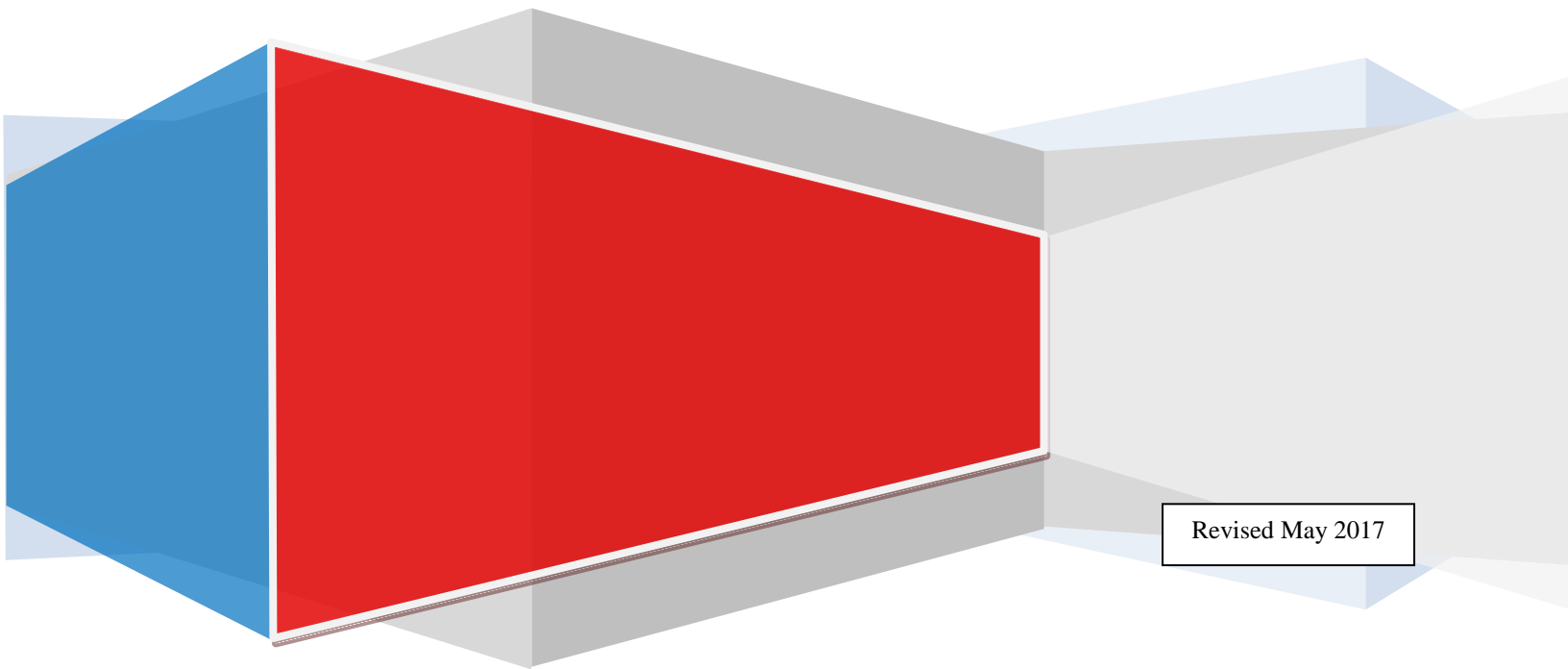




## **Policy on the Collection, User, Disclosure Of Personal Information**



Revised May 2017

RE/MAX Professionals Inc.  
Policy on the Collection, User, Disclosure  
Of Personal Information

“PRIVACY POLICY”  
(Revised May, 2017)

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## Appendix 1

### RE/MAX Professionals Inc. Policy On the Collection, Use, Disclosure Of Personal Information "Privacy Policy" (Updated May, 2017)

#### The Privacy Code of The Canadian Real Estate Association

This office is a member of The Canadian Real Estate Association (CREA) and adheres to and abides by the principles set out in the CREA Privacy Code. All employees and sales representatives associated with this office must sign an acknowledgement that they will comply with the requirements of the Code.

#### The Policy Statement

This office only collects personal information necessary to comply with the law (e.g. satisfy FINTRAC regime obligations), to effectively market and sell the property of sellers, to locate, assess and qualify properties for buyers and to otherwise provide professional and competent real estate services to clients and customers.

