



BRITISH COLUMBIA
REAL ESTATE
ASSOCIATION

the bulletin

RESA: Good News

By working together, the real estate profession and the provincial government are slowly achieving a feat that hasn't been accomplished since 1958: the introduction of new real estate laws that support the public interest and reinforce the real estate profession's role within the provincial economy.

The *Real Estate Services Act* (RESA) and *Real Estate Development Marketing Act* (REDMA) are expected to come into force in early 2005, and regulations for both were put forward for public consultation in August and September.

Several of the profession's recommendations to the government are reflected in the new laws, while outstanding ones are still being discussed. Unless otherwise indicated, all of the following changes are contained in RESA or its proposed regulations.

Major Recommendations

Change the terminology to standardize language across the country.

RESA introduces the following new terms:

Old	New
Salesperson	Representative
Agent 9.15	Associate Broker
Nominee	Managing Broker
Agent	Brokerage

Clarify that salesperson are independent contractors.

This is captured under the definition of "engaged."

Expand the meaning of "trading in real estate" to include individuals working as middlemen in real estate contracts.

The definitions for "trade in real estate" and "trading services" capture this meaning.

Require strata managers to be licensed.

The definition of "strata management services" captures this recommendation, and some detail is included in the draft regulations.

Require developers' salaried staff to disclose that they are not licensed, are employees of the developer in question and not acting on behalf of the buyer.

Disclosure of whom they work for is addressed in the draft regulations.

Clarify the current Act by clearly exempting a lawyer from licensing where he or she carries out traditional conveyancing and other work that does not include trade in real estate.

Under s.3, RESA exempts from licensing "a practicing lawyer as defined in s.1 of the *Legal Professions Act*, in respect of real estate services provided in the course of the person's practice." But it doesn't provide any exemption for lawyers' employees, which the current Act does.

Assist salespeople and agents who are owed commissions when their agency becomes insolvent.

Section 27 requires all commissions to be kept in a trust account.

Create a special compensation fund.

A new Real Estate Compensation Fund will be created, under Parts 5 and 7 of

One profession One Voice

Real Estate Act Reform

RESA, to replace the current bonding requirements. BCREA will appoint two directors, with each sitting for a three-year term. The fund will pay out to victims who can't recover elsewhere for frauds committed by licensees.

Real Estate Act (Part 2)

Part 2 of the current Act has been removed and now forms part of REDMA. This new Act focuses specifically on the marketing of strata properties by developers and their staff, and includes two important provisions:

1. It provides assurance to condominium buyers by giving them the right to rescind contracts for not receiving disclosure statements from developers.
2. It allows developers the right to use buyers' deposit monies, provided they have adequate insurance protection in place.

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President's Report

Planning for Tomorrow

What does 2005 have in store for us? That's the question the BCREA Directors have been considering over the summer. The result is our 2005 Strategic Plan, which focuses largely on the Quality of Life philosophy I wrote about in the June issue of *The Bulletin*.

Quality of Life will shift BCREA's focus from only real estate concerns to broader, community interests. By looking beyond our own needs, we'll build credibility with the government and other decision makers.

This approach and actions to accommodate the new *Real Estate Services Act* are prominent in our strategies for next year. Highlights include:

- Holding a real estate legislation appreciation event in January 2005 to coincide with the new legislation coming into force. This is a way to publicly thank the government for delivering on its promise.

- Educating REALTORS about the *Real Estate Services Act*. This will be a challenge, with more than 13,500 REALTORS, but it's clearly a priority.
- Creating a higher profile for the Member Service and Relations Department, which provides many essential services, including inter-board arbitration, standard forms and fielding questions about real estate practice from REALTORS and the public. Kim Spencer, the Director of Member Service and Relations, is also available to boards and REALTORS to speak about BCREA and our programs.
- Negotiating the bulk data agreement with BC Assessment is another service provided by the Member Service and Relations Department. Currently, we're developing a brief to submit to the government, so we can have a new agreement in place by the end of 2004. If the bulk name



President **Gordon Maroney**

data isn't part of that agreement, we will follow up in 2005.

- Carrying out the 2005 provincial election strategy, which will be comprehensive and encourage all REALTORS to get involved.

The complete 2005 Strategic Plan is available on BCREA's REALTOR Link® homepage (www.realtorlink.ca), and I encourage you all to review it and send us your comments.

Gordon Maroney
President

Board of Directors 2004-2005

Long-Range Plan Principles

- Building membership relations
- Responding to communication needs
- Leading provincial advocacy efforts on behalf of the profession
- Demonstrating public interest
- Offering excellence in education services
- Providing enhanced service options for member boards
- Maintaining an equitable fee structure

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Correction: The August President's Report ("Staying Power"), reported that "Canadians spent \$33 million on renovations in 2003." Please note that the correct figure is \$33 billion.

