



Office of the
Superintendent
of Real Estate

Review of the Role of Managing Brokers in BC's Real Estate Regulatory Framework: Project Summary Report

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OSRE Staff Report for the Superintendent of Real Estate

**Review of the Role of Managing Brokers in BC's Real Estate Regulatory Framework:
Project Summary Report**

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I. Project Overview

In May 2018, the Office of the Superintendent (**OSRE**), in collaboration with the Real Estate Council of BC (**RECBC**) and the Ministry of Finance's Policy and Legislation Division (**PLD**), formed a working group to review the role of managing brokers within BC's regulatory framework. The working group's formation was in response to concerns about the role of managing brokers, and the functioning of the real estate regulatory framework, considering various challenges influencing the real estate industry. This report summarizes approximately two years of work by that working group.

Managing brokers occupy a crucial role within the real estate regulatory framework. They perform many functions within a brokerage, acting as supervisor, mentor, trainer, records and bookkeeper and administrator. Managing brokers have expansive duties under the *Real Estate Services Act* (**RESA** or the **Act**) and the Real Estate Rules (**Rules**) and, as a result, play an important role in the protection of real estate consumers.

The Act came into force in 2005. In the last 15 years, changing business practices, increasing expectations of the public and the regulator, advances in technology and other market pressures and disruptors have challenged the ability of managing brokers to fulfill their duties under the regulatory framework. The 2016 [Independent Advisory Group Report on Real Estate Regulation in BC](#) (**IAG**) observed that managing brokers cannot effectively perform the many functions expected of them.

The working group focused on identifying issues and challenges influencing the real estate industry and the ability of managing brokers to effectively uphold their regulatory duties. It also sought to identify opportunities where education, licensing practices and the regulatory framework can be strengthened to enhance professionalism and to address some of the identified challenges in the real estate industry. The working group also sought to explore options for the future of the managing broker role.

The working group conducted significant research and analysis and engaged licensees and key external stakeholders through three consultation activities. These activities included an online survey in September 2018, in-person regional discussion sessions in the winter of 2018/19 and a discussion paper that was released for public comment in October 2019.

In December 2020, this work culminated in the development of five memoranda which make key recommendations on five topics:

1. Enhance Education and Qualification Requirements for Managing Brokers
2. Enhance Resources for Managing Brokers
3. Explore Brokerage Licensing and Ownership Requirements
4. Enhance Regulation Through Data and Information
5. Continue to Explore Long-Term Concepts for the Role of Managing Brokers

This report includes a summary of the recommendations detailed in the memoranda.

Taken as a whole, it is clear that the challenges facing managing brokers are complex and there are no simple solutions. Managing brokers operate in an increasingly complex regulatory environment where change has become a constant. It is likely that an incremental approach to

implementing these recommendations will help both licensees and the regulator to adjust to the impact of these changes over time.

When this project was initiated, it was envisioned as a two-phase project. The first phase was intended to result in a report with recommendations to the Superintendent and the Chair of RECBC related to potential changes to the Act, the Rules, practice guidance, and RECBC practices and activities. The second phase of the project was to focus on implementing any recommended changes.

On November 12, 2019, the Minister of Finance announced that RECBC and OSRE would combine into a single regulator within the BC Financial Services Authority (**BCFSA**). The announcement, and accompanying policy and legislative work, results in a different context for the end of the managing broker project than existed at the outset in May 2018. As a result, all recommendations in the memoranda are being made to the Superintendent of Real Estate for consideration and the timeline for further development of many recommendations has been drafted with the amalgamation in mind.

II. Consultation Activities

The managing broker working group engaged licensees and key stakeholders through various consultation activities:

A survey was launched in September 2018 to identify issues and challenges facing managing brokers. The Superintendent invited all licensees to participate in the survey and sent letters to all local real estate boards and the BC Real Estate Association (**BCREA**) to encourage member participation. The survey had different pathways for participants to complete depending on how they identified themselves (i.e. licensee, public, other) and depending on the level of licence held by licensees (i.e. representative, associate broker and managing broker). Close to 2,400 responses were received and the results were summarized in a [report](#) posted on the project website.

Six regional roundtables were held in November and December 2018. The roundtables were a series of in-person regional engagement sessions around the province to further explore issues, challenges, impacts and possible solutions. These sessions were primarily targeted to managing brokers and staff from key stakeholders. Given geographic and size limitations, managing brokers and others were encouraged to provide written submissions regardless of whether they attended a session. A [summary](#) of the feedback heard at the regional roundtables along with more detailed highlights from each session were posted on the project [website](#).

An internal workshop with RECBC, OSRE and PLD was held in July 2019 to assist the development of a discussion paper by validating options and over 50 potential recommendations, as well as to identify additional considerations. While only a handful of recommendations moved forward to the discussion paper, several recommendations were related to internal processes and procedures. These recommendations are included in the attached memoranda.

A **discussion paper** was published for comment from October 17, 2019 to January 15, 2020. The discussion paper requested feedback related to the impacts, benefits and challenges of potential changes identified through the group’s research. Among the ideas in the paper were three high-level concepts for the future role of the managing broker. (In addition to being describe in the discussion paper, the concepts are discussed in Appendix E of this report.) A [summary](#) of feedback on the discussion paper was posted on the project website in early July 2020.

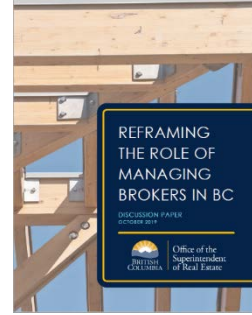


Table: Summary of Participation in External Consultation Activities

	Survey participants	Regional roundtable participants	Discussion paper feedback
Managing broker	340	140	38
Associate broker	238	3	10
Representative	1722	0	35
Other licensee (level not specified)	18	0	0
Others & public (including not specified)	62	7	14
Total	2,380	150	97

III. Identified Issues and Challenges

Through the consultation activities and other research and analysis, several issues and challenges were identified. The issues and challenges facing managing brokers and the industry can generally fit into one of three key areas:



Education and Qualification Requirements



Licensee and Brokerage Supervision



Liability and Regulatory Compliance

Education and Qualification Requirements: Stakeholders have consistently identified concerns that the education and qualification requirements for licensing as a managing broker may not adequately equip graduates with the knowledge, abilities and competencies required to fulfill the unique duties of the position. Inexperienced managing brokers may have difficulty in properly guiding their brokerages’ related licensees on the best practices that comply with the real estate regulatory framework while simultaneously enabling licensees to assist their clients in achieving their objectives.

Licensee and Brokerage Supervision: Managing brokers are required to provide active and adequate supervision of the brokerage's related licensees and unlicensed staff. There are many factors that can impact the quality of supervision provided by managing brokers, including the type of business model and practices employed at a brokerage, and the capacity, experience and skills of a brokerage's licensees. Business models have been influenced by advancements in technology, changes to interprovincial trade and agreements and the 2005 changes to the regulatory framework. Trading services has undergone the greatest shift towards new and emerging business models. The supervision requirements established by the regulatory framework must be met regardless of the business model used by a brokerage. However, some brokerages have moved to business models that provide less value and support to licensees, usually in exchange for higher licensee remuneration, leaving little incentive for brokerages to invest in activities that promote regulatory compliance among licensees. In addition, some individual licensees reported hesitation to seek advice from their managing broker because their managing broker was occupied with other duties or in direct competition with the licensee (e.g. engaged in providing real estate services to a client generally or in the same potential transaction).

Liability and Regulatory Compliance: Because of their duties under the regulatory framework, managing brokers are liable not only for their own conduct, but also for the actions of brokerage staff. Many managing brokers have expressed that they experience uncertainty about how to comply with the regulatory requirements as a result of recent changes to the discipline penalty regime under RESA and RECBC's shift to a principle-based approach to practice guidance. Managing brokers may also experience tension between their duties under the regulatory framework and the profit-based motivations of brokerage owners. Managing brokers often face difficult choices that attempt to reconcile the maximum profitability and productivity desired by ownership and related licensees with the regulatory compliance, consumer protection and oversight required by the regulatory framework. As a result, managing brokers may be placed in a position where they have limited functional authority but have significant liability.

More generally, there is concern among many industry participants about a perceived shortage of managing brokers. Currently, there are approximately 1,350 individuals licensed as managing brokers by RECBC. Across the industry, the ratio of managing brokers to other licensees is roughly 1:18. However, the actual distribution of licensees can vary widely among brokerages, by region and by category of real estate services. Many existing managing brokers are nearing retirement age and there may be a limited number of other licensees willing to step in to perform the managing broker's role if called on to do so.

IV. Consultation on Proposed Solutions

In response to the identified issues and challenges and building on suggestions of how to address them, the discussion paper, that was published in the fall of 2019, presents five foundational measures that the regulator could undertake in the short to medium term to strengthen the role of managing brokers as it currently exists:

1. Require brokerages to develop & submit formal compliance plans
2. Raise qualification standards for managing brokers
3. Provide more targeted continuing education for managing brokers
4. Develop brokerage best practices & related resources for managing brokers
5. Fill regulatory data & information gaps

The paper also sets out three high-level concepts for the future role of the managing broker:

1. Status quo role within an enhanced regulatory framework
2. Compliance officer
3. Single licensing (no managing broker)

The intention in presenting the three alternative concepts was to challenge the assumptions about the managing broker's role and functions and to contemplate how changes to the role could help resolve the tensions that managing brokers, and by extension the industry, are currently experiencing, while ensuring adequate consumer protection.

The five discussion paper questions were:

1. What information and considerations should we be aware of as we further develop the five measures to strengthen the role of managing brokers in the short and medium term?
2. As we examine each of the concepts for the future role of managing brokers, what considerations should we be aware of?
3. What are your thoughts on the impacts, benefits and challenges of each of the concepts?
4. Do you have a preferred concept for the managing broker role, and if so, why?
5. Do you have any other comments or feedback on the discussion paper?

Feedback from all real estate licensees was solicited. Industry organizations were also invited to send feedback on behalf of their organization and membership. In total, OSRE received 97 submissions with feedback from a range of respondents, including 14 industry associations or other groups representing over 20,000 licensees. The BC Real Estate Association and the 11 local real estate boards ran a parallel consultation process and provided a joint submission. In addition, several local real estate boards made supplemental submissions of their own.

After the three-month discussion paper consultation period closed, OSRE prepared a [summary](#) of feedback on the discussion paper. Similar to previous consultation activities on this work, there was little consensus among respondents. The consultation activities provided diverse perspectives on what should be considered developing any measure that moves forward.

With the benefit of the feedback received on the discussion paper and previous consultation activities, additional analysis was undertaken with respect to the measures and the concepts for the future of the managing broker role to develop recommendations for future changes and initiatives. Where appropriate, some feedback has been noted in the attached memoranda.

V. Current Initiatives

The scope of this project was purposely focused on identifying measures that directly connect to the current and future role of managing brokers. This excluded a number of broader issues that may impact the ability of managing brokers to effectively uphold their regulatory duties, such as the education of new licensees. This section aims to outline many of the current initiatives affecting the broader context of this project. The initiatives below provide a strong basis for further measures to strengthen the role of managing brokers and will undoubtedly influence the successful implementation of the recommendations listed in the next section.

