

CONTINUING TO RAISE THE BAR FOR REAL ESTATE IN ONTARIO

A Whitepaper for
TRESA Phase 3

OCTOBER 2024



OREA



Ontario families deserve to have full confidence in the home buying and selling process, and that includes trusting that the professional by your side has the highest professional standards, training, and modern tools.

Rick Kedzior

2024 OREA PRESIDENT







Dear OREA Members:

In 2009, the Ontario Real Estate Association (OREA) set out on a mission to modernize the *Real Estate and Business Brokers Act* (REBBA). At the time, Ontario REALTORS® were facing challenges on several fronts. From increasingly sophisticated consumers to changing technology, our Members across the province were under pressure.

Ontario's real estate rules were outdated – they were over 18 years old and passed at a time when fax machines were the way most real estate deals were made. We worked closely with the Government of Ontario to build a modern piece of real estate legislation for today's real estate market. Our successful advocacy led to the introduction and unanimous passage of the *Trust in Real Estate Services Act*, in 2020, otherwise known as TRESA.

Following the passage of TRESA, the government used a phased approach to enact the supporting regulations. Phase 1 was implemented in 2020, bringing in new advertising rules and allowing for personal real estate corporations (PRECs). Phase 2 came into effect last December and introduced the concept of self-represented party, the transparent offer process, and designated representation. It strengthened consumer confidence, with a new principle-based code of ethics and a stronger RECO discipline process for those who break the rules governing our profession. These changes have made Ontario a leader in professional standards and ethics and provide our Members with modern tools to help your business succeed.

But there is still more work to be done.

OREA is already preparing for the third and final phase of regulations by bringing forward bold ideas to improve training and continuing education for REALTORS® and closing loopholes that put consumers at risk.

We are proud that OREA is at the forefront advocating for the highest professional standards in our industry. These are exciting times for Ontario REALTORS® and we look forward to working with every one of you on this important endeavour.

Yours sincerely,

Rick Kedzior
2024 OREA PRESIDENT

Sonia Richards
OREA INTERIM CEO



Dear OREA Members:

Being a REALTOR® means something.

We are not just in the business to sell homes; REALTORS® are strong advocates of protecting families and strengthening the rules that govern our industry.

In fact, it was the advocacy of Ontario REALTORS® that led to the Government of Ontario introducing the *Trust in Real Estate Services Act (TRESA)*. It was REALTORS® that ensured TRESA Phase 1 and 2 delivered personal real estate corporations (PRECs), stopped a ban on multiple representation dead in its tracks, and introduced designated representation.

Our voice is what drives the TRESA Taskforce.

With Phase 3 on the horizon, I am pleased to present OREA's latest whitepaper, *Continuing to Raise the Bar for Real Estate in Ontario*. It contains a series of policy proposals that OREA will be recommending to the Government of Ontario, building off our previous recommendations around professional standards, ethics, and consumer protection.

Complacency is the death of progress. As a leader, you cannot get comfortable. You always have to push yourself. We need to continue raising the bar to keep Ontario as the leader in North America for real estate standards.

We know that we are on the right track and won't stop until we have a TRESA that works for consumers and REALTORS®.

Yours sincerely,



Ray Ferris

2024 TRESA TASKFORCE CHAIR



EXECUTIVE SUMMARY

In 2016, the Ontario Real Estate Association (OREA) put forward a vision to raise the bar on consumer protection and make Ontario the leader in North America for professional standards. The government listened to the REALTOR® voice and in 2020, the *Trust in Real Estate Services Act* (TRESA) passed unanimously in the legislature and officially became law. The Government of Ontario staggered implementation into three phases.

Phase 1 came into effect October 1, 2020; and allowed for personal real estate corporations (PRECs), and new advertising terms for registrants and brokers, including use of 'REALTOR®'.

In December 2023, **Phase 2** regulations came into effect, and a new era of professionalism and consumer protection was ushered in as TRESA officially replaced the outdated *Real Estate and Business Brokers Act* (REBBA). Changes included tougher enforcement for bad behavior, a modernized REALTOR® Code of Ethics, a new provision allowing sellers the option of a transparent offer process, and introduction of a new 'designated representation' model, as recommended by OREA.

Although the Ontario Government implemented many of OREA's key proposals during the first two phases, there is still work to do during the third and final phase of TRESA implementation.

OREA is already preparing for this next phase of TRESA regulatory work by bringing forward bold ideas to improve consumer protection, train better registrants, penalize the bad actors in the industry, and get more oversight over the regulator.

Continuing to Raise the Bar for Real Estate in Ontario is OREA's latest whitepaper, and it examines the most critical issues that need to be addressed moving forward.

TRESA PHASE 1

- REALTORS® can form PRECs
- New descriptors and advertising terms, including the use of 'REALTOR®'

TRESA PHASE 2

- Allows sharing contents of offers, at seller direction
- Introduces 'designated representation' as a model
- Preserves consumer choice by stopping a ban on multiple representation
- New definitions, disclosures, and terms
- Introduces 'self-represented party'
- An updated Code of Ethics
- Strengthening the Real Estate Council of Ontario (RECO)'s discipline process
- A new *RECO Information Guide* for consumers



SECTION 1

IMPROVING CONSUMER CONFIDENCE WITH INCREASED PROTECTIONS

Eliminate the Auctioneer Loophole: Eliminate the two-tiered system of consumer protection by requiring auctioneers who transact real estate to register with RECO.

