

# RECORDS – RELEASE OF FILE TO CLIENT

Purpose: This bulletin explains the considerations to consider when a client asks for the contents of their file.

This bulletin applies to all industry professionals.

## Industry professionals must comply with legislation and where applicable fiduciary obligations before giving clients the contents of their file

Many industry professionals ask the Real Estate Council of Alberta (RECA) the following question:

*“Our brokerage represented a buyer in a real estate transaction last year. We have now received a letter from the buyer’s lawyer requesting we send the lawyer the contents of our file with respect to that transaction. What is our responsibility or obligation to supply the copy of file as requested?”*

All industry professionals may face a request like and the following applies in all such cases.

In consideration of this question, RECA assumes:

- industry professionals maintain all records that relate to each transaction that is mandatory under real estate legislation
- industry professionals comply with the *Real Estate Act* and Rules, privacy legislation and fiduciary obligations where applicable

The general rule is that you **must give** your client **all** their information you collect.

Client information includes all documents or forms related to the transaction or service, for example:

- listing agreements, mortgage applications, credit reports, offers, counteroffers, purchase contracts, disclosures, condition removals
- any correspondence, receipts or any other records such as copies of advertisements, real property report, appraisals
- all the documents you gather to prepare the real estate appraisal report

## Clients must authorize disclosure to a third party

You must not disclose client information to a third party without the client’s written consent or if the law requires the disclosure

In the question posed, you must obtain written consent from the client to provide copies of the file to the lawyer requesting the information.

### Real Estate Council of Alberta's recommendations

- confirm the buyer consents to disclose writing their file to their lawyer
- confirm in writing what information the client is requesting
- confirm in writing whether copies are sufficient
- comply with your own brokerage's policies
- consult your brokerage's lawyer if you are unsure
- Inform the client if there are any charges to re-produce the file

### Practice tip on saving transaction documents

You do not know if your file will become the subject of a legal proceeding. This is one reason why you should always be cautious and clearly state the type of service and nature of the relationship between yourself and clients in service agreements. You must also remember fiduciary duties, like maintaining confidentiality of information, apply after the transaction is complete.

You may have to disclose your personal information, business information of the brokerage or appraisal firm if it is relevant to the issues in a legal proceeding.

### Related information

#### Legislation

- *Real Estate Act* - section 25
- *Real Estate Act Rules* - sections 13, s.42(c), s.43(1), s.43(2)(b)(vii), s.44(2)(a), s.57(e), s.58(e), s.58.1(2)(e), s.82, s.94