



CONSULTATION REPORT

REAL ESTATE ACT AMENDMENTS

INTRODUCTION

The *Real Estate Act* came into effect July 1, 1996 to:

- set and enforce standards of conduct for the industry and the business of industry members
- promote the integrity of the industry
- protect consumers and
- provide services that enhance and improve the industry and the business of industry members

In 2006, the *Real Estate Act* was amended to include an additional purpose of detection and suppression of mortgage fraud.

The Real Estate Council of Alberta (RECA) is responsible for administering the *Real Estate Act*. RECA licenses (authorizes) real estate, mortgage and real estate appraisal professionals to ensure they meet the entrance and regulatory requirements set out in legislation.

The Alberta Government last opened the *Real Estate Act* for amendments in 2005/2006, with the *Real Estate Amendment Act* being proclaimed in July, 2008. In late 2011, RECA approached the Alberta Government and asked that the *Real Estate Act* be put on the legislative agenda to deal with matters that were not addressed in the last amendment process. In mid-September 2012, Service Alberta notified RECA that the *Real Estate Amendment Act* is scheduled to go to the Alberta Legislature as a Bill during the spring 2014 sitting of the Legislature. Service Alberta requested that by May, 2013, RECA complete a full review and report on its consultations with stakeholders about amendments to the *Real Estate Act*.

RECA's Legislation Review Task Force and RECA considered the feedback from industry associations, individual industry professionals, other stakeholders and members of the public. In addition to stakeholder feedback, issues were identified by RECA for discussion based on its experience administering the *Real Estate Act*.

Effective regulation of real estate, mortgage, and real estate appraisal industry professionals requires good legislation. Any recommended approaches to issues included in this consultation report are intended to:

- increase industry professionalism and accountability
- increase consumer protection
- provide clarity to all stakeholders
- promote effective enforcement, and
- encourage voluntary compliance with the legislation.

This report summarizes the consultation process and the feedback received from stakeholders with respect to the proposed *Real Estate Act* amendment consultation papers.

LEGISLATION REVIEW TASK FORCE

RECA established a Legislation Review Task Force composed of six (6) council members in the fall of 2012. This task force's mandate included reviewing the *Real Estate Act* and preparing a report summarizing recommended changes to the *Real Estate Act* which will form the basis of RECA's request to the Government of Alberta, through Service Alberta, at such time as the *Real Estate Act* is scheduled for amendment.

Members of the Legislation Review Task Force (2012-2013) are:

Kevin Clark,
Chair of Committee

Gary Siegle,
Council member

Chad Griffiths
Council member

Bill Buterman**
Council member

Jean Flanagan*
General Counsel

Gordon Graydon,
Council member

Cindy Dubray
Council member

Robert Telford
Council member

Bob Myroniuk*
Executive Director

Kirk Bacon*
Deputy Executive Director

**denotes ex officio

*denotes resource

CONSULTATION PROCESS

The key consultation mechanisms were two (2) Consultation Papers outlining the *Real Estate Act* proposed amendments. These were published by RECA on December 20, 2012 and March 15, 2013 respectively. The public, industry members, industry associations and others were invited to provide comments with respect to the first Consultation Paper by February 28, 2013 and with respect to the second Consultation Paper by March 25, 2013.

The first Consultation Paper was made available to stakeholders on December 20, 2012 by way of a link to an online survey under the "Featured Resources" section on RECA's website. An email address was provided, as well, for those stakeholders who wished to email RECA with comments. The link to the survey and the consultation email address were also listed on the scrolling "News and Events" section of the website. On December 20, 2012, a RECA News email regarding the consultation process was sent to RECA's entire mailing list, which includes all authorized industry professionals plus other stakeholders, such as industry associations and boards. The link to the online survey was tweeted from RECA's Twitter account on December 20, 2012 and again on January 14, 2013.

Reminders about the *Real Estate Act* consultation and links to the online survey were sent to all industry members via RECA News email on January 15 and February 21, 2013. The February, 2013 Regulator newsletter, which was distributed to all industry professionals and other stakeholders on February 1, 2013, included information about the consultation, a link to the online survey and the consultation email address.

There were approximately 299 responders to the online survey with an average response per question of 70. A report with respect to the online survey outcomes and the specific responses to the online survey (61 pages) are attached as Tab D in the Responses to the Consultation Paper (Schedule A) to this report.

