

Real Estate Act

Rules

These Rules come into force on October 1, 2008

Approved by Council July 5, 2011

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Schedule 2 – Fees

Interpretation

1 (1) In these Rules,

- (a) “agent” means an industry member who is expressly or implicitly authorized to act for or represent another person;
- (b) “appraiser associations” means the Alberta Association of the Appraisal Institute of Canada, Alberta Assessors’ Association, and Canadian National Association of Real Estate Appraisers;
- (c) “automated banking machine,” “automated teller,” “ABM” or similar references refers to automated machines used by banks and other financial institutions to facilitate banking activities by their customers;
- (d) “bank account” means money maintained in a bank, loan corporation, credit union or treasury branch;
- (e) “bank reconciliation” means a schedule drawn as of a specific date to identify the differences, if any, between a brokerage’s records and the bank, trust corporation, loan corporation, credit union or treasury branch statements;
- (f) “buyer” means a person acquiring or attempting to acquire an interest in real estate by purchase;
- (g) “client” means a person who has entered into a service agreement with an industry member in accordance with these rules, whether or not that service agreement is in writing;
 - (g.1) “confidential information” includes any information concerning the client including the client’s financial or personal situation, the client’s real estate and the transaction involving the client;
- (h) “conflict of interest” means a real or apparent incompatibility between an industry member’s interests and the interests of the client or potential client;
- (i) “customer” means a person who has contacted, but not engaged or employed, an industry member to provide services;
 - (i.1) “designated agency” means a relationship in which one or more industry members, licensed with the same brokerage, are designated in writing by the brokerage to act as sole agents for a buyer or a seller;
 - (i.2) “designated agent” means an individual industry member who is designated in writing by a brokerage to serve as a sole agent for a buyer or a seller in a trade in real estate;
 - (i.3) “designated brokerage agreement” means a written service agreement between a brokerage and a buyer or a seller which sets out the terms and conditions under which one or more different individual industry members registered with the brokerage are designated as the sole agent of the seller or of the buyer, respectively;
- (j) “discipline” includes a warning, reprimand, penalty, fine, educational requirement, suspension or cancellation, resignation, withdrawal, agreement, order, or an award of costs, arising from a disciplinary matter;
- (k) “dual agency” means a situation in which an industry member or brokerage represents both seller and buyer in a transaction;
- (l) “electronic” includes created, recorded, transmitted or stored in digital form or in any other tangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage;

- (m) "exclusive buyer brokerage agreement" means a written service agreement between a brokerage and a buyer under which the buyer grants the brokerage exclusive authority to act as agent for the buyer and the exclusive right to locate for the buyer an interest in real estate and by which the buyer may agree to compensate the brokerage on any purchase effected by the brokerage, another brokerage or the buyer;
- (n) "exclusive seller brokerage agreement" means a written service agreement between a brokerage and a seller under which the seller grants the brokerage exclusive authority to act as agent for the seller and the exclusive right to offer for sale the seller's interest in real estate and by which the seller agrees to compensate the brokerage on any sale effected by the brokerage, another brokerage or the seller;
- (n.1) "facilitation services" means services by which the interests of the buyer and seller are met in an even handed, objective and impartial manner without providing confidential advice, advocating on behalf of either the buyer or seller, or using discretion or judgment that benefits the buyer or seller to the prejudice of the other, and will include:
 - (i) assist the buyer and the seller in negotiating a mutually acceptable agreement;
 - (ii) providing real estate statistics and information on property including comparable property information available through listing services or other local databases;
 - (iii) providing standard form agreements of purchase and sale, lease and other relevant documents;
 - (iv) preparing all necessary documents in accordance with the instructions of the client(s);
 - (v) providing the names of real estate appraisers, mortgage brokers, surveyors, building inspectors, lenders, insurance agents, architects, engineers and the like, but will not recommend any particular professional to the client(s);
 - (vi) presenting in a timely manner, all offers and counter-offers to and from the client(s) regardless of whether the property is already the subject of a contract;
 - (vii) conveying to the client(s) in a timely manner all information that either wishes to have communicated to the other;
 - (viii) keeping the client(s) informed regarding the progress of the transaction; and
 - (ix) complying with the provisions of the *Real Estate Act* and its regulations and the rules and bylaws of the Real Estate Council of Alberta
- (o) "incentive" means anything that is advertised, communicated or offered by a brokerage to the public or a person for the purpose of attracting business to the brokerage and includes a promise, good, service, game of chance, contest, or anything else of value;
- (p) "individual" means a natural person;
- (q) "inducement" means anything that is offered or provided by a brokerage to a person who is, or could be, a party to a real estate or mortgage transaction and is intended to either assist, persuade or cause that person to enter into a particular real estate or mortgage transaction;
- (r) "industry member" means any person who holds a licence issued under these

Rules;

- (s) "lease" includes a residential tenancy agreement under the *Residential Tenancies Act*;
- (t) "material latent defect" means a defect that cannot be discerned through a reasonable inspection of the property and:
 - (i) includes a defect that renders the real estate:
 - (A) dangerous or potentially dangerous to the occupants,
 - (B) unfit for habitation, or
 - (C) unfit for the purpose for which a party is acquiring it if the industry member has become or been made aware of this purpose; and
 - (ii) may include:
 - (A) a defect that would involve great expense to remedy;
 - (B) a circumstance that affects the real estate in respect of which a local government or other local authority has given a notice to the client or the industry member, indicating that the circumstance must or should be remedied; or
 - (C) a lack of appropriate municipal building and other permits respecting the real estate.
- (u) "money received in trust," "money held in trust" and other similar references to trust money received or held by an industry member include money that:
 - (i) is paid to the industry member by a party to a trade or dealing, and
 - (ii) is paid on the express or implied agreement or condition that it will be used for a specific purpose or returned to the party in accordance with the agreement or condition.
- (v) "party" means a person who is a legal party to a transaction;
- (w) "property management" includes:
 - (i) leasing, negotiating, approving or offering to lease, negotiate or approve a lease or rental of real estate;
 - (ii) collecting or offering or attempting to collect money payable for the use of real estate;
 - (iii) holding money received in connection with a lease or rental of real estate; and
 - (iv) advertising, negotiating, or any other act, directly or indirectly for the purpose of furthering an activity described in sub-clauses (i) to (iii).
- (x) "pooled disbursement trust account" means a bank account maintained by a brokerage to facilitate payment of disbursements on behalf of more than one client;
- (y) "pooled trust account" means a bank account maintained by a brokerage to deposit, hold and disburse money received on behalf of more than one client or several accounts for the same client;
- (z) "purchase" includes an exchange, option, lease or other acquisition of an interest in real estate;
- (aa) "records" includes:
 - (i) accounts, books, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by other means; and

- (ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.
 - (bb) “referral” means the act of recommending or directing a person for service, assistance, or business to another person or business;
 - (cc) “sale” includes an exchange, option, lease, or other disposition of an interest in real estate;
 - (dd) “seller” means a person disposing or attempting to dispose of an interest in real estate by sale;
 - (ee) “sole agency” means a relationship in which an industry member acts as the agent of only one party in a trade or deal;
 - (ff) “supporting documentation” means any document the brokerage or real estate appraiser created, caused to be created or was received by the brokerage or real estate appraiser in relation to a trade in real estate, mortgage dealing or appraisal service;
 - (gg) “terminate” means to come to an end through an application process or a deeming provision in these Rules; and
 - (gg.1) “transaction brokerage” means a relationship in which a brokerage or industry member provides facilitation services to the buyer and the seller in the same trade;
 - (gg.2) “transaction brokerage agreement” means a written service agreement between a brokerage and the buyer and the seller in a trade which sets out the terms and conditions under which the brokerage will provide facilitation services to the seller and the buyer in the same trade;
 - (gg.3) “transaction facilitator” is an industry member who has been engaged under a transaction brokerage agreement to provide facilitation services to the buyer and the seller in the same trade;
 - (hh) “trust ledger” means a record of the money held in trust for a client.
- (2) Terms defined in the Act have the same meaning when they are used in these Rules, unless otherwise set out in these Rules.
- (3) In these Rules, words importing male persons include female persons.

PART 1

AUTHORIZATIONS, LICENCES & REGISTRATIONS

Division 1 – Classes of Licences

Classes of
real estate
brokers

- 2 (1) For the purposes of the Act, Bylaws and Rules there shall be the following classes of real estate brokers:
- (a) brokerage;
 - (b) broker; and
 - (c) associate broker; and
 - (d) associate.
- (2) A real estate brokerage is a person who:
- (a) is licensed by the Council as a brokerage; and
 - (b) employs or has associated with it a licensed and registered real estate broker.
- (3) A real estate broker is an individual who:
- (a) holds the qualifications of a real estate broker;

- (b) is licensed as a real estate broker by the Council;
 - (c) is employed by or associated with a licensed real estate brokerage in Alberta; and
 - (d) is registered with and approved to operate a real estate brokerage and trade in real estate on behalf of that brokerage.
- (4) A real estate associate broker is an individual who:
- (a) holds the qualifications of a real estate broker;
 - (b) is licensed as a real estate associate broker by the Council;
 - (c) is employed by or associated with a licensed real estate brokerage in Alberta; and
 - (d) is registered with and approved to trade in real estate on behalf of that brokerage.
- (5) A real estate associate is an individual who:
- (a) holds the qualifications of a real estate associate;
 - (b) is licensed as a real estate associate by the Council;
 - (c) is employed by or associated with a licensed real estate brokerage in Alberta; and
 - (d) is registered with and approved to trade in real estate on behalf of that brokerage.

Classes of mortgage brokers

3 (1) For the purposes of the Act, Bylaws and Rules there shall be the following classes of mortgage brokers:

- (a) brokerage;
 - (b) broker; and
 - (c) associate.
- (2) A mortgage brokerage is a person who:
- (a) is licensed by the Council as a mortgage brokerage; and
 - (b) employs or has associated with it a licensed and registered mortgage broker.
- (3) A mortgage broker is an individual who:
- (a) holds the qualifications of a mortgage broker;
 - (b) is licensed as a mortgage broker by the Council;
 - (c) is employed by or associated with a licensed mortgage brokerage in Alberta; and
 - (d) is registered with and authorized to operate a mortgage brokerage, and deal in mortgages on behalf of that brokerage.
- (4) A mortgage associate is an individual who:
- (a) holds the qualifications of a mortgage associate;
 - (b) is licensed as a mortgage associate by the Council;
 - (c) is employed by or associated with a licensed mortgage brokerage in Alberta; and
 - (d) is registered with and approved to deal in mortgages on behalf of that brokerage.

Classes of real estate appraisers

4 For the purposes of the Act, Bylaws and Rules there shall be the following classes of real estate appraisers:

- (a) appraiser; and
- (b) candidate.

Division 2 – Authorizations

Real estate
 brokerage
 authorization

- 5 A real estate brokerage licence issued by the Council under these Rules:
- (a) is the authorization required under the Act in order for a real estate brokerage to trade in real estate or hold itself out as a real estate brokerage;
 - (b) expires on September 30 following its issuance unless it is terminated, suspended or cancelled prior to that date; and
 - (c) may be renewed by the brokerage by submitting a completed renewal application to the executive director in a form prescribed by the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.

Real estate
 broker,
 associate
 broker and
 associate
 authorization

- 6 (1) A real estate broker licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a real estate broker to operate a real estate brokerage and trade in real estate on behalf of a brokerage.
- (2) A real estate associate broker or associate licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a real estate associate broker or associate to trade in real estate on behalf of a brokerage.
- (3) A real estate broker, associate broker or associate may renew his registration certificate by submitting a completed application to the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.
- (4) An individual must not trade in real estate or in any way hold himself out as a real estate broker, associate broker or associate until such time as the individual has been issued a licence and is registered with a brokerage licensed by the Council.

Mortgage
 brokerage
 authorization

- 7 A mortgage brokerage licence issued by the Council under these Rules:
- (a) is the authorization required under the Act in order for a mortgage brokerage to deal in mortgages or hold itself out as a mortgage brokerage;
 - (b) expires on September 30 following its issuance unless it is terminated, suspended or cancelled prior to that date; and
 - (c) may be renewed by the brokerage by submitting a completed renewal application to the executive director in a form prescribed by the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.

Mortgage
 broker and
 associate
 authorization

- 8 (1) A mortgage broker licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a mortgage broker to operate a mortgage brokerage and deal in mortgages on behalf of a brokerage.
- (2) A mortgage associate licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a mortgage associate to deal in mortgages on behalf of a brokerage.
- (3) A mortgage broker or associate may renew his registration certificate by submitting a completed application to the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.
- (4) An individual must not deal in mortgages or in any way hold himself out as a mortgage broker or associate until such time as the individual has been issued a licence and is registered with a brokerage licensed by the Council.

Appraiser and

- 9 (1) An appraiser licence issued by the Council under these Rules is the authorization

candidate
authorization

required under the Act in order for an individual to carry on the practice of a real estate appraiser, or advertise or hold himself out as a real estate appraiser.

(2) Subject to the limitations in these Rules, a candidate licence issued by the Council under these Rules is the authorization required under the Act in order for an individual to carry on the practice of a candidate, or advertise or hold himself out as a candidate.

(3) An appraiser or candidate licence issued by Council expires on September 30 following its issuance unless it is renewed by submitting a completed renewal application to the executive director in a form prescribed by the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.

(4) An individual must not carry on the practice of a real estate appraiser or candidate or in any way hold himself out as a real estate appraiser or candidate until such time as the individual has been issued a licence by the Council.

Termination of
authorization

10 (1) The authorization of any industry member is deemed to be terminated when the person is no longer eligible to be licensed.

(2) The licence of a real estate broker, associate broker or associate is deemed to be terminated if he fails to maintain or renew his registration certificate for a period exceeding 36 months.

(3) The licence of a mortgage broker or associate is deemed to be terminated if he fails to maintain or renew his registration certificate for a period exceeding 36 months.

Withdrawal
from industry
membership

11 A person withdraws from industry membership when:

- (a) a licence is deemed to be terminated in accordance with these Rules;
- (b) a licence is voluntarily terminated by the person, in a manner and form prescribed by the executive director; or
- (c) an application for withdrawal pursuant to section 54 of the Act is approved by Council.

