

CONDUCT DESERVING OF SANCTION

Summary: “Conduct deserving of sanction” is conduct by an industry member or former industry member that

- breaches the *Real Estate Act*, Rules, Bylaws or Regulations
- falls below any industry standard whether or not such standard is provided for in the *Real Estate Act*, Rules, Bylaws or Regulations
- does not necessarily always relate to the business of an industry member but may arise as a result of non-business of an industry member conduct or personal conduct and may be any conduct which is incompatible with the best interests of the public or the industry, tends to undermine public confidence in the industry, harms the integrity of the industry or brings the industry into disrepute. [See: *Real Estate Act* s.39, s.40, s.43, s.46, *Real Estate Act* Rules, s.41, s.42, s.43, s.44, s.45, s.46]

Note: For purposes of this Information Bulletin, a reference to “legislation” means the *Real Estate Act*, Regulations, Rules and Bylaws governing industry members.

Legislative Context

The term “conduct deserving of sanction” is used throughout Part 3 of the *Real Estate Act*. It is important for industry members to understand what the term means. Although conduct deserving of sanction is not defined in the *Real Estate Act* (*REA*), by considering the purposes and mandate of the Real Estate Council of Alberta (RECA), the meaning of conduct deserving of sanction becomes better understood.

REA s. 5 provides that the purposes of the Council are

- (a) to set and enforce standards of conduct for the industry and the business of industry members as the Council determines necessary in order to promote the integrity of the industry, to protect against, investigate, detect and suppress mortgage fraud as it relates to the industry and to protect consumers affected by the industry
- (b) to provide services and other things that, in the opinion of the Council, enhance and improve the industry and the business of industry members;
- (c) to administer this Act as provided in this Act, the regulations, the bylaws and the rules.

The *REA* establishes a model of industry self-regulation. Self-regulation is a privilege granted to the industry by the citizens and the Government of Alberta through the authority of the Alberta legislature. Pursuant to the *REA*, RECA is responsible for industry member education, authorizations (licensing) and enforcing the *REA* as it relates to real estate brokerage, mortgage brokerage and real estate appraisal industries in Alberta.

This privilege comes with special responsibilities and it is RECA’s responsibility to fulfill its statutory mandate. It carries out this responsibility by adopting rules and setting standards of conduct for industry members in order to protect the public, establish and

preserve the integrity of industry members and gain and maintain the confidence of the public. It is the individual and collective responsibility of industry members to ensure they comply with legislation, adhere to industry standards and ensure their conduct in all respects, whether in the business of an industry member or otherwise, doesn't result in conduct deserving of sanction under the *REA*.

Legislation cannot exhaustively speak to all situations an industry member may confront in the course of their lives or while conducting industry or other business. In determining an appropriate course of action where the *REA* does not specifically reference matters of concern, an industry member may find it necessary to be guided by and comply with other provincial or federal legislation, common law principles, general industry best practices, or general moral or ethical principles.

Meaning of “Conduct Deserving of Sanction”

Although, there is no legislative or dictionary definition for the term “conduct deserving of sanction”, there are definitions for words closely related to conduct deserving of sanction. For example, Black's Law Dictionary (7th ed.) defines “unprofessional conduct” as “behaviour that is immoral, unethical, or dishonorable, either generally or when judged by the standards of the actor's profession.”

Generally, the *REA*, Rules, Bylaws and Regulations establish the standards of conduct that must be adhered to by all industry members. Conduct that is deserving of sanction will arise when an industry member's actions breach the *REA*, Rules, Bylaws and Regulations or fall below industry standards, as generally determined by the *REA*, Rules, Bylaws and Regulations. In addition, conduct that is deserving of sanction may also arise when an industry member's industry, personal or non-industry business related conduct is, for example, incompatible with the best interests of the public or the industry, tends to undermine public confidence in the industry, harms the integrity of the industry or brings the industry into disrepute. [*Real Estate Act* Rules, s. 42(g)].

Disciplinary assessment of an industry member's conduct and whether such is conduct deserving of sanction will be based on all facts and circumstances as they existed at the time of the conduct, including the nature of the conduct, the willfulness and seriousness of the conduct, the existence of previous legislative breaches and any mitigating or aggravating factors. Ultimately, a hearing panel will determine whether the conduct in question is deserving of sanction and if so, what sanction will be ordered.

Industry Standards of Practice

All industry members seeking guidance on industry standards of practice are encouraged to review Part 2 of the *REA* Rules. Division 1, “*Standards of Conduct for Industry Members*”, sets out the standards of conduct that apply to all industry members whether or not they are transacting in the business of an industry member. Similar standards are common to many industries and professions and may often be found in Rules or a Code of Conduct or Code of Ethics.

Divisions 2, 3 & 4 set standards of business conduct specific to each industry sector, specifically real estate brokerage, mortgage brokerage and real estate appraisal.

A breach of any of the provisions in Part 2 of the *REA* will likely constitute conduct deserving of sanction.

Below are sections 41 to 46 the *REA* Rules. These standards apply to all industry members from the three industry sectors and include:

- Industry member responsibilities
- Industry member prohibitions
- Written service agreements
- Protection of client information
- Referral disclosure
- Support personnel and assistants

Standards of Conduct for All Industry Members - *Real Estate Act* Rules, Sections 41 to 46

Industry member responsibilities

41 An industry member 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 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 *Real Estate 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 RECA carrying out their duties and responsibilities under the *Real Estate Act*;
- (i) comply with
 - (i) an order issued pursuant to the *Real Estate Act* by the Council, 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 legislation or any other laws

Industry member prohibitions

42 An industry member 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 any 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 party to a trade in real estate or deal in mortgages from seeking independent 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 or 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.

(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.

Practice Tip

It is highly recommended that industry members observe the highest standards of conduct in all personal and professional matters, whether in the business of an industry member or otherwise, so as to gain and retain the trust, respect and confidence of colleagues and members of the public. In so doing, the risk of complaint and possible disciplinary proceeding will likely be greatly reduced.