

## Discipline Within Self-Regulated Industries

One of the basic responsibilities of any self-regulating professional body is to conduct investigations and take disciplinary action when necessary. Responsible industry members within a self-regulating professional body understand and appreciate how important it is to have effective and fair investigative and disciplinary processes.

Despite the large support for effective and fair investigation and disciplinary processes, there is often significant debate and controversy over specific investigation and disciplinary processes within self-regulated professions. The reasons for this are self-evident; investigation and disciplinary processes go to the *raison-de-être* of self-regulation. The outcomes of investigation and disciplinary process can have significant consequences on the livelihood of self-regulated professionals and the reputation of the self-regulated organization.

Self-regulation is founded on public trust. Investigation and disciplinary processes aim to protect the reputation and the integrity on which the public trust is based. From this perspective, the public and self-regulated professionals expect the investigation and disciplinary processes to be transparent and timely, resulting in appropriate fines and penalties to serve as deterrence, and expulsions of professionals who harm the public and by doing so, harm the public trust and the integrity of the profession.

Self-regulation is also founded on the professional's right to be treated justly and fairly by his or her peers and self-regulatory organization.

From this perspective, self-regulated professionals expect investigations and disciplinary processes that maintain their privacy, are courteous and amicable, are minimally intrusive, and respect professional or personal commitments.

Self-regulatory bodies must also adhere to the principles of natural justice set out by common law. It is obvious that the collective and individual expectations of self-regulated professionals are likely to be clash from time-to-time. Self-regulatory organizations often struggle in their efforts to attain the right balance between the collective and individual expectations and needs of professionals.

Much like other self-regulatory professional bodies, RECA strives to:

- treat all parties courteously, fairly, impartially and according to the principles of natural justice and the rules of administrative law;
- have investigation and disciplinary processes that are timely and transparent;

- have efficient investigation and disciplinary processes; and
- have investigation and disciplinary processes that result in proper and just outcomes.

RECA is continually reviewing and improving its investigation processes. Recently, RECA conducted a major, in-depth review that resulted in new initiatives and improvements. Over the next month, RECA will publish a series of articles to highlight the new initiatives and improvements.

In cooperation with other organizations, RECA will meet with brokers and broker delegates to discuss its new investigative process, provide tips for industry members under investigation, and to answer questions and address concerns. Watch for upcoming announcements on meeting dates and locations.

New initiatives and improvements will also be featured on RECA's blog ([www.recablog.ca](http://www.recablog.ca)) and RECA looks forward to your feedback.

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## Legal Corner

### **1068823 Alberta Ltd. v. Mountain View Real Estate Inc., 2010 ABCA 84**

An Alberta real estate brokerage filed a caveat against land owned by the responding party claiming an interest as a result of an unpaid commission. Previous court decisions had discharged the caveat, but the appellant argued to the Court of Appeal of Alberta that the Queen's Bench judge erred in his interpretation of the relevant agreements.

The listing agreement granted the appellant the right to place a caveat on the land to secure all money owed to it under the listing agreement. The agreement stipulated that a commission would be paid if the property was sold, and that the commission was to be paid after the sale was completed once the change in ownership is registered at the Land Titles Office and the buyer pays the purchase price. The listing agreement also stipulated that alternate compensation would be payable if the purchase contract was signed but the buyer defaulted. The alternate compensation would have been the lesser of the commission that would have been payable had the sale completed or 50% of the forfeited deposit.

The contract called for an initial deposit of \$10,000, and an Amending Agreement provided that the purchase price would be paid as follows:

- \$10,000 which was previously paid as a deposit
- A first payment of \$2.2-million, together with the deposit
- A second payment of \$2.79-million, due 90 days following the first payment
- Closing date 15 days after the second payment date
- \$9-million by mortgage back from the respondent

The purchaser paid the \$10,000 deposit, which is held in trust by the appellant, and the first payment of \$2.2-million. The purchaser did not pay the second payment and the sale did not close. The respondent has retained the first payment.

The appellant asserts that under the terms of the Amending Agreement, a beneficial interest was passed to the purchaser upon payment of the first payment and, therefore, there was a sale and commission was payable.

