



# Ethics – Building Trust

Learner Resource Book

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**BCFSA**

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## OVERVIEW

### Disclaimer

The materials in this book are for educational purposes and are general in nature. The content does not constitute legal or other professional advice. Licensees are responsible for exercising their own professional judgement in applying information to particular situations. Contact British Columbia Financial Services Authority (“BCFSA”) Practice Standards Advisors for further guidance.

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# Ethics – Building Trust

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## LEARNING OBJECTIVES

**After completing this introduction, you will be able to:**

1. Evaluate the relationship between ethics and trust;
2. Explain the importance of developing and maintaining an ethical professional brand;
3. Explain how individual behavior impacts the overall professional brand; and
4. Recognize the primary and secondary themes for the course.



## RELATIONSHIP BETWEEN ETHICS AND TRUST

Many surveys are available to explore how the trust levels of various professions and work roles compare. Edelman, a well-known global public relations firm, takes it a step further and explores *why* we trust.

Their research indicates that “people today grant their trust based on two distinct attributes: competence (delivering on promises) and ethical behavior (doing the right thing and working to improve society).”<sup>1</sup> The study itself describes competence as ability, rather than just delivering on promises, and lists components of ethical behaviour as being integrity, dependability,

and purpose.<sup>2</sup> Interestingly, when it comes to developing trust, ethics-based elements are even more important than competence. Edelman reports that “ethical drivers such as integrity, dependability and purpose drive 76 per cent of the trust capital of business, while competence accounts for only 24 per cent.”<sup>3</sup>

This in no way means that competence is unimportant, but it highlights just how very important ethics is in driving trust. In addition, although the Edelman study separates competence from ethics-based elements, the two are actually connected for professionals because maintaining competence is – in and of itself – an important ethical obligation.



<sup>1</sup> See, for example, [www.edelman.com/trust/2020-trust-barometer](http://www.edelman.com/trust/2020-trust-barometer)

<sup>2</sup> See [www.edelman.ca/sites/g/files/aaatuss376/files/2020-02/2020%20Edelman%20Trust%20Barometer%20Canada%20-%20FINAL.pdf](http://www.edelman.ca/sites/g/files/aaatuss376/files/2020-02/2020%20Edelman%20Trust%20Barometer%20Canada%20-%20FINAL.pdf)

<sup>3</sup> *supra* note 1

## IMPORTANCE OF AN ETHICAL PROFESSIONAL BRAND

The relationship that Edelman found between ethics and trust makes sense when we consider practical examples. Think of a problem or situation that you do not have expertise to manage for yourself. Maybe it is setting up an investment portfolio for your child's education, or developing a training plan to be able to master downhill skiing, or choosing a course of medical treatment to get to the best outcome. In situations like these, it is wise to choose a trusted advisor to help you make the important decisions needed to navigate through a situation that has significant consequences.

Describe the person you would turn to. What do you expect from them? Clearly, you want someone who is knowledgeable and will come up with a solid answer or plan. But is that all? Likely, you would expect a lot more from them. To illustrate, consider the following two situations:

Imagine that you just had your first child, and you want to set up an investment plan to pay for her education in the future. You meet with an investment advisor, who opens a file on her computer, and asks you a few questions about what you expect your average income will be over the next 18 years, what level of education you want to provide for, and how many additional children you plan on having. The advisor plugs your responses into the computer and prints out a plan, along with an invoice. While you are gathering your belongings, the investment advisor's assistant pops into the office and mentions that one of the advisor's colleagues is on the phone, waiting to speak with her. The advisor rolls her eyes and says "Oh, great, what stupid question do they have this time?"

Imagine another situation where you are recovering from a rock-climbing injury and you need physiotherapy. You meet with your physiotherapist, and he asks: when do you want to be back on the rock? How much time can you realistically commit to a physio schedule? He also discusses with you what caused the injury, to see how to help prevent it in the future. He encourages you to bring your climbing shoes to your next session, to see a baseline and start tracking progress.

What aspects of these scenarios increase or decrease your trust in that professional and whether you would recommend that person to your friends and colleagues?

