

1995 BILL 28

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 28

REAL ESTATE ACT

MRS. GORDON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 28
Mrs. Gordon

BILL 28

1995

REAL ESTATE ACT

(Assented to , 1995)

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

Interpretation

1(1) In this Act,

- (a) “associations” means the Alberta Real Estate Association, the Alberta Mortgage Brokers’ Association, the Building Owners and Managers Association of Edmonton, the Building Owners and Managers Association of Calgary, the Real Estate Institute of Canada and the Institute of Real Estate Management (a division of the Real Estate Institute of Canada) and any successor organizations;

- (b) “brokerage agreement” means a contract that is in writing and that establishes the relationship between the parties as to the brokerage services to be performed by an industry member;
- (c) “business”, for the purposes of clause (u)(iii), means an undertaking carried on for the purpose of gain or profit and includes an interest in such an undertaking;
- (d) “business of an industry member” means the trades of a real estate broker or the dealings of a mortgage broker undertaken by an industry member;
- (e) “by-laws” means, except in section 66, by-laws made by the Council;
- (f) “client” means a person who has entered into a brokerage agreement with an industry member;
- (g) “continuous use” means the right to possession for a period of time that is greater than 3 consecutive days but less than 12 consecutive months;
- (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;
- (l) “Foundation” means the Alberta Real Estate Foundation continued under section 63;
- (m) “Fund” means the Real Estate Assurance Fund continued under section 56;
- (n) “industry” means the real estate broker industry and the mortgage broker industry;
- (o) “industry member” means any person who holds an authorization as a real estate broker or a mortgage broker, or as any category or class of real estate broker or mortgage broker, issued by the Council;
- (p) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

(q) “mortgage” means

(i) a mortgage

(A) of real property,

(B) of a lease of real property, or

(C) of a mortgage of real property or a lease of real property,

or

(ii) any charge

(A) on real property,

(B) on a lease of real property, or

(C) on a mortgage of real property or a lease of real 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,

and

(ii) a person who holds himself out as a person referred to in subclause (i);

(s) “person” includes a partnership;

(t) “property user’s licence” means a licence permitting the use of real property for residential purposes in circumstances under which

- (i) use of that property or any substituted property is provided for 2 or more periods of continuous use,
 - (ii) at least one period of continuous use following the first period of continuous use commences in a year subsequent to the year in which the first period of continuous use commences, and
 - (iii) payment is required, during or prior to the year in which any period of continuous use commences, of a consideration for the use of that property or any substituted property for any period of continuous use commencing in any subsequent year;
- (u) “real estate” means
- (i) real property,
 - (ii) leasehold property,
 - (iii) a business, whether with or without premises, and the fixtures, stock-in-trade, goods or chattels in connection with the operation of the business,
 - (iv) a property user’s licence, or
 - (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;
- (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, and

(ii) a person who holds himself out as a person referred to in subclause (i);

(w) “rules” means rules made by the Council;

(x) “trade” means

(i) a disposition or acquisition of, or transaction in, real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise,

(ii) an offer or attempt to list real estate for a disposition or transaction referred to in subclause (i),

(iii) assisting or offering to assist a person in disposing of, acquiring or entering into a transaction in real estate referred to in subclause (i), other than through a listing, in circumstances in which that person pays a fee or other consideration for that assistance,

(iv) collecting, or offering or attempting to collect, on behalf of the owner or other person in charge of real estate, money payable as

(A) rent for the use of the real estate, or

(B) contributions for the control, management or administration of the real estate,

or

(v) any act, advertisement, conduct or negotiation, directly or indirectly in furtherance of any activity referred to in subclauses (i) to (iv).

(2) The provision of information alone does not constitute assisting or offering to assist for the purposes of subsection (1)(x)(iii).

(3) For the purposes of this Act, a property user’s licence is deemed to be located where the real property in respect of which the licence is granted is located.

Application

2(1) Except for Part 2, Division 2, 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) 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),
 - (d) a person trading in real estate that consists only of mineral rights, to the extent that the person is engaged in such trading,
 - (e) a member in good standing of the Law Society of Alberta acting in the course of and as part of the practice of law, or
 - (f) a person exempted by the regulations.
- (2) A person who is licensed under the *Land Agents Licensing Act* is not required to be authorized as a real estate broker under this Act with respect to that person's activities as a land agent.
- (3) This Act as it relates to dealing in mortgages does not apply to
- (a) a bank, treasury branch, credit union, loan corporation, trust corporation or insurance company,
 - (b) an agent or employee of a person referred to in clause (a) in the capacity of agent or employee,
 - (c) 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.

PART 1

REAL ESTATE COUNCIL OF ALBERTA

Real Estate Council of Alberta	3 The Real Estate Council of Alberta is hereby established as a corporation.
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.
Purposes of Council	5 The purposes of the Council are <ul style="list-style-type: none">(a) to set and enforce standards of conduct for the industry and the business of industry members as the Council determines necessary in order to promote the integrity of the industry and to protect consumers affected by the industry;(b) to provide services and other things that, in the opinion of the Council, enhance and improve the industry and the business of industry members;(c) to administer this Act as provided in this Act, the regulations, the by-laws and the rules.
Composition of Council	6(1) The Council shall consist of 11 members appointed as follows: <ul style="list-style-type: none">(a) the Minister shall appoint one member, who must not be an industry member;(b) the Alberta Mortgage Brokers Association shall appoint one member, who must be a mortgage broker;(c) the Alberta Real Estate Association shall appoint 6 members as follows:<ul style="list-style-type: none">(i) one member who must be a real estate broker trading in industrial, commercial and investment real estate and who may or may not be active in property management;(ii) one member who must be a real estate broker trading in residential real estate;

