

The Regulator

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Message from Council

Christine Zwozdesky,
Chair



In my final message as Chair, I'd like to begin by thanking my fellow Council members for their hard work, honest opinions, and tireless efforts towards making our industry as professional and strong as possible. Self-regulation does not work unless the stewards entrusted with its care are fully committed to consumer protection.

I would like to say a special thank you and congratulations to Brian Klingspon and Bonny Clarke, who are taking on the roles of Chair and Chair-Elect, respectively, for the next year. I look forward to working closely with both of you, and with all of Council, in my role as Past Chair.

Strategic Plan: Year 1

My term as Chair was the first year of RECA's 2016-2020 stakeholder-focused strategic plan. An important part of that plan is stakeholder communication and openness and transparency, and I strongly believe Council took this focus to heart with our work this year.

Openness and Transparency

One of the most notable initiatives this year was RECA's consultation on and progress with respect to openness and transparency. Many of you took the time to let us know what you think, and your thoughts are reflected in the policy decisions Council made at its July 2017 meeting. As we move into 2018, you'll see Council meeting agendas and minutes posted online, we'll explore options for hosting an online Annual General Meeting, we'll post Notices of Hearings and Hearing dates, and we'll remove restrictions on the publication of disciplinary action.

Work on openness and transparency will continue throughout the life of the strategic plan, and beyond.

I'm also pleased to say that RECA completed nearly all of the 33 recommendations made by Field Law in their Third Party Regulatory Review of RECA processes. One of the most exciting things to come out of these recommendations is a plain language summary of Part 2 of the *Real Estate Act Rules*. These summaries are on RECA's website, and are a great way for consumers to understand the standards of conduct expected of a licensed industry professional. I'm also pleased with the publication of RECA's Good Character Policies. Publication of these policies provides licence applicants and industry professionals with information on what RECA expects of them in terms of character, and how their character can affect the licensing or conduct decision.

Consumer Initiatives

Continuing with its focus on stakeholder needs, RECA significantly expanded its presence with consumers this year.

RECA started the year with the creation of the Consumer Advisory Committee. Through that committee, a diverse group of Alberta consumers comes together to let Council know directly how RECA's awareness campaigns are working, what experiences they've had working with industry professionals, and some of the consumer-related issues RECA should address going forward. The committee met twice in 2016-2017, and will continue to meet in the coming year.

In 2016-2017, RECA also launched comprehensive, mobile-friendly websites www.homebuyersguidealberta.ca and www.homesellersguidealberta.ca, published "Ask Charles" columns in community newsletters across the province, and experienced significant increase in consumer traffic to RECA's website because of our digital ad campaign.

Education Partnerships

I was pleased to continue RECA's valuable partnerships with post-secondary institutions this year. In the past year, RECA entered a Memorandum of Understanding with MacEwan University, under which they will use RECA's courses to develop their minor program in property management. RECA also renewed its existing MOU with Olds College, who offer RECA's Property Valuation course as part of their Land and Environment Program. RECA remains open to exploring further partnerships with educational institutions to create maximum access for potential industry professionals.

Looking Ahead

As we move in to Year 2 of our strategic plan, I look forward to continuing to strengthen our relationships with stakeholders. This will include timely, effective, and efficient stakeholder consultations, and further consumer outreach.

Thank you to my fellow Council Members, to our volunteer committee members, to Bob Myroniuk and his stellar administration team, and to industry professionals across the province who remain committed to effective self-regulation and consumer protection.

