



BRITISH COLUMBIA
REAL ESTATE
ASSOCIATION

the bulletin

Quality of Life: Balanced Political Action



As REALTORS®, you sell the livability of your communities. Economic vitality, affordable housing, a safe and attractive community and a healthy environment create good neighbourhoods. That's why they're the basis of Quality of Life, a philosophy BCREA adopted in May 2004.

By taking a balanced approach to accommodating growth and building better communities, Quality of Life reflects the work you're already doing.

What is Quality of Life?

It provides a framework for BCREA's government relations activities, helping build influence, credibility and trust with the government and other decision makers. It's based on five principles:

- Ensuring economic vitality
- Providing housing opportunities
- Preserving our environment
- Protecting property owners
- Building better communities

The principles are hard to argue with, and they help BCREA establish common ground with individuals and organizations, providing a foundation to work together to achieve specific goals, such as improving the affordability of housing.

How does it work?

"What's good for the province is good for the real estate profession," says BCREA President Dave Barclay, a REALTOR® from Smithers. "By approaching issues from a public perspective, instead of self-interest, we have a better chance of being heard—and making real differences for us and our clients."

For example, a public opinion survey in January indicated nearly all British Columbians are concerned about housing affordability. This reinforces BCREA's position to eliminate or reduce the Property Transfer Tax (in an April survey of BC REALTORS®, the importance of this issue was rated 8.8 out of 10).

Research is an important component. Since it's important to align the priorities of the profession with those of the public—the people who elect the government—BCREA surveys both groups. Before taking positions on issues, the results of these surveys are considered, and other research is sought, including original works (such as the economic impact of real estate transactions) and studies done by other organizations.

External organizations play another role in Quality of Life. By creating alliances on specific issues, BCREA can demonstrate the broader benefits of its positions. It's also harder for decision makers to ignore recommendations made by large numbers of people. BCREA is considering an alliance to further its position on preserving the integrity of

the Torrens system of land title registration (to ensure economic vitality and protect property owners).

"Quality of Life reflects the economic and social contributions we've made for decades," says Barclay. "I'm really proud to bring that to the government's attention."

More information

Enclosed with this newsletter is a brochure that briefly explains the Quality of Life philosophy. BCREA will use this with politicians, government staff, the business community and the public to introduce the philosophy and open the door to more communication. Additional information is available from BCREA's Quality of Life website (www.qualityoflife.bcrea.bc.ca), and more will appear in future issues of *The Bulletin*.

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President's Report

Being Professional

I love my job. That's probably why I've been doing it for 17 years. There's nothing like helping people find the right property—especially since, more often than not, I'm helping them find homes.

Looking at the results of BCREA's REALTOR® survey, I'm pleased so many of you feel the way I do. Despite our pride, though, there are also concerns about ethics and cooperation among REALTORS®, particularly in this very active market. One consumer with a bad experience reflects poorly on everyone else, no matter how seriously we take our education and high standards of practice.

Because we care so much about our professionalism, and we've told our national organization, CREA has been working for some time to revise the Code of Ethics. The new national Code will take effect on July 1, 2006. Here's part of it:

As REALTORS®, we accept a personal

obligation to the public and to our profession. The Code of Ethics of The Canadian Real Estate Association embodies these obligations. As REALTORS®, we are committed to:

- Professional competent service
- Absolute honesty and integrity in business dealings
- Cooperation with and fairness to all
- Personal accountability through compliance with CREA's Standards of Business Practice

Doesn't that say it? I think this new Code of Ethics will be a great marketing opportunity. I also think we can demonstrate our professionalism even more by letting the public know about the education necessary for licensing and, in the future, to require REALTORS® to take continuing education.

More than 96,300 homes sold on the MLS® in BC in 2004. That's more than 96,300 opportunities for a REALTOR®



President *Dave Barclay*

to educate and make a positive impression on a home buyer or seller. We play a very important role in the lives of our clients and our communities, and we always need to remember that.

Dave Barclay
President

Board of Directors 2005-2006

Long-Range Plan Principles

- Responding to communication needs
- Building membership relations
- Providing enhanced service options for member boards
- Offering excellence in education services
- Maintaining an equitable fee structure
- Leading provincial advocacy efforts on behalf of the profession
- Demonstrating public interest

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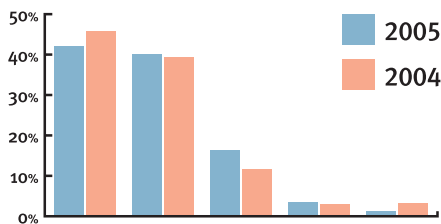
Proud to be a REALTOR®

More than 80 per cent of you are proud to be REALTORS®, according to an online survey conducted in the spring. Unfortunately, this is less than the 84 per cent response in the 2004 REALTOR® survey.

