



Office of the Auditor General of Ontario

Value-for-Money Audit:  
Real Estate Council  
of Ontario



*November 2022*



# Real Estate Council of Ontario

## 1.0 Summary

Buying or selling a home is often the biggest financial decision people will make in their lifetime. Consumers typically rely on real estate professionals to help them navigate the buying and selling process and provide them with expertise and support. Real estate professionals can arrange showings of homes, negotiate the terms of a purchase or sale, offer advice, and manage legal documents such as written offers that are required to facilitate the purchase or sale of real estate.

According to the Ontario Real Estate Association (OREA), in the last 10 years (2012–21), about 2.2 million residential resale homes have been sold in Ontario with a total sales value of over \$1.2 trillion. In addition, the average price of a resale residential home increased by about 127% from \$383,651 in 2012 to \$871,870 in 2021. Effective oversight of the real estate industry is critical to ensure that consumers are protected when engaging in what may be their largest financial transaction.

In 1997, the government of Ontario created the Real Estate Council of Ontario (RECO), a not-for-profit designated administrative authority under the *Safety and Consumer Statutes Administration Act, 1996*, to administer and enforce the *Real Estate and Business Brokers Act, 2002* (Act) and regulate real estate brokerages, brokers and salespersons. RECO's mission is to promote a fair, safe and informed real estate market for consumers in Ontario through effective, innovative regulation of those who trade in real estate. The Ministry of Public and Business Service Delivery (Ministry)

is responsible for overseeing RECO and monitoring its performance to ensure RECO is meeting its mandate.

Under the Act, every real estate salesperson, broker and brokerage that facilitates the purchase or sale of property in Ontario must be registered with RECO. In 2021, there were 78,266 salespersons, 20,038 brokers and 3,876 brokerages registered with RECO. As RECO does not receive any government funding, it primarily funds its operations from registration fees and other fees it collects from registrants. In 2021, RECO's operating revenues totalled \$33.6 million.

To ensure salespersons, brokers and brokerages comply with legislative requirements, RECO undertakes activities that include inspections and investigations of registrants, and enforcement action against those who breach these requirements. RECO has an external Discipline Committee composed mostly of brokers and salespersons that can issue fines to registrants and/or require registrants to complete an educational course for failing to comply with Ontario Regulation 580/05—Code of Ethics, under the Act. Registrants are required to follow the rules of conduct in the Act, the Code of Ethics and other regulations under the Act in conducting real estate transactions. RECO is also responsible for providing timely information to the Minister on emerging issues or concerns relating to the administration of the Act that may require legislative, regulatory or policy changes to resolve.

Our audit found that the activities RECO performs to ensure salespersons, brokers and brokerages comply with the Act and its regulations are not always effective and timely. RECO does not have a process in place to

ensure a full on-site inspection is conducted at all real estate brokerages within a certain time frame to assess brokerages' compliance with the Act and its regulations. Specifically, RECO has never performed a full on-site inspection at 27% of registered brokerages, and has not conducted a full on-site inspection at a further 35% of brokerages in more than five years.

As well, RECO does not have a process in place to monitor whether investigators complete investigations on a timely basis or whether they take appropriate action based on the findings of their investigative work. For example, we found that the proportion of investigations resulting in enforcement action differed significantly amongst RECO's five investigators, ranging from a low of 39% in the case of one investigator to as high as 75% in the case of another.

When RECO finds that a salesperson, broker, or brokerage's conduct related to a real estate transaction has violated the Code of Ethics, it does not have an explicit policy to consider the amount of income earned by a registrant on the related real estate transaction when determining the amount of a fine unless the registrant suffered or gained as a result of the breaches. Between 2017 and 2021, the average fine issued for violations of the Code of Ethics was \$8,273, and 78% of the fines were \$10,000 or less. In our review of a sample of discipline cases, we found that 67% of registrants were fined a lower amount than the commission earned in the related real estate transaction. When a fine is significantly lower than the commission earned on a transaction, there is a risk that the fine may not act as a sufficient deterrent to future misconduct, and instead signal to a registrant that the fine is just a cost of doing business.

Additionally, RECO and the Ministry have lagged in facilitating the introduction of certain protections for consumers who engage in real estate transactions in Ontario, particularly in comparison to its counterpart in British Columbia. For example, in Ontario, there is no legislated cooling off period (a period of time when a buyer can cancel a real estate transaction without risking the loss of their deposit) for new or resale properties except for pre-construction or new condominiums.

In contrast, in July 2022, the government of British Columbia introduced a regulation concerning home buyers that provides buyers with a mandatory three-day period to allow them time to conduct due diligence activities such as a home inspection or to confirm they have secured financing, and to reconsider their offer. The regulation, which comes into effect in January 2023, was informed in part by advice from the British Columbia Financial Services Authority (BCFSA), which regulates real estate professionals in British Columbia, based on its consultations with industry, stakeholders and experts. In addition, while salespersons and brokers in Ontario are permitted to represent both a buyer and a seller in a single real estate transaction—making it challenging to effectively represent the best interests of both parties—with the assistance of the BCFSA's predecessor, the government of British Columbia in 2018 banned this practice because of the risk it presents to consumers. Similarly, in 2022 this practice was also banned in Quebec.

Other significant concerns identified in our audit included the following:

### Registration of Salespersons and Brokers

- **RECO does not have a formal policy, guidelines or a consistent process to assess whether to refuse to register applicants who have a criminal history.** Under the Act, RECO can refuse to register an applicant who cannot reasonably be expected to carry on business in accordance with the law, and with integrity and honesty. However, RECO does not have a formal policy, guideline or process to assess whether an applicant with a criminal charge or conviction is fit to conduct business in the real estate profession in accordance with the Act. We reviewed a sample of 25 brokers and salespersons whose applications were approved by RECO in the last three years who had self-disclosed a criminal conviction or charges in their application. In 20 (80%) of these cases, RECO did not have a documented rationale for why it did not pursue action to refuse or revoke a registrant's registration. These cases included individuals convicted

of serious crimes including fraud, physical violence such as assault and assault with a weapon.

- **Lack of exam protocols contributed to a major breach in the integrity of exams offered in the real estate education program.** We found that despite major breaches in the integrity of real estate exams administered online by Humber College in April 2021, September 2021 and March 2022, RECO has not taken steps to independently verify whether the issues that led to the breaches have been satisfactorily addressed. To date, Humber College has notified RECO of 356 cases of large-scale, deliberate and organized misconduct involving 315 learners. These breaches occurred after exams were moved from in-person to virtual without adequate controls in place to protect the integrity of the examination process.

### Inspections of Brokerages

- **RECO does not review and monitor whether inspections of brokerages are carried out consistently and effectively.** The proportion of inspections that identify instances of non-compliance varies significantly between RECO's five inspectors, ranging from a low of 29% of inspections in the case of one inspector, to as high as 82% in the case of another inspector.
- **RECO rarely follows up on violations found during inspections to confirm they have been corrected.** In 88% of the 2,643 inspections completed by RECO between 2017 and 2021 where violations were identified, we found that RECO's inspectors closed the inspection file without referring the brokerage to the investigations department or conducting a follow-up inspection to confirm that the violations had been corrected. These inspections identified significant violations, including shortages in the brokerage's real estate trust account where client deposits are held, and employing unregistered salespersons.

- **RECO does not check if salespersons and brokers are disclosing accurate information in property listings.** In our review of inspection files and discussions with RECO's inspectors, we found that although RECO's inspection process includes reviewing whether a brokerage's advertising is compliant with legal requirements for accuracy, it does not require its inspectors to review and verify the information included in a property listing to determine if the selling agent took reasonable steps to ensure its accuracy. Buyers rely on the accuracy of key information about a property to make purchasing decisions.

### Money Laundering in the Real Estate Sector

- **The real estate sector rarely reports cash and suspicious real estate transactions as required to the federal agency that monitors money laundering.** The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) received zero reports of large cash transactions between the 2017/18 and 2020/21 fiscal years, and just 18 reports of large cash transactions in 2021/22, from real estate brokers and salespersons. A number of reports commissioned in recent years by the government of British Columbia repeatedly highlighted the risk of money laundering in the real estate sector and the need for stronger enforcement. Given Ontario's large and lucrative real estate market, it is highly likely that money laundering activities are occurring in this sector in Ontario but remain undetected.

### Consumer Protection

- **Lack of transparency in real estate transactions involving multiple offers puts prospective buyers at financial risk.** Under the Act and its regulations, when there are competing offers on a single property, a brokerage that represents the seller must disclose the number of competing written offers to every person

making a competing offer but is prohibited from disclosing the substance of competing offers on the property, including the offer price, closing date and conditions to any person including other salespersons or brokers that represent prospective buyers. This is supposed to result in all interested buyers submitting offers to purchase a property without knowing any information about the content of competing offers from other interested buyers. This practice increases the risk that buyers can overpay for a property by offering a price that far exceeds the next highest offer.

- **RECO's ability to review allegations of fictitious offers on properties is limited.** The Ontario government introduced legislation in 2013 to make changes to the Act, and made changes to Regulation 579/05 in 2014, to require that all offers for a property be made in writing and that all brokerages acting for a seller must retain for at least one year all copies of offers received. These changes were made to prevent a salesperson or broker from making false or misleading claims about competing offers in order to pressure buyers of real estate to act quickly or inflate their offer prices. Although RECO has the authority under the Act to review allegations of fictitious offers, the Act does not require brokerages to retain original offer documents but instead permits brokerages to simply retain a summary of each unsuccessful offer. This summary is not required to include the offer amount or any conditions the buyer includes in an offer. Without this information, RECO's ability to assess whether an offer is a real offer from a legitimate buyer is limited.

### Unclaimed Consumer Deposits

- **RECO does not follow up on brokerages it knows are holding unclaimed consumer deposits.** RECO does not have a process in place to require brokerages to periodically report the number and amount of unclaimed consumer deposits held in a brokerage's trust account. Instead, RECO relies on brokerages to

voluntarily comply with the requirements of the Act to remit to RECO any unclaimed consumer deposits that have not been returned to a buyer or seller after two years. We found that over the last five years (2017–21), RECO's inspectors issued 599 non-compliance notices to 491 brokerages for failing to remit unclaimed consumer deposits to RECO. However, even after issuing these non-compliance notices, RECO did not take any action to follow up and collect the unclaimed consumer deposits.

### RECO's Operations

- **RECO does not currently have general authority to collect transaction data from brokerages, limiting its ability to effectively regulate registrants and identify consumer risks.** In the absence of such information, RECO currently faces challenges in providing evidence-informed policy advice to the Ministry to address emerging risks to consumers. For example, RECO cannot produce detailed analytics to identify the prevalence of trends in real estate transactions that may pose a risk to consumers such as unconditional offers, transactions where a single salesperson represents both the buyer and the seller, and transactions that may involve fictitious offers.
- **Majority of Ontarians surveyed are not aware of RECO and the consumer protections it offers.** RECO's efforts to inform prospective buyers and sellers about its role under the Act have not been effective, and there is no requirement in place for registered brokers and salespersons to inform buyers and sellers of services available through RECO. For example, RECO administers an insurance program where consumers can make a claim against a salesperson or broker in the event of an error or omission. About 89% of Ontarians surveyed by RECO in 2021 indicated that they were not aware of RECO and the protections it offered to real estate buyers and sellers, and 65% of Ontarians surveyed by RECO did not know that real

estate brokerages and salespersons were regulated by RECO.

- **Although RECO's role is to protect consumers, its Board is composed mainly of real estate industry representatives.** At the time of our audit, only two of the 12 directors on RECO's Board were not registered members of the real estate industry. RECO's Board is required to have an advisory process for direct input to the Board on issues of importance to consumers. However, we found that for most of RECO's existence, it has not had a functioning process to do so.

### Ministry Oversight

- **The Ministry does not collect sufficient information to monitor and assess RECO's performance in meeting its mandate.** We found that RECO has not established performance indicators for key areas of its operations including areas where our audit identified significant operational issues such as whether all registered brokerages are inspected over a specific period of time and whether registrant misconduct is investigated within a targeted time frame.

This report contains 25 recommendations, with 63 action items, to address our audit findings.

### Overall Conclusion

Our audit concluded that RECO has not been fully effective in administering the *Real Estate and Business Brokers Act, 2002* to protect the interests of consumers when engaging in a real estate transaction in what is usually the single biggest purchase of their lives. For example, RECO could not demonstrate how it met its requirements under the Act when assessing applicants who had a past criminal charge or conviction. The Act also requires that brokerages remit to RECO any unclaimed consumer deposits from incomplete property sales after two years. However, RECO did not have a process in place to proactively collect deposits and as a result, RECO does not know the number and value

of unclaimed deposits currently held by brokerages in Ontario.

There are also a number of areas where consumer protection for buyers and sellers of real estate could be improved in comparison to another Canadian province, British Columbia. For example, in Ontario there is no legislated cooling off period when purchasing a resale property. This means that buyers cannot typically rescind an offer with no conditions without risking the loss of their deposit. In 2022, the government of British Columbia announced a regulation concerning home-buyers that provides them with a mandatory three-day period to allow them time to conduct their due diligence by means such as obtaining a home inspection or confirming the availability of financing. In Ontario, a single salesperson or broker can represent both a buyer and seller in the same real estate transaction, on behalf of a brokerage. This practice has been banned in British Columbia due to the risks it poses to consumers.

RECO does not currently have general authority to collect transaction data from brokerages. In the absence of such information, RECO currently faces challenges in providing evidence-informed policy advice to the Ministry of Public and Business Service Delivery to address emerging risks to consumers or to apply a risk-based approach to inspecting brokerages so that high-risk brokerages can be inspected more frequently. For example, RECO cannot identify the prevalence of trends in real estate transactions that pose a risk to consumers such as unconditional offers, transactions where a single salesperson represents both the buyer and seller, and transactions that may involve fictitious offers.

Finally, our audit concluded that the Ministry's oversight processes to ensure that RECO effectively administers the Act and fulfills its mandate were not fully effective. We found that the Ministry did not collect sufficient information from RECO to monitor and assess RECO's performance. Specifically, we found that RECO lacked performance indicators for key areas of its operations, including inspections, investigations, disciplinary action and its compliance with the requirement to operate on a cost-recovery basis.

## RECO OVERALL RESPONSE

The Real Estate Council of Ontario (RECO) appreciates the work done by the Office of the Auditor General of Ontario and the insights and opportunities its report presents to enhance the important work it does. RECO is also grateful for the oversight of the Ministry of Public and Business Service Delivery (Ministry).

The Board, management, and staff of RECO are committed to administering the law in the public interest, enhancing consumer confidence in the real estate profession, and raising professional standards in an industry where there are over 100,000 registrants and high-value assets are traded in approximately 250,000 transactions each year. RECO is committed to delivering on its mandate to the fullest extent possible, and to sharing its progress in a transparent manner.

While RECO is actively working on many of the recommendations described in the report, it is committed to developing a plan that will define the necessary steps to assess each recommendation and implement a solution to address the recommendations in a timely and responsive manner.

Specifically, RECO is pleased that so many of the recommendations align very closely with its strategy to modernize its approach to administering the law in the public interest. RECO will continue to develop processes in the areas of registration, inspection, education, complaints, and investigations and to gather relevant data to support its risk-based approach and reporting. The additional data will support and inform RECO's risk-based approach into the future.

RECO will work with the Ministry and other stakeholders to develop and implement strategies that effectively advance the public interest.

## MINISTRY OVERALL RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) would like to thank the Auditor

General and her staff for their work on the audit and for their recommendations. The Ministry welcomes the feedback on how the Real Estate Council of Ontario (RECO) is performing and the recommendations to strengthen RECO's operations and the Ministry's oversight of RECO.

The Ministry recognizes the importance of RECO fulfilling its responsibilities to administer and enforce the *Real Estate and Business Brokers Act, 2002* (Act) in a manner that protects the public.

The Ministry takes its oversight of RECO seriously and is committed to examining areas where the Ministry can enhance its oversight processes to provide greater assurances for the people of Ontario that RECO is meeting its consumer protection mandate.

The Ministry notes that the *Trust in Real Estate Services Act, 2020*, which amends the Act, received Royal Assent in March 2020. The majority of changes made by the *Trust in Real Estate Services Act, 2020* will be coming into force on April 1, 2023, including changes that will:

- strengthen disclosure requirements and other registrant obligations;
- allow a registrant to conduct an open offer process and disclose the details of competing offers, excluding personal or identifying information contained in the offers, at the seller's direction; and
- update the regulatory powers and tools of RECO, including by revising the procedures of RECO's discipline committee.

The Ministry will work with RECO to address the Auditor General's recommendations. For those recommendations directed to RECO, the Ministry will request that RECO provide an implementation plan that outlines the specific steps RECO plans to take to implement each recommendation. The Ministry will closely monitor and track RECO's progress in addressing the recommendations.

## 2.0 Background

### 2.1 Overview of the Real Estate Council of Ontario

In 1997, the government of Ontario created the Real Estate Council of Ontario (RECO), an administrative authority under the *Safety and Consumer Statutes Administration Act, 1996*, to regulate real estate brokerages, brokers and salespersons (referred to as “registrants”). RECO is responsible for administering and enforcing the *Real Estate and Business Brokers Act, 2002* (Act). RECO’s mission is to promote a fair, safe and informed real estate market for consumers in Ontario through effective, innovative regulation of those who trade in real estate. Under the Act, every real estate brokerage, broker and salesperson that facilitates the purchase or sale of property in Ontario must be registered with RECO. In 2021, there were 3,876 brokerages, 20,038 brokers and 78,266 salespersons registered with RECO.

RECO is a designated administrative authority under the *Safety and Consumer Statutes Administration Act, 1996* that does not receive any government funding. It primarily funds its operations from registration fees and other fees it collects from registrants. In 2021, RECO’s operating revenues totalled \$33.6 million.

RECO is accountable to the Ministry of Public and Business Service Delivery (Ministry), which is responsible for overseeing RECO and monitoring its performance to ensure it is meeting its mandate. RECO’s Board of Directors is accountable for RECO’s performance to the Minister of Public and Business Service Delivery through the Board Chair.

### 2.2 Roles and Responsibilities

RECO undertakes a number of activities to administer and enforce the *Real Estate and Business Brokers Act, 2002* (Act) and fulfill its mandate, including:

- **registration** of real estate brokerages, brokers and salespersons (see **Section 2.4**);
- **developing education standards** for brokers and salespersons (see **Section 2.4**);

- **addressing complaints** about brokerages, brokers and salespersons (see **Section 2.5**);
- **conducting inspections** of real estate brokerages (see **Section 2.6**);
- **conducting investigations** of brokerages, brokers and salespersons for potential breaches of the Act (see **Section 2.7**);
- **taking enforcement action** against brokerages, brokers and salespersons, including when its complaints, inspections or investigations indicate that they have not complied with legislative provisions (see **Section 2.8**);
- **overseeing the Insurance Program** that provides professional liability insurance to all registrants (see **Section 2.9**); and
- **promoting** consumer and public awareness.

