

(Consolidated up to 124/2008)

ALBERTA REGULATION 113/96

Real Estate Act

REAL ESTATE (MINISTERIAL) REGULATION

Table of Contents

1 Interpretation

Part 1

Alberta Real Estate Foundation

2 Board of Governors

3 Term of office

4 Vacancies

5 Chair

6 Quorum

7 Fiscal year

8 Trust account interest

Part 2

Real Estate Assurance Fund

8.1 Application of Fund provisions

9 Payments from Fund

10 Assessments

12 Compensation from Fund

14 Prescribed winding-up amount

15 Additional Fund purposes

Part 3

**Nomination of Real Estate Appraiser and
Property Manager Council Members**

16 Application

17 Request for recommendations

18 Recommendations

19 Submission of recommendations

20 Committee and nominations

Part 4

Other Matters

21 Refusing to investigate complaint or discontinuing investigation

- 22 Depositing trust account money
- 23 Service of documents
- 24 Winding up
- 25 Administrative penalties maximum
- 26 Expiry

Interpretation

1(1) In this Regulation,

- (a) “Act” means the *Real Estate Act*;
- (b) “Foundation” means the Alberta Real Estate Foundation;
- (c) “Fund” means the Real Estate Assurance Fund.

(1.1) In the Act and this Regulation, “property manager” means a real estate broker who is active in property management.

(2) References in this Regulation to classes of industry members are to be taken to refer to the classes of industry members as established by rules made by the Council under section 12(h) of the Act, being

- (a) with respect to the trades undertaken by a real estate broker,
 - (i) a brokerage,
 - (ii) a broker,
 - (iii) an associate broker, and
 - (iv) an associate,

and

- (b) with respect to the dealings undertaken by a mortgage broker,
 - (i) a brokerage,
 - (ii) a broker,
 - (iii) an associate broker, and
 - (iv) an associate.

AR 113/96 s1;225/2002;124/2008

Part 1

Alberta Real Estate Foundation

Board of Governors

2(1) Subject to subsection (2), the board of governors of the Alberta Real Estate Foundation shall consist of the following members:

- (a) 2 persons who are appointed by the Alberta Real Estate Association;
- (b) 2 persons who are appointed by the Real Estate Council of Alberta;
- (c) one person, who is not in the industry, who is appointed by the current members of the board then in office and is, in the opinion of those members, representative of the interests of real estate consumers;
- (d) one person, who is not in the industry, who is appointed by the current members of the board then in office and is, in the opinion of those members, representative of Alberta businesses;
- (e) one person, who is not in the industry, who is appointed by the current members of the board then in office and who, in the opinion of those members, possesses special skills or experience to assist the board in carrying out the Foundation's purposes.

(2) The members of the board of governors referred to in subsection (1) may appoint as an additional member the immediate past chair of the board, for one term only of not more than 2 years.

Term of office

3(1) A member of the board of governors referred to in section 2(1) may be appointed for a term of not more than 3 years.

(2) A person may not be appointed as a member of the board of governors under section 2(1) for more than 2 consecutive terms.

(3) Notwithstanding that the term of office of a member has expired, the member remains in office until a successor is appointed.

Vacancies

4(1) Where a vacancy occurs on the board of governors, a person may be appointed to fill the vacancy for the balance of the term of

office, in the same manner as the member whose office became vacant was appointed.

(2) No vacancy on the board of governors impairs the right of the remaining members to act while the vacancy exists.

Chair

5(1) The board of governors shall select a person as chair from among its members.

(2) A person may not serve as chair for more than 2 consecutive years.

Quorum

6 A majority of the persons appointed as members of the board of governors is a quorum at a meeting of the board.

Fiscal year

7 The fiscal year of the Foundation is from November 1 to October 31.

Trust account interest

8(1) Sections 25(5) and 69 of the Act apply only in respect of industry members who are industry members of the brokerage class referred to in section 1(2)(a)(i) and (b)(i).

