

Bill 7
Mr. Graydon

BILL 7

2003

REAL ESTATE AMENDMENT ACT, 2003

(Assented to , 2003)

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

Amends RSA 2000 cR-5

1 The *Real Estate Act* is amended by this Act.

2 Section 1(1) is amended

- (a) in clause (a) by adding** “the Alberta Association of the Appraisal Institute of Canada, the Alberta Assessors Association, the Canadian National Association of Real Estate Appraisers,” **after** “the Alberta Mortgage Brokers’ Association,”;
- (b) by repealing clause (b);**
- (c) in clause (d) by adding** “, the activities of a real estate appraiser referred to in clause (u.1)” **after** “real estate broker”;
- (d) in clause (f) by striking out** “brokerage agreement” **and substituting** “service agreement”;
- (e) by adding the following after clause (k):**
 - (k.1) “former industry member” means a person who ceases to be an industry member;

(f) in clause (n) by adding “, the real estate appraiser industry” after “real estate broker industry”;

(g) by repealing clause (o) and substituting the following:

(o) “industry member” means any person who holds an authorization as a real estate broker, a real estate appraiser or a mortgage broker, or as any category or class of real estate broker, real estate appraiser or mortgage broker, issued by the Council;

(h) in clause (r) by striking out “and” at the end of subclause (i) and substituting “or”;

(i) by adding the following after clause (u):

(u.1) “real estate appraiser” means

(i) a person who, for consideration or other compensation

(A) estimates the defined value of an identified interest in real estate,

(B) signs a real estate appraisal report that makes an estimate referred to in paragraph (A) that is prepared by another person, and accepts responsibility for the report, or

(C) provides real estate appraisal consulting services within the meaning of the regulations,

or

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

(j) in clause (v) by striking out “and” at the end of subclause (i) and substituting “or”;

(k) by adding the following after clause (w):

(w.1) “service agreement” means a contract that is in writing and that establishes the relationship between the parties

as to the services to be performed by an industry member;

3 Section 2 is amended by adding the following after subsection (3):

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

4 Section 6 is amended

(a) in subsection (1)

(i) by striking out "11 members" and substituting "12 members";

(ii) by adding the following after clause (a):

(a.1) the Alberta Association of the Appraisal Institute of Canada, the Alberta Assessors Association and the Canadian National Association of Real Estate Appraisers shall jointly appoint one member, who must be a real estate appraiser;

(iii) in clause (e) by striking out "clauses (b)" and substituting "clauses (a.1)";

(b) in subsection (2) by striking out “subsection (1)(a)” and substituting “subsection (1)(a) or (a.1)”.

5 Section 12 is amended

(a) by repealing clause (e) and substituting the following:

(e) requiring that specified types of transactions in the business of an industry member be evidenced by an agreement in writing and that such an agreement contain specified provisions;

(b) in clause (g) by striking out “deals and trades” and substituting “transactions in the business of an industry member”;

(c) by repealing clause (m) and substituting the following:

(m) requiring industry members and former industry members to keep records and books of account and respecting the contents of the records and books of account, the manner in which they must be kept and the time for which they must be kept which, in the case of a former industry member, may not exceed a period of 3 years after the person becomes a former industry member;

6 The heading “Part 2 Regulation of Trading and Dealing” is repealed and the heading “Part 2 Regulation of Business of an Industry Member” is substituted.

7 Section 17 is repealed and the following is substituted:

Authorization required

17 No person shall

- (a) trade in real estate as a real estate broker,
- (b) deal as a mortgage broker,

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

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

8 Section 18(2) is amended by striking out “brokerage agreement” and substituting “service agreement”.

9 Section 21(1) is amended by striking out “dealing or trade” and substituting “transaction in the business of an industry member”.

10 Section 22(a) is amended by striking out “brokerage agreement” and substituting “service agreement”.

11 Section 23 is repealed and the following is substituted:

Recovery of shared commission or remuneration

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

12 Section 24(1)(a) is amended by striking out “brokerage agreement” and substituting “service agreement”.

13 Section 25(1)(a) is amended by striking out “a trust ledger” and substituting “complete and accurate financial records”.

14 The following is added after section 37:

Prior conduct

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

15 Section 43(3) is repealed.

16 Section 57(3) is amended by striking out “the dealings or trades” and substituting “transactions in the business”.

17 Section 60(1)(a) is amended by striking out “dealing or trade” and substituting “transaction in the business”.

18 Section 74(1)(b)(ii) is amended by striking out “dealing or trade of or on behalf” and substituting “transaction in the business”.

19 Section 75(1)(b) is amended by striking out “dealing or trade” and substituting “transaction in the business of an industry member”.

20 Section 77 is repealed and the following is substituted:

Service of documents

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

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

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

(3) Service under subsection (2)(a)(iii) or (b)(iii) is effected if the sender requests receipt to be acknowledged and the recipient acknowledges receipt.

21 Section 81(4) is amended by striking out “2 years” and substituting “3 years”.

22 Section 84(1) is amended by striking out “dealings or trades or classes of dealings or trades” **and substituting** “transactions in the business of an industry member or classes of such transactions”.

23 Sections 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19 and 22 come into force on Proclamation.

Explanatory Notes

1 Amends chapter R-5 of the Revised Statutes of Alberta 2000.

2 Section 1(1) presently reads in part:

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 division of the Real Estate Institute of Canada called the Institute of Real Estate Management 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;*
- (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;*

- (f) *“client” means a person who has entered into a brokerage agreement with an industry member;*
- (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;*
- (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 out that the person is a person referred to in subclause (i);*
- (v) *“real estate broker” means*
 - (i) *a person who, for another or others and for consideration or other compensation, either alone or through one or more persons, trades in real estate, and*
 - (ii) *a person who holds out that the person is a person referred to in subclause (i);*

3 Certain appraisers exempt from Act.

4 Section 6 presently reads in part:

6(1) The Council shall consist of 11 members appointed as follows:

- (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:*
 - (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 division of the Real Estate Institute of Canada called the Institute of Real Estate Management 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.

5 Section 12 presently reads in part:

12 The Council may make rules

(e) requiring that specified types of trades or dealings be evidenced by an agreement in writing and that such an agreement contain specified provisions;

(g) respecting the disclosure of information by industry members to parties and potential parties to deals and trades;

(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;

6 New heading to reflect inclusion of appraising.

7 Section 17 presently reads:

17 No person shall

- (a) *trade in real estate as a real estate broker,*
- (b) *deal as a mortgage broker, or*
- (c) *advertise the person as or in any way hold out that the person is a mortgage broker or real estate broker*

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

8 Section 18(2) presently reads:

(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 out the terms on which the money will be received, held and disbursed.

9 Section 21(1) presently reads:

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.*

10 Section 22(a) presently reads:

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*

11 Section 23 presently reads:

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.

12 Section 24(1) presently reads:

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) shall retain a commission or other remuneration computed on the basis referred to in clause (a).*

13 Section 25 presently reads in part:

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

(a) 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,

14 Conduct preceding cancellation or suspension of authorization.

15 Section 43(3) presently reads:

(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.

16 Section 57(3) presently reads:

(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.

17 Section 60(1) presently reads:

60(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 after the date that it became final,*

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

18 Section 74(1) presently reads:

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

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

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.*

19 Section 75(1) presently reads:

75(1) The executive director,

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

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

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

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

20 Section 77 presently reads:

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

- (a) *on the Council, 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.*

21 Section 81(4) presently reads:

(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.

22 Section 84(1) presently reads:

84(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.

23 Coming into force.