

# **Annual Report on Operations For Year Ended December 31, 2008**

## ***The Legislated Mandate of the Real Estate Compensation Fund Corporation***

The Real Estate Compensation Fund Corporation (RECFC) and its operations are governed by the *Real Estate Services Act*.

Under the legislation, the RECFC has established a fund, known as the Real Estate Special Compensation Fund, for the purpose of providing compensation in accordance with Part 5 of the Act [*Payments from Special Compensation Fund*].

In summary, those provisions anticipate the claims process working in one of three ways. In each case, a claim on the Fund is filed with the Compensation Committee of the Real Estate Council of British Columbia (the Council), not with the Corporation.

- (1) A finding might be made by a Court to the effect that a licensee has engaged in a wrongful taking and thereby caused a “compensable loss,” as defined in the legislation. Any such finding is binding on the Compensation Committee, and the Committee is obliged to issue a Certificate of Compensable Loss, accordingly, in favour of the claimant. Upon receipt of such a Certificate, the RECFC is obliged to make the payment so certified from the Fund.
- (2) A Discipline Committee of the Council might determine that a wrongful taking has been committed. Again, any such finding is binding on the Compensation Committee and, consequently, on the RECFC.
- (3) Even in the absence of a preceding Court or Discipline Committee decision, a member of the public alleging that he or she has sustained a compensable loss is able to apply directly to the Compensation Committee of the Council. In such cases, the Committee is entitled to conduct a hearing to determine whether a compensable loss has been incurred, and to issue a Certificate of Compensable Loss, if it concludes it has. On receipt of such a Certificate, the Corporation is again bound to make the payment so certified.

It is important to note that in none of the foregoing circumstances does the RECFC deliberate vis-à-vis a payment to a member of the public. It is simply required to make whatever payments might be certified regarding compensable losses found by other entities to have been incurred. It should be noted that the legislation does grant the Corporation intervention rights regarding Court and Discipline Committee proceedings, but even if the Corporation exercises those rights, that does not entail any “deliberations” by the Corporation. Rather, the process merely permits the RECFC, as a party to the proceeding, to adduce or challenge whatever evidence it believes appropriate and to make submissions to the Court or Discipline Committee on what it believes the appropriate disposition of the proceeding ought to be. The determination on whether a compensable loss has occurred and, if so, who is liable for it, either in whole or in part, still rests with either the Council or the courts, rather than the RECFC.

The number of compensation cases arising in any given year is proving to be extremely low in comparison to the number of real estate transactions in the province. The enormous amount of trust funds held by the industry demonstrates the high integrity of the industry as a whole.

Once a payment has been made from the Fund by one of the three mechanisms outlined above, the Act entitles the Corporation to seek to recover the amount paid from whoever is liable for the loss, either in whole or in part. The section expressly permits the RECFC to exercise whatever recovery rights the claimant had “as against any other person” in that regard. Most commonly, that recovery effort would be expected to take the form of the Corporation suing one or more of the parties the claimant could have sued. Where the claimant had already sued and recovered Judgment, pursuit of recovery rights would be expected to include the taking of appropriate execution proceedings to enforce the Judgment and may include the commencement of new proceedings against other parties whom the claimant could have sued but for some reason or other did not.

Given how highly variable real estate transactions and the parties involved in them are, determinations by the Directors of the Corporation on precisely how to exercise recovery rights, or how extensively to exercise them, can only be made on a case by case basis, having regard to all the circumstances of the particular case involved, and having regard to what is in the best interests of the Corporation and the Fund. Because Court proceedings, Discipline hearings, or hearings before the Compensation Committee may or may not provide a complete answer to the question of who all the potentially liable parties are, the Directors may consider it in order for the Corporation to conduct further investigations of its own before deciding what recovery steps to take, or which recovery efforts to abandon, in any given case. Factors to be considered would generally be expected to include things such as the degree of apparent liability of a particular party given all the circumstances, the anticipated costs of recovery, and the amount to be recovered. In considering such matters, the Corporation will take appropriate legal advice. If a decision is made to not pursue the Corporation’s recovery rights, then the file is closed.

