



## TRESA video series: Part 1 Transcript

### Customers, Clients, Self-Represented Parties, RECO Information Guide, and RECO Information and Disclosure to Self-Represented Party Form

#### Introduction

Welcome to Part 1 of the TRESA video series.

The video series has been developed to help salespersons and brokers understand the key changes coming to the laws that regulate trading in real estate in Ontario.

The focus of Part 1 is registrant relationships with consumers. I will speak about key changes that clarify relationships between brokerages, salespersons and brokers and the consumers they deal with, including:

- the elimination of the customer relationship,
- amended definitions of client and representation agreement, and
- the introduction of rules related to self-represented parties.

I will also speak to you about the new mandatory RECO Information Guide and the new mandatory RECO Information and Disclosure to Self-Represented Party Form.

#### REBBA becomes TRESA

Before I begin, the *Real Estate and Business Brokers Act, 2002*, commonly referred to as REBBA, will be renamed the *Trust in Real Estate Services Act, 2002* – or TRESA for short.

#### Customers

First, let's talk about customers in today's world.

The difference between being a client and a customer has been a source of confusion for many involved in trading in real estate in Ontario.

A "customer" is defined as a person who has an agreement with a brokerage under which the brokerage provides services to the person and who is **not** represented under a agreement.

Put another way, a customer is an **unrepresented party** that entered into an agreement to receive services from a brokerage. The commonly used customer agreements would set



out the services to be provided, but clearly state that the brokerage is not representing the customer's interests in the transaction.

On the other hand, a client is a person who has an agreement with a brokerage under which the brokerage represents the person under a representation agreement, which would include the services identified in the agreement.

However, the distinction between a customer and a client is not an obvious one for consumers.

The other relationship that exists is where a party is unrepresented and not under any type of agreement with a brokerage. This might be a sophisticated person, an individual or a corporation, who doesn't want or feel the need for any services from a brokerage. Though not defined specifically under REBBA as such, these people are effectively self-represented.

Under TRESA, clients and self-represented parties continue, but customer relationships will not.

## **Customer relationships/Agreements not permitted**

Customer agreements are no longer permitted.

The definition of customer and all references to customer in REBBA are removed from TRESA.

This means, under TRESA, a person is either a client of a brokerage or a self-represented party in respect of a trade.

I will speak to this in more detail, but I emphasize that self-represented parties are not a replacement for customers.

There is no equivalent to customer under TRESA. There is no equivalent to a customer service agreement under TRESA.

Services, including representation, can only be provided to clients under a representation agreement with a brokerage. It might be easier to think of it as a customer now being a type of client or that anyone you enter an agreement with is now a client.

Now let's discuss clients.

## **Clients**

Under REBBA, clients are represented under a representation agreement with a brokerage.



The definition of representation agreement is amended to refer specifically to the provision of services, including representation.

Any agreement to provide services, whether it is full service listing agreement or a limited-service representation agreement such as a mere posting, is a “representation agreement” and establishes a client relationship.

Today’s customers are not expected to become self-represented parties under TRESA. They would be clients and owed the duties of a client.

Real estate brokerages, brokers and salespersons provide value to those trading in real estate, and moving forward anyone that engages a brokerage will be a client.

Again, to be clear, those who used to be customers under REBBA, will be clients under TRESA.

Those who used to enter customer agreements will enter representation agreements and be clients, while those who have been unrepresented under REBBA, will continue to be self-represented under TRESA.

For those who are not certain whether they want to be clients and considering being a self-represented party, it will be important for them to understand the risks associated with being a self-represented party in a real estate transaction and the extremely limited assistance that might be provided to a self-represented party by a registrant representing a client in a trade.

Now, let’s take a closer look at the self-represented party.

## **What is a self-represented party?**

TRESA defines and puts rules in place related to self-represented parties. So what is a self-represented party?

A self-represented party, in respect of a trade, is a party that is not a client of a brokerage.

As the term implies, a self-represented party is someone who has chosen to represent themselves in a real estate transaction. This is similar to someone who is self-represented in a court matter, they don’t have a lawyer. They are representing themselves.

Earlier I described a customer under REBBA as an unrepresented party receiving services from a brokerage. A self-represented party, in respect of a trade, is an unrepresented party that is **not** receiving services from a brokerage.

This is an important distinction.



There are some key points to keep in mind when considering how registrants interact with self-represented parties:

Self-represented party **does not** replace customer and is **not** a new name for customer.

- Registrants are prohibited from providing services, opinions, or advice to a self-represented party.
- Registrants are prohibited from encouraging a self-represented party to rely on their knowledge, skill, or judgement.