Since this project began in 2018, regulatory partners have undertaken several concurrent initiatives that address broader issues which are also relevant to the managing brokers role and responsibilities. The most significant of these initiatives are summarized below.

- In 2017, RECBC initiated an Education Review. A final evaluation report was submitted to RECBC in June 2018 and identified opportunities for further improvements to both pre-licensing and re-licensing education and has guided many of the initiatives described in this section.
- RECBC has undertaken a full review of the content and delivery of the Applied Practice Course. With the support of an Apprenticeship Sub-Working Group, RECBC has developed a potential revised framework for the development and evaluation of competencies and skills targeted by the Applied Practice Course. Implementation activities, however, are pending due to the COVID-19 pandemic.
- The format of the Legal Update course was revised in 2018 to include both an online portion with content testing and an in-class portion. Generally, these changes have been received positively by licensees. Further, RECBC has ended its partnership with BCREA for development and delivery of course content for licensing renewal. RECBC has assumed full responsibility for course development and delivery beginning with the 2020 Legal Update course. The 2020 Legal Update course includes prompts for managing brokers to reflect on various topics throughout the course.
- RECBC passed a bylaw that allows it to require additional courses for licence renewal. For example, in 2018 all trading services and rental property management licensees

were required to complete the “Rule Changes: Agency and Disclosure” that year and in 2020 all licensees have to complete “Anti-Money Laundering in Real Estate.” Also, in 2020, RECBC launched “Ethics for the Real Estate Professional,” the first course in a program of ethics education, building on the recommendations of the Ethical Conduct Working Group, a collaboration between OSRE, RECBC and PLD.

- In Spring 2019, RECBC in collaboration with OSRE launched a project to update the Professional Standards Manual (**PSM**), which provides professional guidance for licensees. The current PSM has been developed over many years and contains information in certain areas that is out of date or inaccurate, due to regulatory developments. Its content is extensive and is not easily searchable or user friendly. This multi-year project aims to streamline and update practice guidelines and related resources for licensees, modelled on RECBC’s Knowledge Base. This project is an important first step in giving managing brokers new and updated tools and resources, consistent with the recommendations provided later in this report.
- RECBC and OSRE are participating in a pan-Canadian project under the auspices of the Real Estate Regulators of Canada to develop a National Competencies Framework for real estate licensees. Work on the framework began in January 2020 and is expected to be completed in April 2021.
- In Summer 2020, OSRE and RECBC formed a joint working group tasked with making policy recommendations to improve the regulation of real estate teams. This work is on-going, with the first phase of the project focused on identifying and examining regulatory issues related to “teams” and making recommendations related to any necessary enhancements to more effectively regulate teams to protect real estate consumers.

VI. Summary of Memoranda with Recommendations

Building on the foundation set by RECBC over many years, including the initiatives undertaken in the last three years, several measures have been identified through the industry feedback, research and analysis to help strengthen the role of managing brokers moving forward. The five recommendations below and supporting measures ensure that the industry is well-positioned for any long-term changes to the role of managing brokers. Each of these areas and recommendations are discussed in further detail in a series of memoranda that are attached as appendices to this report.

A. Education and Qualification Requirements for Managing Brokers

Setting managing broker licensing requirements ensures graduates achieve the minimum level of knowledge and experience required to effectively perform a managing broker’s duties and functions. Qualification requirements need to be set at a level that balances an adequate minimum level of education and experience while not creating a barrier to the licensing of new managing brokers and the continued functioning of the regulatory framework.

The project team identified concerns related to the education and qualification requirements for managing brokers related to whether:

- the Broker's Licensing Course adequately focuses on key skills, knowledge and abilities;
- the minimum experience requirement is adequate to ensure the necessary breadth and depth of experience required by managing brokers; and
- managing broker-specific continuing education requirements are needed.

Finally, although out of scope for this project, the project team identified a general concern about the minimum level of formal educational attainment to be licensed at any level in BC. Additional data is required to inform future policy work in this area.

Recommendation 1: Enhance education and qualification requirements for managing brokers.

Specific measures that should be considered include:

- 1.1 Conducting an information-gathering survey of managing brokers who completed the Brokers' Licensing Course in 2013 or later to identify content gaps, including whether the identified gaps persist.
- 1.2 Gathering information on licensees' educational attainment through a voluntary disclosure, as part of the Application for Representative, Associate or Managing Broker Licence form, to inform future regulatory changes in relation to education and qualification requirements.
- 1.3 Undertaking a review of the Broker's Licensing Course content, to ensure it builds the necessary competencies and reflects regulator expectations.
- 1.4 Considering developing an applied practice component within the Broker's Licensing Course.
- 1.5 Raising the minimum experience requirement to 3 years (from 2 years).
- 1.6 Providing more targeted continuing education for managing brokers, possibly in the form of a mandatory additional module to the Legal Update course.
- 1.7 Monitoring managing brokers' self-reported completion of additional course modules as part of Legal Update 2021 to inform future decisions about whether to require them to complete continuing education requirements for all categories for which they are licensed within a single re-licensing cycle.
- 1.8 Should changes be made to the continuing education requirements for managing brokers, requiring associate brokers to complete the same continuing education requirements as managing brokers.

B. Resources for Managing Brokers

Real estate services licensees operate in an increasingly complex and changing legal context. As a result, some managing brokers may have difficulty in properly guiding their brokerages' related licensees on complying with the real estate regulatory framework in a manner that enables clients in achieving their objectives.

The working group identified a need to strengthen, reframe and enhance the regulator's existing suite of resources for managing brokers with greater emphasis on prevention. Opportunities for potential enhancement include:

- Increased relevance for managing brokers of regulator best practices and other guidance;
- Promoting voluntary audits as an educational opportunity, particularly for new managing brokers;
- Improving access to and dissemination of aggregate results from RECBC audits.

Recommendation 2: Develop enhanced resources for managing brokers to promote compliance.

Specific measures that should be considered include:

- 2.1 Prioritizing the review, update, development and publication of best practices targeted to managing brokers as part of the PSM project. Other areas of guidance to all individual licensees that would impact managing brokers can also be identified for prioritization.
- 2.2 Exploring the development of additional licensee communications about the regulator's existing expectations of managing brokers and related responsibilities (e.g.: due diligence in real estate transactions, managing broker liability for misconduct in circumstances beyond their control).
- 2.3 Developing additional practical tools and resources to assist managing brokers in performing their unique duties (e.g. template or framework for brokerage policy manuals, compliance checklists) and consider leveraging RECBC's office and records inspection program to assist in this work.
- 2.4 Continuing the quality assurance and proactive audit outreach activities of RECBC's audit department to develop a strong foundation to build public-facing audit information and brokerage risk ratings after amalgamation of RECBC, OSRE and BCFSA.

C. Brokerage Licensing and Ownership Requirements

The managing broker working group identified issues and challenges facing managing brokers in the industry, among them challenges related to brokerage business models and ownership structures which may give rise to tensions between a brokerage owners' desire for growth and profitability and a managing broker's regulatory duties. The managing broker working group

identified that brokerage licensing requirements and assessment processes could be re-examined to help address various impacts on licensee and brokerage supervision.

Recommendation 3: Explore more rigorous brokerage licensing and ownership requirements.

Specific measures that should be considered in support of this recommendation include:

- 3.1 Preparing and developing a compliance plan requirement for all brokerages pursuant to a multi-year phased implementation including related brokerage guidance.
- 3.2 Working collaboratively to review current licensing assessment practices with respect to brokerage owner integrity, financial solvency and competence. In addition, conducting a joint brainstorming meeting to identify potential process improvements and discuss whether changes to the regulatory framework are necessary or desirable to support a more rigorous assessment of the suitability of unlicensed brokerage owners and/or directors.
- 3.3 Working with the Ministry of Finance to explore amendments to RESA that allow the regulator to conduct suitability assessments of new brokerage ownership when there is a change of ownership/control within a licence cycle.

D. Data and Information

While the regulator currently collects a range of personal and business information from licensees, the working group identified opportunities to better leverage data and information to improve regulation and consumer protection. Specific areas include:

- Expanding the range of administrative data that is currently collected from licensees;
- Improving ease of access to administrative data through improvements to data systems;
- Gaining access to additional sources of data, such as transaction data currently collected by industry associations; and
- Improving capacity to perform advanced data analytics.

Recommendation 4: Identify ways to enhance regulation through data and information.

Specific measures that should be undertaken to support this recommendation include:

- 4.1 Capitalizing on the Core Regulatory Suite project¹ to strengthen data collection and analytical capacity, as part of the integration of RECBC, OSRE and BCFSA into a single real estate and financial services regulator.
- 4.2 Considering other mechanisms, such as entering into a formal information sharing Memorandum of Understanding with local boards or the Canadian Real Estate Association, to gain access to transaction data.

¹ The CRS project is part of the amalgamation work and its aim is to design a new administrative database that will meet the needs of BCFSA, RECBC and OSRE and the entities that they regulate.

- 4.3 Considering revising the licensing application form to collect additional information (data) as part of a voluntary disclosure, to inform future regulatory changes (e.g. educational attainment, language, workplace equity group membership).
- 4.4 Establishing a working group tasked with developing a corporate strategy for the collection and use of data and information and a plan for implementation activities, including appropriate consideration of privacy impacts.

E. Long-Term Concepts for the Role of Managing Brokers

Managing brokers perform a wide range of duties and hold various accountability under RESA as well other federal and provincial legislation. Multiple organizations, including RECBC and key industry associations, as well as managing brokers and other licensees, cite that changing business practices may be negatively influencing the ability of managing brokers to effectively uphold their regulatory duties, such as:

- A shift toward greater autonomy and independence among representative and associate brokerages in how their employment relationships and business activities are structured;
- A decline in commission-split remuneration models between brokerages and sales staff in favour of fee-for-service approaches; and
- Potential tensions between unlicensed brokerage owners and managing brokers, whose positions may diverge with respect to the priority placed on profitability compared to regulatory compliance.

In addition to the challenges and tensions experienced by managing brokers, consumer and societal values are shifting, with consumer demands (e.g. price and convenience) driving innovation in business models.² The ability of professional regulators to retain public confidence in their consumer protection mandates depends on regulators' and governments' ability to adapt to changing consumer expectations while maintaining adequate consumer protections.

The specific measures outlined below to support recommendation 5 directly relate to the three potential concepts for the future role of managing broker presented in the discussion paper:

- Status quo role within an enhanced regulatory framework
- Compliance officer (limit the scope of the role to strictly compliance-related duties and remove supervisory duties and related liability)
- Single licensing (no managing broker).

Each of these concepts addresses the challenges and tensions in a different way and has different consequences for the role managing brokers. Because both the concepts of compliance officer and single licensing require legislative amendment, implementing either these concepts is beyond the existing authorities of OSRE and RECBC.

² See, for example, Grey Areas newsletter, "A Futurist Looks at Professional Regulation," no. 180 (October 2013): <https://www.sml-law.com/wp-content/uploads/2013/11/Greyar180.pdf>

Recommendation 5: Continue to explore the long-term concepts for the role of managing brokers, as described in the discussion paper.