#### The Persons In Charge

The privacy compliance officer responsible for privacy compliance in each branch office is as follows:

Corporate Head Office: 1 East Mall Crescent, 3 <sup>rd</sup> Floor Toronto, ON M9B 6G8 (416) 232-9000  Accounting Department – 2 <sup>nd</sup> Floor	Happy Rakkar   Sonia Tontodonati
4242 Dundas Street West, Unit 9 Toronto, ON M8X 1Y6 (416) 236-1241	Bonnie Miniaci
780 Annette Street Toronto, ON M6S 2E2 (416) 236-1241	Melissa Alexander

17 St, Johns Road Toronto, ON M6P 1T2 (416) 236-1241	John Legakos
1900 Dundas Street West Mississauga, ON L5K 1P9 (905) 822-0700	Paul Hannan
91 Lakeshore Road East Mississauga, ON L5G 1E2 (905) 278-8840	Don Marland

Contact information for the Person in Charge shall be made available to consumers. The responsibilities of the privacy compliance officer shall include:

1. establish and update information protection policies;
2. ensure policies are implemented by other organizations to which data-processing functions are outsourced;
3. establish criteria for classification of information;
4. evaluate the accessibility of sensitive information and take corrective action where necessary;
5. provide education to employees on the importance of information protection;
6. make every effort to resolve consumer privacy complaints to the satisfaction of the consumer;
7. respond to privacy breaches, including reporting breaches to impacted individuals, the relevant privacy commissioner(s), and any other government institution when notifying that institution may be able to reduce the harm from the breach, when necessary.

### The Collection, Use and Disclosure of Personal Information

1. Only the information necessary to facilitate the real estate transaction or otherwise provide professional and competent service to clients and customers will be collected;
2. No personal information shall be collected from an individual without first obtaining the consent of the individual to the collection, use and dissemination of that information;
3. Express consent (whether oral or written) must always be obtained except in the following situation. Consent may be implied where the information is not sensitive and where it can be reasonably assumed that the individual would expect the information to

be disclosed in this fashion;

4. Once information is collected, it will be used and disclosed only for the purposes disclosed to the individual;
5. All representation agreements must include the approved privacy clauses.

## Disclosure for New Purpose

1. Anyone using personal information for some new purpose that extends beyond the consent already provided must obtain the express consent of the person for that use;
2. Requests for information by law enforcement officials, lawyers, private investigators or other agents or subpoenas for documents issued by the court must be referred to the privacy officer/office manager or broker/agent as appropriate.

## Protecting Information

Information must be protected in a manner commensurate with its sensitivity, value and criticality. This policy applies regardless of the media on which information is stored, the locations where the information is stored, the systems used to process the information, or the processes by which information is handled.

### (a) **Collection and Disclosure**

1. Meetings with customers and clients on these premises must take place in a place and manner to ensure confidentiality;
2. Mail, email and faxes must be routed directly to the intended recipient;
3. Information should be available to other persons in the office only on a need-to-know basis.

### (b) **Storage**

1. Filing cabinets designated by the office manager to contain personal, including sensitive, information are to be kept secured at all times;
2. Electronic files are to be stored and backed up in a secure, password protected server and/or web service provider;
3. All personnel have computer passwords. These passwords are confidential and are not to be shared with any unauthorized persons.

### (c) **Destruction**

This office has in place a record retention and destruction policy. Refer to that portion of the policy manual for details.

## Accuracy of Personal Information

To ensure the quality of the information collected:

1. insofar as possible, personal information should be collected directly from the consumer;
2. public property information (taxes, assessment data, etc.) should be verified;
3. disclaimers of accuracy in the form approved by the office should always be attached to any disclosure of information.

## Access to Personal Information

1. Copies of any privacy brochure approved by this office should always be available to the public in the reception area of the office;
2. The individuals set out in Section 3 as being responsible for privacy compliance are responsible for responding to access requests and all such requests will be referred to him or her. All staff and salespersons will co-operate fully with the privacy compliance officer in responding to requests;
3. On written request and appropriate identification satisfactory to the organization, an individual will be advised of personal information about him/her retained in the firm's records;
4. Where information cannot be disclosed (for example the information contains reference to other individuals or is subject to solicitor-client privilege) the individual will be given reasons for non-disclosure;
5. An individual may have appended to a record, any alternative information where the office is of the view that the appended information is, in fact, correct;
6. A minimal administrative fee may be charged to supply the information.

## Compliance

- (a) Any complaints from an individual concerning the collection, use or disclosure of their personal information or concerning the individual's ability to access their personal information must be referred to the privacy compliance officer, who will attempt to resolve the complaint to the individual's satisfaction;

- (b) In the event the complaint cannot be resolved internally to the individual's satisfaction, he or she will be advised of where to direct the complaint.

## Tips for Broker/Owners, Managers and Privacy Compliance Officers:

YOUR FIRM IS RESPONSIBLE for all personal information collected by your salespeople (Principle 1, Privacy Code).

•YOU ARE REQUIRED TO AMEND YOUR CURRENT OFFICE POLICIES to incorporate provisions which comply with the Privacy Code ("Sample Office Policies for Realty Firms" and "Making Privacy Work in Your Office").

