

PARC Proposal

Purpose

Members of The Winnipeg Real Estate Board (WREB), as part of the real estate industry, need access to property owners' names in order to do their job as professionals and to ensure that they are meeting their professional and contractual obligations. REALTOR members of the Board are bound not only by Rules and Regulations (including Privacy) of the Bylaws of the Board and the Canadian Real Estate Association (CREA) but also by a provincial licensing structure. Affiliate members of the Board with access to the Board's MLS® / CLS™ database are professional appraisers and government agency officials bound by strict Board contractual obligations.

Members are professionals who represent the public in the sale / lease of real property and are required to ensure that their clients achieve a pricing agreement, which reflects the market norm. Evaluation of said property is paramount in the job done by a REALTOR and proper evaluation cannot be accomplished without the names of ownership being revealed to do due diligence in determining facts about the property. Another major fiduciary duty the agent owes the client is confidentiality. Therefore there is a "privacy" component built right into the business relationship.

The REALTORS, Appraisers and government representatives that work with our database are all responsible for estimating the "market value" of real estate. There are many definitions of real estate market of which the following requirements are always assumed:

1. No undue pressure on either party. This condition is often not met in actual market conditions. This is one important reason why the REALTOR / Appraiser must have access to owners' names in order to investigate the conditions of sale of each comparable property utilized in the analysis supporting a value estimate.
2. An informed buyer and seller. This includes an awareness of the alternatives available to each. The presumption is that they have "reasonable or normal" market information so that they operate in a prudent economic manner. When a real estate professional is not involved in a sales transaction the only way of ensuring that this market condition has been met is by direct contact with the owner.
3. A reasonable turnover period. A quick or forced sale is not assumed. In addition, a seller could receive "a desired price" if willing to wait an unduly long time to find a buyer. Neither of these situations meets the condition of market value. In order to ensure neither of these situations exist for those sales not traced through our Multiple Listing Service®, we must contact the property owner to get the sale details.

4. Payment consistent with the standards of behaviour of the market. Typical or normal financing and payment arrangements are assumed. When appraising a property it is important to know that the comparable property sales prices on which you are basing your conclusions have not been affected by creative financing. Once again this requires communications with the property owner.

In addition to the primary responsibility of determining Market Value detailed above, there are a number of other crucial reasons for REALTORS and appraisers to have the names of property owners when executing real estate transactions and performing market appraisals:

1. Name accuracy decreases the incidence of fraud. REALTORS do their utmost to maintain professional integrity and fulfill the requirements that are compelled by strict provincial regulations to ensure legally binding listing agreements and contracts of offer to purchase and lease are with legitimate owners. Failure to do so can have prohibitive legal and financial ramifications and undermine consumer and investor confidence.

In terms of efficiency, in an industry which prides itself as being one of the most technology-driven and successful in this regard with mls.ca – one of the top internet sites in the country – it appears totally inappropriate and incomprehensible that REALTORS can only access property owner names now by going in person during limited business hours to a government office and paying five dollars per property search or signing on to an expensive online subscription service. The REALTOR business environment is a highly regulated and very competitive business.

Long hours are necessary to accommodate customer's schedules, visiting available properties and travelling. Time is therefore a very precious commodity and a system which existed prior to the onset of privacy law that allowed WREB members to access names 24/7 in a very timely, efficient and cost effective way from its MLS and CLS databases is vastly superior than what exists today. Clearly, it puts WREB members at a competitive disadvantage to other jurisdictions, especially those south of the border.

2. The common law of agency that has been confirmed through Canada's judicial system requires real estate licensees to have specific agency and fiduciary duties to buyers and sellers of real estate. The law of agency demands a higher standard than provided for in legislation, which is to protect the public from misrepresentation and inaccurate contracts in the completion of real estate transactions. The restriction of access to owners names on a 24/7 basis imposed on the real estate community by the Freedom of Information and Protection of Privacy Act (FIPPA) makes it impossible for us to meet this requirement in a market reactive timeframe.

