

Regulator – March 2009

RECA RECOGNIZES OCCUPATIONAL STANDARDS OF OTHER JURISDICTIONS

Effective April 1, 2009, the Real Estate Council of Alberta (RECA) will recognize the occupational standards of real estate industry members from a number of Canadian jurisdictions. RECA will also recognize the occupational standards of mortgage industry members who are currently licensed or eligible for re-licensing in Ontario or British Columbia.

Council approved the policy change at its February 4, 2009 meeting. The change is a direct result of two trade agreements Alberta has signed.

Trade and Labour Mobility Agreements

The *Agreement on Internal Trade* (AIT), which originally came into effect on July 1, 1995, is the agreement by which federal, provincial and territorial governments agree to remove or reduce inter-provincial barriers to the movement of workers, goods, services and capital. Chapter 7 of the AIT is the Labour Mobility Chapter, which requires occupations and professions regulatory organizations to recognize the qualifications of “workers” in other jurisdictions who wish to relocate to a new jurisdiction.

Following implementation of AIT, expectations were that regulators would voluntarily work towards recognizing workers from the other jurisdictions and would establish common competencies and qualifications to remove inter-provincial trade and labour mobility barriers. In September 2006, Trade Ministers from across Canada agreed to establish April 1, 2009 as a deadline to ensure compliance by all regulatory bodies with AIT’s Chapter 7 labour mobility provisions.

On April 28, 2006, Alberta and British Columbia signed a groundbreaking agreement to remove additional barriers to trade, investment and labour mobility between the two provinces. Under the *Trade, Investment, and Labour Mobility Agreement* (TILMA), Alberta will have reciprocity with British Columbia for real estate and mortgage broker industry members. TILMA provisions are to be in place and effective as of April 1, 2009.

Both agreements were designed to promote an open, efficient and stable domestic market for long-term job creation, economic growth and stability through the elimination of barriers to the free movement of persons, goods, services and investments within Canada (AIT) and between Alberta and B.C. (TILMA).

Since 2002, a number of Canadian real estate regulators had provided for labour mobility through a mutual recognition agreement by reducing the licensing requirements for licensed individuals transferring from participating provinces. However, in the months leading up to the implementation of the AIT and TILMA, it became apparent that the Council’s policies with respect to the required Extra-Jurisdictional Exam, would likely be seen as barriers to compliance with AIT and/or TILMA.

Occupational Standards

RECA defines licensing reciprocity as the recognition of occupational standards from other jurisdictions that have occupational standards.

Applicants from jurisdictions with occupational standards will be eligible for licensing reciprocity without additional education requirements; however, individuals are required to purchase a package of information on Alberta-specific issues and to sign a declaration (included in the licence application) that acknowledges their obligation to:

- (a) know, understand and practice in strict accordance with the *Real Estate Act* of Alberta including the Regulations and Rules;
- (b) familiarize themselves with the laws of Alberta as they apply to the business of an industry member;
- (c) only engage in work or provide services when they are competent to do so; and,
- (d) abide by any restrictions or conditions that may be imposed upon the issuance of their licence (restrictions related to specific areas of practice or educational requirements addressing practice issues unique to Alberta).

Additional education requirements may be necessary if the previous jurisdiction did not have occupational standards for a specific specialty area of practice, such as property management in the real estate sector. If the previous jurisdiction does not license property managers or have occupational standards for property management activities, once in Alberta, the applicant would be required to complete education requirements related to property management or have their licence restricted from conducting property management activities.

Recognition of an applicant's occupational standards from another jurisdiction does not exempt the applicant from RECA's Re-licensing Education Program for the current licensing period for the applicable class of licence. In addition, it does not exempt the applicant from any other requirements for licensing and registration with RECA, such as provision of a certified criminal record check. RECA's policy with respect to CCRCs may be found on its website at: http://www.reca.ca/licences_forms/criminal_check.htm

Real Estate Applicants

RECA will recognize the occupational standards of real estate industry members who are licensed or eligible for re-licensing in the following Canadian jurisdictions, though there may be additional education requirements after initial licensing if there are specific occupational issues that have not been addressed in the originating jurisdiction.