Specific measures that should be considered in support of this recommendation include:

- 5.1 In the short term, exploring amendments to the Rules and/or administrative processes within RECBC/OSRE's existing authorities to emphasize the managing broker's existing compliance duties. This could include exploring some of the ideas presented in the discussion paper under the concept of status quo within an enhanced regulatory framework.
- 5.2 In the longer term, working with the Ministry of Finance to explore potential amendments to RESA (and/or other related legislation) to support full implementation of the compliance officer concept.
- 5.3 Undertaking a medium-term planning exercise to identify how the potential for disruption of the real estate industry as a result of ongoing changes in technology and business models will impact consumer protection and professional regulation, precipitating the need for further regulatory amendments.

Licensees have also identified several issues that are best addressed by industry associations as they are beyond the role of a professional regulator. A list of these topics has been shared with key industry associations, including BCREA, the Professional Association of Managing Agents (**PAMA**), the Strata Property Agents of BC (**SPABC**) and the Real Estate Brokers Association (**REBA**), for their consideration.

VII. Conclusion

The various engagement activities that have been undertaken through this project have highlighted that licensees and other industry stakeholders hold a broad, and often conflicting, range of opinions regarding the nature of challenges faced by managing brokers and how best to address them. The aim of this project was not to obtain unanimity or unqualified support for one direction but rather to gain diverse industry perspectives on what should be considered by OSRE, RECBC and the Ministry in moving forward with any regulatory enhancements.

It is clear that the challenges facing managing brokers are complex and there are no simple solutions. With the benefit of the feedback received through this project, further analysis will be necessary to develop recommendations into practical proposals for implementation. This work will require the involvement of both the regulator and industry. The regulator will continue to engage with licensees and industry as appropriate as recommendations are considered and implemented.

The recommendations above reinforce the compliance duties currently performed by the managing broker. The regulator will continue to implement the status quo role of managing brokers concept to the extent possible within existing authorities. Further legislative change, however, may be required to more fully resolve the tensions between the broad range of managing broker duties under the Act.

Appendix A: Education and Qualification Requirements for Managing Brokers

Managing Broker Working Group

MEMORANDUM #1

Subject: Education and Qualification Requirements for Managing Brokers

Date: December 3, 2020

BACKGROUND

The Real Estate Council of British Columbia's (**RECBC**) 2019/20-2021/22 Service Plan includes an objective to increase the standard of education and resources provided to real estate licensees, in support of its overarching goal that consumers and licensees have the information and resources they need to participate effectively in real estate transactions.

During this project, RECBC has undertaken several education-related initiatives. In relation to managing brokers, RECBC has included managing broker-specific information and prompts in education materials such as Legal Update course content and updated practice guidelines. RECBC has also provided managing brokers with priority access to continuing education courses, beginning with "Rule Changes: Agency and Disclosure" in Spring 2018.

In addition, RECBC has undertaken a variety of initiatives to strengthen education and qualification requirements for all licensees more generally, including:

- Initiating an Education Review in 2017. A final evaluation report was submitted to RECBC in June 2018, after which RECBC published a white paper that identified opportunities for further improvements to both pre-licensing and re-licensing education and has guided many of the initiatives described in this list.
- Undertaking a full review of the Applied Practice Course (APC) content and delivery. As part of this work, and with the support of an Apprenticeship Sub-Working Group, RECBC has developed a potential revised framework for the development and evaluation of competencies and skills targeted by the Applied Practice Course. Implementation activities, however, are pending due to the COVID-19 pandemic.
- Updating the format of the Legal Update course in 2018 to include both an online portion with content testing and an in-class portion. Generally, these changes have been received positively by licensees. Further, RECBC has taken back full development and delivery of Legal Update course content, beginning with the 2020 Legal Update course.
- Launching several additional mandatory courses, including "Rule Changes: Agency and Disclosure" in 2018 and "Anti-Money Laundering in Real Estate" in 2020.

- Launching a program of ethics education, building on the recommendations of the Ethical Conduct Working Group. The first course in the program, “Ethics for the Real Estate Professional,” was launched in 2020.
- Launching a project to update the Professional Standards Manual (**PSM**) in Spring 2019. The current PSM has been developed over many years and contains information in certain areas that is out of date or inaccurate, due to regulatory developments. Its content is extensive and is not easily searchable or user friendly. This multi-year project aims to streamline and update practice guidelines and related resources for licensees, modelled on RECBC’s Knowledge Base. This project is an important first step in giving managing brokers new and updated tools and resources, consistent with the recommendations provided later in this memorandum.
- Participating in a pan-Canadian project under the auspices of the Real Estate Regulators of Canada to develop a National Competencies Framework for real estate licensees. Work on the framework began in January 2020 and is expected to be completed in April 2021.

These initiatives will help strengthen education and qualification requirements for managing brokers and align with the recommendations made in this memorandum.

CURRENT EDUCATION AND QUALIFICATION REQUIREMENTS FOR MANAGING BROKERS

All real estate licensees must meet the requirements related to good reputation; age, education and experience; and prior professional licensing, discipline and criminal record considerations. All licensees must also meet an English language proficiency requirement at the time of initial licensing.

To be licensed as a managing broker, individuals are required to have been licensed under RESA to provide real estate services for at least two of the last five years and to have successfully completed the Broker’s Business Planning and Financial Management Licensing Course (**Broker’s Licensing Course**) and Examination. The same education and qualification requirements apply to associate brokers. For the purpose of this memorandum, it should be assumed that any recommendations related to managing broker education and qualification standards also apply to associate broker education and qualification standards.

In limited circumstances, individuals with specified education and qualifications may be eligible to apply for an exemption to these requirements. RECBC also recognizes equivalent experience from other jurisdictions to enable labour mobility within Canada and internationally.

In order to remain licensed, all individual licensees must fulfill RECBC’s Continuing Education Program requirements to complete at least one Legal Update Course and any additional mandatory courses required by RECBC (e.g. the current “Ethics for Real Estate Professionals” and “Anti-Money Laundering in Real Estate” courses) within the two-year re-licensing period.

Setting managing broker licensing requirements ensures graduates achieve the minimum level of knowledge and experience required to effectively perform a managing broker’s duties and functions. Qualification requirements need to be set at a level that balances an adequate minimum level of education and experience while not creating a barrier to the licensing of new managing brokers and the continued functioning of the regulatory framework. While

comprehensive statistics are not currently available on what level of education managing brokers have attained outside the regulatory framework (e.g. whether they have a high school diploma, college certificate or university degree), reported information suggests that many managing brokers exceed the minimum education and experience requirements.

ISSUES IDENTIFIED

The issues identified below include feedback from managing brokers with respect to education and qualification requirements, complemented by the working group's analysis.

Broker's Licensing Course

Managing brokers reported that the Broker's Licensing Course may not have adequate focus on key skills, knowledge and abilities. Identified gaps include content related to effectively discharging the rights and responsibilities of the brokerage generally as well as content related to teaching, mentoring and guiding the brokerage's related licensees, and opportunities for practical application of course content. It should be noted that the feedback may reflect the views of managing brokers who completed their training prior to 2012, when the course was last updated.

Minimum experience requirements

Considering the managing broker's central role in brokerage operations and oversight of the business activities and conduct of its related licensees, it is imperative that managing brokers acquire the necessary competencies and knowledge to effectively perform their duties. The requirement for a minimum level of two years' prior licensing experience history is intended to be a proxy for the level of knowledge and experience required to effectively perform the managing broker's duties and functions. At the same time, it is recognized that within any time period, individual licensees will obtain varying levels of direct experience providing real estate services based on a variety of factors (e.g. urban/rural, region, licensing category). However, the current two-year minimum experience requirement may not ensure the necessary breadth and depth of experience required by managing brokers, including knowledge of niche markets in which some related licensees may specialize. Raising the minimum experience requirement, despite its limitations, may help address these qualification gaps.

Continuing education for managing brokers

Feedback received through licensee engagement activities undertaken as part of this project has identified that the lack of managing broker-specific re-licensing education may contribute to gaps in knowledge of the regulatory framework and/or inadequate business processes at brokerages. For example, managing brokers identified that they would benefit from different information and resources than representatives and associate brokers, in order to support them in effectively discharging their unique regulatory duties and responsibilities. The PSM update project (described above) is actively considering managing brokers' needs for tailored content and resources, including managing broker-specific practice guidelines.

In addition, members of the working group identified that managing brokers are required to complete only one Legal Update course within the re-licensing cycle. There is potential for managing brokers who are licensed for multiple categories of real estate services to repeatedly take the relicensing course for a single category, allowing their knowledge of other categories to become dated over time. Changes are planned as part of the development of Legal Update

2021 to allow licensees, including managing brokers, to complete additional course modules covering multiple licence categories.³

Other issues related to education and qualification requirements for licensees

There is general concern among many industry participants about a perceived shortage of managing brokers. Currently, there are approximately 1,350 individuals licensed as managing brokers by RECBC. Across the industry, the ratio of managing brokers to other licensees is roughly 1:18. However, the actual distribution of licensees can vary widely among brokerages, by region and by category of real estate services. Many existing managing brokers are nearing retirement age and a limited number of other licensees are willing to step in to perform the managing broker's role if called on to do so. Any changes to education and qualification requirements for managing brokers should include consideration of impacts on the ability of prospective managing brokers to become licensed.

In recent years, real estate practice has become increasingly complex, with licensees required to stay abreast of a broad range of legislative requirements and developments under RESA and other statutes (e.g. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, *Homeowner Protection Act*, *Land Owner Transparency Act*, local government zoning bylaws). While out of scope for this project, the working group noted that there is no minimum level of formal educational attainment for licensees in BC (nor in other Canadian provinces). While it is likely many licensees (possibly the majority) have completed high school or achieved some level of post-secondary credential, exact figures are not known as RECBC does not currently gather data on licensee educational attainment.

RECBC has a long-standing English language proficiency requirement. The current proficiency requirement, which has been in force since September 2017, partially mitigates concerns about whether education requirements for licensees are commensurate with the duties which they are called on to perform. At present, licensees must either achieve Level 7 on the CELPIP – General test or possess a bachelor's degree from an institution at which English is the primary language of instruction. However, this requirement only applies to individuals who applied for a new licence on or after September 1, 2017; many licensees became licensed prior to this date and therefore do not meet this requirement. (Prior to 2017, RECBC policy established that applicants could satisfy the language proficiency requirement in several ways, including graduation from an English language high school or a post-secondary institution at which English was the primary language of instruction, among others.)

INDUSTRY FEEDBACK

Broker's Licensing Course

Many respondents elaborated that the education for managing brokers could be improved through revisions to the Broker's Business Planning and Financial Management Licensing Course, including better consideration of rental property management and strata management licensees and increased applied learning opportunities.

Managing brokers identified gaps in the content of the brokers licensing course in two main areas:

³ Limitations within RECBC's current learning system prevent at-source tracking of individual modules.

- First, gaps related to content that would strengthen the managing broker's ability to effectively discharge the rights and responsibilities of the brokerage under the regulatory framework, such as professional ethics, RESA requirements, and modern accounting methods.
- Second, gaps related to content that would equip the managing broker's responsibilities in relation to supervising the brokerage's related licensees, such as greater emphasis on leadership and management skills as well as teaching/coaching/mentoring skills. These latter skills also apply to the managing broker's role in training licensees, including through the Applied Practice Course.

