

The Regulator

- » Message From the Board Chair
- » Commercial Real Estate Broker and Commercial Property Manager Industry Council Update
- » Mortgage Broker Industry Council Update
- » Residential Property Manager Industry Council Update
- » Residential Real Estate Broker Industry Council Update
- » Answering your Questions about Condominium Manager Licensing
- » Recent Consultations
- » Navigating Referral Fees
- » Multiple Offers: The Seller is in the Driver's Seat
- » News Bytes

August 2021

Vol. 27 Issue 3



Message from the Board Chair

Patricia McLeod, Q.C.

I would like to start my update by thanking all of Alberta's licensees for their tremendous efforts as an essential service operating throughout the pandemic. As the Province fully reopens and we hopefully continue to get back to some semblance of normal life, I think it's important that we all reflect on what a strange time it's been. Despite the health restrictions, Albertans still needed to buy, sell, and lease property, and needed to obtain mortgages. Alberta's licensees were up to the challenge of providing their best service to clients and the public as they navigated their life changing decisions. Kudos to all of you.

It's also important to remember that we aren't fully out of the woods yet. Licensees should continue to have the COVID conversation with their clients, and to set expectations for how they want to interact with you and other parties.

RECA's New CEO

On July 20, 2021, RECA announced Russ Morrow as its new CEO. Russ officially started on August 9. The CEO is a role appointed by, and responsible to, the Board of Directors, and will be responsible of RECA's operations.

Russ has already began reaching out to stakeholders to ensure he understand their various needs and expectations, and to better understand the real estate landscape in Alberta and beyond.

[Read more about the appointment, and about Russ](#), in the message sent to all stakeholders.

Bylaws

One of the most important tasks the Board must complete within its first year is the creation of bylaws concerning education divestment, Board and Industry Council conduct, and Industry Council elections. These bylaws must be approved by the Minister of Service Alberta. The Board and Industry Councils are working collaboratively in joint sessions to gain consensus on the draft bylaws, and will provide the bylaws to the Minister soon.

Education Divestment

RECA has been hard at work continuing the education divestment process.

- **Education Discussion Group:** RECA created an Education Discussion Group made up of two licensee members from each Industry Council, some of whom were also Board members. This group provided recommendations to the Board and Industry Councils concerning the Education Framework developed by RECA.
- **Education Framework Consultation:** Once each Industry Council and the Board approved the Framework, it went out for consultation with stakeholders. The Education Framework contains the RECA Pre-Licensing Education Philosophy, the Examination Blueprint, and Course and Course Provider Requirements. The feedback from stakeholders was overwhelmingly positive about the Education Framework.
- **Ministerial Approval:** A required step to the education divestment process is for the Minister of Service Alberta to approve our Education Transition Plan and the bylaws referred to above. Once approved, RECA will hit the ground running, and continue the divestment process through the rest of 2021, with the goal of completing all divestment by December 1, 2022.

- **Competencies Consultation:** An additional step is the development of competency profiles. The Industry Councils will be consulting with stakeholders on competencies for all of the licence classes within their scope. Please keep an eye out for those consultations when they begin.

RECA Budget

The Board approved the 2021-2022 Budget for RECA at our latest meeting. A key takeaway for licensees in this budget is there will be no fee increase for the 2021-2022 licensing year. It is the Board's responsibility to set the licensing fee to ensure RECA has the appropriate resources to fulfill its consumer protection mandate. The licensing fee has not changed in seven years (when it was reduced by \$50), and has not increased in eight years.

This will be the first budget to begin taking into account the divestment of education and the subsequent loss in education revenues. Part of the reason RECA could keep the licence fee the same for so long is that many costs were offset by these education revenues. As we move further into the divestment process, that loss will begin to be felt more keenly. That being said, the Board takes its role in setting RECA's budget seriously, and will only ever increase licence fees when it is absolutely necessary to do so for RECA to adequately fulfill its mandate.

