



BCrea
British Columbia
Real Estate Association

A BETTER WAY HOME:

**Strengthening
Consumer Protection
in BC Real Estate**

February 28, 2022

EXECUTIVE SUMMARY

As trusted advisors on the majority of real estate transactions, BC REALTORS® have an intrinsic interest in consumer protection. The BC Real Estate Association (BCREA) is committed to working with the BC Government and the BC Financial Services Authority (BCFSA) to develop robust evidence-based policy that will enhance consumer protection and confidence within the BC residential real estate market.

This paper proposes evidence-based solutions to enhance consumer protection for buyers and sellers of residential property in BC. BCREA urges the BC Government and BCFSA to consider the 34 recommendations outlined in this paper. The recommendations are focused on four themes including housing supply, changes to the real estate transaction framework, enhancing consumer protections and stakeholder engagement. After investigating the nature and scope of the problem based on the available data, we explore and propose measures to be adopted by the BC Government, BCFSA and organized real estate.

The first section of recommendations is focused on the root cause of consumer concern, which is a mismatch between supply and demand. The province has already established a framework to address these issues through the Development Approvals Process Review and the joint federally and provincially established Expert Panel on the Future of Housing Supply and Affordability. In addition, consideration is given to working with federal and municipal governments to create a National Housing Roundtable to foster collaborative efforts to increase housing supply across the continuum.

The second section of recommendations discusses changes to the real estate transaction framework. We recommend that the BC Government does not move ahead with implementing a “cooling off period” or restrictions to “blind bidding,” as these measures would have ambiguous impacts on housing affordability. They have the potential to increase prices while additionally causing significant unintended consequences for both buyers and sellers. Instead of a “cooling off period,” we recommend a “pre-offer period,” mandating that offers cannot be presented to a seller on new listings until the listings have been posted for five business days. This would allow the buyer to conduct their due diligence while also allowing them time to consider whether the offer they want to make is in their best interest. Instead of restricting “blind bidding,” the paper recommends greater transparency on the number of offers to assist buyers in making more informed decisions. Instead of mandating subjects, the paper recommends that the real estate sector explore amending BCREA’s standardized legal forms for Realtors (standard forms) to balance the rights of all parties. More transparency in the real estate transaction process can be achieved by mandating that property disclosure statements and strata documents are made available at the time of listing.

The third section of the paper includes recommendations on other consumer protections, including increasing licensing standards for new entrants to the profession, support for managing brokers, such as best practice guides and related resources, establishing adequate sector representation within the regulatory structure and ensuring that money laundering has no place in real estate.

The final section of recommendations is focused on improving the foundation of effective real estate policy through fulsome stakeholder engagement. The real estate sector, comprised of the province's eight real estate boards and 24,000 Realtors, is concerned with the Ministry of Finance's November 2021 announcement outlining its intent to implement a "cooling off period" for all residential real estate transactions. While we are supportive of policy changes to strengthen consumer protection, it is our position that this policy was announced in haste with insufficient research and without due regard for the work already being undertaken by BCFSa and the sector. This lack of fulsome consultation prior to policy announcements has been a longstanding issue within provincial real estate.

BCREA believes that these recommendations will enhance consumer confidence and protections within the residential real estate market while providing regulatory clarity to the 24,000 Realtors BCREA represents. We urge the provincial government and the BCFSa to consider them.

ABOUT BCREA

BCREA is a professional association representing eight real estate boards with more than 24,000 Realtors in BC, focusing on provincial issues that impact real estate. BCREA provides continuing professional development, advocacy, economic research and standard forms to help Realtors provide value for their clients.

BCREA supports policies that help ensure economic vitality, provide housing opportunities, help mitigate the impacts of climate change on homeownership and protect property owners. This report's recommendations are made given the data available to us at the time of writing. As new data and ideas become available, it's important to reassess and re-evaluate the recommendations.

TABLE OF CONTENTS

- Executive Summary 2
- About BCREA..... 4
- Table of Contents 5
- Introduction..... 6
- Background..... 7
- Evidence 10
- Addressing Root Causes: Housing Supply 12
- Changes to the Real Estate Transaction Framework 17
 - Mandating a “Cooling Off Period” 17
 - Restricting “Blind Bidding” 24
 - Greater Transparency and Fairness in Multiple-Offer Situations 27
 - Mandating Subjects 28
 - Mandating Home Inspections 29
 - Mandating Disclosure Statements 31
 - Strata Transparency 32
- Enhancing Consumer Protections** 35
 - Education and Professionalism 35
 - Managing Brokers 37
 - Regulatory Structure 38
 - Anti-Money Laundering 38
- Stakeholder Engagement** 40
- Conclusion** 44
- References** 46
- Appendix** 49
 - Table of Recommendations 49
 - Additional Recommendations on a “Cooling Off Period” 52
 - Glossary 54
 - Methodology 57

INTRODUCTION

The BC housing market has experienced substantial price increases over the past decade. Since the onset of the COVID-19 pandemic, home prices have appreciated at an unprecedented pace, even within an already elevated price environment. In 2021, BC set records for home sales in seven of BC's eleven market regions. New listings activity could not keep up with these sales and, as a result, 2022 began with the lowest level of active listings on record for BC. These trends caused the average residential home price on the Multiple Listing Service (MLS®) to rise 18.7 per cent to \$927,877 in 2021 from the prior year.

Given declining listings and price increases, many observers have expressed concerns over housing affordability and availability in the province. Within that context, the BC Government has cited concerns that heated market conditions have led to an increase in multiple offers without subjects and gaps in financing caused by aggressive offers, often over asking price. These conditions have increased the level of perceived risk for many prospective buyers. To address these concerns, the BC Government has announced their intent to implement a "cooling off period," and investigate other measures such as mandatory subjects and restrictions to "blind bidding."

This report illustrates that the phenomena the BC Government is concerned about, such as multiple offers, aggressive bidding and rising prices, are symptoms of an undersupplied housing market, not the result of a broken transaction process. This report also provides recommendations where improvements can be made to real estate practice that would strengthen consumer confidence and protection in the residential real estate market. Making improvements to housing supply is a long-term fix, but there are short-term solutions that can be made to the real estate transaction.

In this paper, recommendations are made in four categories:

- addressing the mismatch between supply and demand,
- changes to the real estate transaction framework,
- enhancements to consumer protection, and
- stakeholder engagement.

These recommendations require coordinated efforts by all levels of government and organized real estate. Some of these can be implemented in the short-term, following consultation with the public and the real estate sector, while other recommendations are intended to be implemented over time, as they require more coordination between the three levels of government.

BACKGROUND

Government Actions to Improve Consumer Protection

In 2016, following media reports and concerns expressed by the public and elected officials, the Independent Advisory Group (IAG) was established. The purpose of the IAG was to provide recommendations to BC's real estate regulator and the BC Government to improve the regulator and the existing regulatory regime (IAG, 2016).

BCREA supported the IAG's objectives of strengthening consumer protection in real estate and worked with BC's real estate regulator and the Ministry of Finance on how to best implement the IAG report's 28 recommendations. As a result of the report's publication, the government announced an end to self-regulation for real estate and increases in penalties to as much as \$250,000 for individuals and \$500,000 for brokerages. Several key recommendations from the IAG report have still not been implemented, including a recommendation requiring the seller to provide consent to allow contract assignments by the buyer, to all forms of contract for trades in real estate, whether or not the contracts are prepared by licensees.

The IAG recommends that the government should consider the impact of new policies on private sales, rather than solely focusing on organized real estate. The IAG noted that For Sale By Owner (FSBO) is often exempted from regulation. This exemption exists on the premise that owners should be able to dispose of their property as they see fit, without a license. However, the IAG also noted that FSBO activity conducted at high volumes may pose greater risks to consumers. These consumer risks would otherwise be mitigated by the regulatory requirements imposed on a licensee, such as minimum qualifications, the duty to act in the best interest of one's client and appropriate disclosure of conflicts of interest.

In September 2018, the Ministry of Finance published Dan Perrin's independent review of the regulatory framework governing real estate practice in BC. The Perrin report recommended changes in both regulatory structure and policy development, concluding that the purpose of real estate regulation should be expanded to include "ensuring a fair, efficient and trusted real estate market" (Perrin, 2016).

We are encouraged that some recommendations from the Perrin Report have been implemented, including reducing dysfunction in the policy development and oversight relationship between the previous two real estate regulators. However, there is still significant room for growth toward the goal of "ensuring a fair, efficient and trusted real estate market" (Perrin, 2016).

In November 2021, the BC Ministry of Finance announced its intent to introduce legislation in spring 2022 to mandate what they term a "cooling off period" for buyers of all residential real estate. BC's real estate regulator, BCFSA, has been asked by the Ministry of Finance to consult on the appropriate length of a "cooling off period" and whether to include penalties for buyers who exercise their right to rescission.

BCFSA has also been asked to consult on additional consumer protection measures, including:

- restricting “blind bidding,”
- mandatory contract conditions, such as home inspections or financing,
- mandatory disclosure statements, and
- other practices that may be identified as consumer protection measures.

In addition, the federal government has committed to implementing consumer protection measures through the introduction of a Home Buyers’ Bill of Rights. This would include a ban on “blind bidding,” establishing a legal right to a home inspection, increasing transparency on the history of recent house sale prices on title searches and developing a beneficial ownership registry.

Organized Real Estate’s Actions to Improve Consumer Protection

BCREA is committed to supporting consumers in mitigating these risks and making informed decisions, while continuing to share knowledge and educating and informing Realtors about professional challenges and potentially heightened consumer risks associated with a hot market.

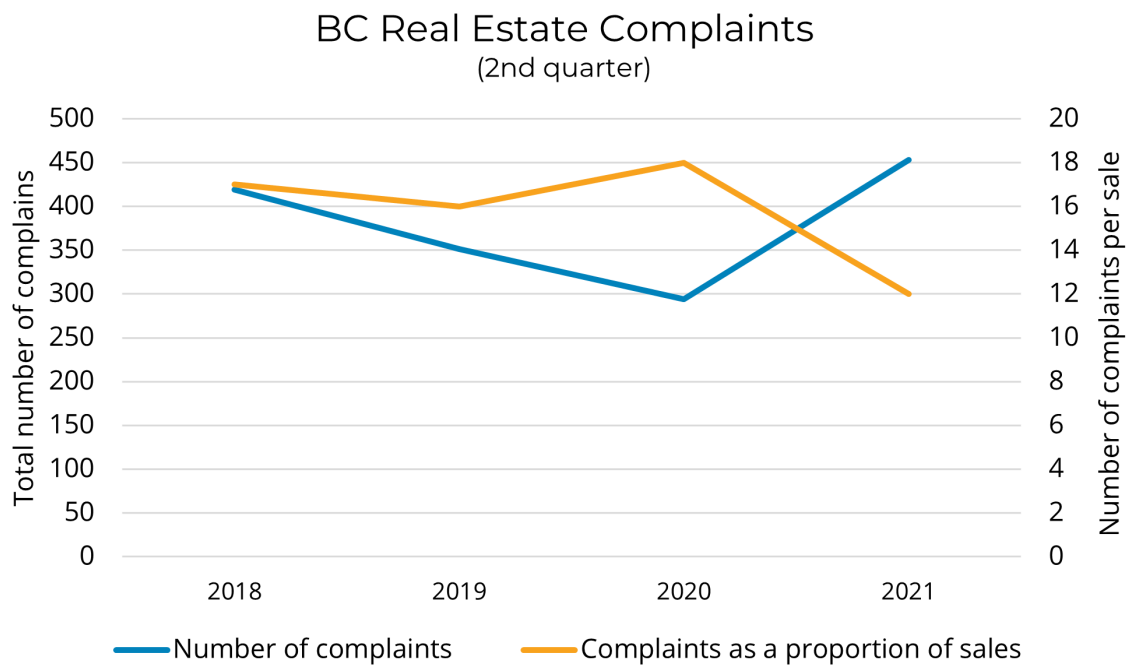
BCREA and regional real estate boards have already taken a series of actions in response to the exceedingly tight market conditions that were present earlier in 2021. These actions were enacted to provide greater transparency and increase consumer awareness, and included:

- Introducing a new standard form known as the “Buyer’s Acknowledgement of Information – Recommended Conditions” to serve as a buyer’s acknowledgement of information. This standard form provides additional transparency to a real estate transaction and put more focus upon educating the potential buyer of the risks associated with foregoing due diligence.
- Introducing a guide and toolkit to support Realtors in integrating use of this form in transactions.
- Producing a podcast episode, “What does the Public Really Think About the Hot Market?”
- Publishing blog posts on the market, including, “Interest Rates Main Cause for Hot Market” and “Protecting Buyers, and Yourself, in a Hot Market.”
- Hosting Community of Practice webinars for managing brokers on emerging issues on hot markets and risk mitigation strategies.

- A real estate board hired an external consulting firm to lead a facilitated session with Realtors to explore the issue of multiple offers and address potential solutions, followed by legal perspectives.
- Real estate boards communicated with Realtors on issues pertaining to multiple offers.
- Changing the offer rule to provide a fairer process for delayed offer presentations, along with support and guidance from many real estate boards.
- Several real estate boards scheduled a course on multiple offers.
- Real estate boards providing one-on-one support to brokers and members on issues surrounding multiple offer situations.

