



HIGHER STANDARDS AND PROFESSIONALISM: THE PATH TO MODERNIZING REBBA

OREA'S RESPONSE TO PHASE 1 CONSULTATIONS



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July 23rd, 2017

Hon. Tracy MacCharles
Minister of Government and Consumer Services
6th Floor, Mowat Block
900 Bay Street
Toronto, ON M7A 1L2

Dear Minister:

On behalf of our 70,000 REALTORS®, I want to thank you for allowing the Ontario Real Estate Association (OREA) to respond to your Ministry's review of the Real Estate and Business Brokers Act, 2002 (REBBA).

After working with you and your Ministry, we are happy to see this review come to fruition. Ontario REALTORS® want to make Ontario a leader in North America when it comes to real estate professionalism and education standards.

To respond to your Ministry's consultation paper, OREA struck a REBBA Review Taskforce. We are pleased to provide you with our Taskforce's recommendations to raise the professional and educational standards in the real estate profession.

Once again, thank you for including OREA in your consultations. If you have any additional questions, please contact OREA's Vice President of Public Affairs and Communications, Matthew Thornton at mthornton@orea.com or 416-385-6624.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ettore Cardarelli', enclosed within a large, stylized oval flourish.

Ettore Cardarelli, President
Ontario Real Estate Association

INTRODUCTION

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Ontario REALTORS® would like to thank the provincial government for committing to modernize the Real Estate and Business Brokers Act, 2002 (REBBA). OREA was proud to be a driving force behind the government's decision to modernize REBBA to make Ontario a leader in North America for professional standards in the real estate industry.

After the review was announced, OREA struck a REBBA Review Taskforce to undertake a broad industry engagement on phase one and phase two of the review process. OREA's response has been informed by a considerable amount of discussion between our volunteer REALTORS® and staff.

The Taskforce is made up of a distinguished group of leaders from the real estate industry including salespeople, brokers, commercial REALTORS®, team leaders, broker owners, sole proprietors, association CEOs, franchise CEOs and REALTORS® from all corners for the province. (Appendix C).

The advice from Ontario REALTORS® will help our province become the leader in North America when it comes to professional and educational standards in the real estate profession.

The Ministry's consultation paper is based on five areas:

- Mandatory Designated Representation (MDR),
- Standardized Disclosure,
- Increased Fines and Penalties,
- Other Issues to be considered in Phase 1; and,
- Scope of Phase 2.

Below is a summary of our feedback on these important topics. The complete answers to our questions can be found in Appendix A.

KEY AREA RECOMMENDATION



KEY OREA RECOMMENDATION

Phase one of the Real Estate and Business Brokers Act, 2002 review represents an important opportunity for the industry and government to work together towards improving enforcement, raising professional and educational standards, and reforming multiple representation in our province.

Multiple representation under REBBA was established in 2002 and modernization is needed to ensure it is in line with best practices in other jurisdictions. The real estate market, consumers' expectations and industry practices have change significantly in the past 15 years. That is why OREA worked hard to convince the province to reform REBBA, including addressing practices like multiple representation. Specifically, **OREA is calling for multiple representation to be reformed in favour of the highest national standard that maintains consumer choice in a real estate transaction.**

To that end, OREA supports mandatory designated representation (MDR) and strongly recommends that MDR include the ability for consumers and registrants to enter into "transactional representation" with their REALTOR® in order to protect informed consumer choice.

DESIGNATED REPRESENTATION

DESIGNATED REPRESENTATION

OREA has studied best practices when it comes to multiple representation across Canada and North America and concluded that the best approach is designated representation. We were pleased to see that the Ministry followed our early advice. Through our research we also found that the best MDR models allow for consumers to choose a transactional relationship with their REALTOR® in certain circumstances.

Designated representation or designated agency is a practice promoted by regulators and industry associations in British Columbia (BC), Manitoba, Alberta and Nova Scotia. If passed, Ontario's proposal to implement MDR would establish the first mandatory requirement for real estate licensees in Canada.

By making designated representation a mandatory requirement for all Ontario real estate brokerages, our province will have implemented the strictest system in Canada. No other province has designated representation as a legislated requirement.

John and Cynthia – Mandatory Designated Representation (MDR)

John and Cynthia have been working with David, their REALTOR®, for 6 months as they search for their first home. They signed a Buyer Representation Agreement (BRA) with David making them a client. John and Cynthia really like David. He provides great service and has showed them dozens of properties. They trust David and have built a good relationship with him. John and Cynthia have also shared with David the maximum price they qualified for through their bank and their income. David lists a property that fits the criteria that John and Cynthia were searching for. John and Cynthia attend a showing and decide to

put an offer on David's listing. Under a mandatory designated representation model, David would have to choose between representing John and Cynthia or the seller since both parties are his clients. David decides to keep his seller clients and refers John and Cynthia to two registrants in his office. They are reluctant to work with a complete stranger who they have just met and are angry they can't work with David. It's his listing after all. Who knows more about the property than David? In this example, what is in John's and Cynthia's best interests as consumers?

Other provinces have varied approaches. BC permits limited dual agency (very similar to multiple representation), however, the British Columbia Real Estate Association (BCREA) endorsed designated representation as a best practice in

2012. As an industry best practice, agents are still permitted to represent two clients in a transaction under limited dual agency. BC is currently reviewing the practice of limited dual agency.