Enhanced Transparency and Disclosures for Latent Defects: Amend TRESA to introduce new rules regarding latent defects and disclosure obligations to ensure consumers have access to all the information they need to make an informed decision when purchasing a home.

Enhanced Disclosures for Guaranteed Sales: Introduce new rules, including written disclosure for guaranteed sales, ensuring the terms and conditions are clearly outlined to the consumer.

Make RECO Subject to Ombudsperson Oversight: Ombudsperson oversight would help instill registrant and public confidence in the regulator's programs and processes.



SECTION 2

RAISING THE BAR ON EDUCATION AND PROFESSIONALISM

A Better, More Practical Education: Introduce a new two-year articling and mentorship requirement for new registrants, which will ensure Ontario's new REALTORS® are better prepared and equipped to handle the market's evolving demands.

Allowing Specialty Certification Designations: The government should enact section 8 of TRESA to permit registrants to use specialty certification designations. Possible designations could include commercial, waterfront/recreational, agricultural, or condominiums.



SECTION 3

DETERRING BAD BEHAVIOUR WITH STRONGER PENALTIES

Allow Administrative Monetary Penalties

For Minor Infractions: Proclaim the necessary legislative and regulatory measures to permit administrative monetary penalties (AMPs) for black-and-white, indefensible actions, like advertising violations.

Eliminate the Financial Incentive for Bad

Behaviour: Grant RECO the ability to order disgorgement, thereby forcing a registrant to repay all, or some, of the profits earned through a breach of TRESA and its Code of Ethics, ensuring that any proceeds from such breaches are returned to the victims and impacted parties.

Strengthen the “Cooling Off” Period for

Registration Revocations: Considering revocations only occur in extremely serious cases, the mandatory “cooling off” period should increase to two years less a day before the offending individual can reapply for registration following a major violation of TRESA.



THE PATH TO TRESA

- 2009** ● **A GOAL IS SET**

OREA set a goal to modernize REBBA, and began an internal review of the legislation while lobbying the Government of Ontario on needed reforms.
- 2016** ● **FACING THE ISSUE HEAD ON**

The media took a scathing look at real estate agents in Ontario and British Columbia. OREA faced the issue head on and led the charge for higher industry standards and REBBA reform.
- 2017** ● **ONTARIO GOVERNMENT AGREES TO WORK WITH REALTORS®**

The Government of Ontario announced a review of REBBA in April, and OREA struck the REBBA Review Task Force to conduct a top-to-bottom review of the legislation over the next 16 months.
- 2018** ● **GETTING TO THE HIGHEST PROFESSIONAL STANDARDS IN NORTH AMERICA**

To ensure Ontario REALTORS® are North American leaders when it comes to professionalism and ethics, OREA's Task Force generated four whitepapers, 4,000 points of feedback, and 45 proposals, which were used to inform OREA's recommended modernizations to REBBA.
- 2019** ● **OREA'S VISION FOR A MODERN REBBA**

28 recommendations for REBBA reform were put forward by OREA, with the goal of ensuring that the Ontario REALTOR® by your side during one of the largest financial transactions of your life has the highest professional standards, training, and modern tools in North America.
- 2020** ● **TRESA PASSES UNANIMOUSLY WITH ALL-PARTY CONSENT**

In February, TRESA passed unanimously. It is one of the few pieces of legislation in Ontario to receive bi-partisan support with positive and constructive debate in the Legislature. In October, Phase 1 regulations came into effect. REALTORS® are now allowed to form PRECs, and can use new descriptors and advertising terms, including 'REALTOR®'.

2021

● ENHANCING PROFESSIONALISM AND ETHICS

OREA worked closely with the Government of Ontario and real estate partners on the development of TRESA Phase 2 regulations, advocating for:

- An updated, “principle-based” Code of Ethics
- New definitions, disclosures and terms
- A new consumer Information Guide
- Strengthening RECO's Discipline Committee
- The option for a new, more transparent offer process
- Introducing Designated Representation

A discrimination provision was added to the Code of Ethics, explicitly requiring compliance with the Ontario Human Rights Code, following a recommendation made by OREA's Presidential Advisory Group on Diversity, Equity and Inclusion.

2023

● TRESA IS HERE!

On December 1, 2023, REALTORS® across Ontario entered a new era of professionalism as TRESA officially replaced REBBA, and Phase 2 regulations came into effect. TRESA makes Ontario a North American leader by ensuring the REALTOR® at your side during the largest financial transaction of your life has the highest professional standards, ethics, training, and modern tools in North America. Phase 2 also includes tougher enforcement for bad actors who break the rules and erode confidence in the profession.

