

# The Regulator

April 2017

Vol. 23 / Issue 2

Message from Council and Council Meeting Highlights

RMS Update - No Changes to Principle 4

Industry Resource: RECA's New Mortgage Broker Practice Advisor

Practice Tip - Educate Your Clients on Pre-Build Mortgage Approvals

Have Your Say: Openness and Transparency Consultation

Leadership Highlight - Joseph Fernandez

News Bytes



# Message From Council



Christine Zwozdesky,  
Chair

## We want to hear from you on Openness and Transparency

I hope many of you have taken the time to review and respond to the Openness and Transparency Consultation Paper we distributed to stakeholders in late February. This is an important initiative, and we are keen to hear how RECA can better engage with you. Please take a few extra moments to read the Consultation Paper before completing the survey, as the paper provides important context to the proposals Council is considering.

In preparing proposals for the Consultation

Paper, Council's Governance Committee explored the practices of other regulatory bodies and organizations. The research demonstrated tremendous variances in openness and transparency practices between them. In comparing that research with our existing practices, we know that RECA has already embraced more open and transparent approaches to self-regulation, but we're committed to taking that further as part of our current Strategic Plan.

Council wants transparency that is relevant, accessible, and sustainable, and we are putting forward proposals that promote these standards. That said, we are still open to new ideas from

all our stakeholders. I encourage you to share any ideas you have as part of this consultation process.

## Strategic Plan Update

We continue to develop and complete initiatives for Year 1 of RECA's 2016-2020 Strategic Plan. Over the past three months, RECA has continued our focus on consumer outreach. Staff and Council Members attended consumer trade shows in Edmonton and Calgary, we participated in Fraud Prevention Month alongside law enforcement and other regulatory agencies in Alberta, and we launched a regular column, "Ask

Charles,” in community newsletters delivered to 200,000 households in Calgary and Edmonton. If you haven’t had a chance, review our mortgage fraud awareness resources for consumers on RECA’s website, including the Dig Deeper video, which is now playing on televisions in courthouses across the province.

I’m also pleased by the creation of the Alberta Home Buyer’s Guide. This is a self-contained, mobile-friendly microsite that is a one-stop-shop for Alberta consumers interested in buying property. Look for the companion Alberta Home Seller’s Guide in the Fall of 2017.

## Council Member Profiles

I am delighted to congratulate Brian Klingspon, the AREA appointee from Edmonton, on his selection as Chair Elect to Council. Brian is also Chair of the Finance and Audit Committee, and Chair of our new Consumer Advisory Committee. The latter group are just beginning their consultations but,

under his leadership, are yielding valuable and fascinating insights to our work in consumer protection and advocacy.

I am also pleased to have Rob Telford, the real estate appraisal appointee, re-join Council. As a former Chair of Council, he contributes critical continuity and experiential wisdom to our deliberations, which I know he will bring to bear as Chair of our Legislation Review Committee as well as Chair of the Appraisal Advisory Committee.

Stan Mills, an AREA appointee from Lethbridge, brings many years of real estate savvy and industry knowledge to the Council table. We are also grateful that Stan has accepted an appointment to REIX on behalf of Council, and serves our Hearings Committee. In both instances, he will have a significant opportunity to affect our industry practices with his expertise.

Our firecracker from Okotoks, Bonny Clarke, is a non-AREA industry professional appointed to Council. Bonny currently brings her considerable talents from the mortgage sector to her duties as Chair of our Hearings Committee

and she is another dedicated member of our Governance and Legislation Review Committees.

Ramey Demian, a former instructor of licensing education, is an AREA appointee for Commercial Real Estate and chairs the Commercial Real Estate Advisory Committee. Ramey also infuses all his work with a genuine spirit of collaboration and helps Council to build consensus in his roles on our Governance and Legislation Review Committees.

Look for more profiles of your Council members in the next issue of the Regulator.

## **Council Highlights - April 12 Meeting**

### **Council reviews consultation with stakeholders on the Residential Measurement Standard (RMS)**

#### **Principle 4 to remain the same**

After reviewing consultation feedback, Council decided to keep RMS Principle 4 in its current form. Principle 4 states that “For properties with common walls, such as half-duplexes, townhouses, and apartments, measure the interior perimeter walls (paint-to-paint) at floor level. An additional area representation may be made assuming exterior measurements.”