•AN INDIVIDUAL IN YOUR OFFICE MUST BE DESIGNATED THE PRIVACY COMPLIANCE OFFICER (Principle 1, Privacy Code). This person is responsible for implementing the privacy policies, training staff, report privacy breaches when necessary, and responding to questions from members of the public.

•ENSURE THAT LISTING AND BUYER AGENCY AGREEMENTS used by your office contain privacy disclosures. Many provincial Associations have already incorporated such disclosures into their forms. If not, see sample clauses in "Making Privacy Work in Your Office". Make sure your office uses only approved forms.

•ALL PERSONAL INFORMATION IN YOUR OFFICE MUST BE ADEQUATELY PROTECTED to ensure that it is not lost, stolen, copied or modified without permission (Principle 7, Privacy Code). The level of protection depends on the sensitivity of the information, but should include locked filing cabinets and computer passwords. You also must have a record retention and destruction program.

•CLEAN OUT YOUR FILES. Destroy files which serve no purpose and do not need to be retained in accordance with a record retention program. Cull the files that are necessary to be retained and remove useless and irrelevant information that would not have been collected under an effective privacy policy.

•YOUR FIRM MUST BE READY TO ADVISE CONSUMERS OF YOUR PRIVACY POLICIES (Principle 8, Privacy Code and Privacy Brochure). Brochures in the waiting room, Privacy Code on wall serve this purpose.

•CONSUMERS MUST BE ABLE TO ACCESS PERSONAL INFORMATION your office is holding on them (Principle 9, Privacy Code; "Sample Office Policies For Realty Firms" and "Making Privacy Work in Your Office"). The office must have in place a process to accommodate these requests, and information must be provided at minimal or no cost. Principle 9, Privacy Code includes a sample procedure. Consumers have the right to correct any inaccurate information.

•TRAIN YOUR STAFF AND SALESPEOPLE ON HOW THE PRIVACY POLICIES WORK. Implement regular updating privacy sessions. Training is absolutely essential. All office representatives should understand the privacy policies. All salespersons should be specifically trained to: disclose to consumers the uses information will be put to at the time it is collected, obtain the informed consent of the consumer to those uses; collect only the information necessary for the transaction, and only use and disclose the information as they said they would.

•CONSUMERS MUST BE ABLE TO COMPLAIN TO THE OFFICE that the Principles of the Code have not been adhered to (Principle 10, Privacy Code). The Privacy Compliance Officer must address any complaints and try to resolve them. If unsuccessful, the consumer must be advised of where the complaint can be directed.

## Tips for Salespeople

### DO:

•FAMILIARIZE YOURSELF WITH THE PRIVACY POLICIES OF YOUR OFFICE. Every realty office must implement privacy policies. These policies, however, are only as effective as the people operating under them. You cannot effectively put these policies into practice if you don't know what they say or what they mean. Read and understand the policies. Ask questions.

•ADVISE CLIENTS WHAT YOU WILL BE DOING WITH THE PERSONAL INFORMATION YOU ARE COLLECTING (Principle 2, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). Understand that there are two separate aspects to this disclosure. Consumers must understand that you use the information to market the property and you also give the information to the real estate Board operating the MLS® system. The Board then has specific uses for the information. Always be completely transparent as to what you are doing with the information. Ensure that the listing and buyer agency forms you are using contain disclosure clauses which explain these uses in more detail. Familiarize yourself with these clauses.

•GET THE CONSENT OF THE CLIENT TO THE USES DISCLOSED (Principle 3, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). Familiarize yourself with the different types of consent – express (written or oral) and implied. Ensure that when you are sending information to any third party you are doing so with the proper consents.

•COLLECT ONLY THE INFORMATION YOU NEED TO EFFECTIVELY REPRESENT THE CLIENT IN THE TRANSACTION (Principle 4, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). Direct your minds to this issue when you are collecting information. Only essential information, necessary for the transaction, is to be collected. Create a list for your own use of the usual required information.

•USE AND DISCLOSE THE INFORMATION ONLY IN A MANNER CONSISTENT WITH THE REASON IT WAS COLLECTED (Principle 5, Privacy Code; Office Policies; "Making Privacy Work in Your Office"). You are collecting the information to market the property for sellers and to locate and qualify properties for buyers. Use it to do that and nothing else. If you do anything else with it (mailing lists, selling names to third parties etc.), get the express consent of the client to that use.

All of the discussion above can be summarized like this: Tell them what you're going to do with the information, get their consent to do that, just collect the information you need to do what you said, and then only do with it what you said you were going to do with it.

•TAKE REASONABLE STEPS TO ENSURE THE INFORMATION IS AS ACCURATE AS POSSIBLE WHEN YOU COLLECT IT (Principle 6, Privacy Code). As much as possible, collect information from the person who has the first-hand knowledge, not some third party. Always verify public property information with the public source.

