



**REAL ESTATE
COUNCIL
OF ALBERTA**

Regulator – September 2008

Renewal Time is Now!

Real Estate and Mortgage Industry Members

All real estate and mortgage broker industry members must have their registration renewed no later than September 30, 2008. The RECA Online system is available for brokers to renew industry members registered with the brokerage. Payment may be made online through Visa or MasterCard and is applied to the brokerage account immediately to begin processing. Payment may also be made by one cheque payable to RECA in an amount to renew all industry members of the brokerage. Please allow 2 working days after receipt by RECA for the brokerage cheque to be credited to the brokerage account.

All brokers should have received a renewal information package in the mail from RECA. Upon receipt of the package:

- review the renewal instructions and material contained in the package from RECA
- review and complete the Confirmation of Trust Account Information form included in the renewal package
- log-in to the RECA Online system and download auto-populated renewal forms for each industry member registered with your brokerage
- have your industry members complete their renewal forms and ensure they are commissioned by a Commissioner for Oaths and signed by the industry member
- review the application form and complete the broker acknowledgement portion
- process renewals for each industry member registered with your brokerage using RECA Online

Do not wait until the last minute to process renewals. If there are unforeseen issues that cause a delay, an industry member's registration may not be renewed by September 30th.

Real estate industry member's registration can only be processed when the industry member has completed the required mandatory professional development courses.

Brokers can use the RECA Online system to view the current course completion status for each industry member registered with their brokerage. This Query Education for Brokerage report is accessed at the bottom of the page after you have logged into your brokerage screen. Encourage industry members to complete their required courses in advance of September 30, 2008. Industry members should allow 48 hours in advance of September 30th to ensure that the completion of

the courses is recorded in the RECA database for the broker to be able to process their application.

There are no professional development requirements for mortgage broker industry members to complete by September 30, 2008.

If any industry member registered with your brokerage answers "YES" to a question in Section C - Information Respecting Suitability, the completed application MUST be sent to RECA for processing along with any and all supporting documentation from the industry member in question. "YES" answers should only be given with respect to events and/or situations that have occurred since the last date of application for that industry member.

Please note that licensing fees have remained the same for the 2008-2009 registration year with a reduction of REIX premiums for real estate industry members.

If you have questions about your education requirements or the renewal process, please contact your broker. If your broker cannot answer your question, please have the broker make the inquiry to RECA as broker inquiries are given priority response.

Appraiser and Candidate Industry Members

All real estate appraisers and candidates must renew their licence no later than September 30, 2008. The RECA Online system is available to process your licence renewal in order to continue to provide real estate appraisal services. Payment may be made online through Visa or MasterCard and is applied to your account immediately to begin processing. Payment may also be made by cheque payable to RECA in an amount to renew your authorization. Please allow 2 working days after receipt by RECA for your cheque to be credited to your account.

Your licence renewal must be processed using the RECA Online system. Do not wait until the last minute to process your renewal as RECA will not process your application for renewal unless there is a suitability issue as a result of a positive answer in Section C. If there are unforeseen issues that cause a delay, your licence may not be renewed by September 30th. All appraisers and candidates have been provided with a package of information to gain access to the RECA Online system.

- Please contact RECA immediately if you have not yet received your licence renewal package. Upon receipt of the package:
- review the renewal instructions
- log-in to the RECA Online system using your AW # and password and download and print the auto-populated Real Estate Appraiser/Candidate Licence Application or use the one included in the renewal package
- complete the application, ensure you have signed it, and have it commissioned by a Commissioner for Oaths. Retain the application on file at your business address
- submit a cheque to RECA if you are not paying by credit card
- process your renewal using RECA Online

If you have answered "YES" to any question in Section C - Information Respecting Suitability, the completed application must be sent to RECA for processing along with any and all supporting documentation. "YES" answers should only be given with respect to events and/or situations that have occurred since the last date of your application. Applications with "YES" answers must be

received by RECA well in advance of September 30, 2008 as they require additional processing time. Do not forward your application if the answers to Section C were negative.

Please note that licensing fees remain the same for the 2008-2009 registration year.

If you have questions about the renewal process, please contact RECA via the email address provided in the August 18, 2008 RECA News. Priority response is given to licensing inquiries directed to this email address.

Message from Council

Busy Summer for Council

The August meeting of Council was a culmination of a number of initiatives and a new beginning for others. Council formally approved its new three year business plan and its budget for the next fiscal year. I am pleased to announce that Council can meet its objectives for the next year with no increase in fees for industry members.

Council recognized through its planning processes the amount of change experienced by the respective industries over the past few years and attempted to avoid new initiatives that would directly affect the day-to-day activities of industry members unless necessary. I believe we have accomplished this with the approval by Council of its three-year Business Plan. A strategy is now in place for planning and implementing a number of new initiatives in education, communication and delivery of our core services. RECA's Strategic Plan is available through our homepage at www.reca.ca. Some of the more significant projects are:

RECA will take a more active role in the development and delivery of pre and post licensing education courses. It has established core values for the delivery of these offerings.

