

ENFORCEMENT OF THE RESIDENTIAL MEASUREMENT STANDARD (RMS)

Purpose: This bulletin describes RECA's approach to enforcement of the Residential Measurement Standard (RMS).

This bulletin applies to real estate professionals.

The Residential Measurement Standard (RMS) area of a property is the sum of its above grade levels. Real estate professionals must competently measure residential properties using the RMS, and accurately represent the RMS area in communications with consumers and other industry professionals.

The RMS does not apply when real estate professionals measure non-residential properties, such as commercial, industrial, or retail premises.

Competent measurement

Real estate professionals:

- measure property for every new listing even if they previously measured the property. Note, re-measuring is not required when renewing a recently expired listing or the property is a rental unit with a property management agreement that indicates the property will be listed for rent multiple times during the agreement as vacancies arise
- measure residential property using the RMS or engage a third party to measure property using the RMS
- calculate the RMS area
- maintain measurements, drawings, calculations, and notes in their brokerage files

Due diligence with client representation

Seller and buyer representatives must explain to their clients:

- the relationship between property size and value
- all the factors that influence buyers when they decide to purchase a property
- the different measurements such as RMS area, living space, above grade, below grade, registered condominium plan size, RPR measurement, etc.
- if required, the different measurement approaches for detached and attached properties

Accurate representation of RMS area

RECA does not require sellers or their real estate representatives to represent the size of a property when marketing it. However, if they are

including property size in their listing information or marketing materials, it needs to be an accurate representation of the RMS area. The seller's real estate representative needs to measure the property using the RMS or engage a third-party to measure the property using the RMS.

RECA's approach to complaints and discipline

RECA receives both formal complaints and information about alleged breaches of the *Real Estate Act* and *Real Estate Act Rules* (the Rules). In either case, the complainant must provide information of the alleged breach. The information prompts RECA to conduct a professional conduct review. When RECA receives a complaint or information about a possible measurement breach, the complaint typically contains evidence of how the complainant discovered the discrepancy, and the extent of the discrepancy.

In all cases, RECA applies an approach called "right-touch regulation." This means RECA's approach to compliance and enforcement of standards will be consistent, proportionate, effective, transparent, and timely. Where appropriate, it will focus on providing information, advice and suggestions for change in future behaviour. That said, RECA will utilize the full range and level of sanctions available in its overall strategy to obtain industry compliance and protection of consumers. When it is appropriate to do so, it will encourage consumer complaint resolution through the real estate professionals and brokerages that provided the services giving rise to the complaint. At the same time, RECA embraces scalable enforcement, which means deliberate or repeated professional misconduct by the same industry professional will typically result in greater penalties.

Aggravating and mitigating factors

When RECA's Professional Conduct Review Officers find sufficient evidence of a breach, they evaluate any mitigating and aggravating factors that may affect the level of the penalty. For example, if a real estate professional measures a property using the RMS but transposes numbers when adding them together, that will be a mitigating factor. Mistakes without intent sometimes happen. RECA reviews the facts of every case to determine the most reasonable outcome.

On the other hand, if a real estate professional copies measurements from a previous listing and does not measure a property themselves, in the event of a complaint about the property's size, that will be an aggravating factor.

When real estate professionals take steps to provide competent service and accurately represent RMS area, RECA will consider that as a mitigating factor even in the face of errors or innocent misrepresentation.

However, when real estate professionals are unaware of the RMS, use a different measurement, or when a misrepresentation is reckless or intentional, RECA will consider this aggravating even if the differences are small or immaterial.

Negligence – what do the courts say?

The courts continue to affirm that individuals do not buy, sell, or value residential properties based solely on cost-per-square foot. However, the size of the property is an important consideration for most consumers. Many buyers take the size of a property into account in their buying decisions including whether they are going to view a property, make an offer, or the price they are prepared to pay.

Real estate professionals in Alberta have errors and omissions insurance coverage through the Real Estate Insurance Exchange (REIX). This insurance covers financial damages to consumers because of a real estate professional's negligence.

Related information

Legislation

- *Real Estate Act* Rules - section 41(b)
- *Real Estate Act* Rules - section 42(a)

Information bulletins

- Competent Service
- Residential Measurement Standard

RECA Guide

Guide to the Residential Measurement Standard in Alberta