



## **Consumer Protection and Licensee Professionalism: The Future of BC Real Estate Licensee Regulation**

December 2019

After extensive consultation with our 11 member real estate boards throughout the province, the British Columbia Real Estate Association (BCREA) has developed 18 recommendations for regulating real estate professionals.

We encourage the government to be consultative and take as much time as necessary to accomplish the following goals:

1. Protect the public and foster consumer confidence.
2. Eliminate the current coregulator model.
3. Ensure a regulator with industry knowledge and expertise.
4. Create a regulatory framework that is:
  - easily understood and accessed by licensees and the public, and
  - involves industry consultation.

This submission includes 18 BCREA recommendations to accomplish these goals.

### **Laying the foundation**

On November 12, 2019, Minister of Finance Carole James announced that the Office of the Superintendent of Real Estate (OSRE) and the Real Estate Council of British Columbia (RECBC) would be integrated into the BC Financial Services Authority (BCFSA) in 2021. This was recommended by Dan Perrin as a result of his 2018 independent review of BC's real estate regulatory structure.

Minister James ordered the independent review in 2018 after hearing concerns from OSRE, RECBC and the British Columbia Real Estate Association (BCREA). The co-regulatory system that was established in 2016 caused confusion over the roles of the two regulators—even resulting in a lawsuit between them.

We appreciate Minister James's attention to the difficulties in our regulatory system. We also appreciate that she did not rush to action after Mr. Perrin completed his review. Rapid change in 2016 without enough consultation and deliberation is what created the current situation. If more care had been taken three years ago, we would have a stronger system now and consumers and REALTORS® would have been spared considerable frustration and uncertainty.

## BCREA recommendations

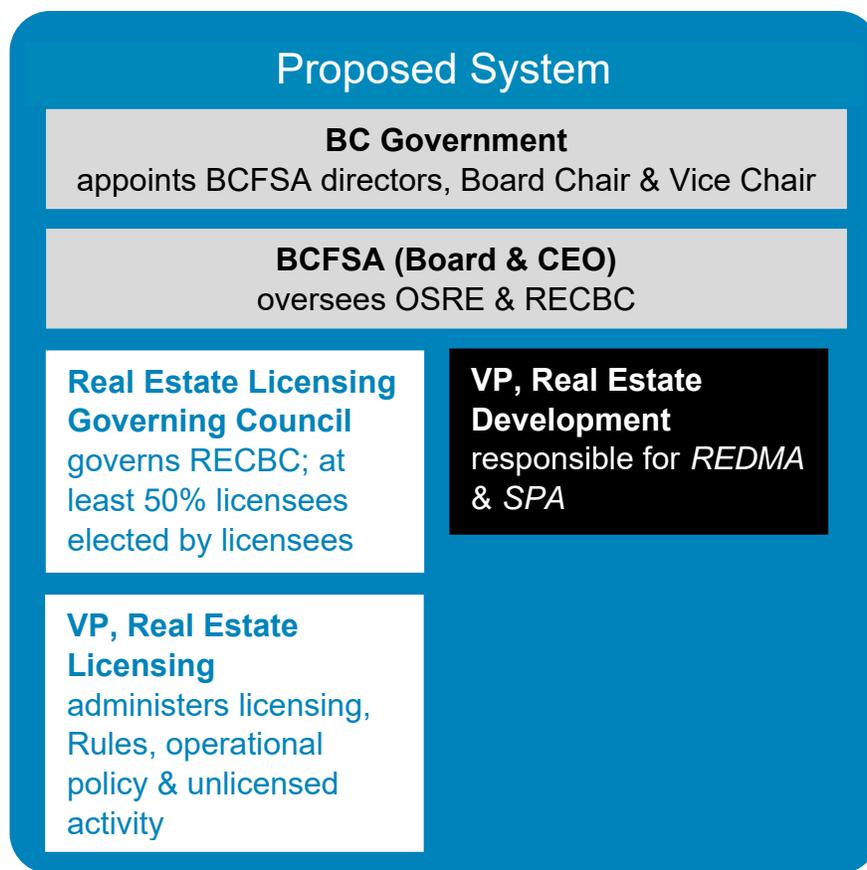
### ***Protect the public and foster consumer confidence***

This is an overarching goal, and all of our recommendations are intended to accomplish it. Please read on for the details.

