



# **NEW TRESA LEGISLATION & THE IMPACT ON YOUR BUSINESS**

**WITH RAY FERRIS**



**Tuesday, July 25, 2023 – 10 a.m. – Noon**  
**Sandman Hotel – 560 Centennial Pkwy N., Hamilton, ON**

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# Today's Agenda



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# TRESA FOR REALTORS®

WHAT YOU NEED TO KNOW  
ABOUT THE TRUST IN REAL  
ESTATE SERVICES ACT



# WELCOME!



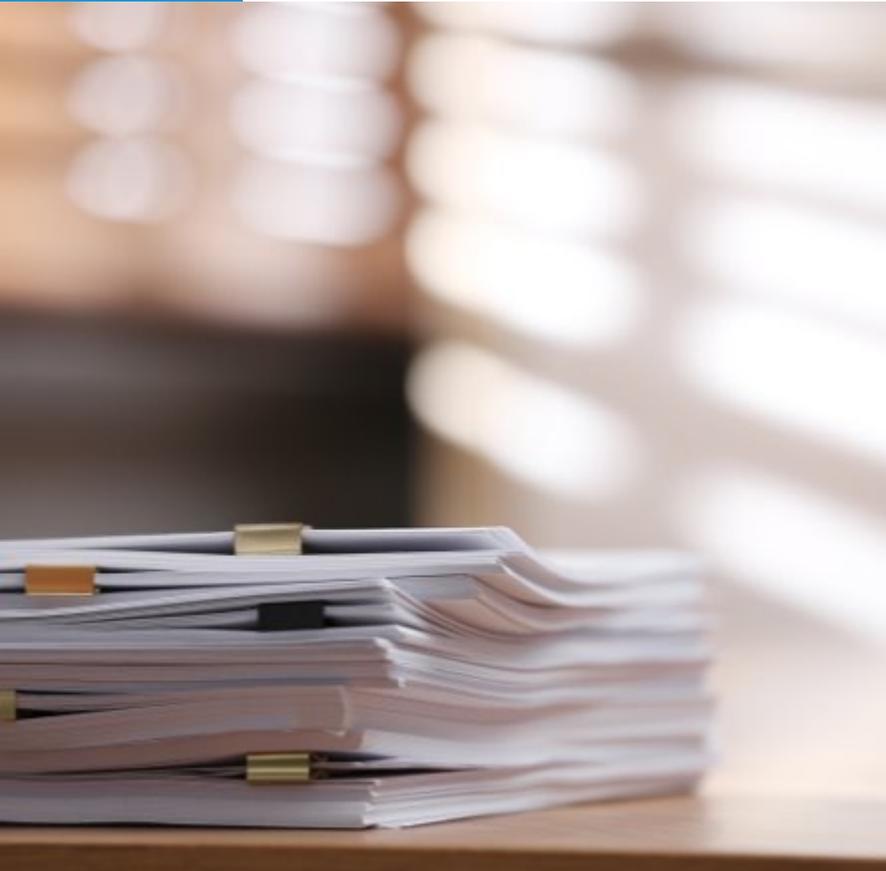
**Ray Ferris, FRI**  
2016 OREA President  
Chair, TRESA Regulations Taskforce



# WORD OF CAUTION



- The information contained in this webinar is not meant to be relied upon as legal advice by Members, or others.
- Due to the changing regulatory environment as part of the TRESA regulatory process, this information is subject to change.



# PRESENTATION FORMAT

- OREA will be providing a summary of:
- Key regulatory changes already in effect under TRESA Phase 1,
- What you can expect under Phase 2; and
- What's to come under Phase 3.
- Q+A





# TRESA BACKGROUND: WHY IS THIS IMPORTANT?

Overhaul of REBBA with new TRESA regulations achieves three things:

- Raises the bar on consumer protection to ensure Ontario is a leader in North America when it comes to real estate standards
- New tools for Members' business success (PREC's, open offers)
- More efficient and nimble Regulator with tougher disciplinary powers to eliminate bad actors



