

## GUIDE TO INVESTIGATIONS: FOR LICENSEES

Established in 1996, the Real Estate Council of Alberta (RECA) is an independent, non-government agency, responsible for governing licensees in the residential and commercial real estate, property management, condominium management, and mortgage brokerage industries under Alberta's *Real Estate Act*.

One of the basic responsibilities of any self-regulating body is to investigate the conduct of licensees and take disciplinary action when necessary. RECA conducts investigations according to a formal process based on the requirements of the Act and the principles of natural justice (which promote fairness throughout the process). Licensees should treat an investigation seriously and be prepared to cooperate fully.

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

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## PURPOSE OF AN INVESTIGATION

RECA's investigation process has three main objectives:

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

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## WHAT RECA INVESTIGATES

RECA investigates 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 a licensee
- demonstrate incompetence, recklessness or intent
- put consumers or other licensees 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 'conduct deserving of sanction' has occurred?

RECA carries out an investigation to gather evidence to help determine if a licensee's conduct is deserving of sanction. Assessment of conduct is based on 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 Registrar or hearing panels. Some examples of aggravating and mitigating factors are as follows:

- **The licensee's intentions.**

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

- **The licensee's cooperation during the investigation.**

*For example, it would be a mitigating factor if the licensee acknowledged the conduct and took responsibility for it. Conversely, it would be an aggravating factor if a licensee attempted to hide the conduct or provided false information during the investigation. Providing false information during the investigation 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 any misconduct;
- Expressing regret for any misconduct;
- Signing up for a course that helps 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 any misconduct.

**HINT:** If you have just been advised that an investigation 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.

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## OPENING AN INVESTIGATION

### What triggers an investigation?

An investigation is initiated when the Registrar receives:

- a written complaint involving a licensee related to their responsibilities as a licensee; or,
- information that the conduct of a licensee 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 an investigation?

No, several criteria must be met before an investigation 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 licensee giving rise to the conduct must be identified; and,
- There must be evidence that indicates that the licensee 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 a licensee 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 licensee is identified
- the conduct complained of is outside of RECA's jurisdiction

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

Licensee's sometimes have concerns about "double jeopardy." However, this term is not applicable to RECA's investigation 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)

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. Some duplication may 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 investigate 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 an investigation.

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

- civil action may determine the extent of liability and/or damages;
- if the licensee belongs to a real estate board, that board may review the matter based on its member standards; and,
- RECA may commence an investigation to determine whether 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 investigation. 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 investigation and disciplinary processes for civil purposes. Some of the steps taken are as follows:

1. RECA will not commence investigations regarding issues that are entirely civil disputes.
2. RECA will only investigate 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 investigation or any information to the complainant during the investigation process. (Note: the investigation may require showing documents to complainants and other witnesses to obtain their testimony)

Section 38(4) of the *Real Estate Act* allows licensee's to provide complete and truthful statements without concern about civil repercussions. It provides protection to licensees or other persons who are required to provide information during the investigation. The information provided 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 the Registrar or a hearing panel.

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## UNDERSTANDING THE INVESTIGATION PROCESS

### How is an investigation carried out?

1. **The licensee is provided with either the letter of complaint or enough context to understand the issues of concern to RECA.** The licensee is asked to respond to questions in writing and to submit documents as directed.
2. **The information submitted is reviewed.** This 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, the associate who is the subject of the investigation, 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 investigation will be closed. If no resolution is achieved, further investigation will be required. Please see the Voluntary Broker Resolution section of this guide for more information on this process (page 11).
  - **Further investigation is required.** If further investigation is required, the investigator will communicate with the licensee, the complainants, and other relevant witnesses to gather any required evidence. The investigator may interview these parties.
3. **Once all information is received an investigation report is prepared for the Registrar.**
4. **The Registrar may send the file back requesting further investigation or information.**

### Is the same process followed in each case?

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

- the investigation results from something other than a formal written complaint
- providing the complaint letter to the licensee may jeopardize the integrity of the investigation

In such cases the licensee will receive written notification of the issues and be asked to provide a statement and information concerning the issues under investigation.

