

January 16, 2019

Honourable Carole James, MLA
Minister of Finance
Room 153, Parliament Buildings
Victoria, BC V8V 1X4
Hand delivered

Dear Minister,

RE: Limited dual agency and real estate regulatory review

The British Columbia Real Estate Association (BCREA) recognizes the importance of consumer protection, and we welcome the opportunity to discuss it with you in two contexts: a potential short-term measure regarding the ban on limited dual agency, and a robust regulatory framework.

Limited dual agency

We are concerned that, in the first six months since the ban on limited dual agency (LDA) came into effect, both REALTORS® and consumers have been negatively impacted.

In November 2018, BCREA distributed a survey to REALTORS® across BC to understand the impacts the ban was having after the first several months of implementation. Over 1,200 respondents completed the survey, providing feedback and sharing their personal stories and experiences.

The survey results suggest that consumer protection is reduced because of the ban. Respondents have observed an increase in unrepresented consumers, who are now restricted when choosing the REALTOR® they believe can best represent them, especially in small communities.

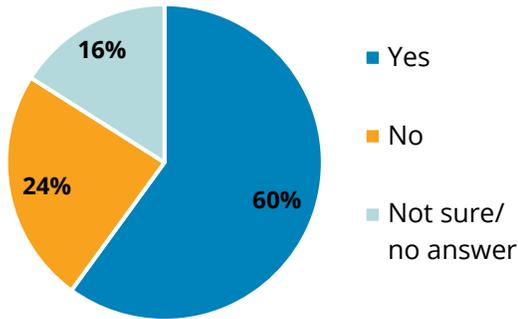
The majority of respondents found an increase in unrepresented consumers, which was not the intention of the ban. Among those who see an increase in unrepresented consumers, more than 80 per cent believe it is a large increase of more than ten per cent.

Respondent comments:

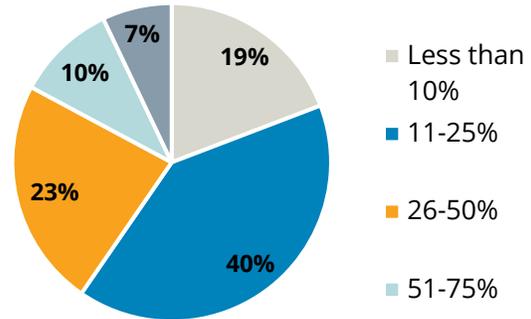
- *Consumers are let down when [REALTORS®] are forced to refer them to a broker they are unfamiliar with. Often they will choose to go unrepresented instead.*
- *There are more people being unrepresented and using lawyers or a notary to represent them. Neither of these options know the current market values of properties like a REALTOR® would. Therefore people either pay too much, or receive less than market value for their for sale by owner property.*

- Consumers are being unrepresented or are being represented by REALTORS® outside of their local areas. Both of which I do not feel are protecting the consumer in any way.

Are you seeing an increase in the number of consumers who are unrepresented?



If you are seeing an increase in the unrepresented consumers, please estimate the increase

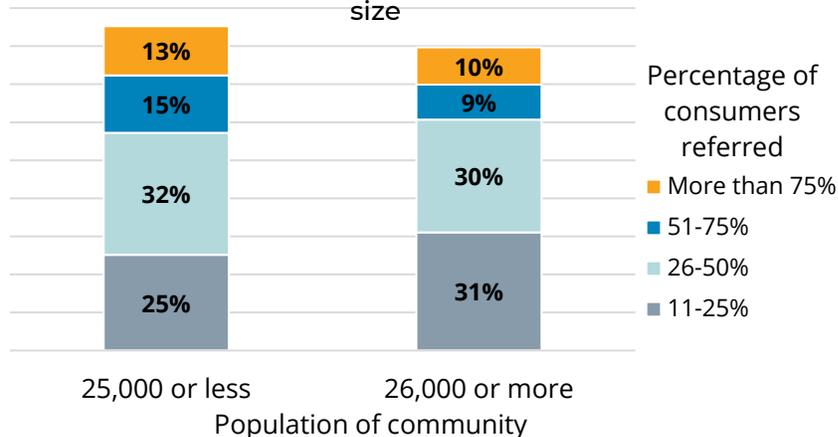


REALTORS® have also had to refer many of their clients to other REALTORS®. Among respondents, nine out of ten in communities with less than four brokerages have had to refer more than ten per cent of clients, severely inhibiting consumer choice, and often leaving consumers unrepresented. According to one respondent:

Consumers are very frustrated because they get referred multiple times. [In] one particular case I had to contact seven different REALTORS® before someone would agree to write an offer for the consumer, when I could have done it right away under the old dual agency rules. I've received multiple complaints about consumers not being able to choose who they work with under the new rules. They're being forced to use someone they don't want to use. ... That's not good for the consumer!