(2) An industry member referred to in subsection (1) who maintains a trust account referred to in section 69 of the Act and is credited with interest on money in the account by a bank, trust company, credit union or treasury branch shall instruct the bank, trust company, credit union or treasury branch in writing to pay to the Foundation at least quarterly the interest less allowable service charges.

(3) A bank, trust company, credit union or treasury branch that pays interest to the Foundation pursuant to this Regulation shall ensure that

- (a) each payment is accompanied by a statement that sets out the interest and service charge calculations and is in a form acceptable to the Foundation, and
- (b) a copy of the statement is sent to the industry member to whom the trust account relates on the request of the industry member.

(4) An industry member who deposits money in an account as required by section 25(1)(c) of the Act is not required to account to any person other than the Foundation for interest earned on the account.

AR 113/96 s8;77/2001;251/2001;225/2002;124/2008

Part 2

Real Estate Assurance Fund

Application of Fund provisions

8.1(1) The classes of industry members prescribed for the purposes of sections 57(3) and (5) and 60(1) of the Act are all the classes referred to in section 1(2).

(2) The classes of applicants to become industry members prescribed for the purposes of section 57(5) of the Act are all applicants to become industry members of all the classes referred to in section 1(2).

AR 225/2002 s5;212/2005

Payments from Fund

9 For the purposes of Part 4 of the Act, money may be paid from the Fund where the judgment or claim referred to in section 57(3) of the Act is in respect of any industry member of any class referred to in section 1(2).

AR 113/96 s9;164/98;225/2002;124/2008

Assessments

10 All industry members of all classes referred to in section 1(2) and all applicants to become industry members of all such classes are liable for assessments for the purposes of section 57(5) of the Act.

AR 113/96 s10;164/98;251/2001;225/2002

11 Repealed AR 58/2005 s2.

Compensation from Fund

12(1) In this section, “compensation event” means, as determined by the Council, the transaction or series of transactions, including all related transactions, for which payment may be made from the fund under section 60 or 60.3 of the Act in respect of one or more industry members for fraud or breach of trust.

(2) The maximum amount of compensation payable from the Fund under section 60 or 60.3 of the Act payable to an applicant with respect to a compensation event is

- (a) with respect to industry members referred to in section 1(2)(a), \$35 000, and
 - (b) with respect to industry members referred to in section 1(2)(b), \$25 000.
- (3)** The maximum amount of compensation payable from the Fund under section 60 or 60.3 of the Act payable to all applicants for a compensation event is
- (a) with respect to industry members identified in section 1(2)(a), \$350 000, and
 - (b) with respect to industry members identified in section 1(2)(b), \$100 000.
- (4)** If subsection (3) operates to limit the amount that would otherwise be paid to an applicant under subsection (2), each applicant shall receive a proportionate share of the amount that would be paid but for the operation of subsection (3).
- (5)** The Council shall determine that payments from the Fund arise from a single compensation event if payments arise from
- (a) the same real estate trade, project or development, or
 - (b) the same mortgage deal, project or development.

AR 113/96 s12;56/97;164/98;77/2001;251/2001;225/2002;
124/2008

13 Repealed AR 124/2008 s5.

Prescribed winding-up amount

14(1) For the purpose of section 62(1) of the Act, the amount of the Fund is hereby prescribed as \$2 000 000.

(2) In calculating the amount of the Fund for the purposes of subsection (1), the following shall be considered:

- (a) the money received from the levy of assessments under section 57(5) of the Act;
- (b) the income from the investment of the money in the Fund excluding the income used to pay administration costs in accordance with section 57(9) of the Act;
- (c) the amount of insurance obtained by the Council to protect the Fund from claims or loss.

AR 113/96 s14;251/2001;237/2003

Additional Fund purposes

15(1) The prescribed amount for the purposes of section 57(4) of the Act is \$2 000 000.

