



BRITISH COLUMBIA
REAL ESTATE
ASSOCIATION

July 11, 2018

Erin Seeley
Executive Officer
Real Estate Council of British Columbia
900 – 750 West Pender Street
Vancouver, BC V6C 2T8
Submitted by email: eseeley@recbc.ca

Dear Ms. Seeley,

Re: Rules implementation feedback

I appreciated the opportunity to address the Real Estate Council of BC recently. Consumers and REALTORS® around the province are struggling to adjust to the Rules that came into effect on June 15, 2018.

As promised, this letter further explains feedback from REALTORS® and real estate boards. We also offer BCREA's specific suggestions to address some of the immediate implementation challenges.

Support for licensees

Many REALTORS® feel significant stress as they adapt to the new Rules. In that stressful context, they have to make major changes to their practice, including having to rethink their business models and approach long-standing relationships in new ways. To meet the needs and expectations of consumers, licensees need timely, firm, consistent answers.

Recommendations: BCREA respectfully asks the Council to respond as quickly as possible to questions from licensees, and provide consistent answers.

Relationships with consumers

Many REALTORS® and consumers are uncomfortable with the initial conversations in which they establish professional relationships. These relationships are built on trust, but the new Rules have REALTORS® feeling constrained in how they can communicate with consumers. It is common for consumers—who have had extremely limited exposure to the new requirements—to approach REALTORS® by explaining why they are looking for or selling real estate.

Instead of having a natural conversation, licensees must now introduce the *Disclosure of Representation in Trading Services* (DORTS) form, which interrupts the process. REALTORS®

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report that many consumers find the form off-putting—even offensive—while others are simply impatient to start looking for homes and barely glance at the form.

Recommendations: REALTORS® are asking for more guidance about what constitutes implied agency, and when the DORTS form must be introduced. BCREA asks that the Council create a new video, or series of videos, to present a variety of scenarios that demonstrate the timing for introducing the disclosure forms. Please also connect with consumers and licensees to understand how they react to the new disclosures.

The situation is even more complicated when a REALTOR® is dealing with former clients or people with whom they have had prior contact. The Council has new expectations of licensees, and they need time and support to get comfortable. For example, if a REALTOR® competes with other licensees for a listing, but is not successful, can they still represent a potential buyer who wants to make an offer? If a REALTOR® has represented a consumer in the past, can the REALTOR® now be involved in a transaction where that former client is an unrepresented party?

When a conflict does arise, it creates a ripple effect of problems in small communities. Take Denman Island, for example, where only two licensees practice on a regular basis and both are one-person offices. The two licensees know everyone who lives on the island. The Council allows a showing to take place without creating a conflict, as long as only facts are communicated. However, that does not work on Denman because many buyers come from off-island and have to spend hours with a licensee as they view a variety of homes. And there is no one to whom these potential buyers can be referred, because there are only two licensees. Even when REALTORS® from other communities can be engaged to work with these potential sellers—which is a major challenge, because conflicts may arise, those REALTORS® could be busy in their own communities or ferry schedules get in the way—they are not familiar with issues specific to real estate transactions on the island, such as archaeological sites and wells. Potential buyers are left without adequate representation, and sellers are left without offers.

Forms

BCREA has specific recommendations for several of the Council's forms, which will make them more effect for licensees and consumers and help managing brokers with document management.

All forms

- Only include information about how a consumer can make a complaint on the page where the consumer has an option to sign.

- Consider separate instructions for real estate professionals and for consumers that are placed with the fields they are expected to complete.
- Require that only the confirmation pages need to be retained by brokerages, to reduce the document management burden. Ideally, the licensee and consumer confirmations would be on the same page.

