The Office of the Superintendent of Real Estate is requesting feedback on proposed amendments to the Real Estate Rules (Rules).

Key proposed changes to the Rules include:

• expanding the list of designated contraventions that fall into the administrative penalty regime,
• updating the administrative penalty amounts,
• creating four separate categories of administrative penalties that have increasing penalty amounts corresponding to the level of public risk of harm, and
• consequential amendments to the definition of “accountant” in the rules based on changes to the Business Corporations Act and the Chartered Professional Accountants Act.

If made, the Superintendent intends that the rules proposed in Appendix 1 would come into force on December 1, 2020.

The Superintendent has rule making authority, and it is the role of the Real Estate Council of British Columbia (RECBC) to implement and enforce the Rules.

Corresponding draft RECBC Administrative Penalty Guidelines as well as a revised RECBC Publication Policy for Administrative Penalties are available [here](#).
The following proposed amendments are intended to come into force immediately upon signing by the Superintendent.

1. The Rules made under the Real Estate Services Act, S.B.C. 2004, c. 42, are proposed to be amended in section 1-1 by repealing the definition of “accountant” and substituting the following:

   accountant means

   (a) a person who is
   (i) a member of, or is a partnership whose partners are members of, a provincial or territorial institute of chartered accountants within Canada,
   (ii) a member of a provincial organization of chartered professional accountants within Canada, authorized by that organization to perform an audit,
   (iii) a professional accounting corporation as defined in the Chartered Professional Accountants Act, authorized by the Chartered Professional Accountants of British Columbia to perform an audit, or
   (iv) a registered firm as defined in the Chartered Professional Accountants Act, authorized by the Chartered Professional Accountants of British Columbia to perform an audit, or
   (b) as an alternative for a brokerage that is a reporting issuer within the meaning of the Business Corporations Act, a person who is authorized under the Securities Act to make an auditor’s report;

Superintendent’s Comments

The proposed amendment to section 1-1 would create a definition of “accountant” that is consistent with section 205 of the Business Corporations Act. Changes to the Business Corporations Act came into force in May 2018 that eliminated the Auditor Certification Board by repealing subsection 205(b). That change resulted from the unification of accounting designations in 2015 by the Chartered Professional Accountants Act. This proposed amendment will help ensure that the Rules continue to be consistent with relevant provisions of provincial legislation.

2. Section 2-23 is proposed to be repealed and the following substituted:

Administrative penalties

2-23 (1) For the purposes of section 56(1) [contraventions that may be subject to administrative penalties] of the Act, contraventions of the rules listed in subsection (2) are designated contraventions to which Division 5 [Administrative Penalties] of Part 4 of the Act applies.
(2) Designated contraventions of these Rules are divided into the following four categories of administrative penalty:

(a) Category A:
(i) 2-5 [residential brokerage offices];
(ii) 2-8.1 [educational requirements on renewal];
(iii) 3-1(3) (except as it relates to the maintenance of trust accounts) [managing broker responsibilities - accounts and records];
(iv) 5-2 [delivery of written agreements to clients];
(v) 5-4 [acceptance of offer];
(vi) 7-7 [annual financial statements, accountant’s reports and brokerage activity report];
(vii) 8-4 [general records];
(viii) 8-5 [trading records];
(ix) 8-5.1 [records related to referral fees received by a licensee];
(x) 8-5.2 [records related to referral fees paid];
(xi) 8-6 [rental property management records];
(xii) 8-7.1 [strata management records];
(xiii) 8-10 [retention of records];
(xiv) 8-11 [brokerage obligations on winding up business].

(b) Category B:
(i) 2-20 [brokerage must give immediate notice respecting solvency];
(ii) 2-21 [licensee must give notice of discipline, bankruptcy or criminal proceedings];
(iii) 2-22 [brokerage must give notice of business changes];
(iv) 2-22.1 [personal real estate corporation must give notice of business changes];
(v) 3-1(4) [managing broker responsibilities - notice to parties respecting deposits];
(vi) 3-2(2) [associate broker and representative responsibilities - keeping managing broker informed];
(vii) 3-2(4) [associate broker and representative responsibilities - supervision of employees];
(viii) 3-2(5) [associate broker and representative responsibilities - knowledge of improper conduct];
(ix) 3-3.2 [designated agency].

