

The Regulator

August 2018

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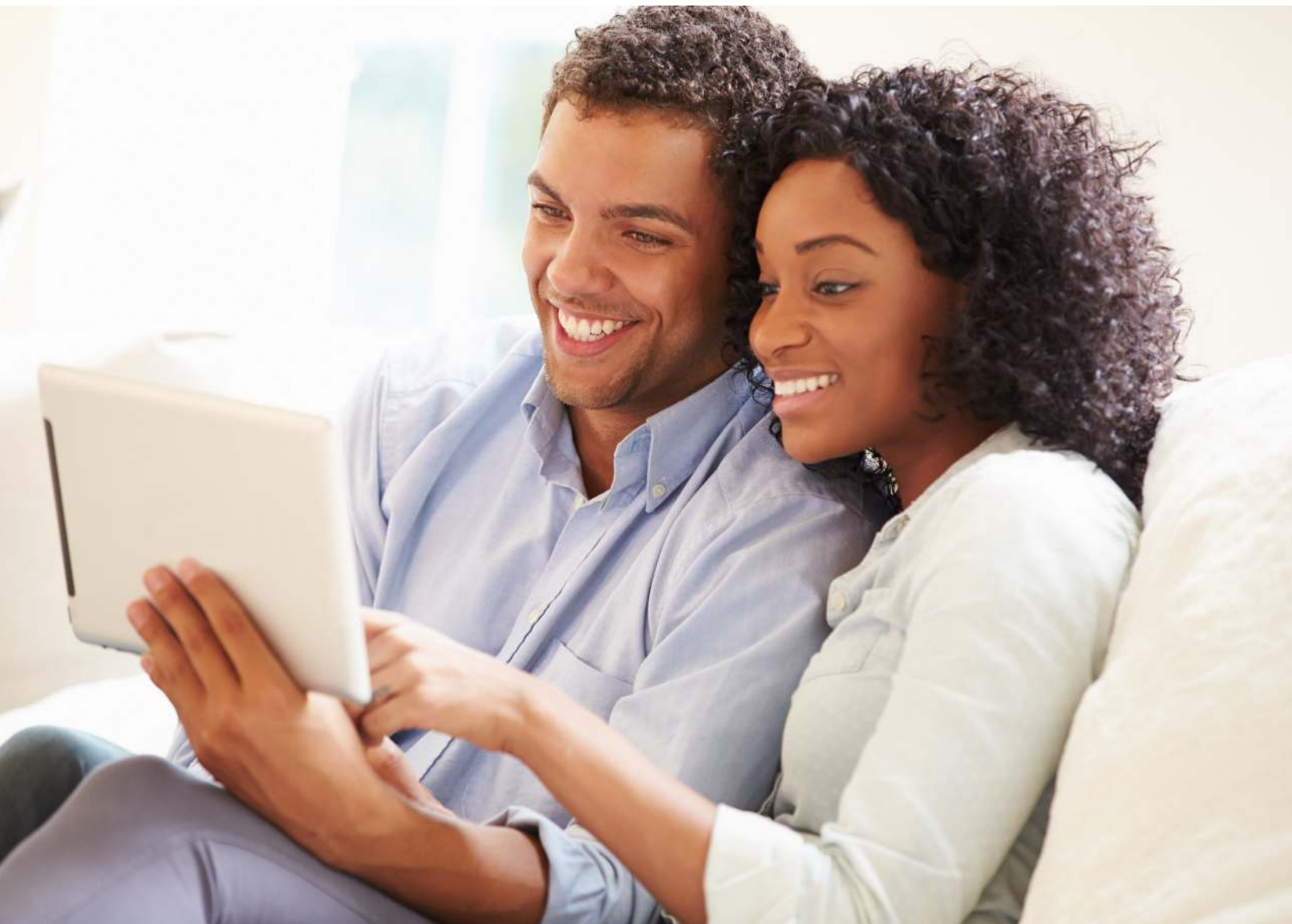
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Message from Council

Brian Klingspon,
Chair



Other parts of this Regulator newsletter will provide updates on Council business, the approved budget, and plans for the year ahead. But I want to touch on something that's extremely important to me – and that should be important to you: the notion that our licence is valuable.

