

MARCH 2024

Summary of Consultation Feedback:

Expanding the Real Estate
Administrative Penalty Framework

BCFSA 

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Introduction

In September 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 current administrative penalty framework is contained in [Sections 26 and 27](#) of the Rules. BCFSA’s current administrative penalty procedures are available on its [website](#).

The proposed amendments are intended to expand the administrative penalty framework to improve enforcement efficiency by addressing more contraventions quickly and avoiding lengthy formal order processes, where appropriate. The proposed Rules amendments would:

- Create two new categories of administrative penalties, capturing:
 - failures by unlicensed persons and licensees to comply with BCFSA investigations, and
 - unlicensed and related restricted activity;
- Add contraventions with respect to the improper use of required disclosures; and
- Expand the list of infractions eligible for administrative penalties that fit within the parameters of existing categories in Section 26 of the Rules:
 - Category B [*licensee responsibilities*],
 - Category C [*substantial duties owed to clients and others*], and
 - Category D [*daily*].

The proposed amendments build on changes to the administrative penalty framework that were brought into force in early 2021. That same year, [Sections 56 and 57](#) [*Administrative Penalties*] of the *Real Estate Services Act* (“RESA”) were amended to enable BCFSA to designate provisions of RESA and its associated regulations as being subject to administrative penalties, as well as the Rules. The legislative change allowed, for the first time, the use of the administrative penalty framework to capture unlicensed activity, as well as a broader range of contraventions. Before the 2021 amendments to RESA, only contraventions of the Rules could be included in the administrative penalty framework. As a result, the administrative penalty framework could only apply to licensees.

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

For further information on the proposed amendments, including other options in BCFSA’s progressive enforcement toolkit, see the [Expanding the Administrative Penalty Framework](#) consultation page on BCFSA’s website.

Consultation Process Overview

The consultation was open for public comment from September 27, 2023, to November 26, 2023. The primary source of feedback came from BCFSA's online feedback form, although other submissions (e.g., emails) were also accepted and considered.

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

- Adding contraventions of RESA, the Real Estate Services Regulation ("Regulation") and Rules to Category B [*licensee responsibilities*];
- Adding contraventions of RESA, the Regulation and Rules to Category C [*substantial duties owed to clients and others*];
- Adding contraventions of RESA, the Regulation and Rules to Category D, as well as moving a contravention of section 75 of the Rules from Category A [*business management infractions*] to Category D [*daily*];
- Creating Category E with contraventions of RESA and the Rules [*refusal to comply with BCFSA investigations*];
- Creating Category F with contraventions of RESA and the Rules [*unlicensed and related restricted activity*]; and
- Proposed penalty amounts associated with new Categories E and F.

The purpose of this consultation was to identify any concerns or unintended consequences that may impede the proposed Rules from operating as intended, highlight issues for BCFSA to consider for successful implementation (e.g., timing, support materials, etc.), inform licensees and the public about likely upcoming changes, and to obtain feedback on areas for future consideration. BCFSA shares a copy of all responses with the Ministry of Finance.

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

- Notifying licensees of the opening of the consultation period via 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,
 - Discussion Paper, and
 - The Consultation Feedback Form;
- Sending regular participation reminders to licensees via email, newsletter articles, and social media;
- Hosting a webinar for approximately 80 managing brokers and associate brokers to share information about the proposed amendments and answer questions in real time;

- Providing an informational video about the proposed amendments on the consultation webpage; and
- Establishing a technical working group of leaders from B.C. real estate organizations to provide feedback on proposed changes in advance of the public consultation period.

Summary of Feedback: What We Heard

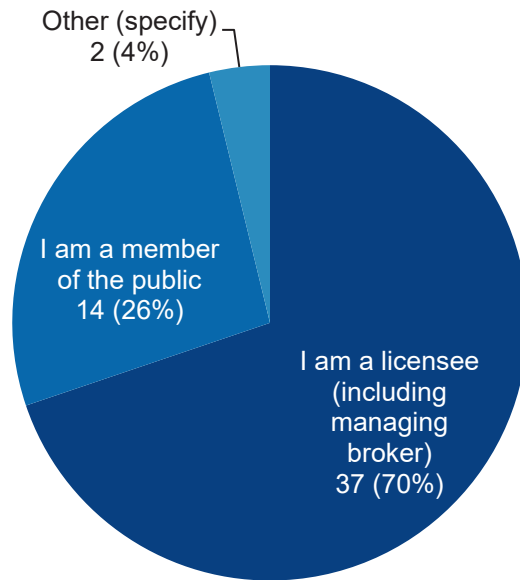
A total of 68 people participated in the consultation by responding to the Consultation Feedback Form. BCFSA also received and considered several written responses submitted by email or in response to the webinar, including two submissions from industry associations.

