

A Guide to RECBC's Consent Order Process

Purpose

This guide is intended to help licensees understand consent orders, consent order proposals and the proceedings of the Consent Order Review Committee of the Real Estate Council of BC (RECBC).

RECBC may at its sole discretion amend this guide from time to time as clarifications and changes become necessary.

Independent Legal Advice

If you have received a notice of discipline hearing from RECBC, you have the right to be represented by a lawyer. RECBC urges you to hire a lawyer to give you independent legal advice about the disciplinary process, including the allegations contained in a notice of discipline hearing and the contents of a consent order proposal.

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Understanding Terminology: Consent Orders, Consent Order Proposals and Consent Order Review Committees

The *Real Estate Services Act* (RESA) allows licensees who have received a notice of discipline hearing, and who wish to admit to the allegations in the notice, to make a written proposal to RECBC to conclude the disciplinary process by way of a consent order.

Consent orders (COs) are not informal settlements of discipline matters; they result in formal discipline orders. COs are published and become part of a licensee's public discipline record.

Section 41 of RESA establishes the basic process for COs:

- Under section 41 of RESA, licensees may, prior to a discipline hearing date, provide RECBC with a consent order proposal (COP) that sets out agreed facts, admissions and proposed penalty terms.
- Under the COP, the licensee consents to RECBC making an order under section 43 of RESA, the CO, without conducting a discipline hearing.

Sections 40 and 41 of the RESA require that a notice of discipline hearing be issued prior to RECBC receiving a COP from a licensee. Section 43 provides the range of penalties possible in consent and other disciplinary orders. RECBC's [Sanctions Guidelines](#) indicate the considerations in assessing penalties.

Though a COP is formally the licensee's proposal, RECBC lawyers may prepare a draft COP for consideration. This is a courtesy only and is generally the most efficient and effective way to proceed, given RECBC lawyers' experience and expertise.

Once RECBC lawyers and the licensee have agreed on the facts, the misconduct and the proposed discipline penalty, the COP will be reviewed by a discipline committee of the Council known as the Consent Order Review Committee (CORC).

Consent Order Review Committee

Approximately once per month RECBC holds a CORC session. At each session the committee members typically review several COPs one at a time. The CORC may accept or reject a COP. If a COP is accepted, no formal discipline hearing will be held on that matter

A CORC cannot vary the COP terms; it has no discretion under RESA to do so. A CORC can only accept or reject a COP exactly as proposed. However, if it rejects a proposal, it may suggest terms it expects would be acceptable in an amended version of the COP.

A CORC only considers the agreed facts, admissions and proposed penalty terms of the COP placed before it. It does not go behind the terms and admissions of the COP, seek to elicit more evidence or

facts, or ask about any negotiations or compromises between the licensees and RECBC lawyers. A CORC may, however, at its discretion, receive and consider additional information of a contextual nature, such information typically forming part of RECBC's or the public record, including:

- licensee's licensing history;
- licensee's disciplinary history (if any);
- nature and status of any related civil or criminal legal proceedings; and
- effect of any proposed penalties on other licensees (e.g. whether there are other managing brokers to step in if the managing broker or licensee in question is suspended).

Who Sits on the CORC?

A CORC is made up of a combination of members of Council and possibly non-Council members appointed from approved rosters of lawyers and real estate industry professionals. For each CORC session, a CORC consists of a Chair and at least two other panel members, the majority of whom must be current members of Council. The membership of a CORC will vary for each CORC session.

The Chair or Vice-chair of Council or RECBC staff with delegated authority appoints the members of the CORC and its Chair.

If members of a CORC have a conflict of interest with respect to a matter scheduled for a CORC session, they may not review that matter. For instance, they may choose not to review a COP if they have a personal acquaintance or connection with the licensee or an associate of the licensee or the brokerage in question.

If a COP is rejected, the members of the CORC will not, without the consent of the licensee and RECBC lawyers, sit on a discipline hearing panel in the same matter.

