



RESULTS OF THE PUBLIC CONSULTATION ON PROPOSED RULES

Summary Report

November 2017



Office of the
Superintendent
of Real Estate

Introduction

On September 6, 2017, the Office of the Superintendent of Real Estate (OSRE) requested public and industry feedback on proposed new rules governing the conduct of licensees providing real estate services in the province. The proposed rules address several of the recommendations of the *Independent Advisory Group on Real Estate Regulation in BC* and aim to enhance consumer protection through a number of mandatory changes to licensee conduct and practices. Key rule changes proposed include:

- prohibiting the practice of dual agency (where a licensee represents both a buyer and seller), except in remote and under-served locations, and
- enhancing consumer education and awareness by increasing mandatory licensee disclosures regarding representation and remuneration.

The proposed rules were developed following a province-wide consultation with all 11 local Real Estate Boards, the British Columbia Real Estate Association (BCREA), a select group of commercial real estate managing brokers and the Real Estate Council of British Columbia in March and April 2017.

The main source of feedback on the proposed rules was an online survey, which closed on October 6, 2017 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 were emailed and asked to provide feedback using the survey. OSRE encouraged the public and licensees to participate through its website and its Twitter account.

As part of the consultation, OSRE received submissions from BCREA and five of the 11 local Real Estate Boards, as well as several dozen e-mails to the Superintendent and the OSRE Policy email account, which was provided to licensees and available on the consultation webpage. Given the volume of feedback received, respondents were encouraged to also consider submitting their feedback through the online survey.

Survey Overview

The main source of feedback on the proposed rules was the online survey, which was accessible on OSRE's website. OSRE received a total of 2,620 responses to the survey during the 30 day consultation period. Individual survey responses were anonymous and respondents were assured of their confidentiality.

The online survey focused on six substantive proposals to amend existing rules or create new rules, specifically:

- Rule 5-1(4)(f.1) – Enhanced remuneration disclosure in written service agreements
- Rule 5-10 – Disclosure of representation in trading services
- Rule 5-10.1 – Disclosure of risks to unrepresented parties
- Rule 5-11 – Disclosure to sellers of expected remuneration
- Rule 5-16 – Restriction on dual agency in trading services
- Rule 5-17 – Dual agency in under-served remote location

The survey included a total of 18 questions:

- Four questions were included to establish background information on respondent demographics
- Twelve questions were included on six specific proposed rules. (Each proposed rule had two questions. First, respondents were asked whether they supported the rule and could select one of three responses “yes”, “no”, or “don't know”. Respondents were then also provided with free-text comment space to provide feedback on each rule.)
- One free-text question was included for respondents to provide general comments on the proposed rules
- One free-text question was included for respondents to provide any other general comments to OSRE

While all comments provided by survey respondents and other submissions were considered by OSRE staff, this report focuses on the high-level themes that emerged from the consultation feedback.

About OSRE

Led by Micheal Noseworthy, 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.

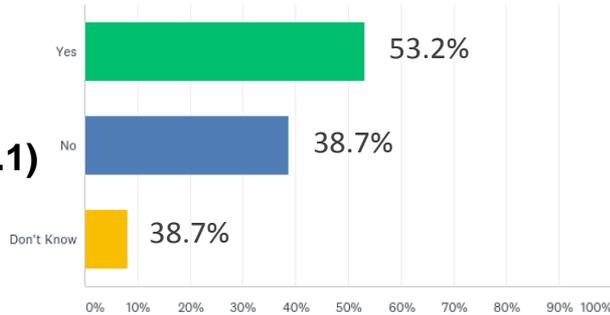
OSRE works with the Real Estate Council to fulfil its consumer protection mandate and is committed to working closely with Council to support implementation of any new rules.

Additional information about OSRE is available at www.gov.bc.ca/osre.

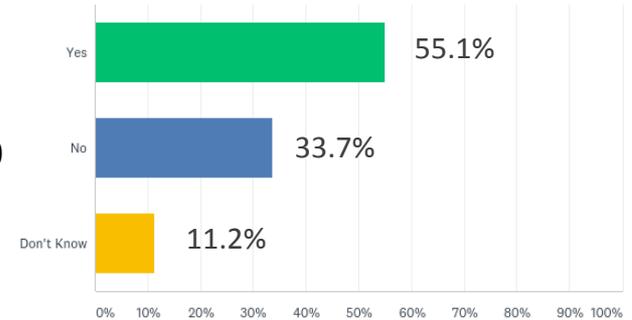
Additional information about the Real Estate Council is available at www.recbc.ca.

Snapshot: Overall Support for Proposed Rules

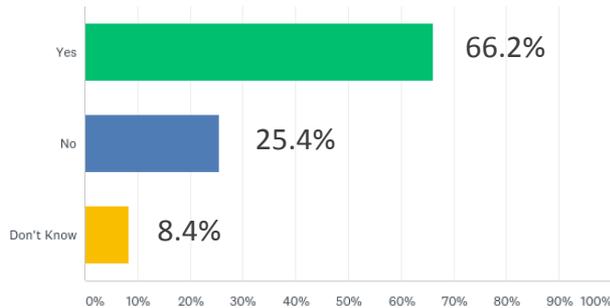
Rule 5(1)(4)(f.1)



