

2019 Bill 15

First Session, 30th Legislature, 68 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

**REAL ESTATE
AMENDMENT ACT, 2019**

THE MINISTER OF SERVICE ALBERTA

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 15

2019

REAL ESTATE AMENDMENT ACT, 2019

(Assented to _____, 2019)

Preamble

WHEREAS the Real Estate Council of Alberta was for a long time a successful regulatory organization;

WHEREAS the Minister of Service Alberta received complaints about the Council's ability to govern effectively, and commissioned a preliminary assessment of the complaints;

WHEREAS the preliminary assessment demonstrated that the complaints were not unfounded, and the Minister of Service Alberta commissioned a further review of the governance of the organization under section 76 of the Act;

WHEREAS a review of the governance of the Council under section 76 of the Act found that the members of the Council are not governing effectively because of significant interpersonal conflict, a lack of focus on strategic issues, a lack of constructive relationships with industry associations and inadequate oversight of the organization's operations;

WHEREAS the person who conducted the review recommended that the members of the Council should be dismissed, and an administrator named in their place;

WHEREAS a failure of the current members of the Council to effectively carry out the mandate of the Council, to the detriment of industry members and consumers, merits the dismissal of members of the Council;

WHEREAS the appointment of an official administrator for the Council is a temporary measure while consultations, to determine

Explanatory Notes

whether the existing Council member appointment structure under the Act remains appropriate, occur; and

WHEREAS the Government of Alberta intends, in due time, for new members of the Council to start afresh and make the Council once again a successful regulatory organization;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Amends RSA 2000 cR-5

1 The *Real Estate Act* is amended by this Act.

2 Section 6(2) is amended by striking out “The term” and substituting “Subject to Part 6, the term”.

3 Section 76(9) is amended by adding “, duties and functions” after “powers”.

4 The following is added after section 76:

Council dismissed

76.1(1) In this section, “current Council” means the Council that is in place immediately before the coming into force of this section.

(2) On the coming into force of this section, despite section 6, all members of the current Council are dismissed and cease to hold office.

(3) The Minister may, by order, appoint one or more persons as an official administrator for a term of up to one year, which may be renewed for further terms of up to one year each.

(4) An order under subsection (3) may provide for the payment of remuneration and expenses to the official administrator and

1 Amends chapter R-5 of the Revised Statutes of Alberta 2000.

2 Section 6(2) presently reads:

(2) The term of office of a member appointed under subsection (1) is 3 years.

3 Section 76(9) presently reads:

(9) An official administrator has all the powers and is subject to all the obligations of the Council or the Foundation, as the case may be, under this Act.

4 Council dismissed; appointment of new Council; Regulations Act; appointment of Hearing Panels.

may provide that the remuneration and expenses are the responsibility of and shall be borne by the Council.

(5) An official administrator appointed under this section has all the powers, duties and functions of the Council.

(6) No action or other legal proceeding for damages lies or may be commenced or maintained against the Government of Alberta, the Council or another person as a result of a Council member being dismissed and ceasing to hold office as a result of this section.

Appointment of new Council

76.2(1) If the entire Council is dismissed under section 76(6)(b) or 76.1(2), the Minister may, by order, establish rules or procedures relating to the appointment of a new Council, including respecting

- (a) when the Alberta Mortgage Brokers' Association and Alberta Real Estate Association must appoint members to the new Council,
- (b) when appointed members must make joint appointments pursuant to section 6(1)(e) and (f),
- (c) any conditions with respect to any appointments to the new Council, including any conditions that may disqualify an individual from serving on the Council,
- (d) when an official administrator's powers, duties and functions will cease,
- (e) when the new members of Council will take office and assume the powers, duties and functions of the Council, and
- (f) any other matters that the Minister considers necessary for remedying any transitional difficulties encountered in dismissing the Council, appointing an official administrator or appointing a new Council.

(2) Despite section 6(6) and (7), if an association fails to appoint a member within the time prescribed by the Minister under subsection (1)(a), or if the appointed members fail to

make joint appointments within the time prescribed by the Minister under subsection (1)(b), the Minister may, by order, appoint the member or members, as the case may be, and the member or members shall be considered to have been appointed by the association or appointed members, as the case may be.

(3) Section 6(5) does not apply to a vacancy that is the result of the entire Council being dismissed under section 76(6)(b) or 76.1(2) and, despite section 6(2), in the case of such a vacancy, the Minister shall, by order, determine the term of office of the members appointed to fill the vacancy.

(4) Rules or procedures established under subsection (1) apply despite any contrary rules or procedures in the Act, the regulations or the bylaws.

(5) Rules or procedures established under subsection (1) cease to apply when the new members of Council have all taken office and the powers, duties and functions of an official administrator cease.

Regulations Act

76.3 The *Regulations Act* does not apply to an order made under section 76.1 or 76.2.

Appointment of Hearing Panels

76.4(1) Despite section 36 and the bylaws, if an entire Council is dismissed, an official administrator may appoint a Hearing Panel or an Appeal Panel, and, subject to an order under section 76.2(1), the Panel shall not include a member of the Council.

(2) Despite section 36 and the bylaws, a Hearing Panel or an Appeal Panel established by an official administrator under subsection (1)

- (a) must consist of at least 3 members, and
- (b) may consist of industry members or members of the public, but the number of members of the public on a Hearing Panel or an Appeal Panel must not exceed the number of industry members on that Panel.

(3) Subject to this section, a Hearing Panel or Appeal Panel appointed by an official administrator under this section is

subject to the Act as if it had been appointed in accordance with the bylaws.

(4) A person who was a member of the Hearing Panel that dealt with a subject-matter is not eligible to sit on the Appeal Panel that deals with the same subject-matter.

(5) In the event that, on the coming into force of this section, a Hearing Panel or an Appeal Panel has been established under section 36, that Panel shall cease to exist and an official administrator shall establish a new Hearing Panel or Appeal Panel to proceed with the matter as if the Hearing Panel or Appeal Panel established prior to the coming into force of this section had not been established.

5 Section 78 is amended by adding “the Minister, an official administrator appointed under section 76(7)(a) or 76.1(3),” **after** “commenced against”.

5 Section 78 presently reads:

78 No action or other proceeding for damages may be commenced against the Council, a member or employee of the Council, a person appointed or engaged under the bylaws or rules to exercise a power or perform a duty for the Council, or a member of a Hearing Panel or an Appeal Panel

- (a) for any act done in good faith in the performance or intended performance of any duty or the exercise or intended exercise of any power under this Act, the regulations, the bylaws or the rules, or*
- (b) for any neglect or default in the performance or exercise in good faith of the duty or power.*

