

RECORDS – RELEASE OF FILE TO CLIENT

The Real Estate Council of Alberta (RECA) has received the following question from a number of industry members:

“Our brokerage represented a buyer in a real estate transaction last year. We have now received a letter from the buyer’s lawyer requesting we send the lawyer the contents of our file with respect to that transaction. What is our responsibility or obligation to supply the copy of file as requested?”

Although this question is framed within the context of a real estate brokerage, the issue applies to the business of mortgage brokers and real estate appraisers as well.

RECA’s assumptions in responding to this question are:

- The industry member has maintained all the records related to the specific transaction as required by the *Real Estate Act* and Rules.
- The former client has authorized his or her lawyer to make this request.

There are a number of requirements an industry member must consider in responding to such a request. These include the *Real Estate Act* Rules, privacy legislation and, where applicable, the fiduciary obligations of an agent representing a client in a real estate or mortgage transaction.

The general rule is the client is entitled to all the information collected by an industry member in the course of providing services to a client. The type of service and nature of the relationship between an industry member and a client should be clearly stated in a service agreement [*Real Estate Act* Rules, s. 43(1)]. In essence, the information in the brokerage or appraiser’s file is also the client’s information. It is important to remember an agent’s fiduciary duties survive the completion of the transaction as well.

Therefore, all documents or forms relating to the real estate transaction itself (e.g. listing agreement, all offers, counteroffers, purchase contracts, disclosures, condition removals etc.), any correspondence, receipts or any other records (e.g. copies of advertisements, real property report, appraisals etc.) on the file related to the transaction should be considered client information. The same principle applies to a real estate appraisal and all the documents gathered in the course of preparing the real estate appraisal report.

While the information may be the client’s information, is it available to any third party upon their request? The short answer is no. All client information is confidential. This includes any personal information, research or property information related to the client’s real estate transaction, mortgage deal or real estate appraisal. It must not be disclosed to a third party unless authorized by the client.

Therefore, before a brokerage complies with a request that the contents of the client’s file be sent to a lawyer (or another third party), it is important that the industry member receives the written consent to do so from the client in advance of sending the file.

However, caution should be exercised if the lawyer who has made the request is representing the client (buyer or seller) in a legal proceeding. Even information intended

for personal information by the industry member or business information of the brokerage (or appraisal firm) that may or may not be on the file in question may also have to be disclosed, if it is considered relevant to the issues before the court.

If the transaction or deal question is or may be the subject of any legal proceedings, and you are unsure of what information should be provided, RECA recommends you review the contents of the file with your lawyer prior to releasing any documents or information to your client or their legal representative.

Practice Tip

In this example, the lawyer in question is in the same legal position as the buyer represented by the brokerage in the transaction, in terms of entitlement to the information. RECA's advice to the broker would be to contact the buyer's lawyer and clarify what information he or she is seeking. The broker should ask for a written authorization from the client in question before providing the information to the lawyer. Copies of the information requested would likely be sufficient; however, the broker should discuss this issue with the lawyer as well. If the broker has any concerns regarding the information being requested, as discussed above, he or she should discuss the matter with their own lawyer prior to release of any information.