



RESPONSIBILITIES AND PROHIBITIONS – MORTGAGE BROKERAGE

Summary: A mortgage brokerage, as an entity licensed with the Real Estate Council of Alberta, has a number of responsibilities. These responsibilities are integral to ensure that dealing in mortgages is carried out competently and in accordance with legislation. Equally important are the mortgage brokerage prohibitions. Mortgage brokerage prohibitions are largely focused on the proper employment of industry members within the brokerage, and payment of commissions and referral fees. [See: *Real Estate Act* Rules, s.32, s.65, s.66, Part 3: Accounting, Records and Reporting Requirements]

Brokerages licensed by the Real Estate Council of Alberta are authorized to trade in real estate or deal in mortgages. Licensed mortgage brokerages are required to comply with the *Real Estate Act*, Rules and Regulations, and to ensure the broker and all associates registered with the brokerage comply with the legislation.

Responsibilities

With respect to mortgage brokerages, responsibilities include only dealing in mortgages in the name on the brokerage's licence, ensuring the brokerage's name is clearly indicated in all advertisements for the brokerage or its registered industry members, and ensuring that mandatory disclosures are made in writing to borrowers, including, but not limited to: how the brokerage will be compensated for the transaction and any additional fees payable by the borrower.

Brokerages are licensed to deal in mortgages only in the name that appears on their licence. For example, 123 Mortgage Services Ltd., as a licensed name, must always appear in full on all brokerage agreements and on any advertising. It would not be allowed to abbreviate the name to 123 Mortgage, unless this was a trade name appearing on the brokerage's licence that had already been provided to RECA. For more information about the requirement to deal in mortgages only in the name that appears on your licence, please see RECA Information Bulletin: *Advertising – Licensed Name*.

Dealing in the name that appears on the brokerage licence and ensuring it is clearly indicated (i.e. legible, not confusing) is important with respect to consumer protection. Consumers need to be able to identify the corporate entity with which they are dealing. For more information about the concept of "clearly indicated," please see RECA Information Bulletin: *Clearly Indicated*.

Mortgage brokerages are also responsible for ensuring the following information is disclosed to borrowers in writing:

- the nature of its service relationship with the borrower;
- the nature of its relationship with the lender;
- the range of lenders whose products it offers;
- how it will be compensated for the transaction;
- the nature of any other monies or benefits it will receive from the lender and the factors that influence payment of any additional monies or benefits; and
- any additional fees payable by the borrower.

Record Keeping

Part 3 of the *Real Estate Act* Rules is specific with respect to the records that must be kept within a mortgage brokerage. These sections of the Rules are in place to ensure the proper management of documents. With respect to mortgage brokerages, among other items, records kept must include commitment letters, credit bureau reports, cost of credit disclosures in relation to each mortgage deal or potential mortgage deal.

For more information on mortgage brokerage record keeping, see RECA Information Bulletin: *Records – Mortgage Brokerage*.

Other Responsibilities

Throughout the *Real Estate Act* Rules, there are other sections that require brokerages to fulfill certain responsibilities that do not relate to the supervision of industry members dealing in mortgages on behalf of the brokerage. An important section is section 32. Section 32 requires brokerages to immediately notify the executive director in writing of: any circumstance where the broker is no longer able to perform the duties of a broker as outlined in the legislation; the termination or resignation of the broker; the opening or closing of a trust account; a change in the brokerage's registered business office address; a change in the financial institution at which the brokerage maintains a trust account; a change in the partners of the brokerage if the brokerage is a partnership and a change in the officers or directors of a corporation if the brokerage is a corporation.

Prohibitions

Along with their responsibilities, mortgage brokerages have a number of prohibitions that govern their operation, particularly with respect to the employment of mortgage industry members, and the payment of commissions and referral fees.

Mortgage brokerages are prohibited from employing, permitting or engaging a mortgage industry member to deal in mortgages on its behalf if that industry member is registered with another brokerage. Additionally, brokerages are prohibited from employing a person to deal in mortgages until that person has met all requirements of the *Real Estate Act*, Regulations, Rules and Bylaws, which includes the payment of all levies, fees, premiums, fines, Administrative Penalties and other amounts.

This means that brokerages should not register an industry member if the industry member in question owes money to RECA, be it a licensing fee, an Administrative Penalty, another fine or levy, subject to the provisions of section 14(h) of the *Real Estate Act* Rules. Additionally, RECA will require that a brokerage terminate the registration of an industry member who is actively avoiding payment of a required fee, fine or penalty, again, subject to section 14(h) of the Rules.

With respect to the payment of commissions, mortgage brokerages are prohibited from paying them, directly or indirectly, in connection with a deal in mortgages except:

- To a broker or associate employed by the brokerage or to not more than one corporation of which that broker or associate owns not less than 50 per cent of the shares issued by that corporation.
- To a brokerage licensed under the *Real Estate Act* Rules or under similar legislation in a jurisdiction outside of Alberta.

- To an auctioneer qualified under the regulations under the *Fair Trading Act*, where the trade is made in the course of and as part of that person's duties as an auctioneer.

Mortgage brokerages are also prohibited from paying referral fees or any other remuneration to a person in relation to a deal in mortgages if the person is required to be licensed in relationship to those services, but is not licensed, and mortgage brokerages must not pay any remuneration directly or indirectly in connection with a deal in mortgages to any mortgage brokerage licensed in Alberta or a jurisdiction outside of Alberta when the brokerage has knowledge that the remuneration is going to be paid to or shared with a person who is required to be licensed in relation to those services, but is not licensed.

Finally, mortgage brokerages cannot offer a lender or investor a mortgage loan guarantee either on behalf of itself or on behalf of any other industry member.

Examples

1. 123 Mortgages Unlimited Alberta Inc., a licensed mortgage brokerage, creates a marketing campaign that indicates the brokerage name is 123 Mortgages. This is not permitted unless 123 Mortgages is listed as a trade name on the brokerage's licence. If it is not, all advertisements for the brokerage and all of its associates must include the complete brokerage name. Note that in order to use a trade name, a brokerage must first advise RECA of its desire to do so and RECA must formally approve the trade name.
2. Jake Smith is a licensed associate registered with XYZ Mortgage Inc. XYZ Mortgage Inc. is a new brokerage, and does not have a standard document to make the disclosures required under the *Real Estate Act* Rules. Smith helps a client obtain a mortgage from a lender, which requires that any property being purchased undergo a professional appraisal. Smith ordered the appraisal on his client's behalf and included the cost of the appraisal in the total mortgage amount. Smith did not disclose this cost to the client. This is not permitted, since brokerages – as part of their responsibilities – must disclose, in writing, any additional fees payable by the borrower.
3. Two industry members registered with Mortgages Unlimited Alberta Inc. each advertise that they pay referral fees to other licensed industry members for bringing them clients. One of the industry members advertises payment of a 30 per cent referral fee; the other industry member advertises a referral fee of 20 per cent. The brokerage has not set referral guidelines, but it has honoured the resulting referrals and the referrals were paid by the brokerage. This is not a brokerage-based referral program as the brokerage has not set a referral policy. At the very least, a brokerage's referral policy should include, when the referral program will be advertised and communicated by all industry members registered with the brokerage, the referral fee that will be offered; if the referral fee is communicated to non-industry members, the conditions and limitations to ensure that referrals are not provided for activities for which an authorization is required; and, guidelines on the limits of referral fee negotiations relating to non-advertised situations. In this specific case at Mortgages Unlimited Alberta Inc., as there is no brokerage-based referral program, to advertise in this manner would be prohibited. It also creates a misleading advertising situation because the brokerage is offering conflicting referral fees.