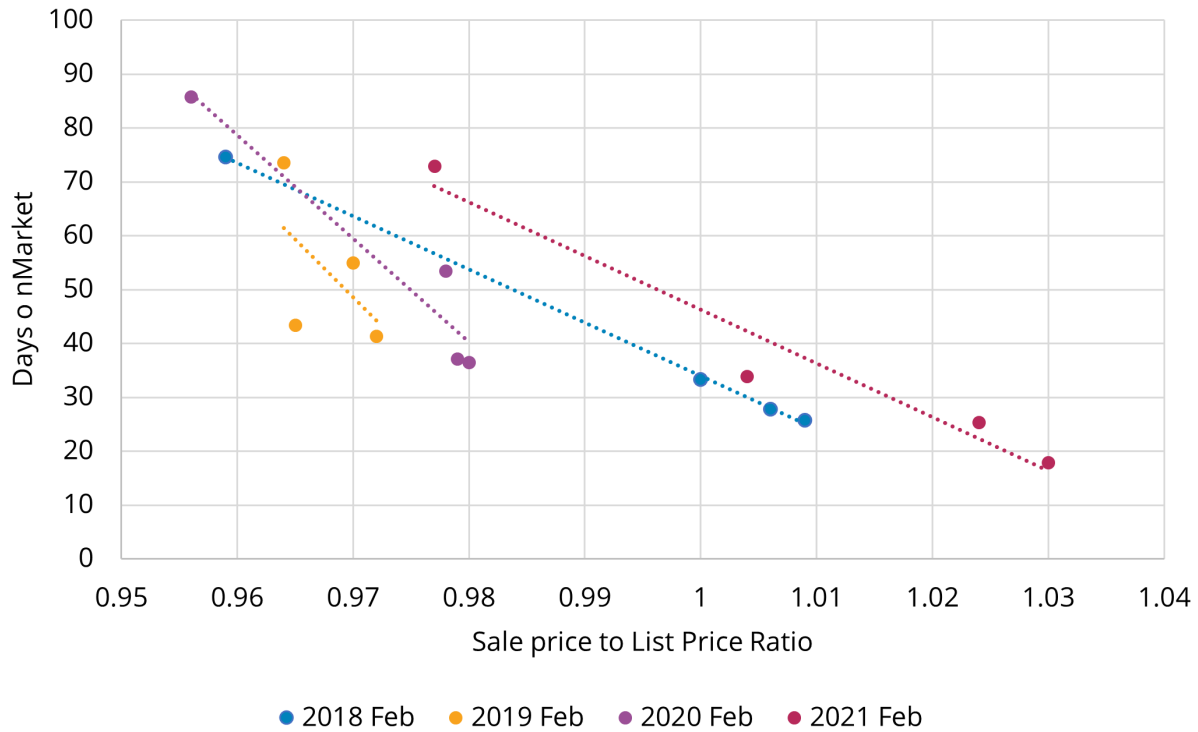
EVIDENCE

As evidence that the transaction process needs addressing, the BC Government has noted that the number of complaints to BCFSa against real estate professionals increased in 2021 compared to previous years. We take issue with this narrative, as between April 2021 and November 2021, BCFSa's Audit Team for Real Estate Market Conduct, Audit & Assurance reported that, of 78 audits, no significant compliance issues were identified. This audit included three brokerage audits regarding the *Real Estate Services Act*, the Real Estate Services Regulation and the Real Estate Services Rules. While it is correct that the absolute number of complaints increased in the second quarter of 2021, complaints per total number of transactions fell significantly in 2021 compared to the previous year. That is, even in a highly competitive and sometimes stressful market environment, there was a decline in the rate of incidents of complaints when compared with transaction volume.



There is some evidence that the sale price to list price ratio is correlated to the number of days a listing is on the market. Looking at the month of February in the years 2018-2021, the larger the gap is between the sale price as compared to the listing price, the fewer days a unit will be on the market. This suggests that addressing affordability is a solution to providing potential buyers with more time to conduct due diligence.

Sale Price to List Price Ratio vs Days on Market

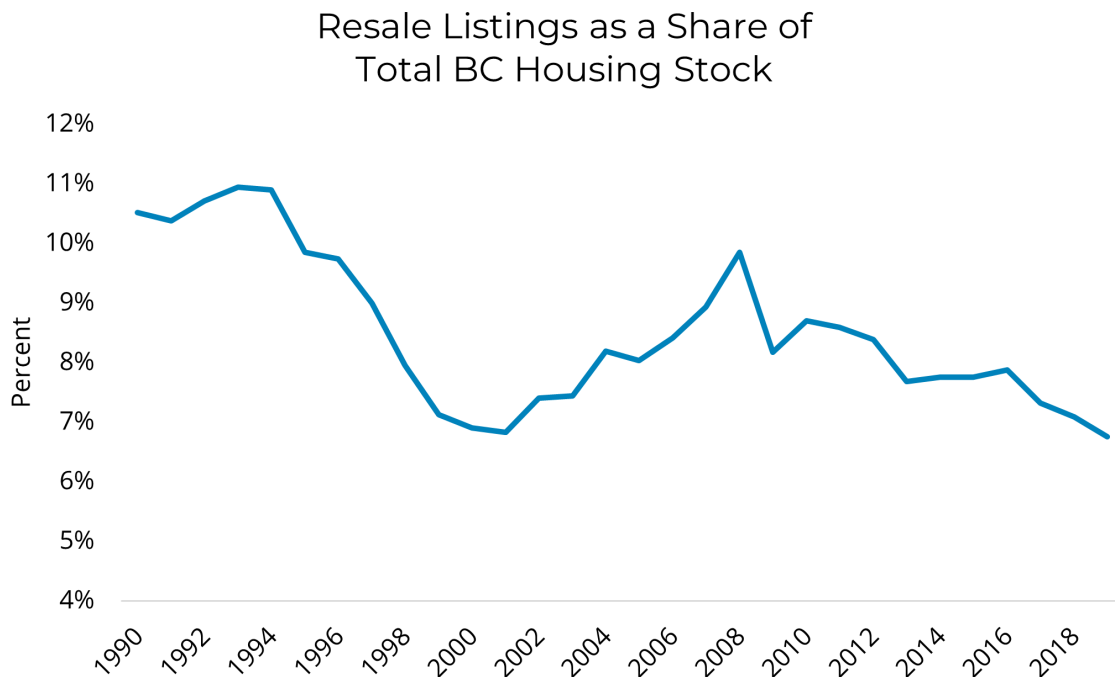


One likely reason that the rate of complaints did not increase with the heightened market activity is that buyers and sellers had a skilled, experienced advisor by their side. Real estate transactions are complex, and buyers and sellers alike are at increased risks without the help of a Realtor, all of whom have undergone education to understand navigating the market and the rules that regulate it. According to a January 2022 survey of BC real estate buyers, 97 per cent of respondents, across age, gender or region, who used the services of a Realtor were somewhat or very satisfied with their Realtor. This suggests that it is important to ensure that any contemplated changes to policies do not have the effect of turning people away from using real estate professionals, resulting in them becoming unrepresented buyers or sellers.

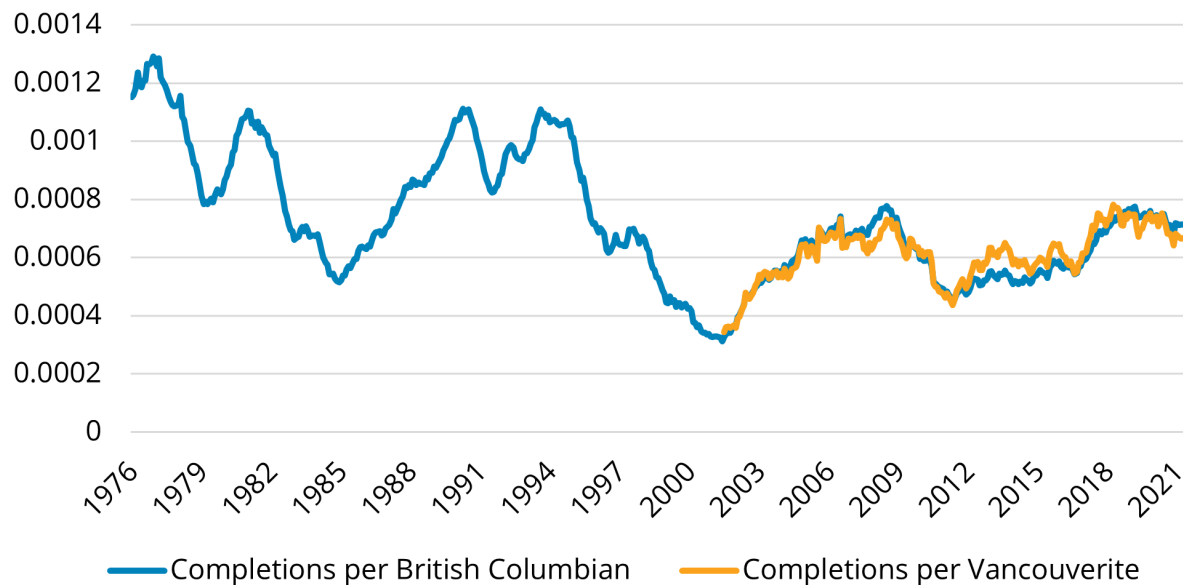
ADDRESSING ROOT CAUSES: HOUSING SUPPLY

According to a survey of unsuccessful homebuyers in BC since January 2021, by far the most common reason for their unsuccessful purchase was competition from other potential buyers (49 per cent), followed by inadequate financing (31 per cent). Similarly, among concerns expressed by successful homebuyers, the largest concern was pressure to make an offer uncomfortably above the list price in order to be competitive (22 per cent) (Canseco, 2022).

A large body of economic research from BCREA and institutions like the Canada Mortgage and Housing Corporation (CMHC) and the Bank of Canada indicates that housing supply is a key driver of home prices and probably the key lever available to policymakers seeking to moderate long-run price growth. Evidence suggests that rising home prices are related to worsening supply metrics in BC and Canada as a whole. Indicators such as completions per resident and the share of housing stock for sale have declined relative to prior decades. Furthermore, home completions are linked with new listings on the MLS®, indicating the dearth of home completions is at least in part responsible for the current lack of home listings in BC (Ogmundson, 2021).



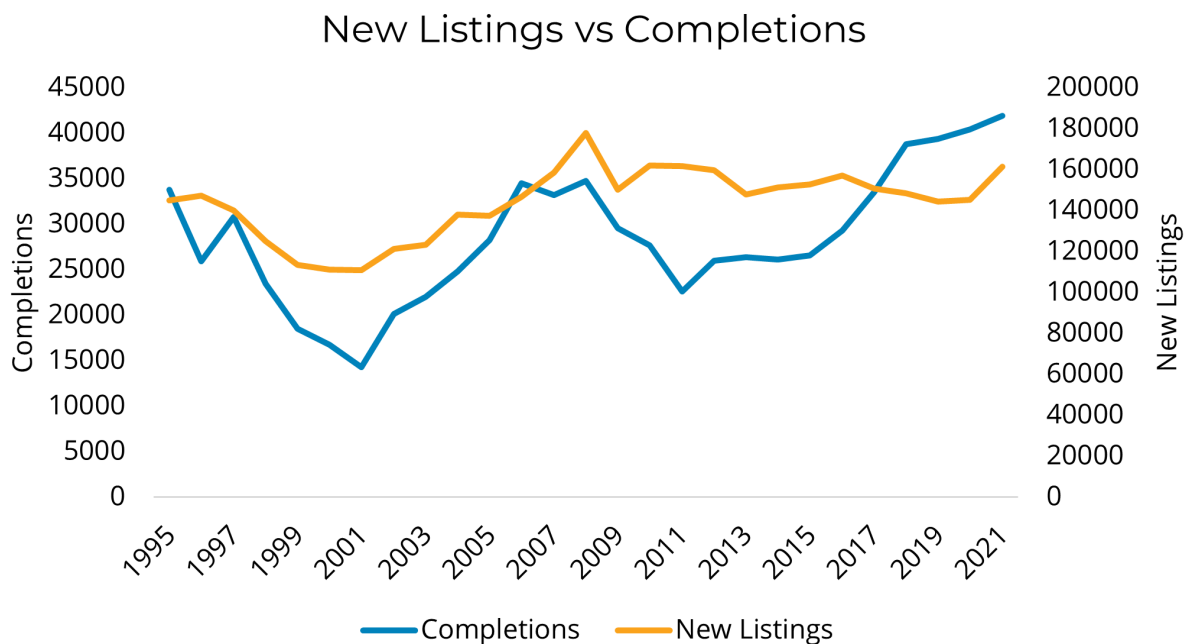
Completions per Resident



Policymakers would be better served by focusing their attention on the market fundamentals that drive prices. In an open and dynamic economy with robust population growth through immigration, demand for housing cannot and should not be restrained. If the goal is for British Columbians to prosper economically and then purchase high-quality homes across the province, this leaves one key policy lever for government to exploit: increasing housing supply. By taking steps to ensure that supply keeps up with robust demand, policymakers grow the pie instead of rationing appetites.

According to a recent report by BCREA, at the peak of market activity in March 2021, 67,000 buyers were searching for homes across BC while only 24,000 listings were available. Put another way, prospective buyers outnumbered sellers three-to-one and that ratio was even more pronounced in regions of the province that experienced significant relocation demand. In the Fraser Valley, buyers outnumbered sellers by as much as seven-to-one at the height of the market in the spring. This resulted in prices rising 30 per cent, double what was seen in the Greater Vancouver area during the same period. Markets in the interior, as well as Vancouver Island, saw similar trends, with Victoria being the most undersupplied with a nine-to-one ratio of buyers to sellers (Ogmundson, 2021).

New housing completions ultimately translate into new listings and active listings, which has the effect of moderating price growth. Since the late 1980s when recorded data became available, there has been a positive correlation between the number of new completions and the number of new listings on the MLS®. Periods of high new housing completions coincide with stronger listing activity as new units free up the existing housing stock for sale.



Interventions at the bidding stage, such as a “cooling off period,” may or may not have a marginal effect on the growth of home prices in British Columbia. Such policies, if poorly designed, may also backfire by increasing multiple-offer situations and layering on additional complexity and transaction costs. Either way, affordability has not worsened in the province in recent years due to the structure of the transaction process, but due to a decline in the housing supply (as measured by the number of active listings) to record lows. Solving this problem by addressing supply gaps may require more time than imposing a simple intervention in the bidding process. However, closing these gaps will be necessary to resolve the fundamental cause of declining housing affordability in British Columbia.

In the past year, the BC Government has made some progress addressing local government issues of supply caused by slow development times. In October 2021, the government removed the default requirement for local governments to hold public hearings for rezoning that is consistent with Official Community Plans. It is further encouraging that Attorney General and Minister Responsible for Housing David Eby recently said of the development approval process that “one thing is clear is that the status quo is not acceptable (Meissner, 2022).”

