

Real Estate Act, Bylaws

July 18, 2018

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Interpretation

- 1 In these bylaws,
- (a) "Act" means the *Real Estate Act, RSA 2000, c.R-5*
 - (b) "Chair" means the Council Chair;
 - (c) "committee" means a committee of Council;
 - (d) "Council" means the Real Estate Council of Alberta;
 - (e) "executive director" means the executive director of the Council appointed under section 8 of the Act;
 - (f) "Fund" means the Real Estate Assurance fund;
 - (g) "Minister" means the minister responsible pursuant to the Act;
 - (h) "Past Chair" means the Council Past Chair;
 - (i) "Regulations" means any regulations enacted by the Minister or the Lieutenant Governor in Council under the Act;
 - (j) "Chair-Elect" means the Council Chair-Elect

Part 1 – Council Members

Appointment of Members

- 2(1) The procedure for the appointment of members under section 6(1)(e) of the *Act* shall occur as outlined in the policies established by Council from time to time for such purposes.
- 2(2) The appointing members shall, within 60 days of receiving the nominations, jointly appoint a member to the Council.
- 2(3) In the event an association fails to appoint a member under section 6 of the *Act* within 120 days of receiving notice of the vacancy as provided under subsection (5), the Council may appoint the member in any of the following ways that the Council determines appropriate:
- (a) through an election in which only industry members, who are also members of the association which failed to appoint a member, are entitled to vote;
 - (b) by appointment at the discretion of the Council from among industry members who are also members of the association which failed to appoint a member;
 - (c) by appointment at the discretion of the Council from among all industry members.
- 2(4) Any appointment by the Council under subsection (3) does not invalidate nor impair the right of an association to appoint a member in accordance with section 6 of the *Act* on a vacancy occurring in the office of the member appointed under subsection (3).
- 2(5) Where a vacancy on the Council occurs, the executive director is given notice by a member that the member is resigning from Council or an appointment is about to expire, the executive director shall:
- (a) in the event of a resignation, provide written or oral notice to the association or person responsible for appointing the member as soon as possible following receipt of the notice from the member,
 - (b) in the event of a vacancy, provide written or oral notice to the association or person responsible for appointing the member as soon as possible on becoming aware of the vacancy occurring, or

- (c) In the event of an appointment expiring, provide the association or person responsible for appointing the member with at least 90 days' prior written notice of the date of expiry of the appointment.
- 2(6) The effective and expiry dates of appointments of members to Council under section 6 of the Act shall occur as follows:
- (a) all appointments shall expire on October 31 of the applicable year and new appointments shall be effective on November 1 of the applicable year;
 - (b) notwithstanding that a member's term of office has expired, the member shall remain in office until a successor is appointed.

Members' Duties

- 3(1) Each member shall
- (a) fulfill the purposes of the Council under the Act,
 - (b) serve as a link between the industry and members of the public, and bring to the Council's attention anything that would affect the welfare or interests of the industry and the public,
 - (c) participate in developing and evaluating the policies and programs of the Council and, more generally, in developing and evaluating the policies and programs affecting the industry,
 - (d) obtain information about the operation or administration of the Council from the executive director or a person designated by the executive director,
 - (e) keep in confidence matters discussed in private by Council or a committee of Council, until published under section 55 of the Act, or released as public information by the Council,
 - (f) attend the meetings of Council except as provided under subsection (2),
 - (g) co-operate with and respond to requests for signatures confirming receipt of resolutions under section 10, and
 - (h) exercise the powers, functions and duties delegated to that member by the Council in accordance with the bylaws and the rules.
- 3(2) A member of Council is disqualified if the member is absent from three consecutive Council or committee meetings or is absent from a total of four Council or committee meetings over a 12 month period.
- 3(3) A member of Council is not disqualified by being absent from Council or committee meetings under subsection 3(2) if the Chair or committee chair, before or after a meeting, excuses the member from attending the meeting if the Chair or committee Chair considers that the member has a valid reason for not attending or if the Council member is absent from a Council meeting or committee meeting on Council business at the direction of Council.

Remuneration

- 4(1) Each member of the Council is entitled to remuneration and expenses at rates set by the Council for carrying out duties as a member of the Council or as a member of a committee established by the Council.
- 4(2) The Council shall review the rates of remuneration and expenses annually when it sets its operating budget for the succeeding fiscal year.

- 4(3) No member shall be reimbursed for expenses incurred in respect of a person other than the member unless the Council approves such reimbursement in advance.
- 4(4) If a member of the Council or a person appointed to a committee receives reimbursement for the same expenses from another source or entity other than the Council, that member or person shall repay to the Council any money received as reimbursement for those same expenses under these bylaws.

