

# WHEN YOUR REAL ESTATE BROKERAGE SHUTS DOWN

**Purpose:** This bulletin explains the steps real estate professionals should take when their brokerage has shut down or their brokerage announces it will shut down. This bulletin is about licensing and client services.

**This bulletin applies to all real estate professionals.**

As a real estate professional, you have responsibilities when your real estate brokerage is no longer licensed (is shut down) or when your brokerage announces it is going to shut down. The reason for the brokerage failure does not affect your responsibilities. To ensure you are registered with a brokerage and you meet client expectations, you must take certain steps.

## Licensing

You can only be registered with one brokerage at a time. You cannot register with a new brokerage until you are no longer registered with your original brokerage. Your registration with a new brokerage depends on whether your original brokerage has already shut down or has announced it will shut down.

### **If your brokerage is no longer licensed (is shut down)**

If your brokerage is not licensed and has shut down, your registration with that brokerage cancels automatically. You can immediately transfer to a new brokerage. You and your new brokerage will use the myRECA licensing system to process your registration.

### **If your brokerage announces it is shutting down and you would like to register with a new brokerage**

If your original brokerage is still licensed, your registration with that brokerage must be cancelled before you can register with a new brokerage.

Using the myRECA licensing system, you can cancel your registration with your original brokerage, your original broker can cancel it or your new broker can cancel it.

If you cancel your registration with your original brokerage, or if your original broker cancels your registration, your new broker can start your re-registration application with the new brokerage.

If your new broker cancels your registration from your original brokerage, this will initiate your transfer application to the new brokerage.

Remember: if your brokerage has shut down and is not licensed, you cannot trade in real estate if you are not registered with a new brokerage. If your brokerage is shutting down and is still licensed, ensure you do not cancel your registration with your original brokerage until you finalize arrangements for registration with a new brokerage.

### Client service

After you have transferred to a new brokerage, you must help your clients from your original brokerage transition to your new brokerage. The service agreement is always entered into with the brokerage. There will be new documents to prepare and sign. The steps you take will depend on your client's stage in the transaction.

After the service agreement with the brokerage is signed, there are three distinct stages:

1. buyers and sellers have not yet entered into a purchase contract;
2. buyers and sellers have a conditional purchase contract; or
3. buyers and sellers have a firm sale, which has not closed

#### 1. Buyers and Sellers have not yet entered into a purchase contract If your brokerage is no longer licensed (is shut down)

As soon as a brokerage is no longer licensed, all of its service agreements with clients, both buyers and sellers, immediately end. After registering with a new brokerage, you need to obtain new service agreements so your new brokerage can work with your former clients.

#### If your brokerage announces it is shutting down but is still licensed

If your original brokerage is a **designated agency brokerage** and you transfer to a new brokerage, your clients can do one of two things: i) request your original brokerage appoint a new designated agent to fulfill the terms of their buyer or seller representation agreement with your original brokerage; or ii) not request a new designated agent and the clients' representation agreement with your original brokerage ends. If the representation agreement ends, you can enter into a new representation agreement with these clients at your new brokerage.

If your original brokerage is a **common law brokerage**, and you transfer to a new brokerage, your clients' representation agreements continue with your original brokerage. They are no longer in force if the agreements end or the brokerage is no longer licensed. You likely want to bring clients with you when you register with a new brokerage. To do this, your original brokerage can end the clients' representation agreements and facilitate the transfer of client brokerage files to your new brokerage. Or, with the

broker's co-operation before you transfer to a new brokerage, you can terminate your client's representation agreement with your original brokerage. The clients need to provide permission for your original brokerage to transfer their file to your new brokerage.

Remember: you can only be registered with and act for one brokerage at a time. For this reason, you cannot enter into new service agreements with your clients for your new brokerage until the clients' service agreements with your original brokerage have ended.

## 2. Buyers and sellers have conditional purchase contracts

### **If your brokerage is no longer licensed (is shut down)**

If your original brokerage is no longer licensed, you will not need an amendment to transfer the deposit to your new brokerage. If the brokerage was holding a trust deposit for a transaction in which you were involved, you will need to have the parties to the purchase contract (the buyers and sellers) agree to and execute an amendment to the purchase contract directing the trust funds to be transferred to a new brokerage; either your new brokerage or the brokerage representing the other party in the transaction.

Make sure you keep the other parties representative informed about your brokerage and your contact information. If the buyer wants to waive conditions, their representative will be responsible for communicating that waiver to you. Your new contact information will be important.

When your brokerage shuts down and there is a pending transaction, you need to amend the representative notice and communication section of the purchase contract to reflect your new brokerage

### **If your brokerage announces it is shutting down but is still licensed**

#### **Your brokerage represents the buyer**

When you represent a buyer and the seller's brokerage is holding the deposit in trust, nothing further needs to happen.

You will want to keep the seller's representative informed about your brokerage and your contact information.

#### **Your brokerage represents the seller**

If you transfer to a new brokerage while your original brokerage is still licensed, and your original brokerage is holding the buyer's deposit, you will likely want an amendment to the purchase contract to transfer the deposit to your new brokerage.

To do this, once your original brokerage has terminated its service agreement with the seller and the seller has entered into a new service agreement with your new brokerage, you need to seek an amendment

from the buyer and seller to the terms of trust in the purchase contract to move the deposit to your new brokerage.

If either the buyer or seller does not agree to move the deposit to your new brokerage, the buyer and seller may agree to another trustee such as the other real estate brokerage, one of the lawyers, etc.

When your brokerage is shutting down and there is a pending transaction, you need to amend the representative notice and communication section of the purchase contract to reflect your new brokerage.

### **3. Buyers and sellers have a firm sale, which has not yet closed**

The steps to follow when there is a firm sale which has not closed are generally the same as when there is a conditional transaction.

#### **If your brokerage is no longer licensed (is shut down)**

If your original brokerage is no longer licensed, you will not need an amendment to transfer the deposit to your new brokerage. If the brokerage was holding a trust deposit for a transaction in which you were involved, you will need to have the parties to the purchase contract (the buyers and sellers) agree to and execute an amendment to the purchase contract directing the trust funds to be transferred to a new brokerage; either your new brokerage or the brokerage representing the other party in the transaction.

Because the transaction has not closed, you need to amend the representative notice and communication section of the purchase contract to reflect your new brokerage and contact information.

#### **If your brokerage announces it is shutting down but is still licensed**

If your original brokerage is still licensed and is holding the buyer's deposit in trust, you need to seek an amendment from the buyer and seller to the terms of trust in the purchase contract to move the deposit to your new brokerage.

If either the buyer or seller does not agree to move the deposit to your new brokerage, the buyer and seller may agree to another trustee such as the other real estate brokerage, one of the lawyers, etc.

Because the transaction has not closed, you need to amend the representative notice and communication section of the purchase contract to reflect your new brokerage and contact information.

#### **RECA's role**

A brokerage continues to have a number of responsibilities to RECA when it is shutting down or has already shut down. Firstly, the brokerage/broker must keep all brokerage records for a minimum of three years from original date. Secondly, the brokerage must complete a closing audit. Most brokerages hold client trust funds. RECA's primary concern is consumer protection and its role is to ensure consumer funds are protected.

A brokerage must also advise RECA of its trust account arrangements and any other brokerage obligations. These could include contract assignments to another brokerage and making payments.

If a brokerage shuts down because of financial reasons or bankruptcy, RECA is not involved with creditor or court issues.

### Related information

#### Legislation

- *Real Estate Act* Rules – section 41(b)

#### myRECA tutorials

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