

The Regulator July 2012

MESSAGE FROM COUNCIL – Wayne McAlister, Chair

It has been a couple of months since I have taken the opportunity to provide an update from Council on current initiatives, and as we head into the busy renewal period at the end of the summer, now seems like the perfect chance to provide such an update. When Council formalized its Strategic Plan for 2011-2016, it made collaboration an important part of it. Our Business Plan contains upwards of 120 projects, but many of them require the support, cooperation and collaboration with our valued industry partners.

RECA remains committed to ensuring consumer protection while enhancing and improving the business of industry members, and advancing the professionalism of our authorized industry professionals.

No Licensing Fee Increase

At its July meeting, Council approved its 2012/2013 budget, which does not see any increase in licensing and registration fees for industry professionals in the coming year. Keeping licensing and registration fees at the same level as last year was an important consideration for Council as it began the budgeting process. The budget that has been implemented for the coming year will ensure RECA can meet its legislative mandate while delivering on the key objectives identified for Year 2 of the 2011-2016 Strategic Business Plan. Some of the most significant projects planned include a redesign of the RECA Online licensing system; increased engagement and communication with consumers; RECA's branding initiative; and a number of consultative processes with industry members.

Enhanced Collaboration with Industry Partners

RECA has spoken at great length about the collaboration that is so integral to the success of our industry and the success of our industry professionals. The process to improve collaboration with our industry partners, particularly as it relates to communicating key changes and projects, is well underway with a few significant consultations initiatives planned for the coming year.

Council recognizes that improved collaboration and communication with industry partners at the outset of a significant project benefits all parties. It leads to better, more consistent communication and messaging; it assists in ensuring the message gets out to all industry members and related stakeholders; and, it means obstacles and issues can be identified at the outset and plans can be put in place to better address them.

Assurance Fund Study and Consultation

Council passed a motion at its July meeting to proceed with a study and preparation of a discussion paper on the Real Estate Assurance Fund. The purpose of this process will be to facilitate extensive consultation with stakeholders including industry professionals, the Real

Estate Insurance Exchange leadership, E&O insurance providers and the Government of Alberta. The issues to be addressed include compensation limits, categories of loss and the procedures for making claims to RECA. We anticipate this consultation process will begin in Fall 2012 and ask industry professionals to watch their inbox for more information in the coming months. The target date for providing the results of the study and consultations, together with any recommendations for Council's consideration, is July 2013.

Again, I want to thank you for taking the time to read this message from Council. Council genuinely values engagement with individual industry professionals and related stakeholders. On behalf of the rest of Council, I wish you all a happy, healthy and prosperous summer.

Principled Learning: Council Approves the Education Code of Conduct for Learners

The honest pursuit of education by those engaged in learning is the cornerstone for the development and enhancement of professionalism. The Real Estate Council of Alberta sets and maintains high standards for its authorized industry professionals. RECA expects – and, in fact, requires – that authorized real estate, mortgage brokerage and real estate appraisal professionals demonstrate a commitment to professionalism in everything they do, including education.

To that end, at its July meeting, Council approved a new Education Code of Conduct for learners, a principle's based document outlining how professionals taking pre-licensing and re-licensing education with RECA are expected to conduct themselves.

As professionals, individuals have the responsibility to gain the requisite knowledge and skills and adopt a mindset for continuous improvement to ensure they are competent in the provision of services to the public. Competent practice is integral to maintaining the trust, respect and confidence of other professionals and the public.

Learners taking education with RECA must ensure they demonstrate the following principles.

Principle 1: Learners will be actively engaged in their education and make their best efforts to acquire the knowledge and develop the skills as set out by the identified learning outcomes for that course or program.

Principle 2: Learners will at all times conduct themselves with honesty, integrity and respectfulness.

Principle 3: Learners may assist other learners when the assistance provided to them supports their engagement in the learning process and results in their honest acquisition of knowledge and skills.

Principle 4: Learners will support RECA's education requirements and will conduct themselves in a manner that does not undermine the integrity, efficacy and efficiency of any aspect of RECA's education.

Those individuals who breach the Education Code of Conduct for Learners may be subject to disciplinary action and may receive a failing grade, a course or program suspension, and/or may be expelled from RECA education courses or programs.

