



PROHIBITIONS – REAL ESTATE BROKERS, ASSOCIATE BROKERS AND ASSOCIATES

Summary: When it comes to what real estate industry members may not do, the rules are the same for real estate brokers, associate brokers and associates. These prohibitions relate to dealing in the correct name, payments of and acceptances of commissions and fees, and advertising. [See: *Real Estate Act* Rules s.54]

It is just as important for real estate brokers, associate brokers and associates to know what they are prohibited from doing as it is for them to know their responsibilities.

Individual real estate industry members must only trade in real estate in the name of the brokerage with which they are registered. This prohibition prevents real estate industry members from doing work on behalf of more than one brokerage and it prohibits them from advertising in anything but the licensed name of the brokerage with which they are registered. For more information on advertising requirements and restrictions, please see RECA Information Bulletin: *Advertising – Licensed Name*, RECA Information Bulletin: *Clearly Indicated* and RECA Information Bulletin: *Teams*.

With respect to accepting and offering or making payments, real estate brokers, associate brokers and associates are prohibited from:

- Making any commission or referral payments in connection with a trade in real estate except on behalf of and through the brokerage with which they are registered;
- Accepting a commission, referral fee or other remuneration, in connection with trades in real estate, except from the brokerage with which they are registered.

The next two prohibitions as outlined in section 54 of the *Real Estate Act* Rules state that real estate brokers, associate brokers and associates are prohibited from:

- Advertising or offering an incentive to any person except incentives that are provided by and on behalf of the brokerage with which they are registered;
- Providing an inducement unless the inducement is provided by and on behalf of the brokerage with which they are registered, details of the inducement are provided in writing and the broker has provided written approval; and,

For more information on incentives and inducements, please see RECA Information Bulletin: *Incentives* and RECA Information Bulletin: *Inducements*.

One of the more important issues that industry members must address is when the brokerage and its individual industry members find themselves in a conflict of interest with the interests of a brokerage client. The prohibition in section 54 of the *Real Estate Act* Rules relates specifically to disclosure of conflicts of interest. Real estate brokers, associate brokers and associates are prohibited from providing services to a client or potential client in a trade or anticipated trade in which the industry member has, or will have, a conflict of interest without receiving the written and informed consent of the client/potential client.

In most situations, a brokerage is in an agency relationship with a client and as such, the brokerage and individual industry members registered with the brokerage owes the client fiduciary duties. One of the main fiduciary duties of an agent to their principal (the client) is to avoid conflicts of interest and to disclose to the client any conflicts of interest that do arise.

Examples

1. Jane Doe is a real estate broker with AgentsRUs Alberta Limited, a licensed real estate brokerage. Ms. Doe includes the name AgentsRUs in all of her advertising materials, including her business cards. Unless the brokerage has registered AgentsRUs as its trade name with Alberta Registries and RECA, Ms. Doe is prohibited from trading in real estate using the shortened brokerage name. All of Ms. Doe's advertising materials – including business cards – must provide the full licensed name of the brokerage, AgentsRUs Alberta Limited.
2. Jake Martin is a licensed real estate associate. In an attempt to get new clients, Mr. Martin advertises that he will personally pay for home inspection fees for all new buyer clients who buy a property through him in the next 90 days. This incentive is not offered by Mr. Martin's brokerage and therefore, Mr. Martin is prohibited from offering the incentive. If the incentive were offered by the brokerage, all associate brokers/associates registered with the brokerage must participate in the program.
3. Sheila Sales is a real estate associate broker in Calgary. Past clients of hers relocated to Vancouver and asked Ms. Sales for a recommendation of a real estate industry member in Vancouver. Ms. Sales provided a name to her past clients. The British Columbia real estate industry member to whom Ms. Sales referred her clients paid her a referral fee by sending her a cheque, in her name, to her home address. Because the referral fee was not paid to Ms. Sales through the brokerage with which she is registered, she is prohibited from accepting the payment.
4. Joe Dean is a real estate broker working with buyers Mr. and Mrs. X. Mr. and Mrs. X wish to buy a condominium unit in a building under construction. Mr. Dean is a minority shareholder of the corporation developing the project by owning 25% of the shares of the corporation. Mr. Dean acts as the representative for Mr. and Mrs. X in their dealings with the developer, but does not disclose to them, either verbally or in writing, that he has a minority interest in the development. The developer has an employee that signs and negotiates on behalf of the developer. Mr. Dean negotiates on behalf of Mr. and Mrs. X. Mr. Dean never discloses his position. This is prohibited as Mr. Dean did not disclose the conflict of interest of him owning 25% of the development company.
5. Other examples of a conflict of interest that must be disclosed may include:
 - A brokerage is representing both parties to a transaction.
 - An industry member represents other persons, to whom the industry members are related or have a special relationship personally or through business, seek to acquire clients' properties.
 - A personal transaction by an industry member or other industry member of the brokerage.
 - An industry member acting for a buyer client seeks to buy a property in which their clients are interested, whether the property is acquired directly

or indirectly through nominees, and whether for re-sale or for personal use, this would be a conflict of interest.

- An industry member uses confidential information from a client to the prejudice of their client's interest.
- The seller of a property offers the buyer brokerage a bonus in addition to the compensation offered in the listing agreement and the buyer brokerage does not disclose this fact to the buyer.
- An industry member refers their client to another service provider and receives compensation of a gift for that referral but does not disclose it to their client.