

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

## Regional Roundtable Discussion Highlights: Victoria

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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 Victoria roundtable, held on December 6, 2018.

### Discussion Highlights: Supervision

Feedback regarding effective supervision:

- Participants expressed opposing views on whether effective supervision required individuals to be physically present in the same location. Generally, those who supported supervision from a distance emphasized the importance of communication technology and brokerages systems.
- Participants identified the following components of effective supervision:
  - a hands-on managing broker who reviews most, if not all, service agreements and contracts;
  - a managing broker who is available to assist the brokerage's related licensees, either in person or through the use of technology. It was noted that even with technology, it is challenging to be available the same hours as the brokerage's related licensees are working;
  - support from well-trained unlicensed staff (suggestion for accreditation or certification of administrative staff) who can assist with paperwork, receipt of deposits, records, and accounts;
  - high quality relationships between managing brokers, the brokerage's related licensees, and unlicensed staff. Managing brokers should know and trust the brokerage's related licensees, as well as know their weaknesses. This was viewed as being easier to accomplish at smaller brokerages, including those that practice rental property management, strata management, and commercial real estate, which are generally smaller by nature;
  - proper business practices and brokerages systems; and
  - the careful use of delegation (e.g. an in-house chartered professional accountant may have some supervisory duties over unlicensed support staff).
- Some managing brokers indicated that better educated licensees, particularly through improved pre-licensing, require less supervision.
- Participants indicated that the ability of managing brokers to effectively supervise is limited when they are unable to detect issues before the brokerage's related licensees bring issues to their attention.
- Many participants felt that managing brokers should not be required to be physically present at the office for a certain amount of time because the brokerage's related licensees are often not in the office themselves.
- Participants identified the following challenges to supervision and direction by a managing broker, particularly in relation to trading services:

- licensees are generally independent contractors;
  - some licensees believe they can influence brokerage decisions, in light of their ability to generate revenue for the brokerage;
  - the current mentality and business model in the industry is that brokerages' related licensees can work from their basements and not be accountable to anyone; and
  - licensees can easily transfer to new brokerages. To this end, some participants suggested that before an application to transfer brokerages is processed, the current managing broker should be notified and RECBC should consider how the transfer affects consumer protection. Also to be considered is whether the purpose of the transfer is to move to a brokerage that is less stringent to escape a managing broker who requires regulatory compliance.
- Some participants felt that it is easier to provide effective supervision at brokerages that practice solely in the areas of rental property management, strata management, and commercial real estate; the individual licensees in these types of brokerages tend to work closer and more collaboratively to serve the clients of the brokerage.
  - Some participants felt that there is opportunity to change the industry model to one where managing brokers have authority to determine what the conduct requirements are for independent contractors associated with their brokerage.

Feedback regarding regulatory requirements for mandatory office meetings:

- Some participants felt that a regulatory requirement for mandatory office meetings is unnecessary. However, if it is mandated, participants suggested it should apply to all brokerages equally.
- Participants indicated that several brokerages hold regular/weekly meetings and training sessions. Some brokerages make meetings mandatory and have better attendance than those offering optional meetings. Other brokerages provide virtual training that is well "attended" by their related licensees.
- Managing brokers identified that different approaches work for different brokerages (e.g. online versus in-person meetings, and one-on-one meetings for all of the brokerage's related licensees versus only new licensees).
- Some participants indicated that brokerages practicing rental property management, strata management, and commercial real estate often have impromptu regular office meetings, as the managing broker and their related licensees are more likely to attend the office on a regular basis. Participants from these types of brokerages observed that as issues arise and are resolved, they are generally discussed with everyone at the brokerage.

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

- Participants indicated that some brokerages already have policies stipulating that managing brokers cannot compete with their related licensees. Non-trading managing brokers have an advantage in being able to support licensees, as they are not in competition with them. Having a non-trading managing broker also works well in brokerages with a commission split model. However, there is generally not enough compensation for many (small) brokerages to have non-trading managing brokers.
- In contrast, some participants indicated that managing brokers are able to remain current in their skills and in providing advice to their related licensees by having recent field experience.

- Some participants have observed that managing broker competition with other licensees at the brokerage is not generally an issue for brokerages that practice rental property management, strata management, and commercial real estate, as they often work more collaboratively to serve the needs of clients.

