

## GUIDE TO COMPLAINTS: INDUSTRY PROFESSIONALS

This guide provides consumers with information on the Real Estate Council of Alberta (RECA) complaint process, including how to make a complaint, how RECA evaluates complaints, and what happens after RECA completes the evaluation.

This guide only applies to complaints about the conduct of industry professionals licensed by RECA. If your concern relates to the conduct of an unlicensed person doing activities that require a licence, please refer to the "*Guide to Complaints Related to Unauthorized Practice*."

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

### When you make a complaint:

RECA will:

- explain the complaint and investigation processes
- promptly acknowledge your complaint and provide you with regular updates as your complaint moves forward
- ask for your preferred method of communication
- respond to your inquiries promptly and professionally
- deal with your complaint solely based on the evidence, without partiality, discrimination, or prejudice
- depending on the seriousness of the action that led to your complaint, RECA may recommend that you meet with the industry professional and their broker in an attempt to resolve your concerns through the Alternative Complaint Resolution process
- explain any investigation and/or disciplinary outcomes
- advise you of any appeal rights you may have
- post any discipline outcome on its website and publish the outcome in accordance with [RECA's publication policy](#).

### WHAT IS RECA'S ROLE IN HANDLING COMPLAINTS?

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

RECA sets the standards of business practice that all industry professionals must follow. RECA investigates complaints against industry professionals related to alleged breaches of

these standards, as outlined in the *Real Estate Act* and Rules.

If RECA investigates a complaint and determines the industry member did not follow the standards of business practice as set out in the *Real Estate Act* and Rules, the industry professional may receive a Letter of Reprimand or Administrative Penalty, or may be subject to a Hearing, which can result in fines, payment of costs, educational requirements and/or suspension.

## WHAT SHOULD I DO BEFORE FILING A COMPLAINT?

Before filing a complaint, you should:

### 1. Determine the nature of your concerns

Direct your concerns at the individual(s) responsible for your problem. Your industry professional may not be at fault. RECA receives many complaints of this nature, but we can only investigate breaches over which we have jurisdiction. For example:

- *A buyer may accuse a mortgage associate when the lender withdraws a financing commitment. Unless the lender withdrew the financing commitment due to misconduct on the part of the mortgage associate, the buyer's concerns are with the lender.*
- *A seller may blame their associate or the buyer's associate for a transaction not closing on time. Although there are cases where a delay in closing may be due to the misconduct of a real estate associate, often there are other legal or financial issues that cause the delay. For example, the deal may not be able to close because the lawyers are unable to register the transfer at the Land Titles Office on time. In these types of cases, discuss your concerns with the lawyers or lending institutions.*
- *A tenant may accuse the property manager of misconduct when the landlord refuses to rent the property, even though a rental agreement was signed. In this situation, address the reasons for the refusal to rent the property to the tenant with the landlord, not the property manager. In this case, if there is any misconduct on the part of the landlord, the tenant should discuss the issue with Service Alberta (the government agency responsible for landlord and tenant issues).*
- *A buyer is not happy about an industry professional who was following the lawful instruction of their seller client not to accept offers for two days. In this situation the buyer's concern is with the direction given by the seller not the actions of the seller's industry professional.*
- *A buyer purchases a property and discovers the property has a material (serious) latent (hidden) defect such as a crack in the basement wall that affects the structural integrity of the property. It is not visible because drywall covers the defect. The seller in this case knew of the defect but did not tell their real estate associate. Although the real estate associate listed the property and represents the buyer, the essence of the complaint falls outside of RECA's jurisdiction. If the real estate associates involved did not have knowledge of the defect and were not able to find out about it, they are not responsible for alerting the buyer. The seller had knowledge about the defect and holds responsibility for disclosing the material latent defect.*

## 2. Understand the industry professional's obligations to you

RECA has found that consumers who review the industry professional's obligations are better able to articulate their complaint.

The standards of business practice industry professionals must follow are set out in the [Real Estate Act and Rules](#). Specifically, most complaints relate to the "Industry Standards of Practice" under Part 2 of the *Real Estate Act* Rules. Additionally, you may want to review RECA's Information Bulletins to see if any of them address your areas of concern.

Consider the following two examples:

### Example 1

- A buyer makes an offer to purchase a property and applies for financing
- The bank requires an appraisal and the buyer obtains an appraisal from a licensed real estate appraiser
- The appraisal comes back below the purchase price and the bank refuses financing
- The buyer is unhappy with the appraisal and wishes to complain about the conduct of the real estate appraiser

Just because the buyer is unhappy with the appraised value does not mean the real estate appraiser has done something wrong. RECA would not accept this complaint unless the buyer articulates a breach of appraisal procedures or standards.

### Example 2

- A buyer approaches a mortgage associate to arrange a mortgage on her behalf
- The mortgage associate finds the buyer a mortgage and obtains a commitment for her
- The mortgage commitment is subject to various conditions, one of which is that the borrower must have worked with the same employer for at least three years.
- The mortgage associate fails to explain the mortgage commitment conditions and the buyer switches employment prior to completion of the financing.
- As a result, the lender withdraws financing and the transaction collapses

RECA would accept this complaint as it relates to the mortgage professional's failure to provide all relevant information to the borrower.