Lifetime
licensing
prohibition

12 An application by an industry member to withdraw from the industry pursuant to section 54 of the Act approved by Council is a lifetime licensing prohibition for that industry member.

Division 3 – Licence Eligibility

Registered
business
office

13 (1) A person is not eligible to be licensed as a real estate brokerage, mortgage brokerage, appraiser, or candidate unless the person maintains a registered business office in Alberta or the City of Lloydminster acceptable to the executive director and in accordance with these Rules and the current address of the business office is provided to the executive director.

(2) The requirement to maintain a registered business office means all of the following conditions have been met:

- (a) the office is a location from which the person conducts business;
- (b) the person has access to and control over the use of the office premises;
- (c) the office is the location where the records required to be maintained by the person in accordance with the Act and these Rules are kept or made available for the purposes of a review; and
- (d) the office location complies with the requirements of the municipality where it is located.

(3) The registered business office shall be the address of service for the real estate brokerage, mortgage brokerage, appraiser or candidate, and all industry members registered with the brokerage for the purposes of the Act and these Rules.

(4) A real estate brokerage and mortgage brokerage may maintain more than one office in Alberta if:

- (a) the brokerage designates one office as the registered business office;
- (b) the broker manages the registered business office; and
- (c) each additional office is managed by the broker or his authorized delegate.

Ineligibility for
licence

- 14 (1) A person is not eligible to be licensed in any class of licence if the person:
- (a) has not met the requirements of the Act, these Rules or the Bylaws;
 - (b) has not met the educational requirements or other requirements, if any, prescribed, adopted or approved by the Council for that category of licence;
 - (c) has not passed the examination prescribed, adopted or approved by the Council for that class of licence, or been exempted from the examination by the executive director;
 - (d) has not submitted a completed application to the executive director in the prescribed form together with the required documentation;
 - (e) has not submitted the required application fees, levies or premiums;
 - (f) has not provided any additional information required by the executive director for licensing purposes within the time prescribed;
 - (g) is someone in respect of whom a payment out of the Real Estate Assurance Fund has been made under the Act and the amount has not been repaid;
 - (h) has failed to pay, or make satisfactory arrangements to pay with the executive director, any outstanding penalties, fines, or costs imposed pursuant to the Act, Rules or Bylaws;
 - (i) contravened or has failed to comply with any terms or conditions imposed by a hearing panel, appeal panel or the court;
 - (j) contravened or has failed to comply with any licence terms, conditions or restrictions previously imposed by the executive director;
 - (k) has made an application to withdraw from the industry pursuant to the Act and the application was approved;
 - (l) is not at least 18 years of age;
 - (m) is licensed as a broker and is subject to bankruptcy; or
 - (n) has failed to obtain appropriate insurance as required by the Act, Regulations, Rules or Bylaws.

(2) A person whose licence has been suspended or cancelled in one class is not eligible to be licensed in any other class until the suspension or cancellation period has expired.

(3) When a person's licence has been cancelled under the Act and that person applies for a new licence, that person is not eligible to be issued a new licence until 36 months have elapsed from the date of the cancellation, or such lesser or greater time as may be determined by a hearing or appeal panel or the court.

(4) Subject to section 18(4), a person is not eligible to be licensed as a candidate or appraiser if that person is not a member in good standing of an appraiser association.

Bankruptcy

15 The bankruptcy of a person does not relieve the person from the requirements of section 14.

Division 4 – Licence Requirements for Individuals

Education,
examination
and other

16 (1) An individual who intends to apply for a licence must first meet the educational requirements or other requirements, if any, prescribed, adopted or approved by the Council for that class of licence.

requirements (2) An individual who has met the educational, examination or other requirements prescribed, approved or adopted by Council for any class of licence, may then apply to the executive director for that class of licence in a form prescribed by the executive director.

(3) The executive director may grant an exemption from any or all of the educational, examination or other requirements prescribed, approved or adopted by Council for real estate and mortgage brokers referred to in (1) above to an applicant who satisfies the executive director that the applicant has satisfactory experience and knowledge of current real estate or mortgage broker practices in Alberta, as the case may be.

Real estate and mortgage broker examination requirements 17 An individual who intends to apply for a real estate or mortgage broker licence must first write the licensing examinations prescribed, adopted or approved by the Council for that class of licence and pass those examinations with a grade that is satisfactory to the Council.

Appraiser and candidate examination requirements 18 (1) An individual who intends to apply for an appraiser or candidate licence shall first meet the educational and examination requirements or other qualifications, if any, prescribed, adopted or approved by the appraiser associations for that class of licence.

(1.1) In addition to the requirements in subsection 18(1), an individual who intends to apply for an appraiser or candidate licence must write the licensing examination(s) prescribed, adopted or approved by the Council for that class of licence and pass those examinations with a grade that is satisfactory to the Council.

(2) An individual who intends to apply for an appraiser or candidate licence who has never met the educational and examination requirements outlined in (1) above or, who currently is not a member in good standing of one of the appraiser associations, must first write the examination prescribed, adopted or approved by the executive director for that category of licence and pass that examination with a grade satisfactory to the Council.

(3) An individual described in (2) above shall be entitled to one re-write of the appraiser licence examination.

(4) An individual described in (2) above who successfully passes the appraiser licence examination must, as a condition of receiving an appraiser licence, become a member in good standing of one of the three appraiser associations prior to the renewal of the appraiser licence for the following licensing year.

(5) An individual who receives a candidate licence must complete the educational and examination requirements or other qualifications, if any, prescribed, adopted or approved by the appraiser associations for the appraiser category of licence within the timeframe prescribed by that appraiser association.

(6) If a candidate fails to obtain the educational and examination requirements or other qualifications referred to in (1) above, the candidate must notify the executive director immediately that the candidate failed to obtain those qualifications. The candidate's licence shall immediately be cancelled by the executive director.

(7) Deleted

(8) Deleted

(9) When a candidate licence has been cancelled pursuant to this section, that individual cannot apply for a new candidate licence for a period of two years following the date of the cancellation of his first candidate licence.

Suitability review 19 The executive director may, at the request of an individual and upon payment of a fee:

- (a) conduct a review of the individual's suitability for licensing;
- (b) request information from that individual in the form and manner prescribed by the executive director; and
- (c) provide that individual with a written response regarding his suitability for licensing.

Licence application

- 20 (1) The application for a licence must be accompanied by the following:
- (a) the fee established by Council;
 - (b) an affidavit in a form prescribed by the executive director;
 - (c) proof of identity of the applicant in a form and manner prescribed by the executive director;
 - (d) a current and original certified criminal record check in the legal name of the applicant in a form and manner prescribed by the executive director;
 - (e) for real estate brokers, the applicable Real Estate Insurance Exchange (REIX) premium;
 - (f) for real estate brokers and mortgage brokers, the applicable Real Estate Assurance Fund levy as established by Council; and
 - (g) for real estate appraisers and candidates, their registered business office address in Alberta.
- (2) In addition to the information required in (1) above, the executive director may require the individual applying for the licence to:
- (a) supply further information within a time prescribed by the executive director; and
 - (b) verify by affidavit or otherwise any information then or previously submitted.
- (3) Real estate appraisers and candidates are exempt from (1)(c) and (1)(d) above when renewing a licence.

Notice of changes to information in support of licence application

21 A broker, associate broker, associate, appraiser or candidate, as the case may be, must immediately notify the executive director in writing of any changes in the information provided to the executive director in support of the licence application that occur during the application process or after the licence is issued.

Licence terms, conditions and restrictions

22 The executive director may, on or subsequent to issuing a licence, make it subject to any terms, conditions or restrictions with respect to trading in real estate, dealing in mortgages or real estate appraisal, as the case may be, that the executive director considers appropriate.

Re-licensing Education Program requirements

- 23 (1) An industry member must satisfy all applicable re-licensing education program requirements prescribed by council to retain a licence issued to the industry member by the Real Estate Council of Alberta.
- (2) The onus is on the industry member to be informed of any applicable re-licensing education program requirements.

Resolution 2008-3 approved by Council on Aug 6/08

Division 5 – Registration Certificates

Registration certificate

24 A registration certificate issued by the executive director under these Rules is proof of registration.

Expiry

25 A registration certificate issued by the executive director expires on September 30 following its issuance unless it is terminated or cancelled prior to that date.

- Cancellation 26 A registration certificate is deemed to be cancelled when a licence is terminated, suspended or cancelled.
- Registration certificate application 27 (1) A brokerage shall apply to the executive director for a broker, associate broker or associate registration certificate, as the case may be, in a form prescribed by the executive director.
- (2) The application for a registration certificate shall be accompanied by the following:
- (a) the fee as established by Council;
 - (b) payment of, or proof of payment of all levies, fees, premiums, fines, administrative penalties and other amounts that are payable under or pursuant to the Act or these Rules;
 - (c) in the case of real estate brokers, the applicable Real Estate Insurance Exchange (REIX) premium; and
 - (d) for real estate brokers and mortgage brokers, the applicable Real Estate Assurance Fund levy as established by Council.
- Application from previous industry member 28 If the applicant for a registration certificate has previously been an industry member, but has not been registered with a licensed brokerage in Alberta or licensed as an appraiser or candidate in Alberta for a period exceeding one year, the application for a registration certificate or licence, as the case may be, must be accompanied by the following:
- (a) proof of identity of the applicant in a form and manner prescribed by the executive director; and
 - (b) a current and original certified criminal record check in the legal name of the applicant in a form and manner prescribed by the executive director.
- Registration restrictions 29 (1) An individual who is registered as a broker with a real estate brokerage cannot be registered as an associate broker or associate with the same or a different real estate brokerage.
- (2) An individual who is registered as a broker with a mortgage brokerage cannot be registered as an associate with the same or a different mortgage brokerage.
- (3) An individual cannot be registered as a broker, associate broker or associate with more than one real estate brokerage and one mortgage brokerage in Alberta at any one time.
- (4) A broker who intends to become registered as a broker or associate broker with a different brokerage cannot be registered as a broker or associate broker with that brokerage until arrangements for any monies held in trust or the trust account(s) of the previous brokerage have been confirmed and are satisfactory to the executive director.

Division 6 – Licence Requirements for Brokerages

- Brokerage application 30 (1) A person who seeks to be licensed as a real estate or mortgage brokerage must apply to the executive director in a form prescribed by the executive director.
- (2) The application for a brokerage licence must:
- (a) be completed and signed by an individual who is qualified to hold a broker licence in Alberta and who is concurrently applying to be the registered broker for the brokerage;
 - (b) state the ownership structure of the brokerage and, if there are multiple owners, their respective percentage share of ownership and the names of the individual or individuals who have the controlling interest;
 - (c) state the fiscal year of the brokerage;

- (d) state the location(s) and account number(s) of the brokerage trust account(s);
 - (e) state the registered business office address of the brokerage;
 - (f) be accompanied by an affidavit in a form prescribed by the executive director; and
 - (g) be accompanied by the application fee established by Council.
- (3) In the case of a partnership or corporation applying for a brokerage licence, in addition to the information required in (2) above, the application must contain the names of the partners or the officers and directors of the brokerage, as the case may be.
- (4) The executive director may require:
- (a) further information be submitted by an applicant for a brokerage licence within a time specified by the executive director; and
 - (b) any information then or previously submitted be verified by affidavit or otherwise.

Registered broker

- 31 (1) An individual applying to be the registered broker for a brokerage that is a partnership or corporation must:
- (a) in the case of a partnership, be a partner or a manager designated by the partnership; and
 - (b) in the case of a corporation, be a member of the board of directors of the corporation, an officer of the corporation or a manager designated by the corporation.
- (2) If the individual applying to be the registered broker of a brokerage or subsequent to issuance of a registration certificate as a broker:
- (a) is not the owner of the brokerage, or
 - (b) does not have a controlling interest in the ownership structure of the brokerage,
- the executive director may request, as a condition of issuing a brokerage licence, that one or more individuals who are the owners of the brokerage or have a controlling interest in the ownership of the brokerage provide a guarantee or security which in the opinion of the executive director is necessary to ensure the brokerage complies with the provisions of the Act, Rules and Bylaws.
- (3) The individual registered as the broker for a brokerage shall at all times meet the qualifications of a broker and be eligible to be licensed as a broker under these Rules.

Notice requirements

- 32 A brokerage must immediately notify the executive director in writing of:
- (a) any circumstance where the broker is no longer able to perform the duties and responsibilities of a broker outlined in these Rules;
 - (b) the termination or resignation of the broker who is registered with the brokerage;
 - (c) the opening or closing of a trust account;
 - (d) a change in the address of the brokerage's registered business office;
 - (e) a change in the bank, loan corporation, trust corporation, credit union or treasury branch, or location at which the brokerage maintains a trust account;
 - (f) a change in the partners if the brokerage is a partnership; or
 - (g) a change in the directors, officers or shareholders of a corporation if the brokerage is a corporation.

Change of fiscal year end

- 33 A licensed brokerage may change its fiscal year end by giving written notice to the executive director, providing the amended fiscal year end does not result in a reporting period of greater than 12 months.

Division 7 – Refusal, Suspension & Cancellation of a Licence or Registration Certificate

Refusal of
licence or
registration

34 (1) The executive director may refuse to issue a licence or registration certificate to a person, or may recommend that a hearing panel refuse to issue a licence or registration certificate, where the executive director is of the opinion that:

- (a) the person has provided false or misleading information to the executive director in the course of applying for a licence or registration certificate or the renewal of either;
- (b) the person is someone against whom a member of the public has obtained a judgment arising out of that person's action as an industry member and no reasonable arrangements have been made to satisfy it;
- (c) Deleted
- (d) It would not be in the public interest or it would harm the integrity of the industry or bring the industry into disrepute to issue a licence or a registration certificate to that person; or
- (e) the person is not of good character and reputation or is otherwise unfit to be licensed;
- (f) the person has not participated in, or completed, the required education course(s) or examination(s) honestly, or, in compliance with the applicable guidelines or requirements;
- (g) the person has provided false or misleading information while participating in or fulfilling educational or examination requirements; or
- (h) the person is a brokerage and any director, officer, shareholder or partner, as the case may be, associated with the brokerage:
 - (i) is not of good character and reputation; or,
 - (ii) has made an application to withdraw from the industry pursuant to the Act and the application was approved.

(2) If an application for a licence or registration certificate is refused by the executive director or a hearing panel, the application fee, less any service fee established by Council, shall be returned to the applicant.

