



RESPONSIBILITIES AND PROHIBITIONS – REAL ESTATE BROKERAGE

Summary: Real estate brokerages, as entities licensed with the Real Estate Council of Alberta, have a number of responsibilities. These responsibilities are integral to ensure that trading in real estate is carried out competently and in accordance with legislation, and also include record keeping requirements – for trade records and accounting records, and ensuring licensing requirements for brokerages are fulfilled. Equally important are brokerage prohibitions. Real estate brokerage prohibitions are focused on the proper employment of industry members within the brokerage, and payment of commissions and referral fees. [See: *Real Estate Act* Rules, s.32, s.49, s.50, Part 3: Accounting, Records and Reporting Requirements]

Real estate brokerages licensed by the Real Estate Council of Alberta are required to comply with the *Real Estate Act*, Rules and Regulations, and to ensure the broker, and all associate brokers and associates registered with the brokerage comply with the legislation.

Responsibilities

With respect to real estate brokerages, responsibilities include only trading in real estate in the name on the brokerage's licence, ensuring the brokerage's name is clearly indicated in all advertisements for the brokerage or its registered industry members, and ensuring that disclosures are made to clients of any benefits the brokerage anticipates receiving from expenditures made by or on behalf of a client or on behalf of whom rental property management services are or may be provided or anticipates an industry member registered with the brokerage will receive from expenditures made by or on behalf of a client to or on behalf of whom rental property management services are or may be provided.

Brokerages are licensed to trade in real estate only in the name that appears on their licence. For example, 123 Real Estate Services Ltd., as a licensed name, must always appear in full on all brokerage agreements and on any advertising. It would not be allowed to abbreviate the name to 123 Real Estate, unless this was a trade name appearing on the brokerage's licence that had already been provided to RECA. For more information about the requirement to trade in real estate only in the name that appears on your licence, please see RECA Information Bulletin: *Advertising – Licensed Name*.

Dealing in the name that appears on the brokerage licence and ensuring it is clearly indicated (i.e. legible, not confusing) is important with respect to consumer protection. Consumers need to be able to identify the corporate entity with which they are dealing. For more information about the concept of "clearly indicated," please see RECA Information Bulletin: *Clearly Indicated*.

Real estate brokerages are also responsible for ensuring that if they anticipate receiving – or if they anticipate an industry member registered with the brokerage receiving – a

benefit of any sort as a result of an expense made on behalf of a client, they must disclose to the client that possible benefit.

Record Keeping

Part 3 of the *Real Estate Act* Rules is specific with respect to the records that must be kept within a real estate brokerage. These sections of the Rules are in place to ensure the proper management of documents. With respect to real estate brokerages, among other items, records kept must include records, books, accounts and supporting documentation in relation to each trade or potential trade in real estate.

For more information on real estate brokerage record keeping, see RECA Information Bulletin: *Records – Real Estate Brokerage*.

Other Responsibilities

Throughout the *Real Estate Act* Rules, there are other sections that require brokerages to fulfill certain responsibilities, which do not relate to the supervision of industry members trading in real estate on behalf of the brokerage. An important section is section 32. Section 32 of the *Real Estate Act* Rules requires brokerages to immediately notify the executive director in writing of: any circumstance where the broker is no longer able to perform the duties of a broker as outlined in the legislation; the termination or resignation of the broker; the opening or closing of a trust account; a change in the brokerage's registered business office address; a change in the financial institution at which the brokerage maintains a trust account; a change in the partners of the brokerage if the brokerage is a partnership and a change in the officers or directors of a corporation if the brokerage is a corporation.

Prohibitions

Along with their responsibilities, real estate brokerages have a number of prohibitions that govern their operation, particularly with respect to the employment of real estate industry members, and the payment of commissions and referral fees.

Real estate brokerages are prohibited from employing, permitting or engaging a real estate industry member to trade in real estate on its behalf if that industry member is registered with another brokerage. Additionally, brokerages are prohibited from employing a person to trade in real estate until that person has met all requirements of the *Real Estate Act*, Regulations, Rules and Bylaws, which includes the payment of all levies, fees, premiums, fines, Administrative Penalties and other amounts.

This means that brokerages should not register an industry member if the industry member in question owes money to RECA, be it a licensing fee, an Administrative Penalty, another fine or levy, subject to the provisions of section 14(h) of the *Real Estate Act* Rules. Additionally, RECA will require that a brokerage terminate the registration of an industry member who is actively avoiding payment of a required fee, fine or penalty, again, subject to section 14(h) of the Rules.

With respect to the payment of commissions, real estate brokerages are prohibited from paying them, directly or indirectly, in connection with a trade in real estate except:

- To a broker, associate broker or associate employed by the brokerage or to not more than one corporation of which that broker, associate broker or associate owns not less than 50 per cent of the shares issued by that corporation.
- To a brokerage licensed under the *Real Estate Act* Rules or under similar legislation in a jurisdiction outside of Alberta.
- To an auctioneer qualified under the regulations under the *Fair Trading Act*, where the trade is made in the course of and as part of that person's duties as an auctioneer.

Real estate brokerages are also prohibited from paying referral fees or any other remuneration to a person in relation to a trade in real estate if the person is required to be licensed in relationship to those services, but is not licensed, and real estate brokerages must not pay any remuneration directly or indirectly in connection with a trade in real estate to any real estate brokerage licensed in Alberta or a jurisdiction outside of Alberta when the brokerage has knowledge that the remuneration is going to be paid to or shared with a person who is required to be licensed in relation to those services, but is not licensed.

Examples

1. Real Estate Unlimited Alberta Inc., a licensed real estate brokerage, creates a marketing campaign that indicates the brokerage name is Real Estate Unlimited. This is not permitted unless Real Estate Unlimited is listed as a trade name on the brokerage's licence. If it is not, all advertisements and trades in real estate for the brokerage and all of its industry members must include the complete brokerage name. Note that in order to use a trade name, a brokerage must first advise RECA of its desire to do so and RECA must formally approve the trade name.
2. A large real estate brokerage has created a number of divisions (commercial, residential and property management) within the brokerage in an attempt to brand the services offered by the brokerage. The brokerage's name on its licence is Quality Realty Services Limited and the brokerage does not have a trade name on file with RECA. Three separate advertisements that appeared in a local newspaper offering brokerage services identified the company offering the services as Southern Alberta Property Management Services; Prairie View Residential Realty and Quality ICI Services. Each of the advertisements had a separate statement that the entity was a division of Quality Realty Services Limited. The advertisements must be done in the name on the licence of the brokerage.
3. A brokerage is offering property management services specializing in residential property management and has developed a substantial business managing apartment buildings on behalf of multiple clients. The brokerage has arranged with a carpet cleaner and painter to provide services to the brokerage on behalf of its clients. The carpet cleaner invoices the brokerage on a monthly basis identifying the property for which services were provided and the amount for each unit. At month end, the brokerage allocates the expense for each property and owner. In allocating this expense the brokerage adds an administration fee of 10% of the amount of the bill for carpet cleaning to the expense for each property. This additional fee is not included in the property management agreement and as such, the brokerage is prohibited from collecting this fee.

4. A property management brokerage that manages a number of residential units for an owner collects the money from the washing machines and dryer on a daily basis. The property management company keeps 10% of this money and reports the remaining balance as income to the owner on their monthly statement. The property management agreement does not identify nor authorize this activity. The brokerage cannot collect this fee.