3. REALTORS are licensed under The Real Estate Brokers Act. The Act sets a high standard of education (e.g. mandatory education on agency), regulatory control and provides for a strict disciplinary system.
4. The Winnipeg Real Estate Board recognizes that individual property owner names are available on Manitoba Online. If the information is already available, we are only debating how it can more efficiently be accessed. A one stop seamless ability for members to obtain the information from the Board's MLS®/CLS™ databases benefits all concerned in real estate transactions.
5. The Winnipeg Real Estate Board has developed an excellent working relationship including well-conceived database sharing agreements with City of Winnipeg and rural assessors in the interest of not only facilitating more timely and efficient real estate transactions but in ensuring assessors have access to MLS® sold data, including current property improvement details, so they can maintain the integrity and accuracy of the assessment roll. The access by the REALTORS to sufficient information to ensure each sale meets the Market Value criteria laid out above assists the Assessment Authorities through the creation of open market, arms-length transactions which are used to establish assessed values. The resulting market value assessments give municipalities and school boards the ability to set budgets and establish mill rates that more fairly distribute taxes based on the value of real estate as required in the Municipal Assessment Act. The removal of property owner names has weakened the value of this positive database sharing arrangement and has the potential to jeopardize our industry's cooperation with municipal and assessment authorities in the future.
6. A final valid reason to support ready and quick access of property names to REALTORS in the course of them doing their business is for personal security reasons. For example, responding to a phone or e-mail request to come to a potential seller's home, a REALTOR could, prior to names being removed, use their quick access to the MLS® database to verify the names of the registered owner match the names of the caller.

Use of Provincial Bulk Property Name Information

Only One Field

The first thing to state is that the Board is only requesting "one" personal information identifier under privacy legislation and that is the property owner's name. Other personal information items like health records, age, race, colour, income, marital status, education or even home address are not requested.

Property Database – Not Personal

The names are only placed on the Board's MLS®/CLS® databases, which are property information databases, not personal databases. Our databases are set up to facilitate consumer to consumer or business to business transactions. Names form one small part of the information a REALTOR/appraiser requires to fulfill their professional and fiduciary duties to their clients and customers.

Ownership is Significant Property Data

Our interest in a property that we market is who the owner is, regardless of whether it is an individual or corporation. In many commercial situations, ownership resides with a numbered company or corporation so has nothing to do with personal information. No owner phone numbers are resident on our databases. The information on our MLS®/CLS™ databases is strictly on a need to know basis so the public be they consumers, businesses or investors can make one of the most important purchasing decisions of their personal or business lifetime. Complete, up-to-date and accurate property database information is a prerequisite to consumers making an informed decision about a real estate transaction with another consumer. It should be stressed only members or specified affiliate government organizations under very strict contract agreements have access to our databases.

Automated Process for Members – Not Raw Data

The bulk data the Board obtains from the government is not available to members in the form it is received. The data is loaded into our databases and every time a member takes a new listing, a Linc Number is created using the municipality, the property type and the roll number. Our software then retrieves legal description/mailling address/property owner (received formerly) from your data and auto-populates the listing with this data. It is a very quick automated process.

Not Downloadable

The province's bulk data is not downloadable by the public or by Board members. It is not searchable by the public and not easily searchable by WREB members. The bulk data is only used as a database to complete information on a listing provided to one of our REALTOR members by a willing seller who wants potential buyers to know the property is for sale and wants enough information available to draft a legal contract. On the other hand, a buyer broker working with a purchaser or an appraiser member working with an investor or on an assessment appeal seek out verification of this information to draft a legal contract or confirm values in cases where a major property owner may have large land holdings.

Consumer Permission

It has been a custom for years in the real estate industry without any public concern to require on standard real estate forms, vendor and purchaser permission, to share factual, public domain type information with each other to facilitate a real estate transaction.

