

OREA REBBA REFORM TOWN HALL Q&A

NOVEMBER 2, 2017

Q: Does "Representation" mean client and customer as we now understand? Or representation only as a dual client?

- Under the proposed new rules, mandatory designated representation (MDR) would only apply to a transaction where a salesperson/broker has two clients interested in the same property. It would not apply to a customer-client transaction.

Q: If one party does not want to take part in the facilitation model can a registrant that is part of a team (example: spouse) represent that party?

- Yes. Under the proposed new rules, if both parties do not agree to enter facilitation with one salesperson/broker, then the brokerage is obligated under MDR to refer one of the clients to another salesperson/broker inside the brokerage. Another registrant on the same team would be acceptable.

Q: How will this work in smaller communities and in areas where there are only two brokerages with fewer than 20 Realtors?

- The REBBA Review Taskforce put forward the facilitation model to account for some of the challenges MDR would put on small and rural brokerages. The facilitation model, which is very similar to the transactional brokerage model currently in place in Alberta and Nova Scotia, allows a registrant to work with both clients with written consent. In most cases, facilitation would allow a registrant to continue working with both clients.

Q: How does it work with multiple locations of the same brokerage?

- There are still details that need to be determined as the regulations are developed. In other jurisdictions that have designated representation, satellite offices are considered part of the same brokerage, therefore salespeople/brokers working in those offices could represent a client in a MDR transaction.

Q: How does this specifically differ from the current model where we do disclose the type of agency we offer and do have to have a written agreement in the confirmation of cooperation and the signing of the working with a realtor brochure - so disclosure and consent is already the rule for multiple representation? I don't quite see the difference.

- While it is similar, facilitation provides a higher level of consumer protection through additional written disclosure and forms.

Q: In the facilitation model, does a Realtor not have the option of treating the buyer as a customer vs. a client? Also, would a Realtor not be able to get a seller's approval when the property is listed?

- If a registrant has a customer and a client they would not be required to enter into MDR or facilitation.

Q: If a second Realtor is chosen how will they be compensated?

- This will be a matter to be negotiated between the parties to the transaction.

Q: Are collateral agreements still going to be permitted if the listing agent represents the buyer in offer?

- There are many details that will be determined through regulations.

Q: If I'm selling my own house and I get a buyer who wants to buy from me. Any changes then?

- These rules only pertain to registrants who are bound to the rules and limitations of the Real Estate and Business Brokers Act, 2002.

Q: At the time of taking the listing, could we have the seller determine whether he would be agreeable to facilitation? If not, then you know clearly where he stands and will avoid preparing offers on behalf of potential buyers and being turned away.

- With the regulations still to be determined, OREA can raise this question with the government. In Alberta, both parties have to agree in writing to the facilitation model.

Q: How can I hold myself out as a professional when under facilitation I am not allowed to give the people advice?

- The proposed facilitation model gives consumers a choice. Through more detailed disclosure and plain, simple language, consumers will better understand the services that they will be getting. If they feel they need a higher level of representation, they can choose to be represented by another registrant.

Q: Can you outline how the new legislation will impact a scenario of "multiple representation" when two sales representatives working at the same brokerage are on either end of a sale on a property (vs. same salesperson working with buyer and seller).

- If this legislation passes and the new rules are implemented, Ontario will move to a system where the Buyer Representation Agreement is with a registrant, not with the brokerage. Agents in the same brokerage would therefore be able to represent different parties in the same transaction.

Q: Why does OREA still call it “Mandatory Designated Representation” now that the government has introduced a “facilitation” model? When would a representative ever be designated?

- MDR would become the standard practice for any client-client transaction unless the two clients agree to facilitation.

Q: Will customer representation be gone finally?

- Under the proposed new rules, mandatory designated representation (MDR) would only apply to a transaction with two clients. It would not apply to a customer-client transaction.

Q: In regard to the media reports on agents double ending, do you think that if penalties were more severe such as loosing their license for a period or having to retake courses rather than a small fine, that would "shape up" our agents? Seems like the fines did not suit the situation.

- We address giving RECO the power to suspend/revoke licenses for bad actors in our first white paper on enforcement. We agree that there should be strong penalties for contraventions of the Code of Ethics and REBBA. This is why we released a white paper that included proposals to strengthen the powers of the regulator to deal with the bad actors.

Q: Is RECO fully on board with OREA on all this?

