

RECBC

REAL ESTATE COUNCIL
OF BRITISH COLUMBIA

MAKING CHANGES

A Review of RECBC's Implementation of
Agency and Disclosure Rules

Real Estate Council of British Columbia

March 2019

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EXECUTIVE SUMMARY

This report reviews the implementation by the Real Estate Council of BC (RECBC) of agency and disclosure rules for BC real estate professionals that came into effect on June 15, 2018.

We committed to undertaking a post-implementation review to help us determine the extent to which RECBC's mandatory forms, informational resources, educational offerings, and engagement with real estate professionals and consumers were delivering the outcomes they were designed to achieve.

RECBC staff gathered the data and feedback which form the basis of the review's findings primarily between June 15, 2018 and September 15, 2018. This includes feedback from a province-wide consultation with managing brokers, the results of a consumer survey, as well as analysis of RECBC statistics on complaints and anonymous tips, aggregate results of brokerage audits, questions received from real estate professionals and consumers, and a survey of licensed real estate professionals conducted in January 2019.

Based on the findings of our review, this report identifies areas in which RECBC intends to take further action to:

- ensure that real estate professionals have the knowledge, skills and tools to comply with the rules
- enhance public awareness of the rules, and
- increase stakeholder engagement in future implementation processes.

This report is not intended to evaluate the degree to which the agency and disclosure rules are achieving their intended outcomes. The measurement of longer-term indicators of success of these regulatory changes would require a larger scope of review and an expanded timeframe. RECBC, in collaboration with the Office of the Superintendent of Real Estate (OSRE), continues to monitor the impact of the rules on consumer protection.

BACKGROUND

On June 15, 2018, agency and disclosure rules came into effect to ensure that real estate consumers receive clear information to make informed decisions about buying, selling, renting or leasing property, and that real estate professionals act with undivided loyalty in their clients' best interests. New mandatory disclosure forms were introduced:

- *Disclosure of Representation in Trading Services*
- *Disclosure of Risks to Unrepresented Parties*
- *Disclosure to Sellers of Expected Remuneration (Payment)*
- *Disclosure of Risks Associated with Dual Agency*

The rules were originally approved by the Superintendent of Real Estate in November 2017, with an implementation date of March 15, 2018. In February 2018, in response to industry concerns about the timeline for implementation and the risk that practitioners could be unprepared to comply with the requirements, the Superintendent delayed the implementation date to June 15, 2018.

On April 27, 2018 the Superintendent approved the following rule amendments:

- a requirement that the *Disclosure to Sellers of Expected Remuneration* include a dollar amount; and
- a new rule to address conflicts of interest where real estate professionals find themselves potentially working with multiple parties that would constitute dual agency, involving the use of the Council-approved form *Agreement Regarding Conflict of Interest Between Clients*.

These rules also took effect on June 15, 2018.

OUR ROLE IN IMPLEMENTATION

RECBC was responsible for educating and informing real estate professionals about their obligations under the new rules, for developing new mandatory forms to be used under the rules and for informing consumers about the changes.

Beginning in December 2017, we distributed a weekly e-newsletter to all real estate professionals featuring information and guidance for complying with the new rules, along with resources to support them to prepare for the changes to their practice. Videos, articles, guides, frequently asked questions (FAQs), podcasts, webinars, and a managing broker toolkit were developed and disseminated broadly to real estate professionals. All of these resources were made available on the Licensee Knowledge Base, a microsite linked from RECBC's corporate website. Appendix A contains a full list of all resources produced.

In May 2018, we introduced *Rule Changes: Agency and Disclosure*, a mandatory online course delivered by the UBC Sauder School of Business, Real Estate Division, which all trading services and rental property real estate professionals must complete within their two-year licensing cycle.

The entire Applied Practice Course program was reviewed and updated to incorporate changes resulting from the agency and disclosure rules. All course materials for Residential, Commercial and Rental Legal Update Courses, both online and in-class components, were updated to incorporate changes resulting from the agency and disclosure rules. RECBC subject matter experts conducted two full day training sessions (May 24 and June 1, 2018) on the new rules for continuing education instructors. The sessions were also attended by representatives from Real Estate Boards, the Office of the Superintendent of Real Estate, and the Real Estate Errors and Omissions Corporation.

RECBC's Professional Standards Advisors responded by phone and email to questions from real estate professionals and consumers regarding the rules, and delivered presentations at industry events, including forums and annual general meetings of local Real Estate Boards.

In June 2018 we introduced the five new consumer information and disclosure forms required under the rules, along with guides to their use, explanatory videos for real estate professionals, and online toolkits to support managing brokers to effectively train and supervise real estate professionals in their brokerages.

OUR KEY FINDINGS

At consultation sessions with managing brokers held across the province over the summer and early fall of 2018 and through a survey of real estate professionals in January 2019, we explored questions regarding the extent to which real estate professionals feel knowledgeable and prepared to comply with the rules, and solicited feedback on ways to improve information resources, education and outreach in any future rule changes.

