

# ***Real Estate Act Reform***

**One Profession - One Voice**

**PRESENTATION TO THE LEGISLATIVE ASSEMBLY**

April 7, 2003



BRITISH COLUMBIA  
REAL ESTATE  
ASSOCIATION

# Who we are

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

The real estate boards throughout the province have as their members nearly 12,000 REALTORS.

To ensure high standards and serve the needs of real estate salespeople, BCREA provides an extensive communications network, required licensing and continuing education courses, standard forms and government relations.

REALTORS help consumers make some of the largest purchases of their lives. As professionals, REALTORS are committed to high standards of customer service, ethics and education.

Every real estate professional who joins a BC real estate board automatically becomes a member of BCREA and of The Canadian Real Estate Association. These organizations work together to represent REALTORS on the municipal, provincial and national stages, and to provide an array of services designed to further their careers.

REALTOR is a trademark which identifies real estate professionals who are members of The Canadian Real Estate Association and the National Association of REALTORS (US). These individuals subscribe to a high standard of professional service and a strict code of ethics.

## Executive Summary

Government's decision to review the *Real Estate Act* came as welcome news to the British Columbia Real Estate Association (BCREA). Enacted in 1958, the current *Real Estate Act* no longer adequately addresses public protection and consumer confidence, and does not provide the flexibility required in this dynamic and economically-significant sector.

BCREA is pleased with government's recognition that real estate plays an important role in the provincial economy. BC's Ministry of Management Services reports that real estate accounts for approximately five per cent of BC's Gross Domestic Product and over 30,000 jobs. In 2002, residential sales on the Multiple Listing Service® set a new record at over \$19 billion, with more than 80,000 homes sold in BC.

Given the economic force of the real estate industry, it is essential that a new *Real Estate Act* be dynamic and strengthen public confidence. This is particularly important now, as real estate has become the investment of choice for people planning their futures in British Columbia.

Through exhaustive consultations with stakeholders and the public, BCREA has identified many issues, problems and concerns that can and must be resolved through reformed legislation. BCREA received and reviewed input from its 12 member boards, and 13 per cent of the province's 12,000 REALTORS through town hall meetings. The Association also received 1,136 electronic survey replies and more than 500 fax-in survey responses from REALTORS.

BCREA consulted with a wide range of stakeholders including the Urban Development Institute, the Real Estate Council of British Columbia and consumer groups. Ongoing meetings and consultations with the Ministry of Finance's Financial and Corporate Sector Policy Branch have ensured transparency and fairness. In a public survey conducted by CGT Research International, BCREA found that citizens share many of the same concerns of the real estate profession.

Having accomplished broad and meaningful consultation, BCREA engaged the expert assistance of The Real Estate Foundation of British Columbia and the law firm of Lawson Lundell in preparing a new draft Act. BCREA is pleased to present government with its draft *Real Estate Brokers and Agents Act*. This draft and its accompanying appendices should be read in conjunction with this brief as BCREA's official response to government's discussion paper.

The draft Act reflects the comments and recommendations compiled through BCREA's broad consultation process. BCREA encourages government to use this draft as a template for a new *Real Estate Act*. By doing so, government can strengthen public protection, enhance consumer confidence and ensure a solid base for real estate activities in BC.

### Key recommendations

BCREA recommends the government:

- Require anyone performing the duties or functions of a REALTOR to be licensed.
- Eliminate the role of the Superintendent of Real Estate in Part I of the *Real Estate Act*.
- Allow licensees to be licensed under the *Real Estate Act* by way of personal corporations.
- Adopt BCREA's draft *Real Estate Brokers and Agents Act* as a template for new legislation to replace the current *Real Estate Act*.
- Invite BCREA to partner with government in drafting the enabling legislation that will accompany the new Act

# ***Real Estate Act Reform – One Profession, One Voice***

The British Columbia Real Estate Association (BCREA) thanks the provincial government for inviting the real estate industry to comment on its discussion paper, *Real Estate Act Review: Discussion Paper*. The Association commends government for including both industry and the public in this process.

