



# Promise to Purchase Immovable

Recommended form

Amendments 2006

**CAUTION:** This form has been amended following a review by the Forms Committee of the Association des courtiers et agents immobiliers du Québec.

## Clause 10 – Declarations and obligations of the seller

Sub-sections 9° and 14° were added to this clause.

Sub-section 9° allows you to indicate the minimum amount of rents that can be collected annually for the immovable referred to in the promise to purchase. This amount is calculated using the leases, the details of which are attached to the Promise to Purchase – Immovable. The first blank space in this sub-section allows you to reference the Annex describing the leases.

Also, please note that the old sub-section 9°, now 10° due to the above addition, has been amended to add a declaration to the effect that “no current lessee benefits from special advantages from the seller that are not specifically indicated in writing in the leases”.

Under sub-section 14°, the seller declares that the immovable is in accordance with environmental protection laws and regulations. This declaration is identical to that appearing under clause 6 h) of the mandatory Promise to Purchase form for a residential immovable containing less than five dwellings.

## Clause 16 – Arbitration clause

The wording of this clause has been simplified by removing the second paragraph regarding arbitration costs.

The broker or agent is no longer involved in this clause.





**IMPORTANT!** In the event that the sale of the immovable herein described is accompanied by the sale of an enterprise, a separate promise to purchase shall be completed for the enterprise.

This form does not constitute the preliminary contract required under articles 1785 and following of the Civil Code of Quebec where an existing or planned residential immovable is sold by the builder or a promoter to a natural person who acquires it to occupy it, whether or not the sale includes the transfer to him of the seller's rights over the land.

**1. IDENTIFICATION OF THE BUYER AND SELLER**

NAME: BUYER 1 \_\_\_\_\_ NAME: SELLER 1 \_\_\_\_\_

ADDRESS AND TELEPHONE NUMBER \_\_\_\_\_ ADDRESS AND TELEPHONE NUMBER \_\_\_\_\_

REPRESENTED BY \_\_\_\_\_ REPRESENTED BY \_\_\_\_\_

NAME: BUYER 2 \_\_\_\_\_ NAME: SELLER 2 \_\_\_\_\_

ADDRESS AND TELEPHONE NUMBER \_\_\_\_\_ ADDRESS AND TELEPHONE NUMBER \_\_\_\_\_

REPRESENTED BY \_\_\_\_\_ REPRESENTED BY \_\_\_\_\_

(hereinafter called the BUYER) (hereinafter called the SELLER)

**2. OBJECT OF THE CONTRACT**

2.1 The BUYER hereby promises to purchase through \_\_\_\_\_, real estate broker, represented by \_\_\_\_\_, the immovable described hereinafter, at the price and under the conditions stated below.

**3. SUMMARY DESCRIPTION OF THE IMMOVABLE**

3.1 The immovable, with construction erected or to be erected thereon, is designated as follows:

ADDRESS \_\_\_\_\_

CADASTRAL DESIGNATION \_\_\_\_\_

MEASUREMENTS \_\_\_\_\_ AREA \_\_\_\_\_

This immovable is held in:

divided co-ownership  undivided co-ownership for a share equal to \_\_\_\_\_ %.

It includes \_\_\_\_\_ parking space(s) (Nos. \_\_\_\_\_)  limited common area  private area  interior  exterior  
and \_\_\_\_\_ storage space(s) (Nos. \_\_\_\_\_)  limited common area  private area  interior  exterior.

(hereinafter called the IMMOVABLE)

**4. PRICE AND CONDITIONS OF SALE (TAXES EXTRA)**

4.1 The purchase price shall be \_\_\_\_\_ dollars (\$ \_\_\_\_\_). Any tax that may be imposed as a result of the sale of the IMMOVABLE (GST, QST, other) and that is to be collected by the SELLER shall be remitted to the SELLER by the BUYER, unless the BUYER is already registered with the appropriate government authorities.

4.2 With this promise, the BUYER remits to the broker referred to above, as an instalment on the sale price, the sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) by cheque payable to the order of: " \_\_\_\_\_ in trust" (hereinafter called the TRUSTEE). Following the acceptance of this promise, the cheque may be certified and shall be given to the TRUSTEE, who shall, without delay, deposit it into a trust account until the signing of the act of sale, whereupon that sum shall be applied against the purchase price. As soon as he has deposited that sum into a trust account, the TRUSTEE shall give the depositor a receipt. Should this promise become null and void, the TRUSTEE shall refund the deposit to the BUYER upon request, without interest. The TRUSTEE may require that this request be made in writing. Otherwise, the TRUSTEE may use that deposit only in accordance with this promise or the law.