- RECA will develop and deliver licensing education courses in areas that are common or that RECA has the expertise
- Continuing professional development will now be referred to as the Re-Licensing Education Program (REP) to further define what RECA's role is in education. There will be no mandatory course for real estate industry members in the 2008-2009 registration year.
- Work with industry partners to develop "work ready" licensing courses, a new brokers program, mortgage associates and brokers program
- A specialty education implementation plan has been tabled for Council's next meeting in November.

Council agreed to revise the composition of the Residential Real Estate Advisory Committee to allow for the Alberta Real Estate Association (AREA) to appoint two individuals to the Committee. These two individuals are to be industry members who sit on the AREA Board of Directors during their appointment to the Committee.

Council continues to consider recommendations from the Mortgage Brokers Advisory Committee regarding the issue of syndicated mortgages. More work will be required on this important issue and input provided from the mortgage broker industry has been invaluable.

After a robust year of changes and clarifications of the Real Estate Rules and the proclamation of the Real Estate Amendment Act in July, 2008, Council understands the need for industry to take the time to incorporate these modifications into daily practice. It appears there are no large changes on Council's agenda for the near future. The work from this the past year shows

Council's strong desire for continued improvement in industry member relationships with consumers and increased integrity throughout the industry.

Real Estate Amendment Act Proclaimed

Highlights of changes to the Real Estate Act and Regulations

Bill 24, the Real Estate Amendment Act, was proclaimed by the Government of Alberta on July 28, 2008 and the amendments are now included in the Real Estate Act (Act). In conjunction with this the new Real Estate Act Regulations (Regulations) came into effect. While the changes are not significant to the day to day business practices of most industry members, we encourage you to take a look at the amended Act and Regulations in their entirety, found on RECA's website. The following are some highlights of the changes:

Composition of Council: Nomination of Real Estate Appraiser and Property Manager Council Members

The election process for appraisal and property managers for Council has been removed from the Real Estate Act and inserted into the Regulations.

The Executive Director will make a request by email for recommendations from respective industry sectors for each position that will become vacant, at least 90 days prior to the expiry of the existing term of office.

Two real estate appraisers may recommend another real estate appraiser for nomination and two real estate industry members who conduct property management activities may recommend another property manager for nomination. A committee established by Council will review the recommendations received and make nominations for consideration by Council who will then appoint the two members from the nominations received for the respective positions.

Timing of Deposits

For the purposes of section 25(1) of the Real Estate Act, an industry member who is required by the Rules to keep and operate a trust account must deposit money received in trust within three days of receipt or, in the case of an offer to purchase, three days of acceptance. RECA had requested that the Regulation read three business days of acceptance of the offer to purchase. We are working with the government to accommodate this change.

Trust Account Interest

All real estate brokerages and mortgage brokers that receive money in trust are required to maintain a trust account. The requirements regarding the payment of trust account interest (non-designated) to the Alberta Real Estate Foundation now includes mortgage brokerages. Mortgage brokerages which receive money in trust must direct their financial institution to pay any interest earned on a trust account to the Alberta Real Estate Foundation. If the contract designates the interest be paid to one of the parties, the broker must set up a separate trust account for that particular transaction.

Assurance Fund Claim

To provide a level of protection for clients, the Real Estate Act dictates the existence of a Real Estate Assurance Fund. The purpose of the Fund is to provide a source of funds from which a consumer may be reimbursed should they suffer a monetary loss through the committing of a fraudulent act or a misappropriation of trust money (breach of trust) by an industry member.

Prior to the amendments to the Act and Regulations, applicants for payment from the Fund were required to have a judgment. Section 57(3) of the Act sets out that payment can be made if there is a judgment based on fraud or breach of trust in a transaction involving an industry member or if there is a claim made for losses when an industry member fails to disburse or account for money that has been held in trust. Consumers now have an easier process in making a substantiated

claim against real estate or mortgage broker industry members from the Fund. In these cases, claims can be made directly to RECA. Application must be made within one year from the date on which the alleged loss or damages occurred.

The maximum payment that may be made to an individual applicant under section 60 of the Act with respect to trades undertaken by a real estate industry member is \$35,000 for judgments or claims, and \$25,000 for judgments or claims made against a mortgage broker industry member. The maximum amount payable for all applicants for a compensation event is \$350,000 for real estate brokers and \$100,000 for mortgage brokers.

Service of Documents

Section 77 of the Act and section 23 of the Regulations have been amended to include that the service of any required documents may apply to non-industry persons and to provide additional clarity on what constitutes service of documents on Council, industry members and non-industry members.