#### **Principle 2 now allows 2% tolerance for measurements**

Council approved a change to Principle 2, which now states: “Identify if the measurement system is metric or imperial, and apply it consistently. Measurements must be calculated to within 2% of the RMS size.” Real estate professionals must continue to apply all the Principles in the RMS when measuring property, despite the new tolerance allowed.

#### **RMS Working Group**

Council asked Administration to form a working group of all stakeholders to cooperatively develop a strategy to transition to a single measurement methodology. The working group composition includes all stakeholders, associations, brokers, real estate professionals on the ground, and consumers.

Read more about Council’s Principle 4 consultation and decision on page 5 of this newsletter.

### **Council directs RECA to develop a consultation on its stakeholder engagement policy**

Council asked administration to develop a consultation paper regarding the current Stakeholder Engagement Policy. RECA will launch that consultation with all stakeholders this summer. Watch for more information.

### **Governance Committee reported to Council on development of a consultation policy**

Council asked the Governance Committee to develop consultation guidelines that can be applied in different ways depending on the type of consultation required. The Committee previously concluded that a one-size-fits-all consultation policy would be too rigid for RECA and the industry. The diversity of RECA stakeholders and the disparate nature of the topics requiring consultation mean RECA requires a nimble and flexible consultation framework.

# RMS Update - No Change to Principle 4



Consultation results are in – Principle 4 of the Residential Measurement Standard (RMS) is staying the same.

Between November 2016 and February 2017, the Real Estate Council of Alberta (RECA) consulted with its stakeholders on possible changes to Principle 4 of the RMS.

Principle 4 of the RMS refers to properties with common walls, and reads that “for properties with common walls, such as half-duplexes, townhouses, and apartments, measure the interior perimeter walls (paint-to-paint) at floor

level. An additional area representation may be made assuming exterior measurements.”

In August 2016, RECA received feedback that properties with a single common (demising) wall (i.e. a duplex or an end unit in row housing) should be measured differently than properties with more than one common wall (i.e. an apartment-style condominium or a middle unit in row housing). The recommendation was to “measure all semi-detached properties, from centre line of common wall to exterior.”

The purpose of this most recent round of consultation was to gauge stakeholders’ support for the recommendation to implement a separate measurement methodology for semi-detached properties, which were defined in the recommendation as properties with a single common (demising) wall.

RECA invited all industry professionals, trade associations, real estate boards, and measurement companies to respond to the consultation. During the 3-month consultation period, only 101 individuals and organizations provided

input. This included 10 associations, 85 individual professionals, 3 property measurement companies, and RECA's Consumer, Real Estate Appraiser, and Residential Real Estate Advisory Committees.

Council reviewed the complete consultation feedback at its April 2017 meeting.

### **Feedback**

- 2% of respondents explicitly supported the definition of semi-detached properties as being properties with only one demising wall
- 23% of respondents explicitly supported the recommendation to measure semi-detached properties from the centre of the common wall to the outside of exterior walls.

Based on the low support for the recommendation to implement a separate measurement methodology for semi-detached properties, Council is keeping RMS Principle 4 in its current form.

Council also considered the number of amendments to the RMS in the last year and how ongoing amendments negatively affect industry professionals. The proposed change to the definition of semi-detached would also bring it out of line with the standard definition of semi-detached, which normally refers to a property composed of two units with a single demising wall.

### **The RMS Going Forward**

Although it did not form part of the consultation process, consumers and other respondents suggested that all properties should be measured with a single measurement methodology. Council would like to explore the possibility of a single measurement methodology for all residential properties. If a single measurement methodology is possible RECA believes that the process of developing the methodology and corresponding transition should be a carefully paced and collaborative process with all stakeholders.

Council asked Administration to form a working group of all stakeholders to cooperatively develop a strategy to transition to a single measurement methodology. The working group will include all stakeholders, associations, brokers, real estate professionals, and consumers.

# Industry Resource - RECA's a new Mortgage Broker Practice Advisor

In March 2017, Gary Siegle joined the Real Estate Council of Alberta as it's first-ever Mortgage Broker Practice Advisor.

Gary will support mortgage brokerages by responding to broker and delegate questions with practical, timely information, guidance, and advisory services that support them in their responsibilities and duties on a "without prejudice" basis. The creation of a Mortgage Broker Practice Advisor position is a tremendous step forward.

Contact Gary directly at [gsiegle@reca.ca](mailto:gsiegle@reca.ca) or call him at 403-685-7925.