Development Approvals Process Review, Official Community Plans and Expert Panel

The process for approving development has a major impact on how quickly housing projects are built, and if the process is too burdensome or expensive it can cause artificial scarcity. The 2019 Development Approvals Process Review (DAPR) report was initiated to address challenges and identify opportunities for improvement in the current approvals process, as well as to support local governments in accelerating the construction of the homes their communities need.

Other tools that can be used to reduce development times are an Official Community Plan (OCP) and Housing Needs Reports. OCPs are defined in the *Local Government Act* and allow local governments to develop objectives and policies that guide planning and land-use management, including long-term development plans. Public hearings are required for all development applications that seek amendments to OCPs and to zoning bylaws that are not consistent with the OCP. Housing Needs Reports are required to be completed by all municipalities and regional districts in BC. The first report deadline is April 2022, with additional reports required every subsequent five years. These reports are intended to help local governments and the BC Government better understand and respond to housing needs.

The Canada-BC Expert Panel on the Future of Housing Supply and Affordability corroborates the importance of supply-side policies. Their 2020 interim report said that “barriers to housing supply remain one of, if not the most important, factors in driving up home prices (Affordability, 2021).”

The changes recently put into place, while welcome, will take some time to yield measurable benefits to supply and BC families are unlikely to see impacts in the short term, even with significant local government uptake. As there is no single panacea to reducing development wait times and increasing supply, we have a series of additional recommendations.

Recommendation: In coordination with the federal government, establish a permanent National Housing Roundtable to bring together key stakeholders of the housing market to help address its challenges with an inclusive, holistic and innovative approach.

Addressing the issue of housing supply requires a coordinated effort between all levels of government. There is a need for a collaborative, multi-stakeholder process to identify the factors limiting the supply of housing forms across the continuum, including owned, rental, affordable, single-family and multi-family. In collaboration with all levels of government, the BC Government should convene a permanent housing roundtable that includes builders, real estate professionals and civil society organizations to implement the DAPR report and Expert Panel recommendations. The roundtable should prioritize the development approval process to reduce red tape and other systematic delays, with the goal of increasing housing supply.

All levels of government must work together to implement solutions that respect the constitutional distribution of legislative powers. Real estate is local, while the regulation of real estate practice is provincial. Each region of BC and Canada has unique market conditions and governing regulations must be recognized and integrated as a part of the solution. Realtors are on the front lines of the challenges in market housing. They provide on-the-ground expertise and knowledge to enable the identification of problems and policies that could make an impact. By being part of a National Housing Roundtable, BCREA and the Canadian Real Estate Association can bring a data-informed perspective for evidence-driven solutions across the housing spectrum.

Recommendation: Through fulsome consultation, implement other supply-side measures and calls to action made by the Development Approvals Process Review and the Canada-BC Expert Panel on the Future of Housing Supply and Affordability.

Many of these measures can be implemented in the short term, with minimal additional expenditures from the provincial government. Consultation with BCREA and other sector stakeholders can ensure that the right measures are implemented by using the on-the-ground experience of Realtors and other experts.

Recommendation: Provide local governments with training and best practices.

While we are encouraged by recent government amendments to speed up the development process, they are only effective to the extent that they are enacted by local governments. There is great diversity in size, scope and resourcing between municipalities. Provincial leadership in developing best practices that can be employed by local governments would improve the efficiency of internal reviews and approvals. For example, providing a guide on what constitutes a minor versus major amendment change or training on conducting a meaningful and robust public consultation process for OCP and pre-zoning would be beneficial to local governments.

Recommendation: Make infrastructure investments to local governments conditional on OCPs, zoning bylaws and other local policies to allow for increased density and a mix of housing types.

Allowing replacement of single-detached homes with Missing Middle housing (duplexes, triplexes and fourplexes), as well as allowing accessory dwelling units such as secondary suites and laneway/coach houses, can create much-needed housing stock diversity. This gentle densification is especially important in neighbourhoods accessible to transit. The BC Government can help local governments unlock additional housing options through linking infrastructure investments to OCPs, zoning bylaws, Housing Needs Reports and other local policies. For example, last month the New Zealand government enacted legislative changes to allow gentle densification of single-family lots without the need for rezoning. Likewise, in September, California's state government passed a law banning single-family zoning. Similar changes made by the BC Government could foster additional shorter-term impacts and provide more housing options for those who need it most. An additional benefit of this policy is that a streamlined approval process for such housing, due to their short construction timelines and the high number of potential development sites, could yield new units on the ground within a much shorter time frame than large apartments or townhouse projects.

CHANGES TO THE REAL ESTATE TRANSACTION FRAMEWORK

Buying a home can be one of the largest financial decisions of an individual's or family's life. Each situation is unique depending on the property, the buyer and the seller, and there are many steps to go through.

Mandating a "Cooling Off Period"

BCFSA is considering the following parameters within their consultation on a "cooling off period:"

- the length of time for a "cooling off period,"
- risks or unintended consequences that could arise with its implementation,
- penalties or other consequences for buyers who exercise their right to rescission, and
- whether there should be a legal obligation for sellers to help ensure they do not frustrate the "cooling off period."

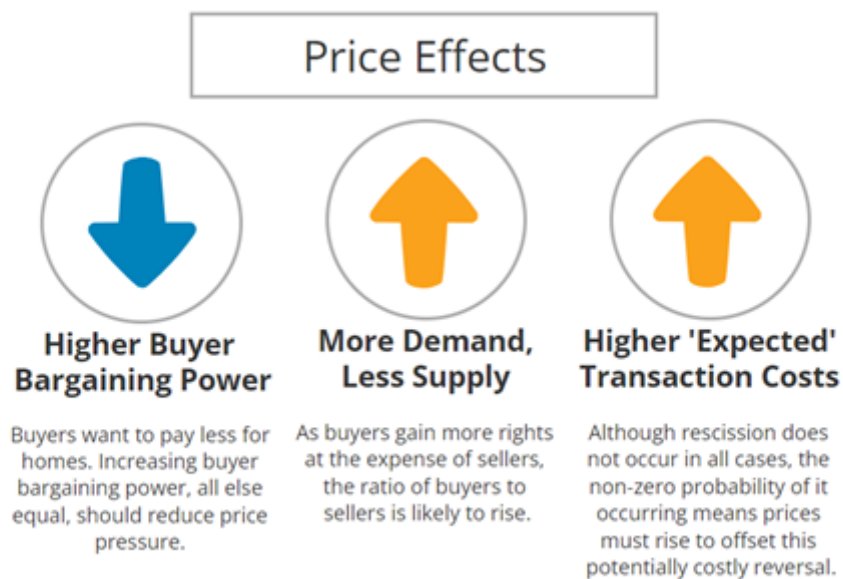
BCFSA's rationale for a "cooling off period" is to give buyers a chance to reconsider offers placed in the heat of a highly competitive market and allow them to complete due diligence that they should have covered in subject clauses, such as home inspection or confirmation of available financing.

While the literature is not very deep, "cooling off periods" are sometimes found in economic theory to tilt the balance in favour of buyers. While few studies investigated a "cooling off period" in real estate transactions, several papers looked into the implications in other kinds of transactions. In the presence of behavioural or psychological quirks such as "projection bias," or the tendency to assume one's present preferences will continue into future periods, a mandatory "cooling off period" or return policy can be beneficial for consumers. According to a 2021 publication, "both a mandatory "cooling off period" and a return policy can be consumer welfare enhancing (Stenzel, 2021)." These policies can redistribute utility from sellers to buyers.

While this may sound desirable, there are many reasons why these benefits do not apply to the resale housing market. Firstly, most sellers are also buyers in other dependent transactions. Making the sellers worse off potentially risks an entire chain of transactions, adding uncertainty to the entire market. For example, if a homeowner buys another home but their home sale falls through because their potential buyer exercises a "cooling off period," this could have a chain effect, jeopardizing their own homebuying efforts. If the goal is moderating price growth, the effects can be ambiguous, and sellers may react to the policy by delisting properties as listing their home would be less enticing, dampening supply and thereby putting an even higher premium on the properties that remain available, which ultimately would drive prices up.

Conversely, if the policy makes transacting more desirable for buyers, it could increase demand, which also puts upward pressure on prices. While buyers can be better-off from the policy, it is not a Pareto improvement whereby a change harms no one and benefits at least one party, since sellers are worse off. If the policy generates significant costs, it is also unlikely to be a Kaldor-Hicks improvement, whereby a change occurs that benefits one party and adequately compensates the other party who was harmed. In short, the policy may make buyers slightly better-off at the greater expense of sellers, making it non-welfare-enhancing in utilitarian terms.

“Cooling off periods” have outcomes that affect prices in potentially counteracting ways. “Cooling off periods” increase the bargaining power of buyers relative to sellers, which should moderate prices. On the other hand, they are also likely to increase the ratio of buyers to sellers and raise transaction costs, which both tend to increase prices. The net result of “cooling off periods” on real estate prices is therefore ambiguous, being dependent on the details of the policy.

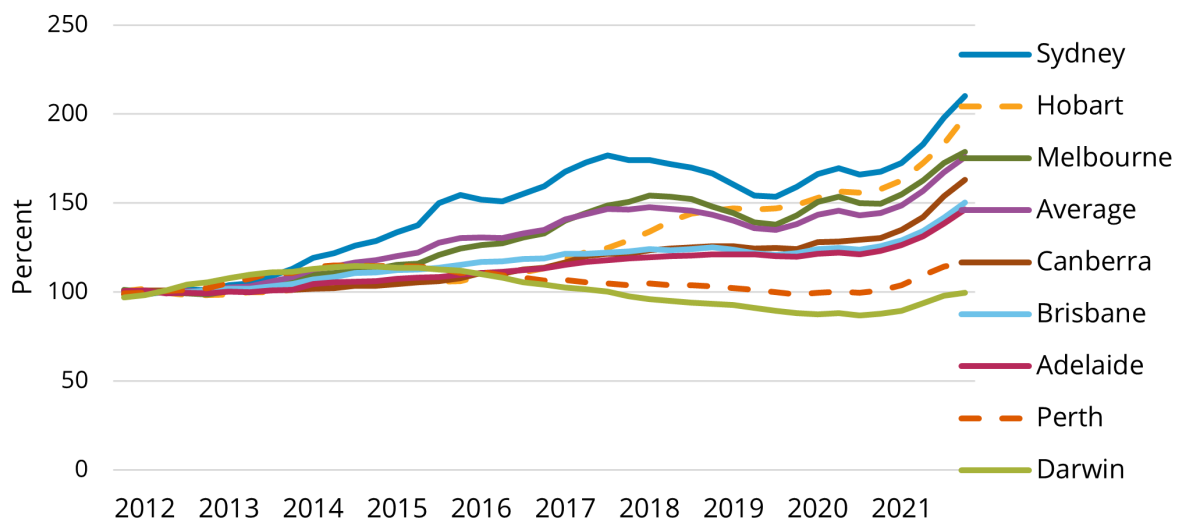


Some research suggests that “cooling off periods” may not be effective due to human psychology. According to research by Paul Harrison of Deakin University, behavioural biases tend to reduce the likelihood that a buyer will reverse their purchase decision. The endowment effect, which occurs when individuals place a higher value on items they already own, consistency theory and status quo bias all tend towards consumers being less likely to reverse their decision (Harrison, 2016). In addition, admitting that one made a mistake requires psychological effort that buyers often try to avoid. As Harrison’s research focused on small purchases, the psychological factors that disincentivize the use of a “cooling off period” may be less applicable for large transactions such as real estate. In a transaction like real estate, where the buyer is coming to the seller with a desire to purchase, rather than the seller aggressively pursuing the buyer, these behavioural effects are likely more present, which would mean few buyers opting to use the “cooling off period” to withdraw from a purchase. The only exception is a scenario where relatively costless withdrawal leads to buyers making offers on several properties at once with the intention of securing only one and withdrawing from others.

A 2010 survey of non-real estate consumer data from businesses found little uptake of “cooling off periods.” Among the firms surveyed, nearly three quarters stated that two per cent or fewer consumers cancelled within three days (Sovern, 2014). The evidence suggests that the rescission rate for many transactions covered by a “cooling off period” is low in the United States. The author concludes: “ironically, in light of the overheated rhetoric accompanying their creation, “cooling off periods” appear to have virtually no benefits or costs.”

“Cooling off periods” are common in the Australian real estate industry, but only for private treaty sales. In this type of transaction, sellers set a price or price range and often use a real estate agent to advertise the property and conduct viewings (Australia, 2021). This differs from auctions, where “cooling off periods” do not apply. Following an auction, the successful buyer needs to sign the contract on the day of the completed auction (Australia, 2021). “Cooling off periods” vary state-by-state in Australia and range in duration from two to five business days, while some states have no “cooling off period” at all. The size of the penalty also ranges depending on the state.

Price Change by Australian City



Unfortunately, according to a recent paper, “there does not appear to be statistical evidence as to what percentage of potential buyers “cool off,” whether those who do have done so after receiving professional advice or to what extent buyers have used the tactic against sellers to hold sellers hostage to bargains which those buyers never intended to complete (Christensen, 2007).” Other evidence indicates that in Australia, one in three buyers do not know how “cooling off periods” work, which suggests they are not very important, or more viable option for sophisticated, wealthier home buyers (Government, 2006). In all, “cooling off periods” do not appear to play a very important role in Australian real estate markets.