As of March 2022, RECO employed 160 full-time-equivalent employees whose responsibilities include processing registration applications, conducting inspections and investigations, mediating complaints, and responding to inquiries from the public and registrants. See **Appendix 1** for an overview of RECO’s organizational structure.

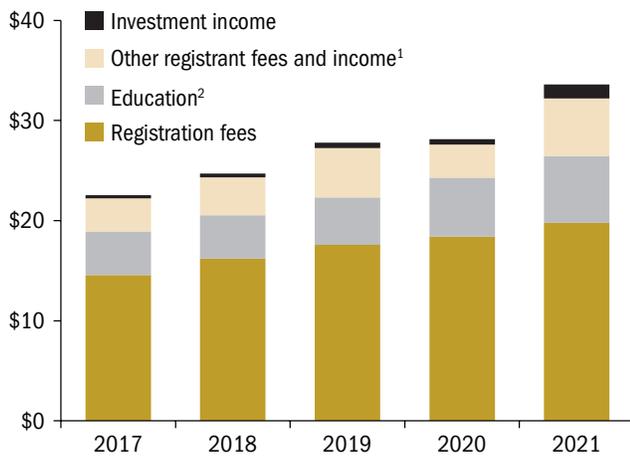
RECO is governed by a 12-member Board of Directors that is composed of nine members who are real estate professionals registered under the Act who are elected by registered brokers and salespersons, and three members appointed by the Minister of Public and Business Service Delivery. **Appendix 2** lists the current RECO Board members and their affiliations.

### 2.3 Revenues and Expenditures

RECO earns most of its revenue from the registration application fees it collects from registrants. In 2021, RECO’s operating revenues totalled \$33.6 million, of which \$19.8 million, or 59%, was revenue collected from registration fees. Other fees charged to registrants such as transfer fees and reinstatement fees accounted for \$4.8 million, or about 14% of total operating revenue. RECO also earns income from real estate education courses delivered by Humber College that are based on materials that were prepared by a vendor hired and overseen by RECO. RECO currently earns a flat fee of \$2 million each year and 5% of all course

**Figure 1: RECO's Operating Revenues, 2017–2021 (\$ million)**

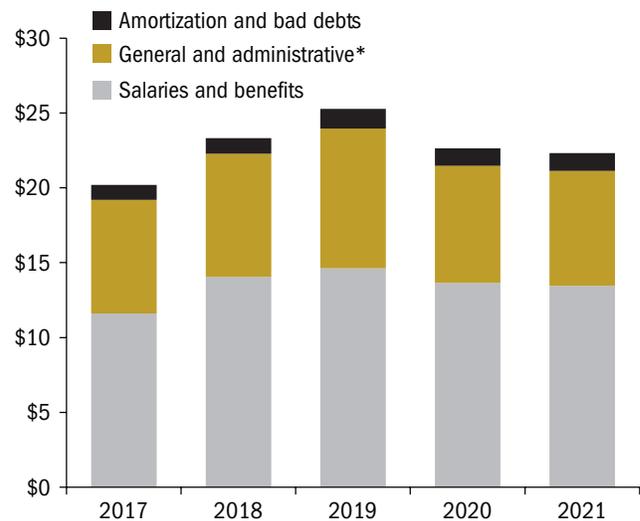
Source of data: Real Estate Council of Ontario



1. This represents other fees collected from registrants such as transfer fees, application review fees, and notice of change fees.
2. Education revenues include education revenue from pre-registration programs delivered by Humber College starting in September 2019 (and previously delivered by the Ontario Real Estate Association), as well as mandatory continuing education programs delivered by RECO.

**Figure 2: RECO's Operating Expenses, 2017–2021 (\$ million)**

Source of data: Real Estate Council of Ontario



\* This includes office and administrative expenses, government oversight fee, board remuneration and occupancy costs.

**Figure 3: RECO's Operating Revenues over Expenses, 2017–2021 (\$ million)**

Source of data: Real Estate Council of Ontario

	2017	2018	2019	2020	2021
<b>Revenue</b>					
Registration fees	14.58	16.22	17.58	18.41	19.77
Education	4.34	4.33	4.73	5.88	6.67
Other registrant fees and income	3.32	3.76	4.93	3.30	5.78
Investment income	0.30	0.40	0.54	0.55	1.38
<b>Total Operating Revenue*</b>	<b>22.53</b>	<b>24.71</b>	<b>27.78</b>	<b>28.14</b>	<b>33.60</b>
<b>Expenses</b>					
Salaries and benefits	11.62	14.04	14.63	13.65	13.45
General and administrative	7.58	8.23	9.34	7.83	7.68
Amortization and bad debts	0.99	1.04	1.30	1.17	1.19
<b>Total Operating Expenses*</b>	<b>20.19</b>	<b>23.32</b>	<b>25.27</b>	<b>22.65</b>	<b>22.32</b>
<b>Excess of Revenue over Expenses*</b>	<b>2.34</b>	<b>1.39</b>	<b>2.51</b>	<b>5.49</b>	<b>11.29</b>

\* Numbers may not total due to rounding.

revenue in excess of \$20 million generated by Humber College. In 2021, RECO earned almost \$6.7 million in education revenue, representing approximately 20% of its total operating revenue. **Figure 1** shows operating revenue collected by RECO over the last five years by

type, and **Figure 2** shows operating expenses incurred by RECO over this same time frame. **Figure 3** provides a comparison of operating revenues and expenses over the last five years (2017–21).

**Figure 4: Registration Categories and Related Requirements**

Source of data: Real Estate Council of Ontario

Type of Registration	Description	Applicant Requirements for Registration
<b>Salesperson<sup>1</sup></b>	Represents a buyer or seller in a real estate transaction.	<ul style="list-style-type: none"> <li>• Be at least 18 years of age and a resident of Canada;</li> <li>• successfully complete the pre-registration education program;</li> <li>• submit a completed application form, criminal background check, and pay a registration fee to RECO;</li> <li>• disclose applicable matters related to financial position;</li> <li>• disclose past and present conduct (e.g., criminal history); and</li> <li>• obtain liability insurance through RECO (described in <b>Section 2.9</b>).</li> </ul>
<b>Broker<sup>1,2</sup></b>	A salesperson that can be designated by a brokerage to supervise other salespersons employed by the brokerage and is responsible for ensuring that that the brokerage complies with the <i>Real Estate and Business Brokers Act, 2002 (Act)</i> and its regulations.	<ul style="list-style-type: none"> <li>• Be registered as a salesperson for at least 24 months of the preceding 36 months prior to registering as a broker;</li> <li>• successfully complete the broker education program; and</li> <li>• submit a completed application form and registration fee to RECO (see <b>Appendix 3</b>).</li> </ul>
<b>Brokerage<sup>1,2</sup></b>	A business (corporation, partnership or sole proprietorship) that employs registered salespersons and brokers.	<ul style="list-style-type: none"> <li>• Submit a completed application form to RECO that includes proof of a trust account that is to be used to hold consumer deposits collected as part of a real estate transaction;</li> <li>• designate one broker as the broker of record; and</li> <li>• pay a registration fee to RECO.</li> </ul>

1. Salespersons and brokers must be employed by a registered brokerage in order to actively trade in real estate in Ontario.

2. Although a brokerage may employ more than one broker, the Act requires a brokerage to designate one broker as the broker of record.

## 2.4 Registration of Brokerages, Brokers and Salespersons

The Act requires a person or business who facilitates a trade (e.g., buy, sell, lease, advertise or exchange) in real estate to be registered with RECO. However, registration with RECO is not required for individuals who choose to advertise and sell their own home. **Figure 4** illustrates the registration categories for individual applicants and businesses, and their related requirements.

In 2021, RECO approved applications for registration for 12,787 salespersons, 3,782 brokers and 686 brokerages. As of December 2021, there were 78,266 salespersons, 20,038 brokers and 3,876 brokerages registered with RECO. As shown in **Figure 5**, the vast

**Figure 5: Salespersons and Brokers Employed by Brokerages, as of December 2021**

Source of data: Real Estate Council of Ontario

# of Salespersons and Brokers Employed	# of Brokerages
0-25	3,355
26-50	185
51-100	137
101-500	170
501-1,000	18
> 1,000	11
<b>Total</b>	<b>3,876</b>

majority of brokerages employ 25 or fewer salespersons and brokers. **Figure 6a** shows that 42% of brokers and salespersons have been registered with RECO for more than 10 years, while 35% have been registered for less than five years. **Figure 6b** shows the number of brokerages, brokers and salespersons registered with RECO in each of the last 10 years (2012–21) compared to the number of residential homes sales in Ontario over the same period.

RECO has the authority to set education standards and approve providers to develop and deliver education programs for registrants. Individuals who want

to apply to become registered salespersons or brokers must complete these programs. RECO has contracted with NIIT Canada to develop and deliver the content for its registration education programs. NIIT Canada has contracted Humber College to deliver the registration education programs through a combination of in-person and remote virtual learning sessions and examinations. To qualify for entry into these programs, applicants must have a secondary school diploma or a General Education Development certificate (GED), or complete a program admission exam. RECO is responsible for overseeing NIIT Canada and Humber College's performance in developing and delivering the real estate education programs.

Brokerages, brokers and salespersons must renew their registration with RECO and pay a renewal fee once every two years (see **Appendix 3** for RECO's fee schedule). To be eligible to renew their registration, brokers and salespersons must also complete RECO's mandatory continuing education courses. Once every two years, salespersons and brokers must complete two RECO update courses and two elective courses offered by RECO. RECO maintains a library of courses that registrants can select from, with content that focuses on industry issues and regulatory knowledge.

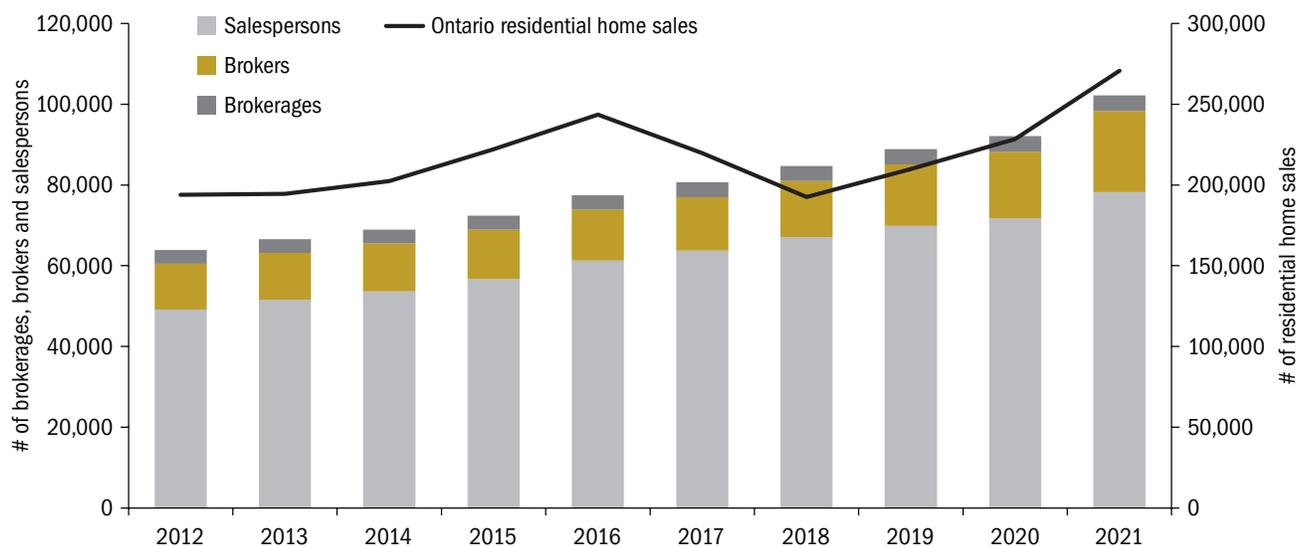
**Figure 6a: Length of Registration of Brokerage, as of December 2021**

Source of data: Real Estate Council of Ontario

# of Years Registered with RECO	# of Brokers and Salespersons	% of Total
0-4	34,042	35
5-9	22,668	23
10-14	14,466	14
> 15	27,128	28
<b>Total</b>	<b>98,304</b>	<b>100</b>

**Figure 6b: Number of Brokerages, Brokers and Salespersons Registered with RECO and Number of Residential Home Sales in Ontario, 2012–2021 (000)**

Source of data: Real Estate Council of Ontario and Ontario Real Estate Association



**Figure 7: Complaints Closed and Average Time to Closure, 2017–2021**

Source of data: Real Estate Council of Ontario

	2017	2018	2019	2020	2021	Total
<b># of complaints closed</b>	3,182 <sup>1</sup>	1,828	1,751	2,251	2,674	<b>11,686</b>
<b>Avg. turnaround time to close complaints (days)</b>	n/a <sup>2</sup>	84	71	79	137 <sup>3</sup>	

1. RECO experienced a significant backlog in handling complaints between 2014 and 2016; it was addressed in 2017 by using additional staff to handle complaints (investigators, inspectors, etc.).
2. RECO made changes to its information systems in 2017, where migration of complaints data from the old system did not capture turnaround time for complaints.
3. In 2021, RECO revised the method used to calculate the turnaround time to more accurately reflect the total time it takes RECO to close a complaint.

## 2.5 Complaint Handling

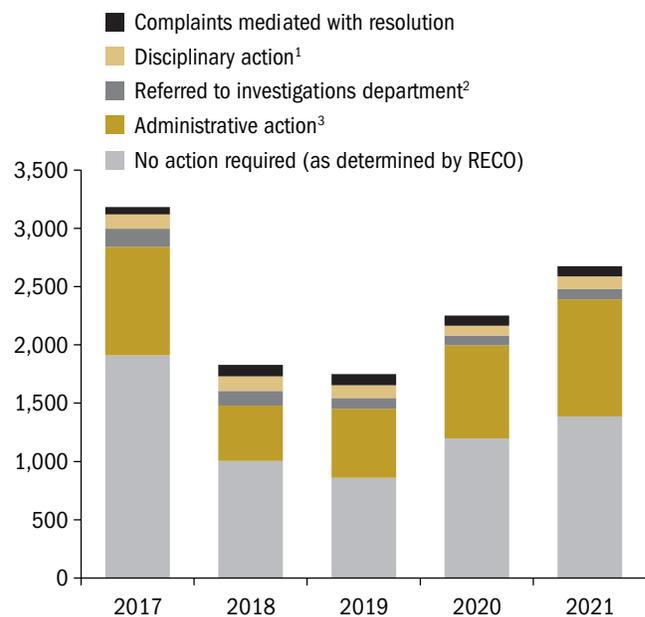
RECO's legislated responsibilities include addressing complaints it receives about the actions of its registrants. Under the Act, registrants are required to provide information about a complaint if requested to do so by RECO. See **Appendix 4** for an illustration of the steps RECO takes from receipt to closure of a complaint.

When handling a complaint, the Act allows RECO to attempt to mediate or resolve the complaint between the parties. In the last five years (2017–21), RECO closed approximately 11,700 complaints between complainants and registrants. About 75% of these complaints were from the public at large, while 25% were from registrants making complaints about other registrants. **Figure 7** shows the number of complaints closed by RECO in each of the last five years, and **Figure 8** highlights the outcomes of RECO's closed complaints over this period.

Based on the severity of the issues that led to the complaint, RECO can also issue a warning letter to the registrant, order the registrant to take educational courses, or require the registrant to make corrections. If a complaint alleges more serious violations of the Act and its regulations, where the actions of a registrant have caused harm to a buyer or seller, RECO may also escalate the complaint for enforcement action (described in **Section 2.8**), including referring the matter to the Discipline Committee, laying charges against the registrant, and/or proposing to revoke or suspend their registration. Such violations include instances where the registrant:

**Figure 8: Outcome of Complaints Closed by RECO, 2017–2021**

Source of data: Real Estate Council of Ontario



1. Disciplinary action is referral to the Discipline Committee for potential violations of the Code of Ethics.
2. Referral to investigations is to lay charges for prosecution in the provincial courts.
3. Administrative actions include issuing proposals to refuse, revoke, or suspend registrations or apply conditions, sending warning letters, and/or ordering education courses for the registrant violating the *Real Estate and Business Brokers Act, 2002*.

- fails to disclose pertinent information to all prospective buyers of a property, providing advantages to only specific buyers;
- gives a client access to a home without accompanying the client;

**Figure 9: Types of Inspections Conducted by RECO**

Source of data: Real Estate Council of Ontario

Type of Inspection	Description
<b>Routine inspections</b>	<p>Involves the full inspection of brokerages on a periodic basis to assess their compliance with the <i>Real Estate and Business Brokers Act, 2002 (Act)</i> and its regulations. The following documents are reviewed:</p> <ul style="list-style-type: none"> <li>• client representation agreement, agreement of purchase and sale, receipts for deposits, trade record sheet, any written disclosures, and correspondence with the client, the client's lawyer and the co-operating brokerage;</li> <li>• brokerage's monthly trust account reconciliations, ledgers and bank statements to verify whether deposit monies (held in trust by the brokerage) have been appropriately handled and maintained;</li> <li>• records for financial information, including all bank accounts held by the brokerage;</li> <li>• brokerage's personnel list to ensure there are no unregistered individuals making real estate trades;</li> <li>• advertisements of the brokerage to ensure they are not false, misleading or deceptive, and comply with all other advertising requirements; and</li> <li>• any other documents associated with specific trade files reviewed as part of the inspection.</li> </ul>
<b>Trust account reconciliation inspections</b>	<p>Performed as part of each routine on-site inspection but are also frequently performed as a separate individual review. They involve the review of a brokerage's trust account reconciliation statements, ledgers and bank statements to verify whether trust monies have been appropriately handled and maintained in accordance with the Act. Typically, these inspections are performed remotely when conducted separately from a routine inspection.</p>
<b>Courtesy inspections</b>	<p>Initiated by RECO's inspectors or at the request of the brokerage itself. These inspections involve the same steps as a routine inspection, with an added focus on education and information. One of the core purposes of these inspections is to educate the brokerage and its employees on their legislated and regulatory responsibilities, and practices that will help them be compliant.</p>
<b>Complaint inspections</b>	<p>These inspections are initiated in response to a complaint. They are conducted similarly to routine inspections, but may have a more targeted focus related to the nature of the complaint.</p>

- misleads consumers in advertising, including property listings; and
- causes financial harm to a client by signing or doing something on the client's behalf without authorization.