•IMMEDIATELY REPORT ANY ACCIDENTAL OR INTENTIONAL DISCLOSURES OR MISUSE OF CLIENT PERSONAL INFORMATION TO YOUR BROKERAGE'S PRIVACY COMPLIANCE OFFICER

### DO NOT:

•ASSUME THAT BECAUSE PRIVACY DISCLOSURES ARE IN THE CONTRACT YOU DON'T HAVE TO EXPLAIN ANYTHING ABOUT PRIVACY TO THE CLIENT. Tell them to read the clause and ask you anything they don't understand. Give them a copy of the privacy brochure. Discuss the issue of privacy with them.

•ASSUME THAT YOU HAVE IMPLIED CONSENT for any use that is not clearly and obviously related to the transaction. Any other uses, no matter how "harmless" or non-invasive require the express consent of the client.

•MARKET BACK TO YOUR CLIENT or send unsolicited materials to them unless they have agreed to be on a list of that nature.



•SHARE PERSONAL INFORMATION WITH ANY THIRD PARTIES without the consent of the individual. Don't sell or rent mailing lists. Don't give your clients' names to other service providers (movers, lawyers, building inspectors, etc.) so they can try to sell their services.

## PIPEDA fair information principles:

September 2011

### Principle 1 – Accountability

An organization is responsible for personal information under its control and shall designate an individual or individuals who are accountable for the organization's compliance with the following principles.

### Principle 2 – Identifying Purposes

The purposes for which personal information is collected shall be identified by the organization at or before the time the information is collected.

### Principle 3 – Consent

The knowledge and consent of the individual are required for the collection, use, or disclosure of personal information, except where inappropriate.

### Principle 4 – Limiting Collection

The collection of personal information shall be limited to that which is necessary for the purposes identified by the organization. Information shall be collected by fair and lawful means.

### Principle 5 – Limiting Use, Disclosure, and Retention

Personal information shall not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law. Personal information shall be retained only as long as necessary for the fulfillment of those purposes.

### Principle 6 – Accuracy

Personal information shall be as accurate, complete, and up-to-date as is necessary for the purposes for which it is to be used.

### Principle 7 – Safeguards

Personal information shall be protected by security safeguards appropriate to the sensitivity of the information.

### Principle 8 – Openness

An organization shall make readily available to individuals specific information about its policies and practices relating to the management of personal information.

### Principle 9 – Individual Access

Upon request, an individual shall be informed of the existence, use, and disclosure of his or her personal information and shall be given access to that information. An individual shall be able to challenge the accuracy and completeness

of the information and have it amended as appropriate.

#### Principle 10 – Challenging Compliance

An individual shall be able to address a challenge concerning compliance with the above principles to the designated individual or individuals accountable for the organization's compliance.

These principles are usually referred to as "fair information principles". They are included in the Personal Information Protection and Electronic Documents Act (PIPEDA), Canada's private-sector privacy law.

## Realtor Privacy Answers You Need to Know

From the Toronto Real Estate Board's "Privacy Compliance Centre"

REALTORS® must comply with new privacy rules effective January 1, 2004. The federal government has enacted the Personal Information Protection and Electronic Documents Act (PIPEDA) which establishes new rules to recognize the privacy rights of individuals with respect to the collection, use, disclosure and retention of their personal information. OREA has already developed a Frequently Asked Questions (FAQ) for REALTORS® which you will find in the privacy corner (under legal) in the Member section of [www.orea.com](http://www.orea.com). TREB provides some additional day-to-day REALTOR® privacy answers to questions you may have.

### **1. Can REALTORS still provide a Comparative Market Analysis (CMA) service to their clients or customers using listing and sale information from the Board's MLS system?**

The "Use and Distribution of Information" clauses found in OREA Standard Form listing and buyer agency agreements allow real estate boards to post and retain MLS listing information, including historical MLS® data, on the MLS system (including sale or lease information). This information is for use by its Members as allowed for by these clauses and the MLS rules of the real estate board. The historical uses of information on the system are usually for comparative market analysis (CMA) and valuation purposes and that is why current and historical data is essential to the operation of the MLS® system.

The current OREA standard form listing agreement adopted by TREB provides:

*USE AND DISTRIBUTION OF INFORMATION: The Seller consents to the collection, use and disclosure of personal information by the Broker for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing property information to prospective buyers, brokers, salespersons and others who may assist in the sale of the Property; such other use of the seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Broker into the database(s) of the appropriate MLS® systems(s) and acknowledges that the MLS® database is the property of the board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the board(s) may: distribute the information to any persons authorized to use such service which*

*may include other brokers, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; compile, retain and publish any statistics including historical MLS® data which may be used by licensed board members to conduct comparative market analyses; and make such other use of the information as the board deems appropriate in connection with the listing, marketing and selling of real estate.*

This would clearly provide the consent needed from the seller for Members to generate CMAs as an appropriate use in connection with the listing, marketing and selling/leasing of real estate. Providing clients and customers with an estimated value of the subject property of the CMA and the properties that the valuation was based on, without revealing the actual price for those properties is not in question.

