

BCFSA's Audit Program & Top Findings from Audits of Real Estate Brokerages

BCREA Managing Broker Community of Practice
Webinar

November 22, 2023



Agenda

1. Introductions
2. BCFSA's Audit Program
3. Top 10 Audit Findings
4. LOA, APs, and Disciplinary Decisions
5. Questions

Introductions

Lisa Holst
Director, Audit & Assurance

Introductions

PRESENTERS



Lisa Holst, CPA, CA
Director, Audit and Assurance



Darrin Bean
Senior Auditor, Audit and Assurance



Martin Dionisio, CPA
Auditor, Audit and Assurance

BCFSA's Audit Program

Martin Dionisio
Auditor, Audit & Assurance

Audit Program

OVERVIEW

- Continuously monitor and audit brokerages and real estate licensees in B.C.
- Support proactive monitoring of market conduct activities to identify and address harmful business practices
- Ensure brokerages and licensees operate in compliance with the:
 - *Real Estate Services Act* (“RESA”)
 - Real Estate Services Regulation (“the Regulation”)
 - Real Estate Services Rules (“the Rules”)

Audit Program

OBJECTIVE OF THE AUDIT PROGRAM



Protection of public trust funds and appropriate use



Assessment of the brokerage's operations, processes, and financial records



Provide guidance to support brokerage operations

Audit Program

NEW BROKERAGES AND NEW MANAGING BROKERS

- Check-in phone call/virtual meeting with the managing broker
- Assess brokerage operations, answer questions, and direct to BCFSA resources

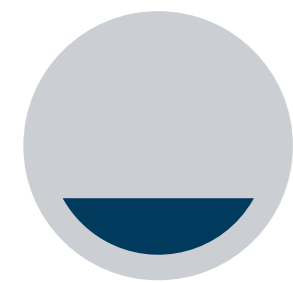
CURRENT BROKERAGES

- All licensed brokerages are assigned a Risk Rating based on the Audit Program's risk assessment
- Auditors perform audits remotely or in person



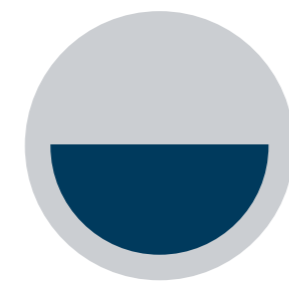
Audit Program

WHAT TO EXPECT DURING THE AUDIT



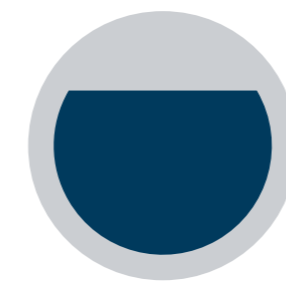
Initial Interview

- Discussion on recent activity
- Risk Assessment



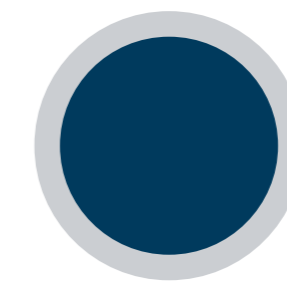
Review of Documents

- Non-trust bank accounts
- Trust bank accounts
- Sample testing of trades/properties



Exit Interview & Report

- Presentation of audit findings
- Delivery of final audit report



Post Audit (if applicable)

Top 10 Audit Findings

Lisa Holst
Director, Audit & Assurance

Darrin Bean
Senior Auditor, Audit & Assurance

Top 10 issues/exceptions noted by auditors while conducting more than 200 audits July 2022 to October 2023:

Ranking	Instances	Rule	RESA	Issue Descriptive
1	62	54		Licensee failed to disclose the nature of the representation that the licensee would provide to a party to a trade in real estate prior to providing real estate services using the Disclosure of Representation in Trading Services.
2	48	80(c)		MB did not ensure that reconciliations were prepared within five weeks after the month end.
3	36	81		MB did not ensure that all trust liability and asset reconciliations are reconciled within 5 weeks after month end.
4	35	52/54/55		Disclosures-Variou disclosure issues were not made including that they must be in writing, must be made with regards to remuneration, of representation in trading services, of risks to unrepresented parties, etc.
5	35	52-56		MB did not ensure that the licensee promptly provide written disclosure under s 56 of Rules to the client regarding any remuneration to be received from anyone other than the client.
6	33	43		MB did not ensure that the Service Agreements are amended to meet the content requirement outlined under this section of the Rules.
7	29	72(2)		Brokerage failed to ensure that all monthly bank reconciliations for the trust accounts are signed and dated by the MB or a person designated by the MB.
8	27	72	26	MB did not ensure all brokerage trust accounts are designated as such in the records of the savings institution and the brokerage.
9	27		31	MB did not ensure that payments to third parties on behalf of licensees are withdrawn directly from a commission trust account.
10	27	73		Negative balances in trust accounts and trust records were evident and appropriate action was not taken
				<i>*MB-Managing Broker</i>

1. Section 54 of the Rules

62

instances

DISCLOSURE OF REPRESENTATION IN TRADING SERVICES (“DORTS”) FORM

- Must be presented **prior** to providing trading services
 - Required for leasing services under rental property management
- Common deficiencies observed by auditors:
 - DORTS **not** prepared
 - DORTS presented **after** providing trading services
 - DORTS **incomplete** or completed **incorrectly**
 - DORTS **not signed** by the licensee



2. Section 80(c) of the Rules

48

instances

RECONCILIATIONS NOT PREPARED WITHIN 5 WEEKS OF MONTH-END

- Timely reconciliations are **crucial** to ensure that trust and general accounts are accounted for properly
 - Immediately highlights bank errors
- Ensure all bank reconciliations have a preparation date
 - Allows auditors to determine the reconciliations are prepared in a timely manner



EXAMPLE: OUTSTANDING DEPOSIT (TRUST SHORTAGE) ON BANK RECONCILIATION

[REDACTED]
 [REDACTED] Account Reconciliation
 As of December 31, 2020

[3.8]

Balance Per Bank Statement

299,038.17

Outstanding Transactions

Trade #	Address	Payee	Date	Reference	Amount
02019098	[REDACTED]	[REDACTED]	A 04/03/2019	adj	-0.01
02019097	[REDACTED]	[REDACTED]	A 10/31/2019	201910-022	5.00
02020206	[REDACTED]	[REDACTED]	D 10/30/2020	CH# 65965177	14,500.00
02020251	[REDACTED]	[REDACTED]	C 12/15/2020	000369	-18,408.00
02020254	[REDACTED]	[REDACTED]	C 12/15/2020	000370	-12,815.37
02020221	[REDACTED]	[REDACTED]	C 12/22/2020	000373	-1,500.00
02020271	[REDACTED]	[REDACTED]	A 12/22/2020	202012-002	2,094.75
02020271	[REDACTED]	[REDACTED]	C 12/22/2020	000374	-2,094.75
Total Outstanding:					-18,218.38
Balance Per Trust Ledger					280,819.79

Cheques Cleared:	-556,653.25	Total Credits Cleared:	-582,211.82
Deposits Cleared:	386,189.23	Total Debits Cleared:	424,263.80

* Remember, your debits are credits to the bank and vice versa.

Reviewed By: [REDACTED] Date: Jan 7, 2021

Approved By: _____ Date: _____



3. Section 81 of the Rules



INDIVIDUAL TRUST LEDGERS & TRUST LIABILITY AND ASSET RECONCILIATIONS (“TLARS”)

Individual Trust Ledgers

- Ledger with transactions for each trade/rental property/commission
- Required for **all pooled trust accounts**
- Ledgers in an **overdraft** position can represent **trust shortages**
 - Must be replenished **within 10 days** of being identified

TLARs

- Listing of trust funds held for each trade/rental property/commission
- **Must reconcile** to the bank reconciliation balance
- Multiple instances found by Auditors where **TLARs were not prepared**