In Manitoba, agents can represent two clients in the same transaction through what's called "limited joint representation." Limited joint representation attempts to restrict the scope of representation, while permitting an agent to act on behalf of both buyer and seller.

When the agent has the opportunity to act for both the seller and the buyer, he or she informs both consumers that they will be representing both parties in the transaction. A timely, informed consent is required from both consumers agreeing to the limited joint representation relationship. If either the buyer or the seller does not agree to the limited joint representation relationship, one of the consumers may be required to seek representation elsewhere. Limited joint representation modifies duties to each principal as outlined, read and agreed to by the buyer and seller in the Acknowledgement of Limited Joint Representation form.

In brief, the limited joint representation obligations include:

- A duty to not disclose any information about the selling or purchase price, motivation for purchase or sale, and/or any personal or financial information about either the buyer or seller unless the disclosure is authorized in writing;
- A duty to disclose all known material latent defects about the property; and,
- A duty to disclose information on other listed and sold properties to the seller and buyer at any time.

Alberta and Nova Scotia also permit agents to represent two clients in the same transaction through transaction brokerage. Transaction brokerage eliminates the ability for an agent to represent both clients by restricting the services they can offer to both a buyer and seller.

Just like in Manitoba, when the agent represents both the buyer and seller, he or she informs both consumers. At that time, both clients can either continue with the agent in transaction brokerage or find another agent. If the buyer and seller both agree to proceed to transaction brokerage, the agent becomes an impartial facilitator and the services they can provide are limited to those outlined in the Agreement to Represent both Buyer and Seller (enclosed in Appendix B).

OREA supports moving to designated representation as it provides consumers with greater clarity about who is representing them in a transaction. Many consumers still do not know that when they sign a Buyer Representation Agreement (BRA)



with a REALTOR®, their agreement is actually with the REALTORS® brokerage. Introducing MDR in Ontario will create better informed consumers, build on best practices from other provinces and follow an emerging national standard for representation in real estate.

At the same time, we should be conscious that there are circumstances where consumers want to work with a particular agent because of geographical considerations, expertise or a pre-existing relationship. This ability should be maintained with proper consumer protection and informed consent. Ontario REALTORS® believe that instead of looking at exemptions to accommodate these circumstances, the government should implement a model that allows a consumer to work with whomever they choose.

TRANSACTIONAL REPRESENTATION

TRANSACTIONAL REPRESENTATION

Transactional representation is a model of designated representation very similar to two Canadian provinces – Nova Scotia and Alberta. In these provinces, it is referred to as transactional brokerage.

John and Cynthia – Transactional Representation

John and Cynthia have been working with David, their REALTOR®, for 6 months as they search for their first home. They signed a Buyer Representation Agreement (BRA) with David. John and Cynthia really like David. He provides great service and has showed them dozens of properties. They trust David and have built a good relationship with him. John and Cynthia have also shared with David the maximum price they qualified for through their bank and their income.

David lists a property that fits the criteria that John and Cynthia were searching for. John and Cynthia attend a showing and decide to put an offer on David's listing. Under transactional representation, David would inform the John and Cynthia and his seller that he represents both parties in the transaction and provide them with the following options: 1) proceed unrepresented; 2) enter transactional representation with David where he provides limited services outlined in the Transactional Representation Agreement;

or 3) find another representative.

John and Cynthia and David's seller each agree to have David facilitate the transaction because of their level of trust and pre-existing relationship with him. John and Cynthia ask David for advice on a potential offer price. David informs them that he must treat everyone in an even-handed manner and cannot recommend a price. Instead, David provides John and Cynthia, and the seller, with comparable properties and information about the neighbourhood to help inform their decision. John and Cynthia give David the price that they would like to offer and ask him to prepare the Agreement of Purchase and Sale (APS). David prepares the APS and delivers to the seller. Happy with the offer, the seller accepts the offer.

As a result of transactional representation David was able to facilitate a deal to ensure that each party was satisfied with the end result and allowed them to choose how they were represented in the transaction.

Moving into a transactional relationship is an option consumers may choose when an agent has two clients in the same potential transaction. Under transactional representation, when a buyer and seller are represented in the same transaction, an agent is required to present consumers with three options. They can:

- Choose to be unrepresented; or,

- Choose to be represented by another agent for the purposes of that transaction; or,
- They can enter transactional representation.

To enter transactional representation, the agent must obtain the consumer's written and informed consent before this relationship may occur and before any offer is presented to buy or sell a property.

In transactional relationships, the agent is required to act as an impartial facilitator and provide services to assist the parties in reaching a mutually acceptable agreement.

Facilitation services means services by which the interests of the buyer and seller are met in an even-handed, objective and impartial manner without providing confidential advice, advocating on behalf of either the buyer or seller, or using discretion or judgment that benefits the buyer or seller to the prejudice of the other. These services may include:

- Providing real estate statistics and information on property, including: comparable property information available through listing services or other local databases;
- Providing standard form agreements of purchase and sale, lease and other relevant documents, and preparing these documents in accordance with the instructions of the client(s);
- Presenting in a timely manner, all offers and counter-offers to and from the client(s);
- Conveying to the client(s) in a timely manner all information that either wishes to have communicated to the other; and,

Keeping the client(s) informed regarding the progress of the transaction.

Transactional representation services do not include:

- Advocating for a party;
- Providing advice on pricing or conditions to either party; and,
- Assisting either party which may give them an advantage over the other;

In Alberta, registrants are bound to strict disclosure rules which are outlined in the Agreement to Represent both Buyer and Seller (enclosed in Appendix B) that both clients must sign. These rules maintain the buyer and seller's confidentiality throughout the transaction.

