



REPORT

This fall, RECO toured the province to ask industry leaders about three key issues:

- **REBBA reform, including changes to multiple representation rules.**
- **Our upcoming review of Mandatory Continuing Education.**
- **Recent improvements to our service standards.**

Chair Mike Cusano, Vice-Chair Tim Barber and Registrar Joseph Richer led town hall meetings in Sudbury, Hamilton, Ottawa, Kitchener, Peterborough, London and Toronto. The final meeting in Toronto was a live webcast open to all registrants.

The main purpose of the tour was to engage in a thoughtful dialogue. This report covers what RECO presented to attendees and a summary of the discussion.

REBBA REFORM

Background

In January 2017, RECO provided its preliminary recommendations for REBBA reforms to government. Government has committed to a REBBA review, with the first phase addressing fines and multiple representation. In October 2017, the government announced some changes to REBBA.

- **Fines:** Increase in maximum fines for Code of Ethics violations from \$25,000 to \$50,000 for individuals and from \$25,000 to \$100,000 for brokerages. This increase is now in place. That does not mean that fines are going to automatically double. The Discipline Committee will consider the increased fine maximum when it rules on matters, and it will fine registrants accordingly.
- **Multiple Representation:** Changes to the rules for multiple representation in Ontario. The Government has made it clear that changes will not take effect until 2019 at the earliest. Further consultation will be necessary as the Government considers stakeholder input around new multiple representation regulations.

Government has committed to a broader review of REBBA in the second phase, which will launch in 2018.

MULTIPLE REPRESENTATION

RECO recommended government change the approach to multiple representation, to significantly reduce or eliminate the inherent conflicts of interest, by introducing mandatory designated representation. Transactional brokerage would be permitted to address any exceptions. Both are described below:

- **Mandatory Designated Representation (MDR):** A brokerage will be able to work with two clients in the same transaction, as long as the parties each work with different representatives, and there is a firewall so that information isn't shared between them, thereby allowing each registrant to promote the best interests of their client.

- When permitted, **transactional brokerage** will allow one salesperson to facilitate a transaction. When this is used, the salesperson acts as a facilitator to help the parties reach a mutually acceptable agreement, but the salesperson cannot represent or advocate for either party. **The government has not yet determined the circumstances when transactional brokerage could be used.**

The government is still considering the details of its approach to multiple representation and will be consulting further on proposed changes, with changes taking effect in 2019 at the earliest.

In addition, the REBBA definition of “customer” makes it such that the brokerage has no obligation to look out for the best interests of a customer. This is not easily understood by the average consumer and therefore not in the public interest. To demonstrate the point, let’s say one brokerage has one seller client, as well as several buyer customers interested in the seller’s property. This situation is not considered multiple representation under REBBA.

RECO has asked government to make the distinction between clients and customers clearer. In Alberta, the customer is an unrepresented party and they sign an acknowledgement that clearly states they are not being represented, unlike in Ontario where they have the opportunity to enter a customer service agreement where they are not likely to appreciate the distinction between being a customer or a client.

Discussion

MDR AND TRANSACTIONAL BROKERAGE

TOWN HALL PARTICIPANT:

“I think that MDR is a change that’s long overdue.”

TOWN HALL PARTICIPANT:

“As long as REBBA limitations for dual representation are disclosed verbally and in writing to both buyers and sellers prior to an agreement of purchase and sale being prepared, the choice should remain firmly within the client’s purview.”

There was a split between attendees who were pleased government is planning to proceed with the proposed MDR model to deal with a long standing problem, and those who were uncomfortable with the proposed changes.

RECO confirmed that government has made it very clear change is coming. The rules will change as they have in other Canadian jurisdictions – most recently in British Columbia.

Some registrants at the Town Halls expressed their view that better enforcement of existing rules is all that is needed, while others recognized that the inherent conflict is not well managed under the existing rules.

RECO explained that multiple representation issues are particularly challenging to identify. When there is manipulation of, or attempts to manipulate, the offer process (as seen in some media reports), the parties might not know about it. As a result, RECO doesn’t receive many complaints about multiple representation. It’s RECO’s view that enforcement takes place after the consumer has been harmed and does not solve the problem.

There were many questions related to how MDR and Transactional Brokerage would work in practice that can't be answered until government has completed its work on the regulations and the details are known.

EXCEPTIONS TO MDR - TRANSACTIONAL BROKERAGE

TOWN HALL PARTICIPANT:

"If you're on the commercial side a bulk of what we do is listen to people, we're communicating with people and [we're] putting together the deal that didn't exist... you have to have the transactional [option]."

TOWN HALL PARTICIPANT:

"Leasing deals can be many times much more difficult than a sale, because you stay married. The landlord and the tenant stay married; they have to get along... everybody has to win at the end of the transaction because you're still involved with that person."

