



Office of the
Superintendent
of Real Estate



REAL ESTATE COUNCIL
OF BRITISH COLUMBIA

Results of Public Consultation on Proposed Real Estate Rules

Administrative Penalties Summary Report

January 2021

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Executive Summary

On September 15, 2020, the Office of the Superintendent of Real Estate (**OSRE**) and the Real Estate Council of BC (**RECBC**) opened a consultation on proposed changes to administrative penalties under the *Real Estate Services Act* (**RESA**). The proposed changes would provide licensees with more predictable outcomes for administrative penalty eligible infractions and help to provide a proportional response by filling the gap between letters of advisement and a full discipline process. The proposed rule changes would not change any licensee obligations or requirements. Additional background information on the consultation is available in Appendix A.

In addition to rule changes being proposed by OSRE to expand and update the administrative penalty system, RECBC proposed changes to its Publication Policy for administrative penalties. RECBC also drafted Administrative Penalty Guidelines (Guidelines) that set out how RECBC would apply administrative penalties under the proposed amendments. The Guidelines set out:

- RECBC's process for issuing an administrative penalty;
- the criteria for a designated contravention to be eligible for an administrative penalty; and
- the dispute or reconsideration process.

This report focuses on the high-level themes that were identified throughout the consultation and provides brief responses from OSRE and/or RECBC. Key themes included:

- feedback on penalty amounts;
- questions or comments on how funds collected from the penalties would be used;
- questions about RECBC's intended process for imposing administrative penalties, which was outlined in the Guidelines, including the availability of a dispute mechanism for licensees (reconsideration);
- questions about how Category D (daily penalties) would operate; and
- a desire to see stronger enforcement and sanctions for professional misconduct, including licence cancellation.

In total, OSRE received close to 600 responses during the 60-day consultation period. All comments that were provided in the survey and email submissions were considered by OSRE and RECBC. A summary of survey demographics is available in Appendix B.

Consultation Feedback

Rule Section 2-23 Designated Contraventions – Information

Section 2-23 is proposed to be repealed and the following substituted:

Administrative Penalties

2-23 (1) For the purposes of section 56(1) *[contraventions that may be subject to administrative penalties]* of the Act, contraventions of the rules listed in subsection (2) are designated contraventions to which Division 5 *[Administrative Penalties]* of Part 4 of the Act applies.

(2) Designated contraventions of these Rules are divided into the following four categories of administrative penalty:

(a) Category A:

- (i) 2-5 *[residential brokerage offices]*;
- (ii) 2-8.1 *[educational requirements on renewal]*;
- (iii) 3-1(3) (except as it relates to the maintenance of trust accounts) *[managing broker responsibilities - accounts and records]*;
- (iv) 5-2 *[delivery of written agreements to clients]*;
- (v) 5-4 *[acceptance of offer]*;
- (vi) 7-7 *[annual financial statements, accountant's reports and brokerage activity report]*;
- (vii) 8-4 *[general records]*;
- (viii) 8-5 *[trading records]*;
- (ix) 8-5.1 *[records related to referral fees received by a licensee]*;
- (x) 8-5.2 *[records related to referral fees paid]*;
- (xi) 8-6 *[rental property management records]*;

- (xii) 8-7.1 *[strata management records]*;
- (xiii) 8-10 *[retention of records]*;
- (xiv) 8-11 *[brokerage obligations on winding up business]*.

(b) Category B:

- (i) 2-20 *[brokerage must give immediate notice respecting solvency]*;
- (ii) 2-21 *[licensee must give notice of discipline, bankruptcy or criminal proceedings]*;
- (iii) 2-22 *[brokerage must give notice of business changes]*;
- (iv) 2-22.1 *[personal real estate corporation must give notice of business changes]*;
- (v) 3-1(4) *[managing broker responsibilities - notice to parties respecting deposits]*;
- (vi) 3-2(2) *[associate broker and representative responsibilities - keeping managing broker informed]*;
- (vii) 3-2(4) *[associate broker and representative responsibilities - supervision of employees]*;
- (viii) 3-2(5) *[associate broker and representative responsibilities - knowledge of improper conduct]*;
- (ix) 3-3.2 *[designated agency]*.

(c) Category C:

- (i) 3-3(a) *[act in the best interests of the client]*;
- (ii) 3-3(b) *[act in accordance with the lawful instructions of the client]*;
- (iii) 3-3(c) *[act only within the scope of the authority given by the client]*;
- (iv) 3-3(d) *[advise the client to seek independent professional advice on matters outside of the expertise of the licensee]*;
- (v) 3-3(e) *[maintain the confidentiality of information respecting the client]*;
- (vi) 3-3(f) *[disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate]*;

- (vii) 3-3(g) *[communicate all offers to the client in a timely, objective and unbiased manner];*
- (viii) 3-3(h) *[use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring];*
- (ix) 3-3(i) *[take reasonable steps to avoid any conflict of interest];*
- (x) 3-3(j) *[if a conflict of interest does exist, promptly and fully disclose the conflict to the client];*
- (xi) 3-5 *[duty to act with reasonable care and skill].*

(d) Category D:

- (i) 2-17 *[mailing address for delivery];*
- (ii) 2-18.1 *[email address for licensees];*
- (iii) 2-19 *[licensee must reply promptly to council];*
- (iv) 3-2(1) *[associate broker and representative responsibilities - records];*
- (v) 3-2(3) *[associate broker and representative responsibilities - prompt response to managing broker inquiry];*
- (vi) 4-1 *[display and keeping of licences];*
- (vii) 4-2 *[brokerage signs required];*
- (viii) 4-3 *[restrictions relating to home and personal offices];*
- (ix) 4-5 *[licensee names must be indicated];*
- (x) 4-6 *[restrictions and requirements related to advertising generally];*
- (xi) 4-7 *[false or misleading advertising prohibited];*
- (xii) 4-8 *[advertising in relation to specific real estate];*
- (xiii) 8-1 *[financial records];*
- (xiv) 8-2 *[trust account and general account records];*
- (xv) 8-3 *[pooled trust account records];*
- (xvi) 8-3.1 *[preparation of records after termination];*

(xvii) 8-9 *[records must be kept up to date]*;

(xviii) 8-9.1 *[electronic records]*.

