

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

## **Regional Roundtable Discussion Highlights: Vancouver (Morning)**

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### **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 information-gathering survey. The following report highlights the feedback gathered by OSRE from participants at the Vancouver roundtable, held on the morning of December 4, 2018.

### **Discussion Highlights: Supervision**

Feedback regarding effective supervision:

- There appeared to be general consensus among participants that supervision does not necessarily require individuals to be physically present in the same location; technology is evolving to support effective remote supervision.
- Participants identified a number of components of effective supervision including:
  - review of documents, records, and accounts (e.g. contracts, transaction files, trust account reconciliations) for regulatory compliance;
  - regular meetings (e.g. weekly, monthly) and brokerage communications to disseminate regulatory and sales information. This can also be accomplished through other means (e.g. Skype, phone, e-mail, and virtual office software) to monitor licensees' responses to training information. Regardless of the means, some managing brokers indicated it can be challenging for them to get licensees to participate in these activities while others did not find this to be challenging;
  - regular contact between managing brokers and licensees, and availability of managing brokers to licensees - to provide guidance and answer questions;
  - the appropriate amount and style of supervision can vary by individual, based on factors such as the licensee's level of experience and receptiveness to guidance. Managing brokers who transact primarily in commercial real estate indicated that the client's level of sophistication can also be an important consideration.
  - effective supervision can include sharing responsibilities among two or more managing brokers, where those managing brokers are licensed in relation to the same brokerage/office, and/or delegating duties to other appropriately-skilled licensees and/or unlicensed staff; and
  - providing tools and ensuring policies, procedures, and systems are in place to reduce consumer risk and ensure regulatory compliance. For example, some brokerages provide in-house training programs to licensees with less than a minimum amount of experience.
- Some managing brokers expressed frustration that their ability to supervise the brokerage's related licensees is limited if they wish to preserve those licensees' status as independent contractors for tax purposes. Other managing brokers indicated that some licensees have taken this independent status too far and are likely to transfer their licence to another brokerage (presumably one with

lower supervisory standards) if they object to the managing broker's supervisory practices. It was suggested that regulators consider the impacts of any regulatory changes on the nature of the employment relationship between brokerages and their related licensees.

- Some managing brokers suggested that supervisory challenges are related to pre- and post-licensing education and qualifications for both managing brokers and representatives. Raising the quality of licensing education and continuing professional development changes the supervisory landscape.
- By contrast, others felt that experienced licensees also present supervisory challenges, as they may be resistant to guidance and may not fully understand the impact on their real estate practice and/or changes in the regulatory framework over time.
- Managing brokers who work in commercial real estate indicated that they deal with "sophisticated clients," who can identify and protect themselves from licensee misconduct. This helps to reduce the burden of supervision.

Feedback regarding a cap or ratio on the number of licensees a managing broker can supervise:

- Many managing brokers indicated that they felt that the regulator should not impose this type of restriction, as it impacts business models. Rather, managing brokers should be well-trained to effectively perform their regulatory duties, including understanding the limits of their own capacity to provide effective supervision.
- There were mixed views regarding whether large brokerages provide effective supervision. Some participants identified consumers may be put at risk when inexperienced licensees are hired into large brokerages where they may receive limited direct supervision and training. Others indicated that large brokerages are the most likely to have developed strong systems and processes, which are necessary for effective supervision.
- Participants identified a number of considerations that regulators should explore further in relation to a cap/ratio including:
  - how to balance the limited number of experienced managing broker with the large number licensed as representatives and associate brokers;
  - potential impacts on business models that depend on collecting desk fees from a large number of licensees, regardless of whether or not these individuals generate commission or other revenues for the brokerage; and
  - whether this type of restriction would be appropriate for newly licensed managing brokers (e.g. graduated supervisory responsibilities based on experience).