# **DUE TO THE SIGNIFICANT OVERHAUL OF REBBA, CONSULTATIONS ON THE NEW LEGISLATION WERE SPLIT INTO THREE PHASES.**

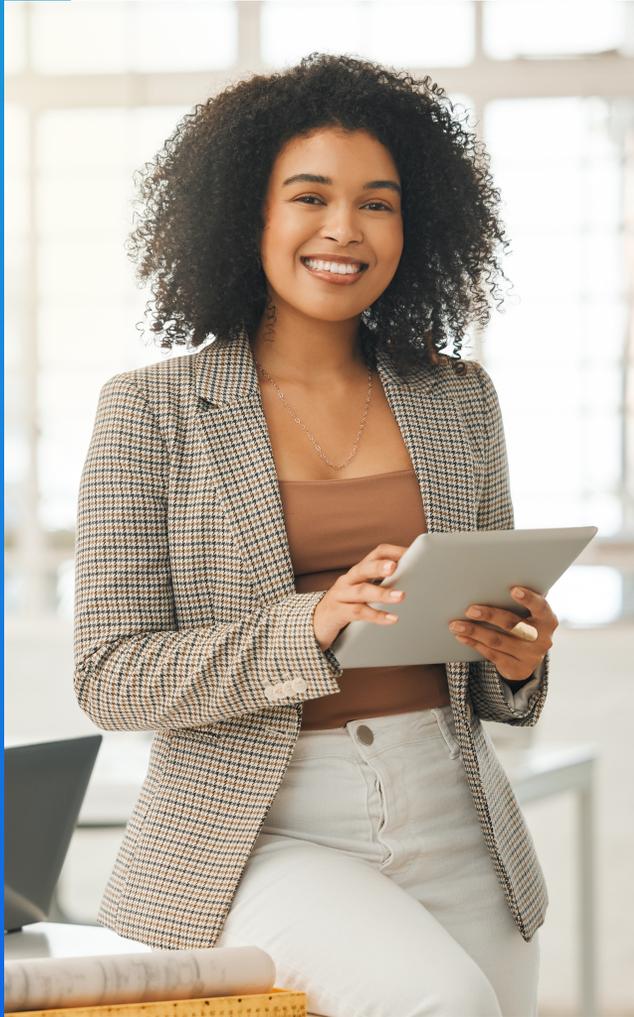
Phase 1 addressed:

- Allowing Personal Real Estate Corporations (PRECS); and
  - New descriptors for registrants
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# PERSONAL REAL ESTATE CORPORATIONS (PRECS)

- PRECs allow Members to access the business advantages of incorporation, including tax and income planning benefits.
- To read more about if forming a Personal Real Estate Corporation could be right for you and your business, please visit
  - [www.orea.com/PRECS](http://www.orea.com/PRECS) or
  - [www.reco.on.ca/precs-ads/](http://www.reco.on.ca/precs-ads/)





# NEW DESCRIPTORS FOR REGISTRANTS

- The Code of Ethics under REBBA was amended to permit the use of new terms, in addition to those previously permitted, to be used to describe a salesperson and broker.
- Eligible registrants who wish to do so may use the new terms

# SALESPERSONS AND BROKERS ARE NOW PERMITTED TO USE THE FOLLOWING ADDITIONAL DESCRIPTORS

- Salesperson
- Real Estate Salesperson
- Sales Representative
- Real Estate Agent
- Real Estate Sales Representative
- REALTOR® (limited to CREA members in good standing)
- Or the French equivalents

- Broker
- Real Estate Agent
- Broker Real Estate Agent
- Real Estate Broker
- REALTOR® (limited to CREA members in good standing)
- REALTOR® Broker (limited to CREA members in good standing)
- Or the French equivalents



## **PHASE 2 – KEY CHANGES TO YOUR BUSINESS PRACTICE:**

1. Updated “principle-based” Code of Ethics
2. New definitions, disclosures and terms
3. The consumer “Information Guide”
4. Strengthening RECO’s Discipline Committee
5. New open offer process
6. Designated Representation

