



Province of Alberta

REAL ESTATE ACT

Revised Statutes of Alberta 2000
Chapter R-5

Current as of July 1, 2015

Office Consolidation

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2014 c10 s60 amends ss1(1), 2, 12, 17, 22, 25.

Regulations

The following is a list of the regulations made under the *Real Estate Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Real Estate Act		
Real Estate Exemption	111/96	80/2001, 205/2004, 60/2006, 132/2008
Real Estate (Ministerial).....	113/96	56/97, 164/98, 77/2001, 251/2001, 225/2002, 237/2003, 58/2005, 212/2005, 57/2006, 124/2008, 164/2008

REAL ESTATE ACT

Chapter R-5

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) “association” means the Alberta Real Estate Association, the
Alberta Mortgage Brokers’ Association, the Alberta

Association of the Appraisal Institute of Canada, the Alberta Assessors Association, the Canadian National Association of Real Estate Appraisers, the Building Owners and Managers Association of Edmonton, the Building Owners and Managers Association of Calgary, the Real Estate Institute of Canada and the division of the Real Estate Institute of Canada called the Institute of Real Estate Management or any successor organization to any of those associations or institutes;

- (b) repealed 2003 c31 s2;
- (c) repealed 2007 c39 s2;
- (d) “business of an industry member” means the trades of a real estate broker, the activities of a real estate appraiser referred to in clause (u.1) or the dealings of a mortgage broker undertaken by an industry member;
- (e) “bylaws” means, except in section 67, bylaws made by the Council;
- (f), (g) repealed 2007 c39 s2;
- (h) “Council” means the Real Estate Council of Alberta established under section 3;
- (i) “Court” means the Court of Queen’s Bench;
- (j) “dealing” means all or any of the activities of a mortgage broker referred to in clause (r);
- (k) “executive director” means the executive director of the Council appointed under section 8;
- (k.1) “former industry member” means a person who ceases to be an industry member;
- (l) “Foundation” means the Alberta Real Estate Foundation continued under section 64;
- (m) “Fund” means the Real Estate Assurance Fund continued under section 57;
- (n) “industry” means the real estate broker industry, the real estate appraiser industry and the mortgage broker industry;
- (o) “industry member” means any person who holds an authorization as a real estate broker, a real estate appraiser or a mortgage broker, or as any category or class of real

estate broker, real estate appraiser or mortgage broker,
issued by the Council;

- (p) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (q) “mortgage” means
- (i) a mortgage
 - (A) of real property,
 - (B) of a lease of real property, or
 - (C) of a mortgage of real property or a lease of real property,or
 - (ii) any charge
 - (A) on real property,
 - (B) on a lease of real property, or
 - (C) on a mortgage of real property or a lease of real propertyfor the purposes of securing the repayment of money or another consideration;
- (r) “mortgage broker” means
- (i) a person who on behalf of another person for consideration or other compensation
 - (A) solicits a person to borrow or lend money to be secured by a mortgage,
 - (B) negotiates a mortgage transaction,
 - (C) collects mortgage payments and otherwise administers mortgages, or
 - (D) buys, sells or exchanges mortgages or offers to do so,or
 - (ii) a person who holds out that the person is a person referred to in subclause (i);

- (r.1) “partnership” means a partnership between or among individuals or corporations or both;
- (s) “person” includes a partnership;
- (s.1) “property management” includes any of the following:
 - (i) leasing or offering to lease real estate or negotiating or approving, or offering to negotiate or approve, a lease or rental of real estate;
 - (ii) holding money received in connection with an activity referred to in subclause (i);
 - (iii) advertising, negotiating or carrying out any other activity, directly or indirectly, for the purpose of furthering an activity referred to in subclause (i) or (ii);
- (t) repealed 2007 c39 s2;
- (t.1) “purchase”, in respect of real estate, includes an exchange, an option, a lease or any other acquisition of an interest in real estate;
- (u) “real estate” means
 - (i) real property,
 - (ii) leasehold property, or
- (iii), (iv) repealed 2007 c39 s2,
- (v) a portable dwelling, other than a holiday trailer or recreational vehicle wholly or mainly used for recreational purposes, that
 - (A) is designed for use as and is used as a residence,
 - (B) is mounted on or otherwise attached to its own chassis and running gear,
 - (C) is capable of being transported on its own chassis and running gear by towing or other means, and
 - (D) is situated on a site that is used or intended to be used, or that has been represented by the owner of the site as being intended to be used, for residential purposes;
- (u.1) “real estate appraiser” means

- (i) a person who, for consideration or other compensation
 - (A) estimates the defined value of an identified interest in real estate,
 - (B) signs a real estate appraisal report that makes an estimate referred to in paragraph (A) that is prepared by another person, and accepts responsibility for the report, or
 - (C) provides real estate appraisal consulting services within the meaning of the regulations,or
- (ii) a person who holds himself or herself out as a person referred to in subclause (i);
- (v) “real estate broker” means
 - (i) a person who, for another or others and for consideration or other compensation, either alone or through one or more persons, trades in real estate, or
 - (ii) a person who holds out that the person is a person referred to in subclause (i);
- (w) “rules” means rules made by the Council;
- (w.01) “sale”, in respect of real estate, includes an exchange, an option, a lease or any other disposition of an interest in real estate;
- (w.1) “service agreement” means a contract that establishes the relationship between the parties as to the services and obligations to be performed by an industry member;
- (w.2) “substantial interest” means an ownership interest in real estate of not less than 25%;
- (x) “trade” includes any of the following:
 - (i) a disposition or acquisition of, or transaction in, real estate by purchase or sale;
 - (ii) an offer to purchase or sell real estate;
 - (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;

- (iv) property management;
 - (v) holding oneself out as trading in real estate;
 - (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);
 - (vii) collecting, or offering or attempting to collect, on behalf of the owner or other person in charge of real estate, money payable as
 - (A) rent for the use of the real estate, or
 - (B) contributions for the control, management or administration of the real estate;
 - (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vii).
- (2)** None of the following constitute an offering, advertisement, listing or showing of real estate for the purposes of subsection (1)(x)(iii):
- (a) the provision of information, forms and signs;
 - (b) the creation of a web page to market properties;
 - (c) the publication of a list of properties for disposition or acquisition.
- (3)** Repealed 2007 c39 s2.

RSA 2000 cR-5 s1;2003 c31 s2;2007 c39 s2

Application

- 2(1)** This Act as it relates to trading in real estate does not apply to
- (a) an assignee, custodian, liquidator, receiver, trustee or other person acting as directed by a statute or under the order of a court, or to an administrator of an estate or an executor or trustee selling under the terms of a will, marriage settlement or deed of trust,
 - (b) subject to the regulations, a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company trading in real estate owned or administered by it,
 - (c) a person

- (i) who acquires real estate or any interest in real estate,
 - (ii) who disposes of real estate owned by that person or in which that person has a substantial interest, or
 - (iii) who is an official or employee of a person acquiring or disposing of real estate within the meaning of subclause (i) or (ii),
- (c.1) a condominium corporation in respect of managing its own affairs,
- (d) a person trading in real estate that consists only of mineral rights, to the extent that the person is engaged in such trading,
 - (e) a member in good standing of The Law Society of Alberta acting in the course of and as part of the practice of law, or
 - (f) a person exempted by the regulations.
- (2)** A person who is licensed under the *Land Agents Licensing Act* is not required to be authorized as a real estate broker under this Act with respect to that person's activities as a land agent.
- (3)** This Act as it relates to dealing in mortgages does not apply to
- (a) subject to the regulations, a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company,
 - (b) subject to the regulations, an agent or employee of a person referred to in clause (a) in the capacity of agent or employee,
 - (c) subject to the regulations, an employee of a person dealing in mortgages as a principal while that principal is so acting in a lawful manner and while the employee is acting within the regular course of employment on behalf of that principal,
 - (d) a member in good standing of The Law Society of Alberta acting in the course of and as part of the practice of law, or
 - (e) a person exempted by the regulations.
- (4)** This Act, as it relates to acting as a real estate appraiser, does not apply to

- (a) a person who is an employee of the Government of Canada, the Government of Alberta or a municipality in Alberta, while so acting in the regular course of employment,
- (b) a person who acts as a real estate appraiser solely for the internal purposes of the person's employer and in circumstances under which it is not intended that the activities of the person will be relied on by third parties, while so acting,
- (c) a person who holds an authorization as a real estate broker and estimates value for the purposes of a trade in real estate, or
- (d) a person exempted by the regulations.

(5) This Act, as it relates to trading in real estate, does not apply in respect of any licence permitting the use of real estate for residential, commercial or other purposes.

RSA 2000 cR-5 s2;2003 c31 s3;2007 c39 s3

Part 1

Real Estate Council of Alberta

Real Estate Council of Alberta

3 The Real Estate Council of Alberta is hereby established as a corporation.

1995 cR-4.5 s3

Powers

4(1) In order to carry out its purposes, the Council has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

(2) The Council is not an agent of the Crown.

1995 cR-4.5 s4

Purposes of Council

5 The purposes of the Council are

- (a) to set and enforce standards of conduct for the industry and the business of industry members as the Council determines necessary in order to promote the integrity of the industry, to protect against, investigate, detect and suppress mortgage fraud as it relates to the industry and to protect consumers affected by the industry;

- (b) to provide services and other things that, in the opinion of the Council, enhance and improve the industry and the business of industry members;
- (c) to administer this Act as provided in this Act, the regulations, the bylaws and the rules.

RSA 2000 cR-5 s5;2006 c29 s2

Composition of Council

6(1) The Council shall consist of 12 members appointed as follows:

- (a) the Minister shall appoint one member, who must not be an industry member;
- (a.1) repealed 2007 c39 s4;
- (b) the Alberta Mortgage Brokers' Association shall appoint one member, who must be a mortgage broker;
- (c) the Alberta Real Estate Association shall appoint 6 members as follows:
 - (i) one member who must be a real estate broker trading in industrial, commercial and investment real estate and who may or may not be active in property management;
 - (ii) one member who must be a real estate broker trading in residential real estate;
 - (iii) from nominations received from the Calgary Real Estate Board, one member, who must be a real estate broker;
 - (iv) from nominations received from the Edmonton Real Estate Board, one member, who must be a real estate broker;
 - (v) from nominations received from other real estate boards in Alberta, 2 members, who must be real estate brokers;
- (d) repealed 2007 c39 s4;
- (e) the members appointed under clauses (b) and (c) shall jointly appoint 2 members as follows:
 - (i) from nominations from industry members who are not members of the Alberta Real Estate Association, one member, who must be an industry member;

- (ii) from nominations from the public at large, one member, who must not be an industry member;
- (f) the members appointed under clauses (a) to (e) shall jointly appoint 2 members as follows:
 - (i) from nominations received in accordance with the regulations, one member, who must be a real estate appraiser;
 - (ii) from nominations received in accordance with the regulations, one member, who must be a property manager.

(1.1) A member appointed under subsection (1), except under subsection (1)(a) or (e)(ii), must be an industry member.

(2) The term of office of a member appointed under subsection (1) is 3 years.

(3), (4) Repealed 2007 c39 s4.

