



GUIDE TO COMPLAINTS FOR CONSUMERS

This guide provides consumers with information on the Real Estate Council of Alberta (RECA) complaint process, including how to make a complaint, how complaints are evaluated and what happens after the evaluation is complete.

This guide only applies to complaints about the conduct of industry members, that is, individuals and firms that are authorized (“licensed”) by RECA. If your concern relates to the conduct of someone who you believe should be licensed, please refer to the “Guide to Complaints about Unauthorized Practice”.

WHO IS RECA?

Established in 1996, the Real Estate Council of Alberta (RECA) is an independent, non-government agency responsible for regulating industry professionals in the real estate brokerage, mortgage brokerage and real estate appraisal industries under Alberta’s *Real Estate Act*.

WHAT DOES RECA REGULATE?

RECA regulates the conduct of industry members. There are various types of industry members.

In the real estate brokerage industry there are real estate associates, associate brokers, real estate brokers and real estate brokerages. They help members of the public to list, sell, market and manage residential, rural, commercial and industrial properties.

In the mortgage brokerage industry there are mortgage associates, mortgage brokers and mortgage brokerages. They help buyers and owners obtain financing and help lenders provide financing and administer mortgages.

In the real estate appraisal industry there are appraisers and candidates. They appraise properties.

RECA does not regulate real estate or mortgage transactions. This means RECA does not look into the fairness or legality of real estate transactions or mortgage deals. It also does not look into the conduct of sellers, buyers, landlords, lenders or borrowers.

MAKING A COMPLAINT

RECA is mandated by the *Real Estate Act* to set and enforce standards of conduct for the industry. The standards of practice aim to protect consumers and promote the integrity and professionalism of the industry.

RECA takes its responsibilities seriously. RECA will be open and transparent with you as much as the investigation and disciplinary process allows. RECA will:

- Provide you with guides to explain the complaint and investigation processes;
- Promptly acknowledge, in writing or by e-mail, receipt of your complaint;
- Provide you with ongoing communication with respect to the investigation of your complaint;
- Notify you in writing of the outcome of your complaint;
- If disciplinary action results from your complaint, RECA will post the discipline outcome on its website and publish the outcome in accordance with RECA's publication policy. For information on RECA's publication policy please see www.reca.ca/consumers/content/complaints-discipline/real-estate-council-publication-guidelines.htm
- If your complaint is refused or does not result in disciplinary action, RECA will notify you in writing and will provide you with reasons for its decision. It will also provide you with information on how you can appeal this decision.

WHAT IS RECA'S ROLE IN HANDLING COMPLAINTS?

RECA sets standards of business practice industry members must follow. RECA will investigate complaints about industry members related to an alleged failure to follow the standards of business practice established by RECA.

If RECA investigates a complaint and determines the industry member did not follow the standards of business practice, the industry member may be disciplined or required to take additional education.

RECA's process is only disciplinary. RECA cannot award damages or intervene in civil disputes. These issues are the purview of the courts. If you are looking to recover damages or have transactions cancelled or enforced, RECA recommends you consult a lawyer for advice on the civil remedies available to you.

WHAT SHOULD I DO BEFORE FILING A COMPLAINT?

Before filing a complaint, you should:

1. Determine the nature of your concerns

Consumers should give careful thought as to the source of the problem. Sometimes, industry members are unfairly accused when another individual is at fault. In these

cases, the concerns should be directed at that individual or to another disciplinary body. RECA receives many complaints of this nature. For example:

- *A buyer may accuse a mortgage associate when the lender withdraws a financing commitment. Unless the financing commitment was withdrawn due to misconduct on the part of the mortgage associate, the buyer's concerns are with the lender.*
- *A seller may blame their associate or the buyer's associate for a transaction not closing on time. Although there are cases where a delay in closing may be due to the misconduct on a real estate associate, often there are other legal or financial issues that cause the delay. For example, the deal may not be able to close because the lawyers are unable to register the transfer at the Land Titles Office on time. In these types of cases, concerns should be discussed with the lawyers or lending institutions.*
- *A tenant may accuse the property manager of misconduct when the landlord refuses to rent the property, even though a rental agreement was signed. In this situation, the reasons for the refusal to rent the property to the tenant should be addressed to the landlord, not the property manager. In this case, if there is any misconduct on the part of the landlord, the tenant must discuss the issue with Service Alberta (the government agency responsible for landlord and tenant issues).*
- *A buyer is not happy about an industry member who was following the lawful instruction of her vendor client not to accept offers for two days. In this situation the buyer's concern is with the direction given by the vendor.*
- *A buyer purchases a property and discovers the property has a material (serious) latent (hidden) defect such as a crack in the basement wall that is not visible because it is behind drywall. The seller in this case knew of the defect but did not tell their real estate associate. Although the property may have been listed by a real estate associate and the buyer was also represented by a real estate associate, the essence of the complaint falls outside RECA's jurisdiction. If the real estate associates involved did not have knowledge of the defect and were not able to find out about it, they are not responsible for alerting the buyer. The seller had knowledge about the defect and is responsible for disclosing the material latent defect.*