### What should I do if I am notified of an investigation?

If you are notified of an investigation, RECA strongly suggests you take the following steps to ensure all relevant information and documents are preserved for the duration of the investigation:

- **Compile all the documents requested by the investigator.** You may also compile any other documents which contain information relevant to the matter under investigation. Examples of other documents may be day-timers, diaries, notebooks etc.
- **Review the documents 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 investigation is about determining the facts, without prejudice statements are inappropriate while the matter is under investigation. During the investigation, without prejudice statements cannot be accepted.

### Can I request an extension?

If you need an extension, please contact the investigator 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 investigator communicate with me?

All correspondence will be emailed or mailed to your contact information you have provided RECA. All letters 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 investigator may also communicate with you over the telephone. The investigator may also request you attend an interview.

### Will the investigation only address issues raised in the complaint?

Sometimes an investigation will uncover matters that were not specifically raised by the complaint.

These may include:

- If a minor issue is discovered during the course of an investigation (e.g., an unapproved AKA name appears on your 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 educational opportunity to learn from the conduct;
- If the ancillary issue is serious (e.g., fraud) RECA will notify the licensee of the issue and the matter will be investigated.

## Will my conversations with the investigator be recorded?

RECA electronically records all interviews, whether in person or by telephone, to ensure the integrity of the investigation 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 an investigation 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:

- **Licensees** because it provides a record of exactly what was said. It is not subject to interpretation. It also provides the licensee 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 Investigators** because it may help safeguard against unwarranted complaints

## Where does the investigator gather information?

The investigation gathers information from a variety of sources depending on circumstances and availability. In most investigations, information is initially gathered from the complainant, licensee, broker, or other licensees or witnesses.

Information is also gathered from the Land Titles Office, corporate registries, lenders, municipalities, banks, phone companies, etc.

## Will I receive copies of all the information gathered during the Investigation?

It depends on the decision of the Registrar at the conclusion of the investigation.

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

If, at the conclusion of an investigation, the Registrar refers the matter to a hearing panel, RECA will provide disclosure to the licensee.

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

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## VOLUNTARY BROKER RESOLUTION PROCESS

Investigations 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 licensee subject to the investigation 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 investigation is closed.

For information on how the [Voluntary Broker Resolution](#) Process works.

For more information for brokers, review the [Guide to the Voluntary Broker Resolution Process](#)

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

This process is beneficial to licensees who are the subject of an investigation, to complainants, to brokers and to RECA.

### Benefits to the licensees who are subject of an investigation are:

- eliminates the intrusiveness and time expenditures of further investigation
- provides an opportunity to avoid the possibility of a sanction
- provides an opportunity to mend the relationship with the complainant
- allows for participation in the process and resolution
- allows for the opportunity to review their practices, identify mistakes or areas where improvement is warranted
- resolution of the complaint will likely be timelier

### Benefits to the complainant are:

- allows for the complainant's concerns to be heard and potentially satisfied
- 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);
- resolution to their complaint will be timelier.

### Benefits to brokers are:

- provides an opportunity to mend the brokerage's relationship with the complainant
- creates the opportunity to identify deficiencies in the brokerage's practices and to make improvements
- creates the opportunity to instruct or mentor the licensee
- allows brokers to set the process and to achieve an acceptable resolution
- helps fulfill his or her broker responsibilities.

### Benefits to RECA are:

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

**HINT:** Usually a licensee'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, licensees under investigation ought to make reasonable efforts to make the Voluntary Broker Resolution Process work whenever possible. If the complaint is resolved through the Voluntary Broker Resolution process, the complaint is withdrawn and the investigation is terminated.

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## ABOUT THE INVESTIGATOR

### What powers do investigators have?

Under the *Real Estate Act* investigators appointed by the Registrar 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 investigation, and to make copies of anything produced; and,
- look into matters that may be private but are relevant to the matter under investigation. (e.g., personal bank records in relation to missing trust funds).

## What responsibilities do investigators have?

Investigators 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.

