

# RECORDS—MORTGAGE BROKERAGE

**Purpose:** This bulletin explains the *Real Estate Act* and Rules related to record maintenance requirements

**This bulletin applies to mortgage brokerages, brokers, and associates.**

## **Purpose for record retention requirements**

The *Real Estate Act* sets out comprehensive record retention requirements.

There are various reasons for these requirements:

- enable brokers to provide an adequate level of supervision and ensure that the business of the brokerage is conducted in accordance with the legislative requirements.
- for the benefit of clients requesting information or copies of documents related to their mortgage application.
- assist brokerages when dealing with complaints and/or possible Errors & Omissions insurance claims.
- enable brokers to deal with possible misconduct by associates, and unlicensed staff.
- enable an accountant to review the brokerage's records and provide a report under section 91 of the Rules for Trust Accounts
- enable RECA to conduct practice reviews under section 74 of the *Real Estate Act*; and,
- enable RECA to review all relevant information necessary to make proper determinations during conduct proceedings under Part 3 of the *Real Estate Act*.

Brokers should have a record management plan to ensure all documents and records are maintained. The *Real Estate Act* and Rules provide brokers with the flexibility to create their own record keeping strategy and record keeping systems based on the brokerage's size, types of business dealings and trade area, provided that all documents and records are maintained in accordance with the legislative requirements.

Brokers have a duty to clearly communicate, in writing, the brokerage's policies and procedures relating to records retention to associates and unlicensed staff, and to ensure compliance with the brokerage's policies and procedures.

For example, many associates administer websites on behalf of the brokerage. The broker should be aware of all associate-administered websites and should ensure electronic deal records collected from these

websites are maintained by the brokerage in accordance with the brokerage's policies and procedures.

### What is a "Record"?

Records are defined very broadly to include all records created and received during a deal in mortgages. Records include traditional paper documents and notes, and electronic documents such as emails, text messages, faxes, website data, and other types of electronic documents

The definition also includes records for a potential deal even if it does not result in a service agreement or a deal in mortgages.

The *Real Estate Act* Rules section 105 (1) and (2) specify the minimum requirements for the retention of all records of a brokerage:

- brokerages are required to have records available at their registered business office in Alberta (or the City of Lloydminster).
- the records are to be separate for each deal or potential deal.

The Rules specify the most common documents expected to be retained such as:

- the signed copies of each service agreement,
- mortgage administration agreement,
- mortgage applications,
- credit bureau reports,
- commitment letters,
- cost of credit disclosures,
- investor lender disclosure,
- banking records,
- accounts and
- supporting documentation (includes email, text messages, and other electronic communication related to the file)

The Rules specify additional criteria for records:

- they must identify each deal by sequential code
- the codes must correspond to the trust ledger (if applicable)
- the nature of the deal
- description of the real estate
- mortgage amount
- names of borrowers and lenders
- the amount of any deposits or investments (private lenders) and a record of disbursements (if any)
- the amount of commission or other remuneration received and the name of the party paying it
- the extent of the distribution of the client's information to third parties.

## Trust Account Records

When a mortgage brokerage receives funds on behalf of clients or investors it is required to open and maintain at least one trust or pooled trust account for the deposit of the funds. Refundable fees on commercial deals are considered trust monies. The *Real Estate Act* s.25(1) specifies a mortgage brokerage operating a trust account shall keep complete and accurate financial records.

The mortgage brokerage must maintain a separate record for each person on whose behalf the mortgage brokerage is acting of all:

- (i) money received in trust,
- (ii) money held in trust,
- (iii) interest earned on money held in trust; and,
- (iv) disbursements made from money received or held in trust.

## Record Retention Period

The *Real Estate Act* s.25(9) requires brokerages keep their records of mortgage activities (mortgage deals and potential deals) and accounting records for a minimum of three years after they come into existence. The three-year period continues even when a brokerage ceases operations.

The three-year period may be extended by RECA in a particular case for the purposes of an investigation or prosecution under the *Real Estate Act*.

Brokers should also take into consideration other legal requirements such as the *Consumer Protection Act* or civil requirements. For example, the Canada Revenue Agency may have requirements in relation to certain records that may exceed the retention requirements under the *Real Estate Act*.

Licensees may also choose to retain records for longer periods for other reasons. Mortgage brokerages that have errors and omissions insurance or liability insurance should consult with their insurance broker or insurance provider.

Privacy legislation may also have specific requirements regarding record retention. This may require brokerages destroy records after meeting other regulatory time periods.

## Record Retention Options

Records may be maintained in paper form or electronic form.

Details for creation and storage of electronic records are contained in a separate Information Bulletin - *Electronic Records*.

