

Real Estate Act Rules Review

Phase 2, Part 3

Accounting, Records, Reporting and More



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DISCUSSION PAPER: RULES REVIEW PHASE 2, PART 3

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-May 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) (COMPLETE)
3. **Records, Reporting, & remaining Rules (Rule 82-118.3 & Schedules 1-5) (WE ARE HERE)**

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

Commission Payments and Trust Accounts

Rules 96 and 97 deal with how commissions must be handled when using money held in trust as a consumer deposit, including how those commission funds are shared with a cooperating brokerage.

Since you must pay a cooperating brokerage directly from the trust account BEFORE moving the rest of the commission funds into a brokerage general or other account, two cheques are often required: one cheque from the trust account to the cooperating brokerage, and another cheque to the brokerage general or other account so that commission can then be paid to the brokerage licensee who earned it. This has meant increased administrative burden for brokerages.

QUESTION: Should a brokerage **be permitted/be required** to move commission funds from trust to their general or other account, when payable, before the brokerage pays the co-operating brokerage, to avoid the need to issue two separate checks?

- Permit brokerages to do so
- Require brokerages to do so
- Do not change this Rule

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

Modernizing Electronic Record Keeping/ Depositing Funds Electronically

Current information technology standards and protocols have led to increased digital business and new technological terms. For example, outdated references such as “using the internet” will be struck from the Rules. The committee proposed modernizing rules around electronic business.

QUESTION: Should the Rules relating to electronic record keeping, specifically Rules 82, 84 and 85, provide for updated, current information technology standards and protocols?

Yes - Please provide any suggestions/specifics to be included in an amendment.
No

QUESTION: Should redundant Rules be removed, for example, Rule 85 is redundant to Rules 51(1)(h), 67(1)(h), 80.4(1)(h), and 80.84(1)(i), which sets out the broker’s responsibility to oversee electronic transfers of trust funds, and management of automatic banking machine (“ABM”) cards that access those trust accounts.

Yes
No

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

Bank Reconciliation

In accordance with Rule 86, brokerages must complete monthly bank reconciliations, including reconciling trust liability for pooled trust accounts, to ensure trust obligations are met and to identify potential trust shortages, or other irregularities that warrant further investigation.

QUESTION: Should Rule 86 be more prescriptive to clarify the monthly requirement to identify the balances owing to each client or customer held in trust, reconcile the trust liability to the reconciled bank balance as of the date of the bank reconciliation, and to include a new subsection which requires the brokerage to, on a monthly basis, prepare, review, investigate and take reasonable measures to resolve discrepancies on a bank reconciliation?

Yes

No

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

Trust Balance/Trust Shortage

Rules 87, 88 and 89 address “Negative trust balance prohibited”, “Trust shortage must be funded”, and “Notification of trust shortage”. The Rules require that a brokerage must not make any payment/transfer from a trust account that would create a negative balance in a client/customer’s ledger.

If a brokerage becomes aware of a trust fund shortage, the brokerage must investigate to determine the amount of the shortage and fund the shortage immediately. In the instance where a brokerage is aware of a shortage, but has not determined the amount, the brokerage must notify the Registrar of the existence of the shortage, and advise what steps are being taken to determine the origin and amount of the shortage.

If a brokerage cannot immediately fund a trust shortage, the broker must notify the Registrar in writing of the amount of the shortage and what corrective action the brokerage is taking to fund the shortage.

Trust shortages pose a serious possibility of harm to Alberta consumers.

QUESTION: Should the Rules require that a broker must notify the Registrar in writing of all trust fund/balance discrepancies under \$100 even if the broker can fund the discrepancy?

Yes

No

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

Sequentially Coded Records

To improve digital record keeping, and to reduce red tape, the Committee considered amendments to Rules 94(2), 105(2), 110.02(2) which provide that records, books, accounts and supporting documentation must identify each trade/deal/service by a sequentially coded system, corresponding with the trust ledger.

QUESTION: Should the Rules requiring a sequential coding system be replaced with a unique identifier, as set by the brokerage?

Yes

No

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

Positive Balance in Pooled Trust Accounts

The Rules provide that to maintain an adequate positive balance in a trust or pooled trust account a brokerage may lend the brokerage's own money to a client by paying the money into the account, if the loan is made pursuant to a written agreement, and specifies the maximum amount that may be lent, the rate of interest, if any, payable by the clients, and the terms on which the brokerage may demand repayment.

