

## THE REAL ESTATE COUNCIL OF ALBERTA

**Case:** 009679.002  
**Process:** Appeal of an Administrative Penalty  
s.83.1 of the *Real Estate Act*  
**Industry Member:** Warren Constantine Phipps  
**Class of License:** Suspended (Formerly Real Estate Broker)  
**Registration:** Mountain Park Real Estate Ltd.  
**Document:** NOTICE OF HEARING

**TO:** Warren Constantine Phipps

A hearing is set for your appeal. Read this entire document to see what you must do.

### Hearing Information

**Date:** Thursday, August 27, 2020  
**Time:** 9:30 a.m.  
**Location:** Virtual Hearing  
**Hearing Panel:** David Hicks - Chair, Panel Member (Public Member)  
Matthew Wiebe - Panel member (Industry Member)  
Michael Brodrick – Panel member (Industry Member)  
(Alternates: Julia Jones, Susanita De Diego, Sanjeet  
(Sunny) Parmar)

The Administrative Penalty issued to you is attached.

### Why You Should Attend the Hearing

The hearing is your opportunity to respond to the allegations and state your side of the case in front of the Panel.

## **Learn About the Hearing Process**

Please read these guides on the RECA website

- *Hearing and Appeal Practice and Procedures Guidelines*
- *Virtual Hearing Guidelines and*
- *Information for Unrepresented Industry Members*

They are under the *Publications and Resources* tab under the heading *Guides to Disciplinary Proceedings*.

## **Witnesses and Documents**

In order to call witnesses or submit documents at the hearing, you must comply with the Virtual Hearing Guidelines.

## **What Will Happen If You Don't Attend**

If you do not attend the Panel may proceed to make a decision without you.

## **What Will Happen At the Hearing**

If the Panel finds a breach has been proven the Panel may do one or more of the things listed in **section 83.1(5)** of the *Real Estate Act*:

- Quash, vary or confirm the administrative penalty
- Order you to pay the costs of the investigation and the hearing.

## **Making Oral and Written Arguments to the Hearing Panel**

The Hearing Panel may accept oral and/or written arguments as part of the hearing.

If the Hearing Panel accepts written arguments, it will set dates for the written arguments to be exchanged before accepting them.

## **You Can Get Legal Advice**

You may get legal advice and may be represented by legal counsel at the hearing.

If you do not have a representative please read *Information for Unrepresented Industry Members*:

<http://www.reca.ca/industry/content/publications-resources/guides.htm>.

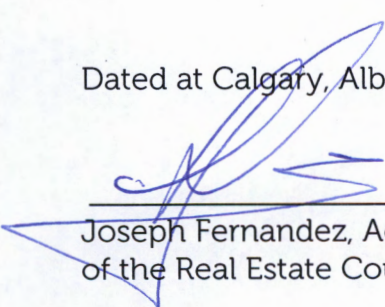
### **If You Object to a Panel Member**

Please review who is on the Panel. If you object to any of the people being on the Panel, you must advise the Hearings Administrator **who you object to and why within 14 days** of receiving this Notice. If you do not object to the Panel within 14 days, this Panel will conduct the hearing.

### **Postponing the Hearing**

If you are not available on the date set for the hearing you can apply to the Panel for a new date. Contact the lawyer for the Executive Director and the Hearings Administrator as soon as possible if you need a new date.

Dated at Calgary, Alberta, on July 28, 2020.  
(date)

  
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Joseph Fernandez, Acting Executive Director  
of the Real Estate Council of Alberta

Contact Information

Hearings Administrator:

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Lawyer for the Executive Director

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# RECA Guidelines for Alternative Hearing Formats

## 1. *Purpose*

Since March 30, 2020 in-person hearings at RECA's office have been suspended due to the COVID-19 pandemic. As a result, scheduled hearings to June 1, 2020 have been either adjourned or conducted through teleconference or other means to avoid in-person contact. This restriction remains in place.

As the COVID-19 pandemic continues to evolve, it is not possible to predict an end to the pandemic. Nevertheless, it is in the public interest that RECA hearings continue and that alternative approaches be considered to promote the timely and fair resolution of matters before RECA's Hearing and Appeal panels.

These guidelines are intended to provide specific guidance on alternatives to in-person hearings and supplement the *Hearing and Appeal Practice & Procedure Guidelines* where applicable. **As before, an appointed Hearing or Appeal panel ("Panel") retains the ultimate discretion as to the appropriate format for a hearing.**

It is encouraged that even after the pandemic is over, parties and their counsel should consider alternatives to in-person hearings outlined in these guidelines to promote the expeditious, fair, and cost-effective resolution of matters before a Panel.

