



Office of the  
Superintendent  
of Real Estate

# Results of the Public Consultation on Proposed Real Estate Rules

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*Summary Report*

*April 2018*

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## Introduction

On March 21, 2018, the Office of the Superintendent of Real Estate (OSRE) sought public and industry feedback on proposed new rules governing the conduct of licensees providing real estate services in the province. The purpose of the proposed rules is to enhance consumer protection through a number of mandatory changes to licensee conduct and practices and qualifications. Key rule changes proposed include:

- Incorporating the Real Estate Council of British Columbia's English language proficiency requirement for new applicants in to the Rules;
- Creating new requirements for licensees to complete designated continuing education courses, typically when significant new rules are introduced;
- Designating the first continuing professional education course to be completed by trading services and rental property management licensees;
- Creating new rules to address conflicts of interest where a licensee finds themselves potentially working with multiple parties that would constitute dual agency
- Clarifying that the disclosure of remuneration to sellers under section 5-11.1 must be expressed as a dollar amount if it is received as money.

The proposed rules were developed following consultation with the Real Estate Council and the British Columbia Real Estate Association (BCREA). Public and licensee feedback on the proposed rules was provided through an online survey, which closed on April 20, 2018 following a 30 day consultation period. Details on the consultation as well as a link to the survey were posted on OSRE's website and over 25,000 real estate licensees received an email in which they were asked to provide feedback using the survey. OSRE also encouraged the public and licensees to participate through its website and its Twitter account.

As part of the consultation, OSRE received submissions from BCREA, local real estate boards and licensees and the public. Given the volume of feedback, individual respondents were encouraged to submit their comments through the online survey.

## **Additional Notes on the Consultation Process and on Dual Agency**

This consultation included a specific proposal related to how licensees would be required to address conflicts of interest related to representing multiple parties. This rule would provide that licensees who find themselves in conflicts related to dual agency could continue to represent one party to the trade with the consent of all parties to the trade. A significant number of comments that were received in response to this section, and in the general comments section of the survey, were related to the prohibition on dual agency under section 5-16 of the rules, which will come into force on June 15, 2018.

This consultation did not seek additional feedback on the rules which will prohibit dual agency. A consultation in the fall of 2017 was previously conducted related to the prohibition on dual agency.

## About the Office of the Superintendent of Real Estate

Led by the Superintendent of Real Estate, the Office of the Superintendent of Real Estate (OSRE) is a regulatory agency of the BC government that protects consumers who are buying and selling or otherwise acquiring or disposing of real estate in the province. OSRE provides oversight and support to the real estate industry in BC and is mandated to protect the public interest and prevent harm to consumers.

Under the *Real Estate Services Act*, the Superintendent of Real Estate has broad powers to make rules governing licensee conduct and to oversee and direct the activities and operations of the Real Estate Council of British Columbia.

The Real Estate Council is a consumer protection agency responsible for enforcing the *Real Estate Services Act* and related *Real Estate Rules*. The Real Estate Council sets and enforces standards of conduct, education, competency and licensing for real estate licensees and is comprised of up to 16 individuals publicly appointed by the BC government.

OSRE works with the Real Estate Council to fulfil its consumer protection mandate and is committed to working closely with Council to support implementation of any new rules.

Additional information about OSRE is available at [www.gov.bc.ca/osre](http://www.gov.bc.ca/osre).

Additional information about the Real Estate Council is available at [www.recbc.ca](http://www.recbc.ca).

## Survey Overview

The primary source of feedback on the proposed rules was an online survey. OSRE received a total of 3,306 responses to the survey during the 30-day consultation period. Individual survey responses were anonymous. The survey questions focused on each of the areas of the rules where substantive amendments were proposed.

The survey included nine questions, as follows:

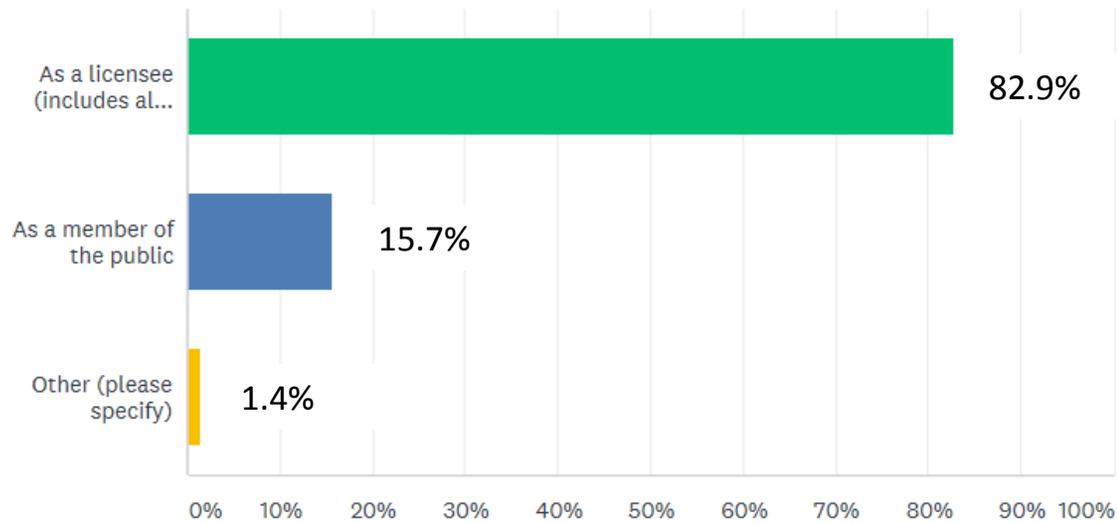
- Four questions were included to obtain background information about respondents and their demographics;
- Four questions were included that were based on each of the specific proposed rule amendments, substitutions, or additions. Each area of amendment included a specific question in which respondents were asked if they had any comments about the proposed amendment, and were provided with free-text comment space to provide feedback on the specific amendment; and
- One free-text question was included at the end of the survey where respondents could provide general comments on the proposed rule amendments.

