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MiniCram® Real Estate Exam Study Notes

Broker Qualifying Exam

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INTRODUCTION

Dear Reader,

Congratulations on purchasing our **MiniCram®** for Ontario Real Estate License Exam preparation. The purpose of this book is to provide you with last minute review of important theory and math concepts for the exam. **MiniCram®** has compiled this booklet so that you can focus on key areas of study as well as prepare to overcome the most common mistakes that students make on the actual test day.

How to Use This *MiniCram®*

We understand that you do not have enough time for studying the online content of the official real estate courses. This **MiniCram®** booklet is designed in such a way that your review for the exam is fast paced. It is suggested that you go through each topic one by one. However, it is assumed that you have already covered the official course content in either the actual class or by self-study.

We Want to Hear from You

This book is written by a practicing Real Estate Broker who is also a trained adult trainer. If you have a feedback for the author, need more information, or have general comments, please send an email to minicram@outlook.com.

We hope you enjoy your review. Good luck for the exam!

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1. UNDERSTANDING REBBA AND CODE OF ETHICS

1.1 Regulatory Governance

REBBA and Regulations

- The *Real Estate and Business Brokers Act (REBBA)* and associated *Regulations* include detailed requirements for a Brokerage, Broker of Record, Broker, and Salesperson when trading in real estate.
- The Act and 5 *Regulations* (called *REBBA*) include the *Code of Ethics* for all Registrants.
- The *Regulations* include procedures and programs to enhance consumer protection.
- These *Regulations* are meant for strong enforcement of items such as education, registration, insurance, handling of trust money, brokerage management, and record keeping.

Real Estate Council of Ontario (RECO)

- RECO works under the *Ministry of Government and Consumer Services, Ontario* to enforce the *Real Estate and Business Brokers Act (REBBA)*.
- The Ministry is responsible for REBBA and RECO's role is to interpret, enforce, and suggest modifications to the legislation.
- RECO's mission is to build and sustain public trust in real estate trading by supporting a fair, safe, and informed real estate market for consumers.
- RECO protects public interest in real estate trading by –
 - Enforcing standards for real estate education to obtain and maintain registration.
 - Holding registered salespersons and brokers to professional standards.
 - Establishing and administering insurance requirements for salespersons and brokers.
 - Addressing inquiries, complaints, and concerns about the conduct of salespersons, brokers, and brokerages.
 - Conducting inspections of brokerages to ensure compliance with REBBA.
 - Educating consumers so that they understand the benefits of regulated real estate profession.

The Role of Broker of Record

- Every brokerage must designate a *Broker of Record* who must be an employee of the brokerage and registered as a Broker with RECO.
- He/she is involved in day-to-day activities of the brokerage and has the ultimate responsibility of its employees (salespersons, brokers, and other employees).
- The *Broker of Record* ensures that all activities of the brokerage, its employees, salespersons, and brokers are in compliance with REBBA.
- Corporations and partnerships may designate either the owner or another registered broker (other than the owner) as the *Broker of Record*.

- In a sole-proprietorship brokerage, the owner himself/herself must be the *Broker of Record*.
- He/she must actively participate in brokerage management, and
 - Provide supervision to registrants and non-registrants,
 - Take reasonable steps to deal with failures to comply with the Act,
 - Review and approve trade related documents,
 - Review and sign the monthly *Trust Account Reconciliation* and *Trade Record Sheets*, and
 - Authorize transactions from the *Real Estate trust Account*.

Branch Manager

- Every office of the brokerage that invites public must be registered with RECO (with certain exceptions).
- One office must be registered as the main office and others as branch office(s).
- A branch with two or more salespersons/brokers must have a *Branch Manager* for supervision.
- The *Branch Manager* may be a broker or a salesperson with over 2 years of experience and under direct supervision of a broker.