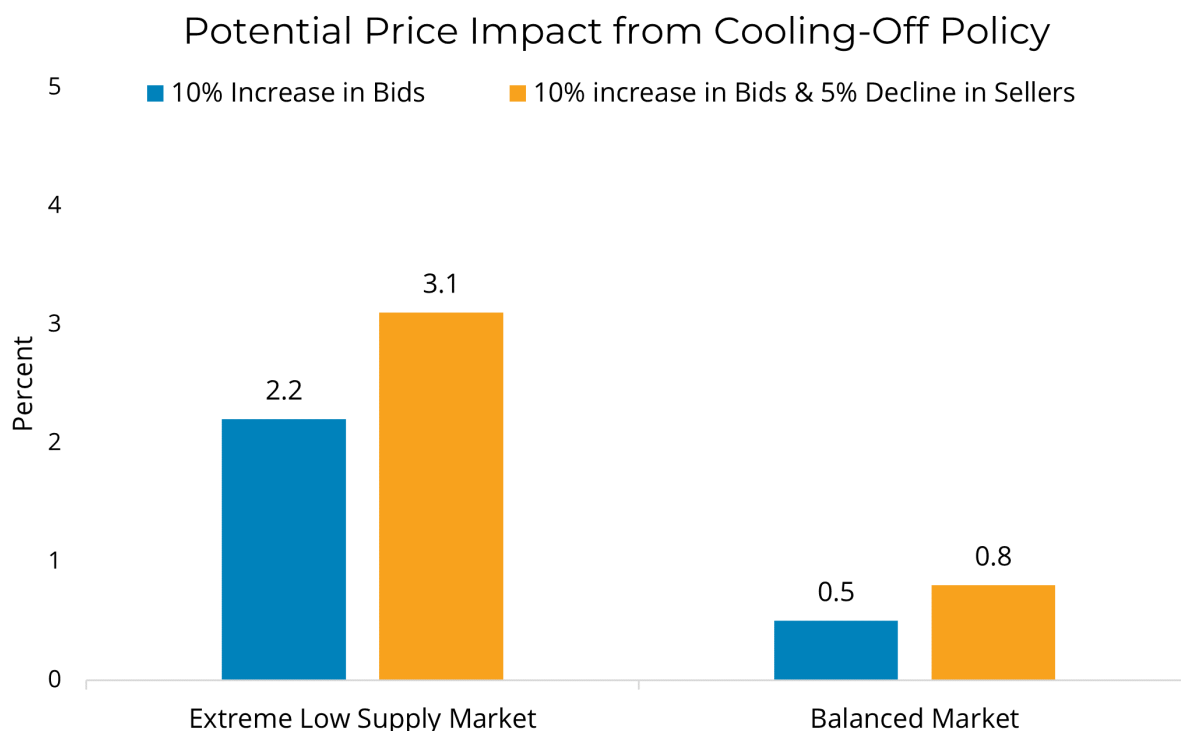
BC Context

In BC, mandatory “cooling off periods,” referred to within the *Real Estate Development Marketing Act* as a “right to rescission,” already exist for pre-sales of properties under development. Buyers of such strata properties have seven days from the time they receive a copy of a signed purchase contract (or acknowledge receiving a disclosure statement) during which they can withdraw their offer. However, a “cooling off period” for pre-sales differs significantly from residential sales for the following reasons:

- compared to sales of existing homes, developers of pre-sale homes are not under as tight a time constraint to find a purchaser;
- timeliness of the transaction is not a serious issue for pre-sales, and in the event of a buyer rescinding the contract, the developer can typically simply remarket the unit and sell it in the subsequent weeks or months;
- pre-sale contracts tend to be significantly larger and more complex than resale contracts;
- in the pre-sale market, the buyer is typically purchasing from a large development corporation, resulting in a potential power imbalance between buyer and seller, while in the resale market, buyers and sellers are both typically “retail consumers” (more or less equal players) in the transaction; and
- the resale market is often different due to the structure of the purchase process. “Cooling off periods” may drive more homes to be sold by auction if the “cooling off period” is designed in such a way that it becomes onerous for sellers.

While on the surface, “cooling off periods” have an intuitive appeal, there are reasons to doubt that this policy will act as intended in BC’s real estate markets. As buyers would be able to back out of contracts, the probability that a buyer will present an offer on a property rises under such a policy. Indeed, under a worst-case scenario, buyers would present offers on multiple properties to preserve their options and later back out of all but their one preferred deal. This policy may increase the incidence of multiple offers, already a common occurrence in a seller’s market in which there is more demand than supply of properties. In a market with demand far outstripping supply (the fundamental driver of price growth in all markets), this proposal makes it easier and less risky to present an offer on homes, thereby raising demand. As a result, this policy may be perfectly counterproductive if the goal is slowing price growth. Perhaps this is why the provincial government has stated that this policy is intended purely as a “consumer protection measure” and is not intended to address affordability.

The policy is likely to affect prices in different ways depending on the tightness of the market. An increase in the number of buyers can be more easily absorbed when the market is normally supplied. Under normal balanced market conditions, we estimate that a “cooling off period” would put modest upward pressure on prices, likely in the range of under one per cent. However, when the market is already undersupplied, a surge in demand can have larger effects on prices. Given the extremely low current supply conditions, we estimate that an increase in offers or a pullback in listings could lead to prices rising an additional two to three per cent.

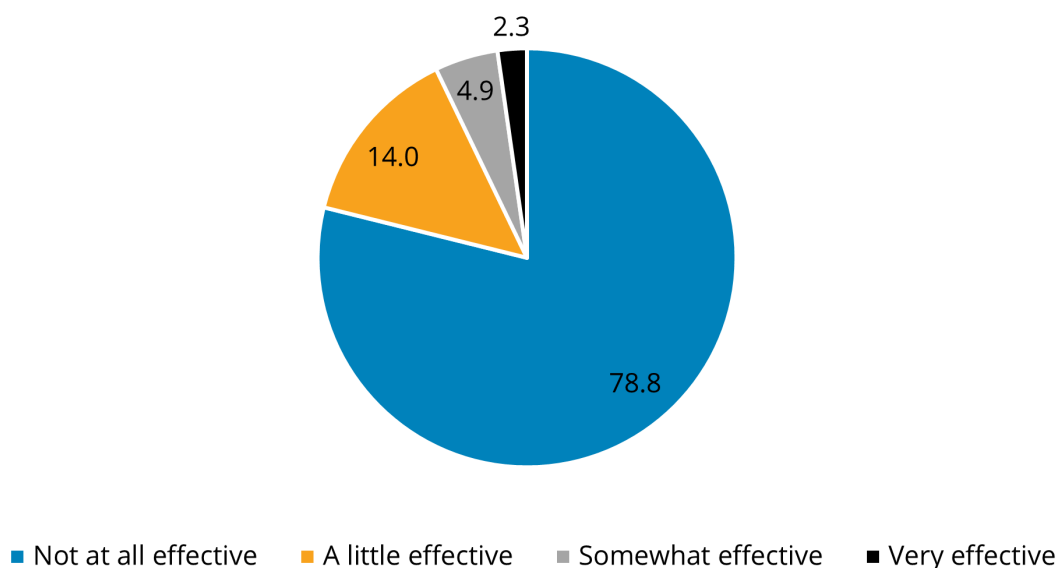


Recommendation: Do not implement a “cooling off period.”

In a December 2021 survey of BC’s Realtors, the vast majority of survey respondents, 93 per cent, believe a “cooling off period” will be ineffective (either “not at all effective” or “a little effective”) at balancing risks to housing affordability and real estate practice.

How effective do you think a mandatory “cooling off period” would be?

(per cent)



Compared to other policies, including restricting “blind bidding” or mandating conditions such as financing or home inspections, the “cooling off period” was considered the least effective by respondents. If other policies were implemented to increase transparency within a transaction, it would negate the need for a “cooling off period.”

A majority of survey respondents are concerned that:

- consumers will look for workarounds, which may lead to more unrepresented parties,
- a “cooling off period” will worsen affordability by increasing the number of offers,
- there is a lack of metrics to understand the effectiveness of a “cooling off period,”
- the impacts will be significantly different in a seller’s market compared to a buyer’s market,

- there will be an imbalance between the rights of buyers and sellers,
- there will be an increase in frivolous offers, and
- sellers will face increased uncertainty, disrupting the market.
- if used indiscriminately by buyers, a “cooling off period” could tie up multiple houses in a neighbourhood.

Among focus groups, many managing brokers also expressed concern over the enforcement mechanism of this policy. A rescission fee could be administratively challenging to enforce due to the nature of trust accounts.

A simple “cooling off period,” where a buyer can cancel a contract for any reason within a certain period, introduces uncertainty in the market and exposes sellers to increased risk. Sellers will also only be basing their offers on price, as they will lack clarity as to the types of due diligence a buyer may wish to undertake. While BC is currently experiencing a sellers’ market, that will inevitably change. In a buyers’ market, a “cooling off period” gives unnecessary power to buyers which has the potential to cause significant market disruption and has an array of unintended negative consequences. As one respondent noted, “a contract is no longer a contract if either side has the right to retract their decisions.”

While we strongly recommend against implementing a “cooling off period,” the appendix contains results from a consultation with Realtors on the least-harmful parameters of a “cooling off period” given BCFSAs ongoing consultation on the appropriate length of time and penalty amount for a buyer who exercises their right to rescission.

Recommendation: Instead of a “cooling off period,” implement a “pre-offer period.”

The ability to calmly consider the key aspects of a home purchase before making an offer has been a missing element during the overheated BC real estate market. Placing the rescission period after an offer has been accepted has significant ramifications for sellers and could exacerbate housing affordability by enabling a purchaser to make multiple offers on separate properties, and rescinding all but one, thus placing all other sellers in a difficult situation with collapsed deals. Allowing enhanced market exposure and opportunities for due diligence before offers are considered and accepted ensures that prospective purchasers are not making risky offers in haste and provides the seller with the confidence that they are receiving serious (not frivolous) offers that have a minimal risk of collapse.

Our findings from our public survey and focus group, as well as Realtor/Managing Broker focus groups, indicate that the primary issue with the real estate transaction as currently conducted during hot markets is the speed and timing of decisions that need to be made by the buyers.

Given the presence of multiple offers, price baiting and the extreme shortage of available listings, some buyers find themselves under pressure to forego proper due diligence and present subject-free offers that are greater than they are comfortable with. These issues represent the source of risk exposure for potential purchasers, which is counterproductive to accomplishing the government's objective of improving protections.

A viable solution is a "pre-offer period," whereby offers cannot be presented to the seller for five business days after a new listing is posted. This would allow time for viewing the property, home inspections and review of documents, such as property disclosure statements and strata documents. This would also combat "bully offers," which occur when purchasers make time-limited offers immediately upon listing, forcing the seller to make a quick decision and freezing out other potential purchasers. A "pre-offer period" also does not represent a fundamental change in the nature of the real estate transaction, and thus does not give rise to the negative unintended consequences of a "cooling off period," such as the domino effect of delayed or uncertain sales throughout the market. It provides potential purchasers with the most valuable element that will reduce risk and stress: time to obtain critical information to properly consider an important decision. It also provides greater transparency in the transaction, in that all parties are aware of what due diligence is being undertaken. While transactions involving a Realtor could be documented through the MLS® System to ensure compliance, one potential concern with this policy would be consumers finding workarounds by turning to FSBO transactions, which is why we would recommend requiring FSBO's to register their listing and document their transaction to ensure compliance.

It is a simple solution, which offers better protection for buyers than the currently proposed "cooling off period," avoiding negative consequences for the seller. If this recommendation is adopted, it negates the need for mandatory clauses for home inspections or document receipt, as the "pre-offer period" will allow time for these conditions to be fulfilled.

Restricting "Blind Bidding"

"Blind bidding," the term used by BCFSa, the BC Government and the federal government, occurs when homebuyers submit offers to sellers and sellers choose not to disclose the details of competing bids. In BC, any home sale where there is a potential for multiple bidders can be considered an auction. One factor affecting the type of auction used is the degree of transparency, or the amount of information bidders receive about the other bidders participating in the process.

Three forms of bid transparency in an auction include:

- **Open bidding.** Under this method, bidders are made aware of the relevant details of the bids made by other participants in the auction.

- **Sealed bidding.** Under this method, bidders submit bids without knowing the identity of other bidders, the number of additional bidders or the details of the bids. In a true sealed bid format, bidders are not allowed to revise their bids, although typical sealed bidding may involve multiple rounds of bidding.
- **Closed auctions, also known as “blind bidding.”** Under this method, prospective buyer submits an offer to purchase a property without knowing any information about the content of competing offers from other prospective buyers (Rhijn, 2019). A “blind bidding” format can be thought of as a less restrictive version of a sealed bidding system. Unlike a pure sealed bid, there is an element of negotiation in “blind bidding.”

Each of the above methods is legal within BC; however, “blind bid” negotiation is by far the most common in residential real estate.

BCFSA is considering the following parameters within their consultation on “blind bidding:”

- current real estate sector practices regarding “blind bidding,”
- trade-offs of implementing alternatives to “blind bidding,” such as live real estate auctions or real-time disclosure of offers,
- trade-offs of the enhancements to “blind bidding,” and
- other measures that should be considered.

In addition to a provincial government investigation into restricting “blind bidding”, the federal government has expressed its commitment to implement a Home Buyers’ Bill of Rights that would ban “blind bidding”. The federal government has argued that “blind bidding” drives up home prices.

No provinces in Canada have implemented restrictions on “blind bidding;” however, other countries can serve as case studies, with impacts likely to be comparable to British Columbia. Other jurisdictions, such as Sweden, do not permit “blind bidding.” Sweden has experienced even faster home price growth during the pandemic than Canada, and comparable home price growth over the previous 20 years. New Zealand has not banned “blind bidding,” but open auctions for homes are common practice. New Zealand has experienced the fastest-growing home prices in the world over the last 20 years (Moffatt, Banning Blind Bidding, 2021). Experiences in Sweden, New Zealand and Australia, where open auctions are also common practice, suggest that bid transparency can lead to higher, not lower, prices in a hot real estate market.

Limited academic evidence also tends to suggest that bid transparency leads to higher real estate prices (Frino, Lepone, Mollica, & Vassallo, 2010). Indeed, BCFSA quotes in a recent document: “Multiple studies show that, when controlling for the higher quality of properties, those sold at auctions tend

to command price premiums over private treaty sales.” Studies examining real-estate transactions in New Zealand, Australia and Ireland, as well as studies examining land sales in Singapore and the United States, have found that increased bid transparency is associated with higher prices, particularly in overheated markets. This could be due to several factors, including public bids creating a signal that a property is particularly valuable, in a way that less transparent bids do not. Of literature examining other jurisdictions, six studies found transparent bidding practices were associated with higher house prices, while two others found transparent bidding to be associated with lower prices. These varied results are not surprising given different methodologies used in different markets.