BENEFITS OF TRANSACTIONAL REPRESENTATION

BENEFITS OF TRANSACTIONAL REPRESENTATION

Transactional representation addresses three key issues identified by the REBBA consultation document released by the Ministry of Government and Consumer Services (MGCS):

- consumer choice,
- exceptions; and,
- consumer protection.

Transactional Representation and Consumer Choice

Ontario is a series of diverse real estate markets. No transaction is the same and no consumer is the same. The ability for a consumer to choose how and by whom they are represented during a real estate deal is a fundamental principle of Ontario's real estate market.

MDR, which permits transactional representation, will preserve the ability for a consumer to choose the form of representation that works best for them. MDR without transaction representation would force a consumer to work with an agent whether they wanted to or not.

There are many instances where a consumer or party to a transaction may not want to work with another agent to finalize the deal. To accommodate these valid reasons and others, OREA strongly recommends Ontario's model of MDR include the ability to enter transactional representation.





COMMERCIAL

Gluten Industries Corp. (Gluten) would like to lease a new building to expand their operation in Kenora. George, signing officer on behalf of Gluten, finds a suitable space and contacts Rachel the listing REALTOR® who has a sign on the property. After Rachel shows the property to George from Gluten, Rachel informs George that the property is properly zoned for Gluten's operation purpose. Deciding that the property is within their budget, has easy access to the

highway and adequate parking for their employees and Gluten's fleet of trucks, George decides to lease the property for Gluten. After Gluten's lawyers conducted their due diligence, George asks Rachel to draft and negotiate an offer to lease, as George was comfortable with Rachel's knowledge of the property and was not seeking extensive knowledge, service or advice from Rachel. In MDR, Rachel would be unable to represent Gluten despite her experience

and abilities. Not unlike the occasional residential transaction, commercial buyers/tenants may only need limited client service from a REALTOR® with their own team of due diligence industry related experts. MDR would force sophisticated corporate consumer parties (such as George for Gluten) to have full service representation when they may not fully need or request this representation service.



RENTAL

Jennifer is moving to Toronto to start a new job on Bay Street and needs to find a rental property. Her company has introduced her to Clark, a Toronto REALTOR® with XYZ Real Estate Brokerage, who specializes in assisting tenants to find executive rental properties. Jennifer discloses to Clark her maximum monthly rent amount and asks him for advice on properties and to assist her to see and review comparable units. During the first few showings, Clark provides Jennifer with advice regarding varied unit common elements, buildings they visit and even discusses points about Condominium By-Laws and the Rules which some units

seen are subject to. Jennifer decides she is interested in one property, a unit Clark showed Jennifer, which is listed by Clark (Clark's brokerage). Based on the consumer representation agreement between Clark and Jennifer, Jennifer is a client. Since Ontario introduced MDR, Jennifer can no longer be represented by Clark and must choose an alternative when working with Clark, she decides to not be represented by Clark. Jennifer proceeds unrepresented. Three months after moving in, Jennifer is sent a warning and repair bill from the building because of changes made to the unit without prior approval. Jennifer did not

fully read the lease agreement, and was not provided advice prior to her signing the lease agreement as she chose to not be represented by Clark. This caused Jennifer to not obtain client advice from Clark relating to all issues that could affect her unit rental value and negotiation decisions. Had Jennifer been able to be represented by Clark, he could have been in a position to advise her for negotiation lease terms, based on the particulars of the unit, the property and condominium, as well as simply negotiate terms of the unit rental Agreement in Jennifer's interest.



RURAL

Charles and Dave are looking to retire and move from Toronto to Long Point. After viewing a number of Roger's listings on REALTOR.ca website, they call Roger and request to arrange a few showings. Roger is registered with a small brokerage, ABC Realty Brokerage, that has 2 branch offices and a total of 5 registrants. One of the ABC Realty branch offices is located in Long Point ON (with only 2 registrants) and the other branch office is in Woodstock. Roger

shows Charles and Dave some of his listed properties and they decide to put an offer in on one of the properties. Roger informs Charles and Dave that due to the fact Ontario has Mandatory Designated Representation, he is required to refer them and have them work with another REALTOR®, Danielle, a registrant in his brokerage office in Woodstock (they cannot work with Roger since he is the listing representative). Unfortunately, Danielle is unable to provide

proper price negotiation advice to Charles and Dave because she is unaware of the property features affecting valuation. For example, the road to the property is not maintained year-round, as well as, there are nests of an endangered species on the property in the spring (the Piping Plover is identified as endangered species bird). Had Charles and Dave been able to work with Roger, they would have known about these issues and adjusted their offer price or find a new property.

Transactional Representation and Exemptions

Mandatory government rules about how Ontarians must do business tend to create implementation problems due to the complexity of a free market. Governments try to address these problems by carving out exceptions to the blanket rules.

To that end, the province has proposed a system of MDR "with exceptions." Exceptions would, for example, be, "a private arrangement between family members or a small number of registrants in areas serving a small market or community."

Exceptions are very difficult to design, administer and enforce. Using the province's own example, what constitutes a small number of registrants? And, how do you define a small market or community?

There are many other examples of potential exceptions the province should consider to MDR. While designing these exceptions will be a significant challenge, administering and enforcing them will be even more difficult. The sheer complexity of the exceptions to MDR will create enormous compliance rules in the marketplace. The Real Estate Council of Ontario (RECO) is not resourced to deal with a flood of complaints or inquiries that will result from such a rigid policy.

The benefit of transactional representation is that it eliminates the need to consider broad exceptions to MDR. In small markets where there are only a few agents

working, consumers can choose transactional representation. For commercial markets where the parties are often sophisticated enough that they do not need an agent on both sides of the deal, they can choose transactional representation. When the agent is a specialist in a type of property a consumer is interested in buying, they can choose to enter transactional representation. Regardless of the where in the province the deal is taking place, who the consumer is, or the type of transaction, a consumer will have the option of entering into transactional representation.

Transactional Representation and Consumer Protection

MDR with the option to enter into transactional representation will enhance consumer protection.

First, OREA's recommended model will all but eliminate instances of conflict of interest that existed under multiple representation. **Under MDR with transactional representation, an individual agent will no longer be able to represent two clients in the same transaction.**

Second, in addition to transaction representation, OREA is also advocating for stronger disclosures to consumers. This will include consumer friendly forms and clauses as part of the new MDR process which will clearly articulate what an agent will and will not do under the new representation model.

Third, if they are provided with all the right information through better disclosure, consumers are good at evaluating what is in their best interests. For example, a consumer may decide that it is in their best interest to work with an agent who is a specialist in a particular type of property through transactional representation, then be forced to work with an agent who has no knowledge of the property in MDR. Consumers are empowered under transactional representation to make informed decisions. That leads to better consumer protection.

Lastly, trust in a real estate transaction is vitally important. It is the largest financial transaction most people ever make. REALTORS® have often worked with clients over a period of years, buying and selling homes. They have built rock solid relationships with these individuals based on experience and trust. MGCS should not prevent consumers from working with an agent who they trust and have a long standing relationship with.

STANDARDIZED DISCLOSURES

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Ontario REALTORS® believe that consumers should be better educated about the agreements they are entering through standardized disclosures. Clear, plain and prominent language will help home buyers and sellers understand the difference between a client and customer, the agent's obligations, and the types of services that will be provided to them.

By moving to transactional representation and mimicking the Real Estate Council of Alberta's (RECA)'s Agreement to Represent both Buyer and Seller, consumers would be aware of all the duties and obligations of a registrant.

OREA does not support the approval of this clause or form being left with a government agency, in this case the Real Estate Council of Ontario (RECO). From escalation clauses to mandatory continuing education, in the last number of years there have been multiple instances where RECO has made decisions that have not been in the best interest of Ontarians (i.e. escalation clauses). RECO is slow moving and designing forms is not a core business competency for the Regulator. OREA does not believe this will change if given the ability to create MDR clauses and forms.

Consumer protection is best enshrined in clearly worded legislation or regulation. That way there is very little room for interpretation or incorrect action.

In 2013, on a similarly prominent consumer protection issue, Bill 55, Stronger Protections for Ontario Consumers Act, 2013, regulated what was to be included in an offer summary document - now referred to as OREA's Form 801.

Legislating or regulating the language of the standardized clause would allow OREA to create a form for the profession to use. OREA updates our forms annually and our Standard Forms Committee meets quarterly which allows us to adapt to any changes in the market or the profession.

OREA has a proven track record creating forms that service the real estate profession in Ontario. Our forms facilitate billions of dollars in real estate transactions every year. They are essential to a well functioning real estate market. Forms require constant updates and amendments as both legislation and market conditions change. OREA has heard loud and clear from our members that forms need to be easier for consumers to comprehend. This project is high on our Standard Forms Committee agenda as it looks at updating our forms for 2018.

INCREASING FINES AND PENALTIES

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Last year, OREA wrote to the Minister of Government and Consumer Services advocating for increased penalties for registrants that act improperly.

Ontario REALTORS® support increasing the maximum fines to \$50,000 for salespeople and brokers and \$100,000 for brokerages. Fines need to be increased to maintain their effectiveness and punish those that break the rules.

With respect to fines, however, OREA notes that historically RECO has not done a sufficient job using the existing fines to deter unethical behaviour. In 2016, the average fine levied by RECO for a breach of the Code of Ethics was \$5,500. It does not matter how high the province increases fines if the regulator is unwilling to use them to deter unethical behaviour.



OTHER ISSUES FOR PHASE 1

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Personal Real Estate Corporations

Currently, Ontario real estate salespeople are prevented by the Real Estate and Business Brokers Act (REBBA), 2002 from incorporating their businesses through a personal real estate corporation (PREC). The exclusion of PRECs from REBBA was not an intentional decision, but rather a technical oversight which should be corrected.

Other regulated professions, including chartered accountants, lawyers, health professionals, social workers, mortgage brokers, insurance agents, architects and engineers, can all form personal corporations. Since 2008, British Columbia, Quebec, Manitoba, Saskatchewan, Alberta and Nova Scotia have all moved to allow real estate salespeople to incorporate.

We also know that there is support for PRECs on all sides of the Legislature as Bill 104, Tax Fairness for REALTORS® Act passed second reading in March.

OREA notes that a good portion of the anticipated revenue leakage that would happen as a result of PRECs is happening already through a development in the industry called “sub-brokerages.” Sub-brokerages are a corporate structure established under a ‘parent’ real estate brokerage that allow a high income earning individual or team to benefit from corporate tax benefits.

For consumers, the relationship between a sub-brokerage and its parent company is likely not well understood or communicated. Permitting PRECs would remove the incentive for agents to set up these complex corporate entities.

Specialty Licensing/Certification

The original version of REBBA included a section which permitted specialty certification. This section was never proclaimed and was sun-setted in 2012.

Specialist certification is a best practice in other professions (doctors, lawyers, dentists etc.) established to provide formal recognition for professionals with advanced knowledge, experience, and skills in a special area of practice and to assist consumers and other agents in identifying those practitioners.

The most commonly referred to area of real estate that could benefit from specialty certification is commercial. Compared to residential, commercial real estate requires a unique set of training, skills and knowledge to practice.

OREA supports adding the specialty certification section back into REBBA –

specifically for commercial real estate. Specialty certification would benefit today's modern, complex real estate market where consumers are demanding more information and greater transparency.

Escalation Clauses

The issue of escalation clauses came to light due to a recent For the RECO column from RECO. RECO's interpretation has sown confusion on this matter which has significant consumer protection implications. OREA is opposed to the use of escalation clauses and recommends that REBBA be amended to close the ability to use these types of clauses.

Prior to RECO's column, Ontario REALTORS® believed that the Code of Ethics and REBBA were very clear about escalation clauses. The Code and REBBA prevent registrants from disclosing the contents of competing offers. An escalation clause, by virtue of its operation, would disclose the content (a competing offer price) of another offer.

Section 26 (1) of the Code clearly states that "If a brokerage that has a seller as a client receives a competing written offer, the brokerage shall disclose the number of competing written offers to every person who is making one of the competing offers, but shall not disclose the substance of the competing offers."

Brokerages across the province have proactively instructed registrants to not use escalation clauses in their Agreements of Purchase and Sale. Ontario REALTORS® urge the government to enhance consumer protection by outlawing escalation clauses in the province.

Role of RECO

Ontario REALTORS® would also like the Ministry to review the role of RECO in Phase 1. We are concerned that RECO has recently shifted its focus from being a Regulator to a political advocacy.

Instead of spending its time advocating for a particular position, RECO should be investigating the individuals who were caught in CBC's Marketplace report breaching the Code. It is also concerning that RECO has taken a position on multiple representation, which according to their website, has not had a single disciplinary decision in 2017. REALTORS® would like to see RECO focus solely on its role as a Regulator.

SCOPE OF PHASE 2

SCOPE OF PHASE 2

OREA believes it has an important role to play as a leading advocate for a modern REBBA with the highest professional standards in North America. Over the next 5 months, the Association is going to embark on a robust consultation of our 70,000 members and 39 real estate boards through white papers, social media and modern technology to engage them about potential improvements to REBBA. OREA has also established a REBBA Review Taskforce to consult with leaders of the profession across the province.

Ontario REALTORS® would like to see the focus of Phase 2 placed in three different areas:

- **Education:** OREA is committed to enhancing entrance and continuing education for the real estate profession. Attracting high quality prospective registrants who go through rigorous training and education to get their license will be beneficial for Ontario's home buyers and sellers.
- **Code of Ethics:** OREA is advocating for a modern Code of Ethics and REBBA that enshrines the highest level of protection for consumers, supports modern business practices, reflects the use of new technology, while supporting an efficient real estate market.
- **Enforcement:** Ontario REALTORS® believe that we need stronger structural (i.e. fines and penalties) and operational (i.e. strong regulator) deterrents to prevent contraventions of REBBA.

We are committed to sharing the results of our consultation with the government by the end of 2017 to inform which areas of REBBA can be enhanced to make Ontario a leader in real estate standards in North America.



CONCLUSION

CONCLUSION

When it was introduced, REBBA was a ground-breaking piece of consumer protection legislation that has since supported a thriving real estate profession and high levels of consumer confidence in the real estate market.

Fifteen years later, we have an opportunity to revisit some important consumer protection mechanisms in REBBA to ensure they are reflective of our modern real estate market. Revisiting these mechanisms will help to strengthen the real estate industry by promoting ethical behavior.

More importantly, it will continue to protect Ontario consumers during one of the most important transactions most of us will ever make – buying and selling a home. If you have any questions or comments, please don't hesitate to contact Matthew Thornton, OREA's Vice President, Public Affairs and Communications at **mthornton@orea.com** or 416-385-6624.

APPENDIX A: OREA'S RESPONSES TO GOVERNMENT'S QUESTIONS

APPENDIX A: OREA'S RESPONSES TO GOVERNMENT'S QUESTIONS

1.1 What are the implications of implementing the potential MDR approach for the real estate industry?

The implications of mandatory designated representation would have a significant impact and be a disadvantage to registrants in smaller markets, smaller brokerages and sole proprietors. In addition, it would limit the ability for a consumer to choose how they are represented in a real estate transaction. OREA has studied best practices when it comes to multiple representation across Canada and North America and found that the best MDR models allow for consumers to choose a transactional relationship with their REALTOR®.

To that end, OREA supports mandatory designated representation (MDR) and strongly recommends that MDR include the ability for consumers and registrants to enter into “transactional representation” with their REALTOR® in order to protect informed consumer choice. We should be conscious that there are circumstances where consumers want to work with a particular agent because of geographical considerations, expertise or a pre-existing relationship. This ability should be maintained with proper consumer protection and informed consent.

1.2 What, if any, are the implications of using MDR for small versus large brokerages?

Smaller brokerages, which only have a few registrants, are at an inherent disadvantage in MDR. A consumer may call the listing sales representative seeking representation and if other registrants are away from the office or unavailable, the sales representative would have to turn the buyer away.

Consumers also do not know the difference between a brokerage or a brand (Royal LePage, Century 21, Re/Max etc.). Some communities could have multiple brokerages of the same brand. If consumers do not understand the difference, they may believe that they cannot use the same brand.

Lastly, it could turn into a slippery slope with exemptions when defining a small brokerage. For example, if the government caps the limit at 9 registrants, what happens with a brokerage with 10 registrants?

1.3 Do the implications, if there are any, change in different geographic areas?

No two markets are the same. Implementing MDR in some geographic areas could put consumers at risk. MDR could force a buyer or seller to work with a less experienced or less knowledgeable registrant who is not familiar with local conditions. Market value, local by-laws, rules on wells, endangered species, winter road maintenance, garbage collection and internet service are some examples of specific information that changes market to market.

Further, it cannot just be assumed that because a registrant works in a particular brokerage, that they are familiar with that specific market. There are brokerages which span across different towns, cities or counties and registrants may specialize in a particular area. Taking away a consumer's right to choose representation can put them at a disadvantage.

Ontario REALTORS® are concerned about the potential impact geographic exemptions could have on local markets. Just because the exemptions might work today, does not mean they could work tomorrow.

1.4 How should brokerages that are sole proprietors be treated?

Sole proprietors will be impacted most by MDR. But rather than carve out specific exemptions for sole proprietors, any program introduced has to work across the board. Transactional representation would give a buyer or seller the choice about whether they would like to continue with the sole proprietor or seek representation elsewhere.

1.5 What are the implications for salespersons and brokers that work as teams?

Ontario REALTORS® believe that whichever representation model is implemented, it should not disadvantage one business model over another.

1.6 What circumstances would require specific exceptions to allow an individual registrant to represent more than one party in a transaction?

Ontario REALTORS® believe that consumers must be given a choice in how they are represented. Models exist across Canada, like in Alberta and Nova Scotia, that allow a consumer with informed consent to choose to be represented by a registrant or to seek representation from another registrant.

MDR removes the choice for a consumer. No matter the situation, they would be forced to seek out another registrant. Much of the focus on multiple representation has been placed on a scenario where a prospective buyer calls the seller's representative. This type of relationship is in the minority. Many clients have pre-existing relationships with a registrant and would be negatively impacted by MDR.

1.7 Are there any alternative approaches that you think the government should consider?

Transaction representation (also called transaction brokerage) in Alberta and Nova Scotia.

2.1 What considerations should be taken into account if this approach is adopted?

Ontario REALTORS® strongly support better educating consumers and the agreements that they are entering through standardized disclosures. Helping home buyers and sellers understand the difference between client and customer, the registrant's obligations, and the types of services that will be provided to them is important to better educating consumers.

OREA opposes the approval of this clause or form being left with the Real Estate Council of Ontario (RECO). Over the past year, there have been multiple instances where RECO has caused additional confusion amongst the profession and consumers. Ontario REALTORS® believe that the content of the form should be legislated rather than being approved by the Regulator. In 2013, Bill 55, Stronger Protections for Ontario Consumers Act, 2013 regulated what was to be included in an offer summary document- now referred to as OREA's Form 801.

If Ontario moves to an MDR model with transactional representation, OREA encourages the Ministry to work within a lengthy education and compliance window. Brokerages and agents will need to adjust business practices and policies to adopt the new model. OREA will also need to work with our member boards/associations and brokerages to educate our 70,000 members.

2.2 Are there any challenges with using standardized clauses for disclosures to consumers in agreements?

OREA does not oppose the creation of standardized clauses. We believe

that Ontario REALTORS® play a role in better educating their clients about the home-buying process and the role that registrants play. However, if the government proceeds with MDR, standardized clauses may not account for all the exemptions or scenarios that could come up within a transaction. Ontario REALTORS® recommend that the government focus on implementing a representation model that does not require significant exemptions and have the standardized disclosure reflect that model.

For instance, Alberta's Agreement to Represent both Buyer and Seller serves as an example of a document that would provide consumers with greater clarity about the role of a registrant. OREA believes that improvements can be made to educate the difference between a client and customer, but that the Agreement serves as a good foundation to build from.

2.3 Are there other disclosures that should be standardized to provide consistency and clarity for consumers (for example, disclosure of interest)?

Ontario REALTORS® are confident in the disclosure and forms that OREA provides for our members and the buyers and sellers that we represent. We are open to looking at how our members educate the public about the home-buying process. However, we would vigorously oppose RECO having an approval on these disclosures or forms.

3.1 What considerations should be taken into account if this approach is adopted?

Ontario REALTORS® favor increasing the maximum fines to \$50,000 for salespeople and brokers and \$100,000 for brokerages. Fines need to be increased to maintain their effectiveness and punish those that break the rules.

3.2 Are the proposed fine amounts adequate to act as an effective deterrent?

While increasing the fines is an important first step, unless the Regulator enforces the current fine levels, contraventions of REBBA and the Code will go undeterred. If you look at recent disciplinary action, RECO's penalties do not come close to the maximum fine levels. Ontario REALTORS® believe that we need stronger structural (i.e. fines and penalties) and operational (i.e. strong regulator) deterrents to prevent breaches of REBBA or the Code.

3.3 Should the government link a fine to the commission amount to encourage compliance and reduce the financial incentive to violate the rules?

