

# The Role of Managing Brokers in BC's Changing Real Estate Landscape

## Regional Roundtable Discussion Highlights: Prince George

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### Introduction/Background

In September 2018, the Office of the Superintendent of Real Estate (OSRE) conducted an information gathering survey regarding the role of managing brokers in BC's changing real estate landscape. Subsequently, OSRE organized a series of roundtable discussions with managing brokers in various communities across the Province. The purpose of the discussions was to gather further feedback about the issues, challenges and potential solutions identified through the information-gathering survey. The following report highlights the feedback gathered by OSRE from participants at the Prince George roundtable, held on November 22, 2018.

### Discussion Highlights: Supervision

Feedback regarding effective supervision:

- Participants indicated that effective supervision does not necessarily require individuals to be physically present in the same location.
- Participants identified the following components of effective supervision:
  - there is not a one-size-fits-all solution: what is considered to be “effective” depends on the situation. For example, it may include regular all-staff meeting and one-on-one meetings or a more flexible approach based on licensee needs and brokerage size;
  - managing broker availability: the managing broker needs to be available to assist the brokerage's related licensees. Most participants indicated that they are available around the clock;
  - relationships: in smaller brokerages, managing brokers have better opportunities to develop close professional relationships and trust with their brokerage's related licensees, which aids supervision;
  - managing broker knowledge and experience: the ability for managing brokers to solve complex problems and exercise sound judgement is based on their breadth of experience; and
  - brokerage policies, procedures, and tools: more could be done to assist smaller brokerages by providing additional tools and resources for their use (e.g. a brokerage policy manual template, and sample checklists for “deal files.”)
- The results of the information-gathering survey results indicated that many representatives want greater supervision from their managing brokers. Participants suggested disaggregating these results by years licensed - to get a better understanding of representatives' needs for supervision at different stages of their careers.

### Discussion Highlights: Providing Services Directly to Clients

Feedback regarding restricting managing brokers from providing services directly to clients:

- Participants indicated that it is a necessity for managing brokers at smaller brokerages to provide services directly to clients; they cannot afford a managing broker who does not also actively provide trading services to generate revenue for the brokerage.

- Participants also indicated that recent Rules changes have introduced additional potential conflicts of interest, including when managing brokers are actively providing trading services; this is difficult for small brokerages to navigate. Participants suggested considering the establishment of a corporation of “independent floating managing brokers,” possibly available through RECBC, to help resolve these situations.

## Discussion Highlights: Liability and Compliance

Feedback regarding liability for misconduct:

- Participants expressed concern about managing brokers having vicarious liability for licensee misconduct. Participants indicated that despite managing brokers’ best supervisory practices, misconduct still occurs (whether intentional or unintentional.) Participants reported anecdotal information that some managing brokers are choosing to leave the industry or downgrade their licence level due to this concern.
- Participants suggested that they need further guidance from RECBC on what is required for managing brokers to demonstrate that they have satisfied the requirement for “due diligence” when misconduct does occur, despite managing brokers’ best efforts to ensure compliance.
- Many participants indicated that making all licensees directly accountable for their conduct (e.g. through a single licensing model) will help to reduce errors and improve consumer protection. Participants recognized that this model could also present risks to consumers that would need to be considered (e.g. handling deposits, trust accounting, record keeping, guidance for new licensees).
- Other participants suggested softer approaches, such as expanding audits to consider individual conduct - not just brokerage records and trust accounts. It was suggested that a flag for this type of audit could include licensees who frequently transfer their licences to new brokerages, which could indicate misconduct. Participants also recognized that consideration should be given to ensuring due process to parties in this situation.
- Participants recognized that brokerage owners have already been restricted through legislative changes as to what activities they can undertake in relation to the brokerage’s operations (e.g. training, supervision).
- Participants suggested that additional qualification requirements could be placed on brokerage owners (e.g. “fit and proper” standards).
- Some participants suggested that managing brokers may need more support from RECBC to stand up to a brokerage owner when the owner’s motivation for profit conflicts with the managing broker’s regulatory duties.
- Suggestions for further exploration included:
  - approaches to increase individual accountability for misconduct (e.g. single licensing and individual conduct reviews as part of brokerage audits);
  - improvements to brokerage licensing processes (e.g. “fit and proper” standards for owners); and
  - additional supports for managing brokers (e.g. information regarding how the RECBC assesses whether a managing broker has performed “due diligence” in a complaint about a licensee’s conduct, and a description of roles and responsibilities that a managing broker and brokerage owner could use for discussion and reference when issues arise).

Feedback regarding the unique compliance challenges in Northern communities:

- participants identified that very small brokerages are having trouble managing the rising costs of compliance. Participants stated that this contributes to smaller brokerages closing

- and amalgamating with larger brokerages in order to share costs and hire sufficient administrative staff;
- participants indicated that in small towns, some managing brokers are concerned about the potential harm to professional relationships if they report misconduct, as well as potential liability for making allegations against other licensees. As a result, participants stated that managing brokers may be reluctant to report anything other than the most egregious cases of misconduct; and
  - participants discussed that a shortage of licensees in Northern communities can contribute to managing brokers “tolerating” misconduct, as there is a limited pool of licensees to employ.