(5) Where a vacancy occurs, the vacancy shall be filled by an appointment for the unexpired portion of the term, to be made in the same manner that the appointment of the member who is being replaced was made.

(6) If an association fails to appoint a member under this section within the time prescribed by the bylaws, the Council may appoint the member, and the member shall be considered to have been appointed by the association.

(7) If the members appointed under subsection (1)(b) and (c) fail to appoint a member under subsection (1)(e) within the time prescribed by the regulations, the Minister may appoint the member, and the member shall be considered to have been appointed by those members.

(8) A vacancy in the membership of the Council does not invalidate the constitution of the Council nor impair the right of members of the Council to act if the number of remaining members is not less than a quorum.

RSA 2000 cR-5 s6;2003 c31 s4;2007 c39 s4

Limit on terms

7 No person may serve more than 2 consecutive terms as a member of the Council.

1995 cR-4.5 s7

Executive director

8(1) The Council shall appoint an executive director, who shall be the chief administrative officer of the Council.

(2) An industry member is not eligible to be or remain executive director.

1995 cR-4.5 s8

Prohibitions

9(1) No person while a member of the Council shall do any of the following:

- (a) act in an official capacity for an association, be on the governing body of an association, be an employee of an association or otherwise act on behalf of an association in any manner other than as an ordinary member of the association;
- (b) engage directly or indirectly in any business transaction or private arrangement for a pecuniary benefit, knowledge of which is gained from or based on the person's being a member of the Council, or from confidential or non-public information gained by reason of the member's position or authority with the Council;
- (c) act in a manner, whether or not prohibited by this Act, the regulations, the rules or the bylaws, that may result in, or create the appearance of,
 - (i) using the member's position for private gain,
 - (ii) giving preferential treatment to any person,
 - (iii) impeding the Council from carrying out its purposes,
 - (iv) foregoing independence or impartiality, or
 - (v) adversely affecting the integrity of the Council;
- (d) represent the Council, explicitly or impliedly, or act in an official capacity on any matter in which the member has a real or potential personal interest, direct or indirect, in a manner that is incompatible with the member's duties under this Act, the rules or the bylaws;
- (e) contract with or otherwise accept the services of an industry member or applicant to become an industry member on terms that are more favourable than those generally available to the general public;

- (f) unless approved by the Council, accept a fee or benefit from another person on account of an occasion at which the member appears or provides a speech, lecture or publication, if the occasion is part of the official duties of the member for which compensation is being paid by the Council;
 - (g) contravene this Act, the regulations, the rules or the bylaws.
- (2)** Subject to subsection (3), a member who contravenes subsection (1) shall resign immediately on becoming aware of the contravention.
- (3)** Instead of accepting a resignation under subsection (2), the Council may suspend the member from all or any Council activities for any period of time and subject to any terms and conditions that the Council considers appropriate.
- (4)** If a member contravenes subsection (2) or any terms and conditions under subsection (3), the Council may apply by originating application to a judge of the Court for
- (a) an order determining whether the member was never qualified to be or has ceased to be qualified to remain a member under this section, or
 - (b) an order declaring the member to be disqualified from membership on the Council.
- (5)** An application under this section may be made within 3 years of the date on which the contravention is alleged to have occurred, but not after that period.

RSA 2000 cR-5 s9;2009 c53 s157

Direction by Council

10(1) In matters pertaining to or arising within the industry, the Council may by notice in writing

- (a) direct any industry member or person who the Council determines is acting in the capacity of an industry member to do immediately or within or at a specified time and in any manner directed by the Council anything that that person is or may be required to do under this Act, the regulations, the rules or the bylaws, or
- (b) forbid the doing or continuing of anything that is in contravention of this Act, the regulations, the rules or the bylaws.

(2) A person who receives a notice under subsection (1) shall comply with it in accordance with its terms.

1995 cR-4.5 s10

Bylaws

11 The Council may make bylaws

- (a) respecting the appointment and election of officers of the Council;
- (b) prescribing time periods for the purposes of section 6(6);
- (c) respecting the duties of members and officers of the Council and their remuneration;
- (d) respecting the procedure for making appointments under section 6(1)(e) and (6);
- (e) respecting the services and other things provided by or on behalf of the Council;
- (f) respecting the conduct of the business and affairs of the Council;
- (g) respecting the receipt, management and investment of contributions, donations, bequests or any other sources of revenue received by the Council;
- (h) respecting the investigation under section 38 of the conduct of an industry member;
- (h.1) respecting the procedures for appointing Hearing Panels and Appeal Panels;
- (i) subject to this Act, respecting the practice and procedure before a Hearing Panel and an Appeal Panel;
- (j) respecting the costs that may be ordered under section 40(4) or 43(2) or (2.1), awarded under section 50(5) or 83.1(5) or payable under section 48(8) or 52(8) and the amount of those costs;
- (k) prescribing the form and contents of notices of administrative penalties for the purposes of section 83;
- (l) prescribing contraventions in respect of which an administrative penalty may be imposed and prescribing the amounts of the administrative penalties that may be imposed, not to exceed the amount prescribed by the regulations for each contravention;

- (m) prescribing limitation periods for the giving of notices of administrative penalties;
- (n) respecting any other matter necessary for the administration of the system of administrative penalties.

RSA 2000 cR-5 s11;2007 c39 s5

Rules

12 The Council may make rules

- (a) prescribing or adopting standards of conduct and business standards for industry members;
- (b) respecting the form and contents of advertising carried out by industry members;
- (c) respecting the use of names by industry members;
- (d) requiring the use of standard forms for matters related to the industry and prescribing or providing for the establishment of those forms;
- (e) requiring that specified types of transactions in the business of an industry member be evidenced by an agreement in writing and that such an agreement contain specified provisions;
- (f) regulating the operation of branch offices by industry members;
- (g) respecting the disclosure of information by industry members to parties and potential parties to transactions in the business of an industry member;
- (h) establishing different classes of industry members and different classes of business of industry members for the purposes of this Act, the regulations, the rules and the bylaws;
- (i) regulating the manner in which industry members are to carry out the activities that form part of the business of an industry member;
- (j) regulating the rights, duties, powers and obligations of industry members in the carrying on of the business of an industry member;
- (j.1) regulating trading in real estate by an industry member on the industry member's own behalf;

- (j.2) respecting the manner in which or the basis on which commissions and other remuneration are to be calculated;
- (k) respecting the issuing of authorizations for the purposes of section 17, including, without limitation, rules
 - (i) respecting eligibility requirements for a person to acquire and retain an authorization,
 - (ii) respecting the application for and issuing of authorizations,
 - (ii.1) respecting the requirement for a criminal record check to accompany an application for an authorization,
 - (iii) providing for the issuing of authorizations subject to terms and conditions and authorizing the imposition of terms and conditions on authorizations,
 - (iv) respecting the duration of authorizations,
 - (v) authorizing and respecting the cancellation and suspension of authorizations in circumstances in addition to the circumstances under which an authorization may be cancelled or suspended under Part 3, and
 - (vi) respecting the appeal of a decision to refuse to issue or to cancel or suspend an authorization and the reinstatement of authorizations;
 - (l) providing for the appeal of orders under section 73;
- (m) requiring industry members and former industry members to keep records and books of account and respecting the contents of the records and books of account, the manner in which they must be kept and the time for which they must be kept which, in the case of a former industry member, may not exceed a period of 3 years after the person becomes a former industry member;
- (n) respecting the keeping and operation of trust accounts by industry members;
- (o) requiring industry members and applicants to become industry members to provide information, reports and returns and other information to the Council or the Foundation, and respecting the manner in which and the circumstances under which information, reports and returns are to be provided;

- (p) requiring industry members to acquire, maintain or provide insurance against their liability for errors and omissions in the carrying on of the business of an industry member and respecting the amount and form of insurance and the terms and conditions under which insurance is to be provided, or requiring industry members to participate in an indemnity plan for that purpose;
- (q) authorizing the Council to establish and administer an insurance or indemnity plan for industry members and respecting all matters necessarily related to the establishment and administration of a plan;
- (r) requiring industry members to acquire, maintain or provide a bond or other form of security and respecting the amount and form of a bond or other security and the terms and conditions under which a bond or other security is to be provided, or requiring industry members to participate in an indemnity plan for that purpose;
- (s) repealed 2007 c39 s6;
- (t) respecting the forfeiture of security provided under clause (r) and the payment of claims against the security;
- (u) repealed 2007 c39 s6;
- (v) subject to regulations under section 84(2)(d), authorizing the Council to charge and collect from industry members fees, levies, premiums and other assessments authorized under this Act or otherwise required by the Council for its operations and for matters under its administration, and respecting the amounts of those fees, levies, premiums and assessments, the manner in which and times at which they must be paid and penalties or interest charges that are payable for late payment;
- (w) repealed 2007 c39 s6;
- (x) respecting the form and contents of statements of admission of conduct for the purposes of section 46 and the circumstances under which the executive director may accept such a statement;
- (y) respecting the form and contents of applications to withdraw from industry membership for the purposes of section 54, and the circumstances under which the Council may approve such an application;

- (z) respecting reviews for the purposes of section 76;
- (aa) exempting persons or classes of persons from the bylaws or the rules.

RSA 2000 cR-5 s12;2003 c31 s5;2007 c39 s6

Non-application of Regulations Act

13 The *Regulations Act* does not apply to bylaws made under section 11 or rules made under section 12.

1995 cR-4.5 s13

Availability of bylaws and rules

14(1) The Council

- (a) shall
 - (i) make copies of its bylaws and rules available to industry members, and
 - (ii) on request make copies of its rules available to members of the public,

and

- (b) may make other information relating to matters under the jurisdiction of the Council available to members of the public.

(2) The Council may charge reasonable fees for the provision of information under this section.

1995 cR-4.5 s14

Delegation of authority

15(1) The Council may delegate in writing to any officer or employee of the Council or any other person any or all of its powers, duties or responsibilities under this Act, except

- (a) its power to make rules or bylaws, or
- (b) any power, duty or responsibility under Part 3.

(2) The Council may, when delegating a matter, authorize the further delegation of the matter.

(3) A delegation may be made subject to any terms and conditions the Council considers appropriate.

1995 cR-4.5 s15

Annual report

16(1) Not later than 120 days after the last day of the Council's fiscal year, the Council shall

- (a) prepare an annual report for the previous fiscal year that must
 - (i) contain an audited financial statement summarizing the income and expenditures of the Council,
 - (ii) state the number of industry members in each class or category of authorization issued by the Council,
 - (iii) for each class or category of authorization state the number of persons
 - (A) who were refused an authorization, or
 - (B) whose authorizations were cancelled, suspended or made conditional,
 - (iv) contain a list of current members and officers of the Council, and
 - (v) contain any other information that the Council determines relevant or necessary, or that the Minister requires;
- (b) cause a copy of the report to be delivered to the Minister.

(2) Not later than 120 days after the last day of the Fund's fiscal year, the Council shall

- (a) cause a report to be prepared as to the Fund and all dispositions made from it during the previous fiscal year, and
- (b) cause a copy of the report to be delivered to the Minister.

(3) In addition to the reports under this section, the Council shall provide the Minister with financial statements or other information concerning the Council or the Fund when required to do so by the Minister.

