

July 12, 2021

Mayor John Tory
City of Toronto
City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Dear Mayor Tory,

On behalf of the 62,000 REALTOR® members of the Toronto Regional Real Estate Board (TRREB), I am writing to provide you with input on a potential municipal Home Energy Rating and Disclosure (HERD) program. We appreciated being included in the City's recent stakeholder consultation meetings. The input provided below provides further details on TRREB's views on this important issue.

TRREB Positions

HERD Programs Should be Voluntary

TRREB commends the City of Toronto for its ambitious greenhouse gas reduction targets and we understand the importance of energy efficiency. In this regard, TRREB has consistently supported government efforts, such as financial incentive and rebate programs, to facilitate and encourage **voluntary** home energy efficiency improvements.

For the reasons noted below, TRREB strongly believes that any government efforts targeted at homeowners in this regard, including HERD programs, must continue to be **voluntary** in nature, and that government efforts would be more effective by focusing on incentives to homeowners.

TRREB welcomes any opportunity to work with governments at all levels to facilitate, promote, and encourage **voluntary** participation of homeowners in home energy rating programs.

HERD Programs Could be Incorporated as Part of Voluntary Home Inspection Process

Rather than a mandatory HERD program, incorporating energy audits into the existing voluntary home inspection process has significant advantages:

- Most home sales already include a home inspection.

- The provincial government has passed the *Home Inspection Act*, which provides for provincial regulation of home inspectors, something which is not being done for energy auditors (provincial government is currently working on regulations to this Act, thereby providing the City with an important opportunity to work with the Province on this). This would keep regulation of the energy audit process at the provincial level, consistent with other aspects of the home sale process.

Rationale

As has been previously noted by TRREB representatives during the City's Stakeholder Consultation session and our meeting with City staff, TRREB has numerous concerns with a **mandatory** HERD program. Our concerns are detailed below:

Jurisdiction

Making home energy rating and disclosure mandatory has been an on-going issue at the provincial level for many years. It is important to note that the provincial government recently repealed the *Green Energy Act*, and thereby decided against imposing a mandatory HERD program.

With this in mind, it is important to note that the City of Toronto would be alone in the GTA and the Province in pursuing a mandatory HERD program. Having this unique distinction, would not serve Toronto residents and home sellers well, putting them at a distinct competitive disadvantage with home sellers in other parts of the GTA who would not be burdened with these costs and bureaucratic processes, which could cause delays (see details below). HERD programs should only be considered at a provincial or national level to be effective, and to avoid confusing and frustrating home sellers and buyers.

It is also important to note that the provincial government has responsibility for regulating all other aspects of real estate transactions. For example, REALTORS® are regulated under the *Real Estate and Business Brokers Act* (soon to be the *Trust in Real Estate Services Act*), lawyers are regulated under the *Law Society Act*, and home inspectors are regulated under the *Home Inspection Act*. The City's involvement in regulating an aspect of the home sale transaction process would be unprecedented and inconsistent with all other aspects of this process.

Housing Supply / Transaction Delays

Housing affordability is one of the most significant challenges facing the City of Toronto and its residents. Addressing this issue has been identified as a priority by Mayor Tory and City Council.

As TRREB has articulated on numerous occasions, the most significant cause of housing affordability challenges in Toronto is that the supply of homes for sale is being vastly outstripped by demand. With this in mind, it is important to understand that any interference in the housing transaction process that could potentially add delays or discourage the listing of a home for sale, will exacerbate an already challenging housing affordability climate.

Unfortunately, a mandatory HERD program could have this consequence for two reasons:

1. Waiting for an energy advisor to be available to conduct an energy audit could cause significant delays, especially given the high number of housing transactions in Toronto, thereby delaying the availability of a home for sale; and,
2. The added cost and bureaucratic process of a mandatory HERD could discourage some people from listing their home for sale at all.

Consumer Protection

A mandatory HERD program could create various consumer protection concerns:

- Energy Advisor Qualifications:
 - o Unlike most other professionals involved in a real estate transaction, energy auditors are not licensed by a provincial regulator, not subject to a rigorously enforced code of ethics/conduct and not required to carry errors and omissions insurance. The lack of effective regulation poses a significant consumer protection risk. In comparison to other professions, energy auditors are under-regulated which will put consumers at risk.
 - o At present, Natural Resources (NR) Canada is responsible for the curriculum for auditor training and approving service organizations to administer the training. HER&D will present a maze of bureaucracy for consumers. NR Canada is responsible for the audit itself, standards for training and the certification process. However, the training and monitoring of individual auditors occurs through service organizations who are also certified by NR Canada.
 - o A City HERD program would be a municipally mandated program, yet the City has nothing to do with the audit, auditor or NR Canada. According to NR Canada, when consumers have a complaint about an energy audit, they must contact the service organization that employs the auditor. With service organizations being consumers' first point of contact when it comes to complaints, TRREB is concerned about the potential conflict of interest.
 - o Making the audit mandatory also presents issues with respect to price gouging. Once HER&D is fully implemented, the price of an audit is likely to increase as demand for the service increases.

- Home energy auditors lack rigorous training which will also put Ontario consumers at risk. A home energy auditors' course ranges anywhere from three days to four weeks and costs between \$2000 and \$3000. This raises a number of issues about the lack of standards that come with the energy auditor profession. How can homeowners trust the findings of an energy audit? In 2007, an investigative report prepared by the Toronto Star on home energy audits, found that one home received three different lists of recommended retrofit renovations, ranging from \$5,000 - \$25,000. With a home energy audit having direct implications on the saleability of a home or property, homeowners should expect that the standards of training for energy auditors are both rigorous and closely monitored by the appropriate level of government. It is not clear that this is currently the case.
- Privacy:
 - energy audits can collect substantial information about the current condition of a home. Homeowners are entitled to privacy. It is important that any HERD program consider potential infringements on privacy rights, with regard to how energy audit information is disclosed.

Effectiveness

Past government programs that focused on financial incentives or rebates to help homeowners make energy efficiency retrofits to their homes proved to be extremely popular with high uptake. With this in mind, TRREB respectfully suggests that the City's current staff time and any funds that would be needed for the administration of a mandatory HERD program would be better used to continue incentive and rebate programs, which have already proven to be effective.

Furthermore, with the current state of Toronto's real estate market (high demand and low housing inventory), it is unlikely that the energy efficiency of a home would impact purchaser decisions.

Home retrofit incentive programs should be a priority of governments, instead of bureaucratic interference with a real estate transaction.

I hope you find TRREB's views helpful. We look forward to continuing to work with the City on this important issue.

Sincerely,



Kevin Crigger
President

c.c. Toronto City Council