There is an inherent conflict of interest when one individual is representing two clients in a transaction. RECO believes this conflict needs to be eliminated, or at least reduced to very narrow circumstances, and then managed appropriately. RECO asked registrants under what circumstances, if any, transactional brokerage should be permitted.

Many attendees supported an exception for commercial real estate deals, in which the buyer and seller tend to have a deeper understanding of the process and are usually advised by a lawyer or an accountant, or both, and the registrant often acts as a facilitator. We also heard widespread support for an exception for leasing in general.

Other issues raised related to brokerages that have only one registrant, often a sole proprietor, who do not have another registrant at their brokerage to effectively practice MDR. Some presented the point that every salesperson is effectively running his or her own business and is quite similar to a sole proprietor. We also heard from attendees who said consideration should be given to rural areas that may not be well serviced, and situations involving established relationships with close friends or family members.

Some attendees were in favour of consumer choice, meaning a registrant could use the transactional brokerage option under any circumstances as long as the parties to the trade agree. There was broad appreciation that consumers must be able to make an informed choice, regardless of the resulting rules. Other attendees opposed including any exceptions at all, in the interest of fairness.

RECO expressed its view that consumer choice needs to be balanced with measures that protect the consumer's best interests. The government will determine where that balance lies as it considers the situations where transactional brokerage can be used.

CLIENTS AND CUSTOMERS

Registrants who shared their opinions on this matter were split on the issue. Attendees who opposed the elimination of current customer relationship said that a qualified salesperson will explain the distinction clearly so that the consumer understands the difference between receiving services and representation. Others suggested that consumers can seek independent legal advice in these situations, and the lawyer can ensure that the consumer's interests are being protected. However, many registrants supported the elimination of customer as it's currently defined, noting it was clearly confusing for consumers.

It may be possible for some consumers to understand the complex client vs. customer distinction, but RECO believes it's better to eliminate the confusion altogether. There should be no ambiguity in a consumer's mind about whose interests the salesperson is representing.

MANDATORY CONTINUING EDUCATION

Background

RECO is launching a comprehensive review of Mandatory Continuing Education (MCE) led by an external third party.

- The review will include consultation, allowing registrants an opportunity to provide input.
- Feedback from the Town Halls will help inform the consultant's approach to the consultation.

We sought feedback from registrants about a few key issues, including in-person opportunities for MCE, something we have been hearing registrants want, despite the strong support for the online program in registrant surveys.

Since launching the program in 2013, we continually made enhancements, based on registrant input. Here are a couple of examples.

- The new 2017 RECO Update Course is faster and easier to navigate.
- We've made the content challenging to more experienced registrants, while making more basic content available for less knowledgeable registrants who need foundational knowledge.

Discussion

FACE-TO-FACE LEARNING OPTION

TOWN HALL PARTICIPANT:

"I personally enjoy online courses because it's easier to work into my schedule."

TOWN HALL PARTICIPANT:

"I'm still a firm believer in a classroom situation where there's group discussion between people, I think they learn a lot more."

Across all seven Town Halls we heard positive comments about the current online program, but most attendees also supported an in-person learning option for those who wanted it. Supporters of an in-person option wanted to ask questions of a qualified instructor and discuss issues in more depth with colleagues.

Even those who preferred online learning supported an in-person training option. Attendees understood that those who wanted an in-person option would bear any additional cost.

Some attendees emphasized that we should ensure instructors will provide consistent, accurate and up-to-date content, answers and advice.

The upcoming MCE review will further assess the best way to deliver an in-person option. It will seek registrant feedback to identify the level of interest in more detail, and determine whether there are specific topics that would be of greater interest to those who prefer to learn face-to-face.

IDENTITY VERIFICATION

TOWN HALL PARTICIPANT:

“I think it’s critical that the identity of the individual writing that exam is verified.”

TOWN HALL PARTICIPANT:

“If you’re really serious about your career then you’re going to take the initiative and get it done.”

Many attendees expressed a desire for stronger identity verification to ensure that registrants are indeed completing the MCE courses themselves, though some believed that accountability lay with individual registrants and their employers to maintain the integrity of the program.

Discussion included the fact that as part of each course, registrants must make a declaration that they are the person who completed the course. Any registrant who makes a false declaration, and allows somebody else to complete the MCE courses on their behalf, has committed a serious violation of REBBA, which should be reported to RECO. RECO noted that as professionals, brokers and salespeople have a responsibility to fulfill their education obligations. Brokers of Record also have a role in ensuring their employees are fulfilling their professional requirements.

Attendees also made suggestions about practices in other regulated sectors that might be applicable to the MCE program.

As part of the upcoming MCE review, we will work with the consultant to assess the issue considering registrant feedback, and look at leading practices in this area. In the meantime, we will continue to investigate evidence based allegations of impropriety and prosecute accordingly.