This brief serves two purposes. First, it presents the vision BCREA's member boards and REALTORS have for a reformed *Real Estate Act*. To properly capture these recommendations, BCREA chose to draft and submit to government a replacement for the current Act. The draft *Real Estate Brokers and Agents Act* and its supporting documents accompany this brief as appendices. BCREA invites government to use this document as a template in reforming the current Act.

Second, this brief is BCREA's official response to the government discussion paper released on March 14, 2003. The brief is organized in a manner that effectively addresses each topic and point outlined in Part 1 of the discussion paper, as it is Part 1 of the *Real Estate Act* that directly affects BCREA's member boards and REALTORS. BCREA did receive general feedback from its membership on Part 2 and acknowledges this with recommendations in the brief.

## ***Real Estate Brokers and Agents Act – An Industry Solution***

BCREA wants to work with the government in addressing real estate-related issues that affect consumers, industry professionals, government and the economic health of the province.

The draft *Real Estate Brokers and Agents Act* reflects the will of the public and the professionals who work in the real estate sector. It also reflects the values and stated philosophy of government as described in its discussion paper: less cost, competitiveness, flexible frameworks and accountability.

### **Methodology for preparation of the draft Act**

BCREA went to The Real Estate Foundation of British Columbia (Foundation) and the law firm of Lawson Lundell to assist with the preparation of the draft Act.

The Foundation was established in 1985 through the *Real Estate Act's* enabling legislation. The Foundation serves the public trust by contributing resources for projects that improve all aspects of land use and real estate practice. In keeping with its mandate, the Foundation has worked with several government agencies, including the Real Estate Council of British Columbia (Council), and lent support to projects with a legislative focus including *Strata Property Guidelines for REALTORS* and *Review of Land Use Legislation and Policy that Impacts Coastal Areas*.

Lawson Lundell was the first law firm in Western Canada to develop a real estate and lending department. The firm is well known for the in-depth knowledge and experience its lawyers provide on all aspects of real estate. Lawson Lundell is known by government and recognized for its knowledge and skill in legislative drafting, having worked with government on issues arising out of drafting the current *Strata Property Act* and new *Business Corporations Act*.

BCREA's *Real Estate Brokers and Agents Act* is designed to meet the following goals:

- convert the real estate industry to a fully self-regulating profession

- revise or remove provisions that are outdated and difficult to understand, do not protect consumers and cause problems in practice
- implement a regulatory and licensing scheme that provides flexibility for industry members while ensuring the Council has adequate powers to oversee regulation of the industry, react to changes in it and, above all, continue to protect consumers and enhance consumer confidence in the industry

With these goals in mind, the draft Act was developed through the following steps.

### **Step 1. Review of Part I of the current Act**

In the course of this review, BCREA considered all existing sections and whether they still served a legitimate function in the Act. Where there was judicial consideration of a particular section, the case law is discussed in the footnote to that section.

While a few current sections were removed because they were obsolete, most of the sections were retained. Sections were revised only if the current wording was found difficult to interpret or presented application problems. They were reorganized into nine parts (e.g., Licensing, Special Corporations) to make the Act easier for industry members and the public to read and understand. The *Table of Concordance* (Appendix B) attached with the draft Act enables readers to locate the sections that are meant to replace specific current Act sections.

### **Step 2. Review of existing regulations**

There are several regulations to the current Act. BCREA reviewed these to ensure the subject matter covered by those regulations was either incorporated into the draft Act, covered in the section of the Act giving the Council bylaw-making powers (so it will ultimately be included in those bylaws) or footnoted so it will be reproduced in regulations to the new Act.

### **Step 3. Review of prior proposals for reform**

BCREA reviewed and considered previous proposals to amend the current Act and treated them as precedents. These include:

- Bill XX (circa 1991), a proposed amendment to the *Real Estate Act* as a whole, which was not ultimately pursued by the government of the day.
- 1996 and 1998 amendments to the Act that were never proclaimed, in particular the provisions found in the *Real Estate (Supplement) Act*, R.S.B.C. 1996 (Supp), c. 397, and in the *Finance and Corporate Relations Statutes Amendment Act*, 1998, S.B.C. 1998, c. 7.