In addition, we analyzed data collected through RECBC's various functions (Licensing, Education, Audit, Compliance, and Communications), reports from external sources (e.g. University of BC Real Estate Division), and surveys of consumers and real estate professionals.

Based on our information-gathering and analysis, the following key findings have emerged.

1. Real estate professionals report that they understand how to comply with the new rules

Data analysis of the survey of real estate professionals indicates that a high proportion of respondents understand how to comply with the rules and now feel confident and competent to do so. While this finding should be regarded with some caution, as most survey respondents also reported having completed the Rules Changes: Agency and Disclosure Course (89%), as compared to approximately 50% of the total real estate professional population, the survey finding is an early indicator that information and education developed to implement the rules are having their intended effect.

Similarly, early data from RECBC's audits of real estate brokerages, as part of our Office and Records Inspection Program, indicates that brokerages are adopting policies and procedures to ensure appropriate record-keeping as required by the rules.

2. Streamlining mandatory forms will enhance their clarity

A consistent theme of the feedback received from real estate professionals centered on suggestions to make the mandatory disclosure forms shorter and quicker to complete. Real estate professionals reported challenges with engaging consumers' interest in the forms and explaining the purpose of the forms.

Based on this feedback, Council directed RECBC staff to develop streamlined versions of three forms:

- *Disclosure of Representation in Trading Services*
- *Disclosure of Risks to Unrepresented Parties*
- *Disclosure to Sellers of Expected Remuneration.*

The Council also approved the development of versions of the Disclosure of Representation in Trading Services form and Disclosure of Risks to Unrepresented Parties form specific to the needs of tenants, for use by rental property managers.

RECBC is committed to thoroughly testing these forms with real estate professionals and consumers ahead of their release, in an open and transparent consultation process.

3. More consumer resources are required

Specialized resources for consumers are currently in development by RECBC and will be launched as part of a planned consumer awareness campaign launching in 2019. Resources will be disseminated directly to consumers by RECBC through social media channels and via targeted online advertising, as well as indirectly through real estate professionals.

Materials in development include animated videos explaining the benefits to consumers of having an agent represent only one party to a transaction and the situations in which they may expect to be presented with a disclosure form by a real estate professional. Additional fact sheets and infographics suitable for use on social media will also be disseminated.

This will be the first phase of a broader campaign to build awareness of the regulation of real estate and to increase consumer knowledge of key elements of real estate transactions. This broader campaign, supported through a generous grant from the Real Estate Foundation of BC, includes the development of a consumer-focused microsite.

We are interested in hearing stakeholders' ideas for enhancing information for consumers on the nature of real estate services offered. Consultation with stakeholders, including both industry members and members of the public, will form a key part of RECBC's wider work on provision of information to consumers in 2019-2020.

4. Professional education is key to ensuring high rates of understanding and compliance

RECBC and UBC collaborated on the development of content for the *Rule Changes: Agency and Disclosure* course introduced in May 2018. The course features:

- a scenario-based, interactive learning approach
- modular assessments which learners must pass with 70% or higher to proceed.

By July 2018, over 7,000 real estate professionals had successfully completed the course, and by January 2019 an additional 6,000 had taken it. Of learners who completed a course evaluation form, 95% indicated that the course was a valuable learning opportunity and that their knowledge improved as a result of taking it.

In August 2018 RECBC released *Opportunities and Achievements: Raising Standards of Regulatory Education*, a whitepaper on our phased plan for education initiatives. It outlines planned changes to regulatory education, including increased control and oversight by RECBC of content development and instruction. We anticipate that these changes will enhance our ability to provide educational offerings that respond to the evolving needs of real estate professionals and to changes in the regulatory environment.

5. Managing brokers play an important role in ensuring compliance and protecting consumers

Real estate professionals who completed RECBC's survey in January 2019 indicated that when they had a question or concern about a regulatory requirement, they were likely to turn to their managing broker for advice. This finding supports the feedback from managing brokers heard during consultation sessions that additional resources were required to assist them to supervise, inform and educate real estate professionals at their brokerages. RECBC is actively developing resources that managing brokers can put into use, including webinars, slide presentations, checklists, infographics and videos.

RECBC continues to explore, in collaboration with OSRE and the Ministry of Finance, tools and resources that can best support managing brokers. More information about this consultation is available from the Office of the Superintendent, as part of its examination of the Role of Managing Brokers in BC's Changing Real Estate Landscape.

6. Implementation of future rule changes would benefit from longer timelines and increased consultation

RECBC and OSRE staff met throughout the period leading up to the effective date of the rules and collaborated on the development of many implementation resources. Other key stakeholders involved from an early stage of the implementation period included education partners, such as the UBC Real Estate Division and the British Columbia Real Estate Association. The involvement of each organization was integral to the successful development and dissemination of information, resources and education throughout the implementation.

Adopting a staged implementation and/or a transition period before future rules come into force may allow for more education and greater information dissemination, and provide opportunities to identify and address knowledge gaps in advance of rules taking effect.

Gradual implementation allows adaptation, which is crucial in supporting successful change management. It helps to ensure that change is more readily embedded in attitudes and behaviours, and that new business practices incorporating the regulatory requirements are established, while minimizing disruption.