2. Understand the industry member's obligations to you

RECA has found that consumers who review the industry member's obligations are better able to articulate their complaint.

The standards of business practice industry members must follow are set out in the *Real Estate Act* and Rules, both of which are available at <http://www.reca.ca/consumers/content/legislation-bulletins/legislation-bulletins.htm>

Most complaints are related to the "Industry Standards of Practice" under part 2 of the Rules. As an alternative, you may want to search the Information Bulletins to see if any of the Information Bulletins address your areas of concern.

RECA will only accept complaints related to an industry member's breach of standards of practice.

Consider the following two examples:

Example 1

A buyer has made an offer to purchase on a property and applies for financing. The bank requires an appraisal and the buyer obtains an appraisal from a real estate appraiser. The appraisal is below the purchase price and the bank refuses financing. The buyer is unhappy with the appraisal and wishes to complain about the conduct of the real estate appraiser. Just because the buyer is unhappy with the appraised value does not mean the real estate appraiser has done something wrong. RECA would not accept this complaint unless the buyer articulates a breach of appraisal procedures or standards.

Example 2

A buyer approaches a mortgage associate to arrange a mortgage on her behalf. The mortgage associate finds the buyer a mortgage and obtains a commitment for her. The mortgage commitment is subject to various conditions one of which is the employee must be employed with the same employer for at least 3 years. The mortgage associate fails to explain the mortgage commitment conditions and the buyer switches employment prior to financing being complete. As a result the lender withdraws financing and the transaction collapses. RECA would accept this complaint as it relates to the industry member's failure to provide all relevant information to the borrower.

Consumers may wish to seek legal advice in assessing the industry member's obligations.

RECA will refuse your complaint if your complaint does not relate to the industry member's conduct.

3. Determine what you are seeking

RECA only assesses the industry member's conduct to determine if he or she has breached the standards and should be disciplined. If you are seeking compensation, you must attempt to recover money through the courts. The only exception to this is if you are making a claim to the Real Estate Assurance Fund for a monetary loss arising from a breach of trust. An example would be if your real estate associate took a deposit you had provided on the purchase of a property and used it for some other purpose. For more information on this topic please visit RECA's website at www.reca.ca/consumers/content/complaints-discipline/consumer-protection-fund.htm.

Even if it is determined by the courts the industry member acted improperly, RECA cannot recover your money.

You may pursue a civil action, a complaint with RECA and a complaint to any other disciplinary body (e.g., a professional association) simultaneously.

If you are seeking compensation for damages you have incurred, RECA encourages you to seek the advice of a lawyer. Your lawyer will be able to discuss with you the various options available to you.

For information on how to find or select a lawyer please visit www.lawsociety.ab.ca/public/public_finding.aspx

HINT: If you seek legal advice, provide your lawyer with a copy of this guide and the Guide to Investigations for Consumers. Not all disciplinary processes are the same and this will provide your lawyer with information about RECA's process to enable him or her to provide you with legal advice.

4. Attempt to resolve the issue

Consumers should attempt to resolve complaints with an industry member where possible. The industry member may be able to provide an explanation for his or her actions.

You can also attempt to resolve the issues by contacting the industry member's broker. The broker is the head of the brokerage with which the industry member is registered. Brokers have a responsibility to:

- to supervise associates and associate brokers to ensure that they comply with the *Real Estate Act*; and
- to inquire into and deal with inappropriate conduct.

The broker may be able to resolve the issue (e.g., by assigning another associate). To determine the broker of a particular real estate or mortgage brokerage, visit www.reca.ca and click on 'Licence Search'.

Consumers may also wish to contact a RECA information officer at (403) 228-2954 or 1-888-425-2754 (toll free) for advice on whether a complaint should be filed with RECA.