Outstanding Concerns

Accountants' Exemption

The draft regulations under RESA included the balance of exemptions to the new Act. The increased number of exemptions reflects the fact that the definition of "trading in real estate" is now expanded. However, BCREA stands by its original recommendation that accountants must be licensed under the new Act, where their traditional role in a real estate transaction expands to include trading.

Personal Corporations

Language that anticipates introduction of a regulation to allow licensees to provide real estate services by way of personal corporations is included under s. 130(2)(g). BCREA considers this a significant reference and continues to work with the Real Estate Council and the Ministry of Finance's Corporate Sector Policy Branch to develop an enabling mechanism.

BCREA has a proven track record of working with the government. By

maintaining an open and transparent relationship, BCREA has helped introduce or played a key role in the introduction of many innovations. The introduction of RESA, REDMA and development of their respective regulations is the latest example.

For the status of all BCREA recommendations, see the Real Estate Legislation Checklist on BCREA's REALTOR Link® homepage under Real Estate Act reform, New Developments.

Practical Points

Mountain Pine Beetle v. Liability Insurance by Kim Spencer

Some REALTORS have reported that the pesky mountain pine beetle is munching its way through acres of pine trees and may be affecting how buyers and sellers deal with home insurance and liability.

Mountain pine beetles leave behind an unsightly mess of dead and dying pine trees. A dead or sick tree is potentially unsafe. BCREA has heard speculation that insurance brokers may now be considering mountain pine beetle-damaged trees when they underwrite insurance policies, resulting in insurance firms demanding that the trees be removed as preconditions to insuring property. Since insurance

policies include protection against negligence, providers are concerned that a diseased tree may fall and damage a home, car or person, which could lead to a negligence claim against the property owner.

Dennis Prouse of the Insurance Bureau of Canada advises that the insurance industry has not targeted the mountain pine beetle as being one of special importance; however, he notes this issue illustrates an important general insurance concept. Property owners are obliged to do their best to mitigate potentially hazardous situations. A rotten deck, hole in a driveway or tree infested with mountain pine beetles

is potentially hazardous and should be rectified.

If you see a hazardous situation affecting a property with which you are dealing, let your client know so professional advice can be obtained. You can then reflect your client's wishes in the documents that you prepare. The Real Estate Council's *Licensee Practice Manual* has some helpful instructions in this area.



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Private Property Rights Need Boost

The *Riparian Areas Regulation* (RAR) is the most recent example of how the rights of private property owners continue to be overlooked by the provincial government.

By the terms of the Canadian Constitution, property and civil rights within the provinces are regulated by provincial governments. The provincial government delegates portions of its property powers to municipalities which, in turn, pass bylaws regulating property within their jurisdictions. As a result, hundreds of laws limit the rights of private property owners.

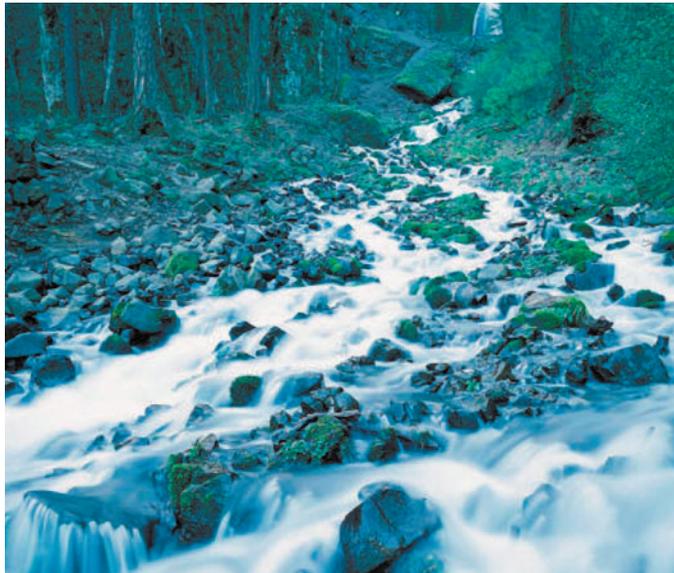
Since private property owners' rights are not guaranteed in the Constitution, care must be taken by all levels of government to balance their interests with owners' rights. REALTORS believe any government policy or legislation that restricts the use or allows for a full or partial taking of private property should also protect owners.

What's missing from the RAR?

The RAR reflects the same principles that were outlined in its failed predecessor, the *Streamside Protection Regulation*. However, the new regulation offers more flexibility, fairness and collaboration. Allowance for a science-based approach, rather than just a prescriptive method, in calculating the amount of setback required from a waterway demonstrates this spirit. It will help

ensure that the fair market value of a property is accurately assessed and the owner compensated appropriately in future transactions.

**Owners must
be compensated for
any expropriation
of their land**



Unfortunately, the new regulation fails to provide fair compensation to owners when their property faces *de facto* expropriation. This is unacceptable to real estate professionals, who believe owners must be compensated for any expropriation of their land.

Is there a thoughtful solution?

The provincial government has stated it will protect private property rights by preventing expropriation of assets without fair compensation to owners.