# CODE OF ETHICS



- The old “Code” was a mix of principle-based rules and technical requirements – was confusing for Members to navigate
- The updated Code retains the ethical requirements and moves technical and procedural requirements to the General Regulation or other regulations
- **The Code speaks to broad principles which were a key OREA ask.**

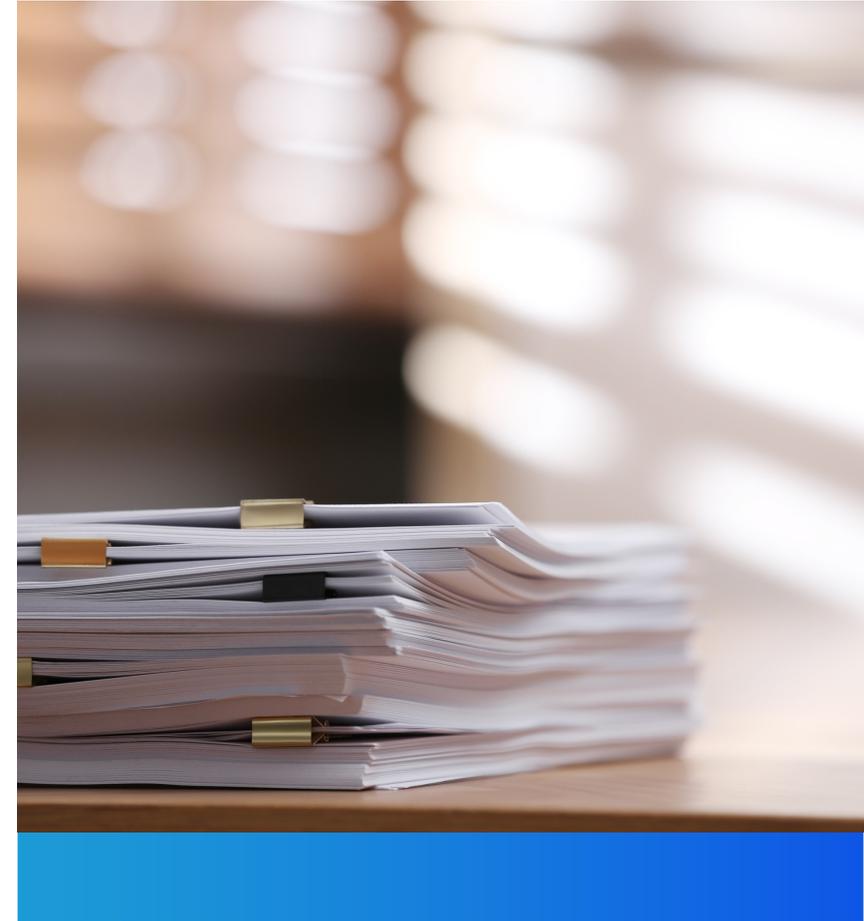
What this means for Members:

- Contains principle-based, articulating requirements that registrants must comply with related to:
  - Integrity
  - Quality of service
  - Conflicts of interest