Officers of Council

- 5(1) The officers of the Real Estate Council of Alberta are the Chair, Chair-Elect, Past Chair, and executive director.
- 5(2) At the last meeting of the Council prior to November 1st, at which at least ten (10) members of Council are present, the members shall elect a Chair and a Chair-Elect from among the members.
- 5(3) For the purposes of (2) above regarding the election of the Chair-Elect, the following rules of procedure will apply:
- (a) Any member of Council who wishes to stand for election to the position of Chair-Elect, shall declare their intention to the executive director by e-mail at least 30 days prior to the meeting of Council at which time the Chair-Elect will be elected by Council;
 - (b) The executive director shall, as soon as practical following the deadline for receipt of declarations, notify all Council members of the names of the individuals who have declared their intention to stand for election to the position of Chair-Elect;
 - (c) A member of Council who has declared their intention to stand for election to the position of Chair-Elect, may withdraw their name at any time prior to the election by notifying the executive director by e-mail and the executive director shall notify all Council members as soon as practical;
 - (d) Prior to voting at the meeting of the election each candidate will be given the opportunity to address the members of Council or if not present, may write an announcement to be read by the Chair of Council;
 - (e) A member of Council does not have to be present at the meeting to be elected to the position of Chair-Elect;
 - (f) If the result of the election is a tie vote, each individual who is a candidate for the position of Chair-Elect will be given an opportunity to address the members of Council, without further comment or question from any of the other members of Council, before a second vote is conducted; and,
 - (g) If there is a tie after a second vote is conducted, using the same procedure outlined in (f) above, Council will conduct as many votes as are necessary until such time as the tie is broken.
 - (h) If following the election of a Chair-Elect, the Chair-Elect resigns, becomes ineligible or is unable to act as Chair-Elect for any reason, the Council will elect a new Chair-Elect at the next regular meeting of Council following notification or an earlier date scheduled by the Chair at which at least ten (10) members of Council are present. The rules of procedures set out in s. 5(3)(a) through (g) will apply.
- 5(4) For the purposes of (2) above regarding the election of the Chair, the following rules of procedure will apply:
- (a) The member of Council does not have to be present at the meeting to be elected to the position of Chair; and

- (b) The Chair-Elect will be deemed elected to the position of Chair.
- 5(5) Following the election of a Chair, the member who held the position of Chair prior to this meeting shall hold the office of Past Chair if that member agrees and is otherwise eligible to be a member of Council.
- 5(6) Subject to subsection (6), a member elected as Chair or Chair-Elect, and the Past Chair, holds their office for a one-year term.
- 5(7) The Council may, under special circumstances, elect a member as Chair or Chair-Elect for a second one-year term.
- 5(8) In the event a member is elected to the position of Chair or Chair-Elect for a second term as provided in subsection (5), the term of the member holding the office of Past Chair shall be extended by the same second term if that member agrees and is otherwise eligible to be a member of council.
- 5(9) The effective and expiry dates of terms of members elected as Chair or Chair-Elect, and the Past Chair shall occur as follows:
- (a) all terms shall expire on October 31 of each applicable year and new terms shall be effective on November 1 of each applicable year;
 - (b) notwithstanding that a member's term of office has expired, the member shall remain in office until a successor is appointed.

Ex Officio Committee Members

- 6(1) The Chair and executive director are ex officio members of all committees.
- 6(2) The Chair shall be a voting member of all committees unless specified otherwise in the committee terms of reference approved by Council.
- 6(3) The executive director shall be a non-voting member of all committees unless specified otherwise in the committee terms of reference approved by Council.

Duties of Chair, Chair-Elect and Past-Chair

- 7(1) The Chair shall:
- (a) perform the duties specified in the Act and these bylaws;
 - (b) fulfill the duties of office as described in the Chair's position description approved by Council; and,
 - (c) perform any other duties assigned by Council.
- 7(2) The Chair-Elect shall:
- (a) when the Chair is absent or unable to act, discharge all the duties of the Chair;
 - (b) fulfill the duties of office as described in the Chair-Elect's position description approved by Council; and
 - (c) perform any other duties assigned by Council.
- 7(3) The Past-Chair shall:
- (a) when both the Chair and Chair-Elect are absent or unable to act, discharge all the duties of the Chair;
 - (b) fulfill the duties of office as described in the Past-Chair's position description approved by Council; and

(c) perform any other duties assigned by Council.

Part 2 – Council Proceedings

Quorum

- 8(1) Any member may participate in a meeting of the Council or a committee by means of conference telephone, video conference, or other communications equipment by means of which all persons participating in a meeting can hear, or see and hear each other, and a member participating in a meeting in such a manner shall be deemed to be present in person at the meeting.
- 8(2) Except where these bylaws provide for a greater number, the quorum at a meeting of the Council is 7 members.
- 8(3) A bylaw or rule may only be made, amended or repealed at a Council meeting at which at least 8 members are present.
- 8(4) Where the Council delegates any power, duty or responsibility under section 15 of the Act, it shall do so only at a meeting at which at least 8 members of Council are present.

Resolution Instead of Meeting

- 9 Where a meeting is not held, a resolution in writing shall be valid and effectual as if it had been passed at a meeting of the Council duly called and constituted when:
- (a) receipt of the proposed resolution is confirmed in writing and returned to the executive director by all members, and
 - (b) the resolution is agreed to, in writing, by at least 8 of the members.

Meetings

- 10(1) The Council shall hold regular meetings at least 4 times per year on a quarterly basis.
- 10(2) At the first meeting of the Council after October 31, Council shall approve a schedule of regular Council meetings for the succeeding year.
- 10(3) Unless specified otherwise by the Chair, all Council meetings will be held at the head office of the Real Estate Council of Alberta.
- 10(4) At least ten (10) days prior to each regular Council meeting, the executive director shall use best efforts to forward a meeting package to all Council confirming the time, date and location of the meeting, together with an agenda and sufficient detail of all business to be transacted at the meeting to allow each member to be adequately informed of the issues.
- 10(5) Notwithstanding anything in this section, the Chair may call a special meeting of the Council on providing at least 24 hours' written notice to each member, stating the purpose of the meeting and the date, time and place at which the meeting is to be held.
- 10(6) Notice of a meeting under this section is deemed to have been given to a member if the notice is delivered to an adult person at the member's home or place of business, or delivered by fax or by e-mail to the fax number or e-mail address provided by the member to the executive director.

