

The Regulator

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Message from Council

Brian Klingspon,
Chair



I'd like to use my message in this edition of the Regulator to do something a bit different, and talk to you as one industry professional talking to another. Usually, I would outline the important initiatives happening at RECA. You can still see those in Council Highlights in this Regulator, and you can see the [Council Meeting Agenda and Minutes](#) (once they're approved) posted on the RECA website. Today, though, I'd like to talk about self-regulation. Not just what it is and how it works, but why it is a privilege to be a part of a self-regulated industry.

We must take this privilege seriously in Alberta if we want to keep it.

Self-Regulation

RECA isn't a government department; we administer and enforce provincial legislation, but are independent and separate from government. We, the professionals, regulate ourselves.

What does this mean? It means your industry peers on Council guide the regulation of the industry, not the government. I'm a real estate associate broker, coming up on 30 years in the industry. My fellow Council members are real estate associates, mortgage brokers, real estate appraisers, property managers, and two outstanding members of the public. We know the industry, and we work as a team to do what is in the best interests of consumer protection and enhancement of the industry. It's a privilege to have industry members sitting around that table, providing that direction and guidance.

But we also recognize Council is just 12 people sitting around a table. We do more than that, of course, but we aren't the industry. We represent the industry, but when I say self-regulation, I do not mean that RECA, governed by industry professionals, regulates other industry professionals. I mean everyday industry professionals must regulate each other.



Self-regulation is a philosophy that licensed professionals need to take on themselves.

Self-Regulation in Action

I'm going to give you a scenario: You, a licensed industry professional, spot an advertisement for your competition in your social media feed. You also notice the advertisement does not follow the RECA Advertising Guidelines, as the brokerage name is not clearly indicated.

What do you do?

Many professionals forward the ad to RECA, and that's fine. RECA is obligated to look into it to determine if a breach has occurred. Perhaps the brokerage name is not clearly indicated and RECA sanctions the industry professional. Now they are out \$1,500 and the decision remains permanently on the RECA website for potential clients to find, potentially costing them thousands of dollars in lost business. All that, and they might not have known they were doing something wrong, or perhaps it was a simple oversight and they meant to have their brokerage name more prominent in the ad.

That scenario doesn't sound very professional, does it? That is not an industry regulating itself. That's someone passing the situation on for RECA to regulate. We do not condone running ads that go against the advertising guidelines, of course, but what we do condone is professional courtesy.

Self-regulation means that when that industry professional came across the advertisement, their first call should be to the other industry professional. A respectful, professional reminder that their brokerage is not clearly indicated might be enough for that industry professional to change it. Then it's done. We regulated ourselves, RECA issued no fines, and no industry professionals had a sanction on their record.

Even if the other industry professional does not agree that their brokerage is not clearly indicated, your next call can be to their broker. Or you can have your broker call their broker. The brokers are responsible for the activities of their associates. I can guarantee you they will take it seriously.

We all have a role to play if we are going to continue having the privilege of self-regulation. We are professionals. We take our professionalism seriously. I know I do. Are you with me?

Council Highlights April 12 Meeting

1. Council added new action items to its 2016-2020 Strategic Business Plan, largely stemming from the Governance Committee's work.
2. Council approved a motion to have an online annual meeting in early 2019, following approval of the Annual Report. The meeting will be an opportunity for stakeholders to receive an update on Council activities from the prior fiscal year, and to ask questions through a webinar-style presentation.
3. Council discussed correspondence from the Alberta Real Estate Association (AREA) and directed the Chair to respond to AREA. Council also directed RECA administration to meet with AREA administration to discuss and clarify AREA's correspondence.
4. Council approved a forward calendar that sets out a schedule of regular agenda items for Council meetings. For example, Council will approve the Annual Report and Financial Statements at its January meeting, review strategic plan additions at its April meeting, and approve the annual budget at its July meeting.
5. Council approved a motion to extend the Term of the Legislation Review Committee.
6. Council defeated a motion to approve a revised Council Electronic Communications Policy that would facilitate a move to the Boardvantage communication platform, and directed it back to the Governance Committee for further review and amendment.

RECA's Continuous Improvement: RECA Communications

The Real Estate Council of Alberta believes in continuous improvement. But, in order to improve and demonstrate improvement, we need to know where we are now.

As part of its 2016-2020 Strategic Plan, RECA hired Downey Norris & Associates Inc. (DNA) to conduct an extensive audit of RECA communications, both internal and external. DNA provided their final report to RECA in January 2018, and in the spirit of openness and transparency, we're sharing the highlights from that report with you now.