We're all licensed professionals. But I think there are many consumers out there who don't know that. They don't know about the education we complete before getting licensed; they don't know that we have to provide a criminal record check before getting licensed; they don't know about our ongoing education and notification requirements, and they don't know about the high standards that are in place.

They don't necessarily see that because we're licensed professionals, there is tremendous value in working with us. RECA's communication team puts an incredible amount of effort into producing materials that highlight the importance of working with a licensed professional, the easy access to a public licence search, and why working with a licensed professional matters. I also think, though, that we all have a role in helping consumers see that value of the licence, and helping them recognize why working with a licensed industry professional matters.

Likewise, as licensed professionals, I don't think that we always see the value of our licence.

All too often we connect our licensing with the things that it requires of us – ongoing education, meeting standards – but do we connect how our licence elevates our industry? How it elevates us to the professionals we are? Do you ever think about what having a licence gives us?

Do we talk to our clients about what makes us professional? Do we talk about the fact that our licence elevates us, our knowledge, competence, service, and ethics? Frankly, we should.

As you read this newsletter today, if I could just have you take that message, that idea, with you – that we are licensed professionals, consumers should know that and respect that, and we should too.

Go out and talk to your clients about the value we, and our licence, bring to their transactions. Even better than that – show them!

Doing so will serve us all, and our industry, well for many years to come.



Council Highlights July 18 Meeting

1. **Council approved the 2018-2019 budget.** The approved budget includes no increase to licensing fees for the 2018-2019 licensing year.
2. **Council approved amended policies relating to Council finances,** including signing authority, depreciation, the Real Estate Assurance Fund, and Council Operating Fund investment policies.
3. **Council approved new governance policies, and amended the *Real Estate Act* Bylaws.**
 - a. Council approved a new Diversity Policy to ensure Council is comprised of talented and dedicated Council members with a diverse mix of expertise, experience, skills, and backgrounds. Read the Diversity Policy [here](#).
 - b. Council approved amendments to section 2(1) of the *Real Estate Act* Bylaws, concerning the procedure for appointment of non-AREA and Public Council Members.
 - i. Section 2(1) of the Bylaws now points to the appointment policies adopted by Council as the procedure for nominating non-AREA and Public Council members.
 - ii. Council updated the existing appointment policies
 - c. Council approved updated position descriptions for Council Members and for the Chair of Council, and a Terms of Reference for Council. These documents better clarify Council's role and the role of each Council member.
4. **Council approved appointments to the Hearing and Appeal Panel rosters.** Hearing and Appeal Panel members are chosen from an approved roster of industry professionals, Council members, and members of the Law Society of Alberta.

Council Highlights July 18 Meeting

- 5. Council approved a recommendation from the Legislative Review Committee** to undertake consultation on amendments to s.96 and s.97 of the *Real Estate Act Rules*. The amendments are about the option to segregate commissions for payment to real estate industry professionals, and are a direct result of the work of the Alberta Real Estate Association's At-Risk Commissions Working Group of real estate industry stakeholders.

RECA wants to hear your opinion on proposed amendments to these sections of the Rules. Read more about this consultation and how to provide your written feedback in the [Consultation article of this Regulator](#).

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- 6. Council tabled discussion on recommendations made by the RMS Working Group.** Council will review these recommendations at its October meeting.

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- 7. Council discussed real estate regulation issues surrounding the upcoming legalization of cannabis** across Canada in October.

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- 8. Council approved 20 payments from the Real Estate Assurance Fund for a total of \$455,978.94.** These payouts stem from incidents involving fraud, breach of trust, and failing to disburse or account for money held in trust. Since its creation in 1985, the Real Estate Assurance Fund has paid out \$2,752,658.94. Since RECA began administering the Fund in 1996, \$1,204,967.94 has been paid out.

More details about Council meetings and decisions will become available when Council approves the Minutes from their July 18 meeting. Council meeting Agendas and Minutes are posted on RECA website [here](#).

Feedback Wanted: Option to Segregate Commissions

RECA consultation on proposed amendments to the *Real Estate Act Rules*



RECA is proposing amendments to the *Real Estate Act Rules* that would allow brokerages to deposit funds in a brokerage “other account.” This account could be used to segregate commissions from which a brokerage could pay professionals’ commissions. If a brokerage sets up the other account as a brokerage trust account, this trust account would not be a RECA-regulated trust account and it could not hold consumer deposits.

