



Phase 2 Regulations
Real Estate and Business Brokers
Act, 2002/Trust in Real Estate
Services Act, 2020

RECO Responses to Proposal
Number: 21-MGCS035

Date submitted: January 24, 2022



RECO is providing advice to government in response to proposed new and amended regulations set out in proposal number 21-MGCS035 on the Regulatory Registry. Included in this response are RECO suggestions for further new and amended regulations, which lend themselves to being addressed in Phase 2 of the reforms.

Introduction

In the two decades since the *Real Estate and Business Brokers Act, 2002* ("Act") was last reviewed, the real estate sector has changed dramatically. Advances in technology and access to information have significantly altered the way in which businesses and consumers interact and the information consumers rely on to make decisions. The Ontario government's stated objectives of reform are to reduce burden on consumers, registrants, and the regulator; maintain consumer protection; and support a fair and competitive real estate sector. RECO supports these objectives.

Over the last two decades, RECO has seen significant advances in the regulation of real estate and other sectors across Canada. RECO's suggestions for reform aim to ensure Ontario does not continue to fall behind other Canadian jurisdictions in the protection of consumers in real estate transactions or in the standards established to regulate the conduct of registrants. The consumer protections in place in British Columbia are of particular interest.

With more than 93,000 real estate brokerages, branch offices, brokers, and salespersons registered to trade in real estate, Ontario should be among the leaders in regulation of the real estate sector.

Opportunities for significant reform to the Act and its regulations are rare. RECO urges government to consider addressing RECO's further proposals not currently captured in the government's proposed regulation package, as part of this Phase 2, supporting a cohesive set of regulations and further enhancing consumer protections.

As part of its advice to government, RECO recommends a comprehensive review of terminology used throughout the regulations for consistency. An example is where "broker or salesperson" is used and the brokerage excluded, notwithstanding that the client relationship is with the brokerage. Another example is the current wording of some provisions that imply that a form of designated representation might exist. In addition, the currently undefined term "represent" is used throughout the regulations. Arguably, these provisions might not apply if a client is not under a representation agreement.

RECO continues to recommend a more comprehensive approach to improving and updating the regulations, a position reflected in the balance of this submission.

Parts 1 through 4 of this document address:

- Regulation to amend Ontario Regulation 567/05 – General
- Regulation to amend O. Reg. 579/05 – Educational Requirements, Insurance, Records, and Other Matters
- Regulations to replace O. Reg. 580/05
 - New Code of Ethics Regulation
 - New Discipline Committee Regulation

For each regulation, the specific provision being amended, added or deleted as set out in the draft regulations is identified, followed by RECO’s comments, which include wording suggestions where appropriate.

In Part 5, RECO identifies further proposals that it recommends be addressed as part of Phase 2 reforms. If RECO’s proposals fall outside the policy scope for Phase 2, RECO urges government to expand the scope to capture those broader consumer protection and regulatory oversight reforms. These are sound consumer protections and oversight provisions, and most have been in place in other Canadian jurisdictions, and other sectors within Ontario, for quite some time.

With respect to the proposed in force date of September 1, 2022, for Phase 2 changes, RECO suggests consideration be given to April 1, 2023. This will allow time for: consumer and industry education and awareness; development of new or amended forms supporting the transition from clients and customers to clients and self-represented parties; adjusting education course content provided by Humber College and RECO’s continuing education courses to reflect changes to the Act and regulations; and the development of the mandated information guide(s).

Part 1 – Regulation to amend O. Reg. 567/05 (general)

1. (1) The definition of “client” in subsection 1 (1) of Ontario Regulation 567/05 is revoked and the following substituted:

“client” means,

- (a) with respect to a brokerage and a trade in real estate, a person who, in the trade, is represented and receives services under a representation agreement by the brokerage, and
- (b) with respect to a broker or salesperson and a trade in real estate, a person who, in the trade, is represented and receives services under a representation agreement by the brokerage that employs the broker or salesperson, if the broker or salesperson represents the person pursuant to the agreement; (“FRENCH”)

2. The definition of “customer” in subsection 1 (1) of the Regulation is revoked.

Client definition: Must capture all client relationships (regardless of name/form of agreement)

Government’s proposed definition of client potentially includes only those persons under what is titled a “representation agreement” with a brokerage and only if that “representation agreement” includes both “representation” AND “services”.

RECO recommends a definition of client that will ensure that all agreements that a registrant may enter into, whether related to or identified as a “representation agreement”, and whether they include one or both of “representation” and “services” to or on behalf of a client, are captured.

In Alberta, “client” is defined as “a person who has entered into a service agreement with a licensee in accordance with these rules, whether or not that service agreement is in writing”. In British Columbia, “client”, is defined as meaning, “in relation to a licensee, the principal who has engaged the licensee to provide real estate services to or on behalf of the principal”.

RECO recommends the use of “services” in relation to agreements. It is broader and clearly captures more than just representation agreements. It also aligns with the future name of the statute, *Trust in Real Estate Services Act, 2002*. RECO recommends defining “client” as follows:

“client” means, with respect to a brokerage and a trade in real estate, a person who has entered into a service agreement with a brokerage for services to or on behalf of the person, and with respect to a broker or salesperson and a trade in real estate, a person who has entered into a service agreement with the brokerage that employs the broker or salesperson.

RECO’s proposed change to the definition of “client” will necessarily require a corresponding amendment to the definition of “representation agreement” and is addressed below.

3. The definition of “representation agreement” in subsection 1 (1) of the Regulation is amended by adding “and provide services to the person” after “will represent the person”.

Agreement definition: Must capture all types of agreements (representation, listing and other)

The government’s proposed amended definition would read:

“representation agreement” means a written, oral or implied agreement between a brokerage and a person under which the brokerage and the person agree that the brokerage will represent the person and provide services to the person in respect of a trade in real estate; (“convention de représentation”)

The proposed definition would require that the agreement include both representation “and” services. Any agreement to provide only services, for example an agreement to list a property but provide no representation or other services, would not be captured by the definition.

“Representation agreement” has a distinct meaning within the sector. RECO notes the LGIC regulation-making authority in subsection 51 (1) of the Act refers to regulations “regulating listing agreements, representation agreements and other types of agreements”, supporting the position that the definition of agreement needs to capture all the agreements that a brokerage and client might enter into.

British Columbia uses the term “service agreement” and defines it as an agreement between a brokerage and a client under which a licensee provides real estate services to or on behalf of the client. The British Columbia definition captures the concept of representation by using “on behalf of”. In Alberta, “service agreement” is defined to mean a contract that establishes the relationship between the parties as to the services and obligations to be performed by a licensee.

RECO recommends “service agreement” replace “representation agreement” and that it be defined to capture all forms of agreement between a brokerage and client. RECO’s proposed wording is:

“service agreement” means a written, oral or implied representation agreement, listing agreement or other agreement between a brokerage and a client under which the brokerage agrees to provide services to or on behalf of the client in respect of a trade in real estate;

To ensure it is clear that providing advice or opinions is a service, a subsection could clarify with wording such as:

(X) Without limiting the generality of services in the definition of service agreement, services include the provision of advice and opinions.

Also, phrases such as “represents a client” or “representing a client” appear throughout the regulation but without a definition of “represent”. RECO recommends replacing this terminology with “has a client” wherever possible and using a phrase such as “providing services to or on behalf of a client” where it might be required.

Regardless, the regulations will need to be reviewed to ensure appropriate references to representation, services, and the type of agreement wherever the terms “agreement”, “represent” and “services” appear.

4. Section 1 of the Regulation is amended by adding the following subsections:

5. For the purposes of the definition of “self-represented party” in subsection 1 (1) of the Act, the following criterion is prescribed:
 1. The party is not represented by a brokerage with respect to a trade in real estate under a representation agreement.

Self-represented party not a client: Status must be clear

In Alberta, “customer” means a person who has contacted, but not engaged or employed, a licensee to provide services. In British Columbia, “unrepresented party”, in respect of a trade in real estate, is defined as a party to the trade in real estate who is not a client of a licensee for the trade in real estate.

Subsection 1 (5) must be clear that a party to the trade is either a client or a self-represented party, leaving no doubt as to the party’s status. Referring to not being “represented” and not “under a representation agreement” does not provide the necessary clear demarcation and risks creating gaps in consumer protection.

RECO also recommends changing the definition’s reference to “a” trade in real estate to “the” trade in real estate, consistent with the example from British Columbia. It is possible that a person might be a self-represented party for purposes of a particular trade and a client of a brokerage in respect of another trade. For example, a person might be a client of a brokerage for a commercial transaction but also a self-represented party with respect to a residential transaction. Similarly, a person might choose to be a self-represented party to dispose of their property in Toronto and be a client of a brokerage for the purpose of acquiring a property in Ottawa.

RECO recommends a clear statement, leaving no room for debate regarding status with wording such as:

- (5) For the purposes of the definition of “self-represented party” in subsection 1 (1) of the Act, the following criterion is prescribed:
 1. The party is not a client of a brokerage with respect to the trade in real estate.

6. For the purposes of the definition of “representation agreement” in subsection (1), the following circumstances do not give rise to an implied agreement between a registrant and a person:
 1. In the course of, or incidental to, providing services to or representing 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.
 2. A registrant provides general information to a person relating to the business of trading in real estate.
 3. A registrant enters an agreement mentioned in subsection 23 (1) with a person solely for the purposes of charging or collecting remuneration from the person in respect of a trade in real estate and the registrant provides no services to the person.

Self-represented party receiving assistance: Proposed wording changes for clarity and consistency

With respect to paragraph 1 of subsection 1 (6), RECO assumes the intention is to capture assistance being provided to the self-represented party as a service to the registrant’s client.

RECO recommends amending the opening flush of paragraph 1 to emphasize that the assistance is in fact a service for their client, with wording such as:

“As a service to, or incidental to services provided to, their client, a registrant provides assistance to...”

With respect to paragraph 3 of subsection 1 (6), RECO is concerned that, as worded, it explicitly permits an agreement to receive remuneration from a self-represented party, notwithstanding that no services have been provided to or on behalf of the self-represented party.

A consumer could fairly assume some entitlement to services in exchange for paying remuneration. To some degree, this can be seen as conflicting with the prohibition set out in paragraph 1 as it could be viewed as encouraging the self-represented party to rely on the skill and judgment of the registrant in view of the commitment to pay.

The wording of related subsection 23 (1) of O. Reg. 567/05 appears to say remuneration is payable, notwithstanding the absence of a written agreement to pay, in three specific situations - if the registrant conveys an offer to the seller and it is accepted, shows the property to the buyer (and presumably an agreement of purchase and sale is signed at some point) or introduces the buyer and seller to each other (and presumably an agreement of purchase and sale is signed at some point). This is not an implied agreement as much as a regulatory right to be remunerated.

2. (1) Section 2 of the Regulation is amended by adding the following definitions:

“child” includes a person whom a parent has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; (“enfant”)

“information guide” means the guide described in section 13 that sets out the rights and obligations of registrants, clients and self-represented parties; (“FRENCH”)

“material fact” means, with respect to the acquisition or disposition of an interest in real estate, a fact that would affect a reasonable person’s decision to acquire or dispose of the interest; (“FRENCH”)

“parent” includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody; (“parent”)

“seller representation agreement” means a representation agreement between a brokerage and a seller, and includes a listing agreement; (“FRENCH”)

“spouse” means either of two persons who,

- (a) are married to each other; or
- (b) are living in a conjugal relationship with each other outside of marriage. (“FRENCH”)

(2) Section 2 of the Regulation is amended by adding the following subsections:

- (2) A person is related to another person for the purposes of this Regulation if,
 - (a) one person is associated with the other person within the meaning of subsection 1 (2) of the Act; or
 - (b) one person is,
 - (i) a spouse of the other person,
 - (ii) a child of the other person, or
 - (iii) a relative by blood, marriage or adoption, of the person or of any person mentioned in subclause (i) or (ii).

Information guide definition: Proposed wording change for clarity

RECO recommends that the definition of “information guide” refer to “duties and obligations” and not just “obligations”. The Act and the regulations include both duties and obligations, depending on the context.

Related person: Recommended new definition

RECO recommends deleting current subsections (2) and (3) of the interpretation provisions in O. Reg. 580/05 and replacing them with a definition of “related person”:

“related person” means related persons as defined in section 251 of the Income Tax Act (Canada).

A reference to section 251 of the Income Tax Act would continue RECO’s current approach to related parties, which includes business relationships defined by “associated” in the Act and familial relationships, but with cleaner modernized language. RECO’s proposed wording for related person would remove the need for definitions of “child”, “parent”, and “spouse”.

3. The Regulation is amended by adding the following sections:

Forms

2.1 If a registrant uses a form in the course of a trade in real estate, the registrant shall use the most current version of the form.

Forms: Proposed wording change for added clarity

With respect to section 2.1 dealing with forms, RECO recommends it refer to the use of the “appropriate” form, instead of “most current version”. While it may be implied as an element of competence, there is value in emphasizing, as a regulatory requirement, that the registrant turn their mind to both the currency of the form and ensuring the applicable form for that trade is being used.

Disclosures etc.

- 2.2 (1) A disclosure, consent, declaration or acknowledgement required by the Act or the regulations must be written in plain language that is clear and concise and it must be presented in a manner that is logical and likely to bring to the recipient’s attention the information that is required to be conveyed.
- (2) A disclosure required by the Act or the regulations must be identified by the prominent placement of the word “disclosure” using bold type and capital letters.
- (3) The following rules apply in respect of a disclosure made under subsection 22 (1) or (3), clause 22.1 (1) (b) or subsection 22.1 (2), 22.7 (1), 23 (4), 23.1 (1) or (2):
1. The registrant shall provide a written declaration to each person receiving the disclosure that the disclosure has been made in accordance with the requirements of the section.
 2. The registrant shall make best efforts to obtain a written acknowledgement from each person receiving the disclosure indicating that the disclosure has been received.
- (4) This section does not apply to,
- (a) a disclosure that a registrant is required to make to the registrar; or
 - (b) a disclosure that a broker or salesperson is required to make to a brokerage.

