

GUIDE TO COMPLAINTS RELATED TO UNAUTHORIZED PRACTICE

This guide only applies to complaints about individuals and brokerages that are not authorized (“licensed”) by the Real Estate Council of Alberta (RECA), but are carrying out activities for which an authorization is required. If your concern relates to the conduct of someone who is authorized, please refer to the *Guide to Complaints: Industry Professionals*.

This guide provides information on RECA’s unauthorized practice complaint process, how to make a complaint, how complaints are evaluated and what happens after the evaluation is complete.

WHO IS RECA?

Established in 1996, the Real Estate Council of Alberta (RECA) is an independent, non-government agency responsible for regulating industry members in the real estate brokerage, mortgage brokerage and real estate appraisal industries under Alberta’s *Real Estate Act*.

WHAT DOES RECA REGULATE?

RECA regulates the conduct of industry professionals within Alberta’s real estate brokerage, mortgage brokerage and real estate appraisal industries. Industry professionals includes any person who holds an authorization as a real estate broker, mortgage broker or real estate appraiser.

Real estate professionals include real estate associates, associate brokers, real estate brokers and real estate brokerages. Real estate professionals provide real estate services to assist others in buying and selling property including offering, advertising and showing real estate for purchase or sale; provide property management services; and, solicit, negotiate or obtain a contract or agreement for a trade in real estate (or simply offer to do so).

Mortgage brokerage professionals include mortgage associates, mortgage brokers and mortgage brokerages. Mortgage brokerage professionals, on behalf of another person for consideration or compensation, solicit a person to borrow or lend money that will be secured by a mortgage, negotiate a mortgage transaction, collect mortgage payments and otherwise administer mortgages, and buy, sell and exchange mortgages (or simply offer to do so).

Real estate appraisal professionals include appraisers and candidates. Appraisers and candidates, for consideration or other compensation, estimate the defined value of an identified interest in real estate; sign a real estate appraisal report that makes an estimate of a defined value of an identified interest in real estate prepared by another person and accepts responsibility for that report; and/or provide real estate appraisal consulting services

(or simply offer to do so).

RECA does not regulate real estate or mortgage transactions. This means RECA does not investigate the fairness or legality of real estate transactions or mortgage deals, and it also does not investigate the conduct of sellers, buyers, landlords, lenders or borrowers.

WHAT IS RECA'S ROLE IN HANDLING COMPLAINTS ABOUT UNAUTHORIZED PRACTICE?

RECA enforces the *Real Estate Act* and may investigate and discipline persons who hold themselves out as real estate, mortgage brokerage or real estate appraisal professionals, but who are not authorized by RECA.

If RECA investigates a complaint and determines the person traded in real estate as a real estate broker, dealt in mortgages as a mortgage broker or acted as a real estate appraiser but was not authorized, RECA may issue an Administrative Penalty or file charges in Provincial Court.

RECA's process is disciplinary in nature. RECA cannot award damages or intervene in civil disputes. These issues are the responsibility of the courts. If you are looking to recover damages or have transactions cancelled or enforced, RECA recommends you consult with a lawyer for advice on the civil remedies available to you.

Note, however, that the *Real Estate Act* of Alberta does provide some protection for persons who may have dealt with unauthorized persons. If you have dealt with an unauthorized person, please review the Legislative Rights section of this guide on page 8.

WHAT SHOULD I DO BEFORE FILING A COMPLAINT?

Before filing a complaint, you should determine whether the person required an authorization. The authorization criteria differ in each area of industry practice. Please refer to the section that is applicable to you.

DETERMINING WHETHER SOMEONE IS ACTING AS A REAL ESTATE APPRAISER

Generally speaking, a person acts as a real estate appraiser when they, for consideration or other compensation, estimate the defined value of real estate; sign a real estate appraisal report that makes an estimate of the defined value of real estate; or, provide real estate appraisal consulting services. For more information, please refer to section 1(1)(u.1) of the *Real Estate Act*. The *Real Estate Act* is available on RECA's website.

For detailed information on what constitutes acting as a real estate appraiser and when an authorization is required, you may also want to review RECA's Information Bulletin: *Acting as a Real Estate Appraiser - Jurisdiction and the Real Estate Act*. It is available on RECA's website.

To assist you in determining whether a person requires a real estate appraiser authorization, RECA has created the following questionnaire:

Part A.1

Is the person providing value estimates of real estate or of an interest in real estate (i.e lease)?

Yes No

Is the person signing a value estimate report and accepting responsibility for the report?

Yes No

Is the person providing real estate appraisal consulting services?

Yes No

Is the person stating that they can provide any of the services described in the questions above?

Yes No

Part A.2.

Has the person received any remuneration (fees, charges, commissions) for the provision of any of the services described in Part A.1?

Yes No

Did the person intend to receive remuneration or ask for remuneration for the purpose of providing the services described in Part A.1?