Suspension or
cancellation of
brokerage,
appraiser or
candidate
licence

35 (1) In addition to the circumstances under which a licence may be suspended or cancelled under the Act, the executive director may suspend or cancel a brokerage, appraiser or candidate licence for any of the following reasons:

- (a) when the brokerage, appraiser or candidate fails to maintain or make available for the purposes of a review proper records at the registered business office;
- (b) when the brokerage, appraiser or candidate fails to immediately fund a trust shortage as directed by the executive director; or
- (c) when an investigator or auditor employed by the Council is denied or restricted access to the registered business office or to any or all of the records of the brokerage, appraiser or candidate or is, in any way, prevented from carrying out his duties and responsibilities under the Act.

(2) When the executive director receives information that, in his opinion, indicates the individual who is registered as the broker for a particular brokerage:

- (a) does not meet the qualifications of a broker;
- (b) has resigned or ceased to be the broker;
- (c) is no longer able to perform the duties and responsibilities of a broker outlined in these Rules;

- (d) exercises little or no authority; or
- (e) is interfered with, restricted or in any way prevented from, performing the duties and responsibilities of a broker outlined in these Rules;

the executive director may suspend the licence of the brokerage.

Temporary
continuation of
brokerage
licence

36 (1) Notwithstanding section 35, the executive director may continue the licence of the brokerage:

- (a) by issuing a temporary broker licence and registration certificate to any individual who, in the executive director's opinion is suitable to carry out the duties and responsibilities of a broker under these Rules; or
- (b) upon the immediate written application to the executive director by the owner of the brokerage or an authorized official to register a replacement broker within seven days.

(2) The term of a temporary broker licence and registration certificate shall not exceed eight months.

(3) The application to register a replacement broker must include information acceptable to the executive director and provide for the continuation of brokerage management and control in the interim period.

Brokerage
ceasing to
carry on
business

37 (1) A brokerage that ceases to carry on the business of a brokerage shall:

- (a) immediately notify the executive director in writing; and
- (b) within 30 days of ceasing to carry on business, provide to the executive director, in a form acceptable to the executive director, an accountant's report on the status of monies held in trust including any trust account(s).

(2) The executive director may require a brokerage that ceases to carry on business to provide additional information about any monies held in trust including any brokerage's trust account(s) or that the accountant's report contain such further information as the executive director directs.

(3) Upon receipt of a notification that a brokerage has ceased to carry on the business of a brokerage, the executive director shall:

- (a) suspend the licence of the brokerage; and
- (b) terminate the licence of the brokerage when the brokerage has provided:
 - (i) the accountant's report referred to in (1) above;
 - (ii) the additional information referred to in (2) above; and
 - (iii) a document signed by the broker, owner or authorized official, satisfactory to the executive director, confirming adequate arrangements have been made with respect to the future status of any monies held in trust including any brokerage trust account(s) and the maintenance of brokerage records as required by the Act.

Suspension or
cancellation of
industry
member
licence

38 Deleted

38.1(1) Subsequent to issuing a licence, and in addition to circumstances under which a licence may be suspended or cancelled under the Act, the executive director shall suspend or cancel a person's licence when the industry member:

- (a) contravenes or fails to comply with a term, condition or restriction, attached to the person's licence by the executive director;
- (b) contravenes or fails to comply with an order of a hearing panel, appeal panel or the court including any term, condition or restriction attached to the person's licence;
- (c) fails to pay, or make satisfactory arrangements to pay, any outstanding fees,

levies, premiums, penalties, fines, or costs imposed by a hearing panel, appeal panel or the court, administrative penalties, or any other payments required to be paid pursuant to the Act, Regulations, Rules or Bylaws.

- (2) Notwithstanding subsection (1), before suspending or cancelling an industry member's licence, the executive director may in extenuating circumstances provide the industry member with additional time, or enter into arrangements with the industry member that are satisfactory to the executive director, for the industry member to comply with the requirements referred to in subsection (1).
- (3) Subsequent to issuing a licence, and in addition to circumstances under which a licence may be suspended or cancelled under the Act, the executive director may suspend or cancel a person's licence when:
 - (a) in matters pertaining to licensing, the industry member:
 - (i) withholds or provides false and misleading information to the executive director in the process of applying for a licence;
 - (ii) swears a false affidavit;
 - (iii) fails to comply with any request for information made by the executive director or the Council or to reply in a constructive way to correspondence from the executive director or the Council;
 - (b) the industry member has not participated in, or completed, the required education course(s) or examination(s) honestly, or, in compliance with the applicable guidelines or requirements;
 - (c) the industry member provides false or misleading information while participating in or fulfilling educational or examination requirements;
 - (d) fails to maintain the appropriate insurance coverage as required by the Act, Regulations, Rules or Bylaws.
 - (e) the industry member fails to file or submit any records or accounting reports as required under the Act, Regulations, Rules or Bylaws.
- (4) Prior to determining whether a person's licence should be suspended or cancelled under subsection (3), and in the case of a suspension for what duration, the executive director or an individual appointed by the executive director to carry out an evidence gathering function for purposes of a licensing review, will gather evidence and information from the person and other relevant parties.
- (5) At the commencement of the licensing review, the person will be provided:
 - (a) notice by the executive director or an individual appointed by the executive director to carry out an evidence gathering function of the specific fact(s) and issue(s) relating to the licensing matter, including notice that a decision may result in a licence suspension or cancellation by a date specified in the notice; and,
 - (b) notice by the executive director or an individual appointed by the executive director to carry out an evidence gathering function that failure to participate in the licensing review and supply requested information to the executive director or an individual appointed by the executive director to carry out the evidence gathering function by the date specified in the notice may result in a licence suspension or cancellation;
- (6) Upon completion of the evidence gathering, the person will be provided:
 - (a) disclosure of all relevant evidence and information relating to the licensing review; and,
 - (b) an opportunity to make oral submissions in the licensing review, or if the person chooses, written submissions, and additional relevant evidence, to the executive

director within 10 days of the date of service of the disclosure set out in (6)(a).

(7) The person will be advised that the person's failure to make submissions to the executive director within 10 days of the date of service of the disclosure set out in (6)(a) may result in a licence suspension or cancellation for a duration to be determined by the executive director.

(8) The executive director will decide whether or not the person's licence will be suspended or cancelled, and in the case of a suspension, for what duration.

(9) The executive director will serve the decision on the person.

Division 8 – Review of Executive Director's Decision

Review of
refusal,
suspension or
cancellation

39 (1) A person:

- (a) who has had terms, conditions or restrictions imposed under section 22;
- (b) who has been refused a licence or registration certificate under section 34, or
- (c) whose licence has been suspended or cancelled pursuant to section 35 or section 38.1;

may, within 30 days after being notified in writing of the decision, request a review of the decision by an appeal panel appointed under the Act.

(2) The appeal panel will, in addition to affording the person the opportunity to make written representations, afford the person requesting the review the opportunity to make oral representations.

(3) The appeal panel may conduct any enquiries, in addition to those made by the executive director, it considers appropriate for the purposes of the review and, in the case of a refusal of a licence or registration certificate, may treat the request for review as an original application for a licence or registration certificate.

(4) The executive director shall serve in accordance with the Act the decision of the appeal panel on the person requesting the review and, where the decision upholds the decision of the executive director, the decision shall be accompanied by reasons.

(5) The appeal panel's decision is final.

Division 9 – Information to Be Provided by Industry Members

Notification by
industry
members

40 (1) An industry member must immediately notify, in writing, the executive director when:

- (a) the name of the industry member changes;
- (b) the industry member is disciplined by any real estate board, real estate association, mortgage broker association, appraiser association, or any professional, occupational or regulatory body;
- (c) the industry member has any judgment(s) rendered against the industry member in relation to the provision of services or sale of goods to consumers;
- (d) any business the industry member owns or has participated in as a partner, director or officer in the past three years, has any judgment(s) rendered against the business;
- (e) the industry member is the subject of any bankruptcy proceedings;
- (f) any business the industry member owns or has participated in as a partner, director or officer in the past three years, is the subject of any bankruptcy or receivership proceedings;
- (g) proceedings pursuant to the Criminal Code are commenced against the industry member; or

- (h) the industry member is convicted of any criminal offence or any other offence under any law of any country, province or state, excluding provincial or municipal highway traffic offences resulting in only monetary fines and/or demerit points.
- (2) In addition to providing a notice in writing, the industry member must provide particulars and any additional information or documentation requested by the executive director.
- (3) In the case of an associate broker or associate, a copy of the notice provided to the executive director must be provided by the associate broker or associate to the broker.
- (4) In the case of an appraiser or candidate, the executive director must be immediately notified when:
 - (a) the appraiser or candidate ceases to be a member in good standing of an appraiser association;
 - (b) the appraiser or candidate is no longer able to perform the duties and responsibilities of an appraiser or candidate outlined under these Rules; or
 - (c) there is a change in the address of the appraiser's or candidate's registered business office.

PART 2 INDUSTRY STANDARDS OF PRACTICE

Division 1 – Standards of Conduct for Industry Members

Industry member
responsibilities

41 Industry members must:

- (a) act honestly;
- (b) provide competent service;
- (c) disclose to their clients, at the earliest practical opportunity, how they will be paid for their services;
- (d) fulfill their fiduciary obligations to their clients;
- (e) ensure the role of the industry member is clearly understood by their clients and third parties;
- (f) disclose to their clients, at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to, or in their dealings with, a client;
- (g) practice in strict accordance with the Act, Regulations, Rules, Bylaws and any other laws that govern trading in real estate, mortgage transactions or appraisals in Alberta;
- (h) cooperate fully with, and provide any information requested to, any representative of the Council carrying out their duties and responsibilities under the Act;
- (i) comply with:
 - (i) an order issued pursuant to the Act by the Council, the executive director, a hearing panel, appeal panel or court; and
 - (ii) any terms, conditions or restrictions of licensing; and
- (j) refuse to provide further services to or on behalf of a client who instructs him to withhold a disclosure required by the Act, Regulations, Rules, Bylaws, or any other laws.

Industry member
prohibitions

42 Industry members must not:

- (a) make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so;
- (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings;
- (c) use confidential information obtained from any person for personal gain nor should that information be used for any purpose other than that for which it was obtained;
- (d) discourage a client, customer or a party to a trade in real estate or deal in mortgages from seeking legal counsel or expert advice;
- (e) deny professional services to, or be a party to any plan or agreement to discriminate against, any client, customer or party to a trade in real estate or deal in mortgages for reasons of race, creed, colour, gender, sexual orientation, family status, marital status, age, national origin, or physical disability;
- (f) physically, sexually, emotionally or verbally abuse a client, customer, industry member or party to a trade in real estate, deal in mortgages, or appraisal services; or
- (g) engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

Written service
agreements

43 (1) Subject to these rules, an industry member who establishes a client relationship should enter into a written service agreement with that prospective client, unless declined by the prospective client.

Resolution 2006-8 approved by Council Dec 20/06

(2) Every written service agreement shall:

- (a) be signed by the relevant parties;
- (b) clearly show all terms and conditions of the agreement and shall include:
 - (i) the names of the parties to the agreement;
 - (ii) if applicable, the address or legal description of the property affected by the agreement;
 - (iii) if applicable, the date on which the agreement will become effective;
 - (iv) the duration of the agreement;
 - (v) the services to be provided by the brokerage or real estate appraiser;
 - (vi) the responsibilities of each party to the agreement;
 - (vii) the use and distribution of personal or confidential information;
 - (viii) the amount or method of calculating the remuneration or alternate compensation to be paid and the circumstances on which it will be payable;
 - (ix) provisions for the termination of the agreement; and
- (c) provide that any amendment or addition to the terms of the agreement shall be in writing and signed by the relevant parties.

(3) An industry member must deliver to the client a true copy of a service agreement and of any amendment or addition, immediately upon its signature.

Protection of
client information

44 (1) In addition to the requirements of relevant legislation on the protection of personal information, an industry member must not disclose information regarding a client,

property or transaction to another person unless:

- (a) authorized by the client, or
- (b) required by law.

(2) Each real estate brokerage, mortgage brokerage, real estate appraiser and candidate will:

- (a) establish adequate policies and procedures for the maintenance and protection of personal and confidential information; and
- (b) ensure all industry members registered with the brokerage and any staff members are aware of the policies and procedures referred to in (1) above and routinely carry them out in the course of their work.

Referral disclosure

45 (1) When, in the course of providing services, an industry member refers any person to any industry member or any service provider and the industry member knows he may be entitled to receive a referral fee, remuneration or benefit from that service provider 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.

(2) An industry member must retain a copy of the disclosure referred to in sub-section (1) above.

(3) If an industry member makes a referral to another person the industry member believes to be an industry member, the industry member must take reasonable steps to ensure the person is in fact authorized to carry out the activities for which the referral is made.

Support personnel and assistants

46 (1) An industry member must only assign to support personnel or assistants tasks they are competent to perform and must ensure they are properly trained and supervised.

(2) An industry member must not delegate, assign, request, direct or in any way allow an unlicensed or unregistered assistant to perform tasks that must only be performed by an industry member.

(3) In the case of an unlicensed or unregistered assistant, the industry member must ensure clients, customers and the public have full knowledge that the assistant is unlicensed or unregistered.

(4) An industry member must ensure in any communication, advertising or marketing material there is no suggestion, implication or statement that may suggest or lead the public to believe an unlicensed or unregistered assistant is qualified to trade in real estate, deal in mortgages, or perform real estate appraisals, as the case may be.

Division 2 – Real Estate Brokerage Standards

Definition

47 This Division applies to all classes of real estate brokers and a reference to “industry member” includes a real estate brokerage, broker, associate broker and associate.

Agency relationship

48 For the purposes of this division:

- (a) an agency relationship is established when a buyer or a seller expressly or implicitly consents that an industry member should act on his or her behalf, and the industry member consents so to act or so acts in a trade of real estate;

- (b) a buyer or seller who is in an agency relationship is a client of the industry member; and
- (c) a buyer or seller who is not in an agency relationship with the industry member is a customer.

