



BRITISH COLUMBIA
REAL ESTATE
ASSOCIATION

the bulletin

Refinements Mark First Anniversary of *RESA*

January 2006 marked the first anniversary of the implementation of the *Real Estate Services Act (RESA)*—a milestone worth examining, as the process to fine-tune the legislation continues.

Responsiveness to the dynamic nature of the modern marketplace is a key characteristic of *RESA*. While the legislation isn't perfect—and what piece of legislation that modernizes a law after 45 years of neglect would be?—the profession continues to work with the Real Estate Council of BC and the provincial government to refine the Act to ensure it responds to public needs and operates effectively for REALTORS®.

On January 1, 2006, some new requirements and modest changes to the legislation came into effect.

New requirements

Written disclosures

Licensees are now required to disclose the following in writing:

- service agreements (s. 5-1 of the Council Rules)
- remuneration not paid by a client (s. 5-11)
- benefits in relation to rental property management services or strata management services (s. 5-12)
- known material latent defects (s. 5-13)
- interest in trade when a licensee, or an associate of that licensee, disposes of that interest (s. 5-9)

Strata licensing

People who wish to provide strata management services are now required to be licensed. All strata managers, with the exceptions of self-managed strata corporations and resident caretakers and their related companies, were required to apply for a licence by January 1, 2006. Grandparent provisions may apply to licensees currently engaged in strata management services and unlicensed providers of strata management services.

Tweaking the legislation

In response to concerns raised by brokerages, s. 4-9 of the Council Bylaws has been amended to eliminate the requirement for commission trust accounts to be included in the audit for the annual Accountant's Report. This change applies from the 2006 reporting year onward.

Looking ahead—personal service corporations

Further refinements to *RESA* are being explored and BCREA will keep you informed on the progress of this work. The most significant development to occur recently was the Canada Revenue Agency's indication that it would recognize individuals who become licensed by way of personal corporations.

This licensing approach could assist with income tax planning options that reflect the cyclical nature of the marketplace. The provincial government is examining the mechanics of how the proposal can work best. Although no



Hon. Murray Coell, *Then-Minister of Community, Aboriginal and Women's Services*, at BCREA's January 2005 Real Estate Services Act Celebration

timeline has been established for introduction of this licensing option, BCREA continues to work with the government and the Council on its development.

For information on *RESA*, visit the Real Estate Council of BC's website, www.recbc.ca.

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President's Report

Legally Speaking Turns 25

The BC real estate market is shattering records. In this hot market, do you have time to research legal developments on such key subjects as agency, strata corporations and commission disputes?

For 25 years, BC REALTORS® have benefitted from the sharp legal mind of lawyer Gerry Neely. Through *Legally Speaking*, Gerry monitors real estate-related case law, translating legal jargon into entertaining, meaningful reading.

Legally Speaking has long been recognized as BCREA's most popular publication. Current and brief, it offers enough information to help us stay on top of the amazing number of legal developments that impact our business.

Gerry's relationship with BCREA began in the mid-1970s when he was retained to review all provincial legislation impacting the real estate profession. He then began preparing briefs on behalf of BCREA to various government ministries on topics such as the protection of REALTORS®' commissions.

In 1993, he co-authored a report, entitled "The Disclosure Dilemma: Real Estate Agent for Whom?" The report examined Canadian and American laws and practice relating to the agency relationship of seller, real estate agent and subagent, and the difficulty of adhering to the duties of disclosure and confidentiality. The recommendations contributed to the substitution of buyer agency for subagency as a general practice, and the introduction of disclosure methods for real estate practitioners.

In his extensive dealings with real estate organizations, Gerry often heard complaints that much of the advice REALTORS® were given about legal decisions only stated what the decision was, without giving any insight into the facts that led to it. In 1981, he proposed the idea of *Legally Speaking* to BCREA. Considering his wealth of knowledge and experience, the Association jumped at the opportunity.

That may have been one of the best decisions BCREA ever made. This year



President *Dave Barclay*

marks the 25th anniversary of *Legally Speaking* and, in October, the 400th column will be published. On behalf of all BC REALTORS®, I offer Gerry Neely our congratulations and thanks for keeping us informed!

Dave Barclay
President

All *Legally Speaking* columns, plus a keyword index and a legal citations index, are available on BCREA's REALTOR Link® homepage under the heading Communications.

