

2007 Bill 24

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Third Session, 26th Legislature, 56 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 24**

**REAL ESTATE AMENDMENT ACT, 2007**

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MR. ROGERS

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 24*  
*Mr. Rogers*

## **BILL 24**

2007

### **REAL ESTATE AMENDMENT ACT, 2007**

*(Assented to , 2007)*

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 is amended**

**(a) in subsection (1)**

**(i) in clause (a)**

**(A) by striking out “associations” and substituting  
“association”;**

**(B) by striking out “and any successor organizations”  
and substituting “or any successor organization to  
any of those associations or institutes”;**

**(ii) by repealing clauses (c), (f) and (g);**

**(iii) by adding the following after clause (r):**

**(r.1) “partnership” means a partnership between or among  
individuals or corporations or both;**

**(iv) by adding the following after clause (s):**

## Explanatory Notes

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

**2** Section 1 presently reads in part:

*1(1) In this Act,*

- (a) “associations” means the Alberta Real Estate Association, the Alberta Mortgage Brokers’ Association, the Alberta Association of the Appraisal Institute of Canada, the Alberta Assessors Association, the Canadian National Association of Real Estate Appraisers, the Building Owners and Managers Association of Edmonton, the Building Owners and Managers Association of Calgary, the Real Estate Institute of Canada and the division of the Real Estate Institute of Canada called the Institute of Real Estate Management and any successor organizations;*
- (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;*
- (f) “client” means a person who has entered into a service agreement with an industry member;*

- (s.1) “property management” includes any of the following:
- (i) leasing or offering to lease real estate or negotiating or approving, or offering to negotiate or approve, a lease or rental of real estate;
  - (ii) holding money received in connection with an activity referred to in subclause (i);
  - (iii) advertising, negotiating or carrying out any other activity, directly or indirectly, for the purpose of furthering an activity referred to in subclause (i) or (ii);

**(v) by repealing clause (t);**

**(vi) by adding the following before clause (u):**

- (t.1) “purchase”, in respect of real estate, includes an exchange, an option, a lease or any other acquisition of an interest in real estate;

**(vii) in clause (u) by adding “or” at the end of subclause (ii) and repealing subclauses (iii) and (iv);**

**(viii) by adding the following after clause (w):**

- (w.01) “sale”, in respect of real estate, includes an exchange, an option, a lease or any other disposition of an interest in real estate;

**(ix) by repealing clause (w.1) and substituting the following:**

- (w.1) “service agreement” means a contract that establishes the relationship between the parties as to the services and obligations to be performed by an industry member;

**(x) by adding the following after clause (w.1):**

- (w.2) “substantial interest” means an ownership interest in real estate of not less than 25%;

- (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;*
- (j) *“dealing” means all or any of the activities of a mortgage broker referred to in clause (r);*
- (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;*

**(xi) by repealing clause (x) and substituting the following:**

- (x) “trade” includes any of the following:
- (i) a disposition or acquisition of, or transaction in, real estate by purchase or sale;
  - (ii) an offer to purchase or sell real estate;
  - (iii) an offering, advertisement, listing or showing of real estate for purchase or sale;
  - (iv) property management;
  - (v) holding oneself out as trading in real estate;
  - (vi) the solicitation, negotiation or obtaining of a contract, agreement or any arrangement for an activity referred to in subclauses (i) to (v);
  - (vii) collecting, or offering or attempting to collect, on behalf of the owner or other person in charge of real estate, money payable as
    - (A) rent for the use of the real estate, or
    - (B) contributions for the control, management or administration of the real estate;
  - (viii) any conduct or act in furtherance or attempted furtherance of an activity referred to in subclauses (i) to (vii);

**(b) by repealing subsection (2) and substituting the following:**

**(2)** None of the following constitute an offering, advertisement, listing or showing of real estate for the purposes of subsection (1)(x)(iii):

- (a) the provision of information, forms and signs;
- (b) the creation of a web page to market properties;

(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;*

(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.*

- (c) the publication of a list of properties for disposition or acquisition.