**5. METHOD OF PAYMENT**

5.1 Deposit paid in accordance with 4.2: \$ \_\_\_\_\_

5.2 Upon the signing of the act of sale, the BUYER shall pay, or shall cause to be paid, by certified cheque payable to the order of the acting notary in trust, an additional sum of approximately: \$ \_\_\_\_\_  
That sum shall include any amount to be obtained in the form of new hypothecary loan, in accordance with clause 6.

5.3 The BUYER shall assume, in accordance with clause 7, the obligations relating to the existing hypothecary loans, whose balances total approximately: \$ \_\_\_\_\_

5.4 The BUYER shall reimburse to the SELLER, in accordance with clause 8, the balance of the sale price, which is: \$ \_\_\_\_\_

**TOTAL PRICE** \$ \_\_\_\_\_

**6. NEW HYPOTHECARY LOAN**

6.1 The BUYER undertakes to take in good faith, as soon as possible and at his expense, all steps necessary to obtain a loan of \$ \_\_\_\_\_, secured by a \_\_\_\_\_ rank hypothec, that loan shall bear interest at the current rate, which shall not exceed \_\_\_\_\_ % per year (calculated semi-annually and not in advance), and shall be payable in instalments of not more than \$ \_\_\_\_\_ (combining principal and interest), calculated according to an amortization plan of \_\_\_\_\_ years, the balance becoming due in \_\_\_\_\_ years.

6.2 The BUYER undertakes to supply to the SELLER, within a period of \_\_\_\_\_ days following acceptance of this promise, a copy of the undertaking by a hypothecary lender to grant the BUYER such a loan. The receipt of such an undertaking within that period shall have the effect of fully satisfying the conditions set out in clause 6.

- 6.3 In the absence of proof of such an undertaking, the SELLER may, within a period of 5 days following the expiry of the period provided for in 6.2 or following receipt of a notice of refusal, notify the BUYER, in writing:
- that he is requiring the BUYER to file immediately and at his expense, with a hypothecary lender designated by the SELLER, a new application for a hypothecary loan conforming to the conditions set out in 6.1. Should the BUYER not succeed in obtaining, within the period stipulated in the SELLER's notice, a written undertaking from that hypothecary lender to grant the BUYER the loan applied for, this promise shall become null and void. However, the receipt of such an undertaking within that period shall have the effect of fully satisfying the conditions of clause 6; or
  - that he renders this promise null and void.
- Where the SELLER does not avail himself of the provisions of paragraph a) or b) above within the period stipulated, this promise shall become null and void.

## 7. ASSUMING OF EXISTING HYPOTHECARY OBLIGATIONS

- 7.1 The BUYER undertakes to take in good faith, as soon as possible and at his expense, all steps necessary to obtain the hypothecary creditor's consent for the BUYER to assume the hypothecary obligations relating to the loan having a balance of approximately \$\_\_\_\_\_, secured by a \_\_\_\_\_ rank hypothec held by \_\_\_\_\_; that loan, which bears interest at the rate of \_\_\_\_\_% per year (calculated semi-annually and not in advance), is payable in instalments of \$\_\_\_\_\_ (combining principal and interest), the balance becoming due on \_\_\_\_\_ DATE \_\_\_\_\_.
- 7.2 The BUYER undertakes to supply to the SELLER, within a period of \_\_\_\_\_ days following acceptance of this promise, a copy of the hypothecary creditor's consent. The receipt of such consent within that period shall have the effect of fully satisfying the conditions set out in clause 7.
- 7.3 In the absence of proof of such consent, the SELLER may, within a period of 5 days following the expiry of the period provided for in 7.2 or following receipt of a notice of refusal:
- himself request, for and on behalf of the BUYER, the hypothecary creditor's written consent for the BUYER to assume the SELLER's hypothecary obligations. Should the SELLER not succeed in obtaining such written consent within a period of 5 days, this promise shall become null and void. However, the receipt of such consent within that period shall have the effect of fully satisfying the conditions of clause 7; or
  - render this promise null and void by giving notice in writing to that effect.
- Where the SELLER does not avail himself of the provisions of paragraphs a) or b) above within the period stipulated, this promise shall become null and void.