---

These are just some of the questions Gary has answered so far, maybe the answers will help you in your own practice. Questions can range from issues with particular transactions to larger licensing concerns to brokerage administration issues:

**When I leave my brokerage can I take my clients and borrowers with me? And do I have to give my client files and borrower information to the brokerage?**

While you may feel as if the relationship with the borrower is all yours, borrowers you work with are actually in service relationships with your brokerage. Your brokerage must have complete file information. If borrowers want to work with you after you transfer to a different brokerage, they may do so, but only after ending any existing service relationship agreements with your former brokerage. Any file information from deals during your time at your former brokerage belong to your former brokerage.

**My friend has moved to another province and is buying a home there. Can I do that mortgage deal myself or do I need to co-broker it with a licensed broker from that province?**

Each regulator has somewhat different rules so it is always best to check for each situation. In most cases, if the borrower is a resident of the other province, and the property is in the other province, a licensed broker from that province would need to be involved. Also, if you're originating the deal in Alberta, you, as a licensed Alberta broker would also need to be involved. At RECA we use the legal standard of 'substantial connection.' If there is a substantial connection to Alberta, the mortgage broker must hold a licence from RECA. For more information on what constitutes a substantial connection, [click here](#).

## **What documents are required to be retained by the brokerage?**

All documents relating to the file must be retained by the brokerage for a period of three years. Documents include notes, e-mail, text messages as well as the more "official" documents such as application, commitment, and documents providing borrower details (income, down payment, debt obligations, etc.). It is a requirement that the brokerage retain documents even for deals that do not proceed. All of these files are brokerage files, including your texts and emails with borrowers.

## **Can I retain these documents electronically?**

Document retention methods must meet privacy standards. If they are retained on portable devices such as a flash drive or external hard drive they should be encrypted in order to ensure security if the drive is misplaced or stolen. If documents are stored on "the cloud" the servers must be in Alberta and accessible to the brokerage. The brokerage needs to know that the security measures that the cloud storage provider has in place will maintain the security and integrity of the information.

**I have been working with a borrower for quite a while and we are almost at the file complete stage. Their purchase transaction closes next week. I have just learned that the borrower is shopping at other brokerages and lenders, and I don't want to do more work for nothing. Can I just cancel my file and send the borrower on their way?**

You can choose who you wish to work with, but based on the fact that there is an imminent closing and cancelling the deal may result in penalties and fees, you should consider the business ramifications. What could the borrower do to attempt to recover extra costs from you? The rules state that you must provide a competent service and you cannot act recklessly. You need to consider whether dropping the file at such a late stage meets the standards of competent service or recklessness.

# Practice Tip - Educate Your Clients on Pre-Build Mortgage Approvals



Sometimes your client's new home purchase collapses because the lender refuses to fund the mortgage it approved prior to the home's construction. The buyer loses the new house and often loses a significant deposit.

## **Why are lenders changing their minds?**

Builders often require a mortgage broker to sign a form indicating there is an "unconditional mortgage approval" for the buyer before proceeding with the sale and construction of a new home. However, many lenders only give borrowers conditional approval, and even after waiving conditions, the lender may carry out

additional due diligence. A lot can change in a borrower's circumstances in the time between getting a mortgage commitment and taking possession of a completed property. If the lender determines the borrower no longer qualifies for the mortgage they approved months earlier, they may refuse to fund the mortgage.

As a mortgage broker, there are things you can do to protect yourselves and your clients.

## **Changes in your borrower's circumstances**

You all know that terms such as "Pre-approval" or "Approval in Principle" or "Conditional approval"

mean a lender will likely fund the mortgage if all of the assumptions the lender made are true and remain true at the time of funding.

A loan that is "pre-approved" or "approved in principle" is not the same as loan that is approved. If there are any material changes to the borrower's circumstance between the time of purchase and the construction of the property, the lender reserves the right to withhold funding. This is usually the case, but the issue is magnified when, with new construction, it's often a full year or more before the lender actually advances the funds for the mortgage.

## **Subject to valuation**

“Subject to valuation” is another typical requirement attached to a conditional loan approval with builders. Markets change over time, and during a lengthy construction period there may be changes to the property specifications. Sometimes the valuation will show your borrower paid or agreed to pay too much for the property. The lender or insurer may require an appraisal to determine if the property value is adequate security for the proposed financing.