Mandatory disclosures should be developed by regulator

RECO is seeking amendments that would provide it with authority to implement mandatory disclosure forms for the purposes of ensuring key disclosures are made to, and acknowledged by, consumers.

Disclosures are critical consumer protection provisions that require a strict adherence to the duty to communicate the required information. Any actions taken, without the disclosures having been made, risk undermining subsequent steps taken and can put both consumers and registrants at risk.

It is common for regulators to have the authority to mandate consumer protection forms, including content, particularly these types of disclosures, with transactional forms typically left to industry. There are risks associated with relying on sector organizations, that represent the interests of their member registrants or licensees (the regulated), to develop disclosure forms that are intended to protect consumers. It also increases the risk of different information being communicated differently, adding inconsistency and confusion for consumers.

RECO believes that consumers can more reasonably be expected to rely on consumer protection disclosure materials produced by the regulator rather than the regulated.

Disclosures critical to informed decision-making or consent

With respect to the proposed wording in section 2.2, there is no room for the ambiguity created with the use of the word "logical" or the reference to the disclosure being in a manner that is "likely to" bring attention to information. For subsection 2.2 (1), RECO recommends wording that is much clearer given the importance of the information being provided.

RECO recommends wording such as:

"A disclosure, consent, declaration or acknowledgement required by the Act, or the regulations must be written in plain language that is clear and concise and it must be presented in a manner that brings to the recipient's attention the information that is required to be conveyed."

Simplified requirements: Written disclosures

RECO strongly recommends requiring "written" disclosures.

With respect to subsection 2.2 (3), it appears to require a disclosure, a written declaration that the disclosure was made, and a written acknowledgement that the disclosure was received, not that the written declaration of the disclosure was received. RECO recommends simplifying the language and requirements of this section.

A written disclosure, acknowledged in writing (signed) by the party receiving it as set out in paragraph 2, should be sufficient. Where acknowledgement (signature) cannot be obtained

despite best efforts, the registrant should retain verification that the written disclosure was provided, and evidence of what efforts were made to obtain acknowledgement/signature.

To be clear, the required disclosures should be "written disclosures", the "written disclosure" is to be provided to the client (or other applicable party), the "written disclosure" is to include a signature or acknowledgement section that can be used to confirm the "written disclosure" was received by the party.

As an example, British Columbia's equivalent provisions, include a clearer statement of the required disclosures that reads:

- 52 (1) Disclosures under this Division must
- (a) be in writing, and
 - (b) subject to subsection (2), be separate from a service agreement or any other agreement under which real estate services are provided and separate from any agreement giving effect to a trade in real estate.
- (2) The disclosure of remuneration that is required under section 56 (2) [disclosure of remuneration] in respect of real estate services referred to in section 56 (1) (a) may be made in either or both of
- (a) a service agreement, and
 - (b) a record, other than an agreement giving effect to a trade in real estate, that is separate from the service agreement.
- (3) If, during the course of providing real estate services, there is any substantive change in the information that the licensee is required to disclose to a person under this Division, the licensee must promptly disclose the change to the person in accordance with subsection (1).

The British Columbia requirement that the disclosure, with limited exceptions, not be part of a service agreement, aligns with the intent of the proposed section 2.2 that the disclosure be clearly brought to the party's attention. For clarity, RECO recommends adding a similar provision.

- 4. The English version of paragraph 4 of subsection 4 (1) of the Regulation is amended by striking out "he or she" and substituting "the applicant".**
- 5. The English version of section 8 of the Regulation is amended by striking out "his or her" wherever it appears and substituting in each case "the applicant's".**
- 6. (1) The English version of subsection 9 (4) of the Regulation is amended by striking out "he or she" and substituting "the registrar".**
(2) The English version of clause 9 (7) (a) of the Regulation is amended by striking out "his or her" and substituting "their".

7. The English version of section 10 of the Regulation is amended by striking out “he or she” wherever it appears and substituting in each case “they”.

RECO has no comments on these amendments.

8. Section 11 of the Regulation is revoked and the following substituted:

Information available to the public

11. (1) The registrar shall make the following information available to the public:
1. The complete legal name of every registrant and, if a registrant is registered in another name, the name in which the registrant is registered.
 2. For every registrant,
 - i. the registrant’s business address, business telephone number and business e-mail address,
 - ii. the registrant’s registration number and the date the registrant’s registration expires, and
 - iii. an indication of whether the registrant is registered as a brokerage, broker or salesperson.
 3. For every brokerage that is a corporation, the name, business address, business telephone number and business e-mail address of every person described in clauses 11 (1) (a) and (b) of the Act.
 4. If the registrar proposes to take any of the following actions under section 13 of the Act, and the proposal has not been disposed of, an indication of that fact and the reasons for or a summary of the reasons for the proposal:
 - i. Suspend a registration.
 - ii. Revoke a registration.
 - iii. Refuse to renew a registration.
 - iv. Apply conditions to a registration or renewal of a registration to which the applicant or registrant has not consented.
 5. If the registrar carries out any of the proposals mentioned in paragraph 4, an indication of that fact and the reasons for or a summary of the reasons for carrying out the proposal.
 6. If a registrant’s registration is currently suspended, an indication of that fact.
 7. If conditions currently apply to a registrant’s registration, a description of the conditions.
 8. If a registration has been voluntarily cancelled or not renewed, an indication of that fact and, if the information is known to the registrar, the reasons for or a summary of the reasons for the cancellation or non-renewal.

9. If an order described in subsection 38 (1) of the Act has been made against a registrant, a copy of the order unless the order is currently stayed under subsection 38 (3) of the Act.
10. For every registrant, former registrant and director or officer of a brokerage and for every person described in clause 11 (1) (a) or (b) of the Act who is currently charged with an offence as a result of an information laid by an employee of the administrative authority,
 - i. the Act that creates the offence,
 - ii. a description of the charge, and
 - iii. the date on which the information was laid.
11. For every registrant, former registrant and director or officer of a brokerage and for every person described in clause 11 (1) (a) or (b) of the Act who has been found guilty of an offence as a result of an information laid by an employee of the administrative authority,
 - i. the Act that creates the offence,
 - ii. a description of the offence, and
 - iii. a description of the disposition of the charge, including any sentence that was imposed and any order to pay compensation or make restitution.
12. If the registrar has, under paragraph 3 of section 20 of the Act, referred a matter to the discipline committee to determine whether a registrant has contravened any provision of the Act or the regulations and the matter has not been disposed of, an indication of that fact and the reasons for or a summary of the reasons for the referral.
13. Any information that relates to a registrant, a former registrant, a director or officer of a brokerage or a person who is trading in real estate, if the registrar is of the opinion that making the information available to the public could assist in protecting the public.
 - (2) The registrar shall make the information described in a paragraph set out in Column 1 of the Table to this section available to the public for at least 60 months after the date set out opposite the paragraph in Column 2 of the Table.
 - (3) The registrar,
 - (a) shall publish the information described in subsection (1) on the administrative authority's website; and
 - (b) shall make the information described in subsection (1) available to the public in at least one other manner that the registrar considers appropriate.

- (4) In making any information available to the public under this section, the registrar shall ensure that the information does not include the name of an individual, unless,
- (a) the individual is an applicant for registration, a registrant, a former registrant, a director or officer of a brokerage or a person who is required to be registered;
 - (b) the individual is a person described in clause 11 (1) (a) or (b) of the Act; or
 - (c) the name of the individual is otherwise available to the public in connection with the information.
- (5) The information that this section requires the registrar to make available shall not be disclosed in bulk to any person except as required by law or to a law enforcement authority.

Item	Column 1 Paragraph	Column 2 Date
1.	Paragraph 5 of subsection (1)	The date the proposal is carried out.
2.	Paragraph 8 of subsection (1)	The date the registration is cancelled or not renewed.
3.	Paragraph 9 of subsection (1)	1. The date the registrar made the order under subsection 38 (1) of the Act, if the registrant did not appeal the order. 2. The date the Tribunal made its order, if the registrant appealed the order made the registrar under subsection 38 (1) of the Act.
4.	Paragraph 11 of subsection (1)	The date the registrant was found guilty.

Information to the public: Proposed wording changes for added clarity

In paragraph 4 of subsection 11 (1), the wording “proposes to take any of the following actions” lacks specificity as to what the triggering event is for the obligation. RECO recommends amending the wording to make it clear that the trigger is the issuance of the of the proposal or notice of proposal in respect of any of those types of actions.

RECO appreciates that paragraphs 10 and 11 of subsection 11 (1) have been broadened as RECO requested. However, RECO recommends removing the reference to “For every registrant, former registrant and director or officer of a brokerage and for every person described in clause 11 (1) (a) or (b) of the Act” in paragraphs 10 and 11 and replacing them with a reference to “For every person...”. RECO also recommends removing the limiting words of “as a result of an information laid by an employee of the administrative authority”, allowing for a range of enforcement processes that might happen, such as cooperation across regulators or with government.

Subsection 11 (4) might benefit from an additional provision that permits the inclusion of the name of any other person who does not object to being identified publicly if they have consented.

10. Section 13 of the Regulation is revoked and the following substituted:

Information guide

Information guide

13. (1) The registrar shall prepare an information guide and publish it on the administrative authority's website.
- (2) The information guide shall include the following information:
 1. An indication that a person may engage with a registrant,
 - i. as a client pursuant to a representation agreement, or
 - ii. as a self-represented party.
 2. A summary of the rights and obligations of registrants, clients and self-represented parties.
 3. An explanation of the risks of being a self-represented party if a person chooses not to be represented by or receive services from a registrant.
 4. A statement advising a person contemplating being a self-represented party to seek independent professional advice.
 5. An indication that agreements with registrants may include terms related to termination of the agreement.
 6. Examples of remuneration arrangements in relation to a trade in real estate for,
 - i. a broker or salesperson, and
 - ii. a brokerage.
 7. A caution that a brokerage may represent more than one client in respect of the same trade in real estate but only if the brokerage obtains the consent, in writing, of every client represented by the brokerage in respect of that trade.
 8. An overview of the services that the brokerage would provide to each client if the brokerage represents more than one client in respect of the same trade in real estate.
 9. An explanation of how to file a complaint about the conduct of a broker or salesperson to,
 - i. the brokerage that employs the broker or salesperson, and
 - ii. the administrative authority.
 10. Any other information the registrar considers relevant in respect of the rights and obligations of registrants, clients and self-represented parties.

- (3) Before providing service or assistance to a person in relation to trading in real estate a registrant shall provide the person with a copy of the information guide or a link to the guide on the administrative authority's website.
- (4) Before providing service or assistance to a person in relation to a trade in real estate a broker or salesperson shall explain the contents of the information guide to the person.

Proposed information guide section unnecessarily prescriptive and requirements more appropriately addressed by the regulator

This proposal appears unnecessarily prescriptive as to the content and form of the guide, notwithstanding that the opening words of subsection 13 (1) speaks to it being the registrar who shall "prepare" the information guide. It is worth noting that the rules related to critical consumer protection disclosures are much less prescriptive on the sector (that is substantively the subject of regulation) than they are in respect of the regulator developing a consumer information document.

RECO recommends an approach that does not prescribe the content of the guide. For example, O. Reg. 30/11 under the *Funeral Burial and Cremation Services Act, 2013* defines "consumer information guide", requires the registrar to make it available to the public, requires operators to link to the guide from their websites, and sets out requirements to provide the guide before contracts are made, but does not prescribe the content of the guide.

RECO also notes that the *Condominium Act, 1998* allows the Minister to delegate responsibility for preparing the equivalent consumer information guide, to the condominium authority, subject to the Minister's approval. That Act also allows for different versions of the guide, depending on the circumstances. RECO believes that a similar approach should be adopted for the real estate sector.

RECO recommends wording such as:

- XA. A consumer information guide shall include
 - (a) general information about the rights, duties and obligations of parties to an agreement; and
 - (b) such other matters that the registrar considers appropriate.
- XB.1 A consumer information guide may be prepared in different versions depending on the type of trade, the persons, or the circumstances to which it applies as the registrar determines.

RECO's proposed wording will allow for focused versions of the guide based on the type of trade, such as leasing, residential, and commercial.

Current registrant obligations moved to information guide

Section 10 of current O. Reg. 580/05 requires brokers and salesperson to provide specific information to prospective clients before entering into an agreement. The section currently reads:

Information before agreements

10. (1) Before entering into an agreement with a buyer or seller in respect of trading in real estate, a brokerage shall, at the earliest practicable opportunity, inform the buyer or seller of the following:
 1. The types of service alternatives that are available in the circumstances, including a representation agreement or another type of agreement.
 2. The services that the brokerage would provide under the agreement.
 3. The fact that circumstances could arise in which the brokerage could represent more than one client in respect of the same trade in real estate, but that the brokerage could not do this unless all of the clients represented by the brokerage in respect of that trade consented in writing.
 4. The nature of the services that the brokerage would provide to each client if the brokerage represents more than one client in respect of the same trade in real estate.

[Note: Paragraphs 5, 6, and 7, related to “customers” are not included. A paragraph related to the limited nature of the assistance the brokerage could provide to a self-represented party could be added.]

- (2) The brokerage shall, at the earliest practicable opportunity and before an offer is made, use the brokerage’s best efforts to obtain from the buyer or seller a written acknowledgement that the buyer or seller received all the information referred to in subsection (1). O. Reg. 580/05, s. 10 (2).

RECO is concerned that capturing these obligations within the context of an information guide, which provides generic information to consumers, will reduce consumer protection below existing levels. Introduction of a consumer information guide should not replace the current obligation on a registrant to provide specific information to prospective clients before entering an agreement. Explaining the contents of the guide is not equivalent to explaining the service options or remuneration arrangements available with a particular brokerage.