**(c) by repealing subsection (3).**

**3 Section 2 is amended**

**(a) in subsection (1)**

- (i) **by striking out** “Except for Part 2, Division 2, this” **and substituting** “This”;
- (ii) **in clause (b) by adding** “subject to the regulations,” **before** “a bank”;
- (iii) **by adding the following after clause (c):**
  - (c.1) a condominium corporation in respect of managing its own affairs,
- (iv) **in clause (e) by striking out** “the Law” **and substituting** “The Law”;

**(b) in subsection (3)**

- (i) **in clause (a) by adding** “subject to the regulations,” **before** “a bank”;
- (ii) **in clause (b) by adding** “subject to the regulations,” **before** “an agent”;
- (iii) **in clause (c) by adding** “subject to the regulations,” **before** “an employee”;
- (iv) **in clause (d) by striking out** “the Law” **and substituting** “The Law”;

**(c) by adding the following after subsection (4):**

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



**3** Section 2(1) and (3) presently read:

*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.*

*(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,*

**4 Section 6 is amended**

**(a) in subsection (1)**

**(i) by repealing clauses (a.1) and (d);**

**(ii) in clause (e) by striking out “(a.1) to (d)” and substituting “(b) and (c)”;**

**(iii) by adding the following after clause (e):**

(f) the members appointed under clauses (a) to (e) shall jointly appoint 2 members as follows:

(i) from nominations received in accordance with the regulations, one member, who must be a real estate appraiser;

(ii) from nominations received in accordance with the regulations, one member, who must be a property manager.

**(b) by adding the following after subsection (1):**

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

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

**(d) by repealing subsections (3) and (4);**

**(e) in subsection (7) by striking out “(1)(b) to (d)” and substituting “(1)(b) and (c)”.**

- (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.*

**4** Section 6 presently reads in part:

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

*(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;*

*(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 (a.1) 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) or (a.1) 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.*

**5 Section 11 is amended**

**(a) by adding the following after clause (h):**

(h.1) respecting the procedures for appointing Hearing Panels and Appeal Panels;

**(b) by repealing clause (j) and substituting the following:**

(j) respecting the costs that may be ordered under section 40(4) or 43(2) or (2.1), awarded under section 50(5) or 83.1(5) or payable under section 48(8) or 52(8) and the amount of those costs;

**(c) in clause (l) by striking out “\$5000” and substituting “the amount prescribed by the regulations”.**

**6 Section 12 is amended**

**(a) by adding the following after clause (j):**

(j.1) regulating trading in real estate by an industry member on the industry member’s own behalf;

(j.2) respecting the manner in which or the basis on which commissions and other remuneration are to be calculated;

**(b) in clause (k)**

**(i) by adding the following after subclause (ii):**

(ii.1) respecting the requirement for a criminal record check to accompany an application for an authorization,

**(ii) in subclause (v) by striking out “Part 3;” and substituting “Part 3, and”;**

**(c) by repealing clause (s);**

*(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 subsequently appointed under subsection (1)(b) to (e), is 3 years.*

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

**5** Section 11 presently reads in part:

*11 The Council may make bylaws*

- (j) respecting the costs that may be ordered under section 40(4) or 43(2) or awarded under section 50(5) and the amount of those costs;*
- (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;*

**6** Section 12 presently reads in part:

*12 The Council may make rules*

- (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;*

- (d) in clause (t) by striking out “or (s)”;
- (e) by repealing clauses (u) and (w).

**7 Section 18(1) is amended by striking out** “or from the industry member’s client”.

**8 The following is added after section 21:**

**Authorization required**

**21.1(1)** No person shall charge or collect a commission or other remuneration for services rendered in connection with a transaction in the business of an industry member unless, at the time of rendering the service, the person

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

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

**9 Section 22 is amended**

- (a) **by striking out** “the sale of land or an interest in land” **and substituting** “a transaction in the business of an industry member”;

- (vi) *respecting the appeal of a decision to refuse to issue or to cancel or suspend an authorization and the reinstatement of authorizations;*
- (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;*
- (w) *governing appeals for the purposes of section 34;*

**7** Section 18(1) presently reads:

*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.*

**8** Authorization required.

**9** Section 22 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*

**(b) in clause (a) by striking out “writing, or” and substituting “writing,”;**

**(c) by adding the following after clause (b):**

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

**10 Section 24(2) and (3) are repealed.**

**11 Section 25 is amended**

**(a) in subsection (1)**

- (i) **in clause (b) by striking out** “within 2 banking days after receipt of the money, or within any longer” **and substituting** “in the business of the industry member within the time prescribed by the regulations, or within any”;
- (ii) **in clauses (c) and (d) by adding** “in the business of the industry member” **after** “trade”;



- (a) *the service agreement on which recovery is sought in the action or some note or memorandum of it is in writing signed by the party to be charged or by that person's agent lawfully authorized in writing, 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.*

**10** Section 24 presently reads in part:

- (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.*

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

**(b) by repealing subsection (2) and substituting the following:**

(2) Where an industry member receives money in trust in respect of a dealing or trade in the business of the industry member, the industry member shall ensure that the terms of the trust governing the use of the money are in writing and agreed to by the industry member and all other parties.