Another important aspect of this year's budget is the costs associated with strategic planning. As we enter the modernized governance era at RECA under the amended Real Estate Act, a new strategic plan is required. The Board, the Industry Councils, and RECA Administration will be working towards setting a new strategic plan in 2021-2022, which will involve robust stakeholder engagement. Keep an eye on your inbox for engagement opportunities, and be aware

you can let the Board know your thoughts on RECA's strategic direction at any time by emailing the Board at board@reca.ab.ca, or by filling out the [Strategic Planning webform](#) on reca.ca. The Board receives every email and every response to the web form, and will consider all input from all stakeholders before setting RECA's strategic direction.

Condominium Management Update

As you all know, RECA will begin licensing condominium managers on December 1, 2021. RECA sent out communications regarding the licensing process and requirements in June. Please see the message from Don Newell, Chair of the Residential Property Manager Industry Council, and the full article on condominium manager licensing in this newsletter.

Bill 62

As you are all aware, further amendments to the *Real Estate Act* came into force with the passing of Bill 62, the *Red Tape Reduction Implementation Act 2021*, on June 17, 2021. These amendments clarify the role of the Board, in consultation with Industry Councils, to create bylaws related to education divestment and Industry Council elections, clarify the Minister's authority concerning approving new bylaws and Rules for the industry, and allow for the staggering of appointments to the Board and Industry Councils. We will keep stakeholders advised as we receive confirmation of the final regulations that will be forthcoming pursuant to these new legislative provisions.

Update on RECA's Office Building

RECA's Board of Directors received serious allegations related to the purchase of RECA's office building. The Board recently undertook a review of the 2018 purchase of RECA's office building. As the body responsible for RECA's assets, RECA's Board commissioned a legally privileged review (Investigation) of the matters noted in the Report. This Investigation determined that the concerns of impropriety speculated in the Report are unfounded and the matter is closed. A summary of the Investigation findings can be found [here](#).

Consistent with its mandate the Board will continue to periodically review the building, and all other assets, in the best interests of RECA.



Commercial Real Estate Broker and Commercial Property Manager Industry Council Update

Summary of Activities Since April

Education Divestment

The Commercial Real Estate and Commercial Property Manager Industry Council worked with the other industry councils and the Board to get the education framework approved for consultation. The framework consists of the exam blueprint, pre-licensing education philosophy, and course and course provider requirements. Feedback so far has been overwhelmingly positive. Work has started on the competencies, which will be consulted on and shared with stakeholders later this year.

Election Bylaw Criteria

The Industry Council worked with the Board to come up with the wording for bylaws around elections for Industry Councils. Bylaws must be approved by the Minister.

Complaint Trends and Outcomes

The Industry Council discussed current complaint trends and how they are affecting the industry and the public.



Mortgage Broker Industry Council Update

Summary of Activities Since April

Education Divestment

The Mortgage Broker Industry Council worked with the other industry councils and the Board to allow the education framework to be approved for consultation. The framework consists of the exam blueprint, pre-licensing education philosophy, and course and course provider requirements. Feedback so far has been overwhelmingly positive. We have started the review of the mortgage broker competency profiles. We look forward to consulting with you regarding the competency profiles later this year.

Mortgage Brokerage Policies and Procedures Manual

RECA has been working on a Policies and Procedures Manual template to help brokers in creating or updating their brokerage manuals. AMBA has reviewed the Policies and Procedures Manual template, and we are looking forward to reviewing the Policies and Procedures Manual template at our upcoming meeting.

Election Bylaw Criteria

The Industry Council worked with the Board to come up with the wording for bylaws around elections for Industry Councils. Bylaws must be approved by the Minister.

Review of Proposed New Rules for Mortgage Brokers

The Industry Council discussed Rules that were consulted on in 2018 and 2019.



Residential Property Manager Industry Council Update

Summary of Activities Since April

Condominium Manager Licensing

In preparation for the commencement of condo manager licensing on December 1, 2021, the Residential Property Manager Industry Council created licensing eligibility standards, requirements, and fee amendments. More on this topic is in this newsletter in the article titled Answering your Questions about Condominium Manager Licensing. Several stakeholder engagement sessions with condo associations were held over the past few months, and the Industry Council will continue hosting sessions over in the coming months. RECA's website also has a page about condo manager licensing, which includes frequently asked questions.