The Broker's Licensing Course was last updated in 2012, with a refined focus on business planning, financial management, human resources management and leadership. It is unclear whether the views captured through industry consultations reflected the experience of individuals who had completed the updated course.

It should be noted that RECBC is currently undertaking a variety of initiatives related to licensee education, as outlined above (see Background). Any modifications to the Broker's Licensing Course need to be considered and prioritized within this broader context.

Minimum experience requirement

There was strong agreement at regional roundtables that the current two-year experience requirement for managing brokers is too low. For example, within a two-year period, licensees will have achieved different levels of direct experience in real estate transactions, with some having the opportunity to be involved in many transactions dealing with a variety of property types (e.g. residential, commercial, agricultural, recreational) while others may have much more limited experience, having participated in only a handful of transactions.

Despite general enthusiasm for raising qualification standards of managing brokers, respondents frequently recognize the difficulty of attracting new managing brokers. Many managing brokers are close to retirement age and there is a perception among licensees that not enough prospective managing brokers are preparing to step into the role. Respondents expressed caution about the potential that higher education and qualification standards could create a barrier for prospective managing brokers (particularly for strata management services), exacerbating this shortage.

Continuing education for managing brokers

Many respondents were in favour of changes to continuing education for managing brokers generally. A handful of respondents recommended that instead of creating "more" education for managing brokers, courses required by the regulator could be improved by having a greater emphasis on practical application. In addition, many respondents expressed concerns about the cost and time required to participate in additional continuing education.

A few respondents recommended that continuing education not just be targeted to managing brokers, but also to managing brokers of specific licence categories (i.e. trading services, rental property management services and strata management services).

Other issues related to education and qualification requirements for licensees

Although out of scope, many respondents commented on entry-to-practice education and qualification requirements.

Respondents to the September 2018 survey undertaken at the outset of the project indicated that the education and licensing requirements need to be re-examined for all licensees (e.g. representatives and managing brokers). Similarly, there was consensus at all roundtables that pre-licensing education requirements for representatives and managing brokers in all licence categories need strengthening.

By contrast, RECBC's 2018/19 Annual Service Plan Report indicates that 87% of managing brokers agree that RECBC education prepares licensees for competent and professional practice.

The lack of unanimity in feedback presents challenges in understanding the industry's broader perspective on these and other issues.

RECOMMENDATIONS

To address the issues identified by the project team, as set out above, it is recommended to enhance education and qualification requirements for managing brokers. Specific measures that should be undertaken in support of this recommendation include:

- 1.1 Conducting an information-gathering survey of managing brokers who completed the Brokers' Licensing Course in 2013 or later to identify content gaps, including whether the identified gaps persist.
- 1.2 Gathering information on licensees' educational attainment through a voluntary disclosure, as part of the Application for Representative, Associate or Managing Broker Licence form, to inform future regulatory changes in relation to education and qualification requirements.
- 1.3 Undertaking a review of the Broker's Licensing Course content, to ensure it builds the necessary competencies and reflects regulator expectations.
- 1.4 Considering developing an applied practice component within the Broker's Licensing Course.
- 1.5 Raising the minimum experience requirement to 3 years (from 2 years).
- 1.6 Providing more targeted continuing education for managing brokers, possibly in the form of a mandatory additional module to the Legal Update course.
- 1.7 Monitoring managing brokers' self-reported completion of additional course modules as part of Legal Update 2021 to inform future decisions about whether to require them to complete continuing education requirements for all categories for which they are licensed within a single re-licensing cycle.

- 1.8 Should changes be made to the continuing education requirements for managing brokers, requiring associate brokers to complete the same continuing education requirements as managing brokers.

Appendix B: Resources for Managing Brokers

Managing Broker Working Group

MEMORANDUM #2

Subject: Resources for Managing Brokers

Date: December 3, 2020

BACKGROUND

Managing brokers occupy a crucial role within the real estate regulatory framework established under the *Real Estate Services Act (RESA)*. As detailed in the discussion paper released in the fall of 2019,⁴ managing brokers wear many hats and this can contribute to uncertainty for many managing brokers about how to ensure brokerage compliance with regulatory requirements. Feedback received throughout this project identified that some managing brokers have difficulty guiding related licensees in complying with the real estate regulatory framework in a manner that enables clients to achieve their objectives.

Through the project's engagement activities, licensees of all levels and categories indicated strong and universal support for targeted resources for managing brokers to help prevent compliance issues. Developing additional resources for managing brokers will help to address the uncertainties and difficulties in guiding related licensees and complement recommendations made in the memorandum on education and qualification requirements for licensing as a managing broker.

CURRENT PREVENTION INITIATIVES FOR MANAGING BROKERS

The Real Estate Council of British Columbia (**RECBC**) currently provides licensees with multiple resources to aid in understanding and complying with the regulatory framework. Resources that are specifically targeted to managing brokers include:

- The Brokerage Standards Manual (**BSM**) – online resource developed to assist managing brokers in discharging their duties under RESA
- Office and Records Inspections – RECBC conducts an audit of every new brokerage within the first 12 months of operation. RECBC also conducts brokerage inspections as a result of new or reinstated managing brokers. These audits and inspections generally focus on educating managing brokers on meeting the brokerage's obligations.⁵
- Report from Council newsletter articles highlighting various aspects related to properly discharging the obligations of a managing broker

⁴ The *Report on the Review of the Role of Managing Brokers in BC's Real Estate Regulatory Framework*.

⁵ RECBC also performs inspections at other times, such as when there are deficiencies identified in a previous inspection, exceptions on an Accountant's Report or on a periodic basis of approximately 6 years.

During RECBC office and records inspections, among other things, auditors typically look to ensure:

- the brokerage has a managing broker in active charge of the business (RESA s. 6);
- the brokerage maintains proper books and records (Part 8 of the Real Estate Rules (**Rules**)); and
- the brokerage maintains compliance with Rules related to the brokerage place of business, signage, and display of licences (Rules ss. 2-5, 4-1, and 4-2).

In addition to resources targeted to managing brokers, RECBC has information to assist and prevent non-compliance that is available to all licensees, through the publication of discipline committee orders, the Professional Standards Manual (**PSM**) and Professional Standards Advisors (**PSAs**). The material in the PSM helps individual licensees of all levels to better understand their professional obligations and manage challenges that arise in practice. PSAs provide information and answer questions about the standards of conduct required by all licensees under RESA, its regulations and the Rules.

Although beyond the scope of this project, the working group received feedback through the engagement activities that there was a gap in consumer information and resources about licensee duties under RESA, its regulations and the Rules.

Recent prevention initiatives

In January 2019, RECBC and the Office of the Superintendent (**OSRE**) started a comprehensive review and revision of the PSM. As part of this work, the PSM project team will integrate the BSM with the PSM to increase accessibility for licensees, regardless of their licence level, particularly as managing broker content is being added to the PSM. Work on the PSM project has been conducted parallel to the review of the role of managing brokers. The PSM project is now in phase 3, *Content Development*. The PSM project is actively considering managing brokers' needs for tailored content and resources, including managing broker-specific practice guidelines.

In April 2020, RECBC organized two one-hour webinars for managing brokers related to strata management and trading services and the impacts of COVID-19. These webinars provided an opportunity for managing brokers to ask questions as well as share ideas and best practices in adjusting their businesses and providing real estate services during a public health emergency. The hosts of the webinars included representatives from relevant industry associations (including former or current managing brokers) and RECBC PSAs. Managing brokers previously requested a forum for the sharing of best practices and the recent public health emergency provided a unique opportunity for RECBC to explore facilitating such a space for managing brokers. Given the positive feedback received by RECBC from participants, RECBC is considering how best to continue to provide interactive webinar content without competing with recent industry initiatives offering webinars targeted to managing brokers.

In April 2020, the British Columbia Real Estate Association launched a “virtual community for managing brokers” that provides managing brokers with an opportunity to connect and share best practices.

OPPORTUNITIES TO ENHANCE RESOURCES FOR MANAGING BROKERS

Best practices and other guidance for managing brokers

Developing and updating practice guidance specifically targeting managing brokers was presented as one potential measure in the discussion paper released in Fall 2019. Feedback was almost universally consistent in wanting more resources and guidance developed by the regulator. Respondents noted that brokerage owners and licensees of all levels want a clear understanding of the standards established by the regulatory framework.

Based largely on industry feedback, the working group noted that the development and publication of best practice guidance and related resources specifically targeted to managing brokers has the potential to help brokerages better address multiple issues. Sample topics that can be covered in updated or new practice guidance include:

- clarifying expectations for a managing broker's due diligence, supervision and oversight (e.g. in what situations would "reasonable steps" to address knowledge of improper conduct include reporting allegations to RECBC for investigation),
- engagement contracts, including brokerage remuneration to individual licensees,
- expanded and updated practice advice on how to properly delegate managing broker duties (things to consider and form of delegation),
- appropriate and lawful role of brokerage owners,
- managing broker supervisory best practices in relation to teams (and establishing relevant brokerage policies), and
- potential conflicts of interest created by a managing broker providing trading services directly to clients.

In addition to updating and developing additional best practices for managing brokers, it may be possible to further assist brokerages and managing brokers to meet compliance expectations by producing additional checklists and templates (e.g. template or framework for brokerage policy manuals, compliance checklists).

Care will need to be taken to develop best practices and resources that are relevant to different licence categories and brokerage business models as well as to not overstep the appropriate role of the regulator and provide "legal advice" or business management advice.

OSRE and RECBC can capitalize on the PSM project by developing and updating practice guidance that targets managing brokers. While continuing the progress towards principles-based practice advice, there is the opportunity to provide more detailed, more specific, practical information on select important regulatory matters, such as guidance on circumstance where the only reasonable step is to report potential professional misconduct to the regulator (see s. 3-1(2) of the Rules). The creation of guidance in key areas with high potential impact to managing brokers can be prioritized as part of the ongoing PSM work.

OSRE and RECBC can also capitalize on RECBC's office and records inspection program to collect samples of existing brokerage policy manuals and compliance checklists. Examining existing compliance resources can help the regulator to potentially identify gaps in understanding, opportunities for best practices and to develop templates and compliance checklists for managing broker consideration. The development of checklists and templates

should be approached with caution as they cannot reasonably cover all risks and situations; if developed, such resources should encourage managing brokers to continue to think critically about their unique circumstances

Voluntary educational brokerage audits

Offering brokerages the opportunity to request an educational audit from RECBC, regardless of the age of the brokerage or the experience of the managing broker, was another option referenced in the discussion paper that received managing brokers' support. This licensee-initiated office and records inspection is a step beyond RECBC's current approach to brokerage audits for new brokerages. Offering educational audits by request represents a prevention initiative that leverages the existing educational benefits of periodic audits. This option can help brokerages better address multiple issues created by business models. Managing brokers are likely to be receptive to the availability of one-on-one advice from the regulator and advice that is to their unique brokerage. Such audits would be performed only on request.

