

RECORDS – MORTGAGE BROKERAGE

Summary: Record keeping requirements for mortgage brokers and mortgage associates are outlined in the *Real Estate Act* and the *Real Estate Act Rules*. [*Real Estate Act*, s.25(9), *Real Estate Act Rules* s.1(1)(aa), s.13(2)(c), s.67(g)(i)(j), s.69(c), s.105(1)(2)]

Note: For the purposes of this Information Bulletin, and where the context permits, the term “mortgage broker” includes all industry members authorized to deal in mortgages by the Real Estate Council of Alberta including a brokerage, broker and associate.

It is important for mortgage brokers to understand what is meant by a “record” and their obligations with respect to keeping records of their mortgage deals and potential deals. Records can be created and stored in electronic format or they can be converted to electronic format for storage purposes.

For the purposes of the *Real Estate Act* and Rules, and this Information Bulletin, “records” include:

- (i) *accounts, books, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by other means, and*
- (ii) *the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.*

As indicated, records can be in “electronic format.” In accordance with the *Real Estate Act Rules*, “electronic” includes “created, recorded, transmitted or stored in digital form or in any other tangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage.”

Purpose for record retention requirements

The *Real Estate Act* sets out comprehensive record retention requirements. There are various reasons for these requirements. Some of the reasons are as follows:

- Enable brokers to provide an adequate level of supervision and ensure that the business of the brokerage is conducted in accordance with the legislative requirements;
- Enable brokers to deal with possible misconduct by associates, associate brokers and unlicensed staff;
- Enable an accountant to review the brokerage’s records and provide a report under section 91 of the Rules made pursuant to the *Real Estate Act*;
- Enable RECA to conduct compliance audits under section 74 of the *Real Estate Act*; and,
- Enable RECA to review all relevant information necessary to make proper determination during conduct proceedings under Part 3 of the *Real Estate Act*.

Brokers should have a record management plan to ensure all documents and records are maintained. The *Real Estate Act* and Rules provide brokers with the flexibility to create their own record keeping strategy and record keeping systems based on the

brokerage's size, types of business dealings and trade area, provided that all documents and records are maintained in accordance with the legislative requirements.

Brokers have a duty to communicate the brokerage's policies and procedures relating to records retention to associates, associate brokers and unlicensed staff, and to ensure compliance with the brokerage's policies and procedures. For example, many associates administer websites on behalf of the brokerage. The broker should be aware of all associate-administered websites and should ensure electronic records from these websites are maintained by the brokerage in accordance with the brokerage's policies.

Trust Account Records

When in the course of business a mortgage brokerage receives funds on behalf of clients or investors it is required to open and maintain at least one trust or pooled trust account for the deposit of such funds. The *Real Estate Act* s.25(1) specifies a mortgage brokerage that operates a trust account shall keep complete and accurate financial records in which the mortgage broker must maintain a separate record for each person on whose behalf the mortgage broker is acting of all:

- (i) *money received in trust, accounts, books, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by other means;*
- (ii) *money held in trust;*
- (iii) *interest earned on money held in trust; and,*
- (iv) *disbursements made from money received or held in trust.*

Mortgage Deal Records

The *Real Estate Act* Rules specify the minimum requirements for the retention of all records of a brokerage. Mortgage brokers are encouraged to become familiar with sections 105(1) and (2):

- 105(1)A brokerage shall keep separate and have available at its registered business office in Alberta or the City of Lloydminster all records for each trade or potential trade including signed copies of each service agreement, mortgage administration agreement, commitment letters, mortgage applications, credit bureau reports, cost of credit disclosures, investor lender disclosure, banking records, accounts and supporting documentation made in the course of the brokerage's business in relation to a mortgage deal or potential deal in Alberta.*
- (2) *The records must identify each mortgage deal by a sequential code and use that code for the corresponding trust ledger if applicable and must contain the following:*
 - (a) *the nature of the mortgage deal or potential deal;*
 - (b) *a description of the real estate;*
 - (c) *the mortgage amount;*
 - (d) *the names of the lenders and borrowers;*
 - (e) *the amount of deposit or investment received, if any, and a record of the disbursements;*
 - (f) *the amount of commission or other remuneration received, if any, and the name of the party paying it; and,*
 - (g) *the extent of the distribution of the client's information to third parties.*

What is a “Record”?