HINT: Concerns associated with real estate trades or mortgage deals can have significant implications and can be very stressful. In situations like this, dissatisfaction with the transaction can result in strong emotions which may be directed at various participants although they may not be responsible for the problems with the transaction. RECA recommends you discuss your concerns with your lawyer or a person who may provide you with unbiased advice on the issues of concern. RECA's experience suggests complainants who follow this advice are more successful with their complaints and have a higher probability of resolving their complaints successfully.

I have done my research and concluded my concerns are with the conduct of an industry member. How do I file a complaint?

To file a complaint, please use the Complaint Form on www.reca.ca > *Consumer Information > Complaints and Discipline.*

If you choose not to use RECA's complaint form, your complaint must:

- **be in writing and clearly state the intention is to file a formal complaint with RECA**
RECA will not accept a copy of a letter addressed to another party as a complaint.
- **identify the industry member you are complaining about and their contact information**
- **provide a detailed account of the transaction**

This requirement is very important. Your complaint must be supported by as much relevant information as possible. For example:

- chronological statement of events giving rise to the complaint
- copy of the applicable contracts (listing, purchase, service agreement, etc.)
- copy of the appraisal
- copy of any records
- names of individuals who may have relevant information, documents or records

It is not sufficient to state your complaint in general terms. For example, "the industry member misled me." You must provide details about how you were misled and relevant information and documentation to support your conclusion the industry member provided you with incorrect information. For example, if you feel that you were misled in setting the list price of your house, an appraisal is required to show the house was listed at a price that was either too high or too low. An investigation will not be opened based on a suspicion.

Note: Only copies of supporting documents should be sent. Do not send originals.

- **include your name and your contact information**
RECA may need to contact you to gather more information about your complaint including documents related to the complaint (e.g., purchase contract).
- **the complaint must be completed by someone authorized to file the complaint**
RECA will not accept a complaint about the conduct of an industry member in relation to misconduct affecting another party unless there are extenuating circumstances preventing the other party from making a complaint. For example, a relative may file a complaint on behalf of an elderly individual or an individual with diminished capacities. Complaints against a condominium property manager must be filed by the condominium corporation's board of directors.

- **the complainant must agree to cooperate with RECA's investigation**

The form, titled 'Agreement to Proceed,' available from our website must be filled out, signed and included with your complaint. Without your cooperation, RECA will not proceed further with your complaint. Cooperating with the investigation means you agree to answer RECA's questions, provide necessary information and appear as a witness if the matter goes to a hearing or prosecution.

You may seek assistance, if required, to write the complaint. For example, a translator may help overcome language barriers or a lawyer may help draft the complaint.

Your complaint must meet the above criteria before being evaluated by RECA. When complete, your complaint can be sent to the attention of RECA Investigations via mail, fax or email:

Mail: Real Estate Council of Alberta - Investigations

Suite 350, 4954 Richard Road SW

Calgary, AB T3E 6L1

Fax: (403) 228-3065

Email: info@reca.ca

Does RECA accept anonymous complaints?

No. RECA will not proceed with a complaint unless it receives sufficient information to determine if the matter should be investigated. Often, the complainant is an important witness and without their cooperation, RECA will not be able to make that determination.

EVALUATION OF COMPLAINTS

What does the evaluation take into consideration?

Several criteria are taken into account when evaluating a complaint. Some of the most important are:

- **Does the matter must fall under RECA's jurisdiction?**

If the matter is a dispute between you and another party the matter may be civil and therefore does not fall under RECA's jurisdiction.

- **Does the essence of the complaint relate to conduct governed by the *Real Estate Act* or the Rules?**

For example, RECA will not investigate an industry member's sale of a car to you because that conduct is not related to the industry member's licence. However, RECA may investigate circumstances related to the sale of a home or a mortgage application by an industry member because that conduct is related to their licence.

- **Does the matter have to concern an alleged breach of the *Real Estate Act* or Rules**
Although you may disagree with the industry member, there may not be a corresponding alleged breach of the Act or Rules. Matters that do not concern an alleged breach of the Act or Rules may fall under the jurisdiction of another organization or the matter may be pursued through the courts. For more information, see “What if RECA does not investigate my complaint?” at the bottom of this page.
- **Has an industry member been identified?** For example RECA will not investigate a complaint related to a mortgage being obtained through mortgage fraud if a specific industry member is not identified as a participant.

What happens when the complaint evaluation is complete?

