

REGULATORY PROPOSALS FOR PUBLIC COMMENT

REAL ESTATE REGULATIONS INCREASING TRANSPARENCY IN MULTIPLE OFFER TRANSACTIONS

Purpose of this consultation

The Ministry of Consumer Services is seeking public input on proposals that would increase transparency in real estate transactions, particularly where there are multiple offers on a property.

You are invited to comment and suggest improvements or alternatives to the proposals. Please provide the rationale for your comments as this will help us better understand your advice.

More information on how to provide input can be found on the last page of this paper.

Responses must be received no later than **May 5, 2014**.

Summary of the act

The Real Estate and Business Brokers Act (the “act”) regulates real estate brokerages, brokers and salespersons (typically called “agents”). Real estate brokers and salespersons typically act for the seller or buyer to help with the purchase or sale of property. The act is intended to protect property owners and purchasers when they use a brokerage or work with a salesperson.

The Real Estate Council of Ontario (RECO)

RECO is a not-for-profit corporation responsible for administering the act on behalf of the Ministry of Consumer Services (referred to as the “ministry” here). RECO is responsible for the day-to-day administration and enforcement of the act and its regulations. The ministry retains responsibility for the legislation.

INCREASING TRANSPARENCY IN REAL ESTATE PURCHASES

Overview of the regulatory proposals

In Fall 2013 the Legislature passed the Stronger Protection for Ontario Consumers Act (Bill 55). The act improved consumer protection in four areas:

- Increasing transparency in real estate bidding practices under the Real Estate and Business Brokers Act.
- Real estate fees and commissions under the Real Estate and Business Brokers Act
- Door-to-door water heater rentals and sales under the Consumer Protection Act
- Debt settlement services under the (to be renamed) Collection and Debt Settlement Services Act.

This consultation focuses on proposals related to increasing transparency in real estate bidding practices. The proposals suggest clear rules for brokerages and salespersons related to the retention of offers to purchase real estate.

Effective December 12, 2013, real estate professionals can charge a combination of a fee and a commission. This gives them greater flexibility in their business models and service offerings.

What is already in the law?

Before focusing in on the proposals, it is helpful to summarize the existing law.

The Statute of Frauds establishes that, for an offer to purchase real estate to be effective, it must be in writing. The Real Estate and Business Brokers Act does not establish what information must be contained in a written offer. Even though there is no set requirement, a large portion of the industry uses standard forms of offer developed by real estate trade associations (e.g. the Purchase of Agreement and Sale form developed by Ontario Real Estate Association).

The Real Estate and Business Brokers Act, 2002 prohibits falsifying information or documents related to a trade in real estate. A person who is registered under the act can face a disciplinary action, such as a proposal to revoke their registration (i.e. licence), or be subject to prosecution.

Before the Stronger Protection for Ontario Consumers Act passed, there was no requirement for brokerages to keep written offers that were not accepted by the seller.

The Stronger Protection for Ontario Consumers Act strengthens the integrity of real estate bidding practices and increases transparency in multiple offer situations by:

- Requiring real estate salespersons and brokers acting on behalf of a buyer to only present written offers
- Prohibiting real estate professionals from indicating they have an offer, unless they have that offer in writing
- Requiring brokers acting for the seller to retain copies of all written offers received or other prescribed documents
- Permitting anyone who has submitted a written offer on a property to ask RECO's Registrar to report the number of written offers on that property.

The new requirement for brokerages to keep copies of all written offers or other prescribed documents related to those offers, improves RECO's ability to inquire about claims of false offers. It also makes it easier to take action against real estate professionals who falsify or fabricate these documents.

What are the proposed regulatory changes?

We are looking for your input and suggestions in two key areas:

- 1) What information should be included in "other prescribed documents"?
- 2) How long should real estate professionals be required to retain unsuccessful offers or other prescribed documents?

Details of proposals

1) Prescribed Documents

The changes to the act require the seller's brokerage to keep:

- a) copies of all written offers received for the purchase of a property, or
- b) all other prescribed documents related to those offers.