### ***Eliminate the coregulator model***

The government's intention to merge OSRE and RECBC into the BCFSA is a starting point to accomplish this goal. BCREA offers seven recommendations to create a stable, clear and transparent regulatory framework.

This is an overview of the structure we propose (see details in the recommendations described below):



Recommendation 1: Transition to a single regulator: currently known as RECBC (future: Vice President, Real Estate Licensing).

As a standards-based regulator, and given the appropriate governance model, RECBC has the experience, staff and knowledge to deal with all aspects of the *Real Estate Services Act (RESA)*. Under the BCFSA, we assume RECBC will transition to a functional unit headed by something with a title like Vice President, Real Estate Licensing.

**Recommendation 2: Remove OSRE's oversight responsibility for RECBC; that is, task OSRE's successor only with responsibility for the *Real Estate Development Marketing Act* and *Strata Property Act*.**

Unless OSRE's oversight role is eliminated, the current co-regulatory model will continue—in fact, it will become more complex because the BCFSA will add a third layer. OSRE's responsibilities for *REDMA* and *SPA* are very different from the regulation of real estate licensees, so BCREA suggests they remain with OSRE. We assume OSRE will become another functional unit in the BCFSA and the current Superintendent of Real Estate will transition to Vice President, Real Estate Development.

**Recommendation 3: Review the *Real Estate Services Act*, the *Real Estate Services Regulation*, RECBC Bylaws and Rules to separate public policy from operational policy.**

The [Perrin Report](#) found these documents to be a mixture of public and operational policy. A change to the regulatory framework provides an opportunity to streamline roles and responsibilities with input from licensees, real estate boards and BCREA.

The result will be that licensees and consumers will find it easier to find information and understand roles and responsibilities.

**Recommendation 4: Give the Real Estate Licensing function the authority to make Rules and operational policies.**

Once operational matters are clearly separated from public policy, it makes sense that the Real Estate Licensing unit should create its own operational policies.

**Recommendation 5: Give the Real Estate Licensing function the responsibility to deal with unlicensed activities.**

This functional unit is in a unique position to distinguish licensed activity from unlicensed and should be responsible for both.

**Recommendation 6: Clearly define the roles of the BCFSA, Real Estate Development and Real Estate Licensing.**

This is necessary to avoid questions about mandate and jurisdiction.

**Recommendation 7: Describe and publish clear accountability measures for the BCFSA, Real Estate Development and Real Estate Licensing.**

Currently, RECBC is obligated to create Annual Service Plans and annual reports on those plans. Having the reporting requirements entrenched in legislation would benefit the regulator, licensees and consumers.

### ***Ensure a regulator with industry knowledge and expertise***

Real estate is complex, and a standards-based approach to regulation requires a deep understanding of licensee practice and consumer experience. The Liberal government in 2016 made hasty decisions to change the real estate regulatory structure; one of those

decisions was to not ensure adequate industry representation on RECBC's governing council.

BCREA believes the current government has an opportunity to implement the best practices already in use in other sectors to create a system that inspires the confidence of consumers and licensees.

**Recommendation 8: Retain a governing council for Real Estate Licensing.**

RECBC is an established, credible regulator with oversight over about 25,000 licensees. This makes the future Real Estate Licensing function unique among all the other organizations encompassed in the BCFSA.

If Real Estate Licensing is only governed by staff members without the practical insights and advice offered by a governing council, then we expect significant problems for licensees and consumers. In fact, we already saw evidence of such challenges even with the current composition of RECBC's governing council, where only a handful of members are licensees.

BCREA urges the government to consider the model offered in the *Professional Governance Act*, which provides for a governing council for each profession.

**Recommendation 9: Ensure that 50 per cent of Real Estate Licensing's governing council members are licensees, with appropriate geographic and practice areas represented.**

Regulatory governing boards, including the Insurance Council of BC and the Motor Vehicle Sales Authority, have a balance of industry representatives and public lay members. BCREA believes the same standard should apply to the real estate profession.

