



GUIDE TO A PROFESSIONAL CONDUCT REVIEW FOR INDUSTRY PROFESSIONALS

Established in 1996, the Real Estate Council of Alberta (RECA) is an independent, non-government agency, responsible for governing industry professionals in the real estate, mortgage brokerage and real estate appraisal industries under Alberta's *Real Estate Act*. One of the basic responsibilities of any self-regulating body is to conduct reviews of an industry professional's conduct and take disciplinary action when necessary. RECA conducts Professional Conduct Reviews (PCR) according to a formal process based on the requirements of the Act and the principles of natural justice (which promote fairness throughout the process). Industry professionals should treat a PCR seriously and be prepared to cooperate fully.

This guide is intended to provide industry professionals with an overview of the PCR process and to address common questions. Professional Conduct Reviews, no matter how well-handled, are intrusive by nature and cause stress to the individual under review whether or not they have done something wrong. While RECA cannot relieve this stress, this detailed explanation of the PCR process will hopefully alleviate any uncertainty about the process. Topics include:

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PURPOSE OF A PROFESSIONAL CONDUCT REVIEW

RECA's Professional Conduct Review process has three main objectives:

1. to gather all relevant information to enable the Executive Director and hearing panels to make an informed decision on the facts of the matter under review.
2. to treat all parties courteously, fairly, impartially and according to the rules of administrative law.
3. to gather information efficiently.

RECA's Professional Conduct Review procedures are designed to achieve these objectives with as little disruption as possible and to give consideration to personal or business issues.

WHAT RECA REVIEWS

RECA reviews conduct that appears to:

- be in breach of the *Real Estate Act* or *Real Estate Act Rules*;
- be contrary to the standards of practice expected of an industry professional;
- demonstrate incompetence, recklessness or intent;
- put consumers or other industry professionals at risk;
- undermine public confidence in the industry, harm the integrity of the industry or bring the industry into disrepute.

These issues are referred to as 'conduct deserving of sanction.'

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

RECA carries out a PCR to gather evidence to help determine if an industry professional's conduct is deserving of sanction. Assessment of conduct is based on all the facts and circumstances at the time of the conduct.

RECA will also attempt to determine whether there are aggravating and mitigating factors that need to be taken into consideration by the Executive Director or hearing panels. Some examples of aggravating and mitigating factors are as follows:

- **The industry professional's intentions.**

For example, it would be an aggravating factor for an industry professional to intentionally fail to disclose a defect to a client in order to profit from the transaction.

- **The industry professional's cooperation during the Professional Conduct Review process.**

For example, it would be a mitigating factor if the industry professional acknowledged the conduct and took responsibility for it. Conversely, it would be an aggravating factor if an industry professional attempted to hide the conduct or provided false information during the Professional Conduct Review process. Providing false information during the review process also constitutes conduct deserving of sanction.

- **The significance of the consequences for any particular breach of legislation.**

For example, if the breach was technical in nature and it did not impact the transaction it would be considered a mitigating factor. A breach that results in a collapsed transaction or disadvantages a party to a transaction would be considered an aggravating factor.

- **The harm to the integrity of the industry or member of the public.**

For example, conduct that significantly harmed the public or the integrity of the industry would be considered an aggravating factor.

There are many types of aggravating and mitigating factors and this list is meant to only provide some examples.

Some actions you can consider doing include:

- Acknowledging the misconduct;
- Expressing regret for the misconduct;
- Signing up for a course or courses that may help you gain a better understanding of your obligations and how to comply with them;
- Changing your procedures to ensure compliance in the future;
- Attempting to rectify any harm created by the misconduct.

HINT: If you have just been advised that a Professional Conduct Review has been commenced into your conduct and you realize you have committed conduct deserving of sanction, take action to mitigate the conduct.

What is NOT considered 'conduct deserving of sanction'?

Isolated, trivial or technical breaches of the standards of business practice devoid of significant consequences may not be considered conduct deserving of sanction.

OPENING A PROFESSIONAL CONDUCT REVIEW

What triggers a Professional Conduct Review ?

A Professional Conduct Review is initiated when the Executive Director receives:

- a written complaint involving an industry professional related to their responsibilities as an industry professional; or,
- information that the conduct of an industry professional may be in breach of the *Real Estate Act* or *Real Estate Act Rules*.

Do all complaints or all information received result in the commencement of a Professional Conduct Review ?

No, several criteria must be met before a Professional Conduct Review is initiated.

The most important are:

- The matter must fall under the RECA's jurisdiction (i.e., it must concern a breach of the *Real Estate Act* or *Real Estate Act Rules*);
- The industry professional giving rise to the conduct must be identified; and,
- There must be evidence that indicates that the industry professional was possibly involved in conduct deserving of sanction. In other words the conduct complained of, if proven to be true, must be a breach of the *Real Estate Act* or the *Real Estate Act Rules*.

The complaint is likely to be refused when:

- the conduct complained of does not constitute conduct deserving of sanction. *For example, the conduct in question is the result of an industry professional following the lawful direction of his or her client;*
- the complaint is anonymous, and no objective, verifiable evidence is provided;
- the complaint is simply a suspicion;
- the complaint is frivolous or vexatious;

- no industry professional is identified.

What if the complaint is being handled by an industry association - local board or provincial or national association?