Despite using similar engagement methods, the participation numbers were lower than other recent Rules consultations (e.g., 1,252 people participated in the February 2022 [Real Estate Teams](#) consultation and 368 people participated in the June 2023 [Data Collection Rules](#) consultation). This may suggest that these proposed Rules were less controversial and more readily accepted by licensees, in part because the Rules would not change licensee obligations and are focused on BCFSA's processes and procedures.

A summary of respondent demographics for the Feedback Form is provided in Figures 1-4. A thematic summary of feedback is provided in Table 1. Feedback outside the scope of the current proposed Rules has also been considered where appropriate.

A greater proportion of respondents identifying as members of the public expressed support for the proposed Rules. We also identified misunderstandings of the proposal. For example, some respondents did not understand that the proposed Rules are focused on expanding BCFSA's procedural tools and that currently all contraventions of RESA, its Regulation, and the Rules can be subject to the more serious and punitive process of an enforcement order.

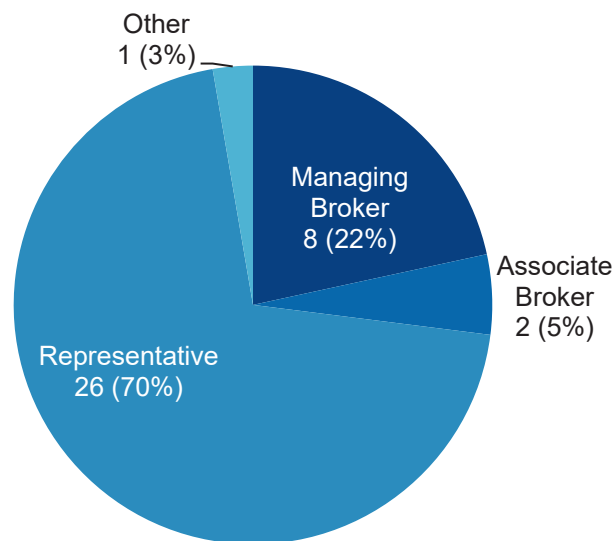
FIGURE 1: RESPONDENT DEMOGRAPHICS BY GROUP



N = 53

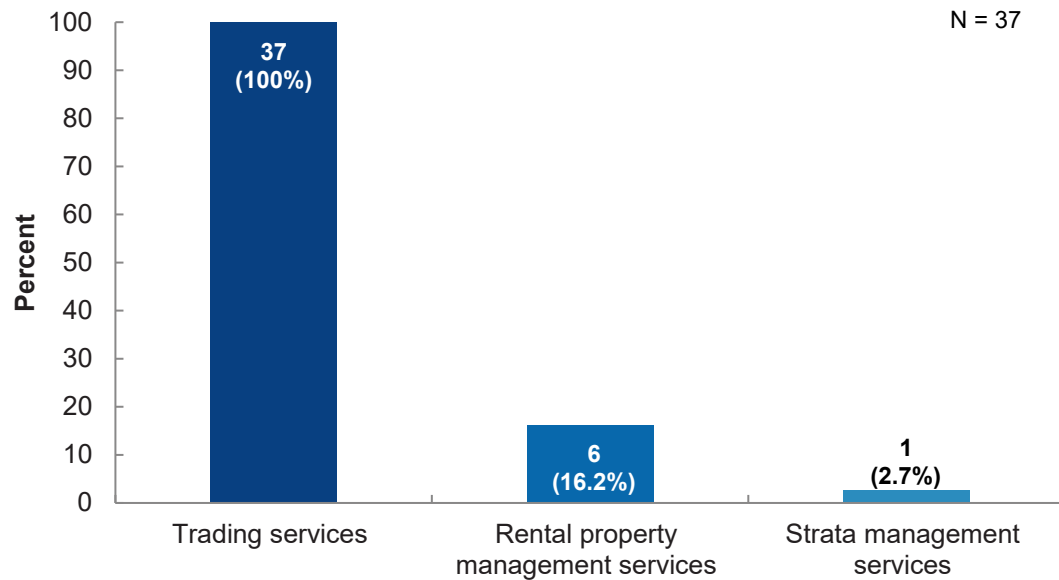
Respondents who identified as “Other”, included the following descriptions: “public” or “strata owner”.

