

DISCLOSE COST OF SERVICES

Purpose: This bulletin explains why and when industry professionals must disclose to their clients how they will receive pay for their services.

This bulletin applies to all industry professionals.

If you are a mortgage broker or real estate broker, you may only receive payment for your services through your brokerage. Real estate appraisers may receive payment for your services directly.

Your client is entitled to know how you will receive pay or other compensation. You must disclose the amount of the exact costs (fees and disbursements) or how to calculate those costs.

If you provide services to a client and you receive pay from a third party, it is your responsibility to disclose how you receive that pay. If the client wants more information about the payment arrangements, it is your duty to be accurate and honest in all your answers.

You should never hesitate to have an open and frank discussion with a potential client. You should do this before signing a service agreement. If the exact fee is unknown, you should give a reasonable estimate with an explanation of the factors that will affect the estimate.

It is important the client receive full information on all matters that affects the cost of services and how you will receive payment. You may alleviate any confusion or misunderstanding when service cost information is clear at the beginning of the relationship.

You must not suggest commissions or fees are set throughout the industry or represent that any council, board, association, or other industry body sets a minimum amount of fees. This would be false and misleading as the client and brokerage can negotiate all fees.

The client must clearly understand that each brokerage sets its own fee structure. The brokerage decides whether fees are negotiable. If the industry professional has a regular rate of commission that he or she generally charges for providing certain services, it is acceptable to advise the client of this fact. Negotiations can follow at the discretion of the brokerage and the industry professional.

Receipt of advance fees

Before you receive any money relating to your business, you must ensure there is a written service agreement in place that acknowledges the trust arrangement and sets out the terms under which you receive the advance fees and how you will hold and disburse them.

Fee restrictions (mortgage brokers)

The *Real Estate Act* Rules (Rules) state a mortgage brokerage must not charge, collect, or attempt to collect a fee from a person for assisting the person to obtain a mortgage from a lender until you meet the following conditions:

- the lender has given a written commitment to fund the mortgage which has been accepted by the borrower, and the commitment has been provided to the borrower or the borrower's associate, and
- the person receives an initial disclosure and at least two business days have passed since the person received it, or the person has waived the time period for delivery as required by the *Fair Trading Act*.

These restrictions apply to a mortgage where the person is an individual and the credit arrangement is primarily for personal, family, or household purposes. Please note, a written commitment means the borrower has met all lenders' conditions.

This restriction does not apply to fees paid by the brokerage to third parties (e.g., credit reports, Alberta Registries, courier, appraisal services) provided the brokerage has a written agreement with the person for compensation for such fees.

Practice tip – mortgage brokers

Mortgage industry members are encouraged to use the Mortgage Borrower Disclosure document available through the RECA website. Completion of the document meets the mortgage brokerage responsibilities in the Rules.

Related information

Legislation

- *Real Estate Act* - sections 18(2) and 18(3)
- *Real Estate Act* Rules - section 41(c), s.43(1)(2)(b)(viii), s.44, s.45, s.56, s.65(c), s.70, s.71, s.73(1)(2)(b)(viii)

Information bulletins

- Mortgage Borrower Compensation Disclosure Document
- Referrals – Industry Member Requirements