



GUIDE TO COMPLAINTS: INDUSTRY PROFESSIONALS

This guide provides consumers with information on the Real Estate Council of Alberta (RECA) complaint process, including how to make a complaint, how complaints are evaluated and what happens after the evaluation is complete.

This guide only applies to complaints about the conduct of industry professionals, that is, individuals and brokerages that are authorized (“licensed”) by RECA. If your concern relates to the conduct of someone who you believe should be licensed, please refer to the “*Guide to Complaints Related to Unauthorized Practice*.”

WHO IS RECA?

Established in 1996, the Real Estate Council of Alberta (RECA) is an independent, non-government agency responsible for regulating industry members in the real estate brokerage, mortgage brokerage and real estate appraisal industries under Alberta’s *Real Estate Act*.

WHAT DOES RECA REGULATE?

RECA regulates the conduct of industry professionals within Alberta’s real estate brokerage, mortgage brokerage and real estate appraisal industries. Industry professionals includes any person who holds an authorization as a real estate broker, mortgage broker or real estate appraiser

Real estate professionals include real estate associates, associate brokers, real estate brokers and real estate brokerages. Real estate industry professionals provide real estate services to assist others in buying and selling property including offering, advertising and showing real estate for purchase or sale; provide property management services; and, solicit, negotiate or obtain a contract or agreement for a trade in real estate.

Mortgage brokerage professionals include mortgage associates, mortgage brokers and mortgage brokerages. Mortgage brokerage professionals, on behalf of another person for consideration or compensation, solicit a person to borrow or lend money that will be secured by a mortgage, negotiate a mortgage transaction, collect mortgage payments and otherwise administer mortgages, and buy, sell and exchange mortgages (or simply offer to do so).

Real estate appraisal professionals include appraisers and candidates. Appraisers and candidates, for consideration or other compensation, estimate the defined value of an identified interest in real estate; sign a real estate appraisal report that makes an estimate of a defined value of an identified interest in real estate prepared by another person and accepts responsibility for that report; and/or provide real estate appraisal consulting services.

RECA does not regulate real estate or mortgage transactions. This means RECA does not investigate the fairness or legality of real estate transactions or mortgage deals, and it also does not investigate the conduct of sellers, buyers, landlords, lenders or borrowers.

MAKING A COMPLAINT

RECA is mandated to protect consumers and to provide services that enhance and improve the industry and the business of industry professionals. The standards of practice that are in place through the *Real Estate Act* and the Rules protect consumers, and promote the integrity and professionalism of the industry.

RECA takes its consumer protection mandate seriously. Throughout the complaint evaluation and investigation process, RECA will be as open and transparent with you as much as the process allows. RECA will:

- Explain the complaint and investigation processes;
- Promptly acknowledge your complaint and provide you with regular updates as your complaint moves forward;
- Provide you with a choice as to how you wish to communicate with RECA (in writing or electronically);
- Respond to your inquiries promptly and professionally;
- Deal with your complaint solely based on the evidence, without partiality, discrimination or prejudice;
- Depending on the seriousness of the action that led to your complaint, RECA may recommend that you meet with the industry member about whom you have complained and his or her broker in an attempt to resolve your concerns;
- Provide you with an explanation of any investigation and/or disciplinary outcomes;
- Advise you of any appeal rights you may have; and,
- Post any discipline outcome on its website and publish the outcome in accordance with RECA's publication policy. For information on RECA's publication policy, please see www.reca.ca/consumers/content/complaints-discipline/real-estate-council-publication-guidelines.htm.

WHAT IS RECA'S ROLE IN HANDLING COMPLAINTS?

RECA sets the standards of business practice that all industry professionals must follow. RECA investigates complaints against industry professionals related to alleged breaches of the *Real Estate Act* and Rules.

If RECA investigates a complaint and determines the industry member did not follow the standards of business practice as set out in the *Real Estate Act* and Rules, the industry member may receive a Letter of Reprimand or an Administrative Penalty, or may be subject to a Hearing, which can result in fines, payment of costs, educational requirements and/or suspension.