The first Consultation Paper was also mailed directly to 68 industry associations, regulators, and other key stakeholders on December 20, 2012, requesting feedback on the proposed amendments. Of those to whom the Consultation Paper was sent, twenty-one (21) written responses were received from organizations representing large industry sectors and other stakeholders. Thirteen (13) individual responses were received. The mailing list of the organizations to which the Consultation Paper was sent, Master Consultation List, is attached as Tab G in the Responses to the Consultation Paper (Schedule A) to this report.

The second Consultation Paper was made available on March 15, 2013 to stakeholders by way of a posting to the RECA website. Given the short timeline for response, responses were requested by email. An email address was provided. A RECA News email was sent to the entire RECA mailing list on March 15, 2013. The posting was tweeted from RECA's Twitter account on March 15, 18 and 25, 2013. Sixty-two (62) email responses were received. A report with respect to the second Consultation Paper responses is attached as Tab F in the Responses to the Consultation Paper (Schedule A) to this report.

RECA Advisory Committees were consulted on the proposed amendments. The RECA Mortgage Brokers Advisory Committee, Real Estate Residential Advisory Committee, and Commercial Real Estate Advisory Committee all provided feedback. The RECA Property Management Advisory Committee and Real Estate Appraiser Advisory Committee were unable to meet due to scheduling challenges and so did not provide feedback as committees but did so through associations.

In addition, RECA staff met with several organizations for in-person consultations including the Alberta Real Estate Association, the Alberta Mortgage Brokers Association, the Alberta Private Mortgage Lenders, the Alberta Securities Commission, the Canadian Bar Association-Real Estate North Section, and Service Alberta. RECA administration offered to meet with many more organizations.

RECOMMENDATIONS AND SUMMARY OF RESPONSES

Developed from the responses received from industry associations, individual industry members and the public and from Council's experience implementing the *Real Estate Act* over the past 17 years, this Consultation Report identifies several issues and recommendations. (Note: as a result of responses from stakeholders with respect to the first Consultation Paper, items for possible amendment 2.4, 9 and 11.3 were withdrawn and items 11.1 and 11.2 were withdrawn with recommendations for amendment being revised by RECA.) Key responses and points raised during the consultations with respect to the recommendations for *Real Estate Act* amendment are indicated below.

Issue 1: Interpretation

1.1 DEFINITION OF ASSOCIATION AND APPRAISAL ORGANIZATION

RECOMMENDATION: Amend the reference to the Alberta Association of Appraisal Institute of Canada to "the Appraisal Institute of Canada" in the definition of "association".

- The **Alberta Association of the Appraisal Institute of Canada (AIC AB)** supported the recommendation. No comments were provided.
- RECA's **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.

- The **online** survey and individual email responses showed that the majority of industry member respondents supported this amendment.

1.2 DEFINITION OF AUTHORIZATION

RECOMMENDATION: For purposes of Part 3 conduct proceedings, authorization will be defined in the Interpretations section of the Act to mean a licence.

- **Alberta Real Estate Association (AREA)** agreed with this recommendation based on the explanation of the intent to provide clarity as to the type of license.
- The **Alberta Mortgage Broker's Association (AMBA)** supported this recommendation.
- **AIC AB** supported the recommendation.
- **RECA's Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** were almost exclusively in favour of this proposed amendment.

1.3 DEFINITION OF OFFICIAL

RECOMMENDATION: Official is proposed to mean an individual who plays a role in management or establishes policies for the organization and includes but is not limited to directors, chief executive officers and chief financial officers.

- **AREA** agreed with this recommendation based on the explanation that the reference was to "high level official or controlling mind of an organization"
- **AMBA** supported this recommendation and noted that clarity is important to avoid the exemption being used inappropriately.
- **AIC AB** supported the recommendation.
- **RECA's Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- This proposed amendment was supported by **industry member responses**. There was unanimous support of the amendment from the **online survey**.

1.4 REGULATION OF PORTABLE DWELLINGS

RECOMMENDATION: Because it is unnecessary and causes confusion, the definition of portable dwelling will be removed but the regulation of real estate, including portable dwellings affixed to land, would continue.