RECBC recognizes that nothing helps build commitment to change more than being involved in shaping the new direction, and that building shared solutions helps enable effective implementation.

HOW YOU CAN BE INVOLVED

RECBC will continue to monitor for emerging trends related to the implementation activities undertaken in 2018, in order to assess whether additional resources or education are needed to deliver good outcomes for consumers. We welcome the comments of interested parties in response to this report.

You can send your feedback to us at info@recbc.ca.

IMPLEMENTATION REVIEW: INSIGHTS AND ACTIONS

A number of key themes emerged from the data gathering and consultation activities RECBC undertook between June 15 and September 15, 2018. In particular, there were consistent themes in the feedback from managing brokers at the Listening Tour roundtables held throughout BC during August – September, 2018.

EDUCATION AND RESOURCES

Practitioner Insights: what we heard	Actions we are taking
<p>Managing brokers who have taken the <i>Rule Changes: Agency and Disclosure</i> course, and ensured that real estate professionals engaged at their brokerage take the course reported feeling better prepared to implement changes in their brokerage.</p>	<p>This feedback from managing brokers is supported by high approval ratings in course evaluations completed by real estate professionals. In November 2018, we initiated a direct email campaign specifically targeted to managing brokers who have not yet completed the Rules Changes course, to encourage them to register for the course and ensure that real estate professionals engaged at their brokerage also register.</p> <p>Throughout 2019 this direct email campaign will be extended to representatives and associate brokers and supported through social media and online video resources.</p>
<p>Managing brokers who conducted internal training sessions at their brokerages reported that this enhanced real estate professionals' ability to comply with the rules.</p> <p>Managing brokers reported finding the information and resources from RECBC useful in training real estate professionals at their brokerages to comply with the rules. Many suggested additional topics to cover, and asked for more resources, in different formats. Videos and slide presentations were among the most frequently requested resources.</p>	<p>In January 2019, RECBC launched a monthly webinar series, <i>Professional Matters</i>, to support managing brokers to effectively train and supervise real estate professionals.</p> <p>In February 2019, as part of the <i>Professional Matters</i> webinar series, RECBC developed and distributed a slide presentation that managing brokers can use in internal brokerage trainings.</p> <p>Further resources will be developed and their use and effectiveness evaluated throughout 2019.</p>

Managing brokers asked for regulatory education to be available earlier on in a future rule change, to allow real estate professionals more time to understand new requirements and how to comply.

They also called for more specialized education for managing brokers to support their role as supervisors, and to assist them in training real estate professionals at their brokerages to comply with their legislative requirements.

As indicated in RECBC's education whitepaper released in August 2018, RECBC is assuming greater control of the content development and instruction of regulatory education. This will enable RECBC to more flexibly and proactively develop educational offerings that respond to the evolving needs of real estate professionals and to changes in the regulatory environment.

RECBC is also exploring, in collaboration with OSRE and the Ministry of Finance, the needs of managing brokers in BC's changing real estate landscape. Following consultation with managing brokers, this initiative may result in further specialized education for managing brokers.

There was strong support for the development of consumer-focused resources to increase public awareness and understanding of the rule changes.

Development of resources to support consumer awareness of the agency and disclosure rules, as well as other aspects of real estate transactions, is underway.

A series of short animated videos is in development, intended to help consumers understand the benefits of receiving disclosures from a real estate professional. Videos and associated resources including fact sheets, brochures and infographics will be disseminated through a social media and digital advertising campaign. They will also be made available to real estate professionals as part of a customizable toolkit of resources to use with clients. More information, including opportunities for real estate professionals to participate in focus testing and consultations, will be available in spring 2019.

MANDATORY FORMS

Practitioner Insights: what we heard	Actions we are taking
<p>Many managing brokers recommended streamlining the mandatory forms to make them faster to complete and easier to explain to consumers.</p>	<p>RECBC will release updated versions of the following forms in 2019:</p> <ul style="list-style-type: none"> • <i>Disclosure of Representation in Trading Services</i> • <i>Disclosure of Risks to Unrepresented Parties</i> • <i>Disclosure to Sellers of Expected Remuneration</i> <p>The revisions, currently in development, will incorporate feedback received from real estate professionals about challenges experienced in using the forms, including reducing their length and complexity.</p> <p>As part of the process of developing the updates, we will conduct focus testing with consumers and real estate professionals to help ensure that the changes meet the needs of both groups.</p>
<p>Additional resources to assist real estate professionals to explain the forms to consumers were requested.</p>	<p>All materials developed for the consumer campaign will also be available to real estate professionals, who will be encouraged to use the resources with clients and consumers to assist them to better understand the services to expect of a licensed real estate professional.</p>
<p>Licensed rental property managers and industry associations asked that RECBC consider developing rental-focused versions of the <i>Disclosure of Representation in Trading Services</i> and the <i>Disclosure of Risks to Unrepresented Parties</i> forms with a view to making those disclosures more relevant to landlords and tenants.</p>	<p>RECBC is developing rental-specific versions of the <i>Disclosure of Representation in Trading Services</i> form and the <i>Disclosure of Risks to Unrepresented Parties</i> form. These forms, and associated guidance documents, will be released in 2019 and will provide greater clarity on:</p> <ul style="list-style-type: none"> • the differing obligations of rental property management real estate professionals vs. trading services real estate professionals under RESA; and • the needs of tenants, who may not have the financial means to seek out independent professional advice as suggested in the forms, and who rely on the Residential Tenancy Branch for advice and guidance in a rental transaction.

