

# ACCESS TO PROPERTY

**Purpose:** This bulletin sets out the responsibilities real estate and property manager licensees have when accessing a property.

**This bulletin applies to all real estate and property manager licensees.**

Real estate licensees frequently access properties that they neither own nor represent the owner of. Sometimes they access these properties on their own, sometimes with others—for example, when showing a property to a potential buyer.

In all cases—whether the property is for sale, for rent, or is the subject of a property inspection condition—the owner retains their rights as an owner. Licensees must not violate these rights.

## **Permission**

Licensees must have permission to access a property before doing so. Whether a house, apartment, a business or bare land and whether for sale or rent, entering onto or into a property without the owner's permission is trespassing.

Permission must come from the owner or their authorized agent such as an appointed real estate representative who has instructions from the seller to give permission.

Permission to enter a rental property is required from the landlord who must give notice to the tenant under s.23 of Alberta's *Residential Tenancy Act*. If the landlord has failed to give notice properly, permission must be given by the tenant.

## **Restrictions on Permission**

Permission *always* has limits. Entering a property for a showing does not mean visitors can use the kitchen to cook dinner!

Permission given for a specific purpose, like showing a property to a potential buyer, is limited to that purpose only—use of the property beyond that purpose is also trespassing.

Express restrictions on permission communicated by the seller's representative for a showing must be followed as a condition of the permission given. Restrictions often include:

- a limit on the number of people who enter a property
- a specific time and time limit for a showing
- areas of the property people cannot enter
- a requirement that people wear masks or remove shoes

If a restriction is unclear, it is the licensee's responsibility to contact the seller's representative before accessing the property. If a restriction needs to be amended for the sake of a specific showing, licensees must negotiate that change with the seller's representative. If a change cannot be agreed to then the choices are to comply with the restriction or not see the property.

### **Seller Representative Duties**

It's important that seller representatives talk to their clients about property restrictions. While some restrictions may make the property less likely to sell, the owner always has the final decision.

If restrictions are made by the owner, it is their representative's duty to clearly communicate the restrictions to people in advance of giving access to enter the property.

### **Potential Liability**

A licensee who does not have permission to access a property, or is acting outside of their permission, may face liability for damage to a property or civil action in trespass. A damage award for the tort of trespass does not require proof of harm or loss against the trespasser.

### **Conclusion**

Remember, it is the owner's right to give, withhold, or restrict permission.

Sellers' representatives must discuss restrictions with the seller before offering showings and must communicate those restrictions to parties viewing the property before the showing.

Buyer representatives must discuss any restrictions with their clients before accessing a property. If buyers do not accept a restriction, they are *not* free to disregard them. They can however negotiate permission and restrictions before accessing a property.

Just because a property is for sale does not mean an owner has provided unrestricted access to potential buyers. The owner is in control of access. If a buyer or renter will not accept restrictions on accessing a property, access to the property must be declined.

## Related information

### Legislation

- *Real Estate Act Rules*, sections 41(a)(b)(g), 42(a)(b)(g), 57(d)(g), 58(a)(d)(g)(h)
- *Petty Trespass Act*, RSA 2000, c P-11

### Commentary and Examples

- A seller's agent can give permission for a showing to a buyer's agent. However, a seller's agent cannot give permission beyond what a seller instructs them to give.
- A buyer's agent who obtained permission for a long showing period does not have permission to then offer portions of that time to other licensees unless the permission expressly allowed that.
- A buyer's agent who obtained permission for a long showing period for one client does not have permission to use the time to show it to several other clients.
- A buyer's agent has permission to show a property to clients at a particular time. The permission does not involve naming the specific buyers but is given for 3 people to access the property. The original buyer clients cannot now attend but the licensee has other clients who want to see the property. If the number of people, duration, purpose, and all other restrictions from the original permission are met, the agent has permission.
- A buyer's agent has permission to access a property for a showing with a couple and their one child. At the showing the couple's parents attend with them and would like to see the property. If the permission limited the number of people in the house at any one time, then all 5 cannot enter the property at once. However, they may be able to enter separately in groups of 3 and 2 if the wording of the permission allows this.
- A buyer's representative shows a property to their client with permission which is given for a specific period of time and for a specific number of people. The clients ask their representative during the showing if they can use the bathroom. The representative and the clients do not have permission to use the bathroom.

### Honesty

Licensees have a duty to be honest and to avoid misrepresenting the purpose for which they are seeking access to a property. An owner

whose property is for sale or rent may infer that the reason a licensee is seeking permission to access the property is to show it to a genuinely interested buyer or tenant. If this is not the purpose, a licensee has a duty to disclose the actual purpose to the owner or their representative when seeking permission.

- A licensee arranges a showing time with the seller's representative. There are no restrictions in the permission given, only a time and duration. The licensee enters the furnished vacant property and entertains several friends.

In this case the seller reasonably assumed the purpose was to show the property to a prospective buyer. Not disclosing the actual purpose is an act of dishonesty, misrepresentation, possibly fraud and trespass.

- A seller representative decides to take their seller client to a competing property in their neighbourhood to compare the two properties. The seller of the competing property gives permission reasonably assuming they are an interested buyer.

Not disclosing the real purpose when the context suggests otherwise is an act of dishonesty, misrepresentation, possibly fraud and trespass.

#### INFORMATION BULLETINS

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### Too Many People

RECA frequently receives complaints from owners that a licensee let too many people into their property for a showing.

If the owner restricted the number of people allowed into a property for a showing and it was communicated to the buyer's representative the extra people do not have permission to enter.

- The licensee for a young first-time buyer couple obtains permission for a home inspection. The seller's representative assumes the buyer's representative, a home inspector, and the two buyers will attend. At the appointed time for access, the buyers attend with extended family members, in addition to the buyer's representative and home inspector.

In this case permission was not given for this number of people and it was a violation of the seller's property rights to let all of these people enter the property.

If unanticipated people show up, the buyer representative must contact the seller's agent to ask for permission for additional people to access the

property. If permission is not given the additional people cannot enter the property. A buyer's representative does not have the right to extend permission beyond what the seller has given.

### **Broken items**

Accidents happen. When people are in unfamiliar surroundings and they're paying attention to features of the home rather than its contents, occasionally, something may get broken.

Most people take responsibility, pay for the broken item, and everybody is satisfied.

Sellers' representatives should advise the seller to remove or secure valuables, breakables, and confidential or personal items before a showing to avoid broken or stolen articles.

Buyers' representatives should remind their clients that they are in another person's home or place of business, and to be careful and not touch personal belongings.

It is very unusual to run into a situation in which a potential buyer would have to touch the seller's personal effects (e.g., artwork, figurines on a mantle) to adequately view and evaluate the home. If such a situation arises, for example to view a locked room, permission must be obtained before doing so.

### **Taking photos**

Seller representatives should discuss in advance of any showings whether parties viewing their property are allowed to take pictures. Again, the seller is in control. Their representative must communicate any restrictions on taking photos when giving permission to others to access the property.

Buyer representatives should not assume their clients can take pictures and instruct their clients beforehand not to take pictures without permission of the owner.

Property inspections involve many detailed photographs of the inside of the property for the report to the prospective buyer. Seller representatives should make sure their seller client is aware of this and discuss any reservations or concerns their client has. If the buyer has a right to a home inspection as a condition of the contract the seller may not have the right to refuse the home inspector taking pictures.

Taking pictures of a property from the street or from any place the public has access to is allowed.