The requirement to keep the offer or other prescribed documents applies to both successful and unsuccessful offers.

Content of the Prescribed Document

It is proposed that the "prescribed document" be a summary that must include certain information. A standard form will not be prescribed. When a summary is retained instead of a full offer it must contain the following information:

Buyer's and Seller's Information

- Name(s) of person(s) offering to buy, and contact information¹ such as a telephone number, email address, or mailing address
- Name(s) of seller(s) and contact information such as a telephone number, email address, or address
- Name of the brokerage acting for the seller and contact information for the brokerage
- If the person making an offer has a representative under the act, the name and contact information for the representative

Summary Information about the Offer

- Address of property on which the offer is made
- Date of the offer
- How the offer has been presented (fax, email, in person, etc.) to the seller's brokerage, and the date and time
- Any irrevocable date provided in the offer by the person making the offer

This information will help the regulator confirm whether or not an offer was made.

RECO's Registrar may contact the individuals listed above to confirm the number of offers on a property under several circumstances including:

¹ An alternative option was considered in which the seller's brokerage would retain the summary document with buyer's name only and the buyer's brokerage would retain the buyer's contact information. This option was rejected because placing a retention requirement on both the seller's brokerage and the buyer's brokerage would create unnecessary administrative burden.

- In response to a request to conduct an inquiry regarding the number of offers received on a property
- In response to a complaint
- If the RECO suspects inappropriate behaviour.

It will be the responsibility of the brokerage receiving the offers to ensure that it retains either the full written offer or a document that meets the above requirements.

As set out in REBBA, brokers, salespersons and brokerages must preserve the confidentiality of information they receive in the course of their duties as real estate professionals.

The government anticipates that the Ontario Real Estate Association and/or the Toronto Real Estate Board may develop standardized forms for their members. We recommend that RECO be consulted on the development of any form of this nature.

Type of Retention

The seller's representative must indicate to all registrants who make an offer whether they will keep copies of all unsuccessful offers or whether they will keep a summary form of the offer. The seller's representative must also advise a person who is making an offer without a representative that the brokerage must retain the written offer that is made.

The seller's brokerage is responsible for keeping the full offers or summary forms for the required period of time.

2) Retention Period for Unsuccessful Offers and Summary Documents

REBBA states that documents required by the act be retained for a period of six years. The six-year timeframe allows the regulator to keep relevant records to review in the event that compliance action is necessary.

However, it is proposed that the retention period for written offers (other than the "successful" offer) or other prescribed document, be set at one year instead of six years.

There are two reasons for the proposed shortened retention period:

1. RECO expects to receive most inquiries related to multiple offers very soon after offers have been made on a property.
2. Industry representatives have told the ministry that the new requirement to keep offers or summaries of these offers will introduce a new administrative burden for brokerages. A shorter retention period for these documents would minimize that burden.

Your Input is Important

**Please provide your comments to the Ministry of Consumer Services
no later than May 5, 2014.**

You may send your response by e-mail with “Real Estate Consultation” in the subject line to:

Realestate@ontario.ca

You may also mail your response to:

Attention: Aimée Skelton
Real Estate Consultation
Consumer Policy & Liaison Branch
Ministry of Consumer Services
5th Floor, 777 Bay Street
Toronto, ON M7A 2J3

Thank you for taking the time to review these proposals. We look forward to receiving your input and suggestions.

Privacy Statement

Please note that unless requested and agreed otherwise by the Ministry of Consumer Services, all materials or comments received from organizations in response to this consultation will be considered public information and may be used and disclosed by the ministry to assist the ministry in evaluating and revising the proposed regulatory amendments. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process.

An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified. Materials or comments received from individuals who do not indicate an affiliation with an organization will not be considered public information unless expressly stated otherwise by the individual. However, materials or comments by individuals may be used and disclosed by the ministry to assist in evaluating and revising the proposed regulatory amendments.

Personal information of those who do not specify an organizational affiliation, such as an individual's name and contact details, will not be disclosed by the ministry without the individual's consent unless required by law. If you have any questions about the collection of this information, please contact consumerpolicy@ontario.ca.