RECA's process is disciplinary in nature. RECA cannot award damages or intervene in civil disputes. These issues are the responsibility of the courts. If you are looking to recover damages or have transactions cancelled or enforced, RECA recommends you consult with a lawyer for advice on the civil remedies available to you.

As in every profession, mistakes do happen and sometimes real estate transactions and mortgage deals will not go as planned. When this happens, RECA will provide guidance and direction to the industry professional(s) involved in order to prevent future problems, and to improve the service provided to the public by industry professionals.

WHAT SHOULD I DO BEFORE FILING A COMPLAINT?

Before filing a complaint, you should:

1. Determine the nature of your concerns

Consumers should give careful thought as to the source of the problem. Sometimes, industry professionals are unfairly accused when another individual is at fault. In these cases, the concerns should be directed at that individual or to another disciplinary body. RECA receives many complaints of this nature. For example:

- *A buyer may accuse a mortgage associate when the lender withdraws a financing commitment. Unless the financing commitment was withdrawn due to misconduct on the part of the mortgage associate, the buyer's concerns are with the lender.*
- *A seller may blame their associate or the buyer's associate for a transaction not closing on time. Although there are cases where a delay in closing may be due to the misconduct of a real estate associate, often there are other legal or financial issues that cause the delay. For example, the deal may not be able to close because the lawyers are unable to register the transfer at the Land Titles Office on time. In these types of cases, concerns should be discussed with the lawyers or lending institutions.*
- *A tenant may accuse the property manager of misconduct when the landlord refuses to rent the property, even though a rental agreement was signed. In this situation, the reasons for the refusal to rent the property to the tenant should be addressed to the landlord, not the property manager. In this case, if there is any misconduct on the part of the landlord, the tenant should discuss the issue with Service Alberta (the government agency responsible for landlord and tenant issues).*
- *A buyer is not happy about an industry professional who was following the lawful instruction of her seller client not to accept offers for two days. In this situation the buyer's concern is with the direction given by the seller not the actions of the seller's industry professional.*
- *A buyer purchases a property and discovers the property has a material (serious) latent (hidden) defect such as a crack in the basement wall that affects the structural integrity of the property. It is not visible because it has been hidden behind drywall. The seller in this case knew of the defect but did not tell their real estate associate. Although the property may have been listed by a real estate associate and the buyer was also represented by a real estate associate, the essence of the complaint falls outside of RECA's jurisdiction. If the real estate associates involved did not have knowledge of the defect and were not able to find out about it, they are not responsible for alerting the buyer. The seller had knowledge about the defect and is responsible for disclosing the material latent defect.*

2. Understand the industry professional's obligations to you

RECA has found that consumers who review the industry professional's obligations are better able to articulate their complaint.

The standards of business practice industry professionals must follow are set out in the *Real Estate Act* and Rules, both of which are available on the RECA website at <http://www.reca.ca/consumers/content/legislation-bulletins/legislation-bulletins.htm>. Specifically, most complaints are related to the "Industry Standards of Practice" under Part 2 of the *Real Estate Act* Rules. Additionally, you may want to review RECA's Information Bulletins to see if any of them address your areas of concern.

RECA only accepts complaints related to an industry professional's breach of standards of practice.

Consider the following two examples:

Example 1

A buyer has made an offer to purchase a property and applies for financing. The bank requires an appraisal and the buyer obtains an appraisal from a real estate appraiser. The appraisal is below the purchase price and the bank refuses financing. The buyer is unhappy with the appraisal and wishes to complain about the conduct of the real estate appraiser. Just because the buyer is unhappy with the appraised value does not mean the real estate appraiser has done something wrong. RECA would not accept this complaint unless the buyer articulates a breach of appraisal procedures or standards.

Example 2

A buyer approaches a mortgage associate to arrange a mortgage on her behalf. The mortgage associate finds the buyer a mortgage and obtains a commitment for her. The mortgage commitment is subject to various conditions, one of which is that the employee must be employed with the same employer for at least three years. The mortgage associate fails to explain the mortgage commitment conditions and the buyer switches employment prior to financing being complete. As a result, the lender withdraws financing and the transaction collapses. RECA would accept this complaint as it relates to the mortgage professional's failure to provide all relevant information to the borrower.