1995 cR-4.5 s16

Part 2 Regulation of Business of an Industry Member

Division 1 General

Authorization required

17 No person shall

- (a) trade in real estate as a real estate broker,
- (b) deal as a mortgage broker,
- (c) act as a real estate appraiser, or
- (d) advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or real estate appraiser

unless that person holds the appropriate authorization for that purpose issued by the Council.

RSA 2000 cR-5 s17;2003 c31 s7

Receipt of money

18(1) No industry member shall solicit, accept or receive from the public money or other consideration except in the usual course of carrying on the business of an industry member.

(2) No industry member shall receive money in the course of carrying on business as an industry member unless, before receiving the money, the industry member has entered into a service agreement with the person who provides the money or on whose behalf it is to be held that expressly acknowledges the trust arrangement between them and sets out the terms on which the money will be received, held and disbursed.

(3) Before accepting any money in connection with the carrying on of the business of an industry member, an industry member shall provide to the person on whose behalf the industry member is acting and any other person who is providing the money full particulars in writing of

- (a) any direct or indirect interest that the industry member or any associate within the meaning of the *Securities Act* or any officer, director or manager of the industry member or associate or, where the industry member is a partnership, any partner in the partnership, has or may acquire in the transaction, and

(b) any intention on the industry member's part to have the industry member or another person referred to in clause (a) named in any document that would tend to indicate that the industry member or that person had such an interest.

(4) This section does not apply to the soliciting, acceptance or receipt of money or other consideration that represents remuneration or expenses paid to an industry member for carrying on the business of an industry member or security provided for remuneration or expenses.

RSA 2000 cR-5 s18;2003 c31 s8;2007 c39 s7

Representations prohibited

19 Except in accordance with section 20, no industry member shall make a representation to a seller of real estate that the industry member or another person on the industry member's behalf will pay to the seller a fixed or determinable amount of money within a fixed or determinable period of time.

1995 cR-4.5 s19

Guaranteed sale agreement

20(1) In this section, "guaranteed sale agreement" means an agreement in writing under which an industry member or another person on behalf of or to the benefit of an industry member undertakes to pay to the seller of real estate within a fixed or determinable period of time a fixed or determinable amount of money in respect of that seller's real estate.

(2) An industry member who enters into a guaranteed sale agreement or has another person enter into a guaranteed sale agreement on behalf of or to the benefit of that industry member shall maintain a separate trust account in a bank, loan corporation, trust corporation, credit union or treasury branch in which money payable under this section must be deposited.

(3) When a guaranteed sale agreement is entered into by an industry member or other person on behalf of or to the benefit of an industry member, that industry member shall deposit into the trust account maintained under subsection (2) not less than 5% of the total amount that may be payable under the guaranteed sale agreement.

(4) When money is deposited under subsection (3), it must be held in trust for the seller and must be

(a) paid to the seller or to some other person as directed by that seller as part of the total amount payable under the guaranteed sale agreement,

- (b) forfeited to the seller if the seller is not paid in accordance with the guaranteed sale agreement, or
 - (c) returned to the industry member when, pursuant to the terms of the guaranteed sale agreement, there is no longer any money payable to the seller under that guaranteed sale agreement.
- (5) Subject to subsection (6), money deposited under subsection (3) must remain on deposit in Alberta until it is paid out under subsection (4).
- (6) Section 25(4) applies in respect of a trust account under this section.
- (7) When a deposit is forfeited under subsection (4)(b),
- (a) the forfeiture does not prejudice any action that the seller may have against the industry member or other parties to the guaranteed sale agreement, and
 - (b) the money forfeited may be applied toward any sum that the seller may be entitled to receive as damages arising out of the non-performance of the guaranteed sale agreement.
- (8) When an industry member or other person who enters into a guaranteed sale agreement with a seller purchases the seller's real estate pursuant to that sale agreement, no commission is payable to that industry member or other person by that seller in respect of that trade.

1995 cR-4.5 s20

Action for money

21(1) No action may be brought for a commission or for other remuneration for services rendered in connection with a transaction in the business of an industry member unless, at the time of rendering the services, the person bringing the action

- (a) was the holder of the appropriate authorization issued by the Council authorizing that person to render those services, or
- (b) was exempt from the authorization requirements.

(2) The Court may on application stay an action under subsection (1) at any time.

RSA 2000 cR-5 s21;2003 c31 s9;2009 c53 s157

Authorization required

21.1(1) No person shall charge or collect a commission or other remuneration for services rendered in connection with a transaction

in the business of an industry member unless, at the time of rendering the service, the person

- (a) was the holder of the appropriate authorization issued by the Council authorizing the person to render those services, or
- (b) was exempt from the authorization requirements.

(2) A person who has paid a commission or other remuneration to a person who was prohibited under subsection (1) from collecting that commission or other remuneration may bring an action for recovery of the amount so paid.

2007 c39 s8

Recovery of commission

22 No action shall be brought to charge a person by commission or otherwise for services rendered in connection with a transaction in the business of an industry member unless

- (a) the service agreement on which recovery is sought in the action or some note or memorandum of it is in writing signed by the party to be charged or by that person's agent lawfully authorized in writing,
- (b) in the case of a trade in real estate, the person sought to be charged
 - (i) has as a result of the services of a real estate broker employed by that person for the purpose effected a sale or lease of land or an interest in it, and
 - (ii) has either executed a transfer or lease signed by all other necessary parties and delivered it to the buyer or lessee, or has executed an agreement of sale of land, or an interest in it, signed by all necessary parties, entitling the buyer to possession of the land or any interest in it, as specified in the agreement, and has delivered the agreement to the buyer,
- (c) in the case of a mortgage transaction, the person sought to be charged has as a result of the services of a mortgage broker employed by that person for the purpose obtained a mortgage loan or loaned funds secured by a mortgage, or

- (d) in the case of a transaction involving the activities of a real estate appraiser described in section 1(1)(u.1), the person sought to be charged has as a result of the services of a real estate appraiser employed by that person for the purpose received an estimate of the value of an identified interest in real estate.

RSA 2000 cR-5 s22;2003 c31 s10;2007 c39 s9

Recovery of shared commission or remuneration

23 Where there is an agreement between 2 or more industry members providing for the sharing of a commission or remuneration payable in respect of a transaction in the business of an industry member, only the industry member who, by virtue of a service agreement between that industry member and a party to the transaction, is entitled to the commission or remuneration, or an assignee of that industry member, may bring an action for recovery of the commission or remuneration against the person who is liable to pay it.

RSA 2000 cR-5 s23;2003 c31 s11

Calculation of commission

24(1) No real estate broker

- (a) shall request or enter into a service agreement or other arrangement for the payment to the broker of a commission or other remuneration based on the difference between the price at which real estate is listed for sale and the actual sale price of it, or
- (b) shall retain a commission or other remuneration computed on the basis referred to in clause (a).

(2), (3) Repealed 2007 c39 s10.

RSA 2000 cR-5 s24;2003 c31 s12;2007 c39 s10

Trust accounts

25(1) An industry member who is required by the rules to keep and operate a trust account shall

- (a) keep complete and accurate financial records in which the industry member shall maintain a separate record for each person on whose behalf the industry member is acting of all
 - (i) money received in trust,
 - (ii) money held in trust,
 - (iii) interest earned on money held in trust, and

- (iv) disbursements made from money received or held in trust,
 - in respect of a dealing or trade for that person,
 - (b) deposit money received in trust in respect of a dealing or trade in the business of the industry member within the time prescribed by the regulations, or within any period agreed to in writing by the parties to the dealing or trade, in an interest-bearing account that is
 - (i) maintained in a bank, loan corporation, trust corporation, credit union or treasury branch, and
 - (ii) kept in the name of the industry member and designated as a trust account,
 - (c) keep money received or held in trust in respect of a dealing or trade in the business of the industry member separate from money that belongs to the industry member or any industry members the industry member employs, and
 - (d) disburse money received or held in trust in respect of a dealing or trade in the business of the industry member only in accordance with the rules and with the terms of the trust governing the use of that money.
- (2)** Where an industry member receives money in trust in respect of a dealing or trade in the business of the industry member, the industry member shall ensure that the terms of the trust governing the use of the money are in writing and agreed to by the industry member and all other parties.
- (3)** Subject to subsection (4), all money deposited under subsection (1)(c) shall be kept on deposit in Alberta.
- (4)** Where an industry member
- (a) maintains business premises in the City of Lloydminster,
 - (b) maintains an account designated as a trust account in a bank, loan corporation, trust corporation, credit union or treasury branch located in the City of Lloydminster, and
 - (c) otherwise complies with subsection (1),
- subsection (3) does not apply to deposits to the extent that they are made and kept in the account referred to in clause (b).

(5) Where an industry member of a class specified in the regulations holds money in trust for more than 2 years after the date on which the person for whom it is held becomes entitled to receive payment of it and, using reasonable efforts, is unable to locate the person, the industry member shall

- (a) pay the money to the Foundation, and
- (b) provide the Foundation in writing with
 - (i) the name of the person for whom the money was being held,
 - (ii) the circumstances resulting in the money being unclaimed, and
 - (iii) if the money represents more than one unclaimed amount, a breakdown of each amount.

(6) If at any time a person establishes entitlement to any money paid to the Foundation pursuant to subsection (5), the Foundation shall pay the money to that person.

(7) An industry member is not liable to any person referred to in subsection (6) for money paid to the Foundation under subsection (5).

(8) Subsections (1), (3) and (4) do not apply to a trust corporation.

(9) An industry member shall, in accordance with the rules, keep in Alberta records and books of account of the industry member's business and accounting records, and shall keep those records and books of account

- (a) for a period of 3 years after they came into existence, or
- (b) for any longer period that the executive director directs in a particular case for the purposes of an investigation or prosecution under this Act.

(10) Repealed 2007 c39 s11.

(11) Any waiver or release by a person on whose behalf the industry member is acting of the rights, benefits or protections provided to the person under this section is void.

RSA 2000 cR-5 s25;2003 c31 s13;2007 c39 s11

26 to 35 Repealed 2007 c39 s12.

Part 3 Conduct Proceedings

Panels

- 36(1)** A Hearing Panel must consist of at least 3 members appointed in accordance with the bylaws.
- (2)** At least one member of a Hearing Panel must be a member of the Council and the other members of the Hearing Panel may be industry members or members of the public.
- (3)** Despite subsection (2), the number of members of the public on a Hearing Panel must not exceed the number of industry members on a Hearing Panel.
- (4)** An Appeal Panel must consist of at least 3 members appointed in accordance with the bylaws, all of whom must be members of the Council.
- (5)** Despite subsection (4), a member of The Law Society of Alberta or of the law society of any other province or territory may be appointed as a member of an Appeal Panel in accordance with the bylaws, in which case that Appeal Panel must consist of
- (a)** one member of The Law Society of Alberta or of the law society of any other province or territory, and
 - (b)** at least 3 additional members, all of whom must be members of the Council.
- (6)** A person who was a member of the Hearing Panel that dealt with a subject-matter is not eligible to sit on the Appeal Panel that deals with the same subject-matter.