Rules of Procedure

- 11 Except as otherwise provided in the Act, the regulations, the bylaws or the rules, all meetings of the Council and any committee shall be governed by the rules of procedure in the attached Schedule 1 – Rules of Procedure.

Establishing Committees

- 12(1) The Council may establish standing, advisory or ad hoc committees.
- 12(2) On establishing a committee, the Council shall establish a terms of reference for the committee that includes:
- (a) the mandate of the committee,
 - (b) the composition of the committee,
 - (c) the quorum of the committee,
 - (d) the staff resources of the committee,
 - (e) the reporting requirements of the committee to the Council, and
 - (f) if an ad hoc committee, the term of the committee.
- 12(3) The standing committees of Council are:
- (a) Finance & Audit Committee, and
 - (b) Hearings Committee
- 12(4) The advisory committees of Council are the:
- (a) Residential Real Estate Advisory Committee,
 - (b) Commercial Real Estate Advisory Committee,
 - (c) Property Management Advisory Committee,
 - (d) Mortgage Brokers Advisory Committee,
 - (e) Real Estate Appraisers Advisory Committee, and
 - (f) Consumer Advisory Committee
- 12(5) The composition of a committee must include at least one member of Council, and may include industry members and the public at large.
- 12(6) Subject to subsection (7), the Chair shall make all committee appointments, including the committee chair.
- 12(7) The terms of reference of a committee may provide for appointments to be made to the committee by a specified external organization.
- 12(8) The effective and expiry dates of appointments to committees shall occur as follows:
- (a) all appointments to committees shall be effective on the date of appointment by the Council, Chair, or external organization, as the case may be, and shall expire on October 31 of each applicable year, unless specified otherwise by the Chair;
 - (b) notwithstanding that an appointment has expired, the individual appointed shall remain in office until a successor is appointed.
- 12(9) Any recommendation or decision of a committee established under this section must be ratified by Council prior to being acted on.

Records of Proceedings

- 13(1) The Council shall keep minutes of its meetings and each committee shall provide a record of their proceedings.

- 13(2) Minutes of Council meetings and bylaws, rules and resolutions must be signed by the Chair and at least one other person so authorized by the Council.
- 13(3) The record of any committee proceedings must be signed by the person presiding at the meeting.

Irregular Appointments

- 14 Subject to the quorum requirements, all actions taken by the Council or by any person acting as a member are valid notwithstanding that a person is not qualified to be a member or that there was a defect in the appointment of that person as a member of the Council.

Part 3 – Administration

Appointment of Executive Director

- 15(1) The appointment of a person to the position of executive director may be made, suspended or revoked only if the majority of all of the members of the Council then in office vote to do so.
- 15(2) The appointment of a person to the position of executive director may not be revoked or suspended unless the Council notifies the executive director, in accordance with subsection (3), that it is proposing to revoke or suspend the appointment and provides the executive director with its reasons.
- 15(3) The notification and reasons must be in writing and be served personally on the executive director or sent by regular mail to the address of the executive director as shown in the Council's records.
- 15(4) If requested by the executive director, the Council must give the executive director or the executive director's representative a reasonable opportunity to be heard before the Council.

Duties of Executive Director

- 16(1) As chief administrative officer of the Council, the executive director shall:
 - (a) assist the Council in the establishment of policies and procedures under section 17,
 - (b) ensure that the policies and programs of the Council are recorded and implemented,
 - (c) advise and inform the Council on the operation and affairs of the Council's administration,
 - (d) perform the duties and exercise the powers and functions assigned to the executive director by the Act, the regulations, the bylaws and the rules, or as otherwise assigned by Council, and
 - (e) report to the Chair on the ongoing activities of the Council, its policies and programs, and on other matters as directed by the Council.
- 16(2) The executive director must ensure that
 - (a) the names of members present at Council meetings are recorded,
 - (b) following a Council or Committee meeting, RECA provides the draft Council or Committee meeting minutes to the Chair of Council or Committee within two weeks (14 days) of the Council or Committee meeting. The Chair or Chair Elect of Council or the Chair or Vice Chair of the Committee approves the minutes for timely

- circulation to the Council or Committee. The Council or Committee will formally approve the draft minutes at the next Council or Committee meeting. The bylaws, rules and minutes of Council meetings, and all other records and documents of the Council are kept safe,
- (c) the operating and capital budgets for the succeeding fiscal year are prepared in a timely manner before the current fiscal year end,
 - (d) the reports referred to in section 16 of the Act are prepared,
 - (e) the revenues of the Council are collected and controlled, and receipts are issued in the manner directed by the Council,
 - (f) all money belonging to or held by the Council is deposited in a bank, credit union, loan corporation, treasury branch or trust corporation designated by the Council,
 - (g) all accounts for expenditures authorized by the Council are paid,
 - (h) accurate records and accounts are kept of the financial affairs of the Council,
 - (i) money belonging to or held by the Council is invested as directed by the Council, and
 - (j) appropriate staff, including any delegate(s), are hired or otherwise engaged and supervised as necessary to assist the Council and the executive director in fulfilling the Council's purposes.