The agreement specified that a commission was payable when a sale was completed by a change in ownership, registered at the Land Titles Office, and upon payment of the purchase price; neither occurred. The agreements say nothing about a commission being payable upon the purchaser acquiring a beneficial interest.

In the alternative, the appellant argued that the first payment (\$2.2-million) was a deposit and as a result, 50% should be payable as commission to the appellant as a result of the agreement that states the appellant is entitled to 50% of forfeited deposits in the event a sale is not completed.

The issue must rest on the wording of the agreements. The only deposit specified in either of the agreements was for \$10,000. The sum of \$2.2-million, the first payment, was not designated as a deposit. The Court of Appeal of Alberta agreed with the Queen's Bench judge that the payment of \$2.2-million was not a deposit and as a result, none of it was payable as commission.

As the appellant has retained the \$10,000 deposit in trust, there is no money owing under the listing agreement to support the caveat. The brokerage's appeal was dismissed and the caveat remains discharged.

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## News Bytes

### **Industry Member Websites and Misleading Meta Data**

Imagine doing a web search for your website, using your name as the search term, and having the search engine direct you to the website of another local industry member. In a few instances, that is exactly what has been happening lately as a result of industry members using the names of other industry members in the meta data (keywords, tags, description, etc), or title information for their website. Meta elements provide information about a website, most often to help search engines find it. Meta information is inserted into the HTML document, but is not directly visible to a user visiting the site.

Section 41 of the Real Estate Act Rules requires all industry members to act honestly. Section 42 of the Rules prohibits industry members from making representations or carrying on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so. Using the names of other industry members in "background" information about your website is an attempt to intentionally deceive members of the public.

Industry members are expected to be transparent and ethical in all of their licensed activities (advertising, etc.), with members of the public and other industry members. Any attempt to garner more "hits" to your website by intentionally deceiving about the content of the website

– especially if the deception involves the names of other industry members – could be in breach of legislation and the Rules. If you have questions about setting up a compliant website, please speak with your broker.

### **RECA Launches New Mortgage Associates Program**

The Real Estate Council of Alberta (RECA) launched a new Mortgage Associates Program (MAP) last week as part of its commitment to mortgage brokerage education. The enhanced MAP includes a greater focus on competency-based education for new mortgage brokerage industry members, which will better prepare them to serve the needs of borrowers and lenders.

The new MAP includes two mandatory courses: the first course, The Fundamentals of Mortgage Brokerage, is offered by RECA, and the second is offered by the Alberta Mortgage Brokers Association (AMBA). The Fundamentals of Mortgage Brokerage is available online. This format provides learners with the maximum flexibility for taking the course at any time, any place and any pace.

For more information on Alberta's mortgage brokerage industry and the new MAP, please visit the Licensing and Renewals section of the RECA website by clicking [here](#).

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## **Council Members 2010-2011**

### **BILL BUTERMAN**

**Appointed from non-AREA industry members**

### **KEVIN CLARK**

**Appointed from residential real estate industry members**

### **CINDY DUBRAY**

**Appointed from the property management sector**

### **GORDON GRAYDON**

**Appointed from the public**

### **CONNIE LECLAIR**

**Appointed from the public**

### **WAYNE MCALISTER, CHAIR-ELECT**

**Appointed from the Calgary Real Estate Board**

### **KEN MCCOY**

**Appointed from the Edmonton Real Estate Board**

### **WENDY ROBSON**

**Appointed from boards outside of Calgary and Edmonton**

**RALPH SALOMONS, PAST CHAIR**

**Appointed from commercial real estate sector**

**CHERYL SCHINDEL**

**Appointed from boards outside of Calgary and Edmonton**

**GARY SIEGLE**

**Appointed from the mortgage brokerage sector**

**ROBERT TELFORD, CHAIR**

**Appointed from the real estate appraisal sector**

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## **Contact RECA**

Case Summaries is published by the Real Estate Council of Alberta. Please forward your comments and suggestions to [communications@reca.ca](mailto:communications@reca.ca).

Executive Director - Bob Myroniuk

Director of Audit and Investigations - Joseph Fernandez

Director of Corporate Services – Dale Cawsey

Director of Education – Kirk Bacon

Director of Industry Standards – Charles Stevenson

Director of Legal Services - Jean Flanagan