

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

Regional Roundtable Discussion Highlights: Written Submissions

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. OSRE also invited managing brokers to make written submissions on the roundtable discussion topics, regardless of whether they are able to attend a session in person.

OSRE received 10 written submissions from managing brokers between November 16, 2018 and December 21, 2018. These managing brokers represented brokerages of a range of sizes and geographic regions, including Interior BC, northern Vancouver Island, Victoria and the Lower Mainland. These managing brokers were predominately licensed in relation to trading services and practiced in residential and commercial areas. In addition to sending in written submissions, approximately half of the managing brokers also attended a roundtable discussion in-person. No written submissions were received from any of the local real estate boards or the various industry associations (i.e. SPABC, PAMA, BCREA).

Much of the feedback received through written submissions echo the sentiments of managing brokers who attended the regional roundtables and is generally captured in one or more other summaries. The summary below focuses on the suggestions and feedback which were not heard as often at the regional roundtables or were novel or unique to the written submissions.

Submission Highlights: Supervision

Feedback regarding effective supervision:

- Despite advances in technology, for managing brokers to be able to effectively supervise related licensees in multiple offices or through virtual brokerages, managing brokers must be knowledgeable about the geographic region where services are being provided. Otherwise, the managing brokers' ability to provide effective guidance and training is diminished.
- Some managing brokers suggested that supervisory challenges related to the distance of a managing broker from their related licensees and lack of local knowledge could be improved by:
 - limiting the distance between a managing broker and the brokerage office(s) and related licensees; and
 - encouraging brokerages to develop business models that use associate brokers as regional managers.
- Some managing brokers suggested that they would be able to provide more supervision, training and guidance to related licensees if there was greater collaboration among government agencies to reduce the collective demands their respective requirements have on managing brokers' time
- Some managing brokers observed that there has been a rise in problematic business practices and models in the industry and suggested that the market should be allowed correct the development of such business models without regulatory intervention.

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

- There were several views that effectively supervising a large number of licensees can be very challenging and imposing a restriction of this type would help ensure that managing brokers' workloads are manageable and reduce the potential for conflict between brokerage owners and managing brokers.
- Considerations that regulators should explore further in relation to a restriction on the number of licensees supervised by managing brokers include:
 - the characteristics of the individual licensees in any particular brokerages (e.g. experience of related licensees and experience of managing broker(s); and
 - flexibility in the design of the restriction to allow managing brokers to demonstrate that they can effectively supervise more related licensees (e.g. by providing supervisory plans, brokerage policies and procedures, demonstrate brokerage infrastructure will assist the managing broker to fulfill all duties).

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

- Such a restriction would eliminate the competition between a managing broker and related licensees as well as prevent conflicts of interest that can arise from a managing broker representing one party in a transaction and a related licensee representing another party in the same transaction.
- Some managing brokers also noted that a restriction would also make managing brokers more available to help resolve issues of all clients of the brokerage and promote effective brokerage supervision.
- Some managing brokers indicated there are advantages to managing brokers being allowed to provide services directly to clients, as noted in other roundtable summaries.

Submission Highlights: Liability and Compliance

Feedback regarding where to place the liability for misconduct:

- A managing broker and brokerage should not necessarily be liable for the misconduct of a related licensee.
- There should be great care in apportioning liability to ensure that there are still people willing to take on the role of a managing broker.
- In brokerages with more than one managing broker or related licensee acting as a delegated supervisor, related licensees can receive conflicting advice and it can become difficult to apportion liability.
- Managing brokers may not have the power to make changes within a brokerage to minimize non-compliance if such changes conflict with the vision of brokerage ownership.
- Some managing brokers suggested that tools should be developed for managing brokers to leverage their position in case of conflicting values with brokerage ownership.

Feedback regarding a single-licensing model:

- In support of single-licensing, respondents noted that such a model would:
 - ensure individual licensees are responsible for misconduct and pay their own penalty;
 - result in a higher standard of conduct and accountability for all licensees; and
 - all deposits should be held by a party's conveyancer and not handled by trading services licensees.

- Some of the concerns noted by managing brokers about such a model were that:
 - there would be an increased focus on transaction volume leading to a decrease in consumer protection;
 - individual licensees would not know where to go for advice and would fear that doing so may be used against them later in civil or regulatory proceedings;
 - managing brokers represent a valuable resource and there would be a rise in non-compliance without supervision and management;
 - it would be difficult to separate the supervisor from the individual licensee who breach the *Real Estate Services Act (RESA)*, Regulations or Rules;
 - there would be a rise in commission disputes and arbitration; and
 - there would be a reduction in the number of licensees, negatively impacting brokerages, real estate boards and other entities related to the industry.

Feedback regarding complaints resolution processes:

- Writers noted that non-compliance becomes an acceptable business risk to unethical licensees if enforcement is considered to be insufficient and not seen to be proactive.
- Some managing brokers expressed that penalties imposed for misconduct that pre-dates the 2016 RESA amendments were inadequate to deter contraventions or the promote consumer confidence in the industry.
- Some managing brokers noted that the maximum fines in RESA post-2016 amendments are too high and if imposed would cause financial hardship on individual licensees and could force a brokerage to close. At the same time, some managing brokers also noted that it remains to be seen how penalties will be assessed under the new wider range.
- The written submissions also noted that having a real estate licence is a privilege and not a right and the penalties imposed for contravention should send a clear message to the public and licensees that misconduct will not be tolerated.
- Some managing brokers observed that there are many industry incentives that favour potential income generation over ethical behaviour and that regulators and industry itself should find ways to reward ethical behaviour.