KNOWLEDGE GAPS

Practitioner Insights: what we heard	Actions we are taking
<p>Misunderstanding of existing obligation to disclose representation to consumers</p> <p>Feedback and questions received by RECBC revealed that some real estate professionals do not understand that prior to June 15, 2018, they were already obliged by section 5-10 of the Rules to disclose the nature of their representation “before providing trading services” to a consumer. In some cases real estate professionals did not ask their clients to sign the previous “Working with a REALTOR®” form until quite late in the relationship (i.e. at the point an offer was being completed).</p>	<p>RECBC’s mandatory relicensing education reinforces the regulatory obligations and conduct requirements for real estate professionals. As outlined in the Education Whitepaper released in August 2018, RECBC is taking greater control of the content development and instruction of education.</p> <p>Planned changes to the development and delivery of regulatory education, RECBC has committed to develop a strategic proactive outreach program for Professional Standards Advisors to engage with more real estate professionals on key regulatory requirements.</p>
<p>Some rental management real estate professionals mistakenly believed that previously they were not obliged to make disclosures to consumers before providing trading services, as was required by section 5-10 prior to June 15, 2018 and as continues to be in force.</p>	<p>RECBC is developing specific guidance materials for rental property managers to clarify their agency duties and obligations to make disclosure to consumers.</p> <p>Along with versions of the new disclosure forms specific to the needs of tenants, these resources will be tested with representative rental property management practitioners in advance of their release to ensure that they adequately meet the needs of real estate professionals, as well as the information needs of consumers.</p>

Lack of understanding of principles of agency and fiduciary law

Feedback from managing brokers indicates that some real estate professionals experience confusion with regards to the following:

- When and how an agency relationship terminates;
- The duties owed to clients versus unrepresented parties
- The circumstances in which an implied agency relationship is created;
- Their obligations when dealing with a former client on behalf of a current client; and
- Their obligations when dealing with a conflict of interest between two current clients.

Further resources to support real estate professionals' overall understanding of the principles of agency are in development, and will be released regularly through a number of channels, including *Report from Council* newsletters, the Licensee Knowledge Base, social media, and videos.

Beginning with the December 2018 issue, and continuing throughout 2019, each issue of the *Report from Council* newsletter will include a brief article on agency basics. Intended as a refresher for experienced real estate professionals and as a guide to those newly licensed, the series will cover fiduciary duties, conflicts of interest, issues relating to teams, and more.

Misunderstanding of privacy obligations

Feedback from managing brokers indicated that some real estate professionals may require clarification about the following issues:

- When and how real estate professionals should be using the BCREA "Privacy Notice and Consent" form;
- The difference between the "Privacy Notice and Consent" form and the privacy notices that appear at the bottom of the new RECBC forms; and
- Why the "Privacy Notice and Consent" cannot be rolled into the *Disclosure of Representation in Trading Services* form.

RECBC recognizes that the change from the privacy notice previously included in the *Working with a REALTOR®* form developed by the BCREA may have resulted in confusion on the part of some real estate professionals. The privacy notice on RECBC's mandatory disclosure forms relates to the *Freedom of Information and Protection of Privacy Act*, which sets out the privacy rights of individuals as they relate to public sector organizations. Real estate professionals may also need to obtain consent of clients for the collection, use and disclosure of their personal information, and can do so using the *Privacy Notice and Consent Form* developed by the BCREA.

RECBC will look for opportunities to partner with stakeholder organizations to clarify areas of potential confusion or misunderstanding with regards to mandatory form requirements.

FUTURE RULE CHANGE IMPLEMENTATIONS

Practitioner Insights: what we heard	Actions we are taking
<p>Among the most frequent feedback that RECBC received throughout the post-implementation period was that there was insufficient time for industry members to understand and adapt to the scope of changes introduced by the new rules. Real estate professionals consistently called for a longer implementation timeline that allowed for greater education or a transition period.</p> <p>Some managing brokers suggested that an approach similar to that taken for the introduction of designated agency in 2012, with a piloting program followed by a province-wide 12 month education program may have assisted real estate professionals to feel more comfortable with the changes to their business practices and led to enhanced industry-wide compliance with the rules.</p>	<p>Adopting a staged implementation and/or a transition period before future rules come into force may allow for more education and greater information dissemination, and provide opportunities to identify and address knowledge gaps in advance of rules becoming effective.</p> <p>Gradual implementation allows adaptation, which is crucial in supporting successful change management. It helps to ensure that change is more readily embedded in attitudes and behaviours, and that new business practices incorporating the regulatory requirements are established, while minimizing disruption.</p> <p>RECBC recognizes that nothing helps build commitment to change more than being involved in shaping the new direction, and that building shared solutions helps enable effective implementation. During the pre-implementation period in 2018 RECBC staff worked closely with stakeholder organizations, including OSRE, BCREA and UBC.</p> <p>Based on the learning from this review of the implementation, we look forward to expanding these partnerships in future rule implementations, and to incorporating increased outreach and engagement with real estate professionals and other affected stakeholders, including members of the public. RECBC has developed a Stakeholder Engagement Framework as a guide to consultation in future initiatives.</p>