In support of our submission for requesting bulk property name data, we want to refer you to the current legislation. It is our view that when the Act states that

A public body may disclose personal information only... aa) subject to subsection (2), to a person providing information technology services to or for the public body; bb) when the information is available to the public.”

We interpret the Act to mean that the provincial assessors under Manitoba Intergovernmental Affairs or the City of Winnipeg’s Property Assessment Department would be considered a public body and that the information is available to the public already, albeit in a different form. The Winnipeg Real Estate Board just repackages the same information and makes it available to a restricted audience in a more cost effective, convenient and user-friendly 24/7 format. Section 44 (2) further states that you can only provide such information if you have an agreement in writing with the technology provider for protection of the personal information.

In this respect, the Board has had considerable experience and success in executing solid data information sharing agreements with the City of Winnipeg. In addition, it requires every member to sign strict agreements with the Board on how they can only use the information for the express purpose of transacting in real estate or doing market appraisals. We would have no problem in entering into an agreement with the Province to ensure the use of owners’ names in our databases is strictly limited.

Section 42 (2) also speaks to any use being “ ...limited to the minimum amount of information necessary to accomplish the purpose.” Since as we have stated already we keep no financial or other personal information on the vendor or purchaser, and only record owner’s name and real property details freely provided by the consumer, it is our position that your inclusion of the names in the data you provide meets with the spirit and the intentions of the Act. It is property information and the Province and public should know the ownership particulars of all real property.

We contend that the purpose with which we use owners’ names is consistent with why government assessment departments require property owners’ names to have an accurate assessment roll. It all points to the requirement by law to verify ownership thus avoiding fraud and liability situations. The public is best served by an accurate assessment roll and a real estate industry that has all of the proper information they require for consumers to make an informed decision. We believe the Board’s request has a reasonable and direct connection to the

purpose with which ownership names are collected by assessment authorities. Our use of names from the assessment roll is a plausible one and logical outgrowth of that use or purpose.

The question to ask here is would a property owner expect their name to be used in the manner in which the real estate industry uses it? We think the answer based on many years of having property owners' names reside in our database without any public concern would be a resounding "yes". REALTORS and appraisers use information from the assessment roll in a 'case-by-case' or one-off basis to verify property value information. It is that simple and we believe the consumer fully understands why REALTORS and appraisers need to know who the owner of a property is. We should also state here that we believe that this one personal information identifier – property owner name - would have to be considered a low risk in terms of privacy sensitivity.

In a 1998 report by the British Columbia Privacy Commissioner, he acknowledged that the use of owners' names by real estate salespeople in conveyancing properties is appropriate. This again gives credence to our point that our use of assessment property name information is consistent with the use for which it was obtained.

If accessing name information through Manitoba Online to confirm property value and owner identification is considered a consistent use, no distinction may be made if the information is obtained for the same purpose in another format. Indeed, when individuals access the assessment roll through Manitoba Online, no inquiry is made as to the purpose of their inspection. In these instances, the name information is revealed to individuals, regardless of the purpose for which the information is used. The Board purchases bulk assessment data for a very clear and legitimate purpose and for an identifiable professional audience. Therefore, why should it not be exempted and have names available on its MLS®/CLS™ databases?

Safeguarding Property Name Information

The Board contends it has proper safeguards in place to guard against any potential misuse of bulk assessment roll information. Examples of these protections include:

- Unique user ids.
- Logging use of the bulk assessment use information to create an audit trail.
- Investigating all system logs that indicate excessive run times or unsuccessful access attempts.
- Storing bulk purchased assessment roll information in alarmed, secure environments.

- Forming an agreement with assessment authority that explicitly deals with misuse of the data (e.g. may revoke WREB access privileges for inappropriate use of assessment roll information)
- Setting standards for REALTORS and appraiser members for the use of assessment roll information.
- Regularly communicating to members about the misuse of assessment roll information and the consequences of such misuse.
- Ability to remove names (stalker legislation) when requested by authorities.