Breaches of the Education Code of Conduct for Learners by individuals seeking to become authorized may result in an authorization being denied and the issuance of Administrative Penalties up to \$25,000.

Learners who are industry members and who breach the RECA Education Code of Conduct for Learners, may be subject to a finding of conduct deserving of sanction, and could receive discipline ranging from an Advisory Note to licence cancellation.

To read the Education Code of Conduct for Learners in its entirety, [click here](#). For more information about what the Education Code of Conduct for Learners means in practice, review the RECA Information Bulletin: Education Code of Conduct for Learners on the RECA website.

INFORMATION BULLETIN: ATTACHED AND UNATTACHED GOODS

Summary: When purchasing any significant item, it is important to know exactly what your purchase includes. In real estate, attached goods are those items affixed to a property, such as lights, built-in dishwashers, water heaters etc., unless otherwise agreed to by the buyer and the seller. Unattached goods are not necessarily included, but may become bargaining tools for sellers. Unattached goods may include garage door opener controls, power head for a built in vacuum system, draperies etc.

An industry professional should ensure that what his or her client wants is written into the contract and that requires a consideration of attached and unattached goods. Industry professionals should review the concept of attached/unattached goods with their clients so there is no misunderstanding.

Attached goods (items affixed to a property), include items such as built-in appliances and ceiling fans. Anything that is attached to the property stays, unless otherwise agreed to by the buyer and the seller in writing. If sellers plan to take an attached item with them when they vacate the property, these items must be identified in the Real Estate Purchase Contract.

The inclusion of an unattached good in any purchase contract can be negotiated between the buyer and the seller and should be specified in the contract.

When does the Real Estate Act Apply?

The *Real Estate Act* and Rules do not include any references to attached and unattached goods. However, one of the mainstays of providing competent service in the real estate industry is the drafting of contracts. As such, industry professionals should discuss attached and unattached goods with their buying and selling clients when drafting contracts.

If and when a Real Estate Purchase Contract is presented to sellers, the seller needs to be cognizant of any inclusions or exclusions the potential buyers have listed in the contract. A seller's representative should ensure he or she has reviewed these details carefully with the sellers as they review and consider the buyer's offer.

It is a common misconception in the industry that the responsibility to reference attached and/or unattached goods falls to the buyer and/or the buyer's representative. In reality, both the seller and the buyer (and their respective industry professionals) should ensure any contracts being signed or offers being made or accepted make reference to, in writing, any inclusions or exclusions that would not otherwise be clear.

For example, purchase contracts do not need to specifically reference the dining room light as an attached good that is being left as it would be assumed. However, should a seller wish to take the dining room light – for whatever reason – that should be listed, in writing, as an attached good that will be removed and replaced by the sellers. If ever in doubt about whether something is attached or unattached, and as a result, whether it is included or not – reduce it to writing in the contract.

Even in the case of an unattached item, which the seller intends to leave in the property and therefore includes in the Seller Brokerage Agreement (Listing Agreement), any potential buyer that wants to ensure that unattached item stays in the property should include it explicitly in the Real Estate Purchase Contract. These may end up being negotiated items.

Mitigating Issues at Possession

There are steps the buyer and the buyer's representative can take to potentially mitigate any issues at possession. The buyer may wish to negotiate a term in the contract through which the sellers agree to the buyer and his or her representative conducting a walk-through of the property immediately prior to possession. The purpose of this is to determine if the property is in the same condition as the day the offer was written and if all the attached goods are still in the home. If there is an issue identified by the buyer, the parties can then negotiate a mutually satisfactory resolution.

Remedies After the Fact

Unfortunately, in the case of a buyer who arrives at their new home to find out attached goods have been removed, in the absence of cooperative sellers, the only remedy to the situation may be a legal one – depending, of course, on the value of the attached good removed.

Examples

It is impossible to draft an exhaustive list of unattached and attached goods. The following are examples you may encounter during your work as a real estate industry professional.