## 2. *Alternatives to in-person hearings*

Adjournment of a hearing or review is to be avoided where it can be conducted expeditiously and fairly under an alternative hearing format. There are three alternative hearing formats:

- written submissions;
- oral hearing by teleconference; and
- oral hearing by video conference.

Not all alternative hearing formats may be appropriate for every hearing. For example, where witness evidence is required a video conference may be the most appropriate format.

### **3. *Presumption that hearings will proceed by video conference***

Until otherwise directed, all hearings that would ordinarily be scheduled for an in-person hearing will be scheduled for an oral hearing by video conference.

### **4. *Responsibility of party to request alternative format***

If a party wishes to request an alternative hearing format other than video conference, they must bring an application at least 14 days after the Notice of Hearing is served. The application should be in writing and include submissions in support of the alternative format proposed and any evidence to support the submissions. The responding party will be given 10 days to respond. The Panel must render a decision on the application within 15 days of receiving all submissions, unless there is good reason why this timeline cannot be met. It is at the discretion of the Panel to grant or refuse the request.

### **5. *Proceeding by teleconference or by written submissions***

Conducting the hearing as a teleconference or by way of written submissions may be appropriate in some circumstances including:

- when oral testimony from witnesses is not required;
- when there is an admission of conduct deserving of sanction;
- when there is an agreed statement of facts;
- when there is an agreement on breach;
- when there is an agreement on sanction and/or costs;
- pre-hearing matters and applications; and
- requests for adjournments.

### **6. *Virtual hearing procedures***

- a. *The platform.* RECA's video conference hearings are conducted on Microsoft Teams software ("Teams"). All participants, including the Panel, parties and their counsel, and witnesses, should familiarize themselves with Teams prior to the hearing.

The hearing will have the following channels (rooms) set-up in Teams:

- "General" (may serve as a waiting room in some circumstances)
- "Hearing Room" (where the hearing takes place)
- "Panel Caucus Room" (private room for the Panel and Independent Legal Counsel ("ILC") to use prior to the start of the hearing, during breaks, and for Panel deliberations)
- "Secure Evidence Hold" (secure storage of all documents and exhibits accessible by the Hearings Administrator only)

Some features of Teams will not be available during the hearing:

- the “chat” function will be disabled in the Hearing Room
- the “record” function will be used by the Hearings Administrator only
- the Hearings Administrator will have the ability to mute and unmute all microphones; but participants will be able to mute and unmute their own microphones as desired
- Note: Members of the public are asked to keep their microphones muted at all times and are not permitted to speak at the hearing.

A Hearing Support person will manage the technical aspects of the hearing in Teams. The Hearing Support person will manage aspects such as:

- sending hearing invites in Teams to the participants prior to the hearing
- admitting and removing participants during the hearing
- monitoring the list of participants during the hearing
- assisting the Panel to move between the Hearing Room and Panel Caucus Room

For specific information on accessing Teams and for hearing tips, RECA has developed a series of *Navigating Microsoft Teams* guides for Panel members, parties and their counsel, and witnesses. To obtain a copy of the guides, please contact the Hearings Administrator.

- b. List of participants. At least 20 days in advance of the date set for the hearing, the parties must provide the Hearings Administrator a list of participants in the hearing including names of legal counsel and any witnesses. If the parties do not supply a list of witnesses in accordance with this procedure, the Panel has the discretion not to allow the witness(es) to testify.
- c. Document exchange and electronic filing protocol. Any documents the parties intend to rely on at the hearing must be exchanged with the parties and the Hearings Administrator at least 7 days before the start of the hearing. If the parties do not follow this procedure, the Panel has discretion not to allow the entry of documents as exhibits at the hearing.
- i) The Hearings Administrator will keep a record of all exhibits entered electronically at the hearing
  - ii) Electronic Written Submissions, Books of Authorities and Books of Exhibits, if applicable, should be in PDF format with page numbers and should be OCR (text) searchable wherever possible
  - iii) If possible, consider hyperlinking case references in Written Submissions to cases available online

- iv) If possible, annotate electronic Written Submissions, Books of Authorities and Books of Exhibits, as applicable, to include a navigable table of contents with links directly to the paragraph references
  - v) Where possible, submit electronic documents together in a single e-mail in a zip file, a secure file sharing service or compiled on a USB
  - vi) For the purposes of ensuring the parties, panel, and witnesses are working from the same document, the Hearings Administrator may, as requested during the hearing, share a copy of any document being referred to using the "share screen" function in Teams
- d. Witnesses at the hearing. Each of the parties are responsible for testing Teams with its own witnesses before the hearing. Parties should refer to the *Navigating Microsoft Teams* tip sheet for a list of items to confirm with the witness prior to the hearing.