Although RECO has the ability to take enforcement and disciplinary action against registrants, RECO does not have the authority under the Act to direct registrants to compensate claimants for damages, or to force registrants to cancel a contract that has been signed.

## 2.6 Compliance Inspections

Using its authority under the Act, RECO conducts periodic inspections of brokerages to ensure they conduct business in accordance with the Act and its regulations,

and that brokerages along with the brokers and salespersons they employ remain entitled to registration. RECO's inspectors have unrestricted access to all of a brokerage's documents and records that are relevant to the inspection (including financial records, past transactions and bank statements). RECO's inspection team consists of five inspectors and one manager. **Figure 9** shows the type of inspections conducted by RECO inspectors at registered brokerages.

Over the last five years (2017–21), RECO has conducted 5,148 inspections. Routine on-site inspections accounted for 28%, and trust account reconciliation inspections accounted for about 60% of the total. **Figure 10** shows the total number of inspections that RECO has conducted in each of the past five years, including a breakdown by inspection type.

## 2.7 Investigations

RECO can also investigate brokerages, brokers and salespersons who do not comply with the Act and its regulations. While it is not uncommon for RECO to identify compliance issues with a registrant, more serious or repeated violations of the Act are referred to RECO’s investigations team for further inquiry by RECO’s registration, complaint or inspection departments. Such violations include mishandling of consumer deposits, dishonest conduct of brokers and salespersons, misappropriation of assets, misleading business practices, and unregistered individuals illegally trading in real estate. Investigations that confirm serious violations of the Act and its regulations can result in enforcement action (described in **Section 2.8**) that can range from issuing a warning letter to filing charges against a registrant under the Act and/or issuing a proposal to revoke or suspend their registration.

RECO’s investigations team consists of five investigators and one manager appointed as Provincial

Offences Officers under the *Provincial Offences Act*.

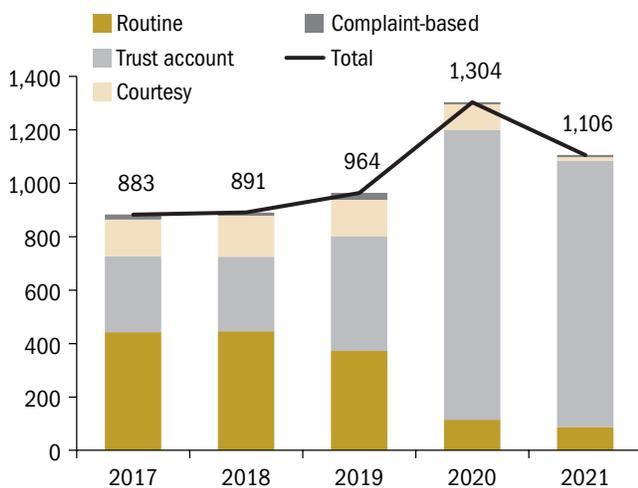
Investigations are initiated as a result of information received from various sources, including referrals from internal departments, such as inspections, registration and the insurance department. Complaints from a consumer or registrant can also trigger an investigation. Between 2017 and 2021, RECO conducted 735 investigations—see **Figure 11** for the number of investigations conducted by RECO annually during this period.

## 2.8 Enforcement and Disciplinary Actions

RECO can take a number of enforcement actions such as issuing a warning letter or a fine, or ordering a registrant to take education courses when violations of the Act are identified through its inspections and investigations. Complaints received from the public may also prompt RECO to take enforcement actions against registered salespersons, brokers and brokerages, and unregistered persons. **Figure 12** lists the types of enforcement actions that RECO can take in response to violations of the Act. **Figure 13** shows the number of enforcement actions taken by RECO over the last five years (2017–21).

**Figure 10: Number of Inspections Conducted by RECO, by Type, 2017–2021**

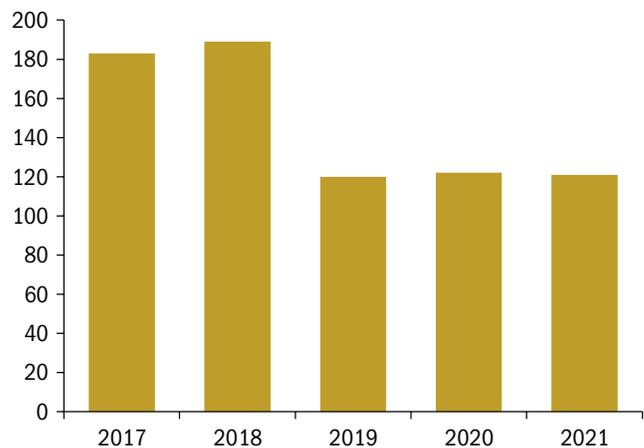
Source of data: Real Estate Council of Ontario



Note: All on-site inspections were suspended in March 2020 due to the impact and restrictions of the COVID-19 pandemic. Since then, on-site inspections have been intermittent as restrictions came off and then on again. During this period, RECO increased its trust account reconciliation inspections, as they can be completed remotely. RECO resumed conducting on-site inspections on a more frequent basis in July 2022.

**Figure 11: Investigations Conducted by RECO, 2017–2021**

Source of data: Real Estate Council of Ontario



**Figure 12: Types of Enforcement Actions RECO Can Take**

Source of data: Real Estate Council of Ontario

Type of Enforcement	Description
<b>Inspection deficiency notices</b>	Inspection deficiency notices outlining the violations noted during an inspection are issued to brokerages at the conclusion of the inspection. The broker of record is required to sign the notice and correct the violations.
<b>Warnings</b>	A written warning issued to registrants that permanently remains on the registrant's record with RECO, and is taken into consideration in the case of future violations and complaints.
<b>Educational courses/fines</b>	Referral by RECO of registrants to the Discipline Committee for breaches under Ontario Regulation 580/05—Code of Ethics. The Committee's Discipline Panel can issue a fine to registrants and/or require registrants to complete RECO's education courses. See <b>Section 2.8.1</b> for a description of the responsibilities and authority of the Discipline Committee.
<b>Proposal to refuse, revoke or suspend registration</b>	In cases involving a registrant where there are concerns related to their financial position and/or past conduct, or they have made a false statement in an application, the registrar has the authority to issue a proposals to a registrant to refuse, revoke, suspend or apply conditions to a registration. Registrants can appeal proposals to the Licence Appeal Tribunal (LAT).
<b>Provincial offence charges</b>	Charges that are laid and offences prosecuted in provincial court against registrants and non-registrants for breaches of the Act. The maximum penalty for an individual who is convicted of an offence under the Act is a fine of \$50,000 and/or imprisonment of two years less a day. The maximum fine for a corporation (brokerage) is \$250,000.

**Figure 13: Enforcement Actions Taken by RECO, 2017–2021**

Source of data: Real Estate Council of Ontario

	2017	2018	2019	2020	2021
<b>Inspection deficiencies (#)</b>	2,008	2,088	2,206	1,387	1,172
<b>Warning letters (#)</b>	920	458	540	756	970
<b>Education courses ordered by RECO's Discipline Committee (#)</b>	27	22	18	57	19
<b>Fines ordered by RECO's Discipline Committee (#)</b>	50	99	60	85	24
<b>Fines ordered by RECO's Discipline Committee (\$)</b>	569,500	807,250	411,000	674,000	144,000
<b>Registration proposals issued (#)</b>	19	19	23	11	17
<b>Provincial offences: charges laid (#)</b>	101	83	97	38	36
<b>Provincial offences: persons prosecuted (#)</b>	38	27	28	7	11
<b>Provincial offences: convictions (#)</b>	97	75	86	22	36
<b>Provincial offences: fines ordered (\$)</b>	434,700	127,000	414,450	123,400	85,000
<b>Provincial offences: restitution ordered (\$)</b>	69,156	23,500	54,100	58,238	35,000

### 2.8.1 RECO's Discipline Committee

The Discipline Committee is an independent committee composed of 43 members, 32 of which are brokers and salespersons, and 11 of which are members of the public. The Chair of the Discipline Committee appoints a panel of three members from the pool of 43 committee members to participate in committee hearings. Two of these three members must be registered brokers and/or salespersons; the third is a non-industry member. If the panel determines that a registrant has failed to comply with Ontario Regulation 580/05—Code of Ethics, under the Act, it may order any of the following:

- require the broker or salesperson to take educational courses;
- require the broker or salesperson to pay a fine of up to \$50,000; and/or
- require the brokerage to pay a fine of up to \$100,000.

Discipline Committee decisions are made public on RECO's website. RECO often enters into a settlement agreement with the registrant prior to a hearing taking place in front of the panel. **Figure 14** shows the number of settlements and discipline hearings that have taken place, and their outcomes, in the last five years (2017–21).

### 2.9 Insurance Program

Under the Act, all registrants are required to be insured under the professional liability group insurance arranged and administered by RECO. The professional liability insurance program that RECO administers provides coverage for liability arising from negligence, errors and omissions, and loss of commissions relating to a trade in real estate. In addition, consumers are protected against loss of deposits relating to a trade in real estate arising from situations such as theft, fraud, misappropriation, and insolvency or bankruptcy. See **Figure 15** for the minimum insurance coverages registrants are required to carry under the Act. **Figure 16** shows the number and value of claims paid from RECO's professional liability insurance program from 2016 to 2020.

### 3.0 Audit Objective and Scope

Our audit objective was to assess whether the Real Estate Council of Ontario (RECO) has effective and efficient processes in place to:

- administer the *Real Estate and Business Brokers Act, 2002* (Act) to protect the public when

**Figure 14: Discipline Committee Hearings Closed and Their Outcomes, 2017–2021**

Source of data: Real Estate Council of Ontario

	2017 <sup>1</sup>	2018	2019	2020	2021 <sup>2</sup>
Cases settled prior to hearing	45	109	64	97	27
Cases resolved at hearing	9	10	6	1	0
<b>Total disciplinary cases</b>	<b>54</b>	<b>119</b>	<b>70</b>	<b>98</b>	<b>27</b>
<b>Outcome of Settlements and Hearings</b>					
Education courses ordered <sup>3</sup>	27	22	18	57	19
Fines ordered (#) <sup>3</sup>	50	99	60	85	24
Fines ordered (\$) <sup>3</sup>	569,500	807,250	411,000	674,000	144,000

1. RECO made changes to its information systems, where migration of discipline data from the old system did not capture all 2017 cases accurately. Therefore, 2017 data is incomplete.

2. Between 2017 and 2021, 137 cases have been initiated, but are still pending outcome/settlement.

3. Registrants can be ordered to take courses, be ordered fines, or a combination of the two.

**Figure 15: Minimum Insurance Coverage Required under the *Real Estate and Business Brokers Act, 2002***

Source of data: Real Estate Council of Ontario

Coverage Type	Minimum Coverage Required	Examples of Scenarios Covered under Insurance
<b>Professional Liability</b> (Errors and Omissions)	<ul style="list-style-type: none"> <li>• \$1,000,000 per claim</li> <li>• \$3,000,000 per year</li> </ul>	Covers mistakes such as: <ul style="list-style-type: none"> <li>• under- or overpricing a property</li> <li>• making a mistake with respect to taxes</li> <li>• forgetting a key clause in the Agreement of Purchase and Sale</li> </ul>
<b>Consumer Deposit</b>	<ul style="list-style-type: none"> <li>• \$100,000 per claim</li> <li>• \$1,000,000 per same event*</li> </ul>	A registrant misappropriates a consumer's deposit.
<b>Commission Protection</b>	<ul style="list-style-type: none"> <li>• \$100,000 per claim</li> <li>• \$1,000,000 per same event*</li> </ul>	A brokerage fails to pay commission to the salesperson or declares bankruptcy.

\* The bankruptcy of a brokerage can affect a number of deposit claims. This is considered as one event and a registrant must carry a minimum of \$1 million coverage per event.

**Figure 16: Insurance Claims Statistics, 2016–2020**

Source of data: Real Estate Council of Ontario

	2016	2017	2018	2019	2020	Total	%
<b>Claims Received (#)</b>							
Errors and omissions	1,219	1,430	1,185	959	1,093	<b>5,886</b>	<b>74</b>
Commission protection	43	1,266	123	406	36	<b>1,874</b>	<b>24</b>
Consumer deposits	5	70	20	54	46	<b>195</b>	<b>2</b>
<b>Total claims received (#)</b>	<b>1,267</b>	<b>2,766</b>	<b>1,328</b>	<b>1,419</b>	<b>1,175</b>	<b>7,955</b>	<b>100</b>
<b>Claims Paid (\$ million)</b>							
Errors and omissions	10.91	12.06	8.55	4.60	2.49	<b>38.61</b>	<b>85</b>
Commission protection and consumer deposits	0.08	3.53	0.33	2.70	0.02	<b>6.66</b>	<b>15</b>
<b>Total claims paid (\$ million)</b>	<b>10.99</b>	<b>15.59</b>	<b>8.88</b>	<b>7.30</b>	<b>2.51</b>	<b>45.27</b>	<b>100</b>

engaging with a registered salesperson, broker or brokerage in real estate trades; and

- register and oversee brokerages, brokers and salespersons in accordance with the Act.

In addition, our audit assessed whether the Ministry of Public and Business Service Delivery (Ministry) has oversight processes in place to ensure that RECO effectively administers the Act, including effectively registering and regulating brokerages, brokers and salespersons.

Before starting our work, we identified the audit criteria we would use to address our audit objectives. These criteria were established based on a review of applicable legislation, policies and procedures. Senior management at RECO and the Ministry reviewed and agreed with our objective and associated audit criteria as listed in **Appendix 5**.

We conducted our audit between January 2022 and August 2022. We obtained written representation from RECO's management and the Ministry that, effective

November 18, 2022 they have provided us with all the information they were aware of that could significantly affect the findings or the conclusion of this report.

Our audit work at RECO was focused on the period of January 2017 to August 2022. However, in some areas we analyzed data going back as far as 10 years. The focus of our audit was on examining RECO's five main areas of responsibility:

- registration of real estate brokerages, brokers and salespersons;
- education program for brokers and salespersons;
- handling complaints against brokers and salespersons;
- conducting inspections of real estate brokerages and investigations of brokerages, brokers and salespersons for potential breaches of the *Real Estate and Business Brokers Act, 2002* and its regulations; and
- oversight of RECO's Insurance Program.

In conducting our work, we interviewed staff at RECO responsible for issuing and renewing the registration of salespersons, brokers and brokerages, and conducted walkthroughs of the registration process. We also reviewed the information RECO collected from NIIT Canada and Humber College that RECO uses to oversee the education program for new brokers and salespersons.

We interviewed RECO staff responsible for handling disputes and complaints against salespersons and brokers, and conducted walkthroughs of the complaint handling process.

To aid in our understanding of RECO's enforcement actions, we also interviewed all inspectors and the manager of investigations and reviewed past inspection/investigation records on a sample basis. To observe how RECO conducts its inspections, between May and August 2022 we accompanied RECO inspectors on inspections of brokerages. We interviewed RECO staff that regularly work with RECO's Discipline Committee and also reviewed past Discipline Committee case rulings. We obtained access to RECO's information systems to collect and analyze data from the registration, complaints, inspection, and investigations departments.

To evaluate RECO's governance structure, we engaged in discussions with some current members of RECO's Board of Directors and RECO's Consumer and Industry Advisory Group. We also reviewed meeting minutes, Board materials and Board backgrounds, including member appointment records.

We engaged in discussions with representatives of the primary stakeholder groups, including the Ontario Real Estate Association (OREA) and the Toronto Regional Real Estate Board (TRREB). As well, we contacted representatives from the Canadian Real Estate Association (CREA).

We also engaged in discussions and collected information from the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to understand reporting requirements in place for salespersons and brokers to report real estate transactions in order to prevent, detect and deter money laundering activities.

Lastly, we conducted jurisdictional scans to identify best practices in other jurisdictions including British Columbia, Alberta, Quebec, the United States and Australia.

The audit also evaluated the Ministry of Public and Business Service Delivery's oversight function of RECO's operations and performance through a review of past communications, evaluations and reports. In addition, we engaged in discussions with key personnel from the Ministry who regularly interact with RECO staff.

We conducted our work and reported on the results of our examination in accordance with the applicable Canadian Standards on Assurance Engagements—Direct Engagements issued by the Auditing and Assurance Standards Board of the Chartered Professional Accountants of Canada. This included obtaining a reasonable level of assurance.

The Office of the Auditor General of Ontario applies the Canadian Standards of Quality Control and, as a result, maintains a comprehensive quality control system that includes documented policies and procedures with respect to compliance with rules of professional conduct, professional standards and applicable legal and regulatory requirements.

We have complied with the independence and other ethical requirements of the Code of Professional Conduct of the Chartered Professional Accountants of Ontario, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour.

## 4.0 Detailed Audit Observations

### 4.1 Registration of Brokers and Salespersons

#### 4.1.1 RECO Does Not Have a Formal Policy, Guidelines or a Consistent Process to Assess Whether to Approve the Registration of Applicants That Have a Criminal History

We found that RECO does not have a consistent process to demonstrate how it assesses the past conduct of applicants for registration who have a criminal history.

The *Real Estate and Business Brokers Act, 2002* (Act) requires RECO to assess the past conduct of an applicant for registration as a salesperson or broker. Under the Act, RECO can refuse to register an applicant whose past conduct or financial position is such that they cannot reasonably be expected to carry on business in accordance with the law, and with integrity and honesty. To make this determination, RECO requires applicants to undergo a criminal background check, and to also self-declare if they have been charged with or convicted of any criminal offences.

We found that RECO does not have a formal policy, guidelines or a consistent process to assess whether an applicant with a criminal charge or conviction is fit to conduct business in the real estate profession. Instead, RECO expects each of its seven registration officers to use their own individual judgment to determine whether applicants with criminal convictions cannot reasonably be expected to carry on business in accordance with the law, and with integrity and honesty, on a case-by-case basis. RECO noted that in doing so, it expects its registration officers to consider RECO's past precedent-setting decisions, and decisions made by the Licence Appeal Tribunal. In the absence of a consistent

process, as well as a formal policy and guidelines, RECO cannot demonstrate that it effectively assesses whether an applicant's past criminal history poses a risk to the public or indicates potential unwillingness to act lawfully and in accordance with the standards of the profession.

