



REFERRALS – INDUSTRY MEMBER REQUIREMENTS

Summary: An industry member may refer a person to any industry member or other service provider, and receive a referral fee, but he or she must provide a written disclosure of the referral to the person being referred. Industry members must also be aware of their obligation to protect their client's personal information and the requirement to obtain the client's consent before releasing the client's contact information to a third party. [*Real Estate Act* Rules, s.1(1)(bb), s.44, s.45, s.54(c), s.70(c)]

The current *Real Estate Act* Rules, approved by the Real Estate Council of Alberta (RECA), came into effect October 1, 2006. The Rules, as they relate to the practice of making and receiving referrals, particularly within the real estate and mortgage brokerage industries, reflect a major change in the approach previously taken by RECA to this area of industry practice. A "referral" means "the act of recommending or directing a person for service, assistance, or business to another person or business." [*Real Estate Act* Rules, s.1(1)(bb)]

Consent of Client to Referral

The practice of making referrals, in exchange for a fee or some form of compensation, is a common business practice within the real estate and mortgage brokerage industries. While the *Real Estate Act* Rules acknowledge and regulate this practice, it is important for industry members to comply with their common law and regulatory obligations concerning client information.

It is a general obligation of all professionals providing services to the public to keep their client information confidential. The same obligation applies to industry members trading in real estate, dealing in mortgages or providing real estate appraisal services.

Under the *Real Estate Act* Rules, "confidential information" means "any information concerning the client including the client's financial or personal situation, the client's real estate and the transaction involving the client." The obligation to maintain client confidentiality applies to all industry members in the course of conducting business (s. 44, *Real Estate Act* Rules). This general requirement is subject to any legislative obligation to disclose client information or if the client has provided informed written consent.

In the course of making a referral, the type of information an industry member may be asked to provide to another industry member or service provider will vary. Some referrals may involve basic contact information (e.g. name and telephone number) whereas some may require details concerning the person's real estate, mortgage or appraisal requirements.

In all cases, the information must be treated as confidential and cannot be released to a third party without first obtaining the express written consent of the client.

Referral Disclosure Requirements

When an industry member refers any person to any industry member or service provider and the industry member knows he or she may receive a referral fee, remuneration or benefit for making that referral, the industry member must disclose in writing:

- (a) *the industry member has forwarded the person's name and contact information to that service provider; and,*
- (b) *the industry member may be entitled to receive a referral fee, remuneration or benefit from the service provider for making the referral.*

An industry member is required to retain a copy of the consent to release the client's information and disclosure of the referral mentioned above. Electronic documentation e.g. email confirmation is considered written consent and disclosure for the purposes of this requirement. If an industry member utilizes email for this purpose, a hard copy of the email consent and disclosure should be printed and placed in the client's file, though it is also acceptable to maintain the email in electronic form within the brokerage's electronic record keeping system.

Know the Person Your Client is Being Referred To

It is important to know the industry member or service provider a client is being referred to. In addition to ensuring the individual is authorized as an industry member, it is important to ensure the person is competent to provide the services required by the client.

If an industry member makes a referral to a person the industry member believes to be an industry member, it is the responsibility of the industry member making the referral to take reasonable steps to ensure the person in question is in fact authorized to carry out the activities for which the referral is made.

An easy way to determine if an individual is authorized as an industry member in Alberta is to visit the RECA website at www.reca.ca and utilize the "Search for an Industry Member" function. This public search tool allows industry members to determine if any individual they are dealing with is authorized by RECA to trade in real estate (real estate brokers), deal in mortgages (mortgage brokers) or conduct real estate appraisals (real estate appraisers) in the Province of Alberta. If an industry member wishes to refer a client to an industry member carrying on business outside the Province of Alberta, there are several steps that can be taken to determine whether that individual is properly authorized in their provincial or state jurisdiction.

If the individual is believed to be a real estate industry member, the Association of Real Estate Licence Law Officials (ARELLO) is an international organization that provides a special website (www.ARELLO.com) for this purpose. ARELLO.com allows a person to verify whether a particular individual is duly licensed in a member jurisdiction. Most provinces and states in North America are members of ARELLO and participate in this "Real Estate Licence Verification" database.

If the individual cannot be verified as an industry member on www.ARELLO.com, RECA recommends searching the website of the licensing authority in the province or state in question. If the website does not provide an online licence search function, RECA recommends contacting the licensing authority directly to confirm where a particular individual is duly licensed in that province or state.

Referral Fees are Paid and Received Through the Brokerage

Referrals of clients to other brokerages are generated by the broker, associate brokers or associates on behalf of the brokerage with which they are registered. Therefore, all referral fees are paid out by and received by the brokerage. The individuals registered to a brokerage as brokers, associate brokers or associates can never pay the referral fee out of their own account or receive the referral fee directly. The brokerage, upon receiving a referral fee, pays its registrants according to his or her contract with the brokerage.