



Annual Report

March 31, 2021

Message to Minister

The Honourable Selina Robinson
Minister of Finance
PO Box 9048
Station Provincial Government
Victoria, BC, V8W 9E2

On behalf of the Board of Directors of the Real Estate Compensation Fund Corporation (RECFC), I am pleased to present the Annual Report for the year ended March 31, 2021.

RECFC was formed under the *Real Estate Services Act* on December 31, 2004 to protect the public interest by providing compensation in certain cases of wrongdoing by real estate licensees, as determined by the Real Estate Council of British Columbia's Compensation Committee. Since inception, RECFC has paid over \$1.8million in compensation claims to consumers.

This year, the Corporation launched a website to increase consumer awareness of the Compensation Fund coverage available to protect homebuyers grappling with housing affordability. We also recommended an increase in coverage from \$100,000 to \$200,000 for single claimants and from \$500,000 to \$1 million per brokerage, which came into effect April 1, 2021, to better align the coverage with current real estate markets and provide enhanced protection for consumers. The Corporation is working towards a smooth transition and continuing consumer protection when the BCFSA assumes responsibility for real estate regulation in BC. We are pleased to report that our conservative investment strategy resulted in minimal impact on the fund's reserves during the global pandemic this year.

The RECFC fulfills an important role in providing consumer protection to the citizens of British Columbia. I am confident that with the ongoing support of the government and industry, the RECFC will continue to provide the public with the protection that it expects and deserves when dealing with members of the real estate profession.

Sincerely,



John Evans,
Chair

Introduction

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

In accordance with the legislation, RECFC established the Real Estate Special Compensation Fund (the “Fund”) for the purpose of providing compensation in accordance with Part 5 of the Act [Payments from Special Compensation Fund]. The Act provides for payments from the Fund to be made in one of the following three ways. In each case, a claim on the Fund is filed with the Real Estate Council of British Columbia (the Council)’s Compensation Committee, not with the RECFC.

- (1) Civil Suit - a court finds that a real estate 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) Discipline Committee determination – The Council’s Discipline Committee determines that a wrongful taking has been committed. Again, any such finding is binding on the Compensation Committee and, consequently, on the RECFC.
- (3) Compensation Committee hearing - 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 Council’s Compensation Committee. In such cases, the Compensation Committee is entitled to conduct a hearing to determine whether a compensable loss has been incurred and issue a Certificate of Compensable Loss. On receipt of such a Certificate, the RECFC is bound to make the payment so certified.

It should be noted that the legislation grants the RECFC intervention rights regarding court and Discipline Committee proceedings. These intervention rights are critical to allow the RECFC to become a party to the proceeding in order 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 RECFC is the only entity who has these intervention rights in the courts. 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. Experience indicates that compensation claims often come in groups, often because a single licensee generates multiple claims. Given the enormous amount of trust funds held by the industry, the claims history demonstrates the high integrity of the industry as a whole.

In addition, pursuant to an amendment to the Regulation in 2007 allowing the RECFC to make an emergency payment in cases where the Council determines 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 Fund to complete the trade or prevent the loss.

The RECFC came into effect December 31, 2004. Since inception, payments from the Fund have been made for compensable losses in 2021:30 (2020:28) cases totaling approximately \$1.8 million (2020: \$1.8million).

An important function of the RECFC is to pursue recovery rights against the wrongdoers who were responsible for the claims. Once a payment has been made from the Fund by one of the three mechanisms outlined above, the Act entitles the RECFC to seek recovery of 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 RECFC filing a civil suit against one or more of the parties the claimant could have sued. The RECFC has been able to successfully recover funds in several cases.

Given how highly variable real estate transactions and the parties involved in them are, determinations by the Directors of the RECFC 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 and having regard to what is in the best interests of the RECFC 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 RECFC 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 considered include 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 RECFC takes appropriate legal advice. If a decision is made to not pursue the RECFC'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,
- (b) Levy different assessments against different classes of licensees as defined by the RECFC, 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 RECFC, any assessment levied by the RECFC. In order to limit the size of the Real Estate Special Compensation Fund to only the amount necessary to fund future compensation claims, the RECFC reduced its assessments in 2017. As of April 1, 2017, licensees pay a one-time assessment upon initial licensing, and no assessment on license renewal. The legislation continues to provide that if a licensee has not paid an assessment as required, the licensee's license is suspended until the licensee pays the full amount due, together with interest on that amount at a rate determined by the RECFC.