Council Highlights October 18 Meeting

1. Council elected Brian Klingspon as Chair and Bonny Clark as Chair-Elect
 - Brian and Bonny will serve in these positions from November 1, 2017 to October 30, 2018
 - outgoing Chair, Christine Zwozdesky, will serve as Past Chair
2. Council approved a revised Council Code of Conduct
 - the Governance Committee revised the existing Council Code of Conduct to enhance its clarity, guidance, and expectations for Council members
 - the Council Code of Conduct is available on RECA's website, [here](#)
3. Council approved the Mortgage Brokers Advisory Committee recommendation to develop a consultation paper on the proposed standards of practice and Rule changes for mortgage brokers
 - the consultation will focus on amendments to the *Real Estate Act* Rules to enhance consumer protection levels, including additional consumer disclosure requirements, and verification of mortgage application information and documentation to assist in detecting and suppressing mortgage fraud.
 - watch for consultation information early in the new year
4. Council approved written policies for posting Council meeting agendas and minutes to the RECA website
 - the new policies take effect in January 2018
5. Council approved revised Publications Guidelines
 - at its July 2017 meeting, Council approved a recommendation to remove the restrictions within its publication guidelines
 - the revised publication guidelines take effect in January 2018:
 - RECA will post Notices of Hearing, which include upcoming hearing dates
 - Letters of Reprimand will now include names
 - there will no longer be a 2-year publication limit
 - RECA will share its disciplinary decisions with other disciplinary databases, including CanLII

Renewal Roundup

The Industry – An Update

The latest annual renewal period is behind us, and overall, the industry outlook remains positive.

The Numbers

Year-over-year, the number of individuals licensed in Alberta remained stable. Real estate professionals increased by over 5%, with both mortgage professionals and appraisal decreasing slightly.

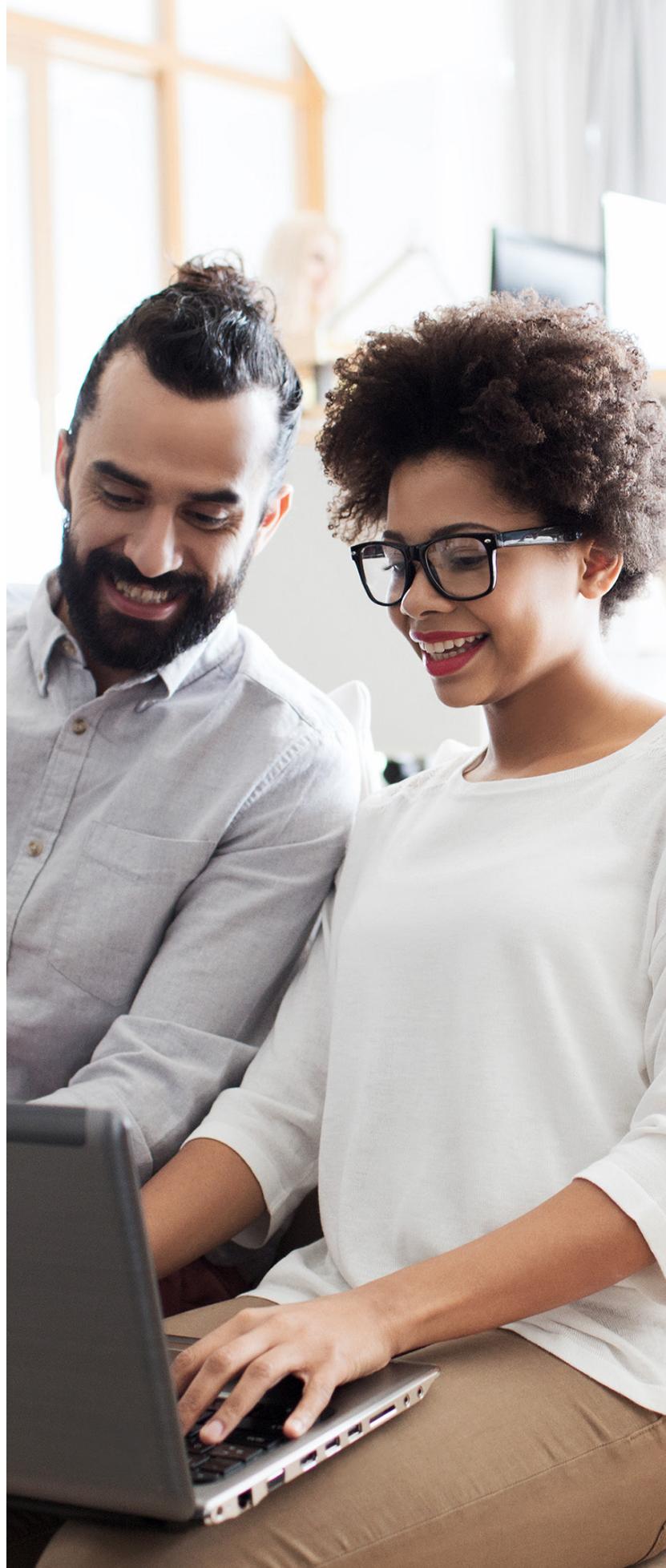
As of October 7, 2017, there were 12,112 real estate professionals; a year-over-year increase of 646 people. Mortgage brokerage professionals decreased by 13 people to 2,150. The real estate appraisal sector showed decline this year, decreasing by 55 individuals to 578. That's a 9% decrease. The number of new appraisal professionals is down over the last three years, and is below the five-year trend.

