

ELECTRONIC RECORDS

Summary: The *Real Estate Act* Rules contain a number of record-keeping requirements for brokerages and appraisers. One of the most recent considerations for brokerages and appraisers is the conversion of paper records into electronic format. This is allowed provided certain conditions are met. Records that began in an electronic format may also be maintained electronically and do not need to be converted to paper records. [See: *Real Estate Act* s.25(9), *Real Estate Act* Rules, s. 1(1) (I), s.82, s.83, s.84, s.85]

Though proper record keeping is an important responsibility of all industry members, it is especially so for brokerages and real estate appraisers/candidates. The *Real Estate Act* Rules contain a number of sections specifically dealing with electronic records because of the fact that an increasing number of businesses are making greater use of electronic record keeping systems. The *Real Estate Act* and the Rules legislation allows for electronic record-keeping provided certain conditions are met.

Relating specifically to “records,” the *Real Estate Act* Rules section 1(1)(I) define “electronic” to include “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.” Electronic records can be created and stored in electronic format or they can be converted to electronic format from paper for storage purposes. The *Real Estate Act* s.25(9) requires records to be kept for a minimum of three years after they come into existence.

Record Storage

The majority of the subsections within section 82 of the *Real Estate Act* Rules are in place to ensure that the integrity of information contained in electronic records and the security of those records is maintained.

Among other things, brokerages and appraisers must ensure that the electronic format conversion process used does not materially alter the information being maintained in the record; that the physical location where the electronic records are stored is secure; that trade/deal records (potential trade/deal) records are stored together and/or are linked so as to create a complete record; that they keep a copy of the program required to view and/or reproduce the electronic record in a printed form; and, that the electronic records are located in a physical premise, accessible by the broker or appraiser in Alberta.

Only brokers, appraisers or someone authorized by these individuals may delete electronic records in compliance with the *Real Estate Act*'s record keeping requirements.

Trust Fund Cheques

During the course of business a real estate brokerage may receive funds on behalf of clients or investors. When this is the case, brokerages are required to open and maintain one trust or pooled trust account for depositing these funds.

In terms of disbursement using electronic copies of cheques, section 83 of the *Real Estate Act* Rules clearly states that a brokerage can receive electronic copies of cheques used for trust disbursements, only if copies of both the front and the back of the cheque are received.

Electronic Funds Deposit

Electronic deposits into trust accounts using ABM cards and bank machines require the Brokerage to retain the deposit receipt. This receipt provides pertinent information including account number, time, date and amount of deposit.

Using the Internet for electronic deposits into trust accounts is allowed, provided a written record is signed and dated by the broker or authorized person. This record includes the account number, time, date and specific details of the deposit.

Electronic Transfer of Funds

There are a number of conditions that must be met when transferring trust fund money using an ABM card. Not only will the ABM card be set-up to prohibit account withdrawals, written supporting documentation and an ABM transfer record is also required. The ABM record is then reviewed signed and dated by the broker or authorized person on the transaction day or the following day.

A Brokerage cannot make electronic trust account transfers using Internet banking unless they have written supporting documentation, along with a printed record containing details of the transaction. This record must be reviewed, dated and signed either on the transfer day or the following day.

Examples

An Alberta mortgage broker spends every weekend at his cabin in British Columbia. While he is there he processes and stores all his electronic paperwork on his office computer at the cabin. He stores these electronic files at this location because it is convenient. The broker should remember that although convenient, all electronic documentation must be stored in a physical premise within the province of Alberta.

An appraiser has saved important electronic documentation regarding a client transaction on her USB drive. The information has not been encrypted, as she plans to transfer the information to a designated safe environment later that day. Brokers and Appraisers must be aware that a USB drive is not considered a **safe** storage device – even for the interim. The average USB user is unaware of encryption tools to protect their files and these drives are easily misplaced or lost.

A broker is planning a move to Calgary from Brooks. He currently manages a trust account at a Chartered Bank in Brooks. He would like to move the funds into a newly created account at a Chartered Bank in Calgary. To make things easy, he uses the Automated Banking Machine (ABM) trust account card to **withdraw** the RBC trust fund monies in Brooks. His plan is to deposit the money into the new account in Calgary later that day. Brokers setting up ABM cards for Trust Fund accounts must ensure the issued card **prohibits** cash withdrawals. An electronic funds transfer using Internet banking is a viable option, if written supporting documentation and a printed record containing details of the transaction are provided. This record must also be reviewed, dated and signed either on the transfer day or the following day.

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