

OPENNESS AND TRANSPARENCY

Consultation Paper

One of RECA's strategic objectives is to review its current policies and identify opportunities to advance openness and transparency. As a regulatory body licensing and regulating industry professionals in four sectors, RECA strives to achieve the right balance between privacy of the individuals and firms it regulates, and society's desire for greater openness and transparency.

The purpose of this paper is for the Real Estate Council of Alberta (RECA) to consult with stakeholders on the concepts of openness and transparency. Specifically, what policies should RECA consider to enhance openness and transparency as it carries out its mandate of regulating industry professionals under the *Real Estate Act*?

The Regulatory Landscape (Canada)

Council's research into openness and transparency revealed that all regulators consider openness and transparency important principles of regulation; however, transparency practices differ significantly between professions and industries across Canada.

It is fair to say that RECA does a good job and is transparent about carrying out its mandate. It is also reasonable to suggest RECA can do better.

What Are "Openness" and "Transparency"?

For the purposes of this consultation paper, we are using the definitions presented at the September 2015 Annual Educational Conference of the Council on Licensure, Enforcement & Regulation (CLEAR):

Transparency of Process: knowing how the regulator does its job

Openness of Information: knowing what is happening / has happened to a specific practitioner.

We will use the term "transparency" to refer to both openness and transparency.

RECA's Approach to Transparency

RECA's philosophy of regulation, policies, practices, and communications reflect the concept of transparency. RECA's Statement on Self-Regulation, which Council approved in April 2012, includes a focus on the public interest as one of its guiding principles. It reads, in part:

"It will be an independent body that is fair, transparent and accountable."

RECA's commitment to provide "transparent and quality information" is in the Statement on Self-Regulation and reads:

RECA will be transparent by providing information and operational updates to its stakeholders. Its communications will be timely, relevant and aligned with the interests of its industry professionals and the public. Transparency and access to information will be balanced with the principles of fairness and the right to privacy of industry professionals.

Transparency supports accountability. The sharing of information allows the Government of Alberta, the public (consumers), and industry professionals to determine if RECA is, in fact, an independent and accountable regulatory body fulfilling its mandate in a manner intended by the legislation.

Current RECA Strategies to Promote Transparency

RECA has evolved with society since its creation in 1995. The public's demands for transparency, particularly for the professions and occupations that maintain a privilege of self-regulation, have increased significantly over the past 21 years.

RECA makes a significant effort to provide stakeholders with access to information. A summary of the current strategies and examples of information shared by RECA to promote transparency is in attached Schedule A.

Opportunities to Enhance Transparency

Council is requesting stakeholder feedback on the following proposals to enhance RECA's transparency.

You can provide answers to the questions from this consultation paper via this link: <https://www.surveymonkey.com/r/RECA-Openness-and-Transparency>

Note, we are conducting this survey through a third-party platform, Survey Monkey, and we are not collecting information that personally identifies respondents.

1. Council Proceedings (Meetings)

Current Policy: Council meetings are not open to the public.

Background: RECA's current policy is consistent with other regulatory bodies that are members of the Real Estate Regulators of Canada (RERC). However, some regulatory bodies in other professions hold open meetings. This may be a direct result of a policy decision by their governing board to increase transparency or a requirement in their governing legislation.

While open meetings promote transparency, the concern related to making Council meetings public is the impact of this on the discussion and deliberations at the Council table.

Proposed policy: Posting of the Council agenda and posting a podcast of the Council meeting the day following the meeting. This would ensure equal access for all industry professionals and the public to the topics under consideration at the meeting. RECA would need to develop policies related to topics that would be subject to in camera deliberations. In camera deliberations would occur when addressing sensitive or confidential corporate information or personal information that is subject to the protections outlined in Alberta's *Personal Information Protection Act*.

Questions:

- a) Should Council post its meeting agendas?
- b) Council meetings vary in length, but are typically 5-6 hours. If Council were to post audio files of its meetings, would you listen to:
 - i. The entire audio file
 - ii. Portions of interest
 - iii. None at all
- c) Do you have any ideas to mitigate concerns that open Council meetings will limit or reduce frank discussion?

2. Council Decisions

Current Policy: RECA does not publish or provide Council minutes to the public.

Background: The current RECA policy is consistent with other regulatory bodies that are members of the RERC. RECA publishes Highlights of Council meeting decisions in the *Regulator* (online newsletter) following each regular meeting.