Consumers may wish to seek legal advice in assessing the industry professional's obligations.

RECA will refuse your complaint if your complaint does not relate to the industry professional's conduct.

3. Determine what you are seeking

RECA assesses the industry professional's conduct only to determine if he or she has breached the *Real Estate Act* and/or Rules and should be disciplined. If you are seeking compensation, you must attempt to recover money through the courts. The only exception to this is if you are making a claim to the Real Estate Assurance Fund for a monetary loss arising from fraud, breach of trust, or a failure to disburse or account for

money held in trust by an industry member with respect to a trade in real estate or deal in mortgages. An example would be if your real estate associate took a deposit you provided for the purchase of a property and used it for some other purpose. For more information on the Real Estate Assurance Fund, please visit RECA's website at www.reca.ca/consumers/content/complaints-discipline/consumer-protection-fund.htm.

Even if the courts determine the industry professional acted improperly, RECA cannot recover your money; however, you may pursue a civil action, a complaint with RECA and a complaint to any other disciplinary body (e.g., a professional association) simultaneously.

If you are seeking compensation for damages you have incurred, RECA encourages you to speak with a lawyer. Your lawyer will be able to explain the various options available to you.

For information on how to find or select a lawyer, please visit the Law Society of Alberta's website at www.lawsociety.ab.ca/public/public_finding.aspx.

HINT: If you decide to seek legal advice, provide your lawyer with a copy of this guide and the *Guide to Investigations for Consumers*. Not all disciplinary processes are the same and these guides will provide your lawyer with information about RECA's process to enable him or her to provide you with legal advice.

4. Attempt to resolve the issue

Depending on the seriousness of the alleged breach, consumers should attempt to resolve complaints with an industry professional prior to making a complaint. The industry professional may be able to provide an explanation for his or her actions.

You can also attempt to resolve the issues by contacting the industry professional's broker. The broker is the head of the brokerage with which the industry professional is registered. Brokers have a responsibility to:

- Supervise associates and associate brokers to ensure they comply with the *Real Estate Act* and Rules; and,
- Inquire into and deal with inappropriate conduct.

The broker may be able to resolve your issue quickly and easily, for example, by assigning another associate to work with you. To determine the broker of a particular real estate or mortgage professional, visit www.reca.ca and click on "Search for an Industry Member."

RECA has created a Voluntary Broker Resolution Process (VBRP) to facilitate the resolution of client or customer concerns that are less serious in nature. If this process is followed, you will be asked to agree to the Voluntary Broker Resolution Process (VBRP) Agreement. The VBRP has been created to facilitate an environment where your concerns can be discussed openly without fear that anything said will be used in

subsequent legal proceedings should the discussions fail to resolve your concerns. The VBRP Agreement is available at <http://www.reca.ca/industry/content/forms/voluntary-broker-resolution-process-forms.html>.

If your concerns are resolved as a result of discussions pursuant to the VBRP Agreement, you will be asked to sign a release. The VBRP release form is available at <http://www.reca.ca/industry/content/forms/voluntary-broker-resolution-process-forms.html>.

Feel free to discuss the VBRP with your lawyer. If you do, please share the VBRP Agreement and release forms with your lawyer so that he or she can provide you with complete advice.

Consumers may also wish to contact a RECA information officer at (403) 228-2954 or 1-888-425-2754 (toll free) for advice on whether a complaint should be filed with RECA.

HINT: Concerns associated with real estate trades or mortgage deals can have significant implications and can be very stressful. In situations like this, dissatisfaction with the transaction can result in strong emotions that may be directed at various participants even though they may not be responsible for the problems with the transaction. RECA recommends you discuss your concerns with your lawyer or a person who may provide you with unbiased advice on the issues of concern. RECA's experience suggests complainants who follow this advice are more successful with their complaints and have a higher probability of resolving their complaints successfully.

I believe my concerns are with the conduct of an industry professional. How do I file a complaint?