Superintendent's Comments:

Overall, the proposed amendments to the administrative penalties, and the publication of RECBC Administrative Penalty Guidelines (Guidelines), are intended to lead to predictable outcomes for the resolution of most minor rule contraventions. To fully understand the proposed changes, it is important to read the proposed rule changes in conjunction with the proposed Guidelines.

All of the designated contraventions currently listed in section 2-23 of the Rules remain. The proposed amendment to section 2-23 of the Rules would expand the list of rules where a contravention may be eligible for an administrative penalty. The expanded designated contraventions include some of the sections of the rules that frequently appear in RECBC Consent Orders, such as the duty to act with reasonable care and skill.

Unethical conduct, such as a contravention of the duty to act honestly under section 3-4, or contraventions of the rules related to disclosures or trust accounting will not be eligible for administrative penalties.

This proposed amendment also lays the foundation to create four separate groups of rule contraventions eligible for administrative penalties. The four separate categories are generally separated based on the risk of consumer harm and distinguished from each other by the penalty amount or method of penalty calculation. The penalty amounts are included in section 2-24 (below). The four categories are:

Category A – matters are mostly characterized as business management infractions with low risk of harm to consumers and generally easily substantiated.

Category B – generally minor matters with no or immaterial harm to consumers, and where imposing an administrative penalty is in the public interest.

Category C – contains substantial duties licensees owe to clients and non-clients (e.g.: section 3-3 of the Rules).

Category D (daily) – matters are mostly characterized as minor matters that present a low risk of harm to consumers, and which have a temporal element.

RECBC is responsible for enforcing licensee conduct requirements in the Rules, including exercising its discretion to determine whether the unique circumstances of a contravention of a rule designated in section 2-23 is appropriate for disposition by imposing an administrative penalty. To help guide the exercise of RECBC's discretion, the criteria for a designated contravention to be eligible for an administrative penalty will be set in the proposed new Guidelines, a draft of which has been published for comment with these proposed rules. In addition, the Guidelines set out RECBC's process for levying an administrative penalty and the reconsideration process available.

Rule Section 2-23 Designated Contraventions – Feedback Themes

Key Theme	OSRE Response
Feedback on the Proposed Categories: • The distinction between Categories A and B is unclear. • Categories A and B should be merged. • Categories A, B and D should be merged. • Designated contraventions should be separated based on responsibility (e.g. managing broker or representative).	The categorization of designated rules was largely based on the relative severity and the risk of harm to consumer posed by a potential breach. Most of the rules in Category A focus on the relationship between a brokerage or individual licensee and the regulator (RECBC). Contraventions of the rules in Category B (e.g. brokerage solvency, notice to parties respecting deposits) have a higher risk of harm to consumer than the rules in Category A (e.g. record related to referral fees). The rules subject to daily penalties (Category D) generally involve simple contraventions that can be established by clear, concrete and straightforward evidence, and can be remedied within a short period of time. Such contraventions also tend to represent a lower risk of harm to consumers. Category D matters would be in Category A if they did not have a temporal element. The creation of a daily category was seen to be a useful tool to gain compliance by providing licensees with an incentive to act quickly to fix non-compliance. The process for the imposition of Category D penalties provides licensees with time to come into compliance before additional daily penalties start being added. The process also allows licensees to ask RECBC for an extension of the period to come into compliance and provide material that supports an extension request (e.g. the licensee has taken all reasonable steps to come into compliance and there is still some aspect outside of their control).

	Creating additional categories to separate the designated contraventions based on the level of licence responsible for compliance would make the rules overly complex. This feedback has been shared with RECBC to consider in the development of education, reference and communication materials.
Expanding the designated contraventions eligible for administrative penalties should not be used as a revenue stream.	The purpose of the proposed changes is to make the regulatory discipline process more efficient for RECBC and licensees. Quickly diverting minor misconduct away from formal discipline will allow RECBC's investigative and legal teams to increase their focus on more complex and serious cases. For licensees, dealing with minor misconduct through administrative penalties means that there are no additional enforcement expenses to consider. Penalty amounts have been updated to ensure that the amounts are a deterrent, not seen as a cost of doing business, reflective of the increased administrative penalty range and reflective of public expectations. RESA governs how funds collected from administrative penalties can be used. RESA stipulates that such funds may only be expended by RECBC for an education purpose set out in s. 44(3). Those purposes include educating licensees about the operation and regulation of the industry and issues related to real estate and real estate services.

Rule Section 2-24 Penalty Amounts – Information

Section 2-24 is proposed to be repealed and the following substituted:

Amount of administrative penalty

- 2-24** (1) In respect of each contravention of a specified rule in Category A in section 2-23(2)(a) of these Rules the amount of administrative penalty is as follows:
- (a) \$1 000 for a first contravention;
 - (b) \$2 000 for a subsequent contravention.
- (2) In respect of each contravention of a specified rule in Category B in section 2-23(2)(b) of these Rules the amount of administrative penalty is as follows:
- (a) \$2 500 for a first contravention;
 - (b) \$5 000 for a subsequent contravention.
- (3) In respect of each contravention of a specified rule in Category C in section 2-23(2)(c) of these Rules the amount of administrative penalty is as follows:
- (a) \$5 000 for a first contravention;
 - (b) \$10 000 for a subsequent contravention.
- (4) In respect of each contravention of a specified rule in Category D in section 2-23(2)(d) of these Rules the amount of administrative penalty is as follows:
- (a) A base penalty amount of
 - (i) \$1 000 for a first contravention;

- (ii) \$2 000 for a subsequent contravention; and
- (b) \$250 each day or a part of a day on which the contravention of the specified rule continues to an amount not exceeding the maximum under section 56 of the Act.