Attached goods:

- Garburator
- Water softener
- Bathroom mirrors
- Chandeliers
- Built-in appliances (i.e. most dishwashers)
- Kitchen cabinets

Unattached goods:

- Wall art
- Window coverings
- Book shelves (not built-in)
- Rolling kitchen cart
- Floor lamps
- Movable kitchen island
- Appliances that are not built-in (i.e. countertop microwave)
- In commercial transactions, everything other than the four walls is typically “unattached” and should be specified in any Purchase Contract (i.e. equipment, hoists)

[See: *Real Estate Act Rules*, s.41(b)]

RECA IMPLEMENTS STREAMLINED PROCESS FOR OPENING A BROKERAGE

As the Real Estate Council of Alberta (RECA) prepares for the annual renewal period, it is reviewing its internal processes to ensure they are as efficient as possible, and to ensure that individuals are able to begin or enhance their chosen career in a timely manner.

To that end, recent changes have been made that streamline the process of opening a real estate or mortgage brokerage in Alberta.

RECA no longer requires proof of municipal land use approval to open an Alberta brokerage, nor does it require a copy of a franchise agreement. Brokerages must still ensure their office meets municipal land use requirements and that their trade name meets franchise requirements, but proof no longer has to be provided to RECA.

The requirement to provide copies of municipal land use approval and/or a copy of the franchise agreement to RECA often delayed the process of opening a brokerage. RECA made the

process change in response to that difficulty and in recognition of the fact, that as authorized industry professionals in a self-regulating industry, brokers should be trusted to confirm their brokerage meets certain requirements even if they are not required to provide physical proof to RECA.

Additional changes

The Brokerage Licence Application has also been changed in a couple of ways, including:

- Clearer suitability questions that are dependent on the brokerage's business model (i.e. corporation, partnership)
- A revised Affidavit that requires the broker applicant to swear to the accuracy of the information within the application and to swear that he or she has taken the necessary steps to ensure accuracy and truthfulness (in the past, brokers who did not have a majority interest in the brokerage were not doing this).

Additionally, an internal change means brokerage applications will no longer expire after 30 days. If the application takes longer to process than 30 days, the broker will be contacted by email and required to state there have been no changes to the suitability questions within the application. This eliminates the need for the brokerage to submit multiple applications if there has been a delay in processing the brokerage application.

RECONCILING YOUR CORPORATE AND PERSONAL SELF

We all function through our “personal values” infrastructure we develop from an early age that guides us on how to react to stimulus, how to analyze, plan and make decisions.

Professionally speaking, we negotiate within our “corporate” infrastructure. This is simply the set of skills we have learned to best function at work. Whom do we trust? How do we best work with colleagues? How do we convince the boss our idea is right?

Our corporate infrastructure could well be called our “external” infrastructure. It starts to develop independently when we are first exposed to institutional behaviour such as at daycare or school.

Those infamous words “But my teacher says...” are a good example of a young mind trying to reconcile differences between the personal world and the external world.

The more experience we gain, the stronger our external skills become. We continually develop those skills and fine tune them to meet our needs.

But what happens when our corporate infrastructure isn't enough? When sufficiently challenged, we fall back to our defense mechanisms. These defense mechanisms reflect our personal values and our instincts.

We see ourselves as conveying more fundamental arguments of common sense, or of right and wrong. However others may see us as no longer being objective. To them we are interjecting emotions or subjectivity. In turn, we might view their counter-arguments as now becoming personal.

The better we understand how we might be seen by others, the better we can control our message and its effectiveness. Preparing for negotiations is much more than having your argument or presentation ready. The skill sets of mediation can often identify and isolate mutual and differing goals, the merits and limitations of each, as well as alternative options we might not think of.

It is crucial to remember that problems cannot be resolved at the same level on which they were created. Similarly, we are not capable of solving those problems at the same level we were at when we created them.

**Pete Desrochers, Executive Director Membership
Alberta Arbitration and Mediation Society (AAMS)**

NEWS BYTES

Reduced Licensing and Registration Fees

Effective July 1, 2012 through to September 30, 2012 the licensing and registration fee for each class of licence will be reduced to \$200. The REIX premium, if applicable, will also be reduced to \$100. This fee reduction applies to new applicants and those applicants who have not been registered in the current licensing year. The Assurance Fund levy does not change.

REP Reminder

Industry professionals in all three industry sectors must complete a Re-Licensing Education Program (REP) course prior to renewing their registration or licence by September 30, 2012.

