

## 4.13 Council Terms of Reference

### Council's Mandate

Council is the governing body that is accountable to the Government of Alberta for the achievement of the Real Estate Council of Alberta's ("RECA" or the "Corporation") mandate outlined in the *Real Estate Act* (REA) of Alberta.

Council achieves its mandate in various ways including:

- a commitment to the spirit of self-regulation
- a focus on the public interest
- a principles-based approach to setting standards
- adherence to its policy on self-regulation
- a "right touch" approach to setting and enforcing standards, i.e. consistent, proportionate, effective, transparent and timely
- ensuring legal and procedural integrity, that is, following the procedures in the REA and adhering to the principles of administrative fairness and natural justice
- a positive relationship with the Government of Alberta

### Governance Model

Governance is about the processes that organizations put in place to ensure sound decision-making. It is the Council's responsibility to establish a governance model that supports the work of Council and best meets RECA's needs. RECA's governance model is dynamic. It can be adjusted from time to time to address changing needs or changes in the regulatory environment.

Council operates within a model that distinguishes between strategic leadership and operations management. Accordingly, Council and the executive director have distinct and complementary responsibilities in advancing the Corporation's mission.

Council is ultimately accountable for all aspects of RECA's activities. However, appropriate governance principles require there to be a distinction between those aspects of RECA's processes for which the Council is directly responsible from those responsibilities that the Council delegates and assigns to the executive director under the *Real Estate Act*.

Council's primary responsibilities are:

- Fiduciary Duty to the Corporation
- Duty of Care
- Strategic Leadership
- Governance Framework

- Stewardship
- Informed Decision-Making
- Oversight
- Relationship to the Executive Director

### Fiduciary Duty to the Corporation

In addition to the duty to comply with applicable legislation, a Council member has two fundamental duties: fiduciary duty and duty of care.

The fiduciary duty of Council members is the requirement that Council members act “honestly and in good faith with a view to the best interests of the corporation” in exercising their powers and discharging their duties”.

In determining whether they are acting in the best interests of the Corporation, Council members may consider the interests of various stakeholders; however, Council members must act objectively and independently. The public interest (consumer protection) and that of the Corporation must be paramount at all times.

The fiduciary relationship dictates a strict standard of conduct which includes loyalty and utmost good faith vis-à-vis the Corporation. Among other things, Council members must maintain the confidentiality of information they acquire by virtue of their position.

A Council member’s responsibilities to the Corporation are not diminished, and may not be compromised, by other relationships the Council member may have. This applies to Council members who are appointed by particular parties such as an industry association. The overriding principle governing a Council member’s behaviour is that the Council member has a fiduciary responsibility to the Corporation, rather than to one or more stakeholders or any other constituency.

### Duty of Care

Duty of care refers to a Council member’s obligation to “make informed decisions in discharging their fiduciary responsibilities.” An informed decision is one that gives due consideration of “all relevant facts and material”. In making informed decisions, Council members must “exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.” This standard of care can be achieved by any Council member who devotes reasonable time and attention to the affairs of the Corporation and exercises informed business judgment.

The standard of care is measured against the objective standard of what a reasonably prudent person would do in comparable circumstances. This requires Council members to devote the necessary time and attention to bring their own judgment to bear on the matter and make an

informed decision. In applying the standard of care in a regulatory organization like RECA, courts are primarily concerned with concepts of legal jurisdiction and process rather than result.

Assuming Council members are acting in good faith, have sufficient information concerning the issue before them, examine the information critically, take the time to make an informed decision they believe is in the public interest, the courts will generally show deference to Council decisions. While the Council members may make a decision that may be debatable from a regulatory or public interest perspective, courts tend to defer to the regulator if the decision is deemed “reasonable” and made in good faith in accordance with the applicable fiduciary duties.

### Strategic Leadership

Council provides the overall leadership and strategic direction for the Corporation and it is responsible for establishing the Corporation’s vision, mission and goals. Once these are established, it is the Council’s responsibility to establish the objectives and the critical success factors that enable Council to monitor and measure corporate results. These objectives and success factors can be found in a variety of documents.

The strategic plan is a three or four-year plan that is regularly monitored and reviewed by Council. Where appropriate, course corrections can be made to reflect changes in the environment or the emergence of new strategic issues.

Council establishes the policies that guide RECA in fulfilling its vision, mission and goals. The policies reflect the values and guiding principles that determine RECA’s activities and goals. They provide the appropriate point of departure for the executive director to implement and manage the Corporation’s programs and services.