The Board maintains a good relationship with its local assessment authority and provincial assessors responsible for WREB territory outside the City of Winnipeg boundaries. If any concerns were to arise, we would be more than willing to cooperate and assist in an investigation of any misuse of assessment roll information. We can also act immediately to remove a name from our database if we are advised there is a security risk to that individual. Making WREB MLS®/CLS™ log records available to assessment authorities to conduct their own review of members accessing bulk assessment roll information or other suspicious uses is one way to further alleviate any privacy concerns.

Our “partnership agreements” with the assessment authorities restrict who can access our database. Only professional, licensed and affiliate members of WREB have access to help consumers buy, sell and lease property.

All REALTORS carry errors and omissions insurance to protect the public interest in case of any transgression of a licensee’s responsibilities to the public. There are also mandatory education requirements of all licensees to ensure professional education requirements are being met and members are current on any industry trends including new regulations or legislation such as privacy.

The Board has a strict code of ethics and standards of business practices and has the necessary mechanism to deal with breaches of ethics and consumer complaints. The investigation and tribunal systems follow the principles of natural justice and are conducted with due diligence and administrative law procedures. These systems over many years have proven very effective in protecting the consumer from unethical business practices and ensuring professionalism in the industry. The Board also works closely with the Real Estate Advisory Council of Manitoba, The Manitoba Real Estate Association and the Manitoba Securities Commission to ensure any infractions of The Real Estate Brokers Act are communicated and resolved. It is noteworthy that there have only been a few licensee suspensions over the past number of years, and that is in a Board where members are involved in over 10,000 MLS® sales and 15,000 MLS® listings a year.

Real estate sales agents of the Winnipeg Real Estate Board are required to be full time professionals as are not allowed to receive remuneration for other employment. They are also independent contractors that rely on commission sales for their income. It therefore can be said with a high degree of confidence that no one is willing to lose his or her license, livelihood, or freedom through legitimate breaches of privacy protocol.

Finally, all members of the Board are now subject to a national privacy code that the Canadian Real Estate Association (CREA) passed and approved in October 2001. It is a declaration of organized real estate to the public that we respect the privacy rights of individuals and have adopted policies and procedures to protect these rights. The Privacy Code takes the requirements of Canada's Personal Information Protection and Electronic Documents Act (PIPEDA) and translates them into processes that make sense in terms of the real life information practices of our REALTORS. CREA will review this Code at least every two years to ensure it is relevant and up-to-date.

WREB suggests that any concerns regarding privacy violations can be alleviated in that our safeguards and ability to discipline members exceed those in place to guard against misuse of assessment roll information already available in other forms. Our own experience has shown members do have the utmost respect for vendor and purchaser privacy. They use the necessary assessment roll information to validate and expedite the sale or appraisal of property. Our industry is also fully cognizant of the terms and conditions of our agency relationship with the client or customer. Therefore, the issue of a disclaimer for the use of disclosing pertinent real estate information for the purpose of selling or appraising a property can be easily accommodated.

Who is the Winnipeg Real Estate Board?

Established in 1903, the Winnipeg Real Estate Board is the longest running Board in the country. In 1908, WREB became a charter member of the National Association of Real Estate Boards (NAREB), which later became known by its current business name, the National Association of REALTORS (NAR). Board members have been bound by a formal Code of Ethics since 1908.

WREB, is a professional and industry association representing close to 1,300 real estate brokers, salespeople, appraisers and financial members active in the local real estate market. It exists to serve its members and to promote the benefits of organized real estate. Members of WREB are also members of the Manitoba Real Estate Association and the Canadian Real Estate Association. This not-for-profit organization has earned a well-respected reputation throughout the country and to this end, received a national community service award in 1997 that recognized the Board's and members' efforts in making Winnipeg a better community.