All comments that were provided in the survey were considered by OSRE staff, regardless of whether they were submitted through the survey or through alternative means. This report focuses on the high-level themes that were identified through the consultation.

# Consultation Feedback – Survey Demographics

## Respondent Demographics

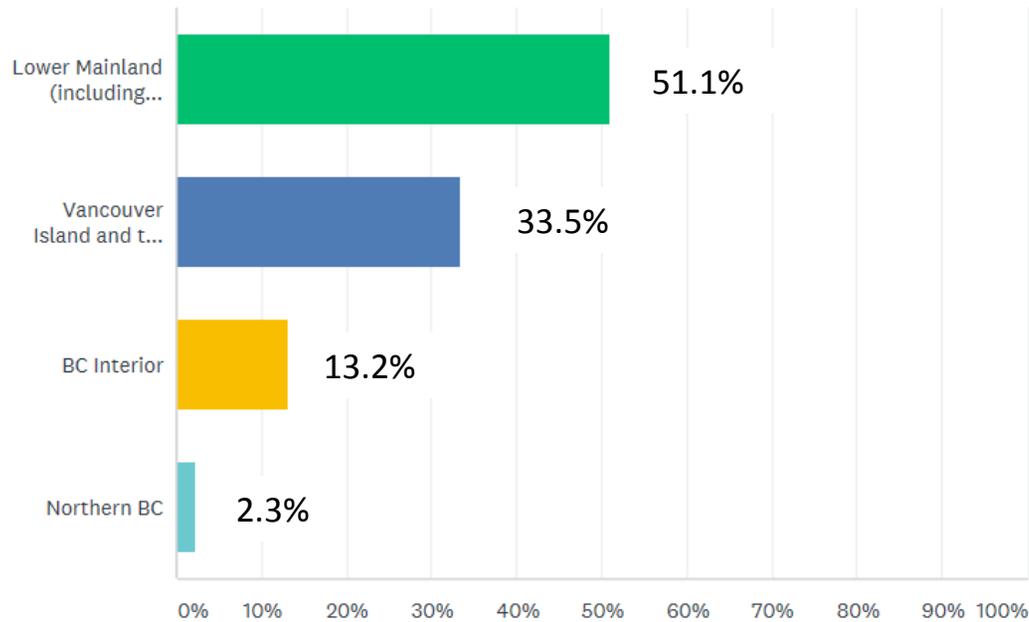
Capacity in which survey respondents commented on the proposed rules:



ANSWER CHOICES	RESPONSES
As a licensee (includes all levels of licenses)	82.88% 2,740
As a member of the public	15.70% 519
Other (please specify)	Responses 1.42% 47
<b>TOTAL</b>	<b>3,306</b>

## Public Demographics

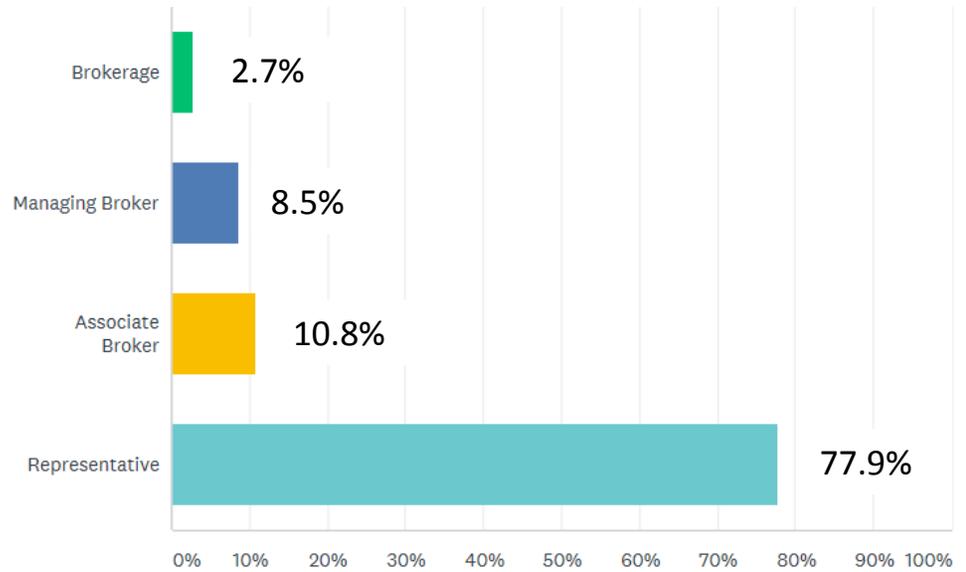
Region of the province that best describes where members of the public who responded to the survey live:



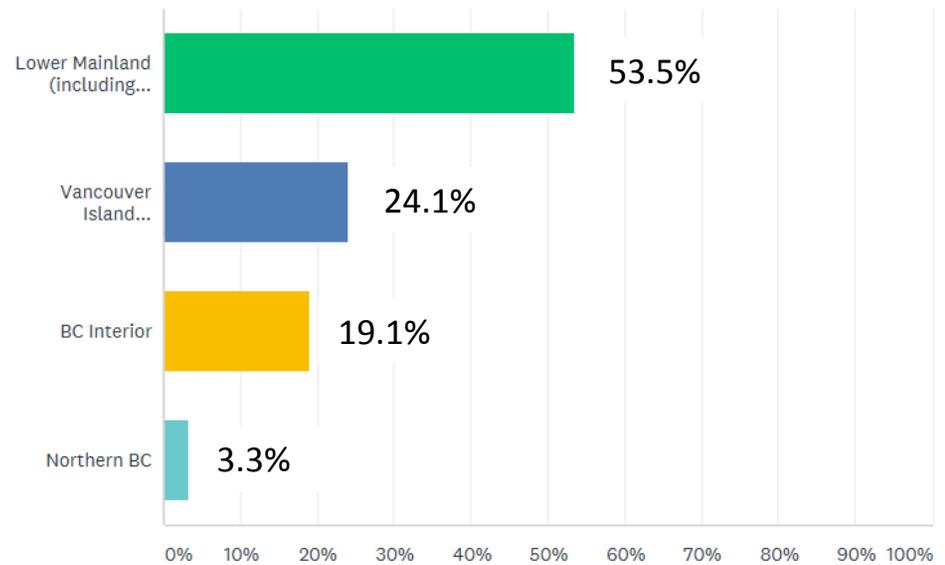
ANSWER CHOICES	RESPONSES	
▼ Lower Mainland (including Metro Vancouver, Fraser Valley, Sunshine Coast and Sea-to-Sky Region)	51.07%	287
▼ Vancouver Island and the Gulf Islands	33.45%	188
▼ BC Interior	13.17%	74
▼ Northern BC	2.31%	13
<b>TOTAL</b>		<b>562</b>