Among many other questions, BCREA asked about REALTOR® and public perceptions of the real estate profession. The study was conducted by Inshtrix Research Services. Personalized email invitations were sent to 9,452 BC REALTORS® and 1,831 responded, for a completion rate of 19.4 per cent.

How closely does the following statement reflect your opinion of the real estate profession: I am proud to be a REALTOR®.

	2005	2004
Very well	41.4%	45.2%
Well	39.5%	38.8%
Somewhat	15.7%	11.1%
Not very well	2.8%	2.4%
Not at all	0.5%	2.6%

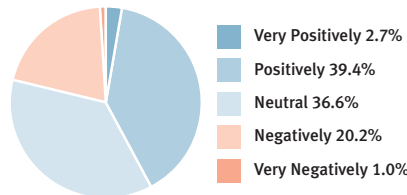


Why so much pride? REALTORS® love helping clients achieve their goals and dreams, and they also consider real estate to be an honourable profession that provides valuable services.



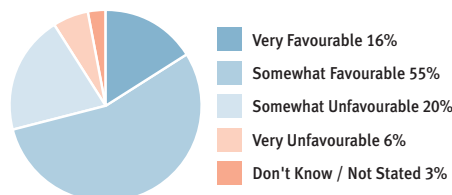
It's interesting to note, then, that more than 36 per cent gave a neutral response when asked how the profession was perceived by the public. More than 40 per cent said very positively or positively:

REALTORS®



In a public survey conducted in January by Ipsos-Reid, more than 70 per cent of respondents had a very favourable or somewhat favourable impression of the real estate profession:

Public



Correction

I always like to receive *The Bulletin* put out by the BCREA as the articles are usually of some interest and informative. The Trends article in the [June] issue is an exception.

The "Years of Employment" . . . graph separates years of experience into 5 year segments ending with 25+ years and ranks it as percentage of total. Unfortunately if you add up the totals in each column you get 149%. This means that 149% of the respondents have been in real estate somewhere between 0 and 25+ years. How's that for a useful statistic!

Sincerely,

Jeremy Sutton
RE/MAX Treeland Realty

Mr. Sutton also had concerns regarding the REALTOR® profile that appeared at the beginning of the article. The profile was based on the highest number of responses to the options given for each of the questions and wasn't meant to be definitive.

Thank you, Mr. Sutton, for raising your concerns. The correct figures for years employed in real estate are included below.

The Editor

Years employed in real estate

	2005	2004
1-5 years	26.6%	21.0%
6-10 years	10.3%	13.2%
11-15 years	26.7%	27.0%
16-20 years	14.7%	14.1%
21-25 years	9.6%	11.1%
25+ years	12.1%	13.6%

Read the October issue of *The Bulletin* for more about REALTOR® volunteerism and to learn what REALTORS® see as priorities for government lobbying.

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Be WELL Prepared: New *Ground Water Protection Regulation* by Kim Spencer kspencer@bcrea.bc.ca



Anyone involved in the purchase and sale of rural property knows the importance of a reliable and adequate supply of good quality water. The next time you deal with a property that contains a well, consider this: starting November 1, 2005, a new government Regulation for wells will take effect in BC. It's important to understand the new Regulation so you can properly advise your clients.

The new Regulation is designed to protect groundwater and wells from contamination. This is particularly important for rural property owners who use private, domestic wells as their drinking water source. The Regulation also applies to geotechnical and environmental monitoring of wells on commercial and industrial properties.

- deactivate or permanently close a well that has been out of service, and
- ensure the well is securely capped or covered.



adding questions relating to water wells (based on the requirements of the Regulation) to the form, and this request will be considered this fall. In the meantime, you may wish to learn more about the legal requirements of well owners so you can properly advise clients purchasing property on which there is a well. Even if these requirements aren't reflected on the Property Disclosure Statement, it will be useful for the property owner to be aware of them. As a trusted professional, you're in an ideal position to lend a hand with this.