- (iii) from nominations received from the Calgary Real Estate Board, one member, who must be a real estate broker;
 - (iv) from nominations received from the Edmonton Real Estate Board, one member, who must be a real estate broker;
 - (v) from nominations received from other real estate boards in Alberta, 2 members, who must be real estate brokers;
 - (d) the Building Owners and Managers Association of Edmonton, the Building Owners and Managers Association of Calgary, the Real Estate Institute of Canada and the Institute of Real Estate Management (a division of the Real Estate Institute of Canada) shall jointly appoint one member, who must be an industry member;
 - (e) the members appointed under clauses (b) to (d) shall jointly appoint 2 members as follows:
 - (i) from nominations from industry members who are not members of the Alberta Real Estate Association, one member, who must be an industry member;
 - (ii) from nominations from the public at large, one member, who must not be an industry member.
- (2) The term of office of a member appointed under subsection (1)(a) is 3 years.
- (3) The terms of office of the members initially appointed under subsection (1)(b) to (e) are as follows:
- (a) in the case of the members referred to in subsection (1)(b), (c)(iii) and (iv) and (d) and one of the members referred to in subsection (1)(c)(v), 3 years;
 - (b) in the case of the members referred to in subsection (1)(c)(i) and (ii) and (e) and one of the members referred to in subsection (1)(c)(v), 2 years.
- (4) Subject to subsection (5), the term of office of members appointed to replace the members initially appointed under subsection (1)(b) to (e) on the expiration of their terms of office, and the terms of office of all members appointed under subsection (1)(b) to (e) thereafter, is 3 years.
- (5) Where a vacancy occurs, the vacancy shall be filled by an appointment for the unexpired portion of the term, to be made in

the same manner that the appointment of the member who is being replaced was made.

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

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

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

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

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

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

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

(a) act in an official capacity for an association, be on the governing body of an association, be an employee of an association or otherwise act on behalf of an association in any manner other than as an ordinary member of the association;

(b) engage directly or indirectly in any business transaction or private arrangement for a pecuniary benefit, knowledge of which is gained from or based on the person's being a member of the Council, or from confidential or non-public information gained by reason of the member's position or authority with the Council;

(c) act in a manner, whether or not prohibited by this Act, the regulations, the rules or the by-laws, that may result in, or create the appearance of,

- (i) using the member's position for private gain,
 - (ii) giving preferential treatment to any person,
 - (iii) impeding the Council from carrying out its purposes,
 - (iv) foregoing independence or impartiality, or
 - (v) adversely affecting the integrity of the Council;
- (d) represent the Council, explicitly or impliedly, or act in an official capacity on any matter in which the member has a real or potential personal interest, direct or indirect, in a manner that is incompatible with the member's duties under this Act, the rules or the by-laws;
- (e) contract with or otherwise accept the services of an industry member or applicant to become an industry member on terms that are more favourable than those generally available to the general public;
- (f) unless approved by the Council, accept a fee or benefit from another person on account of an occasion at which the member appears or provides a speech, lecture or publication, if the occasion is part of the official duties of the member for which compensation is being paid by the Council;
- (g) contravene this Act, the regulations, the rules or the by-laws.
- (2) Subject to subsection (3), a member who contravenes subsection (1) shall resign immediately on becoming aware of the contravention.
- (3) Instead of accepting a resignation under subsection (2), the Council may suspend the member from all or any Council activities for any period of time and subject to any terms and conditions that the Council considers appropriate.
- (4) If a member contravenes subsection (2) or any terms and conditions under subsection (3), the Council may apply by originating notice to a judge of the Court for
- (a) an order determining whether the member was never qualified to be or has ceased to be qualified to remain a member under this section, or
 - (b) an order declaring the member to be disqualified from membership on the Council.

(5) An application under this section may be made within 3 years of the date on which the contravention is alleged to have occurred, but not after that period.

Direction by
Council

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

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

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

By-laws

11 The Council may make by-laws

- (a) respecting the appointment and election of officers of the Council;
- (b) prescribing time periods for the purposes of section 6(6);
- (c) respecting the duties of members and officers of the Council and their remuneration;
- (d) respecting the procedure for making appointments under section 6(1)(e) and (6);
- (e) respecting the services and other things provided by or on behalf of the Council;
- (f) respecting the conduct of the business and affairs of the Council;
- (g) respecting the receipt, management and investment of contributions, donations, bequests or any other sources of revenue received by the Council;
- (h) respecting the investigation under section 38 of the conduct of an industry member;
- (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 required to be paid under section 38(6) or ordered under section 40(4) or 43(2) and the amount of those costs;
- (k) prescribing the form and contents of notices of administrative penalties for the purposes of section 82;
- (l) prescribing contraventions in respect of which an administrative penalty may be imposed and prescribing the amounts of the administrative penalties that may be imposed, not to exceed \$5000 for each contravention;
- (m) prescribing limitation periods for the giving of notices of administrative penalties;
- (n) respecting any other matter necessary for the administration of the system of administrative penalties.

Rules

12 The Council may make rules

- (a) prescribing or adopting standards of conduct and business standards for industry members;
- (b) respecting the form and contents of advertising carried out by industry members;
- (c) respecting the use of names by industry members;
- (d) requiring the use of standard forms for matters related to the industry and prescribing or providing for the establishment of those forms;
- (e) requiring that specified types of trades or dealings be evidenced by an agreement in writing and that such an agreement contain specified provisions;
- (f) regulating the operation of branch offices by industry members;
- (g) respecting the disclosure of information by industry members to parties and potential parties to deals and trades;
- (h) establishing different classes of industry members and different classes of business of industry members for the purposes of this Act, the regulations, the by-laws and the rules;
- (i) regulating the manner in which industry members are to carry out the activities that form part of the business of an industry member;