Proposed Policy: RECA would publish Council meeting minutes after Council approves them. Confidential corporate information, and personal information, in accordance with Alberta's *Personal Information Protection Act*, will be deleted (redacted) prior to posting.

Question:

- a) Should Council post its meeting minutes?

3. Annual Meeting

Current Policy: Council does not hold an annual meeting.

Background: Some regulators legislation requires them to hold annual meetings; others do not.

RECA is not required to hold an annual meeting. RECA used to convene annual meetings, and in 2005, Council removed the requirement to hold an annual meeting. Prior to this decision, RECA contacted the appointing industry organizations.

The general feedback from those organizations was that RECA's annual meeting was not of great value to industry professionals, was costly to attend, and largely limited to those who resided in Calgary or representatives of organizations that paid their expenses to attend. The consensus was it would be more efficient to post the RECA Annual Report on the website, and RECA would respond to any questions industry professionals or the public might have.

RECA's Stakeholder Engagement Policy provides representatives of industry associations with an opportunity to meet with RECA to discuss information in the annual report or any other regulatory issues of interest. RECA also maintains ongoing face-to-face communications with real estate professionals on all regulatory issues with industry professionals across Alberta through a variety of strategies.

Proposed Policy: RECA hold an annual online meeting shortly after posting its annual report. To ensure equal and broad access, RECA would conduct an interactive webcast for the public and industry members to review its annual report, and respond to any questions related to its mandate.

Questions:

- a) Should RECA hold an annual meeting online shortly after posting its Annual Report?
- b) Would you participate in an online Annual Meeting?

4. Disciplinary proceedings

Current Policy: Any person can contact RECA and request a licensing history for any industry professional. RECA publishes disciplinary decisions on its website and provides the *Case Summaries* report monthly to industry professionals and other organizations that have subscribed to this service. RECA does not report the names of industry professionals who receive a letter of reprimand. Disciplinary decisions remain on RECA's website for 2 years. Lifetime withdrawals remain on the website permanently.

The following policies are currently in place:

- a. RECA does not post any information to indicate the names of the industry professionals who are the subject of conduct proceedings
- b. RECA does not publish the allegations of conduct deserving of sanction or any other documents filed by the parties in hearing/appeal process
- c. RECA hearings and appeals are open to the public. RECA does not publish or provide public notice as to when, where, and at what time it will hold hearings or appeals
- d. RECA publishes the decisions of hearing and appeal panels in "Case Summaries" provided to industry professionals and posts the decisions on RECA's website
- e. All of RECA's disciplinary decisions are available to the public upon request. However, RECA's current publications guidelines have restrictions on the publishing of certain information. For example, RECA does not publish the names of industry professionals who have received a letter of reprimand. RECA removes discipline information posted on its website after 2 years from the date of the decision.

Proposed Policy:

RECA would adopt a policy of full transparency at the conclusion of a review into the conduct of a licensed real estate professional when:

- disciplinary action occurs
- referral of a case to a hearing panel
- when the decision of a hearing panel was the subject of an appeal or judicial review.

The following policies are proposed:

- a. RECA would post the names of industry members who are the subject of a hearing (or appeal) to determine if their actions constitute conduct deserving of sanction within the meaning of the *Real Estate Act*
- b. RECA would post the allegations of conduct deserving of sanction and any other documents filed by the parties in the hearing/appeal process in chronological order

- c. RECA would publish or provide public notice when it will hold upcoming disciplinary cases i.e. date, time and place where hearings or appeals
- d. RECA will remove current restrictions on publication of information related to disciplinary decisions

Questions:

- a) Should RECA post allegations of misconduct against industry professionals (the Notice of Hearing) in advance of the hearing?
- b) Should RECA post, on its website, a list of upcoming hearings, including the date, location, and time?
- c) Should RECA remove current restrictions on publication of information related to disciplinary decisions?

5. Closing Comments

- a) Do you have any closing comments on openness and transparency for Council to consider?

What next?

The Real Estate Council of Alberta is consulting with government, the public (consumers), industry professionals, and stakeholders on these proposals. RECA will complete the consultation on May 29, 2017. Council's Governance Committee will review the consultation feedback and survey results, and report to Council.

To respond to the consultation questions, please click [here](#). Note, we are conducting this survey through a third-party platform, Survey Monkey, and we are not collecting information that personally identifies respondents.