# NEW DEFINITIONS & INTERPRETATIONS

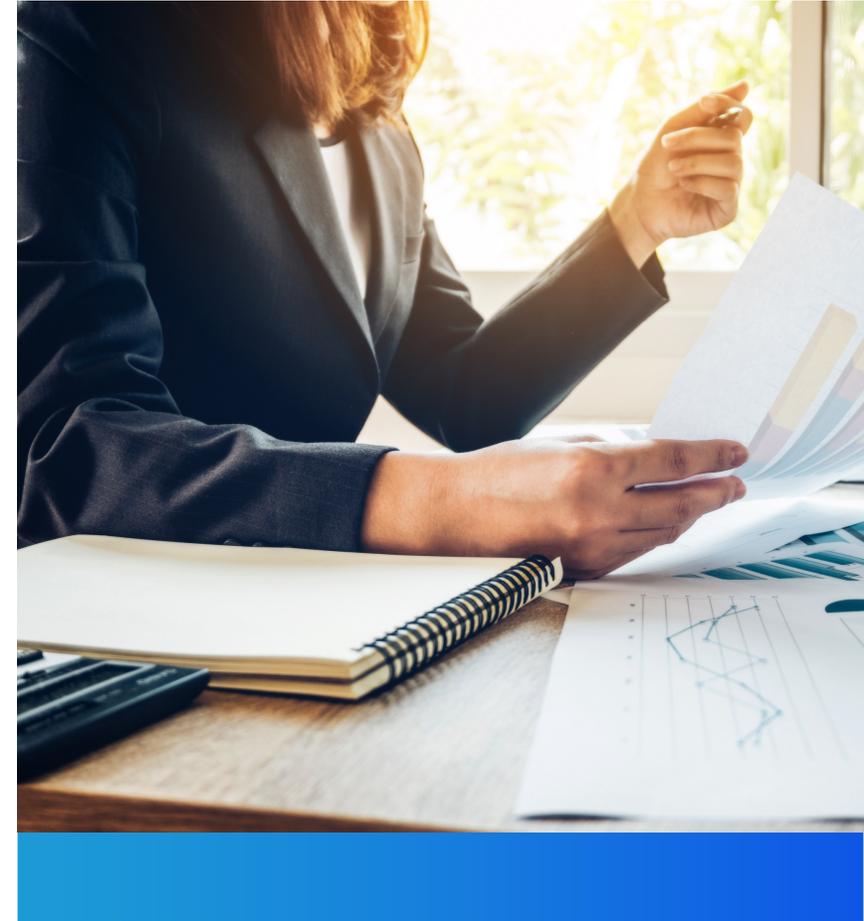
Under REBBA, “client” and “customer” have been sources of confusion for the public when interacting with a registrant.

- Removal of the term “customer” in the Act and regulations
- Now two terms – client and self represented party



# SELF-REPRESENTED PARTY (SRP)

- Defined simply as *“a party who is not a client of any brokerage”*
- When representing a client, assistance can be provided to an SRP as a **service to, or incidental to a service to your client**, but it must not encourage the SRP to rely on the registrant’s “skill, knowledge or judgement”
- As a service to the registrant’s client, assistance may be provided to an SRP, after:
  - The SRP has received the mandatory statutory “Information Guide”\* (prepared by RECO); and
  - The SRP is presented with the statutory “Self-Represented Party Acknowledgment Form” (prepared by RECO)



# **SELF-REPRESENTED PARTY (SRP) ACKNOWLEDGMENT FORM (PREPARED BY RECO)**



1. A disclosure that the brokerage represents a client in respect of the trade
2. An explanation of the risks to the party that may arise from receiving assistance from the brokerage
3. A description of the type of assistance that the brokerage is permitted to provide
4. A recommendation that the party seek independent professional advice
5. Regulation requests a signed acknowledgment

# Q: Under what circumstances could a self represented party interact with a registrant?

Response from Ministry of Public and Business Service Delivery:

A self represented party (SRP) could interact with a registrant in two kinds of circumstances without the interaction giving rise to an implied agreement between the registrant and the party:

1. An SRP could receive **general information** relating to the business of trading in real estate
  - *For example, the sharing of general real estate market statistics*

# Q: Under what circumstances could a self represented party interact with a registrant? (2)

2. An SRP could receive assistance if the assistance to the SRP is a service to, or incidental to the registrant's own client service
  - *Example: to expedite the client's sale of the real estate, the registrant may assist the SRP with the mechanics of filling out an Agreement of Purchase and Sale*
  - The registrant could not provide advice about decisions made by the self-represented party

The registrant **must not** encourage the SRP to rely on the registrant's skill or judgement.

# KEY QUESTIONS: SELF REPRESENTED PARTY

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1. Can I show another brokerage's listing to an SRP?
2. What if a buyer calls for information about my listing?
3. Is the SRP designation just a "customer" by a new name?