Bill XX and the 1998 proposed amendments were of particular assistance in drafting the proposed Special Compensation Fund, which BCREA has designed to replace the bonding regime currently in place.

### **Step 4. Review of equivalent legislation from other provinces**

BCREA reviewed the equivalent legislation from each province and territory. BCREA paid particular attention to the legislation from those provinces that have already moved to a self-regulatory model, including Alberta's *Real Estate Act*, Nova Scotia's *Real Estate Trading Act* and Ontario's *Real Estate Brokers Act, 2002* (which has received royal assent but is not yet in force). Where provisions from other provinces' Acts were suitable to the real estate environment in BC and met a valid policy objective, they were incorporated into the draft Act and identified with footnotes.

### **Step 5. Review of legislation governing other self-regulated professions in BC**

To ensure consistency with other BC statutes dealing with the regulation of professions and occupations, BCREA reviewed such statutes including, but not limited to, the *Health Professions Act*, the *Legal Profession Act*, the *Architects Act*, the *Dentists Act* and the three Acts governing accountants.

This enabled BCREA to ensure the draft *Real Estate Brokers and Agents Act* took a modern, consistent approach to self regulation and to ensure the Council was given appropriate powers to achieve the goal of a flexible and accountable system of governance. These Acts were also of assistance in drafting the personal corporation provisions of the draft Act, which are designed to permit real estate brokers and agents to form personal corporations in the same way that other professionals do.

### **Step 6. Review of input from BCREA members, other stakeholders and the public**

BCREA undertook an exhaustive consultation process to obtain the views of its members. BCREA received and reviewed input from its 12 member boards and 13 per cent of the province's nearly 12,000 REALTORS through town hall meetings. The Association also received 1,136 electronic survey replies and more than 500 fax-in survey responses from REALTORS.

BCREA sought and received input from other stakeholders on preliminary versions of the draft Act, including the Foundation, the Real Estate Special Compensation Corporation Working Group and the Real Estate Brokers' Association. Some changes to the draft Act were made as a consequence, and footnotes were added to credit these stakeholder groups in relation to specific reforms they proposed.

BCREA also sought consumer input through a public consultation survey. This process ensures that recommendations presented in this brief and in the draft Act provide fairness and protection for the public, and responsiveness to the needs of consumers and licensees. Above all, the public consultation process provides BCREA's recommendations with credibility. Feedback from this process is contained in the footnotes to the draft Act and accompanying appendices. These include:

- *Real Estate Brokers and Agents Act* (Appendix A), which BCREA recommends the government use as a template for a new *Real Estate Act*
- *Table of Concordance* (Appendix B), which identifies where sections or subsections from the current *Real Estate Act* appear in the draft Act
- *Council Bylaws* (Appendix C), which provides readers of the draft Act with a specific, though not exhaustive list of matters, currently dealt with in either the *Real Estate Act* or regulations, that could migrate to the bylaws. The document also confirms that provisions important to the real estate industry will be retained in the same overall scheme, albeit in the bylaws rather than in the Act
- *Public Consultation Final Report* (Appendix D), which notes the results of BCREA's public consultation process

# **BCREA Responds to Government Discussion Paper**

## ***Real Estate Act – Part 1***

### **Application of Licensing Requirements**

Government believes the overriding purpose of the licensing requirements is to protect the public and preserve confidence in the real estate sector. BCREA supports this position and has obtained independent support by commissioning a public survey.

BCREA, its member boards and REALTORS across the province want few and very restricted exemptions for anyone who carries out the duties and functions of a licensee. BCREA found that the public is concerned with licensing exemptions for professionals, strata managers and full-time employees of a principal to a real estate transaction.<sup>1</sup>

BCREA believes the public is best protected when professionals and individuals performing the duties and functions of a licensee share the same competencies as a licensee. By extending the licensing requirement, government can ensure consistent policies and procedures that will also enhance consumer confidence in this vital sector and provide a solid base for real estate activities.