Regarding the ability to provide clients and customers with an estimated value of the subject property of the CMA and the properties that the valuation was based on, including revealing the actual price for those properties is less settled at the current time. Although it cannot be said with absolute certainty given the lack of precedents or case law on the ultimate interpretation of many aspects of PIPEDA, a strong argument can be made that the words "conduct comparative market analyses" contained in the consent clause of the OREA standard form listing agreement can be interpreted broadly enough to include the essential part of "conducting a CMA", that is, providing that information to a prospective seller or prospective buyer. A CMA should be treated as a confidential document between the salesperson and the seller/prospective buyer. It should contain a written statement regarding a requirement for confidentiality and safekeeping of the document. Be mindful of providing a CMA to just anyone - it should not be released to the general public.

The issue of whether the consent of the buyer of the property was obtained or needed to be obtained is based on a three-pronged combination of arguments. First, the consent was provided in the appropriate clause contained in the OREA Standard Form Buyer Agency Agreement or Buyer Customer Service Agreement (see clause below); second, in using CMAs when buying their property through the MLS system, the buyer implicitly consents that their property information on the MLS system may also be used for similar CMA purposes; and thirdly, the sale price ultimately becomes publicly available information by appearing in a public registry.

The current OREA standard form buyer agency agreement adopted by TREB and the current OREA buyer customer service agreement provides:

*USE AND DISTRIBUTION OF INFORMATION: The Buyer consents to the collection, use and disclosure of personal information by the Broker for such purposes that relate to the real estate services provided by the Broker to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Broker in connection with the purchase or prospective purchase of the property.*

The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Broker may be retained and disclosed by the Broker and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes.

## **2. Can I disclose the sold price of any property to anyone?**

Sold price after "closing" appears in a public registry, and is considered to fall within the definition of "publicly available" under the federal privacy legislation. However, the uses of this information must still be consistent with the reason it appears in the public registry → ie confirmation of ownership or sold price.

Otherwise, disclosure of sold price from the MLS system has to be consistent with the consent provided by the individual that can be identified with this information. You have to fall back on the "Use and Distribution of Information" clause in the Listing and Buyer Agency Agreements and the related MLS rules requiring that such consents be obtained for MLS listings. So, prior to closing, disclosure of the sold price to "anyone" has to be consistent with the listing, marketing and sale or lease of the property as allowed for in the "Use and Distribution of Information" provisions in the Listing Agreement or Buyer Agency Agreement. This could involve disclosure to other Realtors if consistent with these uses but not to the public or other customers and clients without independently obtaining consent from the seller for such a purpose.

## **3. Should our administrative assistants still be disclosing the "sold price" over the phone to other agents; should they know it at all; should they still be disclosing the condition (if sold conditionally) to other agents?**

They should only know the "sold price" if they need to have it in order to perform tasks assigned to them. Those tasks should be consistent with the "Use and Distribution of Information" provisions in the Listing or Buyer Agency Agreement. They can disclose the condition if it is for a purpose covered by the "Use and Distribution of Information" consent.

## **4. Can Realtors distribute flyers or other advertising material to the public indicating sold price or photo or address of a recently sold property before or after closing date?**

Sold price associated with an address or photo may easily be associated with a name making it personal information. The consent language in the "Use and Distribution of Information" clause in the MLS Listing and Buyer Agency Agreements authorizes the use and disclosure of price as it relates to the listing, marketing and sale or lease of the property. The consent language in these forms does not permit Members to use that information to market their services to others. The fact that such information may become "public information" i.e. following registration in a land registry does not alter this conclusion since the regulations to the federal privacy legislation is clear that the collection, use and disclosure of such registry information must relate directly to the purpose for which the information appears in the registry → ownership verification, notice of sale price. It is questionable as to whether this purpose relates directly to a purpose of marketing to others. Therefore, consent for such marketing purposes should be expressly obtained from the individual identified by such information before Realtors distribute flyers to the public indicating "sold" price and photo or address of a property.

Indicating that a property has sold (without any amount indicated) accompanied by a picture, becomes problematic if the identity of the owner can be discerned from the photo (i.e. the house

is recognized as being owned by person X) because this would place it in the category of "personal information". To the extent that it is not personal information then the practice is permissible in relation to PIPEDA. However, since the question of whether the "photo plus address" is personal information is dependent upon who is viewing the picture (i.e. who recognizes the property as belonging to Person X) we would caution that obtaining consent would be advisable since the use and disclosure of personal information without consent would violate PIPEDA.