FIGURE 2: LICENCE LEVELS OF LICENSED RESPONDENTS



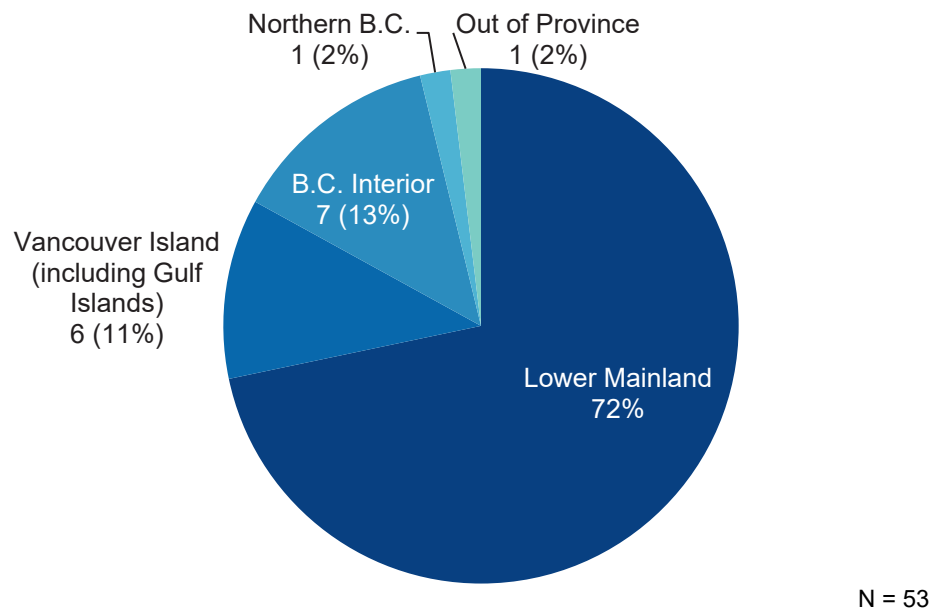
N = 37

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



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

TABLE 1: FEEDBACK RELATED TO REAL ESTATE ADMINISTRATIVE PENALTY FRAMEWORK RULES

The survey included eight specific questions about the proposed Rules relating to expanding the administrative penalty framework as well as two general questions. BCFSA received an average of 13 written comments per question.

THEME	BCFSA RESPONSE
<p>General support for the proposed changes and/or agreement that the amendments are in the public interest.</p>	<p>The aim of administrative penalties is to encourage compliance with the regulatory framework. The proposed changes expand BCFSA's procedural tools to respond quickly to more contraventions, including unlicensed activity and failures to cooperate with BCFSA investigations, with an aim to support consumer protection and trust in the regulatory framework as a whole.</p>
<p>General concern about the fairness of BCFSA's administrative penalty process.</p>	<p>Administrative penalties are for easily proven contraventions, where the evidence is straightforward. The fairness of the current process has been tested through reconsideration (dispute process). A reconsideration process remains under RESA to anyone who receives an administrative penalty and is carried out by an impartial hearing officer.</p> <p>More information about BCFSA's process and the procedural fairness safeguards can be found on BCFSA's website, including the webinar on the proposed changes.</p>
<p>Confusion about the rationale for adding contraventions to the administrative penalty framework as the maximum administrative penalty amount (\$100,000; or \$50,000 prior to August 2021) has never been imposed.</p>	<p>Under the current administrative penalty framework, only Category D (daily) administrative penalties could reach the maximum amount. To date, it is rare that the use of Category D exceeds \$5,000. This suggests that the current framework is achieving its aim of encouraging prompt compliance for contraventions in this category.</p> <p>Adding additional contraventions to the administrative penalty framework doesn't change existing obligations and requirements. Rather, the changes provide a procedural tool for BCFSA to help encourage prompt compliance with a greater range of contraventions, which fosters consumer protection.</p>

