



# THE REGULATOR

DECEMBER 2022 | VOLUME 28. ISSUE 4

---

# ARTICLES

---

## 03 MESSAGE FROM THE BOARD CHAIR

### Residential Real Estate

---

## 05 RULES FOR GAINING BUSINESS USING INCENTIVES

### Commercial Real Estate and Commercial Property Management

---

## 08 WHAT TYPE OF LICENCE IS REQUIRED TO TRADE IN RURAL REAL ESTATE?

### Mortgage

---

## 11 WHAT HIGHER LENDING RATES MAY MEAN FOR MORTGAGE BROKERS

### Residential Property Management

---

## 14 PRACTICE REVIEWS PROVIDE LEARNING OPPORTUNITIES FOR NEW CONDOMINIUM MANAGERS

## 16 WHOSE RULE IS IT ANYWAY? – IMPORTANT INFORMATION FOR ACCESSING PROPERTIES

## 18 NEWS BYTES

# Message from the Board Chair

Elan MacDonald, ICD.D

I have had the honour of serving as Board Chair of the Real Estate Council of Alberta for the past two months. While it has been a steep learning curve as I become more familiar with the various issues facing this diverse and integral Alberta industry, I have hit the ground running dealing with a number of important and timely matters, such as condominium licensing.

For those who may have missed the communication regarding my appointment, my name is Elan MacDonald, and I was appointed Board Chair on October 1, 2022 by the Minister of Service Alberta. I want to take this time to thank Deputy Minister David James for his admirable work serving as Interim Board Chair over this past Spring and Summer, particularly as RECA approved its Business and Financial Plan and its Strategic Plan during his tenure. These two documents set RECA's strategic direction moving forward and had to be carefully considered as RECA enters a new financial reality without revenues from licensing education. I also want to thank David for his tremendous support during my transition into the role.

I would also like to thank my fellow Board members, the Industry Council members, and RECA's senior staff for making my transition as the new Board Chair go as smoothly as possible.

RECA will soon undertake one of its most crucial activities to date with its comprehensive review of the *Real Estate Act* Rules. The Board recently created a Rules Review Steering Committee, chaired by Neil McCrank, a former Deputy Minister in the Justice Ministry, and a legislation and governance expert. The rest of the committee will be made up of industry representatives from the Industry Councils. Engagement on the Rules Review is set to begin soon, and I encourage all stakeholders to take part. Self-regulation is an amazing privilege, but it only works when stakeholders take an active role.

As the new Chair, I want to re-affirm RECA's commitment to meaningful stakeholder engagement, and timely and transparent communication. This is a cornerstone of RECA's Strategic Plan, and I will continue to make every effort to champion this philosophy and strategic direction.

I look forward to continuing to work closely with my fellow Board members, the Industry Councils, RECA staff, and the industries it regulates to ensure they continue to thrive in the public interest.





A man and a woman are sitting on a light-colored wooden floor in a room that appears to be a new home. They are both smiling and looking at a laptop that the woman is holding. The man is wearing a light blue button-down shirt and blue jeans, while the woman is wearing a light blue button-down shirt and blue jeans. They are both wearing white sneakers. In the background, there are cardboard boxes, a round clock on a table, and a potted plant. A large orange semi-transparent rectangle is overlaid on the image, containing the text "Residential Real Estate".

# Residential Real Estate

# RULES FOR GAINING BUSINESS USING INCENTIVES

*by Kristian Tzenov, RECA Regulatory Compliance Advisor, Real Estate Brokers*

Real estate licensees may be finding it more difficult to attract new business over the past several months, likely due to the Bank of Canada raising interest rates several times over the course of 2022. As a result, some licensees may attempt to increase the demand for their services by offering incentives, inducements, cash backs, or rebates.

As stated in section 54(d) of the *Real Estate Act* Rules, incentives may only be advertised at the brokerage level and may not be offered by individual licensees. Individual licensees aren't permitted to directly or indirectly advertise, communicate, or offer incentives where the sole purpose is to attract business to their own services unless the offer is being made by the brokerage.

