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Council  
Alberta

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# THE REGULATOR

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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 patterned scarf, is leaning over and pointing at a laptop screen. One man is seated and looking at the screen, while another man stands to the left, also looking on. The scene is overlaid with a semi-transparent orange rectangle. The text 'All Licensees' is centered within this rectangle in a white, sans-serif font.

# All Licensees



# WHAT'S HAPPENING AT RECA



RECA's modernized governance model consists of a Board of Directors and four Industry Councils representing each industry RECA regulates.

To consolidate RECA's governance updates, this general summary is inclusive of the key activities of the Board and all Industry Councils over the last quarter.

## PUBLICATION GUIDELINES CHANGES

In response to stakeholder feedback, RECA's Board, Industry Councils, and Registrar have recently reviewed and recommended changes to when and how RECA publishes disciplinary decisions.

In the past, identifying information was included in all decisions, including letters of reprimand, RECA's least serious type of discipline. As of January 2023, RECA will no longer publish identifying information for letters of reprimand. Letters of reprimand will continue to be published for educational purposes, using only the individual's industry and licence class.

Moving forward, RECA will also only publish news releases for disciplinary decisions when there is a consumer protection need. Administrative suspensions that have no consumer harm related to the suspension will not have a public news release. For more details please refer to the [Discipline Publication Guidelines Changes](#) article.

## RECA'S ANNUAL REPORT AND FINANCIALS

RECA's Annual Report and Audited Financial Statements for the 2021-2022 fiscal year are now [available for download](#). RECA encourages all licensees to read these thoroughly, as they include a comprehensive and transparent accounting of RECA's activities and finances over the year.

## RULES REVIEW CONSULTATION IS UNDERWAY

RECA has kicked off its comprehensive review of the *Real Estate Act* Rules (Rules). Letters requesting feedback on the current Rules were sent to all stakeholder organizations and all brokerages in early February. Your organization or your brokerage is encouraged to share your written submission, or request an in-person or virtual meeting with RECA regarding

your feedback on the current Rules, to [consultation@reca.ca](mailto:consultation@reca.ca).

The Rules Review will take place in three phases, until the Fall of 2024:

- Phase 1, will gather feedback on the existing Rules from stakeholders
- Phase 2 will be a multi-stage consultation with ALL stakeholders and licensees on proposed Rule changes based on the feedback from Phase 1
- Phase 3 will be a final consultation on potential issues that could arise should the final proposed Rules change come into force

Please read this [Discussion Paper](#) for further details.

## **PROPOSED NEW RULES FOR PRIVATE LENDING**

The Mortgage Broker Industry Council has been considering how best to protect consumers involved with private lending for mortgages, including a consideration for new private lending rules and forms. The Industry Council has decided to not create more red tape around the private lending industry, and will favour increased education and awareness for licensees and consumers around private lending, instead of new rules and forms.

## **MENTORSHIP AND GRADUATED LICENCE MODEL**

To deal with challenges in recruitment and retention in the condominium manager industry, the Residential Property Manager Industry Council has directed RECA to develop a framework for a graduated license model pilot project for condominium managers. This model will outline who can receive a graduated licence, what activities someone with a graduated licence can undertake, and what criteria must be met to become fully licensed. When a framework is approved by an Industry Council, RECA will communicate the details of the pilot project, and be transparent with any developments, hurdles, and successes, experienced over the period the pilot takes place.

## **RMS COMMITTEE UPDATE**

The Residential Real Estate Broker Industry Council struck an RMS Sub-Committee in 2022. This Committee was tasked with reviewing the Residential Measurement Standard (RMS), and determining if it continued to make sense for the industry in its current form, and reporting back to the Industry Council. The Industry Council would then propose any changes, and consult on those proposed changes, should they determine there is a need for change. The Sub-Committee has met several times, and will report back to the Industry Council soon.

## **WHAT DO YOU THINK?**

Through RECA communications surveys and audits, stakeholders have indicated that, while they are interested in hearing about the important work of RECA's Board and Industry Councils, in today's chaotic world less is often more.