## Licensee Demographics

Category of licence held by respondents who replied to the survey as a licensee:



Area of the province in which licensees who responded to the survey primarily work:



## Consultation Feedback – Proposed Rules Published for Consultation

### English Language Proficiency Requirements

*The Rules are proposed to be amended by adding the following section:*

#### **English language proficiency requirement**

- 2-6.1** (1) In addition to any other requirements set out in section 10 [*qualifications for obtaining licence*] of the Act and established by these rules, an applicant for a new licence who is an individual must achieve a level 7 or higher on each of the parts applicable to reading, writing, speaking and listening, as tested by the Canadian English Language Proficiency Index Program—General Test.
- (2) An applicant is deemed to have satisfied the requirement to demonstrate English language proficiency under subsection (1) if the applicant
- (a) has graduated with a bachelor degree or higher from a degree program at an accredited university, college or technical institute where English is the primary language of instruction, or
  - (b) has been licensed to engage in real estate services in another Canadian jurisdiction with an English language proficiency requirement after satisfying that jurisdiction's requirement for English language proficiency.

#### **Superintendent's Comments:**

This proposed amendment will create a new section that incorporates the current English language proficiency requirement for new applicants into the Rules. These changes were announced by the Real Estate Council on July 21, 2017 and came into effect on September 1, 2017. More information on the English language proficiency requirement is available on the Council's website at: <https://www.recbc.ca/2017/07/council-updates-language-proficiency-requirements-for-new-licence-applicants/>

## English Language Proficiency Requirements – Feedback Themes

Key Theme	OSRE Response
<p>The proposed amendment will establish a sense of professionalism within the industry.</p> <p>Understanding the language of contracts and the laws of British Columbia is essential for licensees to properly advise and protect their clients, including knowing when to suggest a client seek legal advice.</p>	<p><i>Consistently applying a high standard of English language proficiency will help to ensure that licensees understand the regulatory framework that governs their industry and conduct (including the Real Estate Services Act, the regulations and the Rules), as well as the Real Estate Council of British Columbia's discipline processes. Licensees will also be able to understand practice advice from the Council, developments in law, changes to the regulatory framework and provide competent services to consumers.</i></p>
<p>Existing licensees should be required to satisfy the Council's higher English language proficiency requirement in order to ensure there is protection for the public and equal expectations for all licensees.</p> <p>Some current licensees would not meet this standard, prepare inadequate or incorrect agreements, and/or refuse to communicate in English.</p>	<p><i>OSRE continues to consider measures within its jurisdiction that would protect the public interest and prevent harm to consumers. At this time, the Council is considering opportunities to expand the English language proficiency requirements to existing licensees as part of the re-licensing education program or as remedial education when identified as a risk in a discipline case. It is important to note that existing licensees were required to meet the language proficiency requirements that were in place at the time of licensing.</i></p> <p><i>Brokerages can encourage current licensees who struggle with English language proficiency to upgrade their English skills to ensure that they understand the Real Estate Services Act, the regulations and the Rules that govern their industry and conduct, as well as understand tools, supports and processes of the Real Estate Council.</i></p>

<p>The English language proficiency requirement should be less stringent, in particular, for applicants from English speaking regions and Canadian high school graduates.</p>	<p><i>Regardless of an applicant's background, the public, OSRE and the Real Estate Council need to have confidence that licensees have English language skills appropriate for competently participating in the real estate industry. High school English is not a stringent enough standard for licensees to competently understand the regulatory framework, the legal nuances of being a fiduciary, and the industry terms that are used in the various agreements that licensees are required to sign and to provide advice on.</i></p>
<p>The English language proficiency requirement should be more stringent and fewer exemptions should be available.</p>	<p><i>The CELPIP-General score of 7 in reading, writing, speaking and listening should demonstrate that an applicant has adequate proficiency in workplace and community contexts. A similarly high standard is the exemption for applicants that have bachelor degree or higher from an accredited institution where the primary language of instruction is in English. To ensure compliance with requirements for internal trade under the Canadian Free Trade Agreement, an exemption related to transfers from other Canadian provinces has been created.</i></p>
<p>There should be strict enforcement of the English language requirement during the test to prevent cheating, in obtaining a license, and in respect of misconduct that results from a lack of understanding of the English language.</p>	<p><i>The CELPIP-General test must be taken in person. The Real Estate Council is confident that the provider of the CELPIP-General test engages in a rigorous identification and security process for test takers.</i></p> <p><i>To be licensed, an applicant must satisfy the Council that they have met all the criteria under the Real Estate Services Act and the Rules.</i></p> <p><i>A lack of English language comprehension does not excuse or mitigate misconduct by a licensee.</i></p>

The CELPIP-General test is inconvenient for those living outside of the Lower Mainland.

The time and cost of travel to take the test are prohibitive and disadvantage residents on the North Island, BC North and remote communities.