## WHAT CONSTITUTES AN INCENTIVE?

An incentive is anything that is advertised, communicated, or offered with the intent to attract new business. Incentives could include travel miles, gifts, gift certificates, or

anything else of value. An incentive can even be something as simple as an individual licensee offering entry into a draw for a gift certificate for liking or sharing a post on social media. RECA has even seen examples where individuals have presented items such as a donation to a charity of their consumer's choice, in exchange for hiring the licensee. If an item of value is being offered to attract business, it is considered an incentive.

Sometimes there is confusion between an incentive and an inducement. An inducement is anything a brokerage offers to a person regarding a specific real estate transaction. For example, an offer to pay moving costs or legal fees in order to complete a purchase being negotiated. There are rules surrounding inducements and they must also be offered by the brokerage.

See the Information Bulletin for more information on [inducements](#).

Simply put, if the item or service to promote new business is not available through the brokerage, individual licensees are not permitted to employ the incentive.





In turn, individual licensees should be made aware of any incentives their brokerage is offering so they have an equal opportunity to attract new business.


## WORK WITH YOUR BROKERAGE

It is natural for licensees to want to find new ways to generate business during a downturn. The important point to remember is that some promotional activities could constitute an incentive, and if so, they must be offered through the brokerage.

If you are looking for a boost to your business, speak with your brokerage about any incentives they may be offering in the coming months. Share your incentive ideas with your broker and ask if it makes sense to offer the incentive to all the clients or potential clients of the brokerage. If an offer makes sense at the individual level, it may make sense for the brokerage to offer it too.

Brokerages considering the use of incentives are encouraged to review the [information bulletin on the proper use of incentives](#) at the brokerage level and reach out with any questions to [ktzenov@reca.ca](mailto:ktzenov@reca.ca).





# Commercial Real Estate and Commercial Property Management



# WHAT TYPE OF LICENCE IS REQUIRED TO TRADE IN RURAL REAL ESTATE?

*by Kristian Tzenov, RECA Regulatory Compliance Advisor, Real Estate Brokers*

As most RECA licensees are aware, not all real estate professionals in Alberta can trade in all types of real estate transactions. When becoming licensed in real estate, individuals can choose from four separate practice areas: residential real estate, rural real estate, commercial real estate, and property management.

RECA also has four industry-specific Industry Councils. The practice area real estate professionals are licensed in, dictates which Industry Council they are governed by. Real estate professionals with a practice area of rural are governed by the Commercial Real Estate Broker and Commercial Property Manager Industry Council.



## WHEN IS A TRANSACTION CONSIDERED RURAL?

The difference between commercial and residential real estate in a city is typically clear, but sometimes deciphering whether a trade is considered rural can become more complicated.

The *Real Estate Act*'s definition of rural real estate can be summed up as any real estate located outside of a municipality that has farming as its primary purpose—but doesn't include minerals in, on, or under the property.

However, real estate that otherwise fits the definition but is primarily used for extracting, processing, storing, or transporting minerals is not considered rural property under the Act.



Where it gets complicated, is when a sale includes a residential property on the same plot of land as farming land. In this case, a licensee with a residential practice area could technically complete the transaction on the residential property but they are not licensed to complete the trade on the farming land. If the primary purpose of the land is for farming, either animal husbandry or horticulture, then a rural licence would be required. Unless the two transactions are listed separately, or only the rural residential property is listed for sale, the consumers should work with a licensee who is licensed in rural real estate.

Another scenario that may need clarification is when a business unrelated to farming is located on rural land. In this case, the seller would be best represented by a real estate licensee with a commercial practice area.

The [information bulletin on trading in real estate](#) further clarifies what constitutes a rural real estate transaction.

## IT'S THE BEST USE OF THE LAND THAT MATTERS

A good way to think about the subject of rural versus residential is to consider the highest and best use of the land, and the marketing direction taken by the seller. If the seller deems the highest and best use to be residential, and this is how they are marketing the property, then a residential licence will be required. The same would apply if the seller directs that agriculture is the highest and best use of the property. In this case the licensee must have a rural licence.