**(c) by repealing subsection (5) and substituting the following:**

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

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

**(d) in subsection (9) by striking out “dealings and trades” and substituting “business”;**

**(e) by repealing subsection (10);**

**(f) in subsection (11) by striking out “client” wherever it occurs and substituting “person”.**

- (iv) *disbursements made from money received or held in trust, in respect of a dealing or trade for that person,*
  - (b) *deposit money received in trust in respect of a dealing or trade 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,*
  - (c) *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*
  - (d) *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.*
- (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.*
- (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.*

**12 Division 2 of Part 2 is repealed.**

**13 Section 36 is repealed and the following is substituted:**

**Panels**

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

**(2)** At least one member of a Hearing Panel must be a member of the Council and the other members of the Hearing Panel may be industry members or members of the public.

**(3)** Despite subsection (2), the number of members of the public on a Hearing Panel must not exceed the number of industry members on a Hearing Panel.

**(4)** An Appeal Panel must consist of at least 3 members appointed in accordance with the bylaws, all of whom must be members of the Council.

**(5)** Despite subsection (4), a member of The Law Society of Alberta or of the law society of any other province or territory may be appointed as a member of an Appeal Panel in accordance with the bylaws, in which case that Appeal Panel must consist of

- (a)** one member of The Law Society of Alberta or of the law society of any other province or territory, and
- (b)** at least 3 additional members, all of whom must be members of the Council.

**(6)** A person who was a member of the Hearing Panel that dealt with a subject-matter is not eligible to sit on the Appeal Panel that deals with the same subject-matter.

**14 Section 37(2) is amended by adding** “and must include the name of the complainant and reasonable particulars of the complaint” **after** “writing”.

*(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.*

**12** Division 2, Trading in Real Estate Outside Alberta, is repealed.

**13** Section 36 presently reads:

*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.*

**14** Section 37(2) presently reads:

*(2) A complaint must be in writing.*

**15 Section 38 is amended**

**(a) in subsection (1)(a) by striking out “immediately on” and substituting “as soon as practicable after”;**

**(b) by repealing subsection (2) and substituting the following:**

**(2)** A person conducting an investigation may

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

**(c) by repealing subsection (4) and substituting the following:**

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

- (a) shall co-operate with the investigator and promptly respond to the questions, and
- (b) shall not be excused from answering any question on the ground that the answer might tend to
  - (i) incriminate the person,
  - (ii) subject that person to punishment under this Act, or
  - (iii) establish that person’s liability to a civil proceeding at the instance of the Crown or of any other person, or to prosecution under any Act,

but if the answer so given tends to incriminate that person, subject the person to punishment or establish the

**15** Section 38 presently reads in part:

*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).*

*(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.*

person's liability, it may not be used or received against the person in any civil proceedings, in a prosecution of an offence under this Act or in any proceedings under any other Act, except in a prosecution for or proceedings in respect of a contravention of this section.

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

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

**(e)** in subsection (5) by adding "in writing" after "report";

**(f)** by adding the following after subsection (5):

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

**16 The following is added after section 38:**

**Refusing to investigate complaint or discontinuing investigation**

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

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

under any circumstances provided for in the regulations.

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



**16** Refusing to investigate complaint or discontinuing investigation.

**17 Section 39(1)(b) is amended by striking out “or” at the end of subclause (i) and by adding the following after subclause (i):**

