



Province of Alberta

REAL ESTATE ACT

# **REAL ESTATE (MINISTERIAL) REGULATION**

**Alberta Regulation 113/1996**

With amendments up to and including Alberta Regulation 205/2020

Current as of December 1, 2020

Office Consolidation

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(Consolidated up to 205/2020)

**ALBERTA REGULATION 113/96**

**Real Estate Act**

**REAL ESTATE (MINISTERIAL) REGULATION**

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### **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**(1.1)** Repealed AR 205/2020 s2.

**(2)** References in this Regulation to classes of licensees are to be taken to refer to the classes of licensees as established by rules made by the relevant Industry Council under section 12(1)(h) of the Act, being

- (a) all classes of licensees established by the Industry Council referred to in section 7.1(1)(a) of the Act,
- (b) all classes of licensees established by the Industry Council referred to in section 7.1(1)(b) of the Act,
- (c) all classes of licensees established by the Industry Council referred to in section 7.1(1)(c) of the Act, and
- (d) all classes of licensees established by the Industry Council referred to in section 7.1(1)(d) of the Act.

AR 113/96 s1;225/2002;124/2008;205/2020

## **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 Board of the Real Estate Council of Alberta;
- (c) one person, who is not a licensee, 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 a licensee, 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 a licensee, 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.

AR 113/96 s2;205/2020

#### **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 licensees who are licensees of a brokerage class of licensees.

**(2)** A licensee 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 licensee to whom the trust account relates on the request of the licensee.

**(4)** A licensee 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;205/2020

## **Part 2**

### **Real Estate Assurance Fund**

#### **Application of Fund provisions**

**8.1(1)** The classes of licensees 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 licensees prescribed for the purposes of section 57(5) of the Act are all applicants to become licensees of all the classes referred to in section 1(2).

AR 225/2002 s5;212/2005;205/2020

#### **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 licensee of any class referred to in section 1(2).

AR 113/96 s9;164/98;225/2002;124/2008;205/2020

#### **Assessments**

**10** All licensees of all classes referred to in section 1(2) and all applicants to become licensees 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;205/2020

**11** Repealed AR 58/2005 s2.

#### **Compensation from Fund**

**12(1)** In this section, “compensation event” means, as determined by the Board, 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 licensees 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 to an applicant with respect to a compensation event is,

- (a) with respect to licensees referred to in section 1(2)(a) to (c), \$35 000, and
- (b) with respect to licensees referred to in section 1(2)(d), \$25 000.

**(3)** The maximum amount of compensation payable from the Fund under section 60 or 60.3 of the Act to all applicants for a compensation event is,

- (a) with respect to licensees identified in section 1(2)(a) to (c), \$350 000, and
- (b) with respect to licensees identified in section 1(2)(d), \$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 Board 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 property management agreement, 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;205/2020

**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 Board to protect the Fund from claims or loss.

AR 113/96 s14;251/2001;237/2003;205/2020

#### **Additional Fund purposes**

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



(2) The Board 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 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 licensees referred to in section 9 of this Regulation.

AR 113/96 s15;251/2001;237/2003;205/2020

**Part 3** Repealed AR 205/2020 s11.

## **Part 4 Other Matters**

### **Refusing to investigate complaint or discontinuing investigation**

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

- (a) the licensee 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 licensee 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;205/2020

### **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;164/2008

#### **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(1)** For the purposes of section 12(l)(z) of the Act, the maximum administrative penalty that may be prescribed is \$25 000.

**(2)** a notice of administrative penalty may not be given more than 3 years after the event that would have resulted in the penalty.

AR 124/2008 s6;205/2020

#### **Prescribed time**

**25.1** For the purposes of section 7.1(9) of the Act, the time within which the licensees of an industry must elect a member or members under section 7.1(2)(b) or (8) of the Act is

- (a) 10 days after the member's term expires according to section 7.1(3) of the Act, or
- (b) 90 days after the member's position otherwise becomes vacant.

