



Province of Alberta

REAL ESTATE ACT

Revised Statutes of Alberta 2000
Chapter R-5

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Office Consolidation

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Note

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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, 34/2018, 186/2020
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, 124/2018, 12/2019, 205/2020

REAL ESTATE ACT

Chapter R-5

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WHEREAS the Government of Alberta recognizes the need for effective regulation of the real estate industry; and

WHEREAS the Real Estate Council of Alberta is intended to provide that regulation to protect the public and support the real estate industry;

THEREFORE 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 Association of Condominium Managers of Alberta, the Canadian Condominium Institute North Alberta Chapter, the Canadian Condominium Institute South Alberta Chapter, 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;
- (a.1) “Board” means the Board of Directors of the Council, as composed pursuant to section 6;
- (b) repealed 2003 c31 s2;
- (c) repealed 2007 c39 s2;
- (d) “business of a licensee” means the trades of a real estate broker, the services of a property manager referred to in clause (s.2) or the dealings of a mortgage broker undertaken by a licensee;
- (e) “bylaws” means, except in clause (e.2)(ii) and section 67, bylaws made by the Board;
- (e.1) “condominium corporation” means a corporation as defined in the *Condominium Property Act*;
- (e.2) “condominium management service” means the exercising of a power or the performing of a duty of a condominium

corporation on behalf of the condominium corporation, including, but not limited to,

- (i) collecting, holding or disbursing, or attempting to collect, hold or disburse, contributions levied by the condominium corporation or other amounts levied by or due to the corporation under the *Condominium Property Act*,
- (ii) enforcing the bylaws or rules of the corporation,
- (iii) negotiating or entering into contracts on behalf of the corporation, and
- (iv) supervising employees or contractors hired or engaged by the corporation,

but does not include any activity excluded by the *Condominium Property Act*, this Act or the regulations under either Act;

- (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 licensee” means a person who ceases to be a licensee;
- (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 property manager industry and the mortgage broker industry;
- (n.1) “Industry Council” means an Industry Council established under section 7.1;

- (o) “licensee” means any person who holds a licence as a real estate broker, a property manager or a mortgage broker, or as any category or class of real estate broker, property manager or mortgage broker, issued by an Industry 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 property
- for 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);
 - (iv) engaging in a condominium management service referred to in clause (e.2);
 - (v) 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 real estate, or
 - (B) contributions for the control, management or administration of real estate;
- (s.2) “property manager” means a person engaged in property management as defined in clause (s.1);
- (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);
- (v.1) “registrar” means the registrar appointed under section 8.1;
- (w) “rules” means, except in clause (e.2)(ii) and section 76.2, rules made by an Industry 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 a licensee;
- (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) repealed 2020 c10 s4;
 - (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) repealed 2020 c10 s4;
 - (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vi).
- (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;2020 c10 s4

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) repealed 2020 c10 s5,
- (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 licensed 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 a licence 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 the use of real estate for any purpose when that use is authorized by another enactment.
- (6) This Act, as it relates to engaging in a condominium management service, does not apply to a condominium corporation in respect of the condominium corporation managing its own affairs.
- (7) This Act, as it relates to property management, does not apply to a person exempted by the regulations.

RSA 2000 cR-5 s2;2003 c31 s3;2007 c39 s3;2020 c10 s5

Part 1

Real Estate Council of Alberta

Real Estate Council of Alberta

- 3(1)** The Real Estate Council of Alberta is hereby established as a corporation.

(2) The Council consists of the members of the Board.

RSA 2000 cR-5 s3;2020 c10 s6

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 the Board

5 The purposes of the Board are

- (a) to set the strategic direction and ensure the effective operation of the Council;
- (b) to protect against, investigate, detect and suppress fraud as it relates to the business of licensees and to protect consumers;
- (c) to provide, or support the provision of, services and other things that facilitate the business of licensees, as provided for in the regulations;
- (d) to administer this Act as provided in this Act, the regulations, the bylaws and the rules.

RSA 2000 cR-5 s5;2006 c29 s2;2020 c10 s7

Composition of Board

6(1) The Board shall consist of 7 members appointed as follows:

- (a) the Minister shall appoint 3 public members, who must not be licensees;
- (b) each Industry Council established under section 7.1 shall appoint a member, who must be a member of the Industry Council elected to the Industry Council under section 7.1(2)(b).

(2) Subject to section 9(11) and Part 6, the term of office of a member appointed under subsection (1) is 3 years.

(3) A person may be reappointed to the Board, but no person may serve more than 2 consecutive terms as a member of the Board.

(4) No person may serve as a Board member for more than 12 years of total service as a Board member.

(5) The Minister shall appoint one of the public members appointed under subsection (1)(a) as the chair of the Board, for a

term of up to 3 years, and the chair shall act as the meeting facilitator and spokesperson for the Board and otherwise provide leadership for the Board.

(6) Despite subsection (5), the term of a person who is serving as the chair of the Board ends immediately if the person is no longer a member of the Board.

(7) 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 or chair who is being replaced was made.

(8) If an Industry Council fails to appoint a member within the time prescribed by the regulations or the bylaws, the Board may appoint the member, and the member shall be considered to have been appointed by the Industry Council.

(9) A vacancy in the membership of the Board does not invalidate the constitution of the Board nor impair the right of members of the Board 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;2019 c13 s2;
2020 c10 s8

7 Repealed 2020 c10 s9.

Industry Councils

7.1(1) Four Industry Councils are established to create and administer rules and licensing requirements for the following industries:

- (a) the residential real estate broker industry;
- (b) the commercial real estate broker and commercial property manager industry;
- (c) the residential property manager industry;
- (d) the mortgage broker industry.

(2) Each Industry Council shall be composed of

- (a) 2 public members appointed by the Minister, who must not be licensees, and
- (b) 3 licensees from the industry to which the Industry Council relates, elected by the licensees of that industry.

- (3) Subject to section 9(11) and Part 6, the term of office of a member of an Industry Council is 3 years.
- (4) A person may be reappointed or re-elected to an Industry Council, but no person may serve more than 2 consecutive terms as a member of the Industry Council.
- (5) No person may serve as an Industry Council member for more than 12 years of total service as an Industry Council member.
- (6) Each Industry Council shall elect one of its members as the chair of the Industry Council, for a term of 2 years, and the chair shall act as the meeting facilitator and spokesperson for the Industry Council and otherwise provide leadership for the Industry Council.
- (7) Despite subsection (6), the term of a person who is serving as the chair of an Industry Council ends immediately if the person is no longer a member of the Industry Council.
- (8) Where a vacancy occurs, the vacancy shall be filled by an appointment or election for the unexpired portion of the term, to be made in the same manner that the appointment or election of the member or chair who is being replaced was made.
- (9) If the licensees of an industry fail to elect a member or members within the time prescribed by the regulations, the Minister may appoint the member or members, and the member or members shall be considered to have been appointed by the Industry Council.
- (10) A vacancy in the membership of the Industry Council does not invalidate the constitution of the Industry Council nor impair the right of members of the Industry Council to act if the number of remaining members is not less than a quorum.