## **WHAT DO YOU THINK OF THE NEW FORMAT?**

What work or projects are you interested in hearing more about from your Board and/or Industry Councils? Let us know at [communications@reca.ca](mailto:communications@reca.ca).

# ENFORCEMENT STRATEGY CHANGES AND STAKEHOLDER FEEDBACK SUPPORTS CHANGES TO RECA'S DISCIPLINE PUBLICATION GUIDELINES

## RECA's Discipline Publications

Guidelines is a document that outlines when and how RECA publishes disciplinary decisions. These guidelines are set under section 55 of the *Real Estate Act*, which gives the Registrar, the Board, and the Industry Councils the discretion to publish disciplinary information in the public interest. These guidelines have changed over the years, most recently in 2018, when the Council at that time determined all disciplinary decisions should remain published indefinitely, and all levels of discipline, including letters of reprimand, should be published with identifying information. Previously, decisions remained published for two years, and Letters of Reprimand contained no identifying information.

RECA has always taken the position that the publications of disciplinary decisions is primarily done to increase consumer protection and to educate licensees.

RECA has also modified its enforcement strategy recently, focusing discipline on breaches that affect consumer protection, rather than breaches without a consumer protection element. For example, moving forward RECA will rarely issue discipline for breaches of Rules around notification requirements (i.e., where licensees must notify RECA of certain events), or for advertising breaches, when there is no consumer harm resulting from those breaches. RECA will instead handle these breaches with communication, information, and education with the licensee involved.

Due to this shift in enforcement strategy, and based on stakeholder feedback concerning the Guidelines, the Registrar, the Board, and Industry Councils recently reviewed the Guidelines and allowed for the following amendments, effective immediately:

1. RECA will not publish personal information on letters of reprimand. These will identify the individual who received the discipline by industry and licence class only
2. RECA will only publish news releases for disciplinary decisions when there is a consumer protection need. Administrative suspensions that have no consumer harm related to the suspension, will not have a public news release.
3. If a previously published disciplinary decision is overturned on appeal, RECA will automatically publish a retraction in a manner similar to the publication of the original infraction, unless the licensee involved requests a retraction not be published.

Thank you to all stakeholders who provided their feedback on the publication of disciplinary decisions through RECA's various stakeholder engagements in the past year.

For further information on RECA's Discipline Publication Guidelines, please visit [reca.ca](https://reca.ca)





## FILE YOUR BROKERAGE REPORTING FORMS ONLINE AND SAVE TIME!

Let's face it, filing your brokerage's fiscal year-end taxes is a lot of work. And then, on top of your tax obligations, there are also fiscal year-end reports that must be filed with RECA within 90 days of your fiscal year-end.

Your time is precious—we get it! RECA's Practice Review team is here to work with you and/or your accountant to ensure your forms are filed on time and in the most efficient way possible. We have found that filing your forms online, through your [myRECA](#) account, is both easy and timesaving as it avoids the need to print, fill out, and return the forms manually to RECA.

Brokerages have had the ability to file fiscal year-end forms with RECA using the myRECA system since 2015, but many brokerages and accountants continue to do so manually!

### WHAT FORMS DO I NEED TO FILE?

The fiscal year-end forms your brokerage is required to file are dependent on whether it held money in trust during the reported period. For those who held money in trust, you must complete Forms 1, 2, and 3. Form 1 is an engagement letter between your brokerage and a licensed accountant. You do not need to submit Form 1 to RECA, but you must retain it for your records. Form 2 is filled out and submitted by the brokerage, outlining your trust activity. Form 3 is the accountant's report, completed and submitted by your accountant. You and your accountant can file forms 2 and 3 online, or manually, by downloading and printing the pdf.

Find more information on how to file these forms in our guides:

- [Broker Guide](#)
- [Accountant Guide](#)

If your brokerage did not hold money in trust during your fiscal year, you must submit Form 4—Declaration of Absence of Trust Transactions. You can file this form online through your [myRECA](#) account.

