

The Role of Managing Brokers in BC's Changing Real Estate Landscape

Regional Roundtable Discussion Highlights: Kelowna

Introduction/Background

In September 2018, the Office of the Superintendent of Real Estate (OSRE) conducted an information gathering survey regarding the role of managing brokers in BC's changing real estate landscape. Subsequently, OSRE organized a series of roundtable discussions with managing brokers in various communities across the province. The purpose of the discussions was to gather further feedback about the issues, challenges and potential solutions identified through the survey. The following report highlights the feedback gathered by OSRE from participants at the Kelowna roundtable, held on November 28, 2018.

Discussion Highlights: Supervision

Feedback regarding effective supervision:

- Participants identified that effective supervision does not necessarily require individuals to be physically present in the same location; however, a remote brokerage model would present challenges for supervision.
- Participants identified the following components of effective supervision:
 - hands-on guidance and training, as well as proactively reaching out to the brokerage's related licensees to check in;
 - review of all documents and listings, preferably before anything is finalized;
 - having strong brokerage standards and policies in place that also help protect managing brokers;
 - having the brokerage's related licensees frequent the office and a managing broker who is available to them (at minimum during regular office hours) and who can develop quality relationships with them;
 - holding regular sessions with an educational component (monthly or biweekly) and ensuring licensees are getting more than the minimum mandatory education; and
 - recognizing that all individual licensees are different and require varying levels of supervision.
- Participants also identified a number of challenges to effective supervision, including:
 - the reactive nature of supervision in this industry can often be too late to prevent consumer harm, as contracts are already signed;
 - the rise in the number of licensees who work as independent contractors who may view themselves as independent, but who may not recognize that the "independent" status is primarily with respect to the structure for payment of taxes, as well as WCB and EI premiums – and does not mean working completely independently with respect to supervision. Some participants indicated that this is less of an issue for brokerages who do not provide residential trading services; brokerages that focus on rental property management services and strata management services are more likely to be structured as employer-employee relationships;

- the rise of technology allows for licensees to work and remain outside of the brokerage; this includes managing brokers who may attempt to supervise from another area and lack regional expertise;
 - licensees not knowing who their managing broker is or understanding the role of managing brokers;
 - increasing regulatory workload being put onto managing brokers;
 - lack of managing broker training on subjects before managing brokers are required to provide guidance to licensees on those subjects (e.g. speculation tax);
 - people coming into the industry for the wrong reasons, without business acumen, and who do not want supervision or training;
 - the perceived low level of education of those entering the industry; and
 - the tension created when a managing broker is not the owner of the brokerage and has no control over the hiring and firing decisions of the brokerage's related licensees.
- Participants indicated that rental property management and strata management licensees often require a lower level of direct supervision akin to mentoring.
 - Participants indicated that individual licensees at commercial trading services brokerages generally attend the office more frequently and their interaction with clients is predominantly during business hours, making it easier for managing brokers to provide effective supervision.
 - Participants expressed concerns about how a managing broker can delegate supervision of themselves to a licensee within their brokerage who has less experience and training.

Feedback regarding regulatory requirements for mandatory office meetings:

- Participants indicated that there are challenges in getting licensees to attend meetings and that licensees prefer to work at brokerages that place fewer demands on them with regard to their business activities. However, participants also cautioned that mandatory attendance at a training session does not guarantee actual learning, and many of the best lessons come from experience in the field.
- Participant suggestions for further exploration included:
 - regulatory requirements for licensees to participate in training provided by the brokerage or managing broker; and
 - more regulator-provided practical resources for managing brokers - to providing training which would improve consistency across brokerages.

Feedback regarding restricting the number of licensees a managing broker can supervise:

- Generally, participants indicated that current brokerage business models need to adjust, either through responsible business solutions or through regulation.
- Participants indicated that this type of restriction would not be an issue for the many smaller brokerages, including brokerages that solely provide strata management services. However, they also identified that larger brokerages tend to have the resources to set up systems, develop policies and procedures manuals, and hire well-trained support staff to reduce the likelihood of regulatory non-compliance or consumer harm.
- Some participants indicated that this type of restriction may be useful. Other participants identified that such a restriction raises issues of brokerage viability where margins are small.
- Some participants expressed concern that this type of restriction may contribute to a future shortage of managing brokers, or that managing brokers would split their attention between the brokerage and a second job; this would expose the public to further risk of harm. They also stated

that managing brokers need to be able to provide services directly to clients in order to know the issues arising in the field; brokers may take on fewer clients themselves when they have another source of income.

- Participants identified a range of factors to consider in the creation of a reasonable maximum number of individual licensees that one person can supervise, including:
 - experience level of those under supervision;
 - experience level of the managing broker (e.g. new managing brokers will have fewer licensees to supervise);
 - category of the licence;
 - use of associate brokers as middle-managers reporting to the managing broker;
 - number and location of offices, and whether a managing broker predominantly supervises licensees remotely or in-person; and
 - whether a managing broker is also providing real estate services directly to clients.