Feedback regarding restricting the number of licensees a managing broker can supervise:

- There was mixed reaction to the idea of limiting the number of licensees. Participants felt that limiting the number of licensees:
  - raises managing broker compensation and shortage issues;
  - would have significant implications for part-time licensees;
  - may be detrimental to new licensees, as managing brokers would prefer to work with experienced licensees; and,
  - would help to maintain strong supervision and retention of licensees through personal relationships and culture.
- Some participants felt that the issue is more related to the number of transactions, which cannot be effectively regulated.
- Participants indicated that some managing brokers can effectively supervise a large number of licensees, while some cannot effectively supervise a small number of licensees. Factors influencing the capacity of managing broker to effectively supervise may include:
  - whether they are providing services directly to clients;
  - the level of their own, and the brokerage’s related licensees’ experience; and,
  - the amount of other supports within the brokerage to help them fulfill their regulatory responsibilities.
- Some managing brokers suggested that it would be difficult for any of them to supervise 200+ licensees and to know and trust every licensee under their supervision, especially where the brokerage’s related licensees are spread across several offices. However, some participants countered that larger brokerages generally generate few complaints to RECBC per licensee than small brokerages.
- Managing brokers who work in rental property management, strata management, and commercial real estate indicated that their brokerages are generally smaller by nature, and neither a restriction on the maximum number of licensees working at a specific brokerage nor a particular ratio would change the current level of supervision. These participants also identified the existence of a shortage of rental property management and strata management licensees, and indicated that there is a desire not to have additional regulation that would further discourage people from entering these areas.

## Discussion Highlights: Liability and Compliance

Feedback regarding where to place the liability for misconduct:

- Many participants felt that there should be a greater focus on prevention; in part, this can be addressed through raising education standards for all licensees and with greater support from RECBC.
- Generally, participants indicated that representatives and associate brokers need greater liability, especially in trading services brokerages where they are often independent contractors who should, due to the nature of the employment relationship, be responsible for their own conduct.

- Many participants indicated that managing brokers generally have a reactive role. It was suggested that when it comes to apportionment of liability, RECBC needs to consider what level of involvement the managing broker had in the misconduct and whether there was failure to act properly in response to learning of misconduct.
- Several participants expressed concern that RECBC is not conducting investigations of misconduct in a procedurally fair manner (e.g. very black and white, no consideration of the nuances of the situation, and no time limit on pursuing complaints). Participants also indicated that there is a lack of understanding among licensees as to how discipline will be pursued and how the new penalty regime will be applied.
- Many managing brokers expressed a desire for more responsiveness to misconduct when it is detected. Some managing brokers have observed improvements in RECBC's compliance work in the last four years.
- There was a discussion about some managing brokers being reluctant to report misconduct by the brokerage's related licensees to RECBC because they are concerned about vicarious liability. Additionally, participants identified that concerns over vicarious liability may also contribute to reluctance by managing brokers to contact RECBC for advice.
- Some participants suggested that the fear that comes from vicarious liability can be mitigated through the ability of managing brokers to purchase insurance coverage. Participants also indicated that several brokerages include indemnity clauses in their contracts with their related licensees.

Feedback regarding restrictions or responsibilities on brokerage ownership:

- Some managing brokers believe that unlicensed brokerage owners should have some level of liability. However, some participants identified disadvantages to increasing the liability of brokerage owners, including that it pushes the liability further away from the individual who is responsible for the misconduct - and may result in the closure of some brokerages. Some participants suggested that unlicensed brokerage owners should be kept at arm's length from certain brokerage operations (e.g. the provision of real estate services) or have increased pre-qualifications or requirements for owners planning to be involved in day-to-day operations. However, several participants considered that the current restrictions on the level of permitted involvement of a non-licensed brokerage owner may be sufficient to protect the public.
- Some managing brokers noted that unlicensed ownership does not necessarily lead to operational involvement or interference.
- Participants identified that there are benefits to brokerage owners who properly understand the industry, which can be fostered through education provided to owners about the regulatory regime.
- Some managing brokers suggested that restrictions or requirements on unlicensed owners should be considered further in the context of brokerages where unlicensed ownership has led or contributed to issues.