Industry professionals sometimes have concerns about “double jeopardy.” However, this term is not applicable to RECA’s review process. It refers to a person being prosecuted twice for the same crime by the same court.

A single situation or event may trigger a review from several different perspectives. For example, one event may trigger:

- civil proceedings;
- proceedings by another regulatory body or government agency;
- criminal proceedings;
- conduct proceedings under the *Real Estate Act*;
- proceedings by an industry association (e.g., real estate board or appraisal association).

RECA is concerned with possible breaches of the *Real Estate Act* and *Real Estate Act* Rules, while an industry association may wish to determine whether a professional met the standards required of its members. RECA has entered into Memoranda of Understanding with many real estate boards and other industry associations in an attempt ensure that the roles and responsibilities of each body are clearly understood, to establish a method for identifying primary responsibility for the review of complaints and to facilitate the transfer of information and minimize duplication. However, some duplication is likely to exist as some types of conduct will give rise to conduct deserving of sanction and breaches of industry association rules or standards of practice.

Why does RECA need to review a complaint that is already being dealt with by another organization?

Just because a matter has been or is being dealt with in another forum does not mean there is no need for RECA to initiate a review .

For example, consider a case in which a real estate industry professional makes an error in calculating square footage:

- civil action may determine the extent of liability and/or damages;
- if the industry professional belongs to a real estate board, that board may review the matter based on its member standards; and,
- RECA may commence a review to determine whether the error was because

of a simple mistake (not a breach of the Act), or if the error was intentional or due to recklessness or incompetence, any of which may merit disciplinary action under the *Real Estate Act*.

Proceedings initiated by an industry association or other regulatory body do not duplicate or interfere with a RECA Professional Conduct Review. The courts, industry associations or other regulatory bodies do not have the legal responsibility RECA has to determine whether conduct complies with the *Real Estate Act*. The courts may consider the *Real Estate Act*, but only insofar as the conduct may relate to civil liability.

What if a complainant is suing me?

While complainants pursue civil proceedings and conduct proceedings for legitimate reasons, there are some complainants who will file complaints with RECA in the belief that doing so will advance their civil proceedings. RECA has taken steps to prevent complainants from unfairly using RECA's Professional Conduct Review and disciplinary processes for civil purposes. Some of the steps taken are as follows:

1. RECA will not commence Professional Conduct Reviews regarding issues that are entirely civil disputes.
2. RECA will only review the matter if there is an alleged breach of the *Real Estate Act* or *Real Estate Act Rules*.
3. RECA will not provide disclosure of the Professional Conduct Review or any information received to the complainant. However, the Professional Conduct Review process may require showing documents to complainants and other witnesses to obtain their testimony.

Section 38(4) of the *Real Estate Act* allows industry professionals to provide complete and truthful statements without concern over about civil repercussions. It provides protection to industry professionals or other persons who are required to provide information during the Professional Conduct Review. The response cannot be used or received against the person in any civil proceedings or in a prosecution of an offence under any other *Real Estate Act*.

The complainant/plaintiff must demonstrate their case to the courts and cannot rely on a disciplinary decision by a hearing panel.

UNDERSTANDING THE PROFESSIONAL CONDUCT REVIEW PROCESS

How is a Professional Conduct Review carried out?

RECA's standard review is designed to minimize any intrusive or disruptive effects of a Professional Conduct Review. The review steps are as follows:

- 1. The industry professional is provided with the letter of complaint and is advised of the issues of concern to RECA.** The industry professional is asked to respond to those issues in writing and to submit documents as directed.
- 2. The information submitted will then be reviewed.** The initial review may indicate that:
 - The subject matter of the complaint meets the criteria of RECA's **Voluntary Broker Resolution Process**. If this is the case, the broker (or appraiser), associate (or candidate) who is the subject of the Professional Conduct Review, and the complainant, will be notified in writing. If the complaint is resolved to the satisfaction of all parties, the complaint will be withdrawn and the Professional Conduct Review file will be closed. If no resolution is achieved, further review will be required. Please see the Voluntary Broker Resolution section of this guide for more information on this process (page 11).
 - **Further Professional Conduct Review is required.** If further Professional Conduct Review is required, the Professional Conduct Review Officer (PCRO) will communicate with the industry professional, the complainants and other relevant witnesses to gather any required evidence. The Professional Conduct Review Officer may interview these parties. The PCRO may also send correspondence to the industry professional varying the scope of the Professional Conduct Review.
- 3. Once all information is received a Professional Conduct Review report is prepared for the Executive Director.**
- 4. The Executive Director may send the file back requesting further Professional Conduct Review or information.**

Is the same process followed in each case?

Every effort is made to follow the Professional Conduct Review process (described herein). However, there are some cases where the standard processes cannot be followed because:

- the Professional Conduct Review results from something other than a formal written complaint
- providing the complaint letter to the industry professional may jeopardize the integrity of the Professional Conduct Review

In such cases the industry professional will receive written notification of the issues to be examined and be asked to provide a statement and information concerning the issues under review.

What should I do if I am notified of a Professional Conduct Review?