Recommended changes if section is retained as proposed

If the detailed section proposed by government is retained, RECO notes the following:

- Paragraph 1 of subsection 13 (2) refers to a self-represented party engaging with a registrant. As “engage” is often used to refer to an employment arrangement, RECO recommends the wording be amended to remove reference to “engage with a registrant” and replace it with wording that emphasizes the differences between being a client and a self-represented party.
- Paragraph 3 of subsection 13 (2) refers to the risk of being a self-represented party. The primary source of risk is a self-represented party’s reliance on assistance from a registrant who is representing their seller client’s interests. The risk increases if the appropriate disclosures are not clearly made. RECO recommends government consider alternate wording.
- Paragraph 4 of subsection 13 (2) refers to the guide containing a statement that a self-represented party should seek independent professional advice. This is a critical disclosure that should be made if the self-represented party is being provided with “assistance” from a registrant who is acting in the best interests of their client. General information about these circumstances could be provided as part of the information about the differences between being a client and a self-represented party.
- Paragraph 6 of subsection 13 (2) should refer to what is legally permitted. RECO should not provide “examples” of arrangements. There are too many possibilities to cover effectively in a consumer guide (residential, commercial, listing, mere posting, leasing, etc.).
- Paragraph 7 of subsection 13 (2) should be reworded for clarity and to avoid the use of “may” which is overly permissive. It should be clear they cannot, without the express consent of all parties, engage in multiple representation. See comments related to section 22 (multiple representation), which recommend some qualifiers on multiple representation.
- Paragraph 8 of subsection 13 (2) is unclear. RECO assumes it is intended to capture the “services” that the brokerage is not able to provide when it has to balance the competing interests of two “clients”. Current regulations refer to “obligations” as this is linked to the brokerage’s inability to fulfil its duties or obligations to both clients. RECO believes the focus needs to stay on how the duties or obligations are affected rather than services. See comments related to section 22 (multiple representation).
- Paragraph 9 of subsection 13 (2) refers to providing instructions on how to file a complaint with the brokerage that employs the broker or salesperson. However, RECO’s proposal to have a regulatory obligation on brokerages to have a complaint process, and to maintain records in respect of complaints, was not included as part of government’s Phase 2. If brokerages are obliged to have a complaint process, the guide could include this information.

Information to self-represented parties

- 13.1 (1) As soon as possible after meeting a self-represented party and before providing assistance to a self-represented party in relation to a trade in real estate, a **registrant** shall,
- (a) explain the risks of being a self-represented party;
 - (b) advise the party to seek independent professional advice; and
 - (c) provide confirmation in writing to the party that the registrant will not represent the party as a client.
- (2) Before providing assistance to a self-represented party in relation to a trade in real estate, a **broker or salesperson** shall,
- (a) make a declaration, in the form and manner determined by the registrar, that the requirements of subsection (1) have been satisfied; and
 - (b) use best efforts to obtain a written acknowledgment from the self-represented party that the requirements of subsection (1) have been satisfied.
- (3) A **broker or salesperson** shall, as soon as possible after making a declaration under subsection (2),
- (a) submit the declaration to the brokerage that employs the broker or salesperson; and
 - (b) provide a copy of the declaration to the self-represented party mentioned in subsection (1).
- (4) A **brokerage** that represents a client in respect of a trade in real estate shall, before providing assistance to a self-represented party in respect of that trade,
- (a) disclose the representation to the self-represented party in the form and manner determined by the registrar; and
 - (b) use best efforts to ensure that the self-represented party confirms that the representation has been disclosed by signing the form.

Information to self-represented parties: Risk of receiving assistance from a registrant acting in the best interests of their client

RECO believes the most significant risk emerges when a self-represented party relies on assistance from a registrant who is protecting and promoting the best interests of their client. It is not the fact of being self-represented in and of itself that is necessarily the risk. Included in the mandatory “disclosure of risks to unrepresented parties” in British Columbia is the following:

A real estate professional representing someone else in the transaction cannot act in **your** interests. The real estate professional cannot:

- give you advice.

- negotiate on your behalf.
- give you any confidential information about their client. (For example, they cannot tell you their client's maximum/minimum price unless their client authorizes them to share this information with you.)

A real estate professional must share all relevant information they know with their client. This could include:

- your motivation for buying/selling/leasing/renting.
- your maximum/minimum price.
- your preferred terms and conditions.

Be cautious about sharing any confidential information with a real estate professional who represents a client with opposing interests to yours. They must share that information with their client.

RECO recommends similar prescriptive content for the mandatory disclosure to self-represented parties if the disclosure is not a mandatory form prepared by the Registrar.

Proposed wording to simplify and clarify disclosure of risks obligation

RECO recommends wording similar to the rules in British Columbia, focusing on mandating the disclosure in the situation where "a registrant who has client" is providing assistance:

Disclosure to self-represented parties

- 13.1 (1) A registrant who has a client in respect of a trade in real estate shall, before providing assistance to a self-represented party in respect of that trade, disclose, in a form approved by the registrar,
- the risks to the self-represented party of receiving assistance from the registrant due to the registrant's duties and responsibilities to the client of the registrant;
 - the limited assistance that the registrant may provide to the self-represented party; and
 - a recommendation that the self-represented party seek independent professional advice in respect of the trade in real estate.
- (2) A broker or salesperson shall, as soon as possible after making a disclosure under subsection (1),
- use best efforts to obtain a signed disclosure from the self-represented party acknowledging that the requirements of subsection (1) have been satisfied;

- (b) submit the signed disclosure to the brokerage that employs the broker or salesperson; and
- (c) provide a copy of the signed disclosure to the self-represented party mentioned in subsection (1).

General information, about the difference between being a client and a self-represented party, can be provided in a consistent manner through the information guide and other RECO communications.

Agreements: Conveyance of an interest in real estate

Written and legible agreements

13.2 A registrant who represents a client in respect of a trade in real estate shall use best efforts to ensure that any agreement that deals with the conveyance of an interest in real estate is in writing and that the written agreement is legible.

Copies of agreements

13.3. (1) If a registrant represents a client who enters into a written agreement that deals with the conveyance of an interest in real estate, the registrant shall use best efforts to ensure that all parties to the agreement receive a copy of the agreement as soon as possible after the agreement is entered into.

(2) If a broker or salesperson represents a client who enters into a written agreement that deals with the conveyance of an interest in real estate, the broker or salesperson shall use best efforts to deliver a copy of the agreement to the brokerage that employs the broker or salesperson as soon as possible after the agreement is entered into.

RECO has no comments on sections 13.2 and 13.3.

Agreements: Trade in real estate

Contents of written agreements

13.4 (1) A brokerage shall not enter into a written agreement with a buyer or seller for the purpose of trading in real estate unless the following requirements are satisfied:

1. The agreement clearly, comprehensibly and prominently, sets out the following information:
 - i. The date on which the agreement takes effect and the date on which it expires.
 - ii. The method for determining,
 - A. the amount of any remuneration payable to the brokerage, and
 - B. in the case of an agreement with a seller, the amount of any remuneration payable to any other brokerage.

- iii. The method to be used for paying any remuneration payable to the brokerage.
 - iv. The services that the brokerage will provide under the agreement.
 - v. The terms related to termination of the agreement, if any.
2. The expiry date is displayed prominently on the first page of the agreement.
 3. The buyer or seller has initialled the agreement next to the expiry date.

(2) A brokerage shall ensure that an agreement referred to in subsection (1) contains only one date on which the agreement expires.

Seller representation agreements

13.5 If a brokerage enters into a seller representation agreement with a seller and the agreement is not in writing, the brokerage shall, as soon as possible after entering the agreement and before any buyer makes an offer, reduce the agreement to writing, have it signed on behalf of the brokerage and provide it to the seller for signature.

Buyer representation agreements

13.6 If a brokerage enters into a buyer representation agreement with a buyer and the agreement is not in writing, the brokerage shall, as soon as possible after entering the agreement and before the buyer makes an offer, reduce the agreement to writing, have it signed on behalf of the brokerage and provide it to the buyer for signature.

Copies of agreements

13.7 If a brokerage and one or more other persons enter into a written agreement in connection with a trade in real estate, the brokerage shall ensure that each of the other persons is immediately given a copy of the agreement.

Written agreements should be required

RECO's preference, as a strong consumer protection measure, is to require all agreements be in writing whether between a brokerage and a seller or a brokerage and a buyer. At a minimum, any agreement between a brokerage and a seller should be reduced to writing before any services are provided. In British Columbia, unless waived by the prospective client, a brokerage must have a written service agreement if the brokerage is to provide trading services to an owner of real estate in relation to the offering of that real estate for sale or other disposition.

Greater transparency related to remuneration payable by seller

RECO recommends requiring more explicit content related to remuneration in proposed section 13.4, to make clear the different amounts that might be payable. It should be clear to a seller, at the outset, what amount is payable in each situation.

In the case of an agreement with a seller, RECO recommends the agreement address both of the following situations:

- in the event there is a cooperating brokerage, the remuneration payable by the seller to the listing brokerage and the portion of that remuneration payable by the listing brokerage to the cooperating brokerage
- in the event there is no cooperating brokerage, the remuneration payable by the seller to the listing brokerage in a multiple representation situation and the remuneration payable by the seller to the listing brokerage if the buyer is a self-represented party

Buyer and seller agreements: Proposed wording changes for clarity and consistency

For sections 13.5 and 13.6, alternate wording might eliminate the need to define “seller representation agreement” and “buyer representation agreement”. RECO recommends amended wording such as:

Service agreement with seller

13.5 Where a brokerage enters into a service agreement with a seller and the agreement is not in writing, the brokerage shall, as soon as possible after entering the agreement and before taking any action under the agreement, reduce the agreement to writing, have it signed on behalf of the brokerage and provide it to the seller for signature.

Service agreement with buyer

13.6 Where a brokerage enters into a service agreement with a buyer and the agreement is not in writing, the brokerage shall, as soon as possible after entering the agreement and before taking action under the agreement, reduce the agreement to writing, have it signed on behalf of the brokerage and provide it to the buyer for signature.

For section 13.7, referring to “each of the other persons” is ambiguous. RECO recommends the wording refer to “every party to the agreement.”

RECO recommends the heading of section 13.4 be changed to “Content of service agreements” for clarity.

11. Section 22 of the Regulation is revoked and the following substituted:

Multiple representation

22. (1) A brokerage shall not represent more than one client in respect of the same trade in real estate unless,
- (a) the brokerage discloses the information set out in subsection (2) to each client and prospective client in respect of the trade; and

- (b) each client and prospective client, after receiving the information under clause (a), consents, in writing, to being represented by the registrant in respect of the trade.

(2) The following is the information referred to in subsection (1):

1. A disclosure that the brokerage proposes to represent more than one client in respect of the same trade in real estate.
2. A description of,
 - i. the services the brokerage would provide if it represented only one client in respect of the trade,
 - ii. the services the brokerage would provide if it represented more than one client in respect of the trade, and
 - iii. the services the brokerage would not provide if it represented more than one client in respect of the trade.

(3) If a registrant represents a seller and a prospective buyer in respect of the same trade in real estate, the registrant shall, as soon as possible after receiving a written offer and before an offer is accepted, disclose this fact to every other buyer who makes a written offer.

Multiple representation: Registrant cannot act in best interests of clients with competing interests

RECO has significant concerns with the current and proposed provisions related to multiple representation. Clear, consistent disclosure of the change in the relationship arising out of multiple representation, and the impact on duties and obligations owed to clients, must be made, to enable informed consent to multiple representation. Fundamentally, a brokerage is not able to protect and promote the best interests of two clients with competing interests.

British Columbia, and other provinces, explicitly permit designated representation in their rules or regulations, meaning an individual is the designated by the brokerage as the representative for a client. Multiple representation, sometimes called dual agency, arises under those rules or regulations when an individual is the designated representative for more than one client. In Ontario multiple representation is at the brokerage level and can arise where different brokers or salespersons of the same brokerage each represent a separate party to a trade. It is reasonable to assume an individual representing more than one party to a trade poses a greater risk to the consumer than different individuals from the same brokerage representing parties to the same trade. However, Ontario does not make this distinction.

Multiple representation: Disclosure must clearly address change in duties and obligations to clients to enable informed consent

The current wording of section 16 of O. Reg. 580/05 includes, as part of the disclosure requirements, the following:

“The differences between the obligations the brokerage would have if it represented only one client in respect of the trade and the obligations the brokerage would have if it represented more than one client in respect of the trade, including any differences relating to the disclosure of information or the services that the brokerage would provide”.

The wording of the proposed regulation significantly alters the intent of the existing provision by reducing the disclosure requirement to a description of “services” and fails to address the critical elements that are impacted, namely the duties and obligations to clients and in particular disclosure and confidentiality aspects, which is effectively a change in the nature of the relationship.

In British Columbia, the “dual agency” disclosure form clearly summarizes the change in the real estate professional’s duties to a client in “dual agency”, allowing for an easy comparison.

The British Columbia form includes:

As a client	In multiple “representation”
<ul style="list-style-type: none"> • Your real estate professional must be 100% loyal to you and put your interests above all others. • They must take reasonable steps to avoid conflicts of interest. • They must fully disclose all facts in their knowledge that could affect your decision-making. • They must protect your confidential information. They cannot reveal your motivation for buying/ selling/leasing/renting, the minimum/maximum price that you are willing to pay or accept, or other confidential information, without your permission. 	<ul style="list-style-type: none"> • The duties that your real estate professional owes to you and their other client(s) will be limited, as set out in an agreement of dual agency. • They cannot give you any advice on what purchase price you should offer or accept, or what terms you should include in the contract to protect your interests. • They cannot make full disclosure to you of all material facts in their knowledge if that would breach their duty to protect their other client’s confidential information. • They cannot share information with you such as the other client’s motivation or preferred terms, nor share your information with their other client.