Implementing this option requires significant regulator resources to ensure that timely responses to requests for educational audits do not negatively impact periodic audits as well as audits in response to consumer protection concerns. Consideration can also be given to offset regulator expenses, paid for by the licensing fees of all licensees, by requiring the requesting brokerage pay some or all costs associated with the educational audit.

Over the long-term, the demand for audits in response to consumer protection concerns may decrease, in part due to the preventative impact of educational audits. However, in the short- to medium-term, offering greater access to brokerage auditing will have an impact on resources. As noted above, it would require significant resources to ensure that providing timely responses to requests for educational audits does not negatively impact periodic audits as well as audits in response to consumer protection concerns. Consideration can be given to limits on requesting an educational audit (e.g. once every 5 years unless the brokerage has undergone one or more specific change, such as a change in managing broker, increase in the real estate services provided, number of licensees and/or branch offices).

Aggregate audit results

Another resource that would assist managing brokers would be the publication of the aggregate results of all RECBC audits. Among other data points, the results can highlight common brokerage errors and issues. Sharing this information would allow managing brokers to learn from the mistakes of others. It may also help to address the uncertainty created by the move to principles-based practice advice through practical information and real-life examples.

Proactively providing information about common audit issues can help managing brokers to strengthen brokerage compliance and improve brokerage policies and procedures in key areas. As noted above, RECBC is working on a public-facing audits dashboard and the publication of audit-results could dovetail with this work.

The working group did not directly seek industry feedback on the sharing of aggregate audit data. However, through various open-ended consultation opportunities numerous licensees reported the educational benefits of learning from the mistakes of others through reading discipline decisions. Additionally, some managing brokers who consider that their brokerage performs well would like public recognition from the regulator of their compliance.

At the regional roundtables, managing brokers were also supportive of proactive enforcement mechanisms, such as expanding the number and scope of brokerage audits. Some of the suggested potential expansions include a review of how a brokerage management team, operations and owner values contribute to regulatory compliance, as well as brokerage training activities.

As part of its publication of [licensing and enforcement statistics](#) on its website, RECBC publishes the number of brokerage audits conducted by quarter. RECBC has plans to enhance this information through the creation of a public-facing audit dashboard.⁶ The audits dashboard would include various data points (e.g. number of audits, common issues, and specific brokerage risk rating). RECBC's development plans of expanding the public facing audits information are on hold pending amalgamation with the BC Financial Services Authority (BCFSA).

As noted in the memorandum on enhancing regulation through data and information, to prepare for amalgamation, BCFSA, OSRE and RECBC are collaborating on a Core Regulatory Suite (CRS) project to design a new administrative database that will meet the needs of the new BCFSA and the entities it regulates. The amalgamated regulator will be able to capitalize on the CRS project to share a broader range of audit results with little additional resource expenditures.

After amalgamation, it is anticipated that preliminary data and statistics will be gathered into a shared system that can automate brokerage risk ratings as well as increase collaboration between BCFSA's regulated industries, enhancing the accuracy and usability of risk ratings.

RECOMMENDATIONS

To address the issues identified by the project team, as set out above, it is recommended to develop enhanced resources for managing brokers to promote regulatory compliance. Specific measures that should be considered include:

- 2.1 Prioritizing the review, update, development and publication of best practices targeted to managing brokers as part of the PSM project. Other areas of guidance to all individual licensees that would impact managing brokers can also be identified for prioritization.
- 2.2 Exploring the development of additional licensee communications about the regulator's existing expectations of managing brokers and related responsibilities (e.g.: due diligence, managing broker liability for misconduct in circumstances beyond their control).
- 2.3 Developing additional practical tools and resources to assist managing brokers in performing their unique duties (e.g. template or framework for brokerage policy manuals, compliance checklists) and consider leveraging RECBC's office and records inspection program to assist in this work.

⁶ RECBC has already created an internal audits dashboard and brokerage risk ratings based on a number of elements (e.g. volume of clients, number of services provided, experience of managing broker, history of brokerage and annual average of trust monies held).

- 2.4 Continuing the quality assurance and proactive audit outreach activities of RECBC's audit department to develop a strong foundation to build public-facing audit information and brokerage risk ratings after amalgamation of RECBC, OSRE and BCFSA.

Appendix C: Brokerage Licensing and Ownership Requirements

Managing Broker Working Group

MEMORANDUM #3

Subject: Brokerage Licensing and Ownership Requirements

Date: December 3, 2020

BACKGROUND

Among the issues identified by the working group is a set of challenges that relate to brokerage business models and ownership structures. This includes the potential for tensions to arise between a brokerage owners' desire for growth and profitability and a managing broker's regulatory duties. A similar concern was identified by the Independent Advisory Group Report on Real Estate Regulation in BC's (IAG) 2016 report. The IAG noted

The ownership of a brokerage influences the culture and conduct of managing brokers and licensees, and accordingly, ownership should be subject to a suitability assessment and approval by the Real Estate Council.

The regulatory framework currently has no requirement for brokerages to submit information to the regulator on the anticipated day-to-day management of the business, brokerage policies and procedures, or number of unlicensed staff. In short, a brokerage's business model is currently not subject to regulatory scrutiny and may contribute to an increase risk of non-compliance by related licensees. Brokerage licensing requirements and assessment processes could be re-examined to help address various impacts on licensee and brokerage supervision.

CURRENT BROKERAGE LICENSING AND REPORTING REQUIREMENTS

In broad terms, when considering whether to approve a brokerage licensing application (or ownership change application) the regulator must evaluate whether the applicant appears to be fit and proper for licensing and whether the applicant's licensing is in the public interest or objectionable.

The Real Estate Council of BC's (RECBC) brokerage licence application requires key information such as the names of each proposed managing broker, evidence of a business licence, information about the reputation and suitability of the applicant (e.g. prior professional discipline proceedings, criminal convictions, bankruptcy proceedings, etc. involving the

brokerage's proprietor, partners, directors and officers), and a financial statement and balance sheet (e.g. estimated operating and capital expenditures for the first three months).⁷

To become licensed, or to renew a licence, section 10 of RESA requires an applicant be of good reputation and be suitable to be licensed. These licence requirements apply to brokerage licence applications and renewals.⁸ In the case of a partnership or corporation that is applying to be licensed as a brokerage, the applicant's partners, directors and officers must be of good reputation. This requirement does not extend to shareholders of a brokerage who are not directors or officers.

In a November 2017 memo to Council⁹, RECBC staff unsuccessfully recommended that the Council consider expanding its examination of the financial circumstances of brokerage licence applicants in the bylaws (e.g. to require the source of the applicant's funding, a projected income statement for the first year, line of credit information, etc.). At a meeting in January 2018, the Council directed RECBC staff to explore the need for changes to bylaws, Rules, RESA and/or guidance material. Later that year, RECBC's work was put on hold pending the recommendations of the managing broker working group.

Every brokerage is required to annually file with RECBC:

- financial statements,
- an accountant's report or, in some specific cases, a statutory declaration when the brokerage does not hold or receive any public trust funds, and
- a brokerage activity report.

The brokerage activity report provides information respecting the type of business carried out by the brokerage, the approximate number of trades in real estate and/or number of units managed, and the average monthly trust balance relating to trades in real estate, the average monthly total of rents and the average monthly total of strata fees received or held on behalf of landlord or strata corporations.

Under the current regulatory framework, the details to be included in an accountant's report and a brokerage activity report are described in RECBC bylaws.

With the amalgamation of the Office of the Superintendent of Real Estate (**OSRE**) and RECBC into the BC Financial Services Authority (**BCFSA**) there will no longer be RECBC bylaws. As a result, the amalgamation represents an opportunity to examine changes to brokerage licensing and reporting requirements currently contained in bylaws as requirements transition to RESA, Rules and BCFSA policies.

ISSUES IDENTIFIED

The working group heard from multiple sources, including RECBC, that changing business models and practices may be negatively influencing the ability of managing brokers to effectively uphold their regulatory duties. Some of these changes include:

⁷ Pursuant to s. 9(1)(b) and (d) of RESA, RECBC bylaws describe the details required for licence applications and other information and documentation to supplement an application.

⁸ Section 10(e) also requires an applicant to meet qualification requirements established by the rules.

⁹ "Fit and proper" standard for brokerage ownership, November 23, 2017.

- a shift toward structuring representatives' relationships with brokerages as self-employed contractors,
- a decline in commission-split remuneration models between brokerages and sales staff in favour of fee-for-service approaches,
- the mobility of licensees to work at a competing brokerage under more favourable terms,
- limited functional authority of managing brokers where brokerage owners make decisions regarding business model, staff and other resources,
- brokerages require a high volume of licensees to support a profitable business model, and
- potential tensions between managing broker duties under the regulatory framework and the profit-based motivations of (unlicensed) brokerage owners and related licensees.

These changing business models and practices are particularly felt in trading services, representing over 90% of licensees.

Additional industry reputational and consumer risks have been identified regarding the suitability of brokerage owners through cases involving unlicensed brokerage owners that have either not appreciated the restrictions on various brokerage bank accounts or had creditors disrupt brokerage operations through court receivership and/or collection proceedings.

OPPORTUNITIES TO ADDRESS ISSUES RELATED TO BUSINESS MODELS

The managing broker working group identified two potential brokerage licensing solutions to help address multiple issues related to business models, including the tension between a managing broker's regulatory duties and the brokerage's drive for profit maximization:

1. Requiring brokerages to submit a compliance plan to the regulator; and
2. Enhanced rigour around brokerage ownership suitability assessments.

1. Requiring brokerages to submit a compliance plan to the regulator

The working group is recommending that a new rule be established that requires brokerages to submit a satisfactory brokerage compliance plan to the regulator. Through a compliance plan, brokerages would be required to demonstrate to the regulator that they have adequate controls, processes, systems and management structures in place to provide effective supervision of licensed and unlicensed staff and explain how the brokerage business model and structure fosters an atmosphere of compliance. The content and details provided by each brokerage could vary depending on their business model and the controls intended to be employed. The requirement would provide an opportunity for brokerages (and managing brokers) to actively and deliberately think through their business model, operations, and any expansion plans, and how those things impact compliance with the regulatory framework. The compliance plans would also provide the regulator with a wealth of information that could be used to inform further regulator action. Additionally, data provided by compliance plans may help the regulator to proactively identify appropriate circumstances to impose conditions or restrictions on a specific brokerage licence to limit the number of individual licensees.

Industry respondents expressed a preference for a regulator-imposed maximum number of representatives and associate brokers under one managing broker, rather than creating a compliance plan requirement. However, based on a review of RECBC complaints data,

imposing a maximum number of licensees under one managing broker would not in and of itself address existing risks and there does not appear to be any demonstrative consumer protection benefit to such a stand-alone restriction. In addition, the compliance plan approach is more flexible compared to a prescriptive approach of regulating business models, and thus better aligns with the principles of modern regulation.

Models for similar requirements already exist in other sectors, including the triennial assessment plans required of pension plans under the *Pension Benefits Standards Act* or the business plan requirements of the Motor Vehicle Sales Authority of BC. Lessons learned from OSRE's existing process of reviewing developer Consumer Disclosure Statements under the *Real Estate Development Marketing Act* can assist in the development and implementation of a new process under RESA.