Delegation

- 17 The executive director may delegate to a member of staff his duties and the exercise of the powers and functions assigned to the position of executive director by the Act, the regulations, the bylaws and the rules, or as otherwise assigned by Council.

Policies and Procedures

- 18 The Council may establish policies and procedures to be followed in the administration of the bylaws, rules and resolutions of Council.

Signing Authority

- 19 Agreements, cheques and other negotiable instruments must be signed or authorized by at least two persons so authorized by the Council.

Fiscal Year

- 20(1) The fiscal year of the Council will be from October 1 to September 30.
- 20(2) The second and each succeeding fiscal year shall be as determined by the Council, but shall be a period of 12 months.
- 20(3) The 12 month requirement does not apply in a year in which the Council changes the fiscal year.

Accounts

- 21 Only a person authorized by the Council may open or close accounts that hold the money of the Council.

Operating Budget

- 22(1) The Council must, at least 30 days prior to the end of the current fiscal year, approve an operating budget for the succeeding fiscal year.

- 22(2) An operating budget must include the estimated amount of expenditures and revenues from each source, and the amount needed to provide for the Council's policies and programs.

Capital Budget

- 23(1) The Council must, at least 30 days prior to the end of the current fiscal year, approve a capital budget for the succeeding fiscal year.
- 23(2) A capital budget must include
- (a) the estimated amount of money needed to acquire, construct, remove or improve capital property,
 - (b) the anticipated sources and amounts of money to pay the costs referred to in clause (a), and
 - (c) any amounts to be transferred from the operating budget or any other fund maintained by Council.

Expenditures

- 24(1) The Council may only make an expenditure that
- (a) is included in its operating budget or capital budget or otherwise authorized by the Council,
 - (b) is for an emergency, or
 - (c) is legally required to be paid.
- 24(2) The Council shall establish procedures to authorize and verify expenditures that are not included in a budget.

Investments

- 25 The Council may invest its money only in investments in which a trustee may invest trust funds under the Trustee Act.

Borrowing for Operating Purposes

- 26(1) Subject to subsection (2), in each fiscal year the Council may for operating purposes borrow by way of loan, bank overdraft or line of credit from any financial institution any sum, to a maximum total of 15% of the operating budget of the Council for that fiscal year.
- 26(2) Any sum borrowed must be borrowed on the condition that the sum is to be repaid within the fiscal year in which the loan is made.
- 26(3) The Council may, during the fiscal year in which any sum is borrowed and the succeeding fiscal year, extend the term of the loan and renew or extend any obligations or securities securing the loan, but the total amount of time from the date a sum is initially borrowed to the date that the sum is repaid must not exceed two years.

Borrowing for Capital Purposes

- 27(1) Subject to subsections (2) and (4) to this section, in each fiscal year the Council may for capital purposes borrow by way of loan, overdraft or line of credit from any financial institution any sum, to a maximum total of 15% of the Council's total budget for that fiscal year.

- 27(2) Subject to subsections (3) and (4), any sum borrowed must be borrowed on the condition that the sum is to be repaid within the fiscal year in which the loan is made.
- 27(3) Subject to subsection (4), the Council may, during the fiscal year in which any sum is borrowed and the two succeeding fiscal years, extend the term of the loan and renew or extend any obligations or securities securing the loan, but the total amount of time from the date a sum is initially borrowed to the date that the sum is repaid must not exceed three years.
- 27(4) After Council has approved the purchase of real estate to be owned and occupied by the Real Estate Council of Alberta, the Council may borrow a maximum sum of 80% of the purchase price of the real estate, secured by a loan, debenture, mortgage agreement or other form of security, provided that the total amount of time from the date a sum is initially borrowed to the date that the sum is repaid must not exceed twenty-five years.

Recovery of Costs from Industry Members

- 28(1) Where a complainant is ordered to pay costs under section 40(4) of the Act or an industry member is ordered to pay costs under section 43(2) of the Act or costs are awarded pursuant to section 50(5) of the Act, the costs payable shall be determined in accordance with the following:
- (a) Investigation costs
- (i) investigators' costs at a minimum of \$40 per hour to maximum of \$80 per hour;
 - (ii) general investigation costs including but not limited to disbursements, expert reports and travel costs in accordance with Council policy guidelines;
 - (iii) transcript production including but not limited to interview transcripts;
 - (iv) legal costs not to exceed \$250 per hour; and
 - (v) other miscellaneous costs.
- (b) Hearing and appeal costs
- (i) investigators' costs at a minimum of \$40 per hour to a maximum of \$80 per hour;
 - (ii) general hearing and appeal costs including but not limited to disbursements, process service charges, conduct money, expert reports, travel expenses including but not limited to witnesses and Council representatives in accordance with Council policy guidelines, expert witness fees to a maximum of \$1,000 per diem;
 - (iii) transcript production;
 - (iv) hearing or appeal administration costs including but not limited to location rental, hearing secretary salary to a maximum of \$15 per hour, honoraria of hearing panel members;
 - (v) legal costs not to exceed \$250 per hour;
 - (vi) adjournment costs; and
 - (vii) other miscellaneous costs.
- 28(2) Upon the complainant providing notice in writing of an appeal under section 40(4) of the Act, the complainant shall post security for costs with the Council in the amount of \$500.
- 28(3) Subject to a panel's discretion, the following Guide to Costs may apply:

ITEM	COLUMN 1	COLUMN 2	COLUMN 3	COLUMN 4	COLUMN 5
Total fine or penalty	\$0 - \$4,999	\$5,000 - \$9,999	\$10,000 - \$29,999	\$30,000 - \$69,999	Over \$70,000
Costs for fully Contested Hearing, including Administrative Penalty Appeal	\$0 - \$2,000	\$0 - \$2,500	\$0 - \$5,000	\$0 - \$7,500	\$0 - \$10,000
Costs for Hearing and Administrative Penalty Appeal with Agreed Statement of Facts	\$0 - \$1,500	\$0 - \$2,000	\$0 - \$4,500	\$0 - \$7,000	\$0 - \$9,500
Costs for Hearing and Administrative Penalty Appeal with Agreed Statement of Facts and Admission of Conduct Deserving of Sanction	\$0 - \$1,000	\$0 - \$1,500	\$0 - \$4,000	\$0 - \$6,500	\$0 - \$9,000
Costs for Hearing and Administrative Penalty Appeal with Agreed Statement of Facts, Admission of Conduct Deserving of Sanction and Agreement on Sanctions	\$0 - \$750	\$0 - \$1,250	\$0 - \$1,750	\$0 - \$2,250	\$0 - \$2,750
Costs for Consent Agreement	\$0 - \$500	\$0 - \$1,000	\$0 - \$1,500	\$0 - \$2,000	\$0 - \$2,500

- 28(4) The following factors may be considered by a panel in determining any cost order:
- (a) the degree of cooperation by the industry member;
 - (b) the result of the matter and degree of success;
 - (c) the importance of the issues;
 - (d) the complexity of the issues;
 - (e) the necessity of incurring the expenses;
 - (f) the reasonable anticipation of the case outcome;
 - (g) the reasonable anticipation for the need to incur the expenses;
 - (h) the financial circumstances of the industry member and any financial impacts experienced to date by the industry member; and
 - (i) any other matter related to an order reasonable and proper costs as determined appropriate by the panel.

Indemnification of Council members

- 29 The Council shall indemnify each member against all costs, charges and expenses that the member incurs in respect of any civil, criminal or administrative action or proceeding to which the member is made a party by reason of anything done or permitted by the member in the execution of the duties of office as member, except things that are occasioned by the member's own willful neglect.

Part 4 – Administrative Penalties

Designation of Administrative Penalties

- 30(1) The contraventions of the provisions listed in column 1 of Schedule 2 to these bylaws are hereby designated as the contraventions which may be dealt with and in accordance with the procedure set out in section 83 of the Act.

Notice of Administrative Penalty

- 31(1) A notice issued to a person by the executive director pursuant to subsection 83 of the Act shall be in writing and specify
- (a) the contravention of the provision that the executive director believes has occurred;
 - (b) the particulars of the alleged contravention;
 - (c) that payment of the amount set out in the notice will be accepted by the executive director as complete satisfaction of the amount of penalty for the alleged contravention and that no further proceedings under Part 6 of the Act will be taken against the person in respect of that contravention and that a person who pays an administrative penalty may not be charged under this Act with an offence in respect of that contravention;
 - (d) that if the person fails to pay the amount set out in the notice in accordance with the requirements set out therein, the executive director may commence legal proceedings against the person to recover the amount owing in respect of the administrative penalty as a debt due the Council and may charge that person under the Act with an offence in respect of that contravention; and
 - (e) that the person has the right to appeal the administrative penalty to a Hearing Panel in accordance with section 83.1 of the *Real Estate Act*, and that person will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the alleged contravention.
- 31(2) A notice under subsection (1) shall be served personally or by single registered mail sent to the latest known address of the industry member to whom the notice relates.

Time to Pay

- 32(1) Subject to subsection (2), a person must pay any penalty imposed in accordance with subsection 83 of the Act within 30 days of the date on which the executive director issued a notice of administrative penalty.
- 32(2) Where the executive director is of the opinion that a penalty may cause undue hardship for the person who has received a notice of administrative penalty, the executive director may extend the time to pay.

33 & 34

*Repealed May 5, 2010
Resolution 2010-2*

Part 5 – Hearing and Appeal Panels

Hearing and Appeal Practice and Procedure Guidelines

- 35 The practice and procedure of a hearing panel and an appeal panel shall include the Hearing and Appeal Practice and Procedure Guidelines prescribed, adopted and approved by the Council from time to time.

Appointment of Hearing Panels and Appeal Panels

- 36(1) The Council shall establish a hearing panel roster consisting of council members, industry members, past council members or members of the public.
- 36(2) The Council shall establish an appeal panel roster consisting of council members.
- 36(3) In addition to council members, Council may appoint one or more members of the Law Society of Alberta or the law society of any other province or territory to the appeal panel roster.
- 36(4) Subject to subsection (4.1), each member of Council is a member of the hearing and appeal panel roster and is eligible to be appointed to one or more hearing and appeal panels for the period of their appointment to Council.
- (4.1) If Council has resolved to apply to the Court for an order declaring a member of Council to be disqualified from membership on Council, that member shall not be eligible for appointment to a hearing or appeal panel roster until such matter is concluded.
- 36(5) The Hearings Committee Chair will appoint hearing and appeal panel members from the hearing and appeal panel roster established by Council to any hearing or appeal as set out in the Real Estate Act.
- 36(6) In the absence of the Hearings Committee Chair, the Hearings Committee Vice-Chair will make the appointments to hearing and appeal panels.
- 36(7) In the absence of the Hearings Committee Chair and Vice-Chair, the Council Chair will make the appointments to hearing and appeal panels.