- During the consultation, RECO proposed a very strict form of MDR which would only exempt transactions taking place in remote communities. OREA had a more thoughtful approach and ultimately, the province’s proposed legislation includes our recommended reform that will maintain consumer choice.

Q. Will there be a consumer-friendly form for the customers to fill out confirming they agree to the facilitation model?

- All the details have not yet been worked out. What we do know is that consent would come through a simple, plain language document that clearly outlines the duties and obligations of the Realtor to the consumer.

Q: Why don't you just revamp the "working with a REALTOR® form" and use that form?

- All the details have not yet been worked out about how consent will be achieved.

Q: What will the process be for enforcing these new rules?

- That is still unclear and until the regulations are drafted, we do not know for sure how the disclosure of these types of transactions will work. The legislation as drafted mentions reporting to the regulator. It remains to be seen what the type and extent of disclosure will look like.

Q: Many buyer consumers seek out multiple-representation opportunities because they feel that they will take advantage of reduced fees. Will this activity be discouraged/eliminated with the new rules?

- Fees will continue to be negotiated by the parties to the transaction.

Q: What is in your proposal to stop what the entire country watched on the W5 coverage with Realtors disclosing offers, terms and encouraging pricing advice?

- The behaviour demonstrated on CBC Marketplace would be stopped in two ways. First, a registrant would be unable to provide advice on the price when working with two clients. Second, facilitation should not be used for convenience. In other jurisdictions that practice MDR with facilitation, a registrant, for example, who has a seller client would not be permitted to sign up a buyer who came through an open house for the purposes of facilitating the transaction. In that instance, the registrant is obligated to maintain their fiduciary duties to their seller. These new rules are some of the strictest in North America when it comes to transparency and consumer protection.

Q: Under the facilitation model, I really struggle with how a seller would benefit. Why would any client seller agree to a reduced service model, one which prevents us from providing any advice on how to deal with an offer. They pay a good commission for our services.

- The proposed facilitation model gives consumers a choice. Through better disclosure and plain, simple language, consumers will better understand the services that they will be getting. If they feel they need a higher level of representation, they can choose to be represented by another registrant.

Q: How does this prevent "greedy" listing agents from holding back listings to MLS® (doing exclusive listings only) so that they can double end a transaction instead of letting other agents submit offers - this is prevalent in some areas?

- These rules pertain to all registrants who are bound by the rules and limitations of the Real Estate and Business Brokers Act, 2002.

OTHER TOPICS

Q: Raising the education standards is very desirable, but is consideration being given to specialty licensing to delineate residential from commercial?

- Yes, in our third and most recent white paper on Registration Education, there is a proposal on specialty licensing. You can find that white paper on www.rebbareform.ca.

Q: When are you anticipating the existing education program will no longer be available and what happens if someone has already registered in the existing program.

- The OREA Real Estate College will continue to provide real estate education through the remaining term of the Educational Services Agreement until December 31, 2020. Students enrolled in the existing program will be allowed to complete their courses until that date.

Q: Why is there divisiveness between OREA and RECO. If you are both working on our behalf, then why are you not working together on our behalf?

- OREA has taken a more assertive tone with our regulator, RECO. This more assertive tone is a reflection of our new overall GR strategy which includes holding RECO more accountable. This hasn't hurt our relationship, instead it has made RECO more responsive to REALTORS®. For example, OREA and RECO are holding more liaison meetings than ever to discuss issues of shared concern.

Q: Can you tell us what's happening on Bill 104, Tax Fairness for Realtors Act?

- Bill 104 was supported by all three parties, and passed second reading in the legislature on March 23, 2017. It has been referred to the Standing Committee on General Government where it will be debated prior to being referred back to the legislature for third and final reading. This is the furthest this bill has ever gone and we are working hard to make sure this important bill passes.

Q: What makes post-secondary education a valid prerequisite?

- This is a proposal from the third white paper on registration education. This white paper presents a series of proposals that have been discussed by the OREA REBBA Review Taskforce. The Taskforce does not endorse any of these proposals. They are options we want your feedback on. Read the proposal on www.REBBAReform.ca.

Q: Are you suggesting someone would have to have a post secondary degree BEFORE taking the Real Estate Education?

- This is a proposal from the third white paper on registration education. The proposal suggests that some level of post secondary, whether a college diploma or university degree, would be required prior to enrolling in the registration education program.