**Recommendation 10: Formally establish an industry advisory committee that is consulted early in the process when changes to real estate practice are considered. All members should be licensees, representing a variety of geographical areas and real estate practice perspectives.**

Dan Perrin also recommended an industry advisory committee in his 2018 report, because it would add a practical filter when real estate practice changes are considered.

***Create an accessible, consultative regulatory framework***

Trust and confidence depend on transparency and consultation. We firmly believe the following eight recommendations will help create a regulatory environment in which consumers and licensees can participate and feel secure.

**Recommendation 11: Before real estate practice changes are introduced, fully examine and provide evidence of the need for changes.**

The ban on limited dual agency that took effect on June 15, 2018 has created challenges for many consumers and licensees around the province. However, aside from media reports, adequate evidence of the need for this measure was never

presented. BCREA suggests a return to public policy best practices, as recommended by Mr. Perrin.

**Recommendation 12: Before changes to real estate practice take effect, ensure those changes are widely broadcast to licensees, consumers and stakeholders.**

The implementation of Rule changes that took effect on June 15, 2018 left many licensees feeling unprepared. We recognize that RECBC has created significant licensee and consumer resources, but not all of them were ready for the implementation date, and that undermined confidence in the regulatory framework.

**Recommendation 13: Consult in a meaningful way with licensees and the public when interpreting and implementing real estate practice changes—including licensee education—in the same way that consultation currently occurs when Rules are introduced.**

This builds on other recommendations, and highlights the necessity for REALTORS® to participate in the regulation of their profession. In the past RECBC's interpretation of Rules has differed from the intention of OSRE, and BCREA believes consultation at the interpretation stage would help ensure successful and practical implementation.

**Recommendation 14: Devote resources to speed up Real Estate Licensing's complaints and discipline process.**

RECBC's 2018-2019 Annual Service Plan Report notes that a complaint investigation takes an average of 296 days to complete. BCREA believes licensees, property buyers and sellers and stakeholders deserve far faster decisions.

**Recommendation 15: Implement strong administrative penalties for repeat offenders. For first offenders, focus on correcting poor performance more than on punishment.**

For many years, REALTORS® have supported stronger penalties for those who deliberately breach *RESA* and/or the Rules. This is supported by consumers, as well: in a September 2019 survey, 61 per cent of consumer respondents said handing out tougher penalties for REALTORS® found to have profited from misconduct would improve their opinion of REALTORS®.

At the same time, we believe an honest mistake is an opportunity for the regulator to encourage licensees to seek additional education and professional growth.

**Recommendation 16: Retain the opportunity for licensees to appeal certain disciplinary decisions or orders, as described in s. 54 of *RESA*, to an administrative tribunal.**

Section 54 allows licensees to appeal the following to the Financial Services Tribunal:

- refusal to issue a licence,
- imposition of restrictions and conditions on a licence (s. 15), and
- cancellation or suspension of a licence (s. 24).

Only a handful of appeals are made to the tribunal each year, but we still believe licensees should have an option aside from going to court.

Recommendation 17: Retain the opportunity for licensees subject to administrative penalties to be heard by Real Estate Licensing to demonstrate that they have exercised due diligence, as described in s. 54 of *RESA*.

As a result of a licensee demonstrating due diligence, RECBC has the authority to cancel or confirm the administrative penalty. This process will continue the natural justice to which licensees currently have access.

Recommendation 18: Immediately establish a joint working group of representatives from BCREA, OSRE and RECBC to examine separate licensing categories for commercial and residential trading services.

The 2016 Independent Advisory Group made recommendations for all areas of practice based on examination of mostly residential real estate practice. Those recommendations reinforced the differences between commercial and residential practice.

During consultations with REALTORS®, BCREA found significant interest in separate licensing. REALTORS® also expect that any major change will be thoroughly examined before taking effect, which is why we recommend this working group.

## Thank you

BCREA looks forward to working with the Ministry of Finance, BCFSA, OSRE and RECBC. With dialogue and cooperation, we are certain we can create a stable, long-lasting real estate regulatory structure.

If you have questions, concerns or comments, please contact Trevor Hargreaves, VP, Government Relations and Stakeholder Engagement: 604.742.2798; [thargreaves@bcrea.bc.ca](mailto:thargreaves@bcrea.bc.ca).