Feedback regarding potential future shortage of managing brokers:

- Participants indicated that the managing broker role should be viewed as a respected and prestigious position, and that regulators should assist with elevating that role
- Participants cautioned that additional requirements or restrictions on managing brokers should be approached with careful consideration for how these may influence representatives and associate brokers in their decisions to become managing brokers.
- Participants suggested that a new succession plan requirement for managing brokers should be explored - to avoid putting transactions and livelihoods in jeopardy, if there is a sudden departure.

Discussion Highlights: Liability and Compliance

Feedback regarding where to place the liability for misconduct:

- Some participants indicated that discipline for misconduct that occurred before the 2016 increase in the penalty regime is generally seen as insufficient, and punishment imposed by a brokerage is more severe than regulatory penalties.
- There were mixed views regarding the liability placed on representatives and associate brokers, and some participants indicated that:
 - individual licensees need to see that there can be a strong regulatory disciplinary response and consequence, especially for ethical breaches;
 - strict enforcement helps managing brokers keep the brokerage's related licensees in compliance, and that fear of punishment can help create accountability; and
 - they preferred a supportive approach to discipline.
- There were mixed views regarding the liability placed on managing brokers, and some participants:
 - indicated that this liability was prohibitive and that a greater proportion of liability should be on the individual and not on the brokerage or managing broker, as often misconduct occurs despite a managing broker's best efforts to be involved in transactions; and
 - cautioned that managing brokers can manage their personal risk through rigorous hiring practices and may be less cautious in their hiring practices if they had no liability for misconduct on the part of the licensees in their brokerage.
- Participants indicated that brokerages and brokerage owners should bear more responsibility than managing brokers. Only if managing brokers fail in their supervisory capacity and do not attempt to gain compliance, should the managing broker share in the responsibility. However, participants also

indicated that maximum penalties set out in the new penalty regime could force a small brokerage to close.

- There were varied opinions expressed regarding the reluctance for managing brokers to report misconduct by the licensees in their brokerages to RECBC. While some participants identified that stronger enforcement of regulatory requirements is required by RECBC, they also indicated that they were not willing to report potential misconduct for business reasons.
- Participant suggestions for further exploration included:
 - improvements to RECBC’s audit and enforcement activities (e.g. more audits, strict enforcement of the current Rules); and
 - use of contractual clauses to indemnify managing brokers against being held personally liability for misconduct.

Feedback regarding restrictions or responsibilities on brokerage ownership:

- Participants indicated that in smaller brokerages there are very few owners who are not actively involved in the real estate industry.
- Participants identified that there can be tension when a brokerage owner wants to continue to employ problematic licensees when the managing broker is the one held responsible for potential misconduct committed by these licensees. Participants indicated that brokerage owners should understand their responsibilities and the responsibilities of the managing broker related to customer funds and the value of proper supports (e.g. systems, policies, access to other professionals).
- There was discussion that regulators should focus on outcomes-based regulation and avoid setting Rules that are overly prescriptive about business models and practices to allow for the continued growth of brokerages.

Feedback regarding the concept of single licensing:

- There were mixed views expressed in the feedback received from participants regarding the concept of “single licensing” and moving toward a single-licensing model.
- Some participants indicated that single licensing would reduce consumer protection as the role, experience, knowledge, and guidance of managing brokers would be lost. For example, some participants indicated that representatives and associate brokers do not have the same skillset as managing brokers and, under single licensing, there would be no supervision resulting in more errors.
- Participants also indicated that individual licensees are not prepared for a single-licensing model and that managing brokers are unlikely to support a move to single licensing because they are paid to have licensees under their supervision.
- In contrast, some participants indicated that single licensing would make individual licensees more interested in compliance and education, and new business models would emerge, such as a “broker for hire”.
- A participant observed that if the fundamental issue is that licensees are not following the Rules, it is not the Rules that need to be changed.
- Participants recognized that the liability on managing brokers would be removed under a single licensing model.
- There was discussion that a transition to single licensing could be complex. For example, a move to single licensing would require changes to licensing and a significant increase in education (e.g. four years and some sort of articling or internship). If a single-licensing model were implemented,

participants indicated that individual licensees should be allowed to share services (e.g. bookkeeping, accounting and records).