Board of Directors 2005-2006

Long-Range Plan Principles

1. Demonstrating leadership through effective communication with member boards, REALTORS® and the public
2. Demonstrating the professionalism of REALTORS®
3. Strengthening membership relations
4. Providing service and support options for member boards
5. Building on the role and recognition of BCREA in the development and delivery of excellent education products and services
6. Leading provincial advocacy efforts and providing valued advice on behalf of the profession
7. Demonstrating public interest by integrating the Quality of Life philosophy in BCREA programs
8. Building and strengthening relationships with external stakeholders

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2005 Marks Banner Year For REALTORS®

As the profession gears up for another year of hustle and bustle, it's a good idea to take a step back and reflect on what was accomplished in 2005. To say REALTORS® have been busy over the past 12 months would be an understatement.

The real estate market in BC reached a level in 2005 that very few predicted, especially after the record-setting year in 2004. Thanks to the hard work and expertise of REALTORS® throughout the province, not only was that record surpassed in 2005, it was shattered. Last year, 106,290 homes were sold on the MLS® in BC, which translates into a whopping \$35.3 billion in total dollar volume. This represents more than a ten per cent increase in units sold and over a 26 per cent increase in dollar volume. These unprecedented figures are a clear indication that the market is strong and the economy vibrant.

Looking ahead to the coming months, what's in store for BC real estate? Both the Credit Union Central of BC and the Canada Mortgage and Housing Corporation predict a slightly more moderate real estate market for 2006.

While the factors driving housing demand will remain, including employment growth, net interprovincial migration and above-average economic growth, there are numerous factors that are already negatively impacting the supply side of the market. These factors include a shortage in skilled labour and the subsequent rise in labour costs, a shortage of developable land in some urban areas and significant increases in the costs of building materials. Combined with the gradual increase in interest rates expected in 2006, these indicators point to a slight easing of 2005's record pace.

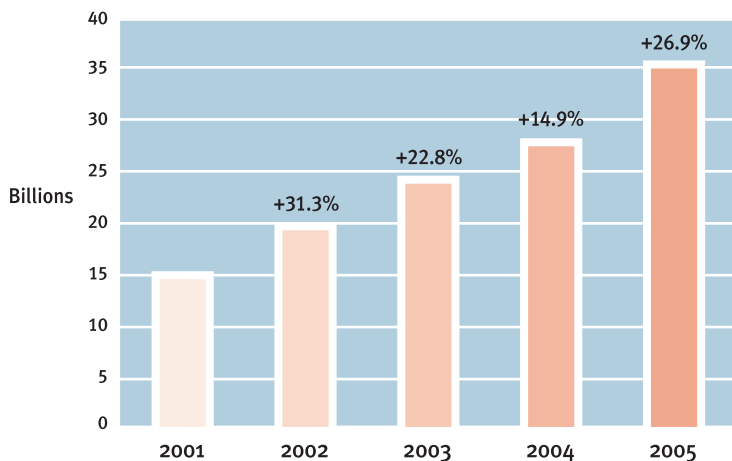
However, even under such conditions, real estate sales will continue to have

a significant impact on BC's economy. A study prepared by Clayton Research Associated Limited found the average BC home sold on the MLS® between 2002 and 2004 triggered an estimated \$27,873 in additional spending, including legal fees, moving expenses, furniture and appliance purchases and taxes. That means 2005 home sales generated nearly \$3 billion in additional spending.

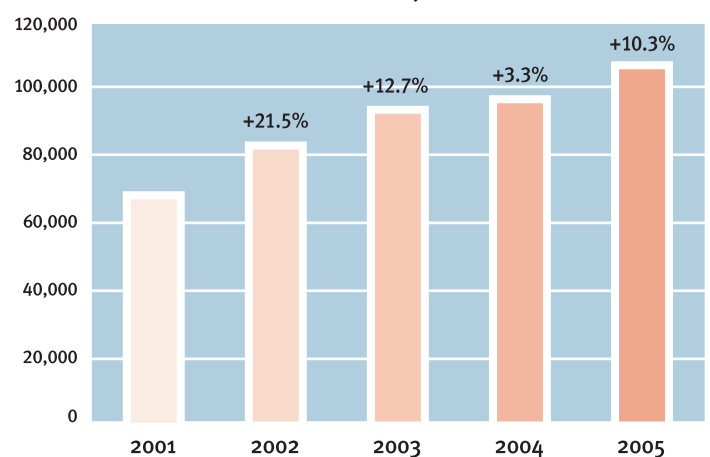
Looking ahead to another healthy year, the issue of affordability continues to be a primary concern to the real estate profession in BC. As part of its Quality of Life philosophy, BCREA is committed to working with government, real estate organizations and others to help make buying a home an achievable dream for all British Columbians.