# SUMMARY: WHAT THIS MEANS FOR MEMBERS

- Only client or self-represented party
- When representing a client, assistance can be provided to an SRP as a service to, or incidental to a service to your client, but it must not encourage the SRP to rely on the registrant's "skill, knowledge or judgement"
- Self-represented party is NOT a name change for customers
- In short, you can't provide assistance to a self-represented buyer unless the seller is your client
- You can't provide assistance to a self-represented seller unless the buyer is your client

# DISCLOSURES

- There are many disclosures throughout the Act (some have remained the same, some are slightly different, and some new)
- Must be attention-drawing and written in plain language that is clear and concise
- Must be presented in a way that brings attention to the information that is required to be conveyed
- In the case of disclosures, there must be a prominent placement of the word **disclosure**.
- Remember, it is not enough to simply provide your client with a disclosure. It's important to have a discussion with your client to explain the information being disclosed, why it matters to them, and how it might affect their decisions



# WHAT'S NEW WHEN IT COMES TO MATERIAL FACTS?

- A “**material fact**” means a fact that would affect a reasonable person’s decision to buy or sell
- The registrant must take reasonable steps to determine what is material to their client
- Disclose the material fact to the client
- Advise the client to consider whether the material facts why it matters to them, and how it might affect their decisions (Sec. 22.1 General Reg.)
- Make best efforts to obtain a written acknowledgment from the client indicating that the disclosure and advice have been received
- Provide a copy of the written acknowledgment to the client



# INFORMATION GUIDE

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- Registrants are mandated to provide consumers with an “[Information Guide](#)” and shall explain the contents of the guide [before](#) providing any services (Sec. 13 General Reg.)
- The statutory Information Guide is mandatory and is the one prepared by RECO

# WHAT IS IN THE INFORMATION GUIDE?



- The benefits of being a client of a registrant
- The duties and obligations registrants owe to clients
- The obligations of clients
- The risks of receiving assistance as a self-represented party from a registrant representing a client in the transaction
- The content of agreements with brokerages, including remuneration arrangements
- That a brokerage is prohibited from representing more than one client in respect of the same trade in real estate unless the brokerage has disclosed the required information and has obtained the consent, in writing, of every client to be represented by the brokerage in that trade
- The duties and obligations owed to clients and the services that will be provided if the brokerage represents more than one client in a trade, and
- How to bring a concern to the attention of the brokerage or file a complaint with RECO



# RECO'S DISCIPLINE COMMITTEE

- The scope of the Discipline Committee will be expanded to have the ability to suspend, revoke or apply conditions to a registration
- The Discipline Committee will consist of five or more members, at least one of whom has no connection to the real estate industry
- Appeals of all matters decided by the RECO Discipline Committee will be to the Licence Appeal Tribunal (LAT) rather than the RECO appeals committee. LAT is an independent, quasi-judicial tribunal.

# REGULATOR POWER & TOOLS



- Allows RECO to look into a registrant's conduct and refer a matter to the discipline committee, whether there is a formal complaint or not (Sec. 11, General Reg.)
- RECO shall make information about a registrant available to the public; including reasons for the revocation or suspension of a registration
- RECO has limited abilities to collect transactional data for the purposes of regulatory oversight, as it current does not have this authority

# OFFER PROCESS

- The barrier to open offers will be removed, giving sellers another option to negotiate the sale of their property
- Requires a brokerage representing a seller to disclose information about the number of competing offers from potential purchasers
- Permits the substance of competing offers to be shared if the seller directs the brokerage (Sec. 22.7 General Reg.)\*

*\*(b) if the seller directs, share the substance of the competing written offers with every person who is making one of the offers.*

*(2) For the purposes of clause (1) (b), a seller may direct that only parts of the competing written offers be shared.*

- No personal information may be disclosed or any other information that would identify the person making the offer



# CONTENTS OF WRITTEN AGREEMENTS



Any written agreement **MUST** “clearly, comprehensibly and prominently” set out the following:

- In the case of a listing agreement - remuneration payable to any other brokerage
- Circumstances in which remuneration payable, may change (*i.e., multiple rep.*)
- The services that the brokerage will provide under the agreement
- The terms related to the termination of the agreement, if any
- The buyer or seller must have initialed next to the expiry date
- The brokerage shall ensure that the agreement only contains one expiry date

