



Annual Report

December 31, 2016

Message to Minister

The Honourable Michael De Jong
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 December 31, 2016.

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 just over \$1 million in compensation to consumers.

As a not-for-profit entity, RECFC is governed by a five-person Board of Directors, appointed by the Real Estate Council of British Columbia and the British Columbia Real Estate Association. RECFC employs an Executive Officer to administer the Fund.

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 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,



Paul Penner
Chair elect

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 is important to note that in none of the foregoing circumstances does the RECFC deliberate regarding a payment to a member of the public. It is simply required to make whatever payments might be certified regarding compensable losses determined by the other entities. It should be noted that the legislation does grant the RECFC intervention rights regarding Court and Discipline Committee proceedings, but even if the RECFC exercises those rights, that does not entail any “deliberations” by the RECFC. 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.

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 25 (2015: 22) cases totalling approximately \$1,547,700 (\$2015: \$ 1,374,000).

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. 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. 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 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.

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 the initial grants made by the Council totalling \$1,000,000 and \$600,000 by the Real Estate Foundation of BC. In addition, through the payment of their annual assessments, real estate licensees have contributed over \$10 million.

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 Finlayson - Chair

John Finlayson served as an elected member of the Real Estate Council of BC for six years, is former President of Vancouver Island Real Estate Board and also served as a director of REALTORlink and the Canadian Real Estate Association MLS Technology Committee. John was appointed by the Real Estate Council and served as Chair for 2016. John has been a licensed realtor for 32 years and is an associate broker with Pemberton Holmes Ltd. in Duncan.



Paul Penner - Vice Chair/Chair Elect

Paul Penner is past President of the Fraser Valley Real Estate Board and has served as a director of the BC Real Estate Association. He is an instructor with BCREA. Paul was appointed as a director by the BC Real Estate Association. He was first licensed as a Realtor in 1985 and operates out of RE/MAX Little Oak Realty in Abbotsford.



Ann Petrone

Ann Petrone served as an elected member of the Real Estate Council of BC for five years and is Past President of the Okanagan Mainline Real Estate Board. She was appointed by Council and served two years as RECFC Chair. Ann has been a licensed realtor for over 24 years and operates out of Re/Max Kelowna.



Dougal Shewan

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 has been a licensed realtor since 1976. He is the founder, President, and CEO of VWR Capital Corporation.



Wayne Strandlund

Wayne Strandlund is Chancellor and Chair of the Board of Governors of Royal Roads University. He is past President of the Victoria Real Estate Board and the BC Real Estate Association and served as an elected member of the Real Estate Council of BC. Wayne was appointed by the BC Real Estate Association and has been a licensed realtor since 1968. He is the founder, president and CEO of Fisgard Asset Management Corporation in Victoria.

Activities During 2016

During the past year, the RECFC has been successful in continuing to build a solid financial reserve as a result of the assessments paid by licensees and the returns on the investments. Notwithstanding uncertainties in the financial investment markets, income from the Fund's investments remained strong in 2016 while assessments from licensees increased over the prior year.

In the current year, RECFC budgeted \$385,000 for claims, and paid out \$173,702. In the prior year, RECFC budgeted \$385,000 for claims and paid \$212,321.

None of the claims paid out in prior years were recovered in the current year.

During the year, the government of BC removed the real estate industry's ability to self-regulate, and appointed a new board of directors to the Real Estate Council of BC ("Council"). These changes resulted in Council becoming a government reporting entity. At year end, the Corporation's Board was assessing the impact of these changes on its reporting requirements for 2017.

Financial Summary

During 2016, RECFC collected \$1,630,000 in assessments (2015: \$1,489,000) and incurred operating expenditures of \$349,000 (2015: \$373,000). The decrease in operating expenditures was primarily due to decreased legal and hearing costs related to claims. There was a net surplus of \$1.7 million at year end (2015: \$1.2m).

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

Contact Us



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