Audit Goals

The goals of this audit were to:

- evaluate and assess the effectiveness of RECA's internal and external communication programs and practices in supporting the organization to achieve the objectives outlined in the 2016-2020 Strategic Plan
- provide recommendations for improvement of RECA's internal and external communications to position its efforts to serve organizational and stakeholder needs through the current strategic plan
- provide recommendations and a plan for development of employee skills and resource requirements to ensure the communications function serves evolving organizational and stakeholder needs and expectations

Method

The communications audit included extensive research, interviews, and surveys with RECA staff, Council, consumers, the Government of Alberta, and industry professionals, including:

- 22 in-person interviews
- 2 industry member focus groups



- RECA staff survey
- analysis of RECA communications vehicles, tools, media relations, and communications unit structure and resources
- analysis of third-party research reports, which included consumer focus groups and surveys, and industry professional surveys
- analysis of industry professional survey on RECA communications (December 2016)
- analysis of other Canadian regulators' communications

Hundreds of industry professionals provided their feedback as part of this initiative – whether through survey work or focus groups - and we would like to thank you for your participation. Your feedback and input will help us continually improve.

Key findings

Overall, DNA's report indicated RECA maintains a wide range of high quality communications tools and processes to support communications with RECA industry professionals, consumers, and employees. The DNA report also identified some areas for improvement.

- Lack of awareness of RECA among consumers is impeding consumer access to RECA information and resources to help protect themselves in a real estate transaction
- RECA receives positive recognition from stakeholders for its efforts to improve collaboration. However, a very small segment of stakeholders continue to identify an underlying lack of trust and respect for RECA that could hamper RECA's ability to communicate and engage effectively with them.
- Not all industry members see RECA reflecting the "can do" attributes described in the brand guidelines
- The RECA website is the core communications vehicle. It acts as a central hub and repository for all external communications and as a resource for employees. The site contains a wealth of helpful information; however, it is currently not mobile-friendly, and it can be difficult to navigate and search.
- Email is the most preferred and effective method of communicating with industry professionals, especially emails highlighting the most important and pertinent information in a few short sentences at the top
- Industry professionals rely on RECA to sort and highlight what information is most important and to make it clear and easy to access.

- Industry members understand and accept RECA's core mandate—to regulate the industry in the best interests of the public. Seventy-nine per cent of industry professionals surveyed say they are thoroughly or very aware of RECA's roles and responsibilities, and 70% agree that RECA keeps them informed of key Act changes and rules. However, industry professionals indicated they are much less clear about how RECA's role differs from trade associations.

Now what?

Continuous performance improvement is exactly that – continuous. RECA will continue on its journey of enhancing its communications both internally and externally. The recommendations and findings of the communications audit will guide us and inform our initiatives in the coming months and years.

- Consumers and consumer protection are at the heart of RECA's 2016-2020 Strategic Plan. To that end, RECA continues to increase its consumer awareness initiatives, including digital advertising, participation in consumer trade shows, participation in consumer events such as Fraud Prevention Month and Financial Literacy Month.
- RECA is developing a new mobile-friendly website, which will launch this summer
- Openness and transparency are key components of RECA's current strategic initiatives. In the past year, RECA introduced a number of new policies to increase its openness, and will continue along this journey in the future.
- RECA will continue to enhance its plain language and customer service skills. This includes providing additional plain language training to all staff.

Engaging with Consumers and Industry Professionals

In Fall 2017, RECA hired Weaver Marketing Research to gather in-depth feedback from Alberta consumers and industry professionals through focus groups and surveys. This is the third time RECA has conducted this series of surveys and focus groups, and we're beginning to see trends and changes over time. We can now compare the results of the latest research with those of past years to gauge the effectiveness of RECA initiatives, and to mark changes in industry attitudes towards RECA, trends in consumer awareness of RECA, and consumer attitudes towards the industry itself.

Overall, the results from this year's research show an upward trend in ratings for most aspects of RECA's performance as a regulator, but they also identified areas where RECA can improve further.



Consumers

RECA's consumer surveys and focus groups help us understand consumer experiences within Alberta's real estate industry and with its licensed professionals. Consumer awareness of RECA promotes a better appreciation for the professionalism and skills licensed industry professionals offer, and this awareness provides consumers with the knowledge that RECA is available to offer neutral, independent information, and guidance if they have questions or concerns.

