

PERSONAL TRADES IN REAL ESTATE

Summary: Real estate industry members have a number of written disclosures that they must provide when they become involved in personal trades in real estate, either directly or indirectly. Some disclosure requirements also apply when it is not an industry member who is personally involved in the trade, but it is an industry member's immediate family member or it is someone who is somehow associated with the brokerage (employee, director, shareholder, etc.). [See: *Real Estate Act Rules*, s.41(f) and s.62]

Real estate industry members in Alberta are considered to have above-average knowledge of factors affecting trades in real estate including but not limited to, property values and market performance. Through their work, it is not unusual for them to come across properties in which they are interested or recognize the best time at which to sell a piece of property they own. Nothing prevents real estate industry members from directly or indirectly trading in real estate on their own behalf. However, when they have a direct or indirect interest in any real estate transaction they are required to meet the disclosure requirements of section 62 of the *Real Estate Act Rules*.

Written disclosures required

If an real estate industry member, either directly or indirectly, trades in real estate on their own behalf, they must make a number of disclosures in writing, either to the buyer or seller (as the case may be) when that individual is not represented by an industry member or to the industry member representing the buyer or seller (as the case may be). If the buyer or seller is a client of the industry member and the industry member has a direct or indirect interest in the transaction, it is a significant conflict of interest for the industry member. If a problem arises with the transaction, how would a RECA hearing panel or a court of law view the conflict where the industry member has stated they are representing the best interests of the client at the same time as the individual industry member is directly or indirectly trading in real estate on their own behalf?

Pursuant to section 62(1) of the *Real Estate Act Rules*, when the buyer or seller is not represented by an industry member, the industry member trading in real estate on their own behalf in the transaction must disclose in writing to the buyer or seller:

- Any direct or indirect interest the industry member has in the transaction;
- That the industry member is authorized as a real estate industry member pursuant to the *Real Estate Act*;
- The name of the brokerage with which the industry member is registered;
- 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,
- any information within the knowledge of the industry member that could materially affect the value of the real estate.

If the buyer or the seller is represented by another industry member, the industry member trading in real estate on their own behalf in the transaction must disclose in writing to the industry member representing the buyer or seller:

- That the industry member is authorized as a real estate industry member pursuant to the *Real Estate Act*, and,
- The name of the brokerage with which the industry member is registered.

The written disclosures outlined above must be done at the earliest practical opportunity and prior to any offer being considered.

Brokerage disclosure responsibilities

Real estate brokerages also have disclosure responsibilities that come into play any time a person employed by or associated with the brokerage wishes to acquire an interest in a property that is listed for sale with or managed by the brokerage.

According to section 62(2) of the *Real Estate Act* Rules, in such a situation, the brokerage must:

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

These disclosure responsibilities apply when the buyer of the property is either the broker, or an associate broker, associate, director, shareholder, official or employee of a brokerage and an immediate family member of such an individual. Immediate family members include an industry member's parents, sibling(s), children and spouse. It also includes the industry member's spouse's parents, siblings and children. Any reference to children includes children that have been legally adopted.

Examples

1. An industry member registered with ABC Realty owns 25 per cent of a numbered company. The numbered company wishes to purchase a property listed with Calgary Realty Services. Because the buying industry member has an indirect interest in the purchase of the property vis-à-vis ownership in the numbered company, the buying industry member must provide proper disclosures in writing. As the seller of the property is represented by an authorized industry member with Calgary Realty Services, the industry member buyer must disclose that he or she is a licensed industry member and is registered with ABC Realty. This disclosure must be done in a timely fashion, prior to any offer is considered by the seller.
2. An industry member's mother-in-law is interested in purchasing commercial space that is listed for sale with the industry member's brokerage. The brokerage must disclose, in writing, to the seller that there is a conflict of interest in that the mother-in-law of an industry member registered with the brokerage is the buyer, and disclose any confidential information that may have already been provided to the buyer, disclose who will be representing the buyer and the seller is to be provided with an opportunity to seek legal and independent advice.

3. An individual owns 25 per cent of the shares in a commercial (non-publicly traded) real estate brokerage. He is a silent shareholder who is not involved in the operations of the brokerage. This individual wishes to buy a strip mall that is currently listed with the brokerage of which he is a shareholder. The brokerage must disclose to the seller(s) of the strip mall that there is a conflict of interest as a result of the shareholder's interest in the listed property, and must disclose the intended buyer's name and how the buyer is associated with the brokerage; any confidential information of the seller that the buyer may have already received; and, who will be representing the buyer. Additionally, the seller must be provided with an opportunity to seek legal and independent advice.