If you are notified of a Professional Conduct Review, RECA strongly suggests you take the following steps to ensure all relevant information and documents are preserved for the duration of the review process:

- **Compile all the documents requested by the PCRO.** You may also compile any other documents, not requested by the PCRO, which contain information relevant to the matter under review. Examples of other documents may be day-timers, diaries, notebooks etc.
- **Review the documents compiled to refresh your memory.**
- **Prepare a truthful and complete written statement of events in your own words.** If you committed conduct deserving of sanction, examine ways that you can mitigate the circumstances giving rise to the conduct deserving of sanction. If you are planning to take action or have taken action to mitigate the effects of your conduct, include this in your statement, date it and retain a copy for your reference.
- **Submit the statement and the information asked for by the required date.**
- **Keep all other records that may be relevant** (e.g., documents, notes, reports, correspondence, emails, telephone bills, cell phone records, bank statements, copies of cancelled cheques, etc.).

Can I provide my statement without prejudice?

The term “without prejudice” is often misunderstood. Some people use its plain language meaning to indicate they do not have an unfavorable or preconceived opinion.

However this term has a specific legal meaning. Without prejudice is a legal term for proposing an outcome or resolution and what is discussed cannot be used as evidence or be considered the signatory's last word on the subject matter. As the Professional Conduct Review is about determining the facts, without prejudice statements are inappropriate while the matter is under review. During the Professional Conduct Review process, without prejudice statements cannot be accepted.

Can I request an extension?

If you need an extension, please contact the PCRO as soon as possible and provide the reasons for your request. Decisions will be made on a case-by-case basis, but all reasonable requests will be accommodated.

How will the Professional Conduct Review Officer communicate with me?

All correspondence will be delivered to your brokerage. All correspondence sent to you will be copied to your current broker (or brokers if you have more than one class of licence) and to the broker at the time of the events.

The PCRO may also communicate with you over the telephone. The officer may also request that you attend an interview.

Will the Professional Conduct Review only address issues raised in the complaint?

Sometimes a Professional Conduct Review will uncover matters that were not specifically raised by the complainant.

These may include:

- If a minor issue is discovered during the course of an Professional Conduct Review (e.g., the name of the brokerage does not appear on the business card) it may be addressed in a discussion with you;
- For more significant concerns an Advisory Note may be issued. An Advisory Note is a constructive and educational method of handling conduct that is not in accordance with the *Real Estate Act* or Rules. A letter is sent to the broker and associate alerting them of the issue and providing an opportunity for the conduct to be rectified;
- If the ancillary issue is serious (e.g., a trust deficiency) RECA will notify the industry professional of the issue and advise that individual whether it will be

addressed in the current Professional Conduct Review or if it will be the subject of a separate Professional Conduct Review.

Will my conversations with the Professional Conduct Review Officer be recorded?

RECA electronically records all witness interviews, whether in person or by telephone, to ensure the integrity of the Professional Conduct Review by providing an actual record of what was said rather than relying on an interpretation of what was said. Recording interviews is also a means of ensuring quality and ensuring a Professional Conduct Review is conducted in accordance with RECA's policies and procedures. Section 38(2) of the *Real Estate Act* allows RECA to record conversations without consent.

Recording conversations is beneficial to:

- **Industry professionals** because it provides a record of exactly what was said. It is not subject to interpretation. It also provides the industry professional with an exact record of what was said by other witnesses during the disclosure process.
- **RECA administrators** because it helps ensure that proper processes are followed
- **Hearing panels** because it provides a record of exactly what was said and the process used to elicit testimony
- **RECA Professional Conduct Review Officers** because it may help safeguard against unwarranted complaints

From where does the PCRO gather information?

The PCRO gathers information from a variety of sources depending on circumstances and availability. In most Professional Conduct Reviews, information is initially gathered from the complainant, industry professional, broker, or other industry professionals or witnesses. Information is also gathered from the Land Titles Office, corporate registries, lenders, municipalities, banks, phone companies, etc.

VOLUNTARY BROKER RESOLUTION PROCESS

What is the Voluntary Broker Resolution Process?

Professional Conduct Reviews into matters of a minor nature may be referred to the Voluntary Broker Resolution Process. This process is voluntary. All parties, i.e. the complainant, the industry professional subject to the Professional Conduct Review and the broker at the time of the events, must agree to participate in writing. This process is a type of complaint resolution process managed by the broker. If the complaint is resolved, it results in the complaint being withdrawn and the Professional Conduct Review is terminated.

***Note:** This process is not available for complaints related to real estate appraisers and candidates at this time.*

How does the voluntary broker resolution process work?

- A Professional Conduct Review Officer will send to the complainant, the industry professional subject to the Professional Conduct Review and the broker a letter advising them their complaint meets the criteria for the Voluntary Broker Resolution Process;
- The parties seek legal advice;
- If the broker wishes to carry out the broker resolution process, the broker will contact the complainant and the industry professional subject to the Professional Conduct Review and determine if they are interested in participating in the process;
- If the parties are interested in participating, the broker will be responsible for contacting the parties and carrying out the resolution process on a without prejudice basis. If the resolution process is successful, the broker becomes responsible to ensure that all applicable releases are signed and to forward to RECA the signed complainant's withdrawal form;
- Once the complainant's withdrawal form is received, the Professional Conduct Review will be terminated.

If any of the parties refuse to participate in the Voluntary Broker Resolution Program or the resolution process does not result in resolution, the Professional Conduct Review will continue.