Feedback regarding moving towards a single licensing framework:

- Some participants felt that single licensing would make licensees more accountable, require brokerage models to restructure, and, be valued for the services it provides (e.g. trust accounting, records, training).
- Many managing brokers felt that a move to single licensing would require a significant increase in education for all licensees (e.g. equal to that of managing brokers) and raise the standards for ongoing education (e.g. regular re-licensing competence test).

- Some participants suggested that single licensing would look different in the residential trading services context than it would in other areas of real estate.

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

Feedback regarding the education and training needs of managing brokers:

- There was general agreement among participants that the two years of industry experience and the managing brokers' licensing course do not adequately prepare new managing brokers to perform their duties at a brokerage, including how to solve problems. Participants indicated that the managing broker course does not prepare a person to function as a managing broker and the accounting content is out of date. New managing brokers need more guidance and supports.
- Several participants indicated that existing managing brokers do not receive sufficient training, including on changes to various enactments (e.g. *Residential Tenancy Act, Homeowner Protection Act, Rules*), making it difficult to fulfill their responsibility to train the brokerage's related licensees.
- Participant suggestions that could be explored by regulators to better support new and existing managing brokers:
  - more scenario-based learning in the managing broker course;
  - more supports specific to managing brokers, including a re-licensing program specific to managing brokers;
  - expand RECBC's Knowledge Base;
  - provide a framework for what should be included in brokerage policy manuals; this would also assist in building consistent standards across the province;
  - add benchmarks for managing broker remuneration based on a variety of factors (e.g. brokerage size, license category, region);
  - there was consensus that it would be worthwhile to add a practical component to new managing broker education, such as an Applied Practice Course (APC) or mentorship program; managing brokers are lucky if they get to be mentored by another, experienced managing broker with good management systems;
  - consider whether individual licensees need to complete an APC (e.g. exemption for people with significant applicable experience, such as former lawyers or accountants);
  - Have the managing broker course focus more on conflict resolution, communication skills, deal review and compliance, how to train/mentor others, and where to go for help; and
  - help to establish regular managing broker forums, specific to each practice area (e.g. residential trading, commercial trading, etc.), to review and discuss major problems of the day and RECBC's expectations.
- Participants indicated that better education and training for managing brokers may help attract new managing brokers.
- There was a discussion at one of the tables that the Real Estate Errors and Omissions Commission is an under-utilized resource; it may be able to provide assistance to help avoid future claims.
- Managing brokers indicated that they generally want more ongoing educational opportunities specific to their needs.
- Participants indicated that managing brokers should be given education on upcoming changes well in advance of rules or legislation coming into force, in order to be able to train their related licensees; "train the trainer" programs are a good idea if properly executed and could include training among managing brokers (not just licensees at their own brokerage).

- There was discussion that experienced managing brokers know that RECBC's *Professional Standards Manual* and *Brokerages Standards Manual* are great resources, and they are free and available to everyone online.
- A participant felt there is currently no point in having an associate broker recognized by the *Real Estate Services Act* (RESA), and it only serves to confuse the public as to who has power to commit the office, who to make a complaint to, etc.

Feedback regarding the role of managing brokers in the training and development of other licensees:

- There was general agreement among participants that the content of the pre-licensing course for all categories of license should be improved.
- Many participants indicated that having an APC for trading services is good progress; however, some participants felt that the pre-licensing course for trading services licensees should be two years, and up to one year for the APC or practicum component.
- Several managing brokers indicated they would like to have the option of seeing the licensing course materials, especially the materials for the trading services APC. However, participants expressed conflicting opinions on the level of direct involvement managing brokers should have in the education and training of new licensees, and there is varying experience among managing brokers as to how much new licensees include them in the APC. For example, some managing brokers are not as involved and, subsequently, unaware about which stage their related licensees are at, compared to other managing brokers who are heavily involved. Participants indicated that, in part, the level of involvement depends on the brokerage's business model.
- Some participants identified that not all managing brokers have the proper skillset to be trainers or mentors and may need to look outside of brokerages to get that support. In addition, participants identified that managing brokers do not have enough time to be training new licensees and providing mandatory sessions. Some participants felt that RECBC is responsible to ensure individual licensees are competent, and that it is inappropriate to expect brokerages to fulfill this responsibility.
- Other participants observed that, in previous business models, part of the funds paid by representatives and associate brokers to the brokerages were to fund training; now desk fees are generally not sufficient to cover training costs.
- Some participants suggestions:
  - in order to bring on new licensees, a brokerage should be required to satisfy the regulators that they have a training program in place;
  - develop an APC course for each of the other license categories (rental, strata, and potentially commercial) in a format similar to the *Rule Changes: Agency and Disclosure Course*; and
  - if minimum levels of annual training are not provided by a brokerage, then licensees should "buy" it elsewhere (e.g. British Columbia Real Estate Association).
- Some managing brokers felt it was good practice to require their related licensees to attend training, either in-house or third-party seminars, above and beyond minimum requirements of RECBC and local real estate boards- and to include both licensed and unlicensed staff in such training sessions.
- Some managing brokers acknowledged that in the areas of rental property management and strata management, it may be difficult to create cost effective courses focused on these areas, as rental and strata licensees represent such a small proportion of all licensees in the province.

