

## PROTECTION OF CLIENT INFORMATION

**Summary: It is the duty of all industry members to protect and keep confidential their clients' information. [See: *Real Estate Act* Rules, s.1(1)(g.1), s.44, s.58, s.58.1, s.59(4)(j)(iv), s.59.1(b)(vii)(D)]**

It is a general obligation of all professionals providing services to the public to keep their client's information confidential. The same obligation applies to industry members trading in real estate, dealing in mortgages or providing real estate appraisal services.

Under the *Real Estate Act* Rules, "confidential information" means "any information concerning the client including the client's financial or personal situation, the client's real estate and the transaction involving the client." The obligation to maintain client confidentiality applies to all industry members in the course of conducting business [*Real Estate Act* Rules, s. 44]. This general requirement is subject to any legislative obligation to disclose client information or if the client has provided informed written consent.

In the context of real estate, the obligation to maintain confidentiality of client information applies where an industry member is in sole agency with the seller or buyer or if they are providing services as a transaction facilitation in a transaction brokerage (dual representation) relationship.

It is important to recognize the obligation to keep a client's information confidential is ongoing. In other words, this obligation continues after the industry member has ceased to provide services to the client under the service agreement. For example, a real estate broker who is representing a buyer in a transaction where the broker had previously represented the seller when they purchased the property in question, cannot disclose any confidential or personal information received as a result of providing services to the seller (in the previous relationship) to the current buyer. It should be noted the residential real estate relationship form reinforces this principle. It contains a clause that states the buyer or seller, as the case may be, agrees: "*the brokerage cannot disclose to the seller or buyer as the case may be confidential information obtained through any other agency relationship to which the brokerage is or has been a party.*"

In addition to the obligations outlined in the *Real Estate Act* Rules, industry members should be aware of the requirements and obligations of the *Personal Information Protection Act of Alberta* (PIPA) and the federal government's privacy legislation, the *Personal Information Protection and Electronic Documents Act* (PIPEDA).

Examples of personal information that may be subject to the obligation of confidentiality and protection under privacy legislation include a client's address, phone number, employer, age, ID numbers, marital status, health, family, occupation, etc. The requirements of the *Real Estate Act* Rules and privacy legislation both apply to industry members in the course of conducting business.

## Practice Tip

Information barriers should be implemented to ensure that an industry member does not disclose confidential information concerning a client to another industry member in the same brokerage who does not represent that same client.

The following guidelines are intended to address the areas that need to be considered for the establishment of acceptable, effective Information Barriers.

- A brokerage should have policies, procedures and enforcement mechanisms to ensure that the industry members representing clients with conflicting interests do not communicate with or to their colleagues, directly or indirectly, intentionally or inadvertently, any confidential information.
- The files of current and former clients, including computer files, contain confidential and private information of these clients. These files should be specifically identified and secure from unauthorized access.
- Individual industry members should ensure that confidential client files they keep in their possession are secure from unauthorized access.
- Current and former client files, and any confidential information of those clients, should be accessible only to the industry members who currently represent, or in the past represented those particular clients, and those support personnel in the brokerage who are involved in providing services to or on behalf of those clients.
- Information Barrier policies and procedures should address the access to confidential client information of administrative support personnel who work on files for multiple industry members within the brokerage.
- Information Barrier policies and procedures should ensure that confidential client documents and electronic files are disposed of in a manner that safeguards the client's confidential information while complying with record retention requirements of real estate licensing legislation, and any other legislation that may relate to the services the brokerage provides.
- A brokerage's policies and procedures that ensure confidential client information is not shared with other members of the brokerage, including other designated agents, should be disclosed to clients and those clients must give their consent for the brokerage to practice designated agency and/or transaction brokerage.
- A brokerage needs to take reasonable steps to ensure the employees and industry members of the brokerage are aware of and understand the Information Barrier policies and procedures, and those employees and industry members should acknowledge and agree to the brokerage's Information Barriers policy and related procedures.
- An Information Barriers policy should include the possible legal and employment-related ramifications of non-compliance with the policy.

For the maintenance and protection of confidential information, Information Barrier policies and procedures, should address the following:

- Sharing of information at office meetings
- Office layouts (physical separation of industry members in an office)
- Electronic and paper files (access, maintenance and destruction)
- Contents of bulletin/sales boards
- Use of support staff for multiple transactions from different industry members
- Access to locked filing cabinets
- Use and privacy of computer passwords
- Telephone system (i.e. knowledge of voice mail passwords)

- E-mail system (i.e. privacy of e-mail passwords)
- Fax machines (i.e. the ability of anyone in the brokerage to read something off the fax machine)
- Personnel at the brokerage with whom the client may safely communicate
- After sale relationships

The above list is not meant to be exhaustive, and brokerages are encouraged to develop Information Barriers policies and procedures to address situations unique to their brokerage.