2024

● CONTINUING THE WORK WE STARTED

Work on the third and final phase of TRESA regulations is underway. OREA has tabled several bold policy proposals for the Government of Ontario to implement, aimed at improving consumer confidence with increased protections, raising the bar on REALTOR® education and professionalism, and deterring bad behaviour with stronger penalties.



SECTION 1

IMPROVING CONSUMER CONFIDENCE WITH INCREASED PROTECTIONS

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We need to continue raising the bar to keep Ontario as the leader in North America for real estate standards.

Ray Ferris

2024 TRESA TASKFORCE CHAIR

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IMPROVING CONSUMER CONFIDENCE WITH INCREASED PROTECTIONS

The government's role in the housing market has always been to protect homebuyers and sellers against dishonest actors. This is why consumer protection is at the very core of TRESA. No matter who you are, where you live, or how you buy or sell a home, your provincial government will protect you against bad actors. OREA supports this underlying principle and is committed to continuing to work with the government in Phase 3 to tackle issues that put consumers at risk. This includes closing loopholes, more robust disclosures, and new oversight of the regulator.

AUCTIONEER EXEMPTION

RECOMMENDATION #1: Level the playing field for consumers by eliminating the two-tiered system of consumer protection in Ontario real estate by requiring auctioneers transacting properties to register with RECO.

Ontario's families deserve full confidence in the homebuying and selling process when making the biggest financial transaction of their lives. That includes trusting that the professional by their side adheres to the professional standards and ethics enforced by RECO.

Unfortunately, these professional standards are being undermined by an out-of-date exemption which some real estate "auction" companies use to sidestep oversight and avoid rules aimed at protecting consumers. Right now, auctioneers and auction companies can transact real estate without oversight, accountability, or requirement to adhere to the Code of Ethics.

This exemption dates back to the 1950s, when estate auctioneers would help farmers sell their properties at auction, alongside their livestock, equipment, and business. These antiquated rules still exist in TRESA, with potentially frightening implications for unsuspecting consumers trying to buy a home.

When it comes to government rules around real estate transactions, homeowners should be empowered to sell their property how they want, and homebuyers should have the time and space to make informed decisions. They should also have the right to expect that they will be protected against dishonest actors who can skirt rules because of a 70-year-old exemption. This is why the government needs to address the auctioneer exemption in TRESA Phase 3.

Two common problems with the auctioneer exemption put homebuyers and sellers at risk: phantom bidding and misrepresentation. If an auctioneer is exempt from registration, consumers have no recourse and no penalties for unethical behaviour.

Phantom bidders are non-legitimate prospective buyers who are planted to push bidding higher and create a false impression of more bids. Often, buyers have no way of knowing if participants in a virtual real estate auction are legitimate. Most often, bidders show up only as a “username” to others participating in the process. The Ontario Government expressed concern about phantom bids in 2015, but only focused on these types of bids in the traditional offer process. At that time, they introduced new rules which prohibited registrants from saying they had received an offer unless it had been in writing and signed by a purchaser. Registrants were also required to keep records of offers they received so they could be verified if someone had a complaint about the process.

This was an important consumer protection, but it was short-sighted to only focus on the traditional offer process and not include auctioneers. In Australia, where auctioneering real estate is more common, phantom bidding became such a problem that the government had to step in and introduce tough penalties.



Generally speaking, the other consumer protection issues that have come to the forefront in recent years with the growth of auction sites are misrepresentation and lack of recourse for both buyers and sellers.

OREA recommends eliminating the two-tiered system of consumer protection by requiring auctioneers who transact real estate to register with RECO.

You should not be allowed to trade in real estate, free of the oversight and ethical and professional requirements deemed crucial to protecting home and landowners, by simply adding an auction element to your activities.

The vast majority of OREA Members (nine in ten REALTORS®) support this proposal and feel that auctioneers should be required to register with the regulator to transact real estate in Ontario, according to a Member survey conducted by Environics on behalf of OREA in September.

Ontario is one of two provinces in Canada that do not currently have a regulatory framework to protect consumers using auctions to sell property. All other provinces have restrictions or rules governing the sale of property through an auction. For instance, Alberta requires a client to use a real estate brokerage to auction real estate or an auctioneer that holds a real estate broker's license from the Real Estate Council of Alberta (RECA).

When it comes to buying and selling your home, the stakes are high. Young families use their life savings to scrape together a down payment while seniors put in decades' worth of hard-earned home equity. The provincial government must take action to ensure all Ontarians who buy or sell

real estate, regardless of method, have the same level of consumer protection in place to protect their largest investment – their home.

The lack of regulation of real estate auctions has potentially frightening consumer protection implications, including:

- Buyers have no way of knowing if participants in a virtual real estate auction are legitimate.
- If an auction goes badly, consumers have very few remedies available to them: there is no independent body to complain to and no penalties in the event a consumer feels they were treated unethically.
- Real estate auction companies have no obligations to protect deposits — putting thousands of dollars at risk if the company goes bankrupt.
- Owners of real estate auction companies are not vetted for past criminal or fraudulent activity, which matters if they are helping to manage someone's life savings.