1. British Columbia
2. Saskatchewan
3. Manitoba
4. Ontario
5. Quebec
6. New Brunswick
7. Nova Scotia
8. Prince Edward Island
9. Yukon Territories

RECA will also recognize the occupational standards of the following U.S. states:

1. Colorado
2. Georgia
3. Montana
4. Oregon
5. South Dakota
6. Utah

Once authorized under the occupational standards recognition policy, real estate industry members have 120 days to complete the 6-hour online course, *Understanding Designated Agency and Transaction Brokerage*, which is available through the RECA website at www.reca.ca. This course is a requirement for re-licensing in Alberta and failure to complete the course will result in licence suspension and/or cancellation.

Mortgage Broker Applicants

RECA will recognize the occupational standards of mortgage broker industry members who are licensed or eligible for re-licensing in the following Canadian jurisdictions:

1. British Columbia
2. Ontario

Other Jurisdictions

Individuals who make application to become licensed in Alberta from any jurisdiction not listed above must complete the applicable licensing education requirements.

Since 2006, RECA has not received any licence applications from individuals from jurisdictions that do not meet the pre-determined occupational standards. From January 1, 2006 to December 31, 2008, RECA approved licensing reciprocity, under the former policy, for 180 individuals: 86 individuals from British Columbia, 17 from Saskatchewan, 8 from Manitoba, 62 from Ontario, 6 from Nova Scotia and 1 from New Brunswick. RECA does not anticipate that applications from individuals from jurisdictions without occupational standards will become an issue.

In addition to its offering of licensing reciprocity to applicants from jurisdictions that meet the occupational standards, Council will approach the Minister of Service Alberta and ask that the Minister approach her counterparts across the country in the jurisdictions that do not meet the common education standards in an effort to have other jurisdictions raise their occupational standards to the common level.

For more information about the application process for licensing reciprocity, please click [here](#).

Message from Council

Ralph Salomons, Chair

Council's Direction

I would like to use this opportunity to discuss RECA's current direction in education as it appears to be a topic of conversation within the industry. As always, Council looks forward to continuing the dialogue with industry members on issues of mutual interest and importance.

As early as the fall of 2006, RECA began to re-focus its attention on education when it made changes to the professional development requirements of industry members, which were implemented in 2007. Council was of the opinion that its role in continuing education should be to focus on the *Real Estate Act*, Rules and related regulatory and consumer protection issues. These are areas where RECA has direct responsibility, experience and expertise.

In 2008, Council reinforced policy decisions it made in 2006, with respect to licensing and re-licensing education. RECA, as part of its core services, will develop and deliver licensing education courses in those areas that RECA has the expertise. For real estate, this means the education areas that are common to all sectors of the real estate industry.

The topics which are common to all sectors will be the focus of Phase 2 of the Real Estate Associates' Program, or REAP. It is anticipated the topics to be covered will include the *Real Estate Act*, the Rules, contract law, agency law, the land titles system, ethics, the *Condominium Act*, planning law, privacy legislation, competition law and other provincial or federal statutes that affect the practice of all industry members.

RECA's target date for developing and delivering Phase 2 of the Real Estate Associates' Program is January 2011.

Both RECA and the Alberta Real Estate Association (AREA) recognize it will take time to develop and implement this new program. Accordingly, RECA signed a two-year extension of its current agreement with AREA that will see AREA continue to deliver the Real Estate Associates' Program in its current format until December 31, 2010.

In accordance with the recommendation of Council's Real Estate Education Committee, Council will also be reviewing Phase 1 of the REAP Program. Specifically, Council will examine whether it should be mandatory that all individuals complete "Introduction to a Career in Real Estate" course before proceeding to Phase 2 and 3 of the Program. RECA will initiate its review of this course later this year.

