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REBBA Review  
Consumer Policy and Liaison Branch  
Policy, Planning and Oversight Division  
Ministry of Government and Consumer Services  
56 Wellesley Street West, 6<sup>th</sup> Floor  
Toronto, Ontario  
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Dear Sir/Madam:

On behalf of the 53,000 members of the Toronto Real Estate Board (TREB), I am writing to provide input to the current consultation on the review of the Real Estate and Business Brokers Act, 2002 (REBBA, 2002).

As you may know, TREB is an association of REALTORS® from across the Greater Toronto Area (GTA) who are directly impacted and regulated by REBBA, 2002. As the largest real estate board in Canada and 65 per cent of REBBA registrants in Ontario, TREB is uniquely positioned to provide input on this issue.

The views detailed below, have been established with extensive consultation with thousands of TREB Members over the last year. We have noted our positions in the order that the topics and questions are raised in the Ministry's consultation paper on this subject, for ease of reference.

### **Transparency in Offer Process**

#### **Question 1.1 (b)**

Consumer choice should be respected and privacy protected. Consent by all parties is key.

#### **Question 1.2**

If the legislation is changed to permit registrants to disclose the details of competing offers, disclosure should be limited to those making offers; however, consumer choice and protection of privacy (e.g. names) should be respected and not be disclosed.

#### **Question 1.3**

If the legislation is not changed to permit registrants to disclose the details of competing offers, they should be prohibited from submitting offers that automatically increase if higher offers are submitted by another party (i.e., escalation clauses).

### Question 1.4

Regulating when registrants can or cannot submit offers is a complicated area for the government to attempt to legislate since registrants ultimately are under contract with their clients and have a fiduciary duty to their clients and contractual obligations. There is a danger of putting registrants into a conflict situation with their clients. It appears the real issue the government is trying to address here are “pre-emptive” offers and if that’s the case, then the two scenarios that need to be considered are

- a) Looking at all offers as they come in, or
- b) Not “accepting” any offer until a certain date.

These are the complicated scenarios that would need to be examined when clients deal with registrants trying to comply with client direction. It is impossible for the government to try to regulate consumer choice in how a seller/buyer decides to dispose/purchase of a property.

### Question 1.5

- More information is needed on the type of offer details being contemplated for possible disclosure. Will names be protected? Privacy must be a priority.
- The REBBA Code of Ethics currently allows parties the option for more disclosure in the offer process, with the consent of all parties.
- Mandatory Standardized Disclosure Clauses
  - In general, TREB is in favour of consumer protection policy that ensures transparency. Mandatory standardized disclosure clauses (MSDC) may be an option in this regard. TREB offers the following points for consideration:
    - For the most part, TREB Members already operate with many standard clauses, and generally speaking, this works well.
    - Careful consideration must be given to the drafting and administration of MSDC. TREB and the Ontario Real Estate Association are well positioned in this regard
    - Disclosure of interest should be considered for any property transaction, including those who are not licensed under REBBA, 2002 (e.g. builders’ salesperson).

### Relationship with Consumers: clients and customers

#### Question 2.3

Clarity for consumers should be addressed through the use of plain and standardized disclosure language so that consumers understand the services they will receive. The type of relationship is determined by the consumer and consumer choice should be paramount and is between the brokerage and the client or customer. In this regard, TREB’s views on Mandatory Standardized Disclosure Clauses (MSDC, as noted above, and Mandatory Designated Representation(MDR), detailed below, are relevant:

### *Mandatory Designated Representation (MDR)*

TREB supports the move towards a mandatory designated representation model where the brokerage would be required to designate different representatives from that brokerage to represent each client in the same transaction. However, it is important to allow for flexibility in the rules to allow two clients in the same transaction, such as a buyer and seller or more than one buyer, to work with the same REALTOR® as an impartial facilitator, with consumer consent. This will provide for consumer choice.

### **Relationship with Consumers: Multiple Representation**

#### **Questions 3.1 – 3.5**

TREB supports the move towards a mandatory designated representation model, as detailed above.

The following are some of the issues that may require attention if an MDR model is adopted:

- Would MDR apply to REBBA registrants with regard to leasing, or just in purchase and sale situations?
- Is regulation of referral fees for MDR transactions required (i.e. between the two designated registrants)? Could such referral fees compromise the intent of the MDR model?
- Does MDR have to be disclosed to other parties making offers prior to the offer presentation?
- Will there be regulations regarding how a brokerage selects the designated registrant?
- Special consideration may have to be given to situations involving sole proprietors, small brokerages, brokerages in geographic areas that have limited numbers of REBBA registrants, and transactions involving family.