Condominium Manager Education

The Industry Council approved the condominium manager competencies and has communicated the education framework to course providers.

The other Industry Councils also reviewed the framework in a timely manner, allowing communication to course providers to happen as soon as possible. RECA is now answering questions from potential course providers interested in providing condominium manager education.

Condominium Corporation Document Fees

The Industry Council discussed condominium corporation document fees, as this has been reported to RECA as an area of concern. RECA has advised Service Alberta that this is an area for continuing education of condominium corporation boards and managers.

Education Divestment (Property Management)

The Industry Council worked with the other industry councils and the Board to allow the education framework to be approved for consultation. The framework consists of the exam blueprint, pre-licensing education philosophy, and course and course provider requirements. Feedback so far has been overwhelmingly positive. Work has started on the property manager competencies, which will be consulted on and shared with stakeholders later this year.

Regulatory Processes

The Industry Council approved its first application, under Section 54 of the *Real Estate Act*, for a lifetime withdrawal from property management. This is one of the most serious consequences for an industry member and the decision to accept the application was thoroughly considered by the Industry Council.

Residential Real Estate Broker Industry Council Update

Summary of Activities Since April



Education Divestment

The Industry Council worked with the other industry councils and the Board to facilitate the education framework to be approved for consultation. The framework consists of the exam blueprint, pre-licensing education philosophy, and course and course provider requirements. Feedback from stakeholders so far has been overwhelmingly supportive. Work has started on the residential real estate associate competencies, which will be further consulted on and shared with stakeholders later this year.

Election Bylaw Criteria

The Industry Council worked with the Board to come up with the criteria for bylaws governing the elections for Industry Councils. These bylaws

must now be approved by the Minister.

Advertising, Incentives, and Guaranteed Sales

The Industry Council reviewed current complaint trends and is concerned with the disproportionate volume of complaints related to these three issues. We would like to remind licensees who have concerns about fellow licensees to attempt to bring their concerns forward, in a professional manner, to their colleague first. If the colleague disregards their concern, then they should bring it to the attention of their broker or broker delegate for discussion with the other broker. If the matter is not resolved after these steps, a formal complaint should be filed with RECA. If a colleague brings a concern to your attention, try to view it as an opportunity to collaborate and improve, rather than a criticism. Not dealing with these types of concerns from colleagues can result in it becoming an aggravating factor, if RECA issues a sanction.

RECA also has a guide to support licensees through the [Voluntary Broker Resolution Process](#), which is designed to satisfy minor consumer complaints through discussion between the consumer, the industry professional, and their broker.

RMS

The Industry Council discussed the history and the current landscape of the RMS and asked the Board to establish a Residential Measurement Standard Ad-Hoc Committee, which was approved at its July 29, 2021 Board of Director's Meeting.

Non-reporting of Accepted Conditional Offers

The Industry Council continues to foster discussions regarding the non-reporting of conditional sales. We have received stakeholder input and legal opinions regarding the implications of the current practice. We look forward to gaining greater clarity on the issues, resulting in clearer guidance for licensees.

Answering your Questions about Condominium Manager Licensing

As you're likely aware, RECA will begin regulating condominium managers on December 1, 2021.

In preparation, the Residential Property Manager Industry Council has created licensing eligibility standards, requirements, and fee amendments. With these resources, RECA is able to give licensees, and future licensees, an idea of what they can expect from this transition. However, they are not set in stone and are subject to change due to realities outside of RECA's control, such as third-party course providers not having education ready by December 1, 2021.

Will I need a condominium manager licence with RECA?

The short answer is, everyone who practices condominium management in Alberta, whether currently licensed with RECA in another area or not, needs a licence.

Existing real estate or mortgage brokerages that provide condominium management services will require a separate condominium manager brokerage licence to provide condominium management services after December 1, 2021.