LATENT DEFECTS

RECOMMENDATION #2: Enhance consumer protection and confidence by introducing new rules and strict disclosure obligations around latent defects for sellers and their representatives.

Consumers should be confident that they have access to all the information they need to make an informed decision when purchasing a home. After all, it is the largest purchase they will ever make. Perhaps the basement leaks in the spring, or an addition was built without the appropriate permits; these defects should be disclosed.

- **Patent Defect:** A visible defect that is easy to see or observe.
- **Latent Defect:** Any physical defect hidden and not evident through a reasonable inspection that makes a property unsafe or uninhabitable.

There are two types of defects: patent and latent. A **patent defect** is a visible defect that is easy to see or observe. This might be a crack in the drywall or a broken window. A **latent defect** is a non-visible defect. Sellers are under no obligation to disclose patent defects. Courts have consistently ruled that it is “buyer beware” in real estate transactions, except for misrepresentation or fraud.

When it comes to latent defects, the Ontario Court of Appeal established legal precedent in 1979 with the case of *McGrath v. McLean*. The ruling stated that a seller was only required to disclose a latent defect if they were aware that they were hidden, if they rendered the house unsound, made it unfit for living, and if the defects existed. The caveat with this ruling is that the seller has no obligation to disclose the defect unless **all** exceptions outlined in the McGrath ruling are present. This is particularly concerning for consumers. Based on the McGrath precedent, sellers have no obligation to disclose defects or potential defects unless all exceptions are met.

Think about a first-time buyer who has done everything right. They saved for years and bought their dream home, only to find out a few months into owning the property that the foundation is cracked, and water enters the house whenever it rains. It will cost them \$20,000 to repair the foundation, money they do not have.

Their opinion on the property would have changed had they known about the defect. To make matters worse, even if the sellers knew about the crack, they could have made the case that they were not obligated to disclose it because the house was still sound and habitable. This is wrong.

Ontario consumers are entering into one of the largest financial transactions of their lifetime, and it is important there be legislative protections in place, shielding them from unscrupulous parties.

TRESA must be amended to include new rules regarding latent defects and disclosure obligations for sellers and their representatives. OREA believes that this should be addressed in Phase 3.

In Quebec, the Province's *Civil Code* includes disclosure requirements for latent defects, if they meet the criteria as outlined within the code.

In addition, other jurisdictions have supplemented the courts' guidance on disclosure rules. For instance, the New York legislature introduced the *Property Condition Disclosure Act* (PCDA), which requires sellers to make certain disclosures about the property before signing the purchase contract.

The PCDA requires a seller to complete a standard form disclosure statement that contains questions about the property, including:

- General information (ex. age, shared driveways or borders, easements, etc).
- Environmental (ex. flood plain, landfill, toxic spills, contains asbestos or lead pipes, etc).
- Structural (ex. water, fire, smoke, or insect damage, and the condition of the roof, beams, and other such elements).
- Mechanical systems and services (ex. utilities, water source and quality, sewers, drainage, flooding).

The disclosure statement also requires the seller to complete a checklist of systems or property components with known material defects.

The legislation clearly states that this is only about **known issues** and is not a substitute for any inspections or tests by the buyer.

DEFECT VS. STIGMA

There is a substantial difference between a defect and stigma. A **defect** is something that makes a home unsafe or uninhabitable, whereas a **stigma** is a matter of personal opinion. Stigmas should not be included in any disclosure requirements.

FACT: Tarion defect claims for new builds do not need to be disclosed to prospective buyers. A September 2024 CBC Investigates story recently exposed this loophole.

ENHANCED DISCLOSURES FOR GUARANTEED SALES

RECOMMENDATION #3: Curb bad behaviour while preserving consumer choice by introducing new rules, including written disclosures, for guaranteed sales.

Guaranteed sales are a marketing technique that some real estate agents use to sell a home. The agent will agree to purchase the home at a price agreeable to the seller if the listing does not sell in a certain timeframe. These details are confirmed before the listing agreement is signed. While most guaranteed sales agreements are done properly with clear disclosures and understanding by a home seller, there are situations which warrant new rules to enhance disclosure requirements to protect consumers.

REALTORS® believe that consumers should have the right to choose how they buy or sell a home. Life circumstances may dictate how a family transacts real estate and may warrant using a REALTOR® who offers a guaranteed sales program. Perhaps a growing family has purchased their next home and needs to sell theirs quickly, or there is a marriage breakup; situations like this occur in Ontario, and flexibility in TRESA is critical.

OREA recommends introducing new rules, including written disclosure, for guaranteed sales.

We want to ensure that the terms and conditions are clearly outlined to the consumer at the forefront of any listing agreement. We want to prevent bait-and-switch situations where sellers do not understand their obligations or the agreement's specifics. For example, agreements may have parameters around the listing price being decreased throughout the selling process, or repairs and upgrades may be required before the sale.

Additional disclosures should also be required concerning the advertising of guaranteed sales programs. Guaranteed sales advertisements often do not include how the brokerage calculates the price. The implication is that the purchase price is based on the listing price or the property's market value, but that is not always true. Sometimes, the legal fees, carrying costs, and commission of the resale are deducted from the purchase price, and that is not required to be disclosed.