Part 6 – Real Estate Assurance Fund

Administration of Fund

37 The Fund shall be administered by the executive director subject to the direction of Council.

Practices & Procedures

38 The Council may establish practices and procedures in relation to the administration of the monies held in the Fund.

Trust Account

39 All monies credited to the Fund shall be maintained in a trust account in a bank, loan corporation, trust corporation, credit union or treasury branch in Alberta, separate and apart from any other money of the Council.

Levies

40 Any monies collected by the levy of assessments on applicants to become industry members and/or on the classes of industry members provided for in the Regulations, pursuant to section 57(5) of the Act, as well as any income from such monies, shall be credited to the Fund.

Recoveries

41 Any recovery of monies by the Council pursuant to subsection 60(5) and section 61 of the Act shall be credited to the Fund.

Payments from Fund

42 Payments may be made from the Fund for the following purposes:

- (1) payment of compensation pursuant to subsection 60(4);
- (2) payment of any or all of the monies in the Fund in excess of the amount prescribed in the Regulations for any purpose authorized in the Regulations, with the prior written consent of the Minister, pursuant to subsection 57(4) of the Act; and
- (3) payment of the administrative costs associated with the Fund, from the income from the investment of the money in the Fund, assessments levied pursuant to subsection 57(5) of the Act or monies approved by the Minister pursuant to section 57(4) of the Act, or from a combination of two or more of the foregoing sources.

Payments Authorized by Minister

43 In the event that the payment of monies from the Fund is authorized by the Minister pursuant to subsection 57(4) of the Act, any such monies shall be held in a trust account separate from the remainder of the Fund.

Executive Director's Fund Duties

44 The executive director shall:

- (1) ensure that all monies credited to the Fund are held as trust funds and invested only as permitted by the Act, the regulations, the bylaws and as directed by the Council;
- (2) ensure that accurate records and accounts are kept in relation to the Fund and report to the Council in relation to the Fund as directed by the Council;
- (3) advise the Council as to the balance and prospective balance of the Fund; and
- (4) assist the Council in making appropriate reserves for the contingent liabilities of the fund and determining the need for the levy of assessments pursuant to subsection 57(5) of the Act.

Notification to Minister

- 45 If at any time the balance of the Fund falls below the amount prescribed in the Regulations, the council shall immediately inform the Minister.

Part 7 – Schedules

Schedule 1 - Rules of Procedure

Introduction

This *Procedure Bylaw* is a set of simple rules that is consistent with the general concepts of parliamentary procedures, is easily applied and anticipates most situations Council and its committees are likely to encounter. It is based upon the *Simple Rules of Procedure for Occupational Licensing Agencies*, authored by Thomas R. Miller and published by the Association of Real Estate License Law Officials (ARELLO), of which the Real Estate Council of Alberta is a member.

In order to keep these rules simple, it has been necessary to focus only on likely situations. Consequently, these rules may be inadequate to cover certain unanticipated situations. When these arise, council members will have to fashion a procedural response to the problem consistent with the spirit of these rules using common sense, charity and justice.

Subordination to Law

The Real Estate Council of Alberta must conduct its business within the boundaries set out in the Real Estate Act, Rules and Bylaws. This Procedure Bylaw covers the conduct of business at a Council or committee meeting where such business may be lawfully conducted.

These rules of procedure are not intended to address special procedural requirements of conduct proceedings under Part 3 of the *Real Estate Act*. In any situation where these rules of procedure could be interpreted as conflicting with any requirement of law, Council must adopt an interpretation of the rules which avoids the potential conflict.

Guiding Principles

Council members should approach the *Procedure Bylaw* with a spirit of goodwill and common purpose. Adherence to the rules is the responsibility of all council members.

Interpretation of the Procedure Bylaw must be guided by the following principles:

1. fair and open debate
2. majority rule
3. courtesy
4. good order
5. common sense
6. efficiency

The goal is to move business along, to ensure majority rule, and to provide the minority with a right to be heard. Because the rules in the Procedure Bylaw are few, and there is not a rule for every situation that may arise, it is incumbent upon council members to apply the rules guided by the principles above.

The Rules of Procedure

1. Majority Rule

- (a) Each member has one vote on a matter on which the Council votes.
- (b) Except as may be otherwise provided by law, all decisions by Council shall be made upon a vote of majority of the members present at the meeting, a quorum being in attendance.
- (c) Before a vote is taken by Council, a member may request the vote be recorded.
- (d) If there are an equal number of votes for and against a motion, the motion is defeated.

2. Duties and Powers of the Chair

- a) The chair shall preside at all meetings when present. When the chair is not present, the chair-elect shall preside. If there is no chair-elect, Council shall designate a temporary chair to preside in the chair's absence.
- b) The chair may initiate action and participate in debate on any matter with the same rights and privileges as any other member and the chair shall vote on every matter before Council, unless first excused or disqualified as provided in the *Procedure Bylaw*.
- c) The chair shall exercise the following powers impartially and without favour:
 - i) to recognize any member or other person to address the chair or Council;
 - ii) to reasonably regulate the course of debate consistent with the *Procedure Bylaw*, including the time allotted to any speaker;
 - iii) to reframe or restate any motion as an aid to the moving party;
 - iv) to enforce the *Procedure Bylaw* and to determine whether a motion, petition, or remarks of any person is out of order when the same has been brought into question by any member or upon the chair's own motion;
 - v) to deviate from the agenda or order of business when fairness or the convenience of Council may require it;
 - vi) to call the members to a meeting, to call meetings to order, to call a brief recess in business and to adjourn a meeting; and
 - vii) to take such action consistent with the *Procedure Bylaw* which may be necessary to protect the rights of any person at the meeting or the dignity of the meeting.
- d) Appeal of any procedural ruling by the chair shall be made to Council upon the motion of any member. Council shall decide a motion to appeal in a manner consistent with the *Procedure Bylaw*. A motion to appeal shall be debated and determined immediately.