We reviewed RECO's records and found that over 1,700, or about 2% of the 98,304 salespersons and brokers registered by RECO as of December 2021, disclosed in their registration application that they have one or more criminal charges or convictions. RECO does not have a dedicated field in its information system to identify the results of criminal record checks it collects from applicants. As a result, we were unable to determine the number of registrants that submitted a criminal record check that identified a criminal conviction or charge. In our review of a sample of 25 brokers and salespersons registered by RECO in the last three years who had self-disclosed a criminal conviction or identified charges in their application, for 20 of the 25, or 80%, we found no documented rationale by RECO for why it did not pursue action to refuse or revoke a registrant's registration. In these 20 applications, we found that RECO approved registration for individuals convicted of crimes such as fraud, physical violence—including assault and assault with a weapon. For example, one registrant was convicted of acquiring and using credit card and debit card information for the purpose of defrauding a large number of victims, through theft of financial data from cardholders to extract funds from their accounts. Another registrant was convicted of using fraudulent cheques.

In comparison, in Queensland, Australia, individuals convicted of serious offences in the past five years are deemed unsuitable to hold a real estate licence. Examples of serious offences include violent crimes, fraud and dishonesty, drug trafficking, extortion, arson, stalking and sexual offences. Under the California Code of Regulation of the Real Estate Commissioner, the Department of Real Estate has identified specific criteria to establish rehabilitation of people convicted of crimes. These criteria include, for example, consideration of the nature of the crime, time elapsed since the conviction and whether reasonable efforts are made to rehabilitate. The Commissioner

can also request testimony from the applicant, family members, and law enforcement.

We also observed that while having a criminal history does not prevent individuals from acquiring a real estate licence in British Columbia, the British Columbia Financial Services Authority (BCFSA) has a clear set of guidelines that applicants must meet. Persons with criminal charges relating to honesty and integrity, or criminal charges involving other individuals, are subject to greater scrutiny. The BCFSA assesses the nature of the criminal offence and the time elapsed since the offence. The BCFSA also considers rehabilitation efforts such as restitution, successful completion of parole or early discharge, enrolment in education related to self-improvement, and involvement within the greater community. The guideline is made public so that it may be used by prospective applicants as a self-assessment tool prior to applying for a real estate licence.

Further, in Texas, all real estate education providers are legally required to notify individuals who have a criminal history that they may submit a fitness determination application before enrolling in real estate education courses or applying to become real estate registrants. The Texas Occupations Code authorizes real estate licensing agencies to deny a licence if an applicant has committed a criminal offence that is directly related to the licence.

### **Criminal Background Check Not Required to Renew Registration**

Salespersons and brokers are required to renew their registration with RECO every two years, and as part of that process they are required to self-disclose if they have been convicted or charged with any criminal offences. However, with few exceptions, RECO does not require salespersons and brokers to undergo a criminal background check on a periodic basis after they are registered. Instead, RECO generally relies on renewing registrants to self-disclose criminal convictions and charges. We noted approximately 42% of brokers and salespersons have been registered with RECO for over 10 years. Since RECO does not obtain a periodic criminal background check, RECO cannot

verify how many brokers and salespersons have been charged or convicted of a criminal offence subsequent to their initial registration and have not disclosed the charges or convictions.

Although RECO told us that it can impose a condition for registrants with a criminal history at the time of their initial registration to provide an updated criminal record check when renewing their registration, we found that as of September 2022, RECO did not have any conditions in place to maintain registration for 72% or 1,232 out of 1,700 registrants with a self-disclosed criminal history.

## **RECOMMENDATION 1**

So that the Real Estate Council of Ontario (RECO) is able to meet the requirement of the *Real Estate and Business Brokers Act, 2002* to approve applications only if individuals seeking to register or renew their registration as a salesperson or broker can be expected to carry on business lawfully and with integrity, we recommend that RECO:

- develop a policy and guidelines to help registration staff determine when it is appropriate to approve and refuse the registration of applicants that have a history of criminal offences;
- require registration staff to document their rationale, consistent with the policy and guidelines, for recommending that the registration and renewal of registration of applicants be approved or refused;
- disclose the policy and guidelines publicly so that prospective applicants can self-assess their eligibility prior to completing the real estate education program; and
- introduce a requirement for registrants to periodically obtain an updated criminal background check as a condition of renewing registration.

## **RECO RESPONSE**

Real Estate Council of Ontario (RECO) agrees with this recommendation. RECO will enhance its registration policy to include guidelines and processes for those assessing applications to include rationale

for approval and refusal of applications, including for applicants who have a history of criminal offences, by the end of 2023.

RECO will also publish a guideline for the public to understand the factors that are considered when assessing an application. RECO will continue to make the fact and outcomes of proposals to revoke, suspend and refuse registrations available on its website. RECO will also re-evaluate its former practice of requiring criminal record checks randomly for those renewing their registration.

#### 4.1.2 Lack of Exam Protocols Contributed to a Major Breach in the Integrity of Exams Offered in the Real Estate Education Program

We found that despite major breaches in the integrity of real estate exams administered online by Humber College in April 2021, September 2021 and March 2022, RECO has not taken steps to independently verify whether the issues that led to the breaches have been satisfactorily addressed.

To date, Humber College has notified RECO of 356 cases of large-scale, deliberate and organized misconduct involving 315 learners. We noted that the breaches occurred after exams were moved from in-person to virtual without adequate controls in place to protect the integrity of the examination process.

We found that critical exam protocols to protect the integrity of virtual exams were not put in place on a timely basis, and many were implemented only after the large-scale breach at Humber College was identified. For example, the exam software used by Humber College did not prevent exam writers from sharing their screen with people not writing the exam. This could be done because the proctoring software used could not detect and notify the exam proctor of screen sharing with other devices. The software also did not have continuous and automated proctoring detection, which means that the exam would continue and would not be paused even if the proctor was not able to monitor an exam writer due to a technical issue.

We found that RECO has not initiated an independent review of the virtual examination process after

these large-scale exam breaches were found. Instead RECO relied solely on the service providers' (Humber College and NIIT Canada) own investigation of the breaches and the changes they subsequently implemented.

We also noted that, in July 2019, RECO proactively took steps to review the in-person exam process and provided feedback to the service providers to strengthen the in-person examination process. However, such steps were not taken prior to implementing the virtual examination process.

The Law Society of Ontario, which administers licensing exams for lawyers and paralegals in Ontario, suspended all online exams after it received information that exam content had been improperly accessed by some candidates, compromising the integrity of the exams. The Law Society of Ontario moved to hold all future exams in person only, citing this as “the most effective solution which balances the need for confidence in the examination process with the needs of candidates to continue their licensure journey.” The Law Society also hired third-party investigators to conduct a comprehensive investigation of the matter.

In comparison, despite three instances of breaches taking place in 2021 and 2022, RECO did not suspend any virtual exam offerings.

### RECOMMENDATION 2

So that the integrity of real estate exams is protected, we recommend that the Real Estate Council of Ontario (RECO):

- take steps to independently review the exam protocols and the proctoring software for deficiencies;
- work with the education service provider to take immediate corrective action to address the issues identified;
- establish a formal protocol to be followed by the education service provider and RECO to identify and analyze future exam breaches; and
- maintain the ability to move exams to in-person administration should software integrity issues arise necessitating in-person exams.

## RECO RESPONSE

RECO appreciates the Auditor General's timely recommendation. To protect the integrity of the real estate program examinations, RECO is formalizing the exam protocols to be followed by the current and future education service providers that develop, administer, and deliver exams on behalf of RECO. The protocols will include identifying and analyzing any future exam breaches, specifying that immediate corrective actions are to be taken to address those identified issues, and maintaining the ability to move exams to in-person administration should software integrity issues arise.

In addition to working with the education service provider and the results of its own completed independent reviews, RECO will take steps to independently review the exam protocols and the proctoring software for any deficiencies.

### 4.2 RECO Does Not Analyze Complaints to Identify Systemic Issues or Trends

We found that RECO does not track the complaints it receives by type, and thus does not analyze them to identify and address systemic issues and trends, including with respect to violations of the Act and its regulations.

In the last five years (2017–21), RECO handled approximately 11,700 complaints against salespersons and brokers, including instances involving possible violations of the Act and its regulations. We noted that RECO records the complaints it receives in its information system. However, RECO does not meaningfully categorize complaints to enable it to analyze them and identify systemic issues and trends that need to be addressed. In addition, RECO is unable to publicly report on the most common issues identified through its complaint handling process.

We found that in 55% of the 11,700 complaints handled by RECO, RECO did not categorize or record any description of the complaint in its system. In the remaining 45%, RECO identified that the complaints involved alleged violations of the Code of Ethics.

However, RECO categorized these violations in broad categories such as fairness and honesty, competent service, and unprofessional conduct, limiting its ability to identify and address systemic issues. For example, RECO could not identify how many complaints related to allegations that a registrant representing a seller did not disclose to the seller all offers they had received. Under the Act, all offers received by a selling agent are required to be disclosed to the seller.

We analyzed a sample of 100 complaints and found that a number of them related to violations of the Act and its regulations. Common examples included:

- misrepresentation of property listings, where the information presented in the property listing was inaccurate;
- the registrant not disclosing to all parties in a transaction that the registrant is representing both the buyer and the seller, a requirement under the Act; and
- the registrant verbally harassing and exhibiting inappropriate behaviour toward a consumer.

This indicates that recording complaints by type could also be used to identify recurring issues, which could help focus areas of RECO's operations aimed at facilitating compliance with the Act, such as its inspections and investigations (described further in **Section 4.3** and **Section 4.5**, respectively). Our review of a sample of complaints also identified complaints relating to consumer awareness, indicating that recording complaints by type can also help RECO aim at improving awareness in areas of highest consumer concern. For example, the complaints we reviewed included instances where the registrant representing a buyer asked the buyer to sign a buyer's representation agreement, which means that the buyer agrees to purchase a property using only the services of the registrant for a specified period of time. In these cases, the buyers alleged that they did not fully understand the implications of this agreement and specifically that they could not use the services of another registrant to purchase a property.

In comparison, the Ontario Motor Vehicle Industry Council (OMVIC), a delegated authority that regulates motor vehicle dealers and salespersons, mediates complaints between its registrants and consumers, and assigns a specific complaint category/type to each complaint

it receives about its registrants. OMVIC is thus able to identify the most common issues and complaints it receives and can report on and tackle these issues accordingly in order to improve overall consumer protection in the motor vehicle industry. OMVIC also reports on the most common issues identified through its complaints handling process in its public annual report.

### RECOMMENDATION 3

So that the Real Estate Council of Ontario (RECO) improves its capacity to identify systemic issues and trends that require improvement, we recommend that RECO:

- implement a system to assign a descriptive complaint category to each complaint it receives;
- periodically analyze complaints data to identify systemic issues and trends over time;
- address and resolve identified systemic issues; and
- publicly report on common and emerging trends from complaints received on an annual basis.

### RECO RESPONSE

RECO agrees with this recommendation. RECO will develop an improved classification system beyond just the sections of the Code of Ethics and implement it for 2024. The new approach will better enable the extraction of data to identify systemic issues and trends, and facilitate corrective action where needed. RECO commits to reporting on the newly categorized trends in annual reports commencing with the 2024 Annual Report.

## 4.3 Inspections of Brokerages

### 4.3.1 RECO Has Never Performed a Full On-Site Inspection at 27% of Registered Brokerages

We found that in the absence of a policy to inspect each registered brokerage within a certain time frame, RECO has never conducted a full on-site inspection at 27% of registered brokerages, and has not conducted

a full on-site inspection at a further 35% of registered brokerages for at least five years.

As noted in **Section 2.6**, RECO has the authority to conduct periodic inspections of brokerages to ensure the brokerage conducts business in accordance with the Act and its regulations. However, RECO does not have a policy to inspect brokerages within a certain time frame (e.g., at least once every five years), and it does not assess and assign a risk rating to each brokerage so that high-risk brokerages can be inspected more frequently. We also found that RECO does not consider in its selection process risk factors that can affect risk of non-compliance, including the volume of annual transactions, number of employees, compliance history and complaints.

We analyzed RECO's inspection data and found that RECO has never performed a full on-site inspection at 1,050, or about 27%, of the 3,890 brokerages registered with it. RECO told us that one reason for its not having inspected some registered brokerages is that it suspended all on-site inspections with the onset of the COVID-19 pandemic. While we acknowledge the impact of the pandemic, our analysis of RECO's data identified that 589 of the 1,050, or 56% of the brokerages that had never had an in-person inspection by RECO, were registered before the declaration of the pandemic in March 2020. On average, the 589 brokerages that RECO had never inspected had been registered for approximately 14 years.

We also analyzed when RECO had last inspected the 2,840 brokerages that received a full on-site inspection and found that 1,380 had not been inspected for at least five years.

In contrast to RECO, the Technical Standards and Safety Authority (TSSA), a delegated authority which, among other things, is responsible for inspecting elevators in Ontario, established a process to inspect every elevator at least once every five years. Every elevator is automatically assigned an inspection frequency between six months and five years. The TSSA has a computer system that is programmed to automatically determine how often every elevator should be inspected based on its risk factors. The computer

program automatically schedules the inspections when an elevator becomes due for an inspection.

#### RECOMMENDATION 4

So that brokerages are inspected based on their risk of non-compliance with the *Real Estate and Business Brokers Act, 2002* and its regulations, we recommend that the Real Estate Council of Ontario:

- develop a brokerage risk framework (for example, high, medium and low) and assign an inspection frequency to each level of risk;
- determine and assign a risk level and inspection frequency to each brokerage;
- put in place systems to ensure that each brokerage is scheduled for and receives an inspection based on its assigned frequency; and
- put in place a process to reassess each brokerage's risk level on an ongoing basis.

#### RECO RESPONSE

RECO agrees with this recommendation. A newly developed brokerage inspection program will launch in 2023 focusing on brokerages and activities that pose the greatest risk to consumers. The new program will include a risk-based approach to the type of inspections to be conducted and scheduling. The program will also involve an ongoing risk assessment of each brokerage.

#### 4.3.2 RECO Does Not Inspect Brokerages That Declare Limited or No Real Estate Transactions and Does Not Verify the Accuracy of These Declarations

We found that over the last five years (2017–21), RECO cancelled about 20% of scheduled inspections of registered brokerages because the brokerage declared it had limited or no trading activities. However, we found that RECO does not take steps to verify the accuracy of these declarations before cancelling the inspection. We also noted that RECO counts these initiated but cancelled inspections as having been carried out even

though it did not attend the brokerage or review any trading documents or records.

According to RECO's policy, once RECO selects a brokerage for an inspection, RECO's inspector contacts the brokerage to notify the brokerage in advance of the inspection. If a brokerage informs the inspector that they had limited trades (five or fewer) or no trades in real estate for at least two years prior to the scheduled inspection date, RECO does not proceed with the inspection, and closes the inspection file.

Also, over the last five years RECO cancelled 1,244, or nearly 20% of the 6,392 scheduled inspections of registered brokerages that in total reported employing 2,370 salespersons and brokers, because the brokerages informed it that they had limited or no trading activities in real estate.

We noted that when a brokerage declares that it had limited or no trading activities, RECO's policy requires its inspectors to conduct an online search of the brokerage name before exempting it from an inspection, and review any complaints against it to assess the accuracy of the declared trading volume. However, RECO's inspectors told us that they do not carry out such procedures. Instead, the inspectors informed us that once the brokerage's broker of record signs a declaration form confirming their limited trading volume or no trading activity, the inspector retains a copy of the declaration form and closes the inspection file with no further action. We also noted that the number of brokerages declaring limited or no trading activity more than tripled over the last five years, from 79 in 2017 to 278 in 2021.

#### RECOMMENDATION 5

So that only brokerages with limited or no real estate trading activities are exempted from an inspection by the Real Estate Council of Ontario (RECO), we recommend that RECO:

- update the inspection policy requiring the inspectors to document the results of the procedures and other activities the inspectors have undertaken to verify the brokerage's trading volume;

- establish a process to conduct unannounced site visits to select brokerages to confirm the accuracy of their declared trading volume; and
- establish a checklist of procedures for its inspection staff to follow prior to granting a brokerage an exemption from inspection.

## RECO RESPONSE

RECO agrees with this recommendation. A newly developed brokerage inspection program will launch in 2023, which will be supported by policy, procedures, and checklists to guide inspectors' assessment of brokerage trading volumes. RECO also commits to establishing a process by the end of 2023 for conducting unannounced inspections to confirm the accuracy of declared trading volumes when warranted.

### 4.3.3 RECO Does Not Review and Monitor Whether Inspections of Brokerages Are Carried Out Consistently and Effectively

We found that RECO does not have a process in place to periodically monitor whether its inspectors conduct compliance inspections of brokerages consistently and effectively, and has not updated the checklists its inspectors use to carry out inspections since RECO's inception 25 years ago.

We reviewed the inspections completed by RECO's inspectors between 2017 and 2021 and found that on average, 51% of RECO's inspections identify instances of non-compliance with the Act and its regulations. However, we also found that the proportion of inspections that identify instances of non-compliance varies significantly between inspectors, ranging from a low of 29% in the case of one inspector, to as high as 82% in the case of another. RECO does not monitor differences between inspectors to identify trends that may require management follow-up and/or corrective action.

We also noted that while RECO's inspectors use an inspection manual and checklists to guide their inspection work and to document their observations, these checklists have not been updated since RECO's

inception in 1997 to ensure they appropriately reflect the requirements of the Act and its regulations. For example, RECO's checklist does not require inspectors to record the amount of unclaimed consumer deposits that have not been remitted as required to RECO (described in **Section 4.7.2**). As well, we noted that the number of real estate transaction files selected for review during an inspection is not proportional to the number of properties sold by the brokerage. Instead, irrespective of a brokerage's volume of transactions, RECO's inspectors typically review 24 trade files.

## RECOMMENDATION 6

So that the Real Estate Council of Ontario's (RECO's) inspectors carry out inspections of brokerages consistently and effectively, we recommend that RECO:

- update its inspection manual and checklists to require the number of trade files to be reviewed as part of an inspection to be proportional to the volume of properties sold by the brokerage;
- develop and implement an inspection oversight process that includes an inspection file review and a documented assessment of whether inspections are carried out effectively and consistently; and
- where inconsistencies are identified, take steps to facilitate corrective action.

## RECO RESPONSE

RECO agrees with this recommendation. A newly developed brokerage inspection program will launch in 2023, which will be supported by policy, procedures, and checklists to guide the number of trade files reviewed during inspections. RECO will also implement an inspection oversight process that includes inspection file reviews for effectiveness and consistency. Where inconsistencies are noted, RECO intends to take corrective action. RECO will incorporate assessment of more performance metrics related to its inspections program throughout 2023.

#### 4.3.4 RECO Rarely Follows Up on Violations Found during Inspections to Confirm They Have Been Corrected

We found that when RECO's inspectors identify instances of non-compliance with the Act and its regulations at a brokerage, they rarely follow up to confirm that the brokerage has addressed the violations, or refer the brokerage to RECO's investigations department for further review. RECO does not have a policy that provides guidance to its inspectors on how to determine when it is appropriate to conduct a follow-up inspection, or to refer the brokerage to RECO's investigations department for further review.

