



BRITISH COLUMBIA
REAL ESTATE
ASSOCIATION

May 25, 2018

Dan Perrin

Submitted by email: dan@perrinthorau.ca

Dear Mr. Perrin:

Following the recommendations of the Independent Advisory Group (IAG), the regulatory design for real estate practice changed. The real estate co-regulator model, in which we have both the Office of the Superintendent of Real Estate (OSRE) and the Real Estate Council of British Columbia, was quickly established in 2016, in the context of an impending election. Given that beginning, the British Columbia Real Estate Association (BCREA) is pleased that the Honourable Carole James initiated a review of BC's real estate regulators. We recognize the importance of consumer protection and welcome appropriate regulatory powers, and believe there are dysfunctions in the current design that do not help or protect consumers.

Working with the 11 regional real estate boards, we consulted extensively with REALTORS® on this matter, including representatives, managing brokers and commercial specialists. We held several focus groups, and conducted an online survey using your questions and examined regulatory structures across North America. This submission combines our findings with BCREA's original position paper, which we presented to Minister James on April 11.

Why regulate?

We agree that "public protection" is the primary reason. Real estate requires a major financial commitment. The process is also complex, which means there are many risks. Regulation is required to make sure licensees meet high standards of professionalism, including education and practice. Where licensees fail to meet those standards, the regulator has a responsibility to hold licensees accountable.

Regulations are intended to protect the public from bad actors and from their own lack of knowledge. Ultimately, regulations should ensure consumer confidence.

BCREA and the profession welcome thoughtful and robust regulatory processes and powers. We ask that consideration be given to a 2007 study done by the Competition Bureau of Canada: *Self-Regulated Professions—Balancing Competition and Regulation*. The study examines accountants, lawyers, optometrists, pharmacists and real estate agents, and a key finding is

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that increasing regulation and government oversight of industry can, eventually, lead to a negative economic outcome to government, industry and the consumer. There is a balance to be achieved between regulation and economic impact, but this balance is certainly further from a reality when moving from a self-regulated structure to a co-regulated structure.

Challenges and opportunities

The current regulatory structure was established quickly in 2016, and the transition has been difficult and challenging. To create a system that works for consumers and licensees, BCREA describes current challenges as well as opportunities for improvement.

| Challenges | Opportunities |
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| <p>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, even though the 2016 IAG recommendations did allow for additional industry representatives.</p> <p>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. The same is true of real estate regulators in the United States and other Canadian jurisdictions (please see the enclosure for more information).</p> <p>Practitioners are essential to sound decision making, because they understand the sector being regulated. A prime example of how the current system does not work is the ban on limited dual agency, which takes effect on June 15. Licensees know that different areas of the province and different areas of practice have varying needs. With more</p> | <p>Short term:</p> <ul style="list-style-type: none"> The <i>Real Estate Services Act</i> provides for a total of 16 Council members, so there is an immediate opportunity to add more licensees to expand the Council’s knowledge base by appointing more real estate practitioners. This will ensure that the implementation of Rules has a solid foundation in the reality of real estate practice, and is practical and workable for consumers and licensees. <p>Medium and long term:</p> <ul style="list-style-type: none"> As the terms of current Council members expire, ensure that 50 per cent of Council members are licensees, with appropriate geographic and practice areas represented. |

| Challenges | Opportunities |
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| <p>practitioners making decisions, we might have ended up with at least one workable exemption—unfortunately, we have none.</p> | |
| <p>2. The roles of OSRE and the Council are unclear, resulting in no unity of command. This unique model appears to be misaligned, as illustrated by the ongoing legal dispute between them.</p> <p>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.</p> | <p>Short term:</p> <ul style="list-style-type: none"> • In consultation with consumers and licensees, clearly define the role of each organization, to avoid legal and jurisdictional disputes. • Describe and publish clear accountability measures for OSRE and the Council. <p>Medium term:</p> <ul style="list-style-type: none"> • Over the course of 18 months, deliberately and transparently evaluate the regulatory system to determine its effectiveness. Such an evaluation should include consultation with licensees and consumers. <p>Long term:</p> <ul style="list-style-type: none"> • Work with consumers and licensees to examine options for a single regulator system. This is the norm across North America, because it is straightforward and effective. |

