

DISCLOSE COST OF SERVICES

Summary: Industry members must disclose to their clients, at the earliest opportunity, how they will be paid for their services. [See: *Real Estate Act*, s.18(2), *Real Estate Act Rules*, s.41(c), s.43(1)(2)(b)(viii), s.56, s.65(c), s.71]

An industry member must clearly disclose, at the earliest opportunity, how they will be paid for their services [*Real Estate Act Rules*, s.41(c)].

When the client is responsible for paying the industry member for their services, not only will the client be entitled to know how the industry member will be paid, they are also entitled to know exactly what the costs (fees and disbursements) will be or how they will be calculated.

If an industry member will be providing services to a client, but will be paid by a third party, it is also incumbent upon the industry member to disclose how they will be paid. If the client asks questions seeking greater detail, it is the duty of an industry member to accurately and honestly answer all questions related to their compensation.

Written Service Agreements

An industry member who wishes to establish a client relationship should enter into a written service agreement with that prospective client [*Real Estate Act Rules*, s.43(1)]. An exclusive buyer brokerage or seller brokerage agreement between an industry member and a client must be in writing [*Real Estate Act Rules*, s.56].

Every written service agreement must clearly address the issue of remuneration. It must include the amount or method of calculating the remuneration or, where applicable, alternate compensation to be paid and the circumstances on which it will be payable [*Real Estate Act Rules*, s.43(2)(b)(viii)].

Collection of Advance Fees

Real Estate Act, s.18(2) allows industry members to receive fees in advance of providing service, provided that the industry member has entered into a service agreement with the person who provides the money or on whose behalf it is to be held that expressly acknowledges the trust arrangement between them and sets out the terms on which the money will be received, held and disbursed.

Restrictions on Advance Fees (Mortgage Brokers)

In relation to mortgage brokers, the *Real Estate Act Rules* [s.71] place restrictions on the collection of an advance fee for assisting an individual in obtaining a mortgage from a lender. This Rule applies to a mortgage where the borrower is an individual who enters into a credit arrangement primarily for personal, family or household purposes. It prohibits collecting a fee from such an individual until the lender has provided written confirmation to fund the mortgage to the borrower, has provided an initial disclosure statement and at least two business days have passed since the disclosure statement

was received (or the individual has waived the time period for its delivery in accordance with the *Fair Trading Act*).

This restriction on collection of fees by mortgage brokers in advance do not apply to actual fees disbursed by the mortgage brokerage to third parties (e.g. fees for credit reports, Alberta Registries, courier, appraisal services) where the individual has agreed to compensate the brokerage for such fees.

Commentary

An industry member should never hesitate to have an open and frank discussion with a potential client. It is recommended this be done prior to the signing of a service agreement. If the exact fee cannot be provided, industry members should provide a reasonable estimate with an explanation disclosing the factors that will affect the estimate.

It is in everyone's best interests to have a clear understanding of what fees will be charged and how these will be paid. It is important that the client receive full information on all matters affecting the cost of services. With service cost information being provided at the beginning of the relationship, the likelihood of confusion or misunderstanding at a later date may be lessened.

An industry member must not suggest that commissions or fees are fixed throughout the industry or make any representation that any council, board, association or other industry body sets a minimum amount of fees that can be charged. This would be false and misleading as all fees are negotiable between the client and the brokerage.

Since there are no fixed commissions, fixed rates or minimums throughout the industry, arriving at a commission acceptable to the parties may require the industry member to give an explanation of the services offered and fees for providing those services. This would include, but is not limited to, the frequency of advertising, types of advertising, open houses, meetings with clients to update them on changes in the marketplace, etc.

The client must clearly understand that each brokerage sets its own fee structure and it is the brokerage that decides whether or not fees are negotiable. If the industry member has a regular rate of commission that he or she generally charges for providing a certain list of services, it is acceptable for the industry member to advise the client of this fact. Negotiations, if any, can follow at the discretion of the industry member.

Practice Tip – Mortgage Brokers

Mortgage industry members are encouraged to use the Mortgage Borrower Disclosure document available through the RECA website. Completion of the document meets the mortgage brokerage responsibilities of *Real Estate Act* Rules s.65(c).