



COOPERATE WITH THE REAL ESTATE COUNCIL OF ALBERTA

Summary: An industry member must cooperate fully with, and provide any information requested by, any representative of the Real Estate Council of Alberta carrying out their responsibilities under the *Real Estate Act*. [See: *Real Estate Act*, s.10(2), 38(4) and (4.2); *Real Estate Act Rules*, s.38(h), s.41(h)]

By virtue of the *Real Estate Act* of Alberta, the Real Estate Council of Alberta (RECA) has been given the responsibility of licensing and regulating the real estate brokerage, mortgage brokerage and real estate appraisal industries in Alberta. The mandate or purposes of the Council are to:

- set and enforce standards of conduct for the industry and the business of industry members in order to protect the integrity of the industry,
- protect against, investigate, detect and suppress mortgage fraud as it relates to the industry,
- protect consumers affected by the industry,
- provide services that enhance or improve the industry and the business of industry members; and,
- administer the *Real Estate Act*, Rules, Bylaws and Regulations.

The *Real Estate Act* of Alberta establishes a model of industry self-regulation. Self-regulation is a privilege that has been granted to the industry by the Government of Alberta. This privilege comes with responsibility. It is the responsibility of the Real Estate Council of Alberta to fulfill its mandate as set out in the *Real Estate Act*. In order to preserve the integrity of self-regulation and confidence of the public, it is the professional and legal obligation of each industry member to ensure compliance with the *Real Estate Act*, Rules, Bylaws and Regulations.

In order for RECA to enforce standards of conduct, protect consumers and address issues such as mortgage fraud, it must be able to respond to complaints, or information that has come to its attention, by conducting effective and timely investigations of industry member activities.

The case of *James v Real Estate Council of Alberta (2004)* addressed the issue of an industry member's duty to cooperate. In his decision, Justice Macklin made the following comments:

"It is important to note the fact that the real estate industry, like the legal profession and others, is self-regulating. R.E.C.A. was statutorily created, and one of its key functions is to ensure that its members, like Mr. James, abide by the rules and Code of Conduct set by R.E.C.A. for the purpose of protecting members of the public.

Crucial to its ability to regulate is its ability to rely on the co-operation of its members in any investigation of behaviour alleged to be contrary to the rules and code. That co-operation must be provided in all cases, regardless of the view the investigated member has of the merits of the complaint. Needless to say, if his or her view of the merits is right, the complaint will be dismissed, but that is not for the member to decide, nor is it to

constitute a reason for the member not to co-operate.”

Accordingly, in order to ensure industry member compliance with the legislation, industry members are required to fully cooperate with the Real Estate Council of Alberta. Industry members must cooperate with an investigator and promptly respond to the questions they are asked. They must answer questions put to them in a timely, truthful and meaningful way. Refusal to provide a response when contacted for information or refusal to cooperate is not an option. It is a breach of the *Real Estate Act* and Rules and is likely to result in a disciplinary hearing. It is also not enough to indicate a lack of knowledge where the information is within the realm of knowledge and responsibilities of the industry member. Likewise, past Hearing Panels have found that it is not up to the industry member being investigated to decide what information is relevant to an investigation.

Industry members are given the opportunity to cooperate throughout the investigative process. However, the *Real Estate Act* [s.38(4.2)] gives the executive director the authority to suspend the authorization of an industry member who refuses to cooperate with an investigation until the executive director is satisfied that the industry member has cooperated.

Legal counsel cannot assume the responsibility of an industry member to cooperate and therefore may not provide information to a RECA investigator on behalf of an industry member being investigated. RECA investigators want and require direct evidence from industry members.

The fact that the information will need to be obtained from storage or some location other than that of the brokerage will not suffice. If the industry member is unsure as to the purpose of the information request or the process being followed, he or she should raise any concerns with the Real Estate Council of Alberta representative who has contacted him.

Additionally, if an industry member misleads or provides false information to a Real Estate Council of Alberta representative, this will be breach of the duty to cooperate and conduct deserving of sanction.

Under the *Personal Information and Protection Act* (PIPA) and the *Personal Information Protection and Electronic Documents Act* (PIPEDA), which govern the collection, use and disclosure of personal information, an industry member may disclose personal information about a client without the client's consent:

- when authorized or required to do so by a statute or regulation
- to comply with an order issued by a body having jurisdiction
- when it is reasonable for the purposes of an investigation or a legal proceeding
- for the purposes of protecting against, preventing, detecting or suppressing fraud or unfair trading practices

The *Real Estate Act* gives RECA the authority to request or order the production of information to assist in an investigation. Industry members must comply with such requests and orders to produce evidence, including personal information about other individuals. Confidential information collected as part of a RECA investigation is maintained in accordance with RECA's privacy policy.