RSA 2000 cR-5 s36;2007 c39 s13

Complaint

- 37(1)** A person may make a complaint to the executive director about the conduct of an industry member.
- (2)** A complaint must be in writing and must include the name of the complainant and reasonable particulars of the complaint.

RSA 2000 cR-5 s37;2007 c39 s14

Prior conduct

- 37.1** Subject to section 54(3), conduct proceedings under this Part that relate to the conduct of a former industry member that took place while that person was an industry member may be commenced within 2 years following the date on which the person became a former industry member, but not after that date, and for

that purpose the former industry member is considered to be an industry member.

2003 c31 s14

Investigation

38(1) The executive director shall,

- (a) where a complaint is made under section 37, as soon as practicable after receipt of the complaint, and
- (b) in a case where no complaint is made but the executive director believes that any conduct of an industry member constitutes or may constitute conduct that is deserving of sanction,

commence or appoint a person to commence an investigation into the conduct.

(2) A person conducting an investigation may

- (a) by notice in writing demand that any person produce to the investigator any books, documents, records and other things in that person's possession or under that person's control that are relevant to the investigation,
- (b) demand that any person answer any questions that are relevant to the investigation,
- (c) copy by electronic or other means, and keep copies of, anything produced under clause (a), and
- (d) record by audio or video or by other means any answers provided under clause (b).

(3) A person conducting an investigation may investigate any other matter related to the industry member's carrying on of the business of an industry member that arises in the course of the investigation.

(4) A person who is required under subsection (2) to answer the questions of a person conducting an investigation

- (a) shall co-operate with the investigator and promptly respond to the questions, and
- (b) shall not be excused from answering any question on the ground that the answer might tend to
 - (i) incriminate the person,
 - (ii) subject that person to punishment under this Act, or

- (iii) establish that person's liability to a civil proceeding at the instance of the Crown or of any other person, or to prosecution under any Act,

but if the answer so given tends to incriminate that person, subject the person to punishment or establish the person's liability, it may not be used or received against the person in any civil proceedings, in a prosecution of an offence under this Act or in any proceedings under any other Act, except in a prosecution for or proceedings in respect of a contravention of this section.

(4.1) A person shall not withhold, destroy, conceal or refuse to produce any books, documents, records or other things required for the purpose of an investigation under this section.

(4.2) The executive director may by notice in writing suspend the authorization of an industry member who refuses to co-operate with a person conducting an investigation under subsection (2) until the executive director is satisfied that the industry member has co-operated.

(5) Where a person other than the executive director conducts an investigation, that person shall, on concluding the investigation, report in writing to the executive director.

(6) Nothing in this section shall be interpreted so as to affect the privilege that exists between a solicitor and the solicitor's client.

RSA 2000 cR-5 s38;2007 c39 s15

**Refusing to investigate complaint or
discontinuing investigation**

38.1(1) The executive director may, in respect of a complaint made under section 37,

- (a) refuse to investigate the complaint,
- (b) discontinue investigating the complaint, or
- (c) direct a person appointed under section 38(1) to discontinue investigating the complaint

under any circumstances provided for in the regulations.

(2) The executive director shall serve a notice of a decision under subsection (1) on the complainant.

2007 c39 s16

Disposition by executive director

39(1) On completion of an investigation or on receipt of a report under section 38(5), as the case may be, the executive director shall

- (a) direct that no further action be taken, if the executive director is of the opinion that
 - (i) the complaint is frivolous or vexatious, or
 - (ii) there is insufficient evidence of conduct deserving of sanction,

or

- (b) if the executive director determines that there is sufficient evidence of conduct deserving of sanction,
 - (i) refer the matter to a Hearing Panel,
 - (i.1) issue a letter reprimanding the industry member, or
 - (ii) impose an administrative penalty on the industry member in accordance with section 83 and the bylaws, where the matter involves a contravention by the industry member of a provision referred to in section 83(1).

(2) The executive director shall cause notice of a decision under subsection (1) to be served on the industry member and the complainant, if any.

RSA 2000 cR-5 s39;2007 c39 s17

Appeal by complainant

40(1) A complainant who is served with a notice of a decision

- (a) under section 38.1(2) not to investigate a complaint or to discontinue investigating a complaint, or
- (b) under section 39(2) that no further action will be taken

may, within 30 days after receipt of the notice, by notice in writing to the executive director, appeal the decision to a Hearing Panel.

(2) On an appeal under subsection (1), the Hearing Panel shall determine whether

- (a) the complaint is frivolous or vexatious or there is insufficient evidence of conduct deserving of sanction, or

- (b) there is sufficient evidence of conduct deserving of sanction to warrant a hearing by the Hearing Panel

and shall notify the complainant and the industry member in writing of its decision.

- (3) A Hearing Panel's decision under subsection (2) is final.

(4) If the Hearing Panel determines that a complaint is frivolous or vexatious, it may by notice in writing order the complainant to pay to the Council the costs of conducting the investigation and of the appeal determined in accordance with the bylaws.

RSA 2000 cR-5 s40;2007 c39 s18

Appeal by industry member

40.1(1) An industry member whose authorization is suspended by the executive director under section 38(4.2) may, within 30 days after receipt of the notice, by notice in writing to the executive director, appeal the executive director's decision to a Hearing Panel.

(2) An industry member who receives a letter of reprimand from the executive director under section 39(1)(b)(i.1) may, within 30 days after receipt of the letter of reprimand, by notice in writing to the executive director, appeal the executive director's decision to a Hearing Panel.

(3) On receipt of a notice under subsection (1) or (2), the executive director shall refer the matter to a Hearing Panel.

2007 c39 s19

Duty to hold hearing

41(1) A Hearing Panel shall hold a hearing

- (a) on referral of a matter to it under section 39(1)(b);
- (b) on deciding under section 40(2) that a hearing should be held;
- (c) on referral of a matter to it under section 40.1.

(2) A hearing under subsection (1) must be commenced within 60 days after the date on which the matter is referred to the Hearing Panel or the Hearing Panel makes its decision under section 40, or within any other period prescribed by the Council.

(3) At least 15 days before the date set for a hearing, the executive director shall serve on the industry member and any other person who in the opinion of the Hearing Panel is directly affected by the subject-matter of the hearing a notice of the hearing stating the

date, time and place at which the Hearing Panel will hold the hearing and giving reasonable particulars of the matter in respect of which the hearing will be held.

(4) A notice of hearing shall indicate

- (a) whether oral or written submissions, or both, will be accepted by the Hearing Panel, and if written submissions will be accepted, the date by which they must be received by the Hearing Panel, and
- (b) that the Hearing Panel
 - (i) may proceed with the hearing in the absence of the industry member who is the subject of the hearing, or
 - (ii) if the industry member initiated the appeal, may dismiss or reschedule a hearing if the industry member does not attend the hearing.

RSA 2000 cR-5 s41;2007 c39 s20

Hearing in absence of industry member

41.1 A Hearing Panel may, on proof of service of the notice of hearing on the industry member under section 41(3),

- (a) proceed with the hearing in the absence of the industry member, or
- (b) if the industry member initiated the appeal, dismiss or reschedule the hearing if the industry member does not attend the hearing.

2007 c39 s21

Rules re hearing

42 The following applies in respect of a hearing:

- (a) the Hearing Panel shall receive evidence that is relevant to the matter being heard, and the industry member who is the subject of the hearing shall
 - (i) be given a reasonable opportunity to provide relevant evidence,
 - (ii) be informed of the facts before the Hearing Panel or the allegations made to it respecting the conduct of that person in sufficient detail
 - (A) to permit a reasonable understanding of the facts or allegations, and

(B) to afford a reasonable opportunity to provide relevant evidence to contradict or explain the facts or allegations,

and

- (iii) be provided with copies of all documents, records or other evidence that were considered at the investigation and that relate to the same conduct that is or is to be the subject-matter of the hearing before the Hearing Panel;
- (b) an industry member whose conduct is the subject-matter of the hearing and who satisfies the Hearing Panel that any evidence given before the Hearing Panel may adversely affect that industry member's interests shall be given an opportunity during the hearing to give evidence on the matter and to call and examine or cross-examine witnesses personally or by legal counsel in respect of the matter;
- (c) the Hearing Panel has the same power as is vested in the Court of Queen's Bench for the trial of civil actions
 - (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence on oath or otherwise, and
 - (iii) to compel witnesses to produce books, records, documents and things;
- (d) the industry member whose conduct is the subject-matter of the hearing is a compellable witness at the hearing;
- (e) a witness may be examined under oath on anything relevant to the subject-matter of the hearing and is not to be excused from answering any question on the ground that the answer might tend to
 - (i) incriminate that person,
 - (ii) subject that person to punishment under this Act, or
 - (iii) establish that person's liability
- (A) to a civil proceeding at the instance of the Crown or of any other person, or
- (B) to prosecution under any Act,

but if the answer so given tends to incriminate that person, subject that person to punishment or establish that person's liability, it may not be used or received against that person in any civil proceedings, in a prosecution of an offence under this Act or in any proceedings under any other Act, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence;

- (f) proceedings for civil contempt of court may be brought against a witness
 - (i) who fails to attend before the Hearing Panel in compliance with a notice to attend or to produce books, records, documents or things in compliance with a notice to produce them, or
 - (ii) who refuses to be sworn or to answer any question that the witness is directed to answer by the Hearing Panel;
- (g) a person appearing at a hearing may be represented by legal counsel;
- (h) the laws of evidence applicable to judicial proceedings do not apply;
- (i) all oral evidence received must be taken down in writing or recorded by electronic means;
- (j) all evidence taken down in writing or recorded by electronic means, all written submissions and all documentary evidence and things received in evidence form the record of the hearing;
- (k) the provisions of the *Alberta Rules of Court* relating to the payment of allowances or witness fees apply.

RSA 2000 cR-5 s42;2007 c39 s22;2009 c53 s157

Decision of Hearing Panel

43(1) If a Hearing Panel finds that the conduct of an industry member was conduct deserving of sanction, the Hearing Panel may make any one or more of the following orders:

- (a) an order cancelling or suspending any authorization issued to the industry member by the Council;
- (b) an order reprimanding the industry member;
- (c) an order imposing any conditions or restrictions on the industry member and on that industry member's carrying on

of the business of an industry member that the Hearing Panel, in its discretion, determines appropriate;

- (d) an order requiring the industry member to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;
- (d.1) an order prohibiting the industry member from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the industry member;
- (e) any other order agreed to by the parties.

(2) The Hearing Panel may, in addition to or instead of dealing with the conduct of an industry member under subsection (1), order the industry member to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

(2.1) In the case of a hearing in respect of an appeal under section 40.1, the Hearing Panel may

- (a) quash, confirm or vary the decision of the executive director that is the subject of the appeal, and
- (b) order the industry member to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws.

(3) Repealed 2003 c31 s15.

RSA 2000 cR-5 s43;2003 c31 s15;2007 c39 s23

Notice of decision

44(1) The Hearing Panel shall forward to the executive director

- (a) the decision of the Hearing Panel, and
- (b) the record of the hearing.

(2) The executive director shall, on receiving the decision of the Hearing Panel and the record of the hearing referred to in subsection (1), serve

- (a) a copy of the decision on the industry member and on the Council, and
- (b) a notice of the decision on the complainant, if any.