Yes No

If you answered yes to any question in Part A.1 **AND** either question in Part A.2, the person requires a real estate appraisal authorization unless they are exempt pursuant to the *Real Estate Act* or the Regulations. To determine if a person is exempt, please answer the following questions:

Part A.3

If the person is an employee of the Government of Canada or the Government of Alberta, or a municipality of Alberta, is he or she only providing appraisal services as part of their employment?

Yes No

Is the person an employee who provides appraisal services only for their employer?

Yes No

Is the person a real estate broker authorized by RECA and is only providing value advice services to assist a person with a trade in real estate?

Yes No

Is the person an accredited municipal assessor of Alberta acting in an assessment capacity?

Yes No

If you answered "yes" to any of the questions in Part A.3, the person is exempt from a real estate appraisal authorization.

If you answered “yes” to any of the questions in Part A.1, “yes” to either question in Part A.2 **AND** “no” to all questions in Part A.3, the person likely requires a real estate appraisal authorization. You may complete the Complaint Form (Unauthorized Practice – Real Estate Appraisal) on www.reca.ca > *Complaints and Discipline*.

DETERMINING WHETHER SOMEONE IS ACTING AS A REAL ESTATE BROKER

Generally speaking, a person acts as a real estate broker when they trade in real estate pursuant to section 1(1)(x) of the *Real Estate Act*. The *Real Estate Act* is available on RECA’s website.

For detailed information on what constitutes acting as a real estate broker and when an authorization is required, you may want to refer to the Information Bulletin: *Trading in Real Estate as a Real Estate Broker*. It is available on RECA’s website.

The definition of a trade in real estate is complex. To assist you in determining whether a specific activity is a trade in real estate, please consider the following questions.

Part B.1

Are the activities a trade in real estate?

Is there a deposition or acquisition or a transaction in real estate? (*please note this includes an exchange, an option to purchase or sell, a lease or rental agreement*)

Yes No

Is there an offer to purchase, sell, lease or rent real estate?

Yes No

Are there any activities to offer, advertise, list or show real estate for purchase, sale, lease or rent? (*An offering, advertisement, listing or showing does not include: The provision of information, forms and signs, the creation of a webpage to market properties or the publication of a list of properties for purchase, sell, lease or rent.*)

Yes No

Are property management activities taking place?

Yes No

Is the person soliciting, negotiating or obtaining any contracts described above?

Yes No

Is the person collecting, holding in trust, and disbursing condominium contributions from an account other than the condominium corporation’s legally owned account on behalf of a condominium corporation for the administration of the condominium corporation?

Yes No

If you answered “yes” to any of the questions in Part B.1, the activities are considered a trade

in real estate.

Is the person acting as a real estate broker?

Part B.2

Is the person performing trade activities (please see activities described in Part B.1)?

Yes No

Is the person holding themselves out as being able to perform trade activities?

Yes No

Part B.3

Has the person received or does the person intend to receive remuneration for any of the activities described Part B.1?

Yes No

Part B.4

Does the person disposing the real estate by exchange, purchase, lease or rent, own less than 25% of the real estate?

Yes No

If you answered "yes" to questions in Part B.2, Part B.3 **AND** Part B.4, the person in question requires a real estate broker authorization provided they are not exempt pursuant to the *Real Estate Act* or the Regulations.

Part B.5

Determining whether the person is exempt from a real estate broker authorization

To determine if a person is exempt, please answer the following questions:

Is the person an assignee, custodian, liquidator, receiver, trustee or other person acting as directed by a statute or a court order?

Yes No

Is the person acting as an administrator, trustee or executor selling under the terms of a will, marriage, settlement or deed of trust?

Yes No

Is the person an employee of a person intending to purchase, sell, lease or rent real estate?

Yes No

Is the person a lawyer acting as part of their practice of law?

Yes No

Is the person acting as an on-site manager? (*An on-site manager is a person who on behalf of a real estate broker or owner of a residential property, maintains the property, collects rent, shows the property to prospective tenants and receives applications but does not negotiate or approve leases or hold any monies in trust. The on-site manager*)

is a resident of the residential complex.)

Yes No

Is the person involved in the sale of a mobile home and licensed under the *Retail Home Sales Business Licensing Regulation*? (A mobile home is a portable dwelling other than a holiday trailer to be used as a residence, is mounted on its own chassis and running gear, is capable of being transported and is situated in a site intended for residential purposes. The *Retail Home Sales Business Licensing Regulation of the Fair Trading Act* is administered by Service Alberta. For information on whether a person is licensed under the *Retail Home Sales Business Licensing Regulation* please go to www.servicealberta.gov.ab.ca/consumer/business_search/index.cfm)

Yes No

If you answered “yes” to any of the questions in Part B.5, the person in question is exempt from a real estate broker authorization.

If you answered “yes” to questions in Parts B.1, B.2, B.3 **AND** B.4, and “no” to ALL questions in Part B.5, the person likely requires a real estate broker or associate authorization. You may complete the Complaint Form (Unauthorized Practice – Real Estate Brokerage) on www.reca.ca > *Complaints and Discipline*.