- **AREA** agreed with the removal of this section from the *Real Estate Act*.
- **AIC AB** supported the recommendation.
- The **Modular Housing Association** disagreed with the recommendation to remove the definition of portable dwelling from the *Act*. It expressed concern with portable dwellings not affixed to land, but situated on sites intended to be used for residential purposes being removed from definition of real estate. It argued that this amendment would leave chattel housing, commonly described as 'property other than real estate', with no status as a legitimate and necessary source of housing for Canadians.
- **RECA's Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.

- The **online survey** and individual email responses showed that the majority of **industry member respondents** supported this amendment.

Issue 2: Application of the *Real Estate Act*

2.1 BANKS, TREASURY BRANCHES, CREDIT UNIONS, LOAN CORPORATIONS, TRUST CORPORATIONS OR INSURANCE CORPORATIONS

RECOMMENDATION: The *Real Estate Act* should apply to banks, treasury branches, credit unions, loan corporations, trust corporations or insurance companies when they are dealing in mortgages from other financial institutions.

- **AMBA** supported this amendment because the current situation permits financial institutions to compete unfairly with licensed mortgage brokers. It noted that the public is at risk as a result of the fact that unregulated mortgage brokerage activity occurs outside the *Real Estate Act*.
- The **Private Mortgage Lenders Forum** supported the recommendation and commented that it is in the public interest to have all institutions subject to the same regulation.
- The **Canadian Association of Accredited Mortgage Professionals (CAAMP)** was in support and commented that if current non-regulated entity is placing a mortgage product with a lender that is not their employer, then they are mortgage brokering and the person or entity should be licensed and regulated.
- The **Mortgage Brokers Advisory Committee** agreed with the recommendation.
- **Alberta Credit Unions** indicated that it would respond to Service Alberta directly regarding the proposed amendment to include regulated financial institutions under the *Real Estate Act*.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.
- The **Canadian Bankers Association** was opposed to the amendment because it stated that banks and banking activities are not subject to provincial legislation. It argued that under *s. 91(15) of the Constitution Act, 1867*, “Banks” and “Banking” fall under the exclusive federal jurisdiction. It stated that lending (including on the security of a mortgage) is recognized as a core banking activity that falls within the federal government’s exclusive jurisdiction and that networking and referral arrangements are part of the “business of banking”. It felt the exemption should be maintained so as to continue to recognize the federal government’s exclusive jurisdiction in this area.

2.2 AGENTS OF BANKS, TREASURY BRANCHES, CREDIT UNIONS, LOAN CORPORATIONS, TRUST CORPORATIONS OR INSURANCE CORPORATIONS

RECOMMENDATION: The application section of the *Real Estate Act* should remove the word agent to support consumer protection and a fair market place.

- **AMBA** supported this recommendation and commented that the action of brokering needs to be regulated on an equal basis for all institutions. The current situation permits financial institutions to compete unfairly with licensed mortgage brokers. The public is at risk as a result of the fact that unregulated mortgage brokerage activity occurs outside the *Real Estate Act*.
- The **Private Mortgage Lenders Forum** supported the recommendation
- The **Mortgage Brokers Advisory Committee** agreed with the recommendation

- **CAAMP** supported the amendment and commented that removal of the word “agent” will support consumer protection, end confusion and strengthen the position that “mobile mortgage representatives” must be licensed.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.
- The **Canadian Bankers Association** opposed the recommendation and commented that mortgage representatives are generally employees of banks and are not subject to the REA. As a result, there would be no particular merit to relying on the existing exemptions for persons who would be considered agents of banks

2.3 MORTGAGE INVESTMENT ENTITIES

RECOMMENDATION: Clarify that the *Real Estate Act* does not apply to those who deal in mortgage investment entities.

- **AMBA** supported this recommendation and commented that it would avoid duplication of costs, conflicts in regulatory regimes, and confusion amongst both consumers and industry members.
- The **Private Mortgage Lenders Forum** supported the recommendation because of the challenges in being dually regulated by two separate bodies.
- The **Mortgage Brokers Advisory Committee** agreed with the recommendation.
- **CAAMP** supported the amendment and noted that the subject of who would regulate these entities has been debated and discussed extensively in Alberta and the recommendation merely confirms the result of those discussions.
- The **Canadian Bankers Association** was in support of the recommendation and commented that this is consistent with the goal of having rules established to protect consumers in the retail context, rather than sophisticated parties who have access to and/or provide professional advice.
- The **Alberta Securities Commission** advised that it would not be providing any formal response to the Consultation Paper.
- The majority of **online survey** responses were in favor of the amendment. There were some comments from **industry members** who believed that Mortgage Investment Entities should be regulated under the *Securities Act* and the *Real Estate Act*.

