

NOVEMBER 2023

Summary of Consultation Feedback:

Real Estate Data Collection Rules

BCFSA 

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Introduction

As the province's financial services regulator, BCFSA requires industry data to support its effective oversight of the financial services sector. Whether in relation to credit unions, insurance companies, or real estate services, or other areas regulated by BCFSA, this data provides critical insights into the functioning of the sector and helps BCFSA respond to emerging risks that may impact British Columbians.

The *Real Estate Services Act* ("RESA") provides broad authorities for BCFSA to collect data from licensees necessary for its operations and regulatory oversight of the industry. As a public body, BCFSA is governed by the *Freedom of Information and Protection of Privacy Act* ("FOIPPA"), which sets limitations and requirements related to BCFSA's collection, disclosure, and use of personal information.

In June 2023, BCFSA launched a public consultation on proposed amendments to the Real Estate Services Rules (the "Rules"), as required under the Financial Services Authority Rule-Making Procedure Regulation.

The proposed amendments are intended to strengthen and clarify BCFSA's authority to collect real estate data from licensees. Enhancing the ability to gather this information will give BCFSA a deeper understanding of current real estate market conditions and practices, including market-driven risks to residential real estate consumers. The data will contribute to BCFSA's evidence-based policy and regulatory decision-making to help protect British Columbians during life's most important financial decisions – like buying or selling property.

In addition, the proposed Rules amendments also include:

- A requirement for licensee disclosures of conflicts of interest (under Section 30) to be made in writing and maintained with other brokerage records; and
- A requirement for brokerages to retain copies of any offers prepared or received by, or on behalf of, a brokerage in relation to a real estate trade or prospective trade.

This report provides a summary of the feedback received during the public consultation.

For further information on the proposed amendments see the [Real Estate Services Rules Amendments](#) consultation page on BCFSA's website.

Consultation Process Overview

The consultation was open for public comment from June 26, 2023, to August 27, 2023. The primary source of feedback came from BCFSA's online feedback form, although other submissions were also accepted and considered.

Participants were invited to share their opinions on the draft amendments, including:

- 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.

To support informed participation and raise awareness, BCFSAs shared information and resources with stakeholders in advance of and throughout the consultation period. Some of the engagement activities BCFSAs undertook included:

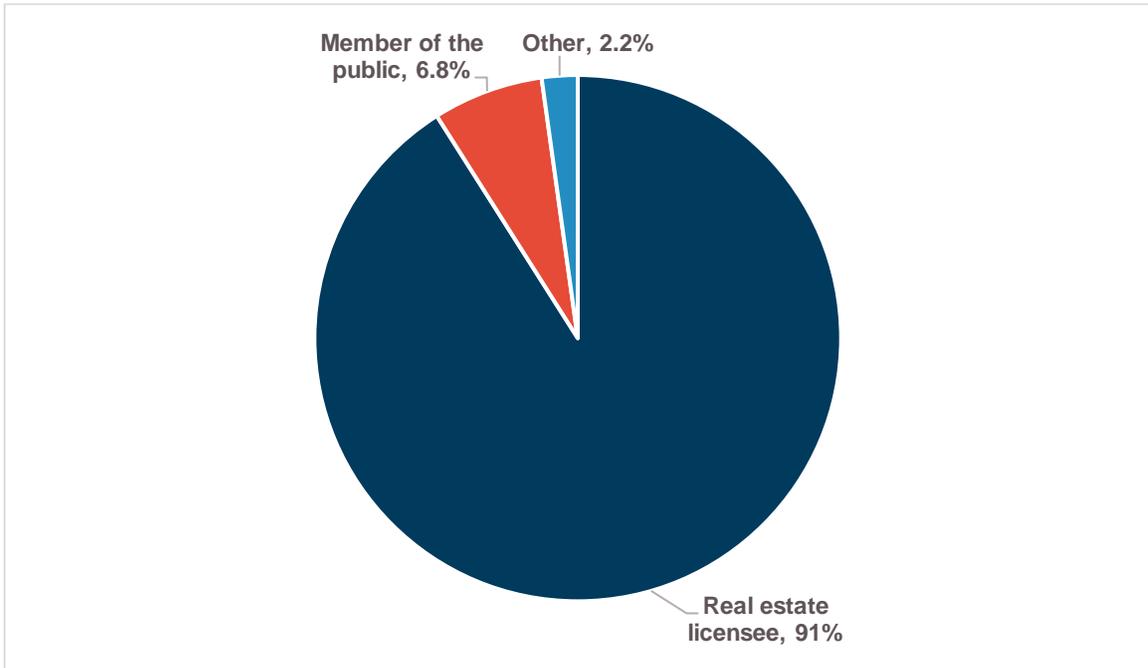
- Notifying licensees of the opening of the consultation period with an email Advisory;
- Publishing a news release inviting the public and licensees to participate in the consultation;
- Publishing a consultation webpage with a variety of resources explaining the proposed Rules and their anticipated effects including:
 - [Annotated Rules](#),
 - Results of BCFSAs's [2022](#) and [2023](#) real estate data calls, and
 - Consultation Feedback Form;
- Sending regular participation reminders to licensees via email, newsletter articles, and social media;
- Providing a webinar for managing brokers to share information about the proposed amendments; and
- Participating in meetings with industry to discuss the proposed Rules.