Even before the ban, consumers in small communities with few REALTORS® had little choice. The LDA ban disproportionately affects small communities and communities with few brokerages. Among respondents who work in communities of less than 5,000 people, 81 per cent know REALTORS® who have given up their licenses as a direct result of the ban. Among respondents, 60 per cent of REALTORS® working mostly in communities of less than 25,000 people estimate having to refer more than 25 per cent of their clients to another REALTOR®. This is compared to 39 per cent of respondents working in communities of more than 26,000.

Estimated proportion of consumers referred to other REALTORS® as a result of the LDA ban by community size



We know from a consumer survey we commissioned in August 2018 that more than 70 per cent of consumers think it is “very” or “somewhat” important to be able to work with the REALTOR® of their choice. This is a situation that requires a solution.

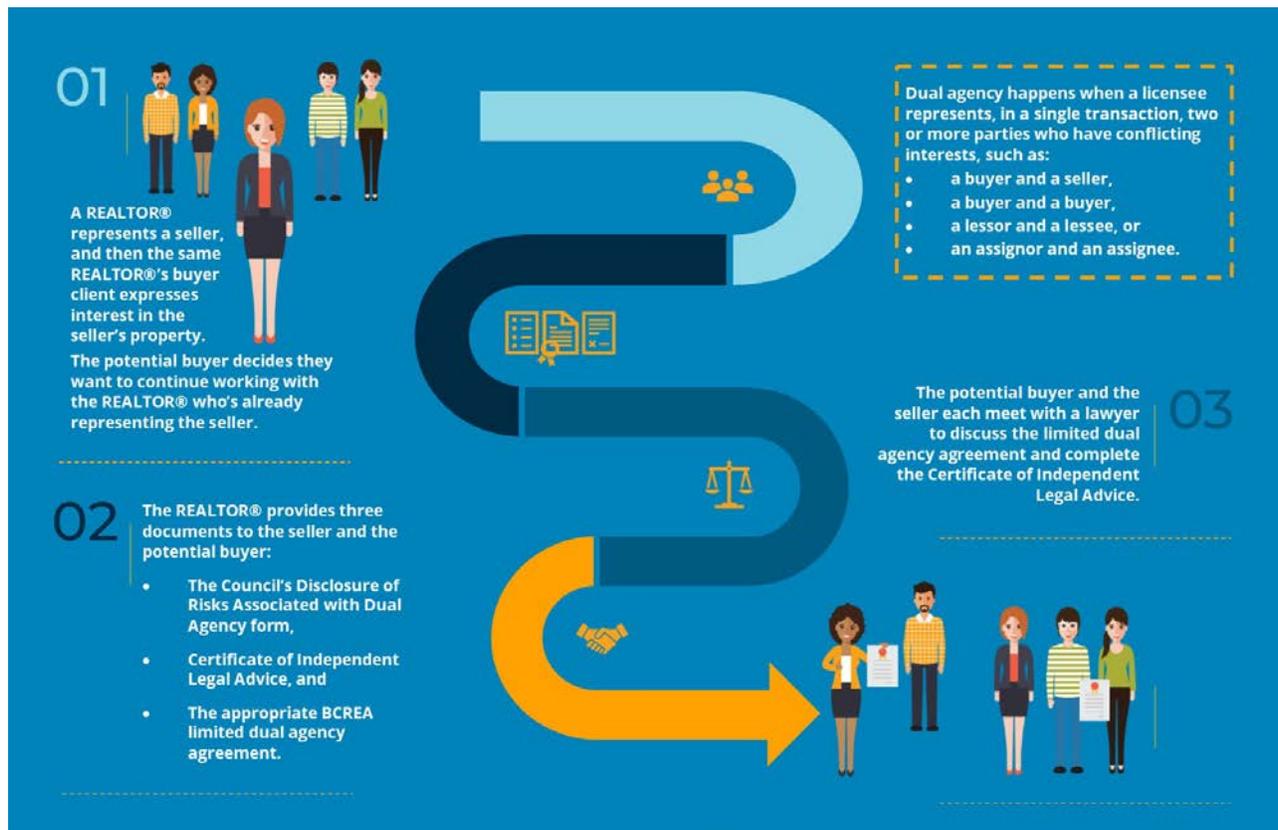
Waiver proposal

To make the LDA ban more workable for consumers and REALTORS®, three out of five respondents support a waiver that consumers could sign to allow the use of LDA. The waiver would be reviewed by a lawyer to be valid. The creation of a waiver, or certificate of independent legal advice, will result in continued protection of consumers, while mitigating some of the unintended consequences of the LDA ban, especially to small communities and commercial real estate transactions.

Enclosed is a draft waiver in a format most lawyers are familiar with and containing standard language common to most certificates of independent legal advice.