ACKNOWLEDGEMENTS

The Real Estate Council of BC wishes to acknowledge the cooperation of real estate board staff members around the province who dedicated time and effort to bring together groups of managing brokers to meet with RECBC staff during our Listening Tour in August and September 2018. We are also grateful for the support of staff from the Office of the Superintendent of Real Estate (OSRE) who attended each of the Listening Tour sessions.

Thank you to the many managing brokers who took time out of their busy professional lives to meet with us at Listening Tour roundtables and to share their perspectives on the implementation of the agency and disclosure rules along with their thoughts on how future rule changes can be successfully implemented. Your commitment to supporting professionalism in the industry and to the protection of real estate consumers in your communities was evident in all of the feedback we heard. Your feedback will contribute to our ongoing efforts to achieve RECBC's vision, which we know is shared by the overwhelming majority of BC's real estate professionals: *public trust in ethical and competent real estate professionals*.

Finally we wish to express our gratitude to representatives from related stakeholder groups who were generous with their time and expertise during our consultations on the implementation. These include LandlordBC, the Tenant Resource and Advisory Centre, the Residential Tenancy Branch, the Building Owner and Manager Association, the Professional Association of Managing Agents, the British Columbia Real Estate Association, and the University of British Columbia.

APPENDIX A: RECBC IMPLEMENTATION RESOURCES

Forms

Disclosure of Representation in Trading Services
Disclosure of Risks to Unrepresented Parties Form
Disclosure to Sellers of Expected Remuneration
Disclosure of Risks Associated with Dual Agency
Agreement Regarding Conflict of Interest Between Clients

Guides

Guide to Disclosure of Representation in Trading Services
Guide to Disclosure of Risks to Unrepresented Parties
Guide to Disclosure to Sellers of Expected Remuneration
Guide to Disclosure of Risks Associated with Dual Agency
Guide to Agreement Regarding Conflict of Interest Between Clients
Agency and Disclosure: A Resource Guide for Managing Brokers

Frequently Asked Questions

FAQ: Disclosure of Representation in Trading Services
FAQ: Disclosure to Sellers of Expected Remuneration
FAQ: Ban on Dual Agency
FAQ: Issues for Small Brokerages
FAQ: Teams and Agency
FAQ: Current and Former Clients
FAQ: Agreement Regarding Conflict of Interest Between Clients

Real Advice E-News

<i>December 14, 2017</i>	Learning About the New Consumer Protection Rules
<i>December 21, 2017</i>	Information on Changing Real Estate Rules
<i>December 28, 2017</i>	Mandatory Forms & Small Brokerage FAQs
<i>January 5, 2018</i>	Unrepresented Parties 101
<i>January 11, 2018</i>	Conflicts of Interest
<i>January 19, 2018</i>	Commercial, Rental or Niche Market Providers
<i>January 26, 2018</i>	The Ongoing Duty of Confidentiality
<i>February 2, 2018</i>	How to Disclose Payment to Your Clients
<i>February 16, 2018</i>	Update on Superintendent's Rules
<i>February 23, 2018</i>	Information You Can Use
<i>March 2, 2018</i>	Agency Basics
<i>March 8, 2018</i>	Material Information
<i>March 15, 2018</i>	Reporting Misconduct
<i>March 23, 2018</i>	Consultation Opens on Superintendent's Rules
<i>March 29, 2018</i>	Fundamentals of Agency (Podcast)
<i>April 6, 2018</i>	3 Things You Can Do Now to Prepare for Change

<i>April 12, 2018</i>	5 Key Questions to Prepare for Rule Changes
<i>April 20, 2018</i>	Exploring Education
<i>April 27, 2018</i>	Teams, Agency & Disclosure
<i>May 4, 2018</i>	Managing Conflicts of Interest
<i>May 11, 2018</i>	Addressing Conflicts of Interest When Acting for Multiple Clients
<i>May 15, 2018</i>	Council Announces New Forms, Resources, Education
<i>May 25, 2018</i>	Agency and Disclosure Registration Opens
<i>June 1, 2018</i>	New Conflict of Interest Agreement and Resources Now Available
<i>June 11, 2018</i>	New Videos, Education Link and an Update on Forms
<i>June 18, 2018</i>	Rules Now in Effect
<i>June 25, 2018</i>	Tips for Disclosing Remuneration to Sellers
<i>July 9, 2018</i>	6 Things You Should Know About Keeping Records
<i>July 24, 2018</i>	"What to do if..."
<i>August 8, 2018</i>	Don't be Left Behind! Register Now for the Rule Changes: Agency and Disclosure Course
<i>September 4, 2018</i>	Managing Change: Information and Resources to Support Licensees

