

Water supply, wells and septic tanks: duties and obligations of the broker

When a transaction concerns a property that is not serviced by a municipal water system or equipped with a wastewater treatment system, financial institutions usually want assurances that the water is drinkable or the system is up to code before authorizing a loan. The Chambre des notaires du Québec informs us that several files forwarded to notaries by real estate brokers do not contain any documentation or any verifications made to this effect.

Since requests are often made at the last minute, this frequently results in delays in the signing of transactions, causing harm and inconvenience for all parties involved.

These crucial verifications are an integral part of a broker's duty to verify and advise, because they are factors that are relevant to the transaction. Therefore, it is the responsibility of the real estate broker to verify compliance and obtain the documents that financial institutions require before authorizing a loan. The requirements are as follows:

Regarding water drinkability

When taking up a brokerage contract, the broker must:

1. Verify whether or not the water source is considered drinkable and state this on the detailed description sheet.
2. Verify the type of source, whether a public or private system, a well or spring, and obtain the following documents:
 - a. For a public system (municipality)
 - i. Tax bill.
 - b. For a private system
 - i. Copy of the contract or agreement with the system owner;
 - ii. System number;
 - iii. Customer invoice;
 - iv. Any document evidencing problems declared or remedied.
 - c. For a well or spring servicing a single property
 - i. Installed before 2004
 1. Copy of the installation invoice;
 2. Any document evidencing problems declared or remedied.
 - ii. Installed after 2004
 1. Copy of drilling report;
 2. Results of water testing at time of installation;
 3. Any document evidencing problems declared or remedied.
 - d. For a well or spring servicing more than one property, in addition to the above documents, you must provide a copy of the water easement.

If the seller has no document concerning his water supply and diligent verifications by the listing broker do not allow him to demonstrate the nature thereof, a note to this effect must be made to the detailed description sheet. This can be as simple as indicating "system unknown".

In this case, the collaborating broker must warn the buyer about the risks inherent to this situation and recommend that he consult with a qualified person, such as a well digger.

- e. In all cases the listing broker must complete and have the clients sign the form "Declarations by the seller of the immovable".

When taking up a promise to purchase, the collaborating broker must advise his client to have a microbiological water test done, and allow enough time for the testing to take place and results to be received. In some cases, a physicochemical test could also be necessary.

Regarding sewage disposal systems

When taking up a brokerage contract, the broker must:

1. For systems installed before June 15, 1981
 - a. Obtain a copy of the installation invoice;

- b. Obtain a copy of the construction or renovation permit.
2. For systems installed since June 15, 1981
 - a. Obtain a copy of the municipal permit and the professional's drawing;
 - b. Obtain a copy of the maintenance contract for certain systems.
3. In all cases
 - a. Obtain a letter from the city confirming whether or not any violation notices have ever been issued;
 - b. Advise the seller to remove the warranty regarding the septic system;
 - c. Obtain any document evidencing problems declared or remedied;
 - d. Advise the seller to have his septic tank emptied or obtain the bill for the last emptying.
4. If the seller does not have any documentation on his septic system, the broker must state this on the detailed description sheet.
5. Complete and have his clients sign the form "Declarations by the seller of the immovable".

If the seller has no document concerning his sewage disposal systems and diligent verifications by the listing broker do not allow him to demonstrate the nature thereof, a note to this effect must be made to the detailed description sheet. This can be as simple as indicating "system unknown".

In this case, the collaborating broker must warn the buyer about the risks inherent to this situation and recommend that he consult with a qualified person, such as a specialty contractor.

Regarding the sewage disposal system, in all cases the broker should recommend that the seller state on the brokerage contract and on the detailed description sheet that he cannot guarantee the conformity of his septic system.

When taking up the promise to purchase

The collaborating broker must copy onto the promise to purchase the information contained on the detailed description sheet regarding the sewage disposal system, including the fact that the seller cannot guarantee the conformity of his septic system and recommend the addition of an inspection clause regarding this system.

We remind licence holders that for many years now the OACIQ has been offering a continuing education activity entitled "Wells, septic tanks and soil absorption fields: duties and obligations of the broker". This activity will help you familiarize yourself with the different types of systems and better fulfill your duty to advise and inform.

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