The core argument that “blind bidding” leads to homebuyers overpaying for houses is the “bid-gap spread.” The rationale is that due to the lack of transparency, winning offers may be thousands of dollars more than need be because there is no disclosure of what others may be offering. If the winning bidder had known that the second-highest bid was significantly lower, they may have ended up winning their bid with a much lower offer (Reitzes, 2021).

A counterargument is that open bidding can create frenzied market psychology that can cause final bids in open auctions to be even higher than in closed bidding. The “bid-gap spread” argument overlooks lower-ranked bidders potentially continuing to raise their bids if they can observe the amounts being offered by the leading bidder (Moffatt, Banning Blind Bidding, 2021). For example, a study of the New Zealand real estate market found that open auctions are preferred by sellers and lead to higher prices. “Allowing bidders to learn about others’ valuations in an auction can make bidders more comfortable with their own assessments and may lead them to bid less cautiously” (Kabir, 2018). Another paper assessing vacant land auctions in Singapore estimated that open auctions led to prices that were between 1.2 and 9.6 per cent higher compared to sealed-bid auctions (Ooi, 2014).

Recommendation: Do not implement restrictions to “blind bidding.”

There are other alternatives to imposing restrictions on “blind bidding” that improve transparency to the interest of buyers and sellers alike (see recommendation below on “Disclosure of Information about Offers in Multiple-Offer Situations”). Imposing an open bidding system could cause buyers and sellers to shift away from using an experienced Realtor, potentially becoming unrepresented. It would also place more emphasis on the price of an offer as opposed to other potential considerations which may not be mandated to be open.

Research on “blind bidding” tends to associate the policy with higher prices (Moffatt, 2021). The reason is that the other bidders do not sit idly by while the “winning bidder” bids slightly above the others. Bids contain information on the quality of the property. Under a transparent bidding system, a high bid communicates information that the property is particularly valuable to the other buyers, giving them the confidence to bid higher.

In addition, the majority of real estate professionals, 68 per cent, believe a more transparent bidding system would not be effective at improving consumer protection while balancing risks to housing affordability in the real estate market. Compared to six other consumer protection measures, “blind bidding” ranked lower than all except for a more efficient disciplinary process and a “cooling off period.”

Greater Transparency and Fairness in Multiple-Offer Situations

In BC, if more than one written offer on a specific property is made before the seller has accepted an offer, all written offers are required to be presented to the seller, unless the licensee has specific written instructions from the seller on the listing not to present particular types of offers. Real estate professionals should be aware that any written offers received prior to the completion of an existing sale must be presented to the seller. In addition to the Real Estate Services Rules, real estate boards typically have additional requirements on the presentation of offers to help ensure consumers are better protected.

The IAG report recommended that brokerages be required to maintain records of all offers made during the sale process. They also recommended that the regulator implement a real-time multiple offer registry so that buyers can monitor all offers made on a property, with appropriate privacy protections. This would enable buyers to confirm their offer has been submitted and whether multiple bids were received on the property.

Recommendation: Work with BCREA and regional boards to provide greater transparency on the number of offers written.

Instead of restricting “blind bidding,” we recommend exploring opportunities for greater transparency and fairness in the offer process, requiring the disclosure of the number of competing offers and the brokerage who prepared the offer to every person who is making a competing offer.

One option that could be explored is within Ontario’s *Stronger Protection for Ontario Consumers Act*, which stipulated how offers were to be handled requiring that:

- Listing brokerages could not indicate they had an offer unless they had received a form declaring an offer had been signed.
- Brokerages keep copies of all written offers to the seller and counter offers, or a summary document.
- Buyers who made offers could request that the regulator validate the number of offers that were presented.

If greater transparency on the number of offers written is implemented, it is important to consider the following:

- Avoid undue administrative burden on real estate brokerages. Ontario removed a requirement present in a First Reading of the *Stronger Protection for Ontario Consumers Act*, which would have mandated retention of all unsuccessful written offers by the selling brokerage for a period of time prescribed by the regulation. Instead, the Ontario Real Estate Association created a new form that meets the requirements for a prescribed document but is just a single page.
- Consider privacy concerns of the potential buyers. Avoid requiring personal information such as the purchaser's name, price, conditions or closing date.
- Avoid consumers moving away from trusted real estate professionals towards riskier practices such as becoming unrepresented.

Mandating Subjects

Real estate contract conditions are an important consumer protection piece for buyers. Conditions allow parties to conduct due diligence and help avoid unenforceable contracts. Conditions on financing, appraisal, inspections, home sales and other subjects allow for legally enforceable roles and obligations that must be met.

BCFSA is considering the following parameters within their consultation on unconditional offers:

- current real estate sector practices regarding unconditional offers,
- additional measures to protect buyers from the risks associated with unconditional offers,
- the trade-offs of additional measures such as mandatory home inspections, mandatory contract conditions and mandatory property disclosure statements, and
- other measures that should be considered.

Quebec has a mandatory financing subject for all purchase contracts unless the purchaser can demonstrate they possess all necessary funds. Offers must include the loan amount, the interest rate not to be exceeded, the amortization period, the term required by the buyer and the period in which the buyer must provide a copy of the mortgage lender's undertaking to the seller. If a buyer cannot furnish proof of mortgage, the contract becomes void. Quebec's policy has not resulted in significant instances of purchasers failing to secure financing.

A majority of real estate professionals, 58 per cent, felt mandatory subjects would be ineffective at improving consumer protection while balancing risk to housing affordability and real estate practice. Mandatory conditions ranked second highest compared to other consumer protection policies, higher than everything except higher education standards for new real estate licensees.

The implementation of a “pre-offer period” would negate the need for mandatory subject clauses. It would also allow time for potential buyers to conduct any due diligence, such as a home inspection or ensuring financing. Mandating additional subjects would be redundant.

Recommendation: BCREA will explore amending BCREA’s standard form to include terms for buyer protections that balance the interest of all parties.

BCREA works with BC’s eight real estate boards, lawyers and other sector experts to draft and update standard forms, which are the backbone of a real estate transaction. The “Information about the Contract Purchase and Sale: Residential” standard form could be amended using a broad approach to include terms and conditions for the purchase of property to be subject to inspection. This standard form allows buyers and sellers to waive the term if both parties agree. Additional information is provided below on the proposed market interventions of a mandatory home inspection, financing, insurance and the buyer obtaining legal advice. The standard form would also provides for the inclusion of the property disclosure statement into the offer. In the draft, we have proposed a way for buyers to make informed decisions should they choose to waive the protections by signing a document acknowledging the risks of doing so.

If BCFSAs pursue mandatory contract conditions, they should consider the following:

- consult with real estate professionals to avoid excessive administrative burden,
- identify what, if any, proof of mortgage needs to be provided, ensuring mortgage lenders undergo the same requirements,
- ensure mechanisms are in place for situations in which a buyer does not require financing, and
- commercial real estate transactions should be exempt.

Mandating Home Inspections

Home inspections are an important step for providing buyers with a list of repairs needed and disclosing conditions not readily apparent or understood by a non-technical buyer. Inspections may not find all problems, but they provide a reasonable degree of consumer protection.

In 2002, CMHC conducted research on the possibility of having mandatory home inspections in Ontario.

They found that if mandatory inspections were imposed, there would be too few qualified home inspectors to cope with the increased volume (CMHC, Study on Mandatory Home Inspections, 2016). Sellers would be disadvantaged if there were not enough registered inspectors to conduct mandatory inspections, which would likely result in delayed sales.

Eleven local governments in Minnesota, including Minneapolis, have mandatory home inspections. A study found that the implementation of mandatory home inspections was a concern for many homebuyers (GAO, 2004). The requirement brought benefit to those who would otherwise forgo home inspections, but the requirement negatively affected buyers' competitiveness in certain real estate markets.

Recommendation: Instead of a mandatory home inspection, explore alternative options such as amending the standard form to include terms for buyer protections that balance the interest of all parties.

The implementation of a "pre-offer period" would negate the need for mandatory home inspections. It would address the perceived risk felt by prospective buyers by providing the time necessary to conduct a home inspection if desired. If BCFSAs pursue mandatory home inspections, please consider the following:

- There would be increased costs imposed on the buyer, regardless of whether they want an inspection.
- Ensure there are enough inspectors in all areas of the province to cope with an increased demand for their labour.
- Ensure consistent quality of inspections. Consider what limits home inspectors can place in their disclaimers, as many inspectors limit their risk exposure to the cost of the inspection.
- Exemptions to mandatory home inspections should include:
 - purchasing bare lots,
 - properties where a recent home inspection was performed, is available and is able to be transferred,
 - new homes, as the presence of a home warranty negates the need for an inspection, land assembly, and
 - properties purchased for demolition purposes.

- Other relevant property inspections specific to property types, for example, septic systems, asbestos inspections, building inspection reports, geotechnical reports and oil tanks, as these do not fall under the traditional “home inspection clause” but can provide a significant risk to consumers where there is no opportunity for a buyer’s due diligence.

Mandating Disclosure Statements

A property disclosure statement is a form that is usually provided by the seller to potential buyers before the buyer writes an offer. A property disclosure statement protects a seller by having them disclose, in writing, facts known to them about the property. It also provides potential buyers with insights about the property, including potential additional costs such as necessary repairs or maintenance. There are different forms depending on the type and location of the property. A Property Disclosure Statement includes sections on land, services, building, general and latent defects, as well as additional sections depending on the land type.

Disclosure statements can provide valuable information on details about a property’s condition that might negatively affect its value. Currently, there are no regulatory requirements to complete the disclosure statement and sellers’ disclosures are narrow, limited only to latent defects.

Recommendation: Make property disclosure statements mandatory.

Property disclosure statements are a public protection issue that improve transparency in the interest of buyers and sellers alike.

For buyers, having information on the property condition known to the seller provides due diligence and helps them make informed decisions on offers. For sellers, property disclosure statements can increase the attractiveness of a property and reduce the risk of possible claims by buyers as complete written disclosure was conducted. Lawsuits are expensive and often result from misunderstanding, failed communication or lack of information.

Increased disclosure requirements may help harmonize disclosure requirements of real estate professionals with those of the seller, who are often more knowledgeable about the condition of a property. It also helps ensure sellers are aware of the information being disclosed about their property by their real estate professional. Mandatory property disclosure statements are a critical element of a “pre-offer period,” as well as increased strata transparency. If such documents are not available to all potential purchasers at the time of the listing, then a “pre-offer period,” regardless of length, will have little effect.

If mandatory property disclosures are implemented, the following factors should be considered:

- Avoid requiring the seller to disclose information above and beyond what is reasonable.

- The information provided in property disclosures should help demonstrate the seller’s knowledge, such as how long they have resided on the property.
- Exemptions should be made for estate sales and foreclosures.
- Ensure disclosures are made on a timely basis if they form part of any offer. This policy intervention will only be effective if buyers have the information they need before making an offer.
- If implemented alongside a “pre-offer period,” ensure that the “pre-offer period” does not commence until property disclosure statements are made available to potential purchasers.
- property disclosure statements should be required at time of listing on the MLS® or the transaction registry.

Strata Transparency

More than 1.5 million British Columbians live in strata housing. The governing legislation, the *Strata Property Act*, took effect in July 2000, replacing the *Condominium Act*. Strata depreciation reports are a core aspect of strata transparency. They are a detailed written, and sometimes illustrated, physical assessment of the condition of a strata property that identifies current and future issues needing to be addressed along with associated cost estimates. According to provincial regulations, a depreciation report must include an inventory and evaluation of a building’s:

- structure,
- exterior, such as roofs, roof decks, doors, windows and skylights,
- systems, such as electrical, heating, plumbing, fire protection and security, and
- common amenities, such as a fitness room, pool, bike lockers, etc.

Strata depreciation reports help strata corporations plan for the repair, replacement and renewal of common property assets. Along with other strata documents, they are also an important part of a buyer’s due diligence as they provide insight into future repair and maintenance needs and their associated costs. When available, Realtors typically encourage their clients to thoroughly review strata depreciation reports.

Depreciation reports don’t normally cover every item contained in the common property or routine repairs and maintenance, which is why it is important for a buyer to obtain other strata documents.

Recommendation: Require documents related to strata transactions be made available with the listing.

Documents should include:

- strata bylaws,
- depreciation reports,
- status of contingency reserve funds,
- correspondence from strata council,
- Form B, 24 months of minutes,
- current financing statements,
- registered strata plans, including any amendments and any resolutions dealing with changes to common property,
- info about additional fees charged by strata corporations,
- information regarding any building warranty,
- municipal occupancy or final inspection permit,
- correspondence to owners from strata council over the previous 12 months,
- copy of strata corporation's insurance,
- building envelope inspections,
- engineering reports or remediation reports, and
- legal opinions.

Like property disclosure statements, these documents are critical to the proper implementation of a "pre-offer period." The timely availability of these documents should be an important element of the decision-making process for any potential purchaser of a strata unit.

Recommendation: Explore implementing a service contract for real estate buyers, also known as a Buyers Agency Exclusive Contract.

In BC, written service agreements are required for offering the real estate for sale or other disposition of land, but are not required for acquiring real estate. However, according to the regulator, “service agreements are a great way to ensure all parties to the agency relationship know what is expected from them and what they are required to do during an agency relationship.” As such BCREA recommends that service agreements apply to both buyers and sellers.

In January 2022, Manitoba enacted *The Real Estate Services Act*, requiring every licensee in the province when entering a client relationship, before providing real estate services, to specify in writing:

- the relationship between parties
- the services they agree to provide by the brokerage,
- the obligations and responsibilities of the parties,
- any rights to terminate the service agreement before it expires, and
- the manner in which their brokerage is to be paid.

The purpose of the buyer representation agreement is to define the relationship, the service obligations and the timeframe in which the services are to be provided and how their brokerage will be paid for those services. Licensees are prohibited from providing services without a written service agreement. Notably, service agreements are not intended to impose obligations on the buyer or seller unless they are agreed upon (MREA, 2022).

We recommend that BCFSA observe and monitor Manitoba’s rollout of the requirements to enter into a written service agreement throughout 2022 to understand its impacts and consider the structure in a BC context for potential implementation in 2023. Consultation on rules and ensuring they mirror those required in the offering and disposition of real estate should be undertaken.