With respect to the development and delivery of licensing education for industry members that is industry sector specific, RECA will undertake a request for proposal (RFP) process to determine the appropriate organization to develop and deliver the residential, commercial and agri-business modules of Phase 3 of REAP. The RFP will incorporate the core values adopted by RECA, as well as the other significant factors in education development and delivery that have been adopted by RECA. We anticipate AREA will submit a proposal to be the supplier of education programming for the real estate components of Phase 3 of REAP.

NEW LICENSING FORMS AVAILABLE ON RECA WEBSITE

The Real Estate Council of Alberta has new licensing application forms available through RECA Online and on its website.

Changes to the licensing forms were necessitated by RECA's new licensing reciprocity policy with other Canadian jurisdictions. These changes, which take effect on April 1, 2009, are a result of the new requirements of the *Trade, Investment and Labour Mobility Agreement* (TILMA) between Alberta and British Columbia and the *Agreement on Internal Trade* (AIT) between all jurisdictions in Canada (for an article on RECA's new policy, please click [here](#)). RECA has reviewed all licensing and registration forms.

Significant form changes are outlined below:

Information Respecting Suitability: The last question in this section requires applicants to disclose whether they are currently the subject of a suspension, investigation, licensing conditions, statement of claim relating to the business of an industry member or similar process including, but not limited to, conduct, audit, practice review or competence-related proceedings in any jurisdiction. This will assist RECA in determining the suitability of applicants from other jurisdictions at the time of application and whether they are the subject of a complaint and/or investigation process. On occasion, industry members who are the subject of a complaint involving serious allegations of misconduct in one jurisdiction move to another jurisdiction to avoid dealing with the complaint.

Responsibilities: Applicants currently acknowledge their obligation to familiarize themselves with the laws of Alberta as they apply to the business of an industry member, only engage in work or provide services in which they are authorized and competent to do so, and abide by any restrictions or conditions that may be imposed upon the issuance of a licence, including restrictions related to specific areas of practice or educational requirements addressing practice issues unique to Alberta. This section of the application was enhanced to more accurately reflect an industry member's responsibilities.

Broker Acknowledgement: This section has been amended to reinforce that brokers have a responsibility to review the approved photo identification of applicants with their brokerage, to ensure that the identification matches the information on the application form. Brokers have to acknowledge that they have spoken with the applicant about the questions respecting suitability, the serious nature of the questions, the importance of answering truthfully and the possible consequences of swearing a false affidavit. Some applicants have sworn a false affidavit because, at the time of completing the application, forgot, or chose to forget, activities for which they have a criminal record, such as a Driving Under the Influence or a "0.08."

Applicant from Another Jurisdiction: The shaded section of the application is to be completed only by those applicants seeking licensing in Alberta who are currently licensed or eligible for re-licensing in another jurisdiction that is recognized by RECA's licensing reciprocity policy. Section G requests information with respect to any previous jurisdiction in which a licence was granted. In addition, applicants must confirm they have reviewed and familiarized themselves with the applicable *Real Estate Reciprocity Information Materials* or the applicable *Mortgage Brokerage Reciprocity Information Materials*. The application must be submitted to RECA for consideration and processing.

The new forms for licensing and registration are available now on the RECA website at www.reca.ca. For more information on RECA's licensing reciprocity policy, please click [here](#).

RECA BEGINS ADDITIONAL SYNDICATED MORTGAGE CONSULTATION

The Real Estate Council of Alberta's (RECA) Mortgage Brokers' Advisory Committee (MBAC) continues to explore whether RECA should remain the regulator of mortgage broker industry members dealing in syndicated mortgages. MBAC has prepared a number of recommendations with respect to the regulation of syndicated mortgages, which, along with input from industry members, will be considered by Council.

Currently, the Alberta Securities Commission (ASC) has an exemption from its registration and prospectus requirements for those persons that are licensed with RECA as a mortgage broker and dealing in syndicated mortgages. It is considering a proposal to remove that exemption.