A new brokerage entity will not be required. As is the case for brokerages licensed in both real estate and mortgage brokerage, current real estate or mortgage brokerages can obtain a condominium manager brokerage licence using their current brokerage's business entity (proprietorship, partnership, or corporation).

What if my brokerage is licensed in property management?

You will still need a condominium manager brokerage license. Condominium management is a separate activity. If companies would like to practice both condominium management and property management, they must do so under separate brokerages. A condominium manager brokerage licence is required to provide condominium manager services, and a real estate brokerage licence is required to provide property management services. Individuals must be licensed and registered with these brokerages.

Why was this model chosen?

This model was chosen in 2016 based on feedback from stakeholder consultations the Condominium Manager Implementation Advisory Committee (CMIAC) undertook in late-2015.

Additional reasons for adopting this regulatory structure include:

- trading in real estate as a real estate broker involves the disposition of real property. Condominium management activities involve assisting a condominium corporation to manage itself and its common property. These activities are separate and distinct.
- including condominium management as part of a real estate licence would require condominium manager brokers to obtain residential, rural, commercial, and property management licences, and to complete re-licensing education in these sectors even if they are not intending to practice in those sectors.

- including condominium management as part of a real estate licence would require existing real estate brokers and associate brokers to take condominium management education in order to retain their broker or associate broker licences, even if they do not intend to manage condominiums.

How will condominium manager licensing work?

License classes: There are three condominium manager licence classes: condominium manager broker, condominium manager associate broker, and condominium manager associate.

The function of each class is similar to corresponding real estate classes, where:

- a broker is the individual in charge of a brokerage and there is only one broker per brokerage
- an associate broker is an individual who has all of the qualifications to be a broker, but is not in charge of a brokerage. They must be registered with a brokerage in order to offer condominium manager services on behalf of that brokerage
- an associate is an individual who offers condominium manager services on behalf of a brokerage, and must be registered with that brokerage. There can be multiple associates and associate brokers registered to a brokerage.

Brokerages themselves must also be licensed.

Timing of licence applications: RECA opened the licensing eligibility process on August 3, 2021, and expects to start processing licence applications on October 12, 2021. This way the condominium management industry can complete their applications for licensing well before December 1, when the regulation of the condominium management industry will begin. Condominium manager brokerages and brokers will have to be processed and approved for licensing before individual condominium manager associates can complete their licensing application. RECA strongly recommends prospective brokers to start the process as soon as it opens to avoid delays.

Licence Eligibility:

Individuals who are currently offering condominium management services who hold a licence with RECA in another industry

Associates:

- two years of experience in condominium management within the last five years, by affirmation
- must include the names of five condominium corporations managed

Associate brokers & brokers:

- two years of experience in condominium management oversight role within the last five years, by affirmation
- must include the names of five condominium corporations managed

Individuals who are currently offering condominium management services who **DO NOT** hold a licence with RECA in another industry

- ability to work in Canada
- minimum 18 years of age
- certified criminal record check
- good character as defined in [RECA's Good Character Policy](#)

*Note: approved lifetime withdrawal applicants are not eligible

Additional eligibility standards for current condominium managers who wish to become licensed as condominium manager associates:

- two years of experience in condominium management within the last five years, by affirmation
- must include the names of five condo corporations managed

Additional eligibility standards for current condominium managers who wish to become licensed as condominium manager associate brokers & condominium manager brokers:

- two years of experience in condominium management oversight role within the last five years, by affirmation
- must include the names of five condo corporations managed

New Condominium Managers

- ability to work in Canada
- minimum 18 years of age
- criminal record check
- good character as defined in [RECA's Good Character Policy](#)
- proof of English proficiency
- proof of education

Do I have to take any courses?

Yes, but in some cases, not right away. Individuals who currently offer condominium management services who meet all eligibility criteria above will be issued a conditional licence by December 1, 2021. The licence will be conditional on successful completion of the pre-licensing education exams by November 30, 2022.