### **Discussion Highlights: Pre and Post-Licensing Education and Qualifications**

Feedback regarding pre- and post-licensing education and qualifications requirements for managing brokers:

- There appeared to be general consensus among participants that the broker licensing course does not adequately prepare new managing brokers to perform their duties at a brokerage, and that the first year as a managing broker is very difficult.
- Participants’ views regarding the experience requirements for managing brokers were varied. Some participants indicated that the current experience requirement is insufficient. By contrast, other participants felt that the current experience requirement is appropriate and that individual suitability, skills, and professional networks are more important factors as to how well an individual will adjust to the job.
- Participants acknowledged that, in light of the aging demographics of current managing brokers, consideration should be given to ensuring that the qualification requirements to become a managing broker do not deter interested licensees from upgrading their licences.
- Participants suggested that regulators could consider developing an Applied Practice Course for prospective managing brokers and provide more practical information in the Brokerage Standards Manual to better support new managing brokers. In the absence of this kind of practical, clear guidance from regulators, licensees will look to others to fill the void (e.g. local real estate boards, peers). This can create risk for managing brokers and other licensees, if they follow incorrect advice.
- Participants also indicated that there may be lack of continuing education courses that meet the needs of managing brokers, and that more targeted content would be of benefit.
- Suggestions for areas that could be explored by regulators to better meet the continuing education needs of managing brokers included:
  - improvements to pre-licensing education and qualification requirements for managing brokers (e.g. increasing the minimum experience requirements to five or ten years of licensing experience and identifying an alternate basis to assessing “experience”, such as a minimum number of transactions);
  - targeted continuing education courses for managing brokers; and
  - sharing aggregated information with managing brokers on the outcomes of RECBC’s brokerage audits (e.g. most common contraventions, frequent challenges, best practices).

Feedback regarding pre and post-licensing education and qualification requirements for representatives:

- Generally, participants indicated that pre-licensing education needs to place a greater emphasis on practical application of course material. The Applied Practice Course was identified as a positive step in this direction.

- Participants indicated that affiliation with a franchise may also play a role in how much training and support is available to new licensees. According to participants, many independent brokerages do not have these kinds of services readily available to them.
- While most participants indicated that their brokerages provide training and have processes for orienting new licensees, some stated that they are aware of brokerages that do not do so.
- Participants were receptive to the idea of “train-the-trainer” approaches, in which managing brokers would be trained on new procedures and forms first and provided with materials that they could use in their brokerages. Some participants felt that this type of approach should be optional, if implemented.
- There was also discussion about reluctance among some licensees to take courses beyond what may be required by RECBC and/or as a condition of membership in industry associations.

### **Discussion Highlights: Teams**

Feedback on the supervision of teams:

- Most participants indicated that they have historically supervised very few teams, if any; those that they have supervised were typically made up of members with a familial relationship (e.g. parent-child, spouses). Participants reported that most teams have recently split up or are in the process of doing so, in response to recent Rules changes.
- Participants felt that the primary challenge in effectively supervising teams is that members may not know how to comply with regulatory requirements when duties to clients are shared among team members.
- Participants identified that one advantage of teams is the assurance that their clients’ needs will be covered by another team member should they be absent (e.g. illness, vacation).
- Although participants indicated that large teams do not currently exist in northern communities, they expressed concern about large teams operating quasi-independently from their brokerage - and there is confusion among team members about the respective responsibilities of the team leader and managing broker (e.g. licensees may go to the team leader for advice, team leaders may try to resolve consumer complaints without involving the managing broker.)
- Suggestions for further exploration included:
  - regulators providing clearer regulatory requirements and practice advice to licensees who are members of teams; and
  - regulators providing more general guidance for managing brokers and other licensees on how to manage absences.

### **Discussion Highlights: Issues in Rental Property Management, Strata Management and Commercial Real Estate**

Feedback regarding rental property management issues:

- None of the participants had experience with strata management.
- Participants provided similar comments about the job readiness of newly licensed rental property managers and regarding general licensee education. Some of the specific gaps identified by participants (e.g. landlord-tenant arbitration, how to provide notice to a tenant) may have been addressed when the rental property management licensing course was updated between 2016 and 2018.
- Some participants indicated that the new Rules may have the unintended consequence of discouraging licensees from providing rental property management services as a result of potential

conflicts of interest (e.g. licensees cannot talk to tenants about buying or investing in properties until they are no longer tenants of the landlord whom the licensee represents).

Feedback regarding commercial real estate:

- There was general consensus among participants that there are differences in how commercial and residential trading services operate, and that both consumers and licensees are at increased risk where licensees with limited knowledge of commercial transactions handle them anyway.
- There was discussion of whether a separate commercial real estate licensing category is required. Some participants were supportive of this idea while other participants indicated that there is not enough commercial business available in many Northern communities to justify becoming licensed as a “commercial specialist.” There was also discussion about whether additional education could be provided to address licensee knowledge gaps regarding commercial real estate.
- There was discussion about how the new Rules impact “commercial specialists,” including potential confusion about agency for buyers and sellers.
- Suggestions for further exploration included:
  - creating a new licensing category for commercial real estate; and
  - developing a “commercial basics” course as an alternative to commercial licensing.