Production Orders (Section 83.2 of the Act)

For the purposes of enabling an investigation or to determine if an industry member has contravened the Act, Regulations, Bylaws or Rules, the executive director or delegate may require a person to produce for inspection documents, records and other items in the person's possession or control or answer questions. The executive director may make this order only if the executive director has information that the information or other items requested relate to a possible contravention of RECA's legislation. The documents, records or other items may be copied by the executive director or delegate.

These production orders will help RECA in its investigation of complaints but specifically mortgage fraud cases. In the past, RECA did not have access to all documents or records required from non-industry members to adequately prove mortgage fraud activities by industry members. The person to whom an order is directed may make application to the court to vary or cancel the order and the court may do what it considers just.

Sale of Real Estate Outside Alberta

The requirement to file a prospectus for trades in real estate located outside of Alberta has been eliminated. RECA determined the prospectus process went beyond its mandate, placing RECA in a position to regulate the activities of non-industry members such as developers and sellers. The process was also inconsistent with the requirements in many jurisdictions and set a double standard compared to real estate located in Alberta.

The Act does not apply to a person that acquires or disposes of real estate for their own account or an official or employee of that person. In practical terms, if a person from another jurisdiction wants to sell real estate located outside of Alberta in Alberta, they may do so just as any person in Alberta disposing of real estate, through an industry member, their own efforts, an employee of that person or in the case of a corporation, an official of that corporation. As a point of clarification, an employee of an owner must meet some minimum standards to be considered an employee and be exempt under the Act.

Outlined below are a few standards to assist in determining if an individual is an employee or self employed:

- The employer pays the employer portion of CPP and EI
- Employees do not have a GST registration number; an independent contractor would be GST registered if their income is in excess of \$30,000 per year
- An independent contractor would file income tax as a self employed person
- An employee would receive a T4 slip for their remuneration and an independent contractor would invoice the owner for services

- The source(s) of income for the employee/contractor

If it is determined by RECA that an individual is not an employee then that person must be registered to trade in real estate or cease trading in real estate on behalf of the owner.

Exemption Changes Section 2(1) & (3)

A bank, treasury branch, credit union, loan corporation, trust corporation or insurance company trading in real estate administered by it or dealing in mortgages currently is exempt from the Act for these activities. RECA is of the opinion that these institutions should only be exempt for real estate and financial products that the institution owns. The Act was amended to allow for a modification of these exemptions by making a reference "subject to the regulations" in the exemption to allow for limiting the exemption in the Regulations.

RECA will undertake further consultation with stakeholders on this issue in the future.

Sale of Businesses

The definition of real estate in 1(1)(u)(iii) has been amended so that it does not include the buying and selling of businesses. RECA's involvement with business brokerage has been minimal and the regulation of business transactions is beyond RECA's primary mandate of consumer protection. Prior to the amendment, the Act prohibited business brokering by anyone who was not licensed by the Council. This prohibition applied whether or not the business had a real estate component. Many other professionals such as accountants, lawyers etc. were involved in the sale of businesses.

A "business" is an entity or undertaking that is separate and apart from real property. Assigning the licensing and regulation of business transaction to RECA is not appropriate to consumer protection legislation.

RECA will continue to regulate any industry members in transactions involving the sale of businesses that have a real estate component such as a lease or sale of a property included in the purchase or lease; however this regulation will be limited to the real estate aspects of the transaction itself.

Administrative Penalties (Section 25 Regulations)

The maximum amount of an administrative penalty has increased to \$25,000. Upon completion of an investigation of unlicensed activity that is founded, RECA could levy an administrative penalty. The maximum amount was \$5,000 which was not a sufficient deterrent to person who may have earned many times that amount for trading in real estate in contravention of the Act.

Syndicated Mortgages Update

The Mortgage Brokers Advisory Committee has been involved in providing Council with direction regarding the issue of syndicated mortgages. In brief, a syndicated mortgage is a mortgage in which two or more people participate, directly or indirectly, as lenders in a debt obligation that is secured by a mortgage. The Real Estate Act of Alberta defines "mortgage" and "mortgage broker" in broad terms and captures syndicated mortgage. The Alberta Securities Commission (ASC) considers a syndicated mortgage to be a type of security.

Currently, the Alberta Securities Commission (ASC) has an exemption from its registration and prospectus requirements for those persons that are licensed with RECA as mortgage brokers and

deal in syndicated mortgages. The ASC is considering a proposal to remove that exemption. In addition, RECA has identified concerns with the regulation of syndicated mortgages and consumer protection levels for some types of syndicated mortgages.

RECA issued a discussion paper on this topic and consulted with mortgage industry members and stakeholders regarding the regulation of syndicated mortgages. The meetings were very well attended and resulted in several submissions from the industry. Thank you to all who participated and provided valuable feedback.