THEME	BCFSA RESPONSE
<p>Comments about administrative penalty amounts, including:</p> <ul style="list-style-type: none"> • Administrative penalty amounts are too high; • Establishing administrative penalty amounts should allow for a regional approach; • Administrative penalty amounts are too low: <ul style="list-style-type: none"> ○ In general, ○ For Category C [<i>substantial duties owed to clients and non-clients</i>] (existing), ○ For Category D [<i>daily</i>] (existing), and ○ For unlicensed activity (proposed new Category F). 	<p>The aim of administrative penalties is to encourage current and future compliance. BCFSA has sought to create administrative penalty amounts that are proportionate to the nature of the contravention and potential for harm; administrative penalty amounts need to be high enough not to be seen as a cost of doing business and low enough not to be punitive. To date, it has been rare for an administrative penalty for Category D to exceed \$5,000. This means most licensees who have received a Category D warning have come into compliance within two weeks. This use of Category D suggests that the current framework is achieving its aim of encouraging prompt compliance for contraventions in this category. BCFSA will continue to monitor and evaluate the administrative penalty framework, and consider whether it continues to achieve its aim, particularly with the expanded list of contraventions.</p> <p>BCFSA expects that the potential of penalties increasing \$1,000/day under the proposed Category E will be a strong incentive for people to promptly comply with investigation requests and the regulatory framework. It is expected that imposing more than a few days of the daily penalty amount will only occur in rare circumstances. See additional Category E information below.</p> <p>For contraventions under Category F, BCFSA can tailor the administrative penalty amount to case-specific circumstances which should result in a penalty that motivates future compliance, whether that penalty is \$5,000 or \$100,000.</p> <p>Outside of the administrative penalty framework, BCFSA can levy higher penalty amounts, cancel licences, and impose other penalties, where it pursues contraventions, such as those involving fraud, dishonesty, and other unethical behaviour, by way of a Notice of Hearing. The Notice of Hearing process is separate and distinct from the administrative penalty process. Learn more about the distinction on BCFSA's website, including the webinar on the proposed changes.</p>
<p>Recommendations for Category E [<i>refusal to comply with BCFSA investigation</i>], including:</p>	<p>A person who is the subject of an investigation can avoid a potential administrative penalty by providing timely responses to BCFSA investigators. A person who believes they may</p>

THEME	BCFSA RESPONSE
<ul style="list-style-type: none"> A reasonable period to comply with a request during an investigation should be at least 5 business days; and Category E being too broad and could capture unintentional lack of compliance or an activity where a party is attempting to cooperate but is struggling to comply in a fulsome manner. 	<p>have difficulty in meeting any timeline set by BCFSA should inform BCFSA immediately, with an explanation of the reason for the anticipated delay and when BCFSA can expect a full response. BCFSA will consider this information in determining whether an administrative penalty is warranted. Learn more about BCFSA's process for considering extenuating circumstances on BCFSA's website.</p> <p>The trigger for the accrual of a daily penalty amount only comes after all of the following:</p> <ol style="list-style-type: none"> BCFSA has made a request for information or an interview for a licensee or unlicensed person and established reasonable timeframes for a response (timeframes may vary based on the scope of the request). The licensee or unlicensed person is generally unresponsive or unhelpful within the timeframe and without evidence of extenuating circumstances being accepted. BCFSA issues a warning letter that continued non-compliance with the obligation to provide information and/or failure to attend an interview will result in an administrative penalty and the method of calculating the penalty. The warning letter will state that the person must come into compliance within a specific number of days (e.g., seven calendar days) to avoid the \$1,000/day from accruing. <p>BCFSA will not issue a warning letter without having made a reasonable attempt to contact an individual who is the subject of an investigation first. Learn more about BCFSA's process on BCFSA's website, including the webinar on the proposed changes.</p>
<p>Questions about how BCFSA differentiates between the severity and level of harm to consumers between:</p> <ul style="list-style-type: none"> Category B [<i>licensee responsibilities</i>]; and 	<p>All contraventions of RESA, its Regulation or the Rules, present the potential for consumer harm. Administrative penalties are mainly used where the evidence of a contravention is compelling and straightforward and no material harm to a consumer has arisen, despite the risk.</p> <p>In general, the contraventions to be added to Category C represent a greater risk to consumers because they are</p>

