Appendix A

Proposed Amendments to the *Real Estate Act* Rules – Summary Document

The amendments outlined below were approved by RECA's Industry Councils under section 12 of the *Real Estate Act and* were submitted to the RECA Board of Directors for transmission to the Minister of Service Alberta and Red Tape Reduction for final approval.

A draft redline and a clean version of the amended Rules are in Appendix D and E, respectively.

Rule	Current Rule	Proposed Amendment and Application	Reasoning
13	Outlines requirements for a registered business office, including the assumption of it being a physical office space within Alberta.	Remove the requirement for brokerages to maintain a physical office space, allowing for virtual brokerages. Require a physical address within Alberta that can be used for service of documents by RECA. This can be a private residence of a brokerage licensee.	**Modernization and Red Tape Reduction** • Current remote work technology has lessened the need for physical office space • Most brokerage documents are digital • Removing this requirement allows for more innovative business models in Alberta and reduces red tape for brokerage operations. • Requiring a physical address for service that can be a private home of a brokerage licensee allows RECA to maintain its regulatory responsibilities in terms of service of documents.
32 and 40	Sets requirements for reporting certain suitability events to the Registrar for brokerages (Rule 32), including changes to corporate structures and business addresses, and for individual licensees (Rule 40), including any disciplinary, civil or criminal charges, proceedings or convictions, and bankruptcies. Requirement is to notify 'immediately'	Prescribe the time periods allowed before being required to notify the Registrar, including different time periods for different events, depending on their severity or potential for consumer harm. Some events will have five days to notify, others will have 10, and the Registrar will be given the discretion to extend the notification period when extenuating circumstances are proven.	**Reducing Red Tape** RECA interpreted 'immediately' to be five days. Certain events, such as a change to a brokerage's shareholders or corporate officers, might not be shared with the brokerage within that five-day period, especially if the brokerage owner was a national or multinational corporation. By prescribing the time-period for notification based on the event and allowing for a longer notification period for matters less important in terms of consumer protection, the Rule better reflects the realities of the modern brokerage environment.
Rule	**Current Rule**	**Proposed Amendment and Application**	**Reasoning**
3	Outlines the classes of mortgage licence as	Change the licence classes for mortgage to mortgage	**Modernizing and Reducing Confusion**

	brokerage, broker, and associate	brokerage, principal mortgage broker (formerly broker), and mortgage broker (formerly associate)	The mortgage brokerage industry has used the term 'mortgage broker' to refer to any individual who deals in mortgages, regardless of actual licence class. The public also uses 'mortgage broker' to generally refer to any person helping them obtain a mortgage. Because of this RECA has allowed mortgage associates to hold themselves out as 'mortgage brokers' despite not holding a mortgage broker licence class. This Rule change will codify this practice and lessen confusion within the industry and among the public.
1(bb.2)	Defines "rural real estate" as real estate with the primary purpose of farming	Change "rural real estate" to "agribusiness real estate"	**Modernizing and Reducing Confusion** The term "rural" has led to confusion among licensees and the public, with many conflating it with rural residential real estate. The expertise and competence required to assist consumers in buying and selling agricultural land for the purpose of commercial farming is significantly different than the competencies required to sell residential real estate, even if that residential real estate is in a rural setting, not on municipal utilities, and perhaps has a hobby farm. Some licensees believe a rural licence designation is required to buy or sell rural residential, when it is not. Changing the term alleviates some of the confusion.
Rule	**Current Rule**	**Proposed Amendment and Application**	**Reasoning**
43	Requires a written service agreement with clients in order to provide services in all sectors except commercial.	Requires a written service agreement to be entered before ANY service is provided in the mortgage, property management, and	**Consumer Protection Issue** Furthers consumer protection by ensuring there is informed consent and a representation agreement in place prior to any services taking place, including introductory services for potential