A program such as the Board's Housing Opportunity Partnership (HOP) is helping rejuvenate the West End area of Winnipeg and is directly contributing to an improvement in the assessment base by increasing property values through renovations totaling over \$2 million in close to forty homes. The Board's Citizens Hall of Fame is another program worth singling out. It honours the likes of former Premier Duff Roblin for "Duff's Ditch" and Carol Shields for her outstanding writing accomplishments. There are now twenty-five inductees since the program's inception in 1986 and the majority of them have bronze sculptures that are proudly displayed in the formal gardens at Assiniboine Park. These individuals have all made outstanding contributions to Winnipeg's quality of life and have certainly inspired the Board to follow suit in ways it is able to make a difference in Winnipeg and surrounding environs.

The Board has its own highly acclaimed weekly newspaper (Winnipeg Real Estate News) and has used it quite effectively over 21 years to educate the public on the benefits of real estate. It also addresses issues like property assessment and other civic and provincial matters that can impact real estate.

Ultimately, through the Board's continued and exemplary efforts to provide the best possible services to its members, the consumer is well served, as is the Manitoba economy. Just last year alone, over 10,700 sales were transacted through our MLS® system and that number of sales fell just shy of \$1 billion dollars worth of activity. In addition, there were a considerable number of exclusive sales by members, including CLS™ sales and leases.

The MLS® and CLS™ systems are backed up by a significant investment in time and staff resources in technology. To this end, the Board is the MLS® provider for the Brandon Real Estate Board, the Thompson Real Estate Board and the Manitoba Real Estate Association's rural territory that falls outside real estate board boundaries. The Board prides itself on providing effective solutions to meet our member's current technology needs. Electronic access is very important to our members. For example, we are now into push technology so real estate information is now pushed out from our computer to a member's palm pilot. REALTORS can now be extremely mobile which is becoming a real asset in such a fast-paced real estate market.

Herein lies one of the strongest arguments to allow WREB access to assessment roll names. By doing so, it facilitates and ensures the real estate market operates in the most effective and efficient way possible for consumers and practitioners, thereby generating enormous economic activity as a result. The chairman of the largest supplier of mortgage funds in the United States indicated that approximately one of every \$7 spent each year goes for housing in one form or

another. He added housing is the top consumer investment and the country's number one economic driver. While we do not have comparative numbers for Canada, given the strong housing market our country has enjoyed over the past few years, it can be deduced housing is a big generator of economic activity. It goes without saying that the Province reaps significant revenue from land transfer taxes, PST on household items including new taxes recently implemented on construction trades work, and income taxes from the 20 person years of employment that has been attributed to every 100 homes sold (Clayton Research Associates 2001).

Other Benefits to Granting an Exemption to WREB

The reasons stated at the outset of this proposal for requiring the assessment roll data speak to benefits in a number of ways. The public is best served by having the professional that looks after its real estate needs equipped with all the necessary information in a timely, cost-effective manner so as to ensure the accurate preparation of contracts and details crucial to the proper transfer of land. The same holds true for an appraiser that could have an investor on a real short timeline that needs to know some important property valuations. In this case, there may likely be other jurisdictions that the investor is considering as well where property name information is more readily available. This puts the Manitoba appraiser at a competitive disadvantage and could well result in Manitoba losing a good investment opportunity.

Another important benefit is the fact a person buying property for residential or commercial use can go into the buying decision with a high degree of confidence because he or she knows the system is reliable.

There is the real tangible benefit that comes with the assessment authorities and the Board developing a win-win public/private partnership that engenders reciprocal sharing of information that is critical to both respective organizations fulfilling their mandate and legal responsibilities. Winnipeg in particular has experienced some serious property valuation problems that were clearly pointed out in the 1996 Scurfield Report. It was extremely costly to the taxpayer. The Board worked closely with the Winnipeg Property Assessment Department during the recent reassessment process to ensure that residential assessments were accurate representations of potential 1999 selling prices. The significant drop in assessment appeal activity for this property type, by comparison to past reassessments, is an indication of the success of this relationship. The Board, on the other hand has gained access to basic property information from that Department which assists us in completing our day to day business in a timely and accurate manner. The addition of Property Owner names from this same source would only reinforce this important partnership.

