

Field Law Recommendations Progress Report – February 2019

*Regulatory Performance Review of the Real Estate Council of Alberta
Field Law Professional Regulatory Group (April 2016)*

#	Field Law Recommendation	Status/Comments
1	In the interest of transparency and to assist consumers in understanding the standards of conduct expected of industry professionals, consider including a link under the "Consumers" portal to "Standards of Conduct" that includes a summary of the Rules and other material relevant to the standards of conduct expected of industry professionals.	Complete
2	Develop a "plain-language" summary of the Rules for reference by consumers.	Complete
3	a. Increase the information available to applicants about how licensing criteria and requirements are interpreted and applied, particularly in relation to the questions associated with the good character of an applicant and the protection of the integrity and reputation of the industry.	Complete
	b. Consider preparing a policy document available to applicants explaining how these criteria are typically applied.	Complete
4	We recommend increased communication and collaboration between the Office of the Registrar and the Professional Standards Unit with respect to issues relating to the character of applicants or industry professionals. In order to enhance organization-wide consistency, we recommend that the two departments hold a joint training session to discuss how the two departments address "character issues" with the objective of developing an internal policy document providing guidance to both departments. The joint training session should also address when an issue will be addressed in the registration/renewal process and when it will be addressed as a discipline issue.	Complete
5	RECA should seek a change to its Act broadening the publication power so that conditions, restrictions and limitations on an industry professional's registration can be included in the Public License Search. In the Public License Search, RECA should consider providing more specific information on the reason for an individual not being authorized and information on any findings of conduct deserving of sanction with a link to the specific decisions.	On Hold; Subject to Government of Alberta Legislative Agenda
6	RECA may wish to consider increasing the information provided to the public as to the importance of using the Public Licence Search when forming a relationship with an industry professional.	Complete

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7	RECA should avoid a blanket policy concerning complaints by “strangers” to the transaction. Instead, RECA should consider accepting a complaint from any individual or organization, regardless of their relationship with the industry professional, so long as it is in writing and provides “reasonable particulars”.	Complete
8	When the <i>Real Estate Act</i> is open for revision, RECA should seek amendments expressly authorizing the informal resolution processes it uses.	On Hold; Subject to Government of Alberta Legislative Agenda
9	RECA may wish to consider changing its practice to generally provide a short time-frame to industry professionals to make written submissions prior to imposing interim suspensions. Where public protection requires an immediate interim suspension without waiting for submissions, RECA might consider adopting a practice of providing industry professionals with an opportunity to make written submissions asking for the Chair of Council to reconsider and change his or her decision imposing an interim suspension.	Complete
10	RECA should assess the reason it is facing challenges in meeting the performance objective for the time taken to resolve Level 2 and Level 3 complaints. RECA will need to consider whether it is devoting sufficient resources to meet the performance objectives in this area.	Complete
11	RECA may wish to establish a performance objective for the assignment of a Professional Conduct Review Officer to Level 2 complaints.	Complete
12	RECA may wish to consider implementing a non-binding guideline or policy to assist staff in determining how all types of complaints should be resolved, i.e. with an advisory note, letter of reprimand, administrative penalty (where authorized) or referral to hearing.	Complete
13	RECA may wish revise its template letter of reprimand and administrative penalty to state that the Executive Director has determined that there is sufficient evidence that the industry professional contravened a section(s) of the Act and that this is conduct deserving of sanction.	Complete
14	RECA may wish to undertake a review of the administrative penalty amounts prescribed in its Bylaws to determine if the amounts are still considered to be at an appropriate level.	Underway February 2019
15	RECA may wish to consider providing a greater detail of information to industry professionals and complainants when a complaint is resolved, in particular, RECA may wish to consider stating why other outcomes were inappropriate.	Complete
16	RECA should consider implementing a process where Hearing Panels that are ratifying Consent Agreements provide reasons for their finding that the industry professional has engaged in unprofessional conduct as well as reasons for why the sanctions being imposed are appropriate orders for penalty given the conduct at issue. Given that the matter is proceeding by consent, the reasons provided by the Hearing Panels could be much shorter than a contested hearing but some reasons should be provided.	Complete

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17	RECA should consider adopting a process whereby the effect of a Hearing Panel's rejection of a Consent Agreement is made clear. Hearing Panels should specify when they are rejecting a Consent Agreement that they are not making a finding that the industry professional has not engaged in conduct deserving of sanction and that the Hearing Panel is simply requesting further information before making a determination as to whether or not to accept the Consent Agreement. RECA may wish to consider revising its Consent Agreement templates so that the Hearing Panel may specify why it has rejected the Consent Agreement.	Complete
18	RECA should ensure that members of the Hearing Panels are aware of the process for seeking further information from either the Case Presenter or the industry professional during the course of a Consent Agreement hearing or should consider amending the Consent Agreement process to allow for in-person attendance of the parties to present the Consent Agreement.	Complete
19	RECA may wish to develop additional measures to assist self-represented industry professionals in the hearing process. Examples of additional possible measures include:	
	a. The publication for self-represented industry professionals should explicitly state that they are strongly encouraged to have legal representation. The publication could explicitly state that due to the legalistic nature of the hearing process, most industry professionals who do not have legal representation find the process very difficult. The objective is to ensure that the industry professionals clearly understand the challenges of proceeding without legal counsel.	Complete
	b. We heard many concerns that some industry professionals do not understand until the hearing starts how formal the process will be. Some industry professionals may think that this was simply going to be a meeting among colleagues. There is no good reason for this misconception since RECA's publications clearly describe the formality of the hearing processes. However, sometimes industry professionals have a "head in the sand" approach ignoring the reality of the impending process. To help industry professionals clearly understand the formality of the process and the set-up of the hearing room, RECA could develop a short video made available to self-represented industry professionals showing a demonstration of a mock hearing process.	Complete
	c. Develop checklists for industry professionals that they can use and follow to guide themselves through the hearing process. While the current resources available to self-represented members are excellent, a short check-list that is followed by all participants during the hearing process could significantly assist in keeping hearings on track.	Complete
	d. Develop a system where industry professionals have the same access to the previous Hearing Panel decisions as the Case Presenters.	
	e. Regularly assess the need for training of Hearing Panel and Appeal Panel members on how to effectively deal with self-represented industry professionals. (Note as a result of the input we received during this review on the challenges of dealing with self-represented industry professionals, we recommended and developed a training session on this topic that we presented to Hearing and Appeal Panel members in March 2016).	Complete