To file a complaint, please use the Complaint Form on www.reca.ca > Consumer Information > Complaints and Discipline. Below are some things to keep in mind when filing a complaint:

- **RECA will not accept a copy of a letter addressed to another party as a complaint;**
- **You must identify the industry professional you are complaining about and provide their contact information;**
- **You must provide a detailed account of the transaction;**
This requirement is very important. Your complaint must be supported by as much relevant information as possible. For example:
 - chronological statement of events giving rise to the complaint
 - copy of the applicable contracts (listing, purchase, service agreement, etc.)
 - copy of the appraisal
 - copy of any records
 - names of individuals who may have relevant information, documents or records

It is not sufficient to state your complaint in general terms. For example, “the industry professional misled me.” You must provide details about how you were misled and relevant information and documentation to support your conclusion that the industry professional provided you with incorrect information. For example, if you feel you were misled in setting the list price of your house, an appraisal or other value information is required to show the house was listed at a price that was either too high or too low. An investigation will not be opened based on a suspicion.

Note: Please provide copies of supporting documents. Do not send originals.

- **The complaint must be completed by someone authorized to file the complaint;** RECA will not accept a complaint about the conduct of an industry professional in relation to misconduct affecting another party unless there are extenuating circumstances preventing the other party from making a complaint. For example, a relative may file a complaint on behalf of an elderly individual or an individual with diminished capacities. Complaints against a condominium property manager must be filed by the condominium corporation’s board of directors.
- **You must agree to cooperate with RECA’s investigation.** Cooperating with an investigation means you agree to answer RECA’s questions, provide necessary information and appear as a witness if the matter goes to a Hearing or prosecution.

You may seek assistance, if required, to write your complaint. For example, a translator may help overcome any language barrier that may exist.

Your complaint must meet the above criteria before being evaluated by RECA. When complete, your complaint can be sent to the attention of RECA Investigations via mail, fax or email:

Mail: Real Estate Council of Alberta - Investigations

Suite 350, 4954 Richard Road SW

Calgary, AB T3E 6L1

Fax: (403) 228-3065

Email: info@reca.ca

Does RECA accept anonymous complaints?

No. RECA will not proceed with a complaint unless it receives sufficient information to determine if the matter should be investigated. Often, the complainant is an important witness and without their cooperation, RECA will not be able to make that determination.

EVALUATION OF COMPLAINTS

What does the evaluation take into consideration?

Several criteria are taken into account when evaluating a complaint. Some of the most important are:

- **Does the matter must fall under RECA’s jurisdiction?**
If the matter is a dispute between you and another party (other than an industry professional), the matter may be civil in nature and does not fall under RECA’s jurisdiction.
- **Does the essence of the complaint relate to conduct governed by the *Real Estate Act* or the Rules?**
For example, RECA will not investigate an industry professional’s sale of a car to you because that conduct is not related to the industry professional’s authorization. However, RECA may investigate circumstances related to the sale of a home or a mortgage application by an industry professional because that conduct is related to their work as an authorized professional.
- **Does the matter concern an alleged breach of the *Real Estate Act* or Rules?**
Although you may disagree with an industry professional, there may not be a corresponding alleged breach of the Act or Rules. Matters that do not concern an alleged breach of the Act or Rules may fall under the jurisdiction of another organization or the matter may be pursued through the courts. For more information, see “*What if RECA does not investigate my complaint?*” on page 9 of this Guide.
- **Has an industry professional been identified?** For example, RECA will not investigate a complaint related to mortgage fraud if a specific industry professional has not been identified as a participant.

What happens when the complaint evaluation is complete?

Once the complaint evaluation is complete, you will be advised in writing as to whether an investigation file will be opened. For information on RECA’s investigation process, please see www.reca.ca/consumers/content/complaints-discipline/PDF/consumer_investigation_guide.pdf

An investigation file is NOT likely to be opened when:

- The conduct in question is not a breach of the *Real Estate Act* or the Rules;
- The industry professional is not identified;
- The complaint is anonymous;
- The complaint is simply a suspicion; or
- The complaint has already been dealt with.

If RECA does not investigate your complaint, you will be notified in writing and provided with reasons for the refusal.

If your complaint falls under another organization's jurisdiction, RECA will provide you with suggestions on how to proceed.

If RECA does not investigate my complaint, do I have any other options?