Challenging exams: RECA strongly encourages existing condo managers to enroll in the pre-licensing courses to be recognized by RECA. That said RECA will allow licensees with at least two years' condominium management experience in the last five years to challenge the exam. However, some of the exam questions will relate to regulation and RECA's legislation, which may not be familiar to current condo managers who are not licensed with RECA in another area. The competency profiles below provide an idea of what will be covered in the exams.

Courses: pre-licensing education will be delivered by third-party course providers. RECA will notify all stakeholders immediately when course providers meet the RECA Course and Course Provider Requirements and are accepted as third-party course

providers. There will be three condominium management courses provided by third-party providers. RECA deems successful completion of the education requirement as a grade of at least 70% on the course exams.

The three courses are:

1. Fundamentals of Condominium Management

Must be completed by:

- new condominium manager associates entering the industry
- all individuals who currently offer condominium manager services who DO NOT currently hold a licence with RECA in another industry

2. Practice of Condominium Management

Must be completed by:

- new condominium manager associates entering the industry
- all individuals who currently offer condominium manager services who DO NOT currently hold a licence with RECA in another industry
- all individuals who currently offer condominium manager services who DO currently hold a licence with RECA in another industry

3. Condominium Manager Broker Program

Must be completed by:

- new condominium manager brokers
- all individuals who currently offer condominium manager services as an associate broker or broker who DO NOT currently hold a licence with RECA in another industry

Competency Profiles: the Residential Property Manager Industry Council recently developed condominium manager competency profiles (for [associates](#) and [brokers](#)) with the help of subject matter experts and competency experts. After obtaining input through stakeholder consultation earlier this year, the Residential Property Manager Industry Council approved the final competency profiles at their June 4, 2021 meeting. These competency profiles will be used by third-party education providers to assist in building their courses.

Will I have to pay a fee for my licence?

Condominium manager brokerages: firms applying to become licensed as condominium manager brokerages on December 1, 2021, will have to pay a licence fee but will not be charged the application review fee. The brokerage license fee is \$450.

Changing your licence to become licensed in condominium management: brokerages and individuals currently licensed by RECA who wish to terminate their existing licence and become licensed in condominium management will be allowed to do so at no extra cost on December 1, 2021.

Associate and associate brokers: for a new individual, the licence fee is \$475.

Recent Consultations



RECA is committed to ensuring that it consults with its stakeholders in accordance with its [consultation policy](#) when it is considering changes to the standards of practice. Over the last few months, RECA conducted consultations on:

- the Real Estate Regulators of Canada (RERC) Canadian Competencies for Real Estate Professionals
- Alberta's Pre-licensing Education Framework

We truly appreciate all the stakeholders who take the time to provide their input on these consultations—after all, it's what self-regulation is all about!

RERC Consultation on Canadian Competencies for Real Estate Professionals

In May 2021, the Real Estate Regulators of Canada (RERC) invited real estate licensees across Canada to contribute to setting national competencies for new real estate licensees by completing a validation survey. RECA sent out the survey to its licensees on behalf of RERC.

Purpose of the Competencies

RERC developed these Pan-Canadian Competencies for real estate professionals for many purposes, including:

- assisting provincial regulators develop competency profiles and examinations/assessments
- designing educational programs
- regulating real estate professionals at entry-to-practice, re-entry to practice, and for the purposes of continuing professional development
- providing orientation and on-boarding of new licensees or support staff
- managing performance and identifying quality assurance, continuing competency, and professional development needs

The competencies will be used by a variety of stakeholders including regulators, educators, examiners, employers, individual real estate licensees, and those seeking to practice in Canada.

Invitation

More than 145,000 were invited by RERC to participate in the survey, which opened on Monday May 10, 2021. The survey ran for 22 days, closing on June 1, 2021.

Respondents

Licensees in all jurisdictions except for Nova Scotia, Northwest Territories, Nunavut, and Prince Edward Island responded to the survey.