Licensees must hold a licence to trade in the correct practice area for the transaction. They are not acting in their client's best interest if they are not competent in the practice area required for the client's property. If licensees trade in an area of practice that they do not hold a licence in, their actions may be conduct deserving of sanction and be subject to disciplinary action.

If licensees or consumers are unsure of a specific situation, please reach out. RECA's Information Services team can be reached at [info@reca.ca](mailto:info@reca.ca) and brokers or broker delegates may reach out to [ktzenov@reca.ca](mailto:ktzenov@reca.ca) with any questions on this topic.

A hand is holding a small, light-colored model house with two windows. The house is positioned in the center of the frame. Overlaid on the image is a large, semi-transparent orange rectangle. The word "Mortgage" is written in white, bold, sans-serif font across the center of the orange rectangle. The background is a blurred image of a hand holding the model house.

# Mortgage



# WHAT HIGHER LENDING RATES MAY MEAN FOR MORTGAGE BROKERS

*by Gary Siegle, RECA Regulatory Compliance Advisor, Mortgage Brokers*

To combat rising inflation, the Bank of Canada raised interest rates several times in 2022. Tighter monetary policies, such as interest rate increases, are meant to slow the demand for goods and services, and ultimately lower the pace of national inflation. The economic environment in Canada has begun showing the affects of these rate increases, but not enough yet for interest rates to be lowered again. In fact, widespread belief is that more rate hikes will come soon and may continue into 2023.

Interest-sensitive areas of the economy, including the housing market, are typically among the first to feel the effects of a change in interest rates. Higher rates mean fewer people will qualify for mortgages. Some buyers may decide to hold off on intended property purchases, in hopes that rates come down and housing supply and demand will rebalance. However, economists are warning that Canada is at risk of falling into a recession in 2023.

Fluctuating rate hikes and a downturn in the economy can have a significant impact on the livelihoods of those in the mortgage industry, since income is often paid on commission. As a mortgage broker, it's a good idea to prepare your business for the possibility of a prolonged slowdown in the housing market and economy. If it hasn't already, there is a likelihood that your mortgage business could slow, and your income could become uncertain.

## WHAT OPTIONS ARE AVAILABLE TO HELP PREPARE FOR A MARKET DOWNTURN

If RECA licensees are dealing with debt or financial hardship, there are local services that may be able to help:

- the [Credit Counselling Society](#) is a free, non-profit service that offers debt repayment and settlement solutions as well as no-cost financial planning education programs
- [Money Mentors](#) is a non-profit organization authorized by the provincial government to provide the Orderly Payment of Debts (OPD) debt consolidation program to qualified Albertans if their debt has become difficult to manage
- RECA's [Financial Hardships Information Bulletin](#) provides some further information to help our licensees address financial hardship

It is important to note that many credit counselling and debt restructuring services are non-regulated, so it is always a good idea to check references before engaging with a private company.

## WHEN YOU'RE OBLIGATED TO CONTACT RECA'S REGISTRAR

Some financial situations need to be reported to RECA's Registrar under section 40 of the *Real Estate Act* Rules. As a licensee, you are obligated to notify the Registrar if you are the subject of a personal and/or business bankruptcy proceedings. You must also notify the Registrar whenever a company you own or are a partner, director, or officer of, is the subject of bankruptcy proceedings.

## WHAT IS CONSIDERED A BANKRUPTCY?

The following options fall within RECA's definition of "bankruptcy proceeding" and require an immediate notification to the Registrar:

- a licensee is personally in the process of a consumer proposal
- a business a licensee owns, or is a partner, director, or officer of, is in the process of a Division 1 proposal
- a licensee has declared bankruptcy

## HOW TO NOTIFY RECA

The process to notify the Registrar of a bankruptcy proceeding should be done through your [myRECA](#) account, under the My Account tab. You will need to provide some details about the situation.

RECA's team then reviews the information to determine if the situation creates any potential harm to the public or impairs the licensee's ability to provide competent service. RECA would consider the context of an economic downturn (or other factors outside one's control) when reviewing a submission. Outside intentional factors, such as avoiding financial responsibility,

there would typically be no impact to the licensee.

