

## COMPETENT SERVICE

**Purpose:** This bulletin explains industry professionals must be competent and provide clients competent service and the brokerage responsibility to ensure clients receive competent service.

**This bulletin applies to real estate, mortgage broker, property management and real estate appraisal industry professionals.**

Industry professionals must be competent in all areas in which they provide services. Being competent means industry professionals possess the knowledge, skills and abilities to allow them to perform the necessary services and give necessary advice. Industry professionals must maintain their competency on a continuing basis.

Industry professionals must give the best possible service and advice to clients. The service and advice must meet reasonable standards of competence. This means each industry professional is responsible to achieve and maintain competence in all areas in which they practice.

### Becoming competent

An industry professional achieves a minimum level of competence upon successful completion of pre-licensing education requirements, meeting other eligibility standards, and obtaining a licence. The industry professional trades in real estate or property management, deals in mortgages, or conducts real estate appraisals by virtue of a licence issued by the Real Estate Council of Alberta (RECA).

### Staying competent

Industry professionals must continually update their knowledge of legislative amendments, emerging issues affecting the industry and consumers, legal updates, risk reduction techniques, and other compliance and regulatory issues and any changes within the areas of their practice.

### Do not mislead consumers

Industry professionals must not lead the public to believe they can do something they cannot or possess expertise they do not have. If an industry professional claims special skills beyond those generally expected, they must have the qualifications to support such a claim. More importantly, the industry professional must successfully meet the skill level expected of a specialist.

Providing competent advice to clients means industry professionals must explain the various options available to deal with specific issues a consumer encounters during a trade in real estate, deal in mortgages or real estate appraisal. The explanation of each option must also include the advantages and disadvantages and how local circumstances or market conditions might affect the different options. Industry professionals must let their clients decide which option to choose.

Directing a client to a specific course of action without advising the client of other options available may constitute a failure to provide competent service – even if the industry professional believes it is the best course of action for the client.

### Ensuring a client receives the appropriate expertise

When an industry professional is unable to render competent service, either alone or with the assistance of colleagues, the industry professional must decline to act. As difficult as it may be to turn away a client and the benefit of a commission, industry professionals must recognize the limitations on their expertise. Industry professionals can refer prospective clients to other practitioners with appropriate expertise.

### Contracts and documents

An industry professional must not participate in the creation of any contract or document they know or ought to know is not legally binding, confusing, or does not reflect agreements already in place.

Drafting contracts is one of the mainstays of competence. Industry professionals must ensure they have the knowledge and skills required for the proper and legal drafting of contracts on behalf of their clients.

This includes:

- ensuring all signatures and initials are in place
- contracts contain proper dates
- the terms and conditions of the offer reflect the client's understanding and are clear to other parties
- verifying the parties have the legal capacity to contract
- confirming attachment of all supporting documentation
- copies of all documents are given to all parties to the contract

If unsure of the legal requirements in any situations, industry professionals should obtain or have their clients seek expert advice.

Contracts must accurately reflect the terms agreed to by the parties. The terms and conditions of the purchase contracts or offers to lease must represent the true circumstances and must be clearly written and understood by all parties to the agreement.

RECA's Hearing Panels regularly review contracts industry professionals prepare that contain drafting errors. These errors include:

- the improper naming of parties
- insufficient detail
- lack of clarity in terms and conditions
- no contract completion dates

These deficiencies are serious and can result in confusing or unenforceable contracts. This type of conduct demonstrates a lack of professional care and attention, and is a lack of competency.

An industry professional must make sure what their client wants included in the contract is included in the contract. Review the terms of any contract carefully with the client, including standard clauses, so there is no misunderstanding. The client's intentions must be clear. Words and phrases must be understood by the contracting parties to avoid any confusion. Practitioners must also take care when amending agreements to accurately reflect any requested changes. In order to avoid confusion, industry professionals must clarify any possible implications of changes with the client.

Industry professionals will also clearly understand the scope of their authority and must not sign or initial agreements on behalf of their clients.

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### Brokerage responsibility

Brokerages are responsible and accountable for the competence of their industry professionals. Brokers must ensure their industry professionals meet the competency standards in the legislation. Effective office management and staff supervision helps to achieve this requirement. The level of supervision and responsibility will depend on a number of factors. These include the number and experience of industry professionals and staff, and the number and complexity of transactions.

The broker who competently supervises his or her brokerage will perform many functions, including but not limited to the following:

- ensure a brokerage policy and procedures manual exists
- supervise their industry professionals and staff to ensure complete and accurate work
- make all industry professionals and staff fully aware of the relevant sections of the *Real Estate Act*, Rules, Bylaws, and Regulations, especially as they pertain to their daily functions
- ensure all transactions and clients files are complete and include final, signed contracts and other important documents

- provide documentation to RECA as required by legislation, including registration, transfers and terminations of industry professionals, renewal applications, and brokers' accounting reports
- review trust bank reconciliations within 30 days from the receipt of the trust bank statement and initial this reconciliation as evidence of the review

### Practice tips

In order to be competent, it is important for industry professionals to assess and recognize their level of competence. In areas where the industry professional believes additional training or education would be beneficial, they should discuss the situation with their broker. Together they may consider various options. Taking professional development courses or assisting other industry professionals in the brokerage are two suggestions for developing expertise.

Brokerages should identify or develop forms or checklists for industry members for the issues most commonly encountered in the brokerage's primary practice sector(s). For example, on RECA's website, you will find a Property Inspection Request Form. The form lists the types of potential inspection services that are available to buyers when purchasing a property. The form includes the most common reports or inspections requested by buyers. Industry professionals should suggest their buyer clients use this form as part of their purchase contract.

Mortgage brokerages may want to have a checklist describing the advantages and disadvantages of the various mortgage options available. For example, open vs. closed, cash back, weekly vs. monthly payments, and prepayment options.

Sometimes clients willingly choose to take adverse risks. In such situations, RECA recommends industry professionals obtain a written acknowledgement they have provided the client with various options and the advantages and disadvantages of each.

### Related information

#### Legislation

- *Real Estate Act* Rules - section 41(b)

#### Information bulletins

Responsibilities – Broker

Brokers – Active in Brokerage Management