The concept of a self-represented party is not new. A person has not been required to be a client or a customer of a brokerage under REBBA, and for those who chose not to be, they have been self-represented.

Let's look a little closer at what it means in practice.

### **If registrants can't provide services, opinions, or advice to a self-represented party, what can they do for them?**

RECO has already heard from some registrants asking what they are allowed to do for a self-represented party if services, opinions, and advice can't be provided.

A registrant can provide only assistance, provided it does not create an implied representation agreement.

It's critically important to understand the meaning of "assistance".

The legislation states that an implied representation agreement is not created if:

"As a service provided to a client, or incidental to a service provided to a client, a registrant provides assistance to another person

**without** encouraging the other person to rely on the registrant's skill or judgment in respect of a trade in real estate."

This is a very narrow exception. It relies on the registrant having a client in the trade.

In short, you can't provide assistance to a self-represented buyer unless the seller is your client.

You can't provide assistance to a self-represented seller unless the buyer is your client. And any assistance you might provide is a service to your client.

Registrants are also permitted to provide general information related to the business of trading in real estate to any person.



When considering how to engage with a self-represented party, you might think of them as their own agent, and deal with them in much the same way you would the agent of someone's client. The key difference of course would be that you can engage with them directly.

## **What kind of assistance is permitted?**

Another commonly asked question is what kind of assistance is permitted. There is no closed list of permitted activities.

What registrants need to keep in mind is that any assistance provided must meet the test of being a service, or incidental to a service, provided to your own client **and**, as a service to your own client, and must also be in the best interests of your client.

The following are some questions to consider before providing assistance to a self-represented party:

- Is the assistance a service to, or incidental to, a service provided to your client?
- Is the assistance in the best interests of your client?
- If the answer is no to either of those questions, don't do it.
- Does the assistance include opinions or advice such as the price to offer or accept?
- Would the assistance or how it is provided encourage the self-represented party to rely on your knowledge, skill, or judgment?
- If the answer is yes to either of those questions, don't do it.

If you are representing a seller, an example of assistance would be showing the property to a self-represented party interested in the property. This assistance is a service to your seller client.

You are, after all, trying to sell their property. It is clearly in your seller client's best interest to show the property to someone who might purchase it.

As an example of what is **not** permitted when representing a seller, is suggesting to a self-represented buyer that they consider viewing a similar property owned by someone else that is listed by your brokerage or that they include clauses in their offer that are counter to your client's best interest. That is very clearly not in the best interests of your seller client.



## **Are all non-clients self-represented parties?**

Not every person who isn't a client is automatically a self-represented party. The legislation is very clear that a self-represented party is a party that is not a client of a brokerage **in respect of a trade**.

A potential client, or a consumer asking general questions about the real estate market is not a self-represented party.

However, the same narrow exception to creating an implied representation agreement applies. And registrants should be mindful to not go too far in discussions.

## **Can I provide comparables to a self-represented buyer?**

A very common question is whether or not comparables can be provided to a self-represented party.

If providing those comparables will help your seller client get the highest possible price for their property, the comparables could be provided.

Of course, registrants will want to be careful to be honest and represent information accurately to a self-represented party, or risk prosecution for making false or misleading statements.

Remember, assistance is permitted but it must be a service to and in the best interests of your own **client**.

## **Can I show a property to a buyer who is self-represented?**

RECO has also received questions about performing specific activities for a self-represented party. For example, whether a registrant can show a property to a buyer who is self-represented.

If the seller IS your client, you would be showing the property to the self-represented buyer as a service to your seller – to help sell the property.

If the seller is NOT your client, showing the property would be a service to the self-represented buyer. Services can only be provided to clients. If the self-represented buyer wants the services of a registrant, they need to enter into a representation agreement with a brokerage.

## **Do I have to provide assistance to a self-represented party?**

Some registrants have asked if they are obligated to provide assistance to self-represented parties.



The self-represented party has made a decision to act on their own behalf.

What you are obligated to do will depend on your representation agreement with your client and on your client's lawful instructions.

If the self-represented party does not appear to be able to navigate the real estate transaction on their own, you might suggest they consider becoming a client of a brokerage rather than attempting to provide assistance yourself. The registrant might refer them back to the form explaining the risks of being self-represented and to facilitate the conversation about what you can or cannot do and the benefits of being represented.

Registrants who provide assistance to self-represented parties must be very careful not to create an implied client relationship.

### **Will there be an agreement with a self-represented party?**

Some registrants have asked if brokerages will be entering into agreements with self-represented parties, like they do with customers under REBBA.

The short answer is no.