- (i.1) issue a letter reprimanding the industry member, or

**18 Section 40(1) is repealed and the following is substituted:**

**Appeal by complainant**

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

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

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

**19 The following is added after section 40:**

**Appeal by industry member**

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

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

**17** Section 39(1) presently reads in part:

*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*

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

**18** Section 40(1) presently reads:

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

**19** Appeal by industry member.

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

**20 Section 41 is amended**

(a) **by repealing subsection (1) and substituting the following:**

**Duty to hold hearing**

**41(1)** A Hearing Panel shall hold a hearing

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

(b) **by repealing subsection (4) and substituting the following:**

(4) A notice of hearing shall indicate

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

**21 The following is added after section 41:**

**Hearing in absence of industry member**

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

**20** Section 41 presently reads in part:

*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.*

*(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.*

**21** Hearing in absence of industry member.

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

**22 Section 42(e) is amended by adding “of an offence” after “proceedings, in a prosecution”.**

**23 Section 43 is amended**

- (a) **in subsection (1) by adding the following after clause (d):**
  - (d.1) an order prohibiting the industry member from applying for a new authorization for a specified period of time or until one or more conditions are fulfilled by the industry member;

**22** Section 42(e) presently reads:

*42 The following applies in respect of a hearing:*

- (e) a witness may be examined under oath on anything relevant to the subject-matter of the hearing and is not to be excused from answering any question on the ground that the answer might tend to*
  - (i) incriminate that person,*
  - (ii) subject that person to punishment under this Act, or*
  - (iii) establish that person's liability*
    - (A) to a civil proceeding at the instance of the Crown or of any other person, or*
    - (B) to prosecution under any Act,*

*but if the answer so given tends to incriminate that person, subject that person to punishment or establish that person's liability, it may not be used or received against that person in any civil proceedings, in a prosecution 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;*

**23** Section 43 presently reads in part:

*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) by adding the following after subsection (2):**

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

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

**24 Section 48 is repealed and the following is substituted:**

**Appeal to Appeal Panel**

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

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

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

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

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

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

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



- (b) *an order reprimanding the industry member;*
- (c) *an order imposing any conditions or restrictions on the industry member and on that industry member's carrying on of the business of an industry member that the Hearing Panel, in its discretion, determines appropriate;*
- (d) *an order requiring the industry member to pay to the Council a fine, not exceeding \$25 000, for each finding of conduct deserving of sanction;*
- (e) *any other order agreed to by the parties.*

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

**24** Section 48 presently reads:

*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 that 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.*

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

**(7)** The executive director,

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

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

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

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

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

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

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

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



finding or order until the Appeal Panel renders its decision on the appeal.

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

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

**25 Section 49(2) is amended by adding** "or on the industry member, as the case may be" **after** "executive director".

**26 The following is added after section 49:**

**Hearing in absence of industry member**

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

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

**27 Section 50(7) is repealed and the following is substituted:**

**(7)** An industry member who is appealing a decision of an Appeal Panel to the Court under section 52 may, within 7 days of receiving a copy of the Appeal Panel's decision under section 51, by notice served on the executive director, apply to the Appeal Panel for a stay of the decision pending the determination of the appeal to the Court under section 52.

**(8)** On application under subsection (7) and after allowing the executive director to make representations, the Appeal Panel

**25** Section 49(2) presently reads:

*(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.*

**26** Hearing in absence of industry member.

**27** Section 50(7) presently reads:

*(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.*

may, if the Appeal Panel considers it appropriate to do so, grant the stay.

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

(10) If the Appeal Panel refuses to grant a stay, the industry member may, within 7 days of receiving a copy of the Appeal Panel's decision under subsection (9), 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.

**28 Section 52 is repealed and the following is substituted:**

**Appeal to Court**

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

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

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

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

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

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

(5) If the executive director commences the appeal, the executive director shall serve on the industry member a copy of

**28** Section 52 presently reads:

*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 on the executive director a copy of the originating notice and the supporting documents not fewer 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*

the originating notice and the supporting documents not less than 15 days before the date set for the hearing.

**(6)** The appeal to the Court must be founded on

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

**(7)** The Court on hearing the appeal may

- (a) make any finding or order that, in its opinion, ought to have been made,
- (b) quash, confirm or vary the decision of the Appeal Panel or any part of it,
- (c) refer the matter back to the Appeal Panel for further consideration in accordance with any direction of the Court, or
- (d) direct that a trial of any mixed questions of law and fact related to a finding or order, or both a finding and an order, of the Appeal Panel be held before the Court.

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

**(9)** The Court may make any award as to the costs of the appeal that it considers appropriate.

**29 Section 55 is amended**

**(a) by renumbering it as section 55(1);**

**(b) in subsection (1) by adding the following after clause (a):**

- (a.1) the name, business contact information and category of authorization of industry members,

**(c) by adding the following after subsection (1):**

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



- (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.*

**29** Section 55 presently reads:

*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 those publications have qualified privilege.*

- (a) to an organization that regulates activities in another province or territory similar to those regulated by the Council if the executive director reasonably believes that the information about the industry member may result in a suspension or cancellation of the industry member's authorization or licence in that province or territory, and
- (b) to a law enforcement agency in Alberta or in another jurisdiction in Canada where the notice of that information may be of interest to that law enforcement agency.