## OTHER ACTIONS YOU CAN TAKE

Although interest rates and economic downturns are situations that are out of your control, proactively taking care of your business and personal finances and getting debt in order are habits you can adopt to prepare to weather the storm.

RECA's [Financial Hardship information bulletin](#) further outlines the situations that constitute bankruptcy proceedings. Failure to notify the Registrar immediately could result in fines and other disciplinary action, so it is always better to receive clarification if there are doubts if the requirement applies to your situation. Licensees who have any questions or aren't sure if they need to report an event, can contact RECA's Information Services team to discuss specific circumstance at [info@reca.ca](mailto:info@reca.ca). Brokers or delegates can contact me at [gsiegle@reca.ca](mailto:gsiegle@reca.ca).

For outside advice on financial hardship, please contact the resources listed above or reach out to an accountant or financial advisor.



A modern, multi-story residential building with large windows and balconies, illuminated from within at dusk. The building is partially obscured by a large, semi-transparent orange rectangle. In the foreground, there is a green lawn, a sidewalk, and some landscaping including small trees and potted plants. The sky is a mix of blue and grey clouds.

# Residential Property Management

# PRACTICE REVIEWS PROVIDE LEARNING OPPORTUNITIES FOR NEW CONDOMINIUM MANAGERS

*by Doug Dixon, RECA Regulatory Compliance Advisor, Real Estate Real Estate and Condominium Brokers*

A practice review is a process RECA's Practice Review team undertake to examine a brokerage's records and activities to ensure they are following their regulatory obligations. Sometimes these reviews result in recommendations for change in control, policy, and procedures.

As a newly-regulated industry, RECA has focused practice reviews on condominium management brokerages that have had no experience in the other areas RECA regulates (real estate, mortgage, property management, etc.). Recent reviews were conducted to ensure the newest brokerages are fully educated on their regulatory requirements, to ensure *Real Estate Act* Rules are being followed, and that those holding trust money are doing so properly and in the public interest.

In the interest of assisting condominium management brokerages meet their regulatory requirements, the Practice Review team will be sharing the common issues they are seeing in their reviews. Below are some of the learnings we've encountered recently:

- 70% of brokerages had issues with their management agreement, such as identifying a bank account as a trust account, the brokerage name not being correct, the agreement itself

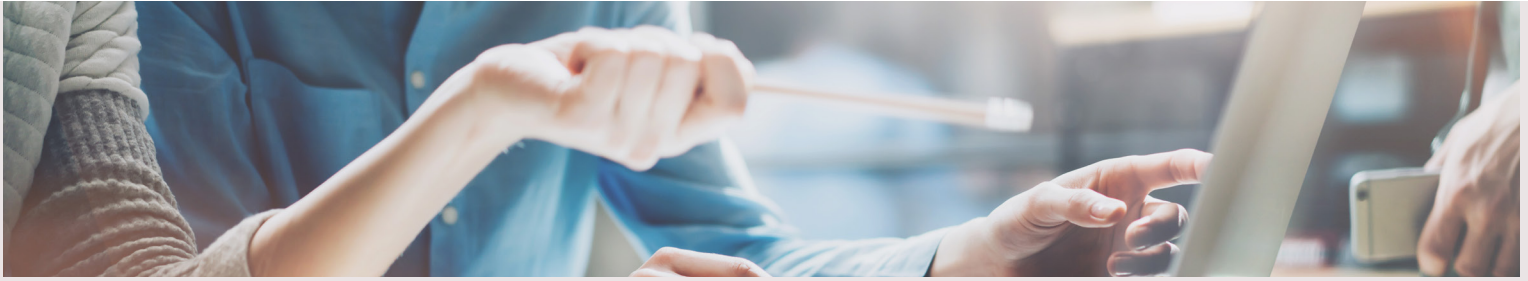
not being signed, or instances where the agreement is expired and/or not properly dated