Videos

Introduction to Agency and Disclosure Rules
Designated Agency: Back to Basics
Changing Rules, Changing Practices
Understanding Unrepresented Parties
Disclosure to Sellers of Expected Remuneration
Agreement Regarding Conflict of Interest Between Clients
Disclosure of Risks Associated with Dual Agency
Disclosure of Risks to Unrepresented Parties
Disclosure of Representation in Trading Services

Professional Matters Webinars

April 2018 Preparing for Change
May 2018 The Managing Broker Rule Changes Toolkit

Real Talk, Real Advice Podcasts

March 2018 Exploring Fundamentals of Agency
April 2018 Preparing for Change
May 2018 Managing Conflicts of Interest

Articles

Best Practices for Avoiding Conflicts of Interest

Designated Agency: How to Protect Client Information

Do the Agency and Disclosure Rules Apply to You?

Electronic Records

Obtaining Informed Consent

Overview of Changes to Agency and Disclosure Rules

Providing Records to Your Brokerage

Referral Fees

Rule Changes: Agency and Disclosure course

Showing, but not Telling. Managing Conflicts of Interest when Showing Properties

When a Released Client Chooses to be Unrepresented: Options for Licensees

RECBC Forms App

How to Use the RECBC Forms App

How to Add the RECBC Forms App to Your Mobile Device

APPENDIX B: RECBC STATISTICS AND DATA

ANONYMOUS TIPLINE

Approximately 8% of the tips received through the Anonymous Tipline between June and September 2018 (16 out of 200 total tips received) related to alleged misconduct in relation to the new agency and disclosure rules.

Investigation files were opened on 9 of the 16 tips, or 52% of those received. This compares to an overall rate of 35% of tips proceeding to an investigation during the same time period.

The contacts to the Anonymous Tipline with respect to the rules which did not proceed to investigation included tips that did not contain specific allegations against any real estate professionals or brokerages, but were rather general comments on the rules themselves. Other reasons for anonymous tips not proceeding to investigation include a lack of details provided regarding the alleged wrongdoing and/or no evidence of professional misconduct or conduct unbecoming a licensee.

Two thirds (66%) of the tips for which investigation files were opened related to alleged misconduct by teams or members of teams representing clients with competing interests in a transaction. Allegations included teams de-registering team names or de-registering members, while continuing to operate as teams.

Anonymous Tips June to September 30, 2018

	JUNE	JULY	AUGUST	SEPTEMBER	TOTAL
TOTAL TIPS RECEIVED	67	65	48	20	200
Tips related to new rules	4	5	3	4	16
Percentage of total tips related to new rules	6%	8%	6%	20%	8%
Investigation files opened as a result of tips	18	20	24	9	71
No files opened, due to insufficient evidence	5	3	5	1	16
No files opened, due to lack of jurisdiction	17	7	4	5	33
No files opened, due to other reasons	27	33	15	5	80
TOTAL TIPS RECEIVED	67	65	48	20	200

BROKERAGE AUDITS

There were 60 brokerages audited by RECBC from June 15 to September 15, 2018. RECBC auditors requested information about the brokerages' policies and procedures with regards to new agency and disclosure rules, including: records retention, education and training, supervision of real estate professionals, and submission of any *Disclosure of Risks Associated with Dual Agency* forms.

Managing brokers demonstrated a high level of awareness of the agency and disclosure rules and the availability of resources on the RECBC website: 83% were aware of the Licensee Knowledge Base. Slightly fewer managing brokers had conducted in-house meetings or trainings for real estate professionals on the new agency and disclosure rules: 65% had held meetings with the real estate professionals at their brokerage. As well, 62% had form retention policies in place specifically to manage the forms required under the new agency and disclosure rules.

	TOTAL #
# of attendance days at audit	88.75
# of real estate professionals	1,105
# months under review	401
# of audits completed	60

	YES	NO	BLANKS	N/A
Form retention policy in place?	37	22	1	
Meeting held w/real estate professionals RE new Rules	39	11		10
Confirm MB aware of Knowledge Base on www.recbc.ca	50	9		1
MB aware of any undisclosed dual agency		58	1	1
Disclosure of Risk Assoc. w/Dual Agency form submitted to RECBC?		59		1
Date DRADA was submitted*		60		

* Disclosure of Risks Associated with Dual Agency (DRADA)

COMPLIANCE AND LEGAL

As of January 30, 2019, one *Disclosure of Risks Associated with Dual Agency* form has been received by RECBC.

Due to the large volume of complaints received in 2018/19 by RECBC, assessment of complaints received during the three months following the introduction of the agency and disclosure rules is still ongoing. At this time, it can be confirmed that two complaints relating to the alleged provision of dual agency to consumers was received during this time period. In addition, nine investigations have been opened as a result of anonymous tips.

Ongoing review has identified an additional ten complaints relating to alleged misconduct since June 15, 2018 that have resulted in the creation of investigative files. These files identify “agency” as the focus of the complaint. At this time the nature of the agency concern has not been confirmed by investigation.

