



Managing Broker Community of Practice August 19: New Forms and Form Revisions Fall 2020

Follow-up Questions

These questions were posed during the Managing Broker Community of Practice session on August 19, 2020. With limited time, we weren't able to address all questions asked and have provided as many additional responses as possible below.

MASTERING COMPLIANCE PROGRAM

Q: How many PDP hours do we receive for the *Mastering Compliance: Anti-Money Laundering Training for Brokers* program?

A: *(Joanna Pedersen, BCREA Education Manager)* By completing the *Mastering Compliance: Anti-Money Laundering Training for Brokers* program, you will receive 9 accredited Professional Development Program (PDP) hours.

Q: Is FINTRAC on board with this training program?

A: *(Joanna Pedersen, BCREA Education Manager)* FINTRAC does not endorse specific courses. We have, however, had engagement with FINTRAC and they will be participating in one of the course modules.

COVID-19

Q: With the COVID-19 case counts in BC increasing, is there any talk among the boards/Council about reinstating the recommendations to not hold open houses?

A: *(Corinne Caldwell, BCREA Chief Operating Officer)* At this time, BCREA is not aware of any intentions from the Real Estate Council of BC (RECBC) to reinstate the recommendations to not hold open houses, however, this is a dynamic time and as things change, these recommendations could be reinstated.

BCREA has ongoing communications with WorkSafeBC[®] and RECBC to obtain up-to-date information, to help ensure that REALTORS[®] voices are represented, and to help ensure the safety of Realtors and the clients they represent.

Disclaimer: The explanations included in this post-session follow up are meant to provide a general overview and are not meant to replace the full text and legal ramifications of each form or sections therein.

STANDARD FORMS

Q: Can anyone explain why we allow Trading Services licensees to list residential leases, it is an opportunity for problems that we are opening and will result in an increase of issues around real or implied breaches of our limitations in services related to license levels?

A: (*Jennifer Lynch, BCREA Professional Services Manager*) The services that licensees can provide, based on their level of licensing, is set by the regulator. Questions related to practice concerns on this can be addressed through the Professional Standards Advisors at the Real Estate Council of BC (RECBC).

To support Realtors in understanding the new forms and the services they can provide, we have included this FAQ in the guide for the Authority to Lease Residential, which can be found in the [BCREA September 2020 Forms Resource Pre-Launch Package](#), which addresses that Realtors must only perform the services which they are licensed for.

Below is an excerpt from the FAQ:

Are there restrictions on what services I can provide to a landlord in the course of leasing their property?

Yes. Realtors are only able to provide services for which they are authorized or permitted under the *Real Estate Services Act* and the Real Estate Rules. Realtors who are licensed only for trading services are limited to providing trading services and cannot provide rental property management services or strata property management services. While trading services include listing a property for lease or helping tenants find a property to lease, they do not include other rental services such as collecting rents or deposits or helping landlords manage their properties. Realtors must ensure that they only provide the services for which they are licensed. Realtors should also check brokerage policies in regards to any additional limitations the brokerage may place on the services they provide.

Please see the table below from RECBC which provides some guidance on the different services covered under a Trading Services Licence compared to a Rental Property Management Licence.

Service	Trading Services Licence	Rental Property Management Licence
Assist a landlord to find tenants	✓	✓
Assist a prospective tenant to find a property to rent	✓	✗
Collect rents from tenants on behalf of a property owner	✗	✓
Collect security deposits from tenants on behalf of a property owner	✓	✓
Make payments on behalf of the property owner to third parties	✗	✓
Negotiate or enter into contracts on behalf of the property owner	✗	✓
Supervise employees or contractors hired by the owner	✗	✓
Manage landlord and tenant matters	✗	✓

For additional resources from RECBC on Rental and Trading Services and what licensees can and cannot do, which you can find: [here](#).

If you are not sure what real estate services you can provide you should review your license and check with your managing broker.

Q: Is the Lockbox form mandatory?

A: *(Jennifer Lynch, BCREA Professional Services Manager)* To support Realtors in understanding the new forms, we have included this FAQ in the guide for the Lockbox, Acknowledgement, Consent, Release and Indemnity, which can be found in the [BCREA September 2020 Forms Resource Pre-Launch Package](#):

Is this form mandatory?

While the form is not mandatory, both the Real Estate Council of British Columbia (RECBC) and the Real Estate Errors and Omissions Insurance Corporation (REEOIC) advise that Realtors should discuss the risks and benefits of using a lockbox with their seller clients prior to using one. The Lockbox Acknowledgement, Consent, Release and Indemnity form can help in documenting the discussion and confirm informed consent and authorization.

Disclaimer: The explanations included in this post-session follow up are meant to provide a general overview and are not meant to replace the full text and legal ramifications of each form or sections therein.