2020 c10 s10

Purposes and mandate of Industry Councils

- 7.2(1)** The purposes of an Industry Council are
- (a) to set and enforce standards of conduct for licensees and the business of licensees in order to protect consumers and promote the integrity of the industry, and
 - (b) to administer this Act as provided in this Act, the regulations, the bylaws and the rules.
- (2) Each Industry Council may establish rules setting out the conditions for a person to become and remain a licensee of the

industry to which the Industry Council relates, including minimum standards for conduct and education requirements.

2020 c10 s10

Executive director

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

(2) A licensee is not eligible to be or remain executive director.

(3) The executive director reports to and is accountable solely to the Board.

(4) The executive director shall perform only the duties imposed on the executive director by or under this Act, and in doing so may exercise all of the powers granted to the executive director by or under this Act.

(5) The Board shall conduct and prepare a performance review of the executive director every year, not later than 120 days after the last day of each fiscal year.

RSA 2000 cR-5 s8;2020 c10 s11

Registrar

8.1(1) The Board shall appoint a registrar, who shall not be the person appointed as the executive director under section 8.

(2) A licensee is not eligible to be or remain a registrar.

(3) The registrar reports to the executive director.

(4) The registrar is accountable to the Board for the performance of duties imposed on the registrar by or under this Act and the exercise of powers granted to the registrar by or under this Act.

(5) The registrar shall perform only the duties imposed on the registrar by or under this Act, and in doing so may exercise all of the powers granted to the registrar by or under this Act.

(6) The executive director shall conduct and prepare a performance review of the registrar every year, and a copy of that review must be submitted to the Board not later than 120 days after the last day of each fiscal year.

2020 c10 s12

Prohibitions

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

- (a) if the person is a licensee, 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 being a member of the Board or an Industry Council, or from confidential or non-public information gained by reason of the member's position or authority with the Board or an Industry Council;
- (c) act in a manner, whether or not prohibited by this Act, the regulations, the bylaws or the rules, 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 Board or an Industry Council from carrying out its purposes,
 - (iv) foregoing independence or impartiality, or
 - (v) adversely affecting the integrity of the Board or an Industry Council;
- (d) represent the Board or an Industry 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 regulations, the bylaws or the rules;
- (e) contract with or otherwise accept the services of a licensee or applicant to become a licensee on terms that are more favourable than those generally available to the general public;
- (f) unless approved by the Board or an Industry Council, as the case may be, 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 bylaws or the rules.

(2) The Board may, by bylaw, establish prohibitions that apply to a member of the Board or an Industry Council in addition to those in subsection (1).

(3) If the Board or an Industry Council becomes aware of a possible violation of

- (a) subsection (1), or
- (b) a bylaw made under subsection (2)

by one of its members, the dispute resolution process established under section 11.3(a) must be used.

(4) The Board or an Industry Council, as the case may be, may vote to suspend a member from all Board or Industry Council activities for the duration of the dispute resolution process.

(5) A vote to suspend a member taken under subsection (4) requires a majority of the other members to pass, plus one additional member.

(6) If, after the dispute resolution process has been used, the Board or an Industry Council, as the case may be, does not believe the member has committed a violation, a member who has been suspended under subsection (4) shall be automatically reinstated to the Board or Industry Council.

(7) If, after the dispute resolution process has been used, the Board or an Industry Council, as the case may be, believes that one of its members has violated subsection (1) or violated a bylaw made under subsection (2), the Board or Industry Council may

- (a) by majority vote, suspend the member from any or all Board or Industry Council activities, as the case may be, for any period of time and subject to any terms and conditions that the Board or Industry Council considers appropriate,
- (b) in the case of a Board member who was appointed to the Board by an Industry Council, dismiss the member from the Board if a majority plus one other Board member votes to dismiss the member,
- (c) in the case of an Industry Council member who is a licensee of that Industry Council, dismiss the member from the Industry Council if all or a majority plus one other member of the Industry Council votes to dismiss the member, or
- (d) in the case of a public member, make a recommendation that the Minister dismiss the member from the Board or

Industry Council if a majority of the Board or Industry Council votes to do so.

(8) The person who is the subject of a vote taken under subsection (4) or (7) shall not cast a vote.

(9) If the majority of votes in a vote taken under subsection (7)(b) or (c) are to dismiss a member, but the required number of votes to dismiss the member has not been reached, the Board or Industry Council shall notify the Minister of the result and shall recommend that the Minister dismiss the member from the Board or Industry Council.

(10) Nothing in this section prevents a member subject to the dispute resolution process from resigning at any time.

(11) If the licence of a member is withdrawn, expires or otherwise becomes invalid for any reason, the member shall be deemed to have immediately resigned from the Board or Industry Council.

(12) An Industry Council shall notify the Board immediately of the results of any vote taken under subsection (4) or (7) or a resignation.

RSA 2000 cR-5 s9;2009 c53 s157;2020 c10 s13

Direction by Industry Council

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

- (a) direct any licensee or person who the Industry Council determines is acting in the capacity of a licensee to do immediately or within or at a specified time and in any manner directed by the Industry 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.

RSA 2000 cR-5 s10;2020 c10 s14

Bylaws

11(1) The Board may make bylaws

- (a) respecting the appointment and election of officers of the Board or an Industry Council;

- (a.1) respecting the appointment of an Executive Director;
- (a.2) respecting the conduct of elections under section 7.1(2)(b);
 - (b) subject to the regulations, prescribing time periods for the purposes of section 6(8);
 - (c) respecting the duties of members and officers of the Board or an Industry Council and their remuneration;
 - (d) respecting the procedure for making appointments under section 6(8);
 - (e) subject to the regulations, respecting the services and other things provided by or on behalf of the Board;
 - (f) respecting the conduct of the business and affairs of the Council, the Board or an Industry Council;
 - (g) respecting the receipt, management and investment of contributions, donations, bequests or any other sources of revenue received by the Council, the Board or an Industry Council;
 - (h) respecting the investigation under section 38 of the conduct of a licensee;
- (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) repealed 2020 c10 s15;
 - (m) respecting the appeal of a decision to refuse to issue, to cancel or to suspend a licence, or to refuse to reinstate a licence;
- (m.1) respecting the appeal of orders under section 73;

- (m.2) subject to regulations under section 84(2)(d), authorizing the Council to charge and collect from licensees 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 manner in which and times at which they must be paid and penalties or interest charges that are payable for late payment;
 - (m.3) specifying the quorum for the Board or an Industry Council;
 - (m.4) respecting the form and contents of statements of admission of conduct for the purposes of section 46 and the circumstances in which the Board may accept such a statement;
 - (m.5) authorizing the Board to establish and administer an insurance or indemnity plan for licensees and respecting all matters necessarily related to the establishment and administration of a plan;
 - (m.6) exempting persons or classes of persons from the bylaws;
 - (n) respecting any other matter necessary for the administration of the system of administrative penalties.
- (2)** Subject to the regulations, except for a bylaw made under section 67, a bylaw or the amendment of a bylaw shall not have effect until it has been approved in writing by the Minister.