- (j) regulating the rights, duties, powers and obligations of industry members in the carrying on of the business of an industry member;
- (k) respecting the issuing of authorizations for the purposes of section 17, including, without limitation, rules
 - (i) respecting eligibility requirements for a person to acquire and retain an authorization,
 - (ii) respecting the application for and issuing of authorizations,
 - (iii) providing for the issuing of authorizations subject to terms and conditions and authorizing the imposition of terms and conditions on authorizations,
 - (iv) respecting the duration of authorizations,
 - (v) authorizing and respecting the cancellation and suspension of authorizations in circumstances in addition to the circumstances under which an authorization may be cancelled or suspended under Part 3;
 - (vi) respecting the appeal of a decision to refuse to issue or to cancel or suspend an authorization and the reinstatement of authorizations;
- (l) providing for the appeal of orders under section 72;
- (m) requiring industry members to keep records and books of account and respecting the form and contents of the records and books of account and the manner in which and the time for which they must be kept;
- (n) respecting the keeping and operation of trust accounts by industry members;
- (o) requiring industry members and applicants to become industry members to provide information, reports and returns and other information to the Council or the Foundation, and respecting the manner in which and the circumstances under which information, reports and returns are to be provided;
- (p) requiring industry members to acquire, maintain or provide insurance against their liability for errors and omissions in the carrying on of the business of an industry member and respecting the amount and form of insurance and the terms and conditions under which insurance is to be provided, or

requiring industry members to participate in an indemnity plan for that purpose;

- (q) authorizing the Council to establish and administer an insurance or indemnity plan for industry members and respecting all matters necessarily related to the establishment and administration of a plan;
- (r) requiring industry members to acquire, maintain or provide a bond or other form of security and respecting the amount and form of a bond or other security and the terms and conditions under which a bond or other security is to be provided, or requiring industry members to participate in an indemnity plan for that purpose;
- (s) respecting the provision of a bond or other security for the purposes of section 27(e), including rules 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;
- (t) respecting the forfeiture of security provided under clause (r) or (s) and the payment of claims against the security;
- (u) respecting the information to be contained in a prospectus under Part 2, Division 2;
- (v) subject to regulations under section 83(2)(d), authorizing the Council to charge and collect from industry members fees, levies, premiums and other assessments authorized under this Act or otherwise required by the Council for its operations and for matters under its administration, and respecting the amounts of those fees, levies, premiums and assessments, the manner in which and times at which they must be paid and penalties or interest charges that are payable for late payment;
- (w) governing appeals for the purposes of section 34;
- (x) respecting the form and contents of statements of admission of conduct for the purposes of section 46 and the circumstances under which the executive director may accept such a statement;
- (y) respecting the form and contents of applications to withdraw from industry membership for the purposes of section 54, and the circumstances under which the Council may approve such an application;
- (z) respecting reviews for the purposes of section 75;

- (aa) exempting persons or classes of persons from the by-laws or the rules.

Non-application of Regulations Act

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

Availability of by-laws and rules

14(1) The Council

(a) shall

(i) make copies of its by-laws and rules available to industry members, and

(ii) on request make copies of its rules available to members of the public,

and

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

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

Delegation of authority

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

(a) its power to make rules or by-laws, or

(b) any power, duty or responsibility under Part 3.

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

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

Annual report

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

(a) prepare an annual report for the previous fiscal year, which must

(i) contain an audited financial statement summarizing the income and expenditures of the Council.

- (ii) state the number of industry members in each class or category of authorization issued by the Council,
 - (iii) for each class or category of authorization state the number of persons
 - (A) who were refused an authorization, or
 - (B) whose authorizations were cancelled, suspended or made conditional;
 - (iv) contain a list of current members and officers of the Council, and
 - (v) contain any other information that the Council determines relevant or necessary, or that the Minister requires;
- (b) cause a copy of the report to be delivered to the Minister.
- (2) Not later than 120 days after the last day of the Fund's fiscal year, the Council shall
- (a) cause a report to be prepared as to the Fund and all dispositions made from it during the previous fiscal year, and
 - (b) cause a copy of the report to be delivered to the Minister.
- (3) In addition to the reports under this section, the Council shall provide the Minister with financial statements or other information concerning the Council or the Fund when required to do so by the Minister.

PART 2

REGULATION OF TRADING AND DEALING

Division 1 General

Authorization
required

- 17** No person shall
- (a) trade in real estate as a real estate broker,
 - (b) deal as a mortgage broker, or
 - (c) advertise himself or in any way hold himself out as a mortgage broker or real estate broker

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

Receipt of
money

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

(2) No industry member shall receive money in the course of carrying on business as an industry member unless, before receiving the money, the industry member has entered into a brokerage 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 forth the terms on which the money will be received, held and disbursed.

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

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

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

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

Representa-
tions
prohibited

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

Guaranteed
sale
agreement

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

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

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

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

- (a) paid to the seller or to some other person as directed by that seller as part of the total amount payable under the guaranteed sale agreement,
- (b) forfeited to the seller if the seller is not paid in accordance with the guaranteed sale agreement, or
- (c) returned to the industry member when, pursuant to the terms of the guaranteed sale agreement, there is no longer any money payable to the seller under that guaranteed sale agreement.

(5) Subject to subsection (6), money deposited under subsection (3) must remain on deposit in Alberta until it is paid out under subsection (4).

(6) Section 25(4) applies in respect of a trust account under this section.

(7) When a deposit is forfeited under subsection (4)(b),

- (a) the forfeiture does not prejudice any action that the seller may have against the industry member or other parties to the guaranteed sale agreement, and

- (b) the money forfeited may be applied toward any sum that the seller may be entitled to receive as damages arising out of the non-performance of the guaranteed sale agreement.

(8) When an industry member or other person who enters into a guaranteed sale agreement with a seller purchases the seller's real estate pursuant to that sale agreement, no commission is payable to that industry member or other person by that seller in respect of that trade.

Action for
money

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

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

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

Recovery of
commission

22 No action shall be brought to charge a person by commission or otherwise for services rendered in connection with the sale of land or an interest in land unless

- (a) the brokerage 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, or
- (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.

Recovery of
shared
commission

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

Calculation of
commission

24(1) No real estate broker

- (a) shall request or enter into a brokerage 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) may retain a commission or other remuneration computed on a basis referred to in clause (a).

(2) A commission or other remuneration payable to a real estate broker in respect of the sale or purchase of real estate must be an agreed amount or based on a percentage of the sale price.

(3) If no agreement as to the amount of commission has been entered into, the rate of commission or other basis or amount of remuneration is that generally prevailing in the community where the real estate is situated.

