

DEALING IN MORTGAGES – JURISDICTION

Purpose: To explain how the Real Estate Council of Alberta determines whether it has jurisdiction over a particular deal in mortgages.

This bulletin applies to persons who deal in mortgages and mortgage broker professionals from other jurisdictions.

In today's global mortgage broker industry, it is not always clear whether a specific deal in mortgages falls under the jurisdiction of the Real Estate Council of Alberta (RECA).

RECA decides its jurisdiction based on a legal test known as the "sufficient connection" test. This test was developed by Canadian courts and applies when a decision maker decides which provincial jurisdiction is the most appropriate to deal with a particular issue.

In Canada, there are limits on the scope of a provincial authority. Provincial regulatory bodies like RECA cannot apply the Act to matters not sufficiently connected to the *Real Estate Act* (Act). Does a specific deal involving inter-provincial elements constitute "dealing" in mortgages under the Act?

Historically, dealing took place between a local borrower and a local branch of a financial institution. Today, deals in mortgages take place across provincial boundaries. The reality is components of mortgage deals may occur in several jurisdictions using electronic means. The mortgage brokerage industry is increasingly becoming national in scope.

One of the issues is when does a person acting as a mortgage broker requires a licence. The Act will apply to deals in mortgages by mortgage brokers in usual cases and in cases where a sufficient connection to Alberta is present.

To determine if there is a sufficient connection, RECA considers all the facts and impact on Alberta consumers. RECA uses these factors to determine whether a deal in mortgages has a sufficient connection to Alberta:

- where the brokerage activities occurred
- where the borrower is located
- where the property is located
- where the mortgage broker holds a licence
- were the activities considered dealing in mortgages

- the place where advertisements originate and appear
- the place dealing records are held
- how documents are prepared, signed, sent or given to the parties
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- where a corporation was incorporated and carries out its usual business
- the place receipt of deposits into a trust account occurs
- where money originates and is delivered to conclude a deal in mortgages
- any choice of law clauses adopted by parties in any agreement

The Act applies to deals in mortgages when there is a sufficient connection to Alberta.

Related information

Legislation

- *Real Estate Act* - sections 1(1)(j), s.1(1)(q), s.1(1)(r), s.17

Information bulletins

- Dealing in Mortgages as a Mortgage Broker
- Mortgage – When Licence Required