

Assessment Amendment Act

PRESENTATION TO THE MEMBERS OF THE LEGISLATIVE ASSEMBLY

April 2000



***British Columbia
Real Estate Association***

MISSION STATEMENT

**The British Columbia Real Estate Association
represents the interests of the real estate boards
and their licensees on all provincial issues.**



Executive Summary

For twenty years, British Columbia Real Estate Association (BCREA) has worked with BC Assessment (BCA) to provide this province with the best land information system in the world.

It is crucial that REALTORS have the names of property owners when executing real property transactions to:

- ensure legally binding listing agreements and Contracts of Purchase and Sale by confirming the parties to the contract are legitimate owners;
- avoid the listing of a property that is not owned by the seller, which could have prohibitive legal and financial ramifications on those involved;
- ensure consumer and investor confidence in the real estate marketing and development system in British Columbia;
- continue the positive relationship between the industry and government in providing a comprehensive assessment system based on Multiple Listing Service® (MLS®) data; and
- continue the \$400,000 in data purchase assessments to the BC Assessment Crown corporation, and over \$1 million in free computer time that BCA has to the industry's computer systems.

Clearly, it is in the public's interest to continue to allow BCREA bulk access to name data on the assessment rolls under the current contract with BCA. Equally important is the maintenance of a proven working relationship between this Crown corporation and the real estate industry.

This is the single most important issue to REALTORS in this province, and the industry is prepared to take all necessary steps to ensure that access to data is maintained.

Recommendation

Amend the *Assessment Amendment Act* to allow the real estate industry to continue receiving name data on the BC Assessment rolls as part of the bulk purchase arrangement between the British Columbia Real Estate Association and BC Assessment.



BACKGROUND

BCREA supports the principle of individual privacy, and has guarded both BCA data and the MLS® against intrusions or manipulations that would compromise privacy. Through extensive security arrangements on real estate board computer systems, member by-laws and regulations, as well as aggressive legal action, BCREA has been successful in that goal.

On March 31, 1998, the Privacy Commissioner issued a report on the distribution of BCA data, covering over four hundred bulk users. BCREA cooperated fully with the Commissioner in this study.

The Commissioner's recommendations on BCA data were accepted by the provincial government, and *Bill 21: Assessment Amendment Act, 1998* was passed by the Legislature on July 30, 1998.

BCREA supported the intent of *Bill 21* and, specifically, the provisions that protect the public from harassment and solicitation. Unfortunately, the legislation was introduced and passed without adequate consultation with the real estate industry. Because of our long and honorable history with the government on the use of government data, BCREA was the only bulk user to maintain names on the data until the end of our contract on December 31, 2000.

BCREA has undertaken extensive communications, including the most recent required *Act* changes, with our members on the use of BCA data. The record shows that this industry continues to use the BCA data as intended, with all the protections to and respect of individual privacy.

ISSUE

BCREA appreciates the need for government to create common and consistent rules for government data users and to protect privacy. Nevertheless, BCREA believes it is in the public's interest for the government to grant an exemption to the Association for the following reasons:

- Access to BCA name data is essential for the effective operation of the real estate market. To draft enforceable listing agreements and Contracts of Purchase and Sale, it is vital that REALTORS have the ability to ensure they are dealing with the legal owner. This allows them to fulfill their common law duties to their clients and to prevent fraud.

The legal consequences of listing a property that is not owned by the seller, misrepresentation to buyers of ownership and general duties of REALTORS are substantial. The public costs of litigation to remedy such errors would be high.



In addition, public confidence in the system would be eroded and the investor's confidence would be undermined.

- The common law of agency, confirmed through the British Columbia Courts, has determined that real estate licensees have specific agency and fiduciary duties to buyers and sellers of real estate. This requires a higher standard than provided for in legislation, to protect the public from misrepresentation and inaccurate contracts in the completion of real estate transactions.
- REALTORS and the public need access to the BCA data based on the nature of the transaction. Most listing, selling and buying situations occur in the evening and on weekends, and on a short time frame. Access to online searches is not available in the evening or all weekend, so the bulk BCA data is the best and only source for verification of ownership.
- BCREA recognizes that individual property owner names are available on BC OnLine. However, this process is wholly inefficient and will dramatically increase the cost of doing business for both BCA and BCREA members - costs that would eventually be passed on to British Columbians.

At the present time, BCA receives approximately \$400,000 in fees from BCREA, and at least \$1,000,000 in free computer time access to MLS[®] information. In addition, BCA staff utilize our members' expertise at no additional cost. These benefits would be significantly reduced, or lost, to BCA if our members were required to obtain name data solely from BC OnLine.