Summary of Feedback: What We Heard

A total of 368 people participated in the consultation by responding to the feedback form. BCFSAs also received five written responses submitted by email, including two submissions from industry associations.

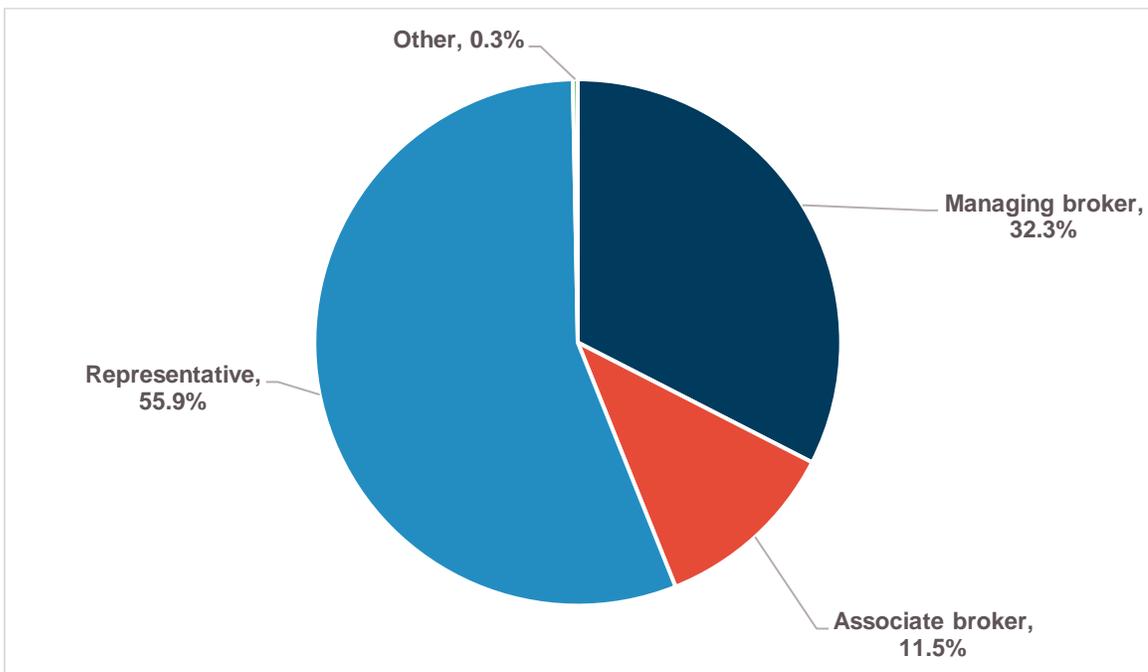
A summary of respondent demographics is also provided in Figures 1-4. A thematic summary of feedback is provided in Table 1.