RSA 2000 cR-5 s11;2007 c39 s5;2020 c10 s15

Conduct of the Board

11.1(1) The Board must, within one year of this section coming into force, make a bylaw governing

- (a) the conduct of its members and the members of the Industry Councils, and
- (b) the roles and responsibilities of
 - (i) the Board and its members,
 - (ii) the Industry Councils and their members,
 - (iii) the executive director, and
 - (iv) the registrar.

(2) A bylaw made under subsection (1) must be reviewed at least once every 3 years and must be repassed in its present or an amended form by 4 or more Board members following the review.

(3) A bylaw made under subsection (1) prevails over any other bylaw made under this Act to the extent of any inconsistency between them.

2020 c10 s16

Governance training

11.2(1) The Board must, within one year of this section coming into force, make a bylaw that identifies mandatory governance training requirements for Board members and Industry Council members.

(2) Each member of the Board and each member of an Industry Council must complete the training required by the bylaw made under subsection (1) within one year of their appointment or election to the Board or Industry Council, as the case may be.

2020 c10 s16

Dispute resolution

11.3 The Board must, within one year of this section coming into force, make a bylaw establishing a dispute resolution process that must

- (a) specify the process that will be used in a case where the Board or an Industry Council becomes aware of a possible violation of section 9(1) or a bylaw made under section 9(2),
- (b) specify the process that will be used in the case of a dispute over roles and responsibilities between the Board and an Industry Council or between 2 Industry Councils, and
- (c) identify other circumstances in which a dispute resolution process will be used, and specify the process that will be used in such circumstances.

2020 c10 s16

Fees

11.4 Except as provided in section 57(5) and (10)(a), no licensee shall be required to pay a fee, levy, premium or other assessment unless the fee, levy, premium or assessment has been authorized by a bylaw made under section 11(1)(m.2).

2020 c10 s16

Rules

12(1) Each Industry Council may, with respect to licensees in the industry to which the Industry Council relates, make rules

- (a) prescribing or adopting standards of conduct and business standards for licensees, including skills, education, competency and experience standards;
- (b) respecting the form and contents of advertising carried out by licensees;
- (c) respecting the use of names by licensees;
- (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 a licensee be evidenced by an agreement in writing and that such an agreement contain specified provisions;
- (f) regulating the operation of branch offices by licensees;
- (g) respecting the disclosure of information by licensees to parties and potential parties to transactions in the business of a licensee;
- (h) establishing different classes of licensees and different classes of business of licensees for the purposes of this Act, the regulations, the rules and the bylaws;
- (i) regulating the manner in which licensees are to carry out the activities that form part of the business of a licensee;
- (j) regulating the rights, duties, powers and obligations of licensees in the carrying on of the business of a licensee;
- (j.1) regulating the business of a licensee acting on the licensee's own behalf;
- (j.2) repealed 2020 c10 s17;
- (k) respecting the issuing of licences for the purposes of section 17, including, without limitation, rules
 - (i) respecting eligibility requirements for a person to acquire and retain a licence,
 - (ii) respecting the application for and issuing of licences,
 - (ii.1) respecting the requirement for a criminal record check to accompany an application for a licence,

- (iii) providing for the issuing of licences subject to terms and conditions and authorizing the imposition of terms and conditions on licences,
- (iv) respecting the duration of licences, and
- (v) authorizing and respecting the cancellation and suspension of licences in circumstances in addition to the circumstances under which a licence may be cancelled or suspended under Part 3;
- (vi) repealed 2020 c10 s17;
- (l) repealed 2020 c10 s17;
- (m) requiring licensees and former licensees 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 licensee, may not exceed a period of 3 years after the person becomes a former licensee;
- (n) respecting the keeping and operation of trust accounts by licensees;
- (o) requiring licensees and applicants to become licensees to provide information, reports and returns and other information to the Council, the Board, an Industry 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 licensees to acquire, maintain or provide insurance against their liability for errors and omissions in the carrying on of the business of a licensee and respecting the amount and form of insurance and the terms and conditions under which insurance is to be provided, or requiring licensees to participate in an indemnity plan for that purpose;
- (q) repealed 2020 c10 s17;
- (r) requiring licensees 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 licensees 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) repealed 2020 c10 s17;
 - (w) repealed 2007 c39 s6;
 - (x) repealed 2020 c10 s17;
 - (y) respecting the form and contents of applications to withdraw a licence for the purposes of section 54, and the circumstances under which the Industry Council may approve such an application;
 - (z) 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;
 - (aa) exempting persons or classes of persons from the rules.
- (2) An Industry Council that is proposing to create a rule or amend a rule shall submit the proposed rule or rule change to the Board, and the Board shall then transmit the proposed rule change to the Minister.
- (3) Subject to the regulations, a rule or the amendment of a rule shall not have effect until it has been approved in writing by the Minister.
- (4) In the event of an inconsistency between a rule made under this section and a bylaw made under this Act, the bylaw prevails to the extent of the inconsistency.

RSA 2000 cR-5 s12;2003 c31 s5;2007 c39 s6;2020 c10 s17

Non-application of Regulations Act

13 The *Regulations Act* does not apply to bylaws made under section 11, 11.1, 11.2 or 11.3 or rules made under section 12.

RSA 2000 cR-5 s13;2020 c10 s18

Availability of bylaws and rules

14(1) The Board

- (a) shall
 - (i) make copies of its bylaws available to licensees and members of the public, and

- (ii) make the agenda and minutes of all Board meetings available to licensees and members of the public,
 - (A) in the case of a meeting agenda, at least 7 days before the meeting takes place, and
 - (B) in the case of meeting minutes, no more than 7 days after they are finalized,

and

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

(2) Each Industry Council

- (a) shall
 - (i) make copies of its rules available to the Board, licensees in the industry to which the Industry Council relates and members of the public, and
 - (ii) make the agenda and minutes of all Industry Council meetings available to the Board, licensees in the industry to which the Industry Council relates and members of the public,
 - (A) in the case of a meeting agenda, at least 7 days before the meeting takes place, and
 - (B) in the case of meeting minutes, no more than 7 days after they are finalized,

and

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

RSA 2000 cR-5 s14;2020 c10 s19

Delegation of authority

15(1) The Board may delegate, by bylaw, 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 bylaws, or
- (b) any power, duty or responsibility under Part 3.