The time allowed for the resolution process is 40 calendar days. The broker may request extensions where extenuating circumstances exist. If the resolution process is not completed in the time allowed, or as extended, the Professional Conduct Review will continue.

What things should brokers do to ensure the success of the Voluntary Broker Resolution Process?

While the success of the Voluntary Broker Resolution process rests with the participants, the broker can create an environment that can increase the chances for success. The following are some suggestions to increase the efficiency of the process:

- Discuss with their E & O Insurance provider the anticipated dispute resolution process to ensure that it does not impact coverage should E & O coverage later become necessary;
- Ensure the parties understand the process is voluntary;
- Give the parties the opportunity to seek legal advice;
- Ensure the parties agree, in writing, that the process is confidential and on a without prejudice basis;
- Request the parties come prepared to the process;
- Set rules for the process, including ensuring the parties act in good faith and respectfully, and that parties focus on facts and rules of order (i.e. to listen to the other parties' submissions without interruption);
- Suggest to the parties there might be multiple solutions, and to seek win-win solutions;
- Clearly document the settlement terms in writing and provide copies to all parties.

For further information please refer to the Guide to the Voluntary Broker Resolution Process for Brokers.

Does the resolution process need to result in a financial settlement?

No. The options for resolution can be varied and are only limited by the imaginations of the participants. Consider the following examples:

Example 1. A vendor states that a real estate associate failed to respond to his calls for advice related to an offer made directly by an unrepresented buyer, and wants the

listing cancelled. There are various ways for the broker to resolve the complainant's concerns that do not necessarily result in the cancellation of the listing. For instance the broker may suggest:

- There were extenuating circumstances and may provide a guarantee relating to the timeliness of future responses. If that call back guarantee is not met the listing will be cancelled, no questions asked;
- An apology will be offered by the associate or the brokerage;
- The broker may offer a call back guarantee where lack of adherence will result in gift certificates or commission reductions;
- The brokerage will seek out the buyer and see if the buyer can be persuaded to make another offer;
- The listing can be assigned to a different associate (with a referral fee being provided).

Example 2. A buyer advises his representative she is only interested in seeing and buying homes with a minimum of 1,500 sq. feet. The buyer's associate shows the client a property listed at 1,545 sq. feet. The buyer's representative fails to confirm the area or to provide the client with advice on how to confirm the area. The buyer purchases the property. After taking possession, the buyer determines the area is only 1,450 sq. feet. The buyer demands compensation based on a prorated price to area calculation.

The broker may:

- Demonstrate to the buyer, given the home's layout, the buyer did not pay any extra for the home;
- Offer an apology;
- Offer to list the property at a discounted rate if the buyer lists the property through the brokerage at a later date;
- Agree to provide compensation in an amount or type agreed to by the parties.

The examples above demonstrate that there are a large number of options available to resolve disputes. However for options to work there must be a willingness by all parties to seek out solutions that satisfy all of the parties' needs.

Why does RECA choose to resolve some complaints through the Voluntary Broker Resolution Process?

This process is beneficial to industry professionals who are the subject of a Professional Conduct Review, to complainants, to brokers and to RECA.

Benefits to the industry professionals who are subject of a PCR are:

- It eliminates the intrusiveness and time expenditures of further Professional Conduct Review;
- It provides an opportunity to avoid the possibility of a sanction;
- It provides an opportunity to mend the relationship with the complainant;
- It allows for their participation in the process and for a resolution acceptable to them;
- It allows for the opportunity to review their practices, identify mistakes or areas where improvement is warranted;
- The resolution of the complaint will likely be more timely.

Benefits to the complainant are:

- It allows for the complainant's concerns to be heard and potentially satisfied;
- It allows for the complainant's participation in the process and for an acceptable resolution (while pursuing the complaint may bring about discipline it does not necessarily address their concerns);
- The resolution to their complaint will be more timely.

Benefits to brokers are:

- It provides an opportunity to mend the brokerage's relationship with the complainant;
- It creates the opportunity to identify deficiencies in the brokerage's practices and to make improvements;
- It creates the opportunity to instruct or mentor the industry professional under Professional Conduct Review;
- It allows brokers to set the process and to achieve a resolution acceptable to them;
- It helps fulfill his or her broker responsibilities.

Benefits to RECA are:

- the complainant's concerns are satisfied;
- industry professionals will self-identify areas where improvement is required;
- industry professionals are afforded an opportunity to resolve their differences with the member of the public constructively;
- it promotes the industry's professionalism;
- RECA resources can be allocated to more serious matters.

HINT: Usually an industry professional's greatest concern with the discipline process is that discipline will become public and it may impact their reputation with the general public. As result, industry professionals under a Professional Conduct Review ought to make reasonable efforts to make the Voluntary Broker Resolution Process work whenever it is made available to them. If the complaint is resolved through the Voluntary Broker Resolution process, the complaint is withdrawn and the Professional Conduct Review is terminated.

Will I receive copies of all the information gathered during the Professional Conduct Review?

It depends on the decision of the Executive Director at the conclusion of the Professional Conduct Review.

If the matter is not referred to a hearing panel, RECA is not under any legal obligation to disclose information gathered during a Professional Conduct Review. However, some information may already have been disclosed to you when the Professional Conduct Review was opened (i.e. a copy of the complaint).

If, at the conclusion of a Professional Conduct Review, the Executive Director refers the matter to a hearing panel, RECA will provide disclosure to the industry professional.