Council has directed the MBAC to further explore all aspects of RECA being the regulator of syndicated mortgages in Alberta for its mortgage brokers. To assist in facilitating the work of the MBAC, the MBAC created the Syndicated Mortgage Subcommittee (Subcommittee) consisting of three MBAC members and five industry members that deal in syndicated mortgages. The objectives of the Subcommittee were to design a regulatory system that would:

- a. enable RECA to effectively regulate the conduct of mortgage brokers dealing in syndicated mortgages;
- b. provide the appropriate levels of consumer protection and disclosures; and,
- c. emulate the best practices currently used by competent and prudent mortgage brokerages dealing in syndicated mortgages.

The Subcommittee reviewed all aspects of dealing in syndicated mortgages that it deemed appropriate and it identified a number of key concepts that would be the basis for an appropriate regulatory program.

- a. determining the activities of mortgage brokers that will be captured by the legislation;
- b. defining the obligations and duties of mortgage brokers with respect to their dealings with lender clients and borrowers;
- c. identifying the appropriate disclosure requirements and prohibitions for any conflicts of interest;
- d. identifying mortgage disclosure requirements for lender clients and borrowers;
- e. establishing appropriate mortgage administration requirements;
- f. determining if errors and omissions liability insurance and fraud insurance is required and at what levels of coverage;
- g. establishing appropriate education modules for existing and potential new mortgage brokers; and,
- h. determining the resources required by RECA to effectively regulate deals in syndicated mortgages by its mortgage brokers.

As a consequence of its work on syndicated mortgages, the Subcommittee determined that underwriting and lender representation requirements also apply in non-syndicated mortgage deals. A number of the legislative amendments recommended will therefore affect the sections of the current Rules dealing with lender clients.

Following review and acceptance of the subcommittee's recommendations, MBAC has prepared a report recommending to Council that RECA continue to regulate mortgage broker industry members dealing in syndicated mortgages and enhance that regulation by establishing minimum standards through the *Real Estate Act* Rules.

Council must now decide how it wishes to proceed with respect to the regulation of mortgage broker industry members dealing in syndicated mortgages.

Syndicated mortgage survey

To assist Council in its deliberations, the Committee believes additional information and data related to the extent of syndicated mortgage activities by mortgage broker industry members is required. Although the Committee has anecdotal evidence as to the extent of syndicated mortgage activity by industry members, it will greatly assist Council to have specific data from mortgage brokerages.

To that end, the Committee has released a survey to all mortgage brokers and brokerages in Alberta asking for input with respect to their syndicated mortgage dealings. The survey was sent via email to all brokerage and is also available on the homepage of the RECA website at www.reca.ca. **Responses are due by Thursday, April 23, 2009.**

ARE YOUR NON-MLS® LISTINGS WORDED CORRECTLY?

Occasionally, a seller will request that an industry member list the seller's property for sale but not use the services of an MLS® system. As a result, some brokerages have developed a non-MLS® listing agreement, which gives the brokerage the exclusive right to market the property on behalf of the seller. Other brokerages simply amend the MLS® Exclusive Sellers' Brokerage Agreement (listing agreement) for use in non-MLS® listing situations.

However, if the agreement is not amended correctly, it could raise a number of concerns as to whether the contract would be valid under law and whether the agreement actually reflects the

relationship between the brokerage and the seller. There are many clauses in the MLS® agreement that would require amendment to be used in a non-MLS® listing situation, and as such, it may create confusion and not accurately reflect the relationship in place.

RECA has developed mandatory wording for inclusion in residential listing agreements for brokerages when exclusively representing a seller, whether in a MLS® or a non-MLS® agreement. The mandatory wording is included in the Exclusive Sellers' Brokerage Agreement form available on RECA's website [here](#). The form can be used as a non-MLS® exclusive right to represent a seller if the seller chooses not to submit the listing agreement to a listing service as identified in clause 3.2(a) of the agreement.

RECA INTRODUCES UPDATED INFORMATION BULLETINS

The Real Estate Council of Alberta has recently released more than 40 Information Bulletins on topics of interest to industry members. Information Bulletins are an important vehicle through which industry members can get plain language information about Alberta legislation related to their practice as industry members as well as valuable practice tips.

RECA Information Bulletins are available through the RECA website, under Industry Standards, both in HTML and PDF format. Additional Information Bulletins will continue to be posted as they are developed. Note that Information Bulletins are not to be construed as legal advice.