(2) An Industry Council may delegate, by resolution, 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,
- (b) its power to make appointments to the Board, or
- (c) any power, duty or responsibility under Part 3.

(3) An Industry Council that delegates a power, duty or responsibility must make copies of the resolution authorizing the delegation available to the Board, licensees in the industry to which the Industry Council relates and members of the public.

(4) The Board or an Industry Council may, when delegating a matter, authorize the further delegation of the matter.

(5) Any officer or employee who further delegates a matter that was delegated to the officer or employee by the Board or an Industry Council must do so in writing and provide a copy to the Board or Industry Council as soon as practicable.

(6) A delegation under subsection (1) or (2) may be made subject to any terms and conditions the Board or Industry Council considers appropriate, and any such terms and conditions shall be set out in the bylaw or resolution, as the case may be, in which the delegation is made.

(7) A delegation under subsection (5) may be made subject to any terms and conditions specified in writing.

(8) A person to whom a power, duty or responsibility has been delegated is subject to the same restrictions and responsibilities as the entity or person that delegated the authority to them.

RSA 2000 cR-5 s15;2020 c10 s20

Annual report

16(1) Not later than 120 days after the last day of the Council's fiscal year, the Board 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 licensees in each class or category of licence issued by the Industry Councils,

- (iii) for each class or category of licence state the number of persons
 - (A) who were refused a licence, or
 - (B) whose licences were cancelled, suspended or made conditional,
 - (iv) contain a list of current members and officers of the Council, the Board and the Industry Councils,
 - (iv.1) state all compensation paid to Board members, Industry Council members, the executive director and the registrar, and
 - (v) contain any other information that the Board determines relevant or necessary, or that the Minister requires;
- (b) cause a copy of the report to be delivered to the Minister.
- (1.1)** Not later than 60 days before the end of the Council's fiscal year, the Board shall
- (a) prepare a business and financial plan for the next 3 fiscal years, and
 - (b) deliver a copy of the business and financial plan to the Minister.
- (1.2)** The business and financial plan must include the following information:
- (a) goals;
 - (b) annual performance objectives;
 - (c) strategies for achieving the goals and performance objectives;
 - (d) the performance measures that will be used to evaluate whether the goals and performance objectives are met.
- (1.3)** The Board must fulfil its mandate and conduct its activities in a manner that is generally consistent with the current business and financial plan.
- (2)** Not later than 120 days after the last day of the Fund's fiscal year, the Board 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.

(2.1) When a report or plan is delivered to the Minister under subsection (1), (1.1) or (2), the report or plan must also be made available to members of the public.

(3) In addition to the reports under this section, the Board shall provide the Minister with financial statements or any other information concerning the Board, an Industry Council or the Fund when required to do so by the Minister, and the Industry Council and Fund shall supply the Board with any information required for the Board to comply with the Minister's request.

RSA 2000 cR-5 s16;2020 c10 s21

Part 2 Regulation of Business of a Licensee

Division 1 General

Licence 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 property manager, or
- (d) advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or property manager

unless that person holds the appropriate licence for that purpose issued by the Industry Council relating to that industry.

RSA 2000 cR-5 s17;2003 c31 s7;2020 c10 s23

Real estate appraisers

17.1 No person shall act as a real estate appraiser or advertise himself or herself as, or in any way hold himself or herself out as, a real estate appraiser in Alberta unless the person is a member in good standing of the Appraisal Institute of Canada, the Alberta Assessors' Association or the Canadian National Association of Real Estate Appraisers.

2020 c10 s24

Receipt of money

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

(2) No licensee shall receive money in the course of carrying on business as a licensee unless, before receiving the money, the licensee 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 a licensee, a licensee shall provide to the person on whose behalf the licensee is acting and any other person who is providing the money full particulars in writing of

- (a) any direct or indirect interest that the licensee or any associate within the meaning of the *Securities Act* or any officer, director or manager of the licensee or associate or, where the licensee is a partnership, any partner in the partnership, has or may acquire in the transaction, and
- (b) any intention on the licensee's part to have the licensee or another person referred to in clause (a) named in any document that would tend to indicate that the licensee 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 a licensee for carrying on the business of a licensee or security provided for remuneration or expenses.

RSA 2000 cR-5 s18;2003 c31 s8;2007 c39 s7;2020 c10 s25

Representations prohibited

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

RSA 2000 cR-5 s19;2020 c10 s26

Guaranteed sale agreement

20(1) In this section, "guaranteed sale agreement" means an agreement in writing under which a licensee or another person on behalf of or to the benefit of a licensee 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) A licensee 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 licensee 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 a licensee or other person on behalf of or to the benefit of a licensee, that licensee 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 licensee 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 licensee 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 a licensee 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 licensee or other person by that seller in respect of that trade.

RSA 2000 cR-5 s20;2020 c10 s27

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 a licensee unless, at the time of rendering the services, the person bringing the action

- (a) was the holder of the appropriate licence issued by the relevant Industry Council authorizing that person to render those services, or
- (b) was exempt from the licence 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;2020 c10 s28

Licence 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 a licensee unless, at the time of rendering the service, the person

- (a) was the holder of the appropriate licence issued by the relevant Industry Council authorizing the person to render those services, or
- (b) was exempt from the licence 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;2020 c10 s29

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 a licensee 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) repealed 2020 c10 s30;
- (e) in the case of a property manager engaging in a condominium management service, the person sought to be charged has, as a result of the services of the condominium manager employed by that person for the purpose, received the services of a condominium manager.

RSA 2000 cR-5 s22;2003 c31 s10;2007 c39 s9;2020 c10 s30

Recovery of shared commission or remuneration

23 Where there is an agreement between 2 or more licensees providing for the sharing of a commission or remuneration payable in respect of a transaction in the business of a licensee, only the licensee who, by virtue of a service agreement between that licensee and a party to the transaction, is entitled to the commission or remuneration, or an assignee of that licensee, 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;2020 c10 s31

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) A licensee who is required by the rules to keep and operate a trust account shall

- (a) keep complete and accurate financial records in which the licensee shall maintain a separate record for each person on whose behalf the licensee 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 property management service, dealing or trade for that person,
- (b) deposit money received in trust in respect of a property management service, dealing or trade in the business of the licensee within the time prescribed by the regulations, or within any period agreed to in writing by the parties to the property management service, 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 licensee and designated as a trust account,
- (c) keep money received or held in trust in respect of a property management service, dealing or trade in the business of the licensee separate from money that belongs to the licensee or any licensees the licensee employs, and
- (d) disburse money received or held in trust in respect of a property management service, dealing or trade in the business of the licensee only in accordance with the rules and with the terms of the trust governing the use of that money.