This year the industry continued to see an increase in new professionals, and also saw fewer individuals leaving the industry. Between October 1, 2016 and September 30, 2017, 1,365 people joined the industry. Last year, 1,348 people joined.

Renewal Experience

During this year's renewal period, RECA staff received thousands of calls and emails, and worked diligently to resolve any issues that arose, ensuring industry professionals were able to renew on time.

As in past years, this renewal period saw more than half of renewals taking place during the last week. On September 27, with only three days remaining in the renewal period, only 55% of professionals had renewed. RECA staff, the myRECA licensing system, and RECA's education platform successfully accommodated the higher user volume in the last week.



This graph shows the renewal percentages throughout September, along with *Real Estate Update 2017* completion percentages.



RECA departments completed internal reviews of this year's renewal, and will talk to brokerages in the coming months to identify opportunities for further improvements in the annual renewal process.



Helpful Tip

Sixty per cent of renewal applicants who answered 'yes' to a suitability question, therefore halting their ability to process their own renewal, didn't need to.

The renewal suitability questions are in regards to judgments, decisions, charges, or bankruptcies that have happened to applicants in the time SINCE their last renewal or licensing application, or last notification to RECA.

If an industry professional already notified RECA about the incident that resulted in the 'yes' answer, they don't have to answer 'yes' again in their renewal application.

Helpful Tip

RECA had numerous calls about forgotten usernames and passwords during this year's renewal process. It is a good idea to keep your username and password on file for future reference.

If you do forget your username or password, there are options on the myRECA login page to have your username sent to you or reset your password. Simply go to myreca.ca and you will find the forgot username and forgot password beside the login.

RECA would like to take this opportunity to thank industry professionals for their support and cooperation throughout this year's renewal.



Radon: A Solvable Problem

Awareness of radon gas has become more prevalent in recent years, and with the expanding availability of home testing, more homebuyers - and property owners – are wondering if they should have a home tested for radon prior to purchase.

How should you handle this as a real estate professional? The first step is educating yourself, and educating your clients.

What is Radon?