Another benefit that cannot be overlooked is the savings government can realize by not having to deploy so many people to handle our industry requests for property information. Be it Manitoba Online or other municipal/provincial employee staff that are preoccupied with serving our industry with assessment roll information, would it not make a lot more sense in the 21st Century to redeploy them in more productive work, especially given the fact many trades, professions and Manitoba industry in general are facing employee shortages? The public will benefit from having a more productive workforce and that includes REALTORS as well since they will be spending less time having to access property names from a more costly and cumbersome process. WREB believes the additional costs in time and money cannot be justified when technology allows the information to be accessed more quickly, at a lower cost, and in a way that protects against misuse of personal information.

Existing Precedents and Other Jurisdictional Developments

In terms of whether there are existing precedents as is asked in the guidelines for our submission to PARC, it is the Board's sincere belief and contention that a precedent exists since 1995 by virtue of our arrangement with the City of Winnipeg and the Province's former Department of Rural Development to obtain tax and assessment information. We have used this information to auto-populate our property databases. This functionality frees up our members from having to look up this information or go in person to a municipal office to obtain it. As pointed out, we have never experienced any complaints from the public. In many respects it's understandable since we believe they understand how important it is that REALTORS and appraisers have ready and quick access to property ownership information. In the case of British Columbia, which is highly regarded throughout the country in terms of its assessment practices, the British Columbia Real Estate Association (BCREA) obtained bulk name data from the BC Assessment for over 20 years. They obviously enjoyed a successful long-term public-private partnership. While BCREA was cut off due to privacy concerns at the end of 2000, it is likely they will be exempted from the privacy act next year.

As a Province that relies heavily on the United States for its exports, and certainly the Province is making efforts to broaden trade with our southern neighbours, it cannot go unnoticed that in our industry, real estate boards in the United States in cities like Minneapolis (Board representatives visited there in 2001) are very aggressive in forming strong linkages with government to enhance their property databases. They have very sophisticated technology which is predicated on having a myriad of data (e.g. mapping) to help them sell their city's property assets to investors and win out over other jurisdictions. They have owners' names in their shared databases. So, in our view, our request for

obtaining one simple personal identifier which is critical to a real estate transaction and/or appraisal to determine an accurate property valuation is quite minimal. We will still be at a disadvantage even with names but will at least be in a more competitive position to attract new investors and industry to Manitoba.

In terms of other jurisdictions in Canada, all of them from what we know had property names on their database as well without public concern until privacy legislation was brought into place.

What we are pleased to share with you now is there is a move afoot with both British Columbia and Ontario to provide exemptions to our counterparts for the very reasons we have made clear in this submission. In both cases (see supporting documentation) they are saying security issues can be well addressed and that includes knowing that our members are only obtaining owner name information on a one off basis. Even more telling and significant is the fact both Ministers responsible are indicating owners' names in the way we use them really should not be considered a privacy matter. It is not private information. It is consumer-to-consumer information that facilitates a real estate transaction and property appraisal.

A final point to make on existing precedents is that it has come to our attention that the RM of Hanover has been granted an exemption to gain access to owners' names from the PARC Review Committee. It is also our understanding that the reason for exemption was based on legitimate economic grounds. We content our request for an exemption is based as well on economic grounds and therefore your favourable decision to grant an exemption to the RM of Hanover should be considered during your deliberations on our submission.

Based on the above precedents that are without any documented privacy violations that we are aware of, and the fact government, at the highest level in other provincial and state jurisdictions, will certainly compete with Manitoba when it comes to attracting new investment, and that our industry's position is consistent and a logical outgrowth of the purpose for which assessment authorities collect property owner name information, we feel it is only just and appropriate to support our request for an exemption for REALTORS and Appraisers under the Freedom of Information and Privacy Act.