Investigators must:

- **gather all relevant facts carefully, fairly, impartially and objectively.** This includes verifying information that is gathered.  
*For example, if a licensee tells the investigator they were out of town on a particular day, the investigator may request proof (such as receipts, cell phone records, etc.). Requesting further information as proof is not an indication the investigator does not believe the source. It is the investigator'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 licensee with a description of the issues under investigation and an opportunity to respond and offer evidence.
- **allow for the presence of legal counsel or broker.** 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 investigation process, investigators must assess the direction of the investigation 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 investigator would indicate bias only if the investigator has "a mind so closed that any submissions would be futile."*
- **Report the facts they gather to the Registrar fully and objectively.**

## Who are RECA's investigators?

RECA has a well-balanced investigative team. RECA's investigators are impartial fact finders that are appointed by the Registrar.

Specialized training ensures all investigators have a high level of industry knowledge and investigative skills.

Many investigators have a background in the industry or law enforcement. Some investigators hold designations as National Certified Investigators, Certified Fraud Examiners, and Certified Financial Crime Specialists.

## Can I complain about an investigator's conduct?

Investigators must comply with the legislative requirements and with RECA's policies and procedures. If you have concerns about the conduct of an investigator, address them in writing to the Investigations Manager.

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## REQUIREMENT TO COOPERATE

### Do I have to cooperate with the investigation? (Section 38(4) of *Real Estate Act*)

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

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

In addition to a licensee's 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 investigation of their conduct, which may include providing personal information. Sometimes an investigator 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 investigator they must be provided in an unaltered form, even though they are held jointly with another person who may not be related to the investigation. This information is only used for purposes related to the investigation.

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

- the licensee's licence being suspended under section 38(4.2) of the *Real Estate Act* until the licensee has cooperated fully;
- the investigation being expanded to include non-cooperation issues or in a new investigation 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 licensee's failure to cooperate during the investigation resulted in sanction.

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

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## 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 investigation process, evidence must be produced before the Registrar can decide if it is relevant to the issues being examined. For example, if the matter under investigation 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 investigation.

### Is information gathered during an investigation confidential?

Investigators share information only as far as the investigation process requires and the law permits.

- In most cases, licensees receive a copy of the complaint that led to the investigation;
- 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 investigated 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 Registrar is of the opinion that the evidence suggests criminal activity or the breach of other laws, the Registrar 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 investigation 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 an investigation 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 the complainants and licensee in civil proceedings.

## Is the investigation public knowledge?

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

- When a licensee's licence is suspended pending the outcome of the investigation, pursuant to section 53 of the *Real Estate Act*, the public is informed;
- When a licensee whose conduct is under investigation requests a transfer to a new brokerage, RECA shares information with the broker applicant (upon receipt of the appropriate waiver from the licensee);
- If a licensee transfers to a new brokerage during an investigation, the new broker receives copies of all subsequent correspondence related to the investigation;
- Individuals who are asked to provide witness statements or to verify documentation will become aware that an investigation is underway
- When the information gathered during an investigation 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 an investigation has been initiated as a result of their complaint if they wish to do so.*

## What if the investigator 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, a licensee 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 an investigation or a legal proceeding; or
- for the purposes of protecting against, preventing, detecting or suppressing fraud or unfair trading practices

The *Real Estate Act* gives investigators the authority to demand information relevant to an investigation. Licensees 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](http://www.priv.gc.ca) for further information. If PIPA applies you may visit [www.oipc.ab.ca](http://www.oipc.ab.ca) for further information.

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## THE LENGTH OF THE INVESTIGATION PROCESS

Each investigation is different, and the time required depends on the circumstances of the case. Timeliness of an investigation is a common concern, as licensees and complainants usually want to deal with the issue as quickly as possible – but due process required under the *Real Estate Act* and the principles of natural justice take time. Complainants and licensees 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 complete investigative report must be prepared. This process is time consuming, but failure to follow it could have a negative effect on the public and/or licensees.

RECA will provide updates to let you know the matter is under investigation.

