

Real Estate Act Rules Review

Phase 2, Part 2 – Standards of Conduct



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DISCUSSION PAPER: RULES REVIEW PHASE 2, PART 2

INTRODUCTION AND BACKGROUND

History

Rules under the *Real Estate Act Rules (Rules)* contain most of the requirements affecting licensee business activities, including licensing structure, standards of practice, and most other activities required in order to protect consumers. The Rules, as they exist today, originally came into effect on Oct. 1, 2006, with some incremental changes since that time.

Rules Review

As part of its 2022-2025 Strategic Plan, RECA committed to a comprehensive review of the Rules. To facilitate this review, the Board created a Rules Review Steering Committee (Committee) made up of industry licensee representatives from each Industry Council, and a non-industry, public member as Steering Committee Chair.

Phase 1 Consultation: February-May 2023 (COMPLETE)

RECA reached out to key stakeholder groups asking for feedback on where they see issues or problems with the current Rules, and where they could potentially be changed to reduce red tape, improve consumer protection, or to align with current technologies and market realities.

Phase 2 Consultation: October 2023-June 2024 (WE ARE HERE)

The Committee has reviewed all feedback from Phase 1 and is proposing potential changes to the Rules to address issues raised. In recognition of the volume of Rules involved, this Phase will be broken into three sections:

1. Licensing Framework and Notification Rules (Rules 2-40) (COMPLETE)
2. Practice Standards (Rules 41-80.89) (WE ARE HERE)
3. Records, Reporting, and the remaining Rules (Rule 82-118.3 plus Schedules 1-5)

Phase 3 Consultation: May-August 2024

After adjusting potential Rule changes based on the feedback from Phase 2, the Committee will once again reach out to key stakeholder groups to receive feedback on any issues or impacts adopting the proposed Rules may have.

CONSULTATION CONSIDERATIONS

Please be aware that the proposed changes in this discussion paper are proposals only. Nothing has been decided nor implemented by RECA's Industry Councils. The Committee is putting forward ideas and they want honest, comprehensive feedback from all stakeholders on those ideas. Each Industry Council is eager to review the feedback from licensees and stakeholders on these proposed changes before committing to any change. They want to know if there are any perspectives or consequences of changing a Rule they have yet to consider.

Feedback is not limited to the questions in this paper or the accompanying survey. Please feel free to provide any additional feedback on any proposed ideas.

Please review the information below prior to providing feedback.

PROPOSED CHANGES

Competent Service

Rule 41 provides, in part, that a licensee must act honestly and “provide competent service”. Competence and fiduciary duties are broad concepts that can arise in consumer relationships. The Rules do not provide a definition of “competent service”. Instead, RECA has issued an [information bulletin](#) on the subject to guide licensees, and to form the basis for interpreting the Rule.

QUESTION: Should Rule 41 provide examples of “competent service” to enhance enforcement mechanisms, increase public protection, and to ensure licensees possess the knowledge, skills, and abilities necessary to provide service, to give appropriate advice, and to comply with fiduciary duties?

Yes
No

Please explain your reasoning. Feel free to also offer alternatives.

Client/Customer Relationship

Rule 41(d) provides “Licensees must: [...] (d) fulfill their fiduciary obligations to their clients”, but does not provide for obligations to customers. When a licensee works with a customer they are obligated to act honestly, use reasonable care and skill, and to ensure that the information provided to the customer is accurate. RECA has issued [information bulletins](#) addressing consumer relationships with clients and customers.

QUESTION: Should the Rules be amended to include a licensee’s legal obligations to a **customer**, providing further protection to the public, for example, an inclusion “Licensees must [...] (e) fulfill their legal obligations to **customers**”?

Yes
No

Please explain your reasoning. Feel free to also offer alternative changes.

QUESTION: Should the Rules be amended to require the completion of a *Customer Acknowledgement* form, to ensure the role of the licensee is clearly understood by the customer, client, and third parties?

Yes
No

Please explain your reasoning. Feel free to also offer alternative changes.

Undermining Public Confidence in the Industry

Rule 42(g) provides, “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”. In response to Phase One consultations, some stakeholders requested more specificity in this area.