The proposed amendments would also clarify that the Real Estate Assurance Fund was and is intended as a consumer protection fund for consumers only.

RECA wants to hear from real estate professionals and consumers about the proposed changes.

Review the [Consultation Paper – Proposed Amendments to Real Estate Act Rules 96 and 97](#) to inform and assist you in providing your feedback.

The deadline for written feedback is October 30, 2018. Send your feedback to:

consultation@reca.ca

or mail your feedback to:
Real Estate Council of Alberta
Suite 202, 1506 11 Ave SW
Calgary AB
T3C 0M9
Fax: (403) 228-3065

RECA wants to hear from you. Your views, comments, and suggestions are welcome and encouraged. We anticipate Council will decide in late 2018 or early 2019 whether it will amend the Rules.

Consultation submissions and responses will be made available on RECA's website. Individuals will not be named. Consultation responses from industry associations will be posted in full, including the responding organization's name

Reasons for the proposed change

1. In early 2016, two large, Calgary-area brokerages closed. Many real estate professionals contacted RECA and their industry associations regarding unpaid commissions owing from these brokerages. Under the Rules, commissions are held in brokerage general accounts.

Shortly after these closures, the Alberta Real Estate Association At-Risk Commissions Working Group (ARCWG) formed with representatives from the Alberta Real Estate Association, the Calgary Real Estate Board, the REALTORS® Association of Edmonton, RECA, and the Real Estate Insurance Exchange. The ARCWG's goals were to study the issue of commission losses and determine whether there were solutions.

The ARCWG recommended to RECA that RECA amend the Rules to create the proposed option for brokerages. The proposal would allow brokerages to segregate commissions in a brokerage "other account". Brokerages could choose to set the other account up as a brokerage trust account. However, if a brokerage made this choice, the other account would not be regulated as a trust account under the *Real Estate Act*.

2. Mitigate Potential Risk to Real Estate Assurance Fund

The Real Estate Assurance Fund was intended as a consumer compensation fund, and not as a commission compensation fund. It was intended to compensate consumers who have lost money due to an industry member's fraud, breach of trust or failure to disburse or account for money held in trust. The current trust provisions in the Rules need to be clarified and amended to ensure there is no ambiguity with respect to this purpose.



Working with Builders: What You Should Know

The *Real Estate Act Exemption Regulation* exempts builders and their employees from the requirement to hold a licence from RECA when selling the builder's properties.

This can lead to confusion when a licensed real estate professional is working with a builder or selling on behalf of the builder. You need to understand what RECA requires or doesn't require of you when working with a builder.



Property Size: If you're a licensed real estate professional selling on behalf of a builder, does the builder need to use the Residential Measurement Standard (RMS) when measuring the property?

No, the builder does not have to use RMS. However, as an industry professional, RECA requires you to use the RMS when you advertise the size of the builder's property. The RMS also requires residential real estate professionals to measure a property themselves or hire a qualified measurement company to do so according to the RMS, regardless of other available measurements. If you are advertising the property for sale and including its size, it must be the RMS size. You can include the builder's measurement as an additional measurement in your advertising if it is not misleading, and you disclose what the measurement is and how the builder came to that size.

The builder can advertise their preferred size if they list their own properties on their own website or printed material that does not mention your involvement with the property.

Disclosures: What disclosures do I have to make to potential buyers as a licensed real estate professional selling a builder's newly built/unbuilt homes if I'm not an employee of the builder?

The same disclosures apply whether you're representing the seller of a newly built/unbuilt property or the seller of a resale property.

As an industry professional you have a duty to ensure that your role in the transaction

is clearly understood. If you represent the builder as a licensed professional, you must disclose that fact to potential buyers. You represent the interests of the builder and not the interests of the buyer. The buyers have the same options as they would in any other transaction:

- the buyer can hire their own licensed professional to work on their behalf
- the buyer can become a customer
- if the builder and buyer agree, you can facilitate the transaction through a transaction brokerage agreement

[Brokerage involvement: If I'm selling a builder's newly built/unbuilt property as a licensed professional and I'm not an employee of the builder, does the transaction still go through my brokerage? Can we use my brokerage trust account?](#)

If you are working as a licensed professional in the transaction it **MUST** go through your brokerage. Who holds the trust depends on the type of property.