## Duty to Link Data

Whether in paper or electronic form, the broker has the duty to ensure that all records related to a deal or potential deal are linked to create a complete record of all documents or records relating to the deal or potential deal. For example, emails related to a specific deal in mortgages should be maintained with the deal file or if maintained in a separate system they should be linked to the deal file.

Often brokerages use multiple systems with respect to a specific deal. For example, the application originated in a brokerage website administered by an associate, the associate sent and received emails through a stand-alone email system, the brokerage maintains a paper file and has an electronic application submission system. Brokers need to understand the various systems used in the brokerage and create and enforce policies and procedures to ensure all information is linked.

All deals or potential deals must be identified by a sequential code system.

## Duty to Maintain Records in Alberta

Whether the records are stored in paper or electronic form, the brokerage must maintain all records in Alberta. Records may be stored in a secure location accessible to the broker away from the brokerage's registered office. However, the records need to be available at the brokerage's registered business office if requested by a RECA auditor or investigator in anticipation of a practice review or during an investigation. [*Real Estate Act* Rules s.13(2)(c)].

Electronic document storage must include a secure and accessible physical presence in Alberta to ensure RECA can access records for practice review and investigation purposes.

Records may be maintained in multiple offices in Alberta if required for the purposes of facilitating deal activities from offices in various locations. The broker must have access to all offices or locations.

Brokerages with offices in other Provinces may maintain duplicate records elsewhere in Canada provided the records are also located in Alberta.

## Duty to Maintain Confidentiality

Brokers have a duty to ensure client information is kept confidential. Information must not be released without the consent of the client unless required by law. Brokerages must only use information for the purpose that it was obtained.

Brokerages must also have policies and procedures for the protection of personal and confidential information, and all licensees registered with the brokerage must be aware of and comply with the brokerage's policies.

Alberta-based brokerages must also ensure they comply with need-to-know principles imposed by the *Personal Information Protection Act of Alberta* (PIPA). For further information on PIPA, visit the Office of the Information Privacy Commissioner for Alberta at [www.oipc.ab.ca](http://www.oipc.ab.ca).

Brokerages conducting business across Canada must comply with the principles of the *Personal Information Protection and Electronic Documents Act of Canada* (PIPEDA). For further information on PIPEDA, visit the office of the Privacy Commissioner for Canada at [www.priv.gc.ca](http://www.priv.gc.ca).

### Protection of Client Information

Section 44 of the Rules requires licensees and brokerages protect client information. Brokerages should ensure adequate backups in case of a loss of access to records such as fire, flood, or cyber breach (ransom), etc. A broker must immediately notify RECA and outline a plan for record recovery if they lose access to records.

Cybersecurity is one of the more serious threats to record loss or compromise. RECA provides a Cybersecurity checklist under [Brokerage Policy Templates on reca.ca](#). Brokerages should use the checklist to ensure they have proper measures in place to meet their obligation for protection of Client Information.

### Separation of Business Records

If the brokerage operates another type of business, not related to mortgage deals, brokers must ensure all mortgage deal records are kept separate from the other business activity.

### Access to Records by Clients

Clients may request copies of advertisements, service agreements, applications, documents used for underwriting purposes and other related records created, sent, or received to assist the client with the deal or potential deal. Brokerages should provide copies or reasonable access to the clients' records. For additional information on this topic, see RECA Information Bulletin: *Records—Release of File to Client*.

### Brokerage – Broker Agreements

When a broker does not have a controlling interest in the ownership of the brokerage, the broker must have a written agreement with the brokerage. The agreement must give the broker licensee the ability to carry out the duties and responsibilities of a broker as it relates to record keeping. For example, a broker who does not have a controlling interest in the

brokerage must not allow records to be stored in the personal residence of an owner as he or she may not be able to safeguard the records or to gain access to the records.

A broker must immediately notify RECA if an owner blocks the broker's access to records.

The broker must also ensure the agreement survives the brokerage as the broker is responsible to maintain the records for three years after they come into existence even if the brokerage ceases operations. Brokers should consider the cost implications when developing these agreements.

### Brokerage Amalgamations

A brokerage may purchase or amalgamate with another brokerage. The brokers for these brokerages have a duty to ensure the records are maintained as required either under the amalgamated brokerage or under the control of the former brokerage.

In the case of amalgamation, the broker should contact the applicable privacy officer to determine if the amalgamation affects the terms under which the information was provided and whether isolation of some records is required.

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### Related information

#### Legislation

- *Real Estate Act s.1(1) (aa), 25(1), 25(9), 38(4.1), 74*
- *Real Estate Act Rules s.13(2)(c), 13(4)(b), 44(1), (2), 67(1)(g)(i)(j), 69(c), 91, and 105(1), (2), (3)*

#### Information Bulletins & Resources

- *Electronic Records*
- *Records—Release of File to Client*
- *Cybersecurity Program Checklist*