RECBC will continue to monitor complaints received in relation to the new rules, in order to assess trends and emerging risks, and to determine appropriate responses.

	JUNE	JULY	AUGUST	SEPTEMBER
Total Complaints by Month	85	94	92	68

EDUCATION

As of January 2019 approximately 13,000 real estate professionals, or approximately 50% of all real estate professionals, have completed the *Rule Changes: Agency and Disclosure* course. Approximately 9,000 real estate professionals completed the course between June 15 and September 15, 2018. Less than 50% of managing brokers had completed the course by September 15, 2018. This relatively low rate of participation by managing brokers, who are responsible for supervising the activities of real estate professionals at their related brokerages, was of concern to RECBC.

While there is a lack of data to support the assumption, relatively low overall levels of course completion may be related to the perception on the part of some real estate professionals that as the course is a requirement for relicensing, there is no need to complete the course until near the expiry date of the individual's current licence. This is consistent with trends in completion of other Relicensing Education Program courses.

To counter this possible perception, an email campaign encouraging managing brokers to complete the course as soon as possible and to develop policies within their brokerage requiring real estate professionals to complete the course was initiated in November 2018 and will continue through 2019. An associated campaign for individuals licensed at the representative and associate broker levels will be initiated in 2019.

Current data on course completion rates is included below, from the period May 15, 2018 to January 30, 2019.

RULE CHANGES: AGENCY AND DISCLOSURE COURSE STATISTICS	
Total Course Registrations	13,305
Course Completions	12,706
Course Suspensions	376
Course Completion Rate	97.1%
Course Evaluations Received	1,662
Course Evaluation Completion Rate	12.7%

Key themes in course evaluations submitted by real estate professionals include:

- Respondents enjoyed the online format of the course (e.g., length of course, content organization, videos, etc.)
- Rental property management real estate professionals were unhappy with having to take the course.

Managing brokers who have completed the course consistently reported in Listening Tour roundtable sessions that the course was of benefit to them, and to real estate professionals at their brokerage, in understanding how to comply with the new rules.

LICENSING

A slight overall decrease in registered teams and licensed members of registered teams has been reported since the effective date of the new rules; however the pattern is not consistent throughout the time period. As reflected in the table below, between July 1 and September 30, 2018, teams and team members increased. RECBC continues to monitor trends with regards to teams and team membership. January 2018 and 2019 numbers are included in the table below for comparison purposes.

Team Trends

MONTH	REGISTERED TEAMS	REGISTERED TEAM MEMBERS	TOTAL REAL ESTATE ESTATE PROFESSIONALS	PERCENTAGE OF REAL PROFESSIONALS WHO ARE MEMBERS OF REGISTERED TEAMS
31-Jan-18	1,150	2,897	25,438	11.4%
01-Jul-18	1,147	2,910	25,846	11.3%
01-Oct-18	1,148	2,922	26,026	11.2%
31-Jan-19	1,145	2,905	25,879	11.2%

Licensing Trends June – September 2018

LICENCE LEVEL	JUNE	JULY	AUGUST	SEPT
Representatives	22,922	22,960	23,096	23,106
Associate Brokers	1,557	1,554	1,559	1,556
Managing Brokers	1,367	1,367	1,368	1,363
Total Individuals	25,846	25,881	26,023	26,025

PROFESSIONAL STANDARDS ADVISORY

RECBC considers the volume and level of inquiries received by the Professional Standards Advisory to be a key indicator of real estate professionals' understanding of how to comply with the new agency and disclosure rules. Throughout June 2018, the frequency of calls was high; however in August and September 2018, call volumes dropped appreciably.

During this period, Professional Standards Advisors responding to enquiries noted that the overall sophistication of questions relating to the new rules increased. This change may relate to increased numbers of real estate professionals completing the *Rule Changes: Agency and Disclosure* course and/or consulting RECBC's online resources to answer common questions, with only those questions of a more complicated nature being directed to RECBC's advisors.

SOURCE OF INQUIRY	Q1 REPORT APR – JUN	Q2 REPORT JUL – SEPT
Real estate professionals	2,917	2,328
Consumers	928	891
Non-identified/Other	81	35
Total	3,926	3,254

WEBSITE TRAFFIC

Resources developed by RECBC as part of the Licensee Knowledge Base to support real estate professionals to become aware of and informed about the rules were accessed frequently throughout the first three months following the implementation, with the highest traffic levels recorded in June, and levels declining gradually over the period. Similarly, high traffic levels were recorded in June at the time RECBC released a mobile app enabling real estate professionals to provide the *Disclosure of Representation in Trading Services* form and the *Disclosure of Risks to Unrepresented Parties* form to consumers electronically, with levels declining to more stable rates by August and September.

To protect the privacy of consumers, RECBC does not collect or store any information relating to usage of the forms app, beyond aggregate usage data through Google Analytics.

The usage rates support the finding of the survey of real estate professionals, in which respondents indicated high levels of awareness and satisfaction with the information resources provided by RECBC, and reported high levels of self-assessed competence and confidence in understanding and complying with the rules.