Alberta has set clear rules about the requirements for offering and entering into a guaranteed sales agreement. First, only a brokerage may offer a written guaranteed sale agreement. There are rules around the contents of the agreement and what must be included. Ontario should look to Alberta as an example of what can be done with guaranteed sales programs to enhance consumer protection.

BETTER REGULATOR OVERSIGHT

RECOMMENDATION #4: Make RECO subject to ombudsman oversight, bringing the regulator in-line with 1,000 other government agencies and ensuring both registrants and consumers have the utmost confidence in Ontario's real estate market and its regulation.

Since 1975, the Government of Ontario has employed an Ombudsman to serve as a neutral party in investigating public complaints concerning the government. The Ombudsman is an officer of the Ontario Legislature whose mandate is to ensure fairness, accountability, and transparency in the public sector.

The Ontario Ombudsman oversees 1,000 government bodies but does not oversee RECO. Other arms-length government agencies, such as the Financial Services Regulatory Authority of Ontario (FSRO), fall within the Ombudsman's mandate. In addition, the Real Estate Council of British Columbia and Organisme D'autoréglementation du Courtage Immobilier du Québec (OACIQ) are within the mandate of their respective ombudspersons.

Registrants and consumers have expressed strong concerns about how their cases are handled at RECO, including frustrations with long delays. They do not have an independent party they can contact

to ensure fairness, accountability, and transparency at RECO. This is why **OREA recommends making RECO subject to the oversight of an ombudsperson.**

Critics of this proposal will try to argue that an internal appeal process at RECO already exists. But how likely would an investigation yield any fruit if RECO were examining itself? An impartial investigation is not possible in its current form. In 2022, the Auditor General conducted a value-for-money audit of RECO and, in her report, noted that "there is no effective oversight of RECO" and that "effective oversight of the real estate industry is critical to ensure that consumers are protected."

The majority of OREA Members (60 percent) surveyed by Environics believe that the regulator should be subject to ombudsperson oversight, while just ten percent indicated they disagree with the proposal.

At present, consumers or registrants who interact with RECO and are unsatisfied with the services they provide have no recourse. Ombudsman oversight would ensure greater public confidence in RECO's programs and processes.

SECTION 2

RAISING THE BAR ON EDUCATION AND PROFESSIONALISM

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A stronger education program will better prepare REALTORS® for our increasingly complex real estate market and the challenges of helping families through the biggest purchase of their lives.

Rick Kedzior

2024 OREA PRESIDENT

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RAISING THE BAR ON EDUCATION AND PROFESSIONALISM

Education is integral to the real estate industry. It is the foundation on which real estate professionals build their knowledge and skills to support buyers and sellers. Families should be able to trust that the person they choose to buy or sell their home is trained to the highest standard and has ongoing education to maintain their registration.

OREA believes that a stronger education program will better prepare Ontario real estate agents for our increasingly complex market and the challenges of helping families through the biggest purchase of their lives. Continuously improving education standards will help ensure the REALTORS® of tomorrow are even more knowledgeable and capable of providing high-quality service right from the start.

A BETTER, MORE PRACTICAL EDUCATION

RECOMMENDATION #5: Introducing a two-year mentorship and articling requirement for new registrants, providing practical training and better equipping agents to handle the evolving demands of a modern market.

Prospective registrants should be able to count on the training they receive to position them for

a successful career. The unfortunate reality is that entrance education has weakened over the years, leaving new registrants unprepared for the complexities of a modern real estate market. What was once an exam with essay-style questions and real-life examples has become a simple multiple-choice test. It is unreasonable to expect that one, short multiple-choice exam will prepare a new REALTOR® for the realities of drafting an offer or negotiating on behalf of their client.

Entrance education is integral to the real estate profession, and Ontario should strive to implement requirements that help attract high quality prospective registrants who go through rigorous training and education. The lack of practical knowledge is very evident in the industry, and ensuring Ontario's newest registrants receive appropriate sales training is critical to ensuring consumer confidence in real estate.

When surveyed by Environics, two-thirds (64 percent) of OREA Members agreed that the new entrance education for REALTORS® has created a gap in practical knowledge, with 37 percent feeling strongly that this is the case. Just nine percent of Members disagreed.

An articling program is a tool that can address the practical knowledge gap and create well-informed, highly competent, and practice-ready agents/brokers. However, the current articling program falls short for those entering the business.

A new registrant begins a two-year articling segment after successfully completing the pre-registration education and registering with RECO. During the articling phase, three additional courses (35 hours total) must be completed over the two years. This includes courses like *Compliance*, *Working in Real Estate: Ownership Alternatives and Complexities* or *Real Estate as an Investment Strategy: Residential Properties*. While these are excellent topics for experienced REALTORS® undertaking continuing education, they miss the mark for new graduates who are helping consumers for the first time.