### 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.

Licensees 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 likely be discovered anyway;
- The scope of the investigation may be expanded to cover non-cooperation
- If your conduct is ultimately found to be in breach of the legislation by a hearing panel you may be ordered to pay investigation costs; and,
- The investigation will take longer

Being truthful and straightforward when dealing with an investigation encourages a more positive result as oppose to not cooperating.

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

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## INVOLVING OTHERS: LAWYERS & BROKERS

### Should I seek legal counsel?

You may seek legal advice at any point during an investigation, but you should be aware that your lawyer's involvement will not change the process or your responsibility to cooperate with the investigation.

During the investigation, the investigator will not engage in discussions or correspond with your lawyer regarding whether the matters under investigation are conduct deserving of sanction or the relevance of the information you have been asked to provide. 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 investigation.

Your lawyer may be present to advise you during an interview. The investigator 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 licensees 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 licensee to provide instructions to their lawyer to prevent the existence of undue interference.

The investigation 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 an investigation 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 investigator?

Your broker or broker delegate is usually welcome to attend interviews. RECA encourages the involvement of the broker in the investigation 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 investigator 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.

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## POSSIBLE RESTRICTIONS ON YOUR ACTIVITY

### Can I change brokerages while my conduct is under investigation?

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

### Can my licence be suspended during the investigation?

Upon a recommendation by the Registrar, the Industry Council Chair may suspend a licence pending the outcome of conduct proceedings. This option is rarely pursued; however it is considered when:

- the conduct under investigation is of a very serious nature;
- the conduct under investigation could cause harm to the public;
- the licensee fails to cooperate with an investigator

There is an appeal process to the courts for a licensee whose licence is suspended in such circumstances.

As discussed in the Requirement to Cooperate Section of this Guide, the Registrar may suspend a licensee's licence if they fail to cooperate in an investigation. The suspension will be lifted once cooperation is achieved (i.e. the information is provided or the questions are answered).

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## INVESTIGATION OUTCOMES

## What outcomes result from an investigation?

Once the investigation is complete, the Registrar will review the investigation report and determine how to proceed based on the evidence that was gathered. The Registrar will consider the issues where 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;

A licensee is always advised of the outcome, in writing, at the conclusion of an investigation.

***Note:** The complainant may appeal the Registrar's decision not to commence an investigation concerning a complaint or discontinue an investigation 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 investigation or hearing costs;
- suspension of, cancellation of, or conditions upon the licensee's licence to trade in real estate, deal in mortgages or act as a property manager 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](http://www.reca.ca).

### Are the results of an investigation confidential?

If there is no disciplinary action taken, the results of an investigation 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 licensees.

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 a licensee's licence 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 licensee and will include a summary of the circumstances leading to the decision;
- RECA publishes a notice of licensees who have withdrawn from the industry under Section 54 of the *Real Estate Act*

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](#).

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## INFORMATION FOR BROKERS

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

When an investigation 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 investigation will consider your conduct and your brokerage policies and procedures in relation to section 51(3) of the Rules.

An investigation 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 issues identified and ensure changes are clearly communicated to brokerage staff. If a licensee 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 an investigation. Interviews are scheduled directly with the licensees involved. If you wish to be present at an interview, please ask your associate or associate broker to advise the investigator of your intentions and to advise you of the appointment particulars.

An investigator may share information gathered during an investigation 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 investigator know you are doing this and let the investigator 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 investigation into your conduct as a broker, an obvious exception being where there is a discipline history of previous brokerage deficiencies.

### Can I ask the investigator to provide me with advice?

Given the role that investigators play in an investigation, it would be inappropriate for investigators to provide advice regarding matters under investigation. In situations such as this, investigators can only refer the broker to the applicable legislation, information bulletin or other publications.

Brokers are reminded that if they require advice on industry matters, they may contact the Regulatory Compliance Advisor.

## How do I find out if a prospective associate or associate broker is undergoing an investigation?

Ask the licensee 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 investigation(s) involving that licensee if he or she signs a confidentiality waiver. Please submit the confidentiality waiver from the licensee to RECA's Professional Standards department at [conductreview@reca.ca](mailto:conductreview@reca.ca)

For more information, contact  
the



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