Who Can Attend CORC Sessions

Licensees and/or their lawyers or real estate professionals and/or their personal representative may attend the CORC session when their COP is presented. The general public is excluded.

You may not have both a lawyer and a personal representative present; it is one or the other. Your lawyer or personal representative will usually speak for you.

You may also be accompanied by someone else at the CORC session if you need personal support or language assistance.

Your personal representative must not be involved in the matter themselves. For instance, your personal representative must not be also charged in relation to the same incidents or a potential witness if the matter proceeds to a disciplinary hearing.

RECBC may disapprove and exclude representatives or persons for personal support.

It is optional for you to attend the CORC session when your COP is presented. Whether or not you decide to attend, RECBC lawyers will present the COP.

If you, your lawyer, representative or personal support person wish to attend the CORC session, you must give at least seven days prior notice to RECBC.

Contact the RECBC lawyer assigned to the matter, and provide the contact information of your lawyer, representative or person for personal support.

If you require any special accommodation or wish to participate remotely by video or dial-in, you must include your request at the time you give notice that you will be attending the CORC session.

If you, your lawyer or your representative is not available when the COP is called, whether in person or remotely by video or dial-in, the matter will proceed regardless.

CORC session dates are not negotiable or moveable at your request. If you wish to attend but cannot, you are welcome to send a lawyer or personal representative, but at least seven days prior notice to RECBC is required, as above.

Steps to Take Before Attending CORC

Before attending the CORC session, you and your lawyer or personal representative may:

- Review the disclosure provided to you about the discipline file.
- Review any correspondence from RECBC lawyers/staff including the case law they are relying on.
- Consider how past cases are similar or dissimilar in important ways to the agreed facts and misconduct.
- Review the *Sanction Guidelines* that set out how RECBC approaches the question of appropriate penalty.
- Review the CORC [Terms of Reference](#).

What to Expect at a CORC Session

Location

CORC sessions are usually held in RECBC's formal committee room – the Douglas Fir Room (the "Committee Room") – at RECBC's offices at 900 – 750 West Pender Street, Vancouver BC. The CORC proceedings Committee Room is arranged in board room style. No one, including licensees, will be under oath or sworn at a CORC session.

Expected Behaviour

The CORC session is a formal disciplinary process and professional decorum is expected. Any persons involved in the session before the CORC should listen carefully to questions and not interrupt members of the CORC or any other person while speaking. All persons are expected and required to act in a professional and respectful manner.

Disrespect or improper conduct could result in rebuke and direction from the CORC or from RECBC lawyers/staff, and in some instances may result in premature termination of the session and/or expulsion from the Committee Room.

Appropriate Dress

Members of CORC, RECBC lawyers and staff attending the CORC session will usually be in business attire. Similar attire is not mandated for licensees and their representatives. However, your attire should at minimum be neat and respectful. Entry to the Committee Room may be denied to anyone wearing message T-shirts or other clothing that could be considered offensive, suggestive or improper.

Turn Off Cell Phones and Other Devices

Cellular phones and other communication devices must always either be turned off or in silent mode while a person is in the Committee Room. No recording devices are permitted.

No Food or Beverages

Water is normally supplied in the Committee Room. You may not bring food or other beverages into the Committee Room.

Special Requirements

If you provide RECBC with notice of any special physical requirements, RECBC will do its best to accommodate these. Please note that accessible washrooms in the building are located on the ground floor only.

With appropriate notice, RECBC will attempt to accommodate video or dial-in phone participation in the CORC session for licensees, their lawyers or their personal representatives.

Other Attendees

In addition to the CORC itself, and the RECBC lawyers or staff dealing with the COP, there will be other RECBC staff present at the CORC session:

- a recording secretary to keep minutes and assist the CORC with documents;

- RECBC’s Director of Legal Services and Compliance (who advises the CORC on procedural and administrative matters);
- the RECBC Executive Officer (who advises the CORC on administrative and general RECBC matters); and
- Other RECBC lawyers with matters coming before the CORC, and other Council members or RECBC staff may also be present.