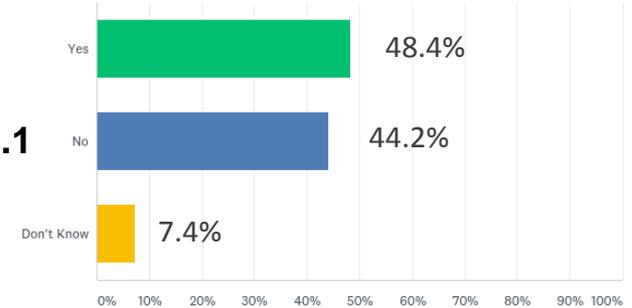
Rule 5-10



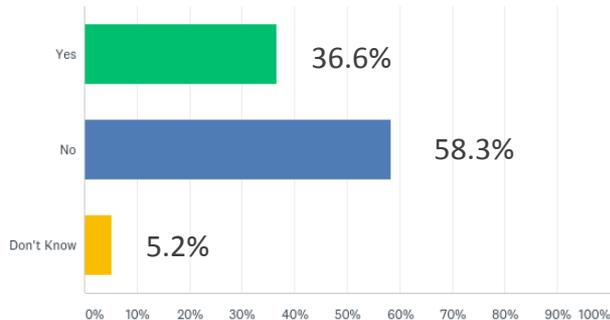
Rule 5-10.1



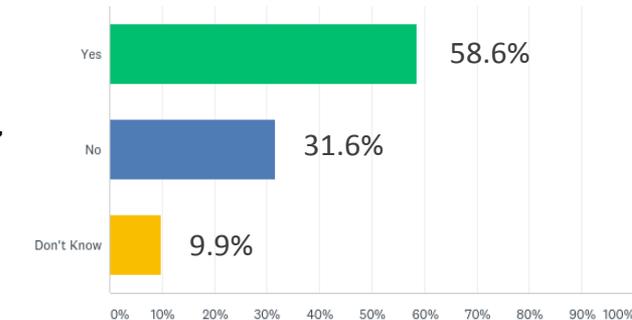
Rule 5-11.1



Rule 5-16



Rule 5-17



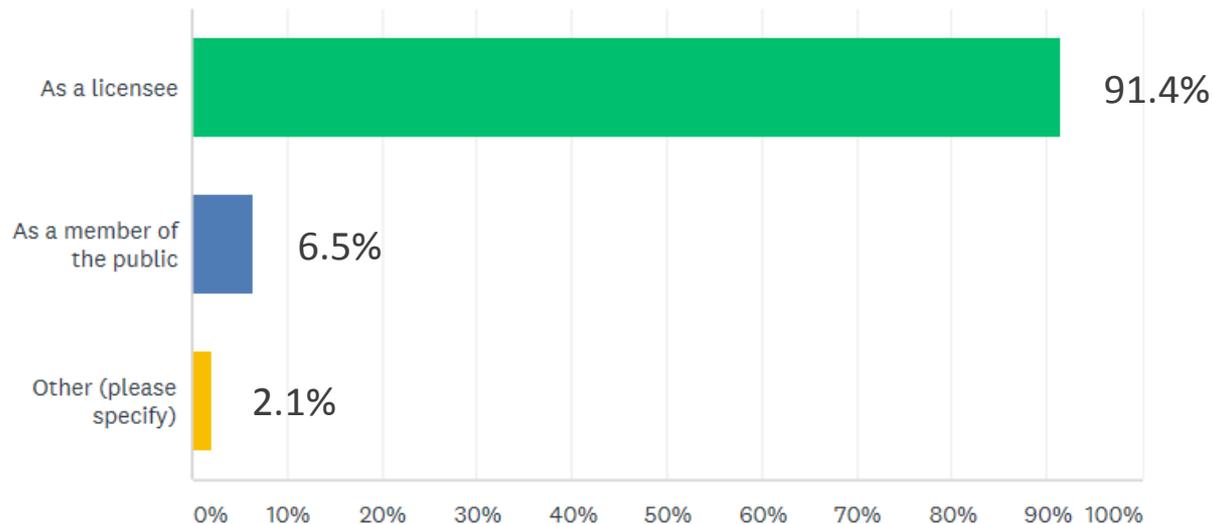


CONSULTATION FEEDBACK

Survey Demographics

Respondent Demographics

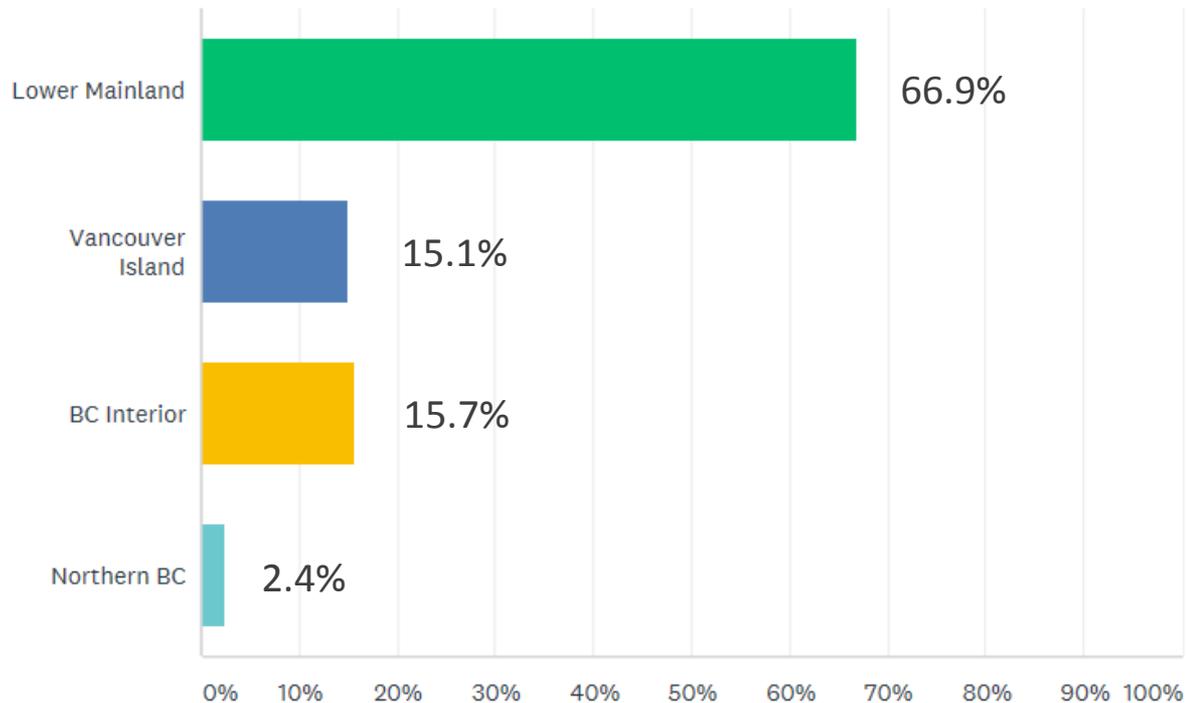
Capacity in which respondents commented on the proposed rules:



ANSWER CHOICES	RESPONSES
As a licensee	91.41% 2,395
As a member of the public	6.45% 169
Other (please specify)	Responses 2.14% 56
TOTAL	2,620

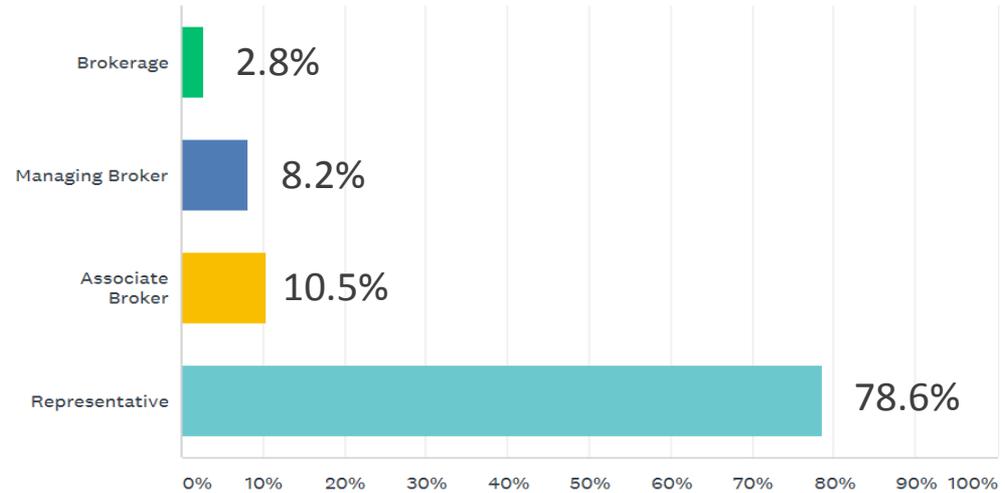
Public Demographics

Area of the province which best describes where members of the public who responded to the survey live and/or work:

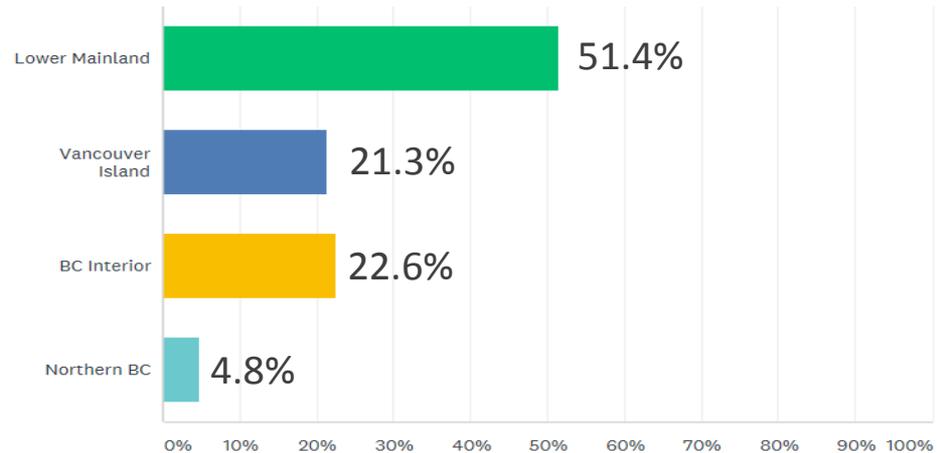


Licensee Demographics

Category of licence held by licensees who responded to the survey:



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





CONSULTATION FEEDBACK

Proposed Rules

Rule 5-1(4)(f.1)

Section 5-1 (4) is amended by adding the following paragraph:

(f.1) in the case of a service agreement for trading services that provides for a portion of remuneration to be paid by a listing brokerage to a cooperating brokerage, the following information:

(i) if there is a cooperating brokerage,

(A) the remuneration to be paid by the seller to the listing brokerage,

(B) the remuneration to be paid by the listing brokerage to the cooperating brokerage, and

(C) the remuneration to be retained by the listing brokerage;

