

REAL ESTATE COMPENSATION FUND CORPORATION

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Annual Report on Operations For Year Ended December 31, 2009

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 trust transactions conducted through real estate licensees in the province. The enormous amount of trust funds held by the industry demonstrates the high integrity of the industry as a whole.

The RECFC came into effect January 1st, 2005. In its five years of operation, payments from the Fund have been made for a compensable loss in three cases totalling approximately \$331,000.

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 may be 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. 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 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 takes 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 grants totalling \$1,000,000 made by the Council and \$1,065,000 from the Real Estate Foundation of BC. In addition, through the payment of their annual assessments, real estate licensees have contributed over \$6 million.

Board of Directors

The Board of Directors of the Real Estate Compensation Fund Corporation consists of three directors appointed by the Council¹ and two directors appointed by the British Columbia Real Estate Association².

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. MacKenzie², Chair
Ms. Arlene Butler¹
Mr. Bob Johnston¹

Mr. Don Lancaster², Vice Chair
Ms. Jeannie Dewhurst¹

Activities During 2009

During its fifth 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.

While several files were opened involving compensation cases in 2009, to date none has resulted in a determination of a compensable loss and a payout by the Corporation. Two of those outstanding cases may result in significant precedent or large sum implications for the Fund. At the same time, the Corporation has initiated recovery action vis-à-vis two past claims paid from the Fund. Some recovery of these amounts is expected in 2010.

Also during 2009, in view of the disruptions in financial investment markets, the Board of Directors reviewed and approved modifications to its investment policy. The Board also initiated a review of several matters related to the interpretation and operation of the RESA Regulation relating to the RECFC. It is anticipated that this review will be completed in 2010.

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 provision.

It was an honour to be re-elected as the Chair of the RECFC in December 2009. 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.

Respectfully submitted,

K.E. MacKenzie, CAE, FRI, RI(BC)
March 31, 2010