(2) Where a licensee receives money in trust in respect of a property management service, dealing or trade in the business of the licensee, the licensee shall ensure that the terms of the trust

governing the use of the money are in writing and agreed to by the licensee 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 a licensee

- (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 a licensee 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 licensee 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) A licensee 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) A licensee shall, in accordance with the rules, keep in Alberta records and books of account of the licensee'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 licensee 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;2020 c10 s32

26 to 35 Repealed 2007 c39 s12.

Part 3

Conduct Proceedings

Panels

36(1) A Hearing Panel and an Appeal Panel must consist of at least 3 members appointed in accordance with the bylaws.

(2) A Hearing Panel and an Appeal Panel must consist of at least one licensee and at least one member of the public.

(3) The number of members of the public on a Hearing Panel or an Appeal Panel must not exceed the number of licensees on the Hearing Panel or Appeal Panel.

(4) No Board member or Industry Council member may sit on a Hearing Panel or an Appeal Panel.

(5) A person who was a member of a 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;2020 c10 s33

Complaint

37(1) A person may make a complaint to the registrar about the conduct of a licensee.

(2) A complaint must be in writing and must include the name of the complainant and reasonable particulars of the complaint.

(3) An Industry Council may request information from the registrar regarding complaints relating to licensees of that Industry Council, and the registrar shall provide the information requested.

(4) Despite subsection (3), an Industry Council shall not request information from the registrar about a specific investigation that is or has been conducted under this Act, and the registrar shall not provide any such information to an Industry Council.

RSA 2000 cR-5 s37;2007 c39 s14;2020 c10 s34

Prior conduct

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

2003 c31 s14;2020 c10 s35

Investigation

38(1) The registrar 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 registrar believes that any conduct of a licensee 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 licensee's carrying on of the business of a licensee 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) An Industry Council may by notice in writing suspend the licence of a licensee who refuses to co-operate with a person conducting an investigation under subsection (2) until the registrar is satisfied that the licensee has co-operated.

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

(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;2020 c10 s36

Refusing to investigate complaint or discontinuing investigation

38.1(1) The registrar 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 registrar shall serve a notice of a decision under subsection (1) on the complainant.

2007 c39 s16;2020 c10 s37

Disposition by registrar

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

- (a) direct that no further action be taken, if the registrar 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 registrar 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 licensee, or
 - (ii) impose an administrative penalty on the licensee in accordance with section 83, the bylaws and the rules, where the matter involves a contravention by the licensee of a provision referred to in section 83(1).

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

RSA 2000 cR-5 s39;2007 c39 s17;2020 c10 s38

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 Board, 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 licensee 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;2020 c10 s39

Appeal by licensee

40.1(1) A licensee whose licence is suspended by an Industry Council under section 38(4.2) may, within 30 days after receipt of the notice, by notice in writing to the Board, appeal the Industry Council's decision to a Hearing Panel.

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

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

2007 c39 s19;2020 c10 s40

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) or 83.1(3);
- (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 Board.

(3) At least 15 days before the date set for a hearing, the Board shall serve on the licensee 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 licensee who is the subject of the hearing, or
 - (ii) if the licensee initiated the appeal, may dismiss or reschedule a hearing if the licensee does not attend the hearing.

RSA 2000 cR-5 s41;2007 c39 s20;2020 c10 s41

Hearing in absence of licensee

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

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

2007 c39 s21;2020 c10 s84

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 licensee 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) a licensee 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 licensee'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 licensee 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;2020 c10 s42

Decision of Hearing Panel

43(1) If a Hearing Panel finds that the conduct of a licensee 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 licence issued to the licensee by an Industry Council;

- (b) an order reprimanding the licensee;
- (c) an order imposing any conditions or restrictions on the licensee and on that licensee's carrying on of the business of a licensee that the Hearing Panel, in its discretion, determines appropriate;
- (d) an order requiring the licensee 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 licensee from applying for a new licence for a specified period of time or until one or more conditions are fulfilled by the licensee;
- (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 a licensee under subsection (1), order the licensee 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 that is the subject of the appeal,
- (b) order the licensee to pay all or part of the costs associated with the investigation and hearing determined in accordance with the bylaws, and
- (c) order the Council to pay the licensee 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;2020 c10 s43

Notice of decision

44(1) The Hearing Panel shall forward the decision of the Hearing Panel to the Board, the relevant Industry Council, the registrar, the licensee and the complainant, if any.

(2) The Hearing Panel shall forward the record of the hearing to the Board.

RSA 2000 cR-5 s44;2020 c10 s44

Discontinuation of proceedings

45(1) If a Hearing Panel has commenced proceedings in respect of the conduct of a licensee 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 registrar 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 relevant Industry Council.

RSA 2000 cR-5 s45;2020 c10 s45

Admission of conduct

46(1) A licensee may, at any time after the commencement of proceedings under this Part and before a Hearing Panel makes its findings in respect of the licensee's conduct, submit to the Board 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 Board and meets any additional requirements set out in the bylaws.

RSA 2000 cR-5 s46;2020 c10 s46

Referral to Hearing Panel

47(1) If a statement of admission of conduct is accepted, the Board 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 licensee's conduct is deemed for all purposes to be a finding of the Hearing Panel that the conduct of the licensee is conduct deserving of sanction.

RSA 2000 cR-5 s47;2020 c10 s47

Appeal to Appeal Panel

48(1) A licensee in respect of whom a Hearing Panel has made a finding or order under section 43 or the registrar may appeal the finding or order to an Appeal Panel.

(2) The registrar may commence an appeal under subsection (1) only if the registrar 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 licensee must be served on the registrar within 30 days after the date on which the decision of the Hearing Panel is served on the licensee.

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

(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 licensee who is the subject of the hearing, or
- (b) if the licensee initiated the appeal, may dismiss or reschedule a hearing if the licensee does not attend the hearing.

(7) The registrar,

- (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) A licensee 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 Board, 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 registrar to make representations, the Hearing Panel may, if the Hearing Panel considers it appropriate to do so, grant the stay.

(12) The Hearing Panel shall serve a copy of the Hearing Panel's decision under subsection (11) on the licensee and the registrar.

(13) If the Hearing Panel refuses to grant a stay, the licensee may, within 7 days of receiving a copy of the Hearing Panel's decision under subsection (12), by notice served on the Board, 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 registrar to make representations, the Appeal Panel may, if the Appeal Panel considers it appropriate to do so, grant the stay.

(15) The Appeal Panel shall serve a copy of the Appeal Panel's decision under subsection (14) on the licensee and the registrar.