Real estate
brokerage
responsibilities

49 A real estate brokerage must:

- (a) only trade in real estate in the name that appears on the brokerage's licence;
- (b) ensure the name of the brokerage is clearly indicated in the course of trading in real estate including any related advertisements; and
- (c) disclose to the client the nature and extent of any benefits the brokerage:
 - (i) anticipates receiving, directly or indirectly, from expenditures made by or on behalf of a client to or on behalf of whom rental property management services are or may be provided; or
 - (ii) anticipates any associate of the brokerage will receive, directly or indirectly, from expenditures made by or on behalf of a client to or on behalf of whom rental property management services are or may be provided.

Real estate
brokerage
prohibitions

50 A real estate brokerage must not:

- (a) employ, permit or engage a broker, associate broker or associate registered with another brokerage to trade in real estate in its name or on its behalf, directly or indirectly, as the case may be;
- (b) employ a person to trade in real estate unless that person meets the requirements of the Act, Regulations, Rules and Bylaws, and all levies, fees, premiums, fines, administrative penalties and other amounts that are payable under or pursuant to the Act, Regulations, Rules, or Bylaws or under any predecessor enactments in respect of that person have been paid;
- (c) pay a commission or other remuneration, directly or indirectly, in connection with a trade in real estate except:
 - (i) to a broker, associate broker or associate employed by the brokerage or to not more than one corporation of which that broker, associate broker or associate as the case may be, owns not less than fifty percent (50%) of the shares issued by that corporation;
 - (ii) to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta; or
 - (iii) to an auctioneer qualified under the regulations under the *Fair Trading Act*, where the trade in real estate is made in the course of and as part of that person's duties as an auctioneer;
- (d) pay, offer to pay, agree, or allow to be paid a referral fee or any remuneration to a person in relation to real estate services if the person is required to be licensed in relation to those services but is not licensed; or
- (e) pay a commission or other remuneration directly or indirectly in connection with a trade in real estate to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta when the brokerage has knowledge that the commission or remuneration will be paid to or be shared with a person who is required to be licensed in relation to those services but is not licensed.

Real estate
broker
responsibilities

51 (1) A real estate broker must:

- (a) be actively engaged in the management of the real estate brokerage with

- which the broker is registered;
- (b) trade in real estate only in the name that appears on the individual's licence and in the name of the brokerage with which the broker is registered;
 - (c) ensure the name of the brokerage is clearly indicated in the course of trading in real estate, including any related advertisements;
 - (d) ensure the business of the brokerage is carried out competently and in accordance with the Act, Regulations, Rules and Bylaws;
 - (e) ensure there is an adequate level of supervision for associate brokers or associates, as the case may be, within the brokerage and employees who perform duties on behalf of the brokerage;
 - (f) provide all industry members of the brokerage and other personnel with written policies and procedures by which they are expected to operate, including written policies and procedures for personal trades;
 - (g) ensure that for all monies held in trust, the bank records are maintained in accordance with the Act, Regulations, Rules, Bylaws and the law as it relates to trustees;
 - (h) ensure adequate control over any access to ABM cards used for electronic deposits and transfers and any access codes used for Internet banking or ABM cards;
 - (i) review all real estate agreements in a timely manner, including but not limited to client/customer relationships and accepted offers to purchase;
 - (j) ensure proper management and control of documents or records related to licensing, registrations and related regulatory requirements;
 - (k) ensure all documents and records related to trades in real estate required under the Act and these Rules are maintained or made available by the brokerage for the purposes of a review at the registered business office of the brokerage;
 - (l) ensure that all parties to an agreement giving effect to a trade in real estate are immediately notified if:
 - (i) a deposit contemplated by the agreement that, if received, would be held by the related brokerage under the Act has not been received; or
 - (ii) a deposit cheque or other negotiable instrument that the brokerage received in respect of a deposit referred to in (i) above has not been honoured; and
 - (m) ensure notice under (l) above is given in writing or confirmed in writing.
- (2) When a broker does not have a controlling interest in the ownership of the real estate brokerage, the broker must have a written agreement with the brokerage giving the broker authority to carry out the duties and responsibilities of a broker under these Rules.
- (3) A broker is accountable for the conduct of an associate broker, associate or employee, as the case may be, if the broker:
- (a) was not actively involved in the management of the brokerage;
 - (b) failed to ensure an adequate level of supervision was in place for the associate broker, associate or employee, as the case may be;
 - (c) was wilfully blind to the conduct of the associate broker, associate or employee, as the case may be;

- (d) was a participant in the misconduct;
- (e) had knowledge of the misconduct of the associate broker, associate or employee, as the case may be, and failed to take reasonable steps to stop such misconduct;
- (f) upon becoming aware of the misconduct failed to take reasonable steps to correct the misconduct or reduce any harm that may have resulted from the misconduct; or
- (g) failed to notify the executive director upon becoming aware of misconduct relating to fraud, deception, theft, or unlawful activities on the part of the associate broker, associate or employee.

Delegation by
broker

52 (1) A real estate broker may delegate the broker's duties and responsibilities to another industry member registered with the brokerage if:

- (a) the delegate is registered with the brokerage and is qualified to carry out the responsibilities;
- (b) the particulars of the delegation of responsibilities by the broker to the delegate are clear, in writing, agreed to and understood by the broker and the delegate;
- (c) the particulars of the delegation are communicated to the employees and associates of the brokerage, associate brokers and associates, as the case may be; and
- (d) the broker has a system in place to monitor the delegate and verify that adequate supervision is being maintained.

(2) In the event a real estate broker delegates the broker's duties and responsibilities to a delegate, the broker remains accountable for the conduct of the delegate and all associate brokers, associates or employees in the brokerage.

Real estate
associate broker
and associate
responsibilities

53 A real estate associate broker and associate must:

- (a) trade in real estate only in the name that appears on that individual's licence and in the name of the brokerage with which that individual is registered;
- (b) ensure that all trades in real estate and the relevant documentation meet legislative requirements found under the Act, Regulations, Rules and Bylaws;
- (c) provide to the broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages:
 - (i) related to a trade in real estate; and
 - (ii) required under the Act and these Rules;
- (d) keep the broker informed of the activities being performed by the associate broker or associate on behalf of the brokerage;
- (e) ensure there is an adequate level of supervision for his employees and others who perform duties on his behalf;
- (f) notify the broker if a deposit referred to in Rule 51(1)(l) has not been received;
- (g) respond promptly to any inquiry that is addressed to him by the broker; and
- (h) notify the broker upon learning of a violation of the Act, Regulations, Rules or Bylaws by any broker, associate broker, associate or employee associated with a brokerage.

Real estate
broker, associate
broker and
associate
prohibitions

- 54 (1) A real estate broker, associate broker or associate, as the case may be, must not:
- (a) trade in real estate on behalf of a brokerage other than the brokerage with which he is registered;
 - (b) promise to pay or pay a commission, referral fee or other remuneration, directly or indirectly, to any person resulting from or in connection with a trade in real estate except through the brokerage with which he is registered;
 - (c) accept a commission, referral fee or other remuneration, directly or indirectly, for a trade in real estate except through the brokerage with which he is registered;
 - (d) directly or indirectly, advertise, communicate or offer to any person an incentive except an incentive that is provided by and on behalf of the brokerage with which he is registered; or
 - (e) make an inducement unless, at the time of making the inducement, he delivers to the person to whom the inducement is made a statement signed by:
 - (i) the real estate broker, associate broker or associate, and
 - (ii) if applicable, the other person involved in the inducement, clearly setting out all the details of the inducement.
- (2) A real estate broker, associate broker or associate, as the case may be, must not directly or indirectly, provide an inducement unless the inducement is provided by and on behalf of the brokerage with which the real estate broker, associate broker or associate is registered, details of the inducement are provided in writing and the broker has provided written approval.
- (3) An industry member shall not provide any services to the client or potential client in a trade or anticipated trade in which the industry member has, or will have, a conflict of interest without receiving the written and informed consent of the party.

Disclosure
requirements

- 55 (1) Before eliciting or as soon as possible upon receiving confidential information from any person concerning that person's real estate needs, motivation, financial qualifications or in any event before entering into a service agreement, an industry member must disclose in writing to that person:
- (a) the nature of the services the industry member will provide;
 - (b) whether the industry member is acting in the trade or anticipated trade on behalf of any other person, in any capacity;
 - (c) any conflict of interest that may exist; and
 - (d) any other facts that may be likely to influence the person's decision.
- (2) If subsequent to this disclosure, there is any material change in the facts which have been disclosed, the industry member must immediately disclose the change to that person.
- (3) The industry member must use his best efforts to obtain written acknowledgement of disclosures made pursuant to this section.
- (4) The industry member's duty of disclosure is not triggered merely by:
- (a) a bona fide "open house" showing;
 - (b) preliminary conversations or "small talk" concerning the price range, location and property styles; or

- (c) responding to general factual questions from a potential buyer or seller.

Exclusive
agreements

56 An exclusive buyer brokerage agreement or exclusive seller brokerage agreement between an industry member and a client must be:

- (a) set out in writing, and
(b) comply with the provisions contained in these Rules or prescribed by Council.

Sole agency with
a seller

57 The basic obligations of an industry member who is in a sole agency relationship with a seller are:

- (a) to use best efforts to market the property and to promote the interests of the seller;
(b) at the earliest reasonable opportunity, to advise any buyer interested in the property that the industry member is the seller's agent;
(c) subject to section 59 to act as only the seller's agent;
(d) to obey all lawful instructions of the seller;
(e) to fulfill its fiduciary duties of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the seller's interests and those of the industry member or buyers;
(f) not to appoint another brokerage to act on behalf of the seller as sub-agent without the seller's prior written consent;
(g) to exercise reasonable care and skill in the performance of the agreement;
(h) to assist the seller in negotiating favourable terms and conditions with a buyer and in preparing and complying with a legally binding agreement of purchase and sale of the property;
(i) to disclose to all buyers all material latent defects affecting the property known to the industry member;
(j) to provide, in a timely manner, all offers and counter-offers to and from the seller even when the property is already the subject of an agreement of purchase and sale;
(k) to disclose, in a timely manner, to the seller all relevant facts affecting the transaction known to the industry member;
(l) to keep the seller fully informed regarding the progress of the transaction;
(m) to advise the seller to obtain expert advice on matters of importance to the seller; and
(n) to comply with the provisions of the Act, Regulations, Rules and Bylaws.

Sole agency with
a buyer

58 The basic obligations of an industry member who is in a sole agency relationship with a buyer are to:

- (a) use best efforts in locating a property in the specified market area that meets the material requirements identified by the buyer and generally to promote the interests of the buyer;
(b) at the earliest reasonable opportunity, advise any seller in whose property the buyer is interested that the industry member is the buyer's agent;
(c) subject to section 59, act as only the buyer's agent;
(d) obey all lawful instructions of the buyer;
(e) fulfill its fiduciary duties of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the buyer's interests and those of

- the industry member, sellers or competing buyers;
- (f) not appoint another brokerage to act on behalf of the buyer as sub-agent without the buyer's prior written consent;
 - (g) exercise reasonable care and skill in the performance of the agreement;
 - (h) seek out and advise the buyer in a timely manner of available properties in the market area which may meet the buyer's requirements, including those listed with other brokerages and other available properties known to the industry member;
 - (i) take reasonable steps to discover relevant facts pertaining to any property for which the buyer is considering making an offer;
 - (j) disclose, in a timely manner, to the buyer all relevant facts known to the industry member affecting a property or transaction;
 - (k) advise the buyer to obtain expert advice on matters of importance to the buyer;
 - (l) provide, in a timely manner, all offers and counter-offers to and from the buyer even when the property is already the subject of an agreement of purchase and sale;
 - (m) keep the buyer fully informed regarding the progress of the transaction;
 - (n) disclose to the buyer the existence and terms of any competing offers known to the industry member for a property in which the buyer is interested;
 - (o) assist the buyer in negotiating favourable terms and conditions with a seller and in preparing and complying with a legally binding agreement of purchase and sale of the property; and
 - (p) comply with the provisions of the Act, Regulations, Rules and Bylaws.

Designated
Agency

58.1 (1) The basic obligations of an industry member who is acting as a designated agent for a seller or a buyer are the same as for an industry member who is in a sole agency relationship with a seller or buyer, as the case may be, and include those obligations that are set out in sections 57 and 58 of the Rules respectively.

(2) If a situation arises where a brokerage enters into a designated brokerage agreement with a buyer or seller, as the case may be, the brokerage shall;

- (a) establish policies and procedures to protect a client's confidential information; and,
- (b) establish policies and procedures governing the activities of the brokerage and designated agents registered with the brokerage; and,
- (c) communicate to clients its policies and procedures that ensure that a designated agent does not communicate any information prejudicial to the interests of the client to other members of the brokerage, including other designated agents.

(3) All designated brokerage agreements must be in writing and must contain the following provisions:

- (a) that the brokerage will designate an agent to serve as sole agent for the seller and will designate other industry members registered with the brokerage to serve as sole agents of any buyers also represented by the brokerage who are interested in the property;

- (b) that if, for any reason, the designated agent ceases to be licensed with the brokerage, the brokerage will designate another member of the brokerage to serve as sole agent for the seller or the buyer, as the case may be;
- (c) that the brokerage will not appoint another brokerage to act on behalf of the seller or the buyer, as the case may be, as a sub-agent without the seller's or buyer's prior written consent;
- (d) that a seller or a buyer, as the case may be, agrees that an agency relationship will exist only with the designated agent and not with the brokerage;
- (e) that a seller or a buyer, as the case may be, acknowledges that the brokerage's responsibilities will be limited to:
 - (i) treating the interests of both a seller and a potential buyer of a property in an even handed, objective manner;
 - (ii) ensuring compliance by the designated agent with the brokerage's policies and procedures governing designated agents;
 - (iii) supervising the designated agent and support staff to ensure the designated agent fulfills its mandate under the agreement;
- (f) that the brokerage and the designated agent undertake that they have not, and will not, disclose any confidential information concerning the seller or the buyer, as the case may be, to any other member of the brokerage or other person unless:
 - (i) authorized by the seller or the buyer, as the case may be; or,
 - (ii) required by law;
- (g) that a designated agent's knowledge will not be attributed to the brokerage or any other designated agent of the brokerage;
- (h) that the brokerage's knowledge will not be attributed to any designated agents of the brokerage.