#### **Provision of information alone**

Government suggests a new Act will clarify that the provision of information and materials to assist owners in selling their own property does not require licensing. That is, no license would be required for people who merely supply “self-help” sales kits or publish listing information. BCREA supports the recommendations of government on this matter.

**BCREA recommends publishers and owners of advertising media, whether a particular medium’s primary focus is advertising real estate or not, should not require licenses.<sup>2</sup>**

#### **Business brokering and exemptions for accountants and lawyers**

Government suggests a new Act will remove the requirement to obtain a license for pure business brokering with no real estate component. Government suggests such transactions are often conducted by professionals, such as accountants and lawyers, who have relevant experience. BCREA disagrees and recommends government reconsider.

The discussion paper suggests a new Act will provide an exemption for accountants for real estate trades which occur as part of a business sale arising in the ordinary course of accountancy practice. Accountants are trained in financial analysis, therefore government suggests these professionals have sufficient expertise in the sale of a business and are already subject to a licensing regime.

Government also suggests a new Act will clarify that the current lawyers’ exemption will apply only to real estate trades which arise in the ordinary course of law practice, such as settling an estate or administering a will.

BCREA believes the public is best protected when individuals performing the duties and functions of a licensee share the same competencies as a licensee. Without real estate licenses, neither accountants

---

<sup>1</sup> *Public Consultation Final Report (Appendix D)*, pages 8-11

<sup>2</sup> *Real Estate Brokers and Agents Act (Appendix A)*, page 8

nor lawyers can fully access or understand specific information and requirements related to the purchase and sale of property with an interest in land. The fact that these professionals may also employ unlicensed staff without proper training and knowledge about transactions that include an interest in land is also a concern.

**BCREA recommends that, if government is committed to granting an exemption for lawyers and accountants, it be very limited to avoid abuse by professionals seeking to expand their traditional areas of practice, thereby ensuring consumers are served by knowledgeable professionals.<sup>3</sup>**

### **Strata managers and residential caretakers**

Government suggests a new Act will require that a person performing strata management services, including collecting strata fees, obtain a license. Licensing will provide basic competency and financial safeguards to strata owners, who currently have no protection, and could reduce the risk of loss due to mismanagement or misappropriation of contingency reserve funds. Government also suggests a new Act will provide a conditional exemption for persons performing certain residential caretaker functions, such as showing suites and collecting fees. BCREA agrees with government's suggestions on these matters.<sup>4</sup>

### **Employees of developers**

BCREA's public consultation found that a significant majority of people mistakenly believe employees of a principal to a real estate transaction, including developers, are licensed. Further, public opinion clearly states that a person or employee who shows a property in a real estate development should be licensed.<sup>5</sup>

**BCREA recommends government, at the very least, grant the Real Estate Council of British Columbia the power to introduce disclosure requirements for employees of principals to real estate transactions.<sup>6</sup>**

### **Personal corporations**

**BCREA recommends a broker or agent who holds a valid license issued under the Act may apply for a permit to carry on the business of providing real estate trading services to a brokerage as a personal corporation.<sup>7</sup>**

This would permit brokers and agents to incorporate personal corporations to reap the applicable tax benefits, and is modeled on similar provisions found in the *Legal Profession Act* and *Health Professions Act*.

## **General Regulatory Framework**

Government notes that under the current model, the Council is delegated responsibilities by the Superintendent of Real Estate under Part I of the *Real Estate Act* with respect to licensing and discipline of real estate agents and property managers. Under this model, the Superintendent has approval authority over Council's budget and certain decisions. The Superintendent also takes direct regulatory action with respect to unlicensed activity and other cases in the public interest.

---

<sup>3</sup> Ibid., pages 10-13

<sup>4</sup> Ibid., page 8

<sup>5</sup> *Public Consultation Final Report* (Appendix D), page 10-11

<sup>6</sup> *Real Estate Brokers and Agents Act* (Appendix A), pages 39-40

<sup>7</sup> Ibid., pages 32-35

Government proposes the general regulatory framework for licensing be streamlined, reorganized and modernized. BCREA supports this approach, which will allow the Council to operate as a self-regulating organization.