The Mortgage Brokers Advisory Committee participated in RECA's consultation process and held several meetings in Calgary and Edmonton with industry members. The committee reviewed all the information that was available related to the regulation of syndicated mortgages, considered the feedback received from mortgage brokers and identified a number of issues that need to be addressed. Consultation with the Alberta Mortgage Brokers Association has been paramount in helping to determine what type of activities or types of investments should be captured as a syndicated mortgage with the ASC.

At its August meeting, Council directed administration and the Committee to:

- further explore RECA being the regulator of syndicated mortgages in Alberta
- undertake a comprehensive study of all aspects of regulating syndicated mortgages and other issues associated with the regulation of syndicated mortgages and report back to Council at a future date on the findings involved if RECA were to regulate all syndicated mortgages;
- update the Alberta Securities Commission (ASC) on the consultation process, RECA's current position on the regulation of syndicated mortgages and its future undertakings and request from the ASC that the current exemptions remain in place until such time as RECA has completed its deliberations;
- inform the respective government ministries that are responsible for RECA and the ASC of RECA's direction and request that no changes occur to legislation until that study is complete and RECA has determined its role.

RECA administration will be working with the Committee to move this project forward in the coming months. Additional consultation will be required.

Getting to Know RECA: Complaint Analysis

A key function of self-regulating or professional organizations is to ensure members comply with the standards of conduct for protecting the public interest, which includes consumers and the industry, when it is not detrimental to consumers.

The process for ensuring compliance must be carried out in accordance with requirements outlined under the organization's governing legislation and the principles of natural justice. Adherence to these standards not only means that the organization ensures it is complying with the law, it also gains the confidence of its industry members.

To maintain public confidence, professional organizations must have an easy accessible, comprehensive, and transparent process for complainants. The Real Estate Council of Alberta (RECA), like other professional regulatory organizations, is tasked with this responsibility and has developed a process that adheres to all these concepts.

The standards of practice for real estate, mortgage brokerage and real estate appraisal industry members are outlined in the Real Estate Act (Act), the Real Estate Act Regulations (Regulations) and Rules made pursuant to the Real Estate Act. The process that RECA follows to enforce the Act, the Regulations and the Rules as it relates to industry members is called conduct proceedings. RECA has divided the conduct proceedings process into three sections. These sections are complaint analysis, investigation and discipline. This article focuses exclusively on the complaint analysis process.

RECA receives a variety of complaints but can only investigate complaints about industry members that are related to an alleged failure to follow standards of business practice as set out in the Act, Regulations and Rules. As investigations are intrusive, RECA treats every complaint it receives seriously, and each complaint is reviewed fully to ensure that only those complaints that concern conduct deserving of sanction are investigated.

Before an investigation is initiated, a complaint must meet certain criteria that is in compliance with the intent of section 38(1) (a) of the Act. Some of these criteria are laid out under section 21 of the Regulations. To determine whether the criterion is met, RECA conducts a complaint analysis.

There are seven criteria that RECA examines before it commences an investigation. Two of the most important criteria examined are:

- the matter must fall under the Real Estate Council's jurisdiction (i.e. it must concern a breach of the Act, Regulations or Rules).
- sufficient evidence must indicate the likelihood that an industry member was involved in conduct deserving sanction. The complainant, in issuing their complaint, is required to provide details of the alleged breach and evidence that supports their conclusion that the breach occurred. An investigation will not be opened based on hearsay or suspicion.

A significant number of the complaints that RECA receives are outside of RECA's jurisdiction and relate to contractual disputes between buyers and sellers, landlords and tenants or lenders and borrowers. In these type of complaints, industry members are frequently unfairly accused when another individual is at fault. An industry member is often cited in the complaint because they are often considered the "face" of the client or may be following the clients' lawful instructions. In these cases, the complaint is directed to another forum such as civil proceedings or alternative disciplinary body.

When a member of the public makes a complaint it usually starts by contacting RECA's information officers. RECA's information officers review the information received over the phone by complainants. If the complaint relates to the actions of an industry member and there appears to be sufficient evidence to indicate a likelihood of conduct deserving of sanction, the complainant is then asked to submit their complaint in writing.

RECA receives complaints from the public, industry members and law enforcement. RECA staff also come across information that would suggest that a particular individual may have been involved in conduct deserving of sanction. Depending on the reliability of the information and

seriousness of the alleged misconduct, the Executive Director, under clause 38(1)(b) of the Act, may wish to investigate a matter and in such cases RECA will be named as the complainant.

Information officers receive approximately 100 phone calls and 38 emails a month in regards to potential complaints. The investigations administrator and the complaint analysts receive approximately 3 written complaints daily and 60 complaints a month and are in daily receipt of information in relation to existing complaints and inquiries regarding status and disposition.

A complaint analysis can result in a variety of outcomes. However, most complaints are not investigated. For example, from July 1st 2006, to September, 2007, RECA completed 587 complaint evaluations. Only 116 were referred to for investigation. The following table is an overview of the closed complaints during this time.