BCREA continues to recommend a balanced approach to achieve this:

1. Consistently recognize private property owners' rights by entrenching the concept of protection in provincial policy and legislation as a guiding principle.
2. Support the establishment of a comprehensive notice board at the new Land Title and Survey Authority. Accessible to the public, the notice board should record interests and charges on the title of individual properties and reference policies and legislation that affect the use of land.
3. Compensate owners when their property values are diminished. Compensation for a measure that benefits the public should be paid for by the public.

Detailed information about these recommendations is available in *Fairness for Private Property Owners*, available at www.bcrea.bc.ca.

BCREA understands restrictions and expropriation are necessary under some circumstances. In these cases, a systematic method to consider loss of property value, provide compensation based on fair market value and an appeal process should be available. If left unchecked, this situation will continue to negatively impact property values and the real estate sector, which is a key indicator and catalyst of provincial economic activity.

Government Relations

Principled Approach to Election Issues

We're onto something big. Through the introduction of modern real estate laws, the provincial government and the real estate profession are serving the public interest and reinforcing the real estate sector's role as a key contributor to our provincial economy.

Equally significant is the approach we have followed to reach this accomplishment. Our mutual willingness to determine the priorities of the public and other stakeholders, followed with the determination to work together in an open, transparent manner has been the secret to our success.

There is considerable value in this approach, and the real estate profession plans to carry it forward into the next provincial election.

BCREA will undertake public opinion research to determine citizens' priority issues and organize them within the following five principles that contribute to improved Quality of Life:

- ensuring economic vitality
- providing housing opportunities
- preserving our environment
- protecting property owners
- building better communities

With research in hand, the real estate profession will make recommendations to the government on how to address the priority issues. To help monitor progress, the profession will develop a report card that highlights the actions and accomplishments of the government. It will also recognize priorities that require increased attention.



The real estate profession is committed to helping improve the Quality of Life in BC. We're confident that this principled approach, and our willingness to work with stakeholders and the government, will ensure this commitment is met.

Member Boards

REALTORS Make High-Tech History

REALTORS of the Chilliwack, Fraser Valley and Greater Vancouver Real Estate Boards made history in August when they launched the first joint MLS® system serving the entire Lower Mainland.

The new Windows/Internet-based MLS® technology, called MLXchange, streamlines real estate service from the Sunshine Coast to Boston Bar.

"We're proud that the more than 10,000 REALTORS in the Lower Mainland now

have the most advanced real estate technology available," says Andrew Peck, president of the Real Estate Board of Greater Vancouver. "This new system offers terrific benefits, like letting REALTORS instantly notify clients of new listings that meet their criteria the moment they hit the market."

"This gives REALTORS a faster and more efficient tool to use on behalf of their clients. Buyers and sellers are going to really like what their REALTORS will be able to do for

them," says Moss Moloney, president of the Fraser Valley Real Estate Board.

The new MLS® system is a cooperative effort among the three boards. Hanne Selby, president of the Chilliwack and District Real Estate Board, says it "is great news for us. It's the best real estate technology to come in years! With all the added benefits to our clients, it's win-win!"

The three boards made history again in October by upgrading to MLXchange for commercial properties, joining Calgary and Edmonton to create one large BC/Alberta database.

▶▶ MLSSLink

PARTNERING FOR SUCCESS



More Ways to Save with Affinity Programs



Scotiabank now offers a complete range of discounted banking services, with savings of up to \$2,228 for BCREA members and REALTORS, including:

- specially-priced business and individual banking packages
- reduced application fees on lines of credit for businesses and self-employed individuals
- mortgage discounts of one to 1¼ per cent off posted rates
- consumer loan discounts of ½ per cent off posted rates
- ¼ per cent interest bonus on GICs
- first year no-administration RRSP fee
- first six months free when using a Scotiabank VISA credit card

Scotiabank provides a broad range of retail, commercial, corporate, investment and international banking

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Education

cpe Seminar Schedule

continuing professional
education

CONDO 202: Advanced Strata Law for REALTORS

Instructor: Mike Mangan

- October 27, CADREB, Chilliwack

Electronic Title Searching

Instructor: Catherine Greenall

- October 18, VREB, Victoria
- October 28, REBGV, Vancouver

Legal Update 2004-2005

Instructor: Mike Mangan

- October 15, KADREA, Kamloops
- November 23, REBGV, Vancouver
- November 29, VIREB, Campbell River
- December 1, VREB, Ganges
- December 3, VIREB, Parksville
- December 6, VREB, Victoria

Representing Buyers in the Sale of New Homes and Condominiums

Instructor: Gerry Halstrom

- November 5, VREB, Victoria
- November 18, REBGV, Vancouver

Risk Management for REALTORS

Instructor: Kim Spencer

- November 18, VREB, Victoria

Selling Tenant-Occupied Properties

Instructor: Evelyn McNulty

- October 28, VIREB, Duncan

Win/Win: Conflict Resolution for REALTORS

Instructor: Gerald Clerx

- October 21, VREB, Victoria