Disclosure of Representation in Trading Services

- Refine the “consumer protection” message of this form. If a consumer is only partially paying attention, they may have the impression from the simple phrase “consumer protection information,” that they need to be protected from the licensee, rather than the licensee helping to protect the consumer’s interests. A licensee may be able to provide other language when explaining the form, but the document should also stand on its own.
- Reduce the emphasis placed on the “optional” nature of the consumer’s signature. There are currently six references to the fact that consumers are not required to sign the form. Once on the first page and once on the last page should be enough.
- On page 1, “The Benefits of Representation,” the most weight is on oversight, which is also a negative message.
- On page 2, “Your Options as a Client,” a consumer who only skims the form could be left with the impression that they have the choice of whether they are represented under designated agency or brokerage agency; please bold or underline “Depending on how the brokerage operates”.

Disclosure of Risks to Unrepresented Parties

- Any consumer who receives this form will have already reviewed the *Disclosure of Representation in Trading Services* form. This creates redundancies between the two forms that should be eliminated. We understand that many consumers are puzzled as to why the same information is given in two distinct forms. Perhaps the information differentiating a client and an unrepresented party could be combined into one document, with only a single confirmation page.
- Reduce the emphasis placed on the “optional” nature of the consumer’s signature. There are currently five references to the fact that consumers are not required to sign the form. Once on the first page and once on the last page should be enough.

Disclosure to Sellers of Expected Remuneration (Payment)

- Page 1 presents an opportunity to remind the seller that their agency relationship is with the brokerage rather than the licensee.
- On page 1, the last sentence is missing a period.

- On page 2, there is no need to include the name of the real estate professional and the listing brokerage, because that information is listed on page 3.
- On page 2, please clarify how a licensee should represent the shared remuneration with a cooperating brokerage in a designated agency situation.
- On page 2, be explicit about how referral fees should be disclosed; that is, provide examples for the what should be included in on the fourth line under “If you accept this offer” and use the term “referral fees” as one of the examples.
- Revise the form so it can accommodate counter offers (sample attached).
- Add this form to the Council’s app.
- Consider allowing the licensee to present the form alongside the offer, rather than before. Doing so allows the seller to see the big picture, rather than focusing on just one piece of it.
- Reduce the emphasis placed on the “optional” nature of the consumer’s signature. There are currently five references to the fact that consumers are not required to sign the form. Once on the first page and once on the last page should be enough.

Council’s app

- Allow a licensee to include a subject line when emailing forms, to assist with document management.

BCREA requests

To achieve the “right-touch” regulatory environment BCREA values, we have several requests:

1. Creating a Council-BCREA task force, beginning immediately.
Most members should be practitioners and the mandate would focus on smoothing the transition of the recent Rule changes. This could serve as a model for future Rule changes. If you agree, then you and I should meet as soon as possible to draft terms of reference, so this group can begin its work. The Council and BCREA have a long history of cooperation, and we would appreciate the opportunity to build on that history of success.
2. Appointing more licensees to the Council.
There are four vacancies on the Council, and BCREA strongly believes they should be filled as soon as possible by licensees. Ideally, these individuals will be chosen based on experience and regional representation. We also believe managing brokers need to be well represented. Having more practitioner expertise will help ensure practical interpretations of the Rules.

3. Inviting the BCREA President and CEO attend your meetings on a quarterly basis. This will ensure continuity and provide a clear opportunity for regular communication. When I suggested this on July 10, Robert Holmes invited BCREA to attend your monthly meetings. Thank you for that offer.
4. Making consumer education a priority when Rules change significantly. We know the Council is working on a consumer education project, and we stress the need for it. Many consumers are struggling with the new requirements that came into effect on June 15. BCREA expects the Council to use this as a learning opportunity and that future Rule changes will include more public education before implementation.
5. Inspiring confidence in licensees. BCREA believes a key role of the regulator is to inspire confidence, and the emphasis on protection and complaints is doing the opposite. Please offer some language licensees can use to explain why the new processes are in place to frame the changes positively.