Further, the disclosure form mandated in British Columbia provides the following information in the consumer acknowledgement section:

“You Have Choices

It is up to you to decide whether you wish to enter into dual agency. You may wish to seek legal advice before making a decision.

You can say yes or no to dual agency. A real estate professional can only proceed in dual agency if both clients consent and enter into an agreement of dual agency.

If one or both clients say no to dual agency, the real estate professional who gave you this form will be unable to provide further real estate services to either client for this transaction.”

Multiple representation: RECO recommended duties to clients, disclosures, and modification of duties agreement

RECO recommends new sections, based on its review of provisions in British Columbia, related to duties to clients and multiple representation, intended to provide clarity, guidance, and enhanced consumer protection as follows:

Duties to clients

- X. (1) Subject to sections [insert], if a brokerage is representing a client under an agreement, the brokerage and its registered employees must do all of the following:
- (a) act in the best interests of the client;
 - (b) act in accordance with the lawful instructions of the client;
 - (c) act only within the scope of the authority given by the client;
 - (d) advise the client to seek independent professional advice on matters outside of the expertise of the brokerage or registrant;
 - (e) maintain the confidentiality of information respecting the client;
 - (f) without limiting the requirements of s. #, disclose to the client all known material facts respecting the real estate and the trade in real estate to which the service agreement relates;
 - (g) inform the client of all significant steps taken in the course of providing services to or on behalf of the client;
 - (h) communicate all offers to the client in a timely, objective and unbiased manner;
 - (i) use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring;
 - (j) take reasonable steps to avoid any conflict of interest.

Disclosure before multiple representation

- XX. (1) Before a brokerage may engage in multiple representation in respect of a trade in real estate a brokerage must
- (a) make a disclosure to each party, in a form approved by the registrar, that includes

- (i) the duties and responsibilities of the brokerage to the clients of the brokerage in a multiple representation relationship;
 - (ii) the risks associated with a multiple representation relationship, and
- (b) enter into an agreement of multiple representation with each party under section XXX 'Modification of duties' after making a disclosure under paragraph (a).

Modification of duties

XXX. (1) By agreement between the brokerage and the client, one or more of the duties under section X may be modified or made inapplicable.

(2) An agreement under subsection (1) must either be

- (a) in a written agreement, or
- (b) preceded by written disclosure made pursuant to section XX (dealing with disclosure).

(3) The written document referred to in subsection (2) (a) or (b) must clearly indicate the duties of the brokerage

- (a) that have been modified and how they have been modified, and
- (b) that have been made inapplicable.

(4) Despite an agreement referred to in subsection (1), the brokerage must not disclose any confidential information concerning a client to any other person unless

- (i) authorized by that client, or
- (ii) required by law.

Multiple representation: Not in client's best interest to take on prospective client

RECO is also concerned with continuing to include "prospective client" in this context a brokerage that knowingly takes on a client and compromises an existing client relationship will have failed to promote and protect the best interests of the original client. This is of particular importance where the registrant knows or ought to know the conflict will arise.

For example, if a brokerage has a client seller and a buyer approaches the brokerage to represent them in offering to purchase the property, by accepting them as a client, the brokerage is in breach of its duty to the seller client as it immediately results in a shifting of the duties and obligations owed to the client. This situation is different from when a brokerage, through no deliberate act on its part, finds itself in a situation where an existing

buyer client expresses an interest in a property of an existing seller client. In that situation, the brokerage must do its best to manage the situation.

As these proposals overlap with and potentially replace sections in the draft Phase 2 general regulation amendments, RECO recommends that the above proposals be included as part of Phase 2 amendments.

12. The Regulation is amended by adding the following sections:

Material facts

22.1 (1) A broker or salesperson who has a client in respect of the acquisition or disposition of a particular interest in real estate shall,

- (a) take reasonable steps to determine the material facts relating to the acquisition or disposition;
- (b) disclose the material facts to the client as soon as possible after the determination; and
- (c) advise the client to consider whether the material facts affect their decision to acquire or dispose of the interest.

(2) If a seller has a legal obligation to disclose a material fact to the buyer and the fact is known to the broker or salesperson who represents the seller, the broker or salesperson shall disclose the fact to every buyer who expresses an interest in the real estate.

Material facts: Broaden application of duty to capture all registrants

RECO recommends referring to a “registrant” generally rather than salesperson or broker, to ensure that the obligation also applies to the brokerage.

Material facts: No further services if seller provides unlawful instructions

RECO had previously recommended adding a new section related to the disclosure of material latent defects. The suggested wording, includes a subsection (3) that speaks to what must happen when a client directs that information be withheld. If RECO’s recommendation for a material latent defects provision is not accepted, the addition of a provision similar to subsection (3) below to section 22.1 would provide much needed guidance to registrants.

RECO’s previously recommended provision is:

Disclosure of material latent defects

XXXX. (1) For the purposes of this section, material latent defect means a material defect that cannot be discerned through a reasonable inspection of the property, including any of the following:

- (a) a defect that renders the real estate dangerous or potentially dangerous to the occupants, unfit for habitation, or unfit for the purpose for which the party is acquiring it;
- (b) a defect that would involve great expense to remedy; or
- (c) a circumstance that affects the real estate in respect of which a local government or other local authority has given a notice to the client or registrant indicating that the circumstance must or should be remedied.

(2) A registrant who is representing a client who is disposing of real estate must disclose to all other parties to the trade, promptly and before any agreement of purchase and sale is entered into, any material latent defect that is known to the registrant.

(3) If a client instructs a registrant to withhold a disclosure required by subsection (2), the registrant must refuse to represent or provide further services to or on behalf of that client in respect of the trade in real estate.

(4) Disclosure to a party is not required under subsection (2) if the party has already received written disclosure of the material latent defect from the client who is disposing of the real estate.

Information statement re seller's property

22.2 If a broker or salesperson has a seller as a client and knows that the seller has completed a written statement that is intended to provide information to buyers about the real estate that is available for acquisition, the broker or salesperson shall make the statement available to every buyer who expresses an interest in the real estate.

Information statement: Proposed wording change for clarity

RECO recommends section 22 refer to "registrant" to ensure the brokerage is also accountable.

Properties that meet client's criteria

22.3 If a brokerage has entered into a representation agreement with a buyer, a broker or salesperson who acts on behalf of the buyer pursuant to the agreement shall inform the buyer of properties that meet the buyer's criteria without having any regard to the amount of the remuneration, if any, to which the brokerage might be entitled.

Properties meeting client's criteria: Recommend explicit reference to self-represented seller

RECO recommends the wording of section 22.3 include an explicit reference to properties of self-represented sellers. Revised wording might read: "A registrant who has a buyer client

shall inform the buyer of properties that meet the buyer’s criteria, including properties of self-represented sellers, without having any regard to the amount of the remuneration, if any, to which the registrant might be entitled.”

Protection of property

22.4 (1) A registrant shall not provide any person with access to real estate that is available for acquisition unless,

- (a) a registrant is present with the person, or
- (b) the owner of the real estate has consented in writing.

(2) A registrant who accesses, provides access to or arranges to provide access to real estate that is available for acquisition shall take reasonable steps to protect the real estate and its contents from damage, loss or destruction.

Protection of property: Proposed wording changes for clarity

RECO recommends deleting the words “that is available for acquisition” from section 22.4. The qualifier is unnecessarily restrictive. It may be that property is not available for acquisition currently, but as a comparison, or because it may be coming on the market, a viewing is arranged, or the property has sold and access to the property is necessary to fulfil conditions or other inspections.

It is not entirely clear what “registrant” means in this section. There are, in most cases, two registrants. The seller’s registrant has a responsibility to protect the property on the client’s behalf. The prospective buyer’s registrant, unless the buyer is a self-represented party, should attend with their buyer client. The absence of either, or both, is problematic.

Protection of property: Owner’s consent to no registrant being present

RECO is concerned that clause 22.4 (1)(b) might allow for some form of blanket consent in a service agreement. With respect to subsection 22.4 (2), RECO recommends expanding it to include requiring “a level of supervision” in addition to taking reasonable steps. It might read “...shall take steps to provide a reasonable level of supervision to...”

Steps taken by registrant

22.5 A registrant shall promptly inform a client of all significant steps that the registrant takes in the course of representing the client.

RECO has no comments on section 22.5.

Competing offers

22.6. (1) If a brokerage that has a seller as a client receives a competing written offer, the brokerage shall,

- (a) disclose the number of competing written offers to every person who is making one of the offers; and

- (b) if the seller directs, disclose information about the competing written offers to every person who is making one of the offers.

(2) Information disclosed under clause (1) (b) must not include any personal information of the person making the offer or any other information that would identify the person making the offer.

Competing offers: Avoid indirect regulation of buyers and sellers

RECO does not support the indirect regulation of sellers or buyers through restrictions on the activities of registrants. For example, not permitting a registrant to disclose some or all of the substance of offers rather than relying on the registrant to follow the lawful directions of their client. There is also a risk of making it more desirable not to be represented in a transaction. For example, a self-represented seller can choose to disclose or not disclose the number of or the substance of offers based on whether it is in their best interests to do so.

Competing offers: Consumer choice should be supported

RECO supports consumer choice and does not oppose the removal of the current prohibition against disclosing the substance of offers where the seller has given specific and express instruction to do so. Generally, disclosures are permitted provided they are made in accordance with the seller's lawful direction.

RECO interprets clause 22.6 1 (b) as potentially restricting a brokerage from:

- Acting on a seller's direction to only disclose information about the "top" competing written offers to the buyers who submitted the "top" offers. RECO notes that not having a definition of "competing offers" introduces ambiguity in how the provision will be applied.
- Disclosing the substance of an offer, at the seller's direction, to any person. RECO does not believe the intent of clause (b) is to prohibit an online public auction that is viewable by anyone who is interested in the property.

While regulating the registrant (brokerage), the regulations do not prohibit a buyer, represented or self-represented, from submitting a confidential offer (including an express condition that prohibits the disclosure of its contents) nor does it prohibit a seller, represented or self-represented, from receiving or accepting such an offer without disclosure to other buyers.

RECO is not recommending introducing provisions to address the gaps noted above. RECO is simply identifying a known resultant risk of the change, as evidenced by advice to licensees in British Columbia not to disclose the substance of an offer if it contains a confidentiality clause.

Competing offers: Proposed wording changes for clarity and consistency

Subsection 35.1 (5.1) of the Act, not yet in force, refers to "substance of any of the offers". Current section 26 of O. Reg. 580/05 also refers to the "substance of the competing offers".

The government's proposed wording in clause 22.6 (1) (b) refers to "information about" and might be interpreted to mean something other than "the substance of". For consistency, it might be preferable to continue with the reference to "substance of competing offers":

"if the seller directs, disclose all or part of the substance of the competing written offers to every person who is making one of the offers".

RECO also recommends replacing "brokerage" with "registrant".

Disclosure of interest

22.7 (1) If a registrant represents a client in respect of the acquisition or disposition of an interest in real estate and the registrant knows or ought to know of any of the following property interests in the real estate, the registrant shall disclose the interest to the persons set out in subsection (2) in accordance with subsection (3):

1. Any property interest that the registrant has in the real estate.
2. Any property interest that a person related to the registrant has in the real estate, if the registrant knows or ought to know of the interest.
3. Any property interest that a personal real estate corporation controlled by the registrant has in the real estate.
4. Any property interest that a person related to a personal real estate corporation controlled by the registrant has in the real estate, if the registrant knows or ought to know of the interest.

(2) The following are the persons referred to in subsection (1):

1. The client represented by the registrant in respect of the acquisition or disposition.
2. Every other person making or receiving an offer in respect of the acquisition or disposition.

(3) The disclosure required under subsection (1) shall contain the following information and shall be made as soon as the registrant knows or ought to know of the interest, and in any event, before any offer is made in respect of the acquisition or disposition of an interest in the real estate:

1. A description of the relationship between the person who has the property interest and the registrant, if applicable.
2. A description of the property interest.

RECO has no comments on section 22.7.

Conveying offers

22.8 (1) A registrant shall convey any written offer received by the registrant to the registrant's client as soon as possible after receiving the offer.

(2) A broker or salesperson shall establish a method of ensuring that the following steps are taken if the broker or salesperson is not available at the time a written offer is submitted:

1. The offer is received by a person on behalf of the broker or salesperson.
2. The offer is conveyed to the client of the broker or salesperson as soon as possible after the offer is received by the person described in paragraph 1.

(3) Without limiting the generality of subsections (1) and (2), those subsections apply regardless of the identity of the person making the offer, the contents of the offer or the nature of any arrangements for remuneration.

(4) Subsections (1) to (3) are subject to any written directions given by a client.

(5) Subsections (1) to (4) also apply, with necessary modifications, to,

- (a) written amendments to written offers and any other written document directly related to a written offer; and
- (b) written assignments of agreements that relate to interests in real estate, written waivers of conditions in agreements that relate to interests in real estate, and any other written document directly related to a written agreement that relates to an interest in real estate.

Conveying offers: Recommend wording change to place duty on brokerage

RECO recommends subsection 22.8 (2) place the obligation on the brokerage to ensure that appropriate steps are taken. The client relationship is with the brokerage, not the individual broker or salesperson, and it is the brokerage that should be responsible for policies and practices related to their registered employees, how absences are managed, and dealings with clients.

Delivery of deposits and documents

22.9 Except as otherwise provided by law, if a registrant is representing a client in connection with a trade in real estate, and the client has entered into an agreement in connection with the trade that requires the registrant to deliver a deposit or documents, the registrant shall deliver the deposit or documents in accordance with the agreement.

RECO has no comments on section 22.9.

13. (1) Subsection 23 (1) of the Regulation is amended by striking out "in respect of a trade" in the portion before clause (a) and substituting "for trading".

