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Draft real estate law flawed

Changes strengthen cabinet, weaken democratic process

The Ontario government has released draft legislation proposing changes to the Real Estate and Business Brokers Act (REBBA), which it claims will improve consumer protection and provide a level playing field for businesses. The act is the governing law for real estate brokers and agents across Ontario and the proposals for changing it are online at <http://www.cbs.gov.on.ca>. A key proposal of the draft legislation has to do with supplying false information. Falsification of documents or supplying false or misleading information for a real estate trade can cause significant problems, not only for individual homebuyers, but also honest real estate agents, mortgage lenders, appraisers, land registration systems and real estate boards.

At present, such practices could be considered a violation of the obligation of a registered real estate agent or broker to conduct business with honesty and integrity. They are currently grounds for suspension or revocation of an agent's registration, but little else.

The draft REBBA would make it an offence for agents or brokers to falsify or assist in falsifying any information or documents relating to real estate transactions. Similarly, it would be made an offence to induce or counsel any person to falsify or supply deceptive information relating to real estate transactions.

One example of the type of false information which would be caught by this new offence is the Oklahoma mortgage scam. Earlier this year I wrote two Title Page columns on the scam, explaining how an inflated purchase price or non-existent down payment was being concealed from lending institutions so that purchasers participating in the scam could fraudulently obtain mortgage financing for the full purchase price. (The columns are available on the Star's Web site, <http://www.thestar.com>.)

Despite the publicity, I heard from a number of agents after the columns appeared that Oklahoma deals were still being arranged with the help of some real estate agents so their clients could buy homes with no money down.

If the new REBBA becomes law, agents who counsel purchasers to falsify a down payment or purchase price could wind up with a fine of up to \$50,000 (\$250,000 for corporations) or a prepaid two-year visit to a government facility.

Another issue on the table for legislative reform is dual agency, the situation in which an agent or broker represents more than one party in a real estate trade.

The proposed legislation would grant the Ontario cabinet the authority to make regulations concerning dual agency. The regulations could prescribe requirements that must be met for a salesperson or broker to represent more than one party in a trade, including determining what constitutes dual agency and what information must be disclosed to the parties to the trade.

This landmark change could have a huge impact on real estate practice in Ontario - especially if agents were prohibited from double-ending deals (acting for buyer and seller). Unfortunately, no details of these proposals are available for discussion within the industry.

Exactly why these new rules could not be available for public comment and inserted into the legislation is not made clear. This proposal takes away law-making power in the real estate field from our elected representatives in the provincial parliament and transfers it to the cabinet. Although I support many of the Harris government initiatives in the real estate field (the land transfer tax rebate and the computerization of title searching and land registration, for example), this proposal is fatally flawed.

The draft legislation also proposes putting details relating to a number of other new provisions in cabinet regulations that are drafted behind closed doors. Queen's Park argues that putting detailed requirements in regulations rather than the statute will create greater flexibility in the legislative framework, enabling it to keep pace with marketplace changes and adapt to new issues as they emerge. This may be true, but it reaches its goal at the expense of the democratic process.

The real estate industry is just too important to this province to allow it to be governed by cabinet orders-in-council rather than laws of the provincial legislature. Real estate agents and their clients across the province should be up in arms at these two proposals.

Finally, the government proposes to substantially alter the registration exemption currently enjoyed by lawyers. Under the current law, lawyers can act as real estate agents when the trade is a normal part of the lawyer's business.

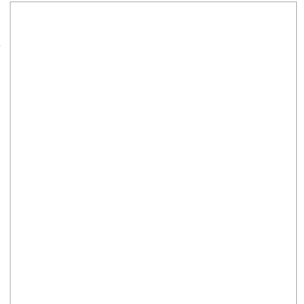
A change to this exemption has been proposed under the guise of "clarifying the intent" of a law which hasn't changed in decades. If enacted, it would prohibit a lawyer from advertising that he or she could sell houses on behalf of clients without being registered under the act. The lawyer could still represent the client in the real estate transaction.

The proposal is a serious attack on the authority of the Law Society to govern the legal profession in the public interest. It was released the day after the board of the Law Society adjourned for its summer break and the deadline for comment is a week before the board meets again in September. This timing almost seems deliberate, and ensures that a formal response from the Law Society cannot be made in a timely fashion.

In Edinburgh, Scotland, lawyers control the real estate market rather than agents. Last year lawyers in that city sold 14,000 resale houses worth more than \$2.8 billion. Lawyers have property sales centres in cities across Scotland and England. Lawyers also sell real estate in New Zealand and British Columbia.

The real estate industry is currently experiencing watershed changes as new sales models emerge. Real estate is now being widely marketed on the Internet with and without agents. Some real estate agents in Ontario charge only a nominal fee for posting a property on the Multiple Listing Service with no sales assistance. Organizations called FSBOS (For Sale By Owners) are gaining in popularity. Given these changes, the elimination of the registration exemptions for lawyers is not in the public interest when the alternative is working so well in the United Kingdom and on a start-up basis in British Columbia.

It is difficult to take Consumer and Business Services Minister Norm Sterling seriously when he says the new REBBA will develop a "level playing field" for businesses in the province, and "improve consumer protection." Sterling wants to govern the industry by executive order instead of the law of the land, and eliminate competition by strengthening a crumbling monopoly.



STEVE RUSSELL/ TORONTO STAR
FILE PHOTO

QUESTIONS: Norm Sterling,
consumer and business services
minister, faces the media at Queen's
Par

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