- 50% of brokerages were identified to have issues such as condominium corporation bank accounts labeled as trust accounts, not having the condominium corporation number on the account, condominium corporation board members not having signing authority on the bank account, and having missing reserve fund accounts
- 43% of brokerages had issues with basic procedures such as not having a policy and procedures manual or not having a brokerage agreement in place when the broker did not own the brokerage
- 30% of brokerages reviewed had accounting discrepancies including financial statement errors and payments being made to the brokerage's general account instead of the condominium corporation
- 7% did not have the brokerage registered name with RECA on the brokerage general account

## BEST PRACTICES: CONDOMINIUM CORPORATION BANK ACCOUNTS:

During our reviews, the RECA team came across several bank accounts for condominium corporations that were labeled and identified as trust accounts





by the bank and on the management agreement. There were also many instances where it was identified that brokerages were operating condominium corporation bank accounts improperly. Please review the following best practices when it comes to operating a bank account on behalf of your condominium management clients.

The *Condominium Property Act* refers to the money being held in trust and the *Real Estate Act* s.25 is clear on what constitutes a trust account.

The bank accounts in a condo corporation's name are not constituted as trust accounts under the *Real Estate Act* s.25 and all brokerages need to ensure these types of accounts are set up as regular accounts. When funds are held in a condominium corporation's named bank accounts, they are just bank accounts, not trust accounts.

For instance, we have seen examples where a brokerage will open a bank account, on behalf of a condominium corporation they manage, in the corporation's name. In this situation, if the management agreement ends, the brokerage would require the new condominium manager or the condominium board itself to open a new account and the funds would need to be transferred from one account to another. This process could lead to issues and/or delays that result in funds not being transferred within the required 30 days period.

To avoid this situation, brokerages should have the corporation open the account in their own name and then have them give the brokerage either broad or limited access to that account, including whether the brokerage has signing authority. This allows the condo corporation to have more control over their funds should the agreement with your brokerage end.

## WE'RE HERE TO HELP

RECA's goal as your regulator is to ensure brokerages and all licensees have the information they need to operate in accordance with the legislation. If you are ever unsure of the proper practices your brokerage should follow or need help interpreting the *Real Estate Act* or Rules, it is best to reach out proactively and ask questions, rather than wait for your practice review or another instance where issues could be identified. If you're a broker in need of regulatory compliance advice, [contact RECA's Regulatory Compliance Advisors](#) – they are here to work with you.

A photograph of three business professionals in a modern office setting. Two men and one woman are gathered around a desk with multiple laptops. The woman, wearing glasses and a light-colored blouse, is leaning over and pointing at a laptop screen. One man, with a beard and wearing a light-colored shirt, is looking at the same screen. Another man, in a dark suit and tie, is partially visible on the left, looking towards the group. The background shows a modern office interior with a staircase and large windows. A large orange semi-transparent rectangle is overlaid on the center of the image, containing the text "All Licensees".

# All Licensees



# WHOSE RULE IS IT ANYWAY? – IMPORTANT INFORMATION FOR ACCESSING PROPERTIES

*by James Porter, RECA  
Investigations Manager*



Most real estate licensees are aware that the *Real Estate Act Rules* (Rules) specify how licensees must conduct themselves when it comes to their relationships with their clients, whether buyers or sellers. Rule 41, for example, states that licensees must act honestly and provide competent service. While Rule 42 outlines how licensees must not engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

Yet did you know real estate licensees are also bound by the property sellers' specific instructions when accessing a property for sale, regardless of whether the licensee represents the seller or interested buyers? Seller's instructions may include the maximum number of people allowed to enter their property, the specific time the buyer licensee may enter, or even if anyone is prohibited from accessing certain areas of the property?

When a property is listed, the seller has the right to specify the rules they wish to be followed when real estate licensees representing a buyer have been given permission to enter their property. The seller's licensee must relay their clients' restrictions to any buyer licensee who wishes to access the property for a viewing. It is the buyer licensee's responsibility to ensure the seller's wishes are being followed by anyone who enters the property.

Violating seller's instructions could cause either licensee to be in violation of the Rules above (or other Rules) and if found in breach, they could become subject to fines or disciplinary action.