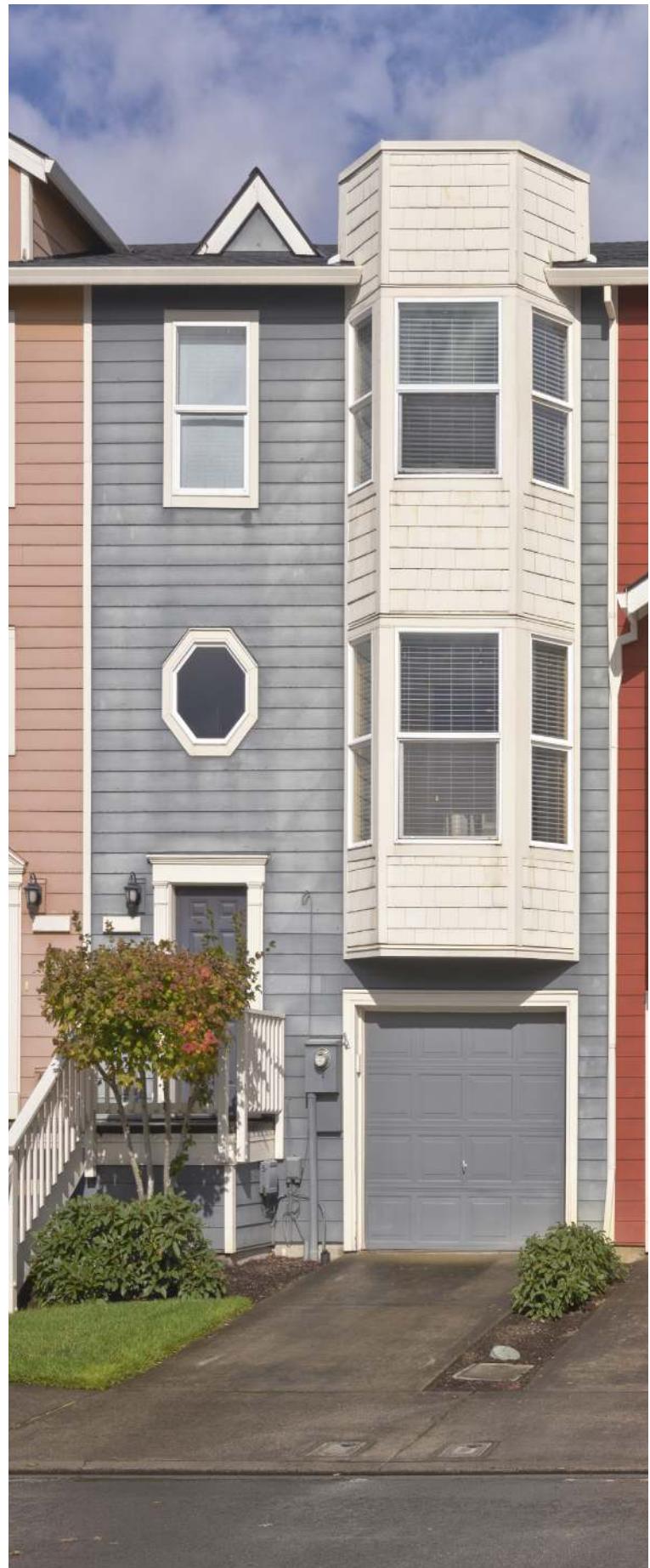
Radon is an odourless, tasteless, colourless radioactive gas that is the by-product of uranium decay. Uranium occurs naturally in soil and rock formations, and places with higher than normal uranium deposits, such as Alberta and Saskatchewan, have higher radon levels.

Radon seeps through the earth and into basements, where it can become trapped because of the efficient way our homes are sealed from the outside elements. In fact, newer homes in Southern Alberta (built after 1992) show a 30% increase in radon levels, since they are typically larger and better sealed than older homes.

Prolonged exposure to radon can lead to health problems, including lung cancer. In fact, after smoking, radon gas is the leading cause of lung cancer.

Luckily, it's testable and fixable

Concerned homeowners can have their home tested, and if they need it, they can install a radon mitigation device to vent radon gas outside the home from the basement. Since November 1, 2015, the Alberta building code requires that all new homes have a basement rough-in for a radon mitigation device. Mitigation costs vary, but are often not more than \$2,000-\$3,000 for a typical residential property.



What can I do during the offer process for a residential property?

Real estate professionals should be talking to their clients about radon.

Unfortunately, there's not much that can be done during the offer and negotiation phase of a real estate transaction. Reliable radon tests take 90 days to complete; a length of time that most buyers and sellers will not find reasonable. There are two-day test kits on the market, but the results from these tests are not reliable, and should not be used.

Sellers

If a client wants to test their home, advise them to use a [Canadian – National Radon Proficiency Program \(C-NRPP\)](#) certified professional for all testing and mitigation. Calgary, Red Deer, and Edmonton have multiple certified professionals available.