PASS/FAIL SYSTEM

TOWN HALL PARTICIPANT:

“I think the fact that there’s no pass or fail, is a huge issue.”

TOWN HALL PARTICIPANT:

“I am very strongly against a pass/fail system.”

Opinions varied on whether registrants should be required to complete a pass/fail test as part of the MCE program. Those who supported pass/fail were also split on what the consequences should be in the event of a failure. Some thought it should result in a loss of registration, while others thought they should be required to take a remedial program, and others yet that they should have the opportunity to be tested repeatedly until they passed.

The consultant undertaking the review of the MCE program will be asked to provide information on leading practices for continuing education programs similar to RECO’s MCE program. However, registrants should keep in mind that the MCE program is a continuing education program and not a re-certification program; moving to a re-certification program would be a significant shift from where professional continuing education is trending.

MORE CHALLENGING COURSE CONTENT

TOWN HALL PARTICIPANT:

“I think the content moving forward should have a little more diversification.”

Though most attendees generally thought the MCE program provided valuable content, some attendees asked for course content that was more challenging to an experienced registrant and additional training for brokers managing within a brokerage.

Based on registrant feedback, we have already modified our approach to make content more challenging for more experienced registrants. The content of the 2017 RECO Update Course is intended for registrants with more experience, with optional foundational content for those who need it. We will continue to look at ways to balance the varying degrees of experience within the registrant base.

SERVICE STANDARDS

Background

Registration and complaint services are the core of RECO’s work. It’s important that we are able to process registrations and complaints, and handle inquiries in a reasonable period of time.

We also want to answer questions quickly, easily and accurately.

We’ve been working to improve in this area. From 2010 to 2016 our complaints volume almost doubled, resulting in a significant inventory of complaints. Complaint timelines lengthened, and it took an average of 280 days to close a complaint file. Since then we’ve been able to ramp up our processing, with a goal of 120 days or better. We are well on our way to meeting that target.

We’re working toward a self-service complaint tracking portal, so that parties to a complaint can check the status of a complaint at any time.

We’ve also increased efficiency through the use of online registration services. RECO has put together a [service standards scorecard](#) that tracks several key metrics. We expect that the numbers will continue to improve as we see the full impact of our recent efforts.

Discussion

During the Town Halls, registrants acknowledged RECO’s efforts to improve service standards and transparency around their reporting. They also provided a number of suggestions for areas for improved service and new online services RECO should consider. We appreciate the input and will be looking at how we might be able to implement some of the suggestions.

Other topics

BROKER OF RECORD ACCOUNTABILITY

In recent years, RECO has taken action to put more accountability on Brokers of Record by implementing a [revised advertising complaints process](#). As previously noted, RECO also believes Brokers of Record have a role in ensuring their employees are complying with their educational obligations.

More broadly, RECO sees increased accountability for Brokers of Record as a potential avenue to increase professionalism and compliance within the industry.

RECO also noted that Brokers of Record are responsible for setting up a brokerage structure so that they can properly manage all of their employees. Whether there are 10 employees, or hundreds, the broker of record is accountable for their conduct.

DISCUSSION

TOWN HALL PARTICIPANT:

“Make it less about running a business and more about running a tight ship and that goes into your managers and how many people they can manage.”

Some attendees expressed support for a limit to the number of registrants that a Broker of Record can employ, but most opposed the idea. Attendees argued that a limit would interfere with widely-used business models, and that the Broker of Record should be able to put a management structure in place to handle the number of employees they have.

We heard a suggestion that RECO’s inspection process could be expanded to examine how the Broker of Record manages their staff.

Some also emphasized that salespeople should be held accountable for their own conduct. The Broker of Record should only be penalized if they are directly involved in the misconduct.

However, most recognized that Brokers of Record should be doing more to promote professional conduct within the industry. One attendee suggested that all discipline decisions against individual registrants should also list the brokerage. For various reasons, this might not work in practice, but it was encouraging that attendees saw the value in increased accountability.

MISUNDERSTANDING OF RECO’S ROLE

Some attendees did not understand that RECO’s mandate is to look out for the interests of consumers, while OREA and local boards look out for the interests of registrants. RECO clarified that RECO puts the public interest first.

RECO also recognizes that there is an ongoing need to make sure brokers and salespeople understand the distinction between RECO’s role, and that of real estate associations. We have a [document](#) on our website that explains the different mandates of RECO, OREA, and the Ministry of Government and Community Services. In addition, we will continue to reach out to registrants to explain the distinction.

THANK YOU

Our thanks to all those who attended and participated in the Town Halls. The post-meeting surveys indicate the meetings were appreciated and there was a clear desire for more town halls on different topics. We look forward to continuing a dialogue with registrants on other initiatives and issues in 2018.