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

- Some managing brokers indicated that actively providing real estate services to clients keep managing brokers knowledgeable about and engaged in the industry.
- Many managing brokers recognized that brokerage profitability requires those working in rural or remote communities to provide services to clients.
- Many managing brokers indicated that it does not make sense for the regulator to prohibit managing brokers from providing trading services directly to clients. For example, the managing broker is often the most experienced and knowledgeable licensee at the brokerage. Further, many managing brokers already choose not to provide trading services directly to clients. This is true for both residential and commercial real estate brokerages.
- Participants identified a number of considerations that regulators should explore further in relation to a cap/ratio including identifying what risks to the consumer could exist when a managing broker

provides services to clients, as well as what risks to the consumer could result from this type of restriction.

## Discussion Highlights: Liability and Compliance

Feedback regarding where to place the liability for misconduct:

- Participants indicated that they are often not aware of what the brokerage's related licensees are doing until they review the contract of purchase and sale, yet remain vicariously liable for licensee conduct. It was suggested that during investigation, RECBC consider whether managing brokers were aware of the misconduct and what due diligence they undertook in assigning liability. It was also suggested that RECBC provide clearer expectations and guidance for managing brokers (e.g. what constitutes "due diligence.")
- Some managing brokers expressed concern that their related licensees want the managing broker to be available at all times for direction so that the managing broker bears a portion of the liability if the transaction becomes the subject of a RECBC discipline process.
- Participants indicated that liability concerns are driving many experienced managing brokers to leave the industry or downgrade their licences. These concerns also prevent new people from taking on the managing broker role.
- Participants indicated that licensees should carry greater responsibility for their own conduct; according to participants, this could improve conduct and reduce complaints and risks to consumers. There was some interest in moving towards a single licensing framework; however, further analysis and development is required (e.g. handling trust monies and trust accounting, what (if any) role managing brokers and brokerage would perform).
- There was mixed feedback regarding brokerage owner liability. Participants indicated that even if greater liability was placed on brokerage owners, some brokerages have tried to indemnify themselves against higher monetary penalties for licensee misconduct by making the licensee responsible for payment of these penalties through employment contracts. Participants identified that, in practice, these clauses can be difficult to enforce if licensees have transferred their licences to other brokerages in the time between when the misconduct occurred and when RECBC resolves complaints.

Feedback regarding complaints resolution processes:

- Participants expressed concern that Council has a backlog of complaints that pre-date the 2016 amendments to the *Real Estate Services Act* (RESA).
- Participants also expressed frustration with timeframes for resolving complaints, which may create the impression that regulators tolerate misconduct and that reporting is pointless.
- There was discussion regarding what, if any, role managing brokers and/or local real estate boards could play in resolving complaints regarding minor or technical issues, and/or preventing these types of complaints from being escalated to RECBC.
- Participants suggested that regulators undertake more proactive enforcement efforts (including of unlicensed activity), ensure a greater number of licensees are represented on discipline panels, and levy higher penalty amounts for egregious misconduct (e.g. permanent licence cancellation).

Feedback regarding reporting of misconduct:

- Participants expressed concern about business fee-based models that prioritize "bums in seats" and enable unethical and/or incompetent licensees to continue to provide real estate services.

- Generally, participants did not support mandatory reporting of misconduct by managing brokers to RECBC.
- Participants expressed concern about exposing brokerages to additional legal liability with regard to reporting unproven allegations to the regulators.
- There was also discussion about how RECBC handles comments from managing brokers when they return a licence for conduct-related issues.
- Participants suggested that RECBC could possibly make more information available to managing brokers regarding licensees' licensing history, including pending allegations of misconduct, subject to further analysis (e.g. harm to reputation).