*If an applicant cannot be deemed to have met the requirement based on previous education or Canadian real estate experience, the CELPIP-General test is regularly scheduled in Victoria, Kelowna and the Lower Mainland. In addition, the Real Estate Council is working with the test provider to create ad hoc test centres to improve access across the province.*

## Consultation Feedback – Proposed Rules Published for Consultation

### Mandatory Continuing Education

*Section 2-8.1 (2) is proposed to be amended by repealing paragraphs (a) and (b) and substituting the following:*

- (a) have taken the applicable courses for renewal for the real estate services and the level of licence in relation to which the application is made,
- (b) have passed any examinations corresponding to those courses, and
- (c) have taken, if the period established for completion has passed, any continuing professional education courses, and passed any examinations corresponding to those courses, set out in Schedule 1

*The following section is proposed to be added:*

#### **Continuing professional education requirements for licensees**

**2-8.2** A licensee who is an individual must, in respect of the applicable licensed real estate services, do the following within the applicable time period set out in Schedule 1:

- (a) take the continuing professional education course or courses set out in Schedule 1;
- (b) pass any applicable examination corresponding to the course or courses.

The following Schedule is proposed to be added:

**SCHEDULE 1**  
**Continuing Professional Education Requirements**

<b>Licensed Real Estate Services (Column A)</b>	<b>Required Continuing Professional Education Courses and Examinations (Column B)</b>		
	<b>Course</b>	<b>Examination</b>	<b>Time Period for Completion</b>
<b>Trading Services</b>	Rule Changes: Agency and Disclosure	Not applicable	Within four (4) months of the date on which the course becomes available
<b>Rental Property Management Services</b>	Rule Changes: Agency and Disclosure	Not applicable	Within four (4) months of the date on which the course becomes available
<b>Strata Management Services</b>	Not applicable	Not applicable	Not applicable

## **Superintendent's Comments:**

The Superintendent proposes to amend the Rules to require licensees to complete new continuing professional education courses within a specified time period, typically when significant new rule changes are introduced. These courses are distinct from, and in addition to, the current Relicensing Education Program. Licensees who do not complete the new courses within the specified time period for completion may face administrative penalties and those who still have not completed them by the end of the licence renewal period will not be able to renew their licence.

It is proposed to do this through a series of amendments, as follows:

- Section 2-8.1 will be amended to create a requirement for licensees to complete any new continuing professional education courses within the renewal period. Note that licensees will also continue to be required to complete the applicable Relicensing Education Program requirements prior to renewing their licence.
- A new section, section 2-8.2, will be added to create a new requirement for licensees to complete any new continuing professional education courses designated by the Superintendent within a specified time period.
- A new schedule, Schedule 1, will be included in the Rules and will designate the first continuing professional education course required. Licensees who provide trading services and/or rental property management services will be required to complete a new continuing professional education course on dual agency and consumer disclosures within four (4) months of the date on which the course becomes available.
- In addition, section 2-23 [*Administrative Penalties*] will be amended to enable the Real Estate Council to impose administrative penalties in cases where licensees fail to complete any continuing professional education courses within the specified time period for completion (see Appendix 2 for details).

This proposal takes into consideration feedback received from licensees, many of whom requested additional information and guidance on how recent amendments to the Rules that come into force on June 15, 2018 related to dual agency and revised consumer disclosures will apply in daily practice.

The Council will continue to be responsible for administering licensing and qualification requirements.

## Mandatory Continuing Education – Feedback Themes

Key Theme	OSRE Response
<p>Many respondents reacted positively to the idea of receiving more information and training on significant rules changes, including recent amendments regarding agency and consumer disclosures.</p>	<p><i>An important component in strengthening protections for real estate consumers is ensuring that licensees are trained and knowledgeable about key developments as they relate to the standards of professional conduct which they are expected to observe as professionals.</i></p>
<p>The proposed four month timeline for licensees to complete the new course, "Rule Changes: Agency and Disclosure," is too short. A longer time period (e.g. six, eight or 12 months) would better accommodate constraints on both the Council's capacity to deliver the course and the availability of licensees to attend.</p>	<p><i>The time period for completion of the proposed new course was developed in consultation with the Real Estate Council. OSRE acknowledges the unique challenges in educating the entire sector in such a manner.</i></p>
<p>New or future designated courses should be provided at no cost to licensees.</p>	<p><i>The delivery of the proposed course and any future continuing professional education courses is the responsibility of the Council. OSRE will share respondents' views regarding the cost of the new course with the Council.</i></p>

<p>A range of online and classroom-based delivery options should be provided for the proposed new course. This will help to ensure adequate and equal access to licensees from communities in different regions and of different sizes.</p>	<p><i>The delivery of the proposed course and any future continuing professional education courses is the responsibility of the Council. OSRE will share respondents' views regarding delivery of the new course with the Council.</i></p>
<p>The proposed new continuing professional education requirement duplicates the existing continuing professional education courses offered by the Council and/or industry-based associations, which are sufficient to deliver information about significant rule changes to licensees.</p>	<p><i>OSRE acknowledges that licensees are already required to undertake continuing professional education activities mandated by the Council as a regulatory requirement. The courses contemplated by this rule are not intended to be duplicative of other professional education requirements.</i></p>
<p>It is not necessary to link the completion of the proposed new continuing professional education requirement to both re-licensing and administrative penalties.</p>	<p><i>The two consequences of non-completion of the proposed new requirement serve different purposes:</i></p> <ul style="list-style-type: none"> <li><i>• The proposed administrative penalty is intended to provide an incentive for licensees to complete any new courses in a timely manner.</i></li> <li><i>• The proposed license non-renewal for licensees who do not complete a designated course within the specified time period is intended to protect consumers by ensuring that licensees who provide real estate services have appropriate knowledge of the real estate regulatory framework.</i></li> </ul>

	<p><i>Matters related to licensee discipline, including how the administrative penalties will be applied in practice (e.g. whether the requirement will apply equally to licensees in a variety of different circumstances), fall under the responsibility of the Council. OSRE will share respondents' concerns with the Council.</i></p>
<p>Any proposed new continuing professional education courses – and related implementation information (e.g. FAQs, forms) – should be made available and delivered to the majority of affected licensees prior to the coming into force of related rules changes.</p>	<p><i>Licensee education is the responsibility of the Council, which was consulted on all proposed timelines.</i></p> <p><i>OSRE will consider this feedback in the context of implementation planning for future designated rules. However, the coming into force on June 15, 2018 of other recent rule changes remains unchanged.</i></p>
<p>Respondents made a number of comments on the quality, availability, relevance and/or volume of existing educational offerings for licensees. Respondents' comments were related to both those courses that are part of the regulatory framework and those courses which are a condition of membership in industry-based organizations.</p>	<p><i>The purpose of the consultation was to seek comments on the current proposals being considered by the Superintendent. The development and delivery of existing educational offerings for licensees are the responsibility of the Council. OSRE will share respondents' views regarding existing education and qualification requirements with the Council. Other comments on topics outside of the scope of the current consultation, including those related to industry-based professional development courses, are best directed to the relevant course providers for consideration.</i></p>

## Consultation Feedback – Proposed Rules Published for Consultation

### Disclosure of Remuneration

*The Rules are proposed to be 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 proposed amendment will require 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.