		condominium management industries. Residential Real Estate Broker Industry Council and Commercial Real Estate Broker and Commercial Property Manager Industry Council will keep the status quo for residential, commercial, and rural real estate.	clients, like pulling credit histories. This will only apply in the provision of mortgage, residential property management, and condo management services. The nature of commercial, rural, and residential real estate makes this change difficult, as consumers often meet these individuals casually, like at an open house, and it would be difficult to get agreements signed to have a brief conversation about the potential of buying or selling. Thus, they chose the status quo.
Various	Rules that allow licensees to represent both sides of a trade they are personally involved in, as long as proper disclosures are made and the parties agree.	Prohibits real estate, condominium management, and property management licensees from representing the other side to a personal trade, even if disclosures are made and the parties agree.	**Consumer Protection Issue** No matter how ethical, a licensee cannot remain objective in a personal trade. There is also the issue of the other parties fully understanding what they are giving up by allowing the licensee who is involved in the trade to represent them. Many brokerages currently do not allow this to happen among their associates. This change codifies the practice and recognizes Errors and Omissions insurance does not cover personal trades.
Various	Rules surrounding electronic record keeping and depositing funds.	Update these Rules to reflect modern digital record keeping and modern, online banking activity.	**Modernize and Reducing Red Tape** Most businesses keep digital records for ease of access, searching, and reducing use of paper. Also, most businesses and consumers do their banking primarily online and through electronic transfers. Rules surrounding access to bank cards do not adequately encapsulate the modern, more accessible and streamlined banking experience.
Rule	**Current Rule**	**Proposed Amendment and Application**	**Reasoning**
97	Rule restricting how money can be paid out of a trust account, particularly when being used for commissions. Brokerages must first pay commissions owed to a cooperating brokerage from the trust	Amend the Rule to allow brokerages to disburse the earned commission held in trust either directly to the co-operating brokerage or move the earned commission to their general or other account	**Reducing Red Tape** This Rule was changed in 2018 to close a loophole in the Rules that could have exposed the Assurance Fund to claims by licensees for missing commissions. An inadvertent result was brokerages being required to write two cheques when paying cooperating brokerages. Keeping

	account to their brokerage account, then write a second cheque for the amount owed to the second brokerage from the brokerage account.	before disbursing to the co-operating brokerage.	the loophole closed, while allowing brokerages to only need one cheque, will reduce red tape.
102	Current Rule wording allows for loans to be made to a brokerage trust account.	Prohibit loans to the trust account.	**Consumer Protection Issue** Brokerage trust accounts are for holding consumer deposits on a purchase of real estate or security deposits on rented real estate. Despite being held by the brokerage, it is only held in trust. It is the consumer's money, and should not be in a shortage, to be filled through a loan from the brokerage to the account.
Schedule 5	Sets Administrative Penalty amounts for contraventions of each section of the Rules. Some convey maximum fines, others convey set fines.	Set the fines as ranges, increase the fine maximums, and allow the Registrar the discretion to apply a penalty within those ranges as appropriate for the contravention.	**Administrative Justice Fairness** Some breaches are very minor and have strong mitigating circumstances, and yet the Registrar has no discretion and must apply the penalty prescribed in the Rules. By providing a range and giving discretion, the Registrar can apply larger penalties for those that cause consumer harm or have other aggravating circumstances, and apply the smaller end of the range for those breaches that are administrative, cause no consumer harm, and have strong mitigating circumstances.
Rule	**Current Rule**	**Proposed Amendment and Application**	**Reasoning**
50(c)(i), 66(c)(i), 80.3(c)(i), 80.83(c)(i)	Rules restricting how commission payments can be paid to corporations. Currently brokerages cannot pay commissions to a corporation where the licensee owns less than 50% of the corporation	Amend to allow commission payments to corporations where the licensee being paid the commission owns less than 50% of the corporation	**Reduce Red Tape** For beneficial tax reasons, many licensees have incorporated and act as independent contractors with their brokerage. Currently, many of these corporations have family members as shareholders, leading to the licensee having less than 50% ownership. Historically, payments of commissions to unlicensed persons/entities were prohibited. The Rule makes an exception based on the ownership structure of the entity receiving the commission. The