The RECFC invests the money in the Real Estate Special Compensation Fund that is not immediately required for disposition, as permitted under the provisions of the Trustee Act respecting the investment of trust property by a trustee, with the primary purpose of protecting the capital in the Fund for future compensation claims.

The RECFC has been fortunate in receiving strong support from the real estate sector. Through the payment of their annual assessments, real estate licensees have contributed over \$10 million to the compensation fund. We are grateful for the initial grants made by the Council totaling \$1,000,000 and \$600,000 by the Real Estate Foundation of BC.

2021 Board of Directors

The Board of Directors governing the Real Estate Compensation Fund Corporation consists of three directors appointed by the Real Estate Council of BC and two directors appointed by the British Columbia Real Estate Association. Directors may serve two consecutive three-year terms. The Corporation is administered by a part-time Executive Officer.

John Evans, Chair, Terrace

John Evans is the Past President of the BC Northern Real Estate board. He had served on the BCNREB Professional Standards committee for over 10 years. He was appointed as a director by the BC Real Estate Association. John was licensed in 1986 and became a Managing Broker in 1991. He retired from the Real Estate industry in the summer of 2018.

Patrick O'Donnell, Vice Chair, West Vancouver

Patrick O'Donnell served as an elected member of the Real Estate Council of BC. He is a past president of the Fort McMurray Real Estate Board and a former instructor for the Alberta Real Estate Association. Patrick was appointed by the Real Estate Council, and has been licensed for 35 years. He is currently an Associate Broker with Royal LePage Sussex in the North and West Vancouver.

Susan McGougan, Director, Nanaimo

Susan McGougan is a past Chair of the Real Estate Council of BC and a former director of the British Columbia Real Estate Association. She is a past president of the Vancouver Island Real Estate Board, where she chaired the Education Committee and served on the MLS and Business Practices Committees. Susan has a diploma in Urban Land Economics from UBC and is a designated RIBC from the Real Estate Institute of British Columbia. Susan was appointed by the Real Estate Council. She and has been licensed since 1990 and is currently with RE/MAX in Nanaimo.

Jorda Maisey, Director, Langley

Jorda Maisey is a past president of the Fraser Valley Real Estate Board. She was appointed by the BC Real Estate Association and has been licensed for over 20 years. Jorda is currently with RE/MAX Lifestyles Realty in Langley.

Dougal Shewan, Director, Langley

Dougal Shewan is a past Chair of the Real Estate Council of B.C. and the Real Estate Errors and Omissions Insurance Corporation. He is a graduate of the University of British Columbia with a B.Com and MBA, and also holds membership in the Real Estate Institutes of B.C. and Canada. Dougal was appointed by the Real Estate Council and was a licensed realtor from 1976 to 2017. He is the founder, Chair, and CEO of VWR Capital Corporation.

Wendy Royle, Executive Officer

Wendy Royle, CPA, CA, is the Executive Officer of the RECFC. She is a Chartered Professional Accountant and is an instructor for CPABC's continuing professional development program where she teaches ethics courses to CPAs. She has served as the Chief Examiner at the BC Securities Commission and the Vice President Pacific of the Mutual Fund Dealers Association.

Claims Activity During 2021

In the current year, RECFC paid out \$57,500 in claims. Last year, RECFC paid out no claims.

No claims paid out in prior years were recovered in the current year pursuant to the RECFC's recovery rights (\$14,000 in 2020).

Through careful investment management, the RECFC has been successful in protecting the Real Estate Special Compensation Fund and building a proper financial reserve for the payment of future compensation claims.

Financial Summary 2021

During 2021, RECFC collected \$768,000 in assessments (2020: \$628,000) and incurred operating expenditures of \$222,000 (2020: \$220,000). The Real Estate Special Compensation Fund was valued at \$20.6 million at year end.

Please refer to the enclosed audited financial statements for detailed financial information.

Contact Us

www.recfc.org



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