

Guide to Professional Conduct Review (Investigations) for Consumers

This guide provides consumers with information on RECA's investigative process. The process begins when RECA receives a complaint or information alleging a breach of the legislation. For information on the complaint process, refer to the [Consumer Guides to Complaints](#).

PURPOSE OF AN INVESTIGATION

- to gather all relevant information so RECA can make an informed decision
- to treat all parties courteously, fairly, impartially, and according to the rules of administrative law
- to gather information efficiently

The purpose of a RECA investigation and any resulting conduct proceedings is to address the conduct of the industry professional. RECA cannot help you recover money or damages. You must pursue actions to recover deposits or other funds through the courts. Consumers should obtain legal advice without delay and should not wait until a related RECA completes a complaint evaluation and/or investigation.

WHAT RECA INVESTIGATES

RECA investigates conduct that appears to:

- breach the *Real Estate Act* (Act) or Rules
- go against the standards of practice expected of industry professionals
- demonstrate incompetence, recklessness or willful wrongdoing
- put consumers or other industry professionals at risk

How does RECA determine if the conduct is 'conduct deserving of sanction'?

RECA assesses conduct based on all the facts and circumstances at the time of the conduct and may consider:

- the industry professional's intentions
- the information available to the industry professional
- the consequences of the conduct
- the harm to the integrity of the industry or a member of the public

Please refer to the Information Bulletin: [Conduct Deserving of Sanction](#) for more information.

WHO RECA INVESTIGATES

RECA investigates the conduct of licensed industry professionals (real estate brokers, associate brokers, and associates, property managers, mortgage brokers and associates, and real estate

appraisers and candidates).

Does RECA investigate unlicensed individuals?

RECA investigates unlicensed individuals if the individual's activities required them to hold a licence. For example, RECA would investigate an individual who was showing properties to prospective tenants and collecting and holding security deposits but was not licensed to practice property management.

Unlicensed activity limits RECA's jurisdiction to determining if the activity constitutes trading in real estate, dealing in mortgages, or providing real estate appraisal services. Any sanctions imposed because of an investigation are specific to this issue, and not the conduct itself.

Make sure you deal with licensed individuals. To check someone's licence, www.reca.ca and click "Find a Professional."

UNDERSTANDING THE INVESTIGATION PROCESS

RECA conducts investigations according to a formal process based on the requirements of the Act and the principles of natural justice, which promote fairness throughout the process.

What is the investigation process?

RECA's investigation procedure maximizes transparency, fairness and impartiality, and minimizes any intrusive or disruptive effects of the investigation.

1. Complaint Letter

You agree to cooperate with the investigation process when you sign the acknowledgement portion of the complaint form. Cooperating with the investigation means you agree to answer RECA's questions, provide necessary information, and appear as a witness if the matter goes to a hearing or prosecution. Without your cooperation, it is unlikely RECA will have sufficient evidence to warrant investigating the complaint further. Where matters are serious such as fraud or breach of trust, the executive director may choose to continue an investigation in the absence of a complainant's cooperation.

2. Notify you and the industry professional that investigation is underway

RECA provides the industry professional with written notification when RECA opens an investigation, which may include a copy of the letter of complaint. RECA asks the industry professional to respond to the complaint issues in writing and to submit documents as directed.

3. Gather all the evidence and statements.

The investigator may then gather statements and documents from other sources in addition to the information provided by the complainant and industry professional.

4. Evidence and facts given to executive director to render a decision

5. **If necessary, RECA may refer the matter to a Hearing Panel**, who will make a decision after hearing all statements and evidence

6. RECA notifies all parties of the decision

7. **Parties may have a right to appeal the decision**

Frequently Asked Questions – Investigation Process

How long does an investigation take?

Each investigation is different and the time required depends on the circumstances of the case. Industry professionals and complainants usually want to deal with the issue as quickly as possible – but the due process required under the Act and the principles of natural justice take time.

RECA must give complainants and industry professionals adequate opportunity to explain what happened and answer questions. RECA must gather and verify all documents, including from outside sources, and prepare a full report. Though time-consuming, failure to follow the process could have a negative impact on the public or industry professionals.

Am I responsible for the investigation against an industry professional?