If the Executive Director issues a Letter of Reprimand or an Administrative Penalty, disclosure will be provided upon appeal.

ABOUT THE PROFESSIONAL CONDUCT REVIEW OFFICER (PCRO)

What powers do PCROs have?

Under the *Real Estate Act*, PCROs appointed by the Executive Director may:

- demand the answer to any relevant questions and to record the responses;
- demand the production of any books, documents or records that are relevant to the Professional Conduct Review, and to make copies of anything produced; and,

- look into matters that may be private but are directly related to the matter under Professional Conduct Review. (e.g., personal bank records in relation to missing trust funds).

What responsibilities do Professional Conduct Review Officers have?

Professional Conduct Review Officers must carry out their duties in accordance with the legislative requirements, the principles of natural justice and administrative law, and RECA's investigative policies and procedures.

Professional Conduct Review Officers must:

- **gather all relevant facts carefully, fairly, impartially and objectively.**
This includes verifying information that is gathered.
For example, if an industry professional tells the PCRO they were out of town on a particular day, the PCRO may request proof (such as receipts, cell phone records, etc.). Requesting further information as proof is not an indication the PCRO does not believe the source. It is the PCRO's duty to determine the accuracy of the information gathered.
- **be courteous and professional.**
- **comply with the legislation and the principles of natural justice.** This includes providing the industry professional with a description of the issues under review and an opportunity to respond and offer evidence.
- **allow for the presence of legal counsel or broker.** Legal counsel and brokers may be excluded under certain circumstances. For more information see the Involving Others: Lawyers and Brokers section of this guide (Page 23).
- **be objective in gathering and reporting evidence.** Throughout the Professional Conduct Review process, Professional Conduct Review Officers must assess the direction of the Professional Conduct Review by evaluating the information on hand and remaining open-minded about issues and options in order to determine whether additional review steps are required.
The courts have held that the personal views of the PCRO would indicate bias only if the PCRO has "a mind so closed that any submissions would be futile."
- **Report the facts that they gather to the Executive Director fully and objectively.**

Do Professional Conduct Review Officers use special techniques?

There is often much more to a Professional Conduct Review than simply asking questions and gathering documents. To carry out an effective Professional Conduct Review, RECA Professional Conduct Review Officers are trained to use techniques similar to those used by law enforcement, including various methods to reveal deception or withheld information. An example of a technique is asking the reasons why a particular action was taken. Use of these techniques is in accordance with administrative law.

When witnesses are truthful and cooperative from the outset it is seldom necessary for RECA Professional Conduct Review Officers to use such techniques.

Who are RECA's Professional Conduct Review Officers?

RECA has a well-balanced investigative team.

- Some have expertise in the real estate, mortgage or real estate appraisal industries from previous experience as brokers, associates or real estate appraisers;
 - Some have extensive investigative backgrounds.

Specialized training ensures all PCROs have a high level of industry knowledge and strong analytical skills.

Some team professionals hold designations as National Certified Investigators with the Council of Licensure Enforcement and Regulation or the Real Estate Investigators Certification from the Association of Real Estate License Law Officials.

Professionals of RECA's trust assurance and practice review team may also assist in a Professional Conduct Review when accounting or other financial records are relevant to the matter under review.

Can I complain about a PCRO's conduct?

Professional Conduct Review Officers must comply with the legislative requirements and with RECA's policies and procedures. If you have concerns about the conduct of a PCRO, address them in writing to the Professional Conduct Review

Coordinator. Interview recordings and correspondence will be reviewed to determine if the PCRO's conduct was appropriate.

REQUIREMENT TO COOPERATE

Do I have to cooperate with the Professional Conduct Review?

Yes. While Professional Conduct Review Officers will take into account serious personal issues when scheduling interviews and setting deadlines for the submission of documents and responses, industry professionals are required to cooperate with the Professional Conduct Review. Cooperation means providing truthful, complete responses in a prompt and constructive manner. Cooperating with the Professional Conduct Review also means making yourself available to the PCRO, returning phone calls, attending interviews, recalling information to the best of your ability and producing documents or other information that the PCRO requests.

Cooperating also means treating PCROs with respect. Yelling, making derogatory comments and swearing at PCROs are also considered a form of non-cooperation.

In addition to their obligation to cooperate under the *Real Estate Act*, the courts have held those who become professionals of a regulated industry give implicit consent to the review of their conduct, which may include providing personal information. Sometimes a PCRO may need to request copies of cell phone records or bank statements that are held jointly with a spouse or business partner. If these items are requested by the PCRO they must be provided in an unaltered form, even though they are held jointly with another person who may not be related to the Professional Conduct Review. This information is only used for purposes related to the Professional Conduct Review. For more information, see *Who Decides if a Document or Other Evidence is Relevant?* (Page 20).

The consequences for failing to cooperate (e.g., not being truthful or not providing all of the information requested by the PCRO) can be significant. Failing to cooperate may result in:

- the industry professional's authorization being suspended under section 38(4.2) of the *Real Estate Act* until the industry professional has cooperated fully;
- the Professional Conduct Review being expanded to include non-cooperation issues or in a new Professional Conduct Review being

- commenced;
- administrative penalties up to \$25,000;
- hearing panel licence suspensions or cancellations.