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

**30 Section 56 is amended by striking out** “ordered or awarded under section 40(4), 43(2) or 50(5)” **and substituting** “ordered, awarded or payable under section 40(4), 43(2) or (2.1), 48(8), 50(5), 52(8) or 83.1(5)”.

**31 Section 57(3) is repealed and the following is substituted:**

- (3) The purpose of the Fund is to pay, in whole or in part, judgments obtained or claims made against industry members of the classes provided for in the regulations when
- (a) in the case of a judgment, the judgment is based on fraud or breach of trust in respect of a transaction in the business of an industry member, or
  - (b) in the case of a claim, the claim is for losses or damages caused where an industry member fails to disburse or account for money held in trust in accordance with section 25 in respect of a transaction in the business of an industry member.

**32 Section 58(3) is amended by adding “, 60.2 or 60.3” after “section 60”.**

**30** Section 56 presently reads:

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

**31** 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 transactions in the business of an industry member.*

**32** Section 58(3) presently reads:

**33 Section 59(1) is repealed and the following is substituted:**

**Rights in actions**

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

**34 Section 60 is amended**

- (a) **by repealing subsection (1) and substituting the following:**

**Payment from Fund in respect of judgments**

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

- (b) **by repealing subsections (3) and (4) and substituting the following:**

(3) The Court on an application may

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

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

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

*(3) The Council has, and is deemed to have had at all times, an insurable interest in the Fund and in the protection of the Fund against loss, notwithstanding that any loss is the result of the exercise of the discretion of the Council under section 60 or the Alberta Real Estate Association under section 15.1 of the Real Estate Agents' Licensing Act, RSA 1980 cR-5.*

**33** Section 59(1) presently reads:

*59(1) When a person commences an action referred to in section 57(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.*

**34** Section 60 presently reads in part:

*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 transaction in the business of the industry member,*
- (b) has become final, 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.*

*(3) The Court on an application may*

- (a) relieve the Council from liability to make any payment under subsection (4) where it is of the opinion that, based on the merits of the action, the judgment is not 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 any order under subsection (3), where an application has been made under subsection (1), the Council shall pay to the applicant the amount of compensation determined in accordance with the regulations.*

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

**35 Section 60.1 is amended by striking out “section 60(1)” and substituting “sections 60(1), 60.2 and 60.3(1)”.**

**36 Section 60.2(2) is amended by adding the following after clause (d):**

- (d.1) if the judgment is not based on a finding of fraud or breach of trust in respect of a transaction in the business of the industry member, a statutory declaration that contains the particulars of the basis of the claim;

**35** Section 60.1 presently reads:

*60.1 Despite section 60(1), the following persons are not eligible to apply to the Council for compensation from the Fund:*

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

**36** Section 60.2(2) presently reads:

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

- (a) the judgment with respect to which the application is made;*
- (b) the statement of claim or other document that initiated the action to which the judgment relates;*
- (c) evidence satisfactory to the Council that the judgment has become final;*

**37 The following is added after section 60.2:**

**Payment from Fund in respect of claims**

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

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

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

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

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

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



- (d) an irrevocable assignment of all or part of the judgment from the applicant to the Council, in a form acceptable to the Council;*
- (e) a statutory declaration stating that the applicant did not participate in and was not wilfully blind to the fraud or breach of trust of the industry member that gave rise to the judgment against the industry member;*
- (f) any other information and documents prescribed by the regulations.*

**37** Payment from Fund in respect of claims other than judgments.

**38 Section 61(1) is amended by adding “or 60.3” after “section 60”.**

**39 Section 62(4) is repealed and the following is substituted:**

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

**40 Section 63(3) is repealed.**

**41 Section 69(4)(a) is amended by striking out “client” and substituting “party in respect of a dealing or trade”.**

**42 The following is added after section 72:**

**Limitation of liability**

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

**38** Section 61(1) presently reads:

*61(1) When a payment has been made from the Fund under section 60, 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.*

**39** Section 62(4) presently reads:

*(4) On the winding-up of the Fund, the Fund belongs to those industry members registered under section 63 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.*