Across the industry, a gap has grown in practical knowledge, hands-on experience, and sales training for new registrants. This is primarily due to the current curriculum focusing on regulation and theoretical learning instead of real-life experience. While learning about the obligations under TRESA is important, the existing articling program should be strengthened to emphasize direct brokerage involvement and practical experience, like drafting an offer or negotiation tactics. These are tangible, hands-on tools that, if taught, can help REALTORS® better serve buyers and sellers across the province.

OREA would like to see TRESA amended to introduce a **two-year articling and mentorship requirement for all new registrants**.

The concept of formal mentorship for registrants is not new in North America. States like Michigan and New York have regulatory requirements that require a real estate agent to have a sponsoring broker before becoming licensed. The sponsorship requirement ensures that new entrants have a broker as a mentor or guide to provide them with professional oversight to help them adhere to ethical and legal standards as they navigate the real estate landscape.

The difference between OREA's recommendation and those in place in Michigan and New York is the length of the articling and mentorship period.



SPECIALTY CERTIFICATIONS

Michigan and New York are indefinite and require all licensees to have a sponsor, not just new entrants. OREA believes that this can place an unwanted burden on brokers. As more registrants enter the industry, a brokers' time and attention will be divided. As such, it should only be a requirement for new entrants during their first two years of registration.

Nearly nine in ten OREA Members would be supportive of a mandatory articling period for new agents, with four in five Members indicating they believe a mentorship program should be a condition of membership.

The concept of articling and mentorship is utilized in other industries across Ontario. From articling lawyers (ten months) to apprentices in the skilled trades (three to five years), many professions require new entrants to work and learn on the job. This allows them to not only develop their skill but get to know the business under the direction of an experienced professional.

A more practical articling and mentorship period will lead to better-prepared professionals who are well-equipped to handle the evolving demands of a modern real estate market.

RECOMMENDATION #6: The Ontario Government should enact section 8 of TRESA and permit registrants to attain specialty certification designations, an option that would allow agents to market themselves as specialists in their area of certification – such as waterfront/recreational, agricultural, or condominiums.

Ontario's real estate market is diverse, and registrants must have a similarly diverse skill set and expertise. Some registrants across the province have taken additional training and education to become experts in a particular property type. For example, a registrant in Haldimand County with expertise in waterfront and recreational properties, a REALTOR® in Renfrew who has taken additional training to market rural and agricultural properties, or an agent in rapidly growing London with a certification in condominium sales. Certifications and designations acknowledge a registrant's experience and expertise. Registrants who have gone the extra mile for their buyers and sellers should be commended.

OREA urges the government to enact section 8 of TRESA, allowing registrants to use specialty certifications. This will protect consumers by helping them identify real estate agents who have obtained professional qualifications and have developed an area of expertise. Ongoing education also incentivizes registrants to continue their education and training.

Specialty certifications are not intended to be prohibitive or prevent registrants from selling any property in Ontario. Rather, the designation would help consumers identify registrants who have achieved increased professional standards and give those who go above and beyond the ability to advertise such achievements. Two-thirds of

Ontario REALTORS® support the implementation of specialty certifications. When asked about which specialty certification types should be considered, the most popular suggestions were those for commercial and agricultural/rural properties.

Ontario would become the fourth province in Canada to allow specialty designations. British Columbia, Alberta, and Saskatchewan have specialty license designations earned through entrance education. All three provinces have residential and property management designations, with Alberta and Saskatchewan also offering commercial and farm/rural licenses. British Columbia offers a strata manager license. The difference between OREA's proposal and the specialty designations in the other three provinces is that specialty certifications in Ontario would be earned through continuing education instead of entrance education.





SPECIALTY CERTIFICATIONS ARE NOT NEW TO ONTARIO

The Law Society of Ontario has a Certified Specialist Program that allows lawyers to become recognized for specializing in a particular field of law.

To qualify for specialization, a lawyer must demonstrate that they have been engaged in the practice of law for at least seven years and have had “substantial involvement” in the specialty area in which they are applying within the last five years. Each specialty has a specific set of knowledge, skills, and experience criteria that an applicant must meet in order to receive a certified specialization.

In addition, all applicants for any specialization must demonstrate that they have completed a total of 150 hours in the last five years towards their professional development. Self-study hours include, but are not limited to: teaching or being a guest lecturer on the

specialty area, completing post-graduate or other studies in the specialty area, and participating as an active member of any organization related to the specialty area. Lawyers may apply for certification for up to two specialty areas.

Applicants have to submit written references from a referee lawyer that has direct knowledge of the applicant’s work in the specialty area during the last five years and demonstrate that they have upheld all professional standards within the last five years.

Certification is renewed annually by filling a Certification Annual Report that attests to compliance with the Administrative Policies Governing the Certified Specialist Program. The Certified Specialist Program can revoke the specialist status when warranted.

SECTION 3

DETECTING BAD BEHAVIOUR WITH STRONGER PENALTIES

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OREA refuses to stand idly by while a few individuals take advantage of consumers and tarnish the reputation of thousands of hard-working real estate professionals.