(2.4 withdrawn)

2.5 LENDING A PERSON’S OWN MONEY

RECOMMENDATION: The *Real Estate Act* would clearly outline that it does not apply to people who lend their own money secured by a mortgage.

- **AMBA** supported this recommendation.
- The **Private Mortgage Lenders Forum** supported the amendment and recommended that language be crafted to ensure no unintended loophole is created.
- **CAAMP** supported the amendment and noted that if a person is a mortgage professional, then they will be licensed anyway.
- The **Canadian Bankers Association** was in support of the recommendation.
- The **Alberta Securities Commission** advised that it would not be providing any formal response to the Consultation Paper.

- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

Issue 3: Composition of Council

3.1 APPOINTMENT OF REAL ESTATE OF ALBERTA COUNCIL MEMBERS

RECOMMENDATION: Amend the appointment process to allow the entire council to appoint the non-AREA council members. Amend the reference to the Calgary and Edmonton boards from trade names to legal names as follows: the Calgary Real Estate Board will be amended to the “Calgary Real Estate Board Co-operative Limited” and the Edmonton Real Estate Board will be amended to the “Edmonton Real Estate Board Co-operative Listing Bureau Limited”.

- **AREA** agreed with an amendment to the current appointment process for non-AREA Council members that would allow the entire Council to appoint non-AREA council members. As part of a more comprehensive review of the *Act*, it recommended that Council consider restructuring the model of industry self-regulation so that each sector is focused on regulatory implications that affect its own with Council continuing to remain the umbrella organization overseeing the entirety.
- **Building Owners and Managers Association of Calgary and Edmonton (BOMA)** recommended that in the future RECA provide appointments on a sector by sector basis rather than by an industry association for some and a sector basis for others. They recommended that BOMA be given the ability to nominate a commercial representative to the Council. This would ensure that the non-residential commercial real estate practitioner has the same access to Council as the residential practitioner who is represented by AREA or one of its subsidiary boards.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

Issue 4: Rule Making Authority- Record Keeping and Books of Account

4.1 AUTHORITY FOR COUNCIL TO MAKE RULES WITH RESPECT TO RECORD KEEPING AND BOOKS OF ACCOUNT

RECOMMENDATION: Delete the time period because it is dealt with elsewhere and may be better dealt with under the Rules.

- **AREA** agreed with this recommendation given the explanation of the rationale.
- **AMBA** opposed this amendment and recommended that RECA retain the duration for record keeping in the *Act* because changes to the *Act* require a degree of consultation and review that is significantly more than a vote of Council.
- **AIC AB** supported this recommendation.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

Issue 5: Regulation of Business of an Industry Member

5.1 RECEIPT OF MONEY AND GUARANTEED SALES

RECOMMENDATION: Two (2) practice provisions, one relating to an industry member's receipt of money and the other to guaranteed sales agreements, currently in the Real Estate Act would be removed from the *Real Estate Act* and placed in the *Real Estate Act Rules*.

- **AREA** agreed with this amendment given the clarification as to Council's reasons for the proposed change.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

5.2 RECOVERY OF COMMISSIONS

RECOMMENDATION: Remove this section from the *Real Estate Act*.

- **AREA** agreed with this amendment.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

5.3 RECORDS AND BOOKS OF ACCOUNT

RECOMMENDATION: Records would be retained for ten (10) years and electronic record keeping would be promoted. The word "Alberta" would be deleted.

- **AREA** agreed with this recommendation following explanation as to why Council was proposing the change including a 10-year retention period for records, which is in accordance with REIX requirements.
- **AMBA** supported the recommendation to delete the word "Alberta" from this section but was opposed to amending the period for retention of documents to 10 years because it is not consistent with other current privacy regulations and there are no examples of investigations being undermined by the 3 year period. It recommended that the current 3 year period be kept.
- The **AIC AB** did not support this proposed amendment. It recommended that records be kept for no longer than 7 years, in keeping with current AIC Standards
- The **Real Estate Insurance Exchange (REIX)** agreed with this recommendation and noted that industry members are often unaware that the limitation period for civil suits is 10 years and RECA investigations can go back farther than 3 years.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.