Submission Highlights: Pre- and Post-Licensing Education and Qualifications

Feedback regarding education and qualifications for managing brokers:

- Similar to the feedback received at the regional roundtables, writers provided general feedback that the current education and qualifications requirements for managing brokers are too low and does not adequately prepare a person for the responsibility of the role.
- Suggestions for improvements included:
 - increase the experience requirement (e.g. 5 years) to become a managing broker;
 - incorporating mentorships or apprenticeship into managing broker training;
 - add practical assignments to be completed within the brokerage before receiving “final” managing broker licence; and
 - create specialized re-licensing courses to reflect the daily activities of managing brokers (including those outside of large urban settings), and focus on how to improve performance and add an examination or evaluation to test acquisition of re-licensing course content.

Feedback regarding education and qualifications for representatives:

- Consistent with the general feedback from regional roundtables, managing brokers who wrote in indicated that the pre-licensing course does not adequately prepare new individual licensees and that recent graduates do not understand the regulatory framework. Writers suggested that raising the bar for entry would minimize future compliance issues and improve public confidence and trust in the industry.
- Writers indicated that managing brokers have to develop their own tools and resources to teach related licensees about the regulatory framework and compliance issues, adding to the burden of managing brokers.
- Revised pre-licensing education requirements and entry qualifications could include:
 - harder course and examination, that includes short-answer questions (versus multiple choice) to help measure comprehension;
 - added entry-level content on creating a business plan and financial management;
 - additional educational pre-requisites prior to enrolling in the pre-licensing course, such as requiring applicants to have completed a business course or completion of a minimum two year diploma or demonstrable equivalent experience;
 - have six months or longer apprenticeship for new licensees of all categories;
 - create a graduated licensing program; and
 - establish minimum mandatory in-house and external training for the first two years.
- Revisions to re-licensing processes could include:
 - examinations or quizzes with short-answer questions to help measure comprehension;
 - random audits of online participants;
 - more in-depth course content relevant to different licence categories and across the province, including:
 - specific reasons for many conditions precedents;
 - strata developments;
 - issues affecting a licensee’s ability to properly represent a client;
 - creating a business plan; and
 - financial management;
 - require all individual licensees to submit a current criminal record check with their renewal application.

Submission Highlights: Teams

Feedback regarding supervision of teams:

- Managing brokers indicated that numerous issues arise with teams, particularly those operating as mini brokerages, including:
 - teams operating at a site away from the main brokerage, impacting the ability to actively supervise related licensees;
 - team members going to their team leader for guidance and advice instead of the managing broker;
 - team leaders who hire licensees to join the team;
 - team leaders who believe their training takes priority over brokerage training;
 - the needs of the team coming before the needs of the brokerage;
 - teams causing consumer confusion through advertising and branding; and
 - managing brokers are reluctant to enforce compliance measures on large teams in order to retain the related licensees.

- Some managing brokers indicated that business practices at some small brokerages effectively mean that they provide brokerage agency, while claiming to practice designated agency. These individuals indicated that this issue presents a bigger concern than the conduct of teams. Additionally, many teams have chosen to disband, making them less of a concern, as a result of the rules that were effective June 15, 2018.
- Potential solutions to these challenges of teams could include:
 - require teams to operate out of the brokerage office or restrict the ability of teams to operate external offices, including a requirement that they be advertised as a branch of the brokerage;
 - allow each brokerage to assess and address any issues that raise from teams and whether to continue allowing teams within their brokerage;
 - increase scrutiny of teams by the regulator, such as an audit process that would focus on ensuring teams are functioning as an advertising vehicle (as contemplated by the regulatory framework) and not functioning as a mini brokerage; and
 - increase consumer awareness about the differences between brokerages and teams.

Submission Highlights: Issues Related in Rental Property Management, Strata Management and Commercial Real Estate

Feedback regarding issues in commercial real estate echoed that provided at regional roundtables, particularly the morning session in Vancouver, about separate education and licensing requirements for licensees who practice in commercial real estate and the creation of a “sophisticated client” designation. Novel feedback was provided in the written submissions in terms of criteria for designating someone as a sophisticated client, such as:

- A controlling shareholder of a registered Canadian corporation; and/or
- Has an advisory team, including legal counsel and a Chartered Professional Accountant, in place that is assisting with negotiating, documenting and conducting due diligence for the transaction.

Feedback regarding issues in rental property management services:

- Some managing brokers indicated that the disclosure of representation is unnecessary for residential tenancies, which are governed by the *Residential Tenancy Act*.

Submission Highlights: Other Matters

The written submissions also contained feedback on several other matters that are generally outside of the scope of this project. Feedback received through the written submissions on other matters included:

- Suggestions related to the structure and location of staff from OSRE and the Real Estate Council of British Columbia (RECBC);
- Changes to the regulatory framework to:
 - require all contracts with unrepresented parties to include a condition precedent that the unrepresented party obtain independent legal advice on the contract;
 - broadly allow limited dual agency;
 - require builders and developers to hold licences;
 - remove the designation of associate broker (current associate brokers would be recognized as representatives under the regulatory framework, and could self-promote as “Broker Qualified”); and
 - make completing Property Disclosure Statements mandatory and impose consequence in cases of misrepresentation;

- Suggestions related to industry organizations and associations:
 - mandate that all PDP requirements be completed in person, which would allow licensees to gain more from in-person discussions with colleagues and teachers;
 - find ways to reward ethical behaviour, rather than unethical behaviour;
 - create insurance policies for managing brokers;
 - reduce duplication in education offered by different providers; and
 - find and implement solutions to the compensation issues for managing brokers to ensure that the best candidates are attracted to the position.

While this feedback generally is beyond the scope of the managing broker project, it may be considered as part of one or more other projects or shared with other entities, as appropriate (e.g. some feedback would require legislative amendments to RESA) and is summarized here for transparency.