In the case of pooled trust account, a brokerage cannot use another client's trust funds in a pooled account to offset a separate client's loan. A risk is presented if the balance of the loan is greater than the balance of the trust account, especially if the trust account balance should fall into a negative balance. Such a scenario would be a failure to disburse trust funds according to the terms of trust.

QUESTION: Should Rules permitting a loan from a pooled trust account be removed?

Yes

No

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

Property Title

Rule 94 addresses real estate trade records that must be kept by the brokerage. Currently, there is no requirement to review or obtain property Title. Titles identify the current owners, legal description, registered mortgages, caveats, easements, builders' liens, and other registered instruments, such as non-remediated "grow ops".

QUESTION: Should residential real estate Rules require that a current title be pulled and reviewed as part of a transaction?

Yes

No

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

Schedule 5: Administrative Penalties

Administrative Penalties for contraventions of the Act and Rules are listed in Schedule 5 of the Rules. Most Rules are listed with a particular amount for contravening that Rule. Serious breaches may be referred to Hearing Panels, who have the discretion to impose larger fines should that be their decision. These penalties are designed to act as a deterrent, and have remained largely unchanged since the Rules came into force in 2006.

Rule 42, relating to licensee prohibitions, is included within Schedule 5, however, breaches of this Rule have proven in practice to not be straightforward, objectively clear, or clear cut administrative matters.

QUESTION: Should Administrative Penalties provide a maximum for contravention, meaning the penalty could span from \$0 to the set maximum, to allow for greater flexibility?

Yes

No

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

QUESTION: Should Administrative Penalties be increased?

Yes - Please explain your reasoning and suggest fine amounts.

No

QUESTION: Should Rule 42, "Licensee prohibitions", be removed from Schedule 5, as licensee prohibitions are not simple, objective, or administrative matters?

Yes

No

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

Clerical Amendments

The Committee is suggesting the following clerical amendments to the Rules to reduce red tape, remove redundancies, and to align with existing legislation.

Rule	Amendment/Inclusion/Removal
81	Move - Definition of "brokerage" to Rule 1 "Interpretations"
91(1)	Inclusion & Removal – "If a brokerage receives or holds money on the account of others, in the course of its business, the brokerage's accounting for the purposes of section 90 and the Accountant's Report shall be in a form and manner prescribed by the registrar consist of the Brokerage's Representations to the Council and an Accountant's Report, both in a form and containing the information required by the registrar"
Throughout	If digital business is supported, the removal of references to a physical office requirement.
throughout	If digital business is supported, remove the requirement maintain physical records available for review.
95(d)	Removal – of the word "Account" after the word "Trust", which would require that "(d) ensures that cheques used to disburse funds from a trust or pooled trust account are numbered and identified with the word " Trust " Account. "
106(d)	Removal – of the word "Account" after the word "Trust", which would require that (d) ensure that cheques used to disburse funds from a trust or pooled trust account are numbered and identified with the words " Trust " Account;
106(g)	Inclusion – clarify language – "(g) not issue a cheque, allow a bank transfer or present a cheque for payment or collection unless there is, in the trust or pooled trust account against which it is drawn, a sufficient credit balance, to cover the cheque."
110.02	Inclusion – "(1) A brokerage shall keep separate and have available at its registered business office in Alberta or the City of Lloydminster all records for each property management service including signed copies of each service agreement, property management agreement, lease, proof of ownership , offer to lease and all records, accounts and supporting documentation made in the course of the brokerage's business in relation to property management services in Alberta."
110.03	Removal – "(d) ensure that cheques used to disburse funds from a trust or pooled trust account are numbered and identified with the words " Trust " Account;
Schedule 3 – Education Code of Conduct	Amendment – amended language to reflect current education framework

QUESTION: Do you support these clerical amendments?

Yes

No

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

Advertising in licensed name and licence class

The Rules state that when a licensee chooses to use a name and mention their licence class in an advertisement, that they must use the name and licence class that appears on their licence. This applies to all industries. However, the public and licensees tend to refer to licensees who deal in mortgages as 'mortgage brokers,' regardless of their actual licence class.

QUESTION: Should mortgage brokerages, mortgage brokers, and mortgage associates be required to deal only in the name **and class** that appears on their licence, to provide greater clarity to the public? Please note that as per Part 1 of this Rules review, the mortgage licence classes may become 'principal broker' instead of 'broker' and 'mortgage broker' instead of 'associate,' and a new associate broker class may be created.