(c) Category C:
(i) 3-3(a) [act in the best interests of the client];
(ii) 3-3(b) [act in accordance with the lawful instructions of the client];
(iii) 3-3(c) [act only within the scope of the authority given by the client];
(iv) 3-3(d) [advise the client to seek independent professional advice on matters outside of the expertise of the licensee];
(v) 3-3(e) [maintain the confidentiality of information respecting the client];
Superintendent’s Comments:

Overall, the proposed amendments to administrative penalties, and the publication of RECBC Administrative Penalty Guidelines (Guidelines), are intended to lead to predictable outcomes for the resolution of most minor Rule contraventions. To fully understand the proposed changes, it is important to read the proposed rule changes in conjunction with the proposed Guidelines (link provided below).

All of the designated contraventions currently listed in section 2-23 of the Rules remain. The proposed amendment to section 2-23 of the Rules would expand the list of Rules where a contravention may be eligible for an administrative penalty. The expanded designated contraventions include some of the

(d) Category D:

(i) 2-17 [mailing address for delivery];
(ii) 2-18.1 [email address for licensees];
(iii) 2-19 [licensee must reply promptly to council];
(iv) 3-2(1) [associate broker and representative responsibilities - records];
(v) 3-2(3) [associate broker and representative responsibilities - prompt response to managing broker inquiry];
(vi) 4-1 [display and keeping of licences];
(vii) 4-2 [brokerage signs required];
(viii) 4-3 [restrictions relating to home and personal offices];
(ix) 4-5 [licensee names must be indicated];
(x) 4-6 [restrictions and requirements related to advertising generally];
(xi) 4-7 [false or misleading advertising prohibited];
(xii) 4-8 [advertising in relation to specific real estate];
(xiii) 8-1 [financial records];
(xiv) 8-2 [trust account and general account records];
(xv) 8-3 [pooled trust account records];
(xvi) 8-3.1 [preparation of records after termination];
(xvii) 8-9 [records must be kept up to date];
(xviii) 8-9.1 [electronic records].

(vi) 3-3(f) [disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate];
(vii) 3-3(g) [communicate all offers to the client in a timely, objective and unbiased manner];
(viii) 3-3(h) [use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring];
(ix) 3-3(i) [take reasonable steps to avoid any conflict of interest];
(x) 3-3(j) [if a conflict of interest does exist, promptly and fully disclose the conflict to the client];
(xi) 3-5 [duty to act with reasonable care and skill].
sections of the Rules that frequently appear in RECBC Consent Orders, such as the duty to act with reasonable care and skill.

Unethical conduct, such as a contravention of the duty to act honestly under section 3-4, or contraventions of the Rules related to disclosures or trust accounting will not be eligible for administrative penalties.

This proposed amendment also lays the foundation to create four separate groups of rule contraventions eligible for administrative penalties. The four separate categories are generally separated based on the risk of consumer harm and distinguished from each other by the penalty amount or method of penalty calculation. The penalty amounts are included in section 2-24 (below). The four categories are:

- **Category A** – matters are mostly characterized as business management infractions with low risk of harm to consumers and generally easily substantiated.
- **Category B** – generally minor matters with no or immaterial harm to consumers, and where imposing an administrative penalty is in the public interest.
- **Category C** – contains substantial duties licensees owe to clients and non-clients (e.g.: section 3-3 of the Rules).
- **Category D (daily)** – matters are mostly characterized as minor matters that present a low risk of harm to consumers, and which have a temporal element.