**property owners also
have a responsibility to
prevent contamination**

Property Owners

While most of the Regulation's requirements relate to the standards that must be met by well drillers and pump installers, property owners also have a responsibility to prevent contamination. For example, property owners must:

- maintain the integrity of the wellhead and surface seal,
- engage a qualified well driller if alterations to, or closure of, the well are contemplated,
- ensure the well identification plate remains visible and not damaged or lost,

REALTORS®

It's a great idea to get into the habit of asking sellers how they have dealt with these items. To assist, the Ministry of Environment is working with the British Columbia Ground Water Association to develop a series of well stewardship brochures, one of which will focus on how property owners can comply with the Regulation and keep their well water safe. These brochures will help you inform and assist your clients. BCREA will advise you when the brochure is available, or you can check (or advise your clients to check) the following website for the appropriate link:
<http://wlapwww.gov.bc.ca/wat/gws/gwis.html>.

The Ministry of Environment has asked BCREA's Property Disclosure Statement Subcommittee to consider

Further information on the Internet:

A list of qualified well drillers and qualified well pump installers:
<http://wlapwww.gov.bc.ca/wat/gws/gwis.html>.

The *Ground Water Protection Regulation*:
http://wlapwww.gov.bc.ca/wat/gws/gws_reg_back/gwpr_oics.pdf

Background information:
http://wlapwww.gov.bc.ca/wat/gws/gws_reg_back/back.html.

BCREA thanks Heather Smart, of the Water Protection Section of the Water, Air and Climate Change Branch of the Ministry of Environment, for her assistance in preparing this information.

Practical Points

New Council Chair, Vice Chair

In July, Dougal Shewan, of Royal LePage-Wolstencroft in Langley, was elected as Chair of the Real Estate Council of British Columbia for 2005-2006. Philip Jones, of Royal LePage East Kootenay Realty in Cranbrook, was elected as Vice-Chair.

Priorities include the licensing of strata managers, introducing a relicensing education program and Council's efforts to effectively regulate the profession, given its new self-regulating status.

The Council licenses individuals and brokerages engaged in real estate sales, rental and strata property management. Its Rules establish expectations regarding conduct, and licensees should be

aware that Council can impose administrative penalties or disciplinary sanctions in situations where a licensee has failed to act in accordance with the Rules. The Council is a regulatory agency established by the provincial government. It protects the public interest by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*.

Eighteen members of the Council are managing/associate brokers and representatives elected by licensees to represent all areas of the province. There are also three government-appointed public members.

Despite the considerable authority of



Real Estate Council of British Columbia



Council Chair *Dougal Shewan*

the Council, few licensees participate in the election of its members. Voting statistics since 2002 indicate about 20 per cent of eligible licensees tend to vote for broker positions, although that number spiked to nearly 34 per cent in 2004. Only about ten per cent of eligible licensees tend to vote for representative positions.

For a complete list of members, and for more information about the Real Estate Council of BC, visit www.recbc.ca.

Government Relations

No Impact from Telemarketer Licensing



BCREA has received written confirmation that REALTORS® won't be subject to new telemarketing licensing requirements, as long as they aren't initiating contact to enter into a contract with a consumer over the telephone or by fax.

By October 1, 2005, the provincial

government will require the licensing of telemarketers under the new *Telemarketer Licensing Regulation*. The regulation will be administered by the Business Practices and Consumer Protection Authority (BPCPA).

According to the BPCPA, the regulation was needed to combat fraudulent telemarketing and consumers' frustration with the number of calls they receive from telemarketers. All telemarketers who conduct business in BC, or who contact consumers in BC by phone or fax for the purpose of entering into a distance sales contract or third-party fundraising, will be subject to the new regulation. A distance sales contract is a contract for

the supply of goods or services between a supplier and consumer that isn't entered into in person.

The BPCPA has indicated that it wasn't the intent of those who drafted the new requirement to impact the practices of the real estate profession.

Other exempted groups include charities that call or fax consumers directly, and may include educational institutions, political organizations and firms conducting surveys.

For more information about the BPCPA and the *Telemarketer Licensing Regulation*, including frequently asked questions, visit www.bpcpa.ca.