Q: With the Co-Listing Separate Representation form - do we need one listing or two listings and combine them together?

A: *(Jennifer Lynch, BCREA Professional Services Manager)* To support Realtors in understanding the new forms, we have included this FAQ in the guide for the Co-Listing Separate Representation form, which can be found in the [BCREA September 2020 Forms Resource Pre-Launch Package](#). While this question is framed differently than the question in the guide, it does provide clarity to address the requirements of what is required with regard to the listing contracts.

What if the sellers have different listing terms in their respective listing contracts, i.e. remuneration, expiry dates or price?

Each party enters into Listing Contract with their respective brokerage and the client they represent. The Co-Listing – Separate Representation form is then completed to amend certain aspects of those listing contracts to provide that, while each seller will have a separate listing agreement with their own brokerage and designated agent, those listing contracts are modified to the extent necessary to provide for certain alignment, cooperation and joint responsibilities with respect to the listing. The effect of this form will be to amend the respective listing agreements to modify their terms to allow for a listing on terms mutually agreed to by all. The amendments include setting a marketing plan for the listing, confirming the parties’ responsibilities for the listing, setting the list price, and other listing terms. The Separate Representation also provides for how expenses will be covered between the brokerages and the term of the Co-Listing.

Q: When would the Notice of Waiver of Conditions be appropriate to use?

A: *(Jennifer Lynch, BCREA Professional Services Manager)* To support Realtors in understanding the new forms, we have included this FAQ in the guide for the Notice of Condition Waiver/Declaration of Fulfillment form, which can be found in the [BCREA September 2020 Forms Resource Pre-Launch Package](#):

When Should it be Used?

The Notice of Condition Waiver/Declaration of Fulfillment form should be used when parties have entered into a conditional contract and the benefiting party (or parties) are satisfied that the condition(s) have been fulfilled or are prepared to waive the condition. It should be signed and delivered by the benefiting parties on or before the deadline for the condition(s) to be satisfied as agreed to in the contract.

Q: What if a client does not want to sign the Privacy Notice & Consent form?

A: *(Jennifer Lynch, BCREA Professional Services Manager)* While the Privacy Notice and Consent form has been revised, this FAQ can be found in the [Privacy Notice & Consent form FAQ](#) that BCREA released in 2019. There are two questions that are important to consider on this question around implied agency, which we've included below.

What happens if a consumer refuses to sign the form? Is there implied consent if they've already given you their personal information?

The *Privacy of Information Protection Act* provides for various ways that an organization can obtain consent. Consent can be implied in certain circumstances; however, relying solely on implied consent can be problematic because, in the event of a dispute regarding whether consent has been given, there is little or no written evidence regarding the content of that consent or whether all of the required elements for implied consent exist. For implied consent, generally the purposes that are implied must be obvious to a reasonable person and the personal information must have been voluntarily given or, alternatively, the purposes must have been clearly disclosed to the consumer who needs to have been given an opportunity to decline to give consent. In these cases, the actual implied consents are open to interpretation and, while they may extend to some primary uses in the Privacy Notice and Consent form, they may not include all of them if challenged.

Does a Realtor need to have the consumer complete the Privacy Notice and Consent form, can't they rely on implied consent?

Privacy laws do provide for implied consent; however, to have implied consent, certain factors must be present. The reasons for needing the consent must be obvious to a reasonable person or properly disclosed to the consumer. Therefore, an implied consent may rely on others' interpretations of what consent is necessary. In the event of a dispute as to whether consent is given, no clear record of what you are allowed to do exists. A collector of personal information and user should really strive for express written consent, which for most cases is obtained by asking the consumer to complete the Privacy Notice and Consent form.

Q: Have you looked at fixing the issue with WEBForms® not populating a second Designated on the CPS?

A: *(Jennifer Lynch, BCREA Professional Services Manager)* From September 1-10, we will be beta testing the forms in terms of searchability and functionality. As users of the forms, we would love to have your participation! If you are interested in being part of the beta test

Disclaimer: The explanations included in this post-session follow up are meant to provide a general overview and are not meant to replace the full text and legal ramifications of each form or sections therein.



group as part of the quality assurance measures, please contact us at: standardforms@bcrea.bc.ca. We will flag the issue of the second designated agent not populating on the CPS with the beta test group.

Q: Any updates on when apps like Really Trusted can have access to Standard Forms?

A: *(Corinne Caldwell, BCREA Chief Operating Officer)* BCREA makes our standard forms available through the WEBForms® platform. BCREA allows for standard forms to be sublicensed to your local real estate board to become available to you through other technology providers. If you wish to work with a specific technology provider, please contact your local real estate board.

If you have questions on BCREA's Standard Forms please email us at: standardforms@bcrea.bc.ca