1995 cR-4.5 s44

Discontinuation of proceedings

45(1) If a Hearing Panel has commenced proceedings in respect of the conduct of an industry member and is satisfied that the circumstances of the conduct do not justify the continuation of its proceedings respecting that conduct, the Hearing Panel may discontinue its proceedings in respect of that conduct, setting out its reasons for its decision.

(2) If the proceedings discontinued under subsection (1) in respect of any conduct were commenced as a result of a complaint, the executive director shall notify the complainant of the discontinuance and shall give the complainant a copy of the decision of the Hearing Panel.

(3) If proceedings are discontinued under subsection (1), no new or further proceedings shall be taken under this Part in respect of the same conduct that was the subject-matter of the discontinued proceedings without the approval of the Council.

1995 cR-4.5 s45

Admission of conduct

46(1) An industry member may, at any time after the commencement of proceedings under this Part and before a Hearing Panel makes its findings in respect of the industry member's conduct, submit to the executive director a statement of admission of conduct deserving of sanction in respect of all or any of the matters that are the subject-matter of the proceedings.

(2) A statement of admission of conduct may not be acted on unless it is in a form acceptable to the executive director and meets any additional requirements set out in the rules.

1995 cR-4.5 s46

Referral to Hearing Panel

47(1) If a statement of admission of conduct is accepted, the executive director shall immediately refer the matter to a Hearing Panel, and in that case the Hearing Panel shall deal with the matter as if it had been referred to it under section 39(1)(b).

(2) If a statement of admission of conduct is accepted, each admission of conduct in the statement in respect of any act or matter regarding the industry member's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the industry member is conduct deserving of sanction.

1995 cR-4.5 s47

Appeal to Appeal Panel

48(1) An industry member in respect of whom a Hearing Panel has made a finding or order under section 43 or the executive director may appeal the finding or order to an Appeal Panel.

(2) The executive director may commence an appeal under subsection (1) only if the executive director determines that it is in the best interests of the public to do so.

(3) An appeal under subsection (1) must be commenced by a written notice of appeal, which must

- (a) describe the finding or order appealed, and
- (b) state the reasons for the appeal.

(4) A notice of appeal by the industry member must be served on the executive director within 30 days after the date on which the decision of the Hearing Panel is served on the industry member.

(5) A notice of appeal by the executive director must be served on the industry member within 30 days after the date on which the decision of the Hearing Panel is served on the industry member.

(6) A notice of appeal shall indicate that the Appeal Panel

- (a) may proceed with the hearing of the appeal in the absence of the industry member who is the subject of the hearing, or
- (b) if the industry member initiated the appeal, may dismiss or reschedule a hearing if the industry member does not attend the hearing.

(7) The executive director,

- (a) on receiving a notice of appeal under subsection (4), or
- (b) on serving a notice of appeal under subsection (5),

shall give to each member of an Appeal Panel a copy of the notice of appeal and make the record of the hearing available to each member of the Appeal Panel.

(8) The costs of preparing the record of the hearing shall be paid by the appellant.

(9) Despite subsection (8), the Appeal Panel may waive or reduce the payment of all or part of the costs of preparing the record.

(10) An industry member who is appealing a finding or order of a Hearing Panel to an Appeal Panel under this section may, within 7 days of receiving a copy of the Hearing Panel's decision under section 44, by notice served on the executive director, apply to the Hearing Panel for a stay of the finding or order until the Appeal Panel renders its decision on the appeal.

(11) On application under subsection (10) and after allowing the executive director to make representations, the Hearing Panel may, if the Hearing Panel considers it appropriate to do so, grant the stay.

(12) The executive director shall serve a copy of the Hearing Panel's decision under subsection (11) on the industry member.

(13) If the Hearing Panel refuses to grant a stay, the industry member may, within 7 days of receiving a copy of the Hearing Panel's decision under subsection (12), by notice served on the executive director, apply to the Appeal Panel for a stay of the finding or order until the Appeal Panel renders its decision on the appeal.

(14) On application under subsection (13) and after allowing the executive director to make representations, the Appeal Panel may, if the Appeal Panel considers it appropriate to do so, grant the stay.

(15) The executive director shall serve a copy of the Appeal Panel's decision under subsection (14) on the industry member.

RSA 2000 cR-5 s48;2007 c39 s24

Notice of hearing

49(1) The executive director shall serve on the industry member a notice of hearing of the appeal stating the date, time and place at which the Appeal Panel will hear the appeal.

(2) The Appeal Panel shall commence to hear an appeal within a reasonable period after the date of service of the notice of appeal on the executive director or on the industry member, as the case may be.

RSA 2000 cR-5 s49;2007 c39 s25

Hearing in absence of industry member

49.1 An Appeal Panel may, on proof of service of the notice of hearing on the industry member under section 49(1),

- (a) proceed with the hearing of the appeal in the absence of the industry member, or

- (b) if the industry member initiated the appeal, dismiss or reschedule the hearing of the appeal if the industry member does not attend the hearing.

2007 c39 s26

Appeal Panel's powers

50(1) The appeal to the Appeal Panel shall be founded on the record of the hearing before the Hearing Panel and the decision of the Hearing Panel.

(2) The Appeal Panel on an appeal may

- (a) grant adjournments of the proceedings or reserve the determination of the matters before it for a future meeting of the Appeal Panel;
- (b) on granting special leave for that purpose, receive further evidence;
- (c) draw inferences of fact and make a decision or finding that, in its opinion, ought to have been made by the Hearing Panel.

(3) Section 42(c) to (k) apply to proceedings before the Appeal Panel.

(4) The Appeal Panel shall, within a reasonable time from the date of the conclusion of all proceedings before it, do one or more of the following:

- (a) make any finding or order that, in its opinion, ought to have been made by the Hearing Panel;
- (b) quash, confirm or vary the finding or order of the Hearing Panel or substitute or make a finding or order of its own;
- (c) refer the matter back to the Hearing Panel for further consideration in accordance with any direction that the Appeal Panel makes.

(5) The Appeal Panel may make an award as to the costs of an appeal determined in accordance with the bylaws.

(6) The Appeal Panel may order that its decision remain in effect until the Court makes its decision on an appeal.

(7) An industry member who is appealing a decision of an Appeal Panel to the Court under section 52 may, within 7 days of receiving a copy of the Appeal Panel's decision under section 51, apply to

the Appeal Panel for a stay of the decision pending the determination of the appeal to the Court under section 52.

(7.1) An application under subsection (7) must be served on the executive director.

(8) On application under subsection (7) and after allowing the executive director to make representations, the Appeal Panel may, if the Appeal Panel considers it appropriate to do so, grant the stay.

(9) The executive director shall serve a copy of the Appeal Panel's decision under subsection (8) on the industry member.

(10) If the Appeal Panel refuses to grant a stay, the industry member may, within 7 days of receiving a copy of the Appeal Panel's decision under subsection (9), apply to the Court for an order staying the decision of the Appeal Panel pending the determination of the appeal to the Court under section 52.

(11) An application under subsection (10) must be served on the executive director.

RSA 2000 cR-5 s50;2007 c39 s27;2009 c53 s157

Decision

51 The executive director shall serve a copy of the Appeal Panel's decision on the industry member.

1995 cR-4.5 s51

Appeal to Court

52(1) An industry member in respect of whom an Appeal Panel has made a decision or the executive director may appeal the decision to the Court.

(2) The executive director may commence an appeal under subsection (1) only if the executive director determines that it is in the best interests of the public to do so.

(3) An appeal under subsection (1) must be commenced by application, which must describe the decision appealed and state the reasons for the appeal and be filed with the clerk of the Court

(a) in the case of an appeal by the industry member, within 30 days after the industry member receives a copy of the decision of the Appeal Panel, and

(b) in the case of an appeal by the executive director, within 30 days after the executive director receives a copy of the decision of the Appeal Panel.

- (4) If the industry member commences the appeal, the industry member shall serve on the executive director a copy of the application and the supporting documents not less than 15 days before the date set for the hearing.
- (5) If the executive director commences the appeal, the executive director shall serve on the industry member a copy of the application and the supporting documents not less than 15 days before the date set for the hearing.
- (6) The appeal to the Court must be founded on
- (a) the record of the hearing before the Appeal Panel, and
 - (b) a copy of the decision of the Appeal Panel.
- (7) The Court on hearing the appeal may
- (a) make any finding or order that, in its opinion, ought to have been made,
 - (b) quash, confirm or vary the decision of the Appeal Panel or any part of it,
 - (c) refer the matter back to the Appeal Panel for further consideration in accordance with any direction of the Court, or
 - (d) direct that a trial of any mixed questions of law and fact related to a finding or order, or both a finding and an order, of the Appeal Panel be held before the Court.
- (8) The costs of preparing the record of the hearing before the Appeal Panel shall be paid by the appellant.
- (9) The Court may make any award as to the costs of the appeal that it considers appropriate.

RSA 2000 cR-5 s52;2007 c39 s28;2009 c53 s157

Temporary order

- 53(1)** Notwithstanding anything in this Act, the executive director may recommend to the chair of the Council that the chair make an order
- (a) temporarily suspending the authorization of the industry member issued by the Council, or
 - (b) temporarily imposing conditions or restrictions on the industry member and the industry member's carrying on of the business of an industry member

pending the outcome of proceedings under this Part, and the chair may make the order accordingly.

(2) The industry member may, by application served on the executive director, apply to the Court for an order staying the decision of the chair pending the outcome of the proceedings.

RSA 2000 cR-5 s53;2009 c53 s157

Withdrawal from membership

54(1) Subject to the rules, an industry member may apply to the Council to withdraw from industry membership if the industry member's conduct is the subject-matter of proceedings under this Part or the industry member suspects that the industry member's conduct may become the subject-matter of proceedings under this Part.

(2) The Council may approve or reject the application and may make its approval subject to any terms and conditions the Council considers appropriate.

(3) Where the Council approves an application, then, subject to any terms and conditions imposed under subsection (2), all proceedings under this Part in respect of the industry member are discontinued and no proceedings in respect of the conduct may be commenced under this Part.

1995 cR-4.5 s54

Publication of information

55(1) The executive director may publish information respecting

- (a) the refusal, cancellation or suspension of an authorization issued by the Council under this Act,
- (a.1) the name, business contact information and category of authorization of industry members,
- (b) a person's withdrawal from industry membership, or
- (c) prosecutions and disciplinary actions taken under this Act,

and those publications have qualified privilege.

(2) The executive director may send a notice of any of the information published under subsection (1)

- (a) to an organization that regulates activities in another province or territory similar to those regulated by the Council if the executive director reasonably believes that the information about the industry member may result in a

suspension or cancellation of the industry member's authorization or licence in that province or territory, and

- (b) to a law enforcement agency in Alberta or in another jurisdiction in Canada where the notice of that information may be of interest to that law enforcement agency.

(3) The information that may be published under subsection (1) or contained in a notice under subsection (2) may include personal information about the industry member that is related to the business of the industry member.