We also noted that RECO does not have a policy to help its inspectors rank the significance and risk of non-compliance issues identified, making it difficult for inspectors to objectively decide whether a brokerage should undergo a follow-up inspection or be referred to the investigations department. For instance, RECO has developed a standard listing of deficiencies that contains 114 types of violations that inspectors can refer to when issuing an Inspection Deficiency Notice to a brokerage (described in **Section 2.8**), which outlines violations found during the inspection. However, RECO has not assigned a risk rating (low, medium or high) to any of these 114 types of violations. In the absence of such a rating system, RECO's inspectors told us that they use their individual judgment and past experience to decide when a brokerage should be scheduled for a subsequent inspection targeting areas of concern, or escalated to management to consider initiating an investigation or other enforcement action.

We analyzed RECO's inspection data and found that RECO's inspectors identified violations of the Act and its regulations in 51%, or 2,643, of the 5,148 inspections conducted between 2017 and 2021. In 88% of the 2,643 inspections that identified violations, instead of conducting a follow-up inspection or referring the case to RECO's investigations department for further review, RECO's inspectors issued an Inspection Deficiency Notice listing the deficiencies identified and relied on the brokerage to correct them. The violations identified

included not reconciling the brokerage's bank account on a monthly basis as required, shortages in the real estate trust account where client deposits are held, employing unregistered salespersons, and improperly completing documentation. In all, RECO flagged just 228 brokerages for a follow-up inspection and referred 100 brokerages to RECO's investigations department for further review.

#### 4.3.5 RECO Does Not Conduct Most Follow-Up Inspections within Its Target of Six to 12 Months

RECO does not have a policy that provides guidance to inspectors on the time frame in which a follow-up inspection should be completed, leaving it up to the discretion of each individual inspector to decide. Nevertheless, RECO's inspection staff told us that they usually aim to conduct a follow-up inspection between six months and one year after the initial inspection.

RECO flagged 228 brokerages for a follow-up inspection between 2017 and 2021, as described in **Section 4.3.4**. We analyzed these inspections and found that as of March 2022, 185 of them related to an initial inspection conducted more than one year previously. We reviewed the follow-up inspection history of these 185 brokerages and found that 43, or 23%, of them have yet to receive a follow-up inspection. On average, these 43 brokerages were initially inspected more than two years ago. Of the remaining brokerages, 64, or 35%, were inspected on average more than two years after their initial inspection. Just 78 brokerages, or 42%, were inspected within one year, consistent with the informal target set by RECO's inspectors. We also noted that brokerages that require a follow-up inspection are manually tracked by each inspector, and that inspectors themselves assign a due date to perform the follow-up inspection.

### RECOMMENDATION 7

So that violations of the *Real Estate and Business Brokers Act, 2002* identified during an inspection

are corrected by the brokerages on a timely basis, we recommend that the Real Estate Council of Ontario:

- develop and implement a framework with appropriate time frames that provides guidance to inspectors on the types of violations of the Act and its regulations that should be reviewed with a follow-up inspection and when brokerages should be referred to RECO's investigations department for further review;
- ensure that follow-up inspections are performed, and referrals to the investigations department are made, in accordance with this framework;
- track the number of follow-up inspections performed; and
- publicly report on the number of follow-up inspections performed.

## RECO RESPONSE

RECO agrees with this recommendation. The new brokerage inspection program launching in 2023 is risk based, and will be supported by policy, procedures, and checklists to guide inspectors' assessment and monitoring of brokerage compliance, including with respect to using inspection outcomes to determine scheduling of subsequent inspections, and criteria for making referrals for investigation. RECO will also track and report on volumes and types of all inspections conducted in its annual report.

### 4.3.6 RECO Does Not Check If Salespersons and Brokers Are Disclosing Accurate Information in Property Listings

Although real estate salespersons and brokers are legally required to provide accurate information about properties they list for sale, and buyers rely on them to do so, we found that RECO does not inspect whether they comply with this requirement.

Under the Act, salespersons and brokers that represent property sellers are strictly prohibited from

making false, misleading or deceptive statements and inaccurate representations about a property listed for sale. It is the selling agent's responsibility to take reasonable steps to ensure the information disclosed in a property listing is accurate.

In our review of inspection files and discussions with RECO's inspectors, we found that although RECO's inspection process includes reviewing brokerages' advertisements, it does not require its inspectors to review the information included in a property listing to determine if the selling agent took reasonable steps to ensure its accuracy. For example, the inspector could select a sample of properties listed for sale at the time of an inspection to determine if the selling agent took reasonable steps to ensure that key information such as the property tax amount, maintenance fees, age of the home and size of the lot is accurate.

We analyzed RECO's inspection data and found that RECO's review of advertising during an inspection is generally limited to materials such as the brokerage's website, business cards and letterhead, to determine whether or not the registered name and proper designations are used. Of note, we found that the sample of advertising materials inspectors reviewed was selected by the brokerage rather than by the inspector. Between 2017 and 2021, RECO identified 870 non-compliances with the Act that related to advertising. All of these involved improper disclosure of the name or designation of the registrants, which RECO advised us are considered low-risk non-compliance issues.

It is critical to ensure the accuracy of key information about a property, as buyers rely on this information to make purchasing decisions. For example, in January 2022, in response to a complaint, RECO's Discipline Committee fined a salesperson \$10,000 and ordered the salesperson to complete an advertising compliance course for listing an incorrect property tax amount on the property listing. The salesperson advertised the property as having property tax levies of \$1,800 when in fact the tax was \$5,500, more than three times that amount. Similarly, in another case, a salesperson was fined \$9,000 for understating property tax levies by \$1,152.69.

## RECOMMENDATION 8

To improve the Real Estate Council of Ontario's (RECO's) effectiveness in identifying misleading advertising in the inspection process, and to minimize false, misleading, deceptive and inaccurate representations made by salespersons and brokers in the marketplace, we recommend that RECO:

- review property listings as part of the inspection process to ensure that salespersons and brokers have taken reasonable steps to ensure the material information advertised on the property listing is accurate; and
- instruct its inspectors to independently select a sample of advertising materials including property listings made prior to the inspection for its review.

## RECO RESPONSE

RECO thanks the Auditor General for the recommendation. A newly developed brokerage inspection program will launch in 2023. The program will be supported by policy, procedures and checklists to support inspection activities. RECO will consider the scope and methodology of the inspections in which it would be most appropriate and effective to review a sample of property listings, when developing its new inspection program.

## 4.4 Money Laundering in the Real Estate Sector

### 4.4.1 The Real Estate Sector Rarely Reports Cash and Suspicious Real Estate Transactions to the Federal Agency That Monitors Money Laundering

Although real estate brokers and salespersons are required by federal law to report suspicious and large cash transactions to the federal agency that monitors money laundering, we found that brokers and salespersons rarely report such transactions. RECO does not

have a process to inspect whether brokers and salespersons comply with this requirement.

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), a federal agency, is responsible for analyzing financial transactions reported to it, to detect, prevent and deter money laundering and financing of terrorist activities. FINTRAC requires real estate brokers and salespersons to verify the identity of all their clients, and report cash transactions exceeding \$10,000 or suspicious transactions.

According to the Ontario Real Estate Association, between 2017 and 2021, 1,120,989 residential properties were sold in Ontario with a sales value of over \$760 billion. We reviewed data reported to FINTRAC by the entire real estate sector in Ontario over the last five fiscal years (2017/18–2021/22). Overall, we found that the number of suspicious and large cash transactions reported to FINTRAC has been extremely low, particularly in comparison to the number of real estate transactions. As shown in **Figure 17**, FINTRAC received no reports at all of large cash transactions between the 2017/18 and 2020/21 fiscal years, and just 18 reports of large cash transactions in 2021/22. In addition,

**Figure 17: Large Cash Transactions and Suspicious Transactions Reported to FINTRAC for Real Estate Transactions in Ontario**

Source of data: Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

Fiscal Year	# of Large Cash Transaction Reports <sup>1</sup>	# of Suspicious Transaction Reports <sup>2</sup>
2017/18	0	0
2018/19	0	16
2019/20	0	12
2020/21	0	6
2021/22	18	48
<b>Total</b>	<b>18</b>	<b>82</b>

1. FINTRAC requires real estate brokers and salespersons to report cash transactions exceeding \$10,000.
2. FINTRAC requires real estate brokers and salespersons to submit a suspicious transaction report if there are reasonable grounds to suspect that a financial transaction relates to an actual or potential money laundering or terrorist financing offence.

FINTRAC received just 82 reports of suspicious transactions in the last five fiscal years.

Our review of inspection files and discussions with RECO's inspectors identified that RECO does not review in its inspection process whether real estate brokers and salespersons are meeting their reporting obligations to FINTRAC. RECO's inspectors told us that their inspection process does not require this review, as it is limited to verifying compliance with the *Real Estate and Business Brokers Act, 2002*, which does not specifically require compliance with money laundering laws.

We found that although the Act does not specifically require registrants to comply with money laundering laws, it requires them to conduct themselves with integrity and to abide by all other laws and regulations that impact their business.

A number of reports commissioned in recent years by the government of British Columbia repeatedly highlighted the risk of money laundering in the real estate sector and the need for stronger enforcement. For example, a 2019 special report on this issue commissioned by the Minister of Finance of British Columbia estimated that in 2018 between \$800 million and \$5.3 billion was laundered through the province's real estate market. The report also noted that money laundering activities have contributed an estimated 5% to the increase in housing prices.

Another review commissioned by the Attorney General of British Columbia in 2019 estimated that about 17% to 21% of residential transactions in British Columbia were done without obtaining any financing. The report also noted that laundering money through real estate is attractive to criminals because large amounts of cash can be laundered, public registry of land ownership (to clarify who the actual owner is) is lacking, and financing can be obtained through private lenders, who are not overseen by FINTRAC.

The British Columbia Financial Services Authority (BCFSA), which regulates real estate professionals in British Columbia, has a signed memorandum of understanding with FINTRAC to share information to facilitate anti-money laundering enforcement activities in the province's real estate sector. In contrast, RECO

does not have such an agreement or process in place to share information with FINTRAC.

## RECOMMENDATION 9

To identify and reduce the risk of money laundering activities through the real estate market, we recommend that the Real Estate Council of Ontario (RECO) work with the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to:

- enter into an agreement to share information to facilitate enforcement targeting money laundering;
- update the RECO inspection manual to include new procedures inspectors are required to follow to review salespersons, brokers and brokerages' reporting obligations to FINTRAC.

## RECO RESPONSE

RECO thanks the Auditor General for the recommendation. RECO has already begun to explore opportunities to collaborate with FINTRAC on sharing information and collaborating on inspections, investigations, and prosecutions within the scope of its authority, as it does with other law enforcement agencies.

RECO will consider to what extent it could review registrants' FINTRAC reporting obligations during inspections within RECO's legislative authority and in consultation with FINTRAC. RECO will prosecute those involved in money laundering or related activity within the scope of its authority.

## 4.5 Investigation of Salespersons, Brokers and Brokerages

### 4.5.1 RECO Does Not Monitor the Timeliness and Effectiveness of Its Investigations

We found that RECO does not have formal policies and procedures to guide the work of its investigators. RECO also does not have a process in place to monitor whether investigators complete investigations

on a timely basis or whether they take appropriate action based on their findings. Over the last five years (2017–21), RECO’s investigators completed 675 investigations. We reviewed RECO’s investigation data and identified the following concerns:

- RECO has not established a range or guideline for the expected length of its investigations, to monitor whether they are completed on a timely basis. We found that the number of days to complete an investigation ranged from one to 1,281 days, although on average it took about 193 days (over six months) to complete an investigation. This number also varied significantly by investigator, ranging from as little as 26 days on average in the case of one investigator to as long as an average of 331 days in the case of another investigator.
- As of March 2022, RECO had 57 investigations in progress. Nearly two-thirds of these had been in progress for over 193 days (which is the average number of days RECO takes to complete an investigation); on average, the investigations exceeding 193 days had been in progress for 434 days. One investigation into a consumer complaint of a non-registered person acting as a salesperson had been open for 865 days because the investigator who was initially assigned to this case left the organization and RECO was not subsequently able to promptly locate the evidence gathered by the investigator.
- One investigator, who took the greatest average number of days (331 days) to complete a file, investigated 74 cases, and about 57% of them resulted in enforcement action. In comparison, another investigator who had a similar rate of enforcement action (54%) completed 132 investigations, spending 185 days less, on average, on each file.
- RECO has not established a benchmark or guidelines for the proportion of investigations expected to result in enforcement action to help monitor whether the investigations are effective and the proportion resulting in enforcement action is reasonable. We noted that of

the 675 investigations RECO’s investigators completed, 52% resulted in enforcement action or referral to other departments for further enforcement. About 18% of the cases resulted in prosecution, and about 24% of the cases were referred to other departments such as legal, registration, and the Discipline Committee for further enforcement action. In the remaining 10% of the cases, RECO issued a warning letter. We found that the proportion of investigations resulting in enforcement action differed significantly between investigators, ranging from a low of 39% for one investigator to 75% for another.

- There is no formal process to review investigation files for quality assurance. About 10% of the investigations resulted in RECO issuing a warning letter to a registrant. Upon further review of the warning letters, we noted that even though RECO employs six investigators, more than half, or 40 of the 69 warning letters, were issued by the same investigator.

## RECOMMENDATION 10

So that investigations of brokerages and salespersons are completed effectively and on a timely basis, and that appropriate enforcement action is taken where required, we recommend that the Real Estate Council of Ontario:

- develop policies and procedures on key aspects of investigations to help guide the work of its investigators;
- implement reasonable guidelines or benchmarks for enforcement action and the timely completion of investigations;
- implement a process to monitor investigations against these guidelines or benchmarks to identify and follow up where significant differences are found; and
- implement a process to periodically review investigation files to determine if they are complete and result in appropriate enforcement action, and to take corrective action where necessary.

## RECO RESPONSE

RECO agrees with the recommendation. Within the next two years, RECO will develop policies, procedures, and checklists to guide the effective administration of the investigations program.

RECO will also implement an investigation oversight process that includes new procedures, monitoring of file completeness, progression, and enforcement outcomes, and follow-up coaching as necessary. RECO will implement guidelines and other performance metrics to support the new policy and procedures throughout 2023 and 2024.

### 4.5.2 The Fines RECO's Discipline Committee Orders Registrants to Pay for Misconduct Relating to Real Estate Trades Are Often Lower than Commissions Earned

We found that when RECO's Discipline Committee finds that a salesperson's, broker's or brokerage's conduct relating to a real estate transaction has violated the Code of Ethics, the fines and penalties it orders may not prevent the registrant from profiting from the trade that resulted in the violation.

As described in **Section 2.8**, RECO has the ability to refer registrants to its Discipline Committee for breaches under Ontario Regulation 580/05—Code of Ethics (Code of Ethics). If the Discipline Committee's panel (described in **Section 2.8.1**) determines that a broker or salesperson has failed to comply with the Code of Ethics, it can order that person to take educational courses (to help prevent future breaches of the Code of Ethics), and/or to pay a fine of up to \$50,000 (up to \$100,000 in the case of a brokerage). Between 2017 and 2021, RECO issued over \$2.6 million in fines to registrants.

The Act allows the Discipline Committee to use its discretion to determine the type of penalty and fine amount it imposes for violations of the Code of Ethics, within the limits stated above. We found, however, that RECO has not put in place a guideline to help members of the Discipline Committee determine the appropriate

fines to impose. Instead, RECO advised us that to determine fines, the Discipline Committee considers past decisions of similar conduct. We reviewed the fines issued by the Discipline Committee to salespersons, brokers and brokerages between 2017 and 2021, and found that the average fine was \$8,273, and 78% of the fines were \$10,000 or less. In addition, we found that 67% of salespersons and brokers that were fined were not required to take any education courses.

We reviewed a sample of 30 discipline cases handled by RECO's Discipline Committee in the last five years (2017–21) where the registrant violated the Code of Ethics in a real estate trade. We were unable to determine the registrant's commission in 15 of these cases because this information was not available in RECO's files. In the remaining 15 cases, we found that the fine issued by the Committee in 10, or 67%, of these cases were lower than the commission earned by the registrant in the related real estate trade. In the remaining five cases the fines were higher than the commission earned. **Figure 18** provides examples of these discipline cases.

Where fines are significantly lower than a registrant's commission, there is a risk that the fines may not act as a sufficient deterrent to future misconduct, and instead signal to registrants that fines are just a cost of doing business.

RECO told us that the Discipline Committee does not consider the amount of income earned by a registrant on the related real estate transaction when determining the amount of a fine, unless the registrant suffered or gained as a result of the breaches. RECO considers past discipline cases as a precedent, and issues similar fines for similar violations identified in the past.