Superintendent's Comments:

This proposed amendment sets out the penalty amount or method of penalty calculation for each of the four separate categories of administrative penalty. The contraventions within each category are in section 2-23 (above).

This proposed amendment increases the penalty amounts for existing designated contraventions and establishes penalty amounts for the expanded contraventions.

In considering what penalty amounts would be appropriate for each category, we considered that the aim of administrative penalties is to encourage compliance and that the amount be a deterrent.

Generally, the penalty amounts increase where a contravention could lead to an increase in the potential risk of consumer harm or could undermine public confidence in the real estate industry. For example, the contravention of any rule in Category C (which contains all of section 3-3 of the Rules [*duties to clients*]) will generally lead to the highest administrative penalty amounts. The draft RECBC Administrative Penalty Guidelines (Guidelines) provide clear guidance on when a contravention would be eligible for an administrative penalty.

For a licensee who has contravened a specified rule, the draft Guidelines make the interpretation that after five years of full compliance, the record of the licensee “resets” for the purposes of establishing whether a new contravention of a specified rule is a first or subsequent contravention.

Under the draft Guidelines, an administrative penalty for a category D contravention would not be imposed until after the licensee has come into compliance, or after RECBC has declared any period for the licensee to come into compliance to be over, to enable RECBC to properly calculate the penalty amount based on

the number of days the contravention continued. The rules subject to daily penalties generally involve simple contraventions that can be remedied within a short period of time. The creation of a daily category can be a useful tool to gain compliance by providing licensees with incentive to rectify non-compliance quickly.

According to section 56(2) of the Act, the maximum amount of an administrative penalty that may be imposed for a contravention of a specified rule is \$50,000. As a result, for a contravention of a Category D rule, adding the base penalty amount to the amount of \$250 for each day the contravention continued cannot exceed \$50,000.

Rule Section 2-24 Penalty Amounts – Feedback Themes

Key Theme	OSRE Response
The proposed penalty amounts are too high for contraventions that are mistakes. Penalty amounts may bankrupt an individual. A first contravention should be met with a warning.	One aspect of updating the penalty amounts is to ensure that the amounts encourage licensees to exercise appropriate due diligence to be compliant with their regulatory obligations, act as a deterrent and are not seen as a cost of doing business. Other aspects include for penalty amounts to be reflective of • Government's expectations, including the recognition of the increased administrative penalty range under RESA, and • public expectations for meaningful enforcement of the Rules. Establishing penalty amounts in the Rules provides for certainty and consistency across minor contraventions of the same category. While the APET requires that the contravention be unintentional or inadvertent, and an ordinary standard of care would have prevented its occurrence, this and the other criteria do not equate to the contravention being inconsequential. Eligible contraventions are still a breach of regulatory requirements under RESA and may include contraventions of other legislation (e.g. <i>Homeowner Protection Act</i>, <i>Electrical Safety Regulation</i>, <i>Manufactured Home Act</i>). Notwithstanding intentions of the licensee or the ultimate outcome, a licensee's (in)actions may result in a contravention and the consequences could have resulted in material consumer harm, particularly Category C. Letters of Advisement (warnings) will continue to be used by RECBC when appropriate. These letters serve a valuable educational tool to help licensees avoid future contraventions. RECBC will exercise its discretion in

	considering all of the circumstance of a contravention as to whether it is more appropriate to proceed by a letter of advisement or an administrative penalty.
The penalty amount for Category C is too high.	The responsibilities in Part 3 of the Rules, contained in Category C, include meaningful obligations of licensees with respect to licensee ethics and professionalism. Contraventions of these sections may lead to significant public harm. Not all contraventions of s. 3-3 of the Rules [<i>Duties to clients</i>] will be eligible for administrative penalties. It will be fact dependent and a case-by-case assessment will be done guided by the APET (Administrative Penalty Eligibility Test) criteria. Special consideration was given to the penalty amounts for Category C, including research of discipline decisions issued for misconduct that could have been eligible under the proposed changes had they been in place. Contraventions of category are a breach of regulatory requirements under RESA and may include contraventions of other legislation (e.g. <i>Homeowner Protection Act, Electrical Safety Regulation, Manufactured Home Act</i>). Notwithstanding intentions of the licensee or the ultimate outcome, a licensee's (in)actions may result in a contravention and the consequences could have resulted in material consumer harm.
The penalty amounts should be linked to the amount of harm to consumers.	To be eligible for an administrative penalty, there can be no material consumer harm. However, the categorization of designated contraventions into four groups does link administrative penalty amounts to the potential risk of consumer harm depending on the rule that has been contravened. Outside of the administrative penalty process, RECBC can pursue contraventions by a full discipline process (notice of discipline hearing)

