Real Estate Council Alberta

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RECA Resource
Information Bulletins

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Personal Trades in Real Estate

Purpose

This bulletin applies to real estate licensees. It describes the disclosures required when licensees directly or indirectly trade in real estate on their own behalf, and when they must not represent a buyer or seller.

Regulatory status: Information Bulletins provide guidance on how RECA interprets and applies existing legislative requirements. They do not create new legal requirements or amend the *Real Estate Act* or the *Real Estate Act* Rules.

Why this matters

Licensees have above-average knowledge of the factors that affect real estate trades, including property values and market performance. Through their work, they will come across properties they are interested in buying, or decide it is a good time to sell a property they own. Licensees can trade in real estate on their own behalf, depending on their brokerage policy, but if they have a direct or indirect interest in any real estate transaction, they must make certain disclosures to the other parties.

Timing of disclosures

Licensees must make written disclosures at the earliest practicable opportunity and before presenting an offer, ensuring they feel empowered and responsible for maintaining industry standards.

What the Rules require

Written disclosures to an unrepresented buyer or seller. When a licensee wishes to buy a property from an unrepresented seller, or to sell a property they own to an unrepresented buyer, they must disclose in writing:

- any direct or indirect interest they have in the transaction;
- the name of their brokerage, and that they are authorized to trade in real estate;
- complete details of any negotiations for a future trade of the real estate, or of the licensee's interest in it, to another person; and

- any information the licensee is aware of that could materially affect the value of the real estate.

Written disclosure to a represented buyer or seller. When a licensee wishes to buy a property from a represented seller, or to sell a property they own to a represented buyer, they must disclose in writing:

- that they hold a real estate licence with RECA; and
- the name of the brokerage they are licensed to trade with.

Written disclosures to acquire a property listed for sale or managed by their brokerage. When any person employed by or associated with the brokerage wishes to acquire a property the brokerage has listed for sale or manages, the brokerage must immediately disclose:

- the conflict of interest;
- the name of the buyer and their relationship to the brokerage;
- any confidential information of the seller the buyer may have already received; and
- who will be representing the buyer in the transaction;

and must provide the seller with an opportunity to seek independent legal advice. These disclosure responsibilities apply when the buyer is a licensee, director, shareholder, official, or employee of the brokerage, or an immediate family member of any of those individuals. Immediate family members include a licensee's parents, siblings, children, and spouse, as well as their spouse's parents, siblings, and children.

A licensee cannot represent the other party in personal trade

This conflict of interest is so significant that a licensee who is a party to the transaction cannot represent the other party in the same transaction. When licensees buy and sell property for themselves, they are not trading in real estate under the Real Estate Act. Under agency law and fiduciary duties:

- when a licensee is selling their own property, they cannot represent the buyer; and
- when a licensee is buying a property, they cannot represent the seller.

The Real Estate Insurance Exchange (REIX) does not provide errors and omissions insurance for personal trades.

Although a personal trade is exempt from the Real Estate Act, RECA retains the authority to review a licensee's actions that undermine public confidence in the industry or bring it into disrepute. How would a RECA hearing panel view the actions of a licensee claiming to represent the best interests of a client while acting for themselves at the same time? For example, if a licensee is involved in a personal trade with a family member or close

associate, they should consider whether this creates a conflict of interest that requires disclosure to all parties involved.

Examples

1. A licensee makes an offer to an unrepresented seller on the seller's property, planning to resell it later if a land assembly for a large retail complex comes together. When making the offer, the licensee discloses that he is an associate of ABC Realty and may resell the property later. This is not adequate disclosure; the licensee must disclose that there is a land assembly for a possible retail project. The seller must be aware that the land could be worth much more if the project goes forward. This requirement exists to prevent licensees from using inside information for their own benefit, or even from being perceived as doing so.
2. A licensee with ABC Realty owns 25 percent of a company that wishes to purchase a property listed with XYZ Realty. The licensee has a substantial interest in the purchase and must provide written disclosures. XYZ Realty represents the seller. The buying licensee must disclose that they are a licensee of ABC Realty before the seller considers the offer.
3. A licensee's mother-in-law is interested in purchasing a commercial building listed with the licensee's brokerage. The brokerage must disclose to the seller, in writing, that there is a conflict of interest because the buyer is the mother-in-law of a brokerage licensee. It must also disclose any seller's confidential information the buyer already has and identify who represents the buyer. The seller should have an opportunity to seek legal and independent advice.
4. An unlicensed individual who owns 25 percent of the shares in a commercial (non-publicly traded) real estate brokerage wishes to buy a strip mall listed with that brokerage. The brokerage must disclose in writing to the seller that there is a conflict of interest because the buyer is a shareholder in the brokerage, along with the buyer's name, any confidential information the buyer already has about the seller, and who represents the buyer. The seller should have an opportunity to seek legal and independent advice.
5. A licensee is selling a house they own through a private sale. A neighbour who knows the licensee and works in real estate expresses interest and asks what they should include in a purchase contract to avoid problems. If the licensee gives this advice, they may unintentionally be representing the buyer. A licensee must not represent another party in their own personal trade.

Related Information

Legislation	Relevant Sections
Real Estate Act Rules	ss. 41(f), 42(g), 62
Additional Resource: Information Bulletins	Conflict - Buying a Client's Property Conflict of Interest Personal Mortgage Deals