In this and future editions of the Regulator, RECA will include at least one Information Bulletin. If the Information Bulletin has been shortened for inclusion in the Regulator, that will be noted and a link to the complete bulletin will also be included.

To read this month's Information Bulletin, please click [here](#).

INFORMATION BULLETIN: ACT AND BOARD RULES

The following Information Bulletin is printed in its entirety.

Act and Board Rules

Summary: The standards of practice and real estate industry member obligations set out in the *Real Estate Act* and the *Real Estate Act Rules*, when in conflict, prevail over association or real estate board rules, including multiple listing service rules, when establishing the standards of conduct industry members are required to follow. [See: *Real Estate Act* s.5, s.12, s.17; *Real Estate Act Rules* sections 41 to 63]

Note: For the purposes of this Information Bulletin, and where the context permits, the term "real estate broker" includes all industry members authorized to trade in real estate by the Real Estate Council of Alberta including a brokerage, broker, associate broker and associate.

This Information Bulletin reviews the relationship between the *Real Estate Act*, *Real Estate Act Rules* and real estate association rules including multiple listing service (MLS®) Rules.

Real Estate Act and Real Estate Act Rules

The *Real Estate Act* is the Alberta statute regulating the real estate industry in Alberta. The *Real Estate Act* contains the regulatory framework for the real estate industry in Alberta and provides that all persons trading in real estate as real estate brokerages, brokers, associate brokers or associates must be licensed and registered with the Real Estate Council of Alberta ("RECA") in accordance with the provisions of the *Real Estate Act* (Section 17).

Pursuant to the *Real Estate Act* (s.5), RECA is the governing body responsible for the regulation of the real estate industry in Alberta. RECA derives its authority from the *Real Estate Act*. By the *Real Estate Act* (s.12), Council is empowered to make rules prescribing and adopting standards of conduct and industry practices for all industry members, and the legislature has determined that these are the law of Alberta.

The *Real Estate Act* Rules are made by Council in consultation with industry members. They detail real estate industry regulatory requirements, including licence application processes and classification, licence approvals/refusals/suspensions, standards of practice, broker/associate obligations and mandatory form content. Like the *Real Estate Act*, the *Real Estate Act* Rules are law in the Province of Alberta and real estate industry members as well as all affected Alberta citizens must comply with the *Real Estate Act* and Rules.

The *Real Estate Act* Rules Part 2, entitled "Industry Standards of Practice," set the regulatory standards of conduct for industry members. Division 1 (*Real Estate Act* Rules 41 to 46) sets standards of conduct that apply to all industry members. Division 2 (*Real Estate Act* Rules 47 to 63) sets specific standards that apply to all classes of real estate brokers (real estate brokerage, broker, associate broker and associate).

The provisions of the *Real Estate Act* and Rules are enforced through a variety of enforcement mechanisms including the public complaints, investigation and disciplinary processes under the *Real Estate Act*. Outcomes of complaints may result in fines and costs and an industry member's licence to trade in real estate in the Province of Alberta may be suspended or cancelled.

Real Estate Board Rules (including Multiple Listing Service® Rules)

After becoming licensed and registered with a brokerage pursuant to the *Real Estate Act* (a prerequisite), a real estate broker may decide to become a member of a local real estate board. Real estate boards are private, voluntary associations which are usually legally formed in accordance with the provisions of the *Cooperatives Act* or the *Societies Act*. Real estate brokers who become members of a local board (by operation of board membership) automatically become members of the Alberta Real Estate Association and the Canadian Real Estate Association.

Boards have private membership rules including rules applying to the operation of the specific board, multiple listing service rules, standards of business practice and others. The multiple listing service and rules originate with the Canadian Real Estate Association. It owns the MLS trademark and under a licensing agreement with boards, permits them to operate their local MLS database. All local board rules regardless of origin must comply with the laws in the Province of Alberta including the *Real Estate Act*.

