



REPORT WITH RESPECT TO RECOMMENDATIONS FROM THE REAL ESTATE COUNCIL OF ALBERTA TO SERVICE ALBERTA FOR AMENDMENT OF THE *REAL ESTATE ACT*

The Real Estate Council of Alberta met on April 10, 2013 and made decisions with respect to recommendations to Service Alberta for amendment of the *Real Estate Act*. The Real Estate Council of Alberta's decisions are presented in this report on an issue by issue basis, following the format of the Real Estate Council of Alberta's first and second *Real Estate Act* Amendment Consultation Papers.

In the responses received by the Real Estate Council of Alberta during the consultation process, additional issues for legislation amendment were raised. These other issues have been captured in reports and have been referred to the Real Estate Council of Alberta's Governance Committee for future consideration.

A. ISSUES PROPOSED FOR *REAL ESTATE ACT* AMENDMENT IN THE FIRST REAL ESTATE COUNCIL OF ALBERTA CONSULTATION PAPER:

Issue 1: Interpretation

1.1 DEFINITION OF ASSOCIATION AND APPRAISAL ORGANIZATION

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

APPROVED BY COUNCIL

1.2 DEFINITION OF AUTHORIZATION

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

APPROVED BY COUNCIL

1.3 DEFINITION OF OFFICIAL

CONSULTATION 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.

APPROVED BY COUNCIL

1.4 REGULATION OF PORTABLE DWELLINGS

CONSULTATION 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.

APPROVED BY COUNCIL

Issue 2: Application of the *Real Estate Act*

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

CONSULTATION 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.

APPROVED BY COUNCIL

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

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

APPROVED BY COUNCIL

2.3 MORTGAGE INVESTMENT ENTITIES

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

APPROVED BY COUNCIL

2.4 PRIVATE LENDING

CONSULTATION RECOMMENDATION: The *Real Estate Act* would not apply to private lending.

NOT APPROVED BY COUNCIL

2.5 LENDING A PERSON'S OWN MONEY

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

APPROVED BY COUNCIL

Issue 3: Composition of Council

3.1 APPOINTMENT OF REAL ESTATE OF ALBERTA COUNCIL MEMBERS

CONSULTATION 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".

APPROVED BY COUNCIL

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

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

APPROVED BY COUNCIL

Issue 5: Regulation of Business of an Industry Member

5.1 RECEIPT OF MONEY AND GUARANTEED SALES.

CONSULTATION 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.

APPROVED BY COUNCIL

5.2 RECOVERY OF COMMISSIONS

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

APPROVED BY COUNCIL

5.3 RECORDS AND BOOKS OF ACCOUNT

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

APPROVED BY COUNCIL

Issue 6: Strengthening Provisions Related to Conduct Proceedings

6.1 COMPOSITION OF HEARING PANEL

CONSULTATION 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.

APPROVED BY COUNCIL

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

CONSULTATION 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.

APPROVED BY COUNCIL

6.3 COMPLAINANT APPEAL (PART 3)

CONSULTATION 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.

APPROVED BY COUNCIL

6.4 WITHDRAWAL APPLICATIONS

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

APPROVED BY COUNCIL

Issue 7: Facilitating Claims to the Real Estate Assurance Fund

7.1 CONSULTATION 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*.

APPROVED BY COUNCIL

Issue 8: Recovery of Monetary Amounts by Filing RECA Order

8.1 CONSULTATION 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.

APPROVED BY COUNCIL

Issue 9: Service of Documents

9.1 CONSULTATION RECOMMENDATION: Add that documents may be served by electronic means and courier and that no acknowledgement of the document's receipt is required. The document is deemed served within a specified period of time unless the contrary is established.

NOT APPROVED BY COUNCIL

Issue 10: Administrative Penalties

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

APPROVED BY COUNCIL

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

11.1 COLLECTION OF PERSONAL INFORMATION FOR ISSUING AUTHORIZATIONS

CONSULTATION 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.

NOT APPROVED BY COUNCIL; HOWEVER, COUNCIL APPROVED AN AMENDMENT OF THE REAL ESTATE ACT TO PERMIT COLLECTION OF SPECIFIC PERSONAL INFORMATION FOR ISSUING AUTHORIZATIONS

11.2 PUBLICATION

CONSULTATION 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.

NOT APPROVED BY COUNCIL; HOWEVER, COUNCIL APPROVED AN AMENDMENT OF THE REAL ESTATE ACT TO PERMIT PUBLICATION OF ALL ENFORCEMENT ACTION TAKEN AND ORDERS MADE, INCLUDING PERSONAL INFORMATION ABOUT INDUSTRY MEMBERS AND OTHER INDIVIDUALS

11.3 NOTIFICATION OF INVESTIGATION

CONSULTATION RECOMMENDATION: RECA is proposing that a provision be added to the *Real Estate Act* which states that the executive director is not required to notify individuals, either before or at the time of collecting their personal information, that their personal information is being collected for purposes of investigations under the *Real Estate Act* and that the provision in the *Real Estate Act* takes precedence over PIPA.

NOT APPROVED BY COUNCIL (*Note: RECA will pursue an amendment of the Personal Information Protection Act with respect to its notification provisions.*)

B. ISSUE PROPOSED FOR REAL ESTATE ACT AMENDMENT IN THE SECOND REAL ESTATE COUNCIL OF ALBERTA CONSULTATION PAPER:

Issue: 1.1: Appointed council and roster panel members conclude hearings

CONSULTATION 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.

APPROVED BY COUNCIL

Dated: April 11, 2013