

October 25, 2010

George Lavallee
Chair
Real Estate Council of Ontario
3250 Bloor Street West
Suite 600, East Tower
Toronto, Ontario
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Dear Mr. Lavallee,

I am writing to provide you with input and suggestions regarding changes to the *Real Estate and Business Brokers Act (REBBA)*, 2002 that the Toronto Real Estate Board (TREB) hopes will be considered. We would welcome the opportunity to meet with RECO to discuss these recommendations in greater detail.

TREB worked closely with the provincial government when REBBA, 2002 was being drafted, and we look forward to doing so again during any future reviews of this statute. The input provided below is intended as a basis for this and we look forward to participating in any RECO or government consultations that may be planned.

While some of the suggestions noted below may require amendments to REBBA, 2002 by the provincial government, RECO may be able to address some of these issues through its existing administrative procedures. We have also made a submission to the provincial government requesting that they facilitate this with legislative action, where necessary, to allow RECO adequate authority.

Recommendation #1:

Allow registrant trade name on RECO application form, in addition to the given name of the applicant.

Rationale:

- REBBA Regulation 567/05, Section 8, allows registrants to substitute an initial or commonly recognized short form of a given name; or a name by which the applicant is commonly known. However, this section also requires that the registrant be registered in only one name.
- Allowing the applicant's given name and trade name on the application form could
 - clarify to registrants that they can use a trade name on application form, as per Regulation 567/06, Section 8
 - could address issues with registrants who change names
 - Make it easier for the public to identify registrants
 - assist RECO record-keeping by having additional registrant information
- Allowing the given name and trade name on RECO's application form would clarify RECO's existing practices, which already include the use of dual names for registrants:

- According to RECO staff, RECO's records will include a trade name, in addition to the formal registrant name, if a registrant makes a separate written request in this regard.
- The RECO web-site's searchable Registrant database publicly lists both the "Registrant Name" and the "Trade Name"
- The RECO Brokerage Application Form allows for both the "Business Name" and the "Trade Style Name" to be listed to accommodate franchise names, according to RECO staff.

Recommendation #2:

Repeated reporting of bankruptcies and criminal offences should not be required on RECO applications if the information has not changed and it has already been recorded. If information changes, registrants should be able to have the change noted, but not be required to report repeatedly.

Rationale:

- If bankruptcy or criminal offence information has already been reported, and the information has not changed, requiring registrants to continue reporting on subsequent applications is redundant and inefficient.

Recommendation #3:

Amend REBBA, 2002 to allow for flexible remuneration (allow flat fee and/or a percentage).

Rationale:

- Section 36 (1) of REBBA, 2002, states that "All commission or other remuneration payable to a brokerage in respect of a trade in real estate shall be either an agreed amount or percentage of the sale price or rental price, as the case may be, **but not both** and, if there is no agreement as to the amount of the commission, the rate of the commission or other remuneration or other basis or amount of remuneration shall be that generally prevailing in the community where the real estate is located.
- The wording "but not both" should be removed from Section 36 (1) of REBBA, 2002 to allow for flexibility in remuneration options.

Recommendation #4:

Amend REBBA, 2002 to require the establishment of a commission trust arrangement requiring that money paid on the closing of a transaction be immediately segregated in a separate trust account, apart from the general trust account of the brokerage.

Rationale:

- Issue is scramble that occurs when brokerage bankruptcies happen. In a bankruptcy, all of the bankrupt's property is vested in the trustee in bankruptcy and the proceeds divisible among the creditors; however, this does not include any trust property. As a result, unless REALTOR® commissions are subject to a true trust arrangement, commissions payable are not protected.
- RECO Commission Trust Insurance may not be adequate.
- Existing statutory protections for REALTOR® commissions in the event of the bankruptcy of a brokerage may not be adequate. REALTORS® may be able to

- make claims under the federal Wage Earner's Protection Act (WEPPA). WEPPA's definition of wages includes commissions. WEPPA claims are limited to \$3,400. In the absence of a commission trust arrangement, under WEPPA, the REALTOR® could apply to the federal government and the maximum they could get, in the event of a brokerage's bankruptcy, would be \$3,400. If the REALTOR® is owed more than \$3,400, they could make an unsecured claim, for the difference, as part of the bankruptcy process. Unsecured claims are given the lowest priority in bankruptcies, and, typically, such claims will receive nothing or a very small percentage of their claim.
- The best way to create protections for REALTOR® commissions is by establishing a trust arrangement and then requiring that money paid on the closing of a transaction be immediately segregated in a separate trust account, apart from the general trust accounts of the brokerage. It would be important that commission monies be kept separate in the commission trust account, because they could lose their status as "trust money" if they became co-mingled with other non-trust property (e.g. if the commission money was deposited into the general trust account instead of the commission trust account).

Recommendation #5:

RECO should allow the brokerage the option of coordinating renewal dates of branch office registrations.

Rationale:

- Issue is whether expiration dates should be coordinated so that it is the same for all branch offices of the brokerage.
- Allowing the option of coordinating registration renewal dates for branch offices of brokerages with numerous branch offices could create greater efficiency for the brokerage and RECO.
- Some brokerages may prefer staggered dates so that fees do not all come due at the same time. This could be addressed by allowing the brokerage the option.
- REBBA, 2002 has provisions for registrar to give the registrant a certificate of registration for each location but does not outline guidelines pertaining to coordination of renewal dates.

Recommendation #6:

Require written agency disclosure (i.e. disclosure of duties and responsibilities to clients and customers; what their options are as consumers) for all parties involved in property transactions, including individuals exempt from REBBA licensing requirements (e.g. new home builder representatives, auctioneers, etc). One possibility is to amend the "exemptions" section of REBBA, which states "Despite section 4, registration shall not be required in respect of any trade in real estate" by adding language requiring "agency disclosure".

Rationale:

- REBBA, 2002 currently includes exemptions from REBBA registration requirements for various types of trading in real estate, including solicitors, auctioneers, property managers, and new home sales representatives, among others.
- In 2000-2001, both TREB and the Ontario Real Estate Association provided input

that generally called for broader registration requirements to require registration of the various individuals/professionals exempted by REBBA.

- Requiring agency disclosure for all parties involved in property transactions could help to reduce consumer confusion and increase consumer protection. Consumers could be better protected if anyone trading in real estate was required to clearly disclose whom they are representing. This approach was implemented in British Columbia, with a new *Real Estate Services Act* that went into effect January 1st, 2005. Under this Act, employees of developers/builders continue to be exempt from licensing requirements, similar to Ontario, however, they are required to disclose, in writing (under separate form), to potential buyers the following:
 - That the individual is not licensed under the Real Estate Services Act,
 - Who the individual is employed by, and
 - That the individual is acting on behalf of one or more developers.

I hope you find TREB's input on these issues helpful. As mentioned, we would appreciate the opportunity to meet with you and RECO staff to discuss these issues in greater detail. We look forward to continuing to work with you on these issues.

Sincerely,

Bill Johnston, M.A., LL. B.
President

- c.c. The Hon. John Gerretsen, Minister of Consumer Services
Frank Denton, ADM, Policy and Consumer Protection Division, MCS
Aimee Skelton, Senior Policy Advisor, Ministry of Consumer Services
Dorothy Mason, President, Ontario Real Estate Association
Edward Barisa, Chief Executive Officer, Ontario Real Estate Association
Tom Wright, President and CEO, Real Estate Council of Ontario