Parties are responsible for ensuring the witness has an electronic or hard copy of any documents they intend to refer the witness to during the hearing.

If requested by the party, the Hearings Administrator may, as an alternative, show documents electronically on screen during the hearing using the "share screen" feature in Teams.

If using a hard copy, the documents must be delivered to the witness prior to the hearing, in clean unannotated form, with the party calling the witness responsible for ensuring the return of any hardcopy documents.

To ensure the parties, Panel, and witnesses are viewing the same document, the Panel may request the witness show the document to the Panel before giving testimony.

- e. Test session. At least 48 hours before the start of the hearing, the Hearings Administrator, Hearing Support person, the Panel and the parties will participate in a non-substantive test session. The sole purpose of the test session is to ensure the smooth operation of the Teams platform during the hearing and to address any procedural questions related to the hearing. Functions to be tested during the test session will include:

- i) Setup and appropriateness of participants' devices (size and number of screens, back up devices, quality of camera)
- ii) Audio and video quality of the connection



- iii) Location of the participants' cameras including camera angle, lighting, background, environmental noise level
- iv) Use of electronic documents
- v) Use of channels (rooms) in Teams, including the Panel Caucus Room.
- vi) Any other technical or procedural items that may arise.

f. Day of the Hearing.

- i) **Advance log-on.** All participants in the hearing, excluding witnesses, shall log into Teams at least 15 minutes in advance of the scheduled start time. The Panel will not begin the hearing until it has ensured all of the participants are adequately connected.
- ii) **Procedures upon joining the meeting.** Upon joining, the parties, their counsel, and any members of the public, will be in the virtual Hearing Room. The Panel will be admitted to the virtual Panel Caucus Room until the scheduled start time. The Hearing Support person will admit the Panel to the Hearing Room to start the hearing.
- iii) **Hearing limited to authorized participants.** Only the Panel, parties and their counsel, witnesses, and any pre-authorized members of the public may join the hearing. Participants must NOT forward their meeting invitation or account credentials to anyone else. The Hearing Support person will remove any unauthorized participants. The presence of any unauthorized persons during the hearing may result in termination of the hearing.
- iv) **Panel Location(s).** The Panel may participate from a single location provided all members of the Panel are able to be present and observe appropriate public health measures. No other participant may be at the same location as a member of the Panel.
- v) **Termination of Hearing.** The Panel should terminate the hearing if it determines that the chosen alternative hearing format is not working as anticipated, is otherwise inadequate, or is prejudicial to any party or to the integrity of the hearing.
- vi) **Disclosure of Participants.** At the outset of the hearing all participants will identify any other persons present at their location. Every participant has an ongoing obligation to alert the Panel and other parties if any other person joins them, and shall represent at the beginning and end of each session that they fully disclosed all persons who have or had access to the hearing or any portion of it.
- vii) **Confidentiality.** Every participant shall take all steps necessary to ensure the confidentiality of the hearing. No person shall have

access to the live video and/or audio feed of the proceeding other than authorized participants.

- viii) **Recording.** No Participant may record any part of the proceeding without the advance, written authorization of the Panel. The Hearings Administrator will record the hearing and the recording shall form part of the Hearing Record. All non-lawyer participants will be required to sign an undertaking not to record or rebroadcast the hearing.
- ix) **Recesses, breaks.** If any of the parties request a break, or if the Panel requires a short recess to deliberate or consult Independent Legal Counsel (ILC), the Panel, and ILC if required, will move to the Panel Caucus Room. All other participants, except witnesses, may remain in the Hearing Room. Witnesses will be asked to leave the Hearing Room and re-join the meeting when directed to do so by the Panel.
- x) **Oaths.** Witnesses will be administered their oaths via videoconference. The witness will be asked to affirm to tell the truth. The witness may choose to swear the oath but is responsible for ensuring they have a Bible present.

## ***7. Public attendance at hearing***

The principles regarding public access to RECA Hearings as found in the Hearing and Appeal Practice and Procedure Guidelines will continue to apply. The greatest possible public access to the hearing process is to be maintained wherever possible.

Any member of the public wishing to attend a hearing must notify the Hearings Administrator at least one day in advance. No access to the hearing will be given to members of the public who have not pre-registered. All members of the public wishing to attend in the hearing will be required to sign an undertaking not to record the hearing.

*In-camera hearings.* The procedures regarding in-camera hearings will continue to apply and any party wishing to close the hearing or part of the hearing to the public must make an application to the Panel at least 14 days in advance of the hearing. The opposing party will be given the opportunity to respond in writing, and may request to the Panel, or the Panel may itself direct, oral submissions in addition to written submissions. Oral submissions will be made by teleconference or video conference