In order to support the Real Estate Special Compensation Fund, the RECFC may

- (a) Levy assessments on licensees for the purposes of the special compensation fund,
- (b) Levy different assessments against different classes of licensees as defined by the compensation fund corporation, and
- (c) Establish terms and conditions in relation to the payment of assessments.

Every licensee must pay to the RECFC, on or before the time set by the Corporation, any assessment levied by the Corporation. If a licensee has not paid an assessment as required, the licensee's licence is suspended until the licensee pays the full amount due, together with interest on that amount at a rate determined by the RECFC.

The Corporation invests the monies in the Real Estate Special Compensation Fund that are not immediately required for disposition, as permitted under the provisions of the *Trustee Act* respecting the investment of trust property by a trustee.

### ***Industry Support of the Real Estate Compensation Fund Corporation***

The RECFC has been fortunate in receiving strong support from the real estate sector. We are particularly grateful for a grant of \$500,000 made in 2005 and a second grant of \$500,000 made in 2006 by the Council.

In addition, support from the Real Estate Foundation of BC has also been significant. In 2005, the Foundation provided the RECFC with a grant of \$65,000 and guaranteed funding support, should it be necessary, for the payment of up to \$1.5 million in claims. In 2006, a further \$35,000 was donated by the Foundation and it also provided an additional grant of \$500,000 in 2007.

During 2008, the Board of Directors of the Corporation reviewed the claims experience since the creation of the RECFC, evaluated the current financial position of the Fund, and sought advice from the Fund's actuary with respect to broadening the coverage provided to the general public by the Fund. As a consequence of this review and evaluation, in December 2008, the RECFC Board of Directors concluded that it should recommend to the Ministry that the Fund's coverage for multiple claims, as specified in the Regulation, be increased from the current amount of \$350,000 to \$500,000. That request was submitted in December 2008 and approved in March 2009.

### ***Board of Directors***

The Board of Directors of the Real Estate Compensation Fund Corporation consists of three directors appointed by the Council<sup>1</sup> and two directors appointed by the British Columbia Real Estate Association<sup>2</sup>.

The term of office for each director is three years and a director may not serve for more than six consecutive years. However, a director may, after at least one year of not being a director, be reappointed for further terms subject to this same six-year restriction. At the present time, the directors are:

Mr. Kenneth E. MacKenzie<sup>2</sup>, Chair  
Mr. Barry Clark<sup>1</sup>, Past Chair  
Mr. Michael Ziegler<sup>1</sup>

Mr. Don Lancaster<sup>2</sup>, Vice Chair  
Ms. Jeannie Dewhurst<sup>1</sup>

### ***Activities During 2008***

During its fourth year of operation, the Corporation has been successful in continuing to build a solid financial reserve as a result of the premiums paid by licensees.

For the fiscal year ending December 31, 2008, the Corporation generated a surplus of \$1,045,659 and at year-end its investments totalled \$5,336,894.

Only one new compensation case arose in 2008. This is an extraordinarily low number in comparison to the number of real estate transactions in the province. It is important to note that reimbursements to consumers are funded entirely by monies that were provided by the members of the real estate industry. I am in no doubt that the ability of the RECFC to take remedial action when a consumer is harmed (no matter how infrequently needed) is part of the reason that the real estate industry enjoys such a high level of public trust in BC.

In 2007, the consumer protection coverage provided by the RECFC was expanded to include an emergency situation where the Council has determined that

- (a) A person has suffered a compensable loss,
- (b) Money is required to
  - (i) complete a trade in real estate in which the person is involved, or
  - (ii) prevent further significant compensable loss to the person,
- (c) It would be in the public interest to use money from the compensation fund to complete the trade or prevent the loss.

No cases have arisen that required the RECFC to make any payments under this new provision.

It was an honour to be elected as the Chair of the RECFC in December 2008. I am confident that with the ongoing support of the industry, the Corporation will continue to provide the public with the protection that it expects and deserves when dealing with members of the real estate profession.

K.E. MacKenzie, CAE, FRI, RI(BC),  
Chair of the Board