- Other participants noted that the Condominium Home Owners Association of BC (CHOA), the Professional Association of Managing Agents (PAMA), and the Strata Property Agents of BC (SPABC) are helpful sources of education programs for both unlicensed and licensed staff in the areas of rental and strata, including specific training on the *Strata Property Act*, the *Residential Tenancy Act*, etc. Some participants suggested that more licensees may be encouraged to attend these and other relevant courses if RECBC recognized them as part of re-licensing requirements.
- Representatives and associate brokers can easily make time for training through setting client expectations that they are not going to be available on a certain day for training; this is particularly easy for those licensed in rental property management and strata management, yet still broadly applicable to all areas of trading services (residential and commercial).

Feedback regarding the education, training, and development of representatives and associate brokers:

- Many participants felt that consumer protection is linked to the quality of education of all licensees, and that deficiencies in education have been a long-standing issue. However, some participants felt that higher educational standards do not necessarily result in more ethical behaviour.
- Many participants identified a disconnect between the educational requirements for new licensees and the skills required to be effective in the industry. Additionally, managing brokers identified that the lack of preparedness of new licensees who enter the industry strains existing managing brokers.
- Participant suggestions for further exploration related to education and development of representatives and associate brokers:
  - new licensees should be taught how and where to look up information and resources, and who to contact at RECBC;
  - there should be a greater emphasis on education and reduced emphasis on discipline;
  - there needs to be more continuing education requirements from regulators, and clear requirements or direction as to content (often courses by BCREA or the Legal Update are focused on Vancouver and lack relevance to other regions);
  - it is important to have remote education options available;
  - larger brokerages can conduct several small group training sessions;
  - there should be more education on what good practices look like; and
  - everyone should have a similar understanding. Licensees are likely to make mistakes if left to use professional judgement without clear interpretations and boundaries (e.g. even two experienced managing brokers can have completely different opinions on how to handle the same situation).
- Some participants felt that more education contributes to greater standardization and consumer protection that cannot be properly achieved through regulation alone.
- Some participants expressed concern that the new English Language Proficiency (ELP) requirement is too high for people who have graduated from English speaking Canadian high schools, and that licensees should learn the language of real estate through the licensing courses.
- Several participants suggested there should be more consumer education about issues specific to all licence categories.

## Discussion Highlights: Teams

Feedback generally on teams:

- Participants indicated that the prominence of teams has grown as a means to:

- increase work-life balance among individual licensees and provide holiday relief;
- provide guidance and support no longer being provided by brokerages, which is often associated with the rise of 100% commission models as licensees no longer pay the brokerage to provide training; and
- provide a better, more competitive consumer experience.
- Participants also identified that teams often share referrals like franchises, and have their own dynamics and cultures.
- Some participants suggested that there should be a more developed definition around what constitutes a team and better guidance - for individual licensees who may be in an undisclosed team (e.g. consistent referral sharing).

#### Feedback on the supervision of teams:

- Managing brokers expressed some concern that they are accountable for misconduct that occurs within a team, but have limited control over teams.
- Participants noted that teams that operate like a mini brokerage can pose a challenge for managing brokers (e.g. when team members approach the team leader with issues instead of the managing broker.) However, some participants indicated that most supervisory issues can be addressed through good communication and proper brokerages policies instead of through increased regulation (e.g. some brokerages have banned teams from having separate offices).
- Some participants suggested that any teams that create their own policies, systems, and procedures should ensure that they are consistent with those of the brokerage.
- Participants observed that in smaller brokerages, the managing broker generally knows who the team members are and who the team leader is.
- Participants also indicated that there is a lack of guidance with respect to teams and what RECBC's expectations are in terms of who should be named on contracts, disclosures of representation, and remuneration.