Implementing a brokerage compliance plan requirement would involve more resources by the regulator to take a proactive role in the scrutiny and regulation of both compliance plans and brokerage activities. Brokerage audits could be expanded to help monitor how various elements of a brokerage compliance plan have been implemented and are functioning. Instances of incompetence and professional misconduct may be reduced by brokerages (and brokerage licence applicants) being required to proactively consider the issues of managing a business that promotes compliance.

If this measure is developed, industry respondents generally suggested:

- a phased, multi-year implementation to ease the development burden on brokerages, particularly on small brokerages. The phased-implementation approach could start by requiring new brokerages to submit a plan in order to be licensed, requesting existing brokerages to volunteer to submit a plan and requiring compliance plans to be developed by brokerages exhibiting poor performance through audits or discipline;
- education, resources and guidance be developed by the regulator to assist brokerages to develop such plans as most brokerages lack the necessary expertise;
- increased brokerage liability for non-compliance may be acceptable to industry if the brokerage's failure to adhere to its compliance plan contributed to a related licensee committing professional misconduct.

A phased implementation can begin prior to a change in the Rules in the form of a condition being imposed on a brokerage's licence through either RECBC licensing processes or discipline orders. A phased multi-year implementation has multiple benefits:

- avoids overloading the regulator with submissions
- enables the regulator to develop, refine and identify gaps in guidance
- develops adequate systems to track data received and to identify consumer protection risks
- identifies early stakeholders and calls for volunteers to create the first compliance plans

An additional consideration for implementation would be the extent of industry resistance to the requirement to invest in developing compliance plans if it is extended to all existing brokerages,

including those without audit or discipline issues. This can be both assessed and mitigated through consultation activities during development.

Typically, rule development requires significant lead time including the preparation of licensee guidance and an implementation plan. Rule development can include an opportunity for early stakeholder engagement to inform the specifics of any new requirements and implementation, as well as to identify strategies to improve licensee comprehension and receptivity.

In the development of such a requirement, consideration can be given to who specifically in a brokerage's ownership or management structure is required to file the compliance plan in order to best achieve the desired results (e.g. requirement may be for owners and directors to file a plan that has been agreed to by all related managing brokers).

Given the amalgamation, rule development can also consider engagement with counterparts involved in the regulation of mortgage brokers at BCFSA to discuss whether there are opportunities for consistency of approach across BCFSA's future licensing schemes (e.g. the regulation of mortgage brokerages and real estate brokerages).

2. Enhanced rigour around brokerage ownership suitability assessments

During licensee engagement activities, managing brokers shared that they may experience challenges related to the conduct and values of brokerage owners (director, officer, shareholder, partner and sole proprietor), which may influence the level of regulatory compliance in the brokerage. Respondents suggested more rigorously examining brokerage owners, including imposing additional restrictions or requirements such as a minimum amount of regulatory or business education.

The brokerage licensing process (for all kinds of licence applications, e.g. new, renewal, reinstatement), allows for a proactive focus on having ownership be subject to a suitability assessment and approval by RECBC rather than a reactive discipline approach using ss. 7.1 and 35(3) of RESA.¹⁰ A rigorous assessment of the suitability of brokerage owners can be assisted by the implementation of brokerage compliance plans, as discussed above.

It may be possible to increase the level of suitability assessments performed on new brokerage applications and renewals, but there does not appear to be any means to respond to a change of brokerage ownership/control during a licence cycle.

The working group received suggestions for additional requirements for brokerage owners including a "fit and proper" standard for brokerage ownership, minimum experience or educational attainment for unlicensed brokerage owners, and restricting the involvement of unlicensed brokerage owners in supervision and business activities. RESA already has restrictions respecting unlicensed brokers owners from conducting training and supervision (section 7.1).

¹⁰ Sections 7.1 and 35(3) of RESA provide RECBC with broad authority to take disciplinary action against brokerages for the actions of owners, regardless of whether the owners are licensed.

Feedback on the diverse nature of potential ownership structures highlights the need for any approach to be flexible and responsive (e.g. managing brokers have noted that some brokerages have publicly traded shares, making rigorous assessments on share owners impractical and perhaps unwarranted depending on who controls the day-to-day operations of the brokerage). An example of a BC regulator that examines the suitability of ownership is the College of Pharmacists of BC. In April 2018, new requirements under the *Pharmacy Operations and Drug Scheduling Act (PODSA)* came into force which allowed the College to know the identity of all pharmacy owners, determine their suitability for pharmacy ownership and to hold them accountable for providing safe and effective care by ensuring that their pharmacies are compliant with BC's legislative requirements. These amendments were directly targeting concerns about the potential for unscrupulous pharmacy owners who were not pharmacists and therefore not regulated by the College. The amendments to PODSA also clarified that the ownership of a pharmacy must be direct (e.g. a pharmacist, a corporation whose majority of officers and directors are pharmacists, etc.) and that indirect owners (e.g. officers and directors of a publicly traded corporation), must provide criminal record histories with their licensing application. The regulation of pharmacies and real estate brokerages is not analogous. Some key differences include education requirements, the potential for misuse of access to narcotics and other pharmaceuticals by pharmacy owners, pharmacists and other employees, and the nature of potential harm to consumers (health consequences compared to financial consequences).

This measure can be further explored in the short-term (< 2 years) with potential implementation in the short- to medium-term depending on competing priorities. Initial stages of considering this option require OSRE staff to gain a better understanding of RECBC's current processes, including the information on brokerage owners/directors requested during audit and how changes to brokerage ownership are proactively identified by the regulator.

If a more rigorous assessment of the suitability of brokerage owners moves forward, there may be a need to ensure that the suitability is not only assessed at initial brokerage licensing, but also at licence renewal and if there are mid-term changes. Under PODSA, pharmacy owners and managers are required to give written notice to the registrar of certain changes in ownership or management, including if an owner of the pharmacy changes, if a direct owner ceases to be eligible to hold a pharmacy licence, and if a manager ceases to manage the pharmacy. The regulations prescribe that the registrar must be given notice either 7 days or 30 days before the change occurs.

Further consideration would be required to determine what an appropriate regulator response would be if there is a concern about the suitability of a director/owner of a brokerage at renewal (e.g. conditions on a temporary brokerage licence or revocation of licence) that would balance the livelihoods of related licensees, risk to existing brokerage clients and risk to the public. Changes to RESA may be necessary to require brokerages to notify the regulator of mid-term changes to ownership and to enable the regulator to take appropriate action to protect consumers when suitability concerns arise.

RECOMMENDATIONS

Based on the analysis above, the working group recommends that the regulator explore more rigorous brokerage licensing and ownership requirements. Specific measures that should be considered in support of this recommendation include:

- 3.1 Preparing and developing a compliance plan requirement for all brokerages pursuant to a multi-year phased implementation including related brokerage guidance.
- 3.2 Working collaboratively to review current licensing assessment practices with respect to brokerage owner integrity, financial solvency and competence. In addition, conducting a joint brainstorming meeting to identify potential process improvements and discuss whether changes to the regulatory framework are necessary or desirable to support a more rigorous assessment of the suitability of unlicensed brokerage owners and/or directors.
- 3.3 Working with the Ministry of Finance to explore potential amendments to RESA to allow the regulator to conduct suitability assessments of new brokerage ownership when there is a change of ownership/control within a licence cycle.

Appendix D: Data and Information

Managing Broker Working Group

MEMORANDUM #4

Subject: Data and Information

Date: December 3, 2020

BACKGROUND

In November 2019, the Minister of Finance announced the decision to amalgamate the Real Estate Council of BC (**RECBC**), the Office of the Superintendent (**OSRE**), and the BC Financial Services Authority (**BCFSA**) into a single real estate and financial services regulator. Legislation is expected to be introduced in early 2021, with changes taking effect later in the year. Early collaboration among the three organizations in preparation for amalgamation includes work on a Core Regulatory Suite (**CRS**) project to design a new administrative database that will meet the needs of all three organizations and the entities that they regulate.

CURRENT DATA AND INFORMATION COLLECTION PRACTICES

Through this project, the working group identified several hypotheses that the working group was unable to explore due to shortcomings in the administrative data that regulatory organizations currently collect or have available. RECBC currently collects a range of personal and business information from licensees, the public and others (e.g. local real estate boards and other regulators) through a variety of methods, including:

- brokerage office and records inspections,
- licensing applications and related documents,
- brokerage annual reports and financial statements,
- complaints and investigations of licensee compliance concerns, and
- inquiries to professional standards advisors (**PSAs**).

Most documents required from licensees are received by RECBC in paper form and data entry is performed by RECBC staff for selected fields. In Spring 2020, RECBC implemented new case management software that is better able to capture and produce internal reports on complaints and compliance related data. PSAs manually track basic information related to inquiries (e.g. number, consumer or licensee inquiry, general topic).

RECBC reports high-level statistics on a monthly basis through its website (e.g. number of licensees, number of complaints received, number of discipline decisions). RECBC has also established key performance indicators (e.g. average number of days to complete a complaint investigation, percentage of complete applications for new individual licenses processes within three weeks, percentage of audits that do not result in administrative penalties or disciplinary

proceedings), which are identified in its Service Plan and reported on annually in its Service Plan Report.

OSRE also receives information related to the provision real estate services and real estate development through a variety of methods including:

- consumer disclosure statements under the *Real Estate Development Marketing Act (REDMA)*,
- rental disclosure statements under the *Strata Property Act*,
- consumer, licensee and regulator inquiries, and
- complaints and investigations involving allegations of unlicensed activity under RESA and of developer misconduct and non-compliance under REDMA, including failure to report the assignment of pre-sale strata units to the Condo and Strata Assignment Integrity Register.

Data entry is performed by OSRE staff variety of tracking systems depending on the source and nature of the information.

A variety of other sources of real estate data exist (e.g. as collected by other government and public bodies, industry associations) but are not necessarily accessible to RECBC and OSRE. This includes real estate transaction data including information on sales price, relevant dates and licensees involved, among other data.

ISSUES IDENTIFIED

Collection of administrative data

The limited administrative data that is currently accessible to the regulator creates challenges in identifying issues and developing effective policies. Some examples of the shortcomings that the working group identified were:

- there is no collection of information on individual licensees' educational attainment which could help support future decision-making regarding potential changes to education and qualification requirements for licensees, and
- RECBC has aggregated data on changes to licence information, but the data does not currently distinguish the type of change (e.g. transfers between brokerages, changes to contact information, adding a new category of real estate services). Greater detail regarding licence changes by type could help support the development of evidence-based consumer risk factors, for example tracking managing brokers that frequently transfer brokerages.

Ease of access to administrative data

The regulator's existing systems for storing data and information are often outdated and difficult to search. While staff have often become adept at finding workarounds to overcome these database limitations, doing so is inefficient. For example, limitations to database capabilities mean that the regulator cannot accurately track a licensee's complete licensing history without manually verifying some details (e.g. short periods when not licensed, historical records); this type of limitation makes it difficult to confidently conclude that there is any link between misconduct and licensee inexperience, which was advanced by many licensees through industry consultations and feedback opportunities.