(2) The Council may, with the prior written approval of the Minister, use money in the Fund that is in excess of the prescribed amount referred to in subsection (1) for the following purposes:

- (a) any purpose incidental to and conducive to the reduction of claims against the Fund under section 60 of the Act or the reduction of claims due to professional errors and omissions of industry members referred to in section 9 of this Regulation;
- (b) promotion of higher professional standards of practice among such industry members.

AR 113/96 s15;251/2001;237/2003

Part 3

Nomination of Real Estate Appraiser and Property Manager Council Members

Application

16 This Part applies to the nomination of a real estate appraiser and a property manager for appointment to Council.

AR 124/2008 s6

Request for recommendations

17(1) The executive director shall make a request for recommendations for appointment to Council by sending a recommendation form to each industry member who is a real estate appraiser or a property manager.

(2) The form must be sent at least 90 days prior to the expiry of the term of office.

(3) The form may be sent to the last known electronic address for the industry member in the Council's records.

AR 124/2008 s6

Recommendations

18(1) Two real estate appraisers may recommend a real estate appraiser for nomination.

(2) Two property managers may recommend a property manager for nomination.

(3) A person cannot recommend himself or herself.

AR 124/2008 s6

Submission of recommendations

19(1) A recommendation form must

- (a) be completed in the form and manner required by the executive director,
- (b) be signed by the individuals making the recommendation,
- (c) be signed by the person being recommended, and
- (d) include an explanation of the recommended person's qualifications.

(2) The recommendation form must be received by the executive director within the time specified by the executive director.

(3) The executive director may, in extenuating circumstances, extend the time in subsection (2).

AR 124/2008 s6

Committee and nominations

20(1) The Council shall establish a committee to nominate individuals for appointment to the Council for the purpose of section 6(1)(f) of the Act.

(2) The majority of the committee members must be present or past Council members.

(3) If recommendation forms have been completed and received in accordance with section 19, the committee must nominate individuals who have been recommended.

(4) If a vacancy occurs, subsection (3) does not apply.

AR 124/2008 s6

Part 4 Other Matters

Refusing to investigate complaint or discontinuing investigation

21 The executive director may take any action permitted under section 38.1 of the Act with respect to the investigation of a complaint if

- (a) the industry member complained of is not clearly identified,
- (b) the conduct complained of is not a breach of the Act, regulations, rules or bylaws or there is insufficient evidence of a breach of the Act, regulations, rules or bylaws,
- (c) the conduct complained of was the subject of a prior complaint,
- (d) the complaint is frivolous or vexatious,
- (e) the breach complained of is minor in nature and an advisory note is sent to the industry member complained of,
- (f) the complainant fails or refuses to cooperate with an investigator, or
- (g) the complainant asks not to proceed with the complaint.

AR 124/2008 s6

Depositing trust account money

22 Subject to and for the purposes of section 25(1) of the Act, money received in trust must be deposited within

- (a) 3 business days of receipt, or
- (b) in the case of money received in trust for an offer to purchase, 3 business days of the acceptance of the offer to purchase.

AR 124/2008 s6/SA:014/2008

Service of documents

23 For the purpose of section 77(2)(c) of the Act, service of a document is effected when it is

- (a) served on the person,
- (b) left at the person's primary residence with a person who appears to be 16 years of age or older,
- (c) mailed to the person's primary residence by a method that provides confirmation of delivery, or
- (d) sent by a telecopier or electronic device to be received and printed by a receiving telecopier or electronic device that is situated at the person's primary residence.

AR 124/2008 s6

Winding up

24 If the Fund is wound up, the Fund must

- (a) first, be used to pay all costs incurred in the winding-up of the Fund,
- (b) second, be used to discharge all liabilities of the Fund, and
- (c) third, be disposed of in accordance with an order of the Lieutenant Governor in Council.

AR 124/2008 s6

Administrative penalties maximum

25 For the purposes of section 11(l) of the Act, the maximum administrative penalty that may be prescribed is \$25 000.

AR 124/2008 s6

Expiry

26 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on June 30, 2018.

AR 124/2008 s6