In addition to PIPEDA concerns, REALTORS should be aware of a RECO CCD decision, posted on the RECO website on December 29, 2003, in which the RECO discipline panel held that a registrant was in breach of Rules 1(2), 1(5), 10, 21, 46 of the RECO Code, for a number of advertising infractions, including "Advertising properties as sold without obtaining the written consent of the buyers to do so."

If you have not independently obtained consent from the individual(s) that are identifiable from the property information (by address or photo) and wish to distribute flyers or other advertising material indicating a property has sold, it may be best for you to aggregate the information. For example - "Recently sold 6 homes in this subdivision for an average price of \$300,000" OR "Recently sold 8 condos in this 3-building complex for an average price of \$200,000" OR "Recently sold 4 homes on this street for an average 97% of list price". The larger the number of properties referred to and the bigger the subject-area, the less likely is the possibility that the information could be linked to an identifiable individual.

The "sold" sign in front of a property communicates the fact that the property has been sold – a reasonable and logical purpose given a sign had been used to advertise the property for sale. People driving by the property would only see that information. Placing that "sold" information in a flyer would involve communicating/disclosing it to people who may not otherwise know about the property. Also the purpose of placing "sold" on a sign on a lawn is different from the purpose of placing it in a flyer.

**5. Can I send out "Just Sold" cards or indicate "SOLD for x% of asking"?**

Same as answer for Question 4 above.

**6. Do I put an opt out provision on these cards (or flyers) if I send them out regularly?**

It would be a good idea to do so.

**7. Can Realtors use seller contact information from expired listings for marketing / prospecting uses ie to market to someone whose listing shows up as expired on the Board's MLS system?**

In our view, the "Use and Distribution of Information" language found in the MLS Listing Agreement does not permit the use of such information for marketing / prospecting purposes. Unless there is a clear disclosure of this purpose in the listing agreement (or some other document) and the seller has given his or her informed consent to that use, the answer is no. Additional consent would be needed for such uses.

So you cannot use the information obtained from an expired listing on the board's MLS system to market to that person. The general rule is – you can't collect, use or disclose a person's personal information without their consent. When that seller signed the listing agreement to submit the now-expired listing to MLS he/she consented to the use of their personal information by the listing broker, cooperating brokers and by the board for certain specified purposes (see section 11 of the OREA standard form listing agreement – Standard Form #200). Those specified purposes and that consent do not include having other Members use that information in order to market their services to the seller.

CREA is cautioning that clauses allowing Realtors to contact sellers on expired listings might still be problematic. Not only must consent be obtained, but the use of the information collected must qualify as "reasonable" in terms of purposes for which the information was collected. The existence of a consent clause such as this in a listing agreement does not necessarily guarantee the consent will be valid. PIPEDA imposes a 2-pronged test. Not only must the consent of the individual be obtained, the use itself must be "reasonable" in terms of the purpose for which the information was collected. It is not clear whether obtaining the consent of the seller to be contacted by other REALTORS on the expiry of the listing would meet this test -- at least in the context of a listing agreement.

PIPEDA deals only with the personal information of individuals. If the seller is a corporate body or a partnership, the information is not "personal information" and no consent would be required.

**8. What do I have to put on my website and do I have to put it on every page or just where they are signing up for information?**

Placing your office privacy policy on your web site and then a link on each page to that privacy policy is recommended.

**9. Would it be sufficient to link to the Company website which contains a privacy policy?**

As long as it's clear that the concerned Realtor has adopted this privacy policy as his / her own.

**10. What do I have to put on sign-in sheets at my Open Houses?**

This all depends on the uses of the information collected on the sign-in sheet. Somewhere on the sheet, where the people attending the open house are writing their names, addresses and/or phone numbers, should be noted all of the purposes for which that personal information will be used and to whom that information will be disclosed – for example "To provide follow up material on this property and also general promotion material about the Listing Broker and the listing salesperson". There should be a place on the sheet where the people who are providing their names and addresses will be able to indicate that they don't want you to use their personal information for some or all of those purposes or they don't want you to disclose their personal information to some or all of the proposed recipients.

**11. Can I still cold call from the phone book or from the reverse directory linked to TorontoMLS or from similar resources?**

Yes, since this is "publicly available" information and you are simply using information to contact individuals. However, real estate brokers or representatives, including REALTORS®, making unsolicited telephone calls qualify as telemarketers. This doesn't mean that REALTORS® cannot contact consumers in other legal ways, such as direct mail. It means that if the consumer, private sellers included, puts their name and telephone information on the National Do Not Call List, you cannot contact them at that number (phone or fax) to sell them a product or your services or in any way solicit business, unless:

- the call is to a consumer who has an existing business relationship with your company, or
- the call is to a business consumer.