(2) Section 23 of the Regulation is amended by adding the following subsections:

(3) A registrant shall not indicate to any person, directly or indirectly, that remuneration is fixed or approved by the administrative authority, any government authority, or any real estate board or real estate association.

(4) If a brokerage has a seller as a client and an agreement between the brokerage and the seller contains both of the following terms, the brokerage shall disclose the existence of the agreement and the details of the terms to any person who makes a written offer to buy as soon as possible after the offer is made and before any offer is accepted:

1. Terms that relate to remuneration.
2. Terms that may affect whether an offer to buy is accepted.

Remuneration: Proposed wording change to clarify the intent

RECO notes that subsection 23 (4) is taken from section 25 of current O. Reg. 580/05 that reads:

25. (1) If a brokerage has a seller as a client and an agreement between the brokerage and the seller contains terms that relate to remuneration and that may affect whether an offer to buy is accepted, the brokerage shall disclose the existence of and the details of those terms to any person who makes a written offer to buy, at the earliest practicable opportunity and before any offer is accepted.

The proposed wording changes in Phase 2 add some confusion. It would be very unusual for an agreement with a seller not to contain terms that relate to remuneration. The key point to emphasize is terms that "may affect whether an offer to buy is accepted". This could be captured by rewording subsection 23 (4) and merging paragraphs 1 and 2 into one statement as currently set out in subsection 25 (1), reading "terms that relate to remuneration that may affect whether an offer to buy is accepted."

14. The Regulation is amended by adding the following section:

Disclosure of financial benefit

23.1 (1) As soon as possible after a registrant knows or ought to know of a direct or indirect financial benefit that the registrant or a person related to the registrant may receive from another person in connection with services provided by the registrant to a client, the registrant shall disclose the following information to the client:

1. A description of the financial benefit, including,
 - i. an indication of whether the financial benefit is direct or indirect,
 - ii. an estimate of the value of the financial benefit, and

- iii. a description of the conditions, if any, under which the financial benefit would be provided.
2. A description of the relationship between,
 - i. the person who may provide the financial benefit, and
 - ii. the registrant or, if applicable, the person related to the registrant.
3. An indication of whether the registrant may receive the financial benefit.
4. If a person other than the registrant may receive the financial benefit, a description of the relationship between that person and the registrant.

(2) A brokerage that has entered into an agreement with a buyer or seller that requires the buyer or seller to pay the brokerage remuneration in respect of a trade in real estate shall not charge or collect any remuneration under another agreement entered into with another person in respect of the same trade unless,

- (a) the brokerage discloses to the other person the terms of the agreement with the buyer or seller that require the payment of remuneration; and
- (b) the brokerage discloses to the buyer or seller the terms of the agreement with the other person that require the payment of remuneration.

Disclosure of financial benefit: Proposed wording change to clarify the intent

RECO recommends the wording in subsection 23.1 (1) be amended to add reference to services being provided "to or on behalf of a client". The provision would read: "in connection with services provided by the registrant to or on behalf of the client" rather than just "in connection with services provided by the registrant" for clarity.

15. The Regulation is amended by adding the following section:

Third party goods or services

26. A registrant shall not, on behalf of a client of the registrant, enter into an agreement with a third party for the provision of goods or services to the client unless,
 - (a) the registrant has disclosed in writing to the client the subject-matter of the agreement with the third party and the identity of the person responsible for paying for the provision of the goods or services;
 - (b) the client has consented to the registrant entering into the agreement with the third party; and
 - (c) the registrant has disclosed in writing to the third party the identity of the person responsible for paying for the provision of the goods or services.

Third-party goods or services: Recommend including “cost” as part of disclosure requirements

RECO recommends including “cost” of third-party goods or services as a required disclosure. RECO also recommends section 26 be amended to read: “A registrant shall not, on behalf of a client, enter into an agreement...” as “client” is a defined term.

16. Section 28 of the Regulation is revoked.

17. The Regulation is amended by adding the following sections:

Certificates of registration

31.1 (1) A brokerage shall ensure that,

- (a) every certificate of registration issued to the brokerage is kept at the office to which the certificate relates; and
- (b) all duplicate original certificates of registration given to the brokerage in respect of brokers and salespersons employed by the brokerage are kept in a safe place.

(2) A brokerage shall, on the request of any person, show to the person,

- (a) any certificate of registration issued to the brokerage; and
- (b) any duplicate original certificate of registration given to the brokerage in respect of a broker or salesperson employed by the brokerage.

(3) Every broker or salesperson shall carry their certificate of registration and, on the request of any person, shall show it to the person.

Certificates of registration: Proposed changes to align with technological and practice changes

RECO recommends moving away from references that imply paper or physical certificates, in particular the use of “duplicate original” in clause 31.1 (2) (b). “Verification of registration” is more appropriate in the context of today’s technology. RECO provides an app that offers verification of registration status in real time using QR codes with a direct link to the RECO public register. RECO also makes registration information available on its website. Unlike a paper certificate, it is current and includes all the information required to be made public.

See comments in Part 5 under Verification of Registration, including recommendations to remove or replace section 9 of O. Reg. 567/05.

Notification of financial circumstances

31.2 (1) A brokerage shall promptly notify the registrar, in writing, if any of the following circumstances occur:

1. The brokerage's liabilities exceed the realizable value of its assets or the brokerage is unable to pay its liabilities as they become due.
2. An insolvency proceeding is commenced by or against the brokerage or the brokerage is in receipt of knowledge that such an insolvency proceeding is imminent.
3. A court order or judgment is made against the brokerage in relation to,
 - i. trading in real estate, or
 - ii. misappropriation, fraud or breach of trust.

(2) In this section,

"insolvency proceeding" means,

- (a) a proceeding initiated pursuant to the Companies' Creditors Arrangement Act (Canada),
- (b) a proceeding initiated pursuant to the Bankruptcy and Insolvency Act (Canada), or
- (c) any receivership, compromise, arrangement, reorganization, winding-up, dissolution or other similar proceeding. ("procédure d'insolvabilité")

RECO has no comments related to section 31.2.

18. Section 32 of the Regulation is revoked and the following substituted:

Disclosure by brokers and salespersons to brokerages

32. (1) A registrant who is a broker or salesperson shall disclose the following matters to the brokerage that employs the broker or salesperson as soon as possible after becoming aware of the matter:

1. Any ownership interest that the broker or salesperson has in another brokerage.
2. Any conviction, absolute discharge or conditional discharge received by the broker or salesperson for an offence under any Act.
3. Any professional discipline proceeding under any Act that resulted in an order against the broker or salesperson.

(2) A registrant who is a broker or salesperson and who communicates with another brokerage with respect to possible employment with the other brokerage shall disclose the matters referred to in subsection (1) to the other brokerage as soon as possible after the first communication.

(3) A broker or salesperson who is not registered as a broker or salesperson shall disclose the matters listed in paragraphs 1, 2 and 3 of subsection (1) to a brokerage that is a prospective employer.

RECO has no comments related to section 32.

Non-contravention of Act and regs

32.1 (1) A broker or a salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene the Act or regulations.

(2) Subsection (1) does not apply to a contravention by the brokerage of section 26 of the Act.

Please see comments related to section 16 of the draft Code of Ethics Regulation and whether section 32.1 already captures the Code of Ethics Regulation.

19. (1) The English version of subsection 33 (1) of the Regulation is amended by striking out "his or her" and substituting "their".

(2) Subsection 33 (2) of the Regulation is amended by adding "together with written reasons for the termination" after "a copy of the notice".

20. Section 34 of the Regulation is revoked.

21. (1) Section 35 of the Regulation is amended by striking out "and customers" wherever it appears.

(2) Subsection 35 (1) is amended by striking out the portion before paragraph 1 and substituting the following:

(1) A brokerage shall provide the following to the registrar as soon as possible after becoming aware that it will cease to be registered:

(3) Subsection 35 (2) is amended by striking out the portion before paragraph 1 and substituting:

(2) A brokerage shall provide the following to the registrar as soon as possible after it ceases to be registered:

Timing of information required when brokerage ceases to operate as a brokerage or ceases to be registered

Much of the information listed in subsection 35 (2) is required before the brokerage ceases to be registered. There is a distinction between ceasing to operate as a brokerage and a brokerage ceasing to be registered. The Registrar requires the information at different stages to oversee, or at least verify, the wind-down of the business. Ideally, given the clearer jurisdiction over registrants relative to former registrants, continuing the registration for as long as necessary is the preferred approach.

RECO is recommending that the information required under subsection 35 (2) should also be required at the earliest opportunity where a brokerage anticipates ceasing to operate as a brokerage.

22. The Regulation is amended by adding the following section:

Auctioneers

36.1 For the purpose of clause 5 (1) (b) of the Act, the prescribed condition is that the auctioneer has no duties other than receiving, managing and recording competing bids and accepting the highest bid as part of an auction bidding process.

Auctioneers: Recommend approach that provides greater clarity regarding permitted and prohibited auctioneer functions

RECO conceptually supports the consumer protection measure of narrowing the exemption in the Act that, subject to the regulations, allows an auctioneer to engage in a trade that is made as part of the auctioneer's duties as auctioneer. RECO reviewed the wording of auctioneer exemptions in other jurisdictions, in particular the wording of the exemption in British Columbia that reads:

Exemption for auctioneers

2.9 An auctioneer is exempt from the requirement to be licensed under Part 2 of the Act in relation to the provision of trading services respecting the auction of real estate if all the following apply:

- (a) the auctioneer does not show the real estate;
- (b) the auctioneer does not
 - (i) engage in discussion with a party to a trade in real estate, or
 - (ii) provide information to a party to a trade in real estate, respecting the real estate or any aspect concerning its disposition, other than to explain the procedures for the conduct of the auction;
- (c) all advertising of the auction specifies, as applicable,
 - (i) if no licensee acts on the seller's behalf in the matter,
 - (A) the name of the seller of the real estate, and
 - (B) the means by which the seller may be contacted for information about the real estate, or
 - (ii) if a licensee acts on the seller's behalf in the matter,
 - (A) the name of the licensee, and
 - (B) the means by which the licensee may be contacted for information about the real estate;

- (d) no deposit or other money payable by the person buying or otherwise acquiring the real estate in respect of that acquisition is paid to the auctioneer.

RECO recommends an approach similar to that taken in British Columbia. It provides more clarity with respect to the functions permitted, includes a requirement for contact information (seller or seller's registrant), and provisions that speak to the handling of deposits and other money.

RECO is also concerned with the terminology in the proposed Phase 2 provision, which appears to make it a legal requirement that the auctioneer accept the highest bid.

23. The English version of section 37 of the Regulation is amended by striking out "his or her" and substituting "their".

24. Section 40 of the Regulation is revoked.

25. Section 42 of the Regulation is revoked and the following substituted:

Information to the registrar, s. 48.1 of the Act

42. (1) Under section 48.1 of the Act, the registrar shall not request information from registrants or a group of registrants with respect to a trade in real estate unless the purpose of the collection is to,
- (a) exercise a power or duty related to the administration of the Act or the regulations;
 - (b) further regulatory oversight, including assessing trends in the information that may impact compliance and enforcement activities;
 - (c) further consumer education and awareness regarding the advancement of consumer protection and a fair, safe and informed real estate market; or
 - (d) further registrant education and awareness regarding roles and responsibilities under the Act and the regulations.
- (2) If the purpose of the collection is a purpose mentioned in clauses (1) (b) to (d), the registrar shall not request information about identifiable individuals who are not registrants or former registrants.
- (3) The registrar shall provide notice to a registrant of a request under subsection (1) that gives the registrant a reasonable amount of time to collect the information requested before the registrant is required to provide the information to the registrar.

RECO has no comments on section 42.

26. Sections 43 and 44 of the Regulation are revoked and the following substituted:

Transition

Customer agreements etc.

43. (1) The Act and the regulations, as they read immediately before the transition date, apply to agreements between brokerages and customers entered into before the transition date.
- (2) Subsection (1) does not apply to,
- (a) an expired agreement; or
 - (b) an agreement that is amended on or after the transition date.
- (3) If an agreement described in subsection (1) has not expired within the period that ends 120 days after the transition date, the agreement is deemed to expire on the last day of that period.
- (4) For the purposes of paragraph 2 of subsection 35 (1) and paragraphs 2 and 7 of subsection 35 (2), a customer is deemed to be a client until the agreement between the brokerage and the customer expires or is amended.
- (5) In this section,
- “transition date” means the day subsection 2 (4) of the Trust in Real Estate Services Act, 2020 comes into force.

RECO has no comments on section 43.

Part 2 – Regulation to amend O. Reg. 579/05 (educational requirements, insurance, records, and other matters)

- 1. Section 14 of Ontario Regulation 579/05 is amended by adding “notify the registrar of the shortfall and” after “immediately”.**
- 2. Section 16 of the Regulation is amended by adding “notify the registrar of the missing property and” after “immediately”.**
- 3. Subsection 17 (7) of the Regulation is revoked.**

RECO has no comments on sections 14 and 16.

- 4. Sections 18 to 21 of the Regulation are revoked and the following substituted:**

Records

Additional records

18. In addition to other records required to be made under the Act and the regulations, a brokerage shall make such records as are reasonably required for the conduct of the brokerage’s business of trading in real estate.

RECO has no comments on section 18.

Retention of records

19. A brokerage shall retain all documents and records that it is required to make under the Act and the regulations,
 - (a) for the time period specified by the registrar or, if the registrar has not specified a time period, for at least six years;
 - (b) at the location specified by the registrar or, if the registrar has not specified a location, at the brokerage’s main office; and
 - (c) in the manner, if any, specified by the registrar.

RECO has no comments on section 19.

Retention of offers that are not accepted

20. (1) For the purposes of subsection 35.1 (2) of the Act, this section applies in respect of a written offer to purchase real estate if,
 - (a) the offer is received by a brokerage acting on behalf of a seller for the purpose of presenting it to the seller; and
 - (b) the offer did not result in the purchase of the real estate.