Real estate professionals representing sellers can provide their clients with information early on, so they can make an informed decision whether to get a test done before listing their home. They could then provide the test results to prospective buyers if they ask. In the event the levels are low, or, if the levels are high and the sellers proceed with mediation prior to listing, it could be a selling feature. If the radon test shows high levels of radon (higher than 200 Becquerel), RECA would consider this a material latent defect that real estate professionals MUST disclose to prospective buyers unless a radon mitigation device is installed prior to listing.

Buyers

If radon is a concern for your buyer clients (and it should be!), real estate professionals should ask seller's real estate professionals if the seller has conducted a radon test, and discover relevant facts about properties, including if mitigation rough-ins or completed mitigation systems are already in place. Real estate professionals can also talk to clients about the possibility of discounting the offer price by the cost of radon mitigation, or about the possibility of putting a holdback on the offer to purchase that will be released upon low radon test results. Indicate in the holdback clause

that if the test results in high radon levels, the holdback funds will be put towards mitigation, with any remaining funds released to the seller afterwards. Of course, the sellers have to agree to such a holdback.

Homeowners, tenants, and employees have filed and won lawsuits against builders, landlords, and employers in the US, because of exposure to radon gas. Encourage your clients to learn about radon. If your buyer clients tell you they want a home with low radon levels or radon mitigation already in place, it is your duty to help them find a property that fits their needs.

If your buyer clients purchase property that hasn't had a radon test or mitigation, encourage them to proceed with a test within 90 days of possession regardless of whether there is a holdback. Knowledge is power, and radon is a solvable problem.

Commercial and rental real estate

Commercial real estate professionals and property managers should also talk to their clients about radon testing and mitigation. Property management professionals have a greater onus to discuss radon with their clients, as tenant health is a legal matter under the *Public Health Act* and *Residential Tenancies Act*.

Because the due diligence or condition period on commercial real estate transactions is considerably longer than in a residential transaction, it's not unusual for commercial purchases and leases to include radon testing as a condition. However, commercial properties, particularly larger ones, might require expensive mitigation, far beyond the cost of mitigating a home.

Additional resources on Radon:

[Health Canada](#)

[The Canadian Real Estate Association: A Home Owner's Guide to Radon](#)

[Canadian National Radon Proficiency Program](#)

[Robson DNA Science Centre Network - Dr. Aaron Goodarzi](#)

Failure to waive conditions and re-contracting



Most purchase contracts have conditions, and contracts fall through when buyers do not meet and waive conditions by the agreed upon condition date. Regardless of the type of condition (financing, property inspection, buyer's existing home sale, etc.), if the buyer doesn't waive the condition, the deal is finished.

But what happens when both parties want to still reach a deal, and they agree to extend the condition date AFTER it expired? You can adjust the dates on the existing contract, as long as both parties agree, right?

Wrong. When a condition expiry date passes, the contract is null and void. You cannot amend a contract that no longer exists.

What to do if the deadline passes

When a condition removal deadline passes without satisfying or waiving the condition, neither party is bound to continue with the deal.

If both parties want to continue, you must draft a new purchase contract for the sellers to accept.

It may be tempting to simply amend a contract to a point where both sides are happy, but legally the contract is void as soon as the condition date passes. If you proceed with such a contract, you and your clients may run into legal trouble in the future if there are any issues with the purchase.

In the event a conditional removal date passes and buyers did not waive their conditions, it is a best practice to have your clients sign a mutual release. This can help reduce the potential for any misunderstandings in the event one party believed they had an ongoing agreement.

When can I amend contracts?

If your client needs or wants to extend a conditional removal deadline, they can amend the existing offer to purchase if they and the seller agree to an extension in writing, and if the agreement to amend occurs before the deadline.

Real estate professionals need to make sure their clients understand the consequences of these deadlines before they pass. If a client doesn't think they will meet a condition by the expiry date, they should let you know as soon as possible so you can discuss amending the purchase contract before it's too late. Have these important conversations with your clients.

