

## RECORDS – REAL ESTATE APPRAISAL

**Summary: The records retention requirements for real estate appraisers and candidates are outlined in the *Real Estate Act* and the *Real Estate Act Rules*. [*Real Estate Act* s.25(9), *Real Estate Act Rules* s.1(1)(aa), s.42(c), s.44, s.82, s.83, s.110]**

It is important for appraisers and candidates to understand what is meant by a “record” and their obligations with respect to keeping records. Records can be created and stored in electronic format or they can be converted to electronic format for storage purposes.

For the purposes of the *Real Estate Act* and *Rules*, and this Information Bulletin, “records” include:

- (i) *accounts, books, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by other means, and*
- (ii) *the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.*

As indicated, records can be in “electronic format.” In accordance with the *Real Estate Act Rules*, “electronic” includes “created, recorded, transmitted or stored in digital form or in any other tangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage.”

### Purpose for Record Retention Requirements

The *Real Estate Act* sets out comprehensive record retention requirements. There are various reasons for these requirements. Some of the reasons are as follows:

- Enable RECA to conduct compliance audits under section 74 of the *Real Estate Act*; and,
- Enable RECA to review all relevant information necessary to make proper determination during conduct proceedings under Part 3 of the *Real Estate Act*.

Real estate appraisers and candidates should have a record management plan to ensure all documents and records related to real estate appraisals are maintained. The *Real Estate Act* and *Rules* provide appraisers and candidates with the flexibility to create their own record keeping strategy and record keeping systems based on their particular business requirements, provided that all documents and records are maintained in accordance with legislative requirements.

If the appraiser or candidate employs unlicensed staff, the appraiser or candidate has a duty to communicate their record keeping and record retention policies and procedures to their staff.

## Trust Account Records

When in the course of business an appraiser or candidate receives funds on behalf of clients or investors it is required to open and maintain one trust or pooled trust account for the deposit of such funds. The *Real Estate Act* s.25(1) specifies an appraiser or candidate who operates a trust account, shall keep complete and accurate financial records in which a separate record for each person is maintained on whose behalf the appraiser or candidate is acting of all:

- (i) *money received in trust, accounts, books, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by other means;*
- (ii) *money held in trust;*
- (iii) *interest earned on money held in trust; and,*
- (iv) *disbursements made from money received or held in trust.*

## What is a “Record”?

Records are defined very broadly to include all records created and received while providing real estate appraisal services. Records includes traditional paper documents, and electronic documents such as faxes, emails, website data and other types of electronic contracts arising out of the use of new technologies. The definition of records also includes records in potential appraisal services even if it does not result in the provision of real estate appraisal services.

Records normally expected to be found in appraiser/candidate offices include:

- appraisal request;
- corporate searches;
- lease and rental agreements, memorandum of understanding or letters of intent;
- architectural drawings;
- site surveys;
- site plans or plot plans;
- land title searches;
- caveat information;
- condominium plans;
- municipal searches;
- municipal/regional planning material (municipal development plans);
- EUB/ARB searches;
- airport data;
- land use maps; or other evidence to support identification of subject land use controls;
- inspection photographs of subject and comparables considered;
- rent rolls;
- balance sheets;
- developer prospectus;
- offer to purchase, Agreement for Sale, option, or listing of the property, or notes of any oral discussion of the same;
- pre-sales data;
- copies of any faxes sent or received;
- email communications pertinent to the transaction;

- MLS data pertaining to comparables considered;
- MLS data for all prior sales of the subject property;
- in-house comparables data, including evidence to support “confidential” sales or data;
- comparable data should include, sale date, listing date, sale price, listing price, legal/civic address, features, photographs;
- data to support market and economic overviews;
- data to support analysis and selection of reasonable exposure time linked to a market value opinion
- copies of previous appraisals provided to appraiser for the subject property;
- inspection notes with clearly indicated inspection date;
- inspection sketch with measurements recorded at time of inspection;
- progress report field inspection notes;
- evidence of payment for appraisal service;
- any documentation necessary to support the appraiser’s opinions and conclusions

This list is not exhaustive and is only a sample of the information that is required to be maintained by the appraisers and candidates.

### **Record Retention Period**

The *Real Estate Act* s.25(9) requires records to be kept for a minimum of three years after they came into existence. The three-year period may be extended by the executive director of the Real Estate Council of Alberta in a particular case for the purposes of an investigation or prosecution under the *Real Estate Act*

Appraisers and candidates should also take into consideration other legislative requirements or civil requirements. For example, the Canada Revenue Agency has retention requirements in relation to certain records that may exceed the retention requirements under the *Real Estate Act*.

