

January 28, 2008

Mr. Rob Harper
Senior Policy Advisor
Ministry of Consumer and Business Services
Ferguson Block
12th Floor
77 Wellesley St West
Toronto, Ontario
M7A 1N3

Dear Mr. Harper:

Re: Draft Responses to Questions on the Real Estate and Business Brokers Act (REBBA)

Thank you for your email further to our submissions regarding REBBA. Please find our responses to your questions below:

1. Large Transactions Provision

1.1 Question: "Value" presumably means the value in the trade ~ how is this established?

Response: "Value" means its "value of the consideration" under the *Land Transfer Tax Act*.

1.2 Question: If a property is listed for an amount over this value but negotiations result in a lower price when the transaction takes place - what then happens?

Response: In that case there would be no exemption.

1.3 Question: It would be awkward for parties to realize "oh oh, we would agree to this deal if we agreed to \$9.8 million but then the exemption wouldn't apply and someone would be breaking the law!" Ideally, the criteria for the exemption's application would be clear "at the outset" of involvement in trading.

Response: If a property drops under the \$10 million mark then there would be no exemption. The same principle applies under the *Ontario Securities Act s.35 (5)*.

Alberta Investment Management
Allied Properties REIT
Artis REIT
Aspen Properties Ltd.
Bentall Capital
BMO Capital Markets Real Estate Group
Boardwalk REIT
Brookfield Financial Real Estate Group
Brookfield Real Estate Opportunity Fund
Brookfield Properties Corporation
Calloway REIT
Canaccord Adams
Canadian Hotel Income Properties REIT
Candere
CAP REIT
CB Richard Ellis Limited
Charter REIT
Chartwell Seniors Housing REIT
CIBC
CIBC Mortgages
CIBC World Markets Inc.
Colliers International.
CREIT
Crombie REIT
Cushman & Wakefield LePage Inc.
Dundee REIT
ECL Developments
Extencicare REIT
FCB Property Management Services
First Capital Realty Inc.
First National Financial LP
FPI Cominar/Cominar REIT
GE Real Estate
Giffels Management Limited
Grosvenor Canada Limited
GWL Realty Advisors Inc.
H & R REIT
Holloway Lodging REIT
Homestead Land Holdings Limited
IG Real Estate Investors
ING Real Estate Canada
InnVest REIT
InStorage REIT
Ivanhoe Cambridge
Killam Properties Inc.
Leben REIT
M3 Capital Partners
Manulife Financial
Melcor Developments
Menkes Development Ltd.
MI Developments Inc.
Morguard (Revenue Properties Company)
Morguard Corporation
Morguard Investments Limited
Morguard REIT
Morguard Residential Inc.
Mortgage Fund Three
National Bank Financial Inc.
Northern Property REIT
Ontario Realty Corporation
OP Trust
Oxford Properties Group Inc.
Presima
Primaris Retail REIT
RBC Capital Markets
RBC Capital Markets Real Estate Group
Redcliff Realty Advisors Inc.
Retirement Residences REIT
Retrocom mid-market REIT
RioCan REIT
Scotia Capital Inc.
Scotiabank
Scott's REIT
Starwood Capital Group
Sun Life Assurance Company of Canada
TD Securities Inc.
The Cadillac Fairview Corporation Ltd.
The Minto Group
Timbercreek Asset Management Inc.
Whiterock REIT

1.4 Question: In saying "the real estate being traded" has the given value of \$10 million, does that mean "the interest being traded" has the given value?

Response: Yes.

1.5 Question: If a \$200,000 interest is being traded in an \$11 million commercial property, is the exemption intended to apply?

Response: No, It's the Land Transfer Tax Value.

1.6 Question: Why \$10 million in particular? "What about the person/group who is just under this amount?"

Response: \$10 million is large enough to ensure both parties are sophisticated.

1. Trades In Commercial Real Estate By Institutional Entities

2.1 Question: "Subsidiary" and "affiliate" are both defined terms in the Business Corporations Act, does the draft intend these terms mean what they are defined to mean in that Act? If not, how are they meant?

Response: Yes.

2.2 Question Why does "subsidiary" appear in (i) and (v), not appearing in (ii) through (iv)? Do such simply not have subsidiaries?

Response: Correct, or none that are regulated in an equivalent fashion.

2.3 Question: As you propose, what would define "primarily" in the definition of "commercial real estate"?

Response: Greater than 50% of gross real estate assets.

2.4 Question: When does some residential use make the commercial use not primary - would this be judged by square footage or value.

Response: Value.

2.5 Question: If either square footage or value is meant and a particular threshold would apply consistently, it would be easier just to say so - in which case the question is what threshold you propose. Also, presumably it is intended to mean the trade in a property whose purpose is primarily commercial is excluded;

Response: Value would be the threshold. Yes, this means the trade in a property who purpose is primarily commercial is excluded.

2.6 Question: If 10% of that building (however measured), is residential condominium space that trades in those residential condominiums specifically are excluded?

Response: No. With respect to "primary" for commercial; residential units of a commercial building, such as condos, wouldn't be excluded except that residential leases are already excluded from REBBA and a sale by owner is also excluded. If the entire condo building was sold, for let's say \$12 million, our exemption would apply to the sale of the entire property because it is a sale for over \$10 million. (Note: the sale of individual condo units would not be exempt.)

2.7 Question: The most important question concerning this draft provision is that, as we read it, the provision proposes that where one of its "sophisticated parties" holds at least a 20% interest then it, and sometimes its affiliates/subsidiaries, can trade without registration in that property (not just in the interest it holds). It does not require that the other party/parties to the trade be "sophisticated parties" as it sets these out. The explanatory text talks about transactions "between large corporations" but the draft seems only to speak to the identity of one party, not all those involved. For example, a private company described in (v) could own 21% interest in a property and have a subsidiary. The other 79% interest could be owned by anyone (not "sophisticated parties), and the parties looking to acquire interests (leases or purchases) could also not be sophisticated parties. The subsidiary would be permitted to act as an intermediary, inducing trades in the property interests (for example negotiating the sale of the entire property by which the private company and the other 79% interest holders dispose of their interest and someone else buys it). Is reading of the draft consistent with REALpac's intent for the provision?

Response: We agree that there should be a secondary test. All other owners would have to be Large Commercial Owners.

Thank you for your questions regarding our submissions on REBBA. Please do not hesitate to contact us if we can provide any additional information.

Regards,

A handwritten signature in black ink, appearing to read 'Michael Brooks', with a long horizontal line extending to the right.

Michael Brooks
Chief Executive Officer