It is your responsibility as a real estate professional to give timely advice and take timely action. Make sure your clients understand the consequences of condition expiry dates, and the need to write a new purchase contract if they wish to continue negotiating after an expiry date.



Staying above board: Referral fees



In medieval Europe, keeping things 'above board' meant everyone around a table kept their hands visible, above the table. This way everyone could be sure no one was hiding a weapon or conducting secret business 'under the table.'

Both expressions remain, and so does their deeper meaning: if we conduct our dealings where everyone can see, with full disclosure and transparency, everyone can feel more comfortable trusting everyone else.

In real estate, there can be many people around the table. Buyers, sellers, real estate professionals, mortgage professionals, appraisal professionals, home inspectors, lawyers, stagers, cleaners, movers, and so on.

Many professionals have existing relationships with third-party service providers, and may refer their clients to a mortgage broker, home inspector, or cleaner. They trust the person or company they are referring to, and believe using the services of the third party is in the best interest of their client, even if by referring a client the referrer collects a referral fee.

This is all perfectly legal, but it must be done above board, where everyone is aware of what is going on.

Industry professionals must always receive payment through their brokerage

Any fees or commissions you will receive must come through your brokerage. This includes referral fees. Industry professionals cannot receive payment directly, and they cannot directly pay a referral fee to someone. The fee must go through the brokerage. The brokerage will then pay the specific professional in accordance with the brokerage policies and any agreements that exist between the professional and their brokerage.

Likewise, if, for example, you are a mortgage associate, and a real estate associate thinks you can help their clients and refers them to you in exchange for a referral fee, that fee must be above board. Your brokerage must pay the real estate associate's brokerage. It cannot go under the table from you to them directly.

Industry professionals must always disclose the details of referrals to clients

When an industry professional will receive a referral fee or other compensation for referring a client to a third party, before making that referral, they must disclose to their client, in writing:

- that they will be giving the client's confidential information to a third party
- the nature of the information being shared (name, address, contact info, etc.)
- the fact the industry professional will receive a fee or other compensation for the referral

After the industry professional provides those disclosures, the clients must give their consent, in writing, to the professional to share their information with a third party. Remember, even a client's name, phone number or email are private, confidential information.

Industry professionals should strive to build trust and confidence in the industry and its professionals. There are perhaps no better tools for doing so than being honest, making full disclosure, and keeping everything above board.



News Bytes

RECA Consumer Initiatives

Consumer awareness of RECA and consumer education are important parts of RECA's stakeholder-focused strategic plan that began this year. Here are some of the consumer awareness initiatives from 2016-2017:

- RECA continued its digital marketing campaign throughout 2016-2017. The campaign is working. Hundreds of thousands of consumers clicked on our ads from Google, Facebook, and Instagram. We also began a series of video ads on YouTube and Facebook in September, and the response has been overwhelming, with over 100,000 views in the first few weeks.
- we introduced an "Ask Charles" column in community newsletters around the province. We've published dozens of articles that reach hundreds of thousands of households in and around Calgary, Edmonton, Red Deer, and Lethbridge.
- RECA also launched the mobile-friendly consumer guides, www.homebuyersguidealberta.ca and www.homesellersguidealberta.ca. These guides are a resource for consumers to understand the buying and selling process, and how working with a licensed industry professional is in their best interest. Watching for a Consumer Guide to Mortgages in the coming year.

RECA wins ARELLO Communications Award

The Association of Real Estate Licensing Law Officials (ARELLO) awarded RECA the 2017 Communications Award for the [RECA Home Buyer's Guide](#).

The Home Buyers Guide is a comprehensive, mobile-friendly website designed to educate consumers on the home buying process, from deciding to buy to after taking possession.

This is the fifth ARELLO Communications Award given to RECA, having won in the past for website and newsletter redesigns, and our social media presence.



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

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

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

Deputy Executive Director

DALE CAWSEY

Director of Corporate Services

JOSEPH FERNANDEZ

Registrar

JEAN FLANAGAN

General Counsel

CHARLES STEVENSON

Director of Professional Standards

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

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