	which can fully consider situations where a consumer has been materially harmed.
The proposed penalty amounts are insufficient to encourage compliance and deter licensees from ignoring their obligations. The penalty amount for Category C is too low given the potential for consumer harm. The penalty amounts for subsequent contraventions should be higher.	Administrative penalties are just one of the tools available for RECBC to encourage licensee compliance and are guided by the APET. Where a licensee purposefully committed the contravention, RECBC can pursue a full discipline process which has a higher range of monetary penalties available as well as education, licence suspension and licence cancellation, if appropriate.
Penalty amounts should consider remuneration earned by a licensee. For example, in establishing penalty amounts RECBC should consider a new licensee versus may be more disadvantaged by a \$2,500 penalty than an established licensee. The penalty amounts can have an unequal impact on brokerages in rural areas compared to brokerages in the lower mainland or brokerages providing strata management services compared to trading services.	Having amounts based on remuneration would diminish the efficiency of the proposed changes and require additional RECBC resources to gather information and assess the financial circumstances of each licensee subject to an administrative penalty. Additionally, RESA, and common law, restricts how administrative penalty amounts are set, and as a result, a more flexible approach that considers the financial circumstances of each licensee is not authorized. Outside of the administrative penalty process, the remuneration and financial circumstances of a licensee can be considered in formal discipline proceedings, including discipline orders establishing a payment plan for sanctions and enforcement expenses.

The changes will result in increased consistency. Given licensee conduct directly impacts the personal finances of consumers, the change is progressive and needed.

Escalating penalties and expanded contraventions will be effective at deterring misconduct.

One of the aims of updating administrative penalties is to provide RECBC with a useful tool to encourage compliance among licensees.

Administrative penalties provide licensees with more predictable outcomes for certain types of infractions and fill the gap between letters of advisement and a full discipline process. The updates will encourage greater compliance, while eliminating the uncertainty and delay of a full discipline process and its potentially greater penalties.

Draft RECBC Administrative Penalty Guidelines - Information

Draft RECBC Administrative Penalty Guidelines (Guidelines) were part of the consultation package to help licensees and the public understand how the proposed changes to the administrative penalty rules would be administered by RECBC. The Guidelines set out the general process RECBC would employ when considering whether to impose administrative penalties on a licensee for non-compliance with designated contraventions of the Real Estate Rules.

The Guidelines would help to ensure that administrative penalties are applied in the public interest and in a manner that is transparent, fair and proportionate to the severity of specific contraventions. The Guidelines were developed to establish the criteria to be considered by RECBC in determining whether a contravention is eligible for an administrative penalty. The Guidelines were also developed to provide guidance on the process used in imposing administrative penalties. The Guidelines also set out the reconsideration process, which allows a licensee to dispute the decision to impose an administrative penalty.

Draft RECBC Administrative Penalty Guidelines – Feedback Themes

Key Theme	RECBC Response
Changes to administrative penalties must be fair, proportional and consistent with the principals of procedural fairness.	Levying an administrative penalty is just one of RECBC's tools to encourage compliance, and, when necessary, respond to a breach of a designated contravention. RECBC will consider the unique circumstances of each case to determine the appropriate and proportionate response. The draft RECBC Administrative Penalty Guidelines were created to help guide the exercise of RECBC's discretion in a transparent and consistent manner. In developing the Guidelines several principles of procedural fairness were incorporated into the process. The Guidelines contemplate a more robust process than the minimal requirements established by RESA. RECBC will investigate a matter to determine if it is satisfied that a contravention occurred and that the criteria of the APET are met. Licensee's will have an opportunity to provide their perspective on the matter as part of the investigation. It has also been contemplated conducting an investigation, prior to deciding whether to impose an administrative penalty, will help RECBC to understand whether the licensee exercised due diligence. Additionally, in order to be eligible for an administrative penalty, the contravention must be easily substantiated, or the licensee has acknowledged committing the misconduct.

Imposing an administrative penalty may be flawed without due process or appeal. The process limits a licensee's opportunity to be heard and to defend themselves.	RECBC developed the draft Administrative Penalty Guidelines to ensure that the process outlined in the Guidelines has several procedural fairness protections for licensees before a decision is made. Before RECBC can impose an administrative penalty, RECBC must be satisfied that a designated contravention occurred and that the circumstances of the contravention meet the criteria in the Administrative Eligibility Test (APET). The APET is described in the Guidelines. These steps require RECBC to conduct an investigation and to ask the licensee about the circumstances of the alleged contravention before deciding whether an administrative penalty is appropriate. Often this will mean RECBC seeking information about a licensee's due diligence efforts to prevent the contravention before deciding an appropriate response. Eligible contraventions are a breach of regulatory requirements under RESA and may include contraventions of other legislation (e.g. <i>Homeowner Protection Act</i>, <i>Electrical Safety Regulation</i>, <i>Manufactured Home Act</i>). Notwithstanding the intentions of the licensee or the ultimate outcome, a licensee's (in)actions may result in a contravention and can carry the risk of consumer harm, particularly in Category C. Section 57 of RESA gives licensees the ability to dispute an administrative penalty. The Guidelines have information on how to make a request for reconsideration, the timelines to make the request, the standard of review and other details. This information also includes circumstances when RECBC may approve an extension to the timeline to make a request.
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People with industry experience should make the decisions of whether to impose an administrative penalty and hear reconsiderations.	RESA authorizes the Real Estate Council to decide whether to impose an administrative penalty. The Act also allows the Council to delegate this decision to RECBC staff. The function of regulation is first and foremost to protect the public.
The 14-day period to request reconsideration should be extended to 30 days.	Section 57 of RESA gives licensees the ability to dispute an administrative penalty and sets the time period at 14 days or a longer period allowed by RECBC. The Guidelines provide examples of extenuating circumstances when RECBC may approve an extension to the timeline to make a request.
The Guidelines do not spell out what information is provided to a complainant.	Under section 36 of RESA, RECBC is required to inform the complainant of the disposition of a complaint, unless it is made anonymously. This includes informing a complainant when a complaint is disposed of through an administrative penalty as well as to the results of any requested reconsideration.
How daily penalties work is unclear, e.g.: when will the daily amount of \$250/per day start? A \$50,000 administrative penalty for something in Category D sounds excessive.	The process for dailies is set out in the Guidelines. In general, after RECBC conducts an investigation and determines that an administrative penalty is appropriate, RECBC will send a Non-Compliance Warning Letter to the licensee. The warning letter tells the licensees, among other things, that they have seven calendar days to come into compliance. If the licensee is not in compliance after the seven days, and RECBC has not granted an extension of time, the amount of the administrative penalty will increase from the base penalty amount by \$250/day for each day or partial day following the compliance warning period.