RECA has had cases where ultimately it was determined there was no evidence of conduct deserving of sanction but the industry professional's failure to cooperate during the Professional Conduct Review resulted in significant sanctions.

If cooperation is still not attained through these processes, the Executive Director may make a production order under section 83.2 of the *Real Estate Act* and have the order enforced through the courts.

If I choose NOT to cooperate with the Professional Conduct Review, do I have any other option?

If your conduct is under Professional Conduct Review or you suspect your conduct may become the subject of a Professional Conduct Review, you may apply to withdraw from industry membership pursuant to section 54 of the Act.

If the Council approves your application to withdraw, all proceedings regarding you and your conduct will be discontinued. Notices of your withdrawal from industry membership will be published.

Note: this option means permanent, lifetime withdrawal from the industry. The lifetime ban applies to all licence classes of industries regulated by RECA.

COLLECTING INFORMATION & PROTECTING CONFIDENTIALITY

Confidential information is maintained in accordance with RECA's Privacy Policy, Practices and Procedures.

Who decides if a document or other evidence is relevant?

Ultimately, relevance is determined by a hearing panel, appeal panel or the courts. However, in practical terms, during the review process, evidence must be produced before the Executive Director can decide if it is relevant to the issues being examined. For example, if the matter under Professional Conduct Review involves undisclosed profits from a party to a real estate trade, personal bank records may be required to determine whether the payments were received. You

are required to produce this information as part of your obligation to cooperate with the Professional Conduct Review.

Is information gathered during a Professional Conduct Review confidential?

RECA Professional Conduct Review Officers share information only as far as the Professional Conduct Review process requires and the law permits.

- In most cases, industry professionals receive a copy of the complaint that led to the Professional Conduct Review;
- Certain information or documents may be shared with witnesses in order to confirm its accuracy or to obtain their statements and evidence in relation to that information;
- If a matter that has been reviewed goes to a hearing or a prosecution, full disclosure is required and all information may become public;
- As a professional body, RECA has a responsibility to ensure that any Criminal Code breaches that come to the attention of RECA are reported to the police. Additionally, if the Executive Director is of the opinion that the evidence suggests criminal activity or the breach of other laws, the Executive Director may file the information with the appropriate law enforcement body;
- Unless legally required by court order, statute or by other legal requirement, RECA will not produce the Professional Conduct Review file created under Part 3 of the *Real Estate Act* to a complainant. Under the *Real Estate Act*, the purpose of collection of information in a Professional Conduct Review created under Part 3 of the *Real Estate Act* is for use in accordance with *Real Estate Act* requirements and is not for use by complainants and industry professionals in civil proceedings.

Is the Professional Conduct Review public knowledge?

The *Real Estate Act* does not require RECA to disclose information about a Professional Conduct Review. In response to inquiries, RECA will neither deny nor confirm a Professional Conduct Review is underway against an industry professional. However, information about an ongoing Professional Conduct Review is disclosed in the following situations:

- When an industry professional's licence is suspended pending the outcome of the Professional Conduct Review, pursuant to section 53 of the *Real Estate Act*, the public is informed;
- When an industry professional whose conduct is under Professional Conduct Review requests a transfer to a new brokerage, RECA shares information with the broker applicant (upon receipt of the appropriate waiver from the industry professional);
- If an industry professional transfers to a new brokerage during a Professional Conduct Review, the new broker receives copies of all subsequent correspondence related to the Professional Conduct Review;
- Individuals who are asked to provide witness statements or to verify documentation will become aware that a Professional Conduct Review is underway;
- When the matter is referred to another law enforcement body (e.g., police), RECA shares the information with the appropriate entity(ies);
- When the information gathered during a Professional Conduct Review will assist a broker in carrying out his or her responsibilities and if it is unlikely the broker would be able to access the information without RECA's assistance, RECA will share the information with the broker.

Note: *The Real Estate Act does not restrict complainants from disclosing that a Professional Conduct Review has been initiated as a result of their complaint if they wish to do so.*

What if the PCRO requests my client's personal information?

Under the *Personal Information and Protection Act* (PIPA) and *Personal Information Protection and Electronic Documents Act* (PIPEDA), which govern the collection, use and disclosure of personal information, an industry professional may disclose personal information about a client without the client's consent:

- when authorized or required to do so by a statute or regulation;
- to comply with an order issued by a body having jurisdiction;
- when it is reasonable for the purposes of a Professional Conduct Review or a legal proceeding; and,
- for the purposes of protecting against, preventing, detecting or suppressing fraud or unfair trading practices.

The *Real Estate Act* gives Professional Conduct Review Officers the authority to demand the production of information to assist in a Professional Conduct Review. Industry professionals must comply with such requests and orders to produce evidence, including personal information about other individuals.

If PIPEDA applies you may visit www.priv.gc.ca for further information. If PIPA applies you may visit www.oipc.ab.ca for further information.

THE LENGTH OF THE PROFESSIONAL CONDUCT REVIEW PROCESS

Each Professional Conduct Review is different, and the time required depends on the circumstances of the case. Timeliness of a Professional Conduct Review is a common concern, as industry professionals and complainants usually want to deal with the issue as quickly as possible – but the due process required under the *Real Estate Act* and the principles of natural justice take time. Complainants and industry professionals must be given adequate opportunity to explain what happened and answer questions. Documents must be gathered and verified, information is sometimes sought from outside sources and a full report must be prepared. This process is time consuming, but failure to follow it could have a negative effect on the public and/or industry professionals.

