



BRITISH COLUMBIA
REAL ESTATE
ASSOCIATION

April 16, 2018

Mr. 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: Rule Changes under the *Real Estate Services Act*

The British Columbia Real Estate Association (BCREA) notes the forthcoming changes to real estate practice announced by your office on March 21, 2018. Our organizations share a commitment to protecting consumers and ensuring high professional standards for REALTORS®.

We worked with our member real estate boards to consult with REALTORS® about the proposed changes, to fully understand their impact. This letter presents the results of those consultations.

English language proficiency requirement

We support this Rule change. We suggest that, for applicants who have been licensed in other Canadian jurisdictions, the English language proficiency requirements of those jurisdictions must at least meet BC's requirements.

Continuing professional education requirements for licensees

Without details about course format, content or the capacity of the course provider, four months to educate more than 24,000 licensees seems optimistic. Instead, we suggest that six months is more realistic, and that all licensees should complete the required education before the new Rules take effect. Rushing the implementation of significant Rule changes does not enhance consumer protection or licensee practice. Therefore, we request that the Rule changes currently scheduled to come into force on June 15, 2018 be delayed until six months from the day those Rules are final.

BCREA also asks that extension provisions be created for extenuating circumstances, such as illness. In addition, how will this requirement apply to individuals who obtain their licenses during the six-month period—particularly those who are licensed near the end of that period?

Finally, if this Rule takes effect, we believe managing brokers should be educated first, that an online option be available and that specific content be created for commercial practitioners, as their work differs significantly from residential (acknowledged by the regulators in the form of the *Commercial Trading Services Applied Practice Course*).

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If the course is available online, then we expect that technical support will be easily accessible, something licensees taking Legal Update 2018 are struggling with. In addition, licensees should have at least a week to complete the course, once they begin.

Remuneration disclosure

While we appreciate the need for transparency, the Rule as currently drafted seems difficult to implement. During a negotiation, and especially a multiple offer situation, this Rule would certainly increase the chance of calculation errors on the part of the licensee, and create a great deal of paperwork that could overwhelm the seller. In fact, some sellers provide their representatives with specific parameters for the offers they will seriously consider, and ask not to see any others. In that situation, how can a licensee comply with this Rule?

The vast majority of BC licensees are REALTORS[®], with access to BCREA's standard forms. Therefore, remuneration is already disclosed in the Multiple Listing Contract. We suggest amending the Multiple Listing Contract to include a dollar amount, in addition to the percentage, for a reasonable range of potential sales prices. Then, once the negotiation is complete, the licensee would complete the Council form with the specific dollar amount of the remuneration, based on the final sales price. This would accomplish the disclosure and transparency for the seller, without adding unnecessary paperwork and calculations, unless the offers were outside of the price range included in the Multiple Listing Contract.

The form to be used by licensees who are not REALTORS[®] should be as simple and clear as possible, also presenting a range of potential sales prices, so a new form would not be required for every counteroffer.

We recommend an exemption from this requirement for commercial transactions, in which the parties are sophisticated and receive advice from lawyers and accountants.

Conflicts of interest

Thank you for revisiting this matter, following the Real Estate Council of British Columbia's interpretation that double recusal would be required in nearly any conflict of interest. While your explanatory comment in the annotated draft Rules suggests that conflicts are unexpected, that is not necessarily the case. In small communities where few licensees practice, conflicts are common; they are also common in commercial real estate, due to the small number of parties who participate.

BCREA's primary recommendation on this matter is that the impending ban on limited dual agency be thoroughly reviewed before it takes effect, particularly as it impacts small communities and commercial practitioners, so the consequences for consumers and the economy are well understood. The most effective approach is a joint review by the government, regulator and licensees, in which more workable alternatives could be fully explored.

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To fully understand the impact of this proposed Rule, BCREA asks once again for guidelines regarding the single exemption to the ban on limited dual agency (Rule 5-17). The Council has, to some extent, explained the term “impracticable,” but no additional guidance has been provided regarding “under-served” or “remote location.”

Specific to the draft Rule presented in this consultation, we firmly believe that requiring consent after the conflict has arisen is problematic because it will result in at least one party having to seek new representation within a very short time, putting that party at a disadvantage. In fact, they may simply choose to be unrepresented, which we believe is counter to your intention.

Instead, we recommend that consumers be allowed to pre-authorize single withdrawal at the time the agency relationship is established. That way, consumers and licensees would have a clear and shared understanding of how conflicts would be handled from the outset. There are only a few types of conflicts in real estate transactions, and they can be common.

Waiting to obtain consent until the conflict arises creates significant new problems, usually at a critical time in the process. When the conflict is that a licensee represents competing buyers, one consumer could refuse to provide consent out of spite. Others may refuse consent as a tactic to delay, divert or otherwise inconvenience a competing buyer.

Where the conflict involves a buyer and seller, we expect the buyer will most often be the one left to find new representation. This is because a Multiple Listing Contract is almost always in place, while the Buyer’s Agency Exclusive Contract is far less common. On short notice, how will the buyer find another representative with comparable expertise and experience, and with knowledge of the property and the buyer’s needs? If other buyers are presenting offers, the delay and inconvenience involved in finding another representative will likely mean the buyer is unable to compete for the property. Plus, what ethical licensee would agree to jump into negotiations without first properly familiarizing themselves with the buyer and property in question? Allowing the parties to agree in advance that the licensee will withdraw in the event of a conflict better enables them to prepare for that eventuality. As BCREA had suggested to the Independent Advisory Group in May 2016, perhaps buyer agency contracts should be required.

Please note that, instead of the term “recusal” which is most appropriately used with judges or other decision makers, we use the term “withdrawal.”

Administrative penalties

We support this Rule, though BCREA recommends a focus on helping licensees improve their practice and understanding through education, rather than the imposition of fines.

Thank you for the opportunity to provide input on these draft Rules. As your office continues to implement the Independent Advisory Group recommendations, we urge you to consider the cumulative

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impact of the changes on both the consumer and the licensee, as there is a danger of creating unnecessary complexity.

We look forward to discussing BCREA's recommendations with you during the week of April 23, 2018. Our office will be in touch soon to schedule a meeting.

As you know, BCREA is the professional association for about 23,000 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.

Sincerely,

A handwritten signature in black ink, appearing to read "Darlene K Hyde". The signature is fluid and cursive, with the first letter of each name being significantly larger and more stylized.

Darlene Hyde
Chief Executive Officer

Copy: Erin Seeley, Real Estate Council of British Columbia (eseeley@recbc.ca)
Hon. Carole James, Minister of Finance (FIN.Minister@gov.bc.ca)
Hon. Selina Robinson, Minister of Municipal Affairs and Housing (MAH.Minister@gov.bc.ca)
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