

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

Regional Roundtable Discussion Highlights: Cranbrook

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 Cranbrook roundtable, held on November 29, 2018.

Discussion Highlights: Supervision

Feedback regarding effective supervision:

- Some participants noted that effective supervision does not necessarily require individuals to be physically present in the same location.
- Managing brokers indicated that the following are components of effective supervision:
 - having a managing broker who is available to assist the brokerage's related licensees. It was noted most managing brokers in this region maintain regular office hours and generally see licensees frequently if not daily;
 - a high quality of relationships between the managing broker and their related licensees, as well as unlicensed staff;
 - holding regular sessions with some educational component (monthly or biweekly). It was noted that last week's issue often becomes this week's lesson plan. The session date, topic, and potentially other details can be noted in a log, which is available for RECBC audits;
 - careful hiring practices/vetting of potential new licensees. Participants noted that brokerages in this region are fairly stable and individual licensees generally don't move brokerages;
 - effective use of technology to keep in contact with the brokerage's related licensees beyond face-to-face interactions, and to help meet the higher expectations among licensees for instantaneous advice. However, some participants felt there is a disconnect between the human limitations of managing brokers to be constantly available and the liability imposed on managing brokers; and
 - a managing broker should not be more than a specified distance away (suggested distanced included 200 km or within a one-hour driving radius), as any further away negatively impacts a managing broker's availability.

Feedback regarding regulatory requirements for mandatory office meetings:

- Many participants indicated that despite frequent attendance at the brokerage, there are still challenges in getting licensees to attend meetings. Attempts are made to incentivize attendance through providing food and trying to make content relevant to those licensees at the brokerage with decades of experience.
- Managing brokers indicated that there is no need for the regulator to mandate attendance.

Feedback regarding restricting managing brokers from providing trading services directly to clients:

- Participants largely agreed that it is a financial necessity for managing brokers at smaller brokerages to also provide trading services directly to clients.” Participants suggested that a brokerage would need a minimum number of licensees before it could afford a non-competing managing broker. A participant estimated that minimum number to be 20 licensees.
- Additionally, participants indicated that managing brokers need to experience the same issues as the brokerage’s related licensees to be able to provide proper advice.
- Participants observed that the advantages of managing brokers not providing trading services directly to clients are that managing brokers would be more available to help their related licensees (e.g. not in the middle of their own deal), and that licensees in turn would be more likely to view the advice as impartial. Participants indicated that it can be difficult to find someone who is qualified to supervise a managing broker’s deals.
- Participants predicted that a consequence of restricting managing brokers from providing trading services would be brokerages in smaller centres consolidating or being purchased by brokerages in larger centres. That in turn could result in managing brokers being a few hours away, reducing their availability to licensees and thus reducing the level of supervision. Participants suggested this could be mitigated by delegating supervision duties to associate brokers in smaller centres and having back office tasks (e.g. managing trust accounts) completed in the larger centres. There should be a clear management model in these types of situations.

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

- Participants noted that there are examples of managing brokers who cannot effectively supervise three licensees, and there are examples of managing brokers who can effectively supervise 100 licensees.
- Some managing brokers felt it is up to each particular business to determine how many licensees their managing broker can effectively supervise, and that there exists a misconception that some very large brokerages with low desk fees don’t care about the quality of licensees who provide services on their behalf.
- Participants suggested that, rather than restricting the numbers of licensees a managing broker could supervise, the onus could be on managing brokers to demonstrate what they do for supervision, potentially through annual reports (e.g. provide a supervisory plan to the regulator, minimum standards).

Discussion Highlights: Liability and Compliance

Feedback regarding where to place the liability for misconduct:

- Participants suggested that representatives and associate brokers need greater liability, and emphasized that managing brokers generally have a reactive role. Only if managing brokers are failing in their supervisory capacity should they share in the responsibility for licensee misconduct. A few participants noted that liability only impacts poor performing brokerages with ineffective managing brokers.
- Some participants expressed concern about the lack of understanding among licensees as to how discipline will be pursued and penalties will be applied as the *Real Estate Services Act* (RESA), regulations, and Rules do not indicate any different treatment for a mistake or administrative error versus fraudulent activity.

- Other participants felt that a defence of due diligence essentially already exists for managing brokers; they are generally not disciplined where it can be demonstrated that they fulfilled their obligations. It was also suggested that managing brokers who effectively supervise licensees can generally detect higher risk behaviour.
- Some participants also suggested that individual licensees at all licence levels can avoid discipline if they receive more education on contracts and ethics, and if there was a reduced emphasis on topics such as mortgage calculations in licensing education.
- Participants shared that managing brokers may be reluctant to report misconduct by the brokerage's related licensee to RECBC because they do not understand the outcome of reporting (e.g. don't see any action or outcome, or get threatened with an investigation into their own conduct).

Feedback regarding restrictions or responsibilities on brokerage ownership:

- Managing brokers indicated that in smaller communities there are very few owners who are not actively involved in the real estate industry.
- Generally, participants felt that there should be some pre-qualifications for someone acquiring a brokerage (e.g. how to run an office, understand RESA, or other industry experience or education), with different requirements for true silent partners.
- Participants indicated that brokerage owners should have liability; otherwise, they put unreasonable requirements on the managing broker, particularly where the owner doesn't understand the regulatory framework. In some cases, a managing broker's contract requires indemnification from the brokerage ownership.
- In contrast, other participants noted that having a licence does not necessarily mean an owner will not put undue pressure on a managing broker; the brokerage's licensees may go to the owner if they think the managing broker is being too rigid.
- There appeared to be strong support for some minimum standards for unlicensed ownership, which would help to increase professionalism and benefit the public.
- Participants also raised an alternative suggestion - to impose a restriction on unlicensed owners from being actively involved in the supervision of brokerage activities and being involved in the affairs of the office.