THEME	BCFSA RESPONSE
<ul style="list-style-type: none"> Category C [<i>substantial duties owed to clients and non-clients</i>]. 	<p>contraventions more likely to jeopardize consumer funds and/or the advice and services a licensee is providing. For example, Category C additions include disclosures about conflicts of interest and rights to rescission.</p> <p>It is possible that one specific case with a contravention of a provision in Category B results in more harm to a consumer than another specific case with a contravention of a provision in Category C. The actual harm to consumers, the public interest, and the reputation of the real estate industry are considered when BCFSA decides whether an administrative penalty is appropriate or if a formal Notice of Discipline Hearing is appropriate. A contravention designated in the administrative penalty framework will not automatically result in an administrative penalty.</p>
<p>Suggestions that specific sections of the Rules be in different categories. For example:</p> <ul style="list-style-type: none"> Section 88(3) of the Rules should be moved from Category A [<i>business management infractions</i>] to D [<i>daily</i>]; and Section 58 of the Rules should be moved from Category B [<i>licensee responsibilities</i>] to C [<i>substantial duties owed to clients and non-clients</i>]. <p>Suggestions that the administrative penalty framework be expanded beyond the RESA regulatory framework, and include contraventions of other legislation, including the <i>Strata Property Act</i> (“SPA”) and the <i>Personal Information Protection Act</i> (“PIPA”).</p>	<p>BCFSA will continue to monitor the use of the administrative penalty framework and will evaluate whether it continues to achieve its aim, particularly with the expanded list of contraventions.</p> <p>If BCFSA determines that an adjustment to the categorization of sections of the Rules is necessary, BCFSA will undertake a public comment period on draft changes.</p> <p>The <i>Real Estate Services Act</i>, BCFSA’s enabling legislation to regulate real estate licensees, does not allow BCFSA to expressly include contraventions of SPA and PIPA in the real estate administrative penalty framework.</p> <p>This feedback, as well as all other comments, will be shared with the Ministry of Finance, who has responsibility to consider amendments of BCFSA’s enabling legislation.</p>
<p>Concern about consultation materials being too technical and not in plain language.</p>	<p>Regulatory topics are often technical in nature. The topic of this consultation, regulatory enforcement and administrative penalties, even more so. To promote accessibility, BCFSA prepared a discussion paper which provided greater detail and attempted to be as plain language as possible. It is unclear whether the respondents expressing a concern about</p>

THEME	BCFSA RESPONSE
	<p>materials being too technical referred to the discussion paper or relied only on the information in the consultation survey form.</p> <p>While licensees are expected to have a high level of comprehension of technical and business language, the members of the public that BCFSA serves may not. In addition, licensees and members of the public may have other barriers to accessing information provided by BCFSA.</p> <p>BCFSA is exploring steps to improve accessibility of consultations and supporting materials for licensees and members of the public.</p>
<p>Highlighted the importance of regulatory content for licensees and the public to explain the changes, if approved and brought into force, including a request for more examples of penalties given to help managing brokers explain to related licensees.</p>	<p>Under this proposal, there are no changes to the existing duties and obligations of licensees.</p> <p>Various guidelines on BCFSA's Real Estate Knowledge Base provide examples of past enforcement decisions. Cases can also be found on BCFSA's Decisions page or CanLII by searching for "notice of administrative penalty" or the section number of RESA, the Regulation, or Rules. For decisions prior to August 2021, refer to the Table of Concordance for previous Rules section numbers.</p> <p>BCFSA will provide additional guidance and resources on the proposed Rules to support implementation.</p>

Consultation Outcomes and Next Steps

BCFSA thanks those who took the time to participate in the consultation. The feedback received varied in support and spanned a range of perspectives. BCFSA has reviewed 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 will seek the Minister of Finance's consent to make the amendments. BCFSA will also review its future consultation materials to look for ways to continue to enhance ease of access for members of the public as well as licensees.

If the Minister consents to the proposed Rules, BCFSA intends to bring the Rules into force on July 1, 2024.

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



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