RECBC is responsible for enforcing licensee conduct requirements in the Rules, including exercising its discretion to determine whether the unique circumstances of a contravention of a rule designated in section 2-23 is appropriate for disposition by imposing an administrative penalty. To help guide the exercise of RECBC’s discretion, the criteria for a designated contravention to be eligible for an administrative penalty will be set in the proposed new Guidelines, a draft of which has been published for comment with these proposed Rules. In addition, the Guidelines set out RECBC’s process for levying an administrative penalty and the reconsideration process available.

The draft Guidelines are available [here](#).

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3  **Section 2-24 is proposed to be repealed and the following substituted:**

**Amount of administrative penalty**

2-24 (1) In respect of each contravention of a specified rule in Category A in section 2-23(2)(a) of these Rules the amount of administrative penalty is as follows:

- (a) $1,000 for a first contravention;
- (b) $2,000 for a subsequent contravention.

(2) In respect of each contravention of a specified rule in Category B in section 2-23(2)(b) of these Rules the amount of administrative penalty is as follows:

- (a) $2,500 for a first contravention;
- (b) $5,000 for a subsequent contravention.
In respect of each contravention of a specified rule in Category C in section 2-23(2)(c) of these Rules the amount of administrative penalty is as follows:
(a) $5,000 for a first contravention;
(b) $10,000 for a subsequent contravention.

In respect of each contravention of a specified rule in Category D in section 2-23(2)(d) of these Rules the amount of administrative penalty is as follows:
(a) A base penalty amount of:
   (i) $1,000 for a first contravention;
   (ii) $2,000 for a subsequent contravention; and
(b) $250 each day or part of a day on which the contravention of the specified rule continues to an amount not exceeding the maximum under section 56 of the Act.

**Superintendent’s Comments:**

This proposed amendment sets out the penalty amount or method of penalty calculation for each of the four separate categories of administrative penalty. The contraventions within each category are in section 2-23 (above).

This proposed amendment increases the penalty amounts for existing designated contraventions and establishes penalty amounts for the expanded contraventions.

In considering what penalty amounts would be appropriate for each category, we considered that the aim of administrative penalties is to encourage compliance and that the amount be a deterrent. Generally, the penalty amounts increase where a contravention could lead to an increase in the potential risk of consumer harm or could undermine public confidence in the real estate industry. For example, the contravention of any Rule in Category C (which contains all of section 3-3 of the Rules [*duties to clients]*) will generally lead to the highest administrative penalty amounts. The draft RECBC Administrative Penalty Guidelines (Guidelines) provide clear guidance on when a contravention would be eligible for an administrative penalty.

For a licensee who has contravened a specified rule, the draft Guidelines make the interpretation that after five years of full compliance, the record of the licensee “resets” for the purposes of establishing whether a new contravention of a specified rule is a first or subsequent contravention.

Under the draft Guidelines, an administrative penalty for a category D contravention would not be imposed until after the licensee has come into compliance, or after RECBC has declared any period for the licensee to come into compliance to be over, to enable RECBC to properly calculate the penalty amount based on the number of days the contravention continued. The Rules subject to daily penalties generally involve simple contraventions that can be remedied within a short period of time. The creation of a daily category can be a useful tool to gain compliance by providing licensees with incentive to rectify non-compliance quickly.

According to section 56(2) of the Act, the maximum amount of an administrative penalty that may be imposed for a contravention of a specified rule is $50,000. As a result, for a contravention of a Category
Duty to act honestly

3-4 When providing real estate services, a licensee must act honestly.

Duty to Act with reasonable care and skill

3-5 When providing real estate services, a licensee must act with reasonable care and skill.

**Superintendent’s Comments:**

This proposed amendment does not create any new requirements on licensees. The amendment separates two existing conduct requirements contained in section 3-4 of the Rules (the duty to act honestly and the duty to act with reasonable care and skill) into separate rules to simplify the application of the proposed new administrative penalty regime.

Section 3-5 is proposed to be designated as an administrative penalty eligible contravention and subject to the penalty amounts in Category C. As noted above, unethical conduct, such as dishonesty under section 3-4, is not eligible for an administrative penalty. Unethical conduct is considered too serious for disposition by way of an administrative penalty.