Real Estate Trust Account

- Legal Requirement: All brokerages are required under REBBA to maintain a *Real Estate Trust Account*, which is used to deposit all money related to a transaction.
 - The trust money must be kept separate from the money belonging to the brokerage.
 - Transactions from the *Real Estate Trust Account* must be authorized by the *Broker of Record*.
- Reconciliation: A bank reconciliation report must be prepared for the trust account every month.
- Receipt of Buyer's Deposit: The buyer may make the deposit by cheque, money order, or a bank draft, as given in the *Agreement of Purchase and Sale*.
 - Cheque must be capable of being accepted or should be a certified cheque.
 - If deposit is received by a co-operating brokerage, a receipt should be issued.
 - Buyer's salesperson must ensure that the deposit is forwarded to the deposit holder without delays.
- 5 Business Days: The brokerage must deposit the received funds in the *Real Estate Trust Account* within 5 business days (excluding Saturdays, Sundays, and statutory holidays), or as early as possible.
- Disbursements: Disbursements from the trust account can be made when –
 - the transaction closes,
 - the seller and the buyer sign a *Mutual Release*, or
 - a court orders/authorizes disbursement if the seller and buyer did not agree.

- Interest: The deposit holder brokerage must disclose the interest earned on the trust account and how much interest would be paid to the beneficial owner of the money.

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1.2 Registration

Registration for Trading in Real Estate

- *Real Estate Trading* refers to any activity of acquisition, disposition, or transaction in real estate by sale, purchase, agreement of purchase and sale, exchange, option, lease, rental, or any attempt to list real estate for these purposes.
- A brokerage, broker, and a salesperson must be registered under REBBA to trade in real estate.
- Lease of seasonal/vacation properties and commercial leases also require registration under REBBA.
- When applying for registration, the applicant must wait for approval, must not be involved in any '*trading*' activity until he/she receives notification of registration approval from RECO.
- Unregistered persons can be employed by a brokerage but cannot perform any activity that falls under the definition of *trade*.

Unregistered Persons

- Unregistered persons are permitted to perform the following activities under the guidance of a Broker or a Salesperson –
 - Attend a listing or offer presentation and be a witness for a buyer or a seller.
 - Set up listing files, marketing sheets, and submit documents.
 - Schedule appointments or draft an offer for a buyer.
 - Prepare marketing materials such as flyers and place a "For Sale" or "Sold" sign.
 - Install lockboxes and attend an open house with a Broker/Salesperson.
- Unregistered persons are not permitted to perform any of the following activities as these are considered a form of trading under REBBA –
 - Active participation in a listing or offer presentation, providing advice, or negotiating terms of an offer.
 - Receive or acknowledge any notice on behalf of a seller or buyer.
 - Show any property or answer questions of any seller or buyer.
 - Phone soliciting, prospecting or door knocking.
 - Access the listed property with a buyer or a third-party such as a home inspector.
 - Hold an open house for other salespersons or for public to view the listed property.

Registration Exemptions

- A lawyer settling an estate and selling real estate on behalf of the estate.
- A property owner privately selling his/her owned property (*For Sale By Owner*).
- A financial institution selling a property under mortgage default.

- A full-time salaried employee of a new home builder who sells only builder's homes at the site office.
- An auctioneer auctioning a property, equipment, livestock, etc. of a retired farmer.
- A residential property manager leasing an apartment on behalf of the landlord.

Registration Requirements

- Anyone who wants to obtain a real estate salesperson registration in Ontario must be at least 18 years of age and a resident of Canada (*Citizen or Permanent Resident*).
- The person must complete the three steps, which are –
 - (i) Completion of the educational requirements,
 - (ii) Registration with RECO after joining a brokerage, and
 - (iii) Purchase mandatory insurance through RECO.
- Once registered with RECO, the post-registration educational requirements must be completed within the first 2 years of registration cycle.

Considerations During Registration/Renewal

- If the *Registrar* believes that the applicant or the registrant does not meet the requirements of financial responsibility, past conduct, and false statements, the *Registrar* may take appropriate action such as refusal to register or renew registration, suspend a registration, and/or approve a registration with conditions.
- **Financial Position:** A salesperson's registration or renewal application may be refused if they have substantial unpaid debts and have not shown financial responsibility.
 - Unpaid judgements, consumer proposals (discharged or not), personal insolvency, and bankruptcies must be disclosed in the application.
 - Disclosure does not necessarily mean that registration is refused; each application is assessed individually.
- **Past Conduct:** Any conduct that gives reasonable grounds to believe that the applicant will not conduct business with integrity, honesty, and in accordance with the law may lead to refusal of registration/renewal.
 - Any convictions or pending criminal charges must be fully disclosed.
 - Any refusal, suspension, or revocation of license/registration in any profession must be fully disclosed.
- **False Statements:** If the applicant does not provide full and complete information, including non-disclosure of information or makes false statements in the application, the application for registration/renewal may be refused.
- **Approval with Conditions:** Conditions are meant to restrict the activities of the registrant. Some examples are –
 - *Financial Issues:* The individual will provide quarterly reports to the Registrar with proof of debt payments.
 - *Bankruptcy:* The individual agrees not to be an officer, director, partner, sole proprietor brokerage, or broker of record of a real estate brokerage.

- *Criminal Charges*: The individual must keep the Registrar updated on court dates, disposition of charges, and court documents.

RECO Insurance

- RECO's Insurance is mandatory for all brokerages, brokers, and salespersons.
- Annual insurance coverage is from September 1st to August 31st of the following year and premiums are due in mid-August of each year.
- Registration does not become active unless insurance premiums are paid.
- The three coverages provided by RECO insurance provides three types of coverage to registrants.
- *Consumer Deposit Protection*: Provides coverage to consumers for loss of deposits due to registrant fraud, misuse of funds or insolvency (bankruptcy).
- *Errors and Omissions*: Provides protection to registrants for errors and omissions committed during provision of services to buyers and sellers.
- *Commission Protection*: Provides protection to registrants from loss of their commission due to other registrant's fraud, misuse of funds and insolvency (bankruptcy).

Post-Registration Education

- RECO's registration cycle for every registrant is 2 years and a renewal reminder is sent by 60 days before the renewal date.
- First-time registrants must complete the post-registration education requirements within the 2-year (24 months) registration cycle.
- Non-completion of post-registration courses may result in refusal of registration renewal.
- To maintain registration, every registrant must also complete the *Mandatory Continuing Education (MCE)* courses in every 2 years of the registration cycle.

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1.3 Salesperson's Roles and Activities

Representing the Seller

- *Listing*: A *Listing Agreement* is signed between the seller and the brokerage, and the salesperson is called *Listing Salesperson*.
 - The listing salesperson must ensure that the listing price is based on market values in the neighbourhood.
 - It is the seller who ultimately decides the listing price.
- *Marketing*: A market plan should be developed that outlines the promotional materials, identifying the target market, signage, and other advertising methods.
 - Most advertising is done at the cost of the salesperson, whether the property sells or not.

- Prospecting: Searching for qualified buyers may involve meeting neighbours, distributing flyers, and introducing the property to other salespersons.
 - Prospecting also promotes the salesperson and the services he/she offers to sellers and buyers.
- Preparing to Show: The listed property must be confidently shown to the prospective buyers.
 - If required, repairs must be done by the seller before the showings start.

Representing the Buyer

- Qualifying the Buyer and Showing: The salesperson must understand buyer's needs and wants to show them properties that meet their search criteria.
 - Buyer's financial capabilities and mortgage requirements should be discussed.
- Preparing an Offer: Buyers depend on the advice of salespersons and hence, the offer must be accurate and complete with necessary conditions in order to protect the best interests of the buyers.
 - At the same time, the seller must be treated with fairness and honesty.
- Presenting an Offer: The salesperson guides the seller when analyzing an offer to ensure that they make an informed decision.
 - They must understand the existing market conditions, the offered price, and the conditions included in the offer.
- Follow Up: After acceptance of the offer, the salesperson must work with the sellers and buyers to ensure that the conditions are fulfilled within required time.
 - The transaction should proceed without any issues, leading to successful completion/closing.

Typical Remuneration Calculation Process

- Typically, two real estate brokerages are involved in a transaction.
- The listing brokerage works with the sellers and the selling (co-operating) brokerage works with the buyers.
- Total remuneration is received by the listing brokerage and divided into two portions: *Listing Portion* and *Selling Portion*.
- If a co-operating brokerage is involved, it receives the selling portion. Each brokerage *splits* the remuneration with its salesperson.
 - *Gross to Brokerage* is the remuneration before *split*.
 - *Net to Brokerage* is the remuneration after *split*.
- Example: A 70/30 remuneration split means that the Salesperson gets 70% of brokerage gross remuneration and the brokerage gets 30%.
- A brokerage may also charge a *Desk Fee* in addition to the remuneration split, which is deducted from the salesperson's remuneration.