3. Council Decisions

Except as provided in Rule 4, decisions by Council shall be made upon the motion of any member. Any member present and not disqualified may make a motion, including the chair or other presiding officer. No second shall be required for any motion.

4. Proceeding without Objection

On routine matters and any other matter when it appears to the chair that council members are of one mind, the chair may state the action to be taken and call for objections from council members. The matter shall be deemed approved if no member objects. Upon the objection of any member, the matter shall be decided only following a motion and appropriate debate.

5. Course of Debate

- a) On any matter where reports are to be considered, the reports shall be considered before a motion to determine the matter shall be permitted.
- b) The chair may permit general discussion of a matter before a motion to determine the matter is made. Otherwise, no discussion or debate of a matter shall be allowed until such a motion is made.

- c) Debate shall be allowed following every motion for which, under the rules, debate is allowed. No member shall be unreasonably excluded from debate.
- d) Whenever possible, the chair shall call upon the member making a motion to speak first and shall recognize a member who has not spoken before a member who has previously spoken on the motion.
- e) Except as may be expressly permitted in these rules, no member or person in attendance at a meeting shall speak except without first being recognized by the chair. The chair shall not unreasonably withhold recognition from any individual wishing to speak.
- f) Except for questions of a member allowed by the chair, all discussion and debate will be addressed to the chair or to Council generally. When a question is permitted of a member recognized to speak, that member shall not surrender the right to reasonably conclude any remarks following the response to the question.
- g) All remarks shall be civil in content and in tone. Whenever possible, a speaker shall avoid merely repeating the remarks of a previous speaker.

6. Main Motions

When a motion which disposes of a main issue before Council is pending, Council shall not consider another such motion.

7. Affirmative Language

Whenever possible, motions should be cast in affirmative language.

8. Inappropriate Motions

Dilatory, frivolous, rude or absurd motions and motions which are contrary to the Procedure Bylaw shall not be allowed.

9. Procedural Motions

- a) The motions set forth in paragraph (b) of this rule are the only procedural motions which may be considered when a main or substantive motion is pending. Other motions shall not be considered. The procedural motions set forth in paragraph (b) of this rule also may be offered at other times as appropriate. Except as may be provided in paragraph (c) of this rule, a procedural motion is debatable and may be amended.
- b) Procedural motions shall follow the following order of rank or precedence. A procedural motion with a lower rank may not be considered while a motion of higher rank is pending.

Rank	Motion
First	To appeal a ruling of the chair or other presiding officer
Second	To recess the meeting
Third	To lay a matter upon the table
Fourth	To postpone action indefinitely
Fifth	To postpone action until a date certain
Sixth	To take up from the table
Seventh	To call the previous question to a vote
Eighth	To amend
Ninth	To make a substitute motion
Tenth	To refer to a committee
Eleventh	To withdraw a pending motion

- c) Concerning procedural motions:
- 1) To appeal a ruling of the chair – This motion may be made by any council member immediately following the ruling which is the subject of the motion. A member may appeal only procedural rulings with this motion as contemplated in Rule 2(d).
 - 2) To recess the meeting – This motion may be made to request a brief recess only. A recess ordered under this rule may be for any reason.
 - 3) To lay a matter upon the table – This motion will allow Council to postpone a decision on a pending main motion for a brief time during a meeting so that other business can be conducted. Unless the matter upon the table is taken up by a separate motion, it will be placed at the end of Council's business and taken up before the meeting is adjourned. A motion to lay upon the table may not be debated or amended.
 - 4) To postpone indefinitely – This motion may be made to ask Council to postpone action on a main motion without any date set for resumption of consideration. Any motion postponed indefinitely shall expire unless revived by the adjournment of the second regular meeting of the Council following the meeting at which the motion was postponed. No motion substantially similar to the postponed motion shall be considered by Council unless a timely motion to revive consideration of the postponed motion is adopted by the Council. This motion is debatable.
 - 5) To postpone consideration to a date (and time) certain – This motion calls upon Council to postpone consideration of a main motion to a date and perhaps also a time specifically identified by the moving member. While consideration of a main motion is delayed under these rules, no substantially similar motion shall be considered by Council.
 - 6) To call the previous question to a vote – This motion may be made only after persons desiring to speak on a pending motion have had the opportunity to speak at least once.
 - 7) To amend a motion –
 - a) A motion to amend must be relevant to the motion which it seeks to amend.
 - b) An amendment which is acceptable to the maker of the original motion shall be adopted without a vote of the members. An amendment which is not acceptable shall be adopted only upon a vote of the members. The adoption of an amendment shall not constitute the adoption of the original motion as amended.
 - c) A motion to amend a pending motion to amend is in order, but a further motion to amend shall not be considered until disposition is made of the previous motion to amend.
 - 8) To make a substitute motion – A motion to treat a matter in a manner which is substantially different from a pending motion shall be offered as a substitute motion. A substitute motion may be amended as provided under Rule 7(c); however, only one substitute motion may be considered at one time. A vote to adopt or defeat a substitute motion does not dispose of the original motion.
 - 9) To refer to a committee – This motion permits Council to refer a pending matter to a standing committee, a committee created to consider the pending matter, or to Council's staff. The motion shall include a date when the matter referred must be returned to Council with a report or recommendation. If the committee provides no report or recommendation within the time allowed, the referred matter shall return to Council for disposition.
 - 10) To withdraw a motion – A pending motion may be withdrawn by its maker at any time prior to its amendment, adoption, or defeat as long as no other procedural motion is also pending.