If you are representing a condominium developer and selling their newly built or unbuilt condos, builders and brokerages are no longer allowed to hold deposits, unless they are covered by a Purchaser Protection Plan approved by the Minister of Service Alberta. For deposits not covered by such a plan, Service Alberta announced new condominium legislation in late 2017/early 2018 stating that a member of the Law Society of Alberta (a lawyer) must hold deposits in trust for buyers of these properties.

If you are representing a new home builder and selling their newly built or unbuilt homes, you and the other parties to a transaction set the terms of the trust in the purchase contract, just as in a resale transaction. All parties must agree on who holds the deposit, and it can be your brokerage, the buyer's brokerage, a lawyer, or the builder.

Always remember to review your brokerage policies, as they may have a policy surrounding who must hold a deposit in transactions involving the brokerage.

[What if you're the employee of a builder AND a licensed real estate professional? What hat are you wearing when you're sitting at the show home?](#)

When negotiating and completing a transaction involving the builder's property as an employee of the builder, you are just that: an employee. As an employee you are exempt from licensing requirements for that transaction, including disclosures and referral requirements.

But if you are acting as an employee of the builder, you should not hand out business cards or other marketing material that includes your brokerage.

You should also be aware that when you are acting as an employee of a builder and not a licensed real estate professional that your actions are not covered by the errors and omissions insurance all real estate professionals hold with REIX.

Your licence does not disappear when you act as an employee of a builder. The expectation of good character still applies to all of your dealings; licensed activity or not. Therefore, if you act in a misleading manner or commit fraud or any illegal acts while working as an employee of the builder, RECA can still investigate that conduct.

Whose Client is it? Moving Your Clients When Transferring Mortgage Brokerages



When you transfer brokerages, it can be difficult to understand what client belongs to what brokerage.

But the answer is simple: clients that you worked with at your old brokerage are that brokerage's clients and not yours. Your clients do not automatically come with you when you transfer brokerages. The *Real Estate Act* Rules consider the "legal" client relationship as being with the brokerage.

However, as you are those consumers' primary contact with the brokerage, it's understandable that they and you would like to continue your relationship even if you move brokerages. To do so, those clients and your old brokerage have to agree to end their existing agreement, and the clients would have to sign new service agreements with your new brokerage.

But your responsibilities don't simply start and stop with signing a new agreement – there's more to consider.

1. Know your brokerage policies and privacy legislation

Some brokerages have consent forms providing for ongoing contact by both the brokerage AND the associate. Some brokerages have clients review and sign this form when forming a relationship, and others may provide it when you transfer brokerages.

This form allows you to ask for consent from your clients to share their personal information with your new brokerage. If you're thinking about leaving your brokerage, talk to your current broker ahead of time about moving clients. Many brokers understand that people move around and may allow this.

You should also know the nature of your current service agreements and the details within *Canada's Anti-Spam Legislation* (CASL) and the *Personal Information Protection Act* (PIPA). Under PIPA, your brokerage cannot share a client's personal information with your new brokerage without the express consent of your clients.

Do your agreements with borrowers and the nature of your relationships give implied consent to be contacted when you move to a new brokerage? If not, section 10(9) of CASL allows for you to contact past clients in order to obtain their consent to continue correspondence or share their personal information with your new brokerage as long as you've had a previous business relationship (such as having entered into a written contract).

2. Brokerage files

The *Real Estate Act* Rules state that a brokerage must keep all client files for three years. These files include relationship documents, mortgage applications and approvals, proof of income and employment documents, and even the correspondence between you and the client about the mortgage deal.

These files cannot leave the old brokerage and "transfer" to you and your new brokerage. The brokerage must keep those files for three years, regardless of how

or why the working relationship ends. However, the client can agree to have copies of their files made and sent to your new brokerage if they give their express consent.

Your old brokerage has a duty of confidentiality for all clients, and can only forego that duty with that written consent.

3. Correspondence is part of the brokerage file

As part of your former brokerage's duty of confidentiality with its clients, it cannot share any aspect of the client's personal or contact information with anyone who does not belong to the brokerage without the client's written permission. This includes correspondence via text and email with that client.

