The Rules made under the Real Estate Services Act, S.B.C. 2004, are amended by adding the following subsection to section 5-11.1:

(3) If the remuneration under subsection (2) is to be received as money, the remuneration must be expressed as a dollar amount.

Superintendent’s Comments:

Under section 5-11.1 of the Rules, licensees are required to disclose their expected remuneration related to an offer that is presented to a seller. This amendment requires disclosures under section 5-11.1 to be made as a dollar amount where remuneration is to be received as money. The disclosure may not be made as a percentage. This will ensure that sellers clearly understand how licensees will be compensated and how remuneration may vary on different offers.

This rule does not affect other requirements of section 5-11.1, such as how non-monetary remuneration is disclosed.

The following section is added to Division 4 of Part 5:

Addressing conflicts of interest when acting for multiple clients

5-18 (1) If the provision of trading services by a licensee to or on behalf of multiple clients in respect of a trade in real estate would constitute dual agency, other than under section 5-17 [dual agency in under-served remote location], the licensee must either:

(a) not provide trading services to any client in respect of that trade in real estate, or

(b) represent only one of the clients, as a client, in respect of that trade in real estate.

(2) A licensee must not represent a client under subsection 1 (b) unless the licensee has obtained written agreement from all clients in respect of the trade in real estate that meets the requirements of subsection (3).

(3) The written agreement referred to in subsection (2) must be in a form approved by the council and must include all of the following information:

(a) a description of the conflict of interest;

(b) a description of the duties and responsibilities the licensee will no longer have to the client with whom the licensee is terminating its client representation;

(c) a statement that the licensee may have confidential information about the client with whom the licensee is terminating its client representation, and that the licensee is prohibited from disclosing any of that information;

(d) a statement that the advice and information that the licensee may provide to the client that the licensee will continue to represent may be limited due to the licensee’s ongoing duty to maintain the confidentiality of the information of the client with whom the licensee will terminate its client representation; and
(e) a recommendation that the clients seek independent professional advice in respect of that trade in real estate.

Superintendent’s Comments:

Licensees are required to take reasonable steps to avoid conflicts of interest and must always consider their fiduciary obligations to their clients. Licensees are expected to actively and pre-emptively avoid situations that will result in dual agency.

In the event that a licensee finds themselves potentially representing multiple clients in a transaction, a licensee has two options:

1) The licensee can recuse themselves from all clients in the transaction. In this situation, the licensee cannot continue to work with any of those clients as unrepresented parties for the transaction.

2) The licensee can continue to represent only one client in the transaction if they obtain the written agreement of all clients. The written agreement must be obtained at the time the conflict arises using a form developed by Council. It is a licensee’s responsibility to ensure that all clients in the transaction fully understand the risks of entering into the agreement, and to recommend that all clients seek independent professional advice.

Brokerages are encouraged to develop policies and procedures respecting how conflicts of interest will be addressed, which should be communicated with clients at the outset of an agency relationship. However, a licensee is always required to obtain a written agreement from all clients at the time that the potential conflict arises.

This amendment comes in to force on the same date as the rules on dual agency.