DETERMINING WHETHER SOMEONE IS ACTING AS A MORTGAGE BROKER

Generally speaking, a person acts as a mortgage broker when they carry out activities (“deal in mortgages”) as described in section 1(1)(r) of the *Real Estate Act*. The *Real Estate Act* is available on RECA’s website.

For detailed information on what constitutes dealing in mortgages as a mortgage broker and when an authorization is required, you may want to refer to the Information Bulletin: *Dealing in Mortgages as a Mortgage Broker*. It is available on RECA’s website.

Mortgage brokerage activities can be complex. To assist you in determining whether a specific activity is dealing in mortgages, please consider the following questions.

Is the person acting as a mortgage broker?

Part C.1

Is the person soliciting a lender to lend or a borrower to borrow through a loan secured by a mortgage?

Yes No

Is the person negotiating a mortgage loan between a borrower and a lender?

Yes No

Is the person collecting mortgage payments or administering a mortgage on behalf of a lender?

Yes No

Is the person buying, selling, or exchanging mortgages or offering to do so on behalf of others?

Yes No

Is the person representing that he/she can perform any of the functions described herein?

Yes No

Part C.2

Has the person received, or does the person intend to receive or expect remuneration for the activities described in Part C.1? Yes No

Part C.3

Is the person someone other than the borrower or the lender in the intended mortgage transaction? Yes No

If you have answered "yes" to any question in Part C.1, **AND** answered "yes" to Part C.2 **AND** Part C.3, the person in question requires a mortgage broker authorization provided they are not exempt pursuant to the *Real Estate Act* or the Regulations.

Part C.4

To determine if a person is exempt, please answer the following questions:

Is the person an agent or employee of a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company?

Yes No

Is the person an employee of a borrower or lender acting within their regular course of employment? Yes No

Is the person a lawyer acting as part of their practice of law?

Yes No

If you answered "yes" to any of the questions in Part C.4, the person in question is exempt from a mortgage broker authorization.

If you answered "yes" to any question in Part C.1, "yes" to Part C.2 **AND** Part C.3, and "no" to all questions in Part C.4, the person likely requires a mortgage broker authorization. You may complete the Complaint Form (Unauthorized Practice – Mortgage Brokerage) on www.reca.ca > *Complaints and Discipline*.

JURISDICTION

The reality is that, in this electronic age, components of trades, deals and appraisals may occur in several jurisdictions using the internet and faxes. The *Real Estate Act* will apply to trades in real estate, deals in mortgages and real estate appraisals in usual cases and in cases where a substantial connection to Alberta is present.

The "real and substantial connection" test is a legal test to determine jurisdiction where business activities take place in multiple jurisdictions. The real and substantial connection test

considers the connectors present in competing jurisdictions and determines which connectors are the more significant, thus creating the "substantial connection," as opposed to a more casual or tangential connection. This is a complex of area of law. As a result, RECA will make this determination and accept all complaints provided that at least some aspect of the trade in real estate, deal in mortgages or real estate appraisal took place in Alberta.

Consumers may also wish to contact a RECA information officer at (403) 228-2954 or 1-888-425-2754 (toll free) for advice on whether a complaint should be filed with RECA.

I HAVE DONE MY RESEARCH AND CONCLUDED THE PERSON REQUIRED AN AUTHORIZATION BUT WAS NOT AUTHORIZED, HOW DO I FILE A COMPLAINT?

To file a complaint, please complete the Complaint Form on www.reca.ca > *Consumer Information* > *Complaints and Discipline*.

When complete, your complaint can be sent to the attention of RECA Investigations via mail, fax or email:

Mail: Real Estate Council of Alberta - Investigations
Suite 202, 1506 11 Avenue SW
Calgary, AB T3C 0M9
Fax: (403) 228-3065
Email: conductreview@reca.ca

Does RECA accept anonymous complaints?

No. RECA will not proceed with a complaint unless it receives sufficient information to determine if the matter should be investigated. Often, the complainant is an important witness and without their cooperation, RECA will not be able to make that determination.

If RECA does not investigate your complaint, you will be notified in writing and provided with reasons for the refusal.

If your complaint falls under another organization's jurisdiction, RECA will provide you with suggestions on how to proceed.

LEGISLATIVE RIGHTS

Sections 21 and 21.1 of the *Real Estate Act* provide members of the public with protection and recourse when they may have unknowingly dealt with a person who required an authorization but was not authorized. The *Real Estate Act* is available on RECA's website.

The *Real Estate Act* prohibits an unauthorized person from collecting or bringing an action to collect commissions or remuneration related to the provision of services for which they required an authorization. If you have paid commissions or remuneration to an unauthorized person for the provision of services for which they required an authorization, you may bring an action through the courts to recover the amount you paid.

If an unauthorized person has brought an action against you for the collection or remuneration

or commissions resulting from services for which an authorization was required, the courts may, on application, stay their civil action.

RECA recommends you consult a lawyer for advice on the legislative and civil remedies available to you.

**FOR MORE INFORMATION ON COMPLAINTS &
INVESTIGATIONS,**

Real Estate Council of Alberta - Investigations
Suite 202, 1506 11 Avenue SW
Calgary, AB T3C 0M9