EXAMPLE: TRUST LIABILITY AND ASSET RECONCILIATION (“TLAR”) [AKA LIABILITY LISTING]

Bank Reconciliation

[3.8]

Pooled Trust Account [REDACTED] Account Reconciliation
As of May 31, 2023

Balance Per Bank Statement	241,000.00
Outstanding Transactions	
Trade # Address Payee Date Reference Amount	
*** No Outstanding Items ***	
Total Outstanding:	0.00
Balance Per Trust Ledger	241,000.00

Cheques Cleared:	-177,184.57	Total Credits Cleared:	-223,303.42
Deposits Cleared:	320,000.00	Total Debits Cleared:	366,118.85

* Remember, your debits are credits to the bank and vice versa.

Reviewed By: [REDACTED] Date: June 6/23

Approved By: _____ Date: _____

Trust Liability and Asset Reconciliation (“TLAR”)

[3.8]

Trust Ledger As Of May 31, 2023

Trade #	Address	Buyer / Seller	Closing Date	Deposits In Trust	Liability For Funds
Bank Account: Pooled Trust Account [REDACTED]					
1112028	[REDACTED]	[REDACTED]	07/15/2011	6,000.00	6,000.00
1116318	[REDACTED]	[REDACTED]	01/04/2023	10,000.00	10,000.00
1116408	[REDACTED]	[REDACTED]	06/30/2023	10,000.00	10,000.00
1116423	[REDACTED]	[REDACTED]	07/12/2023	10,000.00	10,000.00
1116430	[REDACTED]	[REDACTED]	05/31/2023	40,000.00	40,000.00
1116437	[REDACTED]	[REDACTED]	08/03/2023	10,000.00	10,000.00
1116443	[REDACTED]	[REDACTED]	07/20/2023	15,000.00	15,000.00
1116453	[REDACTED]	[REDACTED]	07/17/2023	35,000.00	35,000.00
1116456	[REDACTED]	[REDACTED]	06/21/2023	25,000.00	25,000.00
1116457	[REDACTED]	[REDACTED]	09/14/2023	50,000.00	50,000.00
1116458	[REDACTED]	[REDACTED]	07/04/2023	10,000.00	10,000.00
1116465	[REDACTED]	[REDACTED]	06/29/2023	20,000.00	20,000.00
Number of Deposits:				12	
Total Number of Deposits:				12	
Excess Trust Funds To Transfer:				0.00	
Liability for Funds G/L Account #: 21300				241,000.00	241,000.00

4. Sections 52/54/55 of the Rules

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instances

DISCLOSURE OF RISKS TO UNREPRESENTED PARTIES (“DRUP”) FORM

- Disclosures of Risk to Unrepresented Parties (“DRUP”) form required for **unrepresented commercial lessees**
- Disclosure for Residential Tenancies (“DRT”) form required for **residential tenants**
- Common deficiencies observed by auditors:
 - DRUP/DORTS/DRT **not** prepared
 - DRUP/DORTS/DRT presented **after** providing trading services
 - DRUP/DORTS/DRT **incomplete** or completed **incorrectly**
 - DRUP/DORTS/DRT **not signed** by the licensee