You cannot use any of the information you collected while working with the client when you transfer. The information, communication, and relationship (including emails and text messages) belong to your former brokerage. Once you transfer brokerages, you can no longer continue to use those personal correspondences or contact information as part of your activities as a mortgage professional until you receive permission from the client, whether implicit or explicit.

4. The Bottom Line

Consent, consent, consent. You must have the client's consent to continue working with them through your new brokerage; usually by terminating the service agreement with your former brokerage and having the client enter into a new service agreement with your new brokerage.

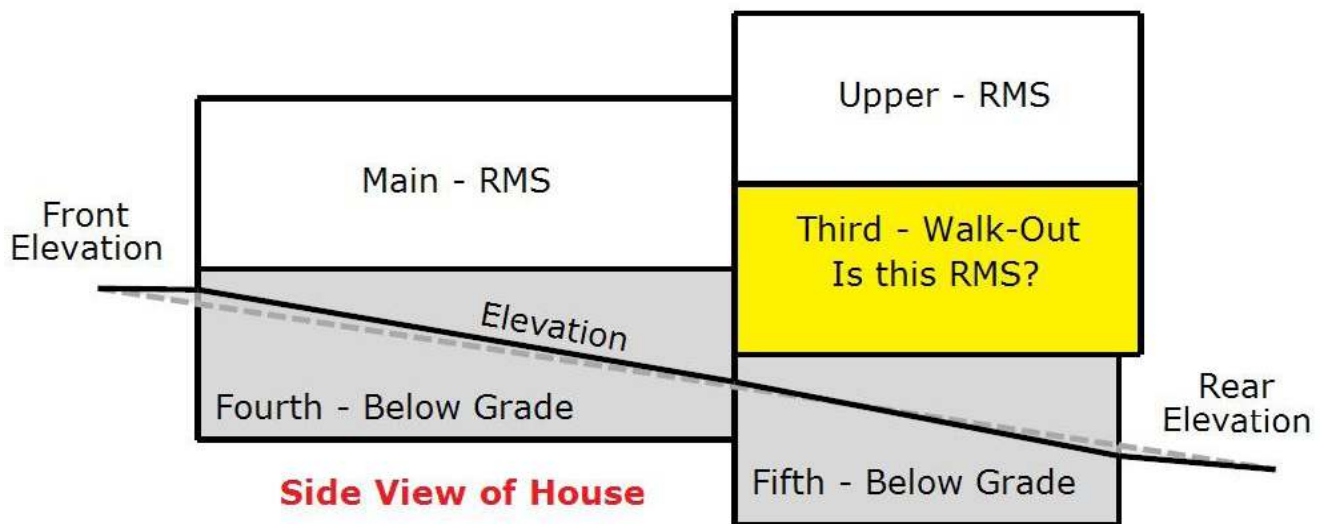
Measured Responses: RMS FAQs

Measured Responses is a new feature in the Regulator where we publish frequently asked questions about the Residential Measurement Standard.

In this edition, we focus on unusual grades, basement access, and appraisal measurements.

If I have a walkout split-level property where part of the home is entirely above grade, but not above the grade at the other end of the house, can it be included in the RMS size?

Front Elevation is Higher than Third Level Walk-Out Floor Level.



Yes. The highlighted area in this diagram is included in the RMS size, as it is entirely above grade.

Split level homes create interesting challenges. And though this may seem like a 2-storey home from the front, there are actually five distinct levels.

As long as the real estate professional can determine where a level of the property begins (whether visually, or through measuring the length of that level), if that level is entirely above grade, they can include it in the RMS area.

However, if you determine that any part of a level is actually below grade, even if 99% of it is above grade, you cannot include it in the RMS area.

Of course, even if you determine a level is partially below grade and cannot be included in the RMS area, you can advertise the extra space as an additional measurement, as long as you also advertise the RMS area, and explain what any additional measurements include, and how they were calculated.

I'm listing a property where stairs at the back of the property come from the basement and lead directly outside. The location of the stairs bump out from the rest of the property, and does not connect with the above grade living space, but is otherwise fully enclosed, insulated, and heated as part of the basement. The RMS Guide says stairs should be included in the above grade level they lead to. Should I count the space of the staircase because they lead above grade?

No. The stairway you describe does not lead to above grade living space. It leads outside, and is not connected to the main level living space. The bumped out area where the stairs from the basement are is not a part of the above grade living space, and should not be included in the RMS area.