The following are several examples RECA has seen where licenses have either knowingly or unknowingly violated a property seller's instructions when accessing property.

## PROPERTY ACCESS VIOLATIONS

- **licensees accessing properties with more than the maximum amount of people permitted**

Sometimes sellers restrict the number of people they will allow in their property at one showing. If the number of people you want to bring to a showing is above the maximum amount, you must ask permission of the seller to bring more people.

- **licensees who have obtained permission to show a property for a specific purposes cannot show the property for another purpose**

You must ensure you have obtained permission from the seller for the specific purpose to access the property, e.g., if you were granted a long showing period to show a property to a client you cannot use that time to have a property inspector access the property. If that purpose changes, you must go back to the seller to ask permission for the revised purpose.

- **licensees allowing a property inspector or a buyer to come into a property unaccompanied**

Unless otherwise agreed to by the seller, you are obligated to supervise anyone you bring into a property that has been placed in your care and control.

As you can see, it is important for real estate licensees to be acutely aware of the seller's instructions when they enter a property. These instructions are not the same for each seller, so each time licensees enter a property, it is critical they familiarize themselves with the access rules that seller has listed. It is also a licensee's responsibility to supervise all parties who accompany them when visiting a property. This includes any buyer clients or their family members, home inspectors or any other contractors.

Until possession day, the property for sale is owned by the seller and they have the right to outline the rules that must be followed when anyone walks through the doors. For more information on a licensee's responsibilities when accessing property, see this [Information Bulletin - Access to Property](#).





## RECA's Former Board Chair Honoured with Queen's Platinum Jubilee Medal

RECA's former Board Chair, Patricia McLeod received The Queen Elizabeth II Platinum Jubilee Medal (Alberta) at a Presentation Ceremony on Tuesday, September 27, 2022. Patricia was nominated by (then) Premier Jason Kenney.

Presented in the presence of both the Premier and the Lieutenant Governor of Alberta, the Queen Elizabeth II Platinum Jubilee Medal was awarded to several thousand Albertans who have made significant contributions to society.

After a successful legal career, Patricia has dedicated herself to Board governance, and has been of member of numerous Boards beyond RECA's, including Innovate Calgary, Calgary Co-op, the Calgary Green Line, the Beverage Container Management Board, and most recently, as Board Chair of Pieridae Energy Limited. Patricia has also volunteered throughout her life, as Board Chair of the Calgary Film Centre, as a member of the volunteer Board or committee for the International Women's Forum, the She Leads Foundation, the Calgary Foundation, YWCA Calgary, Vibrant Communities Calgary, and many more.

Congratulations Patricia on this prestigious accomplishment!

## RECA MANAGEMENT

---

**RUSS MORROW**

Chief Executive Officer

**JANICE HARRINGTON**

Chief Operating Officer

**WARREN MARTINSON**

Registrar

**STACY PAQUIN**

General Counsel & Corporate  
Secretary

## 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](mailto:info@reca.ca)

### BROKER ADVICE

Call or email one of our Compliance Advisors:

Mortgage: [gzielgle@reca.ca](mailto:gzielgle@reca.ca)

Real Estate: [ktzenov@reca.ca](mailto:ktzenov@reca.ca)

Condo: [ddixon@reca.ca](mailto:ddixon@reca.ca)

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

Board of Directors: [board@reca.ab.ca](mailto:board@reca.ab.ca)

Mortgage Broker Industry Council:  
[mortgageic@reca.ab.ca](mailto:mortgageic@reca.ab.ca)

Residential Real Estate Broker Industry Council:  
[resic@reca.ab.ca](mailto:resic@reca.ab.ca)

Residential Property Manager Industry Council:  
[respmic@reca.ab.ca](mailto:respmic@reca.ab.ca)

Commercial Real Estate Broker and Commercial  
Property Manager Industry Council:  
[commic@reca.ab.ca](mailto:commic@reca.ab.ca)

WATCH [RECA.CA](http://RECA.CA) FOR CURRENT ENGAGEMENT EVENTS, BROKER FORUMS, AND MORE.