

RESPONSIBILITIES – MORTGAGE BROKER

Summary: Mortgage brokers have an overall responsibility for the management of the brokerage and for supervising the conduct of all industry members registered with the brokerage and all employees working for the brokerage. This includes, among other things, proper management of brokerage records, ensuring the business of the brokerage is carried out in accordance with legislation and providing all brokerage industry members with written policies and procedures with which they are expected to comply. [See: *Real Estate Act Rules*, s.67]

Mortgage brokers are responsible for the operation of the brokerage. Because of advances in technology, the traditional structure of mortgage brokerages has changed dramatically. Over time, the broker's responsibilities have increased and this section of the Rules attempts to clarify their regulatory responsibilities. These responsibilities include supervision of associates registered with the brokerage, as well as all of the staff/employees in the operation. Ensuring that specific standards and procedures are adhered to by all of the individuals registered to and employed by that brokerage are important functions of brokerage management.

Being "actively engaged in the management of the mortgage brokerage" [*Real Estate Act Rules*, s.67(1)(a)] can vary depending on the size of the brokerage and the number of associates registered to the brokerage. Even though a broker can delegate some of these management activities, ultimately, the broker is the one who is responsible for all of the brokerage activities. For more information on being "actively engaged," please see RECA Information Bulletin: *Brokers – Active in Management*. For more information on broker delegation, please see RECA Information Bulletin: *Brokers – Delegation*.

Mortgage brokers are responsible for verifying that all dealing in mortgages carried out by the broker or any associates registered with the brokerage complies with the *Real Estate Act* and *Real Estate Act Rules*. All of the business must be carried out competently by employees and industry members registered with the brokerage.

This could include but is not limited to the following:

- having clear, written office policies;
- training new industry members;
- recruiting new industry members as required;
- educating industry members on the brokerage policies and procedures;
- reviewing all mortgage deals done on behalf of the brokerage;
- ensuring proper management and control of all licensing and registration documents;
- maintaining control and responsibility for trust accounting procedures within the brokerage (if applicable);
- ensuring there is an adequate level of supervision;
- investigating and dealing with complaints filed by clients or customers of the brokerage (it is not sufficient to simply rely on RECA's or an industry association's investigation);
- ensuring industry members are conducting the business of an industry member competently;

- monitoring the activities of any industry members who have been disciplined by the Real Estate Council of Alberta;
- notifying the executive director upon becoming aware of misconduct relating to fraud, deception, theft or unlawful activities on the part of an associate or employee;
- establishing proper management and control of all accounting documents and records; and,
- notifying the Real Estate Council of Alberta of any changes of information given to the Real Estate Council of Alberta as soon as the change occurs; see RECA Information Bulletin: *Notice to Executive Director*.

All mortgage brokers are accountable for:

- the conduct of associates and employees, if the broker had knowledge of their misconduct, or should have had knowledge, and failed to take reasonable steps to prevent such misconduct or
- failing to take reasonable steps with the conduct of the associate broker, agent or employee upon becoming aware of their misconduct

To ensure the proper management of documents, the Real Estate Council of Alberta provides guidelines as to what records a mortgage broker must keep. For information on mortgage brokerage record keeping, see RECA Information Bulletin: *Record Retention – Mortgage Brokerage*.

When a mortgage broker does not have a controlling interest in the ownership of the brokerage, the broker must have a written agreement with the brokerage giving the broker the authority to carry out the duties and responsibilities of a broker under the *Real Estate Act* Rules.

Examples

1. A broker may be required to monitor all of the activities and deals of an associate for a set period of time if the Real Estate Council of Alberta had granted that associate a conditional licence subject to the broker's commitment to special supervision of the associate's activities. A mortgage broker could find him or herself facing sanction by RECA if he or she is not supervising the activities of this or any other associate registered with the brokerage.
2. Several associates registered with 123 Mortgages Unlimited Inc. take part in fraudulent mortgage dealings. These associates work out of a satellite office of the brokerage, one where the broker is rarely present. These associates sent records of the fraudulent records to the main brokerage office, but the broker did not review the deals in question. It is the broker's responsibility to review all brokerage dealings. In not doing so, the broker of 123 Mortgages Unlimited Inc., did not take reasonable steps to prevent the misconduct, and could be subject to sanction by the Real Estate Council of Alberta.