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

Feedback regarding education and qualifications for managing brokers:

- General feedback from participants suggests that the current education and qualifications requirements for managing brokers are too low, and many not impart the appropriate skills and knowledge to match managing brokers' evolving role. Many participants indicated that they learned through trial and error and/or had the benefit of a mentor to guide them.
- By contrast, many managing brokers who work in commercial real estate felt that pre-licensing education was mostly sufficient.
- Participants indicated that formal training can teach administrative functions; however, prospective managing brokers need greater breadth of experience than what would normally be acquired in two years – in order to effectively resolve problems (e.g. ethics issues). Participants commented that this is particularly true in commercial real estate, where the managing broker is expected to be the most knowledgeable individual in the brokerage.
- Some participants distinguished between the skills required to be an effective managing broker and those required to be a successful representative; they are different roles with different skill sets.
- There was consensus between residential and commercial managing brokers that continuing education for managing brokers is severely lacking. In addition, commercial managing brokers wanted to see continuing education tailored not just to their role, but also to their segment of the real estate sector. However, some participants indicated that the continuing education opportunities exist but people are not taking them because they are optional.
- There was also debate about the responsibility of regulators to provide clear answers and detailed guidance to managing brokers, versus the responsibility of managing brokers to use available information to arrive at well-considered professional judgements.
- Suggestions for improvements to managing broker education:
  - incorporate mentorships or apprenticeship into managing broker training, and use "qualification panels" or "peer reviews" for assessing readiness for licensing;
  - provide more tailored courses and content for managing brokers;
  - increased awareness of what resources are available from Council and others, as well as additional tools (e.g. templates for brokerage policies and procedures manuals);
  - provide an Applied Practice Course (or similar type of training) for managing brokers or consider graduated licensing (e.g. gradually increasing supervisory responsibilities with experience);
  - increase the experience requirement (e.g. from five years to ten years) to become a managing broker;
  - re-brand the managing broker role to be more attractive, i.e. that it is an "MBA in Real Estate"; and

- caution that if the education and qualification requirement are too onerous, this could become a further deterrent to representatives taking on the role.

Feedback regarding additional qualifications for brokerage owners:

- Some participants felt that the amendments to RESA in 2016 resolved concerns about brokerage owners being too involved in operations and that no further qualifications or restrictions are required. There was some discussion about whether this is a significant versus isolated issue.
- Others felt that it is too easy to open a new brokerage and additional criteria should be considered, including potentially licensing brokerage owners. For example, franchisors look at the applicant's business plan as part of their decision to allow franchisees to use the brand.
- Some participants recommended that consideration should be given to how additional requirements or restrictions on brokerages can impact owner equity; others stated that there is no equity in a brokerage, as anyone who wants to own one can open one up.

Feedback regarding education and qualifications for representatives:

- General feedback from managing brokers suggests that low barriers to entry results in poor ethics and non-compliance, placing consumers at risk. Participants indicated that improving the training of licensees coming into the industry positively changes the supervision landscape.
- There was discussion that inexperienced representatives may be in the industry for the wrong reasons (e.g. quick money) and that although this situation will resolve with the market cycle, the risk to consumers remains in the short term.
- There was significant discussion about the role of managing brokers in continuing education. Some managing brokers, particularly those from commercial brokerages, indicated that recent graduates from the licensing courses should be job ready, and brokerage-based training should focus on brokerage-specific procedures and practices. Commercial managing brokers also identified that they often work with "sophisticated clients," who are less vulnerable than the average residential buyers/sellers and who expect the licensees with whom they work to also be "sophisticated."
- Others indicated that training new licensees is part of the managing broker's duties and that those who failed to do so were not performing their duties appropriately.
- There was discussion about how different business models impact how much training a brokerage provides to representatives. Large brokerages may have trouble providing adequate continuing education for their licensees ("can't mentor everyone."); this may not be an issue for experienced licensees, but can be a risk when inexperienced licensees receive inadequate direction.
- Examples of gaps in current education, qualifications, tools and supports, as identified by participants, included:
  - the need to provide an Applied Practice Course (or similar type of training) for rental property and strata management candidates;
  - concern about cheating in both pre-licensing and continuing education; and
  - the need for more practical, in-the-field learning in pre-licensing or for new licensees - to enable new licensees to be job ready, as the exam is not enough.