ENHANCING CONSUMER PROTECTIONS

The survey of BC's homebuyers found that nearly all successful purchasers who relied on a Realtor (97 per cent) were either very satisfied or somewhat satisfied with their Realtor's performance. These survey results include categories such as: knowledge of procedures and regulations (91 per cent), response to concerns about the purchasing process (87 per cent), observance of protocols related to COVID-19 (85 per cent) and ability to provide information to support their decision-making (82 per cent).

BCREA, regional boards and Realtors strive to continually increase professionalism and consumer confidence as ongoing operational priorities. We are committed to evolving our sector, practices and Realtor professionalism to be reflective of the market. To this end, below are recommendations to improve efficiencies of the role of managing brokers, increase education standards for new licensees, add on-the-ground expertise to the regulatory structure and reduce the risks of money laundering playing a role in real estate transactions.

Education and Professionalism

The Canadian Real Estate Association's Code of Ethics and Standards of Business Practice (Code) has been the measure of professionalism in organized real estate for over 60 years. The first Code was approved in 1913 and the first Code of Ethics specifically prepared for CREA was approved by members in 1959. The Code establishes a standard of conduct, which in many respects exceeds basic legal requirements. This standard ensures that the rights and interests of consumers of real estate services are protected. As a condition of membership, all Realtors agree to abide by the Code. A Realtor's ethical obligations are based on moral integrity, competent service to clients and customers and dedication to the interest and welfare of the public. The Code has been amended many times since 1959 to reflect changes in the real estate marketplace, the needs of property owners and the perceptions and values of society (CREA, 2016).

In addition to the Code, BCREA and the eight regional real estate boards facilitate Realtor professional development in BC, providing learning opportunities to enhance skills, confidence and knowledge within the profession. In each two-year licensing cycle, Realtors are required to complete a minimum of 18 hours of professional development over and above re-licensing requirements. Realtors can fulfill these requirements by taking a combination of accredited and self-directed professional development courses.

All new Trading Services licensees, including non-Realtors, are required to receive a real estate license and renew it every two years through BCFSA. New licensing requirements include meeting the requirements for Good Reputation, Suitability and Fitness, English language proficiency, completing the licensing course and exam, obtaining a criminal record check and completing the Applied Practice Course. In addition, licensees are required to renew their license through successful completion of

continuing education courses, currently Legal Update, Ethics for the Real Estate Professional and Anti-Money Laundering in Real Estate.

While the above represents rigorous standards and training focused on the understanding of legislation, regulations and rules, there is room for continued improvement in education standards and code of conduct requirements, both among organized real estate and non-Realtor licensees. In the survey of real estate professionals, there was broad support for the implementation of higher education standards for real estate licensees, which ranked higher than any other suggested consumer protection measure. There was also strong support for more guidance and support for real estate professionals and the public. The IAG suggested that more focus should be placed on entry-level education. This has been implemented to some extent, with higher English language standards, but there is still more work to be done. Real estate licensees handle what is often the most important financial transaction of people's lives, so the entry-level education standards should reflect this accordingly.

Recommendation: Consult with BCREA, member boards, and managing brokers to build meaningful education for preparing new licensees.

Through consultation, most Realtor focus group participants interviewed supported changes to qualification standards for licensees, with a particular focus on the preparation for new licensees. BCREA supports high standards of education that are meaningful and facilitate the preparation of practice-ready Realtors.

Managing Brokers

Managing brokers are critical to the current licensing structure. Their responsibilities apply to all activities of the brokerage that require licensing under the *Real Estate Services Act*. The managing broker must be in active charge of the business of the brokerage and must ensure that there is an adequate level of supervision of the professionals engaged by the brokerage.

BCREA made recommendations regarding the structure to the IAG in 2017 and in early 2018 after reaching out to managing brokers. In October 2019, BC's real estate regulator published a discussion paper on managing brokers. BCREA held focus groups with managing brokers and a survey of all BC Realtors to recommend improvements to the structure and processes around their relationship with the regulator. Our consultation asked about the major challenges faced by managing brokers and found that Realtors had little appetite for additional compliance requirements unless those requirements provided a clear benefit to licensees and consumers. Managing brokers were also seriously concerned about the increased liability and risk they face and would not favour requirements that increase the cost of compliance without a clear benefit for consumers.

Managing brokers overwhelmingly felt targeted rather than supported by their regulator. As a result, they were looking for assistance, including opportunities to build communities and networks. Another theme from the consultation is that Realtors are proud of their profession and have a distinct interest in ensuring quality in the form of high standards of real estate practice and consumer protection.

Recommendation: Develop best practices and related resources for managing brokers.

Specific suggestions include:

- Concrete, consistent professional advice from the regulator that is provided quickly; any increases to the compliance burden of managing brokers must include the regulator's interpretation of compliance protocols. This should include clear and concise resources and clear guidance on the regulator's interpretations of compliance protocols.
- Updated guidance and information on the knowledge base of contracts.
- Support for succession planning, given that the number of managing brokers is declining even while the total number of licensees is increasing.
- Standardized reporting and auditing procedures.

Recommendation: Provide more targeted re-licensing education for managing brokers.

Managing brokers have expressed their need for quality, focused education, especially for those new to the role. This includes the need for education related to specific areas of practice, including strata management, property management, residential trading services and commercial trading services. Given the diversity of real estate services that a managing broker may supervise, ongoing training specific to different areas of real estate should be provided.

Recommendation: Considering options to:

- Shift liability away from managing brokers, possibly to both the brokerage and licensees, though our consultation did not find a consensus; regardless of where the liability shifts, broker-owners should not end up with increased liability.
- Consider revisiting the regulator’s consultation on reframing the role of managing brokers.

Regulatory Structure

Recommendation: Implement a Professional Standing Committee within BCFSA, modeled on the BC Teachers’ Council.

BCFSA lacks a formalized plan for stakeholder engagement. Dan Perrin’s “Real Estate Regulatory Structure Review” also recommended a real estate sector advisory committee in his 2018 report, because it would add a practical filter when real estate practice changes are considered. The committee would establish professional standards and provide practical insights into all changes to real estate practice prior to changes being made. Previously, several licensees held a place on the Real Estate Council of BC, where they could provide sector expertise. While at times inadequate, that representation has been lost in the August 2021 transition to BCFSA. Licensees do not know what changes are coming, when, or to what extent they will be engaged. This has been evidenced through the Ministry of Finance’s sudden announcement to implement a “cooling off period” without adequate prior consultation. While there have been recent improvements made to the BCFSA’s stakeholder engagement approach, it is fair to say that current Real Estate Trading Services Advisory Committee has traditionally not been utilized to date by the BCFSA in any robust manner.

Anti-Money Laundering

The Cullen Commission of Inquiry Into Money Laundering in British Columbia is expected to publish its final report in May 2022. The commission was established to inquire into and report on money laundering in BC and make recommendations on real estate, as well as gaming and horse racing, financial institutions and money services, corporate shell companies, trusts, securities and financial instruments, luxury goods and professional services, including legal and accounting.

BCREA has undertaken a series of actions to ensure that money laundering has no place in BC real estate, including:

- proactively approaching the BC Government to assist in their inquiry into real estate's vulnerabilities to organized crime,
- participating in the Ministry of Finance's Expert Panel on Money Laundering in Real Estate and Peter German's review,
- developing an anti-money laundering training program for managing brokers and compliance officers,
- encouraging Realtors to participate in the government's money laundering investigations through their online and telephone hotlines,
- promoting the government's request for public participation into its inquiries through our social media platforms,
- publishing videos, blog series and webinars,
- working with the real estate regulator on Land Owner Transparency Registry guidance, and
- participating in the Cullen Commission of Inquiry into Money Laundering in British Columbia.

While it is unknown how much money laundering influences housing affordability, any money laundering in real estate is unacceptable. To help understand the true scope of how organized crime has impacted BC's real estate market, BCREA supports the government's investigations into real estate transactions and money laundering.

BCREA wants to continue dialogue and collaboration with the BC Government around anti-money laundering within British Columbia and to work in a coordinated manner to address the findings of the Cullen Commission. In addition, we're hoping to act jointly as a coordinated voice in calling for better information sharing, coordination and cooperation by investigative and regulatory bodies at the federal level.

Recommendation: Let the Cullen Commission of Inquiry into Money Laundering in British Columbia complete its work before implementing additional significant anti-money laundering measures and, after the report is published, coordinate actions with the federal government to create a comprehensive and efficient enforcement and regulatory regime.

BCREA wants to collaborate with the regulator to improve the effectiveness of BC's anti-money laundering regime.

STAKEHOLDER ENGAGEMENT

BCREA, regional real estate boards and Realtors are disappointed and deeply concerned that a mandatory “cooling off period” was announced by the Ministry of Finance on November 4, 2021 without adequate prior consultation with the real estate sector. We share the goal of increased consumer protection and confidence in real estate transactions, but policies to address the issue should be looked at in an integrated fashion. The intent to introduce a “cooling off period” in legislation was announced without a problem statement, supporting rationale, review of alternative measures, evidence of its anticipated effectiveness based on case study analysis or consideration for its impact on the many real estate sub-markets.

Another issue regarding the announcement was that of regulatory independence. BCFSa is a Crown corporation and is subject to mandate letters from the Minister of Finance. While the *Financial Services Authority Act* does not disallow the BC Government from giving a specific direction to BCFSa, there is a generally accepted best practice of regulatory independence. The Organisation for Economic Co-Operation and Development (OECD) describes regulatory independence as “protection from attempts to exercise undue control, curtail the roles and responsibilities of the regulator or intervene in exclusive areas of responsibility for the regulator” such that regulators are guarded “against some form of undue influence that seeks to change their behaviour and the outcomes of their regulatory decisions or activities” (Guy Holburn, 2019).

The OECD outlines five essential dimensions that determine a regulator’s de facto independence:

- role clarity,
- transparency and accountability,
- financial independence,
- independence of leadership, and
- staff behaviour and culture of independence.

The OECD has also identified seven key best practice principles for regulatory policy and the governance of regulators to support or enable an independent regulator: role clarity, preventing undue influence and maintaining trust, decision making and governing body for independent regulators, accountability and transparency, engagement, funding, and performance and evaluation (OECD, 2014).

Best practice suggests that a regulator be insulated from undue influence from a variety of exogenous factors, including political ones. To provide specific Ministerial direction at such a granular level as announcing a “cooling off period,” both circumvents and compromises the judgement of the regulator as the primary subject matter expert and arbiter of what consumer protection mechanisms work best for consumers and the sector. The Minister’s announcement on November 4, 2021 would appear to fetter BCFSa’s discretion in this matter.

Harkening back to the words of former Deputy Premier and Finance Minister Carole James in the announcement of the formation of BCFSA and the ambitions to build out a “world-leading” structure, we suggest that the structure currently in place is falling far short of that stated ambition in both the quality of its consultation with key stakeholders and the appearance of regulatory independence.

Ineffective Consultation: The Ban on Limited Dual Agency

The ban on limited dual agency serves as an example of a policy being made without adequate sector consultation that ultimately resulted in unintended harms and a reduction in consumer protection. The implementation of the ban on limited dual agency in June 2018 was intended to benefit consumers. However, because it was implemented without fulsome sector consultation, consumers were negatively impacted by the policy. A December 2018 survey showed that 60 per cent of Realtor respondents observed an increase in unrepresented consumers and a restriction in consumer choice, especially in small communities.

Notable comments from survey respondents include:

- *“Consumers are let down when [REALTORS®] are forced to refer them to a broker they are unfamiliar with. Often they will choose to go unrepresented instead.”*
- *“There are more people being unrepresented and using lawyers or a notary to represent them. Neither of these options know the current market values of properties like a REALTOR® would. Therefore, people either pay too much, or receive less than market value for their for sale by owner property.”*
- *“Consumers are being unrepresented or are being represented by REALTORS® outside of their local areas. Both of which I do not feel are protecting the consumer in any way.”*

If the Ministry of Finance had undertaken fulsome sector consultation, they would have found community-led solutions that could have minimized unintended impacts. BCREA proposed a recommendation whereby licensees could provide forms to both the buyer and seller of a real estate transaction that would allow parties to engage in limited dual agency if they had a full understanding of what that entailed and consented to during the process.

Effective Consultation: Development Approvals Process Review

In February 2018, the BC Government identified development approvals as a major barrier to quickly building housing projects, often causing complex, lengthy and expensive processes with significant uncertainties for developers. To address the challenges and identify opportunities for improvement, the government initiated the Development Approvals Process Review (DAPR). The Ministry of Municipal Affairs and Housing engaged a broad range of stakeholders to discuss the challenges of the current

development approvals process in BC and develop an informed list of ideas about how to improve the efficiency and effectiveness of the process.

The consultation was broad in scope and considered a full range of legislated and non-legislated elements of the process, in addition to regional differences across the province. Over the course of six months, stakeholders contributed their knowledge, experience and perspectives to inform potential future changes to the local government development approvals process.

Since the final report was published in 2019, DAPR has served as a roadmap for the BC Government to implement meaningful changes to the development process, and significant strides have been made. We are hopeful that BCFSa and the Ministry of Finance will adopt a more effective approach to policy development, working collaboratively with the real estate sector to advance solutions that protect consumers and also work in practice, rather than enacting policies that put consumers at greater risk.

The following recommendations are intended to support BCFSa's mandate, while also reflecting recommendations made in the Perrin Report and by the IAG panel report and effectiveness.

Recommendations:

- **Commit to undertaking fulsome consultation with real estate professionals and the public prior to announcements of any intention to implement policy.**
- **Ensure each proposed policy has a corresponding problem statement, objectives, goals and metrics to evaluate its effectiveness, making those available to the public.**
- **Provide public timeframes for monitoring and evaluating new policies.**
- **Ensure that any new Rules are harmonized with existing Rules and other regulatory requirements.**
- **Consider the specific impacts of potential policies on BC's diverse regional markets, especially in rural, northern and remote communities.**
- **Ensure that a policy does not lead to an increase in unrepresented buyers or sellers.**
- **Consider the impacts of potential policies on commercial real estate.**
- **Consider the impacts to all parties in the transaction, balancing differing priorities and needs.**

- Consider the impacts on a seller's market compared to a buyer's market.
- Ensure that measures don't negatively impact affordability.
- Consider how these policies would interact with each other if multiple measures were adopted.
- Provide adequate notice for consumers and real estate professionals. Resources, education and adequate time to adjust practices and develop new standard forms for brokerages will help with compliance.
- Provide adequate information about data requested from brokerages, including its uses and how it would be reported to licensees, as well as the frequency and complexity of the reporting required by brokerages. This will ensure licensees understand what is expected of them, how they would benefit and how consumers would benefit.