Discussion Highlights: Pre- and Post-Licensing Education and Qualifications

Feedback regarding the education and training needs of managing brokers:

- Some participants indicated that the managing broker licensing course does not adequately prepare new managing brokers to perform their duties at a brokerage, and the requirement for two years' experience as a representative is too low unless you have an MBA or significant business experience.
- Participants also identified that the skillset required of managing brokers is different than the skillset required to be a good salesperson.
- Participant suggestions that could be explored by regulators to better help prepare new managing brokers included:
 - increased focus on consumer protection;
 - increased focus on life history (e.g. past experience in business, management, or the real estate industry);
 - creating a practical component, such as role playing in the course or a practicum/apprenticeship;
 - providing model best practices, processes, and standards - which would also promote more consistency across brokerages;
 - increasing the amount of higher level, in-depth resources and information;
 - course content to better cover the core roles of the managing broker (compliance, business and client service);
 - not providing answers at the end of the chapter/book; and
 - sending an auditor to any brokerage that hires a new managing broker; this should be early in the managing broker's tenure to help identify and mitigate potential issues.
- Some participants felt that adding more requirements or restrictions on who can be a managing broker may contribute to a managing broker shortage.
- Participants identified a list of other supports desired by managing brokers, including:
 - more courses specific to the needs of managing brokers and higher re-licensing requirements, including at least one course in each licensing area/category;
 - standards and guidelines for what a managing broker needs to do, such as a checklist for what supervision means, with step-by-step information dedicated to managing brokers;
 - creation of a forum or collaborative group of managing brokers to share ideas and best practices, and encourage one another to strive for improvement;
 - regulation setting out the desired outcome to be demonstrated, not how a brokerage achieves that outcome; and
 - publicly reporting and grading audit results so that everyone can learn from them.
- There were different views expressed by participants regarding the value of contracting education to UBC Sauder School of Business, Real Estate Division, as well as regarding the preferred format of education (e.g. online versus in class).

Feedback regarding the role of managing brokers in the training of representatives and associate brokers:

- Generally, managing brokers indicated that they trust that people who pass the pre-licensing course and Applied Practice Course, if applicable, are competent and qualified.

- Some participants felt that brokerages should be involved in the training of new licensees, and there should be a consistent level of training delivered by skilled trainers. They also indicated that the best practice is for managing brokers to review every contract with a new representative and be available to answer questions and calls.
- Several participants indicated that their brokerages offer weekly training and coaching sessions and limit the number of new hires each year. Participants also indicated that brokerages offering extra training and guidance to their related licensees have a competitive edge - until those licensees have the confidence to provide services without managing broker support and move to a brokerage with lower fees and less support.
- Some participants felt that there should not be regulation regarding internal business practices, such as how and what training a brokerage must provide.
- Participants suggested that the Applied Practice Course should be updated from time to time, based on feedback from managing brokers.

Feedback regarding the education, training, and development of representatives and associate brokers:

- Participants observed a disconnect between the pre-licensing course's length and difficulty compared to the level of responsibility granted to licensees.
- Many participants indicated that managing brokers are required to provide on-the-job training because the licensing course and Applied Practice Course, if available, are insufficient to prepare new representatives. Some participants also observed that the first two years of a licensee are the most difficult.
- Managing brokers suggested that there should be better resources available for all licensees to get answers to questions with greater assistance from RECBC in promoting consistent brokerage standards, and that raising the bar for entry will lead to gradual improvements.
- Participants also made the following suggestions to improve representative education and preparedness:
 - enhance the courses currently offered to new licensees, making attendees think rather than merely providing them the answers;
 - reduce the emphasis on mortgage calculations in the pre-licensing course and replace it with greater emphasis on useful topics such as contracts, the *Homeowner Protection Act*, and new construction;
 - include managing brokers in applied practice courses to help assess and identify where the new licensees have strengths and weaknesses;
 - require brokerages to provide mentoring, preferably from a senior/experienced licensee;
 - add a licence requirement that states brokerages agree to employ and train their applicants when applicants become a licensee;
 - require mandatory education with the introduction of new rules;
 - consider making the licensing process for all licensees, or at least managing brokers, similar to that for obtaining a designation as an appraiser;
 - raise the level of education required to meet or exceed any national standard (e.g. some commercial brokerages require licensees to have a university degree);
 - teach new licensees where to look for answers, such as how to use RECBC's Knowledge Base or Professional Standards Manual; and
 - create and require applied practice courses for rental property management and strata management.

- Some participants expressed concern that licensee forums pose a risk to consumers, as they can lead some licensees to circumvent their managing broker and receive unsound advice from other forum participants.
- Participants also suggested making the requirements for the re-licensing education program useful, and to require annual re-licensing.