Evaluation of Closed Complaints

TOTAL COMPLAINTS PROCESSED	587
Referred to other agencies or processes (mostly referrals to law enforcement)	37
Referred to for Investigation	116
Issued advisory information	134
Sent warning letter	13
Other (no jurisdiction or valid complaint)	287

Complaints that do not satisfy the relevant criteria are refused or referred to other agencies or processes. Where a complaint satisfies the standards warranting an investigation a letter is sent to the industry member notifying them that an investigation has commenced. The industry member named in the complaint will be notified in writing of the complaint details and receive a written and detailed description of the matter under investigation, or the complainant's letter and supporting documents.

Sometimes there are technical breaches of the Act, Regulations or Rules. In these cases RECA prefers to work personally with the industry member named in the complaint to both alert them to any concerns and bring about a positive change in practice. Provided no previous advisories have been issued to the industry member, efforts will be made to resolve minor issues informally and constructively through advisory correspondence rather than through the investigation and disciplinary process. A letter is sent to the named industry member as a service so that any potential actions deserving of sanction are addressed. The information in the letter assists the industry member to fulfill their responsibilities as an industry member under the Act, Regulations and Rules.

Currently, the complaint analyst team is comprised of an investigations administrator and three complaint analysts. The investigations administrator is responsible for acknowledging the complaint and administering the complaint. The complaint analysts are responsible for analyzing all complaints received by RECA. This includes the preparation of a complaint analysis report for the review by the Director of Investigations for all matters where information gathered indicates conduct deserving of sanction or unauthorized practice.

As part of the complaint evaluation, the complaint analyst may interview witnesses and gather information, documentation and data from brokerages, public bodies, industry associations, expert witnesses, law enforcement agencies and government databases. The complaint analyst fields questions from industry members, unauthorized persons and complainants regarding the complaint evaluation process.

At the end of the review, the complaint analyst will make recommendations to the Director on whether complaints warrant a formal investigation or if the matter may be dealt with through alternative measures. Alternative measures include a warning letter, advisory information or other. If the complaint does not warrant further investigation, the complaint analyst will correspond with complainants and the industry member who was named in the complaint. When warranted, the complaint analyst will prepare advisory information correspondence to an industry member. If further investigation is warranted, the complaint analyst will transfer the file to the investigations team.

Two of the three analysts employed by RECA are former industry members with real estate and mortgage brokerage backgrounds while the third is a former information officer.

All decisions on whether an investigation is opened are made by the Director of Audit and Investigations. The director may obtain legal advice and consult with the Director of Industry Standards in order to make this decision.

RECA is mandated to protect consumers and to provide services that enhance and improve the industry and the business of industry professionals. To that end RECA is committed to the continued development of procedures to streamline the complaint process, using an interactive complaint form that will guide consumers where they believe the conduct of an industry member is deserving of sanction. The core document and text components for this interactive form are currently under development by the Audit and Investigations Unit.

To learn more about the complaint and the evaluation process in its entirety, please read the 'Guide to Complaints for Consumers' which can be found on RECA's website, www.reca.ca.

Education Corner

New Directions for Education at RECA

RECA has charted a new path in taking a more active role in the development and delivery of licensing and re-licensing programs. A variety of education initiatives were approved by Council at their August meeting and this article touches on a few of these:

- 1] RECA has traditionally left program development and delivery to industry associations and education providers. RECA will now take an active role in the development and delivery of licensing and re-licensing programs in areas where we have the expertise. This change also means that industry associations can now focus on providing continuing professional development courses for their members.
- 2] RECA has been involved with online course development and delivery over the past year. The resulting feedback has been exceptionally supportive and industry members have requested that we deliver future courses online. Accessibility, convenience and timeliness are widely recognized benefits of online learning. Therefore, RECA has chosen e-learning as its primary delivery method for all future courses.
- 3] RECA will take a practical, work-ready approach to all future course development, which will be reflected in the course content and instructional design.

4] RECA has changed the name of continuing professional development to the Re-licensing Education Program (REP). Any courses that are mandatory for industry members to complete before they can renew their authorizations with RECA will be a part of the Re-licensing Education Program. The change was made to further define RECA's role in education, as it more directly relates to content dealing with re-licensing matters.

5] There will be no re-licensing course (mandatory course) required of real estate industry members for the 2008-2009 licensing year.

In summary, RECA will focus on licensing and re-licensing programs that support industry members, and future industry members, in the development of practice-related competencies. In addition, RECA will ensure that industry members continue to enjoy the convenience and accessibility that online learning provides.

Communications Survey Results

Positive communications survey results

RECA would like to thank all respondents who recently completed our communications survey. Your time and comments were appreciated. Excellent input was provided resulting in mostly positive feedback in regards to RECA's current communications with the industry.