Trust accounts

25(1) An industry member shall

- (a) maintain a trust account,
- (b) keep a trust ledger in which the industry member shall maintain a separate record for each person on whose behalf the industry member is acting of all
 - (i) money received in trust,
 - (ii) money held in trust,
 - (iii) interest earned on money held in trust, and
 - (iv) disbursements made from money received or held in trust,

in respect of a dealing or trade for that person,

- (c) deposit money received in trust in respect of a dealing or trade within 2 banking days after receipt of the money or within any longer period agreed to in writing by the parties to the dealing or trade in an interest-bearing account that is
 - (i) maintained in a bank, loan corporation, trust corporation, credit union or treasury branch, and
 - (ii) kept in the name of the industry member and designated as a trust account under clause (a),
 - (d) keep money received or held in trust in respect of a dealing or trade separate from money that belongs to the industry member or any industry members the industry member employs, and
 - (e) disburse money received or held in trust in respect of a dealing or trade only in accordance with the rules and with the terms of the trust governing the use of that money.
- (2) Where an industry member receives money in trust in respect of a dealing or trade, the industry member shall ensure that the terms of the trust governing the use of the money are in writing and agreed to by the industry member and the client and any other parties.
- (3) Subject to subsection (4), all money deposited under subsection (1)(c) shall be kept on deposit in Alberta.
- (4) Where an industry member
- (a) maintains business premises in the City of Lloydminster,
 - (b) maintains an account designated as a trust account in a bank, loan corporation, trust corporation, treasury branch or credit union situated in the City of Lloydminster, and
 - (c) otherwise complies with subsection (1),
- subsection (3) does not apply to deposits to the extent that they are made and kept in the account referred to in clause (b).
- (5) Where an industry member of a class specified in the regulations holds money in trust for more than 2 years after the date on which the person for whom it is held becomes entitled to receive payment of it and, using reasonable efforts, is unable to locate the person, the industry member shall pay the money to the Foundation.

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

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

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

(9) An industry member shall, in accordance with the rules, keep in Alberta records and books of account of the industry member's dealings and trades 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) A trust corporation that holds an authorization issued by the Council under this Act shall provide to the Council a certified copy of each financial statement of the corporation prepared for distribution to its shareholders and the auditor's report on the financial statement within 5 days after they are first mailed or delivered to its shareholders.

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

Division 2

Trading in Real Estate Outside Alberta

Prospectus

26(1) A person shall not, directly or indirectly, trade in real estate located outside of Alberta unless

(a) that trade takes place through a real estate broker who is the holder of an authorization for that purpose issued by the Council, and

(b) that person has filed a prospectus with the executive director and has been issued a certificate of acceptance under section 32 in respect of that prospectus.

(2) Subsection (1) does not apply in respect of an isolated trade in real estate when that trade is not part of continued successive transactions of a similar nature.

(3) Where the trade consists only of an advertisement placed or made from outside Alberta, the person conducting the trade need not do so through a real estate broker and, in that case, subsection (1) does not apply.

(4) No person shall make any representation, whether written or oral, that the Council or executive director has passed on

- (a) the financial standing, fitness or conduct of any person in connection with the filed prospectus, or
- (b) the merits of the prospectus.

Contents of
prospectus

27 Each prospectus submitted to the executive director for filing must be accompanied by the following:

- (a) an affidavit of the owner of the real estate or, if the owner is a corporation, an affidavit of a director of the corporation, as to the correctness of every matter of fact stated in the prospectus;
- (b) a copy of every plan referred to in the prospectus;
- (c) a copy of every form of contract referred to in the prospectus;
- (d) any documents the executive director requires to support any statement of fact, proposal or estimate set out in the prospectus;
- (e) a bond or other security required under the rules;
- (f) whatever financial particulars of the owner the executive director requires;
- (g) the fees prescribed by the Council.

Financial
statements
with
prospectus

28(1) The executive director may require that a prospectus filed under section 26 contain

- (a) an audited financial statement of the owner that covers the last fiscal year and is reported on by the owner's auditor, and
- (b) when the audited financial statements are dated more than 120 days prior to the date that the prospectus was submitted to the executive director for filing, current unaudited financial statements dated not more than 90 days

prior to the date of the acceptance of the prospectus by the executive director.

(2) The financial statements must be in a form acceptable to the executive director and must contain any information the executive director requires.

Duties of
seller and
rights of buyer

29(1) A real estate broker shall not enter into or negotiate any contract in respect of a trade in real estate located outside of Alberta, either as a seller or as a real estate broker, unless

- (a) a copy of the prospectus referred to in section 26 has been delivered to the prospective buyer, tenant or licensee, as the case may be, and
- (b) the prospective buyer, tenant or licensee has in writing acknowledged receipt of a copy of the prospectus and the opportunity to read it.

(2) The real estate broker and the seller shall keep an acknowledgment referred to in subsection (1) for a period of not less than 3 years and shall make it available for inspection by the executive director or the Council.

(3) A buyer, tenant or licensee who enters into a contract to which subsection (1) applies may rescind the contract

- (a) within 30 days of entering into the contract, or
- (b) if subsection (1) has not been complied with.

(4) If subsection (1) has not been complied with, the contract is unenforceable by the seller and the real estate broker, and any money paid under the contract must be returned to the buyer, tenant or licensee at the option of the buyer, tenant or licensee.

(5) In an action for rescission under subsection (3)(b), the burden of proving compliance with subsection (1) rests on the seller or real estate broker.

(6) The right of rescission provided in this section is in addition to any other right that the buyer, tenant or licensee may have in respect of the contract.

Inquiry by
executive
director

30(1) The executive director may, before issuing a certificate of acceptance, make any inquiries the executive director considers necessary, including

- (a) an examination of the real estate and any of the circumstances related to the trade, and
- (b) the obtaining of reports from public authorities or others in the jurisdiction in which the real estate is located.

(2) The reasonable and proper costs of the inquiry or report are the responsibility of the person on whose behalf the prospectus was filed or submitted for filing.