### **REBBA Scope and Exemptions**

#### **Questions 4.1 – 4.5**

TREB strongly believes that the definition of trade in real estate should be expanded to eliminate grey areas that allow some unregistered individuals to market themselves as someone who can help facilitate a real estate transaction.

All non-licensees trading in real estate should be captured under REBBA, 2002, other than unrepresented individuals selling their own homes. Mere posters should also be subject to all REBBA, 2002 requirements.

Exemptions under REBBA should be reviewed with the goal of removing some of those exemptions (e.g. employees of builders and developers). Furthermore, written agency disclosure of all parties involved in a property transaction should be required.

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## Code of Ethics

### Questions 5.1 – 5.2

#### Advertising

- A modernized REBBA Code of Ethics - advertising provisions may require review).
- Advertising rules (especially online) should be modernized to keep pace with modern technology.

#### Fines

- Fines should be proportional to the level of infraction.
- The vast majority of TREB Members are ethical and comply with REBBA, 2002 provisions. With regard to fines and penalties, the primary focus should be on review for consistency in enforcement and disclosure of fines and penalties.
- Government policy should be evidence-based. With this in mind, consideration should be given to what has happened since REBBA, 2002 took effect, specifically with regard to the number of fines issues, level of different fines, and the outcome of individuals who were fined (i.e. did they re-offend?).
- Support for the proposal to allow RECO to force the repayment of profits gained through breaches of the Code of Ethics; however question is: where does the money go? Shouldn't go to RECO, but to client.

## Education/Qualifications for Real Estate Brokers and Salespersons

### Questions 6.1 – 6.3

#### Continuing education

- The current continuing education system is too lenient, and a tougher curriculum should be enforced to ensure all REALTORS are up to date.
- Both in-class and online continuing education need to be made available.
- Raise standards in terms of educational requirements for salespeople.
- Reinforce and proclaim section 8(1) of REBBA dealing with specialty certification.

#### Registration

- Opposed to requiring post-secondary education to enroll in the registration education program; need better communication and comprehension skills. There are not many post-secondary options in rural areas but this might help new registrants more than experienced registrants already in business. Work experience should be considered in lieu of education - if one has higher education, credits can be considered.

Support for an articling program that places greater emphasis on brokerage involvement and practical experience. It will increase accountability for brokerages.

- Strong support for a tougher, standardized exam focusing on practical real-life experiences - quality of education is more important than number of hours; for new registrants it needs to be mandated; not for continuing education portion.

## Updated Processes and Tools of Regulations

### Questions 7.1 – 7.5

- The current system needs to be streamlined and made more transparent.
- TREB supports the proposal to allow RECO to force the repayment of profits gained through breaches of the Code of Ethics; however it will be important to consider where the money should go. TREB believes the money should go to the client, not RECO.
- Power to suspend and revoke licenses through Discipline and Appeals Committee, rather than status quo, which allows RECO to issue a proposal to suspend or revoke: status quo not working (from a timing perspective), but an outside appeal process needs to be in place; cannot have RECO both as judge and enforcer. The level of breach is also important - can't suspend license for Code of Ethics violations.
- TREB supports a review of RECO.
- TREB supports the concept of allowing RECO to proactively investigate, instead of waiting for complaints but needs to be measured to avoid giving too much pre-emptive power to RECO.
- Complaint system should be streamlined.
- A strong regulator with the ability to investigate industry issues.
- Need an ombudsman for the industry as RECO cannot be judge and enforcer. Need an outside appeal process. An ombudsman would help to increase oversight, and avoid situations which call for RECO to serve as both judge and enforcer. Other industries in Ontario such as insurance, mortgage lending, pension services, and even the real estate industry in British Columbia, have an ombudsman to allow for a recourse mechanism, which is the fair thing to do.
- TREB is opposed to giving authority to the RECO Discipline and Appeals Committee to hold formal hearings and handle all discipline-related matters.

## Incorporation

### Questions 8.1 – 8.3

TREB supports the proposal to permit personal real estate corporations for all REBBA licensees. Unlike other regulated professions and real estate professionals in other provinces, real estate professionals (other than the brokerage owner) such as salespeople and brokers in Ontario are not allowed to incorporate under current REBBA rules, and as a matter of fairness, we're seeking to have that changed. Furthermore, allowing Ontario Realtors to incorporate will put them on a level playing field with other professionals who can invest more money into their business, allow for better retirement planning and support the economy as small businesses through hiring.

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## Designated Areas of Specialization

### Questions 9.1 – 9.4

TREB supports reinforcing and proclaiming section 8(1) of REBBA dealing with specialty certification.

## Burden Reduction

### Questions 10.1 – 10.2

TREB believes that above recommendations would address “burden reduction”.

## Other Comments

### Contract Provisions

- Terms should continue to be defined in the contract, not set in legislation (REBBA).