In order to gain board membership, a person must voluntarily agree to comply with a board's rules. Though these are important rules for the operation of the board and multiple listing services, such rules are not legislated and are not laws passed by the Alberta legislature in the Province of Alberta. As with each of its individual members, boards comprised of licensed and registered industry members under the *Real Estate Act* must operate within the law of the Province of Alberta and comply with the *Real Estate Act*. Statutory responsibilities override any rights or duties that an industry member may have as a real estate board member. Further, overlapping membership has no bearing on the legal rights and duties of industry members under the *Real Estate Act*.

Of ultimate importance is the understanding that the standards of practice and real estate broker obligations set out in the *Real Estate Act* and the *Real Estate Act* Rules prevail over association or board rules, including multiple listing service (MLS®) rules.

PROPERTY MANAGERS: *SERVICE DOG ACT* NOW IN EFFECT

As of January 1, 2009, the *Service Dog Act* is in effect in Alberta and it is an offence to refuse access to any public place to a person with a disability who is using a qualified service dog. Those with disabilities that require a service dog now have the same rights as blind and/or visually impaired persons who require the assistance of a guide dog.

Property managers need to be aware of the *Service Dog Act*, and the fact it ensures owners can take their service dogs into restaurants, schools, offices, or any other commercial or industrial property where the public is allowed. Individuals that require a service dog must make application to have their dog certified to receive a Service Dogs Certification Card. Service dog certification must be done through an accredited training school.

For further information on this new legislation, visit the government of Alberta's website at: www.seniors.gov.ab.ca or please contact Alberta Queen's Printer for the *Service Dog Act* and the *Service Dog Act Regulations* at: <http://www.qp.alberta.ca/index.cfm>

EDUCATION CORNER

The Real Estate Council of Alberta (RECA) and the Alberta Mortgage Brokers' Association (AMBA) are working together to revise and update the current Mortgage Associates' Program (MAP). A Request for Proposal related to MAP was put out through the RECA website and other channels on March 20. RFP proposals are due by April 17, 2009, at which time RECA and AMBA will begin the vendor review process. The planned launch date for a new MAP is early 2010.

RECA is also working on developing new courses for the next licensing period as part of the Re-licensing Education Program (REP). Real estate and mortgage industry members will be required to complete at least one REP course between October 1, 2009 and September 30, 2010 in order to renew their licence on September 30, 2010.

Future Regulators will include updates on these projects and others.

LEGAL CORNER

In September 2001, a Saskatoon restaurateur and businessman decided to sell his steak house. The seller contacted a local real estate agent who was registered with a brokerage. The agent and the seller signed an exclusive listing agreement that ran from September 25, 2001 to December 15, 2001. Listing price for the restaurant was \$2,400,000. The agent believed that the recently renovated restaurant would be perfect for a large national chain to purchase and he tried to interest the chain, but they were not interested because of the property's location.

The agent marketed the restaurant extensively but failed to find a buyer. The price was dropped to \$1,900,000 but it still failed to sell. When the listing agreement expired in mid-December, the agent approached the seller to renew the agreement. The seller refused to relist but agreed that if the property sold he would pay the agent the commission. The seller also indicated that he was willing to sell the property for \$1,500,000 if an offer was made that same day, but no buyers came forward with an offer.

The agent continued to market the property and again contacted the national chain's head office. He also spoke to a local investor. The local investor (buyer 1) was interested in the property and

asked the agent to write up an offer. The agent took the offer to the seller, who agreed to consider it. While the seller was considering the offer, the agent continued to market the property to other people, including the previously mentioned national chain. Additionally, the agent suggested to one of the other potential buyers that a national chain restaurant might be interested in leasing the property. The agent did not tell either buyer 1 or the seller that he was continuing to market the property other people, as well.

The seller counter-offered in late December and buyer 1 accepted. Condition removal was set for January 31, 2002, with a closing date of March 1, 2002.

Buyer 1 was interested in the property because of its price; he was not interested in running a restaurant, rather, he was looking for a tenant. At that time, the national restaurant chain decided it might be interested in the property after all. Buyer 1 instructed the agent to prepare a proposal to lease and this was presented to the chain's management on January 15, 2002. The agent did not tell the original seller that the national chain might now be interested in the property.