Education

Expand Your Career Opportunities by Andre Gravelle, Director, Diploma and Certificate Programs, Real Estate Division, Sauder School of Business, UBC



The Diploma Program in Urban Land Economics is a nationally recognized distance education program designed for highly motivated real estate professionals who want to expand their knowledge of complex real estate markets and sophisticated properties. The Diploma Program also meets the educational requirements for the Real Estate Institute of BC's RI designation, and serves as the entry requirement for the Bachelor of Business in Real Estate undergraduate degree.

An online distance education program, the Diploma in Urban Land Economics allows working professionals to balance study and work. The flexible online learning format allows students to choose the time and place to study, and determine the program pace according

to their own schedules. The program offers four areas of specialization: property management, appraisal, property assessment and real estate development.

The Real Estate Division works closely with real estate professionals and faculty experts to provide a comprehensive curriculum to meet the educational needs of current practitioners and new participants in the real estate profession. The program consists of 11 courses, each one approximately 13 weeks in length. Courses in the first part of the program provide a broad foundation in the underlying principles that drive the real estate market. The focus then shifts to professional and applied aspects, with an emphasis on helping students hone their analytical and problem solving skills. Online program assistance with course material is readily available.



Real Estate Division

The Sauder School of Business Real Estate Division is Canada's leading real estate educator. The Real Estate Division provides a variety of education programs ranging from licensing education, professional development opportunities and university credit-based programs, providing real estate education opportunities for students provincially, nationally and internationally.

For more information, contact the Diploma Program: 604.822.2227, 1.888.776.7733 or info@realestate.ubc.ca.

Education

cpe Seminar Schedule



Buyer Agency

Instructor: Jim McCaughan

- September 23, VREB, Victoria

CONDO 202: Advanced Strata Law for REALTORS®

Instructor: Mike Mangan

- September 23, OMREB, Kelowna

Negotiating and Presenting Offers

Instructor: Richard Collins

- August 25, REBGV, Vancouver
- October 7, VIREB, Duncan

Professionalism It Pays! Be Safe or Be Sued

Instructor: Mike Mangan

- September 22, SOREB, Penticton

Representing Buyers in the Sale of New Homes and Condominiums

Instructor: Gerry Halstrom

- September 8, KADREA, Kamloops
- October 6, REBGV, Vancouver

Selling Tenant-Occupied Properties (STOP)

Instructor: Evelyn McNulty

- September 15, VREB, Victoria



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GROW-OP POSSIBILITY AND ACTIONS AGAINST PROPERTY MANAGER AND DUAL AGENTS

A rumour and other indirect evidence that a home had been used to grow marijuana resulted in separate actions being combined in a single provincial court trial because of their common facts.

One action was brought by the buyer of the house against the former owners and the dual agents who acted for the buyer and sellers for damages suffered due to their failure to disclose the possibility of a grow-op.

The other action was brought by the former owners of the home against the property management company that rented it to the alleged grow operator, for failing to exercise care in the selection of the tenant and a lack of proper inspections. They wanted reimbursement for the cost of repairs and the return of fees paid to the company. Their written contract didn't refer directly to inspections. Instead, in very general terms, the company was required to act reasonably in performing every act usually performed by a manager of similar premises.

The company only performed interior inspections if it had a specific concern, upon request, if there was a need for repairs or maintenance and for incoming and outgoing inspection. The property manager likely would have avoided litigation if this wording

had been in the contract, because the owners assumed the management company would inspect the exterior monthly and the interior periodically.

Damages to the house were discovered after an exterior inspection revealed the furniture had been removed. The tenant left the house when notice was given of the intention to do an interior inspection. No direct evidence of a grow-op was left, but the type of damages pointed to a grow-op as their source. The lack of direct evidence led the former owners to decide it was unnecessary to disclose to their representative or in the Property Disclosure Statement the possibility that there had been a grow-op in the home.

The dual agents first learned of the possible grow-op from another representative in their brokerage firm who had been told this by a client. The dual agents decided they had an obligation to make their principals aware of this possibility, and proceeded to do so. The buyer denied having been given this information.

The judge accepted the evidence of the dual agents, concluding the information had been given to the buyer. Therefore, and in the absence of any actual knowledge by the dual agents of the potential defect, there was no breach of their respective duties to the former owners or the buyer.