FIGURE 1: RESPONDENT DEMOGRAPHICS BY GROUP



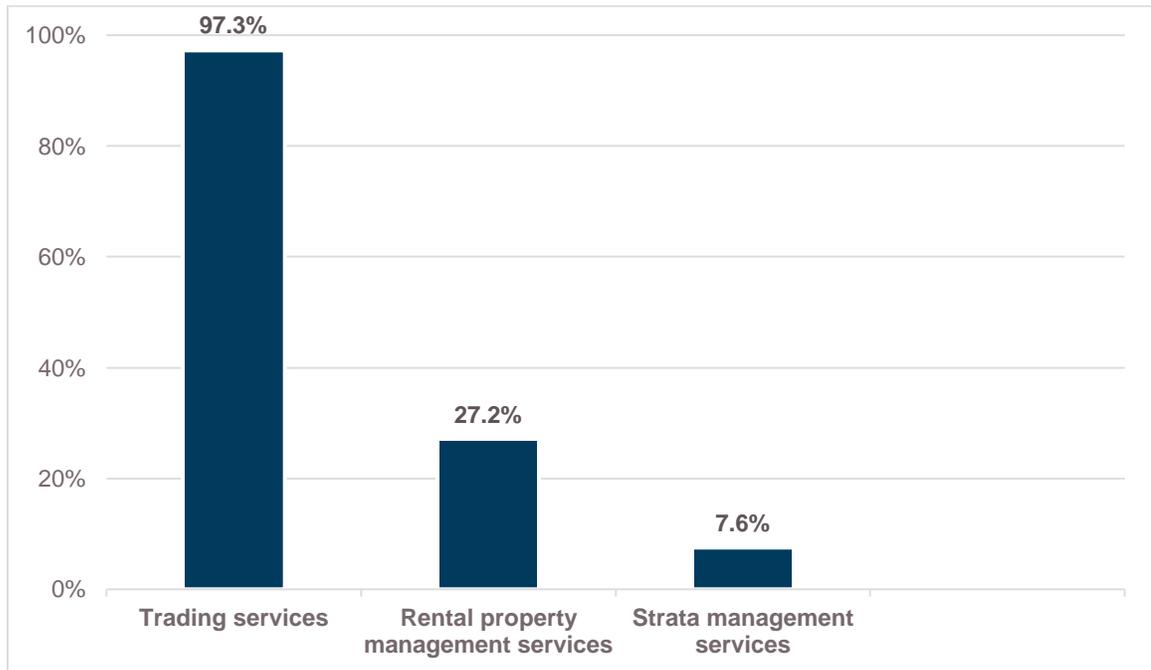
N=368

FIGURE 2: LICENCE LEVELS OF LICENSED RESPONDENTS



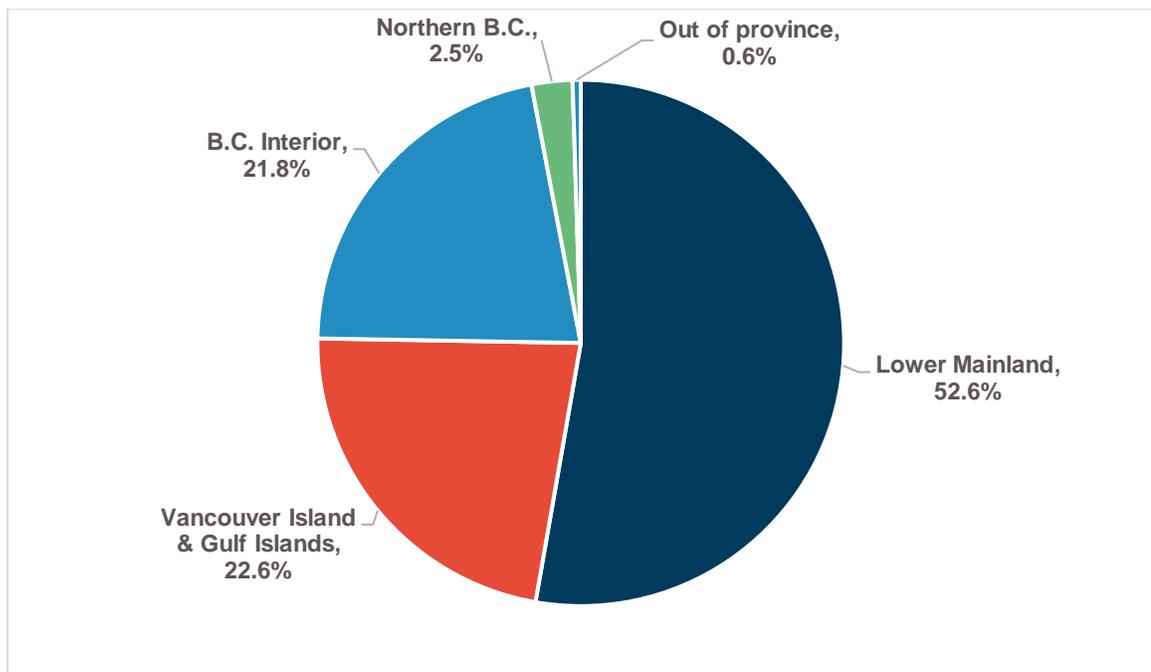
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FIGURE 3: LICENCE CATEGORIES OF RESPONDENTS



*An individual may be licensed for more than one category of real estate services. Does not total 100%.