Refusal of
prospectus

31 The executive director shall not grant a certificate of acceptance if it appears that

- (a) the prospectus contains any statement, promise or forecast that is misleading, false or deceptive, or has the effect of concealing material facts,
- (b) adequate provision has not been made for the protection of deposits or other funds of buyers or for assurance of title or any other interest contracted for,
- (c) the prospectus fails to comply in any substantial respect with any of the requirements of the rules, or
- (d) section 27 has not been complied with in some substantial respect.

Acceptance of
prospectus

32 The executive director shall grant a certificate of acceptance when sections 26 to 31 and the rules have been complied with and, in the opinion of the executive director, the action is in the public interest, but the executive director shall not refuse to grant the certificate without giving the person on whose behalf the prospectus was filed an opportunity to be heard.

Order to
cease trading

33(1) When it appears to the executive director, subsequent to the filing of a prospectus and the granting of a certificate of acceptance, that any of the conditions referred to in section 31 exist, or when in the executive director's opinion it is necessary in the public interest, the executive director may, after giving the person on whose behalf the prospectus was filed an opportunity to be heard, cancel the certificate of acceptance and order that all trading in the real estate to which the prospectus refers cease immediately.

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

- Appeal **34** A decision of the executive director refusing to grant or cancelling a certificate of acceptance may be appealed to the Council, whose decision is final.
- Amended or new prospectus **35(1)** If a change occurs with regard to any of the matters set out in any prospectus
- (a) that has the effect of rendering a statement in the prospectus false or misleading, or
 - (b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time of filing,
- the persons who filed the prospectus shall, within 20 days of the change's occurring, notify the executive director in writing of the change, and shall file a copy of the prospectus with the changes incorporated in it.
- (2)** A prospectus expires 12 calendar months from the date on which the executive director grants a certificate of acceptance in respect of that prospectus.
- (3)** Sections 26 to 34 apply to an amended prospectus or a new prospectus filed under this section.

PART 3

CONDUCT PROCEEDINGS

- Panels **36(1)** The Council shall appoint one or more Hearing Panels and Appeal Panels for the purposes of this Part.
- (2)** A Hearing Panel must consist of at least 3 members.
- (3)** At least one of the members of a Hearing Panel must be a member of the Council and all of the members of the Hearing Panel who are not members of the Council must be industry members.
- (4)** An Appeal Panel must consist of at least 3 members, all of whom must be members of the Council.
- (5)** 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.

- Complaint **37(1)** A person may make a complaint to the executive director about the conduct of an industry member.
- (2) A complaint must be in writing.
-
- Investigation **38(1)** The executive director shall,
- (a) where a complaint is made under section 37, immediately on receipt of the complaint, and
- (b) in a case where no complaint is made but the executive director believes that any conduct of an industry member constitutes or may constitute conduct that is deserving of sanction,
- commence or appoint a person to commence an investigation into the conduct.
- (2) A person conducting an investigation may
- (a) request any person to answer any questions and to produce to the investigator any books, documents, records or other things in that person's possession or under that person's control that are relevant to the investigation, and
- (b) copy and keep copies of anything produced under clause (a).
- (3) A person conducting an investigation may investigate any other matter related to the industry member's carrying on of the business of an industry member that arises in the course of the investigation.
- (4) An industry member shall co-operate with a person conducting an investigation.
- (5) Where a person other than the executive director conducts an investigation, that person shall, on concluding the investigation, report to the executive director.
-
- Disposition by executive director **39(1)** On completion of an investigation or on receipt of a report under section 38(5), as the case may be, the executive director shall
- (a) direct that no further action be taken, if the executive director is of the opinion that
- (i) the complaint is frivolous or vexatious, or

(ii) there is insufficient evidence of conduct deserving of sanction,

or

(b) refer the matter to a Hearing Panel, if the executive director determines that there is sufficient evidence of conduct deserving of sanction to warrant a hearing by the Hearing Panel.

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

Appeal

40(1) A complainant who is served with a notice that no further action will be taken may, within 30 days of receipt of the notice, by notice in writing to the executive director, appeal the decision to a Hearing Panel.

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

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

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

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

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

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

Duty to hold hearing

41(1) On referral of a matter to it under section 39(1) or on deciding under section 40 that a hearing should be held, a Hearing Panel shall hold a hearing.

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

(3) At least 15 days before the date set for a hearing, the executive director shall serve on the industry member and any other person

who in the opinion of the Hearing Panel is directly affected by the subject-matter of the hearing a notice of the hearing stating the date, time and place at which the Hearing Panel will hold the hearing and giving reasonable particulars of the matter in respect of which the hearing will be held.

(4) The notice of hearing shall indicate whether oral or written submissions, or both, will be accepted by the Hearing Panel and the date by which any written submissions must be received by the Hearing Panel.

Rules re
hearing

42 The following applies in respect of a hearing:

- (a) the Hearing Panel shall receive evidence that is relevant to the matter being heard, and the industry member who is the subject of the hearing shall
 - (i) be given a reasonable opportunity to provide relevant evidence,
 - (ii) be informed of the facts before the Hearing Panel or the allegations made to it respecting the conduct of that person in sufficient detail
 - (A) to permit a reasonable understanding of the facts or allegations, and
 - (B) to afford a reasonable opportunity to provide relevant evidence to contradict or explain the facts or allegations,and
 - (iii) be provided with copies of all documents, records or other evidence that were considered at the investigation and that relate to the same conduct that is or is to be the subject-matter of the hearing before the Hearing Panel;
- (b) an industry member whose conduct is the subject-matter of the hearing and who satisfies the Hearing Panel that any evidence given before the Hearing Panel may adversely affect that industry member's interests shall be given an opportunity during the hearing to give evidence on the matter and to call and examine or cross-examine witnesses personally or by legal counsel in respect of the matter;
- (c) the Hearing Panel has the same power as is vested in the Court of Queen's Bench for the trial of civil actions

- (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence on oath or otherwise, and
 - (iii) to compel witnesses to produce books and records and other documents and things;
- (d) the industry member whose conduct is the subject-matter of the hearing is a compellable witness at the hearing;
- (e) a witness may be examined under oath on anything relevant to the subject-matter of the hearing and shall not 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 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 conduct money or witness fees apply.