Do licensed appraisers use the RMS in their appraisal reports? And can real estate professionals use the measurements from appraisal reports as the RMS area?

Appraisers have their own standards for measurement. Appraisers must use the measurement standard prescribed by their appraisal association. That may or may not be the RMS.

The standards appraisers use are often different than the RMS, as their purpose is different. Appraisers measure space as it pertains to the valuation and use of the property. RMS measurements provide consistency and indicate actual, above ground living space. Real estate professionals cannot use the measurements from an appraisal report as the RMS area UNLESS they first confirm the appraiser used the RMS and the appraiser provides written permission for the real estate professional to use the measurement in the appraisal report.



News Bytes

Licence fees remain the same for 2018-2019, REIX fee decreasing

Council approved the 2018-2019 budget at its July meeting, which included no increase to the licensing fees for the 2018-2019 year.

However, REIX has reduced its premium to \$175 (from \$275) for the upcoming year.

Renewals will open August 20 for brokers and appraisers; August 27 for everyone else

Brokers can begin renewing their brokerages and appraisers can begin renewing their licence on August 20, 2018.

Brokers must renew their brokerage before any associates or associate brokers at the brokerage can renew. So please renew your brokerage as early as possible to give your associates a chance to renew.

Brokers should keep in mind that they must report any brokerage amendments BEFORE they begin a renewal. This includes brokerage address changes, corporate structure changes, trade name changes and more. For a complete list of potential brokerage amendments and instructions click [here](#).

All industry professionals should make sure they know their myRECA username and password. We understand that the only time many professionals access myRECA is to renew their authorization every year, and log in information you don't use often tends to be forgotten.

Making sure you know your myRECA username and password now will save you time and frustration come September. RECA call and email volumes increase drastically as the renewal deadline approaches, save yourself the call and take care of it now.

Real estate professionals who practice commercial real estate or property management must complete Real Estate Update 2018 (Commercial/Property Management) before renewing

All brokers and associate brokers, and all associates wanting to keep their authorization in property management and/or commercial real estate must complete Real Estate Update 2018 (Commercial/Property Management) prior to renewing.

Brokers must keep their authorization in all practice areas to remain a broker.

Associate brokers who do not complete this course will lose their associate broker status upon renewal, and will become associates.

Associates who do not wish to keep their property management or commercial authorization, or don't currently have them, do not have to complete this course.

RECA has a new website!

RECA launched its new, mobile-friendly, easy-to-use website on July 18, 2018. The new site is more navigable, searchable, and current.

Highlights include:

- An improved search function
- A searchable database of all published disciplinary decisions
- A searchable database of all RECA information bulletins
- An online complaint submission form
- More intuitive design
- Layered information (read only what you need)

Have a look! www.reca.ca



2017-2018 Council Members

KRISTA BOLTON

Appointed from the public

BONNY CLARKE, CHAIR-ELECT

Appointed from non-AREA industry members

BOBBI DAWSON

Appointed from the boards outside of Calgary and Edmonton

AMINA DEIAB

Appointed from the public

RAMEY DEMIAN

Appointed from the industrial, commercial and investment real estate sector

BILL KIRK

Appointed from the Calgary Real Estate Board

BRIAN KLINGSPON, CHAIR

Appointed from the REALTORS® Association of Edmonton

PHIL MCDOWELL

Appointed from the mortgage brokerage sector

STAN MILLS

Appointed from the boards outside of Calgary and Edmonton

ROBYN MOSER

Appointed from residential real estate industry members

ROBERT TELFORD

Appointed from the real estate appraisal sector

CHRISTINE ZWOZDESKY, PAST-CHAIR

Appointed from the property management sector

RECA Management

BOB MYRONIUK

Executive Director

JEAN FLANAGAN

Director of Strategic Initiatives & External Relations

DALE CAWSEY

Director of Corporate Services

JOSEPH FERNANDEZ

Director of Education Programs

WARREN MARTINSON

General Counsel

CHARLES STEVENSON

Registrar

CONTACT RECA

The Regulator is published by the Real Estate Council of Alberta.

Please forward any questions regarding the content of the Regulator, or any questions regarding licensing or mandatory education, to info@reca.ca



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