



## TRADING IN REAL ESTATE AS A REAL ESTATE BROKER

**Summary:** “Trade” is the term used to describe the activities that require an authorization from the Real Estate Council of Alberta (RECA). Trade is defined in the *Real Estate Act* and includes a number of activities relating to the provision of services for buying, selling, leasing or managing real estate (including but not limited to advertising, solicitation and negotiation). In order to trade in real estate, individuals require an authorization from the RECA, unless they are exempt pursuant to the *Real Estate Act* or the *Real Estate Act Exemption Regulation*. [See: *Real Estate Act*, s.1(1)(u)(v)(x), s.1(2), s.2(1)(2), s.17; *Real Estate Act Rules*, s.1(1)(f)(w)(z)(dd); *Real Estate Act Exemption Regulation*]

The *Real Estate Act* of Alberta requires **any** person who trades in real estate to hold an authorization from the Real Estate Council of Alberta (RECA), unless there is an exemption in real estate legislation.

### What is “real estate”? What is a “trade”?

In order to fully understand when an authorization to trade in real estate is required, one must understand what is meant by real estate, real estate broker, trade, buyer, seller, purchase and sale.

The *Real Estate Act* section 1(1)(u) defines real estate as:

- Real property;
- Leasehold property;
- A portable dwelling, other than a holiday trailer or recreational vehicle wholly or mainly used for recreational purposes, that:
  - Is designed for use as and is used as a residence,
  - Is mounted on or otherwise attached to its own chassis and running gear,
  - Is capable of being transported on its own chassis and running gear by towing or other means, and
  - Is situated on a site that is used or intended to be used, or that has been represented by the owner of the site as being intended to be used, for residential purposes.

And, the *Real Estate Act* section 1(1)(v) defines real estate broker as:

- A person who, for another or others and for consideration or other compensation, either alone or through one or more persons, trades in real estate, or,
- A person who holds out that he or she is a person referred to as described in the above bullet.

For the purposes of when an authorization as a real estate broker is required, a trade in real estate (pursuant to the above definitions) includes:

- A disposition or acquisition of, or transaction, in, real estate by purchase or sale;
- An offer to purchase or sell real estate;
- An offering, advertisement, listing or showing of real estate for purchase or sale;
- Property management;

- Holding oneself out as trading in real estate;
- The solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in the bullets above
- Collecting, or offering or attempting to collect, on behalf of the owner or other person in charge of real estate, money payable as
  - Rent for the use of the real estate, or
  - Contributions for the control, management or administration of the real estate;
- Any conduct or act in furtherance or attempted furtherance of an activity referred to in the above bullets.

A person must be authorized even if they are merely holding themselves out as an industry member. "Holding out" includes holding open houses and acting as a go-between for a tenant or an owner when an agreement is in place. For more information about holding out, please see RECA Information Bulletin: *Holding Oneself Out*.

"Buyer" is defined in the *Real Estate Act* Rules as "a person acquiring or attempting to acquire an interest in real estate by purchase" and the Rules define "seller" as "a person disposing or attempting to dispose of an interest in real estate by sale."

The *Real Estate Act* Rules defines a "purchase" as including an exchange, option, lease or other acquisition of an interest in real estate and a "sale" as meaning an exchange, option, lease, or other disposition of an interest in real estate.

For the purposes of the aforementioned definitions, lease includes residential tenancy agreements under the *Residential Tenancies Act*.

Property management is included in the definition of "trading in real estate" and as such, to carry out property management activities, an individual requires an authorization to trade in real estate. The *Real Estate Act* Rules define property management as:

- leasing, negotiating, approving or offering to lease, negotiate or approve a lease or rental of real estate;
- collecting or offering or attempting to collect money payable for the use of real estate;
- holding money received in connection with a lease or rental of real estate; and,
- advertising, negotiating, or any other act, directly or indirectly for the purpose of furthering an activity described in sub-clauses (i) to (iii)

Within real estate brokerages, unlicensed assistants may only partake in activities for which an authorization is not required. For example, an unlicensed assistant in a real estate brokerage may schedule appointments for the real estate broker to show listed properties or rental units, but may not show properties, either rentals or sales. For more information real estate brokerage assistants, please see RECA Information Bulletin: *Assistants – Real Estate Brokerage*.

Offering, advertising, listing or showing real estate, for the purpose of the definition of "trade," does not include the provision of information, forms and signs; the creation of a website to market properties; and, the publication of a list of properties for disposition or acquisition.

## Authorization exemptions

There are exemptions to the licensing requirements found in both the *Real Estate Act* and the *Real Estate Act Exemption Regulation*.

Within the Act, section 2(1) states that the Act, as it relates to trading in real estate, does not apply to:

- an assignee, custodian, liquidator, receiver, trustee or other person acting as directed by a statute or under the order of a court, or to an administrator of an estate or an executor or trustee selling under the terms of a will, marriage settlement or deed of trust;
- subject to the regulations, a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company trading in real estate owned or administered by it,
- a person
  - who acquires real estate or any interest in real estate,
  - who disposes of real estate owned by that person or in which that person has a substantial interest, or
  - who is an official or employee of a person acquiring or disposing of real estate within the meaning of either of the two bullets immediately preceding this one.
- A condominium corporation in respect of managing its own affairs,
- A person trading in real estate that consists only of mineral rights, to the extent that the person is engaged in such trading,
- A member in good standing of The Law Society of Alberta acting in the course of and as part of the practice of law, or
- A person exempted by the regulations.