Access to transaction data

Industry associations, such as local real estate boards, collect extensive information from licensees in relation to individual real estate transactions involving their members. This information is owned by the local real estate boards but the BC Real Estate Association and the Canadian Real Estate Association (**CREA**) collate and report it publicly for the purpose of producing local and provincial real estate market statistics. Industry associations may also provide access to their data to other organizations (e.g. Land Titles and Survey Authority), who combine it with other sources of information to produce market intelligence and statistics for local real estate board members.

The regulator does not regulate industry associations and has no means by which to require boards to share data. Historically, industry associations may or may not have cooperated with the regulator on requests for voluntary aggregate data releases. Further, differences in data entry procedures between boards make direction comparisons between regions difficult.

Lack of access to transaction data – whether collected by the regulator or collected by third parties such as industry associations – limits the regulator’s ability to fully assess the operation of the regulatory framework. For example, monitoring and evaluation of new Real Estate Rules restricting the practice of dual agency in BC would be strengthened by information about unrepresented parties over time. Local real estate boards have been responsive to varying degrees to the Superintendent’s requests for data about unrepresented parties. Some local real estate boards collect this information (or similar information using various methodologies that could be used as a proxy), others do not, some intend to begin tracking it in the future, others have provided no response at all.

Advanced data analytics

Enhanced data collection will support more advanced data analytics by the regulator to identify potential consumer risk factors related to licensee and developer non-compliance and identify linkages between files (e.g. real estate services, mortgage brokers). It could also support any future mandate for the regulator regarding anti-money laundering and counter-terrorist financing. While this may be a longer-term opportunity, it can further strengthen protections for real estate consumers.

INDUSTRY FEEDBACK

Industry members appear to recognize the importance of data in the consideration, development, implementation and monitoring of evidence-based regulation.

In addition to the regulator’s collection and analysis of administrative data, many licensees also recognize the value in making more data and information available to licensees, particularly managing brokers, to assist them in strengthening brokerage compliance systems and policies and procedures.

However, some licensees have expressed a degree of skepticism or suspicion of the need for the regulator to collect additional data about transactions, the purposes for which it could be used, and the privacy of consumers and licensees involved in transactions. At a more practical level, some licensees have expressed concern that regulator collection of transaction data could

increase workload for brokerages or duplicate the information that they already report to local real estate boards.

RECOMMENDATIONS

Considering the gaps and opportunities identified above, the working group recommends that the regulator identify ways to enhance regulation through data and information. Specific measures that should be undertaken to support this recommendation include:

- 4.1 Capitalizing on the CRS project to strengthen data collection and analytical capacity, as part of the integration of RECBC, OSRE and BCFSA into a single real estate and financial services regulator.
- 4.2 Considering other mechanisms, such as entering into a formal information sharing Memorandum of Understanding with local boards or CREA, to gain access to transaction data.
- 4.3 Considering revising the licensing application form to collect additional information (data) as part of a voluntary disclosure, to inform future regulatory changes (e.g. educational attainment, language, workplace equity group membership).
- 4.4 Establishing a working group tasked with developing a corporate strategy for the collection and use of data and information and a plan for implementation activities, including appropriate consideration of privacy impacts.

Appendix E: Long-Term Concepts for the Role of Managing Brokers

Managing Broker Working Group

MEMORANDUM #5

Subject: Long-Term Concepts for the Role of Managing Brokers

Date: December 3, 2020

BACKGROUND

This memorandum provides recommendations regarding potential concepts for re-envisioning the role of the managing broker under the *Real Estate Services Act (Act)*. Unlike the other memoranda, this memorandum primarily speaks directly to potential legislative changes.

The Act and the Real Estate Rules (**Rules**) set out the responsibilities of managing brokers to control and direct the operations of the brokerage in relation to which they are licensed. The current regulatory framework places the managing broker in a prominent role to ensure the activities and practices of the brokerage and its staff comply with the requirements of the Act, Regulation and Rules.

Section 6 of the Act provides that the managing broker is responsible for exercising the rights and performing the duties imposed on the brokerage through its licence and for controlling the business activities of the brokerage and its related licensees. In addition to this general regulatory requirement, section 3-1 of the Rules enumerates four specific duties for managing brokers regarding supervision, knowledge of improper conduct, brokerage records and accounts, and notice to parties respecting deposits.

With few exceptions, every brokerage is required to have a managing broker, who may themselves be licensed in relation to up a total of four affiliated brokerages and/or branch offices. The brokerage may only provide those categories of real estate services for which the managing broker is licensed, and any conditions or restrictions placed on the managing broker's license flow up to the brokerage and back down to its related licensees.

Currently, there are approximately 1,350 individuals licensed as managing brokers by the Real Estate Council of BC (**RECBC**). Across the industry, the ratio of managing brokers to other licensees is roughly 1:18. However, the actual distribution of licensees can vary widely among brokerages, by region and by category of real estate services. Another 1,600 individuals are licensed as associate brokers; these individuals meet the qualification requirements to be licensed as managing brokers but do not have any distinct statutory duties. Despite these figures, there is a common perception within the industry that there is a shortage of managing brokers, with many existing managing brokers nearing retirement age and a limited number of other licensees willing to step in to perform the managing broker's role if called on to do so.

ISSUES IDENTIFIED

Breadth of duties

Managing brokers perform a wide and varied range of duties. The Act ultimately holds managing brokers responsible for ensuring that the business operations of both the brokerage and its related licensees comply with the requirements of the Act, Regulations and Rules. Depending on how the brokerage's business operations are structured, the managing broker may also perform – or oversee staff who perform – a range of administrative duties, such as accounting, conveyancing, recruiting new staff, payroll, transaction review, filing and records management, etc. In addition to ensuring that their own duties are performed in compliance with regulatory requirements, managing brokers are also responsible for ensuring that the business activities of all the brokerage's related licensees are also compliant. In short, managing brokers play an important role in the broader functioning of the regulatory framework and the protection of real estate consumers. At the same time, however, the regulatory framework does not limit the ability of the managing broker to take on other roles within a brokerage, including representing clients in real estate transactions.

Complex regulatory environment

In addition to their duties under the Act, managing brokers are also responsible for ensuring that the brokerage and its related licensees comply with a broad range of federal and provincial legislation (e.g. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, Canada's anti-spam legislation, *Homeowner Protection Act*, and the *Wills, Estates and Succession Act*). Managing brokers must stay abreast of amendments to a broad and evolving range of legislation and implement policies and procedures to support the brokerage and its related licensees in complying with various legislative requirements.

Changing business models and practices

Multiple organizations, including RECBC and key industry associations, as well as managing brokers and other licensees, cite that changing business practices may be negatively influencing the ability of managing brokers to effectively uphold their regulatory duties. These changes include a shift toward structuring representatives' employment relationships with brokerages as self-employed contractors and uptake among individual licensees of Personal Real Estate Corporations (**PRECs**) for tax purposes, as well as a decline in commission-split remuneration models between brokerages and sales staff in favour of fee-for-service approaches. In addition, some sources identified potential tensions between unlicensed brokerage owners and managing brokers, whose positions may diverge with respect to the priority placed on profitability compared to regulatory compliance.

In light of these changes, managing brokers themselves report that their brokerages require high volumes of licensees to support a profitable business model, that their ability to effectively oversee licensees is constrained by the mobility of licensees to work at a competing brokerage under more favourable terms, and that their remuneration does not reflect the importance and extent of their duties and workload. Managing brokers may also be concerned about maintaining the trust and cooperation of related licensees and may not always report misconduct to RECBC, in the absence of an explicit rules-based requirement for them to do so.

While these issues apply to all three licence categories of real estate services (i.e. rental property management, strata management and trading), the changing business models and practices is particularly felt in trading services, representing over 90% of licensees.

BROADER CONTEXT

In addition to the challenges and tensions experienced by managing brokers, consumer and societal values are shifting, with consumer demands (e.g. price and convenience) driving innovation in business models.¹¹ Several industries have undergone significant disruption and transformation (e.g. taxi services, music distribution, television broadcasting) and there is growing recognition of the potential for significant disruption to real estate services, both from consumers and as a result of broader events (e.g. COVID-19 pandemic). Pressures on the real estate industry include:

- The emergence of new business models, such as online brokerages as well as mere postings and discount brokerages, with a wider range of service offerings that empower consumers to play a greater role in real estate transactions.
- Increased ease of access for consumers to transaction data (e.g. Zillow), previously available only to the Canadian Real Estate Association's (**CREA**) members and their clients.
- The availability of block chain technology that enables new ways of securely completing real estate transactions with or without involving real estate professionals (or other professionals) as intermediaries.

The ability of professional regulators to retain public confidence in their consumer protection mandates depends on regulators' and governments' ability to adapt to changing consumer expectations while maintaining adequate consumer protections. A brief survey of articles contemplating the future of professional regulation suggest some strategies that regulators can follow to remain relevant amid changing societal expectations,¹² including:

- Outcomes- or standards-based regulation;
- Use of risk-based approaches to professional oversight, enabling regulators to anticipate and address risk proactively (vs. reacting to complaints);
- Emphasis on demonstrated competencies (vs. credentials);
- Use of performance measurement and management systems;
- Independence of regulators from political influence;
- Entity (vs. individual) regulation;
- Inter-professional collaboration by both practitioners and regulatory bodies.

These strategies were considered by the working group throughout this work and can continue to be used to inform further development of the below recommendation's supporting measures.

¹¹ See, for example, Grey Areas newsletter, "A Futurist Looks at Professional Regulation," no. 180 (October 2013): <https://www.sml-law.com/wp-content/uploads/2013/11/Greyar180.pdf>

¹² See, for example, Grey Areas newsletters no. 180, 224 and 231, <https://www.sml-law.com/resources/grey-areas/recent-issues/>.

POTENTIAL CONCEPTS FOR THE FUTURE ROLE OF MANAGING BROKERS

The 2019 Managing Broker discussion paper presented three potential concepts for the future role of managing brokers considering the challenges and tensions experienced by managing brokers:

- **Status quo role within an enhanced regulatory framework:** This concept would preserve the role of the managing broker as it currently exists. However, changes to the regulatory framework would be implemented to address some of the tensions currently experienced by managing brokers. Generally, these changes would be more restrictive and detailed in nature (e.g. imposing additional duties, prescribing specific forms, restricting or prohibiting different business practices), compared to the existing regulatory framework and related professional guidelines.
- **Compliance officer:** While managing brokers currently have a compliance function within the brokerage, this concept would limit the scope of their role to strictly compliance-related duties. Compliance officer roles exist in other industries (e.g. banking/financial services) which, like real estate, function within complex regulatory environments. A compliance officer's key function is to ensure that a company's operations and activities fully comply with all relevant regulatory requirements. Consequently, the compliance officer would not carry the same vicarious liability as managing brokers currently do. Further, while the compliance officer would likely be a licensed position, individuals holding this type of licence would not necessarily be authorized to provide real estate services to consumers and would likely draw from a broader range of professional backgrounds (e.g. lawyers, accountants, financial services).
- **Single licensing (no managing broker):** This concept represents a significant departure from the current regulatory framework in that it eliminates the supervisory role currently performed by managing brokers, as well as the vicarious liability placed on them. Rather, all individuals licensed to provide real estate services would be licensed at the same level and would take on responsibility for their own compliance, including administrative functions currently performed by brokerages and managing brokers. Individual licensees could choose to pool resources to obtain administrative services and other office management functions.