## **Educating your borrowers**

Borrower(s) must understand the risks of waiving their financing condition, particularly when dealing with new constructions and a long possession date. If they are unable to get their mortgage funded on possession day, they could forfeit their deposit, and the builder may take legal action.

RECA recommends using a disclosure form with borrowers that explains the risks of waiving their

financing condition. Such a formal could include a checklist of the discussion points between you and the borrower, statements about income, job stability, added debt, missed payments, change in market value, upgrading building specifications (cost doesn't always equal value), and so on.

Borrowers typically choose to proceed with the transaction, but it is important that you educate the borrower so they understand that all of their information, including the value of the property, must meet

# Have Your Say: RECA's Openness and Transparency Consultation



The Real Estate Council of Alberta's Openness and Transparency Survey is open until May 29, 2017, and we want to hear from as many industry professionals as possible.

As a regulator, RECA isn't immune to criticism on how open and transparent it is. As part of its current business plan, RECA committed to developing an openness and transparency policy.

In light of that business plan item, Council's Governance Committee undertook significant research, including surveys with other regulatory bodies, to explore their approaches to openness and transparency. From that research, the Governance Committee developed a [Consultation Paper](#) and survey on openness and transparency initiatives. The consultation paper, which provides important context for the survey questions, is available [here](#).

Protecting the public interest is at the core of RECA's mandate, and we ask that you consider the proposals in the consultation paper within that context.

Please take the time to review the [consultation paper](#) and respond to the survey. There is a link to the survey within the consultation paper.

## Joseph Fernandez, Registrar



With a diverse scope of responsibilities, each work day can look different for RECA's registrar

Joseph Fernandez is the Registrar at the Real Estate Council of Alberta (RECA). Joseph Fernandez is no stranger to regulating the real estate industry, "I have been with RECA since day one," says Joseph, who has worked at the Real Estate Council of Alberta since its inception on July 1, 1996.

Prior to joining RECA, Joseph worked as an investigator for the Alberta government conducting investigations under various statutes including the former Mortgage Brokers Regulation Act and Real Estate Agents Licensing Act, the precursors to the current Real Estate Act. Over time he worked as a manager, and when he left government to join RECA,

he was the Acting Director of Licensing in Trades and Businesses. "This was in essence a registrar role" Joseph says of the position. "I dealt with licensing policies and issues."

When RECA was established in 1996, Joseph became responsible for RECA's Audit and Investigations program, a role he held for 15 years. He has worked in his current role as RECA's Registrar since December 1, 2011.

His current work as RECA's Registrar brings his career full circle. "As Registrar, I have three main areas of responsibility," says Joseph, who oversees the education programs, the licensing process, and Consumer and Information Services.

The first area of Joseph's responsibility is RECA Education, which includes pre-licensing and re-licensing education, as well as continuous learning. According to Joseph, "we strive to provide innovative, leading-edge education that creates competent professionals who are highly valued and respected by the public."

Joseph says that developing and administering education programs has been a journey for RECA. He says that, "We do many surveys with new and existing professionals, and their brokers to evaluate the education we offer, and help us continue to improve and progress."

Joseph adds that, “We are introducing more content and application exercises that will enhance learners’ preparation for future learning in their areas of practice. These enhancements will focus on learners’ capacity to effectively problem solve by enhancing their understanding of the key concepts of their profession. It changes the focus of education from specific situations such as filling out the blanks in certain forms to empowering them to be able to properly navigate new circumstances they may encounter as part of their practice.”

The licensing process is the second area of Joseph’s responsibility, and he says this involves three key aspects. “We try to facilitate a licensing process that is effective, efficient, and intuitive,” Joseph says. “I think the new myRECA system is a great example of this. The new platform has made licensing easier for everybody involved.”

Another aspect of the licensing process is screening for compliance with the entry requirements. “We screen applicants for eligibility, including requirements

such as being able to work in Canada, being proficient in English, and ensuring they meet education requirements,” Joseph says.

“A further aspect of the licensing progress is ensuring that anyone entering the industry is of good character,” he adds. “We must ensure that licensing them is in the public’s best interest and that granting them a licence won’t undermine the integrity of the profession.”

The third aspect of Joseph’s responsibility as RECA’s Registrar involves overseeing Consumer and Industry Services. “We are motivated by service excellence as we try to provide timely, comprehensive, and accurate information in a polite and professional way,” Joseph says. “In our discussions with consumers and professionals we try to anticipate issues so the information we provide is rich and thorough.”

