



REFERRALS – PAYMENT TO UNLICENSED PERSONS

Summary: A brokerage can pay a referral fee to an unlicensed person; however, a brokerage must not pay a referral fee to a person for services they have provided in relation to a trade in real estate, or dealing in mortgages, if the person seeking the referral fee is required to be licensed under the *Real Estate Act* and is not licensed by the Real Estate Council of Alberta. [*Real Estate Act* Rules, s.1(1)(bb), s.50(d), s.66(d)]

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 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)]

Referral Fees to Unlicensed Individuals Are Allowed

The most significant change made in October 2006 with respect to referrals was that (subject to the Rules) brokerages are allowed to pay referral fees to unlicensed individuals. It is important for industry members to be aware of a key restriction to this practice.

In accordance with *Real Estate Act* Rules s.50(d) and s.66(d), a referral fee can be paid to unlicensed individuals as long as the services provided by the unlicensed person do not require a licence. In other words, a brokerage must not pay a referral fee to a person for services they have provided to the brokerage in relation to a trade in real estate or dealing in mortgages, if the services the person has provided fall under the definition of a trade in real estate or a deal in mortgages and the person is not licensed by the RECA.

Referrals to Lending Institutions and to Mortgage Brokers

Part of the definition of mortgage broker in the *Real Estate Act* includes the act of soliciting someone to borrow money from a lending institution. As such, some referrals to mortgage brokers may be considered an activity that requires licensing. If this is the case, referral fees may not be paid to an unlicensed person making the referral.

In *Toronto Dominion Bank v. Real Estate Council of Alberta* (2002), 316 A.R. 280 (Alta Q.B.), the court upheld that if a real estate broker wishes to refer clients to a specific lending institution, and obtains a fee from the institution for doing so, the real estate broker must obtain the necessary authorization as a mortgage broker because the activity is “soliciting” people to borrow money.

Also, for example, if a real estate brokerage, an Internet business or a large retail company refers people to a mortgage broker who is affiliated with a single lending institution; it is the same as referring people directly to that particular lending institution. In turn, that means a

third party has, for compensation, solicited a person to borrow money, and that third party must be licensed as a mortgage broker to do so.

If the referral is to an unaffiliated mortgage broker and the referral fee is not contingent upon an actual mortgage transaction, then arguably the person who made the referral is not persuading a person to borrow money. The referral is simply to put a potential borrower in touch with a mortgage broker, who may then solicit a lending institution on the borrower's behalf.

Note: For additional information on the topic of referrals, see RECA Information Bulletin: *Referrals – Industry Member Requirements*.