Complaints often initiate investigations, but they are not responsible for the investigation, and investigations will not cease if a complainant drops their complaint. RECA's focus is public protection, and will investigate any suspected conduct deserving of sanction, regardless of a complaint being in place.

Will RECA contact me or request information during the investigation?

RECA may contact you several times during the investigation to interview you or gather information and documents related to the investigation. This may include requests for your personal records. For example, RECA may require phone records to show a particular phone call took place, or bank records to show you paid a deposit to the industry professional. RECA will only request information that is relevant to the investigation.

Can my lawyer attend an interview?

Yes. However, you must answer the investigator's questions. Your lawyer cannot interfere with the interview process. The investigator will not address questions to your lawyer or accept your lawyer's testimony on your behalf. Please inform the investigator if your lawyer will attend an interview.

RECA may require information from your lawyer in situations where your lawyer has documents or information related to your complaint that you do not possess. In these cases, the investigator may ask you to sign a solicitor-client privilege waiver. This waiver allows the investigator to speak directly to your lawyer and request information specifically related to your complaint. This improves the efficiency of an investigation.

Frequently Asked Questions: Collecting Information and Protecting Confidentiality

Is information gathered during an investigation confidential?

RECA shares information gathered during an investigation only as far as the investigation process requires or when required by law.

Industry professionals may receive a copy of the complaint that led to the investigation. Additionally, RECA may share certain information or documents with witnesses to confirm their accuracy or to obtain their statements and evidence. RECA requires this exchange of information to meet the requirements of natural justice. It enables the industry professional to know all relevant facts gathered and give them an opportunity to respond.

After an investigation or if the matter proceeds to a hearing or prosecution, RECA must disclose all information gathered during the investigation to the industry professional affected. Since hearings are public proceedings, information gathered during an investigation and disclosed to the industry professional may become public at a hearing.

In unlicensed practice investigations, RECA may refer the matter to Alberta Justice for prosecution, in which case RECA must disclose all information.

You must advise the investigator immediately if they should keep certain personal information confidential. RECA will make every reasonable attempt to comply with such requests provided the information is not integral to the matter under investigation (e.g., new address, phone number).

Will the investigator record my conversations?

Yes. RECA electronically records interviews with complainants and other witnesses. This ensures the integrity of the investigation by providing an actual record of what was said rather than relying on an investigator's interpretation. Recording interviews ensures an investigation follows RECA's policies and procedures.

Frequently Asked Questions: Outcomes

What happens at an investigation's conclusion?

Possible outcomes include:

- RECA may not have jurisdiction or have insufficient evidence
- RECA may issue an advisory note, letter of reprimand, or administrative penalty
- RECA may refer the matter to a hearing panel for a decision

Can an industry professional choose to withdraw from the industry?

Under section 54 of the Act, an industry professional may apply to Council to withdraw permanently from the industry if their conduct is the subject of an investigation or conduct proceedings, or if they suspect their conduct may become the subject of proceedings. Once Council approves this withdrawal, RECA discontinues all investigations into their conduct as an industry professional.

Will RECA inform me about the outcome of an investigation?

Yes.

If RECA refers the matter to a hearing panel or for prosecution, RECA transfers the file to RECA's Conduct Proceedings Unit, who will contact the complainant.

Is there anything I can do if I disagree with the outcome of an investigation?

If RECA closes the file for insufficient evidence and RECA takes no further action following an investigation, complainants have the right to appeal to a hearing panel by providing written notice to the executive director within 30 days of receiving notice.

Note: if the hearing panel determines the complaint is frivolous or vexatious, it may order the complainant to pay costs to RECA.

RECA's publication policy for outcomes

RECA summarizes all enforcement actions (e.g., hearings, consent agreements, letters of reprimand, and administration penalties) in RECA's Case Summaries newsletter in accordance with RECA's policy. RECA distributes Case Summaries to industry professionals and publishes it at www.reca.ca. RECA also posts enforcement actions in full on www.reca.ca, including notices of industry professionals who withdraw from the industry under section 54 of the Act.

FOR MORE INFORMATION ON INVESTIGATIONS, PLEASE CONTACT:

The Real Estate Council of Alberta
Suite 202, 1506 11 Avenue SW, Calgary AB T3C 0M9
Toll free in Alberta 1-888-425-2754
Phone (403) 228-2954 Fax (403) 228-3065 www.reca.ca