Of the 4,222 people who opened the survey, 98% were licensed to trade in real estate in their jurisdiction. A small number of individuals did not hold a license but were interested in the competencies because of related professions.

Alberta licensees accounted for 18% of the respondents, with 4.5% of those licensed in Alberta participating in the survey.

Survey Engagement

Given the length of the survey—135 questions—respondents had the option to skip sections. Because of this, incomplete submissions that include responses from more than just the demographic questions were deemed valid and were included in the analysis. Thirty-five percent (1,471 respondents) completed the entire survey.

Outcomes

A convincing majority of respondents “agreed” or “strongly agreed” that the competency profiles describe the professions well and will contribute to a clear understanding of what is required from a typical real estate practice now and in the future. Visit RERC online for more information on the [National Competencies](#).

In Alberta, RECA’s Residential Real Estate Broker Industry Council, the Commercial Real Estate Broker and Commercial Property Manager Industry Council, and the Residential Property Manager Industry Council will use this feedback to develop competency profiles for commercial real estate associates, residential real estate associates, and real estate brokers.

RECA Consultation on the Pre-licensing Education Framework

As part of the amendments to the *Real Estate Act* that came into force on December 1, 2020, RECA must divest itself of the delivery of licensing education by December 1, 2022. All licensing education will be delivered by third-party course providers who meet the Course and Course Provider Requirements to be set out by RECA.

Purpose of the Framework

The purpose of the framework is to ensure an orderly disposition of pre-licensing education, where Industry Councils will retain the full authority to develop real estate industry licensee competencies and course requirements. Also, the Board,

in consultation with Industry Councils, will as part of the licensing process retain all authority and processes for licensee examinations, including new licensees, and renewing licensees.

RECA's Board and Industry Councils are committed to ensuring:

- the divestment process is fair to all potential course providers—associations, universities, colleges, etc.—allowing for fair competition
- course providers can offer courses in multiple formats (e.g., eLearning, classroom)
- the education creates competent licensees who can serve the public, regardless of the provider
- the education is available to everyone, regardless of affiliation or membership status with trade associations

RECA Industry Councils are responsible for prescribing the competencies required by licensees for their respective industries. While the competency consultations will take place separately, the Industry Councils and the Board are looking to provide a common framework.

Invitation

In May 2021, RECA invited potential education providers, trade associations, and brokers to give their input on the draft pre-licensing education framework which includes the Pre-Licensing Education Philosophy, Course and Course Provider Requirements, as well as an Examination Blueprint for Education. The survey opened on May 21, 2021 and closed at 11:59pm MST on June 11, 2021.

In total, 105 stakeholders participated in the survey.

Survey Engagement

To ensure that RECA's Board of Directors and Industry Councils were able to focus on items in the Framework that required improvement, respondents were asked to simply agree or disagree with each requirement as it was drafted at that time.

Respondents were then invited to provide rationale or input when they disagreed with the requirement as stated. This allowed respondents to offer suggestions for any and all draft requirements without having to consider whether or not those edits meant they disagreed or strongly disagreed with the requirement.

Outcomes

Stakeholders generally approve of the draft RECA Pre-Licensing Education Philosophy, Course and Course Provider Requirements and the Examination Blueprint documents. All requirements outlined in the survey received between 83% and 100% approval rating.

From the feedback received, RECA's Board and Industry Councils were able to make edits to the requirements, where necessary, and put together a list of next steps and future opportunities.

RECA appreciates respondents for taking the time to provide thoughtful feedback that will help us move forward with divesting pre-licensing education.

Navigating Referral Fees

A Reminder from Gary Siegle, Mortgage Broker Regulatory Compliance Advisor

Licensee referrals have become a common practice among the real estate and mortgage brokerage industries. Many licensees have established strong relationships with third-party service providers, and from time to time they may refer their clients to an insurance broker, financial planner, home inspector, house cleaners, another industry member, etc.

Referring a client to another person for service, assistance, or business is often accompanied by a referral fee. Licensees refer a client to use the services of a third party when it is in the best interest of their client—even if they will collect a referral fee.