Currently, there is no RECA Information Bulletin interpreting this Rule, leaving the Registrar or a Hearing Panel with little to guide their disciplinary decisions beyond case precedent. During RECA investigations, the investigators and the Registrar apply aspects of “Good Character” to their determinations, which is an existing policy used by the Registrar in all disciplinary and licensing decisions.

QUESTION: Should the obligation to “demonstrate good character” be placed on the licensee under Rule 41, to complement Rule 42(g) that a licensee must not “engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute”?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

Service Agreements/Customer Acknowledgements

RECA has received complaints from clients stating they were asked to sign a service agreement long after services have been provided.

QUESTION: Should a licensee who establishes a client relationship when trading in real estate or dealing in mortgages be required to enter into a written service agreement / provide a written statement of services with that client **prior to providing services**?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

QUESTION: When dealing with a self-represented consumer, should a licensee be required to provide a customer acknowledgement **prior to providing services**?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

Protection of Personal Information

Rule 45 prescribes how a licensee may share the personal information of a client with a third-party service provider (“referral disclosure”).

QUESTION: In the interest of transparency, if licensees provide client information to a third-party service provider for the purposes of a referral, should the licensee provide notice to the client and collect the client’s consent (provided the consent must comply with the *Personal Information Protection Act* [PIPA])?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

Unlicensed Activity by Support Personnel

Rule 46 provides, in part, “(1)A licensee must only assign to support personnel or assistants tasks they are competent to perform and must ensure they are properly trained and supervised.” and continues “(2) A licensee must not delegate, assign, request, direct or in any way allow an unlicensed or unregistered assistant to perform tasks that must only be performed by a licensee”.

Subsections 3 (licensees ensure clients, etc. have full knowledge someone is unlicensed) and subsection 4 (licensees ensure all communications, advertising, etc., does not suggest an unlicensed person is licensed) may be iterative of subsections (1) and (2), and further complicate advertising requirements.

Strictly speaking, an unlicensed individual acting as part of a team or brokerage must be supervised and cannot hold themselves out to be a licensed member of industry. Further, subsections 46(3) and (4) are not supportive of the graduated licensing model piloted by the Residential Property Manager Industry Council. Removal of this section is an opportunity for red-tape reduction.

QUESTION: Should Rule 46(3)&(4) be removed in the interest of red tape reduction, as unlicensed activity by support personnel is sufficiently addressed in Rule 46(1)&(2)?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

Advertising Standards Set by Brokerage

Licenses may only trade or deal in the name of the brokerage with which they are registered. Licenses must clearly indicate the name of their brokerage as it appears on the brokerage's licence in all advertising.

QUESTION: While RECA believes it is important for the consumer to understand the brokerage the licensee is registered with, should Rules and Guidelines related to the requirement for clearly advertising the brokerage name be amended to allow more brokerage flexibility?

Yes – Please elaborate on how the Rules and Guidelines should be amended
No

BROKERAGE STANDARDS

Payment of Brokerage Commission - 50% Shares Issued by Corporation

Rules 50(c)(i), 66(c)(i), 80.3(c)(i) and 80.83(c)(i) provide that a brokerage must not pay a commission or other remuneration, directly or indirectly, in connection with a trade in real estate except/deal in mortgages/providing of property or condo management services, to a broker, associate broker, or associate employed by the brokerage or to not more than one corporation of which that broker, associate broker or associate as the case may be, owns not less than fifty percent (50%) of the shares issued by that corporation.

Historically, payments of commissions to unlicensed person or entities were prohibited. The current Rule made an exception based on the ownership structure of the entity receiving the commission.

QUESTION: Should the payment of commission or other remuneration under Rules 50(c)(i), 66(c)(i), 80.3(c)(i) and 80.83(c)(i), to not more than one corporation of which a broker, associate broker or associate owns not less than fifty percent (50%) of the shares issued by the corporation, be removed to allow more flexibility for the payout of brokerage commissions for licensed activity?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

Brokerage Oversight

Rule 51 and Rule 67 provide that real estate brokers and mortgage brokers must be **actively engaged** in the management of a brokerage with which the broker is registered. Ultimately,

the broker is responsible for all brokerage activities. Currently, there are no examples in the Rules of what actively engaged means in terms of brokerage oversight.