Decision of
Hearing Panel

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

- (a) an order cancelling or suspending any authorization issued to the industry member by the Council;
- (b) an order reprimanding the industry member;
- (c) an order imposing any conditions or restrictions on the industry member and on that industry member's carrying on of the business of an industry member that the Hearing Panel, in its discretion, determines appropriate;
- (d) any other order agreed to by the parties.

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

(3) Costs ordered under subsection (2) are a debt due to the Council and may be recovered by the Council in an action in debt.

Notice of
decision

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

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

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

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

Discontinuation of proceedings

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

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

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

Admission of conduct

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

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

Referral to Hearing Panel

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

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

Appeal to
Appeal Panel

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

(2) 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.

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

(4) The executive director, on receiving a notice of appeal under subsection (3), shall give to each member of the Appeal Panel a copy of the notice of appeal and make the record of the hearing available to each member of the Appeal Panel.

Notice of
hearing

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

(2) The Appeal Panel shall commence to hear an appeal within a reasonable period after the date of service of the notice of appeal on the executive director.

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, vary or confirm 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.

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

(7) An appellant may, by originating notice served on the executive director, 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.

Decision

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

Appeal to
Court

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

(2) An appeal must be commenced by originating notice, which must describe the decision appealed and state the reasons for the appeal and be filed with the clerk of the Court within 30 days after the industry member receives the decision of the Appeal Panel.

(3) The industry member shall serve a copy of the originating notice and the supporting documents on the executive director not less than 15 days before the date set for the hearing.

(4) The appeal to the Court shall be founded on

- (a) the record of the hearing before the Appeal Panel, and
- (b) a copy of the decision of the Appeal Panel.

(5) 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.
- (6) The Court may make any award as to the costs of the appeal that it considers appropriate.

Temporary
order

53(1) Notwithstanding anything in this Act, the executive director may recommend to the chair of the Council that the chair make an order

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

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

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

Withdrawal
from
membership

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

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

(3) Where the Council approves an application, then, subject to any terms and conditions imposed under subsection (2), all proceedings under this Part in respect of the industry member are

discontinued and no proceedings in respect of the conduct may be commenced under this Part.

Publication of
information

- 55** The executive director may publish information respecting
- (a) the refusal, cancellation or suspension of an authorization issued by the Council under this Act,
 - (b) a person's withdrawal from industry membership, or
 - (c) prosecutions and disciplinary actions taken under this Act,
- and such publications have qualified privilege.

PART 4

REAL ESTATE ASSURANCE FUND

Fund
continued

- 56(1)** The Real Estate Assurance Fund created under the *Real Estate Agents' Licensing Act* is continued.
- (2)** The Council shall administer the Fund.
- (3)** The purpose of the Fund is to pay, in whole or in part, judgments obtained against industry members of the classes provided for in the regulations where the judgment is based on a finding of fraud or breach of trust in respect of the dealings or trades of an industry member.
- (4)** The Council may with the prior written approval of the Minister use any or all of the money in the Fund that is in excess of the amount prescribed in the regulations for any other purpose authorized in the regulations.
- (5)** The Council may from time to time collect money by the levy of assessments on applicants to become industry members and on the classes of industry members provided for in the regulations.
- (6)** The money collected under subsection (5) and any income from the investment of that money shall be credited to the Fund.
- (7)** The Council is deemed to hold in trust all money credited to the Fund and shall immediately deposit that money in a trust account in a bank, treasury branch, loan corporation, trust corporation or credit union in Alberta, separate and apart from any other money of the Council.

(8) The Council shall create separate trust accounts for money to which subsection (3) applies and for money to which subsection (4) applies.

(9) Notwithstanding subsections (6) and (7), the Council may, from the income from the investment of the money in the Fund, pay the administrative costs associated with the Fund.

(10) If the income from the investment of the money in the Fund is insufficient to pay the administrative costs associated with the Fund, the Council may

- (a) from time to time collect money to pay those costs by the levy of assessments on any of the persons referred to in subsection (5),
- (b) use money referred to in subsection (4) to pay those costs, or
- (c) use money from a combination of sources referred to in clauses (a) and (b) to pay those costs.

Investment
and insurance

57(1) The Council may invest any part of the Fund not currently required for disposition in any security or class of securities in which trustees are permitted to invest trust funds under the *Trustee Act*.

(2) The Council may, in a manner and on terms and conditions it considers advisable, enter into contracts with insurers by which the Fund may be protected in whole or in part against any claim or loss to the Fund, and the costs incurred by the Council under any such contracts may be paid from the Fund.

(3) The Council has, and is deemed to have had at all times, an insurable interest in the Fund and in the protection of the Fund against loss, notwithstanding that any loss is the result of the exercise of the discretion of the Council under section 59 or the Alberta Real Estate Association under section 15.1 of the *Real Estate Agents' Licensing Act*.

Rights in
actions

58(1) When a person commences an action referred to in section 56(3) that may result in a claim against the Fund, that person shall immediately give notice of the commencement of the action to the Council.

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

and in the name of the defendant that the defendant could have taken in respect of the action.

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

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

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

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

Payment from
Fund

59(1) When a person obtains a judgment against an industry member of a class provided for in the regulations, and the judgment

- (a) is based on a finding of fraud or breach of trust in respect of a dealing or trade of the industry member,
- (b) has become final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed, and
- (c) is not satisfied within 30 days of the date that it became final,

that person may apply to the Council for compensation from the Fund.

(2) Where an application is made under subsection (1) and no notice of the action was given to the Council under section 58, the Council may, within 30 days after receipt of the application, apply to the Court for an order under subsection (3).

(3) On an application the Court may

- (a) relieve the Council from liability to make any payment under subsection (4) where it is of the opinion that, based on the merits of the action, the judgment is not a judgment referred to in subsection (1)(a), or

- (b) direct the Council to make a payment under subsection (4) where it is of the opinion that the judgment is a judgment referred to in subsection (1)(a),

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

(4) Subject to the regulations and to any order under subsection (3), where an application has been made under subsection (1), the Council shall pay to the applicant the amount of the unsatisfied portion of the judgment.