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	f. Develop a list of experienced defence counsel who are prepared to act on behalf of industry professionals in RECA conduct proceedings. Advise industry professionals that they can obtain the list from the Practice Advisor.	Complete <i>Note: Policy decision to refer self-represented industry members to Law Society's Lawyer Referral Service</i>
	g. Implement a program to provide independent and confidential procedural advice and direction to industry professionals who are in receipt of a notice of hearing from RECA.	Complete
	Enhance the role of the Practice Advisor in providing procedural advice and direction to industry professionals by making industry professionals aware, through the formal correspondence exchanged during the hearing process, of their ability to contact the Practice Advisor and discuss the hearing process in a confidential manner. The Practice Advisor will need to ensure that he does not provide substantive advice on defending the allegations or on the best course of action to be taken by the industry professionals but can properly provide advice on standard procedures and options available.	See above project <i>Note: RECA will not use the Practice Advisor. Instead, a new RECA Program will give industry members an opportunity to receive advice from independent (external) legal counsel, at RECA's expense, about the hearing process on a confidential basis</i>
20	When the <i>Real Estate Act</i> is opened for revisions, RECA should recommend amendments that provide clear direction on the processes to be following in appeals by complainants of dismissals of complaints.	On Hold: Subject to Government of Alberta Legislative Agenda
21	RECA should review its current process for s. 40 appeals by complainants and consider whether any steps need to be taken to restructure the current process, taking into account the requirements for procedural fairness and statutory compliance.	Complete
22	While unanimity in decision-making should be encouraged and efforts made to build consensus among panel members, RECA may want to consider a process where Hearing or Appeal Panel members who do not agree with the majority decision are not required to sign the decision in a manner which indicates agreement. A process could be adopted where the decision is simply issued by the "Hearing Panel" or the "Appeal Panel" and signed by the Chair on behalf of the Panel rather than its individual members. If the decision is only signed by the Chair, it is still essential that all Panel members review and provide input on the drafts. Panel members must still indicate they are satisfied with the decision before it is issued even if it is only signed by the Chair.	Complete

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23	RECA may want to consider “just-in-time” training initiatives for Hearing and Appeal Panel members so that members have ready access to training at any point where members feel that they need to be refreshed on the hearing process. An example of such types of training includes webinars that could be accessed by Panel members on demand. This type of webinar would address the fundamentals of the hearing process that could be reviewed in advance of a hearing. The fundamentals webinar would be supplemented by annual in person training addressing more complex issues.	Complete
24	Enhance opportunities for Panel members to serve as “shadow Panel members” where they attend hearings but are not a formal member of the Panel. The “shadow Panel member” would sit with the Panel during the hearing but would not ask questions. The “shadow Panel member” would caucus with the Panel but could not participate in discussions or the decision-making. RECA would need to develop a formal policy on the parameters of this process and ensure that participants in a hearing did not have any objections to the process.	Complete
25	Consider creating an “adjudicative sub-set” of Council that would sit on Hearing and Appeal Panels.	<i>Note: Establishing an effective subset of Council may not be feasible;</i>
26	RECA should consider preparing a glossary of the types of industry professionals regulated by RECA. The glossary should be provided to public members on Hearing Panels who do not have real estate backgrounds.	Complete
27	RECA should consider establishing a system of retaining independent legal counsel from outside RECA to attend hearings and appeals to provide advice to Panels on legal and procedural issues and provide advice and recommendations on a Panels’ draft decisions.	Complete
28	<p>a. Provide training to Panel members on</p> <ul style="list-style-type: none"> • when direct evidence is required and when inferences from evidence may be made; and, • how to address areas of concern to the Panel when the industry professional is not present or self-represented. 	Complete
	b. When the <i>Real Estate Act</i> is opened, RECA should consider if it is optimal for Council members to sit on Hearing Panels or whether their adjudicative duties should be restricted to hearing appeals.	On Hold; Subject to Government of Alberta Legislative Agenda
29	RECA may wish to consider including the reason for the performance review in the letter sent to the brokerage advising that a review will take place in the near future.	Complete
30	RECA may wish to formally establish the minimum time between the initial notice and request for information and the performance of the review. The minimum amount provided should provide sufficient time for brokers to gather the necessary information.	Complete
31	We recommend that practice reviewers across the Province meet and address: 1) the typical practice review issues arising from the audits and 2) the advice that should be provided in these circumstances. As additional issues arise in practice reviews, we recommend that the department establish processes to share amongst each other the advice being provided by practice reviewers.	Complete

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32	Provide for an education session for Council on the entire discipline process and generalized outcomes of the discipline process.	Complete
33	When the <i>Real Estate Act</i> becomes open for amendments, RECA should examine the statutory objectives, the composition of Council, and the appointment process as opposed to an election process, and assess whether this structure remains optimal.	On Hold; Subject to Government of Alberta Legislative Agenda