

Summary: Industry members must provide competent service. [See: *Real Estate Act Rules, s.41(b)*]

An industry member must maintain a state of competency on a continuing basis in all areas in which the industry member renders services.

Industry members have a responsibility to ensure their clients are given the best possible service and advice in accordance with the standards of competency reasonably expected in the specific disciplines in which the industry member engages. This means industry members bear the burden of ensuring that they are professionally competent.

Being competent means possessing the knowledge, skills and abilities that allow an individual to perform the necessary services or provide the necessary advice required by a client in any given area of real estate, mortgage brokerage or real estate appraisal.

Upon successful completion of education and other requirements, and obtaining a licence, it is believed an industry member has achieved a minimum level of competency. By virtue of a licence issued to an individual by the Real Estate Council of Alberta, that individual is permitted to trade in real estate, deal in mortgages or conduct real estate appraisals, as the case may be. The Real Estate Council of Alberta also recommends industry members continually update their knowledge of new laws, new contracts and any changes within the areas of the industry which they service.

Whatever the industry member's level of experience may be, the public must not be led to believe industry members can do something they cannot, or have expertise they do not possess. If an industry member professes to have special skills above and beyond those generally expected in the industry member's trade or profession, the industry member must have the qualifications to support such a claim to the public or other industry members. More importantly, the industry member must successfully meet the higher expected skill level of a specialist.

In order to provide competent advice to clients, industry members must explain the various options available to clients to deal with specific issues encountered during a trade in real estate or a deal in mortgages. The explanation of each option should also include the advantages and disadvantages of each and how the advantages or disadvantages may be affected by local circumstances or market conditions. Industry members must let their clients decide which option to choose.

Directing a client to a specific course of action, even if the industry member believes it is the best course of action for the client, without advising the client of other options available can constitute a failure to provide competent service.

Responsibility of Brokerages

Brokerages are responsible and accountable for the competency of their brokers, associate brokers and associates. Brokers must ensure their associate brokers and

associates comply with all areas of competency in the legislation. Effective office management and staff supervision will help accomplish this. The level of supervision and responsibility will depend on factors such as the number and experience of industry members and staff and the complexity of transactions.

The broker who is competently supervising his or her brokerage will perform many functions, including but not limited to the following:

- ensure that a policy and procedures manual exists for the brokerage;
- supervise associate brokers and associates who are employed by, or associated with, the brokerage and establish their work is complete and accurate;
- make all staff fully aware of the important sections of the *Real Estate Act*, Rules, Bylaws, and Regulations, especially as they pertain to the daily functions of associate brokers and associates;
- ensure all transactions and clients files are complete and include final, signed contracts and other important documents;
- provide documentation to the Real Estate Council of Alberta as required by legislation, including registration, transfers and terminations of associate brokers and associates, renewal applications and brokers' accounting reports; and,
- review trust bank reconciliations within 30 days from the receipt of the trust bank statement and initial this reconciliation as evidence of this review.

For further information regarding the responsibilities of brokers, see RECA Information Bulletin: *Responsibilities – Broker*.

Contracts & Documents

An industry member shall not participate in the creation of any contract or document the member knows or ought to know is not legally binding, confusing or does not reflect any agreements already in place.

One of the mainstays of competency in the real estate and mortgage broker industries is the common undertaking of drafting contracts. Industry members must ensure they have the knowledge and skills required for the proper and legal drafting of contracts on behalf of their clients. This includes but is not limited to ensuring all signatures and initials are in place and the contract is properly dated, verifying the parties have the legal capacity to contract, and confirming all supporting documentation is attached and copies of all documents have been given to all the parties to the contract. When an industry member is unsure of the legal requirements for any situation, legal advice should be obtained.

The contract must accurately reflect the terms agreed to by the seller and the buyer (or landlord/tenant or mortgagee/mortgagor, as the case may be). The terms and conditions of the purchase contract (or offer to lease) must represent the true circumstances and must be clearly written and understood by all the parties to the contract.

Hearing Panels of the Real Estate Council of Alberta regularly review contracts prepared by industry members that contain drafting errors. These errors include the improper naming of parties, insufficient details, lack of clarity in terms and conditions, and no contract completion dates. These deficiencies are serious and can result in confusing or unenforceable contracts. This type of conduct demonstrates a lack of professional care and attention, and possibly, a lack of competency.

An industry member should know what his or her client wants written in the contract. Review the terms of any contract carefully with the client, including standard clauses, so there is no misunderstanding. The client's intentions should be clearly stated with words and phrases understood by the contracting parties so as not to lead to any confusion in meaning at a later date. When amending contracts, care must also be taken to reflect the changes as requested. Again, it is suggested the industry member clarify any ramifications of those changes with the client in order to avoid confusion.

Industry members must also clearly understand the scope of their authority and must not sign clients' names to contracts or initial them with their client's initials. Doing so may lead to a disciplinary proceeding.

Ensuring a Client Receives the Appropriate Expertise

When an industry member is unable to render such a service, either alone or with the assistance of other industry members, the industry member must decline to act.

As difficult as it may be to lose a client and the benefit of a commission, situations may arise that require industry members to indicate to a potential client they cannot represent them in a particular situation because of their lack of expertise. If an industry member is not competent to render the level of service required by a client, the industry member should seek the assistance of other more competent industry members or refer the client to another industry member with the required level of competency. He or she must not proceed to represent the client. Declining to act may be the safest and most cost effective course of action in the long term and be in the best interest of the client.

Practice Tip

In order to meet this standard, it is important for industry members to recognize their level of competency, their area of practice and its limitations. In areas where the industry member believes additional training or education would be beneficial, the situation should be discussed with the broker so that various options, such as assisting others in the brokerage on certain types of transactions or taking continuing education courses, can be considered.

To ensure industry members do not inadvertently omit a discussion of options and their implications, brokerages should develop forms or a checklist for industry members regarding the issues most commonly encountered in the brokerage's practice sector. For example, RECA has available on its website a Property Inspection Request Form. The form lists the types of potential services that are available to buyers when purchasing a property. Buyers may want additional information and clarification to ensure a property is free of major defects. The form is not all-inclusive, but includes the most common reports or inspections requested by buyers. Industry members should suggest their buyer clients use this form as part of their purchase contract.

Mortgage brokerages may want to have a checklist that describes the advantages and disadvantages of the various mortgage options available. For example, open vs. closed, cash back, weekly vs. monthly, prepayment options.

Sometimes, clients may willingly choose to take adverse risks. In such situations, RECA recommends industry members obtain in writing from the client an acknowledgement the industry member has been provided to the client various options and the advantages

and disadvantages of each. For example, the Calgary Real Estate Board has a form for buying clients that choose not to do home inspections.