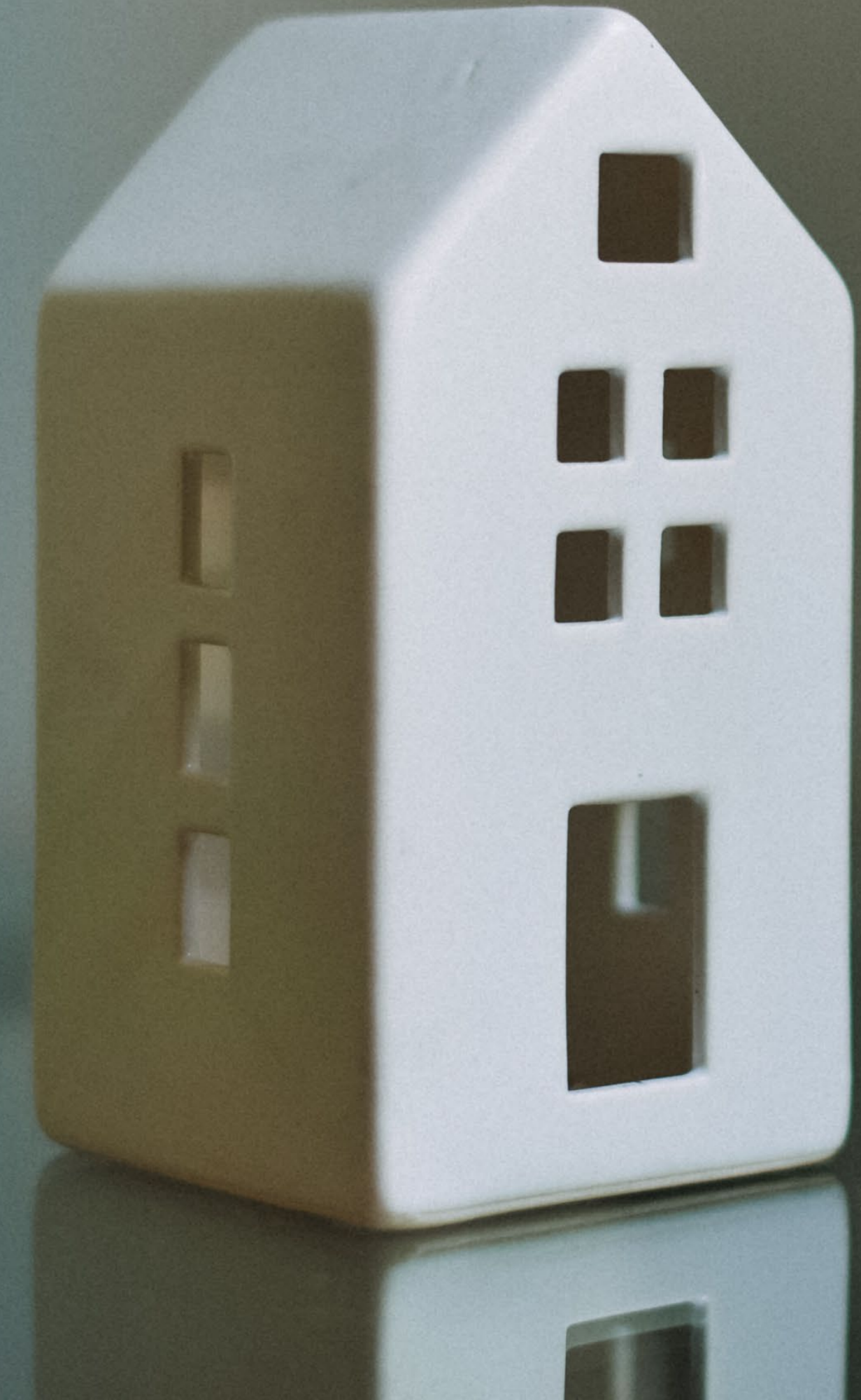


5. Section 52/56 of the Rules



DISCLOSURE OF REMUNERATION (“DOR”)

- Licensee **must** disclose remuneration received (other than remuneration paid directly by a client)
- Includes **referral fees** paid from buyer's agent to listing agent
- Common deficiencies observed by auditors:
 - DOR not prepared.
 - DOR presented **after** date of Contract of Purchase and Sale Agreement
 - DOR **incomplete** or completed **incorrectly**



6. Section 43 of the Rules



WRITTEN SERVICE AGREEMENTS REQUIREMENTS

- Agreements (when made) must be made **on or before** providing real estate services
 - Must be in writing
 - Must be signed by both client and brokerage

- Common deficiencies observed by auditors:
 - No service agreement with **no evidence** of waiver
 - **Missing** clauses
 - Agreements **entered into after** providing real estate services
 - Agreements **not signed** by client and/or authorized signatory of brokerage
 - **No addendum** for management fee increases