Regulatory review

Because some Council members, including Chair Robert Holmes, expressed so much interest in BCREA's submission on the regulatory review, these are some significant points we made:

- increase the number of real estate licensees on the Council,
- clarify the roles and responsibilities of the Council and the Superintendent in consultation with licensees and consumers and, in the long term, consider a single regulator model,
- ensure adequate consultation with licensees and the public in interpreting Rule changes and creating policies, including Rule implementation, and have some way to ensure the feedback is actually considered, and
- ensure the rationale for future Rule changes is made clear and develop a comprehensive approach to communicating Rule changes with licensees and consumers.

Our submission is also enclosed with this letter.

BCREA agrees with the importance of consumer protection, and looks forward to working collaboratively to advance solutions that protect consumers and meet the needs of real estate professionals. I look forward to working with you to ease the transition for licensees.

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,

Ms. Erin Seeley

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July 11, 2018

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 written in a cursive, flowing style.

Darlene Hyde

Chief Executive Officer

Enc (2)

Copies: Robert Holmes, Chair, Real Estate Council of British Columbia
 (rholmes@recbc.ca)
 Micheal Noseworthy, Superintendent of Real Estate
 (Micheal.Noseworthy@gov.bc.ca)

DISCLOSURE TO SELLER OF EXPECTED REMUNERATION (payment)

This disclosure is made to you in compliance with section 5-11.1 of the Rules made under the *Real Estate Services Act*.

You are receiving this form because an offer has been made to purchase your property.

Details of the Offer

This disclosure is made in respect of a property located at: _____

Name(s) of potential buyer(s): _____

Potential buyer(s)'s brokerage: _____

	A.	B.	C.	D.	E.
Date of offer/counter offer:					
Date of disclosure:					
Offered purchase price:					
IF YOU ACCEPT THIS OFFER:	Amounts below are exclusive of GST				
You will pay your real estate professional's brokerage this amount:					
This amount will be shared with the potential buyer's brokerage (the cooperating brokerage)+:					
This amount will be kept by your real estate professional's brokerage:					
Your real estate professional has received or will receive this amount from someone other than you, as a result of providing real estate services to you, or on your behalf*:					
Acknowledgement of disclosure made to the seller - initials					

+ If the seller and the potential buyer are represented by designated agents in the same brokerage, that brokerage is both the listing and cooperating brokerage; complete the form as if the buyer and seller were represented by different brokerages.

*If the real estate professional discloses an amount in this section, they must provide you with a separate *Disclosure of Remuneration* form that sets out the source of the remuneration, the amount or likely amount or method of calculation of the remuneration, and all other relevant facts relating to the remuneration under section 5-11(1)(a) of the Real Estate Rules. Remuneration reported in this area can include items such as referral fees.

Mandatory Real Estate Professional Confirmation:

I confirm that I have: disclosed how the remuneration would be shared if my client accepted this offer
 presented my client with this form before presenting them with the offer.

Name: _____ Brokerage: _____

Signature: _____ Date: _____

Optional Consumer Confirmation:

Please complete to indicate that you received this consumer protection information.

Consumer Name: _____ Consumer Signature: _____

Consumer Name: _____ Consumer Signature: _____



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
<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
<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.
<p>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>While OSRE conducts extensive consultations around Rule making, the Council does not appear to do the same</p>	<p>Short term:</p> <ul style="list-style-type: none"> • Clarify the role of each organization, as described above. • 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

Challenges	Opportunities
<p>around Rule interpretations or policy development. There seems to be very little consumer or stakeholder engagement by the Council.</p> <p>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>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.</p>	<p>have not had enough time or information to comply.</p> <ul style="list-style-type: none"> • Expand, increase or create greater transparency around the Council’s practitioner advisory committees, so licensees are aware that consultation occurs. <p>Short, medium and long term:</p> <ul style="list-style-type: none"> • 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. • Develop a collaborative system that enables the regulator and profession to work together to develop best practices to protect consumers.
<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,</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

Challenges	Opportunities
<p>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>occur, then implement the penalty grace period described above.</p> <ul style="list-style-type: none"> • 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. • 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>

Challenges	Opportunities
	<ul style="list-style-type: none"><li data-bbox="873 396 1370 506">• 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,



Corinne Caldwell
Vice President, Professional Services

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