In comparison, the British Columbia Financial Services Authority (BCFSA), the organization responsible for regulating real estate professionals in that province, can impose penalties as high as \$250,000 on a salesperson or broker, and up to \$500,000 on brokerages. In addition, the BCFSA has the authority to impose additional penalties up to the amount of remuneration that a licensee earns for the real estate services that relate

**Figure 18: Examples of Disciplinary Cases and Fines Issued by RECO, 2017–2021**

Prepared by Office of the Auditor General of Ontario

#	Disciplinary Case Summary	Fine Issued by RECO (\$)	Commission Earned by Registrant (\$)	Difference (\$)
1	The registrant, who represented the buyer of a property purchased on condition of a home inspection, gave both the buyer and inspector unsupervised access into the property by giving them the lockbox code to the property. The registrant did not attend the inspection with them as required.	4,500	13,600	9,100
2	The registrant, who represented the seller of a property, took on a buyer representative's client as their own client, despite being aware that the client had entered into a buyer's representation agreement with their original agent. The registrant entered into a new buyer's representation agreement with the client, and subsequently submitted an offer on the property on behalf of their new client which was accepted by the seller.	9,000	37,500	28,500
3	The registrant, who represented the buyer of a property purchased on condition of a satisfactory home inspection, failed to inform the buyer of issues identified during the home inspection before closing the purchase.	9,000	18,700	9,700
4	The registrant, representing the seller of the property, failed to inform all prospective buyers of the property as required that offers had been placed on the property by the registrant's own clients, and that the registrant entered into an agreement to reduce their commission to complete the sale between the buyer and the seller.	5,000	82,800	77,800
5	The registrant, who represented the seller of the property, misrepresented the listing of the property to prospective buyers, indicating that all appliances were included, when the air conditioner and furnace were rental and loaned appliances. The sellers learned that in order for an offer they received to close, they were required to buy the rental and loan contracts out, where the cost to buy out the furnace was \$3,000 and the air conditioner was \$5,900.	3,250	14,100	10,850
6	The registrant, who represented the buyers of a property, did not take the necessary steps to determine whether the property allowed for demolition and rebuilding, being the primary reason why the buyers wanted to purchase the property in the first place. The buyers later found major obstacles, such as zoning restrictions, that prevented them from being able to do so, and required them to resell the property as a result.	6,000	11,600	5,600
7	The registrant, representing the seller of the property, failed to inform all competing buyer representatives that three of the seven offers being presented to the seller were from their own brokerage, where an offer submitted by the registrant's brokerage was ultimately accepted by the seller.	7,500	14,300	6,800
8	The registrant, who represented the buyer of the property, amended the closing date on the agreement for the property without authorization from the buyer, delaying the closing date by two months. The registrant also agreed to rebate 1% of their overall commission back to the buyer, but did not do so once the deal was complete.	4,000	29,900	25,900
9	The registrant, who represented the seller of the property, approached potential buyer clients who were represented by another agent, to submit an offer for the property directly through them, despite the buyers having signed a buyer's representation agreement with their original agent. The buyers subsequently signed a new buyer's representation agreement with the registrant, and submitted an offer that was accepted by the seller. The registrant received full commission on the sale of property from both the seller and the buyer.	7,500	24,500	17,000
10	The registrant, who represented the buyers of the property, entered into an agreement to purchase the property, with the condition of allowing the buyers to visit the property two times before the closing date. On one visit, the registrant left both their buyers and their heating, ventilation, and air conditioning technician unattended in the property, and had them continue the visitation without the registrant.	4,000	15,700	11,700

to the contravention. According to the BCFSAs sanction guideline, discipline may fail to achieve a genuine deterrent effect if sanctions are low enough that misconduct is still profitable. The guideline requires consideration of factors that deprive the licensee of all economic benefits from the transaction or activity, including penalties equivalent to or greater than the commission earned.

### RECOMMENDATION 11

So that its registrants are sufficiently deterred from contravening Ontario Regulation 580/05—Code of Ethics (Code of Ethics) when conducting real estate transactions with consumers, we recommend that the Real Estate Council of Ontario (RECO):

- create and implement a formal fining framework to guide RECO’s Discipline Committee on the appropriate dollar value of penalties to issue to registrants for contraventions of the Code of Ethics, taking into consideration the severity of the contravention; and
- as part of this framework, take into consideration the amount of remuneration earned on the corresponding real estate transaction by registrants when determining the appropriate dollar value of penalties to be issued.

### RECO RESPONSE

RECO thanks the Auditor General for this recommendation. RECO will develop sanctioning guidelines for the types of penalties it will seek, with the understanding that the discipline committee will continue to have the authority to order fines, and the additional authority to suspend and revoke registrations, within its legislative authority as of April 1, 2023. In developing guidelines for the penalties, it will seek when pursuing disciplinary action, RECO will take into consideration whether the registrant suffered or gained as a result of the breaches when considering an appropriate penalty.

### 4.5.3 Process to Take Disciplinary Action against Registrants That Breach the Code of Ethics Is Lengthy

We found that when allegations of a breach of the Code of Ethics are referred to RECO’s Discipline Committee, it takes on average nearly one year from the time RECO serves a registrant with an allegation for the Committee to reach a final decision.

As described in **Section 2.8**, RECO can refer registrants to its Discipline Committee for breaches under the Code of Ethics. In such instances, the Committee’s rules require a pre-hearing to be scheduled between RECO and the registrant within 45 days of serving the registrant with the allegation, unless the registrant consents to a later date, in order to review and agree on the facts of the allegation and discuss potential settlement options. If a settlement with the registrant cannot be agreed on, the allegation proceeds to a hearing before the Discipline Committee.

We reviewed the timeliness of these pre-hearings and found that over the last five years (2017–21), it took RECO an average of 167 days before a pre-hearing was held, more than three times as long as the Discipline Committee’s 45-day requirement stated in its Rules of Practice. However, we found that RECO did not record and track the reasons for delays in scheduling a pre-hearing to be able to identify and address the delays.

We also found that RECO has not set a target for the amount of time it should take to reach a final decision in the case of allegations that proceed to a hearing before the Discipline Committee. We reviewed these cases for the last five years and found that over this period it took nearly one year, or 340 days, from the time RECO served the registrant with the allegation for the Committee to make a final decision. Additionally, we found that at the time of our audit RECO had not released a final decision publicly for 122 discipline cases, including 23 cases where registrants had been served with an allegation in 2019 or earlier.

At the time of our audit, referrals of registrants to the Discipline Committee were limited to only

registrants alleged to have breached RECO's Code of Ethics. However, effective April 1, 2023, referrals to the Committee will expand to include contraventions of any provisions under the updated Act. Given the expanded scope of the Discipline Committee, the workload associated with the disciplinary process is expected to increase, which may result in further delays if the reasons for the existing delays remain unaddressed.

## RECOMMENDATION 12

So that disciplinary cases and decisions are handled and completed in a timely manner, we recommend that the Real Estate Council of Ontario (RECO):

- identify and track the reason for scheduling a pre-hearing beyond the 45-day requirement under the Discipline Committee's Rules of Practice;
- where practical, take steps to reduce the time it takes to schedule a pre-hearing;
- establish a target for the amount of time it should take for RECO to schedule the main hearing before the Discipline Committee and assess performance against this target; and
- establish a target for how long it should take for the issuance of the final decision and assess performance against this target.

## RECO RESPONSE

RECO thanks the Auditor General for this recommendation. RECO is committed to providing timely hearings and will take steps to improve the efficiency of its discipline hearing process by establishing relevant performance targets for the scheduling of pre-hearings and hearings and releasing decisions.

## 4.6 Consumer Protection

### 4.6.1 Salespersons and Brokers Are Permitted to Represent Both a Buyer and a Seller in a Single Real Estate Transaction

We found that although the buyer and seller of a property have conflicting interests, a single brokerage in

Ontario is permitted to represent both the buyer and the seller in a single real estate transaction as long as the brokerage discloses and obtains consent from the clients for the multiple representation. As a result, a buyer and seller can be represented by the same salesperson or broker. This poses a risk to the buyer and seller as the salesperson or broker cannot effectively represent the best interests of both parties.

The practice of the same registrant representing multiple parties in a single transaction is known as "double-ending," because the registrant would earn a commission from both the buyer and the seller. Under the Act, registrants are required to protect the best interests of their client, irrespective of whether they are representing the buyer or seller of a property. Yet a seller's objective is to obtain the highest possible selling price and most favourable selling terms, while the buyer's objective is to pay the lowest price under the most favourable terms. These competing interests make it challenging for a registrant to effectively represent the best interests of both buyer and seller in the same transaction. There is also a risk that other buyers interested in the property are at a disadvantage because the registrant representing the seller may be motivated to have their own buyer purchase the property, so that they can earn a commission from the buyer as well as the seller.

In 2017, and again in 2019, the Ministry considered proposing changes to the Act to prohibit a single salesperson or broker within a brokerage to represent both the buyer and seller, or more than one buyer in the same trade, subject to limited exceptions. However, the Ministry ultimately decided that it would not propose changes to the regulations to prohibit this practice.

In the Ministry's consultations with stakeholders in 2017 and 2019, the Ontario Real Estate Association (OREA), which represents the interests of real estate professionals, strongly opposed a regulatory change that would prohibit this practice. The OREA's main reason for opposing rules around double-ending was the possibility that consumers may forgo any representation from a real estate professional as a result. In contrast, RECO's 2019 submission to the Ministry during stakeholder consultations proposed that a different

salesperson or broker employed by the same brokerage would have to be designated to represent each client when a multiple representation situation arises, a practice known as mandatory designated representation. RECO stated that “it is when one individual represents more than one party to the same transaction that conflicts of interest are most pronounced and present the greatest risk of consumer harm.”

Although the Ministry advised us that it does not plan to propose changes to prohibit double-ending, it indicated that recent regulatory changes that are scheduled to come into effect on April 1, 2023, will enhance existing requirements for brokerages to disclose to buyers and sellers the differences in their obligations depending on whether they are representing only one party to a transaction or more than one party. In addition, the Ministry indicated that registrants will be required to make their best efforts to obtain a written acknowledgment from each party that this information has been disclosed to them.

In comparison, the British Columbia Financial Services Authority (BCFSA), which regulates real estate licensees in British Columbia, restricts licensees from representing multiple clients with competing interests in a single real estate trade (e.g., the buyer and the seller, two buyers interested in the same property). The Superintendent of Real Estate (the predecessor to the BCFSA) who introduced the restriction indicated that this is a significant source of real and potential conflicts of interest for licensees who may not be able to fulfill their fiduciary duties to two clients with competing interests. An exemption to this rule applies where the real estate is located in a remote location that is underserved by licensees and where it is impractical for the parties to be represented by different licensees. Further, in June 2022, the Ministère des Finances and the Organisme d'autoréglementation du courtage immobilier du Québec (OACIQ), which regulates the real estate industry in Quebec, made amendments to Quebec's *Real Estate Brokerage Act* to prohibit licence holders from acting for both the buyer and the seller during a transaction except where there is no other

brokerage that has an establishment within a 50-kilometre radius of the property.

### RECOMMENDATION 13

To ensure that brokerages protect the best interests of the property buyers or sellers they represent, we recommend that the Ministry of Public and Business Service Delivery (Ministry) review recent changes in other Canadian jurisdictions that prohibit salespersons and brokers from representing both a buyer and a seller in a single transaction, and consider whether it would be appropriate to also prohibit this practice in Ontario.

### RECO RESPONSE

RECO is committed to effective consumer protection and will support the Ministry as it considers this recommendation.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for her work.

The Ministry has consulted and moved forward with changes over the past several years. As noted in the Auditor General's report, recent amendments to the *Real Estate and Business Brokers Act, 2002* and its regulations come into force on April 1, 2023. These include changes that will help the public to better understand their rights and choices when considering whether to work with a registrant in a multiple representation situation (e.g., when a brokerage represents both the buyer and seller). To inform these changes, the Ministry consulted extensively with the public and other stakeholders on the issue of multiple representation and considered the approaches of other Canadian jurisdictions.

The Ministry will monitor the impact of the recent changes in Ontario and the approaches and experiences of other jurisdictions, to inform any future policy work and decision-making for government consideration.

#### 4.6.2 Lack of Transparency in Real Estate Transactions Involving Multiple Offers Puts Prospective Buyers at Financial Risk

Under the Act and its regulations, when there are competing offers on a single property, a brokerage that represents the seller must disclose the number of competing written offers to every person making a competing offer. However, it is prohibited from disclosing the substance of competing offers on the property, which includes the offer price, closing date and conditions, to any person, including other salespersons or brokers that represent prospective buyers. This results in buyers submitting offers to purchase a property without knowing the amounts of competing offers from other buyers, an industry practice known as blind bidding. This practice increases the risk that buyers can be encouraged or feel compelled to offer a price that far exceeds the next highest offer.

The Ministry advised us that recent legislative changes that are scheduled to come into effect on April 1, 2023, will allow for an “open-offer process” where the substance of offers, which includes the offer price, closing date, and any conditions placed on each prospective buyer’s offer, could be disclosed to competing prospective buyers. However, the use of this open-offer process will be at the sole discretion of the property seller, who will be able to decide whether to direct their representing brokerage to disclose to prospective buyers the substance of written offers received. The likelihood of sellers consenting to an open-offer process is unknown. At the time of our audit, neither RECO nor the Ministry had plans to collect information on the percentage of sellers that consent to an open offer process and its possible benefits or unintended consequences.

We note that no Canadian jurisdiction has a full open-offer process whereby it is mandatory for offer amounts to be disclosed to all prospective buyers. However, in places such as Australia, there is an option to sell real estate using an open-bid and closed-end auction format. When a property is sold by auction, all interested buyers are present at the time of the auction and are aware of the amount of each bid as it is made.

Before the auction, all interested buyers are responsible for completing property inspections and arranging financing and all other matters in advance. In this auction process, because all other details such as home inspection and financing are already agreed upon, the highest bid is accepted through an open-offer process.

At the time of our audit, in May 2022, the British Columbia Financial Services Authority (BCFSA), which regulates the real estate industry in British Columbia, released a report comprising research and consultation results with stakeholders on alternatives to the current blind bidding process. The report concluded with advice to the government of British Columbia to further explore open-bid and open-end auction formats (these differ from closed-end auction formats such as that used in Australia, which have a defined closing time), including their implications for sale prices and housing affordability. The BCFSA also advised the government to consider implementing a disclosure requirement in multiple-offer situations where prospective buyers are asked to compete directly against another buyer’s offer following an initial round of offers. The process was described as follows: “an anonymized disclosure of the number of legitimate offers and the price of competing offers could be provided to the prospective purchaser on invitation to submit a second offer or on counter-offer from a seller that is intended to solicit a higher price in reference to a competing offer.” At the time of our audit, the BCFSA was awaiting further direction from the government on its advice relating to blind bidding.

#### RECOMMENDATION 14

To increase transparency and enhance consumer protection in real estate transactions involving offers from multiple prospective buyers, we recommend that the Ministry of Public and Business Service Delivery work with the Real Estate Council of Ontario to:

- once legislative changes come into effect, gather information from brokerages on residential sales in which sellers opt for an open-offer process,

and assess the impact of the process on these transactions and the industry; and

- explore alternatives to the current blind bidding process, including practices adopted or that may be adopted by other jurisdictions such as British Columbia.

## RECO RESPONSE

RECO will work with the Ministry to monitor and assess the impact of the legislative changes that will permit sellers to opt for an open-offer process when working with a brokerage. The monitoring will begin after the legislative changes have taken effect in April 2023.

## MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for her work.

The Ministry has consulted and moved forward with changes over the past several years. As noted in the Auditor General's report, recent amendments to the regulations under the *Real Estate and Business Brokers Act, 2002*, come into force on April 1, 2023. These include changes to give the public more choice in the real estate trade process by allowing a registrant to hold an open offer process and disclose the details of competing offers, excluding personal or identifying information in the offers, at the seller's direction. The Ministry has recently undertaken research, considered options, consulted extensively and considered consultation feedback in relation to the changes to the offer process.

The Ministry will work with the Real Estate Council of Ontario (RECO) to monitor the impact of these changes to inform any future policy work and decision-making for government consideration.

### 4.6.3 RECO's Ability to Review Written Offers to Check Allegations of Fictitious Offers on a Property Is Limited

We found that although RECO has the authority under the Act to review allegations of fictitious offers, Ontario

Regulation 579/05—Education Requirements, Insurance, Records and Other Matters (Regulation 579/05), does not require brokerages to retain original offer documents, limiting RECO's ability to assess whether an offer is a real offer from a legitimate buyer.

The Ontario government introduced changes to the Act in 2013, and made changes to Regulation 579/05 in 2014, to address concerns raised by the public that some real estate salespersons and brokers may have been making false or misleading claims about competing offers to purchase a property in order to pressure buyers of real estate to act quickly or inflate their offer prices. The changes were intended to prevent a selling agent from making false or misleading claims about competing offers to convince buyers that there are other offers on a property to encourage them to raise the amount of their own offer. It required that all offers for a property be made in writing and that all brokerages acting for a seller must retain for at least one year copies of all offers received. However, we noted that the Act also permits brokerages to retain a summary of each unsuccessful offer that is not accepted by the seller instead of the original offer documents, if they choose. We found that the summary document contains information such as the name of the buyer and the buyer's agent, the date and time of the offer, and the property address. We noted that the regulations do not require that the summary document include key information such as the offer amount and any conditions the buyer includes in an offer. In the absence of the original offer documents or at a minimum the key information contained in the original offer documents, RECO's ability to assess whether an offer is a real offer from a legitimate buyer is limited.

We inquired with the Ministry why it permitted brokerages to retain only a summary document as an alternative to retaining a copy of each written offer. The Ministry told us that permitting brokerages to provide RECO with a summary document was designed to reduce the administrative burden on the selling brokerage and was based on consultation with industry stakeholders.

The Ontario Real Estate Association (OREA), which represents the interests of salespersons and brokers

in Ontario, indicated to the Ministry during public consultations that retaining the original offer documents would be a burden on brokerages because of the volume of paperwork required.

Although retaining paper copies of offers may have been burdensome when the legislative change came into effect in 2013, the brokerages we visited indicated that offers are increasingly being submitted in electronic format and are easy to retain.

In contrast, we noted that in Alberta and California, brokerages that represent a seller are required to retain all original offer documents including offers that are not accepted by the seller for three years. Similarly, in Texas, brokerages are required to retain all original offer documents that are not accepted for four years. In Ontario, the brokerage is required to retain the original offer documents or a summary document for at least one year, which may not be sufficient time for RECO to inspect the documents when the need to do so arises.

### RECOMMENDATION 15

So that the Real Estate Council of Ontario (RECO) can effectively protect the interests of consumers, we recommend that the Ministry of Public and Business Service Delivery to assess whether it would be beneficial to propose regulatory changes to amend Ontario Regulation 579/05—Educational Requirements, Insurance, Records and Other Matters to require all brokerages to retain original offer documents for offers not accepted, or a summary document including the offer amount and conditions, for a minimum of three years.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery thanks the Auditor General for her work. This recommendation would require developing potential regulatory proposals for the Minister's consideration.

The development of such policy proposals would be informed by the Auditor General's recommendation and would involve consultations with the public and the real estate services sector.

### RECOMMENDATION 16

To ensure brokerages are complying with the legislative and regulatory requirements, we recommend that the Real Estate Council of Ontario incorporate a step in its inspection process to confirm that the required offer documents are being retained by brokerages.

### RECO RESPONSE

RECO thanks the Auditor General for its recommendation and will consider the scope and methodology of the inspections in which it would be most appropriate and effective to assess the retention of offers, when developing its new inspection program.

#### 4.6.4 Consumers Put Themselves at Risk When Making an Offer with No Conditions to Purchase a Property

When making an offer to purchase a property, a buyer can add one or more conditions to their offer to protect their interests. According to RECO, conditions commonly found in offers to purchase include a requirement to complete a home inspection and to obtain financing. **Figure 19** provides a description of these conditions and the risk assumed by the buyer when they do not include such conditions in their offer.

To make an offer more competitive, a prospective buyer may make an unconditional offer—that is, an offer that does not include any conditions (such as those in **Figure 19**). RECO informed us that this practice is especially common in a competitive real estate market where buyers may feel pressured to make an unconditional offer in order to compete with other buyers.