	Under section 56(2) of RESA, the maximum administrative penalty that may be imposed is \$50,000. None of the basic administrative penalty amounts come close to the maximum. However, if a licensee takes a very long time to comply after a warning letter, the administrative penalty amount may approach or reach \$50,000. The daily penalties are intended to encourage compliance. It is very unlikely any licensee would take up to 200 days to comply unless there were extenuating circumstances preventing compliance, which would be legally significant. It is also likely that if a licensee is taking that long to comply, RECBC may decide to instead issue a notice of discipline hearing, which can result in a higher monetary penalty as well as education, enforcement costs, licence suspension or licence cancellation.
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Potential Changes to RECBC's Publication Policy – Information

A description of potential changes to RECBC's Publication Policy with respect to administrative penalties was part of the consultation package to help licensees and the public understand the full impact of potential changes and for RECBC to take into consideration feedback prior to finalizing any changes to the Publication Policy.

As part of the consultation package, licensees and the public were informed that RECBC was considering the publication of all administrative penalties. RECBC's considerations with respect to expanded publication of administrative penalties focus on the following:

- Balancing potential licensee reputational concerns with public interest and consumer protection goals.
- The proposed rule changes significantly expand the designated rules, including rules that are fundamental to the purposes of regulating real estate services (e.g. sections 3-3 and 3-5 of the Rules). It is expected that administrative penalties under the proposed new rules would be applied in matters which presently are subject to discipline proceedings, often concluded by Consent Orders, which are published and linked to the online licensee search function.
- Publication of decisions generally promotes transparency, accountability and public confidence in the regulatory system and better meets standards of good regulatory practice for regulators. Many other regulators publish administrative penalty decisions.
- Publication of decisions provides an additional educational opportunity for licensees and the public.

Potential Changes to RECBC's Publication Policy – Feedback Themes

Key Theme	RECBC Response
Publication of a decision without naming the licensee may be preferable, unless the licensee is a “repeat offender”.	Currently, most designated contraventions eligible for administrative penalties, including Category C, are resolved through Consent Orders. Consent Orders are published on RECBC's website as required by RESA. Publication of decisions generally promotes transparency, accountability and public confidence in the regulatory system and better meets standards of good regulatory practice for regulators. Many other regulators publish administrative penalty decisions and publication of decisions provides an additional educational opportunity for licensees and the public.
Publication has value for prevention of misconduct and may be more effective of a deterrent than monetary penalties.	The purpose of the administrative penalty system is to provide for an efficient mechanism for RECBC to encourage compliance. It is one of many tools available to RECBC. Other tools include education requirements, practice guidance, letters of advisement and formal discipline processes. Publication of administrative penalty decisions provides an additional educational opportunity for licensees and the public. If publication further encourages and incentivizes licensees to exercise due diligence and professionalism, consumers will be well served.

Publication of administrative penalties will help promote consumer trust and professionalism and be a source of education. This will help the public to understand how highly regulated real estate professionals are in BC, building consumer confidence.	Publication of decisions generally promotes transparency, accountability and public confidence in the regulatory system. Publication also better meets standards of good regulatory practice for regulators. Many other regulators publish administrative penalty decisions.
Publication of a licensee's name may harm the reputation of an individual licensee. It would be ok to only publish statistics.	RECBC's update to the administrative penalty publication policy seeks to balance licensee reputational concerns with the public interest and consumer protection goals of a regulator. Currently, the designated contraventions are often resolved through Consent Orders which are published on RECBC's website. Statistics alone lack sufficient context for the kind of educational value that can be achieved by publishing decisions. Decisions will tell you how something happened or how licensees can avoid making the same mistakes.
Questions or statements about whether other professional regulators publish similar types of decisions	Many other regulators publish various kinds of enforcement action, including administrative penalties. A few examples include: • The Real Estate Council of Alberta, which has both administrative penalties and formal discipline hearing processes, publishes both types of decisions as well as letters of reprimand which identify the licensee. • Consumer Protection BC, which is the regulator of a variety of sectors, publishes all recent enforcement action, including undertakings (i.e. a promise to do or not to something) and orders.

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| | <ul style="list-style-type: none">• The BC Financial Services Authority, which regulates mortgage brokers, financial institutions and sectors, publishes enforcement action identifying the individual or company. |
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Consultation Feedback – General Comments and Feedback