RSA 2000 cR-5 s48;2007 c39 s24;2020 c10 s48

Notice of hearing

49(1) The Appeal Panel shall serve on the licensee and the registrar 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 registrar or on the licensee, as the case may be.

RSA 2000 cR-5 s49;2007 c39 s25;2020 c10 s49

Hearing in absence of licensee

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

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

2007 c39 s26;2020 c10 s84

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) A licensee 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 Board.

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

(9) The Appeal Panel shall serve a copy of the Appeal Panel's decision under subsection (8) on the licensee and the registrar.

(10) If the Appeal Panel refuses to grant a stay, the licensee 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 Board.

RSA 2000 cR-5 s50;2007 c39 s27;2009 c53 s157;2020 c10 s50

Decision

51 The Appeal Panel shall serve a copy of the Appeal Panel's decision on the licensee and the registrar.

RSA 2000 cR-5 s51;2020 c10 s51

Appeals to Court

52(1) A licensee in respect of whom an Appeal Panel has made a decision or the registrar may appeal the decision to the Court.

(2) The registrar may commence an appeal under subsection (1) only with the approval of the relevant Industry Council.

(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 licensee, within 30 days after the licensee receives a copy of the decision of the Appeal Panel, and
- (b)** in the case of an appeal by the registrar, within 30 days after the registrar receives a copy of the decision of the Appeal Panel.

(4) If the licensee commences the appeal, the licensee shall serve on the registrar a copy of the application and the supporting documents not less than 15 days before the date set for the hearing.

(5) If the registrar commences the appeal, the registrar shall serve on the licensee 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;2020 c10 s52

Temporary order

53(1) Notwithstanding anything in this Act, the chair of an Industry Council may make an order

- (a) temporarily suspending the licence of a licensee issued by an Industry Council, or
- (b) temporarily imposing conditions or restrictions on a licensee and the licensee's carrying on the business of a licensee

pending the outcome of proceedings under this Part.

(2) The licensee may, by application served on the Industry Council, apply to the Court for an order staying the order of the chair pending the outcome of the proceedings.

RSA 2000 cR-5 s53;2009 c53 s157;2020 c10 s53

Withdrawal from membership

54(1) Subject to the rules, a licensee may apply to their Industry Council to have their licence withdrawn if the licensee's conduct is the subject-matter of proceedings under this Part or the licensee suspects that the licensee's conduct may become the subject-matter of proceedings under this Part.

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

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

(4) An Industry Council must reject an application under subsection (1) if, in the opinion of the Industry Council, allegations of fraud or criminal activity have been made against the licensee, and those allegations warrant an investigation.

RSA 2000 cR-5 s54;2020 c10 s53

Publication of information

55(1) The Board, an Industry Council or the registrar may publish information respecting

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

and those publications have qualified privilege.

(2) The Board, an Industry Council or the registrar 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 Board, the Industry Council or the registrar reasonably believes that the information about the licensee may result in a suspension or cancellation of the licensee'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 licensee that is related to the business of the licensee.

RSA 2000 cR-5 s55;2007 c39 s29;2020 c10 s54

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)(b), 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;2020 c10 s55

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 Board shall administer the Fund.

(3) The purpose of the Fund is to pay, in whole or in part, judgments obtained or claims made against licensees 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 a licensee, or
- (b) in the case of a claim, the claim is for losses or damages caused where a licensee fails to disburse or account for money held in trust in accordance with section 25 in respect of a transaction in the business of a licensee.

(4) The Board 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 Board may from time to time collect money by the levy of assessments on applicants to become licensees and on the classes of licensees 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 Board 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 Board.

(8) The Board 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 Board 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 Board 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;2020 c10 s56

Investment and insurance

58(1) Subject to the regulations, the Board may invest any part of the Fund not currently required for disposition only in accordance with the *Trustee Act*.

(2) The Board 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 Board under those contracts may be paid from the Fund.

(3) The Board 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 Board 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;2020 c10 s85

Rights in actions

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

(2) Where the Board is served with a notice under subsection (1) or where the Board 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 Board 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 Board under subsection (2) are deemed to be the acts of the defendant, and the Board may not be named as a defendant in the action and no judgment may be given against the Board.

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

(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 Board is actually acting on behalf of the defendant.

RSA 2000 cR-5 s59;2007 c39 s33;2020 c10 s57

Payment from Fund in respect of judgments

60(1) A person who obtains a judgment against a licensee of a class provided for in the regulations may apply to the Board 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 Board under section 59, the Board 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 Board 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 licensee, or
- (b) direct the Board 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 licensee,

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

(4) Subject to any order under subsection (3), the Board 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 licensee, 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 licensee but, in the opinion of the Board, 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 licensee.

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

- (a) from the licensee, where the judgment is against the licensee alone, or
- (b) jointly and severally from all or any of those licensees 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;2020 c10 s58

Eligibility

60.1 Despite sections 60(1), 60.2 and 60.3(1), the following persons are not eligible to apply to the Board 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 Board's opinion knowingly participated in or was wilfully blind to the fraud or breach of

trust of the licensee that gave rise to the judgment against the licensee;

- (c) any corporation or other entity carrying on any business or activity specified or described in the regulations.

2005 c17 s3;2007 c39 s35;2020 c10 s59

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 Board 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 Board 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 Board that the judgment has become final;
- (d) an irrevocable assignment of all or part of the judgment from the applicant to the Board, in a form acceptable to the Board;
- (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 licensee, 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 licensee that gave rise to the judgment against the licensee;
- (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;2020 c10 s60

Payment from Fund in respect of claims

60.3(1) A person may apply to the Board for compensation from the Fund in respect of a claim against a licensee of a class provided for in the regulations for losses or damages caused where a licensee

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 licensee.

(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 Board 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 licensee 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 Board the claim is based on a failure by the licensee to disburse or account for money held in trust in accordance with section 25 in respect of a transaction in the business of the licensee, the Board shall pay to the applicant the amount of compensation determined in accordance with the regulations.

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

2007 c39 s37;2020 c10 s61

Subrogation of rights

61(1) When a payment has been made from the Fund under section 60 or 60.3, the Board 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 licensee 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 Board to the extent of the amount paid from the Fund.

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

RSA 2000 cR-5 s61;2007 c39 s38;2020 c10 s62

Winding-up of Fund

62(1) If the amount of the Fund at any time falls below the amount prescribed in the regulations, the Board 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 a licensee and every licensee who is subject to the Fund shall provide the Board with a bond subject to any terms and conditions set out in the order.

(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;2020 c10 s63

Bylaws for Fund

63(1) The Board 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 Board, directs.

(2) The Board 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 Board under this section.