Once Council has established the strategic direction, it then delegates management authority and responsibility to the executive director. Under this delegation, the executive director exercises broad degrees of discretion and judgment to implement the Corporation’s strategic direction and policies and to establish operations that meet the Corporation’s legislative mandate.

### Governance Framework

Through the *REA* bylaws, policies and conventions, Council establishes a formal governance structure. It provides a framework for decision-making and facilitates the work of the Council, Council Chair, executive director and administration. It provides clarity of roles, authorities and relationships and establishes the internal governance practices of Council including the following:

- Process for appointment of council Members

- Process for appointment of officers (Council Chair, Chair-Elect, Past-Chair)
- Position descriptions outlining the roles of Council members, officers and the executive director
- Hearing/Appeal panel procedures and training of panel members
- Code of Conduct for Council Members
- Duties of the executive director
- Delegation of duties to and by the executive director
- Performance evaluation of the Council
- Performance evaluation of the executive director
- Process for appointment of the executive director and succession planning
- Meeting policies and procedures
- Establishment of standing, advisory and ad hoc Council committees
- Council communications and protocols (internal and external)
- Stakeholder engagement policies and protocols
- Council and committee member remuneration
- Openness and Transparency policies
- Communication strategy

### Stewardship

Effective governance requires the Council to assume responsibility for stewardship of the Corporation and, in particular, fulfillment of its mandate. Stewardship of the Corporation includes:

- Satisfying itself as to the integrity of the executive director and other executive officers (senior management)
- Adopting a strategic planning process and strategic direction for the Corporation
- Adopting adequate operating and capital budgets that ensure RECA can achieve its legislated mandate and meet all legal requirements in a manner consistent with the Corporation's business plan, goals and priorities.
- Adopting policies and procedures reflecting responsible financial management
- Identifying principal risks of the corporation's business and ensuring implementation of systems to manage and mitigate these risks
- Ensuring the stability and endurance of the organization
- Succession plan for the executive director

### Informed Decision-Making

To assist Council making informed decisions in the public interest, it should ensure the corporation has processes in place to scan the environment, identify emerging issues, conduct research, receive feedback (from

government, consumers, industry stakeholders, and other regulators), seek legal advice and, when appropriate, embark on consultation.

The Council should ensure it has sufficient information and advice prior to making a decision. The sources of information and advice include:

- the executive director and assigned staff resources
- standing, ad hoc and advisory committees
- subject matter experts (internal and external)
- consultations
- surveys
- focus groups
- other regulatory bodies

Five industry advisory committees and a consumer advisory committee provide ongoing advice and feedback to Council from industry members and consumers in each regulated sector on regulatory issues and merit council consideration.

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Through its stakeholder engagement meetings, regular meetings with industry groups, town hall meetings, and attendance at industry conferences, Council members and staff increase the profile of RECA within the industry and create opportunities for direct dialogue with stakeholders.

### Oversight

In order for council to fulfill its responsibilities, it should be satisfied the plans and policies it has approved are being effectively implemented.

This includes ensuring appropriate monitoring and audit systems are in place to ensure the Corporation's affairs are being run responsibly and in a manner that supports the Corporation's plans and policies. This is done by:

- evaluating the Corporation's performance in relation to the strategic direction provided by Council
- reviewing and approving materials such as strategic plans, business plans and budgets
- receiving appropriate reporting from management on the business plan, strategic initiatives, the regulatory environment, and new or emerging strategic issues that may impact the plans and priorities of Council, or, the Corporation's operations
- adopting appropriate audit procedures
- ensuring legal and procedural integrity of the Corporation's activities
- seeking and relying on expert advice, both from within the ranks of the Corporation's management external experts; including, conducting audits and reviews of the Corporation's programs and services by third parties
- performance evaluation of the executive director
- a council self-evaluation process

## Relationship to the Executive Director

From a governance perspective, it is generally understood that the relationship between a governance board and an organization's executive officer or director is critical and that it should be characterized by openness and trust. This can be achieved through setting and abiding by clear delegations and accompanying performance expectations.

This fosters the relationship between the Council and the executive director because it minimizes confusion about their respective responsibilities.

Basic governance concepts suggest that:

- the relationship between the Council and the executive director should be characterized by mutual trust and courtesy
- Council should avoid participating in the day-to-day management of the business of the Corporation
- Council should be primarily concerned with setting the Corporation's strategic direction and objectives rather than transactional matters
- Council annually assesses the executive director's performance and sets performance goals, expectations and compensation.

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