Rick Kedzior

2024 OREA PRESIDENT

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DETECTING BAD BEHAVIOUR WITH STRONGER PENALTIES

Consumer confidence in the real estate market is essential to the economy's success, the ability of Ontarians to achieve the dream of homeownership, and the success of OREA Members in their businesses. This is impossible if consumers question the industry because of a few bad apples. When one unethical agent is caught breaking the law, it erodes consumer confidence in the home buying and selling process. OREA refuses to stand idly by while a few individuals take advantage of consumers and tarnish the reputation of thousands of hard-working real estate professionals.

ALLOWING ADMINISTRATIVE MONETARY PENALTIES FOR MINOR INFRACTIONS

RECOMMENDATION #7: Introduce new rules for for an AMP regime to address minor black-and-white infractions, including a requirement for fiscal reporting related to the collection and use of fines.

The existing disciplinary process at RECO for minor infractions is impeded by red tape that shifts the regulator's focus away from egregious breaches of TRESA and the Code of Ethics. Instead of wasting

disciplinary resources on a lengthy investigation into a minor infraction, **RECO should be allowed to use AMPs for black-and-white, indefensible actions, like advertising violations.** AMPs are a good intermediary measure between a simple warning, and more serious enforcement tools like registration revocation, and will lead to a more efficient disciplinary process that ultimately benefits consumers.

TRESA already contains language in section 43.2 authorizing the Registrar to implement an AMP regime. However, that section still needs to be proclaimed into law by the Lieutenant Governor in Council (LGIC). **OREA calls on the government to proclaim all necessary legislative and regulatory measures on AMPs.** While we support AMPs, guardrails must be implemented, including a requirement for fiscal reporting related to the collection and use of fines.

British Columbia and Quebec both use AMPs to address minor or moderate non-compliance. In British Columbia, there are six categories of AMPs, ranging in fines from \$1,000 (business infractions with low risk of harm to consumers) to \$10,000 (contraventions related to licensing requirements).

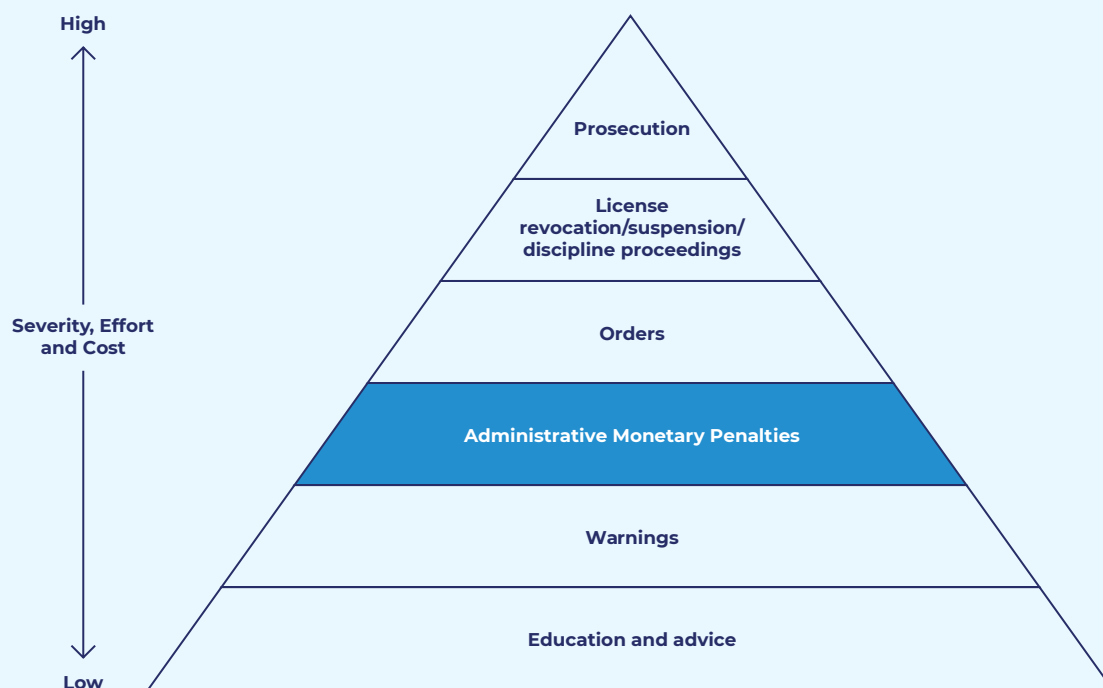
AMPs are already in use within other professions and industries in Ontario, including energy marketing and retail services who violate rules of conduct, minor non-compliance on payday loans (i.e. failing to provide required loan dates), and for both minor and serious environmental infractions.

The use of AMPs is black and white for Ontario REALTORS®: nearly 80 percent of OREA Members support the use of AMPs, while just two in ten say they are opposed.

In Ontario, AMPs for minor infractions could have a limit of up to \$2,000 for bad actors who commit minor, indefensible violations of real estate regulations, allowing RECO's disciplinary resources to focus on the profession's worst offenders.



