



Real Estate Regulatory Redesign

April 2018

Following the recommendations of the Independent Advisory Group (IAG), the regulatory design for real estate practice changed. The real estate co-regulator model was quickly established in 2016, in the context of an impending election.

The British Columbia Real Estate Association (BCREA) and the profession welcome thoughtful and robust regulatory process and powers, but there are dysfunctions in the current regulatory design of organized real estate. These dysfunctions do not help or protect the BC consumer in the real estate market. This government has an opportunity to streamline the regulatory system for the benefit of BC consumers.

Concerns

1. The Council does not have enough real estate expertise involved in its governance. Currently, the Council consists of 12 members, and only two are licensees, despite the fact that the IAG recommendations did allow for additional industry representatives. The *Real Estate Services Act* provides for a total of 16 Council members, and so there is an immediate opportunity to add more licensees to expand the Council's knowledge base. Other regulatory governing boards, such as the Insurance Council of BC and the Motor Vehicle Sales Authority, have a better balance of industry representatives and public lay members than the Council.
2. The roles of OSRE and the Council are unclear. This unique model appears to be misaligned, as illustrated by the ongoing legal dispute between them. Consumers and licensees deserve a degree of certainty and predictability in the regulatory regime, rather than co-regulators that need to seek clarity from the courts.
3. The approaches taken by OSRE and the Council are inconsistent, creating uncertainty for licensees and consumers. While OSRE conducts extensive consultations around Rule making, the Council does not appear to do the same around Rule interpretations or policy development. There seems to be very little consumer or stakeholder engagement by the Council.

Additionally, the Council's interpretations of Rules do not always align with OSRE's spirit and intent. For example, the Council's interpretation that a ban on limited dual agency would have required a licensee to recuse themselves from acting for either party, instead of representing one party. Following significant concerns raised by BCREA and REALTORS®, OSRE announced that it would create new Rules about handling such conflicts of interest.

Confusion over Rule interpretations has led to significant concerns from real estate licensees, the profession at large and consumers. Considering that there are many more IAG recommendations to come, and many more Rule changes to implement, we ask that this process be improved now to minimize future confusion. This speaks again to the need for certainty and predictability in the regulatory regime, in terms of administrative fairness and natural justice.

Recommendations

Regulation is necessary for the protection of consumers and the orderly function of the real estate market. BCREA asks the BC Government to consider the following improvements to the design of the regulatory system, to benefit consumers and licensees:

1. Create a task force to streamline and redesign the current regulatory system to produce greater certainty for licensees, resulting in better consumer protection. Licensees need to be well represented on the task force, along with other key stakeholders who understand the realities of real estate practice.
2. Appoint more real estate practitioners in governance and adjudicative functions, to ensure that the creation and implementation of Rules would have a solid foundation in the reality of real estate practice, and would be practical and workable for consumers and licensees.
3. Develop a “right touch” regulatory system to enable the regulator and profession to work together to develop best practices to protect consumers.
4. Consult with licensees and the public when interpreting Rule changes and creating policies (including licensee education and Rule implementation), in the same way that consultation occurs when Rules are introduced. Understanding how the real estate business functions is essential to having practices that are workable in every part of the province.
5. Introduce a grace period of one year with respect to the disposition of penalties related to significant Rule changes. This would give licensees ample time to conform and comply with the Rule changes, and to get the full benefit of the regulatory body’s educational programs.

Contact

BCREA looks forward to discussing this further with Minister James and her staff. In the meantime, feel free to contact BCREA CEO Darlene Hyde at any time (604.742.2787, dhyde@bcrea.bc.ca).

About BCREA

BCREA is the professional association for more than 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.