Over 70% of respondents rated the frequency of communications from RECA as sufficient, with the Regulator being the most popular and useful source of information. Half of respondents rated the Regulator as 'Excellent' in terms of content, design and relevance. The most popular and useful feature of the Regulator, according to respondents, is the Case Studies.

Respondents indicated that the RECA website is used mostly for access to the RECA Online system and for latest news. Overall, the website was rated 'average' to 'good,' with many respondents indicating that although they find the website useful, it should be easier to navigate around the site.

Starting in the fall, RECA will be redesigning its current website. We will be undertaking a comprehensive review of the current site's content and functionality, and the feedback received in the communications survey will be taken into account during the process. Further consultation with industry stakeholders and with the public will be initiated to help determine further new features and content. The new website will aim to be more user-friendly and continue to provide relevant information for industry members, consumers and stakeholders. The completion of the new website is planned for fall 2009.

Re-Licensing Education Program

Current Re-licensing Education Program

Real Estate

The 2007-2008 Re-licensing Education Program (REP) for real estate industry members includes Agency Fundamentals and Understanding Designated Agency and Transaction Brokerage, both of which must be completed prior to September 30, 2008. For more information on these courses, visit the REP section of www.reca.ca, here.

Both courses in the 2008 REP for real estate industry members are available online. Agency Fundamentals is offered through the education section on the Alberta Real Estate Association

website and Understanding Designated Agency and Transaction Brokerage is offered through the RECA Education Portal at www.reca.ca. Both are also offered in classroom settings. 83% of real estate industry members have completed Agency Fundamentals and 60% have completed Understanding Designated Agency and Transaction Brokerage.

Understanding Designated Agency and Transaction Brokerage online course was launched on July 30, 2008. Several hundred industry members have already completed it online and the feedback has been overwhelmingly positive.

You must have completed Agency Fundamentals before you can register for Understanding Designated Agency and Transaction Brokerage. Industry members must have completed both courses by September 30, 2008 in order to be eligible for renewal of their 2008-2009 license.

To register for Understanding Designated Agency and Transaction Brokerage online, first contact your broker to obtain your RECA ID (RW number). Using this number and your date of birth, you can login and register for the course in the RECA Education Portal.

There will be no REP for real estate industry members in the 2008-2009 licensing year.

Appraisers

The REP for real estate appraisal industry members includes Mortgage Fraud Awareness, which must be successfully completed by September 30, 2009.

Mortgage Brokers

RECA is currently developing a REP course that will focus on the regulatory aspects in the Rules focusing on the most recent changes to the Rules. This course will be offered in the Spring of 2009, and will be comprise the REP for mortgage industry members, to be completed by September 30, 2010.

The following statistics are current as of Thursday, September 2, 2008 regarding Re-Licensing Education Program completion within the industry:

Percentage of the industry with the mandatory course

Real Estate

Percentage of real estate industry members who have completed Agency Fundamentals: 85%

Percentage who have not completed Agency Fundamentals: 15%

Percentage of real estate industry members who have completed Understanding Designated Agency and Transaction Brokerage: 65%

Percentage who have not completed Understanding Designated Agency and Transaction Brokerage: 35%

Understanding Transaction Brokerage

Understanding Transaction Brokerage

Transaction Brokerage replaces Dual Agency with Limitations for all brokerages on October 1, 2008. To help explain how transaction brokerage works, RECA will publish the answers to commonly asked questions in each Regulator.

What does “facilitation services” mean?

Common Law and Designated Agency

It means services by which the interests of the buyer and seller are met in an even handed, objective and impartial manner without providing confidential advice, advocating on behalf of either the buyer or seller, or using discretion or judgment that benefits the buyer or seller to the prejudice of the other. However, the industry member may facilitate for the mutual interests of the buyer and the seller in the transaction.

What are some examples of “facilitation services”?

Common Law and Designated Agency-

Facilitation services include:

- provide real estate statistics and other information through listing services or other local databases;
- assist the buyer and seller in negotiating a mutually acceptable agreement;
- provide standard form agreements of purchase and sale, lease and other relevant documents;
- prepare documents with the instructions of the client(s);
- provide the names of real estate appraisers, mortgage brokers, surveyors, building inspectors, lenders, insurance agents, architects, engineers and the like, but not recommend any particular professional;
- present in a timely manner, all offers and counter-offers to and from the client(s) regardless of whether the property is already the subject of a contract;
- convey to the client(s) in a timely manner all information that either wishes to have communicated to the other;
- keep the client(s) informed regarding the progress of the transaction, and;
- comply with the Real Estate Act and Rules.

Buildings and Structures of Alberta Trivia

Questions:

1. During the 1988 Winter Olympics, a flame burned at the top of this famous structure.
2. What building's motto is “seating 10,000 people, six at a time”?
3. Brad Pitt is rumored to have a home here.
4. What municipal building is a contemporary pyramid shape?
5. Where is the highest river crossing by streetcar in the world?
6. Where did the “Shakespeare of Iceland” reside and write most of his famous poetry?