## Disclosure of Remuneration – Feedback Themes

Key Theme	OSRE Response
<p>The disclosure of remuneration in dollar amounts will result in increased clarity and transparency for consumers.</p>	<p><i>This rule is intended to ensure that the seller of a property receives all of the necessary information about a licensee's expected remuneration. The disclosure must also include how the licensee's commission will be shared as well as any other remuneration a licensee expects to receive for that trade. This disclosure will enhance transparency for consumers and will ensure that sellers have a clear understanding of the remuneration that a licensee would receive as a result of the sale of their home.</i></p>
<p>Disclosure of remuneration in a dollar amount is complicated and will cause confusion for consumers.</p>	<p><i>Disclosing the amount of remuneration a licensee expects to receive in a dollar amount will ensure that consumers clearly understand how a licensee's incentives may vary based on different offers.</i></p> <p><i>The potential complexity of disclosing remuneration as a dollar amount speaks to the need for proposed rule as it will provide more transparency and clarity for consumers when they are in the position of making a decision about a trade in real estate.</i></p>
<p>The disclosure of remuneration in a dollar amount on every offer, in particular in circumstances where there</p>	<p><i>OSRE recognizes that the disclosure of remuneration requirements will result in additional effort for licensees. However, the disclosure of remuneration in a dollar amount</i></p>

<p>are multiple offers, or multiple counter offers, is unnecessary and creates a burden of paper work for both licensees and consumers.</p>	<p><i>will enhance consumer protection by significantly increasing the transparency of the remuneration structure of a real estate transaction at the time that offers are being made and considered. OSRE believes that the benefits that will result from increased transparency outweigh the burden of paperwork that licensees will be required to complete.</i></p>
<p>Other professions are not subject to the same level of scrutiny on their commissions or earnings.</p>	<p><i>Other regulated professions have similar measures to support transparency and clarity in respect of remuneration. Compared to other professions, the remuneration of real estate licensees is unique given that the commission can fluctuate significantly based on the offer, and based on the representation of the other party. Given the significant variability of this remuneration, consumers have the right to have a clear understanding of the remuneration that the listing brokerage and any cooperating brokerage will receive in respect to the sale of their home.</i></p> <p><i>As many respondents to the survey noted, the purchase or sale of a property is a perhaps the single biggest purchase a consumer will make in their lifetime. Consumers should clearly understand how brokerages will be compensated in the transaction and any potential influences on the advice they receive during the decision making process.</i></p>

<p>The disclosure of remuneration in a dollar amount is redundant because clients are already adequately informed about a licensee's remuneration in the listing agreement.</p>	<p><i>Many survey respondents noted that when clients sign a listing agreement, typically the expected remuneration is disclosed as a percentage. The disclosure under section 5-11.1 addresses specific consumer protection issues at the time that a consumer is making a decision about a transaction. The disclosure of remuneration in dollar amounts will help the consumer to understand how remuneration may fluctuate based on the various offers, and based on the buyer's representation.</i></p> <p><i>The 5-11.1 amendment does not change the requirement that disclosure of remuneration is required under 5-11. The 5-11.1 amendment will not require an increase in the number of disclosures that must be made, and only increases the number of calculations that will be required as part of the disclosure.</i></p>
<p>Disclosing remuneration as a dollar amount will place the emphasis of an offer on the remuneration, rather than on the offer itself, and will result in consumers requesting a re-negotiation of the original agreement with a licensee.</p>	<p><i>Individual agreements respecting commissions are negotiated between licensees and their clients and are typically agreed to in the listing agreement, which is a signed contract.</i></p>
<p>The majority of clients are well-informed and can calculate the dollar amount based on the percentage that was agreed upon in the listing agreement on</p>	<p><i>The calculation of the percentage may be straightforward for some consumers. However, the consumer may not be aware of how the remuneration for the licensee may change for various offers if, for example, a buyer is an unrepresented</i></p>

<p>their own.</p>	<p><i>party or if a licensee is receiving compensation from any other source for a specific offer. The completion of a standardized form that clearly discloses the dollar amount for the licensee's remuneration based on each offer will help consumers to fully understand how the compensation structure may vary for each offer prior to making a decision about a transaction.</i></p>
<p>The requirements to calculate the dollar amount that a licensee expects to receive on each offer may result in errors in the calculations.</p>	<p><i>It is a licensee's responsibility to be diligent and to ensure that information provided to a client is accurate.</i></p> <p><i>As many licensees have noted in their survey responses, in the majority of circumstances the calculation of a dollar amount based on the percentage that was agreed upon in a listing agreement is a relatively straightforward process. The calculation may become more complex in those situations in which a buyer is an unrepresented party, or where a licensee is receiving other sources of remuneration. In these circumstances there is an increased need to ensure that clients clearly understand how the licensee will be compensated. To reduce the occurrence of errors in calculation, licensees or brokerages may decide to develop online tools or calculators that will give licensees the capacity to calculate dollar amounts quickly and with minimal possibility of error.</i></p>

## Consultation Feedback – Proposed Rules Published for Consultation

### Conflicts of Interest when Acting for Multiple Parties

*The following section is proposed to be 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 unexpected 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.

As this amendment is directly linked to the new rules on dual agency, which are scheduled to come into force on June 15, 2018, the effective date for this amendment is also proposed to be June 15, 2018.