Within this year's consumer research, there is a lot of good news, both for RECA and for licensed industry professionals.

- Consumer awareness of RECA continues to grow, albeit slowly. Since the 2014 survey, awareness has grown from 21% to 27%. Consumers know an organization regulates the industry, but there remains some uncertainty about what that organization is.
- The majority of consumers surveyed in 2017 (81%) say they would use a real estate professional for their next transaction, and 42% say they would use a mortgage broker (compared to 48% who would use a bank) – this is a modest gain in favour of mortgage brokers relative to 2014.
- Consumers say that the majority of their transactions go smoothly. When consumers do express dissatisfaction, it's mostly related to the state of the market or high commissions, rather than the services their professional provided to them.
- Consumers use multiple sources of information about their property purchase/sale through the course of their transactions.

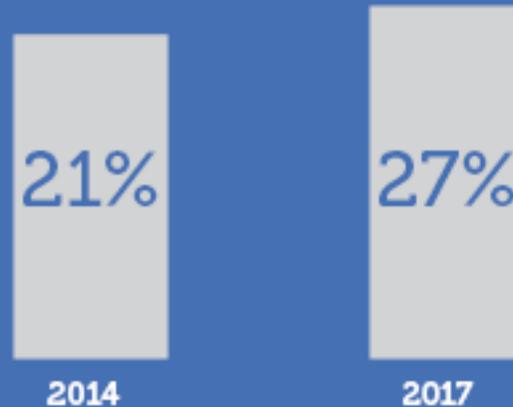
- Consumers rely on their real estate professionals and mortgage brokers as experts to provide advice and guide them.
- Many consumers eventually remembered seeing and signing a Consumer Relationships Guide, but they felt the document's style of language and presentation impeded their comprehension.
- Consumers more clearly recall and more positively receive the Service Agreement though some consumers were not clear on exactly when they signed.
- Consumers believe advertising is one way for RECA to get its message out.
- Consumers believes industry professionals promoting their RECA affiliation would provide a "badge of legitimacy, to instill consumer confidence."

Industry Professionals

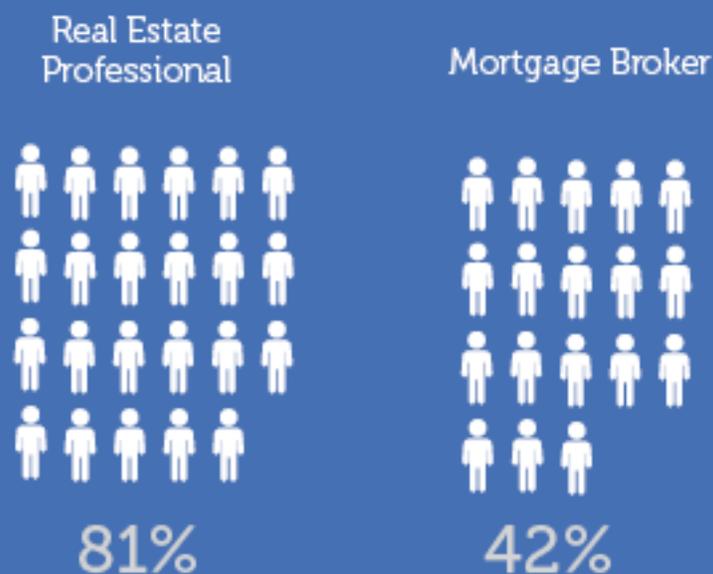
As with the consumer research, there was also good news in the results of the industry professional survey research.

- A vast majority of industry respondents (79%) reported they are thoroughly aware of RECA and its role.
- RECA has strengthened its position as the most important source of information about obligations under the *Real Estate Act* and Rules
- Opinions on RECA's effectiveness in enforcing conduct requirements have progressed gradually upwards, and through the results we see greater agreement with the effectiveness of industry self-regulation.
- Industry professionals still see RECA excelling at setting and enforcing standards of conduct for the industry and at protecting consumers, but RECA performance remains weaker in providing services for enhancing/improving the industry.

Consumer Awareness of RECA



Consumers Who Would Use an Industry Professional



Industry Awareness of RECA and Its Role

79%

Of industry respondents reported they are "thoroughly aware" of RECA and its role.