Collecting a referral fee is perfectly legal, but it must be disclosed to the client by the licensee who will be receiving the fee.

Before a mortgage licensee refers a client to a third-party service provider and before receiving a referral fee or other compensation for the referral, they must disclose to their client, in writing:

- that the client's confidential information will be shared with a third party
- what information is being shared (name, address, contact info, etc.)
- they will be receiving a fee or other compensation for the referral

After providing these disclosures, the client must give their consent, in writing, to the licensee to share their information with a third party. Remember, a client's name, phone number, and email is considered private, confidential information.

If you do not receive written consent from your client to make a referral you cannot under any circumstance release their personal information and in turn you are not entitled to receive a referral fee.

Remember, whether you make a referral to a licensed or unlicensed person you must always have consent from your client, in writing first. Clients have the right to know



with whom and what information is going to be shared. As well, clients need to know if a fee is anticipated so they can assess if the referral is based on the qualifications of the service provider versus the financial gain of the licensee.

Referring other licensees

When you make a referral, you trust the person or company you're referring someone to has the appropriate licence to provide that service. If you are referring a client to another licensee, it is your responsibility to take reasonable steps to ensure the person has a licence to carry out the service for the client you referred.

Referring Unlicensed Individuals

A brokerage can pay a referral fee to an unlicensed person if the activities of that person do not require a licence under the *Real Estate Act*.

If the services of the unlicensed person fall under the definition of a trade in real estate, property management or a deal in mortgages, the brokerage must not pay a referral fee to the person.

Receiving and Paying a Referral Fee

It is important to note that all referral fees must be processed through your brokerage.

Mortgage licensees cannot receive a referral fee payment directly and cannot directly pay someone a referral fee.

When a referral fee is received, the brokerage will then pay the specific mortgage licensee in accordance with the brokerage's policies and any agreements that exist between the mortgage licensee and their brokerage.

When a referral fee is to be paid, the licensee should have brokerage approval for the referral arrangement and then follow brokerage procedure for processing the payment to another brokerage or unlicensed person.

Multiple Offers: The Seller is in the Driver's Seat

A Reminder from Kristian Tzenov, Real Estate Regulatory Compliance Advisor

With the market as hot as it's been this year, there's no surprise that a lot of people have been reaching out to RECA about situations involving multiple offers—some are consumers who are unsure about how multiple offers work, and some are licensees who feel the other party's licensee is not being fair in a multiple offer situation. A common thread running through all of the calls and emails is a misunderstanding of who is fundamentally in control in a multiple offer situation.

Who Is In Control?

The most important take-away when it comes to multiple offers, is that the seller determines the process. This is so important that I'll say it again: the seller determines the process. They are in the driver's seat.

I am often asked by licensees, "but isn't there a duty of fairness between the sellers, buyers, and licensees?" The answer is no.

While sellers and buyers have a duty of honesty, there is no duty of fairness to each other. Whether representing the sellers or the buyers, licensees are required to act in the best interests of their clients. It is the seller's choice whether they disclose the multiple offer situation to other potential buyers. They may also choose whether to disclose the amount of the other offer(s) and the terms of those offer(s). The seller can also choose to disclose this information to one prospective buyer and not another. The seller can choose any offer that came in, for whatever reason.

Again, the seller is in the driver's seat and there is no duty of fairness.



What Can Buyers Do?

The best advice for a licensee with buyer clients in a multiple offer situation is to advise the buyer of the advantages and disadvantages of their options, so your clients can decide on the path that is best for them. The buyer's options include:

- leaving their offer as it is and hope the seller chooses it
- withdrawing their offer
- increasing the amount of their offer before its presented
- reconsidering the fixtures, chattels, terms and conditions of their offer to be more appealing to the seller
- including a term or condition that will compel the seller to deal with their offer at the time of presentation or face withdrawal
- requiring the seller to agree that they will not disclose the price and terms of your client's offer to any other buyer prior to the buyer making an offer

Acting Honestly

As we discussed above, sellers and buyers have a duty of honesty. However, honesty does not mean that the parties are required to be transparent. Many of the complaints that come into RECA about multiple offers are from buyers who feel a seller and their licensee weren't honest with them about a multiple offer situation. Often this is associated with the expectation that the seller is required to be transparent with buyers. It is essential that licensees representing buyers understand the multiple offer process in relation to the legal obligations between buyers and sellers.