- The **online survey and individual industry member response** was somewhat mixed. There was some opposition in the responses to this proposed amendment because of concern that a 10 year retention requirement was too long.

Issue 6: Strengthening Provisions Related to Conduct Proceedings

6.1 COMPOSITION OF HEARING PANEL

RECOMMENDATION: Amend the *Real Estate Act* such that hearing panels may be composed of council members and industry members, and must include a member of the public.

- **AREA** agreed with this amendment.
- **AMBA** supported this recommendation.
- **AIC AB** did not support the idea that an appraiser be questioned by a member of the public at a hearing as they may not understand the industry.
- The **Real Estate Residential Advisory Committee** agreed with this recommendation.
- **REIX** was opposed to Council members sitting on hearing panels because it viewed it as a conflict of interest.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment. There was some concern expressed in the responses to having public members sit on hearing panels as the public may not understand the industry.

6.2 DISCIPLINARY EFFICIENCY (PART 3 CONDUCT PROCEEDINGS) – EDUCATION REQUIREMENTS AND SETTLEMENT (CONSENT AGREEMENT PROCESS)

RECOMMENDATION: Amend the *Real Estate Act* to permit the Executive Director to issue education requirements, subject to the industry member’s right of appeal. Include in the legislation the settlement process (consent agreement) for misconduct issues.

- **AREA** agreed with this recommendation, subject to the industry member’s right of appeal.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation but recommended that if a sanction and educational requirements are given to the members of the AIC, that this be completed in conjunction with the AIC.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

6.3 COMPLAINANT APPEAL (PART 3)

RECOMMENDATION: Amend the *Real Estate Act* to enable the hearing panel hearing the complainant appeal to refer the complaint for investigation and decision by the executive director once the investigation is complete.

- **AREA** agreed with this recommendation based on the explanation that this would enable a third option to refer the complaint back for investigation if required.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation.

- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

6.4 WITHDRAWAL APPLICATIONS

RECOMMENDATION: Amend the *Real Estate Act* to permit the executive director to consider lifetime withdrawal applications for approval.

- **AREA** agreed with this recommendation based on confirmation that all voluntary withdrawals are “lifetime”.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

Issue 7: Facilitating Claims to the Real Estate Assurance Fund

7.1 CLAIMS TO THE REAL ESTATE ASSURANCE FUND

RECOMMENDATION: Amend provisions related to the Real Estate Assurance Fund to ensure that consumers who have legitimate claims in the categories specified can access the fund through a simplified process to a RECA panel set out in *Real Estate Act*.

- **AREA** agreed with this recommendation given the seriousness of cases involving consumers who suffer a financial loss as a result of fraud or breach of trust with respect to a trade in real estate.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation.
- **Genworth Canada** expressed support for RECA improving access to the Assurance Fund for fraud victims.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

Issue 8: Recovery of Monetary Amounts by Filing RECA Order

8.1 FILING RECA ORDERS WITH THE COURT

RECOMMENDATION: Remove the requirement for an action in debt. Replace it with the filing of RECA administrative penalties and orders with the clerk of the Court and once filed, the decision could be enforced as a judgment.

- **AREA** supported this recommendation.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation.

- The **Law Society of Alberta** was of the view that as long as industry professionals had been made aware of disciplinary proceedings, the Court would likely not have difficulty with filing RECA penalties and orders.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

(9 withdrawn)

Issue 10: Administrative Penalties

10.1 ADMINISTRATIVE PENALTIES AS ONE AMOUNT PER CONTRAVENTION

RECOMMENDATION: Amend the provision to reflect the practice of issuing administrative penalties for a contravention(s) and not the continuation of the contravention.

- **AREA** supported this recommendation.
- **AMBA** supported this recommendation.
- **AIC AB** supported this recommendation.
- The **Real Estate Residential Advisory Committee, Mortgage Brokers Advisory Committee, and Commercial Real Estate Advisory Committee** agreed with this recommendation.
- The **online survey and individual email responses** showed that the majority of industry member respondents supported this amendment.

