



DEALING IN MORTGAGES AS A MORTGAGE BROKER

Summary: “Dealing” is the term used to describe the activities of a mortgage broker. Dealing is defined in the *Real Estate Act* and includes a number of activities relating to the provision of services for soliciting, negotiating and collecting funds related to mortgage transactions. In order to deal in mortgages, individuals require an authorization from the RECA, unless they are exempt pursuant to the *Real Estate Act* or the *Real Estate Act Exemption Regulation*. [See: *Real Estate Act*, s.1(1)(j)(q)(r), s.2(3), s.17; *Real Estate Act Exemption Regulation*]

The *Real Estate Act* of Alberta requires **any** person who deals in mortgages on behalf of another person for consideration or other compensation to hold an authorization from the Real Estate Council of Alberta (RECA), unless there is an exemption in real estate legislation.

What is a “mortgage”? What is “mortgage broker”?

In order to fully understand when an authorization to deal in mortgages is required, one must understand what is meant by mortgage, mortgage broker and dealing.

The *Real Estate Act* section 1(1)(q) indicates that a mortgage means:

- A mortgage:
 - Of real property;
 - Of a lease of real property; or
 - Of a mortgage of real property or a lease of real property; or
- Any charge:
 - On real property;
 - On a lease of real property; or
 - On a mortgage of real property or a lease of real property

for the purposes of securing the repayment of money or another consideration.

And, the *Real Estate Act* section 1(1)(r) defines mortgage broker as:

- A person who on behalf of another person for consideration or other compensation:
 - Solicits a person to borrow or lend money to be secured by a mortgage,
 - Negotiates a mortgage transaction,
 - Collects mortgage payments and otherwise administers mortgages, or
 - Buys, sells or exchanges mortgages or offers to do so
- OR
- a person who holds out that he or she is a person referred to as described in the above bullets.

Whenever an individual is carrying out the activities referred to in the definition of “mortgage broker,” it is considered “dealing” pursuant to the *Real Estate Act* section 1(1)(j) and requires an authorization from RECA.

A person must be authorized even if they are merely holding themselves out as an industry member. “Holding out” can include collecting borrower information and leading a client to believe they are in the business of soliciting persons to borrow or lend money. For more information about holding out, please see RECA Information Bulletin: *Holding Oneself Out*.

Unlicensed mortgage brokerage assistants

Within mortgage brokerages, unlicensed assistants may only partake in activities for which an authorization is not required. For example, an unlicensed assistant in a mortgage brokerage may submit completed applications and supporting documentation to the mortgage lender, but may not assist a borrower in completing a mortgage application. For more information mortgage brokerage assistants, please see RECA Information Bulletin: *Assistants – Mortgage Brokerage*.

Authorization exemptions

There are exemptions to the licensing requirements found in both the *Real Estate Act* and the *Real Estate Act Exemption Regulation*.

Within the Act, section 2(3) states that the Act, as it relates to dealing in mortgages, does not apply to:

- Subject to the regulations, a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company;
- subject to the regulations, an agent or employee of a person referred to in the first bullet in the capacity of agent or employee,
- subject to the regulations, an employee of a person dealing in mortgages as a principal while that principal is so acting in a lawful manner and while the employee is acting within the regular course of employment on behalf of that principal
- a member in good standing of The Law Society of Alberta acting in the course of and as part of the practice of law, or
- a person exempted by the regulations.

In addition to the exemptions found in the *Real Estate Act*, the *Real Estate Act Exemption Regulation* specifies the circumstances under which an individual does not require an authorization from RECA in order to carry out the activities that fall under the definition of “dealing” in the *Real Estate Act*.

These exemptions include:

- a corporation, in respect of mortgages given to it in conjunction with a scheme or arrangement to provide housing for its own employees or the employees of a parent, subsidiary or affiliated corporation.
- Agriculture Financial Services Corporation.

Since some of the exemptions actually refer to employees of people or corporations that are exempt, it is important to understand the meaning of employee. There is no definition of the word employee in the *Real Estate Act*. As such, in formulating an interpretation of this word, reference is made to other Alberta legislation and Alberta case law. The Real Estate Council of Alberta has adopted the approach taken in the Alberta *Employment*

Standards Code. For more information about the definition of “employee,” please see RECA Information Bulletin: *Employees*.

Individuals who wish to lend their own money for the purpose of funding a mortgage are also exempt from the authorization requirements within the *Real Estate Act*.

Examples

1. An individual is hired to design and maintain the website for a mortgage brokerage. The website includes information about current mortgage rates and the contact information for a licensed mortgage brokerage industry member. The individual designing and maintaining this website is not required to hold an authorization from the Real Estate Council of Alberta because these activities are not considered dealing in mortgages.
2. A large multi-national corporation assists its employees in purchasing residential properties to serve as their primary residence. This corporation is not required to hold an authorization to deal in mortgages in Alberta because corporations are included in the exemptions in the *Real Estate Act* Exemption Regulation when they are assisting their employees in obtaining housing.
3. An unlicensed mortgage brokerage assistant is alone in the mortgage brokerage and fields calls from potential borrowers. The potential borrowers provide their personal information over the phone – name, address, assets and liabilities, income, etc. – and request that the assistant speculate as to their ability to qualify for a mortgage. The mortgage brokerage assistant requires an authorization in order to provide this information to (potential) borrowers.
4. John, a real estate industry member, is good friends with an employee of a financial institution. John sold a home to a client and he agrees to help that client obtain a mortgage through his friend that works at the financial institution. John negotiates mortgage rates and terms between the lender and his clients. John requires an authorization as a mortgage brokerage industry member in order to carry out these activities or he would be in breach of section 17 of the *Real Estate Act*.
5. Jack Smith is not an authorized industry member. Jack’s son, Michael, wishes to buy his first home, but does not want to go through a financial institution. Jack and Michael work out an arrangement through which Jack will lend Michael the mortgage funds, which will be paid back at a negotiated interest rate over the span of a negotiated amortization period. Jack is not required to be authorized as a mortgage broker in order to provide these mortgage funds as he is lending his own money and he is not being compensated for his work [for more information, please see section 1(1)(r) of the *Real Estate Act* regarding the definition of a “mortgage broker.”]