Key Theme	<i>OSRE and RECBC Response</i>
If changes are made, licensees should be given education on how to comply with the designated penalties and other tools to assist them in navigating the administrative penalty process (e.g. a form and/or checklist for reconsideration requests).	The proposed rule changes would not change any licensee obligations or requirements. Multiple resources are available for any licensee who is unsure how to meet their existing obligations, including managing brokers, RECBC's Practice Standards Advisors, licensing course materials, and guidance published on RECBC's Knowledge Base. RECBC will publish information and guidance for licensees on the updated administrative penalty process, including details on how to request a reconsideration.
Implementation will need to ensure transparency of the process, decisions and use of penalties collected. The process should be fair and include an investigation and appeal.	RECBC's draft Administrative Penalty Guidelines help provide transparency to the process, including the criteria which must be met in order for a contravention to be eligible for an administrative penalty. RECBC must be satisfied that a licensee has contravened a rule in order to levy an administrative penalty and will obtain a licensee's perspective before deciding whether to levy a penalty. Many matters are straightforward, and many can be objectively measured. The publication of administrative penalty decisions will add transparency, both for licensees and members of the public. The Guidelines also explain the reconsideration process that is established by RESA. Licensees will have 14 days after an

	administrative penalty to request the right to be heard. RECBC may agree to extend the time to request reconsideration. The Guidelines provide example circumstances of when RECBC may agree to an extension. The use of penalties collected are governed by RESA under subsection 44(3). Penalties can only be used to educate the public, licensees and other participants in the real estate industry in BC. RECBC produces financial reports under the <i>Financial Information Act</i> which it publishes on its website.
The updated administrative penalty system will be progressive, provide consistency and therefore deterrence. The changes will improve industry integrity.	Administrative penalties are one tool to encourage licensees to exercise due diligence in pursuit of their compliance with regulatory obligations. (Other RECBC tools include education, guidance, Professional Standards Advisors, letters of advisement and discipline orders.) Increasing consistency and efficiency in response to misconduct are some of the aims of the changes. Where appropriate, RECBC will continue to pursue more serious misconduct by the full discipline process (notice of discipline hearing), which has a higher range of monetary penalties available as well as education, licence suspensions and licence cancellations.
Licensees have experienced a lot of change in recent years and would prefer no more change.	The proposed updates to administrative penalties are not changing any existing licensee obligations. These changes do not require licensees to learn anything new. Licensees will be able to continue to provide diligent service to their clients in compliance with the regulatory obligations.

	The changes expand the options available to RECBC to address licensee misconduct.
Other professions do not have administrative penalties.	Administrative penalties are used in a variety of sectors in BC, including regulated professions, as a compliance and/or enforcement tool. A few examples include: • Consumer Protection BC, which licenses and regulates a variety of sectors that impact consumers. • The BC Financial Services Authority, which regulates mortgage brokers and a variety of other financial service sectors. Other Canadian real estate examples include the Real Estate Council of Alberta and the Nova Scotia Real Estate Commission.
How will the funds collected from Administrative Penalties be spent	RESA governs how funds collected from administrative penalties can be used. The Act stipulates that such funds may only be expended by RECBC for an education purpose set out in s. 44(3). Those purposes include educating licensees about the operation and regulation of the industry and issues related to real estate and real estate services. The Draft RECBC guidelines also makes reference to the relevant sections of RESA.
Respondents recommended taking stronger enforcement and sanctions for professional misconduct, including licence cancellation.	Where an administrative penalty is not an appropriate response to a contravention, RECBC can pursue a full discipline process (notice of discipline hearing) which has a higher range of monetary penalties available as well as education, licence suspension and licence cancellation, if appropriate.

	In September 2016, RESA was amended to allow RECBC to levy penalties of up to \$250,000 for individual licensees and \$500,000 for brokerages in discipline orders for professional misconduct. These penalties apply to conduct that occurred after September 2016.
Respondents made a number of additional comments or suggestions for consideration, including: • Revisiting the exemption to be licensed for employees of developers • Ensuring the public receives education about - o what administrative penalties are, - o how rigorously real estate licensees are regulated, and - o the exemption to be licensed for employees of developers • Increasing the barriers to become a real estate licensee by increasing education and training with a focus on professionalism and ethics • Restricting the ability of licensees to advertise a listing that is under valued (e.g. by requiring licensees to document their opinion as to property value and marketing under that value in writing) • Restricting or eliminate the practice of “double ending” real estate transactions	Suggestions for additional policy reforms for the industry within OSRE’s purview will be reviewed and considered as OSRE continues to explore options to address risk, enhance consumer protections and ensure the regulatory framework is modern, efficient and effective. RECBC is updating and enhancing pre-licensing and continuing education courses. Where licensees proposed amendments requiring changes to RESA or the corresponding Regulation, these suggestions will be passed along to the Ministry of Finance.

About the Office of the Superintendent of Real Estate

Led by Micheal Noseworthy, the Superintendent of Real Estate, the Office of the Superintendent of Real Estate (**OSRE**) is a regulatory agency of the BC government that protects consumers who are buying and selling or otherwise acquiring or disposing of real estate in the province. OSRE provides oversight and support to the real estate industry in BC and is mandated to protect the public interest and prevent harm to consumers.

Under the *Real Estate Services Act* (**RESA**), the Superintendent of Real Estate has broad powers to make rules governing licensee conduct, including designating contraventions of specific rules as being subject to administrative penalties. The Superintendent also has broad powers to oversee and direct the activities and operations of the Real Estate Council of British Columbia (**RECBC**). OSRE works with RECBC to fulfil its consumer protection mandate and is committed to working closely with RECBC to support implementation of any rule amendments.

Additional information about OSRE is available at www.gov.bc.ca/osre.

About the Real Estate Council of British Columbia

RECBC is a regulatory agency established by the provincial government in 1958. Its mandate is to protect the public interest by enforcing the licensing and licensee conduct requirements of RESA. RECBC is responsible for licensing individuals and brokerages engaged in real estate sales, rental and strata property management. RECBC also enforces entry qualifications, investigates complaints against real estate professionals and imposes disciplinary sanctions under the Act.

RECBC's mission is to protect the public interest by promoting and enforcing professional standards to raise the competency and conduct of real estate professionals in British Columbia. In collaboration with OSRE, RECBC works to achieve the shared goal of a fair, transparent and consistent regulatory system for real estate services in British Columbia.