### **Role of the Council and the Superintendent**

The enhanced role government envisions for the Council builds on the increased regulatory responsibility the Council has undertaken with great success in the past. Independence from government, with broad parameters set in legislation, will allow the Council to establish a more flexible approach to regulation of the industry and the protection of consumers. It will also enable faster, more creative responses to developments in the marketplace.

This will also generate a greater sense of ownership and enhanced compliance by making the industry more responsible, and more accountable, for the regulation of licenses.

**BCREA recommends the role of the Superintendent be eliminated with respect to Part I of the *Real Estate Act*. This will ensure the Council has direct and exclusive responsibility for the licensing, education and discipline of real estate licensees and property and strata managers, including the power to investigate complaints, hold hearings and apply disciplinary sanctions. Council, rather than the Superintendent, should also have the power to investigate unlicensed activities and issue cease and desist orders or bring actions for such to the courts.**

**BCREA recommends appeals of Council hearing decisions be directed to the Commercial Appeals Commission. This will ensure that any appeal of Council decisions will be addressed by the same measure of independence governing Council. The Commercial Appeals Commission continues to uniquely serve consumers well with respect to real estate matters, because it can respond quickly and at a reasonable financial cost. However, given the government's apparent intention to eliminate the Commercial Appeals Commission, BCREA's draft Act provides for both a review on the record within the Council and an ultimate appeal to the British Columbia Supreme Court.<sup>8</sup>**

### **Council composition**

Government suggests the current model would be retained but, consistent with the least-cost principle, proposes Council size be reduced. Government also proposes provision be made for representation of the various types of licenses, from different regions of the province and that government continue to appoint a minority of members from outside the industry to represent the public.

**BCREA recommends the Council ultimately decide its own composition. However, BCREA believes members should be elected, represent those areas of the real estate sector subject to licensing and be drawn from all geographical regions of the province. BCREA suggests a composition for the Council in its draft Act.<sup>9</sup>**

### **Rule making**

Government suggests, in addition to being able to establish its own internal procedures in bylaws, the Council be given the exclusive authority to establish legally-binding, enforceable rules governing the behaviour of licensees. The Council's rule-making authority would enable it to legislate matters such as:

---

<sup>8</sup> Ibid., pages 59-60

<sup>9</sup> Ibid., pages 14-16

licensing requirements, license conditions and the setting of fees and assessments required by Council for its operation. BCREA supports the recommendations of government on this matter.<sup>10</sup>

### **Accountability**

Government suggests conflict of interest rules be enacted to address the risk of Council members' self-interest overriding the public interest. A Council member who breaches the conflict of interest rules would be required to resign. BCREA supports government's recommendations.

### **Enhanced protection of trust monies**

Government suggests the current bonding regime used to cover the risk of theft of trust money is costly for licensees and provides consumers with inadequate protection. BCREA supports the recommendation of government that bonding be replaced with a Special Compensation Fund, to function as a reserve for reimbursing the public for losses incurred due to fraud or other illegal activities on the part of a licensee.

**BCREA recommends the Council administer the Special Compensation Fund, and provide the Superintendent with audited financial statements or other information concerning the compensation fund when required to do so by the Superintendent.<sup>11</sup>**

### **Commission trust accounts and commission trust agreements**

BCREA recommends a new section on authorized trust settlements be added to a reformed Act.<sup>12</sup> This would assist brokers and agents who are owed commissions when the brokerage that employs them is insolvent and to similarly assist cooperating brokers. This section would permit a declaration of trust at the time when the only legitimate claimants to the funds held in trust would be the parties to the transaction. In addition, the section would expressly permit parties to a real estate transaction and a brokerage to designate funds as trust funds for the benefit of brokers, agents and personal corporations.<sup>13</sup>

## **Flexibility**

Government suggests a new Act will reflect a streamlined and modernized approach in keeping with its principles of least cost, competitive market, flexible frameworks and accountability. The proposed changes are expected to contribute to the government-wide deregulation initiative by significantly reducing the regulatory burden on real estate professionals. BCREA supports government's deregulation initiative.

