



## TRADING IN REAL ESTATE – JURISDICTION AND THE *REAL ESTATE ACT*

**Summary: Individuals who wish to trade in real estate in Alberta as real estate brokers are required to obtain an authorization from the Real Estate Council of Alberta. When a trade in real estate contains components outside of Alberta’s boundaries, application of the Act may become more complicated with respect to whether an authorization as a real estate broker is required. The *Real Estate Act* will apply to trades in real estate by real estate brokers in usual cases and in cases where a substantial connection to Alberta is present. [See: *Real Estate Act* s.1]]**

The *Real Estate Act* section 1 defines “business of an industry member” and the meaning of “trade” in “real estate” as a “real estate broker”. Apart from statutory exclusions, the Act requires that people who wish to trade in real estate as real estate brokers obtain an authorization from the Real Estate Council of Alberta. This requirement applies to all licensing classifications. The facts in any particular case will be determinative of whether or not a person is trading in real estate as a real estate broker pursuant to the Act. RECA, courts and other decision makers are in a position to regularly make this decision.

When there is a question as to whether or not the Act applies, the decision will likely be made on the basis of criteria related to a legal test known as the “real and substantial connection” test. “Substantial connection” is not defined in the Act. The concept is most commonly used when a decision maker is determining which jurisdiction is the most appropriate to deal with a dispute or a legal action. In reviewing the facts, the decision maker considers the connectors present in competing jurisdictions and determines which connectors are the more significant, thus creating the “substantial connection”, as opposed to a more casual or tangential connection.

A trade in real estate by a real estate broker authorized under the Act which is wholly completed within the geographic boundaries of Alberta would, in ordinary circumstances, be covered by the Act. When the trade contains components in a jurisdiction other than Alberta, application of the Act may become more complicated.

The following are some of the factors which will likely be considered by a decision maker in determining whether there is a substantial connection to a jurisdiction:

- the location of the real estate
- the ordinary residence of any individual parties to a trade in real estate
- the province in which the real estate broker holds an authorization to trade in real estate
- the place where advertisements appear
- the place from which advertisements originate
- the method and place documents, such as service agreements and agreements of purchase and sale are executed
- the place receipt of deposits into a trust account occurs

- the method and place from which documents, such as service agreements and agreements of purchase and sale, are sent or provided to parties
- the place where money originates and is delivered to conclude a trade in real estate
- whether or not the authorized real estate industry member was trading in real estate as a real estate broker as defined in the *Act*
- the place where a corporate party was incorporated
- the usual business operations of a corporation in relation to a trade in real estate
- the place trading records are held
- any choice of law clauses adopted by parties in any agreement

Today, the reality is that in addition to more traditional trading practices, trading activity takes place in an electronic age. Components of trades may occur in several jurisdictions using internet and faxes. The *Act* will apply to trades in real estate by real estate brokers in usual cases and in cases where a substantial connection to Alberta is present.