Discussion Highlights: Teams

Feedback on the supervision of teams:

- Some participants indicated that teams can be a struggle to manage. For example, team members may not integrate with the rest of the brokerage and create confusion for new licensees who do not know they should go to their managing brokers for advice. Participants felt that licensees should go to their managing broker for guidance and problem solving, especially if the team leader is not qualified as a managing broker.
- In contrast, other participants indicated that teams offer a service to managing brokers by offering team members additional guidance, training, leads and work-life balance. Some participants suggested that if managing brokers generated leads, the brokerage's related licensees may see managing brokers as more valuable.
- Participant suggestions regarding the supervision of teams include:
 - having a person who is formally responsible to report to a managing broker from within a team as a way to help with supervision;
 - managing brokers instituting administrative controls on teams and carefully scrutinizing all team listings;
 - regulators developing guidance around what constitutes a team, and how to determine if individual licensees may be in undisclosed or implied teams (e.g. is a team created solely on being registered with RECBC or could an implied team exist where there is commission and/or resource sharing?); and
 - regulators providing best practices on how to exert control over the brokerage and teams.
- Some participants expressed a concern that some teams have disbanded since June 15, 2018 and moved "underground".

Feedback regarding the restrictions or qualifications of teams:

- Participants indicated that some brokerages require team leaders to have the same qualifications as a managing broker (e.g. an associate broker).
- In contrast, some participants cautioned that requiring team leaders to have a qualification may further elevate their status and create additional confusion as to their role for new licensees and consumers.
- Participants suggested the following restrictions or requirements for teams:
 - advertising and communications by teams should have the brokerage logo more prominently displayed than that of the team name and logo;
 - teams should not be allowed to operate offices outside of brokerage offices;
 - teams should have proper information sharing security in place;
 - requiring a managing broker to be including on a listing contract (with team members) may generate a discussion with consumers and licensees about who the managing broker is and her/his role; and

- all brokerages should have the same standards and requirements imposed on teams to prevent teams from gaining too much control and moving to brokerages that accept a lower level of compliance from teams.
- Some participants observed that most teams do not wish to become stand-alone brokerages because of the increased responsibility and liability.
- Some participants felt that teams operating with team leaders as sellers' agents and members as buyers' agents have no conflict of interest and should not be restricted from acting for multiple parties in a transaction.

Discussion Highlights: Issues in Rental Property Management, Strata Management, and Commercial Real Estate

Feedback regarding commercial real estate:

- Some participants identified that speciality licensing was implemented in Saskatchewan where it became problematic and was subsequently revoked.
- Many managing brokers (particularly those at the table designated for brokerages with large rental, strata, and/or commercial practices) indicated that pre-licensing course could be expanded to include more information on all speciality areas, and more professional development courses could be available for specialty topics.
- Some participants felt that there should be recognition that commercial rental property management is very different from commercial trading, and both are completely different from residential rental property management and residential trading.
- A few managing brokers indicated that commercial consumers do not need to be protected from licensees, as licensees provide limited agency to commercial consumers; it is often lawyers who prepare any contract, and licensees merely "paper a deal" on the instructions of the consumer. Managing brokers also indicated that consumers engaging in commercial transactions are generally professional, sophisticated, and experienced property owners who do not make emotional decisions; they rely on their licensees a lot less than consumers in residential transactions.
- Participants suggested that to be designated as a sophisticated client, the client would have been involved in more than one commercial transaction.
- Participants indicated that there would be challenges to creating a separate licensing category for commercial, including:
 - not having enough specialty/commercial business available in many Interior BC communities to justify becoming licensed solely in a specialty area of real estate; and
 - difficulty finding managing brokers with experience in a specialty.
- Participants also indicated that a licensee with a residential trading services licence who lives in a small community may not be competent or qualified enough to provide all services that the community needs and should have to pay to be licensed in both commercial and residential. Participants noted that licensees must be competent to provide services in order to protect consumers.

Feedback regarding strata management issues:

- Some participants indicated that the current pre-licensing course for strata management services does not yield licensees who can do the work in the field.
- Participants made the following suggestions:

- there needs to be an applied practice course for strata management (and rental property management), which forces everyone to have same basic level of training;
- there should be incentives for licensees to join industry associations (e.g. the Professional Association of Managing Agents, or the Strata Property Agents of British Columbia), perhaps by accrediting them to provide courses that count towards the re-licensing education program; and
- there should be a resource that clearly states what the role of a strata management licensee is and that they work for the strata council. Licensees could provide this to individual strata owners who make inquiries or demands.

Feedback regarding rental property management issues:

- Participants identified that there is confusion about whether a licensee needs a rental property management or trading services licence to provide advice in transactions involving aboriginal land; this land requires highly specialized knowledge, which is not adequately covered in pre-licensing.
- Some participants indicated that residential tenants have always understood that the licensee represents the landlord, and that the Disclosure of Representation in Trading Services form is not beneficial to residential tenant consumers.
- Some participants also indicated that rental property management licensees can be in a conflict of interest when:
 - a tenant is interested in more than one of the licensee’s listings that have different landlords/clients;
 - a tenant wants to leave one listing for a listing of a different landlord/client; and
 - their obligations under the *Residential Tenancy Act* come into conflict with the instructions of the landlord/client.