RSA 2000 cR-5 s55;2007 c39 s29

Recovery of fine, costs

56 A fine ordered under section 43(1)(d) and costs ordered, awarded or payable under section 40(4), 43(2) or (2.1), 48(8), 50(5), 52(8) or 83.1(5) are a debt due to the Council and may be recovered by the Council in an action in debt.

RSA 2000 cR-5 s56;2007 c39 s30

Part 4 Real Estate Assurance Fund

Fund continued

57(1) The Real Estate Assurance Fund created under the *Real Estate Agents' Licensing Act*, RSA 1980 cR-5, is continued.

(2) The Council shall administer the Fund.

(3) The purpose of the Fund is to pay, in whole or in part, judgments obtained or claims made against industry members of the classes provided for in the regulations when

- (a) in the case of a judgment, the judgment is based on fraud or breach of trust in respect of a transaction in the business of an industry member, or
- (b) in the case of a claim, the claim is for losses or damages caused where an industry member fails to disburse or account for money held in trust in accordance with section 25 in respect of a transaction in the business of an industry member.

(4) The Council may with the prior written approval of the Minister use any or all of the money in the Fund that is in excess of the amount prescribed in the regulations for any other purpose authorized in the regulations.

- (5) The Council may from time to time collect money by the levy of assessments on applicants to become industry members and on the classes of industry members provided for in the regulations.
- (6) The money collected under subsection (5) and any income from the investment of that money shall be credited to the Fund.
- (7) The Council is deemed to hold in trust all money credited to the Fund and shall immediately deposit that money in a trust account in a bank, loan corporation, trust corporation, credit union or treasury branch in Alberta, separate and apart from any other money of the Council.
- (8) The Council shall create separate trust accounts for money to which subsection (3) applies and for money to which subsection (4) applies.
- (9) Notwithstanding subsections (6) and (7), the Council may, from the income from the investment of the money in the Fund, pay the administrative costs associated with the Fund.
- (10) If the income from the investment of the money in the Fund is insufficient to pay the administrative costs associated with the Fund, the Council may
- (a) from time to time collect money to pay those costs by the levy of assessments on any of the persons referred to in subsection (5),
 - (b) use money referred to in subsection (4) to pay those costs, or
 - (c) use money from a combination of sources referred to in clauses (a) and (b) to pay those costs.

RSA 2000 cR-5 s57;2003 c31 s16;2007 c39 s31

Investment and insurance

- 58(1)** Subject to the regulations, the Council may invest any part of the Fund not currently required for disposition only in accordance with the *Trustee Act*.
- (2) The Council may, in a manner and on terms and conditions it considers advisable, enter into contracts with insurers by which the Fund may be protected in whole or in part against any claim or loss to the Fund, and the costs incurred by the Council under those contracts may be paid from the Fund.
- (3) The Council has, and is deemed to have had at all times, an insurable interest in the Fund and in the protection of the Fund against loss, notwithstanding that any loss is the result of the exercise of the discretion of the Council under section 60, 60.2 or

60.3 or the Alberta Real Estate Association under section 15.1 of the *Real Estate Agents' Licensing Act*, RSA 1980 cR-5.

RSA 2000 cR-5 s58;2001 c28 s18;2006 c9 s16;
2007 c39 s32

Rights in actions

59(1) A person who commences an action against an industry member that may result in a claim against the Fund shall immediately give notice of the commencement of the action to the Council.

(2) Where the Council is served with a notice under subsection (1) or where the Council otherwise learns of the commencement of such an action, it may, on application to the Court, be added as a party in the action and afterwards may take any steps on behalf of and in the name of the defendant that the defendant could have taken in respect of the action.

(3) The Council may disclose in any pleading by which it is taking steps under this section that it is appearing on behalf of and in the name of the defendant pursuant to this section.

(4) All acts of the Council under subsection (2) are deemed to be the acts of the defendant, and the Council may not be named as a defendant in the action and no judgment may be given against the Council.

(5) The defendant is deemed to have consented to and agreed with any action or steps taken by the Council pursuant to this section and performed by the lawyer acting on instructions from the Council.

(6) Nothing in this section and no steps taken under this section may be construed to the effect that a lawyer acting on the instructions of the Council is actually acting on behalf of the defendant.

RSA 2000 cR-5 s59;2007 c39 s33

Payment from Fund in respect of judgments

60(1) A person who obtains a judgment against an industry member of a class provided for in the regulations may apply to the Council for compensation from the Fund if the judgment has become final and is not satisfied within 30 days after the date that it became final.

(2) Where an application is made under subsection (1) and no notice of the action was given to the Council under section 59, the Council may, within 30 days after receipt of the application, apply to the Court for an order under subsection (3).

(3) The Court on an application may

- (a) relieve the Council from liability to make any payment under subsection (4) where it is of the opinion that, based on the merits of the action, the judgment is not based on a finding of fraud or breach of trust in respect of a transaction in the business of the industry member, or
- (b) direct the Council to make a payment under subsection (4) where it is of the opinion that the judgment is based on a finding of fraud or breach of trust in respect of a transaction in the business of the industry member,

and may make any other order it considers appropriate in the circumstances.

(4) Subject to any order under subsection (3), the Council shall pay to the applicant under subsection (1) the amount of compensation determined in accordance with the regulations where

- (a) the judgment is based on a finding of fraud or breach of trust in respect of a transaction in the business of the industry member, or
- (b) the judgment is not based on a finding of fraud or breach of trust in respect of a transaction in the business of the industry member but, in the opinion of the Council, the claim for which the judgment was granted is based on fraud or a breach of trust in respect of a transaction in the business of the industry member.

(5) When a payment is made from the Fund under this section, the Council has a cause of action in debt for the recovery of the amount paid

- (a) from the industry member, where the judgment is against the industry member alone, or
- (b) jointly and severally from all or any of those industry members against whom the judgment is made.

(6) For the purposes of this Act, a judgment becomes final when

- (a) the time for all appeals in respect of the judgment has expired without those appeals having been taken, or
- (b) all appeals have been concluded and the judgment has not been set aside or varied.

RSA 2000 cR-5 s60;2003 c31 s17;2005 c17 s2;
2007 c39 s34

Eligibility

60.1 Despite sections 60(1), 60.2 and 60.3(1), the following persons are not eligible to apply to the Council for compensation from the Fund:

- (a) a bank, loan corporation, trust corporation, credit union or treasury branch, or any other financial institution, whose business includes the lending of money by way of mortgage security or otherwise, or a subsidiary, within the meaning of section 2 of the *Business Corporations Act*, of any of them;
- (b) any person who in the Council's opinion knowingly participated in or was wilfully blind to the fraud or breach of trust of the industry member that gave rise to the judgment against the industry member;
- (c) any corporation or other entity carrying on any business or activity specified or described in the regulations.

2005 c17 s3;2007 c39 s35

Payment from Fund

60.2(1) No payment from the Fund shall be made under section 60 unless an application in writing for compensation from the Fund is received by the Council within one year from the date on which a judgment referred to in section 60 becomes final.

(2) In addition to the application referred to in subsection (1), an applicant shall provide the Council with the following:

- (a) the judgment with respect to which the application is made;
- (b) the statement of claim or other document that initiated the action to which the judgment relates;
- (c) evidence satisfactory to the Council that the judgment has become final;
- (d) an irrevocable assignment of all or part of the judgment from the applicant to the Council, in a form acceptable to the Council;
- (d.1) if the judgment is not based on a finding of fraud or breach of trust in respect of a transaction in the business of the industry member, a statutory declaration that contains the particulars of the basis of the claim;
- (e) a statutory declaration stating that the applicant did not participate in and was not wilfully blind to the fraud or

breach of trust of the industry member that gave rise to the judgment against the industry member;

- (f) any other information and documents prescribed by the regulations.

(3) If the applicant is a body corporate, the statutory declaration under subsection (2)(e) must be made by an officer of the body corporate authorized to make it.

2005 c17 s3;2007 c39 s36

Payment from Fund in respect of claims

60.3(1) A person may apply to the Council for compensation from the Fund in respect of a claim against an industry member of a class provided for in the regulations for losses or damages caused where an industry member fails to disburse or account for money held in trust in accordance with section 25 in respect of a transaction in the business of the industry member.

(2) An application under subsection (1) must be made within one year from the date on which the alleged loss or damages occurred.

(3) In addition to the application referred to in subsection (1), the applicant shall provide the Council with the following:

- (a) a statutory declaration that contains
 - (i) particulars of the basis of the claim, and
 - (ii) a statement that the applicant did not participate in and was not wilfully blind to the actions of the industry member in respect of which the claim is made;
- (b) any other information and documents prescribed by the regulations.

(4) If in the opinion of the Council the claim is based on a failure by the industry member to disburse or account for money held in trust in accordance with section 25 in respect of a transaction in the business of the industry member, the Council shall pay to the applicant the amount of compensation determined in accordance with the regulations.

(5) The decision of the Council in respect of compensation under this section is final.

2007 c39 s37

Subrogation of rights

61(1) When a payment has been made from the Fund under section 60 or 60.3, the Council is subrogated to the rights, remedies

and securities, including any amounts held in trust, to which the person receiving the payment was entitled as against the industry member whose conduct gave rise to the payment, and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Council to the extent of the amount paid from the Fund.

(2) The Council may by an action in debt recover from the industry member whose conduct gave rise to a payment from the Fund under section 60 the amounts of any costs and expenses incurred by the Council in connection with audits, reviews, examinations, investigations and hearings relating to claims against the Fund arising from the conduct of the industry member.

RSA 2000 cR-5 s61;2007 c39 s38

Winding-up of Fund

62(1) If the amount of the Fund at any time falls below the amount prescribed in the regulations, the Council shall immediately advise the Minister.

(2) If the amount of the Fund is less than the amount prescribed in the regulations or the Minister considers it in the public interest to do so, the Minister may order that the Fund be wound up in accordance with the regulations.

(3) When the Minister makes an order under subsection (2), every applicant to be an industry member and industry member who is subject to the Fund shall provide the Council with a bond in accordance with the rules.

(4) On the winding-up of the Fund, the Fund shall be distributed in accordance with the regulations.

RSA 2000 cR-5 s62;2007 c39 s39

Bylaws for Fund

63(1) The Council shall make bylaws respecting

- (a) the procedures and methods for administering the Fund, and
- (b) any other matters respecting the operation of the Fund that the Minister, by written notice to the Council, directs.

(2) The Council shall not transact any business in relation to the Fund unless there are bylaws in force under this section.

(3) Repealed 2007 c39 s40.

(4) The *Regulations Act* does not apply to bylaws of the Council under this section.

RSA 2000 cR-5 s63;2007 c39 s40

Part 5 Alberta Real Estate Foundation

Foundation continued

64(1) The Alberta Real Estate Foundation, created under the *Real Estate Agents' Licensing Act*, RSA 1980 cR-5, is continued as a corporation.

(2) The Foundation shall be administered by a board of governors appointed in accordance with the regulations.

(3) The purposes of the Foundation are to promote and undertake

- (a) the education of related professionals and the public in respect of the real estate industry,
- (b) law reform and research in respect of the real estate industry, and
- (c) other projects and activities to advance and improve the real estate industry.