RECA will provide you with periodic communication to let you know the matter is under Professional Conduct Review.

Is there anything I can do to speed things up?

- Respond to requests for information and/or documents in a timely manner;
- Answer fully and be truthful.

Industry professionals who lie or avoid certain subjects or events hoping they won't be discovered, find their statement will almost certainly contradict other evidence. This could mean:

- It could affect your credibility on issues where you may be telling the truth;
- The truth will ultimately be discovered anyway;
- The scope of the Professional Conduct Review may be expanded to cover non-cooperation;

- If your conduct is ultimately found to be in breach of the legislation you may be ordered to pay Professional Conduct Review costs; and,
- The Professional Conduct Review will take longer and cost more.

The more truthful and straightforward you are in dealing with the Professional Conduct Review of a complaint against you, the more positive your effect on the Professional Conduct Review and on any sanctions imposed as a result.

If the complaint is frivolous or unfounded, the evidence will demonstrate that.

INVOLVING OTHERS: LAWYERS & BROKERS

Should I seek legal counsel?

You are welcome to seek legal advice at any point during a Professional Conduct Review, but you should be aware that your lawyer's involvement will not change the process or your responsibility to cooperate with the Professional Conduct Review.

During the Professional Conduct Review, the PCRO will not engage in discussions or correspond with your lawyer regarding whether the matters under review are conduct deserving of sanction or the relevance of the information you have been asked to provide. The PCRO will not direct correspondence to your lawyer instead of you, will not schedule interviews through your lawyer and will not provide copies of letters or documents to your lawyers on your behalf. You may determine what information you wish your lawyer to have and you are responsible for providing copies of letters or documents to your lawyer. You can seek your lawyer's advice in relation to any matter under review.

Your lawyer may be present to advise you during an interview. The PCRO will not address questions to your lawyer or accept your lawyer's testimony on your behalf. Lawyers can make the interview process go more smoothly by suggesting clarifications, advising industry professionals to make reference to certain documents for the record, etc. However, undue interference by a lawyer in the interview process is not permitted.

It is the responsibility of the industry professional to provide instructions to their lawyer to prevent the existence of undue interference.

The Professional Conduct Review is a process to establish the truth. It is not about making a case or a defence. If the matter is referred to a hearing panel, you may

want to consider having a lawyer prepare and present your case at the hearing.

Hint: If you are the subject of a Professional Conduct Review and you have engaged legal counsel you may want to provide your lawyer with a copy of this Guide. This will enable your lawyer to understand RECA's processes and advise you accordingly.

Can my broker attend my interview with the PCRO?

Your broker or broker delegate is usually welcome to attend interviews. RECA encourages the involvement of the broker in the Professional Conduct Review process, with some exceptions (e.g., when the broker may also be a witness or where the interview relates to the broker's conduct).

Please let the PCRO know in advance if you would like your broker to attend the interview. If the broker's attendance is appropriate, it is your responsibility to arrange for him or her to accompany you to the appointment.

POSSIBLE RESTRICTIONS ON YOUR ACTIVITY

Can I change brokerages while my conduct is under Professional Conduct Review?

Your ability to transfer to a new brokerage is not impacted by the Professional Conduct Review process. Approval of your application will be based on any other RECA requirements that may be outstanding.

Can my licence be suspended during the Professional Conduct Review?

Upon a recommendation by the Executive Director, the RECA Chair may suspend an industry professional's authorization pending the outcome of conduct proceedings. This option is rarely pursued; however it is considered when:

- the conduct under review is of a very serious nature;
- the conduct under review could cause harm to the public;

- the industry professional fails to cooperate with the Professional Conduct Review.

There is an appeal process to the courts for an industry professional whose authorization is suspended in such circumstances.

As discussed in the Requirement to Cooperate Section of this Guide, the Executive Director may suspend an industry professional's authorization if they fail to provide information or answer questions. The suspension will be lifted once the information is provided or the questions are answered.

PROFESSIONAL CONDUCT REVIEW OUTCOMES

What will happen as a result of a Professional Conduct Review ?

Once the Professional Conduct Review is complete, the Executive Director will review the file and determine how to proceed based on the evidence that was gathered. The Executive Director will consider the issues in which the evidence indicates a breach of the legislation, including any mitigating or aggravating factors.

- The file may be closed as unfounded, outside RECA's jurisdiction or there may be insufficient evidence to proceed. In some of these cases Advisory Notes may be issued;
- In other cases, a Letter of Reprimand or an Administrative Penalty may be issued;
- The matter might also be referred to a hearing panel for a decision;

An industry professional is always advised of the outcome at the conclusion of a Professional Conduct Review.

Note: *The complainant may appeal the Executive Director's decision not to commence a PCR concerning a complaint or discontinue a review or no further action will be taken. The complainant must appeal to a hearing panel within 30 days of receiving notice of the decision. A hearing panel will make a final decision on whether the complaint is frivolous or vexatious or there is insufficient evidence of conduct deserving of sanction to warrant a hearing by a Hearing Panel.*

If the matter goes to a hearing, what are the possible results of the hearing?