- Survey results showed significant improvement for every tested aspect of RECA administering the Act & Rules, with particular gains for efficient licensing, promotion of ethics and standards, and even its lowest scoring factor, consumer education & awareness, improved.
- As in past years, the strongest ratings come from mortgage brokers, new industry professionals (less than two years), those who have taken RECA Education, and professionals who recently contacted RECA staff/practice advisors. Again, as in past years, the lowest ratings came from appraisers, those with less contact with RECA, and those who were the subject of a complaint or review.
- Industry professionals indicated high levels of satisfaction with RECA's efficient licensing process through the myRECA system
- Almost unchanged since 2014, feelings about the appropriateness of RECA's disciplinary penalties are polarized.
- The survey also asked industry professionals what they think is the most important regulatory issue that will affect them in the next three years. The most popular answer was the Residential Measurement Standard, with transaction brokerage and "double-ending" deals coming in second.
- 2017 results produce the highest level of agreement yet with the effectiveness of industry self-regulation, with 58% now saying 'very' or 'completely' effective.

In the end, this research shows slow, but steady improvements in how consumers and industry understand, access, and perceive RECA. It's good news for RECA – and for the strength and reputation of the industry as a whole.

Life Outside of Your Licensed Activities: Employment Conflicts of Interest



Industry professionals know they must avoid, disclose, and otherwise mitigate conflicts of interest in their work. It's a cornerstone of a professional industry that represents the interests of others. The vast majority of industry professionals put the interests of the consumer first, but regardless, professionals must disclose to clients when there is the potential for conflicts, or even the perception of a potential conflict.

You are all aware of your responsibility to disclose conflicts during your work as a licensed professional. But we understand that industry professionals are typically high-energy, entrepreneurial people, and your licensed work as a real estate, mortgage, property management, or appraisal professional might not be your only ongoing venture.

RECA does not have rules about the other types of employment its industry professionals can take on, but a conflict is a conflict, so industry professionals need to be able to recognize if and when their other business or employment creates a conflict of interest. Consumers expect transparency, and so does RECA.

Potential Conflicts

During every transaction, ask yourself: "does my other business/employment influence this transaction?" If the answer is 'yes,' then you have a possible conflict, and must disclose to your client.

Examples

- A mortgage professional might also work for an insurance business. If they make more commission by selling a larger insurance policy to go along with a larger mortgage, there is a conflict, as encouraging borrowers to get a larger mortgage than they might otherwise have selected directly benefits this professional.
- A mortgage brokerage professional also manages a Mortgage investment Corporation (MIC). If they encourage an investor to refinance their house in order to buy shares in the MIC, that is a conflict of interest.
- A real estate professional is also a home inspector. Conflicts of interest can arise if in order to ensure a deal closes and they get their real estate commission, they provide a positive home inspection report on a property that didn't necessarily deserve one.
- A real estate appraiser is also a licensed real estate professional. It's an obvious conflict, but they could give marginally better value in their appraisal report in order to satisfy a lender and close a deal.

Best Practice

If you believe there is a conflict, disclose the conflict to your client, in writing. The disclosure should include all details about the conflict, why you feel there is a conflict, how the conflict could affect the client, and should advise the client to get independent advice about the conflict.

If a client agrees to continue working with you, they will have given their informed consent to proceed despite the potential conflict.



Obeying Your Client's Lawful Instructions



Industry professionals must obey all of their client's lawful instructions. This aligns with an industry professional's fiduciary responsibility to their clients. Obedience to your client is so important that clients can instruct their industry professional to forego other fiduciary responsibilities owed to them.

At any point during your contract, your client can instruct you to do something (or not do something) on their behalf. This could be as harmless and straightforward as adjusting an offer amount in a counter offer, or as big as waiving one of your fiduciary responsibilities. It is your obligation to obey any instruction given by your client, as long as they are lawful and do not go against the *Real Estate Act* or Rules.

Sounds simple, but there are situations where you might believe that obeying the instruction is not in your client's best interest. You can certainly tell them what you think, and you can suggest they proceed in a different way, but ultimately, they're the client and you need to follow their instructions as long as they're lawful.

Examples of lawful client instructions that might not be in their best interest:

- A client specifically states they do not want to see any offers below a certain amount. Typically, you'd be obligated to share all information related to the sale with your client. But if they told you not to bother them with offers that are below a certain amount, you must obey.
- There is a conflict of interest because you know the buyer, and are representing the seller. You do not have a significant relationship with the buyer, but there is still the potential for a conflict. After disclosing the conflict and all details related to it, your client still wishes to move forward without seeking outside, independent advice, and the conflict isn't so severe that transaction brokerage becomes inappropriate. You can proceed.
- Your client is in a hurry to sell their home because they are being relocated. Normally, you'd need to keep this information confidential. However, the seller instructs you to let potential buyers know that they are motivated. Even though this could potentially result in lower offers, you must obey their instruction.