Additional information about RECBC is available at www.recbc.ca.

Appendix A: Background

On September 15, 2020, the Office of the Superintendent of Real Estate (**OSRE**) and the Real Estate Council of BC (**RECBC**) opened a consultation on proposed changes to administrative penalties under the *Real Estate Services Act* (**RESA**). The purpose of the proposed rules is to make the regulatory discipline model more efficient and predictable for RECBC and licensees.

Key rule changes proposed by OSRE include:

- Expanding the list of designated contraventions eligible for administrative penalties;
- Updating the administrative penalty amounts; and
- Creating four categories of administrative penalties with penalty amounts that increase according to the level of risk of harm to the public.

Two additional proposed rule changes include:

- Separating the two existing conduct requirements contained in section 3-4 of the Rules into separate rules to simplify the application of the proposed changes to administrative penalties; and
- Consequential amendments to the definition of “accountant” in the Rules based on changes to the *Business Corporations Act* and the *Chartered Professional Accountants Act*.

Current rules made under RESA can be found on [RECBC's website](#).

RECBC is responsible for enforcing licensee conduct requirements in the Rules, including exercising its discretion to determine the appropriate disposition of a contravention. To help guide the exercise of RECBC's discretion, the criteria for a designated contravention to be eligible for an administrative penalty is set out in the proposed new Guidelines. Draft Guidelines were published for comment with the proposed rules. In addition, the Guidelines set out RECBC's process for levying an administrative penalty and the

reconsideration process available. The entire consultation package, including the FAQs, can be found on [OSRE's consultation website](#).

The proposed changes to administrative penalties were developed following consultation with key industry stakeholders. Public and licensee feedback on the proposed rules was provided through an online survey, which closed on November 13, 2020 following a 60-day consultation period. Details on the consultation as well as a link to the survey were posted on OSRE's website and over 25,000 real estate licensees received an email in which they were asked to provide feedback using the survey. OSRE and RECBC also encouraged the public and licensees to participate through their website and social media accounts.

Invitations to participate in the public consultation were also sent to various industry groups, including the BC Real Estate Association (**BCREA**), the Professional Association of Managing Agents (**PAMA**), Strata Property Agents of BC (**SPABC**), and Landlord BC, in addition to being provided with an opportunity for early stakeholder input. All local real estate boards were also invited to participate in the public consultation. During the consultation period, OSRE received a joint written submission from BCREA and the 11 real estate boards, a submission from the Real Estate Brokers Association of BC as well as a handful of email submissions from licensees (both individual and brokerage).

The primary source of public feedback on the proposed rules was an online survey. OSRE and RECBC received a total of 591 survey responses during the 60-day consultation period. Individual survey responses were anonymous and all responses have remained confidential. The survey questions focused on the two areas of the rules where substantive amendments were proposed as well as the draft RECBC Guidelines and potential changes to the RECBC publication policy.

The survey included eight questions, as follows:

- Four questions were included to obtain background information about respondents and their demographics;
- Two questions were included that were based on the proposed amendments to section 2-23 and section 2-24 of the Rules. The questions asked respondents for comments about the proposed

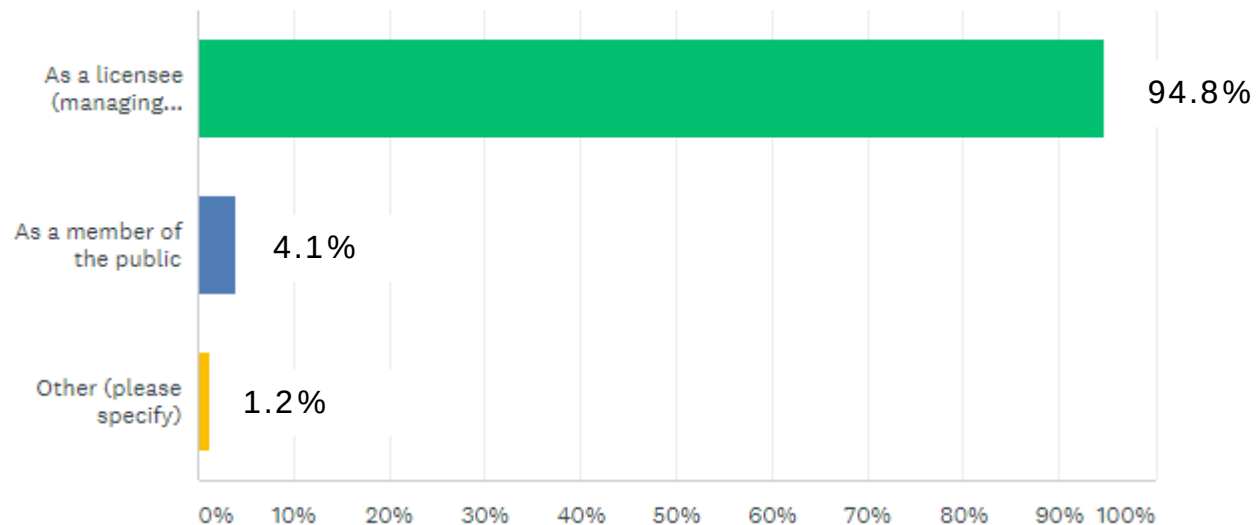
amendment, and were provided with free-text comment space to provide feedback on the specific amendment;

- One question asked respondents for comments on the draft RECBC Administrative Penalty Guidelines, and provided free-text comment space to provide feedback;
- One question asked respondents for comments on potential changes to RECBC's publication policy, and provided free-text comment space to provide feedback; and
- One free-text question was included at the end of the survey where respondents could provide general comments on the proposed rule amendments and RECBC changes.