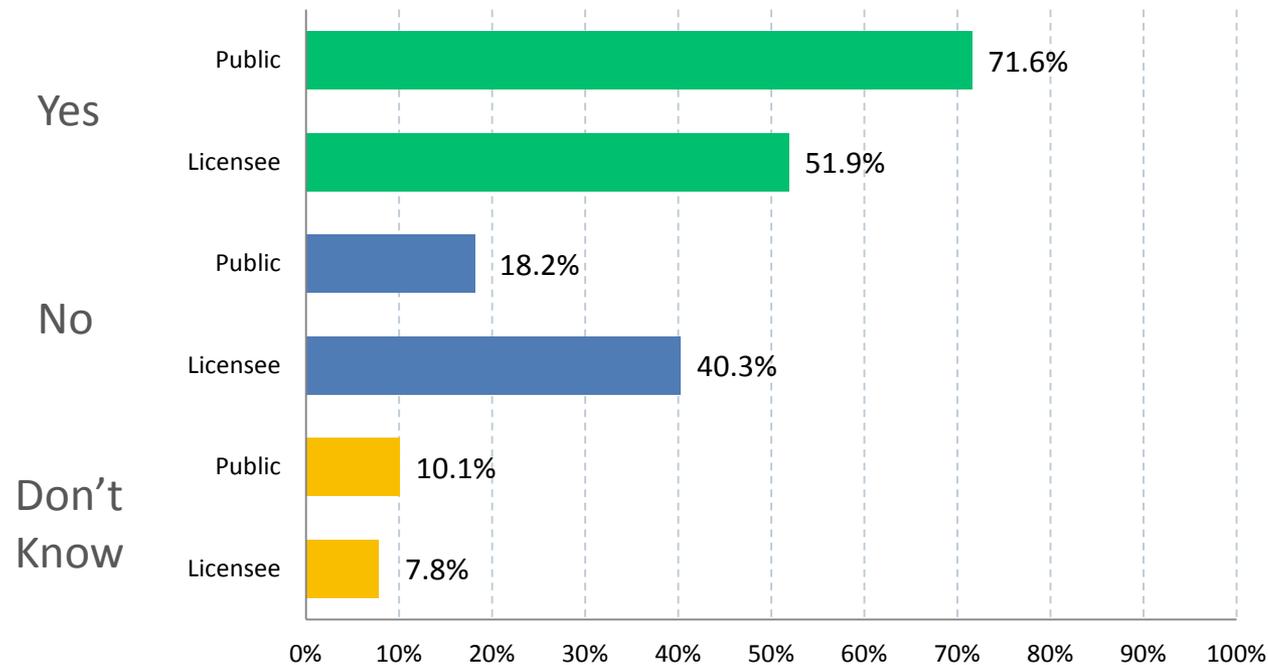
(ii) if there is no cooperating brokerage, the remuneration to be paid by the seller and to be retained by the listing brokerage.

Superintendent Comments

This amendment will require listing agreements that provide for remuneration to be shared by a listing brokerage with a cooperating brokerage to include a standard term for specifying how much remuneration will be paid to the listing brokerage and the cooperating brokerage and a standard term specifying the amount of remuneration payable where there is no cooperating brokerage to the transaction.

Rule 5-1(4)(f.1): Level of Support

Support for the proposed rule by respondent group:



Public (N=148)

Licensees (N=2,251)

Rule 5-1(4)(f.1): Key Feedback Themes

Key Themes	<i>OSRE Response</i>
<p>The proposed amendment is a positive step to protect consumers.</p> <p>Including additional mandatory clauses in the listing agreement will improve transparency and clarity for both consumers and licensees.</p>	<p><i>A majority of respondents indicated support for the proposed 5-1(4)(f.1) rule including 51.9% of licensees and 71.6% of the public.</i></p>
<p>Licensees already disclose adequate information on the gross commission payable in a transaction and how it will be shared between the listing and cooperating brokerages.</p> <p>The buyer does not need to be informed of how commission is shared between the listing and cooperating brokerages.</p>	<p><i>The rule does not fundamentally alter current practice. This amendment will standardize and clarify the specific information which needs to be included in the service agreement with respect to the calculation and sharing of commission between the listing brokerage and any cooperating brokerage. The rule is designed to enhance financial transparency and clarity for consumers, who have a right to know how any remuneration they pay is divided between their licensee's brokerage and any cooperating brokerage.</i></p>
<p>The details of an individual licensee's remuneration are private and confidential.</p>	<p><i>The disclosure under rule 5-1(4)(f.1) will only capture expected remuneration at the brokerage level. The disclosure will not identify how much a licensee will receive as a result of the transaction.</i></p>

Rule 5-10

Section 5-10 is repealed and the following substituted:

Disclosure of representation in trading services

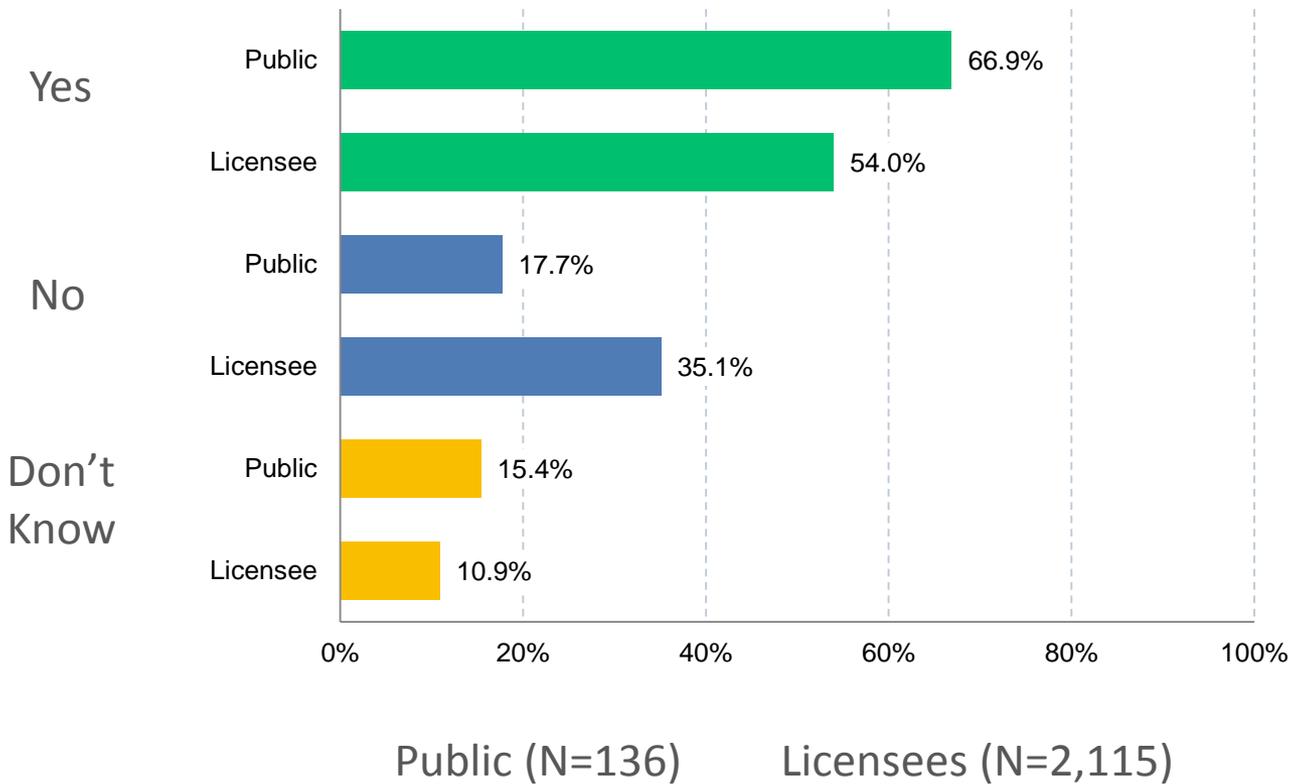
- 5-10** (1) Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose whether or not the licensee will provide representation to the party as a client.
- (2) A disclosure made under subsection (1) must be in a form approved by the council that includes the following information:
- (a) the duties and responsibilities of licensees to clients and unrepresented parties;
 - (b) how to file a complaint about a licensee's conduct.
- (3) Unless a licensee solicits or receives information from a party about the party's motivation, financial qualifications or needs in respect of real estate, a disclosure is not required under subsection (1) when the licensee is only
- (a) hosting an advertised open house, or
 - (b) providing factual responses to general questions from the party.

Superintendent Comments

Changes are being made to the current 5-10 rule to require disclosure regarding representation to be made to all consumers in a form approved by the Council. As part of the rule, licensees will be required to disclose whether they will be providing representation to a party as a client before providing any trading services. Licensees may host open houses and provide general factual responses to consumers without providing this disclosure, unless a licensee receives or solicits confidential information from the party as part of these activities.