The hearing panel may find that the conduct is not deserving of sanction. However, if the panel finds the conduct is deserving of sanction, one or more of the following orders may be made:

- Letter of Reprimand;
- fine up to \$25,000 for each finding;
- payment of the Professional Conduct Review or hearing costs;
- suspension of, cancellation of, or conditions upon the industry professional's authorization to trade in real estate, deal in mortgages or act as a real estate appraiser in Alberta;
- completion of educational courses;
- any order agreed to by both sides.

More information about hearings and disciplinary outcomes is available at www.reca.ca.

Are the results of a Professional Conduct Review confidential?

If there is no disciplinary action taken, the results of a Professional Conduct Review are confidential. Where disciplinary action is taken, the resulting outcome is public information and is posted on RECA's website. All letters of reprimand, administrative penalties, hearing panel decisions, appeal panel decisions and court decisions are posted on RECA's website.

RECA also publishes disciplinary cases in its Case Summaries publication, which is distributed to industry professionals.

In addition to publication of disciplinary cases on its website and in the Case Summaries publication, RECA may also take the following steps to notify the public:

- When an industry professional's authorization is suspended or cancelled or when a prosecution is concluded successfully, a news release will be issued to the media. The news release will identify the industry professional and will include a summary of the circumstances leading to the decision;
- RECA publishes a notice of industry professionals who have withdrawn from the industry while they were the subject of conduct proceedings. Such notice is

limited to cases where RECA has commenced a Professional Conduct Review into an allegation of serious misconduct.

Advisory Notes are not considered discipline and are not published or made available to the public.

For further information on this topic please refer to the [RECA Publication Guidelines](#).

INFORMATION FOR BROKERS

What should I do about a complaint against one of my associates?

When a Professional Conduct Review into the conduct of an associate (or associate broker) is opened, the broker is copied on the notification to the associate/associate broker.

A broker is responsible for ensuring that the business of the brokerage is carried out in accordance with the legislation. Under section 51(3) of the Rules made pursuant to the *Real Estate Act* (the Rules), you are responsible for the actions of your associates unless you can demonstrate that you have systems in place to prevent misconduct and that you deal promptly and appropriately with misconduct when you become aware of it. Every Professional Conduct Review will consider your conduct and your brokerage policies and procedures in relation to section 51(3) of the Rules.

A RECA Professional Conduct Review does not release you from any of your responsibilities as a broker. Don't hesitate to look into and address a client's concerns or the conduct of your associate or associate broker, just as you would if a complaint had not been filed with RECA. RECA suggests the following process:

- Speak to the associate or associate broker;
- Speak to the clients or customers;
- Speak to all relevant witnesses;
- Confirm that all relevant documents are in the brokerage file, and that the documents are authentic and accurate;
- Take appropriate action based on the results of your review. If you have doubts as to what course of action to take, consult a lawyer.

Brokers are advised to document this process to comply with section 51(3) of the Rules.

If the results of your review identify weaknesses in your brokerage's processes, consider amending existing policies and procedures or supervisory practices to prevent the practices identified and ensure changes are clearly communicated to brokerage staff. If an industry professional from another brokerage is involved, report the information related to their involvement directly to their broker for review.

You are encouraged to attend most interviews with associates and associate brokers whose conduct is the subject of a Professional Conduct Review. Interviews are scheduled directly with the industry professionals involved. If you wish to be present at an interview, please ask your associate or associate broker to advise the PCRO of your intentions and to advise you of the appointment particulars.

A PCRO may share information gathered during a Professional Conduct Review with you if it will help you carry out your broker responsibilities and if it is unlikely you would be able to access the information yourself.

HINT: If you are a broker, you may want to undertake the process described above as soon as possible. Let the PCRO know you are doing this and let the PCRO know the outcome of your review and any changes that you made even if the review finds deficiencies in the brokerage's processes. This may prevent the need to open a separate Professional Conduct Review into your conduct as a broker, an obvious exception being where there is a discipline history of previous brokerage deficiencies.

Can I ask the PCRO to provide me with advice?

Most brokers take their broker responsibilities seriously and are looking for ways to identify and resolve problems. Professional Conduct Review Officers are often seen as a resource to help them resolve their inquiries. For example, a broker may request that a PCRO who is conducting a Professional Conduct Review related to an associate offering incentives that are not brokerage incentives review the brokerage website administered by the associate and provide advice on whether the incentives offered therein are brokerage incentives.

Given the role that Professional Conduct Review Officers play in a Professional Conduct Review, it would be inappropriate to respond to matters related to the subject matter of the Professional Conduct Review. In situations such as this, Professional

Conduct Review Officers can only refer the broker to the applicable legislation, information bulletin or other publication.

Brokers are reminded that they cannot rely on Professional Conduct Review Officers to fulfill their broker responsibilities.

How do I find out if a prospective associate or associate broker is undergoing a Professional Conduct Review?

Ask the industry professional and/or their current broker. This is a vital step in the due diligence every broker should complete when considering hiring an associate or associate broker.

If you are considering hiring an associate or associate broker and would like to verify the information he or she provides, RECA will share information with you regarding any ongoing Professional Conduct Review(s) involving that industry professional if he or she signs a confidentiality waiver. Please submit the confidentiality waiver from the industry professional and a \$10 administration fee with your request. All such requests should be directed to RECA's Professional Standards department.

For more information, contact
the



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