**40** Section 63(3) presently reads:

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

**41** Section 69(4) presently reads:

*(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.*

**42** Limitation of liability.

**43 Section 74 is amended**

- (a) in subsection (1) by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following after clause (b):**
  - (c) may copy by electronic or other means, and keep copies of, anything produced under clause (b).
- (b) in subsection (2) by adding “and copying” after “inspection”.**

**44 Section 75(2) is repealed and the following is substituted:**

- (2) If subsection (1) applies, the executive director may do one or more of the following:**
  - (a) in writing
    - (i) direct any person having on deposit or under that person’s control or for safekeeping any funds or securities of the industry member to hold those funds or securities, or

**43** Section 74 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 transaction in the business 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.*

**44** Section 75(2) presently reads:

*(2) If subsection (1) applies, the executive director may do any or all of the following:*

- (a) 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;*
- (b) in writing*

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

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

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

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

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

- (a) the funds or securities have been paid into or deposited with the Court, and
- (b) a person may, by filing an originating notice with the Court and serving a copy on the industry member, apply for an order directing payment or distribution of all or part of the funds or securities to one or more persons.

- (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 the industry member's possession or under the industry member's control in trust for a receiver appointed under clause (a) 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, the Cooperatives Act or the Winding-up and Restructuring 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.*

**45 Section 77(2) is amended by adding the following after clause (b):**

- (c) on a person other than the Council or an industry member in a manner or by a method provided for in the regulations.

**46 Section 81 is amended**

- (a) **by repealing subsection (1) and substituting the following:**

**Offences**

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

- (b) **by adding the following after subsection (1):**



**45** Section 77(2) presently reads:

*(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.*

**46** Section 81(1) presently reads:

*81(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), 69(2), 73(2) or 74(2) is guilty of an offence and liable to a fine of not more than \$25 000.*

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

**47 The following is added after section 83:**

**Appeal of administrative penalty**

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

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

(a) must

(i) describe the administrative penalty appealed from,  
and

(ii) state the reason for the appeal,

and

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

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

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

**(5)** The Hearing Panel on an appeal may

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

(b) make an award as to costs of the investigation that resulted in the administrative penalty and of the appeal in an amount determined in accordance with the bylaws.

**(6)** The Hearing Panel's decision under this section is final.

**47** Appeal of administrative penalties, issuing of productions orders and appointment of investigators.

(7) The executive director shall serve a copy of the Hearing Panel's decision on the appellant.

**Production order**

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

- (a) a person to whom the order is directed;
- (b) a person under investigation who is named in the order;



- (c) a person other than one referred to in clause (a) or (b) who is otherwise affected by the order.

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

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

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

#### **Persons to conduct investigations**

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

#### **48 Section 84 is amended**

**(a) in subsection (1) by adding the following after clause (a):**

- (a.1) respecting the circumstances in which this Act as it relates to trading in real estate applies to the persons referred to in section 2(1)(b);
- (a.2) respecting the circumstances in which this Act as it relates to dealing in mortgages applies to the persons referred to in section 2(3)(a), (b) or (c);

**(b) in subsection (2)**

**(i) by renumbering clause (a) as (a.1) and by adding the following before clause (a.1):**

- (a) respecting the nomination of persons from whom members of the Council are to be appointed under section 6(1)(f);

**(ii) by adding the following after clause (a.1):**



**48** Additional regulation-making powers added.

- (a.2) prescribing the maximum amount of an administrative penalty for the purposes of section 11(l);
  - (a.3) prescribing time periods for the purposes of section 25(1)(b);
  - (a.4) prescribing or otherwise describing, for the purposes of section 38.1, the circumstances under which an executive director may refuse to investigate or may discontinue investigating or direct a person appointed under section 38(1) to discontinue investigating a complaint;
- (iii) in clause (g.1) by striking out “section 60.2(2)” and substituting “sections 60.2(2) and 60.3(3)”;**
- (iv) in clause (j) by adding “, including, without limitation, regulations respecting how the Fund proceeds are to be distributed” after “section 62”;**
- (v) by adding the following after clause (n):**
- (n.1) respecting service of documents for the purposes of section 77(2)(c);
  - (n.2) respecting an appeal of an order under section 83.2 to the Court;
  - (n.3) defining any word or phrase used in this Act but not defined in this Act;

**49 This Act comes into force on Proclamation.**

**49** Coming into force.