That being said, whether you're representing a seller or a buyer, licensees must conduct themselves in a way that maintains trust and confidence with their clients. Even though the seller chooses how the decision is made, licensees must ensure that they are acting honestly and lawfully. Licensees cannot participate in dishonest behaviour and are prohibited from following unlawful instructions. For example, when representing the seller a licensee can't follow an instruction to communicate that the seller has received other offers if other offers have not been received. If a licensee does not act honestly and lawfully, it is conduct deserving of sanction.

Multiple Offers Best Practice

The best approach when dealing with multiple offers is to educate your clients. Provide them with the advantages and disadvantages of the various options available to them, as well as the potential responses of the other party.

Recognize conflicts and other circumstances that may prevent you from acting in your clients' best interests, such a multiple offer situation where you might be representing the seller and one of the buyers. It is not sufficient to disclose the conflict. Licensees must provide their clients with options to resolve the conflict and allow the clients to choose the option they feel is in their best interests.

Remembering John Fraser

It is with great sadness we announce that John Fraser, former Chair of Council, has passed away.

John was involved in Alberta's real estate industry for 6 decades. He was one of RECA's original Council members, serving from 1996-2001, and was a true pioneer in setting a strong foundation for self-regulation in Alberta. He served as Chair for two terms, from 1999-2001. He was also past President of the Calgary Real Estate Board, and past Chair of the Real Estate Assurance Fund of Alberta

John also participated in the Agency Task Force which resulted in Alberta's current agency framework for real estate representation relationships. This was a significant undertaking that John navigated with integrity and professionalism.

RECA and licensees who worked with him will remember the skill and passion he brought to the industry, as well as the congeniality he brought to everything he was involved in—many have fond memories of him singing and playing guitar in post Council meetings.

Our hearts and condolences go out to his family and loved ones.

Renew Your Licence by September 30, 2021

This year no re-licensing education is necessary to renew your licence.

Brokers started their renewal process on August 16, and all other licensees may start renewing their licenses on August 23, provided their brokerage has already renewed its brokerage licence.

This year, in lieu of suitability questions, you'll be asked to sign off on a Section 40 Declaration.

The deadline to renew your licence is September 30, 2021.

RECA MANAGEMENT

RUSS MORROW

Chief Executive Officer

JOSEPH FERNANDEZ

Director of Education Programs

WARREN MARTINSON

Director of Corporate Services

STACY PAQUIN

General Counsel & Corporate Secretary

CHARLES STEVENSON

Registrar

VACANT

Director of Strategic Initiatives & External Relations

CONTACT RECA

Phone (403) 228-2954
Toll-free 1-888-425-2754
Fax (403) 228-3065

GENERAL QUESTIONS

Call or email an Information Officer
at: info@reca.ca

BROKER ADVICE

Call or email one of our Compliance Advisors:

Mortgage: gsielgle@reca.ca

Real Estate: ktzenov@reca.ca

Condo: ddixon@reca.ca

CONTACT RECA'S BOARD OF DIRECTORS OR INDUSTRY COUNCIL MEMBERS DIRECTLY

Board of Directors: board@reca.ab.ca

Mortgage Broker Industry Council:
mortgageic@reca.ab.ca

Residential Real Estate Broker Industry Council:
resic@reca.ab.ca

Residential Property Manager Industry Council:
respmic@reca.ab.ca

Commercial Real Estate Broker and Commercial
Property Manager Industry Council:
commic@reca.ab.ca

WATCH RECA.CA FOR CURRENT ENGAGEMENT EVENTS, BROKER FORUMS, AND MORE.