(2) Despite clause 19 (a), a brokerage acting on behalf of a seller shall retain a copy of the written offer for at least one year after the date the brokerage received it.

(3) Subsection (2) does not apply if the written offer was made by a client of a registrant and the brokerage retains a copy of a document that contains the following information for at least one year after the date the brokerage received the written offer:

1. The name and signature of the person who made the offer to purchase the real estate.
2. The name and contact information of the seller of the real estate.
3. The name of the brokerage and of the broker or salesperson who acted for the seller.
4. The name of the brokerage and of the broker or salesperson who acted for the person who made the offer.
5. The address, legal description or other identifier of the real estate on which the offer was made.
6. The date and time the offer was made.
7. The date and time the offer was received by the brokerage for the purposes of presenting it to the seller, and the means by which the offer was received, such as in person or by fax.
8. If the brokerage presented the offer to the seller, the date of presentation.
9. The date and time, if any, until which the offer was irrevocable.

RECO has no comments on section 20.

Notice by registrar to broker of record

Complaints

21. (1) If the registrar makes a written request to a brokerage for information regarding complaints under clause 19 (1) (b) of the Act, the registrar shall give a copy of the request to the broker of record of the brokerage.

(2) If the registrar makes a written request to a broker or salesperson for information regarding complaints under clause 19 (1) (b) of the Act, the registrar shall give a copy of the request to the broker of record of the brokerage that employs the broker or salesperson.

Actions by registrar

22. (1) If the registrar takes any action referred to in clause 19 (1) (c) or paragraphs 1 to 5 of section 20 of the Act in respect of a brokerage, the registrar shall give written notice of the action to the broker of record of the brokerage.

(2) If the registrar takes any action referred to in clause 19 (1) (c) or paragraphs 1 to 5 of section 20 of the Act in respect of a broker or salesperson, the registrar shall give written notice of the action to,

(a) the broker or salesperson; and

(b) the broker of record of the brokerage that employs the broker or salesperson.

RECO has no comments on sections 21 and 22.

Part 3 – Regulation to replace O. Reg. 580/05 (Code of Ethics)

Integrity, honesty, good faith, etc.

1. In carrying on business, a registrant shall act with courtesy, honesty, good faith and integrity in relation to every person the registrant deals with.

RECO has no comments on section 1.

Unprofessional conduct, etc.

2. A registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as,
 - (a) being disgraceful, dishonourable, unprofessional or unbecoming a registrant; or
 - (b) likely to bring the sector into disrepute or to undermine public confidence in the regulation of registrants under the Act.

RECO has no comments on section 2.

No counselling contraventions

3. A registrant shall not counsel, advise or knowingly assist a person to contravene the Act, the regulations or any other law that is applicable to a trade in real estate or that is relevant to carrying on a registrant's business.

No counselling contraventions: Recommend broadening to prohibit the unlawful conduct of the registrant

RECO recommends this section be expanded to explicitly prohibit unlawful conduct of the registrant themselves, not just counselling, advising, or knowingly assisting a person to contravene the Act, regulations, or any other law applicable to a trade.

Fraud

4. A registrant shall not engage in or be a party to fraud.

Fraud: Proposed wording change for clarity

RECO notes the term fraud is generally understood to involve some form of criminality. RECO recommends section 4 refer to the conduct intended to be captured by this section as fraudulent conduct to be clear that the Code of Ethics provision addresses more than fraud as defined under the *Criminal Code of Canada*.

Misrepresentation, etc.

5. In carrying on business, a registrant shall,
 - (a) make best efforts to ensure any representations are accurate and are not misleading; and

- (b) not engage in or be a party to misrepresentation or any unethical practice.

Misrepresentation: Proposed wording change for clarity

RECO is concerned with the inclusion of the ambiguous qualifier of “best efforts” in clause (a). The fact is that if representations are to be made, they should be accurate and not misleading. RECO recommends framing the obligation as: “In carrying on business, a registrant shall not make representations that are inaccurate or misleading.” Framing it as a positive obligation in (a) – shall not – aligns with the positive obligation in (b) – shall not.

No discrimination, etc.

- 6. In carrying on business a registrant shall not treat any person in a manner that would contravene the *Human Rights Code*.

No discrimination: Recommend broadening scope of the provision

As written, the reference to a breach of the *Human Rights Code* (HRC) would be a breach of the Code of Ethics, requiring either a finding against a registrant under the HRC prior to discipline or requiring RECO to enforce the HRC through discipline proceedings independently of any action being taken under the HRC.

RECO is concerned with both with the specific reference to the HRC and with the only legislation specifically named being the HRC. There is other legislation, which, if not followed, could constitute discrimination and a breach in its own right of that legislation, such as the *Accessibility for Ontarians with Disabilities Act, 2005*. RECO recommends wording that speaks to a general prohibition on discriminating against any person.

Intimidation, coercion, etc.

- 7. In carrying on business, a registrant shall not intimidate or coerce any person or subject any person to undue pressure, abuse or harassment.

Conduct: Proposed wording change for clarity

RECO recommends consideration be given to rewording the provision to focus on “conduct”, for example, that the registrant shall not engage in conduct that is intimidating, coercive, abusive, harassing or constituting undue pressure.

Best interests

- 8. (1) A registrant shall promote and protect the best interests of the registrant’s clients.

(2) If a registrant believes that a client’s ability to understand information or make decisions relevant to a trade in real estate may be impaired, the registrant shall make reasonable efforts to ensure the client understands the information and appreciates the reasonably foreseeable consequences of the decision.

Best interests: Proposed wording changes for clarity and consistency

RECO recommends amending subsection 8 (1) to be clear that the brokerage and every registered employee of the brokerage must promote and protect the best interests of the brokerage's clients.

Subsection 8 (2) appears to address something other than best interests of a client. RECO had proposed that the Code include a provision tied to best interests, worded such as:

"A registrant shall not use or omit to use information known to the registrant about the characteristics or circumstances of a prospective client, a client or a self-represented party in a manner that exploits or takes unfair advantage of any person."

Conscientious and competent service, etc.

9. In carrying on business, a registrant shall,
 - (a) provide conscientious, courteous and responsive service and demonstrate reasonable knowledge, skill, judgment and competence in providing such service to a client; and
 - (b) demonstrate reasonable knowledge, skill, judgment and competence in providing opinions, advice, assistance or information to any person.

Conscientious and competent service: Proposed wording changes for clarity

Current section 5 of O. Reg. 580/05 reads:

"A registrant shall provide conscientious service to the registrant's clients and customers and shall demonstrate reasonable knowledge, skill, judgment and competence in providing those services."

RECO recommends amending the proposed wording of section 9, which speaks to clients and other persons, to be clear that it is speaking about clients. Alternate wording might be:

"In carrying on business, a registrant shall provide conscientious, courteous and responsive service to clients and shall demonstrate reasonable knowledge, skill, judgment and competence in providing services, opinions and advice to clients."

It should be clear that "opinions" and "advice" are only provided to clients and not to "any person" as currently referenced in 9 (b). This would address the potential conflict with 10 (a) and (b) below, which prohibit providing advice or opinions to self-represented parties and prohibit encouraging a self-represented party to rely on the registrant's knowledge, skill, or judgment.

RECO recommends a clear linkage between sections 9 and 10 possibly by including wording such as "Subject to section 10..." at the beginning of section 9.

Dealings with self-represented parties

10. A registrant shall not, in respect of a trade in real estate,
- (a) provide opinions or advice to a self-represented party; or
 - (b) encourage a self-represented party to rely on the registrant's knowledge, skill or judgment.

Dealings with self-represented parties: Proposed wording change for clarity

RECO recommends 10 (a) include a reference to providing "services" as well as "opinions or advice" for added clarity.

Services from others

11. (1) A registrant shall advise a person to obtain services from another person if the registrant is not able to provide the services with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the services.
- (2) A registrant shall not discourage a person from seeking a particular kind of service from another person if the registrant is not able to provide the service with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the service.

RECO has no comments on section 11.

Confidentiality

12. Except as is otherwise authorized or required by law, a registrant shall not disclose to a third party any confidential information of a client without the client's written consent.

RECO has no comments on section 12.

Conflicts

13. In carrying on business, a registrant shall not represent or provide services to a client or continue to represent or provide services to a client where the interests of the registrant conflict or may conflict with the interests of the client unless the registrant has,
- (a) disclosed to a client or prospective client any transaction or relationship that gives rise to or could reasonably be expected to give rise to a conflict of interest;
 - (b) taken all reasonable steps to ensure that the client or prospective client has demonstrated a reasonable understanding of the conflict or potential conflict of interest; and
 - (c) obtained consent in writing from the client or prospective client to the provision of the registrant's services despite the conflict or potential conflict of interest.

Conflicts: Concerns regarding knowingly creating a conflict of interest

RECO is concerned about the permissive nature of this provision, particularly in relation to the reference to a “prospective client” in 13 (b). Entering into a client relationship when the registrant knows their own interests conflict with the interests of the client is not protecting or promoting the best interests of the client. There is also no requirement to recommend the prospective client seek independent professional advice.

Dealings with clients of other registrants

14. A registrant who knows or ought to know that a person is a client of another registrant shall communicate information to the person for the purpose of a trade in real estate only through the other registrant, unless the other registrant has consented in writing.

RECO has no comments on section 14.

No obstruction

15. (1) A registrant shall not obstruct or attempt to obstruct the administration or attempted administration of the Act or its regulations.

(2) Without limiting the generality of subsection (1), a registrant shall not,

- (a) obstruct or attempt to obstruct any person from making a complaint to the registrar;
- (b) obstruct or attempt to obstruct the registrar from making an inquiry with respect to a complaint or otherwise or from receiving accurate or complete information in response to such an inquiry; or
- (c) induce or attempt to induce a person to withdraw a complaint about a registrant to the registrar.

(3) For greater certainty, a registrant does not violate this section by suggesting or engaging in mediation, settlement discussions, negotiation or arbitration to resolve a dispute but any agreement to resolve a dispute must not include a requirement to withdraw or refrain from making a complaint to the registrar.

RECO has no comments on section 15.

Duty to ensure compliance

16. (1) A brokerage shall ensure that every salesperson and broker that the brokerage employs carries out their duties in compliance with this Regulation.

(2) The broker of record of a brokerage shall ensure that the brokerage complies with this Regulation.

Duty to ensure compliance: Whether section is necessary

RECO continues to question whether this provision is necessary as part of the Code of Ethics.

It appears to be a duplication of section 32.1 of the draft general regulation, as well as subsection 12 (2) and section 26 of the Act, inserted below, all of which refer to the Act and regulations generally.

Non-contravention of Act and regs

32.1 (1) A broker or a salesperson shall not do or omit to do anything that causes the brokerage that employs the broker or salesperson to contravene the Act or regulations.

(2) Subsection (1) does not apply to a contravention by the brokerage of section 26 of the Act.

Duties

(2) The broker of record shall ensure that the brokerage complies with this Act and the regulations. 2002, c. 30, Sched. C, s. 12 (2).

Duty of brokerage

26 A brokerage shall ensure that every salesperson and broker that the brokerage employs is carrying out their duties in compliance with this Act and the regulations.

Part 4 – Regulation to replace O. Reg. 580/05 (Discipline Committee)

RECO has no comments on the proposed Discipline Committee Regulation except for the transition comments that follow.

Transition

16. (1) Despite the repeal of section 21 of the Act, as it read immediately before the transition date, and the revocation of Ontario Regulation 580/05 (Code of Ethics), the Act and that regulation as they read immediately before the transition date continue to apply to the following matters:

1. Any matter that was referred to the discipline committee before the transition date in respect of which,
 - i. the discipline committee has not issued a final decision or order, or
 - ii. if the discipline committee has issued a final decision or order, the time period for commencing an appeal has not expired.
2. Any matter that was appealed to the appeals committee before the transition date in respect of which the appeals committee has not issued a final decision or order.

(2) The Registrar shall, in accordance with section 42 of Ontario Regulation 567/06 (General) made under the Act as it read immediately before the transition date, publish each decision and order of the appeal committee that was made on or after the transition date in respect of a matter referred to the discipline committee before the transition date.

(3) In this section,

“transition date” has the same meaning as in subsection ** of Ontario Regulation [**insert O. Reg. #] (General).

Transition: Application of new Code of Ethics and new discipline procedures

RECO recommends that the appropriate trigger for the application of the new Code be the date of the conduct rather than the date of referral to discipline as proposed in paragraph 1 of subsection 16 (1). This is consistent with the approach taken when the Code of Ethics regulation was first introduced.

RECO recommends it be clear that the range of outcomes available to the discipline committee would be the outcomes available prior to the date of transition. For example, if the higher fines are proclaimed in force as part of Phase 2, those higher fines would not apply to conduct that predates the new Code of Ethics and the discipline committee would not be permitted to suspend or revoke a registration or make it subject to conditions, as an outcome. Those would continue to be in the purview of the Registrar.

RECO also recommends that it be clear that referrals to discipline based on conduct that predates the new Code of Ethics will be dealt with procedurally in accordance with the provisions of the Act and regulations that apply to the discipline committee. For example, new process rules (e.g., time for giving notice to other party) would apply and the appeal, if any, would be to the Licence Appeal Tribunal, which replaced the Appeals Committee.

Part 5 – Further RECO Phase 2 proposals, comments on proclamation in force of new act provisions, and PREC regulation

A. Further RECO Phase 2 Proposals

RECO encourages government to consider further amendments to the regulations as part of the Phase 2 of the reforms.

As noted in the Introduction, opportunities for reform are rare. To support strong consumer protection and a cohesive package of reforms, RECO urges consideration be given to proceeding with these additional proposed reforms as part of Phase 2.

1. DEFINITION OF ADVERTISING

RECO recommends adding a definition of “advertisement” to O. Reg. 567/05 and recommends that it explicitly capture or reference social media.