Transaction
Brokerage for
Common Law

59 (1) If the situation arises where a brokerage represents a seller with whom it has an agency relationship and a buyer with whom it has an agency relationship is interested in the seller's property, in order to facilitate the purchase and sale of the property, the buyer and the seller and the brokerage may enter into a written transaction brokerage agreement with respect to that property.

(2) The brokerage will provide both the buyer and seller with the opportunity to review the transaction brokerage agreement and to request further information concerning the transaction brokerage agreement and transaction brokerage relationship described in it before signing the agreement.

(3) If the parties do not agree to enter into a transaction brokerage agreement, unless otherwise agreed to by the parties the brokerage will continue to represent the party, be it the seller or the buyer, with whom it first entered into an agency relationship and the brokerage will offer the option either:

- (a) to treat the other party as a customer; or
- (b) to recommend the other party to another brokerage.

(4) If the parties authorize the brokerage to enter into a transaction brokerage relationship, the brokerage agreement will indicate how the brokerage will be remunerated and provide that the brokerage will:

- (a) treat the interests of both the buyer and the seller in an even handed, objective and impartial manner, including but not limited to, any advice or information given

- to one party will be disclosed to the other;
- (b) exercise reasonable care and skill in the performance of its mandate under the agreement;
 - (c) obey the instructions of the buyer and the seller insofar as they are consistent with other terms of the agreement;
 - (d) perform for the buyer and the seller all necessary facilitation services, that is, services by which the interests of the buyer and seller are met in an even handed, objective and impartial manner without providing confidential advice, advocating on behalf of either the buyer or seller, or using discretion or judgment that benefits the buyer or seller to the prejudice of the other, and as required, the brokerage will:
 - (i) assist the buyer and the seller in negotiating a mutually acceptable agreement;
 - (ii) provide real estate statistics and information on property including all comparable property information available through the listing services or other local databases;
 - (iii) provide agreements of purchase and sale, lease or other relevant documents;
 - (iv) prepare all necessary documents in accordance with the instructions of the buyer and seller;
 - (v) provide the names of real estate appraisers, mortgage brokers, surveyors, building inspectors, lenders, insurance agents, architects, engineers and the like, but the brokerage will not recommend any particular professional to the buyer or the seller;
 - (vi) present in a timely manner, all offers and counter-offers to and from the buyer and seller regardless of whether the property is already the subject of a contract;
 - (vii) convey to the buyer and seller in a timely manner all information that either wishes to have communicated to the other; and
 - (viii) keep the buyer and seller fully informed regarding the progress on the transaction;
 - (e) disclose:
 - (i) to the buyer, all material latent defects affecting the property known to the brokerage; and
 - (ii) to the seller, all material facts relevant to the buyer's ability to purchase the property known to the brokerage;
 - (f) ensure that the industry member(s) registered with the brokerage providing services to the buyer and seller under the agreement;
 - (i) comply with the brokerage policies and procedures governing transaction brokerage; and
 - (ii) treat the interests of both the buyer and the seller in an even handed, objective and impartial manner;
 - (g) supervise the industry member(s) of the brokerage and support the staff members providing services to the buyer and seller to ensure that they properly fulfill the agreement;
 - (h) hold all monies received in accordance with the provisions of the Act;
 - (i) not give false or misleading information to the buyer or the seller;
 - (j) not disclose without the informed written consent of the buyer or seller, as the

case may be:

- (i) that the buyer may be prepared to offer a higher price or terms other than those contained in the offer to purchase or the exclusive buyer brokerage agreement;
 - (ii) that the seller may be prepared to accept a lower price or terms other than those contained in the offer to purchase or the exclusive seller brokerage agreement;
 - (iii) the motivation of the buyer or seller for wishing respectively to purchase or sell the property; and
 - (iv) subject to clause (4)(e) above, personal information relating to the buyer or the seller and other information disclosed at any time in confidence by either to the brokerage; and
- (k) not conduct or influence the selection of:
- (i) an independent inspection of the property for the buyer and will not verify the accuracy or completeness of any information supplied or statements made by the seller concerning the property; or
 - (ii) an independent inquiry into the financial status of the buyer for the seller and will not verify the accuracy or completeness of any financial information supplied by the buyer.

Transaction
Brokerage for
Designated
Agency

59.1(1) If the situation arises where a brokerage representing parties in designated brokerage has appointed the same industry member to act as the designated agent for each of the buyer and seller and the buyer is interested in the seller's property, in order to facilitate the purchase and sale of the property, the buyer and seller and the brokerage may enter into a written transaction brokerage agreement with respect to that property.

(2) The brokerage will provide both the buyer and seller with the opportunity to review the transaction brokerage agreement and to request further information concerning the transaction brokerage agreement and transaction brokerage relationship described in it before signing the agreement.

(3) If the parties do not agree to enter into a transaction brokerage agreement, unless otherwise agreed to by the parties the brokerage will continue to represent the party, be it the buyer or the seller, with whom it first entered into an agency relationship; and the brokerage will offer the option either:

- (a) to designate another member of the brokerage to represent the other party as sole agent;
- (b) to treat the other party as a customer; or
- (c) to recommend the other party to another brokerage.

(4) If the parties authorize the brokerage to enter into a transaction brokerage relationship, the brokerage agreement will indicate how the brokerage will be remunerated and provide that:

- (a) the brokerage will:
 - (i) ensure that the industry member(s) registered with the brokerage providing services to the buyer and seller under the agreement:
 - (A) comply with the brokerage policies and procedures governing transaction brokerage; and
 - (B) treat the interests of both the buyer and the seller in an even handed, objective and impartial manner;

- (ii) supervise the industry member(s) of the brokerage and support the staff members providing services to the buyer and seller to ensure that they properly fulfill the agreement;
- (iii) hold all monies received in accordance with the provisions of the Act.
- (b) the designated agent now acting in the capacity of a transaction facilitator will:
 - (i) treat the interests of both the buyer and the seller in an even handed, objective and impartial manner, including but not limited to, any advice or information given to one party will be disclosed to the other;
 - (ii) exercise reasonable care and skill in the performance of its mandate under the agreement;
 - (iii) obey the instructions of the buyer or the seller insofar as they are consistent with other terms of the agreement;
 - (iv) perform for the buyer and the seller all necessary facilitation services, that is, services by which the interests of the buyer and seller are met in an even handed, objective and impartial manner without providing confidential advice, advocating on behalf of either the buyer or seller, or using discretion or judgment that benefits the buyer or seller to the prejudice of the other, and as required, the brokerage will:
 - (A) assist the buyer and the seller in negotiating a mutually acceptable agreement;
 - (B) provide real estate statistics and information on property including all comparable property information available through the listing services or other local databases;
 - (C) provide agreements of purchase and sale, lease or other relevant documents;
 - (D) prepare all necessary documents in accordance with the instructions of the buyer and seller;
 - (E) provide the names of real estate appraisers, mortgage brokers, surveyors, building inspectors, lenders, insurance agents, architects, engineers and the like, but the brokerage will not recommend any particular professional real estate service providers to the buyer or the seller;
 - (F) present in a timely manner, all offers and counter-offers to and from the buyer and seller regardless of whether the property is already the subject of a contract;
 - (G) convey to the buyer and the seller in a timely manner all information that either wishes to have communicated to the other; and
 - (H) keep the buyer and seller fully informed regarding the progress on the transaction;
 - (v) disclose
 - (A) to the buyer, all material latent defects affecting the property known to the brokerage; and
 - (B) to the seller, all material facts relevant to the buyer's ability to purchase the property known to the brokerage;
 - (vi) not give false or misleading information to the buyer or the seller;
 - (vii) not disclose without the informed written consent of the buyer or seller, as the case may be:
 - (A) that the buyer may be prepared to offer a higher price or

- terms other than those contained in the offer to purchase or the exclusive buyer brokerage agreement;
 - (B) that the seller may be prepared to accept a lower price or terms other than those contained in the offer to purchase or the exclusive seller brokerage agreement;
 - (C) the motivation of the buyer or seller for wishing respectively to purchase or sell the property; and
 - (D) subject to clause 4(b)(v) above, personal information relating to the buyer or the seller and other information disclosed at any time in confidence by either to the brokerage;
- and
- (viii) not conduct or influence the selection of:
 - (A) an independent inspection of the property for the buyer and will not verify the accuracy or completeness of any information supplied or statements made by the seller concerning the property; or
 - (B) an independent inquiry into the financial status of the buyer for the seller and will not verify the accuracy or completeness of any financial information supplied by the buyer.

Customer status

- 60 (1) If a brokerage:
- (a) acts as the agent of a seller and is requested to assist a buyer in purchasing the seller's property; or
 - (b) acts as the agent of a buyer and introduces the buyer to a seller's property;
- the buyer or seller for whom the brokerage is not an agent and the brokerage may enter into a customer status acknowledgement.
- (2) Each customer status acknowledgement will provide that the customer has received and read the acknowledgement and has been given the opportunity to request further information and independent advice concerning the acknowledgement and the representation relationships described and that the customer:
- (a) has chosen to forgo any agency representation, together with its advantages, protection and services;
 - (b) understands that the brokerage does not owe the customer any agency obligations and, in particular, any fiduciary obligations; and
 - (c) understands that the brokerage will not provide the customer with any services that require the exercise of discretion or judgment, the giving of confidential advice, or the brokerage advocating on behalf of the customer.
- (3) Each customer status acknowledgement shall provide that the brokerage's obligations to the customer are limited to:
- (a) the exercise of reasonable care and skill in relation to activities outlined in this section;
 - (b) not negligently or knowingly providing the customer with false or misleading information;
 - (c) holding all monies received from the customer in accordance with the provisions of the Act; and
 - (d) complying with the provisions of the Act, Regulations, Rules, and Bylaws.

- (4) If the customer is a buyer, the brokerage may:
- (a) provide real estate statistics and information on the property including all comparable property information available through the listing services or other local databases;
 - (b) provide agreements of purchase and sale, lease or other relevant documents and prepare all necessary documents in accordance with the instructions of the customer;
 - (c) provide the names of real estate service providers, but the brokerage will not recommend any particular service provider to the customer;
 - (d) present in a timely manner, all offers and counter-offers to and from the customer regardless of whether the property is already the subject of a contract;
 - (e) convey to the seller in a timely manner all information that the customer wishes to have communicated to the seller; and
 - (f) keep the customer informed regarding the progress of the transaction.
- (5) If the customer is a seller, the brokerage may:
- (a) provide real estate statistics and information on the property including all comparable property information available through the listing services or other local databases;
 - (b) provide agreements of purchase and sale, lease or other relevant documents and prepare all necessary documents in accordance with the instructions of the customer;
 - (c) provide the names of real estate service providers, but the brokerage will not recommend any particular service provider to the customer;
 - (d) present in a timely manner, all offers and counter-offers to and from the customer regardless of whether the property is already the subject of a contract;
 - (e) convey to the buyer in a timely manner all information that the customer wishes to have communicated to the buyer; and
 - (f) keep the customer informed regarding the progress of the transaction.

Forms

60.1(1) Subject to the Rules, the content of the Real Estate Council of Alberta forms and Agency Relationship Guide contained in Schedule 1 is mandatory for use when industry members trade in residential real estate.

(2) If industry members use different forms or a different brochure than those set out in Schedule 1, the forms or brochures used must contain the mandatory content set out in Schedule 1 which mandatory content must not be directly or indirectly altered by the industry member.

(3) Any forms used by industry members may, in addition to the mandatory content, include additional or supplementary content; however, such additional or supplementary content must not directly or indirectly alter the meaning or effect of the mandatory content and must not alter the obligations or requirements of industry members outlined in the Act or these Rules.

(4) Notwithstanding 60.1(2), upon the initiative and request of a client, an industry member may by hand add to, strikeout or alter any content of the mandatory forms and, if agreed to by all the parties, such change must be clearly indicated on the form and initialled by the client and the industry member.

Resolution 2007-2 approved by Council on March 22, 2007

Delivery of documents

61 When an industry member receives an offer or an acceptance of an offer in writing from a party to a trade in real estate, the industry member shall, in a timely manner:

- (a) provide that party with a true copy of that offer or acceptance; and
- (b) deliver a true copy of that offer or acceptance to the other parties to that trade.

Personal real estate trades

62 (1) An industry member trading in real estate on the industry member's own behalf, either directly or indirectly, must disclose in writing:

- (a) to a buyer or seller who is not represented by an industry member:
 - (i) any interest, direct or indirect, that he has in the transaction;
 - (ii) that the industry member is authorized under the Act;
 - (iii) the name of the brokerage with which the industry member is registered;
 - (iv) complete details of any negotiations for a further trade of the real estate or the industry member's interest in it to another person; and
 - (v) any information within the knowledge of the industry member that could materially affect the value of the real estate.
- (b) to the industry member representing a buyer or seller:
 - (i) that the industry member is authorized under the Act; and
 - (ii) the name of the brokerage with which the industry member is registered.

(2) When any person employed by or associated with a brokerage wishes to acquire an interest in a property that is listed for sale with or managed by the brokerage, the brokerage must immediately:

- (a) disclose to the seller of the property the existence of a conflict of interest;
- (b) disclose to the seller the name of the buyer and the nature of their relationship to the brokerage;
- (c) disclose to the seller any confidential information of the seller that the buyer may have already received;
- (d) disclose to the seller who will be representing the buyer with respect to the transaction; and
- (e) provide the seller with an opportunity to seek legal and independent advice.

(3) Sub-section (2) above applies to a broker, associate broker, associate, director, shareholder, official or an employee of a brokerage or any of their immediate family members,

Guaranteed sale

63 A real estate broker, associate broker or associate must not advertise, offer or enter into a guaranteed sale agreement except on behalf of the brokerage with which that broker, associate broker or associate is registered.

(i)

(d)

(a)

(a)

(a)

Division 3 – Mortgage Brokerage Standards

Definition

64 This Division applies to all classes of mortgage brokers and a reference to a brokerage includes a mortgage brokerage, broker and associate.

Mortgage
brokerage
responsibilities

65 A mortgage brokerage must:

- (a) only deal in mortgages, as the case may be, in the name that appears on the brokerage's licence;
- (b) ensure the name of the brokerage is clearly indicated in the course of dealing in mortgages, including any related advertisements; and
- (c) disclose to borrowers in writing:
 - (ii) the nature of its service relationship with the borrower;
 - (iii) the nature of its relationship with the lender;
 - (iv) the range of lenders whose products it offers;
 - (v) how it will be compensated for the transaction;
 - (vi) the nature of any other monies or benefits it will receive from the lender and the factors that influence payment of any additional monies or benefits; and
- (vii) any additional fees payable by the borrower.