The chain's management indicated they were not interested in leasing the property, but were instead interested in purchasing it. A contract was signed with buyer 1's lawyer, with a condition removal date of January 31, 2002, and a closing date of March 4, 2002. Later, the chain indicated that it needed a two-week extension for condition removal. To facilitate this, buyer 1 asked for a two-week extension on his contract with the original seller. At no time was the original seller made aware of the property's sale to the chain. The original seller and his wife heard rumours of the sale to the chain and asked the agent if there was any truth to them. The agent assured them, at various times, that the rumours were unsubstantiated.

The agent was concerned about his position in the two sales and consulted a lawyer. He continued to act for both buyer 1 and the original seller.

The original seller found out about the sale to the chain for the first time when he discovered that the transfer of land was from his company directly to the chain (the lawyers had decided this would be more beneficial to the finances of buyer 1). The agent collected commissions from both sales.

The original seller sued the agent and the brokerage for breach of fiduciary duties. The court looked at whether the agent was acting as an agent of the seller, in the absence of a current listing contract. The court concluded that the agent's actions in continuing to market the property were those of an agent. The court quoted William Foster in *Real Estate Agency Law in Canada* when he stated that agency can be established by agreement –“*written or oral, or express or implied from the conduct of the parties.*”

The court also stated that the agent was in dual agency once buyer 1's offer was presented to the seller. As such, he owed fiduciary duties to both. The court suggested that the agent and seller's relationship met the criteria for a fiduciary relationship: the fiduciary has scope for the exercise of some discretion or power; the fiduciary can unilaterally exercise that power or discretion so as to affect the beneficiary's legal or practical interests; and the beneficiary is peculiarly vulnerable to or at the mercy of the fiduciary holding the discretion or power.

The agent testified that he did not tell the original seller about the chain's purchase of the restaurant because he owed a fiduciary duty to buyer 1 not to disclose the particulars of the second sale.

The court concluded that the agent breached his fiduciary duties to the original seller by not providing full disclosure of the flip and by deceiving the seller with his silence. The court also concluded the agent's primary concern was not his fiduciary duty to buyer 1, but rather, in possibly losing his real estate commission on the second sale. The court stated: “The real focus on whether or not a realtor, as a fiduciary, has any obligation to a client has nothing to do with whether or not he or she may possibly lose a real estate commission. The sole consideration of the realtor is whether or not they are performing his or her fiduciary duty to be fair and honest in

disclosing everything and not to deceive or mislead, no matter if that involved the possible risk of losing a real estate commission. “

The court awarded the original seller damages of \$337,750. This case is currently under appeal. (*Crescent Restaurants Ltd. v. ICR Brokerage Inc. 2008 SKQB 383*)

RE-LICENSING EDUCATION PROGRAM

Appraisers

Real estate appraisers and candidates must complete the *Mortgage Fraud Awareness* course before they will be able to renew their licence on September 30, 2009. Completion of the *Mortgage Fraud Awareness* course is the current Re-licensing Education Program requirement for all real estate appraisers. This course qualifies for 3 credits/hours with your professional association's continuing professional development programs.

The 3-hour *Mortgage Fraud Awareness* course is available online through the Alberta Real Estate Association. Please contact AREA for more information at <http://www.abrea.ab.ca>.

If, as a result of licensing as a real estate or mortgage industry member, you have, in the past, completed the 6-hour *Risk Reduction and Mortgage Fraud Awareness* or the 3-hour *Mortgage Fraud Awareness* course, you are not required to complete the *Mortgage Fraud Awareness* course again.

Mortgage Brokers

There will be no **REP required for mortgage industry members to renew on or before Sept. 30, 2009**

Real Estate

There will be no **REP required for real estate industry members to renew on or before Sept. 30, 2009**

RECA WINS CONSUMER CHAMPION AWARD

The Real Estate Council of Alberta has been recognized as a “Consumer Champion” by Service Alberta.