In British Columbia, real estate advertising is defined as “any form of identification, promotion, solicitation or representation relating to real estate, a trade in real estate, or the provision of real estate services, including a sign or other notice relating to real estate, a trade in real estate or the provision of real estate services.” In Alberta, advertising includes “any activity, public notice or representation an industry professional makes, or that someone makes on behalf of an industry professional, that promotes an industry professional or their services.”

Any definition will need to be mindful that section 37 of the Act as worded, distinguishes “advertisement” from a “circular, pamphlet or material published by any means”.

2. APPLICATION FOR REGISTRATION

RECO recommends addressing requirements for applications for registration and applications for renewal of registration separately. The Act distinguishes between the two types of applications in section 10 and elsewhere. However, these are currently only addressed separately in the education provisions in O. Reg. 579/05. RECO recommends provisions similar to those in the application for licensing and application for renewal sections of the *New Home Construction Licensing Act, 2017* regulation, at <https://www.ontario.ca/laws/regulation/200631>.

RECO previously submitted proposed wording for new “Application for registration” and “Application for renewal” sections based in part on the equivalent provisions in the *New Home Construction Licensing Act, 2017*.

3. RESIDENCY REQUIREMENT

RECO recommends that the current requirement in section 4 of O. Reg. 567/05, that an applicant must be resident of Canada, be removed. A residency requirement is not included in more recent regulatory statutes and is a matter more appropriately addressed under federal legislation. The current provision is ambiguous, given that there is no definition of what is required to be a “resident of Canada”.

4. REQUIREMENTS FOR REGISTRATION AS A BROKER

The requirement to be registered as a salesperson for 24 of the 36 months immediately preceding the date of the application for registration as a broker or to have equivalent experience, set out in clause (b) of subsection 4 (1) of O. Reg. 567/05, is premised on the assumption that being registered means the individual is trading in real estate. However, an individual may be registered for that time or even longer, and not have actively traded in real estate.

RECO recommends removing this requirement and instead, relying on completion of the broker educational requirements. The broker education relates to the management of a brokerage and to performing the functions and duties of a broker of record.

If requirements related to the length of time the person is registered are imposed, it should be done in the context of the prescribed qualifications to be designated as a broker or record rather than for registration as a broker.

5. NEW CONDITIONS OF REGISTRATION

RECO recommends new conditions of registration and renewal of registration be added to O. Reg. 567/05 as follows:

- Not being in default of payment of any fines imposed by an order of the discipline committee and not having failed to complete any educational course or other requirement imposed by order of the discipline committee, for example including a general provision that the registrant must be in compliance with an order of the Discipline Committee, failing which an application will not be considered complete and will not be considered. [Note: For purposes of transition, it might require reference to an order of the Appeals Committee.]
- Not being in default of an order made pursuant to a *Provincial Offences Act* proceeding under the Act.

6. PRESCRIBED REQUIREMENTS FOR BROKER OF RECORD

Section 12 (1) of the Act, as amended, anticipates prescribed requirements for the broker of record. Currently, a sole proprietor is required to be the broker of record of a sole proprietorship. Consistent with ensuring a link between the corporate entity and the broker of record, RECO recommends consideration be given to similar requirements for the broker of record of other brokerage corporate structures.

RECO recommends that the prescribed requirements include provisions related to demonstrated compliance with the Act and regulations, to prevent the designation or continuation of designation, of a broker of record who is the subject of discipline proceedings or other regulatory action. This is essentially a "good standing" provision.

Proposed wording is set out below:

- X. (1) An individual designated as the broker of record must be,

- (a) a registered broker employed by the brokerage to trade in real estate,
- (b) the sole proprietor in the case of a sole proprietorship
- (c) one of the partners in the case of a partnership, other than a limited partnership,
- (d) a general partner or director or officer of the general partner that is the corporation in the case of a limited partnership,
- (e) a director or officer of the corporation in the case of a corporation,
- (f) a registrant who has demonstrated a record of compliance with the Act and regulations.

7. DESIGNATION OF ALTERNATE BROKER OF RECORD

RECO is proposing new sections related to the role and duties of the broker of record in relation to the brokerage, to replace subsection 30 (1) of O. Reg. 567/05 and proposes retaining, with amendments, current subsections 30 (2) and (3), relating to the designation of an alternate broker of record, for the purposes of powers and duties under sections 19 and 20, as well as the addition of a proposed (2.1) set out below allowing for a broker of record employed by another brokerage, or another suitable individual such as a director or officer, to be designated with the approval of the Registrar.

RECO recommends amendments to address brokerages that are not sole proprietorships but do not have another broker employed by the brokerage to designate as the alternate broker of record.

Designation of alternate broker of record

(2) A brokerage that ~~is not a sole proprietorship~~ employs more than one broker shall designate another broker employed by the brokerage who, when the broker of record is absent or unable to act, shall exercise and perform the powers and duties of the broker of record under sections 19 and 20.

(2.1) A brokerage that does not have another broker employed by the brokerage to designate under subsection (2), shall, when the broker of record is absent or unable to act, designate another registered broker or individual, subject to the approval of the registrar and any conditions imposed by the registrar, who will exercise and perform the powers and duties of the broker or record under sections 19 and 20.

(3) A brokerage ~~that is not a sole proprietorship~~ shall promptly inform the registrar in writing of the designation under subsections (2) and (2.1) of any change in the designation under those subsections.

8. TEMPORARY REGISTRATION OF THIRD-PARTY AS BROKER OF RECORD (DEATH AND INCAPACITATION)

Related to the comments above about designation of alternate Brokers of Record, under REBBA 1990, section 18 of the previous General Regulation provided for the Registrar to allow temporary registration of a person stepping in to act as a broker of record on behalf of a brokerage, in circumstances where there is a broker of record who lacks capacity or has died. This temporary registration is permitted until more permanent arrangements are made, such as the sale or closing of the brokerage. The intention was to support the orderly management of the brokerage in the circumstances, including ensuring that consumer transactions and registrant employees are not compromised.

Adding authority to permit or authorize temporary registration of a broker/broker of record to allow for the continuation of a brokerage with specific management authorized by the registrar to address what happens in the case of death or incapacity, where there is no alternate broker of record who can act would support the Registrar and provide protection to consumers.

RECO believes that a 12-month temporary registration period is reasonable and recommends that the authority to provide the temporary registration be given to the director under REBBA.

For reference, section 18 of the previous General Regulation under REBBA 1990 read:

Temporary Registration of Estates

18. (1) Where a registered real estate broker dies and no other member or officer in the partnership or corporation of which he or she was a member or officer is registered as a real estate broker, or where a registered real estate broker who carries on business as an individual broker dies, the Registrar may,
 - (a) grant to the executor or administrator of the broker temporary registration as a broker for a period of not more than six months in respect of the business of the deceased broker; and
 - (b) exempt any executor or administrator referred to in clause (a) from passing a written examination. R.R.O. 1990, Reg. 986, s. 18 (1).
- (2) Every salesperson registered as a salesperson of the deceased broker or with the partnership or corporation of which the licensed broker was a member or officer at the time of his or her death shall be considered to be registered as a salesperson of the executor or administrator of the deceased broker. R.R.O. 1990, Reg. 986, s. 18 (2).

Under the Real Estate Rules in British Columbia, similar provisions exist and are set out below. They include a clear explanation of the purpose of the temporary registration in subsection 16 (2).

16 Temporary licences for executors, administrators and committees of estates

- (1) The superintendent may issue a temporary licence to
 - (a) the executor or administrator of the estate of a deceased individual who was licensed as a brokerage or managing broker, or
 - (b) the committee of the estate of an incapacitated individual who was licensed as a brokerage or managing broker.
- (2) A licence under this section permits the executor, administrator or committee to carry on the real estate business formerly carried on by the deceased or incapacitated individual for the purpose of winding up the business or for the purpose of transferring or selling the business as a going concern.
- (3) The maximum term for a licence under this section is 12 months.
- (4) A licence under this section may be made subject to any conditions and restrictions that the superintendent considers appropriate in the circumstances.

9. REGISTRATION OF BRANCH OFFICES

RECO currently registers branch offices. While there are forms and fees specifically for that purpose, branch offices are not specifically mentioned in registration requirements. RECO believes that registration of branch offices is an important consumer protection measure, ensuring that the Registrar has the information necessary to oversee the regulation of the sector and that certain minimum standards are met. RECO is recommending a regulatory requirement that there be a branch manager for a branch office of the brokerage as a condition of registration of a branch office of a brokerage.

Subsection 7 (2) of the Act, as amended, requires every branch office of a brokerage to be under the supervision of a broker and each such office having more than one salesperson to be under the direct management, in accordance with the regulations, of a registrant who meets such requirements as may be prescribed.

The terminology in subsection 7 (2) of the Act remains largely unchanged from 4 (2) of the *Real Estate and Business Brokers Act, 1990* when broker was defined to mean: "a person who, for another or others, for compensation, gain or reward or hope or promise thereof, either alone or through one or more officials or salespersons, trades in real estate, or a person who holds himself, herself or itself out as such" and salesperson was defined to mean: "a person employed, appointed or authorized by a broker to trade in real estate".

As currently worded in the Act, and as proposed to be amended, the original intent of 4 (2) of the *Real Estate and Business Brokers Act, 1990* is not captured as the meaning of the terms has changed. To illustrate how this section could have been amended when the Act came into effect:

Management of branch offices

(2) Each branch office shall be under the supervision of a ~~registered~~ the designated broker of record and each branch office having more than one registered ~~salesperson~~ employee shall be under direct management by a ~~registered broker or by a salesperson who has been registered for at least two years and who is under the supervision of a registered broker~~ branch manager who meets the prescribed requirements. R.S.O. 1990, c. R.4, s. 4 (2).

RECO recommends amending the Act when there is an opportunity to do so.

10. DESIGNATION OF BRANCH MANAGER

Section 7 (2) of the Act is proposed to be amended to allow for prescribed requirements for branch managers. RECO is recommending prescribed requirements for branch managers that are consistent with its proposal for brokers of record:

Prescribed requirements for branch managers

X. Subject to section 7 (2) of the Act, every registered branch office of a brokerage shall be under the direct management of a designated individual who must be,

1. a registered broker employed by the brokerage to trade in real estate, unless the registrar authorizes otherwise, and
2. a registrant who has demonstrated a record of compliance with the Act and regulations.

11. TRUST ACCOUNTS

RECO is requesting the authority to permit a brokerage to operate without a trust account, under certain conditions and the approval of the registrar. This would be appropriate where a brokerage is registered but not trading or in circumstances where a brokerage does not handle trust money including deposits.

The conditions placed on the registration would include a disclosure requirement so that clients and potential clients are aware that the brokerage does not have a trust account and cannot handle trust money including deposits.

This might be addressed as a regulation under paragraph 1 of subsection 51 (1), which permits the LGIC to make regulations exempting any person or class of persons or class of trades from any provision of this Act...and attaching conditions to such exemption.

Many of these brokerages limit their services to referrals, and do not handle trust funds. In some cases, a registration may be maintained solely to continue membership in a real estate association that provides insurance, health, dental, or other benefits the individual wants to continue to access. It may be simply a matter of wanting to stay engaged in the real estate community after ceasing to actively trade in real estate. Also, there are costs involved in

maintaining a trust account and removing the requirement would be a burden reduction to those registrants affected.

12. CRIMINAL RECORD AND JUDICIAL MATTERS CHECK

RECO currently requires that a salesperson applying for registration as a broker, submit a criminal record and judication matters check, and that one be submitted when a broker becomes a broker of record. These requirements should be explicitly referenced in O. Reg. 567/05 as part of the application requirements. The wording of paragraphs 3 and 4 of subsection 1 (1) of O. Reg. 631/20 under the *New Homes Construction Licensing Act, 2017* may be helpful.

13. TRANSFER OF REGISTRATION

RECO recommends section 10 of O. Reg. 567/05 (Re-employment within specified period) be amended to replace the terminology of re-employment with "transfer of registration" to capture becoming employed by another brokerage to another and a "rehiring" by the same brokerage (extremely rare circumstance) within the 60-day window. "Transfer" is the language used at RECO and by the industry. RECO processes more than 10,000 transfers of registration annually.

RECO also recommends a new subsection (4) be added to section 10 making it clear that the registration is in fact terminated once the individual is no longer employed by a brokerage and that the 60-day window is the period during which an application to transfer registration or to register a rehiring can be administratively processed without the need for a new full application for registration.

14. EXPIRATION OF REGISTRATION

RECO recommends consideration be given to amending the wording of subsection 10 (1) of O. Reg. 579/05 (Education requirements etc.) to provide for the registration to expire at the end of the day on the expiry date indicated on the registration rather than hardwiring a two-year period in the regulation.

There have been discussions about the possibility of changes to the registration cycle, including options such as annual renewals, renewals every 5 years with fees due annually, and one renewal date for all registrants. As written, subsections 10 (1) and (2) prevent RECO from considering these alternatives.

The flexibility to adapt to advances in technology and to consider options that have the potential to reduce costs associated with the renewal process would be a positive step.

15. LEGAL AND REGISTERED NAMES

RECO is recommending that section 8 of O. Reg. 567/05 be removed and replaced with an application requirement as follows:

"The applicant shall provide a statement of the complete legal name of the applicant and a statement indicating the name under which the applicant is applying to be registered".

This is similar to the wording used in the *New Home Construction Licensing Act, 2017* (NHCLA). The current wording of section 8 of the REBBA regulation does not clearly require both the legal name and the name under which they propose to carry on business. Section 1 of NHCLA regulation 630/20, dealing with the information required as part of an application for licensing, includes "The complete legal name of every registrant and, if a registrant is registered in another name, the name in which the registrant is registered."

16. VERIFICATION OF REGISTRATION

RECO recommends either removing section 9 of O. Reg. 567/05 or replacing it with a general requirement for the Registrar to provide verification of registration rather than a certificate of registration, which implies a paper document.