Appendix B: Survey Demographics

Respondent Demographics

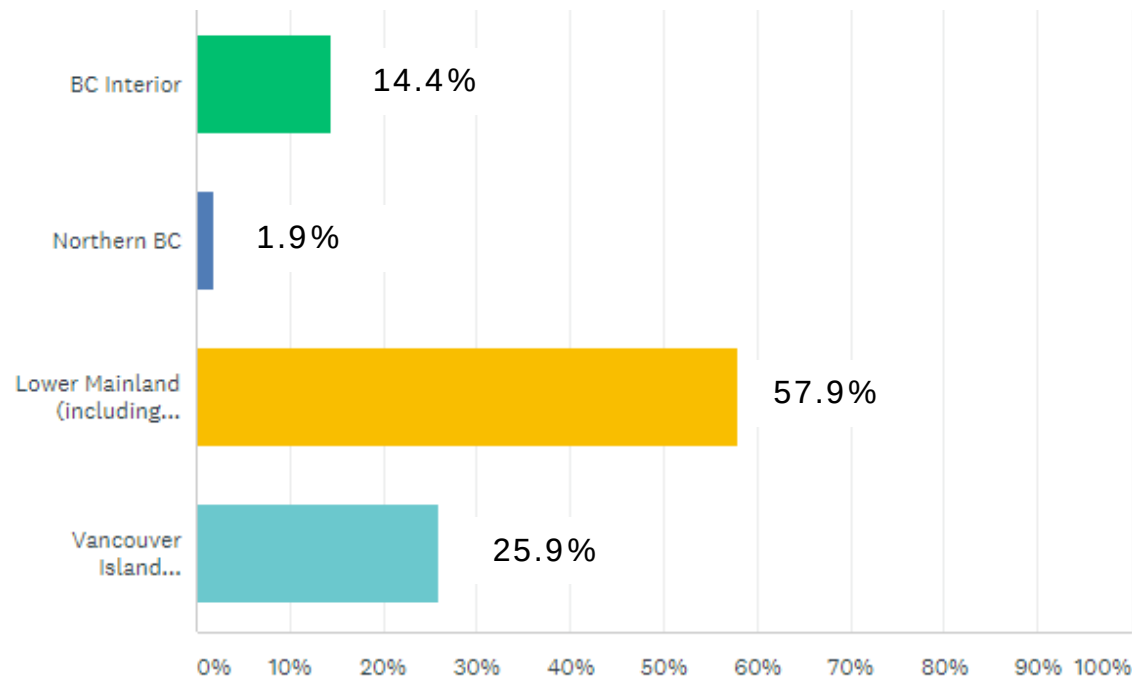
Capacity in which respondents commented on the proposed rules:



ANSWER CHOICES	RESPONSES	
As a licensee (managing broker, representative or associate broker)	94.75%	560
As a member of the public	4.06%	24
Other (please specify)	Responses 1.18%	7
TOTAL		591

Respondent Demographics

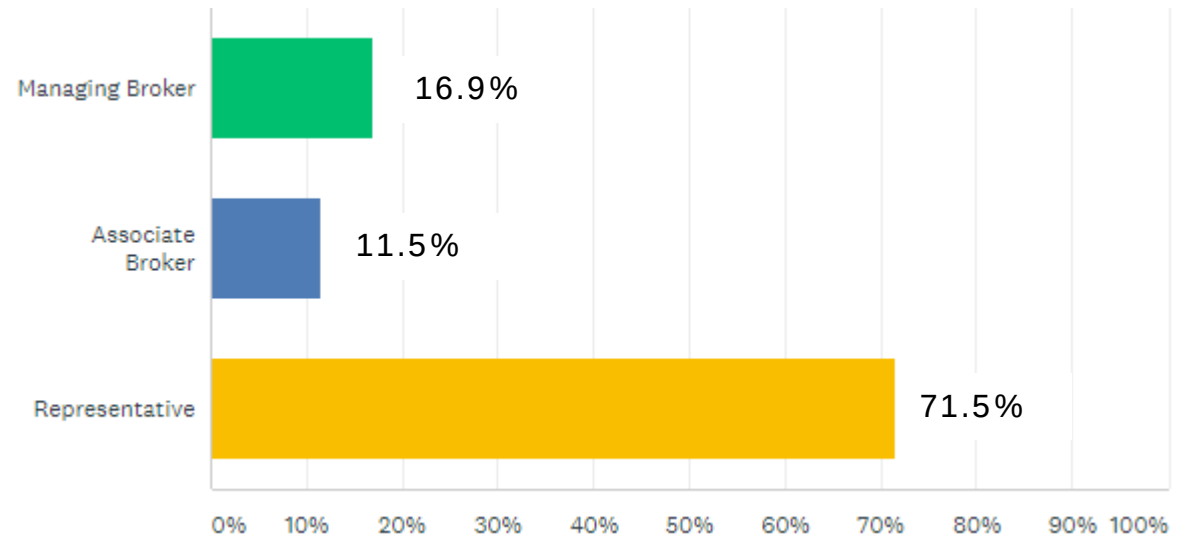
Region of the province that best describes where survey respondents live/work:



ANSWER CHOICES	RESPONSES	
BC Interior	14.38%	84
Northern BC	1.88%	11
Lower Mainland (including Metro Vancouver, Fraser Valley, Sunshine Coast and Sea-to-Sky Region)	57.88%	338
Vancouver Island (including the Gulf Islands)	25.86%	151
TOTAL		584

Licensee Demographics

Level of licence held by licensee survey respondents:



Category of licence held by licensee survey respondents:

