



Government Relations Issues Update

Real Estate and Business Brokers Act / Incorporation

TREB Key Message

REBBA, 2002 responded to many requests that REALTORS® have been making for years on various issues.

REBBA 2002 should now be amended to allow real estate salespeople and brokers to incorporate among other issues listed in this document:

- The right to incorporate by salespeople and brokers is a right that has been granted to many professions in Ontario and is a reasonable request
- Consumer protection is not affected since there would be no change to the direct personal professional liability of the individual, similar to other professionals currently allowed to incorporate.

Background

On December 10, 2002, the provincial government passed Bill 180, which revises and updates the Real Estate and Business Brokers Act (REBBA). Bill 180 could not take effect however, until specific details were established by regulations, which were finalized in November 2005. With the finalization of the regulations, a transition period was provided and the new REBBA, 2002 came into effect on March 31, 2006. However, certain aspects requiring the use of new terms (“brokerage”, “broker of record”, and “sole proprietor”) for advertising purposes were not implemented until January 1, 2007. This requirement was set to be implemented on June 1, 2006, however, as a result of requests by TREB and OREA for more time to allow for advertising materials to be changed, the provincial government delayed these requirements.

Bill 180 updated many sections of REBBA and deals with various issues not currently covered under existing legislation, including exemptions from registration, ownership provisions for registered corporations, brokers of record, specialization, trust accounts, dual agency, and various discipline and offence issues.

In January 2003, a Toronto Real Estate Board (TREB) task force was struck to provide input on the regulations to the Ontario Real Estate Association (OREA), Real Estate Council of Ontario (RECO), and the provincial government. TREB Members were surveyed on key regulatory issues. The Task Force reviewed all Member feedback in drafting recommended positions.

TREB’s comprehensive recommendations covered:

- Dual agency disclosure and consent requirements
- Processes for unclaimed trust money and interest on trust deposits
- Specialization categories and educational requirements
- REBBA exemptions
- Code of Ethics
- Broker of Record responsibilities
- Suspensions
- Complaints, compliance and discipline
- Registration and renewal waiting periods

In April and May 2004, the provincial government released draft regulations for public comment. The regulations deal primarily with a new Code of Ethics and registration matters. TREB submitted comments on these draft regulations to OREA and the Ministry of Consumer and

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Business Services in June 2004. Ministry staff reviewed stakeholder comments and then held a final round of consultations with **TREB** and OREA in the summer of 2005.

In addition to **TREB**'s detailed comments on the draft regulations, **TREB** also informed the Minister of Consumer and Business Services about concerns regarding inadequate representation disclosure by unregistered real estate practitioners, such as new home sales representatives who are currently exempt from REBBA requirements. Specifically, **TREB** has called for representation disclosure obligations for new home sales representatives to be included in the REBBA regulations. This approach is similar to that used in British Columbia.

Currently, a **TREB** sub-committee has been working to provide input on potential changes/updates to REBBA, 2002 and RECO practices. As a result of this work, submissions were made to the Minister of Consumer Services, the Real Estate Council of Ontario, and the Ontario Real Estate Association, focused on the following issues:

- Allow registrant trade name on RECO application form
- Do not require repeated reporting of bankruptcies on RECO applications
- Allow for flexible remuneration (i.e. allow flat fee and/or percentage)
- Require establishment of commission trust arrangements
- Allow brokerages option of coordinating renewal dates of branch office registrations
- Require written agency disclosure for all parties involved in property transactions, including individuals exempt from REBBA licensing requirements

Incorporation

TREB's current efforts with regard to REBBA are also focused on acquiring the ability for real estate salespeople and brokers to incorporate. In 2006, **TREB** struck a task force to study this issue.

The benefits of incorporation for real estate salespeople and brokers could include:

- Lower income tax rate
- Greater accumulation of wealth through long term tax deferral
- Excellent vehicle for retirement savings
- Faster repayment of debts
- Cheaper funding of non-deductible expenses
- Incentive to save
- Individual pension plans
- Tax deferred on bonus accruals
- Capital gains exemption

After six months of study, **TREB** asked OREA and RECO to lobby the province to allow incorporation for salespeople and brokers. REBBA must be amended properly to ensure that the Canada Revenue Agency treats income as taxable to the personal corporation.

Other Ontario real estate boards were asked to support **TREB**'s position. The response was overwhelmingly supportive of **TREB**. As a result, OREA indicated that it would take action on this issue. **TREB** continues to work with OREA in this regard. OREA has recently indicated that the provincial government is considering this issue.

As a result of **TREB**'s most recent recommendations, OREA struck a task force to deal with new proposals to amend REBBA 2002. RECO has also referred the issue including **TREB**'s recommendations to a RECO task force. **TREB** is also engaged in meetings with the Minister with participation from OREA.