With Joseph having such a diverse scope of responsibilities at RECA, it’s no surprise that each workday for him can be different.

“One day I might be reviewing a course, the next I could be assisting Consumer and Industry Staff with an unusual information request,” he says. One thing that remains consistent is the important role the Office of the Registrar plays in elevating the professionalism of Alberta’s industry.

Joseph says that, “we are hoping to raise the professionalism and standing of the industry in the eyes of the public.” He plans to accomplish this “by enhancing pre-licensing and re-licensing education, providing ongoing information and support, and by ensuring that applicants meet the standards of high functioning, highly-ethical professionals.

Joseph adds that he loves his work as the Registrar and enjoys being part of the cohesive and competent team that makes up the Office of the Registrar. He also enjoys the interactions he has with both current and prospective industry professionals. “It’s a pleasure to interact with people in the various professions that RECA regulates, and it is a pleasure to work with those individuals.”

# News Bytes

## **Update – RECA Case Summaries now include practice tips**

In our latest communications survey, industry professionals told us they want more practice tips and educational components in our communications. Thanks to that feedback, RECA now includes educational tips in our monthly Case Summary publication.

The Case Summaries themselves still offer information about each decision, and the tips provide insight as to what the industry member should have done. The expanded information about decisions provides Alberta's industry professional with additional tools and information to apply to their own practice.

Did you also know you can review complete disciplinary decisions by clicking on the links in the Case Summaries publication? If you click on the underlined blue heading at the start of each summary, it takes you to the complete decision, which is posted on [reca.ca](http://reca.ca).

Thank you to the industry professionals who shared their feedback, helping us enhance our communications to better serve the needs of Alberta's industry professionals.

## **New Home Buyer's Guide and Microsite Promotes Smoother Working Relationships**

All Alberta mortgage brokers who are licensed to sell credit related insurance are required to renew their insurance agents' certificates of authority with the Alberta Insurance Council. The renewal period begins on May 1, 2017 and must be completed no later than June 30, 2017.

The Alberta Insurance Council website has a list of frequently asked questions about licence renewal available [here](#), and if you require additional information on licensing please contact the Alberta Insurance Council at [licensing@abcouncil.ab.ca](mailto:licensing@abcouncil.ab.ca). For general information, visit the Alberta Insurance Council's website [here](#).

## **Remember: Authorized industry professionals may use RECA's logo in their advertising.**

RECA's logo is a seal of sorts; it affirms you're licensed; that you're part of a regulated profession consumers can trust.

This logo stands for something. Make the fact that you're licensed as part a regulated profession stand out to consumers.

Learn more about using RECA's logo and download an approved version [here](#).

## 2016-2017 Council Members

---

### KRISTA BOLTON, PAST-CHAIR

Appointed from the public

### BONNY CLARKE

Appointed from non-AREA industry members

### BOBBI DAWSON

Appointed from the boards outside of Calgary and Edmonton

### RAMEY DEMIAN

Appointed from the industrial, commercial and investment real estate sector

### TONY DHALIWAL

Appointed from the public

### BILL KIRK

Appointed from the Calgary Real Estate Board

### BRIAN KLINGSPON, CHAIR-ELECT

Appointed from the REALTORS® Association of Edmonton

### PHIL MCDOWELL

Appointed from the mortgage brokerage sector

### STAN MILLS

Appointed from the boards outside of Calgary and Edmonton

### ROBYN MOSER

Appointed from residential real estate industry members

### ROBERT TELFORD

Appointed from the real estate appraisal sector

### CHRISTINE ZWOZDESKY, CHAIR

Appointed from the property management sector

## RECA Management

---

### BOB MYRONIUK

Executive Director

### KIRK BACON

Deputy Executive Director

### DALE CAWSEY

Director of Corporate Services

### JOSEPH FERNANDEZ

Registrar

### JEAN FLANAGAN

General Counsel

### CHARLES STEVENSON

Director of Professional Standards

## CONTACT RECA

The Regulator is published by the Real Estate Council of Alberta.

Please forward any questions regarding the content of the Regulator, or any questions regarding licensing or mandatory education, to [info@reca.ca](mailto:info@reca.ca)



Suite 350, 4954 Richard Road SW,  
Calgary, AB T3E 6L1  
Phone (403) 228-2954 - Toll-free 1-888-  
425-2754  
Fax (403) 228-3065  
[www.reca.ca](http://www.reca.ca)