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

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

Subrogation of rights

60(1) When a payment has been made from the Fund under section 59, the Council is subrogated to the rights, remedies and securities, including any amounts held in trust, to which the person receiving the payment was entitled as against the industry member whose conduct gave rise to the payment, and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Council to the extent of the amount paid from the Fund.

(2) The Council may by an action in debt recover from the industry member whose conduct gave rise to a payment from the Fund under section 59 the amounts of any costs and expenses incurred by the Council in connection with audits, reviews, examinations, investigations and hearings relating to claims against the Fund arising from the conduct of the industry member.

Winding-up of Fund

61(1) If the amount of the Fund at any time falls below the amount prescribed in the regulations, the Council shall immediately advise the Minister.

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

(3) When the Minister makes an order under subsection (2), every applicant to be an industry member and industry member who is

subject to the Fund shall provide the Council with a bond in accordance with the rules.

(4) On the winding-up of the Fund, the Fund belongs to those industry members registered under section 62 as contributors to the Fund at the time that the Minister issues the winding-up order, and shall be distributed to those persons in the manner and amounts provided for in the regulations.

By-laws for
Fund

62(1) The Council shall make by-laws respecting

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

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

(3) The Council shall maintain a register showing the names of each industry member who is a contributor to the Fund.

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

PART 5

ALBERTA REAL ESTATE FOUNDATION

Foundation
continued

63(1) The Alberta Real Estate Foundation, created under the *Real Estate Agents' Licensing Act*, 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.

Powers of
Foundation

64(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, treasury branch, credit union, loan corporation or trust corporation 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.

Application of
other Acts

65(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.

By-laws of
Foundation

66(1) The Foundation may make by-laws

- (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 by-laws;
 - (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 by-laws of the Foundation.

Establishment
of fund

67(1) The fund established by the Foundation under the *Real Estate Agents' Licensing Act* 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 68;
- (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.

Payment of
trust account
interest

68(1) An industry member who

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

holds the interest in trust for the Foundation.

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

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

(4) This section does not apply to

- (a) money deposited in a separate account for a client, 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*.

Audit of
Foundation
accounts

69 The accounts of the Foundation must be audited annually by a person appointed by the Foundation who is authorized to engage in exclusive accounting practice on a fee for service basis under the *Chartered Accountants Act*, the *Certified General Accountants Act* or the *Certified Management Accountants Act*.

Reports

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

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

- Winding-up **71** 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.

PART 6

GENERAL

- Order to
cease carrying
on business **72(1)** Where under the authority of this Act an industry member's authorization is cancelled or suspended, the person or body ordering the cancellation or suspension may also by order prohibit any other industry member who was acting as an employee or agent of the industry member and
- (a) committed the act or omission that resulted in the cancellation or suspension, or
 - (b) directed, authorized, assented to, participated in or acquiesced in the act or omission
- from carrying on the business of an industry member, subject to any terms and conditions set out in the order.
- (2)** A person against whom an order is made under subsection (1) shall comply with it in accordance with its terms.
- (3)** A person against whom an order is made under subsection (1) may appeal the order to the Council in accordance with the rules.
- Periodic
inspections **73(1)** The executive director or a person authorized by the executive director for the purpose may conduct periodic inspections of the business of an industry member, and for that purpose

- (a) may examine and inquire into
 - (i) books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to,

by, on behalf of, in relation to or connected with the industry member, and

- (ii) property, assets or things owned, acquired or alienated in whole or in part by the industry member or by a person acting on behalf of or as agent for that industry member,

and

- (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 dealing or trade of or on behalf of the industry member.

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

Receiving
order, freezing
assets

74 The executive director,

- (a) where he is about to commence an investigation of an industry member under section 38, or during or after such an investigation,

- (b) where

- (i) criminal proceedings, or

- (ii) proceedings in respect of a violation of this Act, the regulations, the by-laws or the rules

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

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

may do any or all of the following:

- (d) apply to the Court by way of originating notice for the appointment of a receiver, receiver-manager or trustee to

hold or manage, as the case may be, all or part of the property of that industry member, including a trust account;

(e) in writing

- (i) direct any person having on deposit or under that person's control or for safekeeping any funds or securities of the industry member to hold those funds or securities,
- (ii) direct the industry member to refrain from withdrawing funds or securities referred to in subclause (i) from any person who has them on deposit, under control or for safekeeping, or
- (iii) direct the industry member to hold any funds or securities of clients or others that the industry member has in his possession or under his control in trust for a receiver appointed under clause (d) or for an interim receiver, custodian, trustee, receiver, receiver and manager or liquidator appointed under the *Bankruptcy and Insolvency Act* (Canada), the *Judicature Act*, the *Companies Act*, the *Business Corporations Act* or the *Winding-up Act* (Canada), as the case may be,

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

Reviews

75(1) The Minister may, whenever the Minister considers it necessary, review or appoint a person to review

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

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

- (a) may require the attendance of any member, officer or employee of the Council or the board of governors of the Foundation or of any other person whose presence is considered necessary during the course of the review, and

- (b) has the same powers, privileges and immunities as a commissioner under the *Public Inquiries Act*.
- (3) When required to do so by the Minister or other person conducting a review, a person referred to in subsection (2)(a) shall produce for review all books and records that are in that person's possession or under that person's control that are relevant to the subject-matter of the review.
- (4) A person, other than the Minister, who conducts a review shall forthwith on the conclusion of the review report in writing to the Minister.
- (5) On conducting a review or receiving a report under subsection (4), the Minister may by order direct that the Council, the Foundation or any member, officer or employee of the Council or of the board of governors of the Foundation take any action that the Minister considers appropriate in the circumstances.
- (6) If an order under subsection (5) is not carried out to the satisfaction of the Minister, the Minister may by order do either or both of the following:
 - (a) appoint a comptroller to oversee the management of the affairs of the Council or the Foundation or the administration of the Fund, as the case may be, and attach terms and conditions to the continued operation of the Council, the Foundation or the Fund, as the case may be;
 - (b) dismiss all or any of the members of the Council or the board of governors of the Foundation or the member, officer or employee who failed to carry out the order.
- (7) If the Minister dismisses the Council or the board of governors of the Foundation, the Minister may in the same or a subsequent order do either or both of the following:
 - (a) appoint an official administrator to manage the affairs of the Council or the Foundation, as the case may be, until a new Council or board of governors is appointed;
 - (b) direct that a new Council or board of governors be appointed under this Act.
- (8) An order under subsection (7)(a) may provide for the payment of remuneration and expenses to the official administrator and may provide that the remuneration and expenses are the responsibility of the Council or the Foundation, as the case may be.

