

DEALING IN MORTGAGES AS A MORTGAGE BROKER

Purpose: To explain when a person needs a licence from the Real Estate Council of Alberta to deal in mortgages.

This bulletin applies to all mortgage broker professionals.

Does a person need a licence to deal in mortgages?

A person who deals in mortgages on behalf of another and for compensation, or holds oneself out as a mortgage broker, must obtain a mortgage broker licence from the Real Estate Council of Alberta (RECA), unless they are exempt by the legislation.

The *Real Estate Act* (Act) does not apply to a person who deals in mortgages on his or her own behalf.

Generally, a licence to deal in mortgages is required if the property, the borrower or the location of the mortgage broker is in Alberta.

What is a mortgage?

The *Real Estate Act* (Act) defines "mortgage" as a loan secured by a mortgage or any charge on real property or a lease of real property or any charge on real property for the purposes of securing the repayment of money or another consideration.

What does "dealing" in mortgages mean?

Dealing in mortgages occurs when a person, on behalf of another person, does any of the following:

- solicits a person to borrow or lend money secured by a mortgage
- negotiates a mortgage transaction
- collects mortgage payments
- administers mortgages
- buys, sells or exchanges mortgages, or offers to do so
- holding oneself as a mortgage broker

You require a licence from RECA to conduct the above activities.

What does holding oneself out mean?

A person who advertises they are a mortgage broker, or acts in any manner that leads the public to believe they are a mortgage broker, is "holding oneself out" as dealing in mortgages.

“Holding oneself out” as a mortgage broker can include using the term “mortgage broker” to describe oneself, collecting borrower information, or leading a client to believe they are in the business of a mortgage broker.

When a licence is not required?

A licence to deal in mortgages is not required for the following:

- subject to regulations, a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company
- an agent or employee of a person referred to in the previous bullet
- an employee of a person dealing in mortgages as a principal while that principal is so acting in a lawful manner and while the employee is acting within the regular course of employment on behalf of that principal
- a member in good standing of The Law Society of Alberta acting in the course of and as part of the practice of law, or
- a person exempt by the regulations.

A person who lends their money secured by a mortgage does not require a licence under the Act Their employees do not require a licence either.

RECA has adopted the definition of “employee” in the Alberta *Employment Standards Code*.

Certain corporations do not require a licence under the Real Estate Exemption Regulation.

Unlicensed assistants

In mortgage brokerages, unlicensed assistants must not deal in mortgages.

Examples

1. A real estate associate refers his buyer to a financial institution for a mortgage. The financial institution offers to pay the associate’s brokerage a referral fee. The brokerage cannot accept the referral fee because the associate is dealing in mortgages on behalf of that financial institution.

If the real estate associate refers his buyer to a mortgage broker that deals with multiple lenders, the mortgage broker may pay the associate’s brokerage a referral fee.

In the first example, the associate is dealing in mortgages because they are soliciting borrowers for a specific financial institution. In the second example, the associate is referring the borrower to a mortgage broker who deals with multiple lenders.

2. An individual designs, maintains and hosts the website for a mortgage brokerage. The website includes information about current mortgage rates, brokerage services and the contact information for a mortgage broker. These activities are not dealing in mortgages and a licence is not required.
3. A large multi-national corporation helps its employees by financing their primary residence. A corporation does not need a licence to deal in mortgages when it has a program to provide housing for its employees.
4. An unlicensed assistant is alone in the mortgage brokerage office and answers calls from potential borrowers. The potential borrowers provide their personal information over the phone – name, address, assets and liabilities, income, etc. – and request the assistant advise them on their ability to qualify for a mortgage. The assistant requires a licence to collect information and provide advice.
5. John, a real estate industry professional, is good friends with a lending officer at a financial institution. John sold a home to a client and agreed to help him obtain a mortgage through his friend. John negotiates mortgage rates and terms between the lender and his clients. John requires a licence as a mortgage broker to carry out these activities.
6. Amelia is not a licensed industry professional. Amelia's son, Michael, wants to buy his first home. He needs a mortgage but does not want to go through a financial institution. She agrees to lend him the money and secure the loan with a mortgage. Amelia does not need a mortgage broker licence because she is lending her own money.

INFORMATION
BULLETINS

Last Revised April
2014

© 2014 RECA

Related information

Legislation

- *Real Estate Act* - sections 1(1)(j), s.1(1)(r), s.1(1)(q), s.2(3), s.17
- *Real Estate Act Exemption Regulation* - section 2(2)

Information bulletins

- Assistants – Mortgage Brokerage
- Dealing in Mortgages - Jurisdiction
- Employees
- Holding Oneself Out