7. Marilyn Monroe stayed here in 1953.
8. What building is modeled after the Temple of Heaven in Beijing, houses a library, health centre and an art gallery?

Answers:

- 1) The Calgary Tower
- 2) The Little Church, Drumheller
- 3) Bragg Creek
- 4) Edmonton City Hall
- 5) The High Level Bridge and Streetcar, Edmonton
- 6) Stephan Stephansson lived in Stephansson House near Markerville, 7 km north of Red Deer.
- 7) Room 816, Banff Springs Hotel
- 8) Chinese Cultural Centre, Calgary

Case Summaries

Case summaries are published in accordance with section 55 of the Real Estate Act. For full versions of the disciplinary decisions summarized below, visit www.reca.ca and click Member Information > Disciplinary Decisions. Decisions are publicized to enhance the transparency of RECA's disciplinary process and to assure consumers that there is an effective framework in place to deal with breaches of the Real Estate Act. To obtain further information about RECA's policies and procedures, please call 1-888-425-2754.

administrative penalties

June 2008 - August 2008.

- 1 breach regarding unauthorized activity [s.17(c) of the Real Estate Act]
- 1 breach regarding notification of industry members [s.40(1) of the Real Estate Rules]
- 2 breaches regarding year end reporting [s.90 of the Real Estate Rules]
- 1 breach regarding broker responsibilities [s.21(1) of the Real Estate Rules]
- 1 breach regarding industry member prohibitions [s.42(g) of the Real Estate Rules]
- 4 breaches regarding absence of trust transactions [s.92(1) of the Real Estate Rules]
- 1 breach regarding accepting a commission or other remuneration from an person except the brokerage with which they are registered [s.24(1)(c) of the Real Estate Rules]

Consent agreements

June 2008 to August 2008

Lucia Bermudez-Prado, ASSOCIATE

real estate associate then registered with Unison Realty Group Ltd. and currently registered with Seventh Level Management Ltd O/A Keller Williams Realty South.

Issues:

- Failure to render competent service [s.6(c) of the Code of Conduct, as it was then]
- Failure to fulfill fiduciary duty [s.2(k) of the Code of Conduct, as it was then]

Facts:

- Lucia Bermudez-Prado was registered as an associate with Unison Realty Group Ltd at all material times and is currently registered with Seventh Level Management Ltd o/a Keller Williams Realty South.
- Lucia Bermudez-Prado, then a new industry member, assisted Client A in a sale and purchase in November 2005.
- The sale of the Client A's home concluded, however Client A lacked sufficient funds to close on the new purchase.
- As a result Client A was required to rent accommodations in a rapidly appreciating housing market.
- The sales agreement of the Client A's home concluded first and was made subject to two seller's conditions.
- The seller's conditions were that the seller find new accommodation and financing for the new purchase.
- Client A appears to have been relying on insurance proceeds from the settlement of 2 claims, a motor vehicle accident claim, and a critical illness benefit claim, to assist with the new purchase.
- Prior to the waving of conditions, it became apparent that the disability benefit would not come through.
- Ms. Bermudez-Prado had reservations regarding the completion of the transaction in light of the failure of the critical illness claim, but proceeded on the complainant's assurances that the personal injury claim had settled.
- Ms. Bermudez-Prado permitted and facilitated the waiver of seller's conditions on the sale without directing Client A to advise regarding the availability of insurance funds, and despite the fact that the financing conditions in the new purchase agreement had not been strictly met.
- Insurance monies never became available to the clients and they could not complete the purchase for want of funds.

Results: The Hearing Panel found Ms Bermudez-Prado's conduct deserving of sanction and

ordered her to pay a fine of \$2,500; costs of \$1,000 and complete an educational requirement.

Abby Khalil, associate

real estate associate registered with Calgary Independent Realty o/a C.I.R. at all material times and current real estate associate registered with Calgary Independent Realty o/a C.I.R.

Issues:

- Participated in fraudulent or unlawful activities in connection with real estate or mortgage transactions [s.7(c) of the Code of Conduct, as it was then]
- Failure to provide all documentation or trade records to the broker [s.23(3) of the Rules, October 1999 – September 2006]

Facts:

- In 2002/2003 Abby Khalil acted as real estate agent for Client A in the purchase of a property.
- She also acted as agent in the subsequent sale of that property.
- The property was the subject of a purchase contract in August of 2003.
- The contract fell through when the buyer did not come to view the property and did not provide a deposit. However, the contract had been signed by all parties before it fell through.
- In 2005 Client A complained to RECA that Ms. Khalil had violated REA legislation by not providing appropriate advice to him regarding the price of properties, and by pressuring him into purchases.
- The complaint was dismissed for lack of evidence although an advisory note was issued to Ms. Khalil regarding her witnessing a client's signature when she had not seen the client sign.
- Client A sued Ms. Khalil and the brokerage in civil court. As a result of the civil claim three documents were released to Client A by Ms. Khalil and her brokerage. Upon examination of the documents, Client A found three initials that were purported to be his, but that he states were not written by him.
- He submitted this evidence to RECA and requested that the investigation be reopened.
- The documents were sent to handwriting experts. The experts stated that it was very likely that two of the sets of initials were not Client A's.
- The third initial may or may not have been written by him.
- The handwriting experts were unable to state whether Ms. Khalil had written any of the initials.
- Ms. Khalil has no recollection of having created the initials, or of who did.

- She agrees that the documents were in her possession, and not easily accessible to people other than herself or her employees.
- None of the documents were turned into her brokerage, but were rather kept at her home office by Ms. Khalil, until such time as they were requested for a court action.

Results: The Hearing Panel found the Ms Khalil's conduct was deserving of sanction and ordered her to pay a fine of \$4,000 and costs of \$1,000. The Panel also ordered that Ms Khalil submit to supervision by her broker for a period of a year from this decision as a condition of her authorization to trade in real estate.

Barry Meckelberg, associate

real estate associate formerly registered with Envision Property Management Ltd. and currently registered with Consolidated Real Estate Services Inc.

Issues:

- Failure to comply with associate broker and agent responsibilities [s.23(b) of the Real Estate Rules, October 1999 – September 2006]
- Participation in the creation of a document he knew or ought to have known was false or misleading [s.4(d) of the Code of Conduct, as it then was]

Facts:

- Mr. Meckelberg was first licenced as an associate September 18, 1997. He has no prior complaint history with RECA.
- In the summer of 2005, Mr. Meckelberg was registered with Envision Property Management Ltd.
- On May 18, 2005 Mr. Meckelberg moved to Consolidated Real Estate Services Inc.
- Outside of his activity at Envision and Consolidated, Mr. Meckelberg was marketing service as a condominium manager.
- He presented himself to prospective clients under the trade name Absolute Management and Realty.
- He did not advise that he was registered with either Envision or Consolidated and did not advise his broker of his activity.
- In the course of his marketing his service he offered to collect money on behalf of an owner.
- From one client he did receive cheques for the current Condo Corporation operating and reserve funds and set up new Condo Corporation accounts with the funds.
- During the marketing of his management service he advised a prospective client that his insurance through REIX covered his activity outside of the brokerage.

- This was not correct and was not confirmed by Mr. Meckelberg before he made this representation.

Results: The Hearing Panel found Mr. Meckelberg's conduct to be deserving of sanction and ordered him to pay a fine of \$2,000, costs of \$750 and complete an educational requirement.

Kurt Weber, associate

former mortgage associate registered to TD Mortgage Brokerage Inc. o/a Canada Trust Mortgage Brokerage Services at all material times..

Issues:

- Participating in fraudulent or unlawful activities in connection with real estate or mortgage transactions [s.7(c) of the Code of Conduct as it then was]
- Facilitating a commission for a trade other than through the brokerage to which the recipient was registered [s.21(1)(c) of the Rules as it then was]

Facts:

- Mr. Weber was a mortgage agent authorized to deal in mortgages with TD Canada Trust Mortgage Brokerage Services. He ceased his authorization with the Real Estate Council of Alberta (hereafter "RECA") on or about September 30, 2005. He has not been authorized to deal in mortgages or authorized in any other industry governed by REACA since this date.
- In or around February 2004, Associate A was representing Client B in his search for a residential property with an assumable mortgage to purchase.
- Client C became interested in a property that did not have an assumable mortgage.
- Associate A along with Associate B devised a plan to have an individual purchase the property, obtain a mortgage on it and have Client C purchase the property from this individual and assume the mortgage.
- Mr. Weber was recruited by Associate B, a real estate associate formerly registered and currently under an interim suspension pursuant to s.53(1)(a) of the Real Estate Act to purchase a property as a qualifier
- Mr. Weber participated in this transaction in this regard.
- Mr. Weber applied for a high ratio mortgage through Home Loans Canada and was approved.
- In his mortgage application, he warranted that he was going to be residing on the property and that there was a deposit in the amount of \$10,105 being provided.
- Mr. Weber in fact had no intention of residing on the property and no deposit was ever provided for this transaction.
- On or about May 2004, title to this property transferred from Mr. Weber to Client C

- Mr. Weber paid to Associate B an amount of money for Associate B's involvement in the transaction by depositing the funds into Associate B's bank account.

Results: The Hearing Panel finds Mr. Weber's conduct deserving of sanction and orders him to pay a fine of \$10,000 and costs of \$250.

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Ralph Salomons (*vice chair*)

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