FIGURE 4: REGIONAL DISTRIBUTION OF RESPONDENTS



N=363

The following tables summarize the key themes from the feedback received during the consultation.

TABLE 1: FEEDBACK THEMES RELATED TO DATA COLLECTION

The survey included four proposed Rules relating to data collection. BCFSA received an average of 85 comments per proposed Rule.

THEME	BCFSA RESPONSE
<p>Consultation participants raised questions about how the proposed data collection Rules comply with B.C.'s privacy legislative framework, including both FOIPPA, which applies to BCFSA as a public body, and the <i>Personal Information Protection Act</i> ("PIPA"), which applies to private sector organizations (e.g., brokerages).</p>	<p>The proposed Rules comply with existing privacy legislation. BCFSA currently has broad data collection authorities under existing Rules and can request for review any records related to the dealings of a licensee, including for the purposes of audits and investigations. The proposed Rules strengthen and clarify those authorities to ensure BCFSA is able to fulfill its mandate.</p> <p>Section 27(1)(a)(iii) of FOIPPA allows for the collection of data indirectly when it is authorized by another enactment. The proposed Rules amendments would be "another enactment." They clarify the authority already given by RESA and the Rules, combining with the authority already given to the Superintendent of Real Estate (the "Superintendent") under Section 25.1 and Section 89.2(2)(f) of RESA.</p> <p>PIPA permits licensees to provide the information to BCFSA by virtue of Section 18(1)(o): where "disclosure is required or authorized by law."</p>
<p>Consultation participants cited the lack of specificity in the proposed Rules regarding the actual information to be collected.</p>	<p>BCFSA can collect personal information respecting the real estate market in support of its regulatory decision-making.</p> <p>For individual data requests, BCFSA intends to set out the specific data elements to be reported in a regulatory statement approved by the Superintendent, providing clarity to licensees on the content, form, and timing of reports. This information will be provided to licensees in advance.</p> <p>BCFSA will review every data call carefully to ensure full privacy law compliance. However, it is important to understand that the proposed new Rules themselves comply, and BCFSA is able to collect and require disclosure of personal information from licensees, given compliance with RESA, the Rules, and FOIPPA.</p>

THEME	BCFSA RESPONSE
<p>Consultation participants highlighted the importance of BCFSA implementing strong data security and privacy practices and discouraged the use of insecure methods, such as email, for the transmission of personal information.</p>	<p>BCFSA complies with all privacy laws. BCFSA conducts privacy impact assessments and security threats and risk assessments on its initiatives and systems to ensure compliance with legislation and to make reasonable security arrangements to protect personal information.</p> <p>BCFSA operates a secure IRIS portal to receive data submissions from real estate licensees and other regulated entities. This will be the mechanism by which the 2024 brokerage data call responses are submitted.</p> <p>BCFSA already receives a range of data from regulated entities and has rigorous practices in place for the collection, handling, storage, and disposal of personal information that comply with FOIPPA.</p>

TABLE 2: FEEDBACK THEMES RELATED TO WRITTEN DISCLOSURES OF CONFLICTS OF INTEREST

BCFSA received 81 comments in response to the proposed Rules amendments relating to requiring written disclosures of conflicts of interest.