## 8. BALANCE OF SALE PRICE

- 8.1 The BUYER shall reimburse to the SELLER the balance of sale price, as referred to in 5.4, which shall be secured by a \_\_\_\_\_ rank hypothec subsequent to a hypothec securing a loan having a balance of not more than \$\_\_\_\_\_; that balance of the sale price shall bear interest at the rate of \_\_\_\_\_% per year (calculated semi-annually and not in advance) and shall be payable in instalments of \$\_\_\_\_\_ (combining principal and interest), calculated according to an amortization plan of \_\_\_\_\_ years, the balance becoming due in \_\_\_\_\_ years.
- 8.2 The BUYER shall, at any time, without penalty, have the right to reimburse in advance all or part of the balance, as long as such reimbursement is by instalments of \$\_\_\_\_\_ or any multiple thereof.
- 8.3 The act of sale shall contain a resolatory clause, the clauses usually guaranteeing payment of a balance of the sale price of an immovable and a clause whereby the SELLER consents to giving up priority of rank should a new hypothec be created in accordance with clause 6, or should a hypothec already ranking ahead of the balance of the sale price be renewed or replaced, provided that the balance of the loans secured by such hypothecs is not increased and the BUYER is not in default of fulfilling his obligations.
- 8.4 The balance of the sale price shall not be transferred without the prior written consent of the SELLER.

## 9. DECLARATIONS AND OBLIGATIONS OF THE BUYER

- 9.1 The BUYER has examined the IMMOVABLE and the leases and the declaration of co-ownership including any amendment thereto and the by-laws of the IMMOVABLE, if applicable, and declares that he is satisfied therewith, **unless stipulated otherwise, including in 13.1 or any annex forming part of this promise.**
- 9.2 The BUYER undertakes to assume the costs of the act of sale, of its publication and of the copies required.
- 9.3 The BUYER undertakes, after the signing of the act of sale, to pay any applicable transfer duties.
- 9.4 The BUYER undertakes not to sell, assign or otherwise alienate his rights in this promise without obtaining the prior written consent of the SELLER.
- 9.5 In the event that, through the BUYER's fault, no act of sale is signed for the IMMOVABLE, the BUYER undertakes to compensate directly the broker bound to the SELLER by brokerage contract, by paying the compensation that the SELLER would otherwise have had to pay to him.

## 10. DECLARATIONS AND OBLIGATIONS OF THE SELLER (UNLESS OTHERWISE STIPULATED IN 13.1 OR ANY ANNEX)

- 10.1 The SELLER declares that the information contained in this promise is accurate and that he will provide to the BUYER any additional information regarding the IMMOVABLE as soon as he becomes aware of it.
- 10.2 The SELLER also declares, unless otherwise stipulated, including in 13.1, in the Declarations by the Seller form or in any annex forming part of this contract, that:
- he is not aware of any factor relating to the IMMOVABLE that is liable to significantly reduce the value thereof or the income generated thereby, increase the expenses related thereto or restrict the use thereof;
  - he has not received any notice of non-compliance relating to the IMMOVABLE with which he has not complied;
  - he is not a non-resident of Canada within the meaning of the provincial and federal tax laws;
  - the IMMOVABLE is serviced by power utilities and the municipality concerned provides water and sewer services to the IMMOVABLE;
  - he is the sole owner of the IMMOVABLE or is duly authorized to sign this contract;
  - where applicable, the spouse of the SELLER consents to and concurs in this promise and that he will intervene in the act of sale;
  - the IMMOVABLE is not the subject of an agreement to sell, exchange or lease it, or the subject of a right of preference or a right of first refusal in favor of a third party;
  - he has not received any notice from a lessee or from the spouse of a lessee to the effect that the IMMOVABLE or part thereof is used as a family residence;
  - the leases detailed in Annex \_\_\_\_\_ bring in rents of at least \_\_\_\_\_ dollars (\$ \_\_\_\_\_) annually;
  - no notice liable to amend the existing leases has been sent by either of the parties, no current lessee benefits from special advantages from the SELLER that are not specifically indicated in writing in the leases, and no proceedings are pending before the Régie du logement;
  - the IMMOVABLE is not or is not part of a housing complex within the meaning of the Act respecting the Régie du logement (R.S.Q., c. R-8.1) and has not been detached from such a complex without the prior authorization of the tribunal;
  - the IMMOVABLE shall be sold free of any real right and other charges other than the usual and apparent servitudes of public utility, and that the SELLER shall hold any prospective buyer harmless from any violation to restrictions of public law affecting the IMMOVABLE that are exceptions to ordinary law;
  - the IMMOVABLE is not an immovable under article 1785 of the Civil Code of Quebec, i.e. an existing or planned residential immovable sold by the builder or a promoter to a natural person who acquires it to occupy it, whether or not the sale includes the transfer to him of the seller's rights over the land;
  - the IMMOVABLE is in accordance with environmental protection laws and regulations.