Consumers may wish to seek legal advice in assessing the industry professional's obligations.

RECA will refuse your complaint if your complaint does not relate to the industry professional's conduct.

### 3. Determine what you are seeking – accountability or compensation

If you seek compensation, you must attempt to do so through the courts. RECA disciplines licensed professionals who breach the Rules. We cannot recover money. The only exception to this is if you are making a claim to the Consumer Protection Fund for a monetary loss arising from fraud, breach of trust, or a failure to disburse or account for money held in trust by an industry professional with respect to a trade in real estate or deal in mortgages. For example, if your real estate associate took a deposit you provided for the purchase of a property and used it for some other purpose.

Even if the courts determine the industry professional acted improperly, RECA cannot recover your money; however, you may pursue a civil action and a complaint with RECA simultaneously.

If you seek compensation for damages speak with a lawyer.

**HINT:** If you decide to seek legal advice, provide your lawyer with a copy of this guide and the [Guide to Investigations for Consumers](#). Not all disciplinary processes are the same and these guides will provide your lawyer with information about RECA's process to enable them to provide you with legal advice.

### 4. Attempt to resolve the issue

Depending on the seriousness of the alleged breach, consumers should attempt to resolve complaints with an industry professional prior to making a complaint. The industry professional may be able to provide an explanation for their actions.

You can also attempt to resolve the issues by contacting the industry professional's broker. The broker is the head of the brokerage and has a responsibility to supervise brokerage associates, ensure compliance with the Rules, and inquire into and deal with inappropriate conduct.

The broker may be able to resolve your issue quickly and easily, for example, by assigning another associate to work with you. To determine the broker of a particular real estate or mortgage professional, visit [www.reca.ca](http://www.reca.ca) and click on "Find a Professional."

RECA has also created an Alternative Complaint Resolution process, which includes the Voluntary Broker Resolution Process (VBRP). The VBRP facilitates the resolution of client or customer concerns that are less serious in nature. Should you agree to undergo this process, the broker will ask to sign a VBRP Agreement. The VBRP facilitates an environment where you can discuss your concerns openly, without fear that the broker or associate will use anything said in subsequent legal proceedings should the discussions fail to resolve your concerns.

If the VBRP resolves your concerns, the broker will ask you to sign a release.

Feel free to discuss the VBRP with your lawyer. If you do, please share the VBRP Agreement and release forms with your lawyer so that he or she can provide you

with complete advice.

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

**HINT:** Concerns associated with real estate trades or mortgage deals can have significant implications. In situations like this, dissatisfaction with the transaction can result in strong emotions directed at various participants even though they may not be responsible for the problems with the transaction. RECA recommends you discuss your concerns with your lawyer or a person who may provide you with unbiased advice on the issues of concern. RECA's experience suggests complainants who follow this advice have a higher probability of resolving their complaints successfully.

## Filing a complaint

To file a complaint, please use the Complaint Form on [www.reca.ca](http://www.reca.ca). Keep in mind:

- **RECA will not accept a copy of a letter addressed to another party as a complaint**
- **You must identify the industry professional you are complaining about and provide their contact information**
- **You must provide a detailed account of the transaction**  
This requirement is very important. You must support your complaint by as much relevant information as possible. For example:
  - chronological statement of events giving rise to the complaint
  - copy of the applicable contracts (listing, purchase, service agreement, etc.)
  - copy of the appraisal
  - copy of any records
  - names of individuals who may have relevant information, documents or records

It is not sufficient to state your complaint in general terms. For example, "the industry professional misled me." You must provide details about how they misled you and relevant information and documentation to support your conclusion. For example, if you feel they misled you in setting the list price of your house, an appraisal or other value information could show they listed the house at a price that was either too high or too low. RECA will not open an investigation based on a suspicion.

*Note: Please provide copies of supporting documents. Do not send originals.*

- **the complaint should come from someone who was party to the incident leading to the complaint**

RECA may not accept a complaint about the conduct of an industry professional in relation to misconduct affecting another party unless there are extenuating circumstances preventing the other party from making a complaint. For example, a relative may file a complaint on behalf of an elderly individual or an individual with diminished capacities.

- **You must agree to cooperate with RECA's investigation.**

Cooperating with an 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.

You may seek assistance, if required, to write your complaint. For example, a translator may help overcome any language barrier that may exist.

Your complaint must meet the above criteria before RECA will evaluate it. When complete, submit your complaint online or send your complaint to the attention of RECA Investigations via mail, fax or email:

Mail: Real Estate Council of Alberta – Professional Conduct Review

Suite 202, 1506, 11 Avenue SW

Calgary, AB T3C 0M9

Fax: (403) 228-3065

Email: [conductreview@reca.ca](mailto:conductreview@reca.ca)

### **Does RECA accept anonymous complaints?**

Yes, in a way. RECA will review any information received about potential misconduct, however, someone cannot be a complainant AND remain anonymous. If the complainant wants their testimony to be a part of an investigation, they cannot remain anonymous. Anonymous complaints can be harder to investigate, as often the complainant is an important witness and without their cooperation, RECA cannot make a determination.

