



## RULE OF THE SUPERINTENDENT OF REAL ESTATE

### *Real Estate Services Act*

### **ANNOTATED VERSION**

The Superintendent of Real Estate orders that, effective March 15, 2018, the Rules made under the *Real Estate Services Act* are amended as set out in the attached Schedule.

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*(This part is for administrative purposes only and is not part of the Rules.)*

**Authority under which Rules are made:**

Act and section: *Real Estate Services Act*, S.B.C. 2004, c. 42, ss. 56 and 89.2

Other: Real Estate Services Regulation, B.C. Reg. 506/2004, s. 6.1.1

## SCHEDULE

**1** *The Rules made under the Real Estate Services Act, S.B.C. 2004, c. 42, by Minister's Order M417/2004, are amended in section 1-1 (1) by adding the following definitions:*

**cooperating brokerage** means a brokerage that provides trading services to or on behalf of a buyer in respect of a trade in real estate;

**designated agent** means one or more licensees designated by the licensee's or licensees' related brokerage as the exclusive licensee or licensees, of all of the licensees related to that brokerage, to provide real estate services to a client of the brokerage in respect of a trade in real estate;

**dual agency** means the representation, in respect of a trade in real estate, by the brokerage of the following:

- (a) both the seller and the buyer as clients;
- (b) both the lessor and the lessee as clients;
- (c) both the assignor and the assignee as clients;
- (d) 2 or more buyers, lessees or assignees, as the case may be, as clients who have conflicting interests in respect of the trade in real estate;

**listing brokerage** means a brokerage that provides trading services to or on behalf of a seller in respect of a trade in real estate;

**unrepresented party** means, in respect of a trade in real estate, a party to the trade in real estate who is not a client of a licensee for the trade in real estate.

### Superintendent Comments

Several definitions have been added as a result of the introduction of new rules dealing with dual agency, representation disclosures, and licensee remuneration. These definitions will standardize some of the terms introduced by these rules.

**2** *The following section is added:*

#### Administrative penalties

**2-23** For the purposes of section 56 (1) [*contraventions that may be subject to administrative penalties*] of the Act, contraventions of the following rules are designated as contraventions to which Division 5 [*Administrative Penalties*] of Part 4 of the Act applies:

- (a) Rule 2-17 [*mailing address for delivery*];
- (b) Rule 2-19 [*licensee must reply promptly to council*];
- (c) Rule 2-20 [*brokerage must give immediate notice respecting solvency*];
- (d) Rule 2-21 [*licensee must give notice of discipline, bankruptcy or criminal proceedings*];
- (e) Rule 2-22 [*brokerage must give notice of business changes*];
- (f) Rule 3-1 (3) [*managing broker responsibilities*], except as it relates to the maintenance of trust accounts;

- (g) Rule 4-1 [*display and keeping of licences*];
- (h) Rule 4-2 [*business signs required*];
- (i) Rule 4-3 [*restrictions relating to home and other personal offices*];
- (j) Rule 4-5 [*licensee names must be indicated*];
- (k) Rule 4-6 [*restrictions and requirements related to advertising generally*];
- (l) Rule 4-8 [*advertising in relation to specific real estate*];
- (m) Rule 7-7 [*annual financial statements, accountant’s report and brokerage activity report*];
- (n) Rule 8-1 [*financial records*];
- (o) Rule 8-2 [*trust account and general account records*];
- (p) Rule 8-3 [*pooled trust account records*];
- (q) Rule 8-3.1 [*preparation of records after termination*];
- (r) Rule 8-4 [*general records*];
- (s) Rule 8-5 [*trading records*];
- (t) Rule 8-6 [*rental property management records*];
- (u) Rule 8-7.1 [*strata management records*];
- (v) Rule 8-9 [*records must be kept up to date*];
- (w) Rule 8-9.1 [*electronic records*];
- (x) Rule 8-10 [*retention of records*];
- (y) Rule 8-11 [*brokerage obligations when winding up business*].

#### **Superintendent Comments**

As part of their discipline procedures, the Real Estate Council of British Columbia (the Council) may impose administrative penalties on licensees when they contravene designated rules. The list of rules subject to administrative penalties was previously designated by the *Real Estate Services Act (RESA) Regulation*. This change is a housekeeping matter and inserts the list of designated contraventions into the rules.

- 3** *Section 3-3.1 (2) (b) is amended by striking out “section 5-10 (a) [disclosure of representation and relationship in trading services]” and substituting “section 5-10 (1) [disclosure of representation in trading services]”.*

#### **Superintendent Comments**

This minor change is a consequential amendment as a result of changes being made to section 5-10 of the rules.

**4 Section 3-3.2 is amended**

**(a) by repealing subsection (1), and**

**(b) in subsection (3) (b) by striking out “section 5-10 (a) [disclosure of representation and relationship in trading services]” and substituting “section 5-10 (1) [disclosure of representation in trading services]”.**

**Superintendent Comments**

This minor change is a consequential amendment as a result of changes being made to section 5-10 of the rules.

**5 Section 5-1 (4) is amended by adding the following paragraph:**

(f.1) in the case of a service agreement for trading services that provides for a portion of remuneration to be paid by a listing brokerage to a cooperating brokerage, the following information:

- (i) if there is a cooperating brokerage,
  - (A) the remuneration to be paid by the seller to the listing brokerage,
  - (B) the remuneration to be paid by the listing brokerage to the cooperating brokerage, and
  - (C) the remuneration to be retained by the listing brokerage;
- (ii) if there is no cooperating brokerage, the remuneration to be paid by the seller and to be retained by the listing brokerage.