In Ontario, where there is no cooling off period for new or resale properties (except for pre-construction or new condominiums), buyers typically cannot rescind an unconditional offer without risking repercussions, including the loss of their deposit and possibly litigation. Given the significant financial commitment made

## Figure 19: Examples of Common Buyer Conditions

Prepared by the Office of the Auditor General of Ontario using information provided by RECO

Type of Condition	Risk Assumed by Buyer If Condition Not Added
<b>Home inspection condition</b>	<ul style="list-style-type: none"> <li>An inspection of the property provides the buyer with information about the condition of the property, including deficiencies and defects. If concerns are found, the buyer is able to make informed decisions about whether to proceed with the trade, negotiate for repairs, or seek a price reduction.</li> <li>By deciding not to complete a home inspection, the buyer risks incurring unanticipated repair and renovation costs or purchasing a home that they otherwise might not have purchased had they known about the deficiencies or defects.</li> </ul>
<b>Financing condition</b>	<ul style="list-style-type: none"> <li>A financing condition gives the buyer time to confirm that they are able to obtain mortgage financing.</li> <li>If a home appraiser finds that the value of the property is less than the amount, in the agreement, financing may be declined by the financial institution. In order to proceed with the trade, the buyer will have to make up the difference between the approved mortgage amount and what the buyer agreed to pay in the offer.</li> </ul>

to purchase a property, it is critical for consumers to have all relevant information about what they are buying in order to make an informed decision.

In contrast, in July 2022 the government of British Columbia introduced a mandatory three-day home-buyer protection period (i.e., a cooling off period) to provide homebuyers with time to conduct due diligence procedures such as obtaining a home inspection or securing financing. This protection period will come into effect on January 1, 2023, and will include a cancellation fee of 0.25% of the purchase price, or \$250 for every \$100,000, for those who choose to back out of a deal. For example, if a homebuyer exercises their right of cancellation on a \$1 million home, they would be required to pay \$2,500 to the seller. British Columbia states that this protection period will offer homebuyers the opportunity for due diligence if no conditions have been added to the offer. It indicated that industry representatives estimated that more than 70% of offers in British Columbia's most competitive markets in 2021 may have been made without conditions, which can lead to major unexpected repair and renovation costs to a buyer or the loss of a deposit if the buyer's financing falls through.

### RECOMMENDATION 17

To reduce the risk to buyers when purchasing a property, we recommend that the Ministry of Public and Business Service Delivery work with the Real Estate Council of Ontario to explore opportunities to introduce homebuyer protections such as a cooling off period.

### RECO RESPONSE

RECO will work with the Ministry to assess the impact of the legislative changes coming into force in Ontario in April 2023, along with those in other jurisdictions, including the cooling off period that will come into effect in British Columbia in 2023.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for her work.

As noted in the Auditor General's report, a number of recent amendments to the *Real Estate and Business Brokers Act, 2002* and its regulations come into force on April 1, 2023. The Ministry will monitor the impact of the recent changes.

The Ministry will also monitor the approaches and experiences of other jurisdictions, including those that have introduced a cooling off period for homebuyers, to inform any future policy work and decision-making for government consideration.

## 4.7 Unclaimed Consumer Deposits

### 4.7.1 Nearly \$14 Million in Consumer Deposits from Incomplete Property Sales Remains Unclaimed

At the time of our audit, we found that the Ontario government and RECO were holding a combined \$13.7 million in unclaimed trust money—the vast majority of which relates to consumer deposits, because they could not determine whether the deposits should be returned to the buyer or given to the seller, or because the person entitled to the money could not be located.

In Ontario, deposits are commonly paid to and held by the selling agent's brokerage until the transaction is complete. Under the Act, brokerages are required to hold deposits in a trust account with a recognized financial institution and must disburse deposits only in accordance with the terms of the trust. When they agree to purchase a property, buyers normally agree to provide a deposit to reassure the seller that they are acting in good faith and intend to complete the purchase. In the event that the agreement falls through, the deposit is not automatically left with the seller, nor is it returned to the buyer. Typically, the brokerage requires written agreement from the parties involved in the transaction to direct the disbursement of the deposit. If the buyer and seller do not agree in writing to the release of the deposit, normally a court order must be obtained to decide how the deposit will be distributed.

If within two years of receiving a deposit in its trust account the brokerage cannot determine who is entitled to it, the brokerage is required to remit the deposit to RECO. RECO holds the deposit until it either receives consent from both parties, or a court order, to release the deposit. If a deposit is not disbursed within

five years of RECO receiving the deposit, RECO is required under the Act to remit the deposit to the Minister of Finance.

We reviewed RECO's account of unclaimed deposits and noted that between RECO's inception in 1997 and May 2022, it has collected about \$15.9 million in unclaimed consumer deposits from brokerages. Of this amount, about \$3.3 million, or 21%, was returned back to either the buyer or seller, about \$7.4 million, or 46%, was remitted to the Minister of Finance, and the remaining \$5.2 million, or 33%, continues to be held by RECO. We also found that an additional \$1.1 million currently held by the Minister of Finance was collected from unclaimed deposits prior to RECO's inception. The combined \$13.7 million in deposits held by RECO and the Minister of Finance remains unclaimed. The legislation is silent on how long unclaimed deposits should be held after final remittance to the Minister of Finance. Currently, the Minister of Finance holds unclaimed deposits indefinitely.

### RECOMMENDATION 18

So that unclaimed deposits on real estate transactions are settled, we recommend that the Ministry of Public and Business Service Delivery assess the need to:

- establish a maximum time frame during which unclaimed deposits on real estate transactions can be held; and
- establish parameters to determine who unclaimed deposits should be provided or returned to after the time frame has elapsed.

### RECO RESPONSE

RECO will support the Ministry as it considers proposals concerning unclaimed money held by brokerages.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for this recommendation. The Ministry will develop policy

proposals concerning unclaimed money held in trust for the government's consideration.

The development of such proposals will be informed by the Auditor General's recommendation and will involve consultations with the public and real estate services sector.

#### 4.7.2 RECO Does Not Follow Up on Brokerages It Knows Are Holding Unclaimed Consumer Deposits

We found that RECO does not have a process in place to require brokerages to periodically report the number and amount of unclaimed consumer deposits held in a brokerage's trust account. Instead, RECO relies on brokerages to voluntarily comply with the requirement of the Act that brokerages remit to RECO any unclaimed consumer deposit that has not been returned to a buyer or seller after two years.

When unclaimed consumer deposits are not proactively collected by RECO from brokerages on a timely basis, there is an additional risk that brokerages can misappropriate the money over longer periods of time. We found that over the last five years (2017–21), RECO's inspectors issued 599 non-compliance notices to 491 brokerages for failing to remit unclaimed consumer deposits to RECO. Of the 491 brokerages, 102, or about 21%, were issued a notice two or more times in a five-year period for not remitting unclaimed consumer deposits to RECO. However, we found that even after issuing these non-compliance notices, RECO did not take any action to follow up and collect the unclaimed consumer deposits. In fact, in our analysis of collection data, we found that as of May 2022, 62%, or 369 of the 599 non-compliance notices remained unresolved and RECO had not obtained the unclaimed consumer deposits from brokerages.

We also found that RECO was not using information from its inspections of brokerages to effectively monitor the collection of deposits. For example, RECO does not keep track of the amount of unclaimed deposits found during inspections in a centralized database. As a result, even when a brokerage subsequently remits

to RECO unclaimed deposits, RECO does not have a process to ensure that the brokerage has remitted the correct amount of unclaimed deposits identified during an inspection.

Failure to remit unclaimed consumer deposits to RECO is one of the most common types of non-compliance notices issued by RECO. Nevertheless, we were surprised to learn that over its 25-year existence, RECO has never had a process to actively collect unclaimed deposit money from brokerages. As a result, RECO does not know how much unclaimed deposit money is currently being held by brokerages.

### RECOMMENDATION 19

So that deposits held by brokerages that remain unclaimed for two years are remitted to the Real Estate Council of Ontario (RECO) on a timely basis, as required by the *Real Estate and Business Brokers Act, 2002*, we recommend that RECO:

- implement a process to collect on an annual basis information on unclaimed deposits held by brokerages;
- put in place a process to follow up with brokerages that fail to remit unclaimed deposits to RECO on a timely basis;
- include steps in its inspections to verify that brokerages' annual reporting on unclaimed deposits held is accurate; and
- implement a protocol to follow up on inspections that find outstanding unclaimed deposits to ensure amounts are subsequently remitted to RECO.

### RECO RESPONSE

RECO agrees with this recommendation and will take steps to implement each action item. RECO will develop new brokerage reporting requirements, including the reporting of unclaimed deposits held by brokerages. Since the audit began, RECO has put in place a process to follow up on brokerages holding unclaimed monies identified in inspections since 2017 and will put in place a process to follow

up with brokerages that fail to remit unclaimed deposits on a timely basis moving forward. RECO will also include a step in its inspection program to verify that reporting to RECO on unclaimed deposits is accurate.

## 4.8 RECO's Operations

### 4.8.1 Majority of Ontarians Surveyed Are Not Aware of RECO and the Consumer Protections It Offers

In our review of RECO's consumer awareness surveys, which include individuals who have recently purchased a property, we found that most Ontarians are not aware of RECO and the services it provides. Specifically, in the most recent survey completed in July 2021:

- 89% of Ontarians surveyed indicated that they were not aware of RECO and the protections it offered to real estate buyers and sellers; and
- 65% of Ontarians surveyed did not know that real estate brokerages and salespersons were regulated by RECO.

RECO does not currently have a direct process to reach prospective buyers and sellers working with a registrant to buy or sell a home to inform them about protections available under the Act. There is no requirement for registered brokers and salespersons to inform buyers and sellers of services available through RECO. An example of this is RECO's role in mediating disputes that may arise in real estate transactions. RECO also administers an insurance program where consumers can make a claim against a salesperson or broker in the event of an error or omission.

In contrast, Tarion, which administers the warranty program for new home construction in Ontario requires homebuilders to provide homebuyers with information that details their warranty rights and homeowners' ability to make a claim to Tarion if their builder does not fulfill their warranty obligations.

We also found that the Real Estate Council of Alberta requires registered brokers and salespersons to provide consumers with a Consumer Relationships Guide that explains what responsibilities a real estate professional has when engaging with a consumer.

For example, the guide explains how to handle situations when a conflict of interest arises where a real estate professional represents both a buyer and seller in a single transaction. Brokers and salespersons are required by law to obtain a signed acknowledgement from the consumer that the guide has been read, the real estate professional has discussed the guide, and satisfactory answers were provided for any questions posed by the consumer.

The Ministry advised us that recent changes to the legislation and regulations that are scheduled to come into effect on April 1, 2023 will require real estate salespersons and brokers to provide a copy of an information guide prepared by RECO to prospective buyers and sellers.

### RECOMMENDATION 20

So that prospective buyers and sellers of real estate are aware of the Real Estate Council of Ontario's (RECO) available services, we recommend that RECO work with the Ministry of Public and Business Service Delivery to develop an information package outlining available consumer protections, and require all registrants to provide this information to real estate buyers and sellers when they make an agreement to represent the buyer or seller in a real estate transaction.

### RECO RESPONSE

RECO agrees with this recommendation. RECO is currently working on developing an information guide that registrants will be required to provide to buyers and sellers beginning April 1, 2023.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for her work.

The Ministry notes that recent amendments to the *Real Estate and Business Brokers Act, 2002* and its regulations, which come into force on April 1, 2023, include regulatory changes that would require the Registrar of the Real Estate Council of Ontario to prepare an information guide for the

public's and registrants' use. The guide will include information on numerous matters, including, among other things:

- the options for interacting with a registrant as either a client or a self-represented party;
- a summary of the rights, obligations and duties of different parties in a trade in real estate;
- guidance in respect of remuneration arrangements in relation to a trade in real estate;
- processes for filing a complaint about the conduct of a broker or salesperson; and
- other information the registrar considers relevant.

The information guide will be published on RECO's website and registrants will be required to provide the guide and explain its contents to a person before providing services or assistance in relation to a trade in real estate.

#### 4.8.2 RECO Does Not Collect Transaction Data from Brokerages, Limiting Its Ability to Effectively Regulate Registrants and Identify Consumer Risks

We noted that RECO does not currently have general authority to collect real estate transaction information from all brokerages. In the absence of such information, RECO faces challenges in providing evidence-informed policy advice to the Ministry to address emerging risks to consumers. For example, RECO cannot produce detailed analytics to identify the prevalence of trends in real estate transactions that pose a risk to consumers such as unconditional offers (described in **Section 4.6.4**), transactions where a single salesperson represents both the buyer and seller (described in **Section 4.6.1**), and transactions that may involve fictitious offers (described in **Section 4.6.3**). In addition, the lack of transaction information limits RECO's ability to apply a risk-based approach in regulating brokerages. As discussed in **Section 4.3.1**, RECO does not at present assess and assign a risk rating to each brokerage so that high-risk brokerages can be inspected more frequently, which collecting transaction information would enable it to do.

In contrast, we found that the British Columbia Financial Services Authority (BCFSA) collected residential real estate sales information from brokerages upon direction from the provincial government. The BCFSA collected a subset of 2021 and 2022 residential sales data from brokerages to help assess the prevalence of market practices that may put real estate consumers at risk, such as unconditional offers and blind bidding. The data collection attempted to answer questions about homebuyer risks, including:

- how often buyers are making unconditional offers;
- how often there are multiple offers on homes, and how many offers are typical;
- the average difference between a home's listing price and sale price;
- how often the sale price is significantly higher than the next-highest offer; and
- regional variations and comparisons in different time periods.

The BCFSA cited that observations from the data collection were generally consistent with the narrative of an increasingly competitive real estate market, with properties selling quickly, unconditionally, with multiple offers, and potentially a large difference between the sale price and the highest unaccepted offer. The BCFSA indicated that it intends to use its experience and lessons learned from this data collection to enhance future real estate data collection efforts to support evidence-informed policy and regulatory decisions.

### RECOMMENDATION 21

To improve the Real Estate Council of Ontario's (RECO) effectiveness in identifying consumer risks and providing sound evidence-based policy advice to the Ministry of Public and Business Service Delivery (Ministry) to address such risks, we recommend that RECO:

- reference best practices in other jurisdictions to identify the transaction information that it should collect from brokerages;
- put in place a process to periodically collect such transaction information from brokerages;

- analyze the information collected to develop and provide evidence-based policy recommendations for the Ministry's review and consideration; and
- use this information to inform its brokerage inspection process.

## RECO RESPONSE

RECO agrees with this recommendation. RECO's ability to make sound, evidence-based recommendations will be enhanced by the new legislative authority to collect additional information from registrants, effective April 2023. Thereafter, RECO will work to put in place a process to periodically collect transaction and other information from brokerages, and to use that information to both provide evidence-based recommendations to the Ministry and to inform its own processes, including brokerage inspections.

### 4.8.3 RECO Has Surpluses and Reserves Totalling over \$35 Million

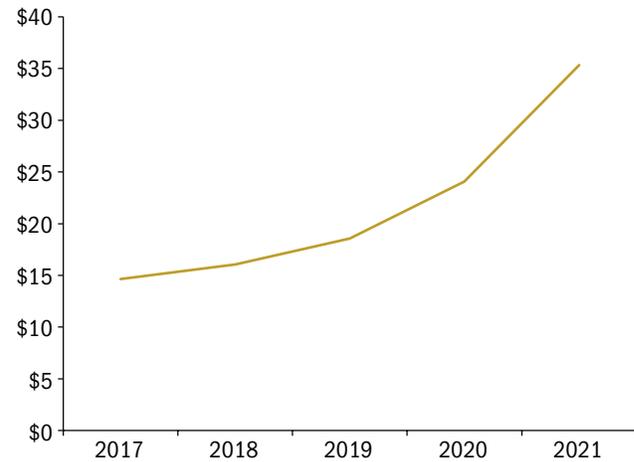
RECO's administrative agreement with the Minister requires that RECO set fees on a cost-recovery basis. However, as shown in **Figure 20**, we found that in the last five years (2017–21), RECO's accumulated surpluses and reserves increased by 140%, from \$14.7 million to \$35.3 million.

Over the same five-year period, the number of registered salespersons and brokerages grew by 21% and 7%, respectively, contributing to an increase of about 45% in RECO's operating revenue. We observed that RECO developed a plan to reduce its accumulated surplus and reserves over the next 10 years by reducing registrant fees without making any spending cuts, and thus running a deficit over this period. This plan was approved by RECO's Audit, Risk, Finance & Insurance Committee on July 28, 2022, and was approved by RECO's Board of Directors on September 22, 2022.

We found that RECO's plan did not include an assessment of whether it devotes sufficient resources

**Figure 20: RECO's Accumulated Surplus and Reserves, 2017–2021 (\$ million)**

Source of data: Real Estate Council of Ontario



Note: The increase in RECO's accumulated surplus and reserves is primarily due to the increase in the number of registrants that entered the industry. From 2017 to 2021, the number of registered salespersons and brokerages grew by 21% and 7%, respectively, contributing to an increase of about 45% in RECO's operating revenue.

to administering and enforcing the Act and fulfilling its mandate. We noted a number of areas where additional resources could be used to improve the effectiveness of RECO's enforcement efforts. For example, although the number of salespersons and brokerages grew by 21% and 7%, respectively, over the last five years (2017–21), RECO continued to designate five individuals as inspectors during that same period; one of the designated positions remained vacant for seven months in 2022. In addition, as noted in **Section 4.3.1**, RECO has never conducted a full on-site inspection at 27% of registered brokerages, and has not conducted a full on-site inspection at a further 35% of registered brokerages for at least five years. As well, as discussed in **Section 4.5.3**, RECO on average takes almost one year to issue a final disciplinary decision for registrants found to have breached the Code of Ethics. Furthermore, as described in **Section 4.8.1**, RECO's surveys illustrate that overall consumer awareness of RECO and the protections it offers remains low among Ontarians.

## RECOMMENDATION 22

So that the Real Estate Council of Ontario (RECO) can effectively meet its mandate and operate on a cost-recovery basis in accordance with its administrative agreement with the Minister of Public and Business Service Delivery, we recommend that RECO:

- assess its current operations to identify where additional resources are required to improve its administration and enforcement of the *Real Estate and Business Brokers Act, 2002*; and
- use the results of this assessment to allocate resources where required and to adjust its fee reduction plan accordingly.

## RECO RESPONSE

RECO thanks the Auditor General for this recommendation. RECO will review the observations in the Auditor General's report in its assessment of its current operations to identify areas where additional resources may be required to improve its administration and enforcement of the *Real Estate and Business Brokers Act, 2002*. RECO will use the results of this assessment to allocate resources where they are required, and to adjust its budgets accordingly.