Rule 5-10: Level of Support

Support for the proposed rule by respondent group:



Rule 5-10: Key Feedback Themes

Key Themes	<i>OSRE Response</i>
General support for the proposed 5-10 rule.	<i>A majority of respondents indicated support for the proposed 5-10 rule including 54% of licensees and 66.9% of the public.</i>
<p>The scope of the exceptions is not broad enough to allow for a natural and helpful real estate conversation to occur.</p> <p>A number of licensees are not supportive of a disclosure requirement being triggered by a party disclosing information concerning their motivation, financial qualifications or, in particular, needs in respect of real estate.</p>	<i>Consumers should have as much information as possible, as early as possible, when working with licensees to understand the nature of their relationship with a licensee and the duties and responsibilities that a licensee owes to them. Under the new rule, as under the previous rule, a disclosure is only required prior to providing trading services to a consumer. Licensees have an obligation to avoid potential conflicts of interest and to be upfront with consumers about the nature of their representation.</i>
Need better public education on the distinction between clients and unrepresented parties (commonly referred to today as “customers”)	<i>Both the public and real estate consumers need timely and relevant access to educational materials pertaining to real estate transactions. OSRE is working closely with the Real Estate Council to enhance public education materials and to provide consumers with greater information concerning the distinction between being a client and an unrepresented party.</i>

Rule 5-10: Key Feedback Themes (cont'd)

Key Themes	<i>OSRE Response</i>
<p>Licensees are already providing a similar disclosure through the <i>Working with a Realtor</i> brochure.</p> <p>Proposed changes may be redundant or would not result in a significant change to current practice.</p>	<p><i>This rule will result in the Real Estate Council determining the form for disclosures regarding the nature of the representation provided by a licensee to a consumer. This disclosure is typically made using the Working with a Realtor brochure. Licensees who are currently providing appropriate disclosure using the Working with a Realtor brochure should be able to easily transition to any new disclosure developed by the Real Estate Council. OSRE is committed to working with the Real Estate Council to ensure licensees understand how and when the disclosure needs to be provided to consumers.</i></p>
<p>A number of licensees lack familiarity with the current 5-10 rule and typically provide agency disclosure only at the time a contract is made.</p>	<p><i>The comments from a number of licensees suggest that they are fundamentally unfamiliar with the requirements of the current 5-10 rule and may not appropriately disclose to consumers early on the nature of their representation. This finding reiterates to OSRE the critical importance of revising this disclosure.</i></p>
<p>It is unclear how the new rules would operate in practice. Need further clarification or would benefit from additional information on how the rules will operate.</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 approved rules will operate in practice. Additional direction will be provided in advance of any new rules coming into effect.</i></p>

Rule 5-10: Key Feedback Themes (cont'd)

Key Themes	<i>OSRE Response</i>
<p>The rules should generally treat residential and commercial real estate transactions and licensees differently, given the relative sophistication of investors and businesses involved in commercial transactions.</p>	<p><i>The Real Estate Services Act and related rules do not distinguish between residential and commercial real estate transactions. As fiduciaries, licensees are expected to conduct themselves to a high standard regardless of the type of property or sophistication of the consumer.</i></p>
<p>Including information on the complaints process presupposes misconduct and the need to file a complaint.</p> <p>Other professionals are not required to explicitly advise how a member of the public can complain.</p> <p>Including information on the complaints process could increase frivolous complaints.</p>	<p><i>The Independent Advisory Group on Real Estate Regulation in BC noted significant confusion among members of the public on where and how to report concerns about licensee conduct. The rule will ensure consumers are adequately informed of their ability to make a complaint to the Real Estate Council should they feel the need to seek this type of recourse.</i></p>
<p>The requirement to provide disclosure before providing trading services occurs too early in the process. Licensees are regularly making inquiries of potential buyers or sellers (concerning their motivation, budget, timeline, interests, etc.). This rule would disrupt their current practice.</p>	<p><i>It is essential to consumer protection that consumers working with licensees have as much information as possible, as early as possible, to understand the nature of their relationship with a licensee and the duties and responsibilities that a licensee owes to them. Consumers should not have to guess or otherwise be uncertain about the nature of their relationship with a licensee.</i></p>

Rule 5-10.1

The following section is added:

Disclosure of risks to unrepresented parties

5-10.1 A licensee who makes a disclosure under section 5-10 (1) to an unrepresented party in respect of a trade in real estate while representing a client to that trade in real estate must also disclose, in a form approved by the council,

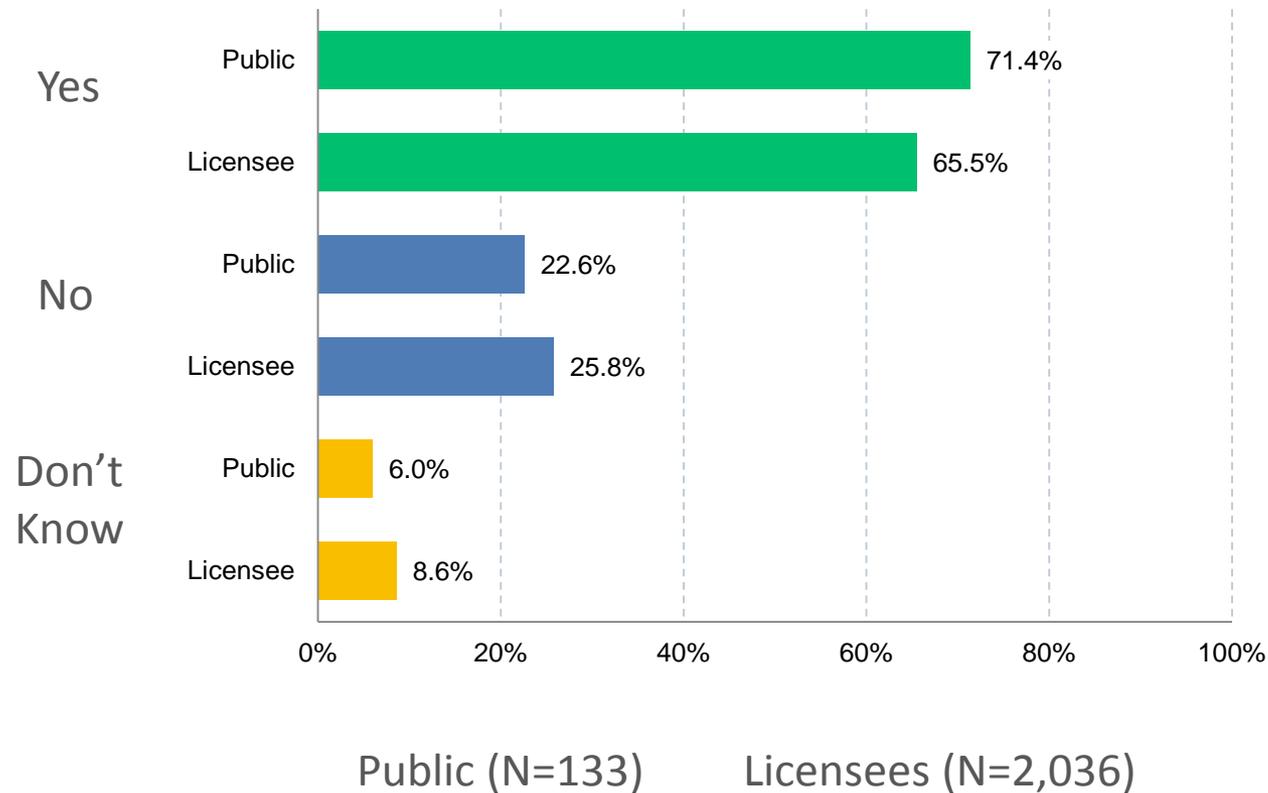
- (a) the risks to an unrepresented party of receiving assistance from the licensee due to the licensee's duties and responsibilities to the client of the licensee,
- (b) the limited assistance that the licensee may provide to the unrepresented party, and
- (c) a recommendation that the unrepresented party seek independent professional advice in respect of the trade in real estate.

Superintendent Comments

This is a new disclosure being implemented for licensees when working with unrepresented parties. The disclosure is supplemental to the revised 5-10 disclosure and is only required when a licensee already has a client to the trade in real estate and is providing services to an unrepresented party for that same trade. This disclosure will inform consumers of the limited assistance that a licensee may provide to an unrepresented party as well as encourage consumers to seek independent professional advice.