Mortgage
brokerage
prohibitions

66 A mortgage brokerage must not:

- (a) employ, permit or engage a broker or associate registered with another brokerage to deal in mortgages in its name or on its behalf, directly or indirectly, as the case may be;
- (b) employ a person to deal in mortgages unless that person meets the requirements of the Act, Regulations, Rules, and Bylaws, and all levies, fees, premiums, fines, administrative penalties and other amounts that are payable under or pursuant to the Act, Regulations, Rules, Bylaws or under any predecessor enactments in respect of that person have been paid;
- (c) pay a commission or other remuneration, directly or indirectly, in connection with a mortgage dealing except:
 - (ii) to a broker or associate employed by the brokerage or to not more than one corporation of which that broker or associate, as the case may be, owns not less than fifty percent (50%) of the shares issued by that corporation;
 - (iii) to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta; or
- (d) pay, offer to pay, agree, or allow to be paid a referral fee or any remuneration

to a person in relation to dealing in mortgages if the person is required to be licensed in relation to those services but is not licensed;

- (e) pay a commission or other remuneration directly or indirectly in connection with a dealing in mortgages to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta when the brokerage has knowledge that the commission or remuneration will be paid to or shared with a person who is required to be licensed in relation to those services but is not licensed; or
- (f) offer a lender or investor a mortgage loan guarantee either on behalf of itself or on behalf of any other industry member.

Mortgage broker
responsibilities

- 67 (1) A mortgage broker must:
- (a) be actively engaged in the management of the mortgage brokerage with which the broker is registered;
 - (b) deal in mortgages only in the name that appears on the individual's licence and in the name of the brokerage with which the broker is registered;
 - (c) ensure the name of the brokerage is clearly indicated in the course of dealing in mortgages, including any related advertisements;
 - (d) provide all industry members of the brokerage and other personnel with written policies and procedures by which they are expected to operate, including written policies and procedures for personal deals;
 - (e) ensure the business of the brokerage is carried out competently and in accordance with the Act, the Bylaws, and these Rules;
 - (f) ensure there is an adequate level of supervision for associates within the brokerage and employees who perform duties on behalf of the brokerage;
 - (g) ensure that for all monies held in trust, the bank records are maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees;
 - (h) ensure adequate control over any access to an automated bank machine ("ABM") or ABM cards used for electronic deposits and transfers and any access codes used for Internet banking or ABM cards;
 - (i) ensure proper management and control of documents or records related to licensing, registrations and related regulatory requirements;
 - (j) ensure all documents and records related to deals in mortgages required under the Act and these Rules are maintained or made available by the brokerage for the purposes of a review at the registered business office of the brokerage; and
 - (k) review all mortgage agreements in a timely manner.
- (2) When a mortgage broker does not have a controlling interest in the ownership of the mortgage brokerage, the broker must have a written agreement with the brokerage giving the broker authority to carry out the duties and responsibilities of a broker under these Rules.
- (3) A mortgage broker is accountable for the conduct of an associate or employee, as the case may be, if the broker:
- (b) was not actively involved in the management of the brokerage;
 - (c) failed to ensure an adequate level of supervision was in place for the associate or employee, as the case may be;

- (d) was wilfully blind to the conduct of the associate or employee, as the case may be;
- (e) was a participant in the misconduct;
- (f) had knowledge of the misconduct of the associate or employee, as the case may be, and failed to take reasonable steps to stop such misconduct;
- (g) upon becoming aware of the misconduct failed to take reasonable steps to correct the misconduct or reduce any harm that may have resulted from the misconduct; or
- (h) failed to notify the executive director upon becoming aware of misconduct relating to fraud, deception, theft, or unlawful activities on the part of the associate or employee.

Delegation by
broker

- 68 (1) A mortgage broker may delegate the broker’s duties and responsibilities to another industry member associated with the mortgage brokerage if:
- (a) the delegate is registered with the brokerage and is qualified to carry out the responsibilities;
 - (b) the particulars of the delegation of responsibilities by the broker to the delegate are clear and in writing, and are agreed to and understood by the broker and the delegate;
 - (c) the particulars of the delegation are communicated to the employees and associates, as the case may be; and
 - (d) the broker has a system in place to monitor the delegate and verify that adequate supervision is being maintained.
- (2) In the event a mortgage broker delegates the broker’s duties and responsibilities to a delegate, the broker remains accountable for the conduct of the delegate and all associates or employees of the brokerage.

Mortgage
associate
responsibilities

- 69 A mortgage associate must:
- (b) deal in mortgages only in the name that appears on that individual’s licence and in the name of the mortgage brokerage with which that individual is registered;
 - (c) ensure that all dealings in mortgages and the relevant documentation meet legislative requirements found under the Act, Regulations, Rules, and Bylaws;
 - (d) provide to the broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages:
 - (i) related to dealings in mortgages; and
 - (ii) required under the Act and these Rules;
 - (e) keep the broker informed of the activities being performed by the associate on behalf of the brokerage;
 - (f) ensure there is an adequate level of supervision for his employees and others who perform duties on his behalf;
 - (g) respond promptly to any inquiry that is addressed to him by the broker; and
 - (h) notify the broker upon learning of a violation of the Act, Regulations, Rules, or Bylaws by any broker, associate or employee associated with a brokerage.

Mortgage broker
and associate

- 70 (1) A mortgage broker or associate, as the case may be, must not:

- prohibitions
- (a) deal in mortgages on behalf of a brokerage other than the brokerage with which he is registered;
 - (b) promise to pay or pay a commission or other remuneration, directly or indirectly, to any person resulting from or in connection with a dealing in a mortgage except through the brokerage with which he is registered;
 - (c) accept a commission, referral fee or other remuneration, directly or indirectly, for dealing in a mortgage from any person except the brokerage with which he is registered; or
 - (d) directly or indirectly, advertise, communicate or offer to any person an incentive except an incentive that is provided by and on behalf of the brokerage with which he is registered.
- (2) A mortgage broker or associate, as the case may be, must not directly or indirectly, provide an inducement unless the inducement is provided by and on behalf of the brokerage with which the mortgage broker or associate is registered, details of the inducement are provided in writing and the broker has provided written approval.
- Collection of fees
- 71 (1) Subject to section 71(2), a brokerage must not charge, collect or attempt to collect a fee from a person for assisting the person in obtaining a mortgage from a lender until the following conditions have been met:
- (a) the lender has provided a written confirmation to fund the mortgage, accepted by the borrower and the commitment has been provided to the borrower or the borrower's associate; and
 - (b) the lender or the lender's agent has provided the person with an initial disclosure statement and at least two business days have passed since the initial disclosure statement was received by the person or the person has waived the time period for delivery in accordance with the *Fair Trading Act*.
- (2) Section 71(1),
- (b) only applies to a mortgage where the person is an individual who enters into a credit arrangement primarily for personal, family, or household purposes; and
 - (c) does not apply to actual fees disbursed by the brokerage to third parties for credit reports, Alberta Registries, courier and appraisal services if a written agreement exists between the brokerage and the person where the person agrees to compensate the brokerage for these costs.
- Verification of information disclosure
- 72(1) A brokerage must disclose in writing to the parties to the deal in mortgages what steps, if any, have been taken by the brokerage to verify the information obtained or supplied by the brokerage to the parties, including information contained in the mortgage application, other representations made by the borrower or lender and the identity of the parties to the deal in mortgages.
- (2) A brokerage must maintain copies of supporting documentation in regard to the specific verification outlined in section 72(1) in the brokerage file.
- Obligations to a lender client
- 73 (1) Mortgage brokerages that represent lenders in a mortgage deal must enter into written service agreements with lender clients.
- (2) Every service agreement must:
- (a) be signed by the relevant parties; and
 - (b) clearly show all terms and conditions of the agreement, which must include:
 - (i) the names of the parties to the agreement;

- (ii) the responsibilities of each party to the agreement;
- (iii) the services to be provided by the mortgage brokerage;
- (iv) the duration of the agreement;
- (v) the loan terms, property description details and analysis;
- (vi) the provisions for terminating the agreement;
- (vii) the risk tolerances of the lender respecting priority on title, ratio of loan to property value, nature and type of the property used as security for the loan, costs and outcomes associated with foreclosures, and source of loan capital;
- (viii) the amount or method of calculating the remuneration to be paid by the lender;
- (ix) the process for the collection, use, safekeeping and distribution of confidential and personal information;
- (x) if the brokerage is expected to hold trust funds, the terms of trust;
- (xi) if the agreement is of an ongoing basis, the method for communicating loan possibilities and property details to the lender and the lender's response to same;
- (xii) if the agreement is of an ongoing basis, the method of communicating changes to the lender's risk tolerances; and
- (xiii) the role of the mortgage broker, if any, in the event the borrower defaults on the mortgage deal.

(3) Mortgage brokerages that represent lenders in a deal must ensure that the lender is provided with:

- (a) a copy of the registered mortgage;
- (b) a copy of the certificate of title for the property affected by the mortgage;
- (c) a copy of the solicitor's report, if any, with respect to the registration and the effect of the transaction.

(4) Every mortgage broker that represents a lender in a deal in mortgages must ensure that the lender complies with the written disclosure requirements to be provided to the borrower pursuant to the *Fair Trading Act*.

(5) A prospective client may waive the requirements outlined in sub-sections (1) and (3) if the waiver request originates with the prospective client and is in writing.

(6) Sub-sections (1), (2), (3) and (4) do not apply if the lender is a bank, treasury branch, credit union, loan corporation, trust corporation, insurance company or any person engaged in the business of making loans secured with mortgages.

(7) Sub-section (3) does not apply if the lender has retained legal counsel and the lender's legal counsel has undertaken these activities on behalf of the lender.

74 (1) Where the brokerage directly represents the lender in its dealings with the borrower, a brokerage must provide the borrower:

- (a) prior to the mortgage commitment being agreed to by the borrower, a copy of the disclosure statement pursuant to the *Fair Trading Act*; and
- (b) as soon as practical after funding, a copy of:
 - (i) the registered mortgage;
 - (ii) the certificate of title for the property affected by the mortgage;
 - (iii) the solicitor's report, if any, with respect to the registration and the

effect of the transaction; and

(iv) any title insurance or real property report obtained.

(2) The requirements listed in sub-section (1)(b) above apply only if the borrower has not already received this information.

Appraiser
responsibilities

77 (1) An appraiser must perform assignments with impartiality, objectivity and independence and without accommodation of personal interests.

(2) An appraiser, when performing an appraisal assignment, must adhere to one of the following standards:

- (a) Canadian Uniform Standards of Professional Appraisal Practice;
- (b) International Valuation Standards; or
- (c) Uniform Standards of Professional Appraisal Practice.

(2.1) When performing appraisals appraisers must:

- (a) adhere to the standards of the appraiser association for which he is a member in good standing at the time of the appraisal;
- (b) select comparables consistently and in accordance with date of sale, location, age, building style and size and may not ignore comparables available in the proximity of the subject property;
- (c) maintain a record of the process followed to identify comparables and all relevant comparables not included in the appraisal report;
- (d) ensure that the methodology used for the adjustments is consistent within a report and is verifiable through data where data exists.

(2.2) an appraiser must maintain all documentation, data and formulas used to arrive at an adjustment, an opinion of value or a range of values;

(3) An appraiser or candidate must indicate on his or her business card that they are an appraiser or a candidate, as the case may be.

(4) An appraiser must:

- (a) ensure proper management and control of documents or records related to licensing, registrations and related regulatory requirements;
- (b) ensure all documents and records related to real estate appraisal services required under the Act and these Rules are maintained or made available by the appraiser for the purposes of a review at the registered business office of the appraiser;
- (c) only provide real estate appraisal services in the name that appears on the appraiser's licence; and
- (d) ensure the name of the appraiser is clearly indicated in the course of providing real estate appraisal services.

Appraiser
prohibitions

78 (1) An appraiser must not accept an appraisal assignment that is contingent on the result.

(1.1) An appraiser must not accept an appraisal assignment that is beyond the designation granted to them by their appraiser association unless is done in conjunction with a qualified and competent appraiser authorized to sign that appraisal report.

(1.2) And appraiser must not accept an appraisal assignment if the client's instructions contravene the Act or these Rules.

(1.3) An appraiser must not accept an appraisal assignment if the appraiser has reasonable grounds to believe the assignment will be used for purposes different than the intended use of the appraisal.

(2) An appraiser must not engage in appraisal assignments in which they have or may reasonably be considered by the public as having a conflict of interest.

(3) An appraiser must not perform an appraisal for a client unless, prior to commencing work on the appraisal, the appraiser has professional liability coverage with a minimum limit of \$1,000,000.

(4) An appraiser must not knowingly develop, use or permit others to use, an appraisal report when the use of the appraisal may result in any person likely to be deceived.

(5) An appraiser must not;

- (a) employ, permit or engage another real estate appraiser to provide real estate appraisal services in the appraiser's name or on the appraiser's behalf, directly or indirectly, as the case may be;
- (b) employ a person to provide real estate appraisal services unless that person meets the requirements of the Act, Regulations, Rules and Bylaws.

79 The appraiser must refuse to provide further services to a person who:

- (a) Instructs the appraiser to prepare an appraisal contingent on the result;
- (b) Attempts to unduly influence the appraiser during the appraisal process to prepare an appraisal report to a predetermined outcome;
- (c) Instructs an appraiser to prepare an appraisal for fraudulent or unlawful purposes.