Not all matters related to real estate or mortgage fall under RECA's jurisdiction. For example, RECA does not regulate the behaviour of buyers and sellers of real estate nor of lenders and borrowers. In addition to the *Real Estate Act*, other legislation may apply to a real estate matter:

- the *Residential Tenancies Act*, *Mobile Home Site Tenancies Act* and *Condominium Property Act* are administered by Service Alberta (1-877-427-4088, www.servicealberta.gov.ab.ca)
- the *Securities Act* may be relevant to a problem with the real estate or mortgage portion of an investment portfolio and is administered by the Alberta Securities Commission (1-403-297-4296 or 1-403-297-4219, www.albertasecurities.com)
- if the matter is criminal, you should contact your local police force. For example, if you suspect that the industry professional is involved in fraudulent activities, the police should be contacted.
- privacy issues can be directed to the Office of the Information and Privacy Commissioner (OIPC) (1-888-878-4044, www.oipc.ab.ca)

Industry associations, such as real estate boards, set their own requirements and rules for their members. Complaints regarding failures to abide by those rules should be directed to the association to which the industry member belongs (see www.reca.ca > links).

Sometimes consumers experience financial losses. RECA cannot help you recover money. Any action to recover losses must be pursued through the courts. However, at the same time you are pursuing a civil action through the courts, RECA may investigate your complaint to determine whether an investigation should be conducted regarding an alleged breach of the *Real Estate Act* and/or Rules.

Can I appeal RECA's decision to not investigate my complaint?

If RECA refuses to investigate your complaint, you have 30 days in which to appeal. If you believe RECA's decision is wrong, you should discuss your concerns with the RECA investigator who was assigned to evaluate your complaint.

RECA may re-evaluate its decision if you have additional information not considered during the original complaint evaluation process. Alternatively, RECA may be able to provide you with more of an explanation as to why it will not investigate your complaint.

If you are not satisfied with the explanation given and wish to appeal the decision, your appeal must be in writing. The matter will then proceed to a Hearing Panel, which will decide whether your original complaint will be investigated.

For further information on appeal rights, please review *Appealing the Executive Director's Decision to Refuse to Investigate a Complaint* at www.reca.ca/consumers/content/publications-resources/PDF/Appealing-Exec-Director-Decision-not-to-investigate.pdf.

OTHER COMMON QUESTIONS

What if the complaint is already being handled by another organization?

A single situation or event may trigger a review or investigation from several different perspectives. The fact one organization is examining a complaint does not prevent another organization from also looking at the complaint from its perspective.

RECA is concerned with possible breaches of the *Real Estate Act* and the Rules. Other organizations may be concerned about the breach of other legislation or rules.

For example, an industry association may wish to determine whether a member abided by its rules. The police may investigate a matter to determine whether criminal charges should be laid and the courts decide whether the industry member is civilly liable (i.e., whether or not the industry member owes you money).

RECA uses agreements with government departments and industry associations to facilitate sharing of information while minimizing duplication. However, in order for RECA to share information with other associations, you must first provide written consent. If you choose to provide that consent, it can be provided through RECA's complaint form.

Can I use information that RECA has obtained relating to my complaint in a civil action?

The *Real Estate Act* prohibits information obtained as part of the investigation process to be used or received against anyone who provided information in any civil proceedings or in the prosecution of an offence under any other Act. In all civil proceedings, the plaintiff must demonstrate their case to the courts and cannot rely on a disciplinary decision by a Hearing Panel.

I resolved my complaint through the courts. Is RECA going to consider the outcome of the civil proceeding in relation to the conduct of the industry professional?

Industry professionals are required to report to RECA disciplinary action from other bodies, judgments arising out of civil proceedings and prosecutions under other federal or provincial statutes. This information may result in disciplinary action against an industry professional, including cancellation of the industry professional's authorization. RECA will assess the circumstances on a case-by-case basis.

**FOR MORE INFORMATION ON COMPLAINTS &
INVESTIGATIONS,
PLEASE CONTACT THE REAL ESTATE COUNCIL OF
ALBERTA:**

Suite 350, 4954 Richard Rd SW, Calgary AB T3E 6L1