**You expect a trusted professional to:**

- Be knowledgeable and be able to provide solid advice;
- Put in sufficient effort to arrive at the best answer;
- Set aside their own assumptions and biases, and ask you what is important to you;
- Understand that this decision is critically important to you;
- Be driven by your needs, rather than by "what is in it for them"; and
- Be honest and transparent.

**These characteristics reflect principles that tie directly to ethical behaviour:**

- Competence and diligence;
- Honesty and integrity;
- Transparency and full disclosure;
- Acting in the client's interest;
- Upholding the standards of the profession;
- Treating others fairly;
- Treating others with respect; and
- Having moral courage/taking action even when it's challenging to do so.

As you read these examples, the parallel to your own professionalism should be obvious. Your success as a real estate licensee depends on being trusted so that others continue to hire you and recommend you to their family and colleagues. Developing and maintaining a consistent ethical brand is an important key to your success as a trusted professional.



# What is your brand?

**If you have a hard time answering this succinctly, think about:**

- Why do your clients refer family/friends/colleagues to you?
- How do you want clients and colleagues to describe you?
- Which of the principles above do you want reflected in your brand?

## Developing Your Brand

A professional brand is not a gimmick – it is a promise backed up by hard work and commitment. Actions and behaviours speak louder than words or advertising. In the wake of the dot-com crash in the late 1990's, Fortune Magazine included in its list of lessons learned: "Branding is not strategy."<sup>4</sup> In the dot-com context, this meant that a flashy online presence without a solid business plan might generate web traffic but would not survive. In the real estate context, it means that marketing yourself as a successful trusted advisor without the depth and commitment to professionalism to back it up might attract clients in the short run but will not retain them over the longer term.

To develop and maintain a professional image as a trusted advisor, you need to commit to meeting or exceeding all of the expectations placed on professionals, including ethical obligations.

As you work through the course, think of how you will demonstrate the principles of ethics in your professional role.

## Maintaining Your Brand

If you are an experienced professional who is well established in the industry, you likely attribute your ongoing success to factors such as consistently focusing on the client and demonstrating professionalism, perseverance, continued learning and growth, and being resilient. Professionals don't compromise on quality, and in your role as a real estate licensee, ethical decision-making and strength of character are key parts of service quality.

## TRUST WITHIN THE PROFESSION

Earning and maintaining public trust is obviously key to the success of the profession overall and of individual real estate licensees, but trust *within* the profession is just as important. Mutual trust between colleagues is a key element for building solid professional relationships. When professional colleagues trust each other, they work more efficiently and effectively together. Importantly, when members of the public see real estate licensees treating each other with respect and trusting in each other's integrity and professionalism, their perception of the industry as a whole is improved. Without mutual trust, however, people tend to be guarded and overly suspicious of each other, which sends the wrong message to the public.

## HOW INDIVIDUAL BEHAVIOUR IMPACTS THE OVERALL PROFESSIONAL BRAND

In today's world of social media and emerging technologies, consumers have a louder voice than ever. They have high expectations that professionals will meet their obligations and act like professionals, and they have no problem calling out what they see as bad behaviour. They also – in many cases – have options. It is getting easier to use technology to take matters into their own hands and conduct property transactions without a real estate licensee if they do not see the value of hiring a professional.

<sup>4</sup> [https://archive.fortune.com/magazines/fortune/fortune\\_archive/2000/10/30/290609/index.htm](https://archive.fortune.com/magazines/fortune/fortune_archive/2000/10/30/290609/index.htm)

**The profession is driving forward, continuing to evolve in order to protect consumers, clients, and the public overall. This includes regulatory initiatives to:**

- Enhance transparency through disclosure requirements;
- Better address conflicts of interest by eliminating dual agency except in specific circumstances;
- Increase obligations with respect to anti-money laundering;
- Enhance licensee education and professional development (including in ethics);
- Consider expectations related to specific roles or contexts undertaken by real estate licensees (e.g., managing brokers, teams); and
- Update practice guidelines and develop consumer guides.

**An emerging area of particular importance for professional brand development is sustainability. This includes concepts such as:**

- Stewardship over natural resources such as land, air, and water, especially in the face of climate change; and
- Achieving and maintaining quality of life for all members of society, including safe neighbourhoods and suitable affordable housing opportunities near where we work, shop, and engage in recreational activities.