### **WE'RE HERE TO HELP!**

We've made it easy to book appointments with RECA's Practice Review Administrator!

These appointments help explain RECA's fiscal reporting process in detail to brokers or accountants. Book an appointment through our [online booking portal](#).

To request an extension to complete the fiscal year-end forms, please complete an [extension request form](#).

To request a change to your brokerage fiscal year-end registered with RECA, please submit a request using [this form](#).

*Please note that condominium brokerages can no longer file one report for multiple brokerages. RECA requires separate reports for entities with separate real estate and condominium brokerage licenses as of December 1, 2022.*



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" in white.

# Residential Real Estate

# GUARANTEED SALES AGREEMENTS MUST COME FROM THE BROKERAGE

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



In times of market change, you may represent clients who are not confident their property will sell quickly. Particularly if they intend to purchase a new property, a guarantee that a client's current home will be sold by a predetermined date may be a way to gain their confidence and retain their business. This type of arrangement is called a guaranteed sale.

In a guaranteed sale agreement, your **brokerage** makes a promise to a client, or a potential client, that the brokerage will guarantee the sale of their property at a predetermined price if the property does not sell to a third party by a specified date. It essentially provides the client, or potential client, with liquidity by guaranteeing that their property will be sold by a set date.

Before you consider using a guaranteed sales agreement, you must ensure that you follow the regulations and guidelines of guaranteed sales as outlined in the *Real Estate Act* and Rules.

## WHO CAN OFFER A GUARANTEED SALE?

Guaranteed sales agreements can only be provided by real estate **brokerages**, not by individual real estate associates.

There are several requirements a brokerage must meet before they can offer a guaranteed sales program in compliance with the legislation. Brokerages and their associates must follow written policies and procedures and specific advertising guidelines. For instance, if a brokerage uses a specific price formula to calculate the guaranteed purchase price, (e.g., commissions, legal fees, carrying costs, etc. are deducted from the purchase price), all guaranteed sale advertising must include that formula, or the advertisement must direct the seller to where they can find it (a website, etc.). If a pricing formula's details are not transparent upfront, the guaranteed sale advertisement may mislead sellers into believing that the brokerage will use fair market value to establish a purchase price.



If a seller chooses to participate in the guaranteed sales agreement, there are also stipulations that brokerages need to follow regarding their property purchase.

### GUARANTEED SALE PURCHASES MUST:

- include a purchase contract (between the brokerage and the property owner) that outlines the purchase price, date of possession, and terms and conditions of the sale
- ensure that 5% of the total purchase price is placed into a separate trust account and released from trust upon completion of the sale
- not include any commission charged, including a deduction from the purchase price

The most important component in a guaranteed sales agreement is that the offer must be presented **by and from the brokerage**, meaning the brokerage is making the offer to purchase the property at a specific price if it does not sell by a specific date. An individual licensee can never make this offer.

### NEXT STEPS

If your brokerage offers a guaranteed sales program, speak to your broker, and ensure you understand the program details before you offer it to any clients.

If you are a broker who needs clarification on the rules and regulations governing a guaranteed sales program, please reach out to me at [ktzenov@reca.ca](mailto:ktzenov@reca.ca).

For more information on guaranteed sales, please see [RECA's Information Bulletin](#).





# WHAT THE SELLER WANTS – GOES.

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

In real estate deals, the seller decides how they will evaluate offers, and the seller's licensee must abide by their client's instructions.

If a seller has set a date and time for when they will consider offers, the seller's representative must communicate this to all interested buyers or their representatives. Should the set time change, the seller's representative has an obligation to make all interested buyers aware of the change.

Licensees representing buyers may ask the seller's representative to speak with the seller and see if they'll make an exception to their offer date and timeframe. If the seller wants to wait to review a potential buyer's offer, unfortunately, there is nothing that can be done by the buyer or their licensee.