When you're given lawful instructions that you don't agree with, a best practice is to ask your client to put their request in writing and keep it in the brokerage file.

Also, remember that if your client instructs you not to show them certain offers, for example, it doesn't mean those offers didn't exist. Keep them in the brokerage file.

What are unlawful instructions?

A client can never ask you to break the law, mislead, lie, or misrepresent. Industry professionals are required to adhere to the *Real Estate Act* and Rules. If you are unsure

of a request from a client, check the Rules and the Act – or talk to your broker – before moving forward. If the client insists you do something unlawful, you must refuse, and should consider terminating the relationship and any existing service agreement. And, depending on the seriousness of their request, you may want to inform local authorities.

Examples of unlawful client instructions:

- Your client instructs you to not disclose a material latent defect, such as a leaky foundation. You have a responsibility as a licensed professional to disclose all material latent defects. Not doing so breaches the *Real Estate Act* Rules
- Your client instructs you use non-RMS size of a property in your listing. You must use the RMS size if you are representing the size in your listing advertisement, to do otherwise is misleading and a breach of the *Real Estate Act* Rules.
- Your client instructs you to tell potential buyers there are multiple offers, when there are not. You have a responsibility to be honest. You cannot lie or misrepresent.
- Your client instructs you to include physical aspects of a home in your listing that have not been built yet. As with the examples above, you cannot mislead or lie.

Remember, you work for the client. You are free to advise your client against certain actions, and you can provide your reasons for doing so, but if they wish to continue and instruct you to take a certain action, you must obey. It is your responsibility as an industry professional to understand the difference between lawful and unlawful instructions. If an instruction is unlawful, explain the reasons it is unlawful, and indicate you cannot obey that instruction.

Measured Responses: RMS FAQs



Measured Responses is a new feature in the Regulator where we publish frequently asked questions about the Residential Measurement Standard.

In this edition, we focus on documentation for the RMS, including that some local Boards require their members to upload documentation to the listing database in support of their RMS measurements.

Generally, RECA does not concern itself with the documents you upload to your local listing database. What matters to RECA is that professionals follow the RMS Principles and include proper documentation in their transaction/ brokerage file.

[When uploading documents to our local listing database to support our RMS measurements, is it enough to upload the room sizes and stated RMS size without a drawing?](#)

What you upload to your local listing database to support your listing size is outside of RECA's concern, but we expect supporting information or documentation to be in your brokerage file.

RECA does not require scaled diagrams or sketches that show room dimensions, but it would be very unusual for a real estate professional to not have a diagram or sketch in the brokerage file showing measurements and/or calculations. Ultimately, residential real estate professionals need to be able to demonstrate how they calculated the RMS size, and diagrams, sketches, and calculations help them do this – and help their broker ensure correct procedures.

Is uploading a measurement package done by a third party measuring company that has a disclaimer “Work is not insured” acceptable?

A measurement package shouldn't contain such a disclaimer because third-party measuring companies need to have E&O insurance. If there is such a disclaimer, you need to ask why – and you need to recognize it will likely not absolve you of any liability.

If you hire a third-party measurement company, you must ensure the company can measure the property competently according to the RMS. Look into their reputation and ensure they carry E&O insurance.

Additionally, brokers should have policies surrounding its industry professionals' use of property measurement companies. The broker can:

- establish the steps the real estate professionals must take to determine whether a property measurement company is competent to measure in accordance with the RMS
- direct associates to only use property measurement companies the broker has determined competent

Is it satisfactory to upload a measurement package from a third party measuring company that has a disclaimer that “the work is not warranted to be accurate and if important a third party should be consulted?”

Whether you hire a measurement company or not – you (and through you, your brokerage) are taking responsibility for the size representations you make. A disclaimer like that will not help you avoid liability if the size is incorrect. In the event of a complaint about the measurement, that disclaimer will not help you avoid liability nor will it serve as a defence. RECA isn't involved in whether such a disclaimer is acceptable when you

upload that package to your local listing database. That being said, if you're hiring this company to provide accurate, competent measurements, you should question them about their use of such a disclaimer – and possibly consider hiring someone else.