Remember, you are not permitted to provide services to a self-represented party. Entering into an agreement to provide assistance that is actually provided as a service to another party – your client – is misleading.

If you enter into an agreement to provide services to a self-represented party, it's a representation agreement and the person becomes a client. This would create multiple representation and require the necessary disclosure and consent to proceed.

### **What if a registrant is dealing with a self-represented buyer and a self-represented seller?**

Some registrants have asked questions about scenarios such as a registrant dealing with a self-represented seller and self-represented buyer.

The registrant's role in such a scenario is not clear. There is no obvious reason for a registrant to be involved in this situation.

Remember, self-represented parties are not customers as they are defined under REBBA. They are not receiving any services from a brokerage.

In this scenario, both the seller and the buyer have decided to act for themselves in place of having a registrant represent them. They have both decided **not** to become a client of a brokerage.



You can't provide services, opinions, or advice to either party.

And because there is no client in this scenario, no assistance can be provided.

If the intent of the parties is for the brokerage to simply document what the two parties may have agreed to, then one or both would enter a representation agreement with you to provide the limited service, and one or both would then be a client. If both became clients, the necessary disclosure and consent would be required as they relate to multiple representation.

## **RECO Information Guide and RECO Information and Disclosure to Self-Represented Party form - Introduction**

I would now like to turn to two other important areas of change. The first is the new mandatory RECO Information Guide and the second the mandatory form called the RECO Information and Disclosure to Self-Represented Party Form.

Let's start with the guide.

### **RECO Information Guide**

Many of you will be familiar with Working With a REALTOR, an OREA form that has been used to satisfy the requirements of section 10 of the current Code of Ethics regulation under REBBA – commonly known as “information before agreements.”

Information currently captured under section 10 of the REBBA Code forms part of the required content of the Information Guide that RECO is responsible for producing under TRESA.

The purpose of the RECO Information Guide is to help consumers understand:

- The benefits of being a client of a registrant,
- The duties and obligations registrants owe to clients,
- The obligations of clients,
- The risks of receiving assistance as a self-represented party from a registrant representing a client in the transaction,
- The content of agreements with brokerages, including remuneration arrangements,
- That a brokerage is prohibited from representing more than one client in respect of the same trade in real estate unless the brokerage has disclosed the required



information and has obtained the consent, in writing, of every client to be represented by the brokerage in that trade,

- The duties and obligations owed to clients and the services that will be provided if the brokerage represents more than one client in a trade, and
- How to bring a concern to the attention of the brokerage or file a complaint with RECO.

Registrants must provide the Information Guide:

- **before** providing any services to a client,
- **before** entering an agreement with a client, and
- **before** any assistance is provided to a self-represented party.

Registrants are also required to explain the content of the Information Guide to the person. While the Information Guide is new, providing this type of information to consumers is not. You are already doing this in some way today.

RECO is working on a process to facilitate the electronic delivery of the RECO Information Guide and for obtaining a consumer's acknowledgement of having received the Guide and had the contents explained to them. The RECO Information Guide will also be made available in a printable PDF format.

## **RECO Information and Disclosure to Self-Represented Party Form**

When dealing with a self-represented party, registrants are required to provide the mandatory RECO Information and Disclosure to Self-Represented Party Form in addition to the RECO Information Guide.

The purpose of the mandatory Form is to ensure that a self-represented party, who chooses to receive assistance from a registrant representing a client in the trade understands:

- The **risks** of receiving any assistance from a registrant who is protecting and promoting the best interests of their seller or buyer client,
- The limited nature of the assistance they might receive from the registrant, and
- That they should seek independent professional advice before proceeding.

Registrants must clearly communicate to the self-represented party the fact that any assistance the registrant might offer is provided as a service to and in the best interests of their own client.



Registrants are also expected to make best efforts to obtain an acknowledgement, provided for in the mandatory Information and Disclosure to Self-Represented Party Form, that the information and disclosure has been received. If the self-represented party signs the acknowledgment, a copy must be provided to them.

As with the RECO Information Guide, RECO is working on a process to facilitate electronic delivery of the Form, and acknowledgment of receipt.

## **Summary**

I hope this video has helped you understand how consumer relationships will change under TRESA, as well as the new obligations related to the mandatory RECO Information Guide and the mandatory Information and Disclosure to Self-Represented Party Form.

RECO will be launching a TRESA Explained page on its website and adding bulletins as they become available. This will serve as the primary source of information about changes under TRESA.

Other videos in the series will focus on new requirements related to disclosures, consents, and acknowledgements required under TRESA, as well as new requirements related to content of representation agreements.

Thank you for watching and for your continued commitment to professionalism.