1995 cR-4.5 s63

Powers of Foundation

65(1) In addition to its other powers as a corporation, the Foundation may

- (a) make grants or loans to any person or organization for a purpose consistent with the purposes of the Foundation;
- (b) publish, produce or distribute books, pamphlets, films or other productions that relate to any matter pertaining to the purposes of the Foundation;
- (c) acquire real or personal property;
- (d) hold, manage and dispose of its real and personal property;
- (e) enter into a contract with any person in relation to any matter pertaining to the purposes of the Foundation;
- (f) borrow money from any person or enter into overdraft or line of credit arrangements with a bank, loan corporation, trust corporation, credit union or treasury branch for the purpose of meeting its obligations as they come due, and give security for the loan, overdraft or line of credit;
- (g) draw, make, accept, endorse, execute or issue promissory notes, bills of exchange or other negotiable instruments.

- (2) The Foundation may, as a condition of making a grant or loan,
- (a) require the recipient of the grant or loan to enter into an agreement with respect to any matter relating to the grant or loan, and
 - (b) prescribe conditions to which the grant or loan is subject.

1995 cR-4.5 s64

Application of other Acts

66(1) Notwithstanding anything in the *Loan and Trust Corporations Act*, the Foundation shall not be considered to be a trust corporation for the purposes of that Act.

- (2) The sections of the *Companies Act* referred to in section 4 of that Act do not apply to the Foundation.

1995 cR-4.5 s65

Bylaws of Foundation

67(1) The Foundation may make bylaws

- (a) respecting the conduct of the business and affairs of the Foundation;
- (b) respecting the calling of meetings of the board of governors and the conduct of business at those meetings;
- (c) designating the offices of the Foundation;
- (d) respecting the appointment, removal, functions, powers, duties, remuneration and benefits of officers and employees of the Foundation;
- (e) delegating to the officers of the Foundation or any committee of it any powers of the Foundation required to manage the business and affairs of the Foundation, except the power to make bylaws;
- (f) respecting the establishment of annual and other budgets of the Foundation and the amendment of those budgets;
- (g) respecting the establishment, membership, duties and functions of special, standing and other committees;
- (h) respecting the making of grants or loans by the Foundation.

- (2) The *Regulations Act* does not apply to bylaws of the Foundation.

1995 cR-4.5 s66

Establishment of fund

68(1) The fund established by the Foundation under the *Real Estate Agents' Licensing Act*, RSA 1980 cR-5, is continued.

(2) The Foundation shall maintain an account for the fund in a bank, loan corporation, trust corporation, credit union or treasury branch, to be called the "real estate foundation account".

(3) The following shall be paid into the fund:

- (a) money paid to the Foundation by a bank, loan corporation, trust corporation, credit union or treasury branch under section 69;
- (b) interest from investment of the money in the fund;
- (c) money paid to the Foundation under section 25(5);
- (d) money received by the Foundation by way of gift.

(4) The Foundation may pay out of the fund the reasonable costs of the administration of the fund and of carrying out the purposes of the Foundation.

(5) Any money that is not immediately required for the purposes of the Foundation may be invested in the name of the Foundation in any manner in which trustees are authorized to invest trust funds, if the investments are in all other respects reasonable and proper.

1995 cR-4.5 s67

Payment of trust account interest

69(1) An industry member who

- (a) maintains a trust account under section 25,
- (b) is credited with interest on money in the account by the bank, loan corporation, trust corporation, credit union or treasury branch in which the account is maintained, and
- (c) is an industry member of a class specified in the regulations for the purposes of this section

holds the interest in trust for the Foundation.

(2) An industry member referred to in subsection (1) shall, in accordance with the regulations, instruct the bank, loan corporation, trust corporation, credit union or treasury branch to pay the interest credited to the account to the Foundation.

(3) A bank, loan corporation, trust corporation, credit union or treasury branch that receives an instruction under subsection (2) shall pay the interest to the Foundation in accordance with the regulations.

(4) This section does not apply to

- (a) money deposited in a separate account for a party in respect of a dealing or trade, or
- (b) a security deposit that is given under a tenancy that is subject to the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*.

RSA 2000 cR-5 s69;2007 c39 s41

Audit of Foundation accounts

70 The accounts of the Foundation must be audited annually by a professional accounting firm registered under the *Chartered Professional Accountants Act* and authorized to perform an audit engagement.

RSA 2000 cR-5 s70;RSA 2000 cR-12 s149;2014 cC-10.2 s185

Reports

71 Within 120 days after each fiscal year end the Foundation shall

- (a) submit to the Minister a report summarizing its transactions and affairs during the preceding fiscal year and containing an audited financial statement, and
- (b) provide a copy of the report to the Council.

1995 cR-4.5 s70

Winding-up

72 In the event of the winding-up of the Foundation, the property of the Foundation must be used

- (a) first in the payment of any costs incurred in the winding-up of the Foundation,
- (b) second in the discharge of all liabilities of the Foundation, and
- (c) third to give effect, as far as possible, to any outstanding applicable trust conditions,

and the balance, if any, must be disposed of in accordance with the regulations.

1995 cR-4.5 s71

Limitation of liability

72.1 A governor, officer or employee of the Foundation is not liable for anything done or omitted to be done in good faith in carrying out powers, duties and functions under this Act and the regulations.

2007 c39 s42

**Part 6
General****Order to cease carrying on business**

73(1) Where under the authority of this Act an industry member's authorization is cancelled or suspended, the person or body ordering the cancellation or suspension may also by order prohibit any other industry member who was acting as an employee or agent of the industry member and

- (a) committed the act or omission that resulted in the cancellation or suspension, or
- (b) directed, authorized, assented to, participated in or acquiesced in the act or omission

from carrying on the business of an industry member, subject to any terms and conditions set out in the order.

(2) A person against whom an order is made under subsection (1) shall comply with it in accordance with its terms.

(3) A person against whom an order is made under subsection (1) may appeal the order to the Council in accordance with the rules.

1995 cR-4.5 s72

Periodic inspections

74(1) The executive director or a person authorized by the executive director for the purpose may conduct periodic inspections of the business of an industry member, and for that purpose

- (a) may examine and inquire into
 - (i) books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of, in relation to or connected with the industry member, and
 - (ii) property, assets or things owned, acquired or alienated in whole or in part by the industry member or by a person acting on behalf of or as agent for that industry member,

- (b) may at reasonable times demand the production of and inspect
 - (i) all or any of the things mentioned in clause (a)(i), and
 - (ii) all or any documents relating to a transaction in the business of the industry member,

and

- (c) may copy by electronic or other means, and keep copies of, anything produced under clause (b).

(2) A person who has the custody, possession or control of the things referred to in subsection (1) shall produce and permit the inspection and copying of them by the executive director or the person authorized by the executive director.

RSA 2000 cR-5 s74;2003 c31 s18;2007 c39 s43

Receiving order, freezing assets

75(1) The executive director,

- (a) where the executive director is about to commence an investigation of an industry member under section 38, or during or after such an investigation,
- (b) where
 - (i) criminal proceedings, or
 - (ii) proceedings in respect of non-compliance with this Act, the regulations, the bylaws or the rules

that, in the opinion of the executive director, are connected with or arise out of a transaction in the business of an industry member, are about to be or have been instituted against any industry member, or

- (c) where the executive director has reason to believe that the trust funds in an industry member's trust account are less than the amount for which the industry member is accountable,

may do any or all of the things referred to in subsection (2).

(2) If subsection (1) applies, the executive director may do one or more of the following:

- (a) in writing

- (i) direct any person having on deposit or under that person's control or for safekeeping any funds or securities of the industry member to hold those funds or securities, or
- (ii) direct the industry member to refrain from withdrawing funds or securities referred to in subclause (i) from any person who has them on deposit, under control or for safekeeping,

until the executive director in writing revokes the direction or consents to release any particular fund or security from the direction;

- (b) in writing direct any person having on deposit or under that person's control or for safekeeping any funds or securities of the industry member to pay those funds or securities into or deposit those funds or securities with the Court;
- (c) where subsection (1)(a) applies, publish in a form and manner that the executive director considers appropriate information about the subject-matter of the investigation.

(3) Where under subsection (2)(a) the executive director directs a person to hold funds or securities, the executive director may send to those persons whom the executive director is readily able to identify as having an interest in those funds or securities a notice stating that the funds or securities are being held.

(4) Where under subsection (2)(b) the executive director directs a person to pay funds or securities into or deposit funds or securities with the Court, the executive director shall send to those persons whom the executive director is readily able to identify as having an interest in those funds or securities a notice stating that

- (a) the funds or securities have been paid into or deposited with the Court, and
- (b) a person may apply to the Court for an order directing payment or distribution of all or part of the funds or securities to one or more persons.

(5) An application under subsection (4)(b) must be served on the industry member.

RSA 2000 cR-5 s75;2001 cC-28.1 s465;2003 c31 s19;
2007 c39 s44;2009 c53 s157

Reviews

76(1) The Minister may, whenever the Minister considers it necessary, review or appoint a person to review

- (a) the conduct of the Council,
- (b) any matter relating to the Fund,
- (c) any matter relating to the Foundation, or
- (d) any matter affecting the industry or its regulation.

(2) The Minister or other person conducting the review under subsection (1)

- (a) may require the attendance of any member, officer or employee of the Council or the board of governors of the Foundation or of any other person whose presence is considered necessary during the course of the review, and
- (b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.

(3) When required to do so by the Minister or other person conducting a review, a person referred to in subsection (2)(a) shall produce for review all books and records that are in that person's possession or under that person's control that are relevant to the subject-matter of the review.

(4) A person, other than the Minister, who conducts a review shall forthwith on the conclusion of the review report in writing to the Minister.

(5) On conducting a review or receiving a report under subsection (4), the Minister may by order direct that the Council, the Foundation or any member, officer or employee of the Council or of the board of governors of the Foundation take any action that the Minister considers appropriate in the circumstances.

(6) If an order under subsection (5) is not carried out to the satisfaction of the Minister, the Minister may by order do either or both of the following:

- (a) appoint a comptroller to oversee the management of the affairs of the Council or the Foundation or the administration of the Fund, as the case may be, and attach terms and conditions to the continued operation of the Council, the Foundation or the Fund, as the case may be;
- (b) dismiss all or any of the members of the Council or the board of governors of the Foundation or the member, officer or employee who failed to carry out the order.

(7) If the Minister dismisses the Council or the board of governors of the Foundation, the Minister may in the same or a subsequent order do either or both of the following:

- (a) appoint an official administrator to manage the affairs of the Council or the Foundation, as the case may be, until a new Council or board of governors is appointed;
- (b) direct that a new Council or board of governors be appointed under this Act.

(8) An order under subsection (7)(a) may provide for the payment of remuneration and expenses to the official administrator and may provide that the remuneration and expenses are the responsibility of the Council or the Foundation, as the case may be.

(9) An official administrator has all the powers and is subject to all the obligations of the Council or the Foundation, as the case may be, under this Act.

(10) An order or direction under subsection (5), (6) or (7) takes effect on the service of a copy of it on the person to whom it is directed.

1995 cR-4.5 s75

Service of documents

77(1) In this section, “telecopier” means a machine or device that electronically transmits a copy of a document, picture or other printed material by means of a telecommunication system.