If a seller licensee does not abide by the offer date or instructions provided to them by their seller client, it may constitute a breach of the *Real Estate Act* Rules.

## CONSIDER THE PROS AND CONS

When sellers wait to consider all offers at the same time, it's usually in a strong seller's market where there is a higher likelihood of multiple offers. In Alberta, multiple offers situations are

still occurring, particularly on properties in desirable locations.

If a seller client is considering waiting until a pre-determined date to accept offers, discuss the benefits and drawbacks of using a delayed offer strategy. The biggest risk the seller takes is losing buyers who don't want to wait to compete in a multiple-offer situation. Great offers could be lost as offers could be withdrawn or not proceeded with at all. After explaining the pros and cons, your client can make an informed decision and give you instructions for handling offers.

## BULLY OFFERS

In a seller's market, when a buyer presents an offer that they'd like presented before the seller's predetermined offer date, this is often referred to as a "bully offer." If a seller licensee asks their client to consider an offer early, this could still spark the multiple offer situation the buyer with the bully offer was trying to avoid.

The seller's licensee may suggest to the seller that they tell other buyers who showed interest in the property that a bully offer has come in. This may lead to other interested buyers immediately putting in their own offers to compete with the bully's offer.



## BEST COURSE OF ACTION

If you and your client are in a situation where sellers are delaying their review of offers, and your buyer is in a rush to purchase, it's a good idea to advise your client to make sure the first offer is their best one. Have backup properties in mind just in case the offer isn't accepted or looked at within the buyer's timeframe.

If you have questions regarding the timeframe an offer is taking to be presented to a seller, please reach out to your broker to ensure you are doing all you can to ensure your client's offer is presented.

If you believe a seller's instructions are not being followed, it is best practice within our self-regulated environment to first contact the seller licensee with your concerns about them not following their client's instructions. If there is no satisfactory resolution, contact your broker to reach out to the seller licensee's broker. If this doesn't resolve the situation, you may submit a complaint to RECA using our [Online Complaint Form](#).



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



# DOES YOUR MORTGAGE BROKERAGE HAVE A RECORD RETENTION PLAN?

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

Mortgage brokers are no strangers to paperwork. Applications, supporting documents, disclosures, service agreements, banking confirmations – the list of information you are required to collect is extensive.

## WHAT DO YOU DO WITH THIS INFORMATION AFTER?

You should retain and store the documentation your brokerage receives from prospective, existing, and past clients, as well as lenders, in a safe place. This documentation may include electronic files, emails, text messages, or even physical paper documents.



The *Real Estate Act* and Rules stipulate that mortgage brokerages must have a record management plan to make sure that their papers and records are kept up-to-date.

## WHAT DOES HAVING A RECORD MANAGEMENT PLAN MEAN?

Your brokerage's plan to retain information can be flexible. In other words, it's up to you how you organize, save and file information. The most important part is that you keep the information in a secure location and that you clearly communicate your plan in writing to the associates and unlicensed staff of your brokerage.

For instance, your plan could specify that each associate must submit all client records within a certain amount of time. Or that all confidential documents are sent electronically via the secure server of the brokerage.

## WHEN CREATING OR OPTIMIZING YOUR RECORDS MANAGEMENT PLAN, CONSIDER THE FOLLOWING:

- is the physical or digital storage place secure?
- is the storage environment located in Alberta?
- what safeguards are in place to ensure unauthorized individuals cannot get access to the files and/or modify them?

- if the files are located on a third-party cloud storage system, what safeguards are in place to protect the data?
- what is the succession plan if any third-party system used goes out of business?

## WHAT ARE CONSIDERED RECORDS?

Records are all types of communication, related to a deal.