Rule 5-10.1: Level of Support

Support for the proposed rule by respondent group:



Rule 5-10.1: Key Feedback Themes

Key Themes	<i>OSRE Response</i>
<p>General support for the proposed 5-10.1 rule.</p>	<p><i>A majority of respondents indicated support for the proposed 5-10.1 rule including 65.5% of licensees and 71.4% of the public.</i></p>
<p>Licensees are already providing a similar disclosure through the <i>Working with a Realtor</i> brochure.</p> <p>The changes may be redundant or would not result in a significant change to current practice.</p>	<p><i>The 5-10.1 rule is a new disclosure for licensees when working with an unrepresented party. The disclosure is supplemental to the revised 5-10 disclosure and is only required when a licensee already has a client to the trade in real estate and is providing services to an unrepresented party for that same trade. This disclosure will inform consumers of the limited assistance that a licensee may provide to an unrepresented party and encourage consumers to seek independent professional advice. The disclosure is being implemented specifically to enhance consumer protection as a result of the restriction on dual agency. Consumers should be encouraged to seek independent professional advice for any real estate transaction.</i></p>

Rule 5-10.1: Key Feedback Themes (cont'd)

Key Themes	<i>OSRE Response</i>
<p>Suggestion that the disclosure should clearly specify the types of services a licensee may or may not be able to provide to an unrepresented party.</p>	<p><i>While the Real Estate Council is responsible for developing the 5-10.1 disclosure under the new rule, OSRE is committed to working with the Council to ensure that new disclosures provide as much relevant information as possible to unrepresented consumers who may be contemplating working with a licensee who already has a client to the potential real estate transaction.</i></p>
<p>Suggestion that there should be no unrepresented parties in a real estate transaction – every consumer should be required to have their own licensee.</p>	<p><i>The Real Estate Services Act applies to licensees and their conduct when working with consumers. The Act does not regulate consumers, including a consumer's decision on whether or not to seek licensee representation.</i></p>
<p>The rules should generally treat residential and commercial real estate transactions and licensees differently given the relative sophistication of investors and businesses involved in commercial transactions.</p>	<p><i>The Real Estate Services Act and related rules do not distinguish between residential and commercial real estate transactions. As fiduciaries, licensees are expected to conduct themselves to a high standard regardless of the type of property or sophistication of the consumer.</i></p>

Rule 5-10.1: Key Feedback Themes (cont'd)

Key Themes	OSRE Response
<p>Suggestion that the 5-10.1 disclosure should be incorporated into the 5-10 disclosure to reduce paperwork.</p>	<p><i>The 5-10.1 disclosure is distinct and is only meant to be provided to unrepresented parties when a licensee already has a client to the trade in real estate and is considering providing services to the unrepresented party for that same trade. Given that this disclosure is only provided in this specific circumstance, it is not appropriate to combine it with the more general 5-10 disclosure.</i></p>
<p>Suggestion to have the forms translated into multiple languages.</p>	<p><i>OSRE is committed to working with the Real Estate Council to ensure that new disclosure forms developed are translated into some of the most common languages used in British Columbia.</i></p>
<p>5-10.1(c) should not be included as part of the proposed rule because a recommendation to seek independent professional advice goes beyond the required disclosure in these cases.</p>	<p><i>Unrepresented consumers should be encouraged to seek independent professional advice for any real estate transaction. OSRE's main goal with the 5-10.1 rule is to enhance consumer protection in light of the restriction on dual agency.</i></p>
<p>Unclear on how the new rules would operate in practice. Clarification or more information needed.</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 approved rules will operate in practice. Additional direction will be provided in advance of any new rules coming into effect.</i></p>

Rule 5-11.1

The following section is added:

Disclosure to sellers of expected remuneration

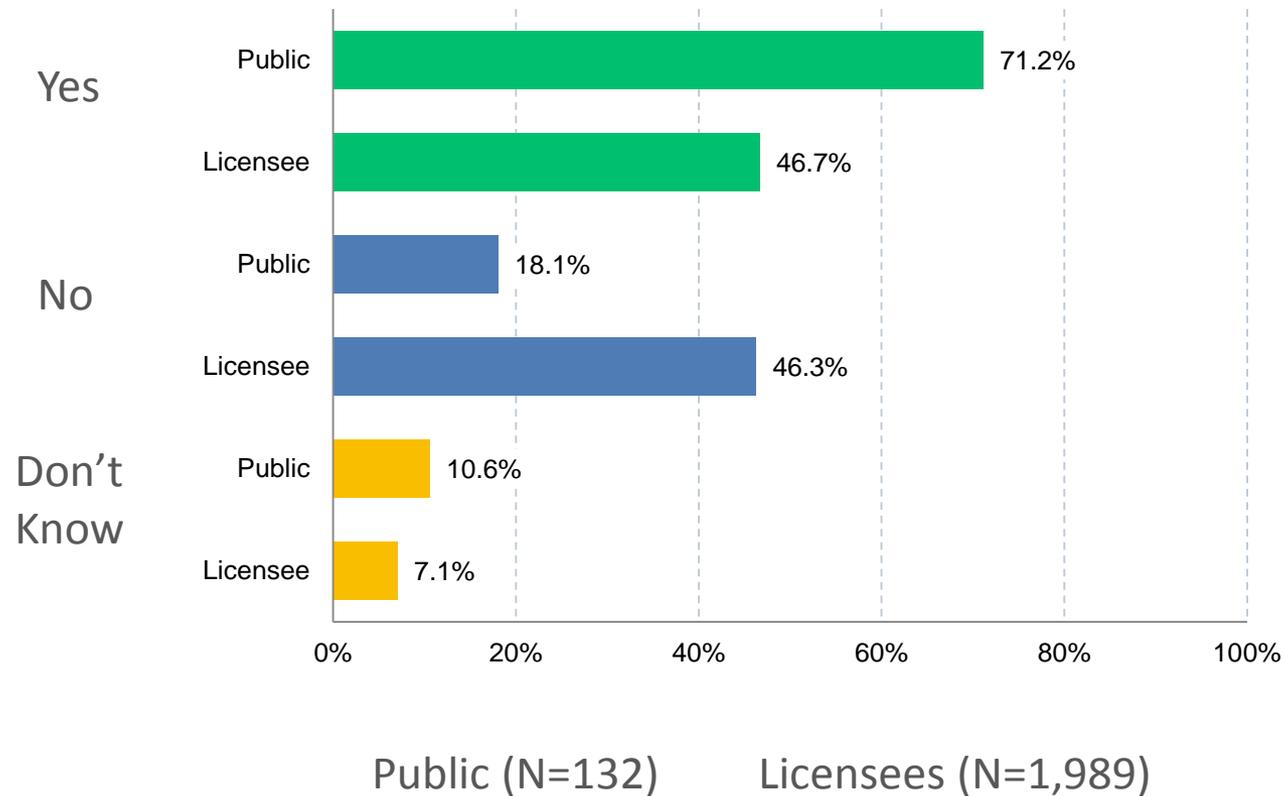
- 5-11.1** (1) When an offer to acquire real estate is presented to a seller by the seller's licensee, a licensee who is providing trading services to or on behalf of the seller must make a disclosure to the seller in accordance with this section.
- (2) The disclosure under subsection (1) must be in a form approved by the council and include the following information:
- (a) the remuneration to be paid by the seller to the listing brokerage;
 - (b) the remuneration to be paid by the listing brokerage to the cooperating brokerage, if applicable;
 - (c) the remuneration to be retained by the listing brokerage;
 - (d) any remuneration a licensee receives or anticipates receiving under section 5-11 (1) (a).

Superintendent Comments

A new disclosure is being introduced to ensure that sellers receive information from their licensee on the licensee's expected remuneration for every offer that is presented to the seller. The disclosure must include how the licensee's commission will be shared, if at all, as well as any other remuneration a licensee receives or expects to receive for that trade.

