

PROHIBITIONS – REAL ESTATE INDUSTRY PROFESSIONALS

Purpose: This bulletin explains the prohibitions for advertising, dealing in the correct name, inducements, incentives and commissions.

This bulletin applies to real estate brokers, associate brokers and associates.

It is just as important for real estate professionals to know what they are prohibited from doing as it is for them to know their responsibilities.

Advertising

Real estate professionals must only trade in real estate in the name of the brokerage with which they are registered. This prohibition prevents real estate professionals from doing work on behalf of more than one brokerage and it prohibits them from advertising in anything but the licensed name of the brokerage with which they are licensed.

Example

Jane Doe is a real estate broker with AgentsRUs Alberta Limited, a licensed real estate brokerage. Ms. Doe includes the name AgentsRUs in all of her advertising materials, including her business cards. Unless the brokerage registers AgentsRUs as its trade name with Alberta Registries and RECA, Ms. Doe must not trade in real estate using the shortened brokerage name. All of Ms. Doe's advertising materials – including business cards – must use the full licensed name of the brokerage, AgentsRUs Alberta Limited.

Accepting and offering payments

Real estate professionals must not:

- pay any commission or referral fees in connection with trades in real estate, except through their brokerage
- accept a commission, referral fee, or other remuneration, in connection with trades in real estate, except from their brokerage

Example

Sheila Sales is a real estate associate broker in Calgary. Past clients are relocating to Vancouver and request Ms. Sales to recommend a real estate professional in Vancouver. The past clients complete a sale with the Vancouver real estate professional. The Vancouver real estate professional pays Sheila a referral fee by sending a check, in her name, to her home address. Ms. Sales must not cash the check as the check must

be payable to her brokerage. Shelia must receive payment for the referral through her brokerage.

Incentives and inducements

Real estate professionals must not:

- advertise or offer an incentive to any person except the incentives of their brokerage
- give an inducement unless the brokerage approves the inducement in writing, the brokerage gives the inducement to the client and the inducement details are in writing

Example

Jake Martin holds a licence as real estate associate. Mr. Martin advertises that he will personally pay the home inspection fees for all new buyer clients who buy a property through him in the next 90 days. This incentive is not an offer available through Mr. Martin's brokerage. Mr. Martin must not offer the incentive. The brokerage must offer the incentive and all real estate professional of the brokerage must participate in the program.

Conflicts of interest

Prior to receiving written and informed consent of the client or potential client, industry professionals must not give services when they have a conflict of interest.

One of the main fiduciary duties of an agent to their client is to avoid and to disclose conflicts of interest at the earliest practical opportunity

Example

Joe Dean is a real estate broker working with buyers who wish to buy a condominium unit in a building under construction. Mr. Dean is a minority shareholder of the corporation developing the project. Mr. Dean negotiates a contract on behalf of the buyer and does not disclose his interest in the property. Mr. Dean is in breach of the Rules and his fiduciary obligation to the buyers by not disclosing his conflict of interest of being a minority shareholder of the development company.

Other examples

- a common law brokerage represents both parties to a transaction.
- a real estate professional represents relatives or a business partner and a seller of a property
- a real estate professional wishes to purchase one of the brokerage listings
- a seller offers any buyer brokerage a bonus, in addition to the offer of compensation in the listing agreement, and the buyer's brokerage does not disclose this fact to the buyer

- a real estate professional refers their client to another service provider and receives compensation of a gift for that referral but does not disclose it to their client.

Related information

Legislation

- *Real Estate Act* Rules - section 54

Guides

- Advertising Guidelines

Information bulletins

- Advertising - Clearly Indicated
- Advertising - Licensed Name
- Incentives
- Inducements
- Teams in the Real Estate Industry