Records are defined very broadly to include all records created and received during a deal in mortgages. Records includes traditional paper documents, and electronic documents such as faxes, emails, website data and other types of electronic contracts arising out of the use of new technologies. The definition of records also includes records in a potential deal even if it does not result in a service agreement or a deal in mortgages.

Records normally expected to be found in mortgage brokerages include:

- general brokerage advertisements (website information, newspaper ads, flyers, bus benches etc.);
- corporate searches;
- power of attorney;
- land title searches;
- presentations made to prospective clients;
- documents related to the underwriting process;
- copies of any faxes received or sent;
- email communications pertinent to the transaction;
- credit bureau reports;
- borrower and lender disclosure documents;
- copies of all service agreements (Lender and Borrower Brokerage contracts) even though they may not have been accepted by the lender or borrower;
- borrower application forms whether they resulted in deals or not;
- letters of employment, notice of assessment and other documents to support the borrower’s application;
- feature sheets, offers to purchase, real estate appraisals and gift letters;
- *Fair Trading Act* cost of credit disclosure documents;
- environmental, engineering and other professional reports;
- progress, building or stage reports;
- commitment letters and rejection communications;
- mortgage administration agreements;
- adding machine tapes, if used;
- any notes made in day timers (electronic or otherwise);
- photocopies of all mortgage payments received;
- trust account and general account information;
- deposit slips, withdrawal slips and records related to internet banking operations;
- reconciliations, trust ledgers and bank statements and
- any computer data files

This list is not exhaustive and is only a sample of the information that is required to be maintained by the broker.

Record Retention Period

The *Real Estate Act* s.25(9) requires mortgage brokers to keep their records of mortgage brokerage activities (mortgage deals and potential deals) and accounting records for a minimum of three years after they came into existence. The three-year period may be extended by the executive director of the Real Estate Council of Alberta

in a particular case for the purposes of an investigation or prosecution under the *Real Estate Act*.

Brokers should also take into consideration other legislative requirements such as the *Fair Trading Act* or civil requirements. For example the Canada Revenue Agency and FINTRAC have some retention requirements in relation to certain records that may exceed the retention requirements under the *Real Estate Act*.

Brokers may also choose to retain records for longer periods for other reasons. Mortgage brokerages that have errors and omissions insurance or liability insurance should consult with their insurance broker or insurance provider.

Brokerages should be aware that licensing and registration records maintained by brokerages under a RECA Online Filer Agreement are not subject to the three-year record keeping requirement and must be kept indefinitely.

Record Retention Options

Records may be maintained in paper form or electronic form. However, if the documents are stored in electronic form the following requirements apply:

- the storage location and medium used for storage is reliable and can reasonably be expected to maintain the integrity of the electronic information;
- if the electronic record was sent, received, or converted from paper form, the information that identifies its origin, destination and conversion must be retained;
- the electronic record is maintained in the format that was created, sent, received, or converted or is in a format that does not alter the information in the original record;
- the means to view and reproduce the record are maintained. Often this means that the broker will also need to maintain the applicable computer program and/or equipment to run the program;
- the records are safeguarded by a biometric access (preferred) or by a password or security code controlled by the broker so that the document cannot be deleted or altered other than by the broker or his delegate and only after three years;
- the records are located in a physical premise in Alberta accessible to the broker in Alberta. This includes storing the information in a server located in Alberta (i.e. a Q9 type of system) if the broker has the means to access the information from the server; and,
- the premises where the electronic records are stored are secure and only accessible by the broker and his or her authorized representatives;

Conversion of Records for Storage

Brokerages may convert paper records into electronic form or from one type of electronic form to another to reduce physical space storage requirements or to facilitate the use of other types of information systems. RECA has created a set of conversion requirements to ensure the resulting electronic record is a true copy of the original document and to maintain the integrity of the conversion process.

Brokerages may convert paper or electronic records only under the following conditions:

- the information is maintained in an electronic form that does not materially alter the information contained in the original document; and,

- the identity of the person who made the conversion is embedded in the document without altering the information contained in the original document;

Duty to Link Data

Whether in paper or electronic form, the broker has the duty to ensure that all records related to a deal or potential deal are linked so as to create a complete record of all documents or records relating to the deal or potential deal. For example, emails related to a specific deal in mortgages should be maintained with the deal file or if maintained in a separate system they should be linked to the deal file.

