



BRITISH COLUMBIA
REAL ESTATE
ASSOCIATION

October 6, 2017

Micheal Noseworthy
Superintendent of Real Estate
2800 – 555 West Hastings Street
Vancouver, BC V6B 4N6
Submitted by email: Micheal.Noseworthy@gov.bc.ca

Dear Mr. Noseworthy,

Re: Draft Rule Changes under the *Real Estate Services Act*

On behalf of the BC Real Estate Association (BCREA), thank you for consulting with stakeholders and the public regarding your proposed rule changes to the *Real Estate Services Act*.

BCREA is committed to high professional standards for REALTORS®, and welcomes many proposals in the draft rules. Particularly, the Association supports increased disclosure mechanisms to ensure consumers are well informed about their transactions. On the other hand, we worry about overwhelming consumers with additional paperwork. Any new disclosure requirements must ensure the information is efficient and easy to understand for the average consumer. BCREA is also concerned that increased disclosure may open the possibility of opening up remuneration negotiations when presenting offers. Licensees already have an obligation to disclose to their clients, in writing, the remuneration they receive (or anticipate receiving). With the new rules, depending on the level of information disclosed, there may be unintended consequences for commercial practitioners, such that brokerages would have to reveal proprietary information.

BCREA also appreciates the exemption to the ban on limited dual agency for remote communities with a small number of licensees. However, we understand that the exemption is intended to apply very narrowly, which means it won't be available to most consumers and licensees. The decision to engage in a limited dual agency agreement is often the preference of the consumer. Consumers want to work with a REALTOR® they know and trust and, if they cannot work with their REALTOR® of choice, they may choose to have no representation at all. This puts consumers at greater personal and financial risk while they make pivotal decisions. Moreover, this ban targets the entire profession of licensees, rather than punishing the few perpetrators who abuse the system.

The ban on limited dual agency could also unduly impact teams. REALTORS® create teams, in part, to provide excellent service to their clients while having flexibility in their personal lives. Teams allow REALTORS® to take sick leave and vacations without leaving their clients unrepresented. Under this ban, BCREA anticipates that many teams would have to be dissolved so that the individual licensees could

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engage in designated agency. However, given the former team members' awareness of their past clients and their motivations, even designated agency may also not be possible. This would further limit consumer choice.

Smaller brokerages would also be hit hard by a ban on limited dual agency. Under a ban, managing brokers would have significantly increased workloads, as they seek to ensure compliance by their licensees. For small brokerages, this added burden may mean brokers would not have the time or resources to stay in business. This may result in the further unintended consequence of increased brokerage consolidation, which would reduce consumer choice and marketplace competition.

Furthermore, limited dual agency is used in cases where REALTORS® have established relationships with buyers and sellers, in commercial transactions and in situations where REALTORS® specialize in particular property types. In these cases, consumers are choosing REALTORS® for the knowledge and experience that few—if any—other REALTORS® have. Under a ban on limited dual agency, these consumers may no longer be able to work with the most qualified and knowledgeable REALTORS® for their transactions, which means consumers' needs will not be served.

To address these concerns and move forward with new rules, BCREA presents several recommendations:

1. Provide exemptions to allow limited dual agency for commercial transactions and long-standing relationships.

Since limited dual agency is often the preference of the consumer, especially in cases where the consumer has sought out a REALTOR® for their specific commercial experience or built trust with a REALTOR® over an extended period of time, consumers should be allowed to choose a limited dual agency agreement if they wish. If the Superintendent is concerned that the consumer may not fully understand the implications of limited dual agency, this concern could be easily overcome by having consumers receive independent legal advice before entering into a limited dual agency agreement. This approach would protect consumers without taking away their right to choose the form of representation that best suits their needs.

In particular, commercial real estate is practiced differently than residential real estate and should be treated as such. In commercial transactions, consumers are often more sophisticated and knowledgeable about the real estate market. It is common to have more than one party represented by the same licensee, but both sides receive significant legal advice and operate under informed consent. For commercial transactions, adding an extra licensee will not necessarily mean increased consumer protection. In these cases, limited dual agency is simply a more efficient way to complete a transaction that all parties understand well.

For long-standing relationships, consumers choose REALTORS® that they trust, may have worked with for many years, and would like to continue working with. In July 2017, BCREA commissioned a survey of consumer opinions on this issue. A total of 88 per cent of the

homeowners who responded were satisfied with their last REALTORS®, and 66 per cent would work with the same REALTOR® in the future. Additionally, 20 per cent of respondents had worked with the same REALTOR® more than once, and two-thirds said it was important for them to be able to work with the REALTOR® of their choice, demonstrating the sustained nature of REALTOR®-consumer relationships.

2. Implement a six-month transition plan for the final rule changes.

BCREA, the Real Estate Council of BC and the Real Estate Division at the UBC Sauder School of Business need adequate time to revise and prepare education materials and standard forms, train instructors and educate licensees. Not only will licensees need to properly understand the changes, but they must also be able to explain them to consumers, as it is very likely that licensees will be consumers' first point of contact. Rushing the implementation of these changes may lead to increased complaints and confusion, as we learned with the changes to the assignment of contracts in 2016.

3. Include grandfathering provisions for existing contracts.

Transactions entered into prior to the effective date of the final rule changes should not be subject to the changes. Such a provision would respect consumer choices already made, and would limit confusion among both consumers and licensees.

4. Provide guidance for the exemption to the ban on limited dual agency.

Licensees will seek to comply with the new rules, but will be unsure what constitutes a "remote" community, or how limited a consumer's choices would need to be before the situation could be deemed "impracticable." If a licensee could seek guidance from the Real Estate Council of British Columbia prior to entering a transaction, this would provide greater certainty for both licensees and consumers and would avoid complications later in the process.

5. Provide greater clarity on sections 5-10 and 5-10.1.

While BCREA supports increased disclosure, sections 5-10 and 5-10.1 leave many questions for licensees. BCREA recommends increased clarity as to the extent of information required to be disclosed to customers, clients and unrepresented parties. For example, could a trading services licensee provide "independent professional advice"? And how would a licensee prove they advised an unrepresented party to seek such advice?

6. Ensure collaboration among the Office of the Superintendent of Real Estate, the Real Estate Council of BC, UBC and BCREA.

In implementing changes, close collaboration among all parties will be necessary to ensure consistency and efficiency.

7. Ensure that implementation materials include ample real-world examples and practical guidance for licensees.

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Licenses will need illustrative examples of how the rule changes will affect their day-to-day business in practice. Real-world examples included in implementation materials will decrease licensee questions and confusion.

8. Evaluate the effectiveness of the changes and make evidence-based changes in the future.

BCREA believes any policy change should be evidence-based. As such, implementing a method to track the outcomes of these changes and evaluate them over time is paramount. A good evaluation system should be designed ahead of time, not after the fact, and should collect information before, during and after the changes are implemented to best analyze outcomes and unintended impacts.

Thank you again for your willingness to engage with stakeholders on these significant and important changes. BCREA welcomes any further opportunities to work with your office to ensure the new rules best protect consumers and are implemented smoothly.

As you know, BCREA is the professional association for about 22,000 REALTORS® in BC, focusing on provincial issues that impact real estate. Working with the province's 11 real estate boards, BCREA provides continuing professional education, advocacy, economic research and standard forms to help REALTORS® provide value for their clients.

Yours sincerely,

A handwritten signature in black ink, appearing to read "D. Stathonikos". The signature is fluid and cursive, with a large initial "D" and "S".

Damian Stathonikos
Interim Chief Executive Officer