While limited dual agency can occur in a variety of circumstances, we offer an example of how the waiver could be used in a particular situation:

1. A REALTOR® represents a seller, and then the same REALTOR®’s buyer client expresses interest in the seller’s property. The potential buyer decides they want to continue working with the REALTOR® who is already representing the seller.
2. The REALTOR® provides three documents to the seller and the potential buyer:
 - the Council’s Disclosure of Risks Associated with Dual Agency form,
 - Certificate of Independent Legal Advice (waiver), and
 - the appropriate BCREA limited dual agency agreement.
3. The potential buyer and seller then each meet with a lawyer to discuss the LDA agreement and complete the Certificate of Independent Legal Advice.



To make this proposal work, several actions are required, including:

- The Office of the Superintendent of Real Estate adding a new provision in the Rules to allow the use of the waiver in division 4, part 5 of the *Real Estate Services Act*.
- BCREA revising our two LDA forms.
- Council amending the Disclosure of Risks Associated with Dual Agency form and the Council's Conflicts of Interest form.

The waiver is not a complete solution to the issues caused from the LDA ban; however, we believe it will provide an additional option for difficult situations in the short term. In the long term, BCREA offers two opportunities that are worth further exploration:

1. A new course or certification offered by the Real Estate Council of British Columbia, which would allow the REALTOR® to practice LDA.
2. Clarifying and expanding upon the definitions of “under-served” and “remote” to help REALTORS® and consumers in small and remote communities, as well as with real estate specialties, such as commercial.

Regulatory review

In September 2018, your ministry published Dan Perrin's independent review of the regulatory framework currently governing real estate practice in BC. The Perrin report had three key findings:

- Recommending changes in both regulatory structure and policy development.
- Concluding that the current regulatory structure is causing dysfunction in the oversight relationship between OSRE and Council.
- Concluding that the purpose of real estate regulation be expanded to include “ensuring a fair, efficient and trusted real estate market.”

The Perrin report also recommended the creation of an industry advisory group, recognizing the importance of the REALTOR® voice. It is important that REALTORS® are able to provide valuable, practical input from the industry perspective, resulting in meaningful and workable improvements. REALTOR® involvement also helps them understand how to respond and adapt to upcoming changes.

Several months have elapsed since the report was published, and so we are curious to know the next steps and the future of the real estate regulatory framework in BC. After several years of disruption and dysfunction, we look forward to a stable system.

BCREA appreciates a well-thought-out decision process, and we are available to provide input at any stage. We strongly believe that explicit REALTOR® involvement in creating and maintaining any future regulatory structure is necessary to create a functional environment that inspires public confidence in REALTORS®.

We look forward to continuing to work collaboratively to advance solutions that protect consumers and meet the needs of real estate professionals.

As you know, BCREA is the professional association for about 23,000 REALTORS® in BC, focusing on provincial issues that impact real estate. Working with the province's 11 real estate boards, BCREA provides continuing professional education, advocacy, economic research and standard forms to help REALTORS® provide value for their clients.

To demonstrate the profession's commitment to improving Quality of Life in BC communities, BCREA supports policies that encourage economic vitality, provide housing opportunities, respect the environment and build communities with good schools and safe neighbourhoods.

Yours sincerely,

A handwritten signature in black ink that reads "Darlene K Hyde". The signature is written in a cursive, flowing style.

Darlene K. Hyde
Chief Executive Officer

Enc (1)

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CERTIFICATE OF INDEPENDENT LEGAL ADVICE

TO: _____ (Brokerage)

RE: _____

(Client)

DATE _____, 20__

I HEREBY CERTIFY THAT:

(1) On this date the Client consulted me in their presence alone about the legal consequences of the Client executing the attached Limited Dual Agency Agreement (**Document**)

(2) The Client advised me that:

- (a) _____ (name of licensee) is, or proposes to be, the Designated Agent representing the Client in a potential real estate transaction concerning property at _____ (**Real Estate Transaction**), and that
- (b) the Designated Agent is licensed with the Brokerage

(3) I explained the nature of the Document to the Client and how, if the Client executes it, the Document will modify the Designated Agent's agency duties to the Client in respect of the Real Estate Transaction.

(4) The Client has informed me and I am satisfied that:

- (a) the Client fully understands the Document and the legal consequences of executing it; and that
- (b) the Client freely and voluntarily executed the Document in my presence and was not under any undue influence or compulsion to execute it

(5) I have given this advice to the Client as the Client's lawyer and in the Client's interest only without regard to the interests of the Brokerage, the Designated Agent or any other person.

(Lawyer)

I HEREBY ACKNOWLEDGE AND DECLARE that I consulted the above noted lawyer as my personal lawyer, that all statements made in this Certificate are true and correct **and that I received the aforesaid advice before executing the Document.**

(Client)