Often brokerages use multiple systems with respect to a specific deal. For example, the property was advertised in a brokerage website administered by an associate, the associate sent and received emails through a stand alone email system, the brokerage maintains a paper file and has an electronic conveyance system. Brokers need to understand the various systems used in the brokerage and to create and enforce policies and procedures to ensure all information is linked.

All deals or potential deals must be identified by a sequential code system.

Duty to Maintain Records in Alberta

Whether the records are stored in paper or electronic form, the brokerage must maintain all records in Alberta. Records may be stored in a secure location accessible to the broker away from the brokerage's registered office. However, the records need to be available at the brokerage's registered business office if requested by a RECA auditor or investigator in anticipation of an audit or during the course of an investigation. [*Real Estate Act* Rules, s.13(2)(c)]

Records may be maintained in multiple offices if required for the purposes of facilitating deal activities from offices in various geographical locations. The broker must have access to all of these offices or locations.

Duty to Maintain Confidentiality

Brokers have a duty to ensure client and customer information is kept confidential. Information should not be released other than with the consent of the client or customer or as required by law. Brokerages must only use information for the purpose that it was obtained.

Brokerages must also have policies and procedures for the protection of personal and confidential information, and all industry members registered with the brokerage must be aware of and comply with the brokerage's policies.

Alberta-based brokerages must also ensure they comply with need to know principles imposed by the *Personal Information Protection Act of Alberta* (PIPA). For further information on PIPA, visit the Office of the Information Privacy Commissioner for Alberta at www.oipc.ab.ca.

Brokerages conducting business across Canada must also ensure they comply with the principles of the *Personal Information Protection and Electronic Documents Act of*

Canada (PIPEDA). For further information on PIPEDA, visit the office of the Privacy Commissioner for Canada at www.privcom.gc.ca.

Separation of Business Records

Some brokerages conduct a variety of business. Some activities may not be related to the deals in mortgages, such as being an Alberta Registries agent. Sometimes the activities will be tangential to the deals in mortgage activities such as administering a mortgage investment corporation. If the brokerage operates another type of business, brokers must ensure all mortgage deal records are kept separate from the other business activity.

General Record Keeping Standards to Consider

While RECA establishes minimum record keeping guidelines, brokerages should also examine the broader concept of records management. Brokerages may want to consider review compliance with DoD [5015.2-STD Records Management Application Design Criteria Standard](#).

Choosing an Electronic Record Keeping System

Brokers have a duty to ensure any electronic system complies with legislative requirements. To assist brokers in acquiring a system that complies with all record keeping requirements, RECA has prepared the following list of questions:

General Questions

- Does the electronic records management system track and maintain all of the brokerage's records?
- Does the brokerage obtain and maintain original paper records belonging to one of the parties to the transaction?
- Does the electronic records system allow for original paper documents to be maintained separately?
- Can paper documents that have been converted to electronic form be readily shared with clients or customers and easily accessible through common programs by those clients or customers?
- Does the brokerage have a system of explaining the advantages and disadvantages of paper record conversion to electronic format and to obtain the client's consent for the destruction of paper records after they have been converted to electronic format?

Questions for Converting Paper Records to Electronic Format

- Is the storage location and medium where the electronic records are to be stored reliable and can reasonably be expected to maintain the integrity of the information from the time the electronic record was created?
- Is the identity of the person who made the electronic copy of the written, printed or any paper record and date of the recording into electronic form embedded in the document without altering the information contained in the written, printed or any paper record?
- If the information is maintained in electronic form in a manner that does not materially alter the information originally contained in the written, printed or any paper record?

- Is the record in electronic form safeguarded by password or biometric security codes controlled by the software, brokerage or appraiser so that the record cannot be altered?
- Will the brokerage maintain a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and reproduced in printed form in a timely manner?
- Will the system allow the brokerage to ensure all electronic documents created in respect to a deal or potential deal are stored together or are linked so as to create a complete record of all documents or records relating to the deal or potential deal?