AR 12/2019 s2;205/2020

**Education and other services****25.2(1)** Despite section 5(c) of the Act,

- (a) the Board shall not provide education services to licensees after December 1, 2022, and
- (b) subject to subsection (2), the Board shall not provide other services to licensees without the written approval of the Minister.

**(2)** The Board may, if a bylaw has been made under section 11(1)(m.5) of the Act, establish and administer an insurance and indemnity plan for licensees in accordance with the bylaw.

AR 205/2020 s15

**Approval of bylaws and rules**

**25.3(1)** Despite section 11(2) of the Act, the Minister's approval of a bylaw or the amendment of a bylaw is only required during the first 2 years after the coming into force of the *Real Estate Amendment Act, 2020*.

**(2)** Despite section 12(3) of the Act, the Minister's approval of a rule or the amendment of a rule is only required during the first 2 years after the coming into force of the *Real Estate Amendment Act, 2020*.

AR 205/2020 s15

## **Part 5 Transitional Matters**

**Industry Council elections**

**25.4** For greater certainty, in accordance with section 7(b) of the *Interpretation Act*, an election referred to in section 7.1(2)(b) of the Act as enacted by section 10 of the *Real Estate Amendment Act, 2020* may be held prior to the coming into force of section 10 of the *Real Estate Amendment Act, 2020*, but the election has no effect until section 7.1(2)(b) comes into force.

AR 205/2020 s16

**Hearing and Appeal Panels**

**25.5(1)** Any Hearing Panel or Appeal Panel proceeding that has commenced prior to the coming into force of section 33 of the *Real Estate Amendment Act, 2020* continues after the coming into force of that section as if Part 3 of the Act had not been amended by the *Real Estate Amendment Act, 2020*.

**(2)** For the purposes of subsection (1)

- (a) a Hearing Panel proceeding has commenced when the notice of hearing has been served on an industry member and any other person who in the opinion of the Hearing Panel is directly affected by the subject matter of the hearing, and
- (b) an Appeal Panel proceeding has commenced when the Appeal Panel has served a notice of hearing of the appeal under section 49(1) of the Act.

**(3)** For greater certainty, if a Hearing Panel proceeding is ongoing when section 33 of the *Real Estate Amendment Act, 2020* comes into force, and a finding or order of the Hearing Panel is appealed to an Appeal Panel after section 33 of the *Real Estate Amendment Act, 2020* has come into force, the Appeal Panel shall be constituted according to section 36 of the Act as amended by section 33 of the *Real Estate Amendment Act, 2020*.

**(4)** For greater certainty, an action taken or decision issued by a Hearing Panel or an Appeal Panel during

- (a) the term of the official administrator who was appointed by the Minister to exercise the powers, duties and functions of the Council dismissed under section 76.1(2) of the Act, or
- (b) the term of any official administrator appointed by the Minister to exercise the powers, duties and functions of the Board referred to in section 8 of the *Real Estate Amendment Act, 2020* prior to the Board being composed for the first time

is a valid action or decision of the Hearing Panel or Appeal Panel, as the case may be.

AR 205/2020 s16

**Official administrator**

**25.6** For greater certainty, any action taken by

- (a) the official administrator who was appointed by the Minister to exercise the powers, duties and functions of

the Council that was dismissed under section 76.1(2) of the Act, or

- (b) any official administrator that is appointed by the Minister to exercise the powers, duties and functions of the Board referred to in section 8 of the *Real Estate Amendment Act, 2020* prior to the Board being composed for the first time

has the same effect as if it had been done by the Council or the Board, as the case may be.

AR 205/2020 s16

### **Bylaws and rules**

**25.7(1)** For greater certainty, any bylaw made by the Council prior to the coming into force of the *Real Estate Amendment Act, 2020* remains in force after the coming into force of that Act insofar as they are not inconsistent with the Act as amended by the *Real Estate Amendment Act, 2020*.