OREA is discussing this issue with members as part of our REBBA Review consultation process and will report back to the Ministry on the results of that work.

3.4 Should the rules be subject to prosecution by the court instead of the discipline committee?

No. Instead, OREA recommends that section 11(1) of the Licence Appeal Tribunal Act, 1999 be amended to strike out the Real Estate and Business Brokers Act, 2002 and that a REBBA committee be given the power to suspend and revoke registrations. Currently, RECO can issue a proposal to suspend, revoke, refuse to renew, or apply mandatory conditions to the real estate professional's registration but registrants can appeal these proposals to the Licence Appeal Tribunal (LAT).

The LAT is an adjudicative tribunal, established under the Licence Appeal Tribunal Act, 1999, with a mandate to resolve appeals regarding compensation claims and licensing decisions made by a wide variety of regulators. Real estate professionals who receive a notice of proposal have 15 days, from the date the proposal is served, to file a notice of appeal LAT. If no appeal is received, the proposal will be carried out.

In the last two years, LAT has considered 10 appeals from registrants regarding RECO proposals. Of those 10 appeals only two proposals to revoke registrations were approved. Even in egregious circumstances (i.e. criminal convictions), LAT has rejected RECO proposals.

RECO is a sophisticated regulator responsible for a critical mandate – protecting consumers during one of the largest financial transactions of their lives. Given the importance of its role, a committee under REBBA should have the authority to consider proposals to suspend and revoke registrations. Providing RECO with the ability to revoke licenses will remove more unscrupulous actors from the industry and deter others from breaching REBBA or the Code.

3.5 Any further comments or suggestions about penalties for Code of Ethics violations?

Ontario REALTORS® do not support revenues from disciplinary penalties going to the Registrar and RECO. Instead, RECO should be entitled to an administrative fee, with the remainder of the fine being recycled into education or other ways which raise the professionalism of the real estate industry.

4.1 What are some other issues with real estate rules you would like the Ministry to consider in this first phase of the review? Are there any additional changes you wish to suggest?

See above.

5.1 What are some of the changes to the real estate rules you would like the ministry to consider in phase two of the review?

Ontario REALTORS® would like to see the focus of Phase 2 placed in three different areas:

- Education: OREA is committed to enhancing entrance and continuing education for the real estate profession. Attracting high quality prospective registrants who go through rigorous training and education to get their license will be beneficial for Ontario's home buyers and sellers.
- Code of Ethics: OREA is advocating for a modern Code of Ethics and REBBA that enshrines the highest level of protection for consumers, supports modern business practices, reflects the use of new technology, while supporting an efficient real estate market.
- Enforcement: Ontario REALTORS® believe that we need stronger structural (i.e. fines and penalties) and operational (i.e. strong regulator) deterrents to prevent breaches of REBBA and the Code.

Over the next 5 months, the Association is going to embark on a robust consultation of our 70,000 members and 39 real estate boards. We are committed to sharing the results of our consultation with the government by the end of 2017 to inform which areas of REBBA can be enhanced to make Ontario a leader for real estate standards in North America.

APPENDIX B: TRANSACTION BROKERAGE AGREEMENT



Agreement to Represent both Buyer and Seller (under designated agency)

This form was developed by the Real Estate Council of Alberta for use in residential real estate.

between

the brokerage (we)

and

the seller (you)

and

the buyer (you)

1. THE PROPERTY

1.1 The land and building at:

(municipal address)

2. CONSUMER RELATIONSHIPS GUIDE

- 2.1 This Agreement is for situations where a designated agent represents both the buyer and the seller in the purchase and sale of this property only.
- 2.2 You each acknowledge you have received and read the Real Estate Council of Alberta's *Consumer Relationships Guide* (Guide) and understand the limited agency responsibilities.

3. THE DESIGNATED AGENT'S RESPONSIBILITIES

- 3.1 The designated agent must:
- (a) be impartial in their dealings with you both.
 - (b) exercise reasonable care and skill in carrying out their duties.
 - (c) obey your lawful instructions as far as they are consistent with this agreement.
 - (d) comply with the *Real Estate Act* and its regulations and the rules and bylaws of the Real Estate Council of Alberta.
 - (e) not act in a way that benefits one of you at the expense of the other.
 - (f) give you a copy of this agreement at signing.

4. THE DESIGNATED AGENT'S RESPONSIBILITIES ABOUT INFORMATION

- 4.1 The designated agent must:
- (a) act honestly.
 - (b) present all offers and counter-offers to and from each of you, even when you have accepted another purchase contract.
 - (c) pass on all information to you that the other side wants you to know.
 - (d) keep you informed of progress.
 - (e) tell you what information they've given to the other side.
 - (f) tell you all information they receive while this agreement is in effect especially:
 - (i) to the buyer, all material latent defects affecting the property.
 - (ii) to the seller, all material facts about the buyer's ability to buy the property.
- but they cannot provide you the information described in clause 4.2.
- 4.2 The designated agent agrees not to tell either of you without the informed written consent of the other:
- (a) that the other side may be prepared to move on the price or to offer more favourable terms.
 - (b) the other side's reasons for buying or selling the property.
 - (c) personal and confidential information about the other.