Rule 5-11.1: Level of Support

Support for the proposed rule by respondent group:



Rule 5-11.1: Key Feedback Themes

Key Feedback Themes	<i>OSRE Response</i>
General support for the proposed 5-11.1 rule.	<i>A significant proportion of respondents indicated support for the proposed 5-11.1 rule including 46.7% of licensees and 71.2% of the public.</i>
Consumers are already sufficiently informed about brokerage remuneration through existing practices and/or requirements; the disclosure is unnecessary.	<i>The 5-11.1 disclosure addresses specific consumer protection issues at the time the consumer is making a transaction decision, which allows the consumer to better understand any licensee conflict of interest relating to remuneration. This disclosure allows a seller to clearly see any remuneration fluctuations based on the buyer's representation, or lack thereof. The rule also clarifies the timing of the existing disclosure requirement under rule 5-11(1)(a) when a licensee is providing trading services to a seller.</i>
The details of an individual licensee's remuneration are private and confidential.	<i>Commission and fee splits between a licensee and their brokerage are not captured by the rule. The disclosure identifies any additional remuneration a licensee anticipates receiving or has received related to the sale of the property. The rule clarifies the timing of the disclosure requirement under rule 5-11(1)(a) when a licensee is providing trading services to a seller.</i>

Rule 5-11.1: Key Feedback Themes (cont'd)

Key Feedback Themes	<i>OSRE Response</i>
<p>The proposed rule would be onerous, create additional paperwork, or be a waste of licensee time.</p>	<p><i>While OSRE recognizes that the rule will create additional disclosure requirements for licensees at the time an offer is made, the additional effort of licensees to comply with this rule is outweighed by the benefit to consumers. The rule will enhance consumer protection by significantly increasing transparency of the remuneration structure of any real estate deal at the time an offer is made and is considered.</i></p>
<p>There were a number of other suggestions related to the proposed rule, including changes to enhance licensee education and specific suggestions about the form to be developed by Council.</p>	<p><i>Feedback regarding matters within the Real Estate Council's authority will be passed along to the Council for its consideration. Other suggestions for possible changes within OSRE's purview will be considered as we continue to implement the IAG's recommendations and fulfill our consumer protection mandate. 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 direction will be provided in advance of any new rules coming into effect.</i></p>

Rule 5-11.1: Key Feedback Themes (cont'd)

Key Feedback Themes	<i>OSRE Response</i>
The proposed rule would make licensees subject to greater remuneration disclosure requirements than other professionals.	<i>Compared to many other professionals, the remuneration of licensees is unique in that it is often involves a commission that fluctuates significantly based on the price of real estate and the presence of agency relationships (or lack thereof). Given the significant variability of this remuneration, consumers have a right to have a clear understanding of the remuneration that the licensee will receive in regards to the sale of their home.</i>

Rule 5-16

The following Division is added to Part 5:

Division 4 – Dual Agency

Restriction on dual agency in trading services

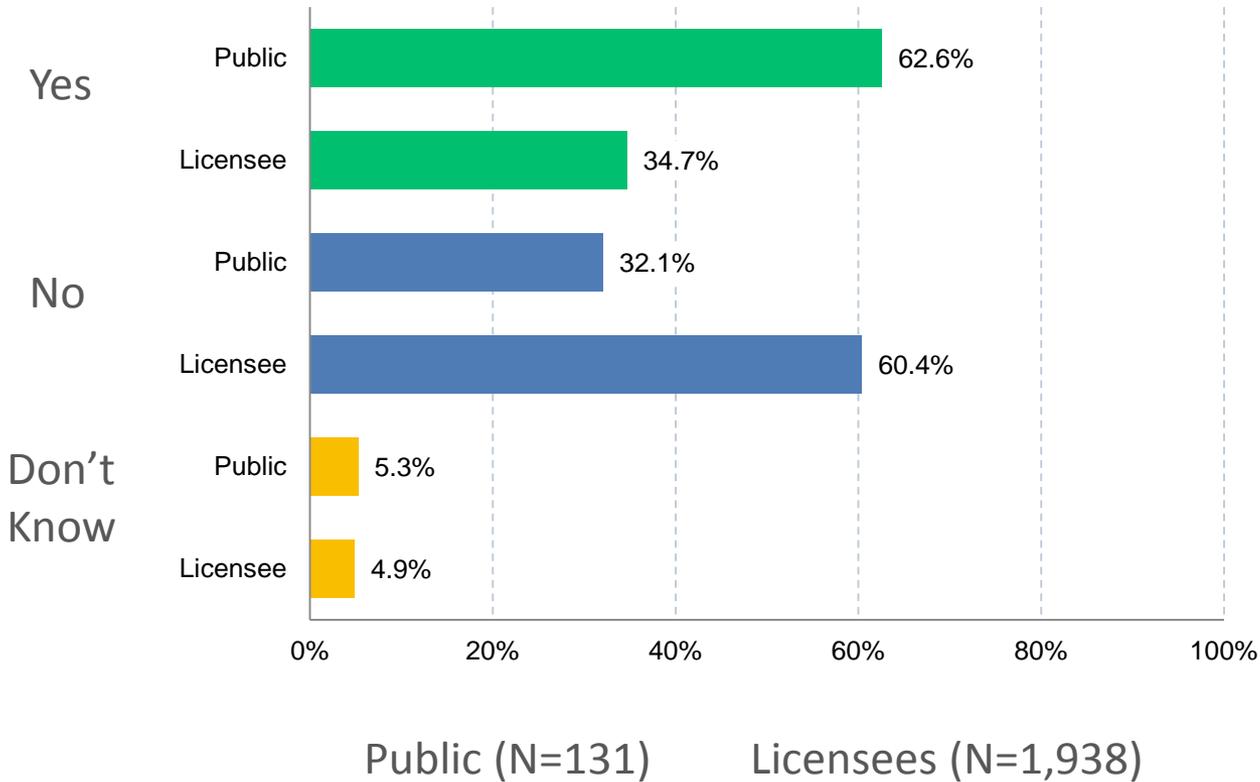
- 5-16** (1) A brokerage must not engage in dual agency.
- (2) The designation of one or more licensees as a designated agent does not constitute dual agency under this section unless the licensee designated as the designated agent represents the parties referred to in paragraph (a), (b), (c) or (d) of the definition of “dual agency” as clients in respect of a trade in real estate.

Superintendent Comments

This rule prohibits the practice of dual agency. Dual agency, also known as limited dual agency, most typically occurs when a licensee represents both a buyer and seller, or two or more competing buyers, in a transaction. Designated agency does not constitute dual agency as long as the designated agent(s) represents only one party to the transaction.

Rule 5-16: Level of Support

Support for the proposed rule by respondent group:



Rule 5-16: Key Feedback Themes

Key Themes	OSRE Response
Public support for the proposed 5-16 rule.	<i>There is strong support among the public for the proposed 5-16 rule, with 62.6% of public respondents indicating that they are supportive. Licensees indicated lower levels of support at 34.7%.</i>
Suggestion that OSRE adopt transaction brokerage in order not to limit consumer choice.	<i>Transaction brokerage provides no agency to both parties. While transaction brokerage addresses some of the conflicts of interest associated with dual agency, it reduces the range of services that licensees can provide and results in lesser consumer protections for all parties to a transaction.</i>
A restriction on dual agency may result in licensees colluding with one another to develop referral kickback schemes.	<i>Consumers are still protected if licensees refer clients to each other as a result of a dual agency prohibition, so long as any remuneration associated with the referral is disclosed and licensees provide proper agency representation.</i>
Certain elements of the proposed rule are unclear (e.g. how it would effect teams, whether designated agency would still be allowed, whether no agency would still be permitted.)	<i>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 direction will be provided in advance of any new rules coming into effect.</i>

Rule 5-16: Key Feedback Themes (cont'd)

Key Themes	OSRE Response
<p>A restriction on dual agency would limit a consumer's choice to work with their preferred licensee, with whom they may have developed trusting, long-standing relationships.</p> <p>Consumers may prefer to work with the listing agent, whom they believe has the most information about the property and may be able to save on commission.</p>	<p><i>The Independent Advisory Group on Real Estate Regulation in BC noted that acting as a dual agent may impede the ability of licensees to fulfill the fiduciary duties owed to both of their clients.</i></p> <p><i>While regulation, by its nature, limits consumer choice, the restriction on dual agency is a reasonable limitation in order to ensure consumers are protected. Further, the results of the consultation do not demonstrate that the public is concerned with the limitations the rule would place on consumer choice as the majority of public respondents were in favor of the restriction on dual agency.</i></p>
<p>Suggestion that in addition to a restriction on dual agency, OSRE also require buyers agreements so as to ensure buyers are represented.</p>	<p><i>Depending on the form and content, OSRE agrees that buyers agreements may serve to clarify agency relationships for licensees and the public and notes that nothing in the rules precludes a brokerage from implementing such agreements in their real estate practice.</i></p>

Rule 5-16: Key Feedback Themes (cont'd)