## Conflicts of Interest when Acting for Multiple Parties – Feedback Themes

Key Theme	OSRE Response
<p>Rules respecting conflicts of interest when acting for multiple parties would not be required if dual agency was permitted.</p>	<p><i>This consultation is not seeking feedback on the rule prohibiting dual agency (Section 5-16) that was published on November 8, 2017. Rather feedback is being sought on proposed rules regarding what a licensee must do when they find themselves in a potential dual agency situation. Additional information from the September 2017 consultation relating to the decision to prohibit dual agency can be found at <a href="https://www2.gov.bc.ca/gov/content/housing-tenancy/buying-and-selling/consumer-protection/consultations">https://www2.gov.bc.ca/gov/content/housing-tenancy/buying-and-selling/consumer-protection/consultations</a></i></p>
<p>The proposed rules provide clarity as to how dual agency situations should be dealt with. The proposed approach to dealing with agency conflicts is a better alternative than so-called “double recusal” in every instance and provides more protection to consumers.</p>	<p><i>The rule gives licensees the option to continue to represent one party, if all of the other conditions are met. If the conditions are not met, a licensee will be required to stop representing either party.</i></p> <p><i>Licensees must always be mindful of potential conflicts and ensure that they can confidently continue to represent one party without having a significant adverse effect on the party from which they recuse themselves. It is OSRE’s expectation that licensees will actively avoid conflicts, and that this rule will only be used to address those circumstances in which a conflict could not reasonably have been foreseen by the licensee.</i></p>

Many respondents asked questions about when agency begins and ends, and what would constitute a conflict of interest. Many respondents questioned how the proposed rules would apply when dealing with past clients and/or social contacts.

*Many of the issues raised by respondents regarding past clients and social networks would not apply under the new rules. While certain fiduciary duties may persist, a licensee's agency relationship with a client does not last forever. Agency terminates when the agency agreement expires or the purpose of the agency has been accomplished. Additionally, agency is not automatically established through interactions outside of a professional context.*

*A licensee is in a conflict of interest when their ability to act in the best interest of their client is compromised due to competing professional or personal interests. In the scenario described in the proposed rules, a licensee would be in a potential conflict of interest because they are representing two or more parties in a transaction with conflicting interests.*

*OSRE is committed to working closely with the Real Estate Council to ensure licensees and consumers have greater clarity on how any approved rules will operate in practice. Additional information will be provided in advance of new rules coming into effect and through the course respecting the new rules.*

While some respondents indicated that they agreed with the general concepts outlined in the proposed rules, the same respondents indicated that they were not supportive of a potential scenario where a licensee may have to recuse

*In many instances, licensees can avoid the need to recuse themselves if they are mindful of potential conflicts before entering into agency relationships and actively look to avoid dual agency situations.*

themselves entirely from a transaction. This related to the requirement to receive agreement from all parties in the transaction.

Respondents felt that it was unfair to allow one client to control another client's representation and this could be used by some consumers to manipulate a transaction. Many felt that this requirement would adversely affect consumers, especially sellers, as this could leave some consumers without representation at a critical juncture and/or may result in consumers losing out on sales or purchases, especially when representing multiple buyers. Some stated that it would be preferable to have all clients agree how conflict would be addressed at the outset of the relationship and/or develop guidelines for who a licensee would continue to work with in all scenarios (i.e. seller, whoever hired licensee first, etc.). Others felt that a licensee should always have the right to decide who they continue to work with.

*The agreement of all parties the licensee is representing is required because the licensee still owes fiduciary duties to those parties and may have confidential information about one of the parties with which they are terminating their relationship.*

*The consent of the client that the licensee will continue to represent is required because the licensee would be required to keep certain information they know about the other client confidential and they may not be able to fully advise the remaining client of all known facts related to the sale of the property.*

*The consent of the client that the licensee will recuse themselves from is also required because the licensee has fiduciary duties to that client, including a duty to act in their best interests, which the licensee cannot unilaterally terminate.*

*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. This will help mitigate conflicts and confusion as to which client the licensee should continue working with and may help licensee's to avoid scenarios where a client refuses to consent to the agreement at the time that the conflict arises. Brokerage policies and procedures would*

Some respondents indicated that a licensee would be in a further conflict when choosing who to continue to represent under the proposed rules and this could lead to adverse impacts on some consumers.

A double recusal scenario could be further complicated in small communities with few licensees where consumers may have few alternate options for representation.

The requirement to receive consent at the time the conflict arises may result in more unrepresented parties. Licensees are more inclined to offer no agency to buyers to avoid the potential for double recusal.

*also help to avoid putting licensees in further conflict resulting from having to choose one client over another.*

*While brokerages may develop and communicate policies with respect to how conflicts will be addressed, consent from clients must be obtained at the time that the conflict arises because a client cannot provide fully informed consent in advance to a particular situation and context that they are not aware of. Clients must have the opportunity to consider the situation when it arises, and to provide informed consent only once they have a full understanding of the situation.*

Respondents expressed uncertainty about when dual agency was triggered and when agreement from all parties would be needed.

*OSRE recognizes that licensees may have questions about the operation of the new rules. Council will be releasing practice advice for licensees that will address questions around dual agency and conflicts of interest. These issues will also be addressed in the education course.*