CONCLUSION

The BC Government has recognized that some prospective buyers of residential real estate have been placed in potentially risky situations because of an overheated market. Many of these risks are a result of the dramatic shortage of housing supply relative to demand. In response, the provincial Ministry of Finance announced its intention to implement a “cooling off period,” to give buyers a chance to reconsider and abandon their accepted offer. BCREA, our member boards and the 24,000 REALTORS® we represent are committed to working with the BC Government and BCFSa to develop effective and meaningful public policy based on the Province’s Regulatory Reform Policy and the Principles of Regulatory Reform ensuring that the policy approach effectively addresses the objective of the government and the issue, concern or problem being addressed.

BCREA does not support the implementation of a “cooling off period,” as research into existing “cooling off periods” in other jurisdictions does not demonstrate that it is likely to be effective in strengthening protections for consumers. In addition, economic modelling suggests that its use may result in negative impacts on housing affordability. Opinions expressed by Realtors and members of the public are strongly opposed to “cooling off periods.”

Instead, BCREA recommends that the government consider a “pre-offer period” of five business days from when a new listing is posted on the MLS System® before a seller can receive an offer. During a “pre-offer period,” property disclosure statements and strata documents would be made available to prospective buyers, and the property would be made available for viewing and access to home inspectors.

The “pre-offer period” allows prospective buyers the time to complete their due diligence, by:

- reviewing any key documentation related to the property,
- conducting proper viewing(s) of the property,
- providing for the opportunity to arrange for a home inspection report, if necessary, and
- ensuring that appropriate financing is in place.

BCREA also recommends that the government modify the current “blind bidding” model by working with organized real estate to provide greater transparency on the number of offers written, wherein prospective buyers could access information on the existence of other verified offers on a listing. Increased transparency regarding the number of bids provides important information for prospective buyers while also considering the privacy concerns of other prospective buyers.

While these solutions can make incremental improvements to the real estate transaction process for buyers and sellers alike, long-term changes need to be made to improve housing supply and lessen the impacts of future overheated markets. Fortunately, effective frameworks for change already exist through the government's own DAPR report and the findings of the Canada-BC Expert Panel on the Future of Housing Supply and Affordability.

For each of the above recommendations to be effectively implemented, fulsome consultation must take place with real estate professionals and the public, prior to policy decisions being made. In the past, lack of consultation has led to premature policy directions that have had negative unintended consequences. The 2018 ban on limited dual agency serves as an example of an attempt at improving consumer protection that effectively achieved the opposite by reducing consumers' access to knowledgeable Realtors and increasing the incidence of unrepresented parties. We are fearful that the hasty announcement of a "cooling off period," along with other measures under consideration, risks additional unintended consequences and potential harm to consumers if not carefully researched and developed in partnership with sectoral expertise. With a newly structured and resourced regulator having launched in August 2021, the stated goal in the formation of the BCFSA was to create – in the words of Carole James – "a world-leading" regulatory environment (Finance, 2019).

In light of current affordability and supply issues, the provincial government is under extreme pressure to enact housing affordability and consumer protection measures to address perceived heightened consumer risk. This pressure unfortunately has manifested as hasty decisions, lacking consultation or research and a failure to empower the new regulator with the appropriate degree of autonomy and independence to develop and enact well-researched, evidence-based measures. The BC housing sector deserves a more careful hand in its oversight and the citizens of British Columbia deserve a thoughtful, evidence-based approach around consumer protection in the housing sector.

We urge the Government of British Columbia and the BCFSA to seriously consider the 34 recommendations contained in this report.

REFERENCES

- Affordability, C.-B. E. (2021). *Opening doors: unlocking*. Government of Canada and BC Government.
- Amanda Schenk, G. G. (2018). *Ensuring Healthy Homes for British Columbians*. Vancouver: University of the Fraser Valley.
- Australia. (2021, December 2). *Preparing to buy property at auction*. Retrieved from Thinking about moving to Australia: https://www.commbank.com.au/articles/property/preparing-to-buy-property-at-auction.html?ei=art_COperiod-auction
- Australia, C. b. (2021, December 2). *Buying a home through private treaty sale*. Retrieved from Thinking about moving to Australia?: <https://www.commbank.com.au/articles/property/buying-a-home-through-private-treaty-sale.html>
- BCFSA. (2021). *Licensing and Enforcement Statistics*. Retrieved from BCFSA: <https://www.bcfsa.ca/industry-resources/real-estate-professional-resources/licensing-and-enforcement-statistics#quarterly-statistics-april-2021-march-2022>
- Canseco, M. (2022). *Questions for Successful Buyers*. Vancouver: Research Co.
- CMHC. (2016, April). *Study on Mandatory Home Inspections*. Retrieved from InterNACHI Forum: <https://forum.nachi.org/t/cmhc-study-on-mandatory-home-inspections-2002/105899>
- CMHC. (2021, September 21). *CMHC releases September Housing Market Assessment*. Retrieved from CMHC: Media Newsroom: <https://assets.cmhc-schl.gc.ca/sites/cmhc/professional/housing-markets-data-and-research/market-reports/housing-market-assessment/2021/housing-market-assessment-2021-09-en.pdf?rev=cd88efa7-53ec-4e31-b9fe-7a3e17a671e3>
- CREA. (2016). *The REALTOR® Code*. Ottawa: CREA.
- Finance, M. o. (2019, November 12). *Single real estate regulator protects people, combats money laundering*. Retrieved from BC Gov News: <https://news.gov.bc.ca/releases/2019FIN0115-002149>
- Frino, A., Lepone, A., Mollica, V., & Vassallo, a. A. (2010). The Impact of Auctions on Residential Sale Prices. *Australian Evidence Australasian Accounting, Business and Finance Journal*, 3-22.
- GAO. (2004). Enforcing Mandatory Home Inspections Would Pose Significant Challenges to FHA but Would Offer Varied Results for Homebuyers and Inspectors. In *Home Inspections: Many Buyers Benefit from Inspections, but Mandating Their use Is Questionable* (pp. 26-36).

- Government, N. (2006, October). *Home Sweet Home, Report of Survey conducted*. Retrieved from Office of Fair Trading, New South Wales: <https://www.pewresearch.org/wp-content/uploads/sites/3/2011/04/Housing-Economy.pdf>
- Guy Holburn, K. T. (2019). Understanding regulatory independence. *Ivey Energy Policy and Management Centre*, 38-51.
- Harrison, P. (2016, November 28). *Cooling-off periods for consumers don't work: study*. Retrieved from Deakin Business School Newsroom: <https://businessnewsroom.deakin.edu.au/articles/cooling-off-periods-for-consumers-don-t-work-study>
- IAG. (2016). *Report of the Independent Advisory Group: On Conduct and Practices in the Real Estate Industry in British Columbia*. Victoria: Independent Advisory Group.
- Kabir, S. S. (2018). Catch Animal Spirits in Auction: Evidence from New Zealand Property Market. *Real Estate Economics*, 59-84.
- Moffatt, M. (2021). *Banning Blind Bidding*. Ottawa: Smart Prosperity Institute.
- Moffatt, M. (2021, November 9). *The federal plan to make houses more affordable may backfire*. Retrieved from <https://theline.substack.com/p/mike-moffat-the-federal-plan-to-make>
- MREA. (2022, January 1). *Manitoba's new real estate service agreement*. Retrieved from Manitoba Real Estate Association: <https://realestatemanitoba.com/promises-on-paper>
- Noone, C. (2009). Cooling-off periods in Victoria: *Consumer Affairs Victoria*, 1-95.
- OECD. (2014). *Creating a Culture: Practical Guidance Against Undue Influence*. OECD.
- Ogmundson, B. (2021). *Way Out of Balance: Housing Supply and Demand During the Pandemic*. Vancouver: BC Real Estate Association.
- Ooi, Y. L. (2014). First-Price Sealed-Bid Tender Versus English Open. *Real Estate Economics*, 253-278.
- Osselaerw, F. B. (2002, January 21). *The value of Flexibility and its Levers*. Retrieved from The Economic Times: <https://economictimes.indiatimes.com/the-value-of-flexibility-and-its-levers/articleshow/10565333.cms>
- Perrin, D. (2016). *Real Estate Regulatory Structure Review*. Victoria: Perrin, Thorau and Associates Ltd.

- Premier, O. o. (2016, June 9). *Government ends self-regulation, strengthens consumer protection in real estate industry*. Retrieved from BC Gov News: <https://news.gov.bc.ca/releases/2016PREM0074-001180>
- Reitzes, R. K. (2021). *Canadian Housing Fire Needs a Response*. BMO Special Report.
- Rhijn, R. v. (2019). *Blind Vs Open Bidding: What's Fairer*. Realty Times.
- Sharon Christensen, B. D. (2007). Cooling off rights in residential land transactions: Too much form, too little substance? *Competition & Consumer Law Journal*.
- Sovern, J. (2014). Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illosry Consumer Protection And The Relative Effectiveness Of Oral And Written Disclosures. *University of Pittsburgh Law Review*, 333-386.
- Stenzel, C. M. (2021). Modern-based Evaluation of Cooling-Off Policies. *Games and Economic Behavior*, 270-293.

APPENDIX

Table of Recommendations:

Topic	Action By	Recommendation
Housing Supply	Federal, Provincial, BCREA	<ul style="list-style-type: none"> In coordination with the federal government, establish a permanent National Housing Roundtable to bring together key stakeholders of the housing market to help address its challenges with an inclusive, holistic and innovative approach.
	Provincial	<ul style="list-style-type: none"> Through fulsome consultation, implement other supply-side measures and calls to action made by the Development Approvals Process Review and the Canada-BC Expert Panel on the Future of Housing Supply and Affordability.
	Provincial	<ul style="list-style-type: none"> Provide local governments with training and best practices.
	Provincial	<ul style="list-style-type: none"> Make infrastructure investments to local governments conditional on OCPs, zoning bylaws and other local policies to allow for increased density and a mix of housing types.
Real Estate Transaction Process		
"Cooling Off Period"	Provincial	<ul style="list-style-type: none"> Do not implement a "cooling off period."
	Provincial	<ul style="list-style-type: none"> Instead of a "cooling off period," implement a "pre-offer period."
"Blind Bidding"	Provincial, Federal	<ul style="list-style-type: none"> Do not implement restrictions to "blind bidding".
Multiple-Offers	Provincial, BCREA	<ul style="list-style-type: none"> Work with BCREA and regional boards to provide greater transparency to both consumers and real estate professionals on the number of offers written.
Mandating Subjects	BCREA	<ul style="list-style-type: none"> BCREA will explore amending their standard form to include terms for buyer protections that balance the interest of all parties.
Home Inspections	BCREA	<ul style="list-style-type: none"> Instead of a mandatory home inspection, explore alternative options such as amending the standard form to include terms for buyer protections that balance the interest of all parties.
Mandating Disclosure Statements	Provincial	<ul style="list-style-type: none"> Make property disclosure statements mandatory.
Strata Transparency	Provincial	<ul style="list-style-type: none"> Documents related to strata transactions should be made available with the listing.
Service Agreement	Provincial	<ul style="list-style-type: none"> Explore implementing a service agreement for real estate buyers.

Enhancing Consumer Protections		
Education and Professionalism	Provincial	<ul style="list-style-type: none"> • Work with BCREA and member boards to build meaningful education for new licensees.
Managing Brokers	Provincial, BCREA	<ul style="list-style-type: none"> • Develop best practices and related resources for managing brokers.
	Provincial, BCREA	<ul style="list-style-type: none"> • Provide more targeted re-licensing education for managing brokers.
	Provincial	<ul style="list-style-type: none"> • Consider options to: <ul style="list-style-type: none"> • Shift liability away from managing brokers, possibly to both the brokerage and licensees, though our consultation did not find a consensus; regardless of where the liability shifts, broker-owners should not end up with increased liability.
	Provincial	<ul style="list-style-type: none"> • Provide opportunities for mentorship for licensees and establish a system that helps facilitate mentorship for new managing brokers by experienced managing brokers. Mentorship could include gradually increasing responsibilities within the brokerage, though this could depend on the size of the brokerage. • Consider revisiting the regulator's consultation on reframing the role of managing brokers.
Regulatory Structure	Provincial	<ul style="list-style-type: none"> • Implement a Professional Standing Committee within BCFSAs, modeled on the BC Teachers' Council.
Anti-Money Laundering	Provincial, Federal	<ul style="list-style-type: none"> • Let the Cullen Commission of Inquiry into Money Laundering in British Columbia complete its work before implementing additional significant anti-money laundering measures and, after the report is published, coordinating actions with the federal government to create a comprehensive and efficient enforcement and regulatory regime.

Stakeholder Engagement	Provincial, Federal	<ul style="list-style-type: none"> • Commit to undertaking fulsome consultation with real estate professionals and the public prior to announcements of any intention to implement policy.
	Provincial	<ul style="list-style-type: none"> • Ensure each proposed policy has a corresponding problem statement, objectives, goals and metrics to evaluate its effectiveness, making those available to the public.
	Provincial, Federal	<ul style="list-style-type: none"> • Provide public timeframes for monitoring and evaluating new policies.
	Provincial, Federal	<ul style="list-style-type: none"> • Ensure that any new Rules are harmonized with existing Rules and other regulatory requirements.
	Provincial	<ul style="list-style-type: none"> • Consider the specific impacts of potential policies on BC's diverse regional markets, especially in rural, northern and remote communities.
	Provincial, Federal	<ul style="list-style-type: none"> • Ensure that a policy does not lead to an increase in unrepresented buyers or sellers.
	Provincial, Federal	<ul style="list-style-type: none"> • Consider the impacts of potential policies on commercial real estate.
	Provincial, Federal	<ul style="list-style-type: none"> • Consider the impacts to all parties in the transaction, balancing differing priorities and needs.
	Provincial, Federal	<ul style="list-style-type: none"> • Consider the impacts on a seller's market compared to a buyer's market.
	Provincial, Federal	<ul style="list-style-type: none"> • Ensure that measures don't negatively impact affordability.
	Provincial, Federal	<ul style="list-style-type: none"> • Consider how these policies would interact with each other if multiple measures were adopted.
	Provincial, Federal	<ul style="list-style-type: none"> • Provide adequate notice for consumers and real estate professionals. Resources, education and adequate time to adjust practices and develop new standard forms for brokerages will help with compliance.
	Provincial, Federal	<ul style="list-style-type: none"> • Provide adequate information about data requested from brokerages, including its uses and how it would be reported to licensees, as well as the frequency and complexity of the reporting required by brokerages. This will ensure licensees understand what is expected of them, how they would benefit and how consumers would benefit.

