

BROKERS - ACCOUNTABILITY

Summary: A real estate or mortgage broker may be held accountable for the misconduct of an associate broker, associate or employee of the brokerage in certain situations where they have failed to carry out their broker responsibilities. [See: *Real Estate Act* Rules, s.51(3), s.67(3)]

Note: For purposes of this Information Bulletin, and where the context permits, “broker” means an individual who holds a “real estate broker” or “mortgage broker” licence issued by the Real Estate Council of Alberta.

As a general rule, individual industry members are accountable to the Real Estate Council of Alberta for any actions they engage in that may constitute conduct deserving of sanction within the meaning of the *Real Estate Act*. See RECA *Information Bulletin: Conduct Deserving of Sanction*.

In addition to being accountable for their own actions, the Real Estate Council of Alberta may hold a broker accountable for the conduct of associate brokers and associates registered with the brokerage, and employees, if the broker:

- was not actively engaged in the management of the brokerage. See RECA *Information Bulletin: Brokers – Active in Brokerage Management*;
- failed to ensure an adequate level of supervision;
- was willfully blind to the conduct in question;
- was a participant in the misconduct;
- had knowledge of the misconduct and failed to take reasonable steps to stop such misconduct;
- upon becoming aware of the misconduct, failed to take reasonable steps to correct the misconduct or reduce the harm that may have resulted; or,
- upon becoming aware of the misconduct, failed to notify the executive director of the Real Estate Council of Alberta of misconduct relating to fraud, deception, theft, or unlawful activities on the part of the associate broker, associate or employee.

When situations involving misconduct or potential misconduct come to a broker’s attention, whether or not a complaint has been filed with RECA, the broker must take reasonable steps to correct the misconduct and reduce any harm that may have resulted from the misconduct. RECA strongly recommends the following process:

- speak with the associate broker, associate or employee as the case may be;
- speak with relevant clients or customers;
- speak with all relevant witnesses;
- confirm that all relevant documents are in the brokerage file, and that the documents are authentic and accurate;
- take appropriate action based on the results of your review. If you have doubts as to what course of action is appropriate given the situation, consult a lawyer. Take reasonable steps to immediately end the misconduct where the misconduct is of an ongoing nature and to correct and reduce the impact of the misconduct. At minimum, advise the associate that the conduct was inappropriate and should

- never be repeated. Provide an explanation or training to the associate on how things are to be done in future;
- document everything pertaining to the review; and,
 - notify the executive director about misconduct relating to fraud, deception, theft, or unlawful activities (see Practice Tips below).

If the outcome of your review identifies weaknesses in the brokerage processes, consider amending or adding to existing policies and procedures or supervisory practices to prevent future misconduct. Ensure changes are clearly communicated to brokerage staff. If an industry member from another brokerage is involved, report the information related to their involvement directly to their broker for review.

Practice Tips

The requirement to notify the executive director about misconduct relating to unlawful activities includes any industry member's breach of fiduciary duties such as undivided loyalty, confidentiality, disclosure of conflicts of interest or receiving secret profits.

A brokerage's expectations with respect to the conduct of associates should be communicated through policies and procedures. The policies and procedures manual should be a living document subject to amendment and additions as different situations arise and there should be a system in place to ensure compliance and general knowledge about the consequences of non compliance.

Further inquiries may be directed to ...
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