Once the evaluation is complete, you will be advised in writing whether an investigation file will be opened. For information on RECA’s investigation process please see www.reca.ca/consumers/content/complaints-discipline/PDF/consumer_investigation_guide.pdf

An investigation file is NOT likely to be opened when:

- the conduct in question is not a breach of the *Real Estate Act* or the Rules;
- The industry member is not identified;
- the complaint is anonymous;
- the complaint is simply a suspicion; or
- the complaint has already been dealt with.

If RECA does not investigate your complaint, you will be notified in writing and provided with reasons for the refusal.

If your complaint falls under another organization’s jurisdiction, RECA will provide you with suggestions as to how to proceed.

What if RECA does not investigate my complaint? Do I have any other options?

Not all matters related to real estate fall under RECA’s jurisdiction. For example, RECA does not regulate the behaviour of buyers and sellers of real estate or of lenders and borrowers. In addition to the *Real Estate Act*, other laws may be relevant to a real estate matter:

- the *Residential Tenancies Act*, *Mobile Home Site Tenancies Act* and *Condominium Property Act* are administered by Service Alberta (1-877-427-4088, www.servicealberta.gov.ab.ca)
- the *Securities Act* may be relevant to a problem with the real estate or mortgage portion of an investment portfolio and is administered by the Alberta Securities Commission (1-403-297-4296 or 1-403-297-4219, www.albertasecurities.com)
- if the matter is criminal, you should contact your local police.

For example, if you suspect that the industry member is involved in fraudulent activities, the police should be contacted.

- privacy issues can be directed to the Office of the Information and Privacy Commissioner (OIPC) (1-888-878-4044, www.oipc.ab.ca)

Industry associations such as real estate boards set standards of performance and service for their members. Complaints regarding failures to meet those standards should be directed to the association to which the industry member belongs (see www.reca.ca > links).

Sometimes consumers experience financial losses. RECA cannot help you recover money. Any action to recover losses must be pursued through the courts. However, at the same time you are pursuing a civil action through the courts, RECA may investigate your complaint to determine whether an investigation should be conducted regarding an alleged breach of the standards of business practice.

Can I appeal RECA's decision to not investigate my complaint?

If your complaint has been refused you have 30 days in which to appeal. If you believe that RECA's decision is wrong, you should discuss your concerns with RECA's investigator.

RECA may re-evaluate its decision if you have additional information not considered during the evaluation process. Alternatively, the investigator may be able to provide more explanation as to why RECA will not investigate your complaint.

If you are not satisfied with the investigator's explanation, you must appeal in writing. Your complaint will then be heard by a hearing panel.

For further information on appeal rights please see www.reca.ca/consumers/content/publications-resources/PDF/Appealing-Exec-Director-Decision-not-to-investigate.pdf

OTHER COMMON QUESTIONS

What if the complaint is already being handled by another organization?

A single situation or event may trigger a review or investigation from several different perspectives. The fact one organization is handling a complaint does not prevent another organization from also looking at the complaint from its perspective.

RECA is concerned with possible breaches of the *Real Estate Act* and the Rules. Other organizations may be concerned about the breach of other laws or rules.

For example, an industry association may wish to determine whether a member met the standards required of its members. The police may investigate a matter to determine whether criminal charges should be laid and the courts decide whether the industry member is civilly liable (i.e., whether or not the industry member owes you money).

RECA utilizes memoranda of understanding with government departments and industry associations to facilitate the transfer of information and minimize duplication. However, in order for RECA to share information with industry associations, you must provide written consent. If you choose to provide consent, the consent may be provided in RECA's complaint form.

Can I use information that RECA has obtained relating to my complaint in a civil action?

The *Real Estate Act* prohibits information obtained as part of the investigation process to be used or received against anyone who provided information in any civil proceedings or in the prosecution of an offence under any other Act. In all civil proceedings, the plaintiff must demonstrate their case to the courts and cannot rely on a disciplinary decision by a hearing panel.

I resolved my complaint through the courts. Is RECA going to consider the outcome of the civil proceeding in relation to the conduct of the industry member?

Industry members are required to report to RECA disciplinary actions from other bodies, judgments arising out of civil proceedings or prosecutions under other federal or provincial statutes. This information may result in disciplinary action against an industry member, including cancellation of the individual's licence. RECA will assess the circumstances on a case by case basis.

FOR MORE INFORMATION ON COMPLAINTS & INVESTIGATIONS,

PLEASE CONTACT THE REAL ESTATE COUNCIL OF ALBERTA:

Suite 350, 4954 Richard Rd SW, Calgary AB T3E 6L1

Toll Free in Alberta 1-888-425-2754

Phone (403) 228-2954 Fax (403) 228-3065

www.reca.ca