



# Questions & answers

## related to REBBA 2002 and the consent agreement

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The following questions and answers are related to the Consent Agreement between the Canadian Real Estate Association (CREA) and the Commissioner of Competition filed with the Competition Tribunal on October 25, 2010 and the *Real Estate and Business Brokers Act, 2002* (REBBA 2002).

This document will be updated as additional questions may arise in the coming weeks.

### **The Consent Agreement**

Under the Agreement, the CREA must allow “mere posting” of a listing by a broker or salesperson who is a member of CREA who has chosen or agreed not to provide services to a seller other than submitting the listing for posting on the MLS® system.

### **Application in Ontario**

Regardless of the terms of the Consent Agreement, all persons registered to trade in real estate in Ontario must comply with the *Real Estate and Business Brokers Act, 2002* and its Regulations including the Code of Ethics (Ontario Regulation 580/05).

**Question:** *As the listing brokerage, if I provide a mere posting service on MLS® and do not provide any other services, am I obligated to verify the accuracy of the information in the listing?*

**Answer:** Yes, the listing brokerage is obligated to verify the accuracy of the information before posting on MLS® and is responsible for its accuracy.

**Question:** *Can I opt out of any of the requirements under REBBA 2002 or the Regulations?*

**Answer:** No, REBBA 2002, including the Regulations, is provincial law and no one can opt out of a provincial statute or regulation.

**Question:** *As a buyer representative, am I obligated to inform a buyer of properties that meet his/her criteria when the listing brokerage is not offering a commission or the seller is offering a commission lower than I expect?*

**Answer:** Yes. As a registrant you are obligated to inform buyers of properties that meet their criteria regardless of the amount of commission or other remuneration, if any, being offered. See Section 19 of the Code of Ethics (Ontario Regulation 580/05).

**Question:** *If a seller is not being represented by a brokerage, except for a mere posting on MLS®, and I, as a buyer's representative, have an offer that I wish to present to the seller, how do I ensure the details of my client's offer remain confidential in a situation where the seller obtains multiple offers on the property?*

**Answer:** You can attempt to have the seller enter into an agreement regarding the confidentiality of the offer; however, the unrepresented seller is not obligated to agree. Please remember that REBBA 2002 and the Regulations do not govern the conduct or actions of non-registrants.

**Question:** *If I merely post a property on MLS® and do not provide any further services to the seller, should I complete a Trade Record Sheet?*

**Answer:** Yes. See sections 17 (Ontario Regulation 579/05) and 30 of the Code of Ethics. You should keep a record of the listing agreement, the listing information, receipt of remuneration and any other documents pertinent to the property.

**Question:** *What if I am representing the buyer?*

**Answer:** If you are the buyer's representative, you are required to make a Trade Record Sheet where your client enters into an agreement of purchase of sale. See Section 17 (Ontario Regulation 579/05).

**Question:** *As a buyer's representative how will I know whether I can contact the seller directly?*

**Answer:** Refer to the listing for clear direction and if there is any question, contact the listing brokerage directly and obtain written consent to contact the seller. See Section 7 of the Code of Ethics (Ontario Regulation 580/05).

**Question:** *Where a listing broker merely posts a property for sale and my buyer wants to submit an offer to purchase, who is the deposit payable to?*

**Answer:** It is negotiable between the buyer and seller. You will want to inform the buyer of RECO's insurance program which provides consumer deposit protection when a registrant holds a deposit.

**Question:** *In a mere posting situation am I required to get the permission of both sellers and buyers of a property before I can advertise the sale?*

**Answer:** Registrants are required to obtain permission of both buyers and sellers before advertising a sale. (Please refer to the Advertising Matters column in the Fall 2010 edition of For the RECOrd for further information.)

**Question:** *If I have an agreement to merely post the property on MLS® that includes a payment to me of a flat fee and the seller at a later time, within the term of the agreement, decides they want me to provide other services on the same property, what remuneration arrangements can be made?*

**Answer:** If a flat fee was charged for a mere posting a registrant could negotiate an amendment to the listing agreement to provide further services for further flat fees, if agreed to by the seller.

**Question:** *What if I have further questions?*

**Answer:** If you have further questions, please contact RECO at [asktheregistrar@reco.on.ca](mailto:asktheregistrar@reco.on.ca).