Yes

No

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

Providing suitable mortgage products

Though it may be best practice among mortgage brokerages and form part of competent service when dealing in mortgages, there is no specific requirement for mortgage licensees to provide mortgage product options that are suitable to a particular client's circumstances.

QUESTION: Currently, there are no explicit requirements under the Rules to provide clients with suitable mortgage options. Should the rules be amended to include an explicit requirement that mortgage licensees must present options to their clients that are suitable to the client's circumstances?

Yes

No

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

Collection of fees

Rule 71 outlines the conditions that must be met before a mortgage broker can charge a fee, including written confirmation from a lender of funding the mortgage, that the borrower has accepted, a commitment has been provided to the borrower or their licensee, and a cost of credit disclosure has been completed and accepted.

QUESTION: Should there be changes to the Rules governing when a mortgage broker may collect a fee?

Yes

No

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

Addressing industry changes in customer/client relationships

The Rules ensure a licensee's role is understood implicitly by a consumer and mortgage licensees understand when certain relationships are created. The Committee may consider adding definitions under Rule 1 (Interpretation), including:

<p>an "agency relationship" is established when the borrower or private lender expressly consents that the industry member is authorized to act on his or her behalf and the industry member consents to act or so acts in a deal in mortgages; (rules and forms for agency relationship in mortgage brokering would be created).</p>
<p>an "intermediary relationship" is established when the borrower expressly consents that the industry member is authorized to represent the borrower as an intermediary with a financial institution and the industry member consents so to act and so acts in a deal in mortgages; (rules and forms for intermediary relationship in mortgage brokering would be created).</p>
<p>a borrower or private lender who is in an agency relationship is a "client" of the industry member; (rules for client status in mortgage brokering would be created).</p>
<p>a borrower who is not in an agency relationship or intermediary relationship with the industry member is a "customer"; (rules for customer status in mortgage brokering would be created).</p>
<p>"financial institution" means a bank, loan corporation, trust corporation, credit union or treasury branch or other body whose business includes the lending of money by way of mortgage security or otherwise, or a subsidiary, within the meaning of section 2 of the Business Corporations Act;</p>
<p>"individual private lender" is an individual or corporation solely owned by an individual that lends money secured by a mortgage;</p>
<p>"intermediary" means an industry member who serves the interests of a borrower and a financial institution in an even handed, objective and impartial manner without providing confidential advice, advocating on behalf of either a borrower or a financial institution, or using discretion or judgement that benefits a borrower or a financial institution to the prejudice of the other and does not act as an agent</p>
<p>"intermediary relationship with a borrower agreement" means a written service agreement between a brokerage and the borrower in which the brokerage acts as an intermediary between the borrower and the financial institution and assists the borrower and financial institution in negotiating a mutually acceptable financing agreement and by which the borrower may agree that the brokerage will be compensated by the financial institution;</p>
<p>"lender" means a financial institution or private lender</p>
<p>"mortgage investment entity" means a person or other:</p> <ul style="list-style-type: none">(i) who invests substantially all of their assets in debts owing to them that are secured by one or more mortgages, hypothecs, or other instruments secured on real property; and(ii) whose primary purpose or business activity is originating and administering mortgages, hypothecs or other instruments secured on real property, with the intent of holding the same for the entire term and using the revenues generated from them to provide a return for its investors;
<p>"private lender" means an individual private lender, mortgage investment entity, or a syndicated mortgage lender and does not include</p>
<p>"sole agency with a borrower agreement" means a written service agreement between a brokerage and a borrower under which the borrower grants the brokerage sole authority to act as agent for the borrower and the sole right to locate for and to recommend to the borrower suitable mortgage products and by which the borrower may agree that the brokerage may be compensated for a successful mortgage transaction by the lender;</p>

"sole agency with a private lender agreement" means a written service agreement between a brokerage and a private lender under which the private lender grants the brokerage sole authority to act as agent for the private lender and the sole right to locate and recommend mortgage proposals suitable to the private lender's investment objectives and risk tolerances and by which the private lender may agree that the brokerage will be compensated on any successful mortgage transaction from the borrower;

"syndicated mortgage" means when two or more persons participate, directly or indirectly, as lenders in a debt obligation that is secured by a mortgage.

QUESTION: Should these definitions be introduced through the Rules to clarify terms commonly used but not previously defined in the mortgage broker industry, and to define and guide customer/client relationships?

Yes
No

Please explain your reasoning. Feel free to also offer additional definitions required.