BCREA congratulates all REALTORS® on a fantastic year!

BC Residential MLS® Dollar Volume Sales, 2001-2005



BC Residential MLS® Unit Sales, 2001-2005



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Cooperation Leads to Sustainability

With a booming economy and growth throughout the province, along with growing sensitivity to environmental concerns and a multitude of issues on a neighbourhood level, the need for sensible community development is becoming increasingly apparent.

As part of its Quality of Life philosophy, BCREA supports projects that create more livable communities. Thanks to the support of The Real Estate Foundation of BC, which has provided funding for several sustainable development projects, the real estate profession will continue to be a major player in building sustainable communities in the future.

History

In the early 1990s, the international Brundtland Commission inspired worldwide concerns about, and enthusiasm for, the concept of sustainability. In BC, the Social Credit government formed the BC Round Table, which generated research and discussion on balancing sustainable development trends with economic, environmental and social considerations. Premier Campbell's government continues to recognize the importance of sustainability for the future, as reflected in its current five priorities.

Partnerships

Real estate organizations have a strong history of practical contributions through the collaborative environment in which sustainability projects often take shape.

In 1996, the Foundation was encouraged by the Fraser Valley Real Estate Board (FVREB) to help fund the Surrey Sustainable Design Charrette (an intense, focused meeting involving hands-on participation), led by Patrick

Condon, holder of the James Taylor Chair in Landscape and Liveable Environments at UBC. The project was the Foundation's start in the theme of funding initiatives related to sustainable land use innovation.

FVREB remained interested in the issue and, two years later, hosted the Sustainable Design Workshop, which produced a sustainable design workbook, one of the early attempts to quantify financial benefits and liabilities that might flow from development based on sustainable design or "green infrastructure" planning.

As well, the Real Estate Institute of BC, Smart Growth BC and UBC's Design Centre for Sustainability (DCS) have created a unique partnership called Smart Growth on the Ground, which assists new and old communities with the preparation and implementation of sustainable neighbourhood plans. The plans are based on a set of principles that underscore the value of complete, self-sustaining communities and greener infrastructure, while providing viable housing and transportation options that meet the needs of the whole community.

From the perspectives of policy formation and marketability, this collaborative approach will continue to help make sustainability a tangible concept for the real estate profession. Involvement in the process strengthens the profession's public presence and helps REALTORS® provide their clients with livable, sustainable community options.



Members of a Squamish charrette team, April 2005
PHOTO CREDIT: Design Centre for Sustainability at UBC

BCREA is pleased to provide continuing support for initiatives that ensure the real estate profession is on the forefront of sustainable development.

More information:

- **Smart Growth BC:**
www.smartgrowth.bc.ca
- **Smart Growth on the Ground:**
www.sgog.bc.ca
- **The Real Estate Foundation of BC:**
www.realestatefoundation.com
- **UBC Design Centre for Sustainability:**
www.designcentreforsustainability.org
- **Real Estate Institute of BC:**
www.reibc.org

More information about BCREA's Quality of Life philosophy:

www.qualityoflife.bcrea.bc.ca

Thanks to Tim Pringle of The Real Estate Foundation of BC for his assistance with this article.

To Disclose or Not to Disclose — Good Question!

by Kim Spencer, kspencer@bcrea.bc.ca



Over the past year the Real Estate Council, BCREA and its member boards have provided information about licensees' obligation to disclose the source and amount of remuneration paid by someone other than the client for whom the licensee is working (Council Rules 5-11 and 5-12).

Why do you have to disclose this information? While Council Rules 5-11 and 5-12 came into effect on January 1, 2006, the requirement to disclose this sort of information to your client is not new. The common law of agency has always required agents to fully disclose who is paying them and the amount of the remuneration they are receiving if they are not being paid by their client. The selling commission you receive is most likely being paid by the seller. If you represent the buyer, then the seller is not your client and you must advise the buyer that you're being paid by the seller.

A Rule 5-11 Disclosure Form has been posted to the Council website (www.recbc.ca) and is also available via *WEBForms™*. The Council doesn't require that this form be used and some boards, as well as some brokerages, have created their own disclosure forms. However, since not all boards have created 5-11 disclosure forms, you should check with your board first to determine its policy on this matter.