10.3 The SELLER promises to sell the IMMOVABLE to the BUYER and, unless stipulated otherwise hereinafter, undertakes to deliver the IMMOVABLE in the condition that it was in when the BUYER examined it.

10.4 The SELLER shall provide to the BUYER a valid title of ownership. The IMMOVABLE shall be sold free of any real right and other charges other than the usual and apparent servitudes of public utility. The SELLER shall hold the BUYER harmless from any violation to restrictions of public law affecting the IMMOVABLE that are exceptions to ordinary law.

The SELLER shall also supply the BUYER with any titles in his possession, including the act of acquisition and any declaration of co-ownership, any amendment thereto and the by-laws of the IMMOVABLE, as well as a certificate of location describing the current state of the IMMOVABLE. If the IMMOVABLE is held in divided co-ownership, an extract of the certificate describing the divided part shall be sufficient. In addition, upon request by the BUYER, the SELLER shall supply the BUYER with the documents which he has in his possession concerning the IMMOVABLE. These documents shall be submitted to the acting notary stated in 11.1.

10.5 The costs relating to the repayment and cancellation of any debt secured by hypothec, prior claim or any other real right affecting the IMMOVABLE shall be borne by the SELLER where payment of those costs will not be assumed by the BUYER. The costs relating to repayment include any penalty charged for early repayment.

10.6 Should the BUYER or the SELLER be notified, before the signing of the act of sale, of any defect or irregularity whatsoever affecting the declarations and obligations of the SELLER contained in this promise, the SELLER shall, within 21 days following receipt of a written notice to that effect, notify the BUYER, in writing, that he has remedied that defect or irregularity at his expense or that he is unable to remedy it.

Within 5 days following receipt of a notice from the SELLER to the effect that he was unable to remedy the defect or irregularity, or if he does not receive notice within 21 days, the BUYER may notify the SELLER in writing:

- a) that he is purchasing with the alleged defects or irregularities, in which case the SELLER's guarantee shall be reduced accordingly, or
- b) that he renders this promise null and void, in which case the fees, expenses and costs reasonably incurred until then by the BUYER and the SELLER shall be borne only by the SELLER.

Where the BUYER has not availed himself of the provisions of paragraphs a) or b) above within the period stipulated, this promise shall become null and void, in which case the BUYER and the SELLER shall bear the respective fees, expenses and costs incurred by them up to that point.

10.7 If part of the IMMOVABLE constitutes the SELLER's family residence, or where rendered necessary by his matrimonial regime, the SELLER undertakes to remit to the BUYER, as soon as this promise is accepted, either a document evidencing his spouse's consent and, where applicable, his spouse's concurrence and an undertaking by his spouse to intervene in the act of sale, or a copy of a judgment authorizing him to sell the IMMOVABLE without his spouse's consent and, where applicable, concurrence. Failing that, the BUYER may, by giving written notice to that effect, render this promise null and void.

**11. DECLARATIONS AND OBLIGATIONS COMMON TO THE BUYER AND THE SELLER**

11.1 The BUYER and the SELLER undertake to sign an act of sale before \_\_\_\_\_ notary, on or before \_\_\_\_\_. The BUYER shall be the owner upon the signing of the act of sale.

11.2 Upon the signing of the act of sale, all the adjustments, including with respect to general and special real estate taxes, co-ownership expenses, fuel reserves and income or expenses relating to the IMMOVABLE shall be made as of \_\_\_\_\_. If the IMMOVABLE is held in divided co-ownership, there shall be no adjustments to the contingency fund or any other fund of the co-ownership.

11.3 The BUYER and the SELLER irrevocably instruct the acting notary to with hold from the proceeds of the sale and to pay directly to \_\_\_\_\_, broker, the compensation provided for in the brokerage contract awarded by the SELLER. Notwithstanding the above, the acting notary shall pay a portion of this compensation to the broker collaborating to this transaction where the listing broker has given the notary written instructions to this effect.