The former owners fared no better with their claim against the property manager. The management company's check of the tenant's employment

record and history with prior landlords didn't reveal anything that would concern a reasonable landlord. Their credibility suffered because they differed as to the inspections that had been agreed upon in the discussions leading to the contract with the property management company. The judge dismissed their claim, concluding the contract didn't impose an obligation for regular interior inspections and the company had acted reasonably in carrying out exterior inspections.¹



Lawyer **Gerry Neely**

Gerry Neely BA, LL.B.
Victoria, BC

¹ *Hawick et al. v. Columbia Prop Management Ltd. and Haggerty v. Loni Hamer-Jackson et al.*, PCBC, Small Claims Division, Kamloops Registry, Reasons for Judgment, February 1, 2005.

Back issues of *Legally Speaking* are available to REALTORS® on BCREA's REALTOR Link® homepage under the heading Communications. Subscribers who are not REALTORS®, and who wish to see back issues, should contact BCREA by email at bcrea@bcrea.bc.ca, or by phone at 604.742.2784.

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THE REAL ESTATE
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OF BRITISH COLUMBIA

MODIFICATION OF AN EASEMENT AGREEMENT

When is an easement not an easement? “When the rights granted by it detract so substantially from the rights of the servient owner that it must be something other than an easement.” This is from the reasons for judgment interpreting an easement agreement granting access over Lot 3 (the servient tenement) for the benefit of Lot 2 (the dominant tenement). The benefits included the right to “landscape, garden and enjoy the Easement Area as an integral part of Lot 2,” in common with the owner of Lot 3.

The Lot 2 owners constructed a road through the Easement Area, which restricted the Lot 3 owner’s access to her property for heavy equipment or a pickup truck, planted hedge trees that would potentially eliminate her water view, installed deer fences about eight feet high on either side of the Easement Area to protect the fruit trees and grapes they had planted in the Easement Area, constructed concrete pilasters to support trellises for grapes and took the fruit from pre-easement trees because they looked after them.

Eventually, the Lot 3 owner rebelled and sued to modify the easement by deleting the landscaping clause. The Lot 2 owners’ position was that the rights of the Lot 3 owner to landscape and garden her property in the Easement Area were subject to their rights. If this argument prevailed, the Lot 3 owner might never be able to use her property.

The judge agreed there was no way both parties could landscape and garden within the Easement Area and ordered the deletion of the clause.¹

ENFORCEMENT OF HARD FLOORING BYLAW

In a hard flooring material case, a strata corporation had mixed success petitioning for an order directing an owner to remove the laminate flooring he installed. It contravened a flooring bylaw approved two years before the owner purchased his unit, requiring wall-to-wall carpet throughout second- and third-floor units except kitchens, bathrooms and five feet of the entry halls.

The owner neither asked whether laminate flooring was permitted nor searched in the Land Title Office for a copy of the bylaws before he made his offer. Instead, he relied on a “buyer’s package” provided by the listing representative, whose evidence was that it contained a complete set of the bylaws. The judge didn’t accept the owner’s claim that the page containing the flooring bylaw was missing.

The owner was ordered to remove the flooring and replace it with carpet at his expense, but not to pay the legal costs normally paid to a successful party.

While a strata corporation can require an owner to pay the cost of remedying a contravention, it must first give the owner particulars of the complaint and a reasonable opportunity to answer it, including a hearing if the owner requests one. The strata corporation failed to do this and had to bear its own costs.²

FIRST NATIONS REGISTRY

The Law Society of BC recently issued a practice watch concerning a completed sale of a sublease on First Nations land following registrations in the Indian Land Registry.

Some First Nations Bands, including the one in question, now have the right to create and run their own land registry systems. In this case, after all monies had been paid out, the lawyer acting for the buyer was notified by Indian and Northern Affairs Canada that the registrations had been cancelled and would have to be submitted for re-registration under the Band’s First Nations Registry, which wasn’t in place at the time of the notification. The cancellation of the registrations and the failure to set up the Band’s registration system potentially risked the title and priority interests of a buyer and mortgagee.

Lawyers were advised to determine whether the land falls under the *First Nations Land Management Act*, and were referred to www.fafnlm.com for information.

Gerry Neely BA, LL.B.
Victoria, BC

¹ *Prinsen v. Wickland*, SCBC, Victoria Registry, Reasons for Judgment, December 3, 2003 and *Property Law Act*, RSBC 1996, c. 377, s. 35.

² *The Owners, Strata Plan VR19 v. Collins*, SCBC, Vancouver Registry, Reasons for Judgment, December 31, 2004 and *Strata Property Act*, RSBC 1998, c. 43, s. 129, 133, 135, 173.

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