7. Section 72(2) of the Rules



REVIEW OF MONTHLY RECONCILIATIONS

- Managing broker or a delegated person **must sign/initial and date** to indicate review
 - Bank Reconciliations
 - TLARs
 - Individual trust ledgers
- Review is **required** for all trust accounts (pooled and designated)
 - Recommended for general account



8. Section 26 of RESA and Section 72 of the Rules



DESIGNATED TRUST

- All trust and banking documents, including cheques, statements and deposit slips **must be designated as trust**
- Common deficiencies observed by auditors:
 - Trust account bank statements, cheques or deposit books are **not** designated "trust"
 - Licensee, employee or director of brokerage is **signatory** on bank account in client's name



9. Section 31 of *RESA*



PAYMENT OF LICENSEE REMUNERATION

- Remuneration to licensees engaged by the brokerage **must be paid** from a brokerage trust account or commission trust account
- Remuneration to licensees of **other** brokerages (i.e., referral fees) must be paid **directly** out of the brokerage trust account
- Payments made to **third parties on behalf of licensees** must be paid from a commission trust account



10. Section 73 of the Rules

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instances

NEGATIVE BALANCES IN TRUST ACCOUNTS AND TRUST RECORDS

- A brokerage must **not** make any payment out of a trust account
 - if the payment puts the trust ledger into a **negative balance (overdraft)**
 - if the trust ledger is already in a negative balance
- **Notify BCFSA within 10 days** the negative balance has occurred, unless the brokerage is able to eliminate the balance
- This rule **reinforces the requirement** for a brokerage to prepare and retain trust ledgers for each trade, rental property, or strata property



EXAMPLE: LEDGER OVERDRAFT AND TRUST SHORTAGE (FROM BCFSA AUDIT REPORT)

- On May 8, 2023, a placement fee payment of \$1,653.75 was made when the balance in the client trust subledger was only \$321.25, which caused a **trust shortage of <\$1,332.50>** [\$321.25 - \$1,653.75].
- The trust shortage was eliminated on August 8, 2023, **92** days later, through a transfer of \$1,653.75 from the P.M. general account. BCFSA was **not notified** of any of the above **negative balances or trust shortages**.

Date	Description	Debit	Credit	Cumulative Balance
4/30/2023	Beginning Balance			\$ 321.25
5/1/2023	Rent Received	2,000.00		2,321.25
5/2/2023	Expenditures Paid		(2,000.00)	321.25
5/8/2023	Placement Fee Payment		(1,653.75)	(1,332.50)
11/30/2023	Ending Balance			\$ (1,332.50)

Letters of Advisement (LOA), Administrative Penalties (APs), and Disciplinary Decisions

Lisa Holst
Director, Audit & Assurance

After the Audit

ACTIONS THAT MAY RESULT BASED ON FINDINGS IDENTIFIED (2023 STATS)

- Letters of Advisement issued on 26 (2022: 9) matters
- Administrative Penalties issued: 28 total value: \$57K (2022: 34 total value: \$36K)
- Files forwarded to legal/compliance for serious contraventions: 2 (2022: 10)
- Visit our website for further details on Consent Order/Hearing Decisions and Notice of Hearings



BCFSA Resources

WEBSITE LINKS

- BCFSA Resources: “Real Estate Audit Program” - [Real Estate Audit Program | BCFSA](#)
- Bulletin Article, “What to Expect During a Real Estate Audit” - [What to Expect During a Real Estate Audit | BCFSA](#)
- Bulletin Article, Audits of Real Estate Brokerages: Top 10 Findings - [Audits of Real Estate Brokerages: Top 10 Findings | BCFSA](#)
- BCFSA Decisions: Real Estate Decisions - [Real Estate Decisions | BCFSA](#)
- BCFSA Resources: Knowledge Base - [Knowledge Base | BCFSA](#)

Questions

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**Thank
you.**