Key issues that would need to be worked out prior to implementation include, for example, education and qualification requirements, arrangements to ensure the safe handling of trust monies as well as whether businesses that provide administrative services to licensees would themselves be regulated.

These three concepts address the identified challenges in different ways and have different consequences for the role managing brokers perform in the regulatory framework and the licensees who work under their supervision.

INDUSTRY FEEDBACK

Overall, respondents preferred the concept of preserving the managing broker's existing role within an enhanced regulatory framework. Respondents flagged challenges that require further consideration with respect to the single licensing concept, which resulted in generally unsupportive feedback on this concept.

Status quo role within an enhanced regulatory framework

Some of the reasons that respondents preferred the concept of status quo within an enhanced regulatory framework were:

- Representatives (and associate brokers) need the mentorship, guidance and leadership provided by a managing broker
- It is simpler to build on the current model than to replace it with an unfamiliar alternative concept
- Change leads to uncertainty
- Tweaks to the current concept are a proportionate response to the scope of the issues
- The current concept of the managing broker role would be improved with tighter regulatory controls
- The other concepts do not benefit consumers of strata management services

Respondents expressed the following concerns about this concept:

- Added regulation might add pressure to the bottom line of brokerages
- Managing brokers often have an incentive not to report misconduct to the regulator
- Does not address the shortage of competent managing brokers
- Does little to reduce managing broker responsibility

Compliance officer

The concept of a Compliance Officer received mixed reactions from respondents, including many neutral comments.

Respondents provided the following comments in support of this concept:

- It would broaden the pool of qualified persons to hold the role, potentially helping to reduce some of the challenges to recruit new managing brokers
- One Compliance Officer would have the ability to supervise multiple offices, not owned by the same principals, reducing costs for some brokerages. This change could be particularly beneficial to small brokerages and those in rural communities, which may not be able to support a full-time, dedicated managing broker
- Liability is reduced for the person fulfilling the compliance officer role (formerly managing broker) and increased for the brokerage (and its owners)

Respondents expressed the following concerns about the Compliance Officer concept:

- New and existing representatives could lose valuable mentorship presently being provided by managing brokers
- If the Compliance Officer of a brokerage was not a current or former licensee, they would lack credibility in the eyes of individual licensees
- Requires significant restructuring of the regulatory framework and business models

- There does not appear to be any benefit to rental property management or strata management brokerages

Single licensing (no managing broker)

The concept of single licensing received the most comments of any of the three concepts. Several respondents reacted negatively to the concept of single licensing and suggested that education and qualification requirements would need to increase significantly to support implementation of this regulatory concept; this was also acknowledged in the discussion paper itself.

Respondents provided alternate suggestions to the single licensing concept including imposing a maximum number of licensees under one managing broker, making individual licensees more accountable for their own actions within the existing regulatory framework and rebalancing managing broker vicarious liability.

Respondents provided the following comments in support of this concept:

- Individual licensees would carry more responsibility for their own actions, solving current liability concerns of managing brokers and raising the bar of professionalism
- Licensing and entry requirements would be raised, resulting in better educated licensees entering the industry, which would benefit consumers
- All functions of the brokerage could be performed by individual licensees and the notaries or lawyers involved in a transaction
- Removing the requirement for a managing broker would eliminate the potential conflict of interest between the managing broker's supervisory and oversight role and their ability to provide trading services to clients in trades involving related licensees
- Individual licensees could retain more remuneration
- Existing business model norms would be disrupted, allowing the industry to evolve to better meet the needs of consumers and licensees.

Respondents expressed the following concerns about this concept:

- It could result in an erosion of consumer protection, particularly during any transitional period, and more legal claims as mistakes presently caught by managing brokers would go undetected
- Representatives currently have insufficient education and it would be difficult to implement education programs for existing representatives to upgrade to a single-licensing concept
- Too much responsibility would be placed on individual licensees; individual licensees are too busy to be responsible for all the administrative tasks required under this concept
- This concept could only work for trading services, where the emphasis is on the individual licensee, rather than the brokerage. The administrative functions performed by rental property management and strata management brokerages are fundamental to the services provided to consumers
- Consumer confidence could be diminished by such a large change to the regulatory structure
- Many licensees would outsource administrative tasks and pass those costs onto consumers.

DISCUSSION OF POTENTIAL CONCEPTS

The following discussion considers how each concept could respond to the tensions experienced by managing brokers and the broader challenges for professional regulation.

Status quo role within an enhanced regulatory framework

In many ways, BC's real estate services regulatory model already demonstrates many of the strategies identified above for modern regulators or has announced plans to work toward them. For example, the Office of the Superintendent of Real Estate (**OSRE**) and RECBC are participating in the development of a national competencies framework and government has announced its intention to amalgamate OSRE and RECBC with the BC Financial Services Authority (**BCFSA**), a Crown agency.

Enhanced regulation would likely include all the following:

- restricting contractual indemnification agreements to prevent managing brokers and individual licensees from paying brokerage penalties and preventing individual licensees from paying managing broker penalties (does not include a restriction on managing brokers from seeking indemnification agreements from a brokerage);
- requiring managing broker approval of team formation and membership changes; and
- requiring associate brokers to requalify several years after completing the Licensing Course if they have not upgraded their licence to become a managing broker.

Increased regulation could also include some of or all the following:

- mandating or restricting brokerage fee structures (e.g. minimum percentage to be retained by brokerage to help ensure brokerage supervisory and compliance functions are adequately funded);
- imposing mandatory requirements for licensees to report allegations of serious misconduct directly to RECBC (e.g. serious ethical breaches, wrongful taking, deceptive dealing, threats of retaliation against licensees or consumers, etc.);
- shifting vicarious liability from managing brokers to brokerages or brokerage owners; and
- changing legislation and/or policy to support a more rigorous assessment of the suitability of brokerage directors/partners and expanded authority to regulate brokerages.

While the regulatory enhancements conceived of with respect to this concept were initially intended to be more prescriptive and/or restrictive, it does not exclude more principles-based regulation.

This concept retains both individual and entity-level regulation and associated liability. In practice, a greater proportion of liability could be shifted away from the managing broker to the entity (i.e. brokerage) thereby relieving, to an extent, some of the tensions identified by managing brokers and encouraging brokerage owners to give greater consideration to the consumer protection risks created by their business models and how to mitigate such risks. In addition, this model continues to provide for the supervision of representatives and associate brokers by a managing broker with greater regulatory education and responsibility.

While greater or more restrictive regulation of how licensees structure their business activities could reduce ineffective supervision, it may also reduce opportunities for innovation that benefit consumers. For example, the status quo, even if it were enhanced, limits inter-professional

collaboration by restricting the activities non-licensees can perform (e.g. making representations about real estate to consumers, receiving or expecting remuneration for real estate services), even under direct supervision.

Implementation of this concept could primarily be accomplished through modification of the Rules, updates to licensing education and continuing education and related practice guidelines. Compared to the two other concepts discussed below, which describe more significant regulatory changes, implementation of this concept would be relatively straight forward.

Compliance officer

Managing brokers already perform compliance related responsibilities in their brokerages; this concept would narrow the breadth of responsibilities which they hold to focus primarily on developing an adequate compliance program and implementing it in their brokerage. As a result, it would also limit their liability for the conduct of other licensees, provided the compliance officer had upheld their duties with respect to the brokerage's compliance program. The details of the compliance program would be flexible and tailored to the specific brokerage and its business model and activities. The intention is that by shifting greater liability onto individual licensees and brokerage owners, these parties would be motivated toward greater diligence and compliance in order to protect themselves (as well as consumers).

The compliance officer concept addresses many of the tensions experienced by managing brokers, particularly those related to the dual role of managing brokers as both salespersons who are also responsible for exercising an incredible breadth of supervisory and compliance duties. It also appears to align best with the strategies for the future of professional regulation (e.g. emphasis on regulating entities, principles-based and flexible, potential to allow for greater inter-professional regulation).

As the compliance officer would not have any fiduciary duties to clients of the brokerage, this concept could strengthen consumer protection by reducing or removing the potential for conflicts of interest and competition posed by the current managing broker role by removing the ability of managing brokers to provide real estate services directly to clients, primarily in trading services. In addition, although the compliance officer concept eliminates managing broker supervision of other licensees, the role would continue to focus on compliance to ensure adequate consumer protection and would continue to be subject to office and records inspections.

The short- to medium-term measures discussed in [Reframing the Role of Managing Brokers: A Discussion Paper](#), notably brokerage compliance plans, would enhance the status quo while also supporting the compliance officer concept. Additional amendments to the Rules, practice guidance and OSRE/RECBC processes could further shift the managing broker's role to emphasize the compliance officer aspect of the role. However, full implementation of this concept would require modification of the Act to eliminate the managing broker licence and create a new compliance officer licence and related consequential amendments. New Rules would also be required to establish education and qualification requirements for compliance officers. This concept would also require changes to pre-licensing education and continuing education for compliance officers and related practice guidance and resources.

No managing broker (single licensing)

Although this concept would address many of the tensions experienced by managing brokers, notably by shifting liability away to individual licensees, it is unclear how well it aligns with future professional regulatory strategies. For example, the single-licensing model emphasizes individuals over entities, although it could be adapted to include regulation of the latter as well. Similarly, it does not provide a clear framework for inter-provincial collaboration.

By removing the supervisory role of managing brokers, the single licensing concept removes the potential for conflicts of interest and competition currently posed by managing brokers and provides a strong, direct incentive for individual licensees to ensure that they maintain a higher level of knowledge and familiarity with the regulatory framework. In order to meet these requirements, licensees would have flexibility to decide how best to meet their administrative duties, such as performing them directly or engaging an administrator individually or with a group of other licensees to assist with some compliance duties.

Implementation of this concept would require significant amendments to the Act to create a single licence level. Amendments to the Act and Rules would need to address outstanding issues, such as safe handling of consumer monies. New Rules would also be required to establish education and qualification requirements, which would likely be significantly higher than those currently in place. This concept would also require changes to pre-licensing education and continuing education and related practice guidance and resources. Measures would also be required to transition existing licenses into the new licensing regime (e.g. re-qualification or recognition of existing qualifications).

RECOMMENDATIONS

In addition to the recommendations in the four other memoranda, and related supporting activities, the working group recommends that the regulator continue to explore the long-term concepts for the role of managing brokers, as described in the discussion paper. Specific measures that should be considered in support of this recommendation include:

- 5.1 In the short term, exploring amendments to the Rules and/or administrative processes within OSRE/RECBC's existing authorities to emphasize the managing broker's existing compliance duties. This could include exploring some of the ideas presented in the discussion paper under the concept of status quo within enhanced regulatory framework.
- 5.2 In the longer term, working with the Ministry of Finance to explore potential amendments to the RESA (and/or other related legislation) to support full implementation of the compliance officer concept.
- 5.3 Undertaking a medium-term planning exercise to identify how the potential for disruption of the real estate industry as a result of ongoing changes in technology and business models will impact consumer protection and professional regulation, precipitating the need for further regulatory amendments.