CORC Session Procedure

1. You and your representatives will only be permitted in the Committee Room for presentation of your own COP. Until your COP is called, you may wait in the reception area or a nearby meeting room. You should not discuss your matter, or its content or issues, with any person while waiting, or amongst themselves where such conversation can be overheard.
2. When your COP is called, you and your representatives may enter the Committee Room and be seated at a designated table facing the CORC. The RECBC lawyer will be seated at the same table. The RECBC lawyer or the CORC chair will take the initiative for introductions. If you have a lawyer present, your lawyer will be expected to introduce themselves and you. Otherwise you or your personal representative or personal support person will be asked to introduce yourselves.
3. The CORC will have the written COP before them. The RECBC lawyer will introduce and describe the COP. Often their introduction and summary are enough to obtain the CORC’s approval of the COP.
4. After the RECBC lawyer has introduced and described the COP, the Chair will usually ask you or your lawyer or representative whether they have anything to add. You, or your lawyer or personal representative, will then have up to five minutes to speak in support of the COP. There is no duty or obligation to do so.
5. The CORC chair may be addressed as “Chair”. Other members of a CORC may be addressed generally as “Members of the Panel”, or specifically by their surnames displayed on name plates at their table, plus the appropriate title (e.g. Mr. or Ms.).
6. You, your lawyer or personal representative should not volunteer any new evidence or information. Your presentation must be confined to:
 - what is contained in the COP;
 - answering any questions from the CORC; and
 - argument and reasoning why the proposal is a proper result in the circumstances, given the facts, the law and the cases.

The CORC has full authority and discretion to limit your submissions. It will intervene to end your presentation or a line of comments if you attempt to give new evidence or information, or if your comments are irrelevant, inflammatory, disrespectful or in any way improper.

The members of the CORC can at any time leave the room to deliberate, whether on a procedural point or to consider approval of the COP. They may return from deliberations with further questions or with a request for further comments.

7. The CORC will usually render its decision at the end of the presentations. However, it may choose to reserve its decision, meaning it wishes to consider the COP at greater length after the presentations are concluded. In that case, licensees and/or their lawyers or personal representatives will be notified in writing of the outcome when it is ready. The CORC might also choose to speak to the admitted facts and misconduct and provide corrective guidance to the licensees.
8. When proceedings concerning your COP are concluded, you and your representatives must promptly leave the Committee Room.
9. **Under no circumstances should you, your lawyer or your personal representative attempt to negotiate with the CORC or RECBC lawyers in the Committee Room with respect to the terms of a COP or a new or amended COP.**

After the CORC Session

Questions and Follow-up

Any follow-up questions, such as next steps, payments, suspension dates, etc. or any discussion concerning proposed alternative terms for a new or amended COP may be directed to RECBC lawyers outside the Committee Room. You can also contact them by email or telephone. No such questions or discussion may be directed to the CORC itself. However, RECBC lawyers' professional duty is to the RECBC, not to you. RECBC lawyers do not act for you or protect your interests, and they cannot provide you with legal advice. You are entitled to be represented by your own lawyer and are urged to consider independent legal advice, as set out on page 2.

Presenting an Amended COP

If the CORC rejects the COP, it may indicate alternative terms that a subsequent CORC may find acceptable in an amended COP, though no subsequent CORC is bound by those suggested alternative terms. If suggested alternative terms are acceptable to you, you will need to sign a new or amended COP, and have it presented to the same or another CORC, at a later date. A new or amended COP may be presented to the CORC by purely written procedure without oral presentation, at the discretion of the RECBC lawyer.

Consent Orders Published

If a COP is accepted by a CORC, the resulting CO, together with the COP, will be published in accordance with the requirements of RESA and RECBC's [Publication Policy](#).

Superintendent Informed

Copies of the CO and COP are sent to the Superintendent of Real Estate (the "Superintendent"). The Superintendent has the right to appeal COs to the Financial Services Tribunal. The Superintendent's office also has independent investigation and discipline powers. For this reason, you may wish to preserve any information or records that are relevant to their discipline proceedings including the CORC proceedings and disposition.