For the purpose of the above exemption, substantial interest means an ownership interest in real estate of not less than 25 per cent.

Section 2(2) of the Act includes an additional exemption, that “a person who is licensed under the *Land Agents Licensing Act* is not required to be authorized as a real estate broker under this Act with respect to that person’s activities as a land agent.”

In addition to the exemptions found in the *Real Estate Act*, the *Real Estate Act Exemption Regulation* specifies the circumstances under which an individual does not require an authorization from RECA in order to carry out the activities that fall under the definition of “trade” in the *Real Estate Act*.

These exemptions include:

- An on-site manager who, on behalf of a real estate broker or the owner of a piece of residential property:
  - Maintains the residential property,
  - Collects rent on behalf of the broker or owner with respect to the property,
  - Shows the property to prospective tenants, or
  - Receives rental applications from prospective tenants for the property, but who does not negotiate or approve leases or rental agreements or hold rental or other money with respect to the residential property on behalf of the broker or owner.
- A person who is licensed under the Retail Home Sales Business Licensing Regulation and is carrying on business in accordance with that Regulation;

- A non-profit organization, or an employee, official or member of the organization, with respect to its or his
  - Leasing or renting of subsidized residential premises,
  - Collecting or offering or attempting to collect money payable as
    - Rent for the use of subsidized residential premises, or
    - Contributions for the control, management or administration of subsidized residential premises, or
    - Acting, advertising, conducting or negotiating directly or indirectly in furtherance of any activity referred to in the bullets above on behalf of the owner or other person in charge of the subsidized residential premises.

Pursuant to the Exemption Regulation, RECA interprets “on site manager” as meaning someone whose primary residence is within the residential property.

These exemptions mean court or statute-appointed custodians, liquidators, trustees and executors of a will are also exempt from the licensing requirements.

Since direct employees of property owners are included within some of the exemptions, it is important to understand the meaning of employee. There is no definition of the word employee in the *Real Estate Act*. As such, in formulating an interpretation of this word, reference is made to other Alberta legislation and Alberta case law. The Real Estate Council of Alberta has adopted the approach taken in the Alberta *Employment Standards Code*. For more information about the definition of “employee,” please see RECA Information Bulletin: *Employees*.

## Examples

1. An individual is hired to design and maintain the website for a real estate brokerage. The website will include pictures of current listings, and will include a link to directly email the listing real estate industry member. The individual designing and maintaining this website is not required to hold an authorization from the Real Estate Council of Alberta because the activities are not considered a trade in real estate
2. An individual who is responsible for collecting security deposits from tenants and depositing it into a trust account must hold a real estate authorization from RECA.
3. An unlicensed real estate brokerage assistant introduces herself to a couple of buyers as an unlicensed assistant to a licensed real estate industry member while holding an open house. The licensed industry member is not present at the open house. In this situation, the unlicensed assistant has breached section 17 of the *Real Estate Act* by carrying out an activity for which an authorization is required (i.e. holding an open house without the licensed industry member present), even though the assistant identified herself as such.
4. An individual wishes to sell his home. He does not want to hire an industry member. Instead, he decides to place his home for sale on a website service that allows property owners to “list” their properties for sale. Website staff do not provide advice with respect to pricing properties, nor do they represent sellers or buyers. The website company does, however, provide lawn signs for private property seller, blank Offer to Purchase forms, and it serves as a website marketing advertising medium for private home sellers. The individual seller in this situation does not require a licence from RECA as he is disposing of real

- estate he owns. The website company assisting the homeowner does not require a licence from RECA because, for the purpose of the definition of “trade,” a licence is not required by a party that is merely providing information, forms and/or signs; creating a website to market properties; and, publishing a list of properties for disposition or acquisition.
5. A condominium corporation hires a third-party management company. The third-party management company is responsible for collecting condominium fees on a monthly basis. If the management company deposits the fees into its own account and then transfers funds to the condominium corporation, it requires an authorization to trade in real estate from RECA. If the management company deposits the condominium fees directly into the condominium corporation’s own account, the management company does not require an authorization for this activity.
  6. An individual owns a number of properties and carries out all needed property management activities for his own properties. A friend asks this individual to manage one of her properties. The individual being asked to carry out property management activities for properties he does not own would require an authorization to trade in real estate from RECA.
  7. A condominium resort unit is jointly owned by five couples (through fractional ownership). Each couple has 20 per cent ownership of the property. All owners are interested in selling the property and one of the owners offers to sell the property on behalf of all of the other owners, and to take a percentage of the final selling price as a commission. Because the owner in question does not own 25 per cent or more of the property, this individual would require authorization to trade in real estate from RECA prior to carrying out the activities required to list, sell and/or market the property in question (and receive payment for same).