To present a comprehensive picture of the reforms being proposed, BCREA chose to deal with the substantive issues arising in the body and footnotes of the draft Act. BCREA's draft Act contains 111 sections. However, several of these are included for explanatory purposes only, and many others are expected to migrate to the rules or bylaws once the new legislation is introduced. This will result in a simpler and shorter Act.

BCREA has also appended to the draft Act a document entitled *Council Bylaws* (Appendix C) in which are described examples of some of the topics BCREA expects will be included in Council's bylaws or rules. At this time, BCREA does not have the mandate from its members to draft the bylaws or rules that the

---

<sup>10</sup> Ibid., pages 18-25

<sup>11</sup> Ibid., pages 69-75

<sup>12</sup> Ibid., page 46

<sup>13</sup> Ibid., pages 44-47

Council will be responsible for enacting in a self-regulatory model. However, it is important that Council work with BCREA on this project.

**BCREA recommends that it be an active participant in drafting the Council bylaws and rules pertaining to the legislation that will replace the current *Real Estate Act*.**

While government will always maintain a final role with respect to any regulatory framework, it is expected that once a move to self regulation has been made, there will be a minimal role for government.

### ***Real Estate Act - Part 2***

BCREA focused its attention and recommendations on Part 1 of the current *Real Estate Act* because that part most directly affects its member boards and REALTORS. However, BCREA did receive general feedback from its membership on Part 2.

**BCREA suggests government improve Part 2 by making it easier to understand and implementing a more efficient and flexible disclosure statement regime.**

The development industry is on record with its concerns about the number of statutes and regulations that make housing difficult to bring to the market within a reasonably short period, and make housing less affordable as the costs associated with the regulations are passed on to the consumers. BCREA would be pleased to work with other stakeholder groups, including the Urban Development Institute, to achieve the goal of housing affordability. BCREA would also be pleased to work with the Ministry of Finance's Financial and Corporate Sector Policy Branch on the enabling documents for a new Part 2.

**BCREA recommends the Superintendent's Office retain its role with respect to Part 2 of the *Real Estate Act*.**

## **Conclusion**

BCREA has a proven track record of working with government agencies; for example, the 25-year partnership between BCREA and BC Assessment with respect to the exchange of Multiple Listing Service® data. By working with government in an open and transparent fashion, BCREA has introduced or played a key role in the introduction of 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 this demonstrated trust in serving the public should be taken into account by the provincial government in its deliberations. BCREA also acknowledges the guidance, support and expertise provided by The Real Estate Foundation and the law firm of Lawson Lundell.

New legislation that responds to the regulatory needs of the public and the real estate sector will contribute to the government's goal of overall regulatory reduction in the province. Moreover, a new *Real Estate Brokers and Agents Act*, created in close consultation with industry, will decisively move the province forward on the road to economic recovery.

**FOR FURTHER INFORMATION, PLEASE CONTACT**

**Dennis Wilson, President**  
dennis@denniswilson.net

**Robert Laing, Executive Officer**  
robertl@bcrea.bc.ca

**Stephen Olmstead, Manager of Government Relations**  
solvstead@bcrea.bc.ca

**British Columbia Real Estate Association**

600- 2695 Granville Street  
Vancouver, BC V6H 3H4  
phone: (604) 683-7702  
fax: (604) 683-8601  
[www.bcrea.bc.ca](http://www.bcrea.bc.ca)



BRITISH COLUMBIA  
REAL ESTATE  
ASSOCIATION

600 – 2695 Granville Street  
Vancouver, BC V6H 3H4  
Phone: 604-683-7702  
Fax: 604-683-8601  
E-mail: [bcrea@bcrea.bc.ca](mailto:bcrea@bcrea.bc.ca)  
[www.bcrea.bc.ca](http://www.bcrea.bc.ca)