CONDOMINIUM MGMT. AND PROPERTY MGMT. BROKERAGE STANDARDS

Pooled Trust Accounts in Property Management

When tenants give security deposits to property management brokerages, the property manager must hold that deposit in a trust account. Trust accounts are for consumer funds only, and the property manager cannot use funds from a trust account for their operations. They are holding that deposit in trust, until it must be dispersed as per the terms of trust (typically when the tenant moves out of a property).

Some property managers manage hundreds of rental properties for hundreds of different landlords, and pool all of their deposit money received into a single, pooled Trust account, rather than an individual trust accounts for every each property or landlord. Having separate accounts could lead to significant costs for property managers which they would pass on to their clients.

Pooled trust accounts means potentially hundreds of individuals have their deposit money being held in a larger account along with thousands or hundreds of thousands of other dollars. This makes trust shortages more difficult for investigators and auditors to spot, and it makes it so tenants and landlords have no way of verifying their specific funds are properly still held in Trust.

QUESTION: Should the use of pooled trust accounts for property managers be prohibited?

Yes
No

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

Property Management Financial Statements

Rule 110.08 requires brokerages to prepare each month and keep on file with respect to each client: a statements of receipts, disbursements and other defined records.

To allow flexibility to property managers in respect to each client, RECA suggested an inclusion Rule 110.08 as follows:

(1) A brokerage shall prepare each month, **or as otherwise agreed to**, and keep on file with respect to each client: [...]

This would allow property managers to manage timelines accordingly. This inclusion would also make Rule 100, relating to Financial Statements, redundant and removed.

QUESTION: Should property management Rules relating to Financial Statements be amended to allow the property manager to set the schedule in which records are disclosed to their client, on agreement with their client?

Yes

No

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

Condominium Management Reporting

A condominium manager brokerage may provide services several condominium corporations. RECA does not collect the names or numbers of condominium corporations managed by the licensee. If a condominium manager is found guilty of misconduct, the regulator has no way of knowing what condominium corporations may be affected. The condominium corporations could continue operating without being made aware of the risk.

QUESTION: Should condominium management brokerages and condominium manager licensees be required to register the names of the condominium corporations they serve, and to update the information as it changes?

Yes

No

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

CONDOMINIUM MANAGEMENT AND MORTGAGE BROKERAGE STANDARDS

Duty to Carry Errors and Omissions Insurance

The Rules provide that mortgage and condominium management brokerages must carry insurance against liability, for errors and omissions, and additional coverage for loss resulting from fraudulent acts. Currently, the aggregate and per occurrence limits are prescribed in the Rules.

QUESTION: In respect of condominium management and mortgage brokerages, should the Rules be amended to permit the Registrar to set the aggregate and per occurrence errors and omissions insurance limits?

Yes
No

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

QUESTION: If errors and omissions insurance is cancelled by the insurer, should there be a positive obligation on the brokerage to report the reason for cancellation to the Registrar?

Yes
No

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

INTERPRETATION

Changes to Rule 1 (Interpretation)

RECA staff and Phase One respondents identified a number of amendments to Rule 1, which is where certain terms pertinent to the Rules are defined. These are listed below:

Removal of defined term "licensee", as it is a defined term within the <i>Real Estate Act</i>
Removal of " <i>party means a person who is a legal party to a transaction</i> "
Removal of "pooled disbursement trust account" as it is referred to within the Rules only as "pooled disbursement account" or "pooled trust account", never a "pooled disbursement trust account"
Removal of "facilitation services", as facilitation services are sufficiently addressed under Rule 59 & 59.1, as well as common law (<i>transaction brokerage common law</i> and <i>transaction brokerage designated agency</i>)
Removal of the definition of a transaction brokerage, as the Rules sufficiently outline a transaction brokerage
Removal of " <i>In these Rules, words importing male persons include female persons</i> " as gendered language will be removed throughout.
Add definition of "brokerage", moved from Rule 81

QUESTION: Are you in support of these interpretation amendments?

Yes
No

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

HOW TO PROVIDE FEEDBACK

FEEDBACK PERIOD FOR PHASE 2, PART 3 CONSULTATION: April 22 – May 17, 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 other Phases and Parts of the Review.

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 a virtual town hall on May 1, 2024. All licensees are welcome to attend. Additional town halls may be added if there is demand. Town halls will be virtual to allow for the maximum number of licensees 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.

Virtual Town Hall – Rules Review Phase 2, Part 3

May 1, 2024

1:30 p.m. – 3:30 p.m.

[Register](#)

Direct Meetings with Associations

RECA encourages stakeholder organizations to meet directly with us 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.