Refusal to
provide
services

80 (1) Every appraisal report must:

- (a) identify the client or intended users;
 - (a.1) state the licensing classification of the real estate appraiser;
 - (a.2) state the standards adhered to by the real estate appraiser;
- (b) state the intended use and purpose of the report;
 - (b.1) state all assumptions and limiting conditions used to perform the appraisal assignment;
- (c) identify whether the appraisal is current, retrospective, prospective or an update;
- (d) provide the reasonable exposure time for the market opinion;
- (e) identify the effective date of the appraiser's opinions and conclusions;
- (f) identify the location and characteristics of the property and the interest appraised;
- (g) identify any hypothetical conditions such as land use controls and proposed improvements;
- (h) identify land use controls;
- (i) state the existing use of the real estate and the proposed use of the real estate in the appraisal;
- (j) define and resolve the highest and best use;

Appraisal
report
requirements

- (k) describe and analyze all data relevant to the assignment;
 - (l) describe the relevant appraisal procedures applicable to the assignment;
 - (m) where comparables are excluded or any usual valuation procedure is excluded, state the reasons for the exclusions;
 - (n) state the reasoning to support all analyses, opinion and conclusions of each valuation approach;
 - (o) state the effect of leases or any type of rental agreement on the value of the real estate when the opinion of value relates to real estate encumbered by a lease or other rental agreement;
 - (p) if the appraisal relates to an assemblage, describe the impact the assemblage has on the final value estimate;
 - (q) describe and reconcile the data, analyses and conclusions of each valuation approach into a final value estimate;
 - (r) report the final value estimate; and
 - (s) bear the name and signature of the appraiser who prepared the report.
- (2) Where the individual who prepared the report is a candidate:
- (a) that person must be supervised by an authorized appraiser with the appropriate designation and qualifications to review the appraisal; and
 - (b) the supervising appraiser must sign the report before it is provided to the client.
- (2.1) Before reviewing and signing an appraisal report under subsection 80(2) an appraiser must ensure that the candidate is licensed under these Rules.
- (2.2) An appraiser who receives a report prepared by a candidate not authorized under these Rules must immediately notify the executive director.
- (3) By signing the report the appraiser is confirming the appraisal has been completed in accordance with the standards as described in the report and that he or she accepts responsibility for the accuracy, content and integrity of the report.
- (4) A candidate must ensure that the appraiser who reviews and signs the report under subsection 80(2) is authorized under these Rules and has the appropriate designation and qualifications to review the appraisal.

PART 3

ACCOUNTING, RECORDS & REPORTING REQUIREMENTS

Definition

- 81 In this part,
- (a) “appraiser” means real estate appraiser and includes candidate; and
 - (b) “brokerage” means a real estate brokerage or mortgage brokerage unless stated otherwise.

Division 1 – General Requirements

Electronic records

- 82 (1) A brokerage and appraiser may convert and store written, printed, or any paper records into electronic format if the following conditions are met:
- (a) the storage location and medium where the electronic records are to be stored is reliable and can reasonably be expected to maintain the integrity of the information from the time the electronic record was created;
 - (b) the identity of the person who made the electronic copy of the written, printed or any paper record and date of the recording into electronic form is

- embedded in the document without altering the information contained in the written, printed or any paper record;
- (c) the information is maintained in an electronic form that does not materially alter the information originally contained in the written, printed or any paper record;
 - (d) the record in electronic form is safeguarded by password or security codes controlled by the brokerage or appraiser so that the record cannot be altered;
 - (e) the brokerage or appraiser maintains a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and reproduced in printed form in a timely manner;
 - (f) the electronic records are located in a physical premise, accessible by the broker or appraiser in Alberta;
 - (g) the physical location where the electronic records are stored is secure and is only accessible by the broker, appraiser or by persons authorized by the broker or appraiser; and
 - (h) the brokerage or appraiser has a system to ensure all electronic documents created in respect to a trade or potential trade, deal or potential deal or appraisal or appraisal services are stored together or are linked so as to create a complete record of all documents or records relating to the trade or potential trade, deal or potential deal or real estate appraisal or appraisal services.
- (2) A brokerage or appraiser may retain in electronic form records created, sent or received in electronic form if:
- (a) the storage location and medium where the electronic records are to be stored is reliable and can reasonably be expected to maintain the integrity of the electronic information;
 - (b) where the electronic record was sent or received, information, if any, that identifies its origin and destination is also retained;
 - (c) the information in electronic form is maintained in the format in which it was created, sent or received, or in a format that does not materially alter the information of the original record in electronic form;
 - (d) the brokerage or appraiser maintains a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and be reproduced in printed form in a timely manner;
 - (e) the document in electronic form is safeguarded by password or security codes controlled by the broker or appraiser so that the records cannot be altered;
 - (f) the electronic records are located in a physical premise, accessible by the broker or appraiser in Alberta;
 - (g) the premises where the electronic records are stored are secure and are only accessible by the broker or appraiser or by persons authorized by the broker or appraiser; and
 - (h) the brokerage or appraiser has a system to ensure all electronic records created in respect to a trade or potential trade, deal or potential deal or real estate appraisal or appraisal services are stored together or are linked so as to create a complete record of all documents or records relating to the trade or potential trade, deal or potential deal or appraisal or appraisal services.
- (3) The broker or appraiser or a person authorized by the broker or appraiser may only delete electronic records in compliance with the record keeping requirements under the

Act.

Electronic copies of trust fund cheques

83 A brokerage may receive electronic copies of cheques used to make disbursements from an account in which money is held in trust, only if copies of both the front and the back of the cheque are received.

Depositing funds electronically

84 (1) A brokerage that deposits funds electronically, using an ABM bank card and an automatic banking machine, into an account in which money is held in trust shall maintain the automated banking machine deposit receipt that indicates the account number, time, date and amount of the deposit.

(2) A brokerage that deposits funds electronically, using the Internet, into an account in which money is held in trust shall maintain a written record signed and dated by the broker or authorized person that indicates the account number, date, amount and details of the deposit.

Electronic transfer of trust funds

85 (1) An ABM card may be used to transfer funds from an account in which money is held in trust only if the following conditions are met:

- (a) the ABM card must be issued prohibiting cash withdrawals from the account;
- (b) before funds are transferred from the account to another account there must be written supporting documentation for the transfer and an ABM record of the transfer must be produced; and
- (c) the record is reviewed, signed and dated by the broker or by a person authorized by the broker on the date of the transfer or the next business day.

(2) A brokerage shall not make an electronic transfer using Internet banking from an account in which money is held in trust unless:

- (a) there is written supporting documentation;
- (b) a printed record providing details of the Internet transfer is produced; and
- (c) the printed record is reviewed, signed and dated by the broker or an authorized person on the date of the transfer or the next business day.

Bank reconciliation

86 (1) A brokerage shall prepare a bank reconciliation monthly, within 30 days of the date of the prior month's bank statement, for all accounts in which money is held in trust.

(2) As part of a bank reconciliation a brokerage shall:

- (a) identify the balances owing to each client or customer held in trust; and
- (b) reconcile monthly the trust liability to the reconciled bank balance as of the date of the bank reconciliation.

(3) The broker must review the monthly reconciliation under (1) above within 30 days of the date of the prior month's bank statement, and acknowledge the review by signing and dating the monthly reconciliation.

Negative trust balance prohibited

87 A brokerage shall not make any payment or allow a bank transfer out of an account in which money is held in trust if the payment or transfer would create a negative balance in a client's or customer's ledger.

Trust shortage must be funded

88 If at any time there is a shortage of money in an account in which money is held in trust, the brokerage shall deposit the brokerage's own money into the account as soon as the amount of the shortage is determined.

Notification of trust shortage

89 (1) If a brokerage is aware there is a trust shortage, the amount of which has not been determined, the broker must notify the executive director in writing of the existence of a trust shortage and what steps are being taken to determine the amount of the

shortage.

(2) If a brokerage cannot immediately fund a trust shortage, the broker must notify the executive director in writing of the amount of the trust shortage and what corrective action the brokerage will be taking.

Year end report

90 A brokerage shall report to Council at the brokerage's fiscal year end with regard to the operation of its accounts in which money is held in trust.

Brokerage accounting

91 (1) If a brokerage receives or holds money on the account of others, in the course of its business, the brokerage's accounting for the purposes of section 90 shall consist of the Brokerage's Representations to the Council and an Accountant's Report, both in a form and containing the information required by the executive director.

(2) The Accountant's Report must be completed by a chartered accountant, certified general accountant or certified management accountant.

(3) The Accountant's Report shall be prepared pursuant to an Engagement Letter between Accountant and Client, in a form and containing the information required by the executive director.

(4) A brokerage's accounting shall be filed with the Council not later than 3 months after the end of the brokerage's fiscal year and shall cover the fiscal year or, where the brokerage did not carry on business for the entire fiscal year, that part of the fiscal year for which the brokerage carried on business.

(5) In preparing the Accountant's Report, the accountant shall comply with the guidelines prescribed by the executive director.

Absence of trust transactions

92 (1) For the purposes of reporting under section 90, a brokerage that has not received or held money on the account of others in the course of its business shall file with the Council a Declaration Respecting Absence of Trust Transactions in a form and containing the information required by the executive director not later than 3 months after the end of the brokerage's fiscal year.

(2) The Declaration Respecting Absence of Trust Transactions shall cover the fiscal year or, where the brokerage did not carry on business for the entire fiscal year, that part of the fiscal year for which the brokerage carried on business.

Division 2 – Requirements for Real Estate Brokerages

Definition

93 In this Division, a brokerage means a real estate brokerage.

Real estate trade records

94 (1) A brokerage shall keep separate and have available at its registered business office in Alberta or the City of Lloydminster all records for each trade or potential trade including signed copies of each service agreement, purchase contract, real estate management agreement, lease, offer and all records, accounts and supporting documentation made in the course of the brokerage's business in relation to trades or potential trades in real estate in Alberta.

(2) The records, books, accounts and supporting documentation in relation to each trade or potential trade in real estate must identify each trade or potential trade including a property management agreement by a sequential code system and use that code for the corresponding trust ledger if applicable and must contain the following:

- (a) the nature of the trade or potential trade;
- (b) a description of the real estate;
- (c) the true consideration for the trade or potential trade;
- (d) the names of the parties to the trade or potential trade;

- (e) the amount of deposit or other monies received, if any, and a record of the disbursement of it; and
- (f) the amount of commission or other remuneration received, if any, and the name of the party paying it.

(3) If the brokerage keeps in Alberta money received in trust in connection with other business, the brokerage shall keep it separate from money received in trust in connection with trades in real estate in Alberta.

Brokerage must maintain trust account

95 When a brokerage in the course of its business receives funds on behalf of clients, it must:

- (a) open and maintain at least one trust or pooled trust account for the deposit of funds received on behalf of clients or owners of real estate managed under real estate management agreements, and for the purpose of section 97 of these Rules;
- (b) ensure that the broker is an authorized signing authority for each account in which monies are held in trust and controls the receipts and disbursements on each account;
- (c) issue a written receipt if money is received in the form of cash;
- (d) ensure that cheques used to disburse funds from a trust or pooled trust account are numbered and identified with the words "Trust Account";
- (e) account for all cheques, including but not limited to void cheques, as part of the records maintained by the brokerage;
- (f) make every disbursement of money held in trust by cheque or bank transfer and these documents shall be cross-referenced in sufficient detail to permit them to be identified with the corresponding disbursement or disbursements recorded in the brokerage's books required by section 25 of the Act or by these Rules; and
- (g) not issue a cheque, allow a bank transfer or present a cheque for payment or collection unless there is in the account in which the monies are held in trust on which it is drawn, a sufficient credit balance, exclusive of tenants' conditionally refundable deposits, to cover the cheque or transfer, or there is a written agreement between a financial institution and a client guaranteeing to the brokerage the payment of funds to ensure that there are sufficient funds to cover any disbursements from an account in which monies are held in trust.

Unauthorized payment from trust

96 Subject to section 97 of these Rules, a brokerage shall not pay any of the brokerage's personal or general office expenses, commission or other remuneration payable to the brokerage's own authorized officials, brokers or associates out of an account in which money is held in trust.

Payment of commission from trust

97 (1) Subject to (2) below, all payments received by a brokerage as or on account of commission or other remuneration for a trade in real estate shall be classified as trust money and shall be paid into the brokerage's trust account notwithstanding that the commission or remuneration may already have been earned, and, where applicable, the payments shall be recorded as being received in trust for the person liable to pay the commission or other remuneration.

(2) Sub-section (1) above does not apply to a commission or other remuneration that is not to be shared between brokerages or to a share of a commission or other remuneration received from another brokerage.

(3) Any money in a brokerage's trust account which represents a commission or

remuneration that has been earned and is no longer required to be held in trust shall be paid in accordance with the following rules:

- (a) any share of such commission or remuneration payable to another brokerage shall be paid to that brokerage directly out of the trust account;
- (b) after the payment pursuant to clause (a) has been made, the commission or remuneration shall be transferred into a brokerage account; and
- (c) where a client fails to pay a commission or other remuneration in full when due, which is to be shared between two or more brokerages, the amount actually received shall be shared between them as they may agree and, in the absence of an agreement, the brokerage holding the commission may not withdraw any part into its brokerage account until the other brokerage or brokerages have been paid in full.

Written leases

98 (1) All leases and rentals of real estate arranged by a brokerage shall be by a written lease.

(2) In addition to the requirements of the *Residential Tenancies Act*, each lease shall contain at least:

- (a) the name and business address of the landlord and the name and address of the tenant;
- (b) the mailing address of the real estate or the unit number or designation of the real estate, the amount and payment conditions of the rent and the rental term; and
- (c) the amount of and the terms for all money paid or to be paid by the tenant to the landlord, including but not limited to money for rent, prepaid rent, conditionally refundable deposits and any fees or other charges.

Ledgers

99 A brokerage that leases or manages real estate on behalf of a client shall:

- (a) prepare and maintain a ledger for each tenant from whom the brokerage receives money;
- (b) identify the ledger with the name of the tenant and the mailing address of the real estate or the applicable unit number that designates the real estate;
- (c) post in the ledger an entry for each receipt of money from, or on behalf of, the tenant; and
- (d) for each entry posted in the ledger, record the amount of money received or disbursed as rent or conditionally refundable deposit, the date and the number of the receipt prepared with respect to the money, and the cheque number.

Financial statements

100 (1) A brokerage shall prepare each month and keep on file with respect to each client:

- (a) a statement of receipts and disbursements that records
 - (i) the balance carried forward from the statement of the previous month,
 - (ii) money and the amount received as rent for the use of real estate, for the control, management or administration of real estate and for any other trade in real estate,
 - (iii) the amount of each disbursement and to whom it was made, and
 - (iv) the balance at the end of the month; or
- (b) any other statement the client requires.

(2) A brokerage must provide the information referred to in this section within a reasonable period of time following a request from the client or as otherwise agreed to by the brokerage and the client.