In alignment with the provincial government's priorities, the mandate of BC Financial Services Authority ("BCFSA") includes building a sustainable economy that creates opportunities for everyone. Because of the important and pervasive nature that real estate plays in our lives, the real estate industry has a significant opportunity to contribute to sustainability improvements in society. BCFSA is supportive of real estate licensees in their efforts around sustainability and affordability.

Throughout the industry, everyone has a role to play in meeting public expectations, including those regarding sustainability. At the individual level, how you choose to conduct your business affects not only your brand and your brokerage's brand, but also the overall brand of the profession. How well does your brand align with the direction of the profession?

Experienced real estate licensees will often say that they think the public does not have a glowing perception of the industry, but that they personally feel very trusted and respected by their clients. This provides an important clue as to how to drive public opinion: one excellently – and ethically – served client at a time.

## COURSE OVERVIEW

Throughout the course, you will have opportunities to explore principles of ethics more fully in the context of your own role in building trust. For example, in:

- **Module One**, you will explore how ethics principles are foundational to the profession;
- **Module Two**, you will explore your role in helping eliminate systemic discrimination as part of social justice, and consider how you can support sustainability initiatives;
- **Module Three**, you will consider the central role that personal and professional integrity play in developing and maintaining your personal brand;
- **Module Four**, you will focus on incorporating ethics principles in your dealings with clients and consumers;
- **Module Five**, you will examine how to develop business practices that support ethical decision-making and build trust; and
- **Module Six**, for managing brokers, you will evaluate ways to build and maintain a strong ethics-based culture in your brokerage.

## Using a Framework to Support Ethical Decision-Making

Being an ethical professional is not just about saying or agreeing that ethics is important, it is about action and making ethics an important part of your practice. Ethical conduct is a positive choice to take the right path, even when there might be easier paths available.

One way to ensure that ethics remains at the forefront of your practice is to systematically approach your decision-making with ethics in mind, recognizing that we make consistently better decisions if we think things through systematically. In the first regulatory ethics course, *Ethics for the Real Estate Professional*, the “Framework for Ethical Decision-Making” was introduced, consisting of five critical steps for ethical decision-making:

**Consider the situation and identify the potential ethical issues;**

1. **Identify** the stakeholders;
2. **Determine** feasible alternatives to be evaluated;
3. **Evaluate** each alternative in terms of ethical consequences; and
4. **Decide** on the best alternative.



[\*\*Click here to open the Ethical Decision-Making Framework\*\*](#)

This framework is being introduced to you again as a useful way to organize your thoughts to ensure that ethics are considered in your professional decision-making. Keep it in mind when ethical dilemmas are presented to you throughout this course.

At its core, the framework is consistent with the motto of “Think-Plan-Do.” A decision’s key elements must be identified (i.e., think), the consequences of the decision must be considered (i.e., plan), and decision must be made (i.e., do).

As a busy professional, you will make major decisions daily. Therefore, in addition to the five steps originally introduced in the Framework for Ethical Decision-Making, a sixth step has been added: **Reflect**. Reflection is a natural extension of decision-making – we want to know how our actions turn out. However, sometimes it is helpful for you to specifically set aside some time to reflect and consider whether your analysis of a particular issue was correct, and whether it could be improved for future decision-making. The overall goal in reflection is to continually improve your overall decision-making abilities.

Note that you might be comfortable using a different framework or model to aid in decision-making. For example, you might be familiar with the steps to decision-making as presented in BCFSA's Regulatory Guidance and Professional Judgement webinar. BCFSA supports the use of any systematic decision-making process that encourages thought, reflection, and consideration of the ethical impacts of a decision.

## Keeping Anti-Money Laundering Front of Mind

The B.C. real estate profession – along with other professions such as accounting and law – is under scrutiny in relation to how it can best play a role in combating money laundering and terrorist financing. There are legal obligations in this regard, and BCFSA created a course devoted to anti-money laundering ("AML") as well as ongoing resources to ensure you stay up to date. