

# Rules

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1 (1) In these Rules,

- (a) “agent” means an industry member who is expressly or implicitly authorized to act for or represent another person;
- (b) “appraiser associations” means the Alberta Association of the Appraisal Institute of Canada, Alberta Assessors’ Association, and Canadian Real Estate Appraisers Association.
- (c) “automated banking machine”, “automated teller”, “ABM” or similar references refers to automated machines used by banks and other financial institutions to facilitate banking activities by their customers;
- (d) “bank account” means money maintained in a bank, loan corporation, credit union or treasury branch.
- (e) “bank reconciliation” means a schedule drawn as of a specific date to identify the differences, if any, between a brokerage’s records and the bank, trust corporation, loan corporation, credit union or treasury branch statements;
- (f) “buyer” means a person acquiring or attempting to acquire an interest in real estate by purchase;
- (g) “concurrent representation” means a situation in which a real estate brokerage or a real estate industry member represents two or more parties to a trade whose interest are seen to be in conflict;
- (h) “conflict of interest” means a real or apparent incompatibility between an industry member’s interests and the interests of the client or potential client including
  - (i) whether the industry member has any interest in the property which is the subject of the trade or anticipated trade;
  - (ii) whether the industry member is, or will be, receiving remuneration relating to the trade or anticipated trade from any other person; and,
  - (iii) the nature of the industry member’s relationship with any other person involved in the trade or anticipated trade.
- (k) “customer” means a person who has contacted, but not engaged or employed, a real estate broker or mortgage broker or real estate appraiser to provide services;
- (l) “discipline” includes a warning, reprimand, penalty, fine, educational requirement, suspension or cancellation, resignation, withdrawal, agreement, order, or an award of costs, arising from a disciplinary matter.
- (m) “dual agency” means a situation in which an industry member or brokerage represents both seller and buyer in a transaction;
- (n) “electronic” includes created, recorded transmitted or stored in digital form or in any other tangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording transmission or storage;
- (o) “exclusive buyer brokerage agreement” means a written service agreement

between a brokerage and a buyer under which the buyer grants the brokerage exclusive authority to act as agent for the buyer and the exclusive right to locate for the buyer an interest in real estate and by which the buyer may agree to compensate the brokerage on any purchase effected by the brokerage, another brokerage or the buyer;

- (p) "exclusive seller brokerage agreement" means a written service agreement between a brokerage and a seller under which the seller grants the brokerage exclusive authority to act as agent for the seller and the exclusive right to offer for sale the seller's interest in real estate and by which the seller agrees to compensate the brokerage on any sale effected by the brokerage, another brokerage or the seller;
- (q) "incentive" means anything that is advertised, communicated or offered by a brokerage to the public or a person for the purpose of attracting business to the brokerage and includes a promise, good, service, game of chance, contest, or anything else of value;
- (r) "inducement" means anything that is offered or provided by a brokerage to a person who is, or could be, a party to a real estate or mortgage transaction and is intended to either assist, persuade or cause that person to enter into a particular real estate or mortgage transaction;
- (s) "individual" means a natural person;
- (t) "lease" includes a residential tenancy agreement under the *Residential Tenancies Act*;
- (u) "licensee" means any person who holds a licence issued under these Rules;
- (v) "money received in trust," "money held in trust" and other similar references to trust money received or held by an industry member include money that
  - (i) is paid to the industry member by a party to a trade or dealing, and
  - (ii) is paid on the express or implied agreement or condition that it will be used for a specific purpose or returned to the party in accordance with the agreement or condition, or
  - (iii) is held in a bank account in the name of a client where the industry member has the authority to withdraw all or a portion of the funds in the account;
- (w) "party" means a person who is a legal party to a transaction;
- (x) "property management" includes
  - (i) leasing, negotiating, approving or offering to lease, negotiate or approve a lease or rental of real estate;
  - (ii) collecting or offering or attempting to collect money payable for the use of real estate;
  - (iii) holding money received in connection with a lease or rental of real estate;
  - (iv) advertising, negotiating, or any other act, directly or indirectly for the purpose of furthering an activity described in sub-clauses (i) to (iii).
- (y) "pooled disbursement trust account" means a bank account maintained by a

- brokerage to facilitate payment of disbursements on behalf of several clients;
- (z) “pooled trust account” means a bank account maintained by a brokerage to deposit, hold and disburse money received on behalf of several clients or several accounts for the same client;
  - (aa) “purchase” includes an exchange, option, lease or other acquisition of an interest in real estate;
  - (bb) "records" includes
    - (i) accounts, books, returns, statements, reports, financial documents or other memoranda of financial or non-financial information, whether in writing or in electronic form or represented or reproduced by other means, and
    - (ii) the results of the recording of details of electronic data processing systems and programs to illustrate what the systems and programs do and how they operate.
  - (cc) “sale” includes an exchange, option, lease, or other disposition of an interest in real estate;
  - (dd) “seller” means a person disposing or attempting to dispose of an interest in real estate by sale;
  - (ee) “sole agency” means a relationship in which an industry member acts as the agent of only one party in a trade or deal;
  - (ff) “supporting documentation” means any document the brokerage or real estate appraiser created, caused to be created or was received by the brokerage or real estate appraiser in relation to a trade in real estate, mortgage dealing or appraisal service;
  - (gg) “terminate” means to come to an end through an application process or a deeming provision in these Rules; and,
  - (hh) “trust ledger” means a record of the money held in trust for a client.
- (2) Terms defined in the Act have the same meaning when they are used in these Rules.
- (3) In these Rules, words importing male persons include female persons.

## PART 1

### LICENCES & REGISTRATIONS

#### Division 1 – Classes of Licences

2 (1) For the purposes of the Act, Bylaws and Rules there shall be the following classes of real estate brokers:

- (a) brokerage;
- (b) broker;
- (c) associate broker; and,
- (d) agent.

(2) A real estate brokerage is a person

Classes of real estate brokers

- (a) licensed by the Council as a brokerage; and,
  - (b) employs or has associated with it a licensed and registered real estate broker.
- (3) A real estate broker is an individual who
- (a) holds the qualifications of a real estate broker;
  - (b) is licensed by as a real estate broker by the Council;
  - (c) is employed by or associated with a licensed real estate brokerage in Alberta; and
  - (d) is registered with and authorized to operate a real estate brokerage and trade in real estate on behalf of that brokerage.
- (4) A real estate associate broker is an individual who
- (a) holds the qualifications of a real estate broker;
  - (b) is licensed as an associate broker by the Council;
  - (c) is employed by or associated with a licensed real estate brokerage in Alberta; and,
  - (d) is registered with and authorized to trade in real estate on behalf of that brokerage.
- (5) A real estate agent is an individual who
- (a) holds the qualifications of a real estate agent;
  - (b) is licensed as a real estate agent by the Council;
  - (c) is employed by or associated with a licensed real estate brokerage in Alberta; and,
  - (d) is registered with and authorized to trade in real estate on behalf of that brokerage.

Classes of mortgage brokers

3 (1) For the purposes of the Act, Bylaws and Rules there shall be the following classes of mortgage brokers:

- (a) brokerage;
  - (b) broker; and
  - (c) agent.
- (2) A mortgage brokerage is a person
- (a) licensed by the Council as a mortgage brokerage; and,
  - (b) employs or has associated with it a licensed and registered mortgage broker.
- (3) A mortgage broker is an individual who
- (a) holds the qualifications of a mortgage broker;
  - (b) is licensed as a mortgage broker by the Council;
  - (c) is employed by or associated with a licensed mortgage brokerage in Alberta; and,
  - (d) is registered with and authorized to operate a mortgage brokerage, and deal

in mortgages on behalf of that brokerage.

- (4) A mortgage agent is an individual who
- (a) holds the qualifications of a mortgage agent;
  - (b) is licensed as a mortgage agent by the Council;
  - (c) is employed by or associated with a licensed mortgage brokerage in Alberta; and,
  - (d) is registered with and authorized to deal in mortgages on behalf of that brokerage.

Classes of real estate appraisers

- 4 For the purposes of the Act, Bylaws and Rules there shall be the following classes of real estate appraisers
- (a) appraiser; and,
  - (b) candidate.

## Division 2 – Authorizations

Real estate brokerage authorization

- 5 A real estate brokerage licence issued by the Council under these Rules
- (a) is the authorization required under the Act in order for a real brokerage to trade in real estate or hold itself out as a real estate brokerage;
  - (b) expires on September 30 following its issuance unless it is terminated, suspended or cancelled prior to that date; and,
  - (c) may be renewed by the brokerage by submitting a completed renewal application to the executive director in a form prescribed by the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.

Real estate broker, associate broker and agent authorization

- 6 (1) A real estate broker licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a real estate broker to operate a real estate brokerage and trade in real estate on behalf of a brokerage.
- (2) A real estate associate broker or agent licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a real estate associate broker or agent to trade in real estate on behalf of a brokerage.
- (3) A real estate broker, associate broker, or agent may renew his registration certificate by submitting a completed application to the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.
- (4) An individual must not trade in real estate or in any way hold himself out as a real estate broker, associate broker or agent until such time as the individual has been issued a licence and is registered with a brokerage licensed by the Council.

Mortgage brokerage authorization

- 7 A mortgage brokerage licence issued by the Council under these Rules
- (a) is the authorization required under the Act in order for a mortgage brokerage

to deal in mortgages or hold itself out as a mortgage brokerage;

- (b) expires on September 30 following its issuance unless it is terminated, suspended or cancelled prior to that date; and,
- (c) may be renewed by the brokerage by submitting a completed renewal application to the executive director in a form prescribed by the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.

Motgage broker  
and agent  
authorization

8 (1) A mortgage broker licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a mortgage broker to operate a mortgage brokerage and deal in mortgages on behalf of a brokerage.

(2) A mortgage agent licence and registration certificate issued by the Council under these Rules constitute the authorization required under the Act for a mortgage agent to deal in mortgages on behalf of a brokerage.

(3) A mortgage broker or agent may renew his registration certificate by submitting a completed application to the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.

(4) An individual must not deal in mortgages or in any way hold himself out as a mortgage broker or agent until such time as the individual has been issued a licence and is registered with a brokerage licensed by the Council.

Appraiser and  
candidate  
authorization

9 (1) An appraiser licence issued by the Council under these Rules is the authorization required under the Act in order for an individual to carry on the practice of a real estate appraiser, or advertise or hold himself or herself out as a real estate appraiser.

(2) Subject to the limitations in these Rules, a candidate licence issued by the Council under these Rules is the authorization required under the Act in order for an individual to carry on the practice of a candidate, or advertise or hold himself or herself out as a candidate.

(3) An appraiser or candidate licence issued by Council expires on September 30 following its issuance unless it is renewed by submitting a completed renewal application to the executive director in a form prescribed by the executive director, together with any fees, premiums or levies established by the Council, by September 30 of the current licensing year.

Termination of  
authorization

10 (1) The authorization of any industry member is deemed to be terminated when the person is no longer eligible to be licensed.

(2) The licence of a real estate broker, associate broker or agent is deemed to be terminated if he fails to maintain or renew his registration certificate for a period exceeding 36 months.

(3) The licence of a mortgage broker or mortgage agent is deemed to be terminated if he fails to maintain or renew his registration certificate for a period exceeding 36 months.

Withdrawal from  
industry  
membership

11 A person withdraws from industry membership when:

- (a) a licence is deemed to be terminated in accordance with these Rules;
- (b) a licence is voluntarily terminated by the person, in a manner and form

prescribed by the executive director; or,

- (c) an application for withdrawal pursuant to section 54 of the Act is approved by Council.

Lifetime licensing prohibition

12 An application by an industry member to withdraw from the industry pursuant to section 54 of the Act approved by Council is a lifetime licensing prohibition for that industry member.

### **Division 3 – Licence Eligibility**

Registered business office

13 (1) A person is not eligible to be licensed as a real estate brokerage, mortgage brokerage, appraiser, or candidate unless the person maintains a registered business office in Alberta or the City of Lloydminster acceptable to the executive director and in accordance with these Rules and the current address of the business office is provided to the executive director.

(2) The requirement to maintain a registered business office means all of the following conditions have been met:

- (a) the office is a location from which the person conducts business;
- (b) the person has access to and control over the use of the office premises;
- (c) the office is the location where the records required to be maintained by the person in accordance with the Act and these Rules are kept; and
- (d) the office location complies with the requirements of the municipality where it is located and allows for the attendance of industry members and consumers.

(3) The registered business office shall be the address of service for the real estate brokerage, mortgage brokerage, appraiser or candidate for the purposes of the Act and these Rules.

(4) A real estate brokerage and mortgage brokerage may maintain more than one office in Alberta if:

- (a) the brokerage designates one office as the registered business office;
- (b) the broker manages the registered business office; and,
- (c) each additional office is managed by the broker or his authorized delegate.

Ineligibility for licence

14 (1) A person is not eligible to be licensed in any class of licence if:

- (a) the person has not met the requirements of the Act, these Rules or the Bylaws;
- (b) the person has not met the educational requirements or other requirements, if any, prescribed, adopted or approved by the Council for that category of licence;
- (c) the person has not passed the examination prescribed, adopted or approved by the Council for that class of licence, or been exempted from the examination by the executive director;
- (d) the person has not submitted a completed application to the executive director in the prescribed form together with the required documentation;

- (e) the person has not submitted the required application fees, levies or premiums;
- (f) the person has not provided any additional information required by the executive director within the time prescribed;
- (g) the person is someone in respect of whom a payment out of the Real Estate Assurance Fund has been made under the Act and the amount has not been repaid;
- (h) the person has failed to pay, or make satisfactory arrangements to pay with the executive director, any outstanding penalties, fines, or costs imposed pursuant to the Act, Rules or Bylaws;
- (i) the person has failed to comply with any terms or conditions imposed by a hearing panel, appeal panel or court of law;
- (j) the person has failed to comply with any licence terms, conditions or restrictions previously imposed by the executive director; or,
- (k) the person has made an application to withdraw from the industry pursuant to the Act and the application was approved.

(2) A person whose licence has been suspended or cancelled in one class is not eligible to be licensed in any other class until the suspension or cancellation period has expired.

(3) When a person's licence has been cancelled under the Act and that person applies for a new licence, that person is not eligible to be issued a new licence until 36 months have elapsed from the date of the cancellation, or such lesser or greater time as may be determined by a Hearing or Appeal Panel or the Court.

Bankruptcy

15 The bankruptcy of a person does not relieve the person from the requirements of section 14.

#### **Division 4 – Licence Requirements for Individuals**

Education, examination, and other requirements

16 (1) An individual who intends to apply for a licence must first meet the educational requirements or other requirements, if any, prescribed, adopted or approved by the Council for that class of licence.

(2) An individual who has met the educational, examination or other requirements prescribed, approved or adopted by Council for any class of licence, may then apply to the executive director for that class of licence in a form prescribed by the executive director.

(3) The executive director may grant an exemption from any or all of the educational requirements for real estate and mortgage brokers referred to in (1) above to an applicant who satisfies the executive director that the applicant has satisfactory experience and knowledge of current real estate or mortgage broker practices in Alberta, as the case may be.

Mortgage broker examinations

17 An individual who intends to apply for a real estate or mortgage broker licence must first write the Council licensing examinations prescribed, adopted or approved by the Council for that class of licence and pass those examinations with a grade that is satisfactory to the Council.

18 (1) An individual who intends to apply for an appraiser or candidate licence shall first meet the educational and examination requirements or other qualifications, if any, prescribed, adopted or approved by the appraiser associations for that class of licence.

(2) An individual who intends to apply for an appraiser licence who has never met the educational and examination requirements in outlined in (1) above or, who currently is not a member in good standing of one of the appraiser associations, must first write the examination prescribed, adopted or approved by the executive director for that category of licence and pass that examination with a grade is satisfactory to the Council.

(3) An individual described in (2) above shall be entitled to one re-write of the appraiser licence examination.

(4) An individual described in (2) above who successfully passes the appraiser licence examination must, as a condition of receiving an appraiser licence, become a member in good standing of one of the three appraiser associations prior to the renewal of the appraiser licence for the following licensing year.

(5) An individual who receives a candidate licence must complete the educational and examination requirements or other qualifications, if any, prescribed, adopted or approved by the appraiser associations for the appraiser category of licence within five years of the date the candidate licence is first issued by the Council.

(6) If a candidate fails to obtain the educational and examination requirements or other qualifications referred to in (1) above, his candidate licence shall immediately be cancelled by the executive director.

(7) A candidate whose licence has been cancelled by the executive director may apply to the executive director for an extension of time to obtain the educational and examination requirements or other qualifications referred to in this section.

(8) The application by a candidate for an extension of time referred to in (7) above shall

- (a) be in writing in the form prescribed by the executive director, and,
- (b) shall outline the reasons why the candidate has failed to complete the requirements to obtain an appraiser licence and a specific time frame as to when those requirements will be met.

(9) When a candidate licence has been cancelled pursuant to this section, that individual cannot apply for a new candidate licence for a period of two years following the date of the cancellation of his first candidate licence.

19 (1) The application for a licence must be accompanied by the following:

- (a) the fee established by Council;
- (b) an affidavit in a form prescribed by the executive director;
- (c) proof of identity of the applicant in a form and manner prescribed by the executive director;
- (d) a current and original criminal record report in the legal name of the applicant in a form and manner prescribed by the executive director;
- (e) a record of the applicant's fingerprints in a form and manner prescribed by the executive director;
- (f) for real estate brokers, the applicable Real Estate Insurance Exchange (REIX)

premium;

- (g) for real estate brokers and mortgage brokers, the applicable Real Estate Assurance levy as established by Council; and,
- (h) for real estate appraisers and candidates, their registered business office address in Alberta.

(2) In addition to the information required in (1) above, the executive director may require the individual applying for the licence to:

- (a) supply further information within a time prescribed by the executive director; and
- (b) verify by affidavit or otherwise any information then or previously submitted.

Notice of changes to licence application

20 A broker, associate broker, agent, appraiser or candidate, as the case may be, must immediately notify the executive director in writing of any changes in the information provided to the executive director in support of the application for a licence that occur during the application process or after the licence is issued.

Licence terms, conditions and restrictions

21 The executive director may, on or subsequent to issuing a licence, make it subject to any terms, conditions or restrictions with respect to trading in real estate, dealing in mortgages or real estate appraisal, as the case may be, that the executive director considers appropriate.

Professional development requirements

22 The onus is upon each industry member to be informed of all professional development requirements the industry member must meet prior to the issuance of a renewal of a licence, and to meet such requirements.

### **Division 5 – Registration Certificates**

Registration certificate

23 A registration certificate issued by the executive director under these Rules is proof of registration.

Expiry

24 A registration certificate issued by the executive director expires on September 30 following its issuance unless it is terminated or cancelled prior to that date.

Cancellation

25 A registration certificate is deemed to be cancelled when a licence is terminated, suspended or cancelled.

Registration certificate application

26 (1) A brokerage shall apply to the executive director for a broker, associate broker or agent registration certificate, as the case may be, in a form prescribed by the executive director.

(2) The application for a registration certificate shall be accompanied by the following:

- (a) the fee as established by Council;
- (b) payment of, or proof of payment of all levies, fees, premiums, fines, administrative penalties and other amounts that are payable under or pursuant to the Act or these Rules;
- (c) in the case of real estate brokers, the applicable Real Estate Insurance Exchange (REIX) premium; and

- (d) for real estate brokers and mortgage brokers, the applicable Real Estate Assurance levy as established by Council.

Application from previous industry member

27 (1) If the applicant for a registration certificate has been a previous industry member but has not been registered with a licensed brokerage in Alberta or licensed as an appraiser or candidate in Alberta for a period exceeding 90 days, the application for a registration certificate or licence, as the case may be, must be accompanied by the following:

- (a) proof of identity of the applicant in a form and manner prescribed by the executive director;
- (b) a current and original criminal record report in the legal name of the applicant in a form and manner prescribed by the executive director; and
- (c) a record of the applicant's fingerprints in a form and manner prescribed by the executive director.

(2) Sub-section (1) above does not apply to an individual whose licence has been suspended unless the Hearing Panel ordering the suspension determines otherwise.

Registration restrictions

28 (1) An individual who is registered as a broker with a real estate brokerage cannot be registered as an associate broker or agent with the same or a different real estate brokerage.

(2) An individual who is registered as a broker with a mortgage brokerage cannot be registered as agent with the same or a different mortgage brokerage.

(3) An individual cannot be registered as a broker, associate broker or agent with more than one real estate brokerage or one mortgage brokerage in Alberta at any one time.

(4) A broker who intends to become registered as a broker or associate broker with a different brokerage cannot be registered as a broker or associate broker with that brokerage until arrangements for any monies held in trust or the trust account(s) of the previous brokerage have been confirmed and are satisfactory to the executive director.

### **Division 6 – Licence Requirements for Brokerages**

Brokerage application

29 (1) A person who applies to be licensed as a real estate or mortgage brokerage must apply to the executive director in a form prescribed by the executive director.

(2) The application for a brokerage licence must:

- (a) be completed and signed by an individual who is qualified to hold a broker licence in Alberta and who is concurrently applying to be the registered broker for the brokerage;
- (b) state the ownership structure of the brokerage and, if there are multiple owners, their respective percentage share of ownership and the names of the individual or individuals who have the controlling interest;
- (c) state the fiscal year of the brokerage;
- (d) state the location(s) and account number(s) of the brokerage trust account(s);
- (e) state the registered business office address of the brokerage in Alberta;
- (f) be accompanied by an affidavit in a form prescribed by the executive director;

and,

(g) be accompanied by the application fee established by Council.

(3) In the case of a partnership or corporation applying for a brokerage licence, in addition to the information required in (2) above, the application must contain the names of the partners or the officers and directors of the brokerage, as the case may be.

(4) The executive director may require

- (a) further information be submitted by an applicant for a brokerage licence within a time specified by the executive director; and
- (b) any information then or previously submitted be verified by affidavit or otherwise.

Registered broker

30 (1) An individual applying to be the registered broker for a brokerage that is a partnership or corporation must:

- (a) in the case of a partnership, be a partner or a manager designated by the partnership; and
- (b) in the case of a corporation, be a member of the board of directors of the corporation, an officer of the corporation or a manager designated by the corporation.

(2) If the individual applying to be the registered broker of a brokerage

- (a) is not the owner of the brokerage, or,
- (b) does not have a controlling interest in the ownership structure of the brokerage,

the executive director may request, as a condition of issuing a brokerage licence, that one or more individuals who are the owners of the brokerage or have a controlling interest in the ownership of the brokerage provide a guarantee or security which in the opinion of the executive director is necessary to ensure the brokerage complies with the provisions of the Act, Rules and Bylaws.

(3) The individual registered as the broker for a brokerage shall at all times meet the qualifications of a broker and be eligible to be licensed as a broker under these Rules.

Notice requirements

31 A brokerage must immediately notify the executive director in writing of

- (a) any circumstance where the broker is no longer able to perform the duties and responsibilities of a broker outlined in these Rules;
- (b) the termination or resignation of the broker or any associate broker or agent who is registered with the brokerage;
- (c) a change in the address of the brokerage's business office registered with the Council;
- (d) a change in the bank, loan corporation, trust corporation, credit union or treasury branch, or location at which the brokerage maintains a trust account;
- (e) a change in the partners if the brokerage is a partnership; or,
- (f) a change in the officers or directors of a corporation if the brokerage is a corporation.

Change of fiscal year end

32 A licensed brokerage may change its fiscal year end by giving written notice to the executive director, providing the amended fiscal year end does not result in a reporting period of greater than 12 months.

### **Division 7 – Refusal of a Licence or Registration Certificate**

Refusal

33 (1) The executive director may refuse to issue a licence or registration certificate to a person, or recommend to a hearing panel to refuse to issue a licence or registration certificate, where the executive director is of the opinion that

- (a) the person has provided false or misleading information to the executive director in the course of applying for a licence or registration certificate or the renewal of either;
- (b) the person is someone against whom a member of the public has obtained a judgment arising out of that person's action as an industry member and no reasonable arrangements have been made to satisfy it;
- (c) the person has failed to cooperate as required under the Act or these Rules; or
- (d) it would not be in the public interest or it would harm the integrity of the industry or bring the industry into disrepute to issue a licence or a registration certificate to that person.

(2) If an application for a licence or registration certificate is refused by the executive director or a Hearing Panel, the application fee, less any service fee established by Council, shall be returned to the applicant.

Review of refusal

34 (1) A person who has had terms, conditions or restrictions imposed, under section 21 or been refused a licence or registration certificate under section 33, may, within 30 days after being notified in writing of the decision, request a review of the decision by a Hearing Panel appointed under the Act.

(2) The Hearing Panel is not required to afford the person requesting the review the opportunity to make oral representations or to be represented by counsel if the person is, in the opinion of the Panel, afforded adequate opportunity to make written representations.

(3) The Hearing Panel may conduct any enquiries, in addition to those made by the executive director, it considers appropriate for the purposes of the review and, in the case of a refusal of a licence or registration certificate, may treat the request for review as an original application for a licence or registration certificate.

(4) The executive director shall serve in accordance with the Act the decision of the Hearing Panel on the person requesting the review and, where the decision upholds the decision of the executive director, the decision shall be accompanied by reasons.

(5) The Hearing Panel's decision is final.

### **Division 8 – Suspension & Cancellation of Licences**

Suspension or cancellation of licence

35 (1) In addition to the circumstances under which a licence may be suspended or cancelled under the Act, the executive director may suspend or cancel a brokerage, appraiser or candidate licence for any of the following reasons:

- (a) when the brokerage, appraiser or candidate fails to maintain proper records at the brokerage's business office registered with the Council;
- (b) when the brokerage, appraiser or candidate fails to immediately fund a trust shortage as directed by the executive director; or,
- (c) when an investigator or auditor employed by the Council is denied or restricted access to the registered business office or to any or all of the records of the brokerage, appraiser or candidate or is, in any way, prevented from carrying out his duties and responsibilities under the Act.

(2) When the executive director receives information that, in his opinion, indicates the individual who is registered as the broker for a particular brokerage:

- (a) does not meet the qualifications of a broker,
- (b) is not in compliance with section 30,
- (c) has resigned or ceased to be the broker,
- (d) is no longer able to perform the duties and responsibilities of a broker outlined in these Rules,
- (e) exercises little or no authority, or,
- (f) is interfered with, restricted or in any way prevented from, performing the duties and responsibilities of a broker outlined in these Rules,

the executive director may suspend the licence of the brokerage.

Temporary continuation of brokerage licence

36 (1) Notwithstanding section 35, the executive director may continue the licence of the brokerage:

- (a) by issuing a temporary broker licence and registration certificate to any individual who, in the executive director's opinion is suitable to carry out the duties and responsibilities of a broker under these Rules; or,
- (b) upon the immediate written application to the executive director by the owner of the brokerage or an authorized official, to register a replacement broker within seven days.

(2) The term of a temporary broker licence and registration certificate shall not exceed eight months.

(3) The application to register a replacement broker must include information acceptable to the executive director and provide for the continuation of brokerage management and control in the interim period.

Brokerage ceasing to carry on business

37 (1) A brokerage that ceases to carry on the business of a brokerage shall

- (a) immediately notify the executive director in writing; and
- (b) within 30 days of ceasing to carry on business, provide to the executive director, in a form acceptable to the executive director, an accountant's report on the status of monies held in trust including any trust account(s).

(2) The executive director may require a brokerage that ceases to carry on business provide additional information about any monies held in trust including any brokerage's trust account(s) or that the accountant's report contain such further information as the

executive director directs.

(3) Upon receipt of a notification that a brokerage has ceased to carry on the business of a brokerage, the executive director shall

- (a) suspend the licence of the brokerage; and,
- (b) terminate the licence of the brokerage when the brokerage has provided:
  - (i) the accountant's report referred to in (1) above;
  - (ii) the additional information referred to in (2) above; and,
  - (iii) a document signed by the broker, owner or authorized official, satisfactory to the executive director, confirming adequate arrangements have been made with respect to the future status of any monies held in trust including any brokerage trust account(s) and the maintenance of brokerage records as required by the Act.

Suspension or  
cancellation of  
industry member  
licence

38 In addition to the circumstances under which a licence may be suspended or cancelled under the Act, the executive director may suspend or cancel a licence of any industry member for any of the following reasons:

- (a) when, subsequent to issuing the licence, the executive director receives information that, in the executive director's opinion, establishes the applicant provided false or misleading information to the executive director in the process of applying for a licence;
- (b) when, subsequent to issuing the licence, the industry member fails to provide notice or information to the executive director pursuant to these Rules;
- (c) when upon reviewing the information contained in the notice provided or the additional information provided pursuant to these Rules, the executive director concludes that such action would be in the public interest;
- (d) when, based on information received concerning the conduct of an industry member, the executive director concludes it would not be in the public interest to continue to licence that industry member or where the continuation of that industry member's licence would harm the integrity of the industry or bring the industry into disrepute;
- (e) when the licensed person fails to pay as required by the Act, these Rules and the Bylaws any levy, fee, premium, fine, administrative penalty or other amount required to be paid;
- (f) when the licensed person fails to comply with an order of a hearing panel, appeal panel or court of law;
- (g) when the licensed person fails to file or submit any records or accounting reports as required under the Act, these Rules or the Bylaws;
- (h) when the licensed person fails to comply with any request for information made by the executive director or the Council or to reply in a constructive way to correspondence from the executive director or the Council; and,
- (i) when the licensed person contravenes a term, condition or restriction attached to the person's licence.

Review of

39 (1) An industry member whose licence has been suspended or cancelled pursuant to

suspension or  
cancellation

section 38 may, within 30 days after being notified in writing of the decision, request a review of the decision by a Hearing Panel appointed under the Act.

(2) The Hearing Panel may conduct any enquiries, in addition to those made by the executive director, it considers appropriate for the purposes of the review and, in the case of a refusal of a licence or registration certificate, may treat the request for review as an original application for a licence or registration certificate.

(3) The executive director shall serve in accordance with the Act the decision of the Hearing Panel on the person requesting the review and, where the decision upholds the decision of the executive director, the decision shall be accompanied by reasons.

(4) The Hearing Panel's decision is final.

### **Division 9 – Information to be Provided by Industry Members**

Notification by  
licensees

40 (1) A licensee must immediately notify, in writing, the executive director when

- (a) the licensee is disciplined by any real estate board, real estate, mortgage broker association, or appraiser association, or any professional, occupational body or regulatory body;
- (b) the licensee has any judgment(s) rendered against the licensee in relation to the provision of services or sale of goods to consumers;
- (c) any business the licensee owns, or has participated in as a director or officer, has any judgment(s) rendered against the business;
- (d) the licensee is the subject of any bankruptcy proceedings;
- (e) any business owned by the licensee, or has participated in as a director or officer, is the subject of any bankruptcy or receivership proceedings;
- (f) proceedings pursuant to the Criminal Code are commenced against the licensee;
- (g) the licensee is convicted of any criminal offence or any other offence under any law of any country, province or state, excluding provincial or municipal highway traffic offences resulting in monetary fines only; or
- (h) the name of the licensee changes.

(2) In addition to providing a written notice, the licensee must provide particulars and any additional information or documentation requested by the executive director.

(3) In the case of an associate broker or agent, a copy of the notice provided to the executive director must be provided by the licensee to the broker.

## **PART 3 INDUSTRY STANDARDS OF PRACTICE**

### **Division 1 – Standards of Conduct for Industry Members**

Industry member  
responsibilities

41 Industry members must:

- (a) practice in strict accordance with the Act, Rules, Bylaws and Regulations and any other laws that govern trading in real estate, mortgage transactions or appraisals in Alberta;

- (b) act honestly;
- (c) provide competent service;
- (d) disclose the cost of their services in writing;
- (e) fulfill their fiduciary obligations;
- (f) ensure the role of the industry member is clearly understood by their clients and third parties;
- (g) disclose, at the earliest practical opportunity, any conflict of interest they may have in the course of providing services to, or in their dealings with, a client;
- (h) practice in strict accordance with the Act, Rules, Bylaws and Regulations and any other laws that govern the provision of services to clients; and,
- (i) cooperate fully with, and provide any information requested to, any representative of the Council carrying out their duties and responsibilities under the Act.
- (j) comply with
  - (i) an order issued pursuant to the Act by the Council, the executive director, a hearing panel, appeal panel or court; and
  - (ii) any terms, conditions or restrictions of licensing.

Industry member prohibitions

42 Industry members must not:

- (a) make representations or carry on conduct that is reckless or intentional and that misleads or deceives any person or is likely to do so;
- (b) participate in fraudulent or unlawful activities in connection with the provision of services or in any dealings with the public;
- (c) use confidential information obtained from any person for personal gain nor should that information be used for any purpose other than which it was obtained;
- (d) discourage a client, customer or a party to a trade in real estate or deal in mortgages from seeking legal counsel or expert advice;
- (e) deny professional services to, or be a party to any plan or agreement to discriminate against, any client, customer or party to a trade in real estate or deal in mortgages for reasons of race, creed, colour, gender, sexual orientation, family status, marital status, age, national origin, or physical disability;
- (f) physically, sexually, emotionally or verbally abuse a client, customer, industry member or party to a trade in real estate, deal in mortgages, or appraisal services; or
- (g) engage in conduct that undermines public confidence in the industry, harms the integrity of the industry, or brings the industry into disrepute.

Written service agreements

43 (1) Unless waived by the prospective client in writing, an industry member who establishes a client relationship must enter into a written service agreement with that person.

- (2) Every written service agreement shall:
- (a) be signed by the relevant parties;
  - (b) clearly show all terms and conditions of the agreement and shall include:
    - (i) the names of the parties to the agreement;
    - (ii) if applicable, the address or legal description of the property affected by the agreement;
    - (iii) if applicable, the date on which the agreement will become effective;
    - (iv) a single expiry date (that is less than 12 months from the date on which the agreement will become effective);
    - (v) the services to be provided by the brokerage or real estate appraiser;
    - (vi) the responsibilities of each party to the agreement;
    - (vii) the use and distribution of personal information;
    - (viii) the amount or method of calculating the remuneration or alternate compensation to be paid and the circumstances on which it will be payable; and,
  - (c) shall provide that any amendment or addition to the terms of the agreement shall be in writing and signed by the relevant parties.
- (3) An industry member must deliver a true copy of a service agreement, and of any amendment or addition, immediately upon its signature.

Protection of client information

44 (1) In addition to the requirements of relevant legislation on the protection of personal information, an industry member must not disclose information regarding a client, property or transaction to another person unless

- (a) authorized by the client, or
- (b) required by law.

(2) Each real estate brokerage, mortgage brokerage, real estate appraiser and candidate will establish adequate policies and procedures for the maintenance and protection of confidential information.

(3) Each real estate and mortgage brokerage will ensure all industry members registered with the brokerage and its staff is aware of the policies and procedures referred to in (1) above and routinely carry them out in the course of their work.

(4) Each real estate appraiser and candidate will ensure his respective staff members are aware of the policies and procedures referred to in (1) above and routinely carry them out in the course of their work.

Referral disclosure

45 (1) An industry member cannot accept a fee or other remuneration for the referral of a party to a trade in real estate, deal in mortgages, or appraisal assignment to another person unless, before the referral is made, the industry member discloses in writing to that party

- (a) the nature of the referral;
- (b) that a referral fee will be paid or is likely to be paid; and,

- (c) the amount of the fee or, if the amount of the fee is unknown, the likely amount of the fee or method of calculation of the fee.

(2) An industry member cannot pay a fee or other remuneration for the referral of a party to a trade in real estate, deal in mortgages, or appraisal assignment to the industry member unless, before a service agreement is entered into, the industry member discloses in writing to that party

- (a) the source of the referral;
- (b) that a referral fee will be paid or is likely to be paid; and,
- (c) the amount of the fee or, if the amount of the fee is unknown, the likely amount of the fee or method of calculation of the fee.

(3) If an industry member makes a referral to another person they believe to be an industry member, the industry member must take reasonable steps to ensure the person is in fact authorized to carry out the activities for which the referral is made.

Support personnel  
and assistants

46 (1) An industry member must only assign to support personnel or assistants tasks they are competent to perform and must ensure they are properly trained and supervised.

(2) An industry member must not delegate, assign, request, direct or in any way allow an unlicensed or unregistered assistant to perform tasks that must only be performed by an industry member.

(3) In the case of an unlicensed or unregistered assistant, the industry member must ensure clients, customers and the public have full knowledge that the assistant is unlicensed or unregistered.

(4) An industry member must ensure in any communication, advertising or marketing material there is no suggestion, implication or statement that may suggest or lead the public to believe an unlicensed or unregistered assistant is qualified to trade in real estate, deal in mortgages, or perform real estate appraisals, as the case may be.

## **Division 2 – Real Estate Brokerage Standards**

Definition

47 This Division applies to all classes of real estate brokers and a reference to “industry member” includes a real estate brokerage, broker, associate broker and agent.

Agency  
relationship

48 For the purposes of this division

- (a) An agency relationship is established when a buyer or a seller expressly or implicitly consents that an industry member should act on his or her behalf, and the industry member consents so to act or so acts in a trade of real estate.
- (b) A buyer or seller who is in an agency relationship is a client of the industry member.
- (c) A buyer or seller who is not in an agency relationship with the industry member is a customer.
- (d) An agency relationship is established expressly when the client and the industry member agree that the industry member will be the agent of the client.

- (e) An agency relationship may be established implicitly when an industry member
  - (i) provides advice on which the client relies, or
  - (ii) receives confidential advice from a client such as the lowest price a seller will consider or the highest price that a buyer is willing to pay.

Real estate  
brokerage  
responsibilities

49 A real estate brokerage must

- (a) only trade in real estate in the name that appears on the brokerage's licence; and
- (b) ensure the name of the brokerage is clearly indicated in the course of trading in real estate including any related advertisements.

Real estate  
brokerage  
prohibitions

50 A real estate brokerage must not

- (a) employ, permit or engage a broker, associate broker or agent registered with another brokerage to trade in real estate in its name or on its behalf, directly or indirectly, as the case may be;
- (b) employ a person to trade in real estate unless that person meets the requirements of the Act, these Rules, and the Bylaws, and all levies, fees, premiums, fines, administrative penalties and other amounts that are payable under or pursuant to the Act, these Rules, or the Bylaws or under any predecessor enactments in respect of that person have been paid;
- (c) pay a commission or other remuneration, directly or indirectly, in connection with a trade in real estate except
  - (i) to a broker, associate broker or agent employed by the brokerage or to not more than one corporation of which that broker, associate broker or agent, as the case may be, owns not less than fifty percent (50%) of the shares issued by that corporation;
  - (ii) to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta; or
  - (iii) to an auctioneer qualified under the regulations under the Fair Trading Act, where the trade in real estate is made in the course of and as part of that person's duties as auctioneer;
- (d) pay or offer any money or anything of value for the receipt of leads or referrals from an unlicensed person; or,
- (e) pay a commission or other remuneration directly or indirectly in connection with a trade in real estate to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta when the brokerage has knowledge that the commission or remuneration will be paid to or be shared with an unlicensed person.

Real estate broker  
responsibilities

51 (1) A real estate broker must:

- (a) be actively engaged in the management of the real estate brokerage with which the broker is registered;
- (b) trade in real estate only in the name that appears on the individual's licence

- and in the name of the brokerage with which the broker is registered;
- (c) ensure the name of the brokerage is clearly indicated in the course of trading in real estate, including any related advertisements;
  - (d) ensure the business of the brokerage is carried out competently and in accordance with the Act, the Bylaws, and these Rules;
  - (e) ensure there is an adequate level of supervision for associate brokers, or agents, as the case may be, within the brokerage and employees who perform duties on behalf of the brokerage;
  - (f) provide all industry members of the brokerage and other personnel with written policies and procedures by which they are expected to operate;
  - (g) ensure that for all monies held in trust, the bank records are maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees;
  - (h) must ensure adequate control over any access to ABM cards used for electronic deposits and transfers and any access codes used for Internet banking or ABM cards;
  - (i) review all real estate agreements in a timely manner, including but not limited to client/customer relationships and accepted offers to purchase;
  - (j) ensure proper management and control of documents or records related to licensing, registrations and related regulatory requirements; and,
  - (k) ensure all documents and records related to trades in real estate required under the Act and these Rules are maintained by the brokerage at the registered business office of the brokerage.

(2) When a broker does not have a controlling interest in the ownership of the real estate brokerage, the broker must have a written agreement with the brokerage giving the broker authority to carry out the duties and responsibilities of a broker under these Rules.

(3) A broker is accountable for the conduct of an associate broker, agent or employee, as the case may be, if the broker

- (a) was not actively involved in the management of the brokerage;
- (b) failed to ensure an adequate level of supervision was in place for the associate broker, agent or employee, as the case may be;
- (c) was willfully blind to the conduct of the associate broker, agent or employee, as the case may be;
- (d) was a participant in the misconduct;
- (e) had knowledge of the misconduct of the associate broker, agent or employee, as the case may be, and failed to take reasonable steps to stop such misconduct;
- (f) upon becoming aware of the misconduct failed to take reasonable steps to correct the misconduct or reduce any harm that may have resulted from the misconduct, or
- (g) failed to notify the executive director upon becoming aware of misconduct

relating to fraud, misrepresentation, deception, theft, or unlawful activities on the part of the associate broker, agent, or employee.

Delegation by broker

- 52 (1) A real estate broker may delegate the broker's duties and responsibilities to another industry member associated with the brokerage so long as
- (a) the delegate is registered with the brokerage and is qualified to carry out the responsibilities;
  - (b) the particulars of the delegation of responsibilities by the broker to the delegate are clear and in writing, and are agreed to and understood by the broker and the delegate;
  - (c) the particulars of the delegation are communicated to the employees, associates of the brokerage, associate brokers, and agents, as the case may be; and
  - (d) the broker has a system in place to monitor the delegate and verify that adequate supervision is being maintained.
- (2) In the event a real estate broker delegates the broker's duties and responsibilities to a delegate, the broker remains accountable for the conduct of the delegate and all associate brokers, agents or employees in the brokerage.

Real estate associate broker and agent responsibilities

- 53 A real estate associate broker and agent must
- (a) trade in real estate only in the name that appears on that individual's licence and in the name of the brokerage with which that individual is registered;
  - (b) ensure that all trades in real estate and the relevant documentation meet legislative requirements found under the Act, the Bylaws, and these Rules;
  - (c) provide to the broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages:
    - (i) related to a trade in real estate; and
    - (ii) required under the Act and these Rules;
  - (d) keep the broker informed of the activities being performed by the associate broker or agent on behalf of the brokerage;
  - (e) notify the broker of any personal trades in real estate or deals in mortgages, as the case may be; and,
  - (f) notify the broker upon learning of a violation of the Act, the Bylaws, or these Rules by any broker, associate broker, agent or employee associated with a brokerage.

Real estate broker, associate broker and agent prohibitions

- 54 (1) A real estate broker, associate broker or agent, as the case may be, must not
- (a) trade in real estate on behalf of a brokerage other than the brokerage with which he is registered;
  - (b) promise to pay or pay a commission, referral fee or other remuneration, directly or indirectly, to any person resulting from or in connection with a trade in real estate except through the brokerage with which he is registered;

- (c) accept a commission, referral fee or other remuneration, directly or indirectly, for a trade in real estate except through the brokerage with which he is registered; and
- (d) directly or indirectly, advertise, communicate or offer to any person an incentive except an incentive that is provided by and on behalf of the brokerage with which he is registered.

(2) A real broker, associate broker or agent, as the case may be, must not directly or indirectly, provide an inducement unless the inducement is provided by and on behalf of the brokerage with which they are registered, details of the inducement are provided in writing and the broker has provided written approval.

(3) An incentive or inducement cannot be money or a sharing of commissions or remuneration.

(4) An industry member shall not provide any services to the client or potential client in a trade or anticipated trade in which the industry member has, or will have, a conflict of interest without receiving the written and informed consent of the party.

Disclosure requirements

55 (1) Before eliciting or as soon as possible upon receiving confidential information from any person concerning that person's real estate needs, motivation, financial qualifications or in any event before entering into a service agreement, an industry member must disclose in writing to that person

- (a) the nature of the services the industry member will provide,
- (b) whether the industry member is acting in the trade or anticipated trade on behalf of any other person, in any capacity,
- (c) any conflict of interest that may exist, and
- (d) any other facts that may be likely to influence the person's decision.

(2) If subsequent to this disclosure, there is any material change in the facts which have been disclosed, the industry member must immediately disclose the change to that person.

(3) The industry member must use his best efforts to obtain written acknowledgement of all disclosures made by the person to whom they were made.

(4) The duty of disclosure is not triggered merely by

- (a) a bona fide "open house" showing;
- (b) preliminary conversations or "small talk" concerning the price range, location and property styles; or
- (c) responding to general factual questions from a potential buyer or seller.

Exclusive agreements

56 An exclusive buyer brokerage agreement or exclusive seller brokerage agreement between an industry member and a client must be set out in writing using one of the standard or supplementary agreements that complies with the provisions contained in these rules or prescribed by Council.

Sole agency with a seller

57 The basic obligations of an industry member who is in a sole agency relationship with a seller are

- (a) to use best efforts to market the property and to promote the interests of the

seller;

- (b) at the earliest reasonable opportunity, to advise any buyer interested in the property that the industry member is the seller's agent;
- (c) subject to section 59 to act as only the seller's agent;
- (d) to obey all lawful instructions of the seller;
- (e) to fulfill its fiduciary duties of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the seller's interests and those of the industry member or buyers;
- (f) not to appoint another brokerage to act on behalf of the seller as sub-agent without the seller's prior written consent;
- (g) to exercise reasonable care and skill in the performance of the agreement;
- (h) to assist the seller in negotiating favourable terms and conditions with a buyer and in preparing and complying with a legally binding agreement of purchase and sale of the property;
- (i) to disclose to all buyers all material latent defects affecting the property known to the industry member;
- (j) to provide, in a timely manner, all offers and counter-offers to and from the seller even when the property is already the subject of an agreement of purchase and sale;
- (k) to disclose, in a timely manner, to the seller all relevant facts affecting the transaction known to the industry member;
- (l) to keep the seller fully informed regarding the progress of the transaction;
- (m) to advise the seller to obtain expert advice on matters of importance to the seller; and,
- (n) to comply with the provisions of the Act and its regulations and the rules and bylaws of the Council.

Sole agency with  
a buyer

58 The basic obligations of an industry member who is in a sole agency relationship with a buyer are

- (a) to use best efforts in locating a property in the specified market area that meets the material requirements identified by the buyer and generally to promote the interests of the buyer;
- (b) at the earliest reasonable opportunity, to advise any seller in whose property the buyer is interested that the industry member is the buyer's agent;
- (c) subject to section 59 to act as only the buyer's agent;
- (d) to obey all lawful instructions of the buyer;
- (e) to fulfill its fiduciary duties of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the buyer's interests and those of the industry member, sellers or competing buyers;
- (f) not to appoint another brokerage to act on behalf of the buyer as sub-agent without the buyer's prior written consent;

- (g) to exercise reasonable care and skill in the performance of the agreement;
- (h) to seek out and advise the buyer in a timely manner of available properties in the market area which may meet the buyer's requirements, including those listed with other brokerages and those "for sale by owner" and other available properties known to the industry member;
- (i) to discover relevant facts pertaining to any property for which the buyer is considering making an offer;
- (j) to disclose, in a timely manner, to the buyer all relevant facts known to the industry member affecting a property or transaction;
- (k) to advise the buyer to obtain expert advice on matters of importance to the buyer;
- (l) to provide, in a timely manner, all offers and counter-offers to and from the buyer even when the property is already the subject of an agreement of purchase and sale;
- (m) to keep the buyer fully informed regarding the progress of the transaction;
- (n) to disclose to the buyer the existence and terms of any competing offers known to the industry member for a property in which the buyer is interested;
- (o) to assist the buyer in negotiating favourable terms and conditions with a seller and in preparing and complying with a legally binding agreement of purchase and sale of the property; and,
- (p) to comply with the provisions of the Act and its regulations and the rules and bylaws of the Council.

Dual agency

59 (1) If the situation arises where a brokerage represents a seller with whom it has an agency relationship and a buyer with whom it has an agency relationship is interested in the seller's property, in order to facilitate the purchase and sale of the property, the buyer and the seller and the brokerage may enter into a written dual agency agreement with respect to that property.

(2) If the parties do not agree to enter into a dual agency agreement the brokerage will continue to represent the party, be it the seller or the buyer, with whom it first entered into an agency relationship and the brokerage will offer:

- (a) to treat the other party as a customer; or,
- (b) refer the other party to another brokerage.

(3) If the parties agree to enter into a dual agency agreement, the brokerage agreement will indicate how the brokerage will be remunerated and provide that

- (a) the brokerage will treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner;
- (b) the brokerage will exercise reasonable care and skill in the performance of its mandate under the agreement;
- (c) the brokerage will not negligently or knowingly give false or misleading information to the buyer or the seller;
- (d) the brokerage will obey the instructions of the buyer or the seller in so far as

- they are consistent with other terms of this agreement;
- (e) the brokerage will not disclose without the informed written consent of the buyer or seller, as the case may be:
    - (i) that the buyer may be prepared to offer a higher price or terms other than those contained in the offer to purchase or the exclusive buyer brokerage agreement;
    - (ii) that the seller may be prepared to accept a lower price or terms other than those contained in the offer to purchase or the exclusive seller brokerage agreement;
    - (iii) the motivation of the buyer or seller for wishing respectively to purchase or sell the property; and,
    - (iv) subject to clause (i) above, personal information relating to the buyer or the seller and other information disclosed at any time in confidence by either to the brokerage.
  - (f) the brokerage will perform for the buyer and the seller all necessary facilitation services, that is, services that do not require the exercise of discretion or judgment, or the giving of confidential advice or advocating on behalf of either the buyer or the seller, and, in particular, when requested by the buyer or the seller, the brokerage will:
    - (i) provide real estate statistics and information on property including all comparable property information available through the listing services or other local data bases;
    - (ii) provide standard form agreements of purchase and sale, lease or other relevant documents and acting as scribe in their preparation in accordance with the instructions of the buyer or the seller;
    - (iii) provide the names of real estate appraisers, surveyors, building inspectors, lenders, insurance agents, architects, engineers and the like, but the brokerage will not recommend any particular professional to the buyer or the seller;
    - (iv) present in a timely manner, all offers and counter-offers to and from the buyer and seller regardless of whether the property is already the subject of a contract;
    - (v) convey to the buyer and the seller in a timely manner all information that either wishes to have communicated to the other; and,
    - (vi) keep the buyer and seller fully informed regarding the progress on the transaction.
  - (g) the brokerage will disclose:
    - (i) to the buyer, all material latent defects affecting the property known to the brokerage; and,
    - (ii) to the seller, all material facts relevant to the buyer's ability to purchase the property known to the brokerage.
  - (h) the brokerage will not conduct or arrange:
    - (i) an independent inspection of the property for the buyer and will not

verify the accuracy or completeness of any information supplied or statements made by the seller concerning the property; or,

- (ii) an independent inquiry into the financial status of the buyer for the seller and will not verify the accuracy or completeness of any financial information supplied by the buyer.
- (i) the brokerage will ensure that the industry member(s) registered with the brokerage providing services to the buyer and seller under the agreement:
  - (i) comply with the brokerage policies and procedures governing dual agency; and,
  - (ii) treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner.
- (j) the brokerage will supervise the member(s) of the brokerage and support staff providing services to the buyer and seller to ensure that they properly fulfill the agreement.
- (k) the brokerage will hold all monies received in accordance with the provisions of the Act.

(4) The brokerage will provide both the buyer and seller with the opportunity to review the dual agency agreement and the buyer/seller information brochure and the opportunity to request further information concerning the dual agency agreement and dual agency relationship described in it before signing the agreement.

Customer status

60 (1) If a brokerage

- (a) acts as the agent of a seller and is requested to assist a buyer in purchasing the seller's property, or,
- (b) acts as the agent of a buyer and introduces the buyer to a seller's property
- (c) the buyer or seller for whom the brokerage is not an agent and the brokerage may enter into a customer status acknowledgement.

(2) Each customer status acknowledgement will provide that the customer has received and read both the acknowledgement and the buyer/ seller information brochure published by the Council and has been given the opportunity to request further information and independent advice concerning the acknowledgement and the representation relationships described in the brochure and that the customer:

- (a) has chosen to forgo any agency representation, together with its advantages, protection and services;
- (b) understands that the brokerage does not owe the customer any agency obligations and, in particular, any fiduciary obligations; and
- (c) understands that the brokerage will not provide the customer with any services that require the exercise of discretion or judgment, or the giving of confidential advice or the brokerage advocating on behalf of the customer.

(3) Each customer status acknowledgement shall provide that the brokerage's obligations to the customer are limited to

- (a) the exercise of reasonable care and skill in relation to activities outlined in this section;

- (b) not negligently or knowingly providing the customer with false or misleading information;
  - (c) holding all monies received from the customer in accordance with the provisions of the Act.
  - (d) complying with the provisions of the Act and its regulations, and the Rules and Bylaws of the Council.
- (4) If the customer is a buyer, the brokerage may:
- (a) provide real estate statistics and information on the property including all comparable property information available through the listing services or other local data bases;
  - (b) provide standard form agreements of purchase and sale, lease or other relevant documents and acting as a scribe in their preparation in accordance with the instructions of the customer;
  - (c) provide the names of real estate service providers, but the brokerage will not recommend any particular service provider to the customer;
  - (d) present in a timely manner, all offers and counter-offers to and from the customer regardless of whether the property is already the subject of a contract;
  - (e) convey to the seller in a timely manner all information that the customer wishes to have communicated to the seller; and
  - (f) keep the customer informed regarding the progress of the transaction.
- (5) If the customer is a seller, the brokerage may:
- (a) provide real estate statistics and information on the property including all comparable property information available through the listing services or other local data bases;
  - (b) provide standard form agreements of purchase and sale, lease or other relevant documents and acting as a scribe in their preparation in accordance with the instructions of the customer;
  - (c) provide the names of real estate service providers, but the brokerage will not recommend any particular service provider to the customer;
  - (d) present in a timely manner, all offers and counter-offers to and from the customer regardless of whether the property is already the subject of a contract;
  - (e) convey to the buyer in a timely manner all information that the customer wishes to have communicated to the buyer; and
  - (f) keep the customer informed regarding the progress of the transaction.

Delivery of documents

- 61 When an industry member receives an offer or an acceptance of an offer in writing from a party to a trade in real estate, the industry member shall, as soon as practicable,
- (a) provide that party with a true copy of that offer or acceptance; and
  - (b) deliver a true copy of that offer or acceptance to the other parties to that trade.

Personal real estate trades

62 (1) An industry member must not

- (a) trade in real estate on behalf of himself or another person until the industry member has first disclosed in writing to the parties to the trade
  - (i) any interest, direct or indirect, that the industry member or any other industry member has in the real estate as seller or buyer; and,
  - (ii) the industry member is licensed under the Act; and,
  - (iii) the name of the brokerage with which the industry member is registered.
- (b) trade in real estate on behalf of another real estate industry member until he has disclosed in writing to the parties he is dealing with that he and that other person are industry members; or
- (c) directly or indirectly, acquire or dispose of any interest in real estate for himself without first disclosing in writing to the owner or the seller of the real estate, or the legal representative of that owner or seller, as the case may be
  - (i) any information within the knowledge of the industry member that could materially affect the value of the real estate; and
  - (ii) whether or not the industry member intends to negotiate, is negotiating or has negotiated a further trade of the real estate or his or her interest in it and, if so, details of those negotiations.

(2) If an industry member intends to buy a property that is listed with the industry member's brokerage, he must disclose in writing to the seller or seller's representative that he is licensed under the Act and registered with the brokerage that has the listing.

Guaranteed sale

63 A real estate broker, associate broker or agent must not advertise, offer or enter into a guaranteed sale agreement except on behalf of the brokerage with which that broker, associate broker or agent is registered.

### **Division 3 – Mortgage Brokerage Standards**

Definition

64 This Division applies to all classes of mortgage brokers and a reference to a brokerage includes a mortgage brokerage, broker, and agent.

Mortgage brokerage responsibilities

65 A mortgage brokerage must

- (a) only deal in mortgages, as the case may be, in the name that appears on the brokerage's licence;
- (b) ensure the name of the brokerage is clearly indicated in the course of trading in real estate or dealing in mortgages, including any related advertisements.
- (c) ensure adequate control over any automated bank machine or ABM cards used for electronic deposits and transfers and any access codes used for Internet banking or ABM cards;
- (d) ensure proper management and control of documents or records related to licensing, registrations and related regulatory requirements; and,
- (e) ensure all documents and records related to deals in mortgages required under the Act and these Rules are maintained by the brokerage at the

registered business office of the brokerage.

Mortgage  
brokerage  
prohibitions

66 A mortgage brokerage must not

- (a) employ, permit or engage a broker or agent registered with another brokerage to deal in mortgages in its name or on its behalf, directly or indirectly, as the case may be;
- (b) employ a person to deal in mortgages unless that person meets the requirements of the Act, these Rules, and the Bylaws, and all levies, fees, premiums, fines, administrative penalties and other amounts that are payable under or pursuant to the Act, these Rules, or the Bylaws or under any predecessor enactments in respect of that person have been paid;
- (c) pay a commission or other remuneration, directly or indirectly, in connection with a mortgage dealing except
  - (i) to a broker or agent employed by the brokerage or to not more than one corporation of which that broker or agent, as the case may be, owns not less than fifty percent (50%) of the shares issued by that corporation;
  - (ii) to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta; or
  - (iii) to an auctioneer qualified under the regulations under the Fair Trading Act, where the trade is made in the course of and as part of that person's duties as auctioneer; or,
- (d) pay or offer any money or anything of value for the receipt of leads or referrals from an unlicensed person;
- (e) pay a commission or other remuneration directly or indirectly in connection with a dealing in mortgages to a brokerage that is licensed under these Rules or under similar legislation in a jurisdiction outside of Alberta when the brokerage has knowledge that the commission or remuneration will be paid to or be shared with an unlicensed person; or
- (f) offer a lender or investor a mortgage loan guarantee either on behalf of himself or on behalf of any other industry member.

Mortgage broker  
responsibilities

67 (1) A mortgage broker must

- (a) be actively engaged in the management of the mortgage brokerage with which the broker is registered;
- (b) deal in mortgages only in the name that appears on the individual's licence and in the name of the brokerage with which the broker is registered;
- (c) ensure the name of the brokerage is clearly indicated in the course of dealing in mortgages, including any related advertisements;
- (d) provide all industry members of the brokerage and other personnel with written policies and procedures by which they are expected to operate;
- (e) ensure the business of the brokerage is carried out competently and in accordance with the Act, the Bylaws, and these Rules;
- (f) ensure there is an adequate level of supervision for agents within the

- brokerage and employees who perform duties on behalf of the brokerage;
- (g) ensure that for all monies held in trust, the bank records are maintained in accordance with the Act, the Bylaws, these Rules and the law as it relates to trustees;
- (h) must ensure adequate control over any access to an automated bank machine ("ABM") or ABM cards used for electronic deposits and transfers and any access codes used for Internet banking or ABM cards;
- (i) ensure proper management and control of documents or records related to licensing, registrations and related regulatory requirements;
- (j) ensure all documents and records related to deals in mortgages required under the Act and these Rules are maintained by the brokerage at the registered business office of the brokerage; and
- (k) review all mortgage agreements in a timely manner.

(2) When a mortgage broker does not have a controlling interest in the ownership of the mortgage brokerage, the broker must have a written agreement with the brokerage giving the broker authority to carry out the duties and responsibilities of a broker under these Rules.

(3) A broker is accountable for the conduct of an associate broker, agent or employee, as the case may be, if the broker

- (a) was not actively involved in the management of the brokerage;
- (b) failed to ensure an adequate level of supervision was in place for the agent or employee, as the case may be;
- (c) was willfully blind to the conduct of the agent or employee, as the case may be;
- (d) was a participant in the misconduct;
- (e) had knowledge of the misconduct of the agent or employee, as the case may be, and failed to take reasonable steps to stop such misconduct; or
- (f) upon becoming aware of the misconduct failed to take reasonable steps to correct the misconduct or reduce any harm that may have resulted from the misconduct, or
- (g) failed to notify the executive director upon becoming aware of misconduct relating to fraud, misrepresentation, deception, theft, or unlawful activities on the part of the agent or employee.

Delegation by  
broker

68 (1) A mortgage broker may delegate the broker's duties and responsibilities to another industry member associated with the mortgage brokerage so long as

- (a) the delegate is registered with the brokerage and is qualified to carry out the responsibilities;
- (b) the particulars of the delegation of responsibilities by the broker to the delegate are clear and in writing, and are agreed to and understood by the broker and the delegate;
- (c) the particulars of the delegation are communicated to the employees,

associates of the brokerage, and agents, as the case may be; and

- (d) the broker has a system in place to monitor the delegate and verify that adequate supervision is being maintained.

(2) In the event a mortgage broker delegates the broker's duties and responsibilities to a delegate, the broker remains accountable for the conduct of the delegate and all agents or employees in the brokerage.

Mortgage agent  
responsibilities

69 A mortgage agent must

- (a) deal in mortgages only in the name that appears on that individual's licence and in the name of the mortgage brokerage with which that individual is registered;
- (b) ensure that all dealings in mortgages and the relevant documentation meet legislative requirements found under the Act, the Bylaws, and these Rules;
- (c) provide to the broker in a timely manner all original documentation and copies of original documents provided to the parties or maintained by other brokerages:
  - (i) related to dealings in mortgages; and
  - (ii) required under the Act and these Rules;
- (d) keep the broker informed of the activities being performed by the agent on behalf of the brokerage;
- (e) notify the broker of any personal deals in mortgages; and,
- (f) notify the broker upon learning of a violation of the Act, the Bylaws, or these Rules by any broker, agent or employee associated with a brokerage.

Mortgage broker  
and agent  
prohibitions

70 (1) A mortgage broker or agent, as the case may be, must not

- (a) deal in mortgages on behalf of a brokerage other than the brokerage with which he is registered;
- (b) promise to pay or pay a commission or other remuneration, directly or indirectly, to any person resulting from or in connection with a dealing in a mortgage;
- (c) accept a commission or other remuneration, directly or indirectly, for dealing in a mortgage from any person except the brokerage with which he is registered; and
- (d) directly or indirectly, advertise, communicate or offer to any person an incentive except an incentive that is provided by and on behalf of the brokerage with which he is registered.

(2) A mortgage broker or agent, as the case may be, must not directly or indirectly, provide an inducement unless the inducement is provided by and on behalf of the brokerage with which they are registered, details of the inducement are provided in writing and the broker has provided written approval.

(3) An incentive or inducement cannot be money or a sharing of commissions or remuneration.

Collection of fees

71 (1) Subject to section 71(2), a brokerage must not charge, collect or attempt to collect a fee from a person for assisting the person in obtaining a mortgage from a lender until the following conditions have been met:

- (a) the lender has provided a written confirmation to fund the mortgage, accepted by the borrower and the commitment has been provided to the borrower or the borrower's agent; and,
- (b) the lender or the lender's agent has provided the person with an initial disclosure statement and at least two business days have past since the initial disclosure statement was received by the person or the person has waived the time period for delivery in accordance with the Fair Trading Act.

(2) Section 71(1),

- (a) only applies to a mortgage where the person is an individual who enters into a credit arrangement primarily for personal, family, or household purposes; and,
- (b) does not apply to actual fees disbursed by the brokerage to third parties for credit reports, Alberta Registries, courier and appraisal services if a written agreement exists between the brokerage and the person where the person agrees to compensate the brokerage for these costs.

Verification of information disclosure

72 (1) A brokerage must disclose in writing to the parties to the deal in mortgages what steps have been taken by the brokerage to verify the information obtained or supplied by the brokerage to the parties, including information contained in the mortgage application, other representations made by the borrower or lender and the identity of the parties to the deal in mortgages, have been verified by the brokerage.

(2) A brokerage must maintain copies of supporting documentation in regard to the specific verification outlined in section 72(1) in the brokerage file.

Delivery of disclosure statement

73 (1) Before accepting money to be used for making a loan or an investment in a mortgage, a brokerage shall deliver to the prospective lender or investor a Lender/Investor Disclosure Statement in a form and containing the information required by the executive director.

(2) Sub-section (1) above does not apply where the prospective lender or investor

- (a) is a corporation engaged in a business consisting of or including the making of secured loans or investments in mortgages;
- (b) is a corporation making a loan or investment exceeding \$500,000; or
- (c) has previously signed a Declaration of Waiver in a form and containing the information required by the executive director.

(3) The Lender/Investor Disclosure Statement or Declaration of Waiver referred to in this section must be in duplicate and the brokerage must

- (a) obtain proof of delivery of the statement or declaration by way of an acknowledgement of delivery signed by the borrower, lender or investor, as the case may be, on the duplicate copy retained by the brokerage; and,
- (b) and maintain the duplicate copy so signed for the brokerage's records.

Delivery of documents

74 Where the brokerage directly represents the lender in its dealings with the borrower, after the completion of the deal in mortgages on behalf of the lender, and as soon as practical after funding, a brokerage must provide the borrower with

- (a) a copy of the disclosure statement required to be provided to the borrower pursuant to the Fair Trading Act.
- (b) a copy of the registered mortgage;
- (c) a copy of the certificate of title for the property affected by the mortgage;
- (d) a copy of the solicitor's report, if any, with respect to the registration and the effect of the transaction; and,
- (e) a copy of any title insurance or real property report obtained.

Personal mortgage deals

75 (1) An industry member must not

- (a) deal in mortgages on behalf of himself or another person until the industry member has first disclosed in writing to the parties to the deal in mortgages;
  - (i) any interest, direct or indirect, that the industry member or any other mortgage broker industry member has in the mortgage dealing as lender or borrower;
  - (ii) the industry member is licensed under the Act; and
  - (iii) the name of the brokerage with which the industry member is registered.
- (b) deal in mortgages on behalf of another mortgage broker industry member until he has disclosed in writing to the parties he is dealing with that he and the other person are mortgage broker industry members; or
- (c) directly or indirectly, sell or purchase mortgages, lend or borrow money secured through a mortgage, without first disclosing in writing to the borrower, lender, vendor or purchaser of the mortgage, as the case may be
  - (i) any information within the knowledge of the industry member that could materially affect the acceptance, issuance, sale or purchase of the mortgage; and
  - (ii) whether or not the industry member intends to negotiate, is negotiating or has negotiated a further disposition of the mortgage or his interest in it and, if so, details of those negotiations.

#### **Division 4 – Real Estate Appraisal Standards**

Definition

76 This Division applies to all classes of real estate appraisers and a reference to an appraiser includes a candidate.

Appraiser responsibilities

77 (1) An appraiser must perform assignments with impartiality, objectivity and independence and without accommodation of personal interests.

(2) An appraiser, when performing an appraisal assignment, must adhere to one of the following standards:

- (a) Canadian Uniform Standards of Professional Practice;

- (b) International Valuation Standards; or
- (c) Uniform Standards of Professional Appraisal Practice.

(3) An appraiser or candidate must indicate on his or her business card that they are an appraiser or a candidate, as the case may be.

Appraiser prohibitions

78 (1) An appraiser must not accept an appraisal assignment that is contingent on the result.

(2) An appraiser must not engage in appraisal assignments in which they have or may reasonably be considered by the public as having a conflict of interest.

(3) An appraiser must not perform an appraisal for a client unless, prior to commencing work on the appraisal, the appraiser has errors and omissions insurance coverage with a minimum limit of \$1,000,000.

Disclosure requirements

79 The appraiser must disclose in the appraisal report:

- (a) the licensing classification of the real estate appraiser;
- (b) the standards adhered to by the real estate appraiser;
- (c) the scope of work used to develop the appraisal report; and,
- (d) any extraordinary assumptions used to perform the appraisal assignment.

Appraisal report requirements

80 (1) Every appraisal must

- (a) identify the client or intended users;
- (b) state the intended use and purpose of the assignment; and,
- (c) bear the name and signature of the appraiser who prepared the report.

(2) Where the appraiser who prepared the report is a “candidate”

- (a) that person must be supervised by a licensed appraiser; and
- (b) the supervising appraiser must sign the report before it is provided to the client.

(3) By signing the report the appraiser is confirming the appraisal has been completed in accordance with the standards and that he or she accepts responsibility for the accuracy, content and integrity of the report.

## PART 4

### ACCOUNTING & RECORDS MAINTENANCE

Definition

81 In this part,

- (a) “appraiser means real estate appraiser and includes candidate;
- (b) “brokerage” means a real estate brokerage or mortgage brokerage unless stated otherwise; and
- (c) “client” means a client as defined in section 1(1) of these Rules, or a person on whose behalf a brokerage receives money in connection with a trade in real estate or mortgage dealing.

## Division 1 – General Requirements

### Electronic records

82 (1) A brokerage and appraiser may convert and store written, printed, or any paper records into electronic format if the following conditions are met:

- (a) the storage location and medium where the electronic records are to be stored is reliable and can reasonably be expected to maintain the integrity of the information from the time the electronic record was created;
- (b) the identity of the person who made the electronic copy of the written, printed or any paper record and date of the recording into electronic form is embedded in the document without altering the information contained in the written, printed or any paper record;
- (c) the information is maintained in an electronic form that does not materially alter the information originally contained in the written, printed or any paper record;
- (d) the record in electronic form is safeguarded by password or security codes controlled by the broker or real estate appraiser so that the record can not be altered;
- (e) the brokerage or appraiser maintains a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and reproduced in printed form in a timely manner;
- (f) the electronic records are located in a physical premise, accessible by the broker or real estate appraiser in Alberta;
- (g) the physical location where the electronic records are stored is secure and is only accessible by the broker, appraiser or by persons authorized by the broker or real estate appraiser; and
- (h) the brokerage or appraiser has a system to ensure all electronic documents created in respect to a trade or potential trade, deal or potential deal or appraisal or appraisal services are stored together or are linked so as to create a complete record of all documents or records relating to the trade or potential trade, deal or potential deal or real estate appraisal or appraisal services.

(2) A brokerage or appraiser may retain in electronic form records created, sent or received in electronic form if:

- (a) the storage location and medium where the electronic records are to be stored is reliable and can reasonably be expected to maintain the integrity of the electronic information;
- (b) where the electronic record was sent or received, information, if any, that identifies its origin and destination is also retained;
- (c) the information in electronic form is maintained in the format in which was created, sent or received, or in format that does not materially alter the information of the original record in electronic form;
- (d) the brokerage or appraiser maintains a copy of the computer program or of any other electronic devices required for the electronic records to be viewed and be reproduced in printed form in a timely manner;

- (e) the document in electronic form is safeguarded by password or security codes controlled by the broker or appraiser so that the records cannot be altered;
- (f) the electronic records are located in a physical premise, accessible by the broker or appraiser in Alberta;
- (g) the premises where the electronic records are stored are secure and are only accessible by the broker or appraiser or by persons authorized by the broker or appraiser; and
- (h) the brokerage or appraiser has a system to ensure all electronic records created in respect to a trade or potential trade, deal or potential deal or real estate appraisal or appraisal services are stored together or are linked so as to create a complete record of all documents or records relating to the trade or potential trade, deal or potential deal or appraisal or appraisal services.

(3) The broker or appraiser or a person authorized by the broker or appraiser may only delete electronic records in compliance with the record keeping requirements under the Act.

Electronic copies of trust fund cheques

83 A brokerage may receive electronic copies of cheques used to make disbursements from an account in which money is held in trust, only if copies of both the front and the back are received and the original cheque is available on request.

Depositing funds electronically

84 (1) A brokerage that deposits funds electronically, using an ABM bank card and an automatic banking machine, into an account in which money is held in trust shall maintain the automated banking machine deposit receipt that indicates the account number, time, date and amount of the deposit.

(2) A brokerage that deposits funds electronically, using the Internet, into an account in which money is held in trust shall maintain a written record signed and dated by the broker or authorized person that indicates the account number, date, amount and details of the deposit.

Electronic transfer of trust funds

85 (1) An ABM card may be used to transfer funds from an account in which money is held in trust only if the following conditions are met:

- (a) the ABM card must be issued prohibiting cash withdrawals from the account;
- (b) before funds are transferred from the account to another account there must be written supporting documentation for the transfer and an ABM record of the transfer must be produced; and
- (c) the record is reviewed, signed and dated by the broker or by a person authorized by the broker on the date of the transfer or the next business day.

(2) A brokerage shall not make an electronic transfer using Internet banking from an account in which money is held in trust unless:

- (a) there is written supporting documentation; and
- (b) a printed record providing details of the Internet transfer is produced.

(3) The printed record produced under (2) above must be reviewed, signed and dated by the broker or an authorized person on the date of the transfer or the next business day.

Bank reconciliation

86 (1) A brokerage shall prepare a bank reconciliation monthly, within 30 days of the date of the prior month's bank statement, for all accounts in which money is held in trust.

(2) As part of a bank reconciliation a brokerage shall:

- (a) identify the balances owing to each client held in trust; and,
- (b) reconcile monthly the trust liability to the reconciled bank balance as of the date of the bank reconciliation.

(3) The broker must review the monthly reconciliation under (1) above within 30 days of the date of the prior month's bank statement, and acknowledge the review by signing and dating the monthly reconciliation.

Negative trust balance prohibited

87 A brokerage shall not make any payment or allow a bank transfer out of an account in which money is held in trust if the payment or transfer would create a negative balance in a client's ledger.

Trust shortage must be funded

88 If at any time there is a shortage of money in an account in which money is held in trust, the brokerage shall deposit the brokerage's own money into the account as soon as the amount of the shortage is determined.

Notification of trust shortage

89 (1) If a brokerage is aware there is a trust shortage, the amount of which has not been determined, the broker must notify the executive director in writing of the existence of a trust shortage and what steps are being taken to determine the amount of the shortage.

(2) If a brokerage cannot immediately fund a trust shortage, the broker must notify the executive director in writing of the amount of the trust shortage and what corrective action the brokerage will be taking.

Year end report

90 A brokerage shall report to Council at the brokerage's fiscal year end with regard the operation of its accounts in which money is held in trust.

Brokerage accounting

91 (1) If a brokerage receives or holds money on the account of others, in the course of its business, the brokerage's accounting for the purposes of section 90 shall consist of the Brokerage's Representations to the Council and an Accountant's Report, both in a form and containing the information required by the executive director.

(2) The Accountant's Report must be completed by a chartered accountant, certified general accountant or certified management accountant.

(3) The Accountant's Report shall be prepared pursuant to an Engagement Letter between Accountant and Client, in a form and containing the information required by the executive director.

(4) A brokerage's accounting shall be filed with the Council not later than 3 months after the end of the brokerage's fiscal year and shall cover the fiscal year or, where the brokerage did not carry on business for the entire fiscal year, that part of the fiscal year for which the brokerage carried on business.

(5) In preparing the Accountant's Report, the accountant shall comply with the guidelines prescribed by the executive director.

Absence of trust

92 (1) For the proposes of reporting under section 90, a brokerage that has not

transactions

received or held money on the account of others in the course of its business shall file with the Council a Declaration Respecting Absence of Trust Transactions in a form and containing the information required by the executive director not later than 3 months after the end of the brokerage's fiscal year.

(2) The Declaration Respecting Absence of Trust Transactions shall cover the fiscal year or, where the brokerage did not carry on business for the entire fiscal year, that part of the fiscal year for which the brokerage carried on business.

### **Division 2 – Requirements for Real Estate Brokerages**

Definition

93 In this Division, a brokerage means a real estate brokerage.

Real estate trade records

94 (1) A brokerage shall keep separate and have available at its registered business office in Alberta or the City of Lloydminster all records for each trade or potential trade including signed copies of each service agreement, purchase contract, real estate management agreement, lease, offer and all records, accounts and supporting documentation made in the course of the brokerage's business in relation to trades or potential trades in real estate in Alberta.

(2) The records, books, accounts and supporting documentation in relation to each trade or potential trade in real estate must identify each trade or potential trade including a property management agreement by a sequential code system and use that code for the corresponding trust ledger if applicable and must contain the following:

- (a) the nature of the trade or potential trade;
- (b) a description of the real estate;
- (c) the true consideration for the trade or potential trade;
- (d) the names of the parties to the trade or potential trade;
- (e) the amount of deposit received, if any, and a record of the disbursement of it; and
- (f) the amount of commission or other remuneration received, if any, and the name of the party paying it.

(3) If the brokerage keeps in Alberta money received in trust in connection with other business, the brokerage shall keep it separate from money received in trust in connection with trades in real estate in Alberta.

Brokerage must maintain trust account

95 A brokerage must:

- (a) open and maintain at least one trust or pooled trust account for the deposit of funds received on behalf of clients or owners of real estate managed under real estate management agreements, and for the purpose of section 194 of these Rules;
- (b) ensure that the broker is an authorized signing authority for each account in which monies are held in trust and controls the receipts and disbursements on each account;
- (c) issue a written receipt if money is received in the form of cash;
- (d) ensure that cheques used to disburse funds from a trust or pooled trust

account are numbered and identified with the words "Trust Account;"

- (e) account for all cheques, including but not limited to void cheques, as part of the records maintained by the brokerage;
- (f) make every disbursement of money held in trust by cheque or bank transfer and these documents shall be cross-referenced in sufficient detail to permit them to be identified with the corresponding disbursement or disbursements recorded in the brokerage's books required by section 25 of the *Act* or by these Rules; and
- (g) not issue a cheque, allow a bank transfer or present a cheque for payment or collection unless there is in the account in which the monies are held in trust on which it is drawn, a sufficient credit balance, exclusive of tenants' conditionally refundable deposits, to cover the cheque or transfer, or there is a written agreement between a financial institution and a client guaranteeing to the brokerage the payment of funds to ensure that there are sufficient funds to cover any disbursements from an account in which monies are held in trust.

Unauthorized  
payment from trust

96 Subject to section 103 of these Rules, a brokerage shall not pay any of the brokerage's personal or general office expenses, commission of other remuneration payable to the brokerage's own authorized officials, brokers, associate brokers or agents out of an account in which money is held in trust.

Payment of  
commission from  
trust

97 (1) Subject to (2) below, all payments received by a brokerage as or on account of commission or other remuneration for a trade in real estate shall be classified as trust money and shall be paid into the brokerage's trust account notwithstanding that the commission or remuneration may already have been earned, and, where applicable, the payments shall be recorded as being received in trust for the person liable to pay the commission or other remuneration.

(2) Sub-section (1) above does not apply to a commission or other remuneration that is not to be shared between brokerages or to a share of a commission or other remuneration received from another brokerage.

(3) Any money in a brokerage's trust account which represents a commission or remuneration that has been earned and is no longer required to be held in trust shall be paid in accordance with the following rules:

- (a) any share of such commission or remuneration payable to another brokerage shall be paid to that brokerage directly out of the trust account;
- (b) after the payment pursuant to clause (a) has been made, the commission or remuneration shall be transferred into the brokerage's general account; and,
- (c) where a client fails to pay a commission or other remuneration in full when due, which is to be shared between two or more brokerages, the amount actually received shall be shared between them as they may agree and, in the absence of an agreement, the brokerage holding the commission may not withdraw any part into its general account until the other brokerage or brokerages have been paid in full.

Written leases

98 (1) All leases and rentals of real estate arranged by a brokerage shall be by a written lease.

(2) In addition to the requirements of the *Residential Tenancies Act*, each lease shall contain at least:

- (a) the name and business address of the landlord and the name and address of the tenant;
- (b) the mailing address of the real estate or the unit number or designation of the real estate, the amount and payment conditions of the rent and the rental term; and,
- (c) the amount of and the terms of for all money paid or to be paid by the tenant to the landlord, including but not limited to money for rent, prepaid rent, conditionally refundable deposits and any fees or other charges.

Ledgers

99 A brokerage that leases or manages real estate on behalf of a client shall:

- (a) prepare and maintain a ledger for each tenant from whom the brokerage receives money;
- (b) identify the ledger with the name of the tenant and the mailing address of the real estate or the applicable unit number that designates the real estate;
- (c) post in the ledger an entry for each receipt of money from, or on behalf of, the tenant; and,
- (d) for each entry posted in the ledger, record the amount of money received or disbursed as rent or conditionally refundable deposit, the date and the number of the receipt prepared with respect to the money, and the cheque number.

Financial statements

100 (1) A brokerage shall prepare each month and keep on file with respect to each client:

- (a) a statement of receipts and disbursements that records
  - (i) the balance carried forward from the statement of the previous month,
  - (ii) money and the amount received as rent for the use of real estate, for the control, management or administration of real estate and for any other trade in real estate,
  - (iii) the amount of each disbursement and to whom it was made, and
  - (iv) the balance at the end of the month; or
- (b) any other statement the client requires.

(2) A brokerage must provide the information referred to in section 104 within a reasonable period of time following a request from the client or as otherwise agreed to by the brokerage and the client.

Pooled disbursement account

101 A pooled disbursement account may be used by a brokerage to make payments only if the following conditions are met:

- (a) only money that the brokerage receives in trust in respect of a trade in real estate may pass through the account;
- (b) disbursements on behalf of a client may be made only with a transfer forthwith of money held for the client from another trust account or pooled

trust account to cover the disbursement; and

- (c) the account must be designated as a trust account.

Positive balance in trust or pooled trust accounts

102 (1) In order to maintain an adequate positive balance in a trust or pooled trust account a brokerage may lend the brokerage's own money to a client by paying the money into the account if:

- (a) the loan is made pursuant to a written agreement between the brokerage and the client that specifies the maximum amount that may be lent, the rate of interest, if any, payable by the clients and the terms on which the brokerage may demand repayment;
- (b) the outstanding amount of the loan and of the accrued interest, if any, is shown on each periodic statement rendered by the brokerage for the client; and,
- (c) the brokerage gives periodic statements to the client at least once every three months.

(2) Money paid into a trust or pooled trust account by a brokerage pursuant to (1) above may not be withdrawn by the brokerage in repayment of the loan if the withdrawal would create a negative balance in the trust account or the client's ledger.

(3) Money received from a client in repayment of a loan under (1) above shall not be processed through a trust account or a pooled trust account.

Brokerage management fees

103 If sufficient funds are available, a brokerage shall withdraw all earned management fees from the money held in trust on behalf of the client at least once each month, but not in advance unless otherwise provided in the real estate management agreement.

### **Division 3 - Requirements for Mortgage Brokers**

Definition

104 In this Division, "brokerage" means mortgage brokerage.

Mortgage deal records

105 (1) A brokerage shall keep separate and have available at its registered business office in Alberta or the City of Lloydminster all records for each mortgage deal or potential deal including signed copies of each service agreement, mortgage administration agreement, commitment letters, mortgage applications, credit bureau reports, cost of credit disclosures, investor lender disclosure, banking records, accounts and supporting documentation made in the course of the brokerage's business in relation to a mortgage deal or potential deal in Alberta.

(2) The records must identify each mortgage deal by a sequential code and use that code for the corresponding trust ledger if applicable and must contain the following:

- (a) the nature of the mortgage deal or potential deal;
- (b) a description of the real estate;
- (c) the mortgage amount;
- (d) the names of the lenders and borrowers;
- (e) the amount of the deposit or investment received, if any, and a record of the disbursements;
- (f) the amount of commission or other remuneration received, if any, and the

name of the party paying it; and,

(g) the extent of the distribution of the client's information to third parties.

(3) If the brokerage keeps in Alberta money received in trust in connection with other business, the brokerage shall keep it separate from money received in trust in connection with mortgage dealings in Alberta.

Brokerage must  
maintain trust  
account

106 When a brokerage in the course of its business receives funds on behalf of clients or investors it shall:

- (a) open and maintain at least one trust or pooled trust account for the deposit of such funds;
- (b) ensure that the broker is an authorized signing authority for each trust or pooled trust account and control the receipts and disbursements on each account;
- (c) issue a written receipt if money is received in the form of cash;
- (d) ensure that cheques used to disburse funds from a trust or pooled trust account are numbered and identified with the words "Trust Account;"
- (e) account for all cheques, including but not limited to void cheques, as part of the records maintained by the brokerage;
- (f) make every disbursement from a trust or pooled trust account by cheque or bank transfer and these documents shall be cross-referenced in sufficient detail to permit them to be identified with the corresponding disbursement or disbursements recorded in the brokerage's books required by section 25 of the Act or by these Rules; and,
- (g) not issue a cheque, allow a bank transfer or present a cheque for payment or collection unless there is, in the trust or pooled account against which it is drawn, a sufficient credit balance, to cover the cheque.

Unauthorized  
payments from  
trust

107 A brokerage shall not pay any of the brokerage's personal or general office expenses, commission or other remuneration payable to the brokerage's own authorized officials, brokers, associate brokers, or agents out of an account in which money is held in trust.

Pooled  
disbursement  
account

108 A pooled disbursement account may be used by a brokerage to make payments only if the following conditions are met:

- (a) only money that the brokerage receives in a mortgage dealing may pass through the account;
- (b) disbursements on behalf of a client may be made only with a transfer forthwith of money held for that client from another account in which money is held in trust to cover the disbursement; and
- (c) the account must be designated as a trust account.

Brokerage  
management fees

109 If sufficient funds are available, a brokerage shall withdraw all earned fees from the money held in trust on behalf of the client at least once a month.

#### **Division 4 – Requirements for Real Estate Appraisers**

110 (1) A real estate appraiser shall keep and have available at his registered business office in Alberta all supporting documentation for each appraisal service performed in Alberta.

(2) An appraiser shall keep and maintain all records, including the service agreement, work files and notes, in the appraisal file.

(3) The records, accounts and supporting documents in relation to each appraisal assignment must identify each transaction by a sequential code system and must contain the following:

- (a) the service agreement;
- (b) work files and notes;
- (c) the appraisal report; and
- (d) data or documentation to support values of adjustment entries.

(4) A real estate appraiser shall keep the records of its business with respect to appraisal services in Alberta separate from those that pertain to any other business.