10. Motions to Restore Matters Previously Postponed or Defeated

The motions described in this rule are in order only when no other motion is pending. Each motion may be debated and amended.

- a) To take up from the table – This motion calls for Council to take up and consider a main motion previously laid upon the table. A motion to take up an item from the table may not be made while another main motion is pending.
- b) To revive consideration – This motion may be used to call upon Council to revive consideration of any matter indefinitely postponed by the adoption of a motion made under Rule 9(c)(4). To be in order, a motion to revive consideration must be made before the matter to be revived expires.
- c) To reconsider – This motion may be used during any meeting to ask Council to reconsider any action taken during that same meeting. To be in order, the motion must be made by a member who voted with the prevailing side on the matter to be reconsidered. A motion to reconsider must be made prior to the final adjournment of the meeting at which the action to be reconsidered was taken.

11. Every Member Must Vote

It is the duty of every council member, including the chair, to vote on every matter coming before Council. No member may abstain from voting and if any member shall fail to indicate his vote, it shall be recorded as an affirmative or “yes” vote. Voting on any matter before Council, except the appointment of the chair and chair-elect, will be conducted by a show of hands. A member may be excused from voting by a vote of Council.

Any member may make a motion to be excused or to excuse any other member from voting. Council shall excuse a member from voting only upon grounds of a real or potential conflict of interest, direct or indirect, or the appearance of such a conflict of interest or if voting on the matter by the member will result in or create the appearance the member would be in breach of section 9(1)(c) of the *Real Estate Act*.

In a conflict of interest situation, the council member shall disclose the conflict in accordance with Rule 12 and ask the entire Council for permission to be excused. Where the conflict is clear, the chair may approve the request without objection under Rule 4.

Council may also excuse a member from voting upon the grounds of personal emergency or other grounds in law. However, a member shall not be excused even upon these grounds if doing so will unreasonably prevent Council from performing its duty under law.

When a member is excused from voting the reasons for the excusal must be recorded in the minutes of the meeting.

12. Disclosure of Conflict of Interest

A member shall make immediate disclosure of any real or potential conflict of interest, direct or indirect, which might make participation on a given matter improper under section 9(1)(d) of the *Real Estate Act*.

13. Points of Order and Privilege

- a) Any council member who believes Council is proceeding in a manner inconsistent with these rules or applicable law shall draw it to the attention of the chair with a point of order. Any council member may direct a question concerning procedure to the chair. A point of order or question of procedure may be made at any time and shall not require

recognition by the chair. The chair shall determine all points of order and questions of procedure.

- b) Any council member who reasonably believes that the dignity, rights or safety of Council or any council member is in immediate jeopardy may raise a point of privilege to announce it. A point of privilege may be raised at any time but may not be permitted to unreasonably interrupt Council's business. The chair shall rule on points of privilege.

14. Suspension of the Rules

Council may suspend the application of these rules of procedure to an identified item or items of business whenever it is reasonably necessary or expedient to do so. Council may not, however, suspend any requirement of law, the application of Rules 1 or 2, or the requirement of a quorum. A motion to suspend the rules, made only when no other motion is pending, must identify the item or items of business to which it will apply. A vote of two-thirds of the council members regardless of the presence of a quorum is necessary to pass a motion to suspend the rules.

15. Adjournment

Upon the motion of any council member, Council may vote to adjourn a meeting finally or until a specified date and time at which the meeting will resume. A motion to adjourn is debatable and, to be in order, must be made when no other motion is pending. A motion for final adjournment is out of order while any item of business is laid on the table pursuant to a motion adopted under Rule 9(c)(3).

Schedule 2 – Administrative Penalties

	Penalty for Contravention
REAL ESTATE ACT CONTRAVENTIONS	
SECTION	
1. 19, 20, 24	\$1,500
2. 17, 18, 25, 38, 73, 74, 83.2	maximum of \$25,000
REAL ESTATE ACT RULES CONTRAVENTIONS	
SECTION	
3. 61, 74	\$500
4. 40, 43, 45, 60, 60.1, 79, 80, 86, 98	\$1,000
5. 21, 32, 49, 51, 52, 53, 56, 65, 67, 68, 69, 71, 72, 77, 82, 83, 84, 85, 90, 91, 92, 94, 101, 102, 103, 105, 108, 109, 110	\$1,500
6. 41, 42, 44, 46, 50, 54, 55, 57, 58, 58.1, 59, 59.1, 62, 63, 66, 70, 73, 75, 78, 87, 88, 89, 95, 96, 97, 99, 100, 106, 107	minimum of \$1,500 to maximum of \$5,000 Amended February 4, 2009
7. 16.1	Maximum of \$25,000 Amended April 4, 2012