The registration information, and more, is available on RECO's website and by way of mobile phone applications, making the issuance of paper certificates is no longer necessary or appropriate.

RECO notes that, for the *New Homes Construction Licensing Act, 2017*, while there are references to displaying licenses on websites and in the place of business, there are no provisions similar to the obligation on the Registrar in s. 9 to issue the licence or with respect to the content of the licence.

If section 9 is not removed entirely, RECO recommends the following amendments:

- For subsections 9 (1), (2) and (3) the content should be as determined by the Registrar rather than hardwired as the detailed list provided in those subsections.
- For subsection 9 (4), the obligation to issue duplicate certificates to brokerages should be removed, as well as the related duty in section 33 of O. Reg. 580/05 for the brokerage to keep duplicate copies and make them available to view. Brokerages can view the registration status of every employee through the RECO portal and can refer persons to the RECO website to view the status of a registration.
- For subsections 9 (5) to (9), it is noted that the return of certificates when registration is suspended, or otherwise ends, is rarely complied with and difficult to enforce. RECO recommends the subsections be removed, consistent with the move to electronic verification of registration.
- For subsection 9 (7), the retention of copies of broker and salesperson certificates by the brokerage does not seem necessary from a regulatory compliance perspective and should be removed, consistent with the move to electronic verification of registration.

RECO is also proposing alternate wording for sections 31 and 32 of current O. Reg. 580/05 as follows:

Verification of registration: broker or salesperson

31. Every broker or salesperson shall, on request, provide the person with verification of registration issued to the broker or salesperson.

Verification of registration: brokerage

32. A brokerage shall, on the request of any person, provide the person with verification of registration issued to the brokerage.

17. WAITING PERIOD FOR REAPPLICATION

RECO recommends amending section 12 of O. Reg. 567/05 to align with the 24-month period in the *Motor Vehicle Dealers Act, 2002*. Where conduct or circumstances are egregious enough to warrant revocation or refusal of registrant, a 12-month waiting period (representing half of a registration cycle) does not seem sufficient.

18. EDUCATIONAL REQUIREMENTS FOR REGISTRATION

RECO recommends significantly simplifying educational requirements by including them as requirements for application for registration and renewal of registration. RECO is recommending sections 1 through 7 of current O. Reg. 579/05 be removed.

RECO's recommendation to address educational requirements as application requirements is linked to its recommendation to remove subsections 1 (3) and (4) of O. Reg. 567/05 that prescribe educational requirements as qualifications for the purposes of the definitions of "broker" and "salesperson". They are requirements for registration or renewal of registration and do not belong in the definitions.

RECO recommends sections 1, 2 and 3 of O. Reg. 579/05 (initial educational requirements for salespersons, articling requirements, and initial educational requirements for brokers) be addressed by adding a provision to the requirements for application for registration such as:

"If the applicant is an individual, the applicant must have successfully completed all of the educational requirements, including any exams, designated by the registrar for applicants of that type, within the timeframes established by the registrar."

RECO recommends sections 4 and 5 of O. Reg. 579/05 (continuing education for salespersons and continuing education for brokers) be addressed by adding a provision to requirements for renewal of registration such as:

"If the applicant is an individual, the applicant must have successfully completed all of the educational requirements, including any exams, designated by the registrar for applicants of that type."

Sections 6, dealing with a break in registration, and 7, dealing with applicants from other jurisdictions and other unique circumstances of O. Reg. 579/05, can be addressed through education policies approved by the Registrar. For example, RECO currently offers an Educational Equivalency Assessment.

RECO recommends section 8 of O. Reg. 579/05 be amended such as:

"The registrar may designate one or more organizations that are authorized to provide the educational courses to fulfill the requirements, including exams,

required for the purposes of application for registration or renewal of registration.”

RECO also recommends subsection 8 (2), allowing the Registrar to cancel or amend a designation be removed as this would be a contractual matter between RECO and the designated organization(s) that would set out the conditions under which a designation might be cancelled, including any notice provisions.

19. MANAGEMENT OF BROKERAGE

RECO is proposing new duties be placed on brokerages to establish certain policies and procedures, as well as a complaints process. While the Act and regulations impose certain responsibilities on brokerages for employee conduct and compliance with the Act and regulations, there is little that relates to the conduct of the brokerage as a business entity. In many cases, the regulator is left to address the misconduct of registered employees with limited brokerage accountability.

Proposed new sections are included below. The proposed wording is similar to the corresponding provisions in the Standards of Practice Regulation, O. Reg. 188/08, made under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*.

Policies and procedures

X. (1) A brokerage shall establish and implement policies and procedures that are reasonably designed to ensure that the brokerage and any registrant trading in real estate on its behalf complies with the requirements established under the Act and regulations.

(2) A brokerage shall establish and implement policies and procedures providing for the adequate supervision of every registrant who is trading in real estate on its behalf.

(3) Without limiting the generality of subsections (1) and (2), the brokerage shall establish and implement policies and procedures in respect of the following matters:

1. The description of the role of the brokerage in relation to trading in real estate.
2. The identification of conflicts of interest or potential conflicts of interest between the brokerage or any registrant trading in real estate on its behalf and a client who is represented by the brokerage, and their disclosure to the client, as the case may be, as required by this Regulation.
3. The provision of incentives other than money for trading in real estate to it by other persons and entities, if the brokerage permits any of its registrants to receive such incentives.

4. The provision of incentives other than money for trading in real estate to registrants who are employed by another brokerage to deal or trade in real estate on the other brokerage's behalf, if the brokerage provides incentives to any registrants employed by the other brokerage.
7. Fraud prevention.
8. The maintenance and retention of records as required by the Act and regulations.
9. Personal information in the custody or control of the brokerage is protected against theft, loss and unauthorized use or disclosure and to ensure that the records containing the information are protected against unauthorized copying, modification or disposal.

Brokerage complaints process

- X. (1) A brokerage shall establish a process for resolving complaints from the public and other brokerages related to the conduct or activities of the brokerage and any registrant trading in real estate on its behalf.

(2) The brokerage shall designate one or more individuals to receive and attempt to resolve complaints from the public, and each designated individual must be an employee of the brokerage or someone who is otherwise authorized to act on its behalf.

(3) The brokerage shall keep a record of all written complaints received from the public by the brokerage and all written responses by the brokerage.

20. BROKER OF RECORD

RECO recommends subsection 30 (1) of O. Reg. 567/05 be replaced with provisions that speak to the "duties" of the broker of record and the "role" of the broker of record in relation to the brokerage. These recommendations are linked to recommendations related to "Management of Brokerage" in section 18.

The existing provisions requiring the brokerage to be responsible for the conduct of its employees and the broker of record, typically an employee, being responsible for the conduct of the brokerage are somewhat circular without any clear delineation of responsibilities.

Proposed wording is set out below.

Broker of record duty re compliance

- X. (1) The broker of record of a brokerage shall take reasonable steps to ensure that the brokerage, and each registrant trading in real estate on its

behalf, complies with every requirement established under the Act and regulations.

(2) The broker of record shall ensure that the brokerage takes reasonable steps to deal with any contravention of a requirement established under the Act or regulations by the brokerage, a branch manager, or any registrant trading in real estate on behalf of the brokerage.

Broker of record duty re policies and procedures

- X. (1) The broker of record of a brokerage shall review the policies and procedures of the brokerage to determine whether they are reasonably designed to ensure,
- (a) that the brokerage, and each registrant authorized to trade in real estate on its behalf, comply with every requirement established under the Act and regulations; and
 - (b) that any registrant authorized to trade in real estate on behalf of the brokerage is adequately supervised.

(2) The broker of record shall recommend to the brokerage that it make changes in its policies and procedures, if necessary, to ensure that the standards described in clauses (1) (a) and (b) are achieved.

Role of broker of record

- X. (1) The broker of record designated by the brokerage acts for the brokerage for all purposes under this Act and is responsible for
- (a) the exercise of the rights conferred on the brokerage by its registration;
 - (b) the performance of the duties imposed on the brokerage by its registration; and
 - (c) the control and conduct of the brokerage's activities related to trade in real estate, including supervision of the other registrants who are registered in relation to the brokerage and any other employees of the brokerage.

21. BRANCH MANAGER

RECO recommends section 31 of O. Reg. 567/05 be amended to include, as a branch manager duty, the duty to notify the broker of record of any employee's failure to comply with the Act or regulations. RECO is also recommending the section be retitled "Branch manager duties" to reflect the content more accurately.

Branch manager duties

31. If a branch office of a brokerage has more than one salesperson and is under the direct management of a broker or salesperson under subsection 7 (2) of the Act, the individual designated to manage the branch office shall,
- (a) ensure an adequate level of supervision for the brokers, salespersons and other persons employed in the branch office;
 - (b) take reasonable steps to deal with any failure to comply with the Act or the regulations by a broker, salesperson or other person employed in the branch office;
 - (c) notify the broker of record of any failure of a registrant or other person employed in the branch office to comply with the Act or regulations; and
 - (d) manage all records relating to the branch office.

22. DISCLOSURE TO SELLERS OF EXPECTED REMUNERATION

RECO is proposing clearer disclosure of remuneration in respect of each offer at the time the offer is presented to enhance transparency for sellers. The proposed provision is set out below.

- X. (1) When an offer to acquire real estate is presented to a seller, the registrant who is providing services to or on behalf of the seller must make a disclosure to the seller in accordance with this section.
- (2) The disclosure under subsection (1) must be in a form approved by the registrar and include the following information:
- (a) the amount payable to the seller's brokerage,
 - (b) the amount payable to the seller's brokerage for the purpose of remunerating the buyer brokerage, if any
 - (c) the amount payable to the seller's brokerage if the seller's brokerage also represents the buyer,
 - (d) any amount payable to the seller's brokerage if the buyer is a self-represented party, and
 - (e) any other remuneration the registrant receives or anticipates receiving in relation to representing the seller in the trade in real estate.
- (3) If the remuneration under subsection (2) is to be received as money, the remuneration must be expressed as a dollar amount.

23. PURCHASE OF BUSINESS

RECO recommends the removal of section 21 of O. Reg. 567/05. Although this section is titled "Purchase of business", the content speaks to duties related to the brokerage representing the client disposing of the business and indirectly places obligations on the person disposing of the business (e.g., "shall provide") to provide certain information to a purchaser.

It also appears to presume that the purchaser is not represented by a brokerage or that the brokerage is representing both the purchaser and the person disposing of the business in the transaction. The delivery of profit and loss statements and a statement of assets and liabilities are matters more appropriately addressed in the terms of the offer and agreements and to be assessed by an accountant or a lawyer.

British Columbia and Alberta address the section 21 information by way of bulletins as support tools for registrants. RECO recommends a similar approach.

Removing the section is not expected to create a gap. The Code of Ethics and other sections of the regulations would continue to require the provision of competent advice and an expectation that a registrant has the skills necessary to undertake a particular transaction.

If there are reasons this section should be retained, RECO would appreciate clarification regarding the purpose of subsection 21 (3) as this is a matter that is arguably more appropriately addressed in the context of litigation. RECO would also appreciate clarification regarding the purpose and intent of subsection 21 (4) as here too, these are arguably inquiries more appropriately made by an accountant or a legal representative.

24. UNCLEAR OR UNCLAIMED TRUST OBLIGATIONS: AMOUNTS UNDER \$25

RECO recommends increasing the current amount of \$25 in section 39 of O. Reg. 567/05. By way of comparison, subsection 82 (5) of O. Reg. 30/11 under the *Funeral, Burial and Cremation Services Act, 2013*, exempts an amount less than \$50. This would be a burden reduction to registrants who currently must arrange to transfer small amounts to RECO.

25. PUBLIC SUMMARIES

RECO recommends removing section 27 of O. Reg. 567/05, dealing with the publication of summaries of complaints that have been resolved or resolved by way of mediation. As written, this places a significant burden on the Registrar. The provision may have been intended to address formal arbitration or mediations.

In practice, this is often an informal process of bringing the parties together to resolve the complaint. RECO's approach is to not resolve matters that involve conduct of a registrant, that otherwise and absent mitigating circumstances warrants disciplinary action, in this manner. RECO questions whether there is value in making this information public.

B. Proclamation in force of new act provisions

RECO is concerned that existing requirements may have been inadvertently dropped due to wording changes to subsection 33 (1) of the Act.

There is currently a provision that, if proclaimed in force, would repeal subsection 33 (1) of the Act and replace it with the following:

Prohibition re: breaking contract

(1) No registrant shall attempt to induce or induce any party to an agreement in respect of a trade in real estate to break the agreement for the purpose of entering into another such agreement.

Existing subsection 33 (1) of the Act refers to inducing a party to break “an agreement for purchase and sale” or “an agreement for rental of real estate”. RECO notes that the regulations distinguish between agreements that deal with the conveyance of interest in real estate and agreements related to a trade in real estate. Subsection 33 (1) of the Act is intended to relate to “an agreement that deals with the conveyance of an interest in real estate” and RECO recommends that the wording be changed to clarify the type of agreement it applies to.

Current subsection 7 (2) of O. Reg. 580/05, not included in the draft regulations, prohibits breaking other forms of agreements between a client and brokerage:

(2) If a broker or salesperson knows or ought to know that a buyer or seller is a party to an agreement in connection with a trade in real estate with a brokerage other than the brokerage that employs the broker or salesperson, the broker or salesperson shall not induce the buyer or seller to break the agreement.

RECO recommends current subsection 7 (2) of O. Reg. 580/05 be captured in the draft regulations and that it be broadened to align with the new wording for subsection 33 (1) of the Act that captures an attempt to induce a party to break an agreement.

C. Personal Real Estate Corporations Regulation

RECO is seeking confirmation that paragraph 7 of section 3 of O. Reg. 536/20 will be amended by removing the reference to “customer”.