

GOOD CHARACTER – PROFESSIONAL CONDUCT REVIEW

Purpose: This bulletin explains how the Real Estate Council of Alberta's (RECA) good character policy applies to individuals who are subject to a professional conduct review (investigation).

This bulletin applies to all industry professionals.

Rule 42(g): What conduct undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute?

The *Real Estate Act* or Rules do not define what conduct undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute. RECA defines Rule 42(g) with reference to five key areas:

Respect for the rule of law

Public confidence in the real estate industry requires industry professionals to respect and comply with the law. RECA considers convictions under any law of any country when evaluating a person's respect for the rule of law.

Honesty

Industry professionals must conduct themselves honestly when in the care and control of money, property, and information. An honest person is truthful, trustworthy, and genuine. A dishonest person deceives or manipulates the truth by lying, misrepresenting the facts, or omitting material facts.

When dealing with RECA, the subject of a professional conduct review must:

- answer questions about an incident truthfully and completely
- address requests for information in a timely manner
- disclose all relevant information

Governability

RECA must ensure industry professionals are governable to serve public interest, protect consumers, and protect the reputation of the real estate industry. Applicants must:

- accept the responsibilities that come with being part of a self-governing profession

- respect the rules established by legislation and RECA as an essential part of the profession
- adhere to professional standards
- respond to RECA appropriately and in a timely manner
- take responsibility and be accountable for their actions

An individual's history of regulation in another profession or jurisdiction is relevant in assessing good character and reputation, and governability.

Financial responsibility

An applicant's lack of financial responsibility may demonstrate a lack of good character when they:

- intentionally avoid financial responsibility
- seek personal interest over financial obligations
- disregard contractual or legal obligations such as trust obligations

Financial concerns resulting from an economic downturn or negligent mismanagement of money or property does not necessarily demonstrate a lack of good character.

Professionalism

Professionalism is a standard of conduct based on ethics that govern the real estate industry. Professionalism means:

- fulfilling fiduciary obligations and acting in the best interest of clients
- providing competent business services to the public with integrity
- being knowledgeable in your area of practice, including legislative changes, and relevant legal or practice considerations
- acting ethically at all times
- being accountable for your actions and taking responsibility
- meeting obligations when dealing with personal or confidential information
- treating RECA, clients, industry professionals, and third parties with civility, respect, and professional courtesy
- putting the interests of your client and the profession above your own

What triggers a review on whether conduct breached Rule 42(g)?

The executive director reviews conduct after receiving sufficient particulars of a potential breach of Rule 42(g) through:

- a complaint
- any information received indicating a potential breach of Rule 42(g)
- a referral from a licensing review after a Rule 40 notification

A potential breach of Rule 42(g) may arise from past conduct or conduct during the review process.

Does RECA review private conduct?

RECA reviews and sanctions private conduct if that conduct undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

RECA may review the conduct of an industry professional if they:

- make unprofessional comments on social media about a client or transaction
- make unprofessional comments on social media about another industry professional, brokerage, or RECA
- engage in conduct that attracts media attention in the local newspaper that reflects poorly on the profession
- carry out deceitful, anti-competitive, or fraudulent activities in another business that has resulted in a judgment against them or criminal charges

What is the conduct review process and possible outcomes?

During the conduct review process, an industry professional can expect:

- notification of the conduct review with a copy sent to their broker
- questions from RECA about the conduct at issue
- an opportunity to provide an explanation
- notification of the outcome

The executive director reviews the evidence and may:

- find insufficient evidence of a breach of the legislation
- issue an advisory note (educational, not sanction)
- issue a letter of reprimand
- issue an administrative penalty
- refer the matter to a hearing panel (severe or egregious circumstances)

Industry professionals have the right to appeal Letters of Reprimand and Administrative Penalties.

Example Cases – Conduct Review Decisions:

- 1) An industry professional's conduct demonstrated a lack of governability by:
 - being rude and belligerent to a RECA investigator
 - refusing to answer questions of a RECA investigator
 - failing to provide records of a transaction

This industry professional received a fine and suspension. The Alberta Court of Appeal upheld RECA's decision.

2) An industry professional's conduct demonstrated a lack of professionalism and respect for the rule of law by driving clients while impaired. This industry professional received an Administrative Penalty.

3) A broker's conduct demonstrated a lack of professionalism by making inappropriate comments to a customer on the handling of a deposit. This broker received a Letter of Reprimand.

4) An industry professional's conduct demonstrated a lack of governability, professionalism, and respect for the rule of law by:

- gaining access to a property without permission through a basement window when the lock box wasn't working
- allowing an individual to access the property when specifically prohibited by the owner

This industry professional received an Administrative Penalty.

5) An industry professional's conduct compromised the investigative process and demonstrated a lack of governability by contacting complainants and threatening them with legal action unless they retracted their statements to RECA. This industry professional received an Administrative Penalty.

6) An industry professional's conduct breached Rule 42(g) by driving while impaired and killing another person. The Appeal Panel cancelled the industry professional's licence.

7) Industry professionals' conduct demonstrated a lack of professionalism by:

- uttering threats and profanities at another industry professional; this industry professional received a Letter of Reprimand
- sending emails with profanity to another industry professional when they were unhappy with a transaction; this industry professional received a Letter of Reprimand
- making derogatory remarks about an industry professional and their brokerage to a group of industry professionals at an open house; this industry professional received a Letter of Reprimand

Related information

Legislation

- *Real Estate Act* Rules, sections 40 and 42(g)

Information bulletins

- Good Character – Licensing
- Notice to Executive Director – Real Estate Appraisers
- Notice to Executive Director – Real Estate and Mortgage Brokerage Professionals

Other

- Licensing – Good Character Policy
- Professional Conduct Review – Good Character Policy
- [Guide to a Professional Conduct Review for Industry Professionals](#)