Disclosure Forms App

	JUNE	JULY	AUGUST	SEPTEMBER
Unique Page Visits	83,289	25,045	14,027	12,200

Licensee Knowledge Base

	JUNE	JULY	AUGUST	SEPTEMBER
Unique Page Visits	190,936	42,946	19,949	19,076

APPENDIX C: EXTERNAL RESEARCH AND DATA COLLECTION

STAKEHOLDER ENGAGEMENT

A key activity during the summer of 2018 was the Listening Tour undertaken by RECBC in order to assess the effectiveness of the implementation. Executive Officer Erin Seeley and senior staff representatives met with groups of managing brokers from each of the 11 board regions throughout August and September 2018. The purpose was to engage in active dialogue with managing brokers about their experiences and perspectives during the implementation process, and to hear feedback on the new forms.

STAKEHOLDER ORGANIZATIONS	DATE	NUMBER OF PARTICIPANTS
Kamloops & District Real Estate Association	August 20, 2018	11
Okanagan Mainline Real Estate Board	August 21, 2018	10
South Okanagan Real Estate Board	August 21, 2018	11
Victoria Real Estate Board	August 27, 2018	16
Powell River Sunshine Coast and Vancouver Island Real Estate Boards	August 28, 2018	12
BC Northern Real Estate Board	August 30, 2018	14
Kootenay Real Estate Board	September 6, 2018	8
Real Estate Board of Greater Vancouver	September 7, 2018	23
Fraser Valley Real Estate Board	September 12, 2018	14
Real Estate Board of Greater Vancouver	September 14, 2018	15
Chilliwack and District Real Estate Board	September 21, 2018	12
Commercial Real Estate Providers	September 13, 2018	12
Rental Property Management Providers	September 6, 2018	19
Total Participants		163

CONSUMER SURVEY QUESTIONS AND RESULTS

From September 14 – 18, 2018 market research firm Insights West conducted an online survey of British Columbia adults on behalf of RECBC, measuring public awareness of the regulation of real estate. Survey respondents were adults who had completed a real estate transaction in the preceding two years, or who anticipated being involved in a real estate transaction in the coming two years.

Overall, survey responses indicated:

- Strong levels of awareness of the Real Estate Council of BC**
 65% of respondents indicated they were familiar with RECBC. Survey respondents from Vancouver Island were the most likely to indicate they had heard of RECBC, with 71% indicating they were aware of RECBC's role as the regulator of real estate professionals.

- **Real estate consumers value getting information from real estate professionals at an early stage about the services to expect, to help them make informed decisions.**
70% of respondents who had participated in a transaction in the past two years agreed that early disclosure would have been of benefit to them. The strongest agreement was from respondents in the greater Vancouver area, 76% of who wanted early disclosure and information from a real estate professional.

LICENSEE SURVEY QUESTIONS AND RESULTS

In January 2019, RECBC conducted a survey of all real estate professionals to measure their knowledge and awareness of the new rules and to hear their feedback about the implementation of the rules. The survey was conducted by Insights West.

The survey was open from January 2, 2019 to January 14, 2019. Insights West received 2,539 completed survey responses, or approximately 10% of the real estate professional population. The margin of error for a sample of this size is +/-1.94% (19 times out of 20).

Some key findings from the survey include:

- 89% of respondents agree or strongly agree that they know how to comply with the new rules
- 86% agree or strongly agree that they clearly understand the requirements of the rules
- 81% agree or strongly agree that they feel confident explaining the rules to consumers
- 52% agree or strongly agree they had sufficient time to prepare for the rules.

When asked how the *Disclosure of Representation in Trading Services* form changed engagement with consumers, respondents indicated the following:

- 64% said disclosure takes longer to discuss than before
- 45% said conversations about representation happen earlier in the process than before
- 41% said consumers have more questions than before
- 10% said there are fewer misunderstandings later on in the transaction than before.

When asked how the introduction of the *Disclosure to Sellers of Expected Remuneration* form changed engagement with clients, respondents indicated:

- 22% agreed that the new disclosure form provides more transparency about remuneration than before
- 22% noted that clients have more questions about remuneration than before
- 11% agreed that there are fewer misunderstandings about remuneration later on in the transaction than before.

In response to a question regarding whether they had encountered a situation where a dual agency conflict of interest required them to recuse themselves from one or more clients, less than a third (28%) indicated that they had been in that situation.

Of the respondents who had encountered this situation, respondents indicated they had used the following options to manage the situation:

- 78% referred the released client(s) to another licensee
- 24% continued to work with the released client as an unrepresented party
- 6% released both clients because one or more of the parties did not agree to the terms in the *Agreement Regarding Conflict of Interest Between Clients* form
- 5% released both clients without presenting the *Agreement Regarding Conflict of Interest Between Clients* form.

Survey respondents were asked about their personal experience of working with unrepresented parties since the agency and disclosure rules came into effect. Respondents indicated:

- 12% work with more unrepresented parties now
- 26% work with fewer unrepresented parties now
- 41% work with about the same amount of unrepresented parties as before
- 22% have not done any transactions since the new rules have come into effect.