RSA 2000 cR-5 s63;2007 c39 s40;2020 c10 s85

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)** A licensee 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 a licensee of a class specified in the regulations for the purposes of this section

holds the interest in trust for the Foundation.

(2) A licensee 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 property management service, 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;2020 c10 s64

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 Board.

RSA 2000 cR-5 s71;2020 c10 s85

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 a licensee's licence is cancelled or suspended, the person or body ordering the cancellation or suspension may also by order prohibit any other

licensee who was acting as an employee or agent of the licensee 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 a licensee, 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 Board in accordance with the bylaws.

RSA 2000 cR-5 s73;2020 c10 s65

Periodic inspections

74(1) The registrar or a person authorized by the registrar for the purpose may conduct periodic inspections of the business of a licensee, 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 licensee, and
 - (ii) property, assets or things owned, acquired or alienated in whole or in part by the licensee or by a person acting on behalf of or as agent for that licensee,
- (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 licensee,

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 registrar or the person authorized by the registrar.

RSA 2000 cR-5 s74;2003 c31 s18;2007 c39 s43;2020 c10 s66

Receiving order, freezing assets

75(1) The registrar,

- (a) where the registrar is about to commence an investigation of a licensee 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 registrar, are connected with or arise out of a transaction in the business of a licensee, are about to be or have been instituted against any licensee, or

- (c) where the registrar has reason to believe that the trust funds in a licensee's trust account are less than the amount for which the licensee is accountable,

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

(2) If subsection (1) applies, the registrar 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 licensee to hold those funds or securities, or
 - (ii) direct the licensee 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 registrar 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 licensee 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 registrar considers appropriate information about the subject-matter of the investigation.

(3) Where under subsection (2)(a) the registrar directs a person to hold funds or securities, the registrar may send to those persons whom the registrar 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 registrar directs a person to pay funds or securities into or deposit funds or securities with the Court, the registrar shall send to those persons whom the registrar 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 licensee.

RSA 2000 cR-5 s75;2001 cC-28.1 s465;2003 c31 s19;
2007 c39 s44;2009 c53 s157;2020 c10 s67

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, the Board or an Industry 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.

(1.1) The Minister may direct that the cost of a review is to be paid by the Council or the Foundation, as the case may be.

- (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, the Board or an Industry 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, do all or any of the following:
- (a) direct the Board, an Industry Council, the Foundation or any member, officer or employee of the Council, the Board, an Industry Council or the Foundation to take any action that the Minister considers appropriate in the circumstances;
 - (b) appoint a comptroller to oversee the management of the affairs of the Board, an Industry 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 Board, Industry Council, Foundation or Fund;
 - (c) dismiss all or any of the members of the Board or an Industry Council, the board of governors of the Foundation or any member, officer or employee of the Council, the Board, an Industry Council or the Foundation.
- (5.1) If the Minister is of the opinion that it is in the public interest to do so, the Minister may, by order, do anything that may be done by an order under subsection (5)(a) without conducting a review or receiving a report under subsection (4).
- (6) If an order under subsection (5)(a) or (5.1) is not carried out to the satisfaction of the Minister, the Minister may, by order, do either or both actions set out in subsection (5)(b) and (c).

(7) If the Minister dismisses the Board, an Industry 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 Board, the Industry Council or the Foundation, as the case may be, until a new Board, Industry Council or board of governors is appointed;
- (b) direct that a new Board, Industry 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, duties and functions and is subject to all the obligations of the Board, the Industry Council or the Foundation, as the case may be, under this Act.

(10) An official administrator appointed under subsection (7)(a), or a comptroller appointed under subsection (5)(b) or (6), may be appointed for a term of up to one year, which may be renewed for further terms of up to one year each.

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

(12) No action or other legal proceeding for damages lies or may be commenced or maintained against the Government of Alberta, the Council, the Board or another person as a result of a Board member, Industry Council member, member of the board of governors of the Foundation or any member, officer or employee of the Council or Foundation being dismissed or ceasing to hold office as a result of this section.

RSA 2000 cR-5 s76;2019 c13 s3;2020 c10 s68

Council dismissed

76.1(1) In this section, “current Council” means the Council that is in place immediately before the coming into force of this section.

(2) On the coming into force of this section, despite section 6, all members of the current Council are dismissed and cease to hold office.

- (3) The Minister may, by order, appoint one or more persons as an official administrator for a term of up to one year, which may be renewed for further terms of up to one year each.
- (4) An order under subsection (3) 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 and shall be borne by the Council.
- (5) An official administrator appointed under this section has all the powers, duties and functions of the Council.
- (6) No action or other legal proceeding for damages lies or may be commenced or maintained against the Government of Alberta, the Council, the Board or another person as a result of a Council member being dismissed and ceasing to hold office as a result of this section.

2019 c13 s4;2020 c10 s69

Appointment of new Board or Industry Council

76.2(1) If the entire Board is dismissed under section 76(5) or (6), the Minister may, by order, establish rules or procedures relating to the appointment of a new Board, including respecting

- (a) when the Industry Councils must appoint members to the new Board,
- (b) any conditions with respect to any appointments to the new Board, including any conditions that may disqualify an individual from serving on the Board,
- (c) when an official administrator's powers, duties and functions will cease,
- (d) when the new members of the Board will take office and assume the powers, duties and functions of the Board, and
- (e) any other matters that the Minister considers necessary for remedying any transitional difficulties encountered in dismissing the Board, appointing an official administrator or appointing a new Board.

(2) The Minister may exercise the powers granted by subsection (1) in relation to the appointment of a Board in the place of the Council that was dismissed under section 76.1(2).

(3) Despite section 6(1)(b), (7) and (8), if an Industry Council fails to appoint a member within the time prescribed by the Minister under subsection (1)(a), the Minister may, by order, appoint the member or members, as the case may be, and the member or

members shall be considered to have been appointed by the Industry Council.

(4) Despite section 6(2), (5) and (7), in the case of the entire Board being dismissed under section 76(5) or (6), the Minister shall, by order, determine the term of office of the members appointed to fill the vacancy.

(5) If an entire Industry Council is dismissed under section 76(5) or (6), the Minister may, by order, establish rules or procedures relating to the appointment or election of new Industry Council members, including respecting

- (a) when licensees from the industry to which the Industry Council relates must be elected,
- (b) any conditions with respect to any licensees elected to the new Industry Council, including any conditions that may disqualify an individual from serving on the Industry Council,
- (c) when an official administrator's powers, duties and functions will cease,
- (d) when the new members of the Industry Council will take office and assume the powers, duties and functions of the Industry Council, and
- (e) any other matters that the Minister considers necessary for remedying any transitional difficulties encountered in dismissing the Industry Council, appointing an official administrator or appointing a new Industry Council.