An existing business relationship, such as one between a consumer and a real estate brokerage, is defined in three ways:

- The consumer purchased or leased a product from the organization within the past 18 months;
- The consumer had a written contract (such as a Listing Agreement) with the organization that expired within the past 18 months;
- The consumer had made an inquiry with the organization within the past six months (for example the consumer called for a listing presentation).

**12. Can I still door knock to solicit business from potential seller?**

Yes. There is no collection, use or disclosure of personal information involved in the mere act of door knocking.

**13. What wording should go on my regular mailings (or newsletters) to my client list?**

This is a drafting issue specific to the business. It would be good business practice to include an opt-out provision (that they can return or contact number to call) should they wish to no longer receive your regular mailings. For example,

*At RE/MAX Professionals Inc., we respect your privacy. If you wish to be removed from our mailing list for this publication or have any questions about our collection, use or disclosure of personal information, you may contact us at (416) 232-9000. Or, please check the box below and return to our attention at ADDRESS or email to EMAIL ADDRESS.*

*[ ] I wish to be taken off your mailing list for XXXXXXXXXXXXXXX*

It would also be a good idea to do this with every mailing.

**Questions 14 and 15 omitted as irrelevant to this Policy**

**16. What's TREB's position on "seller" requests to remove listings from the MLS system?**

TREB's Rules and Regulations prohibit the deletion of MLS Listing information from TREB's

MLS Online System unless TREB is notified in writing that the address shown on the MLS Listing Agreement is incorrect and/or the MLS Listing is invalid.

TREB requires its Member Realtors to advise and obtain the principal's (seller in this case) authorization that TREB may compile, retain and distribute the listing information and may compile, retain and publish any statistical analyses including historical MLS data based on such information. Our Realtor Members must also obtain the consent of their principals in order for TREB to collect, use and disclose the listing, sale/lease and purchase information regarding the property and the transaction on the MLS system and within TREB's MLS database.

When sellers sign the MLS Listing Agreement, they agree to allow this ongoing use of listing and sales information -- see the "Use and Distribution of Information" section of the MLS Listing Agreement. This section is a contractual obligation, which TREB considers a fundamental part of the MLS listing agreement. Removal of the MLS listing information would seriously and adversely impact the usefulness of MLS historical information. Such historical information is essential to the operation of the MLS system so Realtor Members can continue to provide comparative market analysis and valuations to customers and clients.

TREB takes its responsibilities with respect to personal information very seriously. However, the ability for individuals to withdraw their consent for the collection, use and disclosure of personal information is qualified. One of the provisions of Schedule 1 of the Personal Information Protection and Electronic Documents Act (PIPEDA) states:

"An individual may withdraw consent at any time, subject to legal or contractual restrictions and reasonable notice. The organization shall inform the individual of the implications of such withdrawal."

#### **17. How does the privacy act (PIPEDA) prevent me from requesting a buyer's home address when offers are being considered?**

The privacy act (PIPEDA) does not restrict you as a REALTOR® from requesting personal information about an individual, such as home address, as long as it for purposes that a reasonable person would consider appropriate in the circumstances. If the purpose is reasonable, then the collection of such information may occur provided the individual concerned provides his/her consent for its collection and use. Whether requesting a home address is reasonable will depend upon the circumstances of the transaction.

You must tell the individual concerned why you are requesting the information and how you will use it. If that person then provides the information, that act itself is sufficient to constitute consent.

However, under the privacy act, the individual may refuse to consent to the collection and use of their personal information. If the requested personal information (home address) is necessary to proceed with the transaction, then you would inform the person concerned of the consequences if the personal information is not provided. Those consequences could possibly include the fact that the seller may not be able to proceed with the transaction.

Where the individual concerned is not represented by a real estate broker or salesperson, then it would be reasonable to request that potential buyer's home address. It is also reasonable for



a REALTOR®, when considering whether to represent an individual as a buyer's agent, to request a home address in order to "know your customer" (FINTRAC).

**18. One of the questions registrants most commonly ask the Real Estate Council of Ontario (RECO) is about its position on advertising sold properties — often regarding the use of sold cards and the advertising of the price or terms of an agreement.**

#### RECO - Advertising of Sold Properties

Code of Ethics under REBBA 2002:

*36.(8) A registrant shall not include anything in an advertisement that could reasonably be used to identify specific real estate unless the owner of the real estate has consented in writing.*

*36.(9) A registrant shall not include anything in an advertisement that could reasonably be used to determine any of the contents of an agreement that deals with the conveyance of an interest in real estate, including any provision of the agreement relating to the price, unless the parties to the agreement have consented in writing.*

Further,

*When advertising that a property is sold, you may not include anything (such as an image or text) that could reasonably be used to:*

