

TRADING IN REAL ESTATE AS A REAL ESTATE BROKER

Purpose: This bulletin explains when a person needs a licence from the Real Estate Council of Alberta to trade in real estate.

This bulletin applies to real estate brokerages, brokers, associate broker, associates and any person who wishes to trade in real estate on behalf of others.

Does a person need a licence to trade in real estate?

A person who trades in real estate on behalf of another and for compensation, or holds oneself out as a real estate broker, must obtain a real estate 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 purchases or sells real estate on their own behalf.

The Act defines real estate. It includes real property, leasehold property and portable dwellings (e.g. mobile home) used for residential purposes.

What is a "trade in real estate"?

A trade in real estate includes:

- a purchase or sale of real estate
- an offer to purchase or sell real estate
- an offering, advertisement or listing of real estate for purchase or sale
- the showing of real estate for the purpose of purchase or sale
- property management
- holding oneself out as trading in real estate
- the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in the bullets above
- collecting money payable as rent or condominium fees on behalf of the owner or other person in charge of real estate,
- any conduct or act to advance an activity referred to in the above bullets

You require a real estate broker's licence from RECA to conduct the above activities.

A person is not trading in real estate if they carry out the following activities:

- provide information, forms and signs

- create a website to market properties
- publish a list of properties for sale or lease

What is a purchase or sale of real estate?

A purchase includes an exchange, option, lease or other acquisition of an interest in real estate.

A sale includes an exchange, option, lease, or other disposition of an interest in real estate. A lease includes residential tenancy agreements under the *Residential Tenancies Act*.

Who is a buyer and who is a seller?

A buyer is a person acquiring or attempting to acquire an interest in real estate by purchase. A seller is a person disposing or attempting to dispose of an interest in real estate by sale and.

What is property management?

Property management includes:

- leasing or offering to lease real estate or negotiating or approving, or offering to negotiate or approve, a lease or rental of real estate
- holding money received in connection with a lease or rental of real estate
- advertising, negotiating, or carrying out any other activity, directly or indirectly, for the purpose of furthering an activity above

What does "holding oneself out" mean?

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

"Holding oneself out as a real estate broker" can include using the term "real estate broker" to describe oneself, advertising a property for sale to attract buyers, holding open houses, showing properties to potential buyers and negotiating purchase contracts on behalf of a seller or buyer. For more information, please see RECA Information Bulletin: *Holding Oneself Out*.

When a licence is not required?

A licence to trade in real estate is not required for the following:

- an assignee, custodian, liquidator, receiver, trustee or other person acting as directed by a statute or under the order of a court, or to an administrator of an estate or an executor or trustee selling under the terms of a will, marriage settlement or deed of trust
- subject to regulations, a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company trading in real estate owned or administered by it

- a person
 - who acquires real estate or any interest in real estate
 - who disposes of real estate owned by that person or in which that person has a substantial interest
 - who is an official or employee of a person acquiring or disposing of real estate within the meaning of either of the two bullets immediately preceding this one
- a condominium corporation in respect of managing its own affairs
- a person trading in real estate that consists only of mineral rights
- a member in good standing of The Law Society of Alberta acting in the course of and as part of the practice of law
- a person who is licensed under the *Land Agents Licensing Act*
- a person exempt by regulations

A substantial interest means an ownership interest in real estate of not less than 25%.

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

- An on-site manager who lives in the residential property
- A person who has a licence under the *Retail Home Sales Business Licensing Regulation*
- A non-profit organization, its employees or officials when engaged in property management for subsidized residential premises

Review the Exemption Regulation for more clarification.

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

Unlicensed assistants

In real estate brokerages, unlicensed assistants must not trade in real estate.

Examples

- An individual designs, maintains and hosts the website for a real estate brokerage. The website includes information on current listings, brokerage services and contact information for the real estate broker. These activities are not trading in real estate and a licence is not required.
- An individual collects rent from tenants and deposits the money into a bank account. This is a trade in real estate and requires a real estate broker licence.

- An unlicensed assistant holds a public open house. She tells potential buyers she is the listing agent's unlicensed assistant. Holding an open house on behalf of the owners is a trade in real estate. Although she identified herself as an unlicensed assistant, this is a trade in real estate and requires a real estate broker licence
- An owner wants to sell his home himself. He advertises his home on a for-sale-by-owner website. The company provides "For Sale" lawn signs and blank Offer to Purchase forms. Website staff does not advise the seller. They do not represent the seller or negotiate for him. Interested buyers must contact the seller directly. None of these activities requires a real estate broker licence
- Tom owns properties and does his own property management. Julia asks him to manage one of her properties. If Tom provides property management services for Julia, he requires a licence to trade in real estate
- Five couples each own 20% of a condominium unit in a resort and want to sell the property. One of the owners offers to sell the property for everyone for a percentage of the selling price. The individual requires a real estate broker licence, as he does not have a substantial interest (25% or more) in the property

Related information

Legislation

- *Real Estate Act* - sections 1(1)(u)(v)(x), s.1(2), s.2(1)(2), s.17
- *Real Estate Act Rules* – sections 1(1)(f)(w)(z)(dd)
- *Real Estate Act Exemption Regulation*

Information bulletins

- Assistants – Real Estate Brokerage
- Employees
- Trading in Real Estate – Jurisdiction