11.4 Included in the sale are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11.5 Excluded from the sale are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

the following appliances and equipment are covered by a leasing contract: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**12. OCCUPANCY OF IMMOVABLE**

12.1 The SELLER undertakes to render the immovable available for occupancy by the BUYER as of \_\_\_\_\_, and to leave it free of any property not included in this promise, failing which the BUYER may have it removed at the SELLER's expense. If the SELLER vacates the IMMOVABLE before that date, he shall nevertheless remain responsible for keeping the immovable in the condition that it was in when the BUYER examined it.

**13. OTHER DECLARATIONS AND CONDITIONS**

13.1 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13.2 ANNEXES The conditions set forth in the annexes designated below form an integral part of this promise:

Annex G – General AG - [ ] [ ] [ ] [ ] [ ] Annex B AB - [ ] [ ] [ ] [ ] [ ] Declarations by the Seller DS - [ ] [ ] [ ] [ ] [ ]

Other: \_\_\_\_\_

13.3 This promise to purchase is conditional to the acceptance, \_\_\_\_\_ days following acceptance of this promise at the latest, of promise to purchase PP - [ ] [ ] [ ] [ ] [ ] for the sale of an enterprise and to the signing of the act of sale of this enterprise concomitantly to the signing of the act of sale of the IMMOVABLE in accordance with this promise to purchase. Where the promise to purchase for the sale of the enterprise becomes null and void, this promise to purchase shall also become null and void.

14. CONDITIONS OF ACCEPTANCE

14.1 The BUYER and the SELLER declare that their consent to this promise is not the result of any representation or condition not contained herein. The BUYER is irrevocably committed until \_\_\_\_\_ o'clock, on \_\_\_\_\_. If the SELLER accepts this promise by that deadline, it shall constitute a contract that is legally binding upon the BUYER and the SELLER until its full execution. If the SELLER does not accept it by that deadline, this promise shall become null and void. Any refusal or counter-proposal by the SELLER shall render this promise null and void.

15. GENERAL

15.1 Unless the context indicates otherwise, the masculine form includes the feminine form and vice versa, and the singular includes the plural and vice versa.
15.2 This contract is governed by the laws of Québec.

16. ARBITRATION CLAUSE (OPTIONAL)

16.1 With the exception of claims coming under the jurisdiction of the Court of Quebec, Small Claims Division, within the meaning of the Code of Civil Procedure of Quebec, if the BUYER and the SELLER initial the boxes below, any dispute arising from this contract shall be submitted to arbitration, excluding the jurisdiction of the courts. The dispute shall be submitted to a single arbitrator designated jointly by the parties. The arbitrator's decision shall be binding on the parties and shall be final and without appeal. Unless incompatible with this clause, the provisions of the Civil Code of Quebec and the Code of Civil Procedure of Quebec in matters of arbitration shall apply.

Four empty rectangular boxes for initials, labeled BUYER 1, BUYER 2, SELLER 1, and SELLER 2.

SIGNATURES

The BUYER acknowledges having read and understood this promise, including the Annexes, and having received a copy thereof.

The SELLER acknowledges having read and understood this promise, including the Annexes, and having received a copy thereof.

He hereby [ ] (ACCEPTS OR REFUSES) this promise
[ ] submits Counter-Proposal CP- [ ]

Signature lines for Buyer 1 and Buyer 2, including fields for date, time, signature, and witness name.

Signature lines for Seller 1 and Seller 2, including fields for date, time, signature, and witness name.

Signature lines for Buyer 2 and Buyer 1, including fields for date, time, signature, and witness name.

Signature lines for Seller 2 and Seller 1, including fields for date, time, signature, and witness name.

The BUYER acknowledges having received a copy of the SELLER's reply.

Where applicable, the SELLER's spouse consents to and concurs in the acceptance of this promise, including the Annexes, and undertakes to intervene in the act of sale to this effect.

Signature lines for Buyer 1 and Buyer 2, including fields for date, time, signature, and witness name.

Signature lines for Spouse of Seller 1 and Spouse of Seller 2, including fields for date, time, signature, and witness name.

Signature lines for Buyer 2 and Buyer 1, including fields for date, time, signature, and witness name.

Signature lines for Spouse of Seller 2 and Spouse of Seller 1, including fields for date, time, signature, and witness name.