(6) Despite section 7.1(2)(b) and (8), if the licensees of an industry fail to elect a member or members to an Industry Council within the time prescribed by the Minister under subsection (5)(a), the Minister may, by order, appoint the member or members, as the case may be, and the member or members shall be considered to have been elected under section 7.1(2)(b).

(7) Despite section 7.1(3) and (8), in the case of the entire Industry Council being dismissed under section 76(5) or (6), the Minister shall, by order, determine the term of office of the members appointed or elected to fill the vacancy.

(8) If the entire board of governors of the Foundation is dismissed under section 76(5) or (6), the Minister may, by order, establish rules or procedures relating to the appointment of a new board of governors, including respecting

- (a) any conditions with respect to any appointments to the new board of governors, including any conditions that may disqualify an individual from serving on the board of governors,
- (b) when an official administrator's powers, duties and functions will cease,
- (c) when the new members of the board of governors will take office and assume the powers, duties and functions of the board of governors, and
- (d) any other matters that the Minister considers necessary for remedying any transitional difficulties encountered in dismissing the board of governors, appointing an official administrator or appointing a new board of governors.

(9) Rules or procedures established under subsection (1), (5) or (8) apply despite any contrary rules or procedures in this Act, the regulations or the bylaws.

(10) Rules or procedures established under subsection (1), (5) or (8) cease to apply when the new members of the Board, Industry Council or board of governors of the Foundation, as the case may be, have all taken office and the powers, duties and functions of an official administrator cease.

2019 c13 s4;2020 c10 s70

Regulations Act

76.3 The *Regulations Act* does not apply to an order made under section 76.1 or 76.2.

2019 c13 s4

Appointment of Hearing Panels

76.4(1) Despite section 36 and the bylaws, if an entire Board is dismissed, an official administrator may appoint a Hearing Panel or an Appeal Panel, and, subject to an order under section 76.2(1), the Panel shall not include a member of the Board.

(2) Repealed 2020 c10 s71.

(3) Subject to this section, a Hearing Panel or Appeal Panel appointed by an official administrator under this section is subject to the Act as if it had been appointed in accordance with the bylaws.

(4) 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.

(5) In the event that, on the coming into force of this section, a Hearing Panel or an Appeal Panel has been established under section 36, that Panel shall cease to exist and an official administrator shall establish a new Hearing Panel or Appeal Panel to proceed with the matter as if the Hearing Panel or Appeal Panel established prior to the coming into force of this section had not been established.

2019 c13 s4;2020 c10 s71

Policies

76.5(1) The Minister may make policies that must be followed by the Council, the Board, an Industry Council, the Foundation or an officer or employee of the Council, the Board, an Industry Council or the Foundation in carrying out their powers and duties under this Act.

(2) The *Regulations Act* does not apply to policies made under subsection (1).

2020 c10 s72

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 Board or an Industry Council,
 - (i) by leaving the document at the Board’s or an Industry Council’s office,
 - (ii) by sending the document by recorded mail to the Board or an Industry 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 Board’s or an Industry Council’s office;
- (b) on a licensee,
 - (i) by personal service,
 - (ii) by sending the document by recorded mail addressed to the licensee at the last business or residential address provided by the licensee to the Board or Industry Council, as the case may be, 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 licensee to the Board or Industry Council, as the case may be;
 - (c) on a person other than the Board, an Industry Council or a licensee 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;
2020 c10 s73

Immunities

78 No action or other proceeding for damages may be commenced against the Minister, an official administrator appointed under section 76(7)(a) or 76.1(3), the Council, the Board or an Industry Council, a member, officer or employee of the Council, the Board or an Industry Council, a person appointed or engaged under the bylaws or rules to exercise a power or perform a duty for the Council, the Board or an Industry Council, a person exercising powers, duties or responsibilities delegated to the person by the Board or an Industry Council or sub-delegated to the person, 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.

RSA 2000 cR-5 s78;2019 c13 s5;2020 c10 s74

Extension of time

79(1) The Board may on application extend the time within which anything is required to be done by any person under this Act, the regulations, the bylaws or a direction or decision of the Board, the registrar, the executive director or a Panel under this Act.

(2) The relevant Industry Council may on application extend the time within which anything is required to be done by any person under a rule made by the Industry Council.

RSA 2000 cR-5 s79;2020 c10 s75

Certificate evidence

- 80** A certificate or other document purporting to be signed by
- (a) a member of the Board, an Industry Council or of the board of governors of the Foundation,
 - (a.1) the chair of the Board,
 - (a.2) the chair of an Industry Council,
 - (a.3) the registrar,
 - (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.

RSA 2000 cR-5 s80;2020 c10 s76

Offences

81(1) A person who contravenes section 10(2), 17, 17.1, 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;2020 c10 s77

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 licensed by an Industry Council to act as a licensee, the burden of proving that is on that person.

RSA 2000 cR-5 s82;2020 c10 s78

Administrative penalties

83(1) Where the registrar 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 rules, the registrar may, subject to the bylaws and the rules, 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.

RSA 2000 cR-5 s83;2020 c10 s79

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 Board, 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 Board shall refer the matter to a Hearing Panel, which shall hold a hearing.
- (4) Sections 41, 41.1 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 Hearing Panel shall serve a copy of the Hearing Panel's decision on the appellant and the registrar.

2007 c39 s47;2020 c10 s80

Production order

83.2(1) For the purpose of enabling

- (a) a person to conduct an investigation under section 38, or
- (b) the registrar 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 registrar 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 registrar 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 registrar 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 registrar.

(4) The registrar may make an order for the purposes of subsection (1)(b) only if the registrar 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 registrar 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 registrar may in an order under subsection (1) request verification by affidavit that the person has produced to the person conducting the investigation or the registrar 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;2020 c10 s81

Persons to conduct investigations

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

2007 c39 s47;2020 c10 s82

Regulations

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

- (a) exempting persons or classes of persons or transactions in the business of a licensee 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) regarding the provision of services and other things by the Board that facilitate the business of licensees;
- (a.1) prescribing time periods for the purposes of sections 6(8) and 7.1(9);

- (a.11) respecting the approval of a bylaw or the amendment of a bylaw by the Minister for the purposes of section 11(2), including the circumstances in which the Minister's approval is not required;
- (a.2) prescribing the maximum amount of an administrative penalty for the purposes of section 12(1)(z), and prescribing limitation periods for the giving of notices of administrative penalties;
- (a.21) respecting the approval of a rule or the amendment of a rule by the Minister for the purposes of section 12(3), including the circumstances in which the Minister's approval is not required;
- (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 the registrar 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 licensees 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 licensees who are subject to assessments for the purposes of the Fund;
- (d) respecting the classes of applicants to become licensees and the classes of licensees 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 a licensee 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 licensees 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;2020 c10 s83



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