# WHAT'S NEW WITH MULTIPLE REPRESENTATION?

- If a registrant represents a seller and a prospective buyer in respect to the same trade in real estate, the registrant shall, as soon as possible after receiving a written offer and before an offer is accepted, disclose this fact to every other buyer who makes a written offer, in addition to other requirements.
- The registrant shall make best efforts to obtain a written acknowledgement from each person receiving a disclosure indicating that the disclosure has been received and, if a person makes an acknowledgment, provide them with a copy of it
- The registrant must disclose the differences between the brokerage's obligations if it represented only one client versus multiple representation, specifically referencing its:
  - Obligations and duties,
  - Services, and
  - Remuneration arrangements



# DESIGNATED REPRESENTATION



What is Designated Representation?

- This would permit a brokerage with multiple clients in the same trade to designate a different agent to fully represent each client in a trade
- This allows each agent to deliver services in the best interest of their respective clients
- Duties to clients would apply to designated agents within a brokerage, not the brokerage and all its registrants
- The brokerage would retain oversight responsibility for the designated agents' fulfillment of the duties to clients
- Designated representation is an existing business model used by brokerages in other Provinces
- Enables a brokerage practicing under designated representation to have a new option to work with buyers and sellers involved in a single transaction

# DESIGNATED REPRESENTATION



Why is it important?

- Multiple representation will still exist, but designated representation provides an additional positive option
- Since 2017, OREA has called for optional designated representation
- RECO initiated discussions with OREA and the Government on this issue and we worked with them on the proposed solution
- OREA has lobbied to have designated representation included as part of TRESA Phase 2

# **KEY QUESTION: DESIGNATED AND MULTIPLE REPRESENTATION**

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If my brokerage chooses to adopt the designated representation model, would I still be able to practice multiple representation?

# LOOKING FORWARD TO PHASE 3



Phase 3 of regulation development is set to cover the following:

- Developing regulations to support specialty certifications for registrants and Brokers
- Fighting back against cooling off periods
- Improving continuing education
- Administrative monetary penalties
- Updating RECO's registration processes to reduce red tape for registrants

# KEY QUESTION: NEW LEGISLATIVE CHANGES

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Will things that are outside of the new legislative changes (that exist in the current REBBA) remain the same after the implementation of TRESA?

- For example, advertising requirements, requirements to disclose the number of offers, etc.

# SUMMARY

- OREA will communicate to Members expeditiously when the decision on DESIGNATED REPRESENTATION is made by the Ministry
- Registrants are mandated to provide consumers with the statutory “INFORMATION GUIDE” that is prepared by RECO. This is the only permitted version of the GUIDE.
- Only two terms under TRESA – client and self represented party
- Assistance can be provided to an SRP as a **service to, or incidental to a service to your client**, but it must not encourage the SRP to rely on the registrants “skill, knowledge or judgement”

# SUMMARY

- Surrounding the disclosure of MATERIAL FACTS, a Member must make best efforts to obtain a written acknowledgment from the client.
- The barrier to OPEN OFFERS will be removed
- Clients must initial the EXPIRY DATE of their brokerage agreement, regardless of the length of the agreement
- If you represent MULTIPLE CLIENTS in the same trade, you must obtain written consent on a DISCLOSURE document
- Please reach out to [governmentrelations@orea.com](mailto:governmentrelations@orea.com) for further questions

# QUESTION & ANSWER

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# Upcoming Professional Development

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## **September 7**

Best Legal Practices When  
Dealing with Residential  
Tenanted Properties  
with Amna Safdar

## **September 19**

Principal Residences vs.  
Capital Gains vs. Income for  
Real Estate Transactions  
with Gabrielle Loren

## **September 25**

Matrix Mondays:  
Hotsheets & Market Watch  
with Eric Meek

# Upcoming Events

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## **RAHB's 3<sup>rd</sup> Annual Walk-a-thon!**

September 2023

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**Get your walking shoes ready!**



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~ Since 1921 ~

# TiCats Draw!



# Thank You!



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