



Bob Aaron bob@aaron.ca

January 21, 2006

Act brings major changes to real estate industry

Major changes will take place in the Ontario real estate industry when the Real Estate and Business Brokers Act 2002 (REBBA 2002) finally comes into force on March 31.

Here are some major changes that will impact the public and industry stakeholders:

- **Brokerage ownership:** At present, registered brokers must own at least 51 per cent of a real estate brokerage. Under the new act, non-brokers can own the entire business. There must be a "broker of record" on staff to manage the business, but it can be owned by unlicensed entrepreneurs or even financial institutions.
- **Immediate suspensions:** Under the old legislation, when discipline proceedings have been taken against a registered real estate agent, he or she can continue to trade in real estate, sometimes harming more consumers during the delay. As of March 31, the registrar of brokers and agents can order an immediate suspension where it is in the public interest.
- **Trust funds:** Unless an agreement of purchase and sale provides otherwise, all interest payable on trust money must be paid to the person who owns the money usually the purchaser. Brokers will have to disclose to the owner of the money the terms on which the brokerage deposits the money, and if it is in an interest-bearing account, the rate of interest that the broker receives.
- **Unclaimed trust funds:** When a real estate transaction does not close, the brokerage is often left holding the deposit funds in its trust account for a long time sometimes years. Now, where entitlement to the deposit is in dispute or is unclear, the broker will be required to send the money to the Real Estate Council of Ontario (RECO), the governing body of the profession.
- **Falsifying information:** The new act adopts a get-tough policy on agents who participate in mortgage fraud schemes. It is now going to be a specific offence under REBBA 2002 to falsify information or documents, or counsel others to do so in relation to a trade in real estate. This type of offence would include preparing an amendment to a purchase agreement which allows the purchaser to get a "rebate" on closing, for the purpose of misleading the lender as to the true underlying price being paid for a property. It will be illegal for an agent or broker to furnish false or deceptive information regarding a trade in real estate, or to advise others to do so.
- **False advertising:** The registrar will have the power to order an immediate stop to false advertising, and to require registrants to retract statements or publish corrections. The RECO will be required to publish information regarding false advertising, trust account freeze orders and all charges, convictions and sentences under the new legislation.
- **Code of ethics:** Regulations under REBBA 2002 have enacted a new code of ethics, which is quite different from the current one. There will be more obligations on registrants when dealing with the public, particularly when several clients are represented by the same brokerage. Under the new rules, a registrant can't act for more than one client in any transaction unless all the clients being represented consent in writing.
- **Complaints:** The current complaints process against agents and brokers is being scrapped and replaced by a new one governed by regulations passed under the act. Rather than being based on RECO bylaws, the new process is governed by a set of legislated principles.
- **Exemptions:** A number of exemptions from registration have been continued in the new legislation. Full-time salaried employees of new home builders continue to be exempt from registration if they are acting for or on behalf of their employer in the purchase or sale of Ontario property. As a result, billions of dollars worth of new homes and condominiums in this province will continue to be sold every year by unregulated sales staff.

Another exemption relates to lawyers and a slight change has been enacted to our exemption from registration. Under REBBA 2002, lawyers will not be required to register as real estate agents "where the trade in real estate is itself a legal service or is incidental to and directly arising out of the legal services."

Under the old legislation, lawyers were exempt where the trade in real estate was made "in the course of and as a part of the solicitor's practice."

The change in wording will not affect the rapid growth of Lawyer Web Property Shop (<http://www.propertyshop.ca>), an affiliation of real estate lawyers outside of Toronto organized by Mike Forcier of Owen Sound. The Property Shop concept enables lawyers to help clients market and sell their own properties at fixed fees or hourly rates that may be significantly cheaper than alternate sale options.