Feedback regarding movement towards a single licensing model:

- Some participants expressed concern that single licensing is not practical or beneficial to consumers. Participants explained that representatives and associate brokers still require some level of supervision, and it is unreasonable to have a supervisor without any liability.
- Participants suggested that a move to single licensing would require a significant corresponding increase in education (e.g. four years and some sort of articling or internship).

Discussion Highlights: Regulatory Education and Qualifications

Feedback regarding the education and training needs of managing brokers:

- There appeared to be general consensus that the two years of industry experience and the managing brokers licensing course do not adequately prepare new managing brokers to perform their duties at a brokerage.
- Participants provided suggestions that could be explored by regulators to better help prepare new managing brokers:

- greater education and testing requirements;
 - increased focus on life history (e.g. past experience in business, management, or the real estate industry);
 - creating a practical component (such as a practicum), articles, or an Applied Practice Course or mentorship program for future managing brokers. Participants observed that new managing brokers benefit significantly if they are lucky enough to be mentored by another, more experienced managing broker. However, competition between brokerages and the limited numbers of existing experienced managing brokers can create challenges to finding mentorship; and
 - additional course content regarding management, leadership, finance/accounting, and other practical management skills.
- There was consensus among participants that there is a lack of relicensing courses specific to the needs of managing brokers, and that the development of any such course(s) should involve consultation with managing brokers.
 - Participants indicated that managing brokers want more ongoing educational opportunities specific to their needs. They suggested that courses could be a mandatory requirement, as high performing managing brokers will attend such courses if made available; those most at risk of misconduct are not likely to attend unless it is a mandatory requirement.

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

- Generally, participants reported a disconnect between the educational requirements for new individual licensees and the magnitude of transactions.
- Participants suggestions for improvements:
 - have courses that are region-specific (e.g. vacancy taxes are generally not applicable to much of Interior BC);
 - industry-based Professional Development Program (PDP) courses could be amended beyond attendance only to increase the emphasis on absorption of the issues and topics. It was also acknowledged that PDP requirements are separate from the regulatory relicensing requirements;
 - occasionally, there should be some re-education of long-standing licensees; things change and the topics covered in an updated pre-licensing course are never covered again in the Legal Update; and
 - although the new English Language Proficiency (ELP) requirement is good for new applicants, there is a desire that many existing licensees take some type of ELP recertification (similar to the 2013 changes to FOODSAFE certificates).
- Participants felt that managing brokers should be given access to the training manuals for representatives - to be able to provide greater assistance in the training and development of new licensees.
- Participants felt it is important for managing brokers to be taught well in order to train and guide licensees. Some managing brokers indicated that “train the trainer” approaches are appealing. These approaches involve training managing brokers on new procedures and forms first, and then providing them with materials that they could use in their brokerages.
- Participants expressed concern that many licensees have not taken the Rule Changes: Agency and Disclosure Course and that they could be acting for an extended period of time without that knowledge.

Discussion Highlights: Teams

Feedback on the supervision of teams:

- While there were very few teams at the brokerages represented at the roundtable, participants expressed that they could see difficulties with supervising large teams and teams that operate in a separate space.
- Some participants felt that the difficulties that arise with supervising with teams are brokerage policy and management issues rather than legislative or regulatory issues.
- Several participants expressed a desire for a more developed definition and guidance around what constitutes a team and when individual licensees may be in an undisclosed or implied team (e.g. referral sharing agreement in place, sharing an assistant, licensees living under the same roof, or other non-arm's length relationships between licensees).
- Participants also expressed concern that there is a lack of enforcement relating to teams until there is a complaint made to the regulator.

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

Roundtable demographics:

- ~ ½ of participants are licensed to provide rental property management services
- ~ ¼ of participants are licensed to provide strata management services
- ~ ¼ of participants are involved in some capacity in commercial real estate transactions

Feedback regarding commercial real estate:

- Participants indicated that there are differences in how commercial and residential trading services operate, and that both consumers and licensees are at increased risk where licensees with limited knowledge of commercial transactions handle them.
- Participants suggested that, as there are different regulatory requirements for residential versus commercial rental, commercial real estate should be its own licensing category distinct from residential. Participants further suggested that consumers engaging in commercial transactions can be treated differently from residential consumers; commercial consumers are generally more sophisticated or savvy.
- However, some participants felt there are not enough commercial real estate transactions in many Interior BC communities to justify becoming licensed solely in commercial real estate.
- There appeared to be consensus among commercial participants that, regardless of whether commercial becomes a licensing category, there needs to be additional education available for those licensees who provide commercial real estate services.

Feedback regarding strata management issues:

- Some participants expressed concern that a strata management brokerage can provide strata management services from a community several hours away, without direct knowledge of the development.
- Participants also expressed concern for how long it may take a strata management brokerage to prepare and provide documents. Participants indicated that strata management brokerages should be compelled to provide documents within a mandatory short timeline without rush fees being applied, as a good strata management company is organized and then it is easy to complete the Form F and Form B.

- Some participants felt that trading services licensees should be required to take Strata 101 or 102 before they can assist in the purchase and sale of strata property because they don't understand their responsibilities in that process. Additionally, strata 101 and 102 should be available in more (remote) Interior BC communities, more often.

Feedback regarding rental property management issues:

- Managing brokers suggested that trading services licensees should receive more education on the *Residential Tenancy Act*, as many do not seem to understand that "timed tenancies" no longer exist. It was suggested that the appropriate source of this education may be from within the brokerages.
- Some participants indicated that tenants have always understood that they are unrepresented, and that the Disclosure of Representation in Trading Services form is not helpful.