EXAMPLES OF ADMINISTRATIVE MONETARY PENALTIES IN ONTARIO



ELIMINATE THE FINANCIAL INCENTIVE FOR BAD BEHAVIOUR

RECOMMENDATION #8: Grant RECO the ability to order disgorgement, thereby forcing a registrant to repay all, or some, of the profits earned through a breach of TRESA and its Code of Ethics, ensuring that any proceeds from such breaches are returned to the victims and impacted parties.

The effectiveness of set fines as a deterrent to unethical behaviour has eroded. For many of those who willingly break the rules, these fines are the cost of doing business. Even with fines being increased in TRESA to \$50,000 for an agent and \$100,000 for brokerages, there is still a financial incentive for bad behaviour. Depending on the transaction and remuneration received, fines may not cover the profits earned from unethical activity.

OREA believes that there is a need to eliminate all financial incentives for bad behaviour, including by granting RECO the ability to order a registrant to repay all or some of any financial gain resulting from a breach of the TRESA Code of Ethics, which is referred to as 'disgorgement'. These new powers would be administered under RECO's Complaints, Compliance & Discipline (CCD) process.

Ontario REALTORS® also believe that in order for the disgorgement process to be impactful and as fair as

possible, the fines and proceeds of these breaches must be returned to the victims and impacted parties – rather than going into RECO revenues. 77 percent of OREA Members are supportive of allowing the regulator to claw back and return commissions gained through unscrupulous or illegal behaviour.

The disgorgement penalty is used primarily by securities commissions across North America, including the Ontario Securities Commission. As buying or selling a home is one of the largest financial transactions most people will make in their lives, the stakes are even higher when unsuspecting families are defrauded by unethical behaviour. Without a formal mechanism to seek financial remediation outside, Ontarians are left without resolution or forced to pursue a lengthy and expensive legal process. Given the parallels between investments/securities and real estate, the government should expand disgorgement powers to RECO. Adding disgorgement to the penalties that the regulator has at their disposal will deter unethical behaviour for all levels of infractions and breaches of TRESA.

STRENGTHEN THE “COOLING OFF” PERIOD FOR REGISTRATION REVOCATIONS

RECOMMENDATION #9: Increase the mandatory “cooling off” period following a registration revocation to two years less a day, before the offending individual can reapply following a major violation of TRESA.

Most agents/brokers are honest, hardworking individuals who put the interests of their clients at the forefront of everything they do. But like in all professions, a small number of bad actors act unethically and cast a negative light on the entire industry. These individuals need to be held accountable to their peers and consumers. Anyone who would compromise the integrity of

the real estate profession through a major violation of TRESA should be held accountable for their actions. These bad actors undermine consumer confidence in registrants. Individuals can re-apply for registration just one year after RECO decides to revoke their registration.

Considering revocations only occur in extremely serious cases, **OREA is recommending that the mandatory “cooling off” period increase to two years less a day before the offending individual can reapply for registration following a major violation of TRESA.**



CONCLUSION

Overhauling legislation governing an entire profession is a massive undertaking, with real estate reform work spanning several years since the Government of Ontario agreed to a review of REBBA in 2017. OREA tabled 28 recommendations in 2019, designed to ensure Ontario REALTORS® are North American leaders when it comes to professionalism, ethics, and training.

Thanks to OREA's advocacy, many of these changes were included in Phase 1 and 2 of TRESA, raising the bar for professional standards in real estate across North America.

But there is more work to be done, and Ontario REALTORS® are calling on the Government of Ontario to build off previous recommendations around professional standards, ethics, and consumer protection; further improving professionalism and increasing protections for buyers and sellers in three key areas:

1. Improving consumer confidence with increased protections, by eliminating the auctioneer loophole, enhancing transparency and disclosures for latent defects, enhancing disclosures for guaranteed sales, and making RECO subject to ombudsperson oversight.

2. Raising the bar on education and professionalism, through a better, more practical education for agents that includes a two-year articling/mentorship period and allowing for specialty certification designations.

3. Deterring bad behaviour with stronger penalties, by allowing AMPs for minor infractions, eliminating the financial incentive for bad behaviour, and strengthening the “cooling off” period for registration revocations.

With these additional recommendations implemented during Phase 3 of TRESA, Ontario families will be able to have peace of mind knowing that the REALTOR® at their side during one of the largest financial transactions of their life is professionally trained to the highest standard, with ongoing education requirements to maintain their registration. Buyers and sellers would also enjoy greater confidence in Ontario's real estate landscape, thanks to the elimination of dangerous loopholes, and increased regulator oversight and accountability alongside new enforcement mechanisms and penalties for bad actors who break the rules.

Buying or selling one's home deserves the expertise of a real estate agent with the highest professional standards, and OREA is proud of the key role Ontario REALTORS® have played in bringing about historic changes under TRESA.

CONTINUING TO RAISE THE BAR FOR REAL ESTATE IN ONTARIO: A WHITEPAPER FOR TRESA PHASE 3

MEMBER INSIGHTS

The OREA Member insights expressed in this report are based on results from an online survey conducted by Environics Research on behalf of OREA between September 13 and September 26, 2024. Nearly 90,000 Members received the survey via email invitation containing a unique link. A total of 3,050 Members completed the survey, resulting in a margin of error of 1.8 percent.

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