

Rule of the Authority

Real Estate Services Act

Annotated Version

BC Financial Services Authority (“BCFSA”) is releasing proposed amendments to the Real Estate Services Rules (“Rules”) for public and licensee comment. The proposed Rules amendments are intended to strengthen and clarify BCFSA’s authorities in relation to real estate data collection.

Key proposed changes to the Rules include:

- Creating explicit authorities for BCFSA to collect data from licensees on an ad hoc, periodic, and contingent basis;
- Requiring brokerages to retain copies of any offers that a related licensee of the brokerage delivers or receives; and,
- Requiring licensees to make disclosures of conflicts of interest in writing.

If the Minister of Finance consents to the amendments, BCFSA intends to bring the Rules in Appendix 1 into force on February 1, 2024. Specific requirements for data collection will be set by the Superintendent, including how licensees are expected to comply with requests made under these Rules. BCFSA will communicate reporting requirements to impacted brokerages.

As per the *Real Estate Services Act*, the Authority (BCFSA) has rule-making authority and is responsible for the implementation and enforcement of the Rules.

APPENDIX 1

1 Section 1 of the Real Estate Services Rules, B.C. Reg. 209/2021, is amended by adding the following definition:

“personal information” has the same meaning as in section 1 of the *Personal Information Protection Act*; .

Authority’s Comments

The proposed amendment to section 1 adds a definition of “personal information” to the Rules. Defining this term will help to formalize the new regulatory requirements for providing personal information in BCFSAs data calls. Specifically, it is proposed that the Rules adopt the definition of “personal information” provided in the [Personal Information Protection Act](#) (“PIPA”), which real estate brokerages are required to adhere to.

2 Section 26 (2) is amended

(a) in paragraph (a) by adding the following subparagraph:

(xiv) section 93.1 [*information provided to superintendent on request*];
, and

(b) in paragraph (d) by adding the following subparagraphs:

(xii.4) section 75.1 [*periodic brokerage activity report*];
(xix) section 93.2 [*information provided to superintendent after specified event*].

Authority’s Comments

The proposed amendments to section 26 (2) would expand the list of Rules where a contravention may be eligible for an administrative penalty, to include the new Rules proposed for data collection.

Contraventions of the Rules regarding the requirement to provide information to the Superintendent upon request would be eligible for administrative penalties in Category A. This category includes minor business management infractions that present a low risk of harm to consumers. The remaining Rules would be eligible for administrative penalties under Category D, which covers minor matters that present a low risk of harm to consumers and may be time sensitive. For more information on administrative penalties, please refer to BCFSAs [Administrative Penalties under the Real Estate Services Act](#).

BCFSA is responsible for enforcing licensee conduct requirements in the Real Estate Services Rules. This includes using its discretion to determine whether the unique circumstances of a

contravention of a rule designated in section 26 (2) are appropriate for disposition by administrative penalty.

3 Section 30 (j) is repealed and the following substituted:

- (j) without limiting the requirements of Division 2 [Disclosures] of Part 5 [Relationships with Principals and Parties], if a conflict of interest does exist, promptly and fully disclose the conflict to the client
 - (i) in writing, and
 - (ii) separately from a service agreement or any other agreement under which real estate services are provided and separately from any agreement giving effect to a trade in real estate.

Authority's Comments

The proposed amendments to section 30 (j) of the Rules include a new requirement for licensees to make disclosures of conflicts of interest in writing *and* separately from a contract of purchase and sale or a written service agreement. This proposed requirement will enable clients and licensees to refer back to the content of any conflict of interest disclosure, is consistent with existing best practice guidance from BCSFA, and is consistent with the requirements for other disclosures under Division 2 of Part 5 of the Rules.

4 The following section is added:

Periodic brokerage activity report

- 75.1** A brokerage must, at intervals specified by the superintendent, file with the superintendent a brokerage activity report, completed in accordance with any requirements specified by the superintendent.

Authority's Comments

Section 75.1 of the Rules would create an explicit authority for BCFSFA to collect data on a *periodic* basis. *Periodic data collection* would require licensees to submit information from their records, and/or copies of original documents, as specified by the Superintendent, at regular intervals (e.g., monthly or quarterly filings).

5 Section 83 (1) is amended

- (a) in paragraph (a) by adding “section 30 (j) [conflicts of interest],” after “written disclosures under”, and**

- (b) by adding the following paragraph:**

(c.1) reports under section 75.1 [periodic brokerage activity report]; .

Authority's Comments

The proposed amendments to section 83 (1) of the Rules would add reference to the additions in section 30 (j) and section 75.1 with regards to the records that brokerages are required to retain. Division 2 [*Other Records*] of Part 8 [*Brokerage Records*] of the Rules provides for the requirements of brokerage recordkeeping, including section 83. This addition requires brokerages to retain records of disclosures of conflicts of interest, which are to be in writing *and* separate from a contract of purchase and sale or a written service agreement; and to retain a periodic brokerage activity report.

6 *Section 84 (1) is amended by adding the following paragraph:*

(a.1) the offers for the purchase or sale of real estate, or for the assignment of a contract for the purchase and sale of real estate, that a related licensee of the brokerage has delivered or received on behalf of a party to a trade in real estate; .

Authority's Comments

The proposed amendments to section 84 (1) of the Rules would create a new requirement for brokerages to retain copies of any offers that a related licensee of the brokerage delivered or received. This proposed requirement will strengthen record-keeping requirements in relation to the retention of offers.

7 *Section 93 (c) is amended by adding “and one or more of the reports required under section 75.1 [*periodic brokerage activity report*]” after “under section 75 [*annual financial statements, accountant’s report and brokerage activity report*]”.*

Authority's Comments

The proposed amendments to section 93 (c) of the Rules would add reference to the addition of section 75.1 with regards to the records that brokerages are required to retain. This addition outlines that if a brokerage ceases to carry on business, it must submit to the Superintendent one or more of the financial statements and reports required under section 75 [*annual financial statements, accountant’s report and brokerage activity report*] and one or more of the reports required under section 75.1 [*periodic brokerage activity report*], if requested by the Superintendent.

8 *The following Division is added to Part 8:*

Division 4 – Records or Information Provided to Superintendent

Authority's Comments

This new Division under Part 8 of the Rules establishes authorities for the Superintendent to request records or information from licensees on both an ad hoc and contingent basis.

Records or information provided on request

93.1 As requested by the superintendent and in accordance with any requirements specified by the superintendent, a licensee must provide to the superintendent records or information, including personal information, in the possession or control of the licensee.

Authority's Comments

Section 93.1 of the Rules would create an explicit authority for BCFSa to collect data on an *ad hoc* basis. *Ad hoc data collection* would require licensees to compile and transmit records or information maintained in the licensee's possession or control, from time to time, as requested by the Superintendent (e.g., through a data call).

Records or information provided after specified events

93.2 Within a period specified by the superintendent after the occurrence of an event specified by the superintendent, a licensee must provide to the superintendent records or information, including personal information, specified by the superintendent.

Authority's Comments

The proposed amendments to section 93.2 of the Rules would create an explicit authority for BCFSa to collect data on a *contingent* basis. *Contingent data collection* would require licensees to submit certain information, and/or records, within a specified period after a triggering event, as specified by the Superintendent (e.g., filing copies of certain consumer disclosure forms within a certain number of days of making the disclosure).