

## CONSUMER AND INDUSTRY SERVICES – LICENSING POLICY – GOOD CHARACTER

The Real Estate Council of Alberta (RECA) is the independent governing authority that sets, regulates, and enforces standards for real estate brokerage, mortgage brokerage, property management, and real estate appraisal professionals in Alberta.

The purpose of this policy is to explain to applicants:

- good character
  - conduct that may raise good character issues
  - the licensing review process and potential outcomes
- factors the executive director considers in licensing decisions

### Legislative framework

#### *Real Estate Act*

#### *12 The Council may make rules*

*(k) respecting the issuing of authorization for the purposes of section 17, including, without limitation, rules*

*(i) respecting eligibility requirements for a person to acquire and retain an authorization,*

*(ii) respecting the application for and issuing of authorizations*

#### *Real Estate Act Rules*

*34 The executive director may refuse to issue a licence or registration certificate to a person, or may recommend that a hearing panel refuse to issue a*

*(1) licence or registration certificate, where the executive director is of the opinion that:*

*(d) it would not be in the public interest or it would harm the integrity of the industry or bring the industry into disrepute to issue a licence or a registration certificate to that person*

*(e) the person is not of good character and reputation or is otherwise unfit to be licensed*

*(h) the person is a brokerage and any director, officer, shareholder or partner, as the case may be, associated with the brokerage:*

*(i) is not of good character and reputation; or,*

*(ii) has made an application to withdraw from the industry pursuant to the Act and the application was approved.*

## What is good character?

The requirement that industry professionals have good character is essential to the real estate industry<sup>1</sup> as it:

- serves public interest and protects consumers
- promotes high ethical standards and a professional mindset
- protects the reputation of the real estate industry
- promotes the integrity of the real estate industry
- enhances public confidence in the ability of the real estate industry to appropriately regulate itself and thus protects self-regulation

The *Real Estate Act* or Rules do not define good character. Case law defines good character as moral strength and includes integrity, candour, empathy, and honesty.<sup>2</sup> RECA evaluates the following when assessing an individual's good character:

- respect for the rule of law
- honesty
- governability
- financial responsibility
- professionalism

### *Respect for the rule of law*

Public confidence in the real estate industry requires industry professionals to respect and comply with the law. Respect for the law is not limited to the *Real Estate Act* or laws directly related to providing goods or services. RECA considers convictions under any law of any country when evaluating a person's respect for the rule of law.

### *Honesty*

Industry professionals must be honest in their dealings with consumers and the public. Industry professionals must conduct themselves honestly when in the care and control of money, property, and information. An honest person is truthful, trustworthy, and genuine. A dishonest person deceives or manipulates the truth by lying, misrepresenting the facts, or omitting material facts.

When dealing with RECA, an applicant must:

- answer questions about an incident truthfully and completely
- address requests for information in a timely manner
- disclose all relevant information

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<sup>1</sup> Real estate industry refers to the real estate brokerage, mortgage brokerage, real estate appraisal, and property management sectors

<sup>2</sup> *Lum v Alberta Dental Association and College (Review Panel)*, 2016 ABCA 154

### *Governability*

RECA must ensure industry professionals are governable to serve public interest, protect consumers, and protect the reputation of the real estate industry. This means an applicant must:

- accept the responsibilities that come with being part of a self-governing profession
- respect the rules established by legislation and RECA as an essential part of the profession
- adhere to professional standards
- respond to RECA appropriately and in a timely manner
- take responsibility and be accountable for their actions

An individual's history of regulation in another profession or jurisdiction is relevant in assessing good character and reputation, and governability.

Relevant considerations include:

- disciplinary findings
- sanctions
- complaints
- licensing or registration refusals
- removal from a profession

### *Financial responsibility*

An applicant's lack of financial responsibility may demonstrate a lack of good character when they:

- intentionally avoid financial responsibility
- seek personal interest over financial obligations
- disregard contractual or legal obligations such as trust obligations

Financial concerns resulting from an economic downturn or negligent mismanagement of money or property does not necessarily demonstrate a lack of good character.

### *Professionalism*

Professionalism is a standard of conduct based on ethics that govern the real estate industry. Consumers hold industry professionals to a high standard of professionalism. This encompasses an industry professional's quality of work, ethics, and communication with any party when providing services. Professionalism means:

- fulfilling fiduciary obligations and acting in the best interest of clients
- providing competent business services to the public with integrity
- being knowledgeable in your area of practice, including legislative changes, and relevant legal or practice considerations
- acting ethically at all times
- being accountable for your actions and taking responsibility

- meeting obligations when dealing with personal or confidential information
- treating RECA, clients, industry professionals, and third parties with civility, respect, and professional courtesy
- putting the interests of your client and the profession above your own

### What conduct may raise good character issues?

Applicants must truthfully answer suitability questions when applying for licensing and registration, and every subsequent renewal. These questions identify issues that may not be reflective of good character. The applicant must declare:

- discipline by a professional association; professional or occupational body, or any other regulatory body
- suspension, cancellation, or revocation of a licence, registration, or authorization by any regulatory body
- lifetime ban from a regulated industry
- fine, sanction, or discipline by any professional, occupational or trade association or any other regulatory body
- investigations or any kind of review by any professional, occupational or trade association or by any other regulatory body
- judgments or orders relating to misrepresentation, theft, fraud, breach of trust or fiduciary duties in the provision of products or services
- active civil proceedings when the defendant and the statement of claim alleges misrepresentation, theft, fraud, breach of trust or fiduciary duties in the provision of goods or services
- bankruptcy, insolvency, or receivership proceedings
- criminal investigations, charges, or criminal proceedings
- participation in the Alternative Measures Program
- convictions of any offence under any law of any jurisdiction (excluding provincial or municipal highway offences)

Applicants must answer these questions for themselves and for any corporations for which they are or were a shareholder, director or officer, or for any partnerships in which they are or were a partner.