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

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

Service of documents

76 Service of any document required to be sent, communicated, given or served under this Act, the rules or the by-laws may be effected

- (a) on the Council, by leaving the document at the Council's office or by sending it by double registered or certified mail to the Council at its mailing address, and
- (b) on an industry member, by personal service or by sending the document by double registered or certified mail addressed to the industry member at the last business address provided by that industry member to the Council.

Immunities

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

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

Extension of time

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

Certificate evidence

79 A certificate or other document purporting to be signed by

- (a) a member of the Council or of the board of governors of the Foundation,
- (b) the chair of a Hearing Panel or Appeal Panel, or

(c) the executive director

is admissible in evidence as prima facie proof of its contents without proof of the appointment or the signature of the person signing it.

Offences

80(1) A person who contravenes section 17, 18(1), (2) or (3), 19, 20(2), (3), (4) or (5), 24(1)(a), 25(1), (2), (3), (5) or (9), 26(1) or (4), 29(1) or (2), 33(2), 35(1), 68(2), 72(2) or 73(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 82, 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 2 years after the date on which the offence is alleged to have been committed, but not after that date.

Burden of proof

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

Administrative penalties

82(1) Where the executive director is of the opinion that a person has contravened a provision of

- (a) this Act,
- (b) the regulations,
- (c) the by-laws, or
- (d) the rules

that is specified in the by-laws the executive director may, subject to the by-laws, 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 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.

Regulations

83(1) The Lieutenant Governor in Council may make regulations exempting persons or classes of persons or dealings or trades or classes of dealings or trades from the application of any of the provisions of this Act.

(2) The Minister may make regulations

- (a) prescribing time periods for the purposes of section 6(7);
- (b) respecting the classes of industry members in respect of whom judgments may be paid from the Fund under section 56(3);
- (c) prescribing, for the purposes of section 56(5), the classes of applicants and industry members who are subject to assessments for the purposes of the Fund;
- (d) respecting the classes of applicants to become industry members and the classes of industry members who are liable for assessments for the purposes of the Fund;
- (e) prescribing the conditions to be met before any claim is paid from the Fund;
- (f) respecting the limits of liability of the Fund;
- (g) prescribing the time within which claims against the Fund must be made;
- (h) prescribing the amounts referred to in sections 56(4) and 61(1);
- (i) respecting, for the purposes of section 56(4), additional purposes for which money in the Fund may be used;
- (j) respecting the winding-up of the Fund under section 61;

- (k) respecting the appointment of members of the board of governors of the Foundation including, without limitation, the number of members, who is to appoint them, the terms of office of members and the filling of vacancies;
- (l) specifying the classes of industry members to whom sections 25(5) and 68 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 68(2) and (3);
- (n) respecting the circumstances under which and the manner in which the Foundation may be wound up under section 71;
- (o) respecting such other matters as are necessary to carry out this Act.

PART 7

TRANSITIONAL, CONSEQUENTIAL, REPEAL AND COMMENCEMENT

Transitional

84(1) *Notwithstanding sections 11 and 12, the Minister shall make the initial by-laws and rules under those sections, and those by-laws and rules are deemed to be made by the Council, and after they are made may be amended or repealed only by the Council.*

(2) *Where on the coming into force of this Act,*

(a) a licence has been refused, cancelled or suspended under the Real Estate Agents' Licensing Act, or

(b) a registration has been refused, cancelled or suspended under the Mortgage Brokers Regulation Act,

the Real Estate Agents' Licensing Act or the Mortgage Brokers Regulation Act, as the case may be, continues to apply in respect of the right to appeal the refusal, cancellation or suspension and to the appeal itself as if that Act had not been repealed.

(3) *Where on the coming into force of this Act, an investigation has been commenced under section 16 of the Real Estate Agents' Licensing Act or section 15 of the Mortgage Brokers Regulation Act, the investigation shall be completed under the Real Estate Agents' Licensing Act or the Mortgage Brokers Regulation Act as if that Act had not been repealed.*

Consequential amendments	<p>85(1) <i>The Agriculture Financial Services Act is amended by repealing section 16(c) and substituting the following:</i></p> <p>(c) <i>the Real Estate Act.</i></p> <p>(2) <i>The Collection Practices Act is amended by repealing section 3(1)(c) and substituting the following:</i></p> <p>(c) <i>to an industry member within the meaning of the Real Estate Act or to an employee of an industry member acting in the regular course of his employment.</i></p> <p>(3) <i>The Securities Act is amended in section 66(e) by striking out “person or company registered or exempted from registration under the Mortgage Brokers Regulation Act or the Real Estate Agents’ Licensing Act” and substituting “person who holds the appropriate authorization issued under the Real Estate Act or is exempted from holding such an authorization”.</i></p> <p>(4) <i>The Trust Companies Act is amended by repealing section 94(l) and substituting the following:</i></p> <p>(l) <i>act as a real estate broker.</i></p>
Repeal	<p>86 <i>The following Acts are repealed:</i></p> <p>(a) <i>the Real Estate Agents’ Licensing Act;</i></p> <p>(b) <i>the Mortgage Brokers Regulation Act.</i></p>
Coming into force	<p>87 <i>This Act comes into force on Proclamation.</i></p>