QUESTION: Under the Rules, a broker must be **actively engaged** in the management of the brokerage. Should **examples** of the standard of being **actively engaged** be provided to increase accountability, to enhance public protection, and to improve enforcement mechanisms?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

QUESTION: Should there be a limit on the amount of licensees a broker may supervise/manage, or alternatively, a limit on the number of transactions a broker may supervise/manage to ensure effective oversight?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

Promise to Pay Commission - Referral Fees

Licensee referrals have become a common practice. Many licensees have established strong relationships with third-party service providers, and may refer their clients to an insurance broker, financial planner, home inspector, house cleaners, another industry member, etc. Collecting a referral fee must be disclosed to the client by the licensee who is receiving the fee, and these referral fees must be made through the brokerage, not the individual licensee.

QUESTION: Do the payments and receipt of referral fees need to flow through the brokerage?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

Transaction Brokerage

When a brokerage or licensee represents a buyer and seller in a transaction, it creates a conflict of interest. To facilitate such a transaction, all parties can agree to transaction brokerage, where neither party is represented and the licensee would act as a transaction facilitator.

Please note, the Committee is interested in learning stakeholder opinions, and Industry Councils are not actively considering removing transaction brokerage at this time. British Columbia has recently banned this practice (except in specifically mentioned remote regions where there is a limited number of licensees), and some respondents to Phase 1 of this consultation indicated a desire to ban this in Alberta.

QUESTION: Should the practice of transaction brokerage be discontinued?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

QUESTION: Should licensees be prohibited from representing another party while representing themselves in the same trade/deal?

Yes
No

Please explain your reasoning. Feel free to also offer alternative ideas.

MORTGAGE BROKERAGE

Verification of Information Disclosure

Rule 72 outlines the disclosures and records requirements for the steps brokerages took to verify information related to a mortgage deal.

QUESTION: Should the responsibility on brokerages to validate the information they are collecting and submitting to lenders be strengthened to enhance consumer protection and improve fraud detection?

Yes – If yes, please outline any suggestions to strengthen these requirements.
No

Mandatory Relationships and Private Lenders

Currently, the RECA Information Bulletin concerning being an agent for a lender states that mortgage brokers who work with individual private lenders must represent the lender and treat the borrower as a customer. This guideline is not reflected in the Rules. As the prevalence of private lending increases in Alberta, more and more licensees are finding themselves working with particular private lenders more often.

QUESTION: Should a mandatory relationship be established when a licensee is managing an individual private lender and, if so, under what circumstances?

Yes

No

Please explain your reasoning. Feel free to also offer alternative ideas.

CONDOMINIUM MGMT./PROPERTY MGMT. BROKERAGE STANDARDS

Orderly Transfer between Condominium Management Companies

Stakeholders have advised RECA that orderly transfers from former condominium/property management companies to current condominium/property management companies does not occur promptly enough to carry on business.

1. For regular transfers, RECA suggests the following inclusions in the Rules:
 - The current manager must transfer within 10 days of request from the new manager the following information:
 - the list of owners including names, address, and in some cases mortgage holder
 - legal description for each unit
 - unit factor for each unit
 - tenant info for offsite owners
 - budget
 - current trades people and contact info
 - PAD agreement (RECA staff suggestion dependent on PAD agreement, if it specifies an authorized a specific brokerage.)
2. For disorderly transitions (when a manager is released for cause), the above information must be transferred within 24 hours, and everything else within 10 days.
3. In either an orderly or disorderly transfer, all funds must be transferred to the new condominium manager on the day of transfer.
4. That all GICs must be in the condominium corporations' name and not held in trust.

QUESTION: Should these proposed Rules be implemented to regulate the orderly transfer from one condominium or property management company to another before the management agreement's termination?

Yes

No

Please explain your reasoning. Feel free to also offer alternative ideas.