Appraisers and candidates may also choose to retain records for longer periods for other reasons. For example, appraisers and candidates should consult with their insurance broker or insurance provider.

Appraisers and candidates should be aware licensing and registration records maintained by them under a RECA Online Filer Agreement are not subject to the three year record keeping requirement and must be kept indefinitely.

### **Appraisers or Candidates Working for Clearing Houses or Appraisal Companies**

When appraisers or candidates are affiliated with or work for clearing houses or appraisal companies, they should be cognizant the records are the records of the appraiser or candidate. The appraiser or candidate is responsible for their safekeeping and must not rely on the clearing house or appraisal company to safeguard and maintain the records. The appraiser or candidate may only share client information to the clearing house or appraisal company with the client’s informed written consent. The appraiser or candidate may readily share data in the public domain.

If an appraiser or candidate works out of an appraisal company and stores records at the appraisal company's offices, the appraiser or candidate should have a written agreement with the appraisal company. The agreement must give the appraiser or candidate the ability to enter the premises and to fulfill his or her responsibilities as it relates to record keeping. The agreement should survive the employment or association with the appraisal company. For example, an appraiser or candidate must not allow records to be stored in the personal residence of an owner as he or she may not be able to safeguard the records or gain access to the records.

## Record Retention Options

Records may be maintained in paper form or electronic form. However if the documents are stored in electronic form the following requirements apply:

- the storage location and medium used for storage is reliable and can reasonably be expected to maintain the integrity of the electronic information;
- if the electronic record was sent, received, converted from paper form, the information that identifies its origin, destination and conversion must be retained;
- the electronic record is maintained in the format that was created, sent, received, or converted or is in a format that does not alter the information in the original record;
- the means to view and reproduce the record are maintained. Often this means that the appraiser or candidate will also need to maintain the applicable computer program and/or equipment to run the program;
- the records are safeguarded by a biometric access (preferred) or by a password or security code controlled by the appraiser or candidate so that the document cannot be deleted or altered other than by the appraiser or candidate or his delegate and only after three years;
- the records are located in a physical premise in Alberta accessible to the appraiser or candidate in Alberta. This includes storing the information in a server located in Alberta (i.e. a Q9 type) of system if the appraiser or candidate has the means to access the information from the server; and
- the premises where the electronic records are stored are secured and only accessible by the appraiser or candidate and his or her authorized representatives;

## Conversion of Records for Storage

Appraisers and candidates may convert paper records into electronic form or from one type of electronic form to another to reduce physical space storage requirements or to facilitate the use of other types of information systems. RECA has created a set of conversion requirements to ensure the resulting electronic record is a true copy of the original document and to maintain the integrity of the conversion process.

Appraisers and candidates may convert paper or electronic records only under the following conditions:

- the information is maintained in an electronic form that does not materially alter the information contained in the original document; and
- the identity of the person who made the conversion is embedded in the document without altering the information contained in the original document;

## Duty to Link Data

Whether in paper or electronic form, the appraiser or candidate has the duty to ensure that all records related to an appraisal or potential appraisal are linked so as to create a complete record of all documents or records relating to the appraisal or potential appraisal. For example emails related to a specific appraisal should be maintained with the appraisal file or if maintained in a separate system linked to the appraisal file.

Often appraisers or candidates use multiple systems with respect to a specific appraisal. For example, the appraiser used a spread sheet or other program to make adjustments to comparables, the appraiser sent and received emails through a stand alone email system, the appraiser maintains a paper file with supporting data and has an electronic financial tracking system. Appraisers and candidates need to understand the various systems used in the brokerage and to develop and enforce policies and procedures to ensure all information is linked.

All real estate appraisals or potential real estate appraisals must be identified by a sequential code system.

## Duty to Maintain Records in Alberta

Whether the records are stored in paper or electronic form, appraisers and candidates must maintain all records in Alberta. Records may be stored in a secure location accessible to the appraisers or candidates away from the appraiser's or candidate's registered office. However, the records need to be available at the appraiser's or candidate's registered business office if requested by a RECA auditor or investigator in anticipation of an audit or during the course of an investigation.

## Duty to Maintain Confidentiality

Appraisers and candidates have a duty to ensure client and customer information is kept confidentially. Information should not be released other than with the consent of the client or customer or as required by law. Appraisers and candidates must only use information for the purpose that was obtained.

Appraisers or candidates must also have policies and procedures for the protection of personal and confidential information and that all their employees are aware and comply with their policies.