Key Themes	<i>OSRE Response</i>
<p>A restriction on dual agency may weaken protections for buyers. Licensees will opt for more customer relationships with buyers so that they can continue to “double end” transactions.</p> <p>In order to be effective, the Superintendent should restrict “double ending” so as to discourage licensees from working with unrepresented parties.</p>	<p><i>OSRE recognizes that the restriction on dual agency may result in the potential for an increased number of unrepresented parties. To address this situation, OSRE has developed rules, such as the 5-10.1 disclosure, to ensure consumers are aware of the risks of engaging in a real estate transaction as an unrepresented 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 will monitor 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>Certain elements of the proposed rule are unclear (e.g. how it would effect teams, whether designated agency would still be allowed, whether no agency would still be permitted.)</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 approved rules will operate in practice. Additional direction will be provided in advance of any new rules coming into effect.</i></p>

Rule 5-16: Key Feedback Themes (cont'd)

Key Themes	OSRE Response
<p>The role of a licensee in a real estate transaction is one of a facilitator who brings together buyers and sellers in a win/win scenario. The transaction process is not, or does not need to be, adversarial. As such, dual agency, if practiced properly, is a useful and needed tool to facilitate real estate transactions.</p>	<p><i>A licensee is not a salesperson or a facilitator but rather a fiduciary that is obligated to act in the best interests of their client. The Independent Advisory Group on Real Estate Regulation in BC noted that acting as a dual agent may impede the ability of licensees to act in accordance with the duties owed to both of their clients and is a source of considerable existing and potential conflicts of interest. A licensee's legal responsibility to fulfill their fiduciary duties (which may be compromised while acting as a dual agent) must always take precedence over the ease and timeliness of completing a real estate transaction.</i></p>
<p>The proposed rule and the remote and under-served exemption are anti-competitive and could be challenged.</p>	<p><i>The Real Estate Services Act allows the Superintendent to make rules that the Superintendent considers necessary to regulate licensees in relation to the provision of real estate services. Section 89.2(3)(e) explicitly states that the Superintendent may make rules respecting the provision of real estate services to more than one party, including conditions and restrictions applicable to the provision of trading services to or on behalf of different parties to a trade in real estate.</i></p>

Rule 5-16: Key Feedback Themes (cont'd)

Key Themes	OSRE Response
<p>Several licensees asked about the rationale and evidence behind the proposed restriction on dual agency.</p> <p>Sentiment that the Superintendent does not understand the industry and decisions are being made without proper consultation.</p> <p>The proposed rule is a “knee-jerk reaction” to an issue that is caused by a “few bad apples” in the Lower Mainland.</p> <p>Increased disclosure, enforcement and education would be a better approach to improving the functioning of the industry.</p>	<p><i>Consumers are not likely to be aware of the agency duties they are owed or the conflicts of interest that manifest in a dual agency situation because they are singularly controlled by the licensee.</i></p> <p><i>The restriction on dual agency was a major recommendation of the Independent Advisory Group on Real Estate Regulation in BC (IAG). The IAG noted that acting as a dual agent may impede the ability of licensees to act in accordance with the duties owed to both of their clients and is a source of considerable existing and potential conflicts of interest. This conflict of interest would still exist even with increased disclosure, enforcement and education.</i></p>

Rule 5-16: Key Feedback Themes (cont'd)

Key Themes	<i>OSRE Response</i>
<p>A restriction on dual agency will create confusion and complications for both licensees and the public.</p> <p>It is unfair to both licensees and their clients to refer clients out, especially when they have an ongoing relationship with a client.</p> <p>Licensees requested that past and existing relationships be exempted from the proposed prohibition.</p> <p>A ban on dual agency would be a disincentive for many agents to actively market a property to their extensive client networks and/or show buyers their own listings, to the detriment of their clients.</p>	<p><i>A restriction on dual agency will challenge existing industry practices and will require significant industry education. Licensees can avoid many of the challenges identified if they are mindful of potential conflicts before entering into relationships and actively avoid dual agency situations. The rules do not prevent licensees from working with past clients and/or actively marketing a property to a potential buyer.</i></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 approved rules will operate in practice. Additional direction will be provided in advance of any new rules coming into effect.</i></p>
<p>Suggestion that the Superintendent should restrict or prohibit the practice of “double ending” more generally.</p>	<p><i>OSRE will monitor 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>

Rule 5-16: Key Feedback Themes (cont'd)

Key Themes	OSRE Response
<p>The proposed rule will have crippling effects on current business models and the industry as a whole.</p> <p>Licensees expressed concerns about potential lost commissions.</p>	<p><i>Licensee business models were considered in developing the proposed rules only to the extent that they may have an impact on consumer protection.</i></p>
<p>Concerns about how the proposed rules would affect teams. Teams provide a number of benefits for consumers (e.g. allowing licensees to pool resources to market properties and provide coverage if a licensee is unable to attend to a client) and a restriction on dual agency would likely lead to many teams being disbanded.</p>	<p><i>A team will not be able to engage in dual agency to represent both a buyer and a seller, or multiple competing buyers, in a transaction as the team is considered collectively to be the designated agent of a client. While teams may be a convenient business model to facilitate a real estate transaction, a licensee's responsibility to fulfill their fiduciary duties takes precedence over the ease and timeliness of completing a transaction. Teams wishing to represent both buyers and sellers in a single transaction could consider licensing as a brokerage in order to continue to provide this service.</i></p>

Rule 5-16: Key Feedback Themes (cont'd)

Key Themes	OSRE Response
<p>Additional exemptions are needed for specific segments of the market (agricultural land, waterfront property, island properties, commercial real estate).</p> <p>There are not enough licensees with the specialized knowledge of these segments of the market to adequately represent both sides to a transaction in certain parts of the province.</p>	<p><i>Niche markets are difficult to define and there is little evidence to support the potential for consumer protection issues occurring without an exemption. Further, an exemption for commercial properties would require the delineation of commercial transactions in the regulatory scheme, which is a departure from the current model that provides equal protections for all consumers regardless of property type. With over 21,000 trading services licensees in BC, it is anticipated that the rule will provide a further incentive to licensees to expand their knowledge and expertise into niche markets.</i></p>
<p>Failure to provide additional exemptions may result in less consumer protection as one party to the transaction would either receive no representation or be forced to be represented by an under-qualified licensee.</p>	<p><i>The restriction on dual agency may result in the potential for an increased number of unrepresented parties. To address this situation, rule 5-10.1 requires a new disclosure that ensures consumers are aware of the risks of engaging in a real estate transaction as an unrepresented 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>