Schedule A

RECA's Current Strategies to Promote Transparency

The following is an illustrative list of current strategies to indicate how RECA promotes transparency.

- RECA maintains a comprehensive website (www.reca.ca) that provides public access to all the information necessary to clearly understand RECA's purposes and how it achieves its mandate. It provides information for government, consumers, researchers, industry members, trade associations, other regulators, and individuals who may be interested in holding a licence in each of the industry sectors.
- RECA posts information with respect to all applicable legislation and policies that guide its operations, for example:
 - *Real Estate Act* of Alberta,
 - *Real Estate Act* Regulations
 - *Real Estate Act* Bylaws
 - *Real Estate Act* Rules
 - Recent Legislative Changes
 - Council Resolutions
 - RECA Privacy Policy
 - RECA's Publication Guidelines
 - RECA Social Media Policy and Guidelines
 - RECA's Strategic Plan
 - Annual Report
 - Residential Measurement Standards
 - Industry Professional Tools
 - Sample Real Estate and Mortgage Service Agreements for Consumer Relationships
 - Disclosure Documents
- RECA provides information about RECA's governance model, regulatory philosophy and its policies related to stakeholder engagement including:
 - Becoming a Council Member
 - Statement on Self-Regulation
 - Code of Conduct for Council Members
 - Organizational structure
 - Council Committees
 - Industry Advisory Committees
 - Stakeholder Engagement Policy
 - List of Stakeholder Engagement Activities (Since October 2014)
 - Stewardship Reporting Policy (Whistle Blower Policy)

- Information and guides for consumers on RECA's website including:
 - Getting to Know the Real Estate Council of Alberta
 - How the Real Estate and Mortgage Brokerage Industries Operate
 - Consumer Relationships Guide
 - Agency Relationship Video
 - Consumer Guide to Residential Measurement Standard in Alberta
 - Buying and Selling Guides
 - Consumer Tips (variety of common consumer issues)
 - Consumer Alerts
 - Consumer Protection Fund Guide (Real Estate Assurance Fund)
 - A Guide to Written Service Agreements for Consumers
 - Buyer Representation Agreements: Frequently Asked Questions
 - Written Service Agreements: Enhancing Consumer Protection
 - Why Sign a Buyer Representation Agreement
 - Guide to Complaints: Industry Professionals
 - Guide to Complaints Related to Unauthorized Practice
 - Guide to Investigations for Consumers
 - Appealing the Executive Director's Decision That No Further Action be Taken
 - A series of RECA Consumer Videos on YouTube

- Information, resources and guides for industry members on RECA's website including:
 - Information Bulletins (Interpretations)
 - Advertising Guidelines
 - Guide to Residential Measurement Standard in Alberta
 - Transaction Brokerage Practice Guide for Industry members
 - Designated Agency Practice Guide for Industry Members
 - Guide to Voluntary Broker Resolution Process
 - Guide to Complaints for Industry Professionals
 - Guide to a Professional Conduct Review for Industry Professionals
 - Disciplinary Hearings and the Hearing process
 - Information for Unrepresented Industry Members
 - Pre-Hearing Conference Guidelines – Practice and Procedure for Hearing and Appeal Panels
 - Guides (3) to the Trust Assurance and Practice Review Program: Real Estate Members, Mortgage Industry Members and Real Estate Appraisers
 - Guide to Online Filing of Compliance Audit forms
 - The Voluntary Broker Resolution Process
 - Errors & Omissions Insurance Guidelines for Mortgage Brokers
 - Notice to the Executive Director Guide
 - Guide to Written & Oral Submissions in Licensing Reviews for Industry Members

- RECA provides current information to the public and industry members with respect to RECA's licensing and disciplinary decisions, including:
 - Licensing status of all individuals and firms (Public Licence Search)
 - Case Summaries (all disciplinary actions)
 - Licence refusal and appeal decisions
 - News Releases – announcing industry members who have been suspended or taken lifetime withdrawals from the industry

- RECA utilizes a variety of Communication channels to communicate information to industry members:
 - Consumer & Industry Services (Call Center)
 - RECA News - Email communications tailored for the specific audience
 - Quarterly *Regulator* (newsletter); examples:
 - Message from Council
 - Council Meeting Highlights
 - RECA programs or policies e.g. Principles of Sanction
 - Current regulatory issues
 - Case Summaries (Monthly)
 - Real Estate Practice Advisor
 - Social media: Facebook, Twitter, YouTube