5. OUR FACILITATION SERVICES

- 5.1 We will
- (a) make sure the designated agent that helps you meets our applicable policies and procedures and treats you both impartially.
 - (b) supervise the designated agent and support staff to make sure they properly carry out their responsibilities under this agreement.
 - (c) hold money we receive in trust, as the *Real Estate Act* requires.
- 5.2 As part of our services, the designated agent will:
- (a) help you negotiate an agreement.
 - (b) give you property statistics and information, including comparative information from listing services and local databases.
 - (c) give you and prepare agreements of purchase and sale and other relevant documents according to your instructions.
 - (d) give you the names of real estate appraisers, mortgage brokers, lawyers, surveyors, building inspectors, lenders, insurance agents, architects, engineers, and other professionals. We will not recommend any specific service provider.

Agreement to Represent both Buyer and Seller

6. THE DESIGNATED AGENT'S FACILITATION SERVICES DON'T INCLUDE

6.1 The designated agent will not:

- (a) for the buyer:
 - (i) carry out or influence an independent inspection of the property.
 - (ii) arrange an independent inspection of the property, unless the buyer instructs them.
 - (iii) make sure the seller's information or statements about the property are accurate or complete.
- (b) for the seller:
 - (i) carry out or influence an independent inquiry into the buyer's financial status.
 - (ii) make sure the buyer's financial information is accurate or complete.

7. OUR FEE

7.1 You both pay fees according to your representation agreements with us.

8. OTHER DETAILS ABOUT THIS AGREEMENT

- 8.1 Anything we or the designated agent knows about either of you will not be attributed to the other.
- 8.2 Neither of you will be liable to the other for anything we or the designated agent do.
- 8.3 Any future changes to this agreement must be in writing and signed by all of us to be effective.
- 8.4 Words with a singular meaning may be read as plural when required by the context.
- 8.5 If any clauses added to this agreement conflict with standard clauses in this agreement, the added clauses apply.
- 8.6 Except for the representation agreements you both have with us, this agreement is the entire agreement between us and each of you. Anything we discussed with you, or that you told us, is not part of this agreement unless it is in this agreement.
- 8.7 You each acknowledge that:
 - (a) you have read this agreement.
 - (b) you had the opportunity to get independent advice before signing this agreement.
 - (c) this agreement accurately sets out what we and you agree to.

9. CONTACT INFORMATION

9.1 The following contact information must be used for all written communications between us and you. If this contact information changes, we and you must tell each other in writing within two business days of the change.

Seller:

Name _____

Address _____

(postal code)

Phone _____ Fax _____

Email _____

Name _____

Address _____

(postal code)

Phone _____ Fax _____

Email _____

Buyer:

Name _____

Address _____

(postal code)

Phone _____ Fax _____

Email _____

Name _____

Address _____

(postal code)

Phone _____ Fax _____

Email _____

Brokerage:

Name _____

Address _____

(postal code)

Phone _____ Fax _____

Email _____

Designated Agent:

Name _____

Address c/o the brokerage _____

(postal code)

Phone _____ Fax _____

Email _____

APPENDIX C: OREA'S REBBA REVIEW TASKFORCE

APPENDIX C: OREA'S REBBA REVIEW TASKFORCE

CHAIR:	John Meehan (Central Area, RE/MAX Unique Inc., Brokerage, Toronto, Provincial Director for Central Ontario)
EX-OFFICIO:	Ettore Cardarelli (Central Area, National Realty Centre Inc., Brokerage, Mississauga, OREA President)
DIRECTOR MEMBER	Larry Cerqua (Central Area, RE/MAX Ultimate Realty Inc., Toronto Real Estate Board, Substantial Membership Director)
	Karen Cox (Western Area, Sea & Ski Realty Ltd., Grey Highlands, REALTORS® Association of Grey Bruce Owen Sound)
MEMBERS:	Rui Alves (Central Area, iPro Realty Ltd., Brokerage, Brampton, Brampton Real Estate Board)
	Glenn Crosby (Central Area, Lennard Commercial Realty Ltd., Brokerage, Toronto, Toronto Real Estate Board)
	John Di Michele (Central Area, Chief Executive Officer, Toronto Real Estate Board)
	Phil Dorner (Western Area, Louis Parent Realty Ltd., Brokerage, Belle River, Windsor-Essex County Association of REALTORS®)
	Stacey Evoy (Western Area, Royal LePage Triland Realty., Brokerage, London, London and St. Thomas Association of REALTORS®)

Ray Ferris (Southern Area, Erie's Edge Realty Ltd., Brokerage, Port Rowan, Simcoe and District Real Estate Board)

Dreena Gilpin (Northern Area, RE/MAX Crown Realty (1989) Inc., Brokerage, Sudbury, Sudbury Real Estate Board)

Brad Henderson (Central Area, President & Chief Executive Officer, Sotheby's International Realty Canada, Toronto Real Estate Board)

Andrew Hodgson (Northeastern Area, Century 21 - Granite Realty Group Ltd. Real Estate Brokerage, Minden, The Lakelands Association of REALTORS®)

David Kurt (Northern Area, Coldwell Banker Charles Marsh Real Estate, Brokerage, Sudbury, Sudbury Real Estate Board)

Linda McCallum (Eastern Area, Royal LePage Team Realty, Brokerage, Ottawa, Ottawa Real Estate Board)

Janice Myers (Eastern Area, Executive Officer, Ottawa Real Estate Board)

Heather Scott (Northeastern Area, Forest Hill Real Estate Inc. Brokerage, Muskoka, The Lakelands Association of REALTORS®)

Phil Soper (Central Area, Chief Executive Officer, Royal LePage - Brookfield Real Estate Services Inc., Toronto Real Estate Board)



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