- Identify any party to the transaction, unless they have consented in writing S.36.(7)*
- Identify the specific property, unless the owner of the real estate has consented in writing S.36.(8)*
- Determine any of the contents of an agreement relating to the transaction including any provision that relates to the price (e.g., % of list price) or terms, unless the parties to the agreement have consented in writing S.36.(9)*

*Determining whose written consent to seek - the buyer, seller or both - depends on:*

- 1. When the advertisement is distributed (before versus after the transaction has completed).*
- 2. Who is placing the advertisement (the buyer's brokerage or the seller's brokerage).*

*Remember, if you need to contact a party that was represented by another brokerage, communication must go through that other brokerage, unless you first obtain that brokerage's written consent to contact the party directly. S.7. Code.*

If the advertising will appear **before** the transaction is completed:

And if...	Then...
The seller's brokerage wants to advertise that the property is sold (with or without an image of the property)	The seller's written consent is required
The seller's brokerage wants to advertise that the property is sold (with or without an image of the property) and wants to include price information (or % of list price) or other terms of the deal	Both the seller's and buyer's written consent is required
The buyer's brokerage wants to advertise that the property is sold (with or without an image of the property)	The seller's written consent is required (must be obtained via the seller's brokerage unless written consent has been obtained from the seller's brokerage to contact the seller directly)
The buyer's brokerage wants to advertise that the property is sold (with or without an image of the property) and wants to include price information (or % of list price) or other terms of the deal	Both the seller's and buyer's written consent is required

If the advertising will appear **after** the transaction is completed:

And if...	Then...
The seller's brokerage wants to advertise that the property is sold (with or without an image of the property)	The buyer's written consent is required (must be obtained via the buyer's brokerage unless written consent has been obtained from the buyer's brokerage to contact the buyer directly)
The seller's brokerage wants to advertise that the property is sold (with or without an image of the property) and wants to include price information (or % of list price) or other terms of the deal	Both the seller's and buyer's written consent is required
The buyer's brokerage wants to advertise that the property is sold (with or without an image of the property)	The buyer's written consent is required
The buyer's brokerage wants to advertise that the property is sold (with or without an image of the property) and wants to include price information (or % of list price) or other terms of the deal	Both the seller's and buyer's written consent is required

Please see RECO's Advertising Guidelines and Advertising Checklist for more information.

## **19. What Active Listing information from the MLS® System can I share with my clients?**

You are entitled to share non-confidential MLS® data regarding an Active Listing in the MLS® System with your clients with whom you have established an agency relationship. An "Active" Listing refers a listing where the listed property is available for showings, inspections and registration of offers for purchase or lease. Non-confidential MLS® data includes listing and property information contained in a Client Full Listing Report or a Property Match Report or that is published on realtor.ca.

You may not share with your clients confidential MLS® data which is intended exclusively for internal use by Authorized Users of the MLS® System including the compensation offered to cooperating brokerages, the seller's name and contact information (unless otherwise directed by the seller to do so), instructions or remarks intended for cooperating brokers only (such as those regarding showings, security or occupancy of the listed property including instructions for access or when the property will be empty or occupied), the seller's mortgage information, and the sale price of pending solds (including Listings where the seller and buyer have entered into an agreement that has not yet closed).

A Broker Full Listing Report is intended solely for internal use by Authorized Users of the MLS® System and, as it contains confidential MLS® data of the nature described above, it may not be shared with your clients or others. If a Member distributes confidential MLS® data for Active Listings, whether in the form of Broker Full Listing Reports or otherwise, at open houses or in any other manner to clients or consumers, that Member may be found in violation of the Authorized User Agreement (AUA), the MLS® Rules and Policies, the RECO Code of Ethics and/or applicable privacy laws.

If TREB receives a specific complaint with adequate details from a Member or other person alleging such a violation of the AUA or MLS® Rules and Policies by a Member, TREB will treat the matter as a Professional Standards complaint and respond accordingly. If the complainant alleges a violation of the RECO Code of Ethics, TREB will direct the complainant to file a complaint with RECO to be addressed by that body. If the complainant alleges a breach of privacy or raises privacy concerns, TREB will direct the complainant to contact the Member in question and/or to file a complaint with the Privacy Commissioner of Canada. TREB takes compliance with the AUA, MLS® Rules and Policies, the RECO Code of Ethics and applicable privacy laws seriously and encourages any complainant to report any known violation to TREB or the appropriate body so that appropriate action may be taken.

Last updated: September 26, 2016

## Acknowledgement & Agreement

I, \_\_\_\_\_, acknowledge that I have read and understand the Policy on the Collection, Use, Disclosure of Personal Information – PRIVACY POLICY of RE/MAX Professionals Inc., Brokerage

Further, I agree to adhere to this policy and will ensure that employees working under my direction adhere to this policy. I understand that if I violate the rules and procedures outlined in this policy, I may face disciplinary action, up to and including termination of employment.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_