### Ombudsman

- Need for an Ombudsman for the real estate industry.

### Create an Internal “Real Estate Practice Advisor”

- Consider creation of a “Real Estate Practice Advisor” position whose responsibility it would be to ensure the complicated legal or grey area questions from registrants are answered consistently and accurately by the regulator.

### More Transparent Registry

- Support for changes to the RECO registry to make it easier for the public to find a registrant, confirm their registration status, and immediately see any discipline actions taken against the registrant.

### Cooling Off Period for Registration Revocations

- Strong support requiring a cooling off period of at least two years, or even longer, before a registrant who has had their license revoked by RECO can reapply.

### Registration Ban for Violent and Fraudulent Crimes

- Support automatic denial of application for any registrant applicant with a violent or fraudulent criminal conviction in the last 10 years; registrant applicant should have a right to appeal.

### Other

- Allow brokerages the option of coordinating renewal dates at branch office registrations.
- Allow a registrant’s name to appear on their RECO application.
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- Allow a Broker of Record to appoint a registrant from another firm as a “stand-in” broker of record.
- No longer require the repeated reporting of bankruptcies or other matters on the RECO application if the information has not changed.
- Review admissibility of those with a criminal record.
- Registrants should have a photo on their registration certificate.

### Additional Concerns

#### Moving from a Registration Regime to a Licensing Regime

- Concern with RECO proposal to implement a licensing regime in place of the current registration regime, and to consider making employment a requirement to trade rather than a requirement to maintain registration. Concerned that this may be making the process too complicated:
  - What is the intended difference between a registration regime and a licensing regime, and what is the intended benefit/purpose?
  - Could lead to consumer confusion.
  - What are the ongoing standards for licensing? New standards or same as current system?
  - Would there be implications for insurance?

#### Removing Business Brokerage from REBBA Oversight

- Concern with RECO proposal to remove business brokerage from REBBA oversight. RECO was created to regulate the real estate brokerage industry. A business broker is generally defined by RECO as a person who assists individuals in selling or buying a business and who may engage in activities that extend well beyond a trade in real estate.
  - Removing this from REBBA oversight would be encouraging people to engage in these activities without being licensed; which is contrary to TREB’s position with regard to unlicensed individuals trading in real estate.
  - Business brokerage often involves a real estate transaction with the sale of a property or leasing of a property; or at a minimum often requires the review of a current property lease.

#### Curbing Sale Price Underquoting

- RECO has proposed a discussion of the issue of underquoting and has proposed it should be assessed to ensure buyers and sellers are well served by ethical pricing strategies and practices. RECO believes underquoting of selling prices is often connected to heated real estate markets and is frequently cited as the root cause of bidding wars. RECO believes it may be timely to consider whether rules should be introduced for Ontario to bolster the prohibition on false, misleading or deceptive statements in advertising and other publications. RECO has pointed out that this would need to be carefully considered to determine the impact on the marketplace in both seller’s and buyer’s markets and the interests of both buyers and sellers

- Underpricing should not be viewed as misleading; the market will determine pricing and the impact of pricing strategies.
- This proposal appears to be outside the mandate of RECO.

#### Standardized Disclosures and Plain-Language Requirements

- RECO believes that navigating your way through a real estate transaction can be tricky—and that’s especially true for first-time home buyers and sellers. Their position is that it doesn’t help when different brokerages use different forms, and they’re written in difficult-to-understand “legalese” with a significant focus on registrant protection. RECO supports amending REBBA to require the use of specific representation disclosure language through the implementation of specific standard written disclosures. RECO believes the use of standardized disclosure language increases the likelihood that a consumer’s understanding of representation obligations and services is complete, and there is informed consent to an MDR arrangement, for example, on the part of a potential buyer or seller should that situation arise. They believe standardized disclosure language can help consumers appreciate the limitations of representation that may result even in an MDR situation and can support information that gives a consumer clear evidence on the benefits of individual representation.
  - TREB is concerned this could lead to unnecessary inefficiency and “red-tape”, preventing REALTORS® and the industry from being as efficient as possible.
  - The industry already has a system in place that is more nimble and any change should build on the existing structure.

Thank-you for this opportunity to provide input. We look forward to working closely with the Ministry as this issue moves forward. In the meantime, if you have any questions or would like to discuss any of the above in more detail, please do not hesitate to contact Von Palmer, TREB’s Chief Communications and Government Affairs Officer at 416-443-8150 or [vpalmer@trebnet.com](mailto:vpalmer@trebnet.com).

Sincerely,



Garry Bhaura  
President

c.c. The Hon. Bill Walker, Min. of Government and Consumer Services  
Karen Cox, President, Ontario Real Estate Association