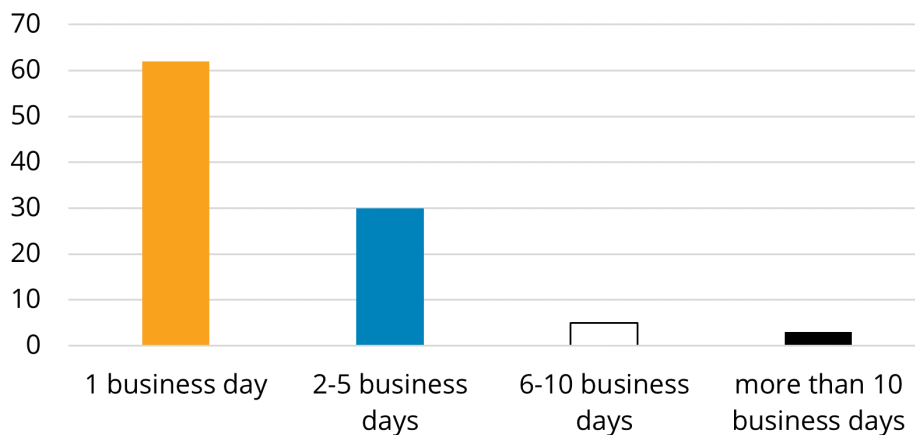
Additional Recommendations on a “Cooling Off Period”

While we strongly recommend not implementing a “cooling off period,” the BC Government has already announced its intent to implement this measure. If it is implemented, below are recommendations on the least-harmful appropriate length and financial penalty for buyers who exercise their right to rescission.

Recommendation: If a “cooling off period” is implemented, the appropriate length should be one business day.

If the provincial government decides to move ahead with its announcement to introduce a “cooling off period,” the length should be as short as possible to mitigate the concerns documented earlier. A majority of Realtor survey respondents, 62 per cent, believe it should be only one business day if implemented. This would help minimize disruption for both the seller and unsuccessful buyers, in providing greater certainty of the status of the accepted offer with respect to whether the rescission period would be exercised.

What is the appropriate length of a “cooling off period?”



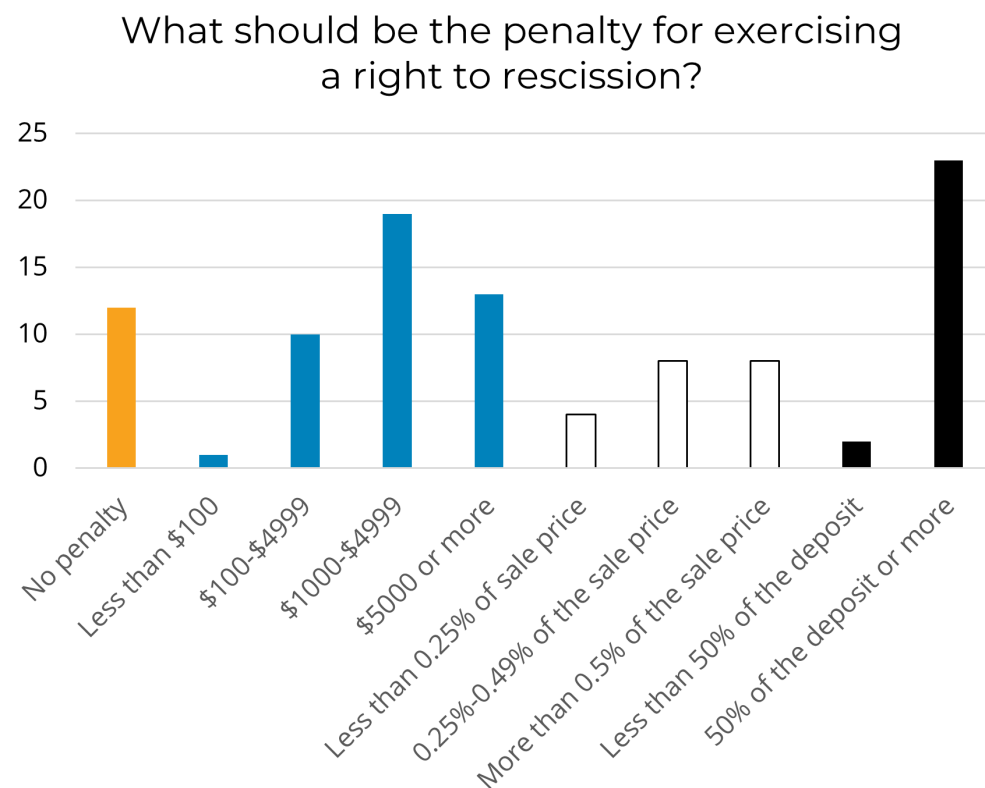
Recommendation: If a “cooling off period” is implemented, the financial penalty for exercising a right to rescission should be at least 50 per cent of the deposit.

Flexibility is not free. The ability to walk away from a purchase has been shown to have an associated cost. Examples of this include flexible airline tickets, as well as call options, which allows a buyer to purchase a stock at a future date. Call options tend to add about one per cent to added value for five days. These costs to allow for the option to walk away are similar to a real estate contract, which allows a buyer to purchase a property in the future or choose to walk away in the interim (Osselaerw, 2002).

According to our survey of real estate professionals, 88 per cent believe there should be a financial penalty for exercising a right to rescission, while only 12 per cent prefer no penalty. There was significant diversity of perspectives regarding the quantity of the financial penalty.

We recommend making financial penalty be a proportion of the deposit significant enough to deter frivolous offers. Given high housing costs, a small penalty of less than \$1000, less than 0.25 per cent of the sale price or less than 50 per cent of the deposit would be unlikely to deter potential buyers from making multiple frivolous offers. To assist with implementation, we recommend making the penalty a proportion of the deposit. If the “cooling off period” is not initiated until after the deposit is received by the seller, this would assist with enforcement. If the seller does not have the deposit in hand, then it may not be worth the financial burden for the seller to pursue legal action against the would-be buyer who enacted their right to rescission and chose not to pay the associated penalty.

Mechanisms would be needed from BCFSA on how the deposit would be released and what threshold would determine the start and finishing period of a “cooling off period.” It is important to ensure that if this is adopted, it does not add additional administrative burden to process of signing releases.



Recommendation: If a “cooling off period” is implemented, allow exemptions for situations where both the buyer and seller agree to waive the “cooling off period,” as well as properties sold by auction.

Many extraordinary circumstances would necessitate a property being sold as quickly as possible, such as divorce or health problems. In these circumstances, if both the buyer and seller have a fulsome understanding of the risks they are taking by circumventing a “cooling off period,” they should be able to sign a waiver allowing themselves to be exempt. In addition, properties sold by auction negate the need for a “cooling off period,” similar to what exists in Australian states.

Glossary

Associate broker	Associate brokers have completed all the education required to become a managing broker but are not in charge of a brokerage. To be a licensed associate broker, licensees must successfully complete the “Broker’s Business Planning and Financial Management Licensing” course.
BC Financial Services Authority	The BC Financial Services Authority (BCFSA) has been the regulator for real estate since August 2020. BCFSA absorbed the functions of the previous real estate regulators, the Real Estate Council of BC and the Office of the Superintendent of Real Estate, while also regulating other financial institutions, including credit unions, trust companies, insurance companies, pension plans and mortgage brokers. BCFSA’s mandate is to serve the public by regulating financial services and is accountable to the public through the Minister of Finance.
BC Real Estate Association	The British Columbia Real Estate Association (BCREA) is the professional association for over 24,000 commercial and residential REALTORS® in BC. Our mission is to empower the province’s eight real estate boards by sharing our expertise and providing professional development opportunities, advocacy, economic research and standard forms so Realtors are trusted, respected and proud of their profession.
“Blind bidding”	“Blind bidding”, also known as closed bidding, is when homebuyers submit offers to sellers and sellers choose not to disclose the details of competing bids. While Canadians are not mandated to use this process to sell their homes, blind bid negotiation is by far the most common in residential real estate. By banning blind bidding, homeowners would be required to use more transparent bidding processes, such as open bidding.
“Cooling off period”	A “cooling off period,” also known as a rescission period, gives consumers the right to withdraw from a purchase agreement within a specified period after an offer is accepted. Without a “cooling off period,” if a buyer wishes to terminate a contract for reasons other than those laid out within the terms and conditions, they would need to negotiate with the seller and would typically face significant financial penalties or legal ramifications.

Cullen Commission of Inquiry into Money Laundering in BC	The commission was established to inquire into and report on the presence of money laundering in specific sectors in BC, including real estate, gaming and horse racing, financial institutions and money services, corporate shell companies, trusts, securities and financial instruments, luxury goods and professional services, including legal and accounting. The commission is expected to publish its final report and recommendations in May 2022.
For Sale By Owner	For Sale By Owner properties mean that the seller has not retained the services of a real estate professional to assist with the sale of their home.
Independent Advisory Group	The Independent Advisory Group was established in 2016 to provide recommendations to BC's real estate regulator and the BC Government to make improvements to real estate licensee regulation. The group was selected for their expertise drawn from service across a broad range of public and private organizations, and for their independence, diversity of perspectives and clear understanding of good governance and the public interest.
Limited dual agency	When a real estate licensee acts as an agent for more than one party in a real estate transaction, this could include acting for both a buyer and seller or acting for two or more buyers.
Managing broker	According to the <i>Real Estate Services Act</i> , every brokerage must have a managing broker in place at all times. The managing broker provides a second look at the work of all real estate professionals in the brokerage. They are a source of information and advice for the professionals they supervise and for members of the public.
Multiple Listing Service®	The Multiple Listing Service® (MLS®) is owned and operated by Realtors. Housing market information originating from the MLS® has long been recognized as the most reliable, comprehensive data available for those looking to buy or sell a home. Government, economists, financial institutions, appraisers and others rely on MLS® data.
Official Community Plan	An Official Community Plan, as outlined in the <i>Local Government Act</i> , describes the long-term vision of communities. The plans are a statement of objectives and policies that guide planning and land use management, impact a community's sustainability and resilience, outline a long-term development plan for the community and outline how a local government plans to exercise its powers.

Real estate licensee	<p>A licensee is simply someone licensed by the province through the BC Financial Services Authority to provide real estate trading services as legislated by the <i>Real Estate Services Act</i>.</p> <p>There are several steps, including meeting good reputation guidelines, satisfying language proficiency requirements, and completing both the Real Estate Trading Services Licensing Course and Exam and the Residential (or Commercial) Trading Services Applied Practice Course. To maintain a license, one must complete continuing education every two years.</p>
Real estate board	<p>BC has eight regional real estate boards that serve Realtors in their communities by managing property listings, providing education, enforcing business practice and ethics standards and providing their members with marketing tools and information. The real estate boards manage BC's MLS® Systems.</p>
REALTOR® / Realtor	<p>The Realtor trademark identifies a real estate professional who is a member of the Canadian Real Estate Association and, as such, is committed to a high standard of professional service, ongoing education and the Realtor Code of Ethics. Realtors also have access to their real estate board's MLS® Systems.</p>
Standard form	<p>BCREA works with BC's eight real estate boards, lawyers and other sector experts to draft and update the standard forms that are the backbone of a real estate transaction. BCREA Standard Forms are for Realtor use and use by lawyers with BC Branch of the Canadian</p>
Team	<p>A real estate team is a group of licensees who work together. They typically assist each other in lead generation, managing listings together and share commission structures. There is typically one team leader, and teams may have specialists. Teams are collectively considered to be the designated agent of a client.</p>
Unconditional offer / subject-free offer	<p>An offer to purchase a property that does not have any conditions (subjects) in the contract.</p>

Methodology

To understand the root of concerns related to consumer protection, we have undertaken several streams of research:

- **Sector consultation.** Between November 22 and December 14 of 2021, a total of 2,787 Realtors® took a survey to provide their feedback and share their professional experiences on protections for homebuyers. This included 211 associate brokers, 176 managing brokers and 2,393 representatives from all real estate board areas. The report also relies on past surveys of Realtors, including a November 2018 survey completed by more than 1,200 Realtors on the impacts of limited dual agency and a November 2019 survey completed by nearly 1,100 Realtors on the role of managing brokers.

Between November 24, 2021 and January 18, 2022, BCREA staff conducted seven focus groups with 41 Realtors from regional representation across BC to understand their perspectives on BCFSAs' consultation. These focus groups included managing brokers, representatives, associate brokers and franchisees. The report also references past focus groups conducted by BCREA of Realtors, including focus groups on the role of managing brokers in November 2019.

- **Public engagement.** In addition, between January 26 and January 31, 2022, Research Co. was commissioned by BCREA to survey 416 adults in BC who made a successful real estate offer in the past 12 months and 436 adults in BC who made an unsuccessful real estate offer in the past 12 months. In addition, two focus groups were conducted with BC homebuyers on February 3, 2022.
- **Literature review.** BCREA conducted extensive research to review academic literature available concerning consumer protection measures and behaviours, as well as identifying other jurisdictions that have implemented measures being considered.

Results and Recommendations

The recommendations provided are a result of research undertaken at a point in time. Many of the recommendations require further exploration and consultation on behalf of the government prior to implementation. These may uncover information gaps that further inform BCREA's own recommendations. Unless otherwise stated, the recommendations provided are intended to be implemented by the BC Government.