Pooled
disbursement
account

101 A pooled disbursement account may be used by a brokerage to make payments only if the following conditions are met:

- (a) only money that the brokerage receives in trust in respect of a trade in real estate may pass through the account;
- (b) disbursements on behalf of a client may be made only with a transfer forthwith of money held for the client from another trust account or pooled trust account to cover the disbursement; and
- (c) the account must be designated as a trust account.

Positive
balance in
trust or pooled
trust accounts

102 (1) In order to maintain an adequate positive balance in a trust or pooled trust account a brokerage may lend the brokerage's own money to a client by paying the money into the account if:

- (a) the loan is made pursuant to a written agreement between the brokerage and the client that specifies the maximum amount that may be lent, the rate of interest, if any, payable by the clients and the terms on which the brokerage may demand repayment;
- (b) the outstanding amount of the loan and of the accrued interest, if any, is shown on each periodic statement rendered by the brokerage for the client; and
- (c) the brokerage gives periodic statements to the client at least once every three months.

(2) Money paid into a trust or pooled trust account by a brokerage pursuant to (1) above may not be withdrawn by the brokerage in repayment of the loan if the withdrawal would create a negative balance in the trust account or the client's ledger.

(3) Money received from a client in repayment of a loan under (1) above shall not be processed through a trust account or a pooled trust account.

Brokerage
management
fees

103 If sufficient funds are available, a brokerage shall withdraw all earned management fees from the money held in trust on behalf of the client at least once each month, but not in advance unless otherwise provided in the real estate management agreement.

Division 3 - Requirements for Mortgage Brokers

Definition

104 In this Division, "brokerage" means mortgage brokerage.

Mortgage deal
records

105 (1) A brokerage shall keep separate and have available at its registered business office in Alberta or the City of Lloydminster all records for each mortgage deal or potential deal including signed copies of each service agreement, mortgage administration agreement, commitment letters, mortgage applications, credit bureau reports, cost of credit disclosures, investor lender disclosure, banking records, accounts and supporting documentation made in the course of the brokerage's business in relation to a mortgage deal or potential deal in Alberta.

(2) The records must identify each mortgage deal by a sequential code and use that code for the corresponding trust ledger if applicable and must contain the following:

- (a) the nature of the mortgage deal or potential deal;
- (b) a description of the real estate;

- (c) the mortgage amount;
- (d) the names of the lenders and borrowers;
- (e) the amount of the deposit or investment received, if any, and a record of the disbursements;
- (f) the amount of commission or other remuneration received, if any, and the name of the party paying it; and
- (g) the extent of the distribution of the client's information to third parties.

(3) If the brokerage keeps in Alberta money received in trust in connection with other business, the brokerage shall keep it separate from money received in trust in connection with mortgage dealings in Alberta.

Brokerage
must maintain
trust account

106 When a brokerage in the course of its business receives funds on behalf of clients or investors it shall:

- (a) open and maintain at least one trust or pooled trust account for the deposit of such funds;
- (b) ensure that the broker is an authorized signing authority for each trust or pooled trust account and control the receipts and disbursements on each account;
- (c) issue a written receipt if money is received in the form of cash;
- (d) ensure that cheques used to disburse funds from a trust or pooled trust account are numbered and identified with the words "Trust Account;"
- (e) account for all cheques, including but not limited to void cheques, as part of the records maintained by the brokerage;
- (f) make every disbursement from a trust or pooled trust account by cheque or bank transfer and these documents shall be cross-referenced in sufficient detail to permit them to be identified with the corresponding disbursement or disbursements recorded in the brokerage's books required by section 25 of the Act or by these Rules; and
- (g) not issue a cheque, allow a bank transfer or present a cheque for payment or collection unless there is, in the trust or pooled account against which it is drawn, a sufficient credit balance, to cover the cheque.

Unauthorized
payments
from trust

107 A brokerage shall not pay any of the brokerage's personal or general office expenses, commission or other remuneration payable to the brokerage's own authorized officials, brokers or associates out of an account in which money is held in trust.

Pooled
disbursement
account

108 A pooled disbursement account may be used by a brokerage to make payments only if the following conditions are met:

- (a) only money that the brokerage receives in a mortgage dealing may pass through the account;
- (b) disbursements on behalf of a client may be made only with a transfer forthwith of money held for that client from another account in which money is held in trust to cover the disbursement; and
- (c) the account must be designated as a trust account.

Brokerage
management
fees

109 If sufficient funds are available, a brokerage shall withdraw all earned fees from the money held in trust on behalf of the client at least once a month, but not in advance unless otherwise provided in the mortgage brokerage service agreement.

Division 4 – Requirements for Real Estate Appraisers

Appraisal records

110 (1) A real estate appraiser shall keep and have available at his registered business office in Alberta all supporting documentation for each appraisal service performed in Alberta.

(1.1) Where an appraiser is employed or contracted by a third party the appraiser must ensure that their employment agreement does not conflict or in any way alter the requirements under subsection (1) and under section 77(2.2) of these Rules;

(2) An appraiser shall keep and maintain all records, including any service agreement, work files and notes, in the appraisal file.

(3) The records, accounts and supporting documents in relation to each appraisal assignment must identify each transaction by a sequential code system and must contain the following:

- (a) any service agreement;
- (b) work files and notes;
- (c) the appraisal report; and
- (d) data or documentation to support values of adjustment entries.

(4) A real estate appraiser shall keep the records of its business with respect to appraisal services in Alberta separate from those that pertain to any other business.

**PART 4
ERRORS AND OMISSIONS INSURANCE**

Division 1 – Requirements for Real Estate Brokers

Definitions

111(a) This Division applies to all classes of real estate brokers and includes a brokerage, broker, associate broker and associate.

111(b) In this Division, “Real Estate Insurance Exchange Agreement” means an agreement entered into between brokerages, brokers, associate brokers and associates providing for the establishment and administration of an insurance or indemnity plan referred to in Rule 113.

Duty to carry insurance

112 Every brokerage, broker, associate broker and associate shall:

- (a) obtain insurance against liability for errors and omissions in the carrying on of the real estate business; or
- (b) participate in an indemnity plan for that purpose;

in accordance with these Rules and through the insurance or indemnity plan or the group insurance plan referred to in Rule 113.

Establishment of plans

113 For the purpose of providing the insurance coverage referred to in Rule 112, the Council is, subject to these Rules, authorized to establish and administer:

- (a) an insurance or indemnity plan under Rule 114; or
- (b) a group insurance plan under Rule 115.

Insurance or indemnity plan

114 (1) The insurance or indemnity plan referred to in Rule 113 shall operate through a reciprocal insurance exchange to be known as the “Real Estate Insurance Exchange,” established pursuant to the Real Estate Insurance Exchange Agreement and licensed under the *Insurance Act*.

(2) The insurance or indemnity plan shall be administered by an advisory board appointed by the Council in accordance with the Real Estate Insurance Exchange Agreement.

(3) The advisory board shall consist of at least five members, all of whom must be brokers, associate brokers or associates and a majority of whom must be members of the Alberta Real Estate Association.

(4) The Real Estate Insurance Exchange shall make the insurance required by Rule 112 available to brokerages, brokers, associate brokers and associates by means of an insurance policy, on payment of any premiums established in accordance with this section.

(5) All matters:

- (a) necessary and incidental to the establishment and administration of the insurance or indemnity plan;
- (b) respecting the appointment, operation, powers and duties of the advisory board; and
- (c) respecting the nature and extent of the insurance provided through the plan and respecting the rights and obligations of persons under the insurance policy and in the administration of it;

may be provided for in the Real Estate Insurance Exchange Agreement and the insurance policy.

(6) The form and content of the Real Estate Insurance Exchange Agreement and the insurance policy, both as amended or replaced from time to time, are subject to the approval of the Council.

(7) A brokerage shall maintain at every office operated by the brokerage for the purpose of trading in real estate a copy of:

- (a) the Real Estate Insurance Exchange Agreement;
- (b) the insurance policy; and
- (c) all significant documentation of a general nature that relates to the application, interpretation or administration of the Agreement or the insurance policy;

and shall make the Agreement, insurance policy and documentation available for examination by the brokerage's brokers, associate brokers and associates.

Group
insurance plan

115 (1) Where the Council wishes to establish and administer a group insurance plan referred to in Rule 113, it may enter into:

- (a) agreements with insurers, brokerages, industry members or adjusters within the meaning of the Insurance Act, or with any other person; and
- (b) agreements with or on behalf of brokerages, brokers, associate brokers and associates;

that it considers necessary for the establishment and administration of the group insurance plan.

(2) All matters:

- (a) necessary for and incidental to the establishment and administration of the group insurance plan; and
- (b) respecting the nature and extent of the insurance provided through the plan and respecting the rights and obligations of persons under the insurance plan and in the administration of it;

may be provided for in the agreements referred to above and the group insurance policy.

(3) The form and content of any agreements referred to above and of any group insurance policy, both as amended or replaced from time to time, are subject to the approval of the Council.

(4) The Council may charge a fee for administration relating to the establishment and administration of the group insurance plan and for loss control activities in an amount to be approved by the Council.

Notification of
contravention

116 The advisory board, in the case of an insurance or indemnity plan referred to in Rule 114, or the administrator of the group insurance plan, in the case of a group insurance plan referred to in Rule 115, shall immediately on becoming aware of a contravention by a brokerage, broker, associate broker or associate of these Rules or a term or condition of an insurance or indemnity plan or group insurance plan:

- (a) notify the brokerage, broker, associate broker or associate who is in contravention; and
- (b) where a broker, associate broker or associate is in contravention, notify the brokerage who employs the broker, associate broker or associate.

Division 2 – Requirements for Mortgage Brokers

Definition

117 In this Division, “brokerage” means mortgage brokerage.

Duty to carry
Insurance

118(1) Every brokerage must have insurance against liability for errors and omissions and additional coverage for loss resulting from fraudulent acts in the carrying on of the business of a mortgage broker in accordance with these Rules. The errors and omissions insurance must:

- (a) be in a form of insurance and terms and conditions approved by the executive director;
- (b) include extended coverage for loss from fraudulent acts;
and
- (c) is sufficient to pay a minimum of:
 - (i) \$500,000 with respect to any one occurrence involving the brokerage or any broker or associate authorized to deal in mortgages on behalf of the brokerage; and
 - (ii) \$1,000,000 with respect to all occurrences during a 365-day period involving the brokerage or any broker or associate authorized to deal in mortgages on behalf of the brokerage.

(2) Every mortgage brokerage shall, at all times while it holds an authorization, maintain errors and omissions insurance in the form of insurance and terms and conditions approved by the executive director.

Resolution 2011-2 approved by Council May 4/11

Definition

Division 3 – Requirements for Real Estate Appraisers

Duty to carry

119 This Division applies to all classes of real estate appraisers and includes an appraiser and a candidate.

insurance

120 Repealed

Resolution 2011-3 approved by Council May 4/11
Resolution 2011-4 approved by Council July 5/11

PART 5 FEES

Fees

121 The fees established by Council are set out in Schedule 2 of these Rules.

PART 6 COMING INTO FORCE

Coming into
force

122 These Rules come into force on October 1, 2006, except for Part 1 [excluding subsections 20(d) and 28(b)] and subsection 51(2), which come into force on July 1, 2006..

SCHEDULE 1
REAL ESTATE COUNCIL OF ALBERTA
FORMS AND AGENCY RELATIONSHIPS GUIDE

A. The content of the following forms and guide referred to in section 60.1 of the Rules has been approved by Council and is mandatory for industry members when industry members trade in residential real estate:

1. Agency Relationships Guide
2. Exclusive Seller Brokerage Agreement
3. Exclusive Buyer Brokerage Agreement
4. Common Law for Transaction Brokerage Agreement (Exclusive Brokerage)
5. Exclusive Seller Designated Brokerage Agreement
6. Exclusive Buyer Designated Brokerage Agreement
7. Designated Agency for Transaction Brokerage Agreement (Exclusive Designated Brokerage)
8. Customer Status Acknowledgement for Buyer(s)
9. Customer Status Acknowledgement for Seller(s)
10. Customer Status Acknowledgement and Fee Agreement for Seller(s)

B. Notwithstanding the above requirement, the members of the Realtors® Association of Lloydminster & District may use the content of the forms and guide as modified and approved from time to time by the Real Estate Council of Alberta.

The content of the following forms and guide referred to in section 60.1 of the Rules has been approved by Council and may be used by members of the Realtors® Association of Lloydminster and District when such industry members trade in residential real estate:

11. Realtors® Association of Lloydminster and District – Agency Relationships Guide
12. Realtors® Association of Lloydminster and District – Exclusive Seller Brokerage Agreement
13. Realtors® Association of Lloydminster and District – Exclusive Buyer Brokerage Agreement
14. Realtors® Association of Lloydminster and District – Brokerage to Represent Both Buyer and Seller Agreement

DATED at Calgary, Alberta this 10th day of December 2009.

SCHEDULE 2**FEEES****Licence Fees (real estate and mortgage)**

Brokerage licence	\$200
Broker licence	\$425
Associate broker licence (real estate)	\$425
Associate licence	\$425

Registration Certificate (transfers during licensing year)

Broker registration	\$50
Associate broker (real estate) registration	\$50
Associate registration	\$50

Real Estate Assurance Fund Levies

Renewal industry member - broker (real estate) – levy waived	\$0
Renewal industry member - associate broker or associate (real estate) – levy waived	\$0
New industry member - broker, associate broker or associate (real estate)	\$100
New industry member - broker (mortgage)	\$100
Renewal industry member – broker (mortgage)	\$0
New industry member – associate (mortgage)	\$100
Renewal industry member - associate (mortgage)	\$0

Licence Fees (appraiser/candidate)

Appraiser/candidate licence	\$425
Renewal industry member – appraiser/candidate	\$425

General Fees

Amendment to change the record of an existing licence/registration	\$50
Request for information related to a person's history as a licensee	\$20
Return of non-payment of any cheque used to pay any levy, fee, premium, fine, administrative penalty or other amount required to be paid	\$25
Suitability review	\$125
Extension for completion of re-licensing education program requirements	\$450
Consideration of the extension of the timeframe for completion of a licensing education course	\$300
Education upgrade unit	\$300
Examination re-write fee	\$150

