waive his right to cancel the contract pursuant to section 28 of the *Real Estate Brokerage Act* (CQLR, c. C-73.2). This is indicated in clause 2.1.

CLAUSE 7 – REMUNERATION

Clause 7.1

This clause takes into account the remuneration conditions that apply in the case of non-exclusive BCD:

- The remuneration is payable, if, during the term of the contract, the unit is sold and the licensee with whom the contract is signed is the efficient cause of this sale.
- The non-exclusive BCD does not provide for a right to remuneration if a sale takes place within 180 days following the contract end date or termination date with a person who was interested in the immovable during the term of the contract (s. 27, par. 2 (3) of the *Real Estate Brokerage Act*).

Clause 7.1 expressly stipulates that taxes apply to the remuneration amount. This allowed for the removal of clause 7.2 of the old form.

A few wording changes have also been made to clause 7.1.

CLAUSE 8 – DECLARATIONS AND OBLIGATIONS OF THE SELLER

Clause 8.1 par. 2 – SELLER'S DECLARATIONS

Under the non-exclusive BCD, the seller does not undertake not to enter into another brokerage contract for the sale of the same immovable.

Clause 8.5 – New obligation for the seller in the non-exclusive BCD

The seller is required to notify the agency or broker in writing if he signs another brokerage contract with another agency or broker. This new obligation is justified by the need, on the one hand, to ensure consistency of the information provided by the seller, and, on the other hand, to allow licence holders to fulfil their ethical obligations. "Any other licence holder collaborating in a transaction must be informed by the broker or agency executive officer of the existence of every transaction proposal, whether accepted or not. The broker or agency executive officer may not, however, reveal the substance of the proposal." (s. 96 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising* (c. C-73.2, r. 1.))

Clause 8.6 – Documents to be provided by the seller

An amendment has been made to this clause to add the documents that a syndicate of co-owners must now have, namely the description of the private portion or, where applicable, that of the private portion of the reference unit, and the documents and information relating to the self-insurance fund (art. 1070, 1071.1 C.C.Q.).

Clause 8.8 – Certificate of location

The certificate of location for the entire co-ownership, including the private portion or, failing this, the certificate of location pertaining to the private portion only shall reflect any operation, amendment or cadastral renovation as well as the current physical state of the premises (e.g. heat pump, terrace, fence, shed, pool), the restrictions of private law (e.g. servitude, real rights or other charges) and the restrictions of public law (e.g. municipal by-laws). An identical clause (10.5) is provided in the revised form *Promise to purchase – Co-ownership – Fraction of a chiefly residential immovable held in divided co-ownership*.

CLAUSE 9 – OBLIGATIONS OF THE AGENCY OR THE BROKER

Clause 9.1 par. 8 – obligation to disclose any remuneration agreement

The licensee must inform the seller, in writing and without delay, of any remuneration agreement in his favour related to the object of the brokerage contract. This clause has been harmonized with the new wording of section 36 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising*. The old wording suggested that there were remuneration agreements that could not put the licensee in a conflict of interest.

Clause 9.1 par. 10 – obligation to disclose any remuneration sharing

With a view to transparency and in order to better inform the public, the licence holder must disclose to the seller in writing any sharing, other than the one mentioned in clause 7.3, which he is planning to make of his remuneration, as well as the identity of the person receiving that share and, in the case of a non-monetary benefit, the nature of the compensation. This clause is consistent with the licensee's regulatory obligation under section 38 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising*.

Clause 9.1 par. 12 a) – Obligation to notify the seller of any change of address of the establishment

The licensee must notify the seller, in writing and without delay, of any change of address of his establishment. This clause is consistent with the licensee's regulatory obligation under section 27 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising*.

Clause 9.1 par. 14 – Obligation to give the client a duplicate of the contract

The licensee must give a duplicate of the brokerage contract to the client. This clause is consistent with the licensee's obligation under section 25 of the *Real Estate Brokerage Act*.

CLAUSE 15 – SIGNATURES

Box before the signatures – Privacy protection

Licensees, as private entities, are governed, in the performance of their activities, by the *Act respecting the protection of personal information in the private sector* (CQLR, c. P-39.1). The purpose of the box concerning privacy protection is to remind licensees of their obligations and to inform consumers.

IMPORTANT: This box does not replace the licensee's obligation to always obtain valid consent when collecting, using or disclosing personal information.

Box before the signatures – Role of the OACIQ

In accordance with section 16.2 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising*, this box contains an informative text about the mission of the OACIQ. If the licensee provides the party with the revised non-exclusive BCD form containing this box, he complies with the obligation under section 16.2 and does not have to provide any other separate documents about the mission of the OACIQ.

OTHER CHANGES

CLAUSE 4 – PRICE AND TERMS OF SALE (PLUS TAXES, IF APPLICABLE)

Clause 4.2

The reference to the taxes that may be imposed if the sale is concluded is removed, as this concerns an obligation of the buyer toward the seller. In addition, this obligation is already included in clause 4.2 of the form *Promise to purchase – Co-ownership – Fraction of a chiefly residential immovable held in divided co-ownership*.

Clauses 4.6 and 4.7

Clarifications introduced to make it easier for the consumer to understand.

CLAUSE 7 – REMUNERATION

Clause 7.4 par. 3

An addition has been made in this clause to make it easier for consumers to understand cases where no remuneration is due. The agency or broker is not entitled to any remuneration if, through the buyer's fault, the deed of sale is not signed or the purchase price is not paid. Other adjustments have been made to the wording.

OTHER CHANGES ARE STRUCTURAL OR TECHNICAL IN NATURE.