At a March 9, 2009 awards ceremony, RECA received a Service Alberta Consumer Champion Award of Distinction for its consumer tools, which include online and print materials to help consumers make decisions about working with real estate industry members, and with buying and selling residential real estate.

The Alberta Consumer Champion Awards, now in their third year, recognize individuals, organizations, businesses and media that demonstrate commitment and innovation in educating Alberta consumers and promoting fairness in the Alberta marketplace.

“Communication with consumers about the process for buying and selling residential real estate in Alberta is a direct result of RECA’s commitment to consumer protection,” says Ralph Salomons, chair of RECA. “RECA is confident that providing consumers with information will lead to a greater consumer understanding and, as a result, protection. Winning this Consumer Champion award is welcome recognition of the work Council has done in the past year.”

RECA's award-winning entry included consumer brochures on buying and selling real estate, the Agency Relationships Guide and Agency Relationships Video, and the Property Inspection

Request Form, all of which are available to consumers, free of charge, through the RECA website, [here](#). Production of the consumer tools was made possible, in part, with the aid of a grant from the Alberta Real Estate Foundation.

RECA's consumer tools project was particularly innovative because it took into account that not everyone participating in real estate transactions in Alberta is comfortable working in English. RECA translated some of the consumer tools into the four most common languages spoken in Alberta (after English). This initiative has gone a long way in demonstrating RECA's understanding of and commitment to Alberta consumers and the Alberta marketplace.

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 Complaints & Outcomes > Disciplinary Outcomes > 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

January 2009 – March 2009

- 4 breaches of failing to file brokerage accounting within the allotted time period [s.91(4) of the *Real Estate Act Rules*]
- 4 breaches of failing to file a Declaration Respecting Absence of Trust Transactions within the allotted period of time [s.92(1) of the *Real Estate Act Rules*]
-

Disciplinary Action

January 2009

David Agema, Associate Broker

formerly registered as an associate with Re/Max Real Estate – Lethbridge and currently registered as an associate broker with Top 5 Real Estate Lethbridge Ltd. o/a Prudential Top 5 Real Estate.

Issue:

- Participation in the creation of a false and misleading document [s.4(d) of the Code of Conduct (Oct.1, 1999)]

Facts:

- In a compensation agreement between a client and X Homes, Mr. Agema, dual agent, agreed to provide compensation to the client, including \$500 cash.
- In exchange for the \$500, Mr. Agema requested that the client create an invoice/receipt for a dishwasher in the amount of \$500.
- Mr. Agema did not provide and never intended to provide such a dishwasher to the client.

Results:The Hearing Panel accepted Mr. Agema's Admission of Conduct Deserving of Sanction with regards to a breach of s.4(d) of the Code of Conduct, as it was then. The Hearing Panel did not find conduct deserving of sanction on four other allegations that had been brought against him.

The Hearing Panel ordered that Mr. Agema pay a fine of \$7,500, costs of \$5,741.58 and that he complete an educational requirement.

Council Members

Ralph Salomons (*chair*)

Real estate brokers trading in commercial real estate

Richard Parker (*vice chair*)

Public member appointed by the minister of Service Alberta

Pat Rudiger (*past chair*)

Real estate brokers trading in residential real estate

Gary Siegle

Alberta Mortgage Brokers Association

Chris Anderson

Industry members who are not members of the Alberta Real Estate Association

Cheryl Schindel

Real estate boards outside of Edmonton and Calgary

Sheldon Johnston

Edmonton Real Estate Board

Les Higa

Real estate boards outside of Edmonton and Calgary

Connie Leclair

Public member appointed by members of Council

Cindy Dubray

Property management Sector

Wayne McAlister

Calgary Real Estate Board

Robert Telford

Real estate appraisers

Contact RECA

The Regulator is published by the Real Estate Council of Alberta. Please forward your comments and suggestions to communications@reca.ca.

Executive Director - Bob Myroniuk

Director of Audit and Investigations - Joseph Fernandez

Director of Corporate Services – Dale Cawsey

Director of Industry Standards - Kirk Bacon