Questions Related to the Maintenance of Electronic Records

- Is the storage location and medium where the electronic records are to be stored reliable and can reasonably be expected to maintain the integrity of the electronic information?
- Does the proposed system require users to identify themselves by username and password or biometric access to identify the brokerages staff who are creating, modifying, sending or receiving electronic records?
- Does the proposed system maintain who created, and modified the electronic record and the date of creation or modification?
- Does the proposed system maintain a copy of the electronic record before modification?
- Does the proposed system maintain who sent or received the electronic record and the date the electronic record was sent or received?
- Is the information in electronic form maintained in the format in which it was created, sent or received, or in a format that does not materially alter the information of the original record in electronic form?
- Does the proposed system maintain a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and be reproduced in printed form in a timely manner?
- Does the proposed system safeguard the document in electronic form by the software, password or security codes controlled by the broker so that the records cannot be altered?
- Are the electronic records located in a physical premise in Alberta?
- Are the electronic records accessible by the broker as required?
- If the electronic data is maintained by a third party supplier, what arrangements have been made to safeguard and transfer the data to the brokerage in the event the third party supplier ceases business?
- Are the premises where the electronic records are to be stored secure and are only accessible by the broker or by persons authorized by the broker?
- Does the system provide the brokerage with the means to ensure all electronic records created in respect to a deal or potential deal are stored together or are linked so as to create a complete record of all documents or records relating to the deal or potential deal?

Questions Related to the Three Year Minimum Record Keeping Requirements

- Will the system prevent the deletion of deal records within the three years after they were created?
- Will the system allow the broker, or a person authorized by him or her to expand the record retention to exceed the three-year period as may be directed by the Executive Director?

- Can the system generate an audit trail of all records including the records that have been deleted after three years?

Questions to Enable Brokers to Fulfill Broker Responsibilities

- Will the system ensure that the broker is able to perform timely supervision of associate brokers or associates, as the case may be, within the brokerage and employees who perform duties on behalf of the brokerage?
- Will the system allow the broker to review all applications submissions and deals in a timely manner?
- Will the system allow the broker to delegate supervisory duties to broker delegates?
- Will the system allow associates to provide to the broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages related to a deal in mortgages as required under the Act and these Rules?
- Will the system allow the broker to be informed of the activities being performed by the associate on behalf of the brokerage?
- Will the system have user name and password or biometric access to prevent unauthorized (unlicensed) staff from trading in real estate or dealing in mortgages?

Access to Records by Clients

Clients may request copies of advertisements, service agreements, applications, documents used for underwriting purposes and other related records created, sent or received to assist the client with the deal or potential deal. Brokerages should provide copies or reasonable access to the clients' records. Brokers should consider disclosing the cost for providing this information. For additional information on this topic, see RECA Information Bulletin: *Records – Release of File to Client*.

Duty of Associates to Provide Deal Records to the Brokerage

Associates and associate brokers have a duty to provide the brokerage with:

- all original documentation such as application forms, letters of employment, borrower disclosure statements, etc.;
- copies of all original documents provided to the parties to the deal in mortgages or their representatives; and
- all records related to a deal or potential deal.

Associates must provide this information on a timely basis and in accordance with the brokerages policies and procedures related to record retention.

RECA has found that some associates interpret "records" to include only those records that are formal in nature (application forms, letters of employment, CRA Notices of Assessment, etc.) and that relate to completed deals in mortgages. Brokers must ensure that associates and other brokerage staff understand the definition of "records" and their obligation to submit all records to the brokerage whether they result in a mortgage loan or not.

Brokerage-Broker Agreements

When a broker does not have a controlling interest in the ownership of the brokerage, the broker must have a written agreement with the brokerage. The agreement must give the brokerage the ability to carry out the duties and responsibilities of a broker as it relates to record keeping. For example, a broker who does not have a controlling interest in the brokerage must not allow records to be stored in the personal residence of an owner as he or she may not be able to safeguard the records or to gain access to the records.

The broker must also ensure the agreement survives the brokerage authorization as the broker is responsible to maintain the records for three years following the brokerage's end as a licensed brokerage. Brokers should consider the cost implications when considering these agreements.

Brokerage Amalgamations

Occasionally a brokerage may purchase or amalgamate with another brokerage. The brokers for these brokerages have a duty to ensure the records are maintained as required either under the amalgamated brokerage or under the control of the former brokerage. (The former broker is able to register under the new brokerage or another brokerage.)

In the case of amalgamation, the broker should contact the applicable privacy officer to determine if the amalgamation affects the terms under which the information was provided and whether isolation of some records is required.