| Challenges | Opportunities |
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| <p data-bbox="198 394 784 541">3. The approaches taken by OSRE and the Council are inconsistent, creating uncertainty for licensees and consumers. Such uncertainty puts both at risk.</p> <p data-bbox="246 590 764 852">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.</p> <p data-bbox="246 900 784 1318">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.</p> <p data-bbox="246 1367 784 1780">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</p> | <p data-bbox="823 394 971 426">Short term:</p> <ul data-bbox="872 436 1419 972" style="list-style-type: none"><li data-bbox="872 436 1419 506">• Clarify the role of each organization, as described above.<li data-bbox="872 516 1419 779">• Either adequately educate licensees before Rules take effect, or provide a six-month grace period before penalties take effect. Licensees should not be subject to penalties when they have not had enough time or information to comply.<li data-bbox="872 789 1419 972">• Expand, increase or create greater transparency around the Council's practitioner advisory committees, so licensees are aware that consultation occurs. <p data-bbox="823 1020 1211 1052">Short, medium and long term:</p> <ul data-bbox="872 1062 1419 1482" style="list-style-type: none"><li data-bbox="872 1062 1419 1325">• Consult in a meaningful way 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.<li data-bbox="872 1335 1419 1482">• Develop a collaborative system that enables the regulator and profession to work together to develop best practices to protect consumers. |

| Challenges | Opportunities |
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| <p>administrative fairness and natural justice.</p> | |
| <p>4. Broad regulatory functions are being carried out in ways that do not inspire confidence.</p> <p>Significant Rule changes are being made without adequate evidence or education, and on seemingly arbitrary, deadline-driven schedules. Changes that take effect on June 15, 2018 introduce considerable complexity. Unfortunately, licensees and consumers have not been given enough time to prepare.</p> <p>Rule changes, which impact both residential and commercial transactions, are largely based on the IAG recommendations. The IAG report clearly states that the work of the group focused on residential real estate practice. No rationale for disrupting commercial practice has been presented.</p> <p>Although only a small fraction of licensees is involved in the disturbing infractions reported in the media, all licensees are labeled negatively and treated the same way.</p> | <p>Short term:</p> <ul style="list-style-type: none"> • Delay the June 15 implementation date to allow licensees to be educated, managing brokers to establish policies and consumers to be informed. If this delay does not occur, then implement the penalty grace period described above. • Inform consumers of the Rule changes that take effect June 15, 2018. Part of this effort could include providing licensees with concise information to pass on to consumers. • Examine the needs of commercial practitioners and consumers to determine whether Rule changes should apply to them. Such an examination may include the question of whether a separate licensing category for commercial should be established. • Immediately implement stronger penalties for repeat offenders. For first offenders, focus on correcting poor performance more than on punishment. <p>Short, medium and long term:</p> <ul style="list-style-type: none"> • Take a change management approach to Rule making and implementation, to make sure consumers and licensees are aware of and understand the changes. |

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| | <ul style="list-style-type: none">• Before Rule changes are introduced, fully examine and provide evidence of the need for changes.• Develop a comprehensive, sustained approach to consult and communicate with consumers.• Work to ensure consumer confidence in real estate licensees. <p>Medium and long term:</p> <ul style="list-style-type: none">• Devote resources to speed up the Council's complaints and discipline process. |

Interprovincial considerations

The New West Partnership Trade Agreement (NWPTA), an accord between the governments of British Columbia, Alberta, Saskatchewan and Manitoba, creates Canada's largest barrier-free, interprovincial market. This agreement builds on the Trade, Investment and Labour Mobility Agreement (TILMA) between BC and Alberta. The NWPTA came into effect July 1, 2010 and has been fully implemented since July 1, 2013.

This accord should remain a reference point for all proposed legislative and regulatory changes. It seems that BC's current co-regulator model may fall short of some provisions in the NWPTA, including the expectation that each province will "Treat businesses, investors and workers of the other three provinces at least as favourably as they treat their own or those of another jurisdiction" and "Mutually recognize or otherwise reconcile unnecessary differences in their standards and regulations."

Consumer protection and licensee professionalism are objectives BCREA shares with OSRE, the Council and the government. To move to a functional regulatory system, we strongly believe that meaningful engagement is necessary. If BCREA can assist in any way, please contact me directly (ccaldwell@bcrea.bc.ca; 604.677.9341).

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.

Sincerely,



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Vice President, Professional Services

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