			Committee considered that the prohibition may not be realistic in the modern business world, for example, in respect of Limited Liability Corporations (LLCs), licensee consortiums, and professional corporations. The Committee considered that once a commission is payable and earned, is it appropriate for the regulator to dictate how the commission is paid out.
86	Sets the requirements for monthly bank reconciliations. Requirements are limited and open to interpretation.	Amend the Rule to be more prescriptive in terms of the requirements for monthly bank reconciliations.	**Consumer Protection** RECA's Practice Review Officers (Auditors) who review trust account records for all brokerages often find discrepancies or missing bank reconciliation information caused by the broad wording of Rule 86. By prescribing exact requirements, brokerages can be sure they are recording the right information in their reconciliations, allowing for maximum transparency for Auditors to identify issues or trust shortages.
Rule	**Current Rule**	**Proposed Amendment and Application**	**Reasoning**
94(2), 105(2), 110.02(2)	Requires brokerages to sequentially code their record entries.	Allow for unique identifiers, instead of sequentially coded records.	**Red Tape Reduction** Sequentially coded records was made a requirement in a time when paper records were the norm. Sequentially coding made searching those documents easier for the brokerage and RECA Auditors. Modern digital record keeping means a unique identifier is just as easy to search and review, allowing brokerages flexibility in terms of how they set up their record keeping.
118(1)(c), 118.2(1)(b)	Sets the errors and omissions insurance limits for Mortgage and Condominium Management.	Allow the Registrar the discretion to increase the limits, as needed, and set a requirement for brokerages to inform the Registrar of the reasons an E&O provider cancelled their coverage, when that occurs.	**Reducing Red Tape and Consumer Protection** As the economy changes and inflation occurs, the set required amounts of E&O coverage can quickly become too low and outdated, and not adequate to protect consumers. Providing the Registrar discretion to change these

			limits removed the lengthy process for a Rule change to modify the limits.
New	None	Create a rule to require mortgage licensees to represent the lender, never the borrower, in deals involving private lenders.	**Consumer Protection** With increasing mortgage rates post-pandemic, the prevalence of consumers turning to private lenders from traditional financial institutions demonstrated a lack of consumer protections around private lending. When a broker works with a private lender, they have typically formed a long-term business relationship, with the broker being that private lender's conduit to consumers. This creates a conflict when a mortgage broker represents the borrower in a deal involving the private lender. By requiring the mortgage broker to represent the private lender, not the borrower, in private lender deals, the conflict is eliminated.
Rule	**Current Rule**	**Proposed Amendment and Application**	**Reasoning**
72	Sets the requirement for mortgage brokers to document the steps they've taken to verify a client's identity, if any	Remove 'if any' and remove along with it the implication that taking steps to verify a client's identity is optional. Essentially making steps to verify identity mandatory.	**Consumer Protection and Mortgage Fraud Prevention** Many mortgage deals are done virtually or over the phone, with a mortgage licensee never meeting a client face-to-face. They are also matching consumers with lenders who will likely never meet the client face-to-face. Confirming a consumer's identity is an important step in combatting mortgage fraud. Many brokerages take steps to verify identity as a matter of practice, but the current Rule contains a loophole, implying the steps are not mandatory. This change requires mortgage licensees to take steps to verify a client's identity.
70(1)(d)	Prohibits mortgage licensees from advertising, communicating, or offering an incentive except when the incentive is provided by	Updating the Rule (for mortgage licensees), so principal brokers can approve individual incentives from the brokerage's associates,	**Modernization and Reducing Red Tape** The industry had indicated an appetite for individual incentives, and the Mortgage Broker Industry Council

	and on behalf of the licensee's brokerage.	meaning incentives do not need to be brokerage-wide.	determined by not allowing associates to create their own incentives, it could stifle innovation and could be seen as red tape. With the advent of social media, offering smaller incentives to drive business to the associate is easier than ever, and so the Industry Council will move forward with the Rule change to test the performance of the idea for the other Industry Councils to reference.
Rule	**Current Rule**	**Proposed Amendment and Application**	**Reasoning**
1	Definitions for the Rules, including mortgage terms used in the industry.	Updating or adding mortgage terms that are either missing or out of date, including those related to private lenders, syndicated mortgages, and how relationships would work with private lenders. Of significance, adding a definition of 'financial institution' , 'mortgage investment entity', 'syndicated mortgage lender', and 'intermediary', and minor change to the terms 'private lender' and 'individual private lender'.	**Modernization and Clarity** The Rules only work if everyone is using certain terms to mean the same thing. By ensuring certain terms are clearly defined, licensees can be sure they are understanding and applying the Rules correctly. With the increase in private lending, it was necessary to distinguish what entities are financial institutions, and what entities are corporate private lenders vs. individual private lenders.