<p>Many respondents disagreed with the notion of a licensee recusing themselves from a transaction. These respondents suggested recusal is unfair and unprofessional, would damage longstanding relationships and would hinder consumer choice. The need for recusal would be more common in small communities where it is more difficult to avoid potential dual agency.</p>	<p><i>The prohibition on dual agency does not allow a licensee to represent two or more competing parties to a transaction. As such, under the proposed rules, in the event that a licensee finds themselves in a potential dual agency situation they must recuse themselves from representing one or more parties. In many instances licensees can avoid the need to recuse themselves if they are mindful of potential conflicts before entering into relationships and actively avoid dual agency situations.</i></p>
<p>The proposed rules would be more effective if OSRE mandated buyer's agency agreements. This would help ensure consumers were represented and were not referred out.</p>	<p><i>Buyers agreements may serve to clarify agency relationships for licensees and the public and nothing in the rules precludes a brokerage from implementing such agreements in their real estate practice.</i></p>
<p>The proposed rules are too cumbersome and complicated and would create additional paperwork which would burden licensees and be confusing to the public.</p>	<p><i>While the rule will create additional requirements for licensees, any additional workload to comply with this rule is outweighed by the benefit to consumers. The proposed rule would enhance consumer protection by ensuring that licensees are able to continue to represent one party in a transaction with the informed consent of both of the parties.</i></p>
<p>The proposed rules are too lenient as they do not prevent licensees from offering no agency to a client they have</p>	<p><i>New rules, such as the 5-10.1 disclosure, have been developed to ensure consumers are aware of the risks of engaging in a real estate transaction as an unrepresented</i></p>

<p>recused themselves from and licensees can still double end transactions.</p>	<p><i>party and to encourage consumers to seek independent professional advice. OSRE is also committed to working closely with the Real Estate Council to enhance public education materials to ensure consumers understand the risks of being unrepresented.</i></p> <p><i>OSRE is committed to monitoring the implementation of the rules to ensure licensees treat consumers transparently and fairly. Additional rules that directly regulate commissions will be considered if there is evidence that consumers are being encouraged to remain unrepresented in order to maximize a licensee's own remuneration.</i></p>
<p>There were concerns about how the proposed rules would affect teams. Respondents felt that under the proposed rules a licensee should be able to refer past clients to members of their team.</p>	<p><i>Under the proposed rules a licensee would not be able to refer a client to a member of their team as that would constitute dual agency. This feedback was addressed in the September 2017 consultation relating to the decision to prohibit dual agency and more information can be found at <a href="https://www2.gov.bc.ca/gov/content/housing-tenancy/buying-and-selling/consumer-protection/consultations">https://www2.gov.bc.ca/gov/content/housing-tenancy/buying-and-selling/consumer-protection/consultations</a>.</i></p>
<p>Some respondents noted that increased consumer education and public awareness is necessary so that consumers make informed choices and understand the risks associated with the scenario presented under 5-18.</p>	<p><i>OSRE is committed to working closely with the Real Estate Council to ensure licensees and consumers have greater clarity on how any new rules will operate in practice. Additional information will be provided in advance of any new rules coming into effect.</i></p>

	<p><i>Under the proposed rules, when a licensee is in a potential dual agency situation a licensee must obtain written agreement from all clients involved in the transaction using a standard form developed by the Council. The form outlines key information and risks for consumers and it is a licensee's responsibility to ensure that all clients in the transaction fully understand the information contained in the form.</i></p>
<p>Respondents raised concerns about underhanded referrals and collusion among licensees as a result of the proposed rules.</p>	<p><i>Consumers are still protected if licensees refer clients to each other under the proposed rules, so long as any remuneration associated with the referral is disclosed to all relevant parties (as per the current requirements) and licensees provide proper agency representation to referred clients.</i></p> <p><i>Licensees aware of professional misconduct should report such misconduct to the Real Estate Council for investigation.</i></p>
<p>It was suggested that transaction brokerage is a better way to deal with potential dual agency situations as it does not limit consumer choice.</p>	<p><i>As it is currently practiced in some jurisdictions, transaction brokerage offers a reduced form of agency representation to clients. However, under this model a licensee would still be representing two or more conflicting parties to a transaction which is explicitly restricted under the prohibition on dual agency.</i></p>
<p>Some respondents provided suggestions respecting the format of the form, including suggestions that a discussion of agency conflicts should be included in</p>	<p><i>OSRE will share feedback respecting the content of forms with the Real Estate Council.</i></p>

<p>the Working with a Realtor form to advise consumers about the possibility of recusal at the outset of an agency relationship.</p>	
<p>Forcing licensees to recuse themselves mid-transaction would create a potential situation where licensees are not paid for the services they have provided, including any out of pocket expenses the licensee may have incurred.</p>	<p><i>In many instances licensees can avoid the need to recuse themselves if they are mindful of potential conflicts before entering into relationships and actively avoid dual agency situations. To address concerns about lost commissions, brokerages have the latitude to re-examine current commission structures and modify written service agreements.</i></p>
<p>Some respondents questioned the need to advise clients to seek professional advice, and raised concerns that this would be an unrealistic suggestion as often the timing of a real estate transaction doesn't allow sufficient time to do so.</p>	<p><i>Independent professional advice can constitute advice from an individual that has expertise in real estate transactions but does not have an interest in the current transaction. For example, this may include a lawyer or another licensee.</i></p> <p><i>OSRE acknowledges that in certain circumstances the timing of a real estate transaction may present challenges for a consumer to obtain independent professional advice in a timely manner. While it may not always be possible to do so, it is important that consumers be encouraged to get independent advice to allow them to make as informed a decision as possible given the context and circumstances.</i></p>
<p>Many respondents indicated that there will be contractual issues and potential lawsuits associated with recusing</p>	<p><i>In many instances licensees can avoid the need to recuse themselves if they are mindful of potential conflicts before entering into relationships and actively avoid dual agency</i></p>

<p>yourself from one client at a crucial point in the transaction.</p>	<p><i>situations. Under the proposed rules, current written service agreements will need to be modified to take into account the event that a licensee needs to recuse themselves due to a conflict of interest. It is critical to remember that licensees have fiduciary duties to act in the best interests of all of their clients and where conflicts arise licensees must take steps to receive the informed consent of clients to continue to act for those clients.</i></p>
<p>In the annotations to the rules, OSRE states that dual agency conflicts are “unexpected”. However, in rural areas and commercial real estate conflicts are common and unavoidable due to the small number of licensees and properties.</p>	<p><i>While there might be additional challenges in smaller communities and with respect to commercial real estate, licensees can avoid potential dual agency scenarios by being mindful of potential conflicts before entering into agency relationships.</i></p> <p><i>Issues relating to rural communities and commercial real estate and the prohibition on dual agency were addressed in the September 2017 consultation relating to the decision to prohibit dual agency. More information on this can be found at <a href="https://www2.gov.bc.ca/gov/content/housing-tenancy/buying-and-selling/consumer-protection/consultations">https://www2.gov.bc.ca/gov/content/housing-tenancy/buying-and-selling/consumer-protection/consultations</a>.</i></p>