## EVALUATION OF COMPLAINTS

### What does the evaluation take into consideration?

- **Does the matter must fall under RECA's jurisdiction?**

If the matter is a dispute between you and another party (other than an industry professional), the matter may be civil in nature and does not fall under RECA's jurisdiction.

- **Does the essence of the complaint relate to conduct governed by the *Real Estate Act* or the Rules?**

For example, RECA will not investigate an industry professional's sale of a car to you because that conduct does not relate to the industry professional's authorization. However, RECA may investigate circumstances related to the sale of a home or a mortgage application by an industry professional because that conduct relates to their work as an authorized professional.

- **Does the matter concern an alleged breach of the *Real Estate Act* or Rules?**

Although you may disagree with an industry professional, there may not be a corresponding alleged breach of the Act or Rules. Matters that do not concern an alleged breach of the Act or Rules may fall under the jurisdiction of another organization or the courts.

- **Has the complaint identified an industry professional?** For example, RECA will not investigate a complaint related to mortgage fraud if it does not specify an industry professional as a participant.

### What happens when the complaint evaluation is complete?

RECA will advise you in writing on our decision to open or dismiss your complaint, including the reasons why/why not.

RECA will likely NOT open an investigation file when:

- The conduct in question is not a breach of the *Real Estate Act* or the Rules
- It does not identify the industry professional
- The complaint is anonymous
- The complaint is simply a suspicion
- RECA, another organization, or the parties involved have already dealt with the complaint

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

### If RECA does not investigate my complaint, do I have any other options?

In addition to the *Real Estate Act*, other legislation may apply to a real estate matter:



- the *Residential Tenancies Act*, *Mobile Home Site Tenancies Act* and *Condominium Property Act* are administered by Service Alberta (1-877-427-4088, [www.servicealberta.gov.ab.ca](http://www.servicealberta.gov.ab.ca))
- the *Securities Act* may be relevant to a problem with the real estate or mortgage portion of an investment portfolio and is administered by the Alberta Securities Commission (1-403-297-4296 or 1-403-297-4219, [www.albertasecurities.com](http://www.albertasecurities.com))
- privacy issues can be directed to the Office of the Information and Privacy Commissioner (OIPC) (1-888-878-4044, [www.oipc.ab.ca](http://www.oipc.ab.ca))
- if the matter is criminal, you should contact your local police force. For example, if you suspect that the industry professional is involved in fraudulent activities, the police should be contacted.

Industry associations, such as real estate boards, set their own requirements and rules for their members. Complaints regarding failures to abide by those rules should be directed to the association to which the industry member belongs (see [www.reca.ca](http://www.reca.ca) > links).

### Can I appeal RECA's decision to not investigate my complaint?

If RECA refuses to investigate your complaint, you may have a right to appeal. First discuss your concerns with the RECA investigator who was assigned to evaluate your complaint.

RECA may re-evaluate its decision if you have additional information not considered during the original complaint evaluation process. Alternatively, RECA may provide you with more of an explanation as to why we will not investigate your complaint.

Your appeal must be in writing. The matter will then proceed to a Hearing Panel, which will decide whether your RECA will investigate your original complaint.

For further information on appeal rights, please review *Appealing the Executive Director's Decision That No Further Action Be Taken* at <https://www.reca.ca/wp-content/uploads/2018/07/Appealing-ED-Decision-No-Further-Action.pdf>

## OTHER COMMON QUESTIONS

### What if another organization is handling the complaint?

A single situation or event may trigger a review or investigation from several different perspectives.

RECA is concerned with possible breaches of the *Real Estate Act* and the Rules. Other organizations may be concerned about the breach of other legislation or rules.

For example, an industry association may wish to determine whether a member abided by its rules. The police may investigate a matter to determine whether to lay criminal charges and the courts decide the civil liability of an industry professional (i.e., whether or not the industry member owes you money).



RECA uses agreements with government departments and industry associations to facilitate sharing of information while minimizing duplication. However, in order for RECA to share information with other associations, you must first provide written consent. You can give that consent as part of RECA's complaint form.

### **Can I use information from an investigation in a civil action?**

No. The *Real Estate Act* prohibits this. In all civil proceedings, the plaintiff must demonstrate their case to the courts and cannot rely on a disciplinary decision by a Hearing Panel.

### **I resolved my complaint through the courts. Is RECA going to consider the outcome of the civil proceeding in relation to the conduct of the industry professional?**

RECA requires industry professionals to report disciplinary action from other bodies, judgments arising out of civil proceedings and prosecutions under other federal or provincial statutes. This information may result in disciplinary action against an industry professional. RECA will assess the circumstances on a case-by-case basis.