### 4.8.4 Although RECO's Role Is to Protect Consumers, Its Board Is Dominated by Real Estate Industry Representatives

Although RECO was established by the Ontario government to administer the Act with the purpose of protecting the public interest, we found that RECO's Board of Directors consists of individuals that almost exclusively represent registrants in the real estate industry.

Currently, RECO's bylaw that addresses the composition of RECO's Board indicates that nine of the 12 directors, or 75%, are to be industry members elected by registrants, and the remaining three director positions are to be appointed by the Minister of Public and Business Service Delivery. According to the

*Safety and Consumer Statutes Administration Act, 1996*, the Minister can choose to appoint up to 50% of board members to represent consumer groups, business, government organizations or other interests as the Minister determines. However, historically, the Minister has appointed just 25%, or three board members. As of March 2022, one of the Minister's appointees was also a real estate industry member, and another was a former real estate industry member, further adding to the high representation of industry members on RECO's Board.

We found that the boards of other Canadian provinces' real estate regulators included fewer industry representatives. For example, the British Columbia Financial Services Authority's Board is entirely composed of members of the public appointed by the Lieutenant Governor in Council. The Board of Directors of the Organisme d'autoréglementation du courtage immobilier du Québec is composed of 50% members of the public (who do not hold a salesperson or broker licence) and 50% industry representatives.

### RECO Has Not Had a Functioning Consumer Advisory Process as Required

RECO's administrative agreement with the Minister also requires that RECO's Board establish an advisory process for direct input to the Board on issues of importance to consumers; however, it does not specify the means by which this should be done. Although RECO's Board has established an Industry and Consumer Advisory Committee, we found that the Board has not ensured that a functioning consumer-focused advisory process is in place.

We reviewed RECO's Board meeting minutes from the last five years (2017–21), and found that there were no significant issues or advice brought to the Board from the Industry and Consumer Advisory Committee that were consumer focused. We also found that for most of RECO's existence, there has not been a consistent functioning consumer advisory group. From November 2004 to September 2007, RECO had a Consumer Advisory Group that reported directly to the CEO. However, in 2007, the group became largely inactive, meeting only on an ad hoc basis. In

2016, a CEO Advisory Group was created to advise the CEO and management. It was primarily composed of members from the real estate industry, but included some consumer representatives. In 2018, this group transitioned to the Industry and Consumer Advisory Committee consisting primarily of members representing the real estate industry. It was not until June 2020, when new members representing consumer interests began to be appointed under the direction of the CEO to the Consumer and Industry Advisory Group that its composition was changed to six consumer and six registrant representatives.

### RECOMMENDATION 23

So that the Real Estate Council of Ontario's (RECO's) Board of Directors effectively executes its responsibilities to oversee the real estate industry and protect consumers, we recommend that the Ministry of Public and Business Service Delivery reassess and adjust the proportion of the industry representatives on RECO's Board and in doing so, ensure a skills-based Board based on best practices is in place.

### RECO RESPONSE

RECO will support the Ministry's efforts as it considers the possible composition and transition towards a skills-based board to oversee RECO's delivery of services to achieve its mandate more effectively.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for this recommendation. The Ministry agrees that good governance is important and should be based on best practices.

Currently, under the *Safety and Consumer Statutes Administration Act, 1996*, the Minister may make various orders related to board governance, including to provide that no more than a fixed

percentage of members of the board shall be drawn from among the persons or classes of persons specified in the order.

The Ministry will consider options to propose to the Minister for enhancing good governance that will be informed by the Auditor General's recommendation.

### RECOMMENDATION 24

So that the Real Estate Council of Ontario's (RECO's) consumer advisory process effectively provides independent and sound advice to RECO's Board of Directors on issues of importance to consumers, we recommend that the Ministry of Public and Business Service Delivery:

- work with RECO to amend the administrative agreement to require RECO's Board to periodically provide the Minister of Public and Business Service Delivery with reports on RECO's consumer advisory process; and
- enforce the requirement in the administrative agreement for RECO to publicly report on the activities and advice generated by its consumer advisory process in its annual report.

### RECO RESPONSE

RECO will work with the Ministry as it considers the Auditor General's recommendations and options for updating RECO's consumer advisory process.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for the recommendation. The Ministry will work with the Real Estate Council of Ontario (RECO) to examine options to improve RECO's consumer advisory process, informed by the Auditor General's recommendation.

The Ministry will strengthen its oversight of RECO's reporting on the activities of its consumer advisory process.

## 4.9 The Ministry Does Not Collect Sufficient Information to Monitor and Assess RECO's Performance in Meeting Its Mandate

We found that the Ministry does not collect sufficient performance information from RECO to be able to monitor whether RECO is meeting its mandate to effectively regulate the real estate sector and protect consumers.

Under the administrative agreement between the Minister and RECO, to evaluate RECO's performance, the Ministry must agree upon performance indicators with RECO and collect results on these indicators from RECO on a quarterly basis. We reviewed these quarterly results and found that the performance indicators currently in place were limited to registration application processing times, the average time RECO takes to close a complaint received, and the wait time to contact RECO over the telephone. However, we found that performance indicators had not been established to monitor RECO's operational performance in several key areas where our audit identified operational issues. For example, targets and indicators were not in place to monitor whether RECO:

- inspects all registered brokerages at least once over a specific period of time;
- conducts follow-up inspections within a targeted time frame;
- investigates registrant misconduct within a targeted time frame;
- processes and refers matters of misconduct to the Discipline Committee, and issues a decision on disciplinary action within a targeted time frame; or
- collects unclaimed consumer deposits from brokerages on a timely basis.

We also noted that although the Ministry has taken steps to inquire with RECO about its growing surpluses, a performance indicator has not been established so that the Ministry can monitor RECO's compliance with the requirement to operate on a cost-recovery basis. For example, a target could be established that compares whether annual revenues exceed annual expenditures by more than 10%. As discussed in **Section 4.8.3**, RECO's accumulated surpluses and reserves increased by 140% in the last five years (2017–21). However, this should be reviewed with the fact in mind that more regulatory work may be needed as real estate activities increase.

### RECOMMENDATION 25

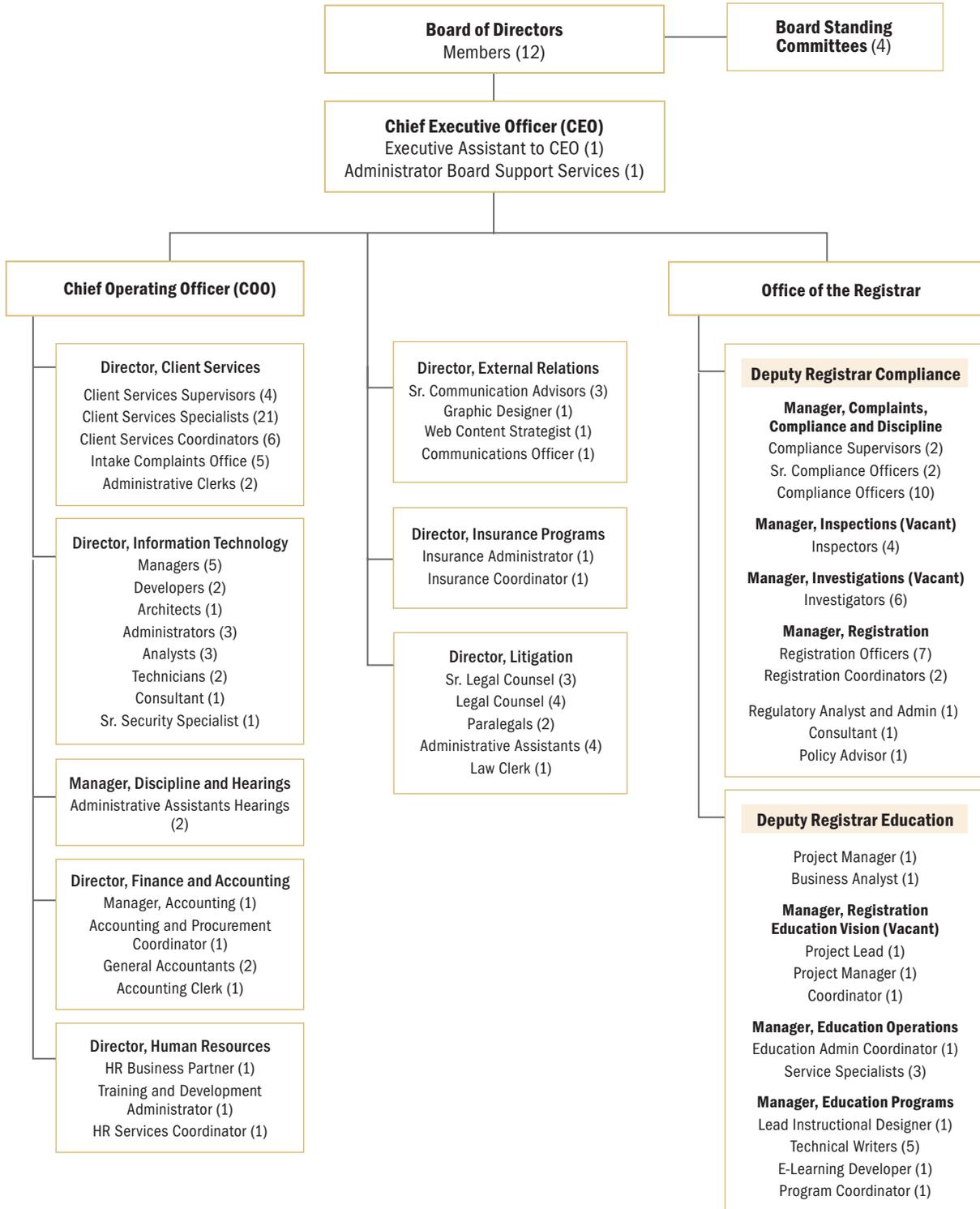
So that the Ministry of Public and Business Service Delivery (Ministry) can effectively monitor the Real Estate Council of Ontario's (RECO's) performance in protecting consumers and regulating the real estate sector, we recommend that the Ministry work with RECO to revise the performance indicators the Ministry uses to monitor RECO's performance to include indicators that more closely monitor RECO's operations, including in the areas of inspections, investigations, disciplinary action and its compliance with the requirement to operate on a cost-recovery basis.

### MINISTRY RESPONSE

The Ministry of Public and Business Service Delivery (Ministry) thanks the Auditor General for this recommendation. The Ministry will work with the Real Estate Council of Ontario (RECO) to revise the indicators the Ministry uses to monitor RECO's performance, informed by the Auditor General's recommendation.

# Appendix 1: RECO Organizational Structure, as of March 2022

Source of data: Real Estate Council of Ontario



Note: Board standing committees include Audit, Risk, Finance and Insurance Committee; Governance, People and Culture Committee; CEO Sub-committee; and Strategy and Organizational Performance Committee.

## Appendix 2: RECO Board of Directors, as of March 2022

Source of data: Real Estate Council of Ontario

### Members of the Board of Directors and Their Affiliations\*

<b>Steve Boxma</b> Board Chair	Royal LePage Team Realty Inc. (Broker – Region 3)
<b>Tim Lee</b> Board Vice-Chair	Century 21 Explorer Realty Inc. (Broker – Region 3)
<b>Rui Alves</b>	iPro Realty Ltd. (Broker – Region 1)
<b>Frank Dattilo</b>	Dattilo Realty Inc. (Broker of Record – Region 2)
<b>Tamer Fahmi</b>	Keller Williams Edge Hearth & Home Realty (Broker – Region 2)
<b>Rebecca Himelfarb</b>	Forest Hill Real Estate Inc. (Broker – Region 1)
<b>John O’Sullivan</b>	RE/MAX Hallmark Realty Group (Broker – Region 3)
<b>David Schooley</b>	RE/MAX Twin City Realty Inc. (Broker – Region 2)
<b>Katie Steinfeld</b>	On the Block Realty Inc. (Broker – Region 1)
<b>Janet Cloud</b>	3C’s Corporation (Public)
<b>John McCharles</b>	RE/MAX Sarnia Realty Inc. (Public)
<b>Phillip Richardson</b>	Black Opal Property Advisors (Public)

Nominated and elected by registrants

Appointed by the Minister of Public and Business Service Delivery

\* As per RECO’s Board bylaws, three Board members are required to be elected from three regions in Ontario. Region 1 is Central Ontario, Region 2 is Western/Southern Ontario and Region 3 is Eastern/North Eastern/Northern Ontario.

## Appendix 3: RECO Fee Schedule, as of February 2022

Source of data: Real Estate Council of Ontario

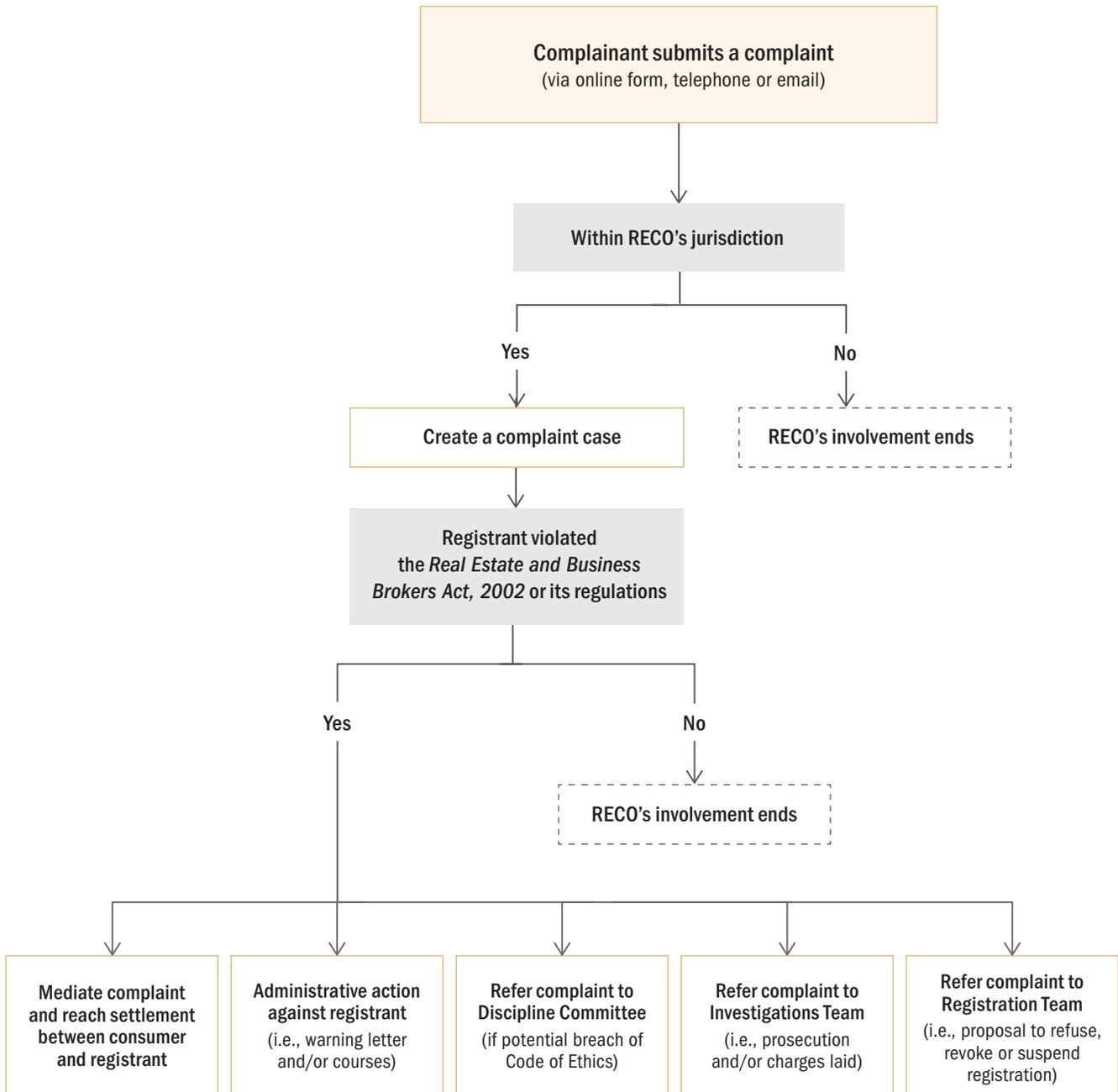
Application Fees	Initial/Reinstatement Fee (\$)	Renewal Fee (\$)	Frequency of Renewal
Salesperson registration	590	390	Every 2 years
Broker registration <sup>1</sup>	200-390	390	Every 2 years
Outside Ontario broker registration	590	390	Every 2 years
Brokerage/partnership/sole proprietor	590	390	Every 2 years
Branch registration <sup>2</sup>	390	390	Every 2 years

Other Fees	Fee (\$)	Frequency
Insurance program fee <sup>3</sup>	475	Annually
Continuing education	44	Every 2 years
Transfer fee <sup>4</sup> and education equivalency assessment	100	As applicable
Notice of change <sup>5</sup>	200	As applicable
NSF cheques	35	As applicable

1. Application review fee of \$200 is charged if change from salesperson to broker is made during a registration cycle. If the change is requested at the time of renewal of registration, \$390 is charged.
2. A branch registration fee is charged for each additional branch opened.
3. Varies each year based on the underlying premiums passed on by the insurer. The \$475 represents the fee charged for the period from September 1, 2021 to August 31, 2022.
4. RECO charges the salesperson a \$100 fee when they transfer their employment to a different brokerage.
5. This is only applicable to brokerages, partnerships and sole proprietors if there is any change to the structure of the business—e.g., name change, change to real estate trust account, change in broker of record, or change in ownership.

## Appendix 4: RECO's Complaints Handling Process

Prepared by the Office of the Auditor General of Ontario



## Appendix 5: Audit Criteria

Prepared by the Office of the Auditor General of Ontario

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1. Effective processes are in place to address complaints, and compliance or enforcement action is taken where appropriate against brokerages, brokers, salespersons and those required to be registered in accordance with the *Real Estate and Business Brokers Act, 2002* (Act).

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  2. Effective processes are in place so that brokerages, brokers and salespersons meet their registration and other requirements, including ethical standards to trade in real estate under the Act and its regulations.

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  3. Effective and timely inspection and investigation processes are in place to support RECO's compliance and enforcement functions so that brokerages, and the brokers and salespersons they employ, comply with the Act and its regulations.

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  4. Systems and processes permit the collection and use of timely and complete information to allow RECO to carry out and publicly report on its mandated responsibilities.

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  5. An effective governance structure and processes are in place to oversee RECO so that it fulfills its mandated responsibilities.

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  6. The Ministry has effective processes to monitor and address RECO's performance in protecting the public and regulating brokerages, brokers and salespersons.
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