Common documents you're expected to retain include:

- any documents associated with brokerage licensing
- signed copies of each service agreement
- mortgage administration agreements
- mortgage applications
- credit bureau reports
- commitment letters
- cost of credit disclosures
- investor lender disclosure
- banking records for trust and general accounts
- accounts and supporting documentation (include email, text messages, and other electronic communication related to each file)

## HOW LONG SHOULD I KEEP RECORDS?

The Rules require that the brokerage retain any documents associated with mortgage deals for a minimum of three years. RECA may extend this retention period if an investigation by RECA requires your records. Always double-check before you hit the delete button or send a file through your paper shredder.

Reference your brokerage's record management plan to ensure you save and file important documents appropriately.

## SUMMARY

Your brokerage must be ready to produce its records for all agreements the brokerage has engaged in over the past three years, even if the deal didn't close. RECA may call upon these files in a brokerage audit or as evidence in an investigation.

This [Records Management Information Bulletin](#) provides additional information on RECA's record management retention requirements. Although I wrote this article with a focus on mortgage brokers, the fundamental messages regarding records management apply to all industries RECA regulates.

If you would like to discuss your mortgage brokerage's record retention plan and ensure it meets the legislative requirements, I am happy to speak to you. Please reach out to me at [gsiegle@reca.ca](mailto:gsiegle@reca.ca).



A photograph of a modern, multi-story residential building at dusk. The building features large windows and balconies. A semi-transparent orange rectangle is overlaid on the center of the image, containing the text "Residential Property Management". The building's interior lights are on, and some outdoor lighting is visible in the foreground. The sky is a mix of blue and grey.

# Residential Property Management



# THINK TWICE BEFORE USING TRUST FUNDS TO OFFSET FEES OWED TO THE BROKERAGE

*by James Porter, RECA Investigations Manager*



It's a broker's responsibility to serve as the trustee for money held in trust for residential property management or condominium management services. This is a serious responsibility and demonstrates the trust the public can place in licensees. The money held in trust is your client's money, after all.

The *Real Estate Act* required brokers to abide by the trust agreements governing the use of trust money, and all parties concerned must agree to the terms of trust in writing.

Brokerages cannot utilize trust funds to offset funds owed to them, unless doing so is expressly permitted by the terms of the trust, such as in the management agreement, or the client has given specific permission in writing.

If your brokerage finds itself in a position where a client owes the brokerage money following the cessation of services, you must carefully consider what kinds of deductions the terms of trust regulating the trust funds permit. Send your client an invoice for the fees owed if you want to collect fees that aren't explicitly permitted to be subtracted from money held in trust. Remember that though your brokerage may pursue legal action should the client neglect to pay the fees the brokerage believes they are owed, trust funds cannot be used to pay those costs.

## **EXAMPLES OF TRUST FUNDS USED INAPPROPRIATELY**

A condominium corporation and a condominium management brokerage terminated their management agreement after the brokerage claimed the condominium corporation owed six months' worth of management costs. The condominium corporation disputed what fees were owed. The brokerage deducted these management fees from the funds held in trust for the condominium corporation. This is inappropriate, as the condominium

corporation did not expressly approve this use of trust funds, and the management agreement did not permit it. Brokerages cannot use funds held in trust to pay any fees owed unless they have specific permission to do so.

A client owed money to a residential property management brokerage for work done on their property. The brokerage held security deposits and rental money held in trust from the tenants. The brokerage withheld from the security deposits the costs of upkeep payable by the property owner. The *Residential Tenancies Act*, the management agreement, and the lease with the tenant all contain the terms of trust that apply to security deposits. The security deposit deductions allowed under that *Residential Tenancies Act* are limited, and the brokerage was not permitted to deduct the owner's maintenance costs.

For more information on brokerage obligations regarding funds held in trust, please see section 25 of the [Real Estate Act](#) or contact one of [RECA's Regulator Compliance Advisors](#).

If you face a dispute when holding trust funds, refer to your service agreement, contact your broker, and refer to the Information Bulletin [Trust Money Disputes and Disbursements](#).





## RECA MANAGEMENT

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### 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: [gsielgle@reca.ca](mailto:gsielgle@reca.ca)

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

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

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