**Superintendent Comments**

This amendment will require listing agreements that provide for remuneration to be shared by a listing brokerage with a cooperating brokerage to include a standard term for specifying how much remuneration will be paid to the listing brokerage and the cooperating brokerage and a standard term specifying the amount of remuneration payable where there is no cooperating brokerage to the transaction.

**6 Section 5-8 (1) (a) is amended by striking out “except for disclosure under section 5-10 (b) [disclosure of representation and relationship in trading services] of these rules,”.**

**Superintendent Comments**

This amendment will require all disclosures to consumers under Part 5, Division 2 to be in writing. The change is being introduced alongside several new disclosures related to representation and licensee remuneration and will ensure consistency with how such disclosures under this Division are handled.

**7 Section 5-10 is repealed and the following substituted:**

**Disclosure of representation in trading services**

- 5-10** (1) Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose to the party whether or not the licensee will represent the party as a client.
- (2) A disclosure made under subsection (1) must be in a form approved by the council and include the following information:
- (a) the duties and responsibilities of licensees to clients and unrepresented parties;
  - (b) how to file a complaint about a licensee's conduct.
- (3) Unless a licensee solicits or receives information from a party about the party's motivation, financial qualifications or needs in respect of real estate, a disclosure to the party is not required under subsection (1) when the licensee is only
- (a) hosting an advertised open house, or
  - (b) providing factual responses to general questions from the party.

**Superintendent Comments**

Changes are being made to the current 5-10 rule to require disclosure regarding representation to be made to all consumers in a form approved by the Council. As part of the rule, licensees will be required to disclose whether they will be providing representation to a party as a client before providing any trading services. Licensees may host open houses and provide general factual responses to consumers without providing this disclosure, unless a licensee receives or solicits confidential information from the party as part of these activities.

**Disclosure of risks to unrepresented parties**

- 5-10.1** A licensee who makes a disclosure under section 5-10 (1) to an unrepresented party in respect of a trade in real estate while representing a client to that trade in real estate must also disclose, in a form approved by the council,
- (a) the risks to an unrepresented party of receiving assistance from the licensee due to the licensee's duties and responsibilities to the client of the licensee,
  - (b) the limited assistance that the licensee may provide to the unrepresented party, and
  - (c) a recommendation that the unrepresented party seek independent professional advice in respect of the trade in real estate.

**Superintendent Comments**

This is a new disclosure being implemented for licensees when working with unrepresented parties. The disclosure is supplemental to the revised 5-10 disclosure and is only required when a licensee already has a client to the trade in real estate and is providing services to an unrepresented party for that same trade. This disclosure will

inform consumers of the limited assistance that a licensee may provide to an unrepresented party as well as encourage consumers to seek independent professional advice.

**8** *The following section is added:*

**Disclosure to sellers of expected remuneration**

- 5-11.1**(1) When an offer to acquire real estate is presented to a seller by the seller's licensee, a licensee who is providing trading services to or on behalf of the seller must make a disclosure to the seller in accordance with this section.
- (2) The disclosure under subsection (1) must be in a form approved by the council and include the following information:
- (a) the remuneration to be paid by the seller to the listing brokerage;
  - (b) the remuneration to be paid by the listing brokerage to the cooperating brokerage, if applicable;
  - (c) the remuneration to be retained by the listing brokerage;
  - (d) any remuneration a licensee receives or anticipates receiving under section 5-11 (1) (a).

**Superintendent Comments**

A new disclosure is being introduced to ensure that sellers receive information from their licensee on the licensee's expected remuneration for every offer that is presented to the seller. The disclosure must include how the licensee's commission will be shared, if at all, as well as any other remuneration a licensee receives or expects to receive for that trade.

**9** *The following Division is added to Part 5:*

**Division 4 – Dual Agency**

**Restriction on dual agency in trading services**

- 5-16** (1) A brokerage must not engage in dual agency.
- (2) The designation of one or more licensees as a designated agent does not constitute dual agency under this section unless the licensee designated as the designated agent represents the parties referred to in paragraph (a), (b), (c) or (d) of the definition of "dual agency" as clients in respect of a trade in real estate.

**Superintendent Comments**

This rule prohibits the practice of dual agency. Dual agency, also known as limited dual agency, most typically occurs when a licensee represents both a buyer and seller, or two or more competing buyers, in a transaction. Designated agency does not constitute dual agency as long as the designated agent(s) represents only one party to the transaction.

### **Dual agency in under-served remote location**

- 5-17** (1) Despite section 5-16, a brokerage may engage in dual agency in respect of a trade in real estate if the real estate is in a remote location that is under-served by licensees and where it is impracticable for the parties to be provided trading services by different licensees.
- (2) Before providing any trading services that constitute dual agency, a licensee must
- (a) make a disclosure to each party, in a form approved by the council, that includes
    - (i) a statement of the brokerage, signed by the managing broker, clearly setting out the reasons why subsection (1) applies, and
    - (ii) the following terms and information:
      - (A) the duties and responsibilities of the licensee to the clients of the licensee in a dual agency relationship;
      - (B) the risks associated with a dual agency relationship, and
  - (b) enter into a written agreement of dual agency with each party under section 3-3.1 [*modification of duties*] after making a disclosure under paragraph (a).
- (3) A brokerage must provide the council with the disclosure made under subsection (2) (a) promptly after entering into a written agreement of dual agency under subsection (2) (b).

### **Superintendent Comments**

This rule provides for an exemption to the dual agency restriction (section 5-16) in remote locations that are under-served by licensees. Before practicing dual agency under this exemption, a licensee must make a disclosure in a form approved by the Council to both parties to the transaction. The disclosure must include information about the duties and responsibilities of the licensee to the clients, the risks associated with a dual agency relationship, as well as a signed statement of the brokerage explaining why the exemption applies. The signed disclosure must be submitted to the Council once a dual agency agreement is entered into.