More RMS documentation questions

If a real estate professional measures a property and they have a sketch but no math showing how they determined size, is this acceptable to RECA?

Ultimately, residential real estate professionals need to be able to demonstrate how they calculated the RMS size. If your sketch does not demonstrate this, and you have no other way of demonstrating it, it may not be enough.

Here are just some of the ways real estate professionals can demonstrate due diligence when measuring property themselves:

- sketch the exterior perimeter of the property
- sketch separate floor plans for each above grade level
- identify the areas to measure (inclusions and exclusions) according to the RMS principles
- record measurements, sketches, and any other relevant notes related to the property
- double check your calculations for mathematical or transposition errors
- keep these items in the client's file

If a real estate professional includes a Real Property Report (RPR) in a brokerage file and says they determined the RMS size using the RPR, is this satisfactory?

No. A real estate professional cannot use the RPR to determine the RMS.

News Bytes

Thank you Kirk!

It's with bittersweet feelings that RECA announces the upcoming retirement of Kirk Bacon, who through his 13 years at RECA, has held the positions of Deputy Executive Director, Director of Strategic Initiatives and External Relations, Director of Education, and Director of Industry Standards. During his time with RECA, Kirk was instrumental in the creation and expansion of RECA's award-winning Education Programs, Alberta's move to designated agency and transaction brokerage, the overhaul of the *Real Estate Act* Rules, and too many other initiatives to name.

Prior to joining RECA in 2005, Kirk was the executive director of the Saskatchewan Real Estate Commission, and prior to that, he was the Chief Executive Officer of the Association of Saskatchewan REALTORS®. He was also a real estate broker in Saskatchewan for more than a decade.

His accomplishments in the real estate industry go far beyond his time and positions with RECA, and include taking a leading role in the Agency Task Force that outlined agency law among real estate regulators in Canada, and the creation and leadership of the Mortgage Broker Regulators' Council of Canada (MBRCC), where he served as its first Chair. While Kirk's retirement will change the face of RECA, the foundation he helped create and secure will endure.

Congratulations Kirk!

RECA welcomes new members to the RECA advisory committees

Mortgage Brokers Advisory Committee

Gord Appel, Broker of TMG The Mortgage Group, Calgary

Melodie Neis, Broker of Regional Mortgage Group – Mortgage Alliance, Red Deer

Residential Real Estate Advisory Committee

Matthew Wiebe, Associate Broker at Real Estate Professionals, Calgary

Brad Woodward, Associate at Homes & Gardens Real Estate Limited, Edmonton

Humaira Palibroda, Associate at Re/Max Real Estate (Central), Calgary

Jessica Stoner, Associate Broker at Re/Max Alpine Realty, Canmore

Property Management Advisory Committee

Robyn Brown, Associate Broker at Ayre & Oxford Inc., Edmonton

Keri Cormier, Associate at Quadreal Property Group, Calgary

Carole Lajoie, Edmonton

Condo Deposit Rule Change

Remember, on April 1, 2018, the rules for buyer deposits for not-yet-built condominiums changed. Lawyers must now hold buyers' deposits in trust. Developers and real estate brokerages can no longer hold these deposits. For more information go to www.servicealberta.ca.

RECA Advisory Committee Opportunities

There are vacancies on the Property Management Advisory Committee and Condominium Managers Implementation Advisory Committee. These advisory committees act as a direct line of discussion and communication from stakeholders to Council. These are volunteer positions, though members receive an honorarium for meeting attendance, and RECA covers related expenses.

If you think you might be interested, or know someone who is, read more [here](#). The application deadline is May 15, 2018.



2017-2018 Council Members

KRISTA BOLTON

Appointed from the public

BONNY CLARKE, CHAIR-ELECT

Appointed from non-AREA industry members

BOBBI DAWSON

Appointed from the boards outside of Calgary and Edmonton

AMINA DEIAB

Appointed from the public

RAMEY DEMIAN

Appointed from the industrial, commercial and investment real estate sector

BILL KIRK

Appointed from the Calgary Real Estate Board

BRIAN KLINGSPON, CHAIR

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, PAST-CHAIR

Appointed from the property management sector

RECA Management

BOB MYRONIUK

Executive Director

KIRK BACON

Director of Strategic Initiatives & External Relations

DALE CAWSEY

Director of Corporate Services

JOSEPH FERNANDEZ

Director of Education Programs

JEAN FLANAGAN

General Counsel

CHARLES STEVENSON

Registrar

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