OTHER

Clerical Amendments

RECA staff and Phase One respondents identified a number of clerical amendments to Rules 41-80.89. Many of these amendments are being proposed to reduce red tape, remove redundancy, or to align with existing legislation, as follows:

Rule	Amendment/Inclusion/Removal
Throughout	Elimination of gendered language
41(c)	Remove - Covered under service agreements to ensure the role of the licensee is clearly understood
41(e)	Inclusion (e) ensure the role of the licensee is clearly understood by their clients and third parties, and where reasonable obtain authorization in writing;
42(e)	Include reference to legislation, rather than a prescriptive list. As the legislation evolves, so will the rule. Amendment: "a Licensee must not [...] deny professional services to, or be a party to any plan or agreement to discriminate against, any client, customer, or party to a trade in real estate, deal in mortgages, property management service, or condominium management service for any protected grounds under the Canadian Human Rights Act or the Alberta Human Rights Act reasons of race, creed, colour, gender, sexual orientation, family status, marital status, age, national origin, or physical disability; "
48(a)	Remove the definition, as the Interpretations section sufficiently defines
51(1)(j)	Remove the requirement that records are reviewed at the registered business office, as digital business models are being considered
53(c)	Remove reference to "original documentation" in favour of "true copies"
57(g)	Specify the agreement type is a service agreement
57(i)	To include that material latent defects must be disclosed to all buyers in writing
57(o)	Inclusion of (o) "to review current title"
58(q)	Inclusion of (q) "to review current title"
59	Add new "(l) will indicate how the brokerage will be remunerated."
62(b)(i)(ii)	Remove, there is no consumer protection mechanism in requiring licensees to disclose to other licensees that they are licenced and act in the name of the brokerage.
60.1(4)	Strike "by hand"
71(b)	Inclusion "(b) the lender or the lender's agent has provided the initial disclosure statement as defined by the Consumer Protection Act and has provided the person with an initial disclosure statement and at least two business days have passed since the initial disclosure statement was

received by the person or the person has waived the time period for delivery in accordance with the *Consumer Protection Act*.”

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Strike reference to “what steps, if any, have been taken”. “If any” does not add to enforcement mechanisms

QUESTION: Are you in support of these clerical amendments?

Yes

No

Please explain your reasoning. Feel free to also offer alternative ideas.

HOW TO PROVIDE FEEDBACK

FEEDBACK PERIOD FOR PHASE 2, PART 1 CONSULTATION: March 18 – April 19, 2024

Online Survey

RECA has prepared an online survey with the information from this discussion paper.

Please review the proposed ideas carefully prior to completing the survey. Stakeholders can complete the survey in as little as 15 minutes.

All licensees and stakeholders were sent survey emails with a link to the survey unique to them. If you did not receive an email, or cannot find your email, please contact consultation@reca.ca.

Written Submissions

Licensees and stakeholders are free to provide written submissions on the proposed ideas in this discussion paper.

Trade Associations, Consumer Groups: Please consider re-forming your Rules Review Committees you may have formed for Phase 1.

Brokers: Please consider involving your management teams and some of your associates into informal committees to allow for robust discussion before making your submissions.

Written submissions can be sent by email to consultation@reca.ca, or mailed directly to RECA at:

ATTN: Janice Harrington, COO
Real Estate Council of Alberta
202, 1506 11 Avenue SW
Calgary, AB,
T3C0M9

Town Halls

RECA will host in-person town halls the weeks of March 25 and April 3. All licensees and stakeholders are welcome to attend. These town halls will be virtual to allow for the maximum number of stakeholders to attend. The Town Halls will have a brief overview of the proposed ideas, and will give the opportunity to raise questions and provide feedback. Some Rules Review Steering Committee members and Industry Council members will be in attendance. \

[Register – March 25, 2024 – 1:30 p.m. – 3:30 p.m.](#)

Direct Meetings with Organizations

RECA staff would like to invite stakeholder organizations to meet directly as part of this consultation. These meetings can occur virtually or in-person, and can involve a single organization, or several related organizations together.

This option is for trade associations, consumer groups, large brokerages, or other regulators.

If you would like to arrange a direct meeting with RECA, please reach out to consultation@reca.ca with your request.

Brokerage Presentations

If any brokerages or other stakeholders would like more information on the Rules, how they came to be, how they are applied, and to discuss where certain issues occurring as licensees navigate their business under the standards in the Rules, RECA's Regulatory Compliance Advisors can make a brokerage visit and give presentations on the proposed Rules.

Rules Review on RECA's website

All the information the Rules Review will be in a central location on RECA's website, at www.reca.ca/rulesreview.

Consumers

Consumers are welcome to complete the survey, provide feedback to consultation@reca.ca, to attend the town hall, or to participate via a consumer group.