Declaring the above triggers a review of the incident and the applicant's good character. RECA's review focuses on the good character of the applicant at the time of application. Good character reviews are not limited to incidents declared on an application. Any information the executive director becomes aware of in the application process may trigger a good character review.

## What is the review process and possible outcomes?

RECA must ensure individuals entering the industry are of good character and suitable for practice. This is fundamental to RECA's role in self-regulation.

If a suitability review prior to an initial application for licence and registration reveals suitability concerns, the Office of the Registrar reviews the events and circumstances giving rise to the concern and recommends an outcome to the executive director. During the licensing review process, an applicant can expect:

- notification of the review
- questions surrounding the conduct at issue
- an opportunity to provide an explanation

Individuals fall into one of three categories when good character issues arise:

- individuals not yet licensed who apply for a suitability review
- individual making an initial application for licence and registration
- individual applying for renewal, reinstatement or re-registration

### *Individuals not yet licensed who apply for a suitability review:*

When an individual wishes to become licensed and questions whether something in their past may give rise to concerns about good character, they may request a [suitability review](#) before they apply for licence and registration. Often an individual requests a suitability review before they enroll in the pre-licensing education program. The suitability review outcome is an opinion about whether the individual would likely succeed if the executive director reviewed a formal application for licence and registration. Individuals can proceed with an application for licensing and registration regardless of the suitability review outcome. This would be at the applicants own risk.

If an applicant does not complete a suitability review and RECA refuses a licence, the applicant loses the time and money invested in the education and licensing process.

### *Individuals making an application for licence and registration, renewal, reinstatement or re-registration:*

When an individual meets all eligibility criteria, successfully completes the required pre-licensing education, and provides a current Certified Criminal Record Check, they may apply for licence and registration. When good character issues arise in the application process, the executive director may:

- issue a licence – occurs when the evidence shows the applicant is of good character and suitable for licensing
- refuse a licence – occurs when evidence shows the applicant is not of good character and not suitable for licensing

- issue a licence with terms, conditions, or restrictions – occurs when evidence shows the applicant may have demonstrated a lack of good character at some point yet, at time of application, is suitable for licensing; one common licensing term is broker supervision; a common condition is the industry professional must provide information to the executive director within a specified time

The applicant must inform the executive director of any changes to suitability question responses during the application process. The executive director may refuse, cancel, or suspend a licence if the applicant fails to do this.

Where the executive director refuses, suspends or cancels a registration or licence, or places terms on a licence, the person has the right to request a review of the executive director's decision to an appeal panel.

### What factors does the executive director consider when evaluating good character?

The executive director considers the circumstances of an incident, the person's actions since the incident, and the person's insight into the incident in deciding an outcome. The executive director places significant weight on cooperation and honesty during the review process and expects applicants to accept responsibility for their conduct and rehabilitate when appropriate.

Good decisions require thoughtful consideration of different factors present in each case. Factors may be aggravating or mitigating and vary in every situation. While this is not an exhaustive list, RECA typically considers the following factors:

1. Past conduct relevant to current character
2. Applicant taking responsibility when misconduct has taken place
3. Rehabilitative efforts
4. Reference letters
5. Outcomes in similar cases

#### 1. *Past misconduct relevant to current character*

RECA considers the nature, seriousness, and duration of the past misconduct. Key considerations include:

- Does the past misconduct affect the ability of the applicant to carry out the responsibilities of an industry professional?
- Was the past misconduct intentional?
- Does the past misconduct relate to the business of an industry professional?
- Was the applicant young and immature at the time of the misconduct?

- How much time has passed since the misconduct?
  - Was the misconduct an isolated event?
  - Did the misconduct achieve personal gain or advantage?
2. *Applicant taking responsibility when misconduct has taken place:*
- Does the applicant understand the misconduct was wrong?
  - Does the applicant take responsibility and show remorse for their actions?
  - Was the applicant honest about the incident?
  - Was there restitution?
3. *Rehabilitative efforts*
- Did the applicant receive and complete treatment or counselling?
  - Did the applicant complete rehabilitative efforts and requirements?
  - What has the applicant done since the misconduct?
4. *Reference letters*
- Can the applicant provide credible character references from individuals who are aware of previous misconduct?
  - Has the applicant made social contributions?

5. *Outcomes in similar cases*

Similar situations should result in similar outcomes. This maintains consistency in decision making. Recent similar decisions should receive more weight and consideration than older decisions.

The executive director has broad discretion in assessing good character. Clear rational reasons in a written decision must support this discretion.

### Example Licensing Decisions: Licensing Refusals

An applicant demonstrated a lack of honesty and governability by:

- misrepresenting the circumstances of his application with brokerages he was seeking registration with
- showing a disregard for the requirements of the legislation by trading in real estate prior to getting a licence

A returning applicant demonstrated a lack of cooperation and respect for the rule of law by:

- previously participating in a mortgage fraud scheme
- refusing to provide information surrounding the mortgage fraud scheme
- refusing to cooperate in RECA's investigation of industry professionals involved in the mortgage fraud scheme

An applicant demonstrated a lack of honesty and governability by:

- committing deceitful behaviour that significantly harmed members of the public
- demonstrating a lack of respect for court and legislative requirements
- providing false and misleading information during the application process

An applicant demonstrated a lack of financial responsibility and honesty by:

- using monies held in trust for their own financial benefit
- intentionally withholding relevant information during the review

An applicant demonstrated a lack of honesty by:

- failing to disclose a serious criminal charge during the application process
- misrepresenting the events that gave rise to the charge and subsequent conviction

An Appeal Panel upheld RECA's decision to refuse registration.