THEME	BCFSA RESPONSE
<p>Generally, many respondents were supportive of the proposed Rules amendments, with many believing that this requirement already existed.</p>	<p>Although there is a long-standing requirement for licensees to promptly disclose conflicts of interest to their clients, this disclosure is not currently required to be made in writing nor retained with brokerage records.</p> <p>The proposed amendment would create a requirement for written disclosures and supports greater transparency for consumers, who will be able to refer to the content of the disclosure provided to ask questions and seek independent advice. Providing disclosures in writing is consistent with best practices – for example, written disclosures of conflicts of interest are required for mortgage brokers in B.C., and real estate licensees in Quebec and Alberta. Written disclosures also allow licensees to have a full record of what information was disclosed to clients and when, and to update the disclosure as needed as circumstances change.</p>
<p>Some respondents cited the number of disclosures that are already required and provided suggestions for streamlining the disclosure process, such as combining all disclosures into one form.</p>	<p>Licensees are required to disclose conflicts of interest fully and promptly to their clients. BCFSA's current practice guidance strongly encourages licensees to make these disclosures in writing. Further, a single omnibus disclosure diminishes the value and timeliness of consumer disclosures and the importance of carefully reviewing disclosure content with clients.</p>
<p>Some respondents sought clarity around how a conflict of interest is defined as well as the timing, form, and other parameters of this disclosure.</p>	<p>BCFSA expects licensees to have a strong understanding of conflicts of interest and their related disclosure obligations. BCFSA has provided extensive industry education on conflicts of interest in recent years through its continuing education program. BCFSA also publishes conflict of interest guidelines for all categories of real estate services as part of the Knowledge Base. If the proposed Rules are approved, BCFSA will consider whether additional resources are needed to support licensees in complying with the new Rules and requirements.</p>

TABLE 3: FEEDBACK THEMES RELATED TO RETENTION OF OFFERS

BCFSA received 90 comments in response to the proposed Rules amendments on retention of offers.

THEME	BCFSA RESPONSE
<p>Generally, many respondents provided negative or unsupportive feedback on the proposed amendments related to retention of offers.</p> <p>Many respondents felt that this was a big change in practice and that the additional file retention requirement would be labour intensive. There were concerns about administrative burden to brokerages and other licensees related to tracking, storage, and other additional costs (e.g., staffing) associated with the proposed Rules. Further, some respondents indicated that the proposed Rules may disproportionately impact smaller brokerages with limited administrative resources.</p>	<p>BCFSA acknowledges the specific concerns raised regarding additional administrative burden and costs to brokerages and other licensees, potential compliance challenges for brokerages, and other operational concerns.</p> <p>It is BCFSA's view that the proposed Rules creates limited additional administrative burden for licensees. Given that many licensees are already making the Disclosure of Buyers Right of Rescission through the Contract of Purchase and Sale, there is already an indirect requirement for brokerages to retain offers as part of their brokerage records. Moreover, some real estate boards and brokerages already require offer information to be retained. The proposed Rules amendments would make this requirement explicit and ensure consistent record keeping across industry.</p>
<p>Some respondents indicated that the proposed amendment is not necessary as they are already retaining all offers.</p>	<p>While some licensees may already be retaining offers, there is currently no explicit regulatory requirement to do so in the Rules. There is, however, a requirement for licensees and brokerages to retain disclosures, including the Disclosure of Buyers Right of Rescission which is commonly made through the Contract of Purchase and Sale and therefore may indirectly result in the retention of offers.</p>
<p>Respondents raised questions around a brokerage's ability to track offers that are not successful and that some licensees may not provide brokerages with unaccepted offers. Some respondents felt that the onus of document retention requirement should be placed on individual licensees, not brokerages.</p>	<p>The proposed Rules do not change licensees' standing responsibilities. The Rules require a brokerage's related licensees to keep the managing broker informed of the real estate services they are providing on behalf of the brokerage and to promptly provide to the managing broker copies of records that the brokerage is required to retain. Brokerages should have their own policies and procedures with respect to record retention in order to comply with regulatory requirements and the operational needs of the brokerage.</p> <p>If the proposed Rules are approved, BCFSA will consider whether additional resources are needed to support licensees in complying with the new Rules and requirements.</p>

Consultation Outcomes and Next Steps

BCFSA thanks those who took the time to participate in the consultation.

BCFSA has completed its review of the consultation feedback and considered all the responses it received. The feedback received did not raise any significant concerns that would substantially impede the proposed amendments from operating as intended and BCFSA continues to believe that the changes support BCFSA's broad consumer protection mandate. As such, BCFSA will proceed with seeking the Minister of Finance's consent to make the new Rules as published.

If the Minister consents to the proposed Rules, BCFSA intends to bring the Rules into force on February 1, 2024. This effective date will support a mandatory brokerage data call in February 2024 similar to the voluntary data calls carried out in 2022 and 2023.

BCFSA will post a news release and Advisory informing the public, licensees, and the media of the Minister's decision.



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