Rule 5-17

Dual agency in under-served remote location

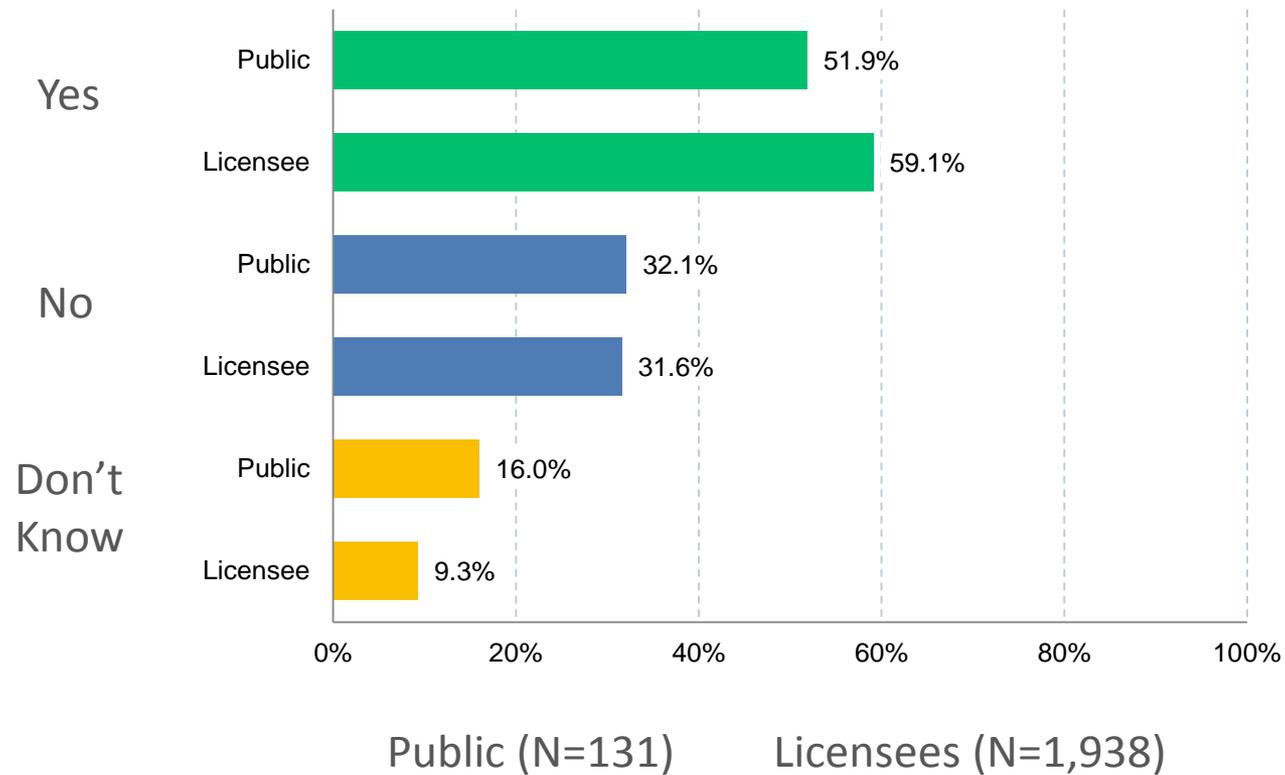
- 5-17** (1) Despite section 5-16, a brokerage may engage in dual agency in respect of a trade in real estate if the real estate is in a remote location that is under-served by licensees and where it is impracticable for the parties to be provided trading services by different licensees.
- (2) Before providing any trading services that constitute dual agency, a licensee must
- (a) make a disclosure to each party, in a form approved by the council, that includes
 - (i) a statement of the brokerage, signed by the managing broker, clearly setting out the reasons why subsection (1) applies, and
 - (ii) the following terms and information:
 - (A) the duties and responsibilities of the licensee to the clients of the licensee in a dual agency relationship;
 - (B) the risks associated with a dual agency relationship, and
 - (b) enter into a written agreement of dual agency with each party under section 3-3.1 [*modification of duties*] after making a disclosure under paragraph (a).
- (3) A brokerage must provide the council with the disclosure made under subsection (2) (a) promptly after entering into a written agreement of dual agency under subsection (2) (b).

Superintendent Comments

This rule provides for an exemption to the dual agency restriction (section 5-16) in remote locations that are under-served by licensees. Before practicing dual agency under this exemption, a licensee must make a disclosure in a form approved by the Council to both parties to the transaction. The disclosure must include information about the duties and responsibilities of the licensee to the clients, the risks associated with a dual agency relationship, as well as a signed statement of the brokerage explaining why the exemption applies. The signed disclosure must be submitted to the Council once a dual agency agreement is entered into.

Rule 5-17: Level of Support

Support for the proposed rule by respondent group:



Rule 5-17: Key Feedback Themes

Key Themes	<i>OSRE Response</i>
General support for the proposed 5-17 rule.	<i>A majority of respondents indicated support for the proposed 5-17 rule including 59.1% of licensees and 51.9% of the public.</i>
<p>There should be no exemption for remote and under-served communities.</p> <p>There should not be different rules for different parts of the province.</p> <p>Different treatment for remote and under-served communities is discriminatory.</p>	<i>Although all consumers require protection, in certain circumstances it is impossible for a consumer in a remote and under-served community to get representation other than from the licensee who is representing the other party to the transaction. This does not negate the inherent conflict of interest in providing dual agency.</i>
Disclosure requirements under the proposed rule are unclear (e.g. who needs to fill out the disclosure, whether Council would need to approve each disclosure before a licensee enters into dual agency.)	<i>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 direction will be provided in advance of any new rules coming into effect.</i>

Rule 5-17: Key Feedback Themes (cont'd)

Key Themes	OSRE Response
<p>Request for a concrete definition of “remote and under-served.”</p> <p>Managing brokers, in particular, indicated that the proposed rule as currently phrased would push decision making to managing brokers and that they would not accept the responsibility without additional guidance on the definition.</p>	<p><i>The rule does not define remote and under-served communities in recognition of the unique and varied geography of the province and the changing circumstances that may impact the availability of licensees in a community. Legal advice may be sought by licensees or managing brokers who are unsure if the exemption applies to their circumstances.</i></p>
<p>Questions on whether remote and under-served communities truly exist, especially since licensees can travel or use various technologies to assist clients.</p> <p>Allowing this exemption creates a loophole because there are few situations where a consumer could not obtain the services of either a licensee or a lawyer.</p>	<p><i>OSRE received submissions which described various circumstances where licensees would not be available to facilitate a transaction due to the remoteness and under-served nature of the location of the real estate.</i></p>

Rule 5-17: Key Feedback Themes (cont'd)

Key Themes	<i>OSRE Response</i>
<p>Request to expand the exemption to include under-served markets and not just under-served locations (e.g. niche properties).</p> <p>A location is not simply under-served if there are a few licensees available but is also under-served if there are few licensees with specialized knowledge and/or expertise.</p>	<p><i>Niche markets are difficult to define and there is little evidence to support the potential for consumer protection issues occurring without an exemption. With more than 21,000 trading services licensees in BC, it is anticipated that the rule will provide a further incentive to licensees to expand their knowledge and expertise into such markets.</i></p>
<p>Licensees feel that the dual agency disclosure form is cumbersome.</p>	<p><i>This additional requirement is needed to ensure that dual agency is used only in very narrow circumstances, where it is impracticable to have another licensee involved in the transaction due to the remote and under-served nature of the property.</i></p>
<p>The dual agency disclosure should include additional requirements (e.g. to demonstrate that reasonable efforts were taken to avoid dual agency or requirement that consumers seek legal advice).</p>	<p><i>These suggestions will be considered when working with the Real Estate Council to develop the dual agency disclosure.</i></p>



CONSULTATION FEEDBACK

General Comments

Key Themes: General Comments and Feedback

Key Themes	<i>OSRE Response</i>
<p>Suggestions for industry improvements instead of or in addition to the proposed rules, including:</p> <ul style="list-style-type: none"> • more enforcement and increased penalties for contraventions • greater education for licensees and the public with a primary focus on entry requirements to the profession • exclusion of commercial trading services from the proposed rules • recognition of other specialized categories of licensees 	<p><i>Feedback that relates to the exercise of the Real Estate Council's authority will be passed along for its consideration. Other suggestions for possible changes to industry within OSRE's authority will be considered as we continue to implement the Independent Advisory Group's recommendations and fulfill our mandate to enhance consumer protections.</i></p>
<p>The proposed rules represent a overreaction and are not supported by evidence.</p>	<p><i>The rules respond directly to the recommendations of the Independent Advisory Group Report on Real Estate Regulation in BC and the Superintendent's broad mandate to enhance consumer protection in the real estate industry. The Superintendent has independent, statutory authority to make rules governing licensee conduct.</i></p>

Key Themes: General Comments and Feedback

Key Themes	<i>OSRE Response</i>
<p>There are regional differences in the practice and conduct of licensees.</p>	<p><i>OSRE will continue to promote a consistent, high-standard of conduct to ensure consumers are protected no matter where they live in the province.</i></p>
<p>The majority of licensees have strong ethics and are being punished for the conduct of a few bad actors.</p>	<p><i>The vast majority of licensees are ethical, diligent and provide valuable and competent services to the public. However, this does not mitigate against the fact that the rules and regulatory regime can do more to protect consumers and ensure consumers have a high degree of confidence in the industry. The Independent Advisory Group on Real Estate Regulation in BC recommended the creation of a comprehensive Code of Ethics and Professional Conduct to reinforce the importance of a licensee's ethical obligations. OSRE is committed to implementing a regulator Code of Ethics.</i></p>

Key Themes: General Comments and Feedback

Key Themes	OSRE Response
<p>Improved licensee and public education and stronger enforcement are required to address licensee misconduct and ethical breaches.</p>	<p><i>The Government of British Columbia and the Real Estate Council have taken a number of steps to strengthen education and enforcement in response to the Independent Advisory Group's recommendations. This includes amendments to the Real Estate Services Act that increase penalties and strengthen the Superintendent's oversight authority, and Council's policy changes that raise the professional entry standards and the English language proficiency requirements. OSRE is committed to working closely with the Real Estate Council to take additional steps to enhance licensee education and enforcement activities.</i></p>