Payment of Remuneration

- Salespersons/brokers must be employed by a brokerage in order to receive remuneration.
- Brokerages can pay remuneration only to its own employee salespersons and brokers.
- A brokerage cannot pay remuneration to an employee of another brokerage or to any unregistered person.
- Brokerages are prohibited from paying any referral fees to unregistered persons.

Remuneration Calculations

- The remuneration charged from a client/customer may be a fixed amount, a percentage of sale price, or a combination of both.
- When a percentage of sale price is used, it may be a fixed percentage or several percentages, which must decrease as the sale price goes up (descending order).
- If no remuneration is specified/agreed with the seller or the buyer, the brokerage may charge the prevailing rate in the community.
- A remuneration based on difference between the listing price and the sale price is prohibited.

Personal Real Estate Corporation (PREC)

- REBBA has been amended to allow real estate brokerages to pay remuneration to a *Personal Real Estate Corporation (PREC)* held by a salesperson or a broker, subject to certain qualifying criteria.
- A salesperson or broker may establish a PREC for directly receiving the remuneration from their brokerage as a result of a transaction.
- A PREC may have certain financial advantage to the individual salesperson or broker, but they should consult their financial advisor in this regard.
- A PREC is *allowed* but is *not a requirement* under REBBA.
- The brokerage may or may not be willing to enter into an agreement with the PREC.

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1.4 REBBA Code of Ethics

Code of Ethics

- *Code of Ethics* is one of the *Regulations* under REBBA, which identifies the minimum standards a registrant must follow when trading in real estate.
- The purpose of the Code is to set minimum acceptable conduct to protect public interest in order to ensure public confidence.
- Non-compliance with the Code may result in a registrant facing penalties imposed by the *Discipline Committee*.
- The *Discipline Committee*, after a hearing, may order a salesperson to do additional educational courses, pay a fine, and/or pay the imposed cost.
- RECO is required to publicly publish its decision on its website for a minimum period of 60 months.

Discipline Committee

- *The Discipline Committee* is comprised of a panel of three or more members to investigate breaches of the *Code of Ethics*.
- Failure to comply with the Code may result in:
 - Fines of up to \$50,000 for an individual registrant and up to \$100,000 for a brokerage.
 - Completion of further educational courses, and in this case, the brokerage may be required to pay for the registrant's education.
 - Payment of additional fixed costs to the administrative authority or the *Minister of Finance*.
- Appeal: The decision of the *Discipline Committee* may be appealed to the *Appeals Committee*, which may overturn, affirm, or modify the order.
- RECO is required to publish the decisions of the *Discipline Committee* on its public website to ensure public protection for a period of minimum 60 months.

Providing Services

- Client: The party with whom a *Representation Agreement (Listing Agreement or Buyer Representation Agreement)* is signed. It is a *Fiduciary Relationship* under the *Agency Law*.
 - The best interests of the client must be protected even if the personal interests of the registrant are suffering.
- Customer: The party with whom a *Service Agreement (Seller Customer Service Agreement or Buyer Customer Service Agreement)* is signed.
 - A customer is NOT represented.
- Fairness, Honesty, and Integrity: Registrants must treat every person they deal with (buyers, sellers, other registrants, other professionals, etc.) fairly, honestly, and with integrity.
- Best Interests: Registrant must provide work that protects and promotes the best interests of the client and place the interests of the client ahead of their personal interests.
- Conscientious and Competent Service: Registrants must focus on their duty of care, which is owed to both clients and customers.
 - This duty is related to reasonable knowledge, skills, judgement, and competence in providing information and performing functions to which the registrant has agreed.
 - When in doubt about providing services, the salesperson should ask the Broker of Record and check office policies.
 - The salesperson must be aware that the client/customer will rely on his/her advice, and he/she should do the things in the right way.
 - Continuous learning and checking RECO's website for discipline decisions in previous case will help the salesperson.

- Material Facts: A *material fact* is any information that can affect a person's decision to buy or sell a property.
 - Registrants must take reasonable steps to determine and disclose material facts to both clients and customers.
- Providing Opinions: Registrants must demonstrate reasonable skills, knowledge, judgement, and competence when answering questions, providing information, and when providing real estate services.
 - They should ensure that they have the required education and experience related to the type of property they are dealing with.
- Services from Others: When a registrant does not have the required reasonable knowledge or competence in a specific property, he/she must advise the client or customer to seek services from other professionals.
 - Also, the client or customer must not be discouraged from seeking expert services from others.

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