If you aren't using the Council form, remember you must not only disclose the amount of remuneration you will receive, you must also disclose the source of that remuneration. The MLS® property information report showing an understandable description of the commission along with the *Working with a REALTOR®* brochure will satisfy

**you should check
with your board first
to determine its policy
on [remuneration
disclosure]**

the Rule 5-11 disclosure requirement. The *Working with a REALTOR®* brochure identifies the source of the remuneration; the MLS® printout identifies the amount of the remuneration. Council has recommended you ask your buyers to initial both the MLS® printout and the brochure to confirm that you have made proper disclosure.

If you plan to use your board's regular MLS® property information report to make your disclosure, and it contains

personal information about the listing and seller, be sure to remove all references to the seller's personal information; e.g., name, contact information, financial encumbrances and REALTOR® comments, before giving the report to your client.

If you're acting as a limited dual agent, you should ensure that you disclose the entire amount of commission (gross list and sell) you will receive to both the seller and the buyer. You must do this because, as an impartial limited dual agent with equal responsibilities to both seller and buyer, you're obligated to make each equally aware of the source and amount of the commission you earn. In other words, since your brokerage represents both parties, both are entitled to equal disclosure of all material facts.



Education

What PDP Means For You

On January 1, 2006, the Professional Development Program (PDP) took effect for all BC REALTORS®, except members of the Fraser Valley Real Estate Board and Real Estate Board of Greater Vancouver. The PDP is a continuing education program designed to help you stay on top of practice issues and other changes, demonstrate your professionalism, inspire confidence in your clients, advance your career and help you manage risks.

From a practical point of view, what

impact will the PDP have on you? To retain your board membership, over the next three years you will take a total of 18 credits worth of continuing education courses.

Courses offered through the PDP are accredited by the BCREA Education Committee. BCREA's risk management Continuing Professional Education (cpe) courses, including *Legal Update*, have already been accredited. Other providers, such as UBC, are also pre-approved. The only required course is

PDP Professional Development Program

What Brokerages and REALTORS® Need to Know About Agency (6 credits).

The number of credits assigned varies from one course to another. Generally, a 3- or 4-hour course qualifies for 3 credits and a 6-hour course qualifies for 6 credits. See the cpe schedule below for examples. You can accumulate up to 12 credits for courses taken 4 months prior to implementation of the PDP.

For more information about the PDP, contact your local real estate board.

Education

cpe Seminar Schedule

continuing professional
education

CONDO 101: Strata Law for REALTORS® 6 PDP credits

Instructor: Mike Mangan

- March 29, FVREB, Surrey

CONDO 202: Advanced Strata Law for REALTORS® 6 PDP credits

Instructor: Mike Mangan or Adrienne Murray

- March 1, REBGV, Vancouver
- March 1, CADREB, Chilliwack

Foreclosures and other Court Ordered Sales 6 PDP credits

Instructor: Michael Walker

- February 24, VIREB, Duncan

Legal Update 2005-2006 6 PDP credits

Instructor: Mike Mangan

- February 23, VREB, Victoria
- February 24, REBGV, Pitt Meadows
- March 2, KADREA, Kamloops
- March 3, KADREA, Kamloops
- March 8, OMREB, Salmon Arm
- March 9, OMREB, Vernon
- March 10, OMREB, Kelowna
- March 24, FVREB, Surrey
- April 7, BCNREB, Fort St. John

Negotiating and Presenting Offers 6 PDP credits

Instructor: Richard Collins

- February 28, REBGV, Vancouver

Selling Time Shares, Hotel Strata Lots, Cooperatives and Other Forms of Real Estate 6 PDP credits

Instructor: Adrienne Murray

- February 23, VIREB, Nanaimo
- March 8, VREB, Victoria

The New *Real Estate Services Act*— Everything You Need to Know 3 PDP credits

Instructor: Adrienne Murray

- March 24, REBGV, Vancouver

What Brokerages and REALTORS® Need to Know about Agency 6 PDP credits

Instructor: Brian Taylor or Harvey Exner

- February 24, FVREB, Surrey*
- February 27, REBGV, Vancouver*
- March 15, REBGV, Vancouver*
- March 20, VREB, Victoria*
- March 23, VIREB, Courtenay*

Win/Win: Conflict Resolution for REALTORS® 6 PDP credits

Instructor: Gerald Clerx

- March 15, KREB, Cranbrook
- March 16, KREB, Castlegar
- March 23, VREB, Victoria

*For brokers and sole proprietors only

Check with your local board office for last-minute changes. Look for more cpe seminars on BCREA's REALTOR Link® homepage, under Education.