Issue 11: The *Personal Information Protection Act* and the *Real Estate Act*

11.1 COLLECTION OF PERSONAL INFORMATION FOR ISSUING AUTHORIZATIONS

RECOMMENDATION: RECA is proposing an amendment which clarifies that a rule made with respect to authorizations prevails despite PIPA. This would allow RECA to make rules requiring the collection and retention of certain personal information as appropriate under this section.

WITHDRAW recommendation; however proceed with recommendation for amendment to the *Real Estate Act* to permit collection of specific personal information for issuing authorizations.

- **AREA** was not supportive of removing the rights/obligations under privacy legislation and therefore did not agree with amendments allowing RECA rules to prevail despite privacy legislation.
- **AIC AB** did not support placing the Real Estate Act above the powers of PIPA and commented that If RECA is to be truly open to the public; they should not be seeking to limit the powers available to members under other legislation. It was recommended that RECA reconsider Issue 11 entirely.
- The **Office of the Information and Privacy Commissioner (OPIC)** objected to this proposed amendment. It commented that if the Legislature determined that RECA cannot fulfill its statutory purposes without collecting and retaining personal information for identity purposes, express authority to do so and for the specific purposes for which it may do so should be included in the *Real Estate Act* and not dealt with by way of a general paramountcy section. It suggests that the proposed paramountcy section was unnecessary and was so broad that it would take RECA outside of PIPA for much of its activities, which is a position that is contrary to the original intent of the Legislative Assembly that professional regulatory organizations be subject to PIPA with respect to

the collection, use and disclosure of personal information in the course of their activities. OPIC was of the opinion that RECA's authority should not extend to copying the identification documents, but only to recording certain specified elements.

- There was opposition in the **online survey and industry member responses** to this recommendation. There was a significant concern with RECA having paramourcy over PIPA.

11.2 PUBLICATION

RECOMMENDATION: RECA is proposing an amendment which clarifies that in addition to the content of the current section, RECA may publish all enforcement action taken and orders made including personal information about industry members and other individuals. This would be the case despite any conflict or inconsistency between the Real Estate Act and PIPA.

WITHDRAW recommendation; however proceed with recommendation for amendment to *Real Estate Act* to publish all enforcement action taken and orders made, including personal information about industry members and other individuals

- **AREA** was not supportive of removing the rights/obligations under privacy legislation.
- **AIC AB** did not support placing the Real Estate Act above the powers of PIPA.
- **OPIC** objected to including the reference to RECA's authority existing despite any conflict or inconsistency with PIPA. It stated that adding a paramourcy provision to the *Real Estate Act* for this situation is unnecessary. Section 20(b) of PIPA allows professional regulatory organizations to carry out their functions concerning the disclosure of personal information without consent when that disclosure is authorized or required by statute. Because of this, it suggested that if the types of information, including personal information, which RECA is able to publish in order to properly carry out its function is specifically authorized in the Real Estate Act, then in accordance with section 20(b) of PIPA, RECA would be in compliance with PIPA and there would be no inconsistency requiring a paramourcy provision.
- There was opposition in the **online survey and industry member responses** to this recommendation. There was a significant concern with RECA having paramourcy over PIPA.

(11.3 withdrawn)

Issue 12 (Note: Item in second Consultation Paper): Expired Terms of Appointment of Council Members and Panel Roster Members

12.1 APPOINTED COUNCIL AND ROSTER PANEL MEMBERS CONCLUDE HEARINGS

RECOMMENDATION: The *Real Estate Act* would be amended to allow council and hearing and appeal panel roster member(s) to complete hearing and appeal work in circumstances where their terms to council or the hearing or appeal panel roster have ended.

- **AREA** supported this recommendation.
- **AMBA** supported this recommendation.
- The **Calgary Real Estate Board (CREB) and the REALTORS® Association of Edmonton** agreed with the recommendation.
- All responses but one to the email address from **industry members** were in favor of this amendment.

Copies of all correspondence received with respect to the Real Estate Act amendment consultation are attached as Schedule A.

CONCLUSION

The Legislation Review Task Force and RECA carefully considered the comments and responses received through the consultation process. As a result, RECA has finalized its recommendations to the Government of Alberta with respect to the proposed amendments to the *Real Estate Act*.