## Discussion Highlights: Teams

Feedback regarding supervision of teams:

- There were varied views expressed regarding the future of teams, including: support for abolishing or prohibiting teams; the sense that teams are beneficial to consumers (e.g. good customer service)

and licensees (e.g. coverage during absences); and, that any challenges can be managed through effective brokerage policies and management practices.

- Some participants felt that teams are the wave of the future, while others felt that teams are disbanding and no longer make sense in the current regulatory environment.
- Participants indicated that teams may be re-examining their structures in response to new rules regarding agency (e.g. whether to continue working together, dissolve the team, or form an independent brokerage).
- Participants identified a number of challenges in supervising teams:
  - team leaders may provide direction to team members, but leaders tend to be focused on sales and not compliance;
  - team leaders may attempt to resolve consumer complaints instead of directing consumers to the managing broker;
  - large teams can override the managing broker by threatening to take their business elsewhere if the managing broker does not give them what they want;
  - confusion among consumers – and team members – regarding the nature of representation provided;
  - managing brokers may not receive enough information about their team’s activities (e.g. they are not aware of the clients teams are working with or the transactions that teams are involved in);
  - team members collectively act as the designated agents of all members’ clients, even if they are not sharing information about clients; and
  - regulatory guidance and framework is unclear on what is considered to be a team, which results in grey areas (e.g. groups of licensees who “work together”, but do not advertise together.)
- Participants identified a number of potential solutions to these challenges including:
  - limiting the number of members in a team;
  - separating out a licensing category for team leaders;
  - tailoring education and resources for team leaders and team members;
  - requiring that an associate broker or managing broker be a part of the team;
  - requiring team advertising to feature the brokerage name more prominently than the team name;
  - allowing team members to separate their duties to clients from those of other team members, thereby allowing individual team members (versus all team members) to act as the designated agent for a client; and
  - concern about encouraging teams to form a separate brokerage, as participants are not sure that existing teams have the required knowledge and skills to function as a brokerage.

## **Discussion Highlights: Issues Related to Rental Property Management, Strata Management, and Commercial Real Estate**

Feedback regarding issues in commercial real estate:

- Participants indicated that the knowledge required by commercial trading services is different than that for residential trading services; this creates a risk to consumers if licensees with residential experience are handling commercial transactions.
- In discussion about dual agency prohibition, participants indicated that there should be an exemption for commercial real estate, or at least different mandatory disclosure forms. Participants suggested that disputes between licensees and consumers related to dual agency in commercial real

estate can be resolved through the courts, and that many commercial real estate consumers are sophisticated individuals with independent advisors working for them.

- Participants identified a number of potential solutions to these issues including:
  - separate licensing for commercial and residential trading real estate;
  - creation of a “sophisticated client” declaration in commercial real estate, allowing for exemptions from certain duties owed to these clients by licensees;
  - tailored practice advice from RECBC that applies to commercial transactions; and
  - tailored continuing professional education courses that are relevant to commercial real estate services.

Feedback regarding issues in rental property and strata management:

- There was discussion regarding the challenges identified in the consultation summary document, including conflicts between the *Residential Tenancy Act* and licensee duties under the RESA as well as agency issues related to sectioned strata corporations.
- Participants identified a number of potential solutions including:
  - providing an Applied Practice Course (or similar type of training) for rental property and strata management candidates, as noted previously;
  - creating apprenticeship programs as part of pre-licensing education to allow candidates to gain experience while they work toward their licence;
  - creating graduated licensing that expands the permitted scope of practice for licensees as they gain industry experience;
  - creating additional RECBC resources for rental property and strata management licensees (e.g. Professional Standards Advisors with appropriate knowledge) ;
  - ensuring that licensees can contact RECBC for guidance in resolving problems without becoming the subject of an investigation; and
  - creating tailored courses (e.g. based on content of Professional Association of Managing Agents (PAMA) and Strata Property Agents of BC (SPABC) courses) and forms (e.g. disclosure forms) for rental property and strata management services.