**(2)** For greater certainty, any rule made by the Council prior to the coming into force of the *Real Estate Amendment Act, 2020* remains in force after the coming into force of that Act as a rule of each Industry Council insofar as it is not inconsistent with the Act as amended by the *Real Estate Amendment Act, 2020*.

**(3)** For greater certainty, subject to section 12(3) of the Act as amended by the *Real Estate Amendment Act, 2020*, after the coming into force of the *Real Estate Amendment Act, 2020*, an Industry Council or an official administrator acting in the place of an Industry Council may amend or repeal a rule made by the Council prior to the coming into force of the *Real Estate Amendment Act, 2020*, and the amendment or repeal applies only to the rule as it relates to that Industry Council.

AR 205/2020 s16

### **Authorizations and licences**

**25.8** On the coming into force of the *Real Estate Amendment Act, 2020*, every authorization issued by the Council and in existence immediately before the coming into force of the *Real Estate Amendment Act, 2020*, other than an authorization issued to a real estate appraiser, is continued as a licence and has the same effect as if it had been issued by an Industry Council in accordance with section 7.2(2) of the Act.

AR 205/2020 s16

### **Transition to the Registrar**

**25.9(1)** For greater certainty, on the coming into force of the *Real Estate Amendment Act, 2020*, an investigation commenced by the

executive director prior to the coming into force of the *Real Estate Amendment Act, 2020* is continued and may be conducted by the registrar as if the registrar had commenced the investigation.

(2) For greater certainty, on the coming into force of the *Real Estate Amendment Act, 2020*, an investigation commenced by a person appointed by the executive director to commence an investigation prior to the coming into force of the *Real Estate Amendment Act, 2020* is continued and may be conducted as if the registrar had appointed the person who commenced the investigation.

AR 205/2020 s16

### **Transitional interpretations**

**25.91(1)** In this section,

- (a) “former Act” means the Act as it read immediately before the coming into force of the *Real Estate Amendment Act, 2020*, and
- (b) “amended Act” means the Act as it reads immediately after the coming into force of the *Real Estate Amendment Act, 2020*.

(2) On the coming into force of the *Real Estate Amendment Act, 2020*, a right, privilege, obligation, liability, function, duty or undertaking under the former Act that is applicable to a person, other than a real estate appraiser, who is an industry member under that Act applies to that person as a licensee under the amended Act.

(3) A reference in the amended Act to the registrar includes a reference to the executive director in the former Act in relation to any right, privilege, obligation, liability, function, duty or undertaking of the registrar that is the same or substantially the same as a right, privilege, obligation, liability, function, duty or undertaking of the executive director under the former Act.

(4) A reference in the amended Act to an Industry Council includes a reference to the Council in the former Act in relation to any right, privilege, obligation, liability, function, duty or undertaking of the Industry Council that is the same or substantially the same as a right, privilege, obligation, liability, function, duty or undertaking of the Council under the former Act.

(5) A reference in the amended Act to an Industry Council includes a reference to the executive director in the former Act in relation to any right, privilege, obligation, liability, function, duty or undertaking of the Industry Council that is the same or substantially the same as a right, privilege, obligation, liability,

function, duty or undertaking of the executive director under the former Act.

**(6)** A reference in the amended Act to the Board includes a reference to the Council in the former Act in relation to a right, privilege, obligation, liability, function, duty or undertaking of the Board that is the same or substantially the same as a right, privilege, obligation, liability, function, duty or undertaking of the Council under the former Act.

**(7)** A reference in the amended Act to the Board includes a reference to the executive director in the former Act in relation to any right, privilege, obligation, liability, function, duty or undertaking of the Board that is the same or substantially the same as a right, privilege, obligation, liability, function, duty or undertaking of the executive director under the former Act.

AR 205/2020 s16

#### **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, 2023.

AR 124/2008 s6;124/2018



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