#### Feedback on regarding limitations to team size:

- Some participants identified that large teams can be powerful and may try to manipulate managing brokers.
- Participants also identified that the less tolerant trading services licensees are to risk, the less likely they will be part of a larger team - to avoid being part of every other team members' contracts.
- Some participants felt that in the current environment, it may be sensible to informally cover holidays and share referrals rather than to form teams, and that a slow market will reduce the number of teams.

#### Feedback on team leader qualifications:

- Participants identified that how a team performs, and whether they engage in misconduct, will depend largely on the culture established by the team leader.
- Some participants indicated that team leaders should have experience and a good reputation.
- Participants identified that the managing broker's supervisory load can be eased when a knowledgeable and ethical trading services licensee becomes a team leader - and starts to train team members to be knowledgeable and ethical.

- Participants also identified that it is not necessary to require team leaders to be licensed, as associate brokers do allow managing brokers to delegate duties to team leaders.
- Some participants indicated that the focus should be less about qualifications and more about accountability; individual trading services licensees need to be accountable for their actions.

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

Feedback from participants who sat at the table comprised of licensees who predominately practice in the areas of rental property management, strata management, and commercial real estate has been included throughout the above discussion highlights. Additional feedback from all tables that was specific to rental property management, strata management, and commercial real estate is summarized below.

Generally, the rental property management, strata management, and commercial real estate participants expressed:

- that they would appreciate more optional policies and procedures being available to them;
- disappointment and frustration that their areas do not get more consideration from regulators, and observed that property management brokerages, in particular, are likely to have more consumer funds in trust than most residential trading brokerages; and,
- that residential trading services rules should be kept separate from rental, strata, and commercial.

Feedback regarding commercial real estate:

- There was debate among participants regarding whether commercial real estate should be its own licensing category distinct from residential. However, some participants felt that if new licensing categories are created in RESA, there should be consideration to the differences between selling and leasing.
- Some participants indicated that commercial real estate licensees should have distinct minimum education requirements.
- There was discussion about whether the level of client sophistication changes a licensee's ethical obligations to clients, and whether a "sophisticated clients" designation is necessary.
- Some participants expressed concern that several commercial brokerages do not provide clients with proper remuneration disclosures with respect to the sharing of commission, or sharing of information in general.
- Participants also expressed concern that some commercial brokerages fail to act in the best interests of their clients, as they refuse to give licensees from other brokerages information on a listed property.

Feedback regarding strata management issues:

- Some participants felt that there should be more consumer education and guidance, with respect to the role of strata management licensees, to be shared with clients and owners, as well as specific explanation with respect to sectioned developments.
- Participants identified that dealing with sectioned developments represents a huge conflict of interest, similar to dual agency, as commercial owners have different interests than residential owners. Unfortunately, it is not economically feasible for most sectioned strata developments to

have different strata management brokerages representing the commercial section, the residential section, and the strata council itself. Participants suggested that to help solve this issue, government should not allow new strata developments to be sectioned.

- Participants identified that strata management brokerages can run into significant difficulties when a strata council changes from one brokerage to another.
- Some participants suggested that, in an ideal world, RECBC would alert and train strata management licensees regarding changes to legislation that impact them, such as changes to the *Strata Property Act*, before RECBC pursues discipline action in relation to any such changes.
- Participants identified that there are consumer protection concerns when strata management brokerages use telephone answering service instead of licensees to respond to after-hours emergency queries.
- Some managing brokers identified that the conflict of interest that arises by a building maintenance division of a strata management brokerage can be managed with informed consent, although it may be difficult to ensure consumers are being properly informed before giving their consent; such models are rare on Vancouver Island and on the Gulf Islands.
- Participants felt that there is a lack of disclosure by strata management brokerages for questionable remuneration models (e.g. partial commission kick-back from insurance brokerage).

Feedback regarding rental property management issues:

- Participants indicated that residential tenants are protected under the *Residential Tenancy Act* and, as a result, the disclosure of representation form is not helpful. However, participants felt that rental property management licensees should disclose who they work for at some point.
- Some participants also indicated that the new Rules are making properties managed by rental property management licensees less competitive - compared to properties being rented out and managed directly by private owners.