- Real estate industry professionals must complete *Real Estate Update 2011-2012*.
- Mortgage brokerage industry professionals must complete *Mortgage Broker Update 2012*.
- Real estate appraisal industry professionals must complete *Real Estate Appraiser Update 2011-2012*.

To enrol in REP, you will need your RECA ID (mortgage and real estate professionals can obtain this from their broker). Once you have your RECA ID, proceed to the RECA website at www.reca.ca, click on RECA Education, and then select your industry sector and your course. Once you are enrolled, you can take the course any time, any place, any pace. You can

complete your REP in one sitting or in multiple sessions. Your progressed is saved as you make your way through your course.

The easiest way to ensure a smooth renewal this September is to finish your REP early. As of July 4, 2012, only 30% of real estate industry professionals, 20% of real estate appraisal professionals and 10% of mortgage professionals had completed their REP. Avoid the last-minute time crunch in September: complete your REP now!

RECA Trade Show Participation Continues to Grow

Look for RECA's trade show booth at the Alberta Mortgage Brokers Association (AMBA) Conference and Trade Show and the REALTORS® Association of Edmonton (RAE) Trade Show in September 2012. The 2012 AMBA Conference takes place September 6-7 at the Fairmont Banff Springs Hotel, and the 2012 RAE Trade Show will be held on September 25 at the Mayfield Inn and Suites Conference Centre in Edmonton.

In addition to the RECA booth on the trade show floor at both of these events, Charles Stevenson, RECA's Director of Professional Standards, will be leading a breakout session for mortgage brokers on Mortgage Broker Accountability in Alberta as part of the AMBA Conference.

Trade shows are an excellent opportunity for RECA staff to meet face to face with industry professionals from across the province. Stop by the RECA booth with your questions or just to say hi.

Consumer Trade Shows in 2013!

RECA is excited to announce that in early 2013, staff will be attending consumer trade shows for the first time. Attendance at consumer trade shows is part of Council's commitment to enhancing engagement with consumers while ensuring consumers recognize RECA as the standards-setting governing body for Alberta's almost 15,000 authorized industry professionals. RECA will begin its attendance at these consumer trade shows in Calgary and Edmonton in early 2013. RECA will announce the exact dates and locations once plans are finalized.

Keep in Touch with Social Media

Over the last few months, RECA has greatly increased its social media presence with even more video and blog content. RECA has increased the frequency of RECABlog posts and uploads to the RECA YouTube channel and now offer even more information to and engagement with industry professionals and consumers.

RECABlog has evolved into the primary delivery vehicle for timely updates from RECA, along with perspectives on issues as they happen. Subscribe to the [RSS feed](#) and never miss a post!

RECA's YouTube channel consists two-minute videos that are meant to inform consumers about RECA, Alberta's real estate industry, and working with licensed professionals, and videos

from RECA's Practice Advisor provide industry professionals with timely practice tips. Look for a new video every week; subscribe to RECA's YouTube channel today!

Council Members 2011-2012

BILL BUTERMAN, Chair Elect

Appointed from non-AREA industry members

KEVIN CLARK

Appointed from residential real estate industry members

CINDY DUBRAY

Appointed from the property management sector

GORDON GRAYDON

Appointed from the public

CONNIE LECLAIR

Appointed from the public

WAYNE MCALISTER, Chair

Appointed from the Calgary Real Estate Board

KEN MCCOY

Appointed from the Edmonton Real Estate Board

WENDY ROBSON

Appointed from boards outside of Calgary and Edmonton

RALPH SALOMONS

Appointed from commercial real estate sector

CHERYL SCHINDEL

Appointed from boards outside of Calgary and Edmonton

GARY SIEGLE

Appointed from the mortgage brokerage sector

ROBERT TELFORD, Past Chair

Appointed from the real estate appraisal sector

Contact RECA

Case Summaries is published by the Real Estate Council of Alberta. Please forward your comments and suggestions to communications@reca.ca.

Executive Director - Bob Myroniuk

Deputy Executive Director – Kirk Bacon

Director of Corporate Services – Dale Cawsey

Registrar - Joseph Fernandez

General Counsel - Jean Flanagan

Director of Professional Standards – Charles Stevenson