(2) Service of any document required to be sent, communicated, given or served under this Act, the rules or the bylaws may be effected

- (a) on the Council,
 - (i) by leaving the document at the Council’s office,
 - (ii) by sending the document by recorded mail to the Council at its mailing address, or
 - (iii) by sending the document by a telecopier or electronic device to be received and printed by a receiving telecopier or electronic device that is situated at the Council’s office;
- (b) on an industry member,
 - (i) by personal service,

- (ii) by sending the document by recorded mail addressed to the industry member at the last business or residential address provided by the industry member to the Council, or
 - (iii) by sending the document by a telecopier or electronic device to be received and printed by a receiving telecopier or electronic device that is situated at the last business or residential address provided by the industry member to the Council;
- (c) on a person other than the Council or an industry member in a manner or by a method provided for in the regulations.
- (3)** Service under subsection (2)(a)(iii) or (b)(iii) is effected if the sender requests receipt to be acknowledged and the recipient acknowledges receipt.

RSA 2000 cR-5 s77;2003 c31 s20;
2007 c39 s45;2009 c53 s157

Immunities

78 No action or other proceeding for damages may be commenced against the Council, a member or employee of the Council, a person appointed or engaged under the bylaws or rules to exercise a power or perform a duty for the Council, or a member of a Hearing Panel or an Appeal Panel

- (a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act, the regulations, the bylaws or the rules, or
- (b) for any neglect or default in the performance or exercise in good faith of the duty or power.

1995 cR-4.5 s77

Extension of time

79 The Council may on application extend the time within which anything is required to be done by any person under this Act, the regulations, the bylaws, the rules or a direction or decision of the Council, the executive director or a Panel under this Act.

1995 cR-4.5 s78

Certificate evidence

- 80** A certificate or other document purporting to be signed by
- (a) a member of the Council or of the board of governors of the Foundation,
 - (b) the chair of a Hearing Panel or Appeal Panel, or

(c) the executive director

is admissible in evidence as proof, in the absence of evidence to the contrary, of its contents without proof of the appointment or the signature of the person signing it.

1995 cR-4.5 s79

Offences

81(1) A person who contravenes section 10(2), 17, 18(1), (2) or (3), 19, 20(2), (3), (4) or (5), 24(1)(a), 25(1), (2), (3), (5) or (9), 38(4)(a) or (4.1), 69(2), 73(2), 74(2) or 83.2(7) is guilty of an offence and liable to a fine of not more than \$25 000.

(1.1) A person who fails to comply with an order issued under section 83.2 is guilty of an offence and liable to a fine of not more than \$25 000.

(2) Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, acquiesced in, assented to or participated in the commission of the offence is guilty of the offence and is liable to the penalty under subsection (1), whether or not the corporation has been prosecuted for or convicted of the offence.

(3) A person who is convicted of an offence under section 17, 18, 20, 24 or 25 shall, in addition to any fine or penalty payable under this section or section 83, return all commissions and other remuneration received by that person in respect of the activity that constituted the offence.

(4) A prosecution under this Act may be commenced within 3 years after the date on which the offence is alleged to have been committed, but not after that date.

RSA 2000 cR-5 s81;2003 c31 s21;2007 c39 s46

Burden of proof

82 When, in an investigation, hearing, appeal or prosecution under this Act, a person pleads that at the time of the conduct at issue the person was lawfully authorized by the Council to act as an industry member, the burden of proving that is on that person.

1995 cR-4.5 s81

Administrative penalties

83(1) Where the executive director is of the opinion that a person has contravened a provision of

- (a) this Act,
- (b) the regulations,

(c) the bylaws, or

(d) the rules

that is specified in the bylaws, the executive director may, subject to the bylaws, by notice in writing given to that person, require that person to pay to the Council an administrative penalty in the amount set out in the notice for each day that the contravention continues.

(2) A person who pays an administrative penalty in respect of a contravention may not be charged under this Act with an offence in respect of that contravention.

(3) Where a person fails to pay an administrative penalty in accordance with a notice under subsection (1), the Council may recover the amount owing in respect of the penalty in an action in debt.

1995 cR-4.5 s82

Appeal of administrative penalty

83.1(1) A person to whom a notice to pay an administrative penalty is given under section 83(1) may, within 30 days after receipt of the notice, by notice of appeal in writing to the executive director, appeal the decision to a Hearing Panel.

(2) A notice of appeal under subsection (1)

(a) must

(i) describe the administrative penalty appealed from, and

(ii) state the reason for the appeal,

and

(b) must be accompanied with security for costs in an amount that is the lesser of 3 times the administrative penalty imposed and \$1000.

(3) On receipt of a notice of appeal and security for costs, the executive director shall refer the matter to a Hearing Panel, which shall hold a hearing.

(4) Sections 41 and 42, but not sections 43 to 47, apply to the hearing of an appeal under this section.

(5) The Hearing Panel on an appeal may

(a) quash, vary or confirm the administrative penalty, and

- (b) make an award as to costs of the investigation that resulted in the administrative penalty and of the appeal in an amount determined in accordance with the bylaws.
- (6) The Hearing Panel's decision under this section is final.
- (7) The executive director shall serve a copy of the Hearing Panel's decision on the appellant.

2007 c39 s47

Production order**83.2(1)** For the purpose of enabling

- (a) a person to conduct an investigation under section 38, or
- (b) the executive director to determine whether a person has contravened a provision of this Act, the regulations, the bylaws or the rules referred to in section 83,

the executive director may, subject to subsection (4), by an order that is applicable to one or more persons, require a person to do the things set out in subsection (3) within the time prescribed in the order.

(2) The executive director must serve a copy of an order made under subsection (1) on

- (a) the person or persons to whom the order is directed, and
- (b) the person under investigation who is named in the order.

(3) An order under subsection (1) may require the person to whom the order is directed

- (a) to produce for inspection by a person conducting an investigation or the executive director the books, documents, records and other things in the person's possession or under that person's control, as set out in the order, and
- (b) to answer any questions asked by the person conducting the investigation or the executive director.

(4) The executive director may make an order for the purposes of subsection (1)(b) only if the executive director has information that the requested books, documents, records and other things relate to a possible contravention of this Act, the regulations, the bylaws or the rules.

(5) A person conducting an investigation or the executive director may

- (a) copy by electronic or other means, and keep copies of, anything produced under subsection (3)(a), and
- (b) record by audio or video or by other means any answers provided under subsection (3)(b).

(6) A person who is required under subsection (3)(b) to answer questions shall not be excused from answering any question on the ground that the answer might tend to

- (a) incriminate the person,
- (b) subject that person to punishment under this Act, or
- (c) establish that person's liability to a civil proceeding at the instance of the Crown or of any other person, or to prosecution under any Act,

but if the answer so given tends to incriminate that person, subject the person to punishment or establish the person's liability, it may not be used or received against the person in any civil proceedings, in a prosecution of an offence under this Act or in any proceedings under any other Act, except in a prosecution for or proceedings in respect of a contravention of this section.

(7) A person shall not withhold, destroy, conceal or refuse to produce any books, documents, records or other things requested in an order under subsection (1).

(8) The executive director may in an order under subsection (1) request verification by affidavit that the person has produced to the person conducting the investigation or the executive director all of the books, documents, records and other things required pursuant to the order.

(9) The following persons may, within 30 days after receipt of the order under subsection (1), apply to the Court for an order varying or cancelling an order under subsection (1):

- (a) a person to whom the order is directed;
- (b) a person under investigation who is named in the order;
- (c) a person other than one referred to in clause (a) or (b) who is otherwise affected by the order.

(10) On an application under subsection (9), the Court may vary or cancel an order on any terms or conditions the Court considers just if the Court finds that

- (a) all or a part of the order is not reasonable, or
- (b) one or more affected persons are unduly prejudiced by the order.

(11) Nothing in this section shall be interpreted so as to affect the privilege that exists between a solicitor and the solicitor's client.

2007 c39 s47

Persons to conduct investigations

83.3 The executive director may appoint persons to conduct investigations for the purposes of this Act.

2007 c39 s47

Regulations

84(1) The Lieutenant Governor in Council may make regulations

- (a) exempting persons or classes of persons or transactions in the business of an industry member or classes of such transactions from the application of any of the provisions of this Act;
 - (a.1) respecting the circumstances in which this Act as it relates to trading in real estate applies to the persons referred to in section 2(1)(b);
 - (a.2) respecting the circumstances in which this Act as it relates to dealing in mortgages applies to the persons referred to in section 2(3)(a), (b) or (c);
- (b) specifying or describing a business or activity for the purposes of section 60.1(c).

(2) The Minister may make regulations

- (a) respecting the nomination of persons from whom members of the Council are to be appointed under section 6(1)(f);
 - (a.1) prescribing time periods for the purposes of section 6(7);
 - (a.2) prescribing the maximum amount of an administrative penalty for the purposes of section 11(1);
 - (a.3) prescribing time periods for the purposes of section 25(1)(b);

- (a.4) prescribing or otherwise describing, for the purposes of section 38.1, the circumstances under which an executive director may refuse to investigate or may discontinue investigating or direct a person appointed under section 38(1) to discontinue investigating a complaint;
- (b) respecting the classes of industry members in respect of whom judgments may be paid from the Fund under section 57(3);
- (c) prescribing, for the purposes of section 57(5), the classes of applicants and industry members who are subject to assessments for the purposes of the Fund;
- (d) respecting the classes of applicants to become industry members and the classes of industry members who are liable for assessments for the purposes of the Fund;
- (e) prescribing the conditions to be met before any judgment or claim is paid from the Fund;
- (f) respecting the payment of compensation from the Fund including, without limitation, regulations respecting the maximum payments that may be paid from the Fund based on any one or more factual circumstances relating to an applicant or an industry member or on any other consideration set out in the regulations;
- (f.1) respecting the investment of funds for the purpose of section 58(1);
- (g) repealed 2005 c17 s4;
- (g.1) prescribing the information and documents to be provided by an applicant under sections 60.2(2) and 60.3(3);
- (h) prescribing the amounts referred to in sections 57(4) and 62(1);
- (i) respecting, for the purposes of section 57(4), additional purposes for which money in the Fund may be used;
- (j) respecting the winding-up of the Fund under section 62, including, without limitation, regulations respecting how the Fund proceeds are to be distributed;
- (k) respecting the appointment of members of the board of governors of the Foundation including, without limitation, the number of members, who is to appoint them, the terms of office of members and the filling of vacancies;

- (l) specifying the classes of industry members to whom sections 25(5) and 69 apply;
- (m) respecting the manner in which and the times at which a bank, loan corporation, trust corporation, credit union or treasury branch must pay interest to the Foundation as required by section 69(2) and (3);
- (n) respecting the circumstances under which and the manner in which the Foundation may be wound up under section 72;
- (n.1) respecting service of documents for the purposes of section 77(2)(c);
- (n.2) respecting an appeal of an order under section 83.2 to the Court;
- (n.3) defining any word or phrase used in this Act but not defined in this Act;
- (o) respecting any other matters that are necessary to carry out this Act.

RSA 2000 cR-5 s84;2001 c28 s18;2003 c31 s22;
2005 c17 s4;2007 c39 s48;2008 c43 s9



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