Alberta based appraisers or candidates must also ensure they comply with need to know principles imposed by the *Personal Information Protection Act of Alberta* (PIPA). For further information on PIPA, visit the Office of the Information Privacy Commissioner for Alberta at [www.oipc.ab.ca](http://www.oipc.ab.ca).

Appraisers or candidates conducting business across Canada must also ensure they comply with the principles of the *Personal Information Protection and Electronic Documents Act of Canada* (PIPEDA). For further information on PIPEDA, visit the office of the Privacy Commissioner for Canada at [www.privcom.gc.ca](http://www.privcom.gc.ca).

## Separation of Business Records

Some appraisers or candidates conduct a variety of business activities. Some activities may not be related to real estate appraisal services, such as being an Alberta Registries agent. Sometimes the activities will be tangential to real estate appraisal services such as being a tax appeal agent. If the appraiser or candidate operates another type of business, the appraiser or candidate must ensure all real estate appraisal services are kept separate from the other business activity.

## General Record Keeping Standards to Consider

While RECA establishes minimum record keeping guidelines, appraisers or candidates should also examine the broader concept of records management. Appraisers and candidates may want to consider review compliance with *DoD [5015.2-STD Records Management Application Design Criteria Standard](#)*.

## Choosing an Electronic Record Keeping System

Appraisers and candidates have a duty to ensure any electronic system complies with legislative requirements. To assist appraisers and candidates in acquiring a system that complies with all record keeping requirements RECA has prepared the following list of questions:

### *General Consideration Questions*

- Does the electronic records management system track and maintain all of the appraiser's or candidate's records?
- Does the appraiser or candidate obtain and maintain original paper records belonging to one of the parties to the transaction?
- Does the electronic records system allow for original paper documents to be maintained separately?
- Can paper documents that have been converted to electronic form be readily shared with clients or customers and easily accessible through common programs by those clients or customers?

### *Questions for Converting Paper Records to Electronic Format*

- Is the storage location and medium where the electronic records are to be stored reliable and can reasonably be expected to maintain the integrity of the information from the time the electronic record was created?
- Is the identity of the person who made the electronic copy of the written, printed or any paper record and date of the recording into electronic form embedded in the document without altering the information contained in the written, printed or any paper record?
- If the information is maintained in electronic form in a manner that does not materially alter the information originally contained in the written, printed or any paper record?
- Is the record in electronic form safeguarded by password or biometric security codes controlled by the software, appraiser or candidate so that the record cannot be altered?
- Will the appraiser or candidate maintain a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and reproduced in printed form in a timely manner?

- Will the system allow the appraiser or candidate to ensure all electronic documents created in respect to a real estate appraisal or potential appraisal are stored together or are linked so as to create a complete record of all documents or records relating to the deal appraisal or potential appraisal?

*Questions Related to the Maintenance of Electronic Records*

- Is the storage location and medium where the electronic records are to be stored reliable and can reasonably be expected to maintain the integrity of the electronic information?
- Does the proposed system require users to identify themselves by username and password or biometric access to identify the brokerages staff that are creating, modifying, sending or receiving electronic records?
- Does the proposed system maintain who created, and modified the electronic record and the date of creation or modification?
- Does the proposed system maintain a copy of the electronic record before modification?
- Does the proposed system maintain who sent or received the electronic record and the date the electronic record was sent or received?
- Is the information in electronic form maintained in the format in which it was created, sent or received, or in a format that does not materially alter the information of the original record in electronic form?
- Does the proposed system maintain a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and be reproduced in printed form in a timely manner?
- Does the proposed system safeguard the document in electronic form by the software, password or security codes controlled by the appraiser or candidate so that the records cannot be altered?
- Are the electronic records located in a physical premise in Alberta?
- Are the electronic records accessible by the appraiser or candidate as required?
- If the electronic data is maintained by a third party supplier, what arrangements have been made to safeguard and transfer the data to the appraiser or candidate in the event the third party supplier ceases business?
- Are the premises where the electronic records are to be stored secure and are only accessible by the candidate or appraiser or by persons authorized by them?
- Does the system provide the appraiser or candidate with the means to ensure all electronic records created in respect to a an appraisal or potential appraisal are stored together or are linked so as to create a complete record of all documents or records relating to the appraisal or potential appraisal?

*Questions Related to the Three Year Minimum Record Keeping Requirements*

- Will the system prevent the deletion of deal records within three years they were created?
- Will the system allow the appraiser or candidate, or a person authorized by him or her to expand the record retention to exceed the three year period as may be directed by the Executive Director?
- Can the system generate an audit trail of all records including the records that have been deleted after three years?