- Real estate salespeople and agents are licensed under the *Real Estate Act* of British Columbia. The legislation sets a high standard of education, regulatory control and provides for a strict disciplinary system.
- Real estate boards have strict codes of ethics and business practices review mechanisms to deal with breaches of ethics and consumer complaints. The investigation and tribunal systems follow the principles of natural justice and are conducted with due diligence and administrative law procedures. These systems have proven very effective in protecting the consumer from unethical business practices and ensuring the professionalism of the industry.

The boards also work closely with the Real Estate Council and the Superintendent of Real Estate to ensure that any infractions of the *Real Estate Act* are communicated and resolved. It is noteworthy that there were only three licensee cancellations for breaches of the *Real Estate Act* in the year ending June 1999.¹ For an industry of 13,000 members, who are involved in over 60,000 transactions each year, this represents a nominal level of infractions.

¹ Real Estate Council of British Columbia. September 1999. Note these cancellations were unrelated to the use of BCA data.



- As part of their obligations under the *Real Estate Act*, real estate licensees carry errors and omissions insurance to protect the public interest. In addition, the Real Estate Council plans to increase the relicensing requirements in the future, with the introduction of ongoing professional education requirements.
- The Freedom of Information and Privacy Office acknowledged that obvious benefits accrue to society through the availability of public databases. Volumes of business transactions depend on the quick availability of such information. Its major concerns centred on the potential use of databases for inappropriate purposes, such as constructing mailing lists, and they stressed that BC OnLine access provides an audit trail so usage can be monitored.

BCREA has demonstrated the integrity of BCA data in its hands and BCA is satisfied that BCREA and its boards have undertaken the security system measures to protect BCA data. BCREA has implemented progressive security guidelines to protect the integrity and confidentiality of BCA data. Boards have encrypted and passworded computer systems that control access to BCA information by the membership, including a limit on the number of downloaded records that are confirmed by audit trails.

- The government of BC has made the use of BCA data a criminal offence. This is a powerful deterrent to anyone misusing BCA data. As licensed professionals, REALTORS are fully cognizant of the law, its penalties and the probability of violation is minimal. No one is willing to lose their licence, livelihood, or freedom for the sake of client solicitation.
- BCREA has a contract with its member boards regarding any misuse of BCA data, including provisions for loss of use if privacy conditions are not met or enforced in accordance with *Bill 21*.
- BCREA and the Canadian Real Estate Association are working on an industry privacy code to control the collection, use and dissemination of personal information. We expect it will meet or exceed requirements contemplated under federal and provincial private sector privacy legislation.

SOLUTION

BCREA proposes a simple solution that is in the public's best interest: grant an exemption under section 68 of the *Assessment Amendment Act*, allowing BCREA to continue receiving name data on the BCA rolls as part of the bulk purchase arrangement with BCA.



BENEFITS

British Columbians benefit from their REALTORS having access to assessment data for the accurate preparation of contracts and details crucial to ensuring the proper transfer of land. This creates a high level of consumer confidence, since every person buying property for residential, commercial or industrial use can rely on the system.

BCA and the government also benefit through BCREA's financial contribution in buying the bulk data, and through access to BCREA's member board MLS® systems. BCA staff receive free access to all the listing and sales data to ensure that their field assessments are accurate to current market pricing. BCA staff liaise with our 13,000 members on a daily basis to confirm sales prices, and for esoteric information on the sale of properties that affect assessment assumptions of value.

The resulting market value assessments give municipalities the ability to set mill rates that truly reflect their values for land. In addition, the provincial government has a database it can rely on for accurate financial projections regarding the more than \$12 billion market in real estate sales each year in BC.

CONCLUSION

The public's privacy is not threatened by BCREA's access to name data on assessment rolls. The integrity of the real property transaction system should not be compromised by a general rule about bulk access to government data. The legal and information needs of the consumer should not be difficult to obtain, as this is inconsistent with the mission of government to be more efficient and open.

BCREA's access is truly different than the dissemination of information to the general public over the Internet. The real estate industry's data protection mechanisms are a more appropriate means for limiting the use of, or access to, private information. BCREA's full access to public data has reduced the cost of property transactions, helped to eliminate fraud and significantly reduced the time it takes to confirm real property ownership.

In closing, BCREA has a proven track record of working in trust with government agencies. The Association has introduced many innovations for the benefit of British Columbians, including property and agency representation disclosure systems, errors and omissions insurance, bonding, advanced education, strict ethical codes and consumer protection mechanisms.

BCREA sincerely believes that this demonstrated trust in serving the public should be taken into account by the provincial government in its deliberations.

BCREA looks forward to further discussions on this matter.

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