## Consultation Feedback – General Comments and Feedback Themes

Key Theme	OSRE Response
<p>Industry and the public have not been adequately consulted and their perspectives have not been adequately considered in the development of the new rules.</p>	<p><i>OSRE has carefully reviewed and considered every response that was submitted as part of the consultation. OSRE also consulted with the Real Estate Council and BCREA during the drafting process for the proposed rules.</i></p> <p><i>Throughout the consultation process concerns have been noted and assessed by OSRE as part of its mandate to protect the public interest and prevent harm to consumers.</i></p> <p><i>OSRE is committed to monitoring the implementation and the impact of the rules to ensure that the rules are achieving their intended outcomes and to identify any further amendments or modifications that may be required.</i></p>
<p>The new rules are not well understood and are confusing for licensees and for the public. There is also confusion in the policies and guidelines that have been developed by the Real Estate Council.</p>	<p><i>The Real Estate Council provides practice advice to licensees on how the Council intends to apply and enforce the rules. Council regularly posts information about the new rules on its website at <a href="https://www.recbc.ca/licensee/new-consumer-protection-rules.html">https://www.recbc.ca/licensee/new-consumer-protection-rules.html</a>.</i></p> <p><i>Council is actively working to develop professional education that will support licensees to understand all of the requirements under the new rules coming into force on June</i></p>

	<i>15, 2018 and how the new rules will affect licensee practice and operations.</i>
There is confusion about how the new rules will be implemented, and when training and education on the new rules will be available, and when new forms can be reviewed by industry members.	<i>The Real Estate Council is currently working to develop forms and practice advice that will support the implementation of the new rules. It is anticipated that the new forms will be made available to licensees beginning in May 2018 in advance of the new rules coming into force.</i>  <i>Professional education on the new rules will also be made available beginning in May 2018.</i>
The proposed rule amendments will undermine the public's confidence in the industry.	<i>In concert with the other rules coming into force on June 15, 2018, it is expected that the new rules will enhance transparency and consumer protection and support increased public trust and confidence in the industry. The proposed rules have been enacted to ensure that the public have confidence that a licensee is representing their best interests at all times, and that real estate transactions are as clear and transparent as possible.</i>
The real estate industry is being punished for the actions of a few unscrupulous licensees, and the issues are isolated to the Lower Mainland.	<i>The vast majority of licensees are ethical and diligent and provide a valuable and important service to the public. However, rules and a responsive regulatory regime are required to protect consumers and to promote and maintain consumer confidence in the industry. Licensees who do not comply with the rules will be investigated and disciplined by</i>

	<p><i>the Real Estate Council as appropriate.</i></p> <p><i>The Independent Advisory Group on Real Estate Regulation in BC (IAG) highlighted several areas of concern within the industry related to transparency and ethics, compliance, education, and industry structures and governance. These concerns were not specific to any one region of the province. While the nature of real estate transactions varies greatly across regions, the proposed rules are intended to enhance consumer protections regardless of the location.</i></p>
<p>The most effective method of addressing consumer protection issues in the real estate industry is to increase the enforcement of existing rule and to ensure that licensees who contravene the rules are appropriately and severely held accountable for their actions.</p>	<p><i>Appropriately enforcing the rules is critical to ensuring that the rules are followed by licensees and that consumers have a high degree of confidence in the industry and its regulation and oversight. In addition to the new consumer protection rules, the legislative amendments that resulted from the IAG report included significant increases of allowable disciplinary penalties. OSRE is committed to working with the Real Estate Council to ensure that contraventions of the rules are appropriately addressed and enforced.</i></p>
<p>There should be more industry representation on the Real Estate Council and in the Office of the Superintendent of Real Estate.</p>	<p><i>The Real Estate Services Act provides for all 16 members of the Council to be appointed by the Lieutenant Governor in Council.</i></p> <p><i>OSRE works with the Council and industry advisors on the development of new rules and policies, and also consults extensively with industry representatives through public</i></p>

	<p><i>consultations such as this one. OSRE routinely meets with industry groups and seeks submissions from industry on recommendations to enhance industry practice and consumer protections.</i></p>
<p>There should be exemptions to the new rules made for commercial real estate transactions.</p>	<p><i>The current regulatory model provides equal protections for all consumers regardless of the property type. Exemptions or exclusions for commercial transactions would require significant legislative amendments to the Real Estate Services Act, which is outside of OSRE's authority. OSRE acknowledges that the new consumer protection rules will challenge existing business practices but is confident that industry business models can be updated and adapted to accommodate the new rules and to support increased protections for consumers.</i></p>
<p>Respondents made a number of additional recommendations for consideration, including:</p> <ul style="list-style-type: none"> <li>• Developing exclusions or exceptions for commercial trading services</li> <li>• Banning licensees from working on a part time basis or in regions or areas outside of their area of expertise</li> <li>• Greater education for licensees with a primary focus on entry requirements to the profession</li> </ul>	<p><i>Suggestions for additional policy reforms for the industry within OSRE's purview will be reviewed and considered as OSRE continues to implement the IAG's recommendations and to explore additional options and alternatives to address risk and to enhance consumer protections.</i></p> <p><i>The Real Estate Council provides practice advice to licensees on how the Council intends to apply and enforce the rules. OSRE will share respondents' requests for additional guidance on the rules with the Council.</i></p> <p><i>Where licensees propose amendments requiring changes to the Real Estate Services Act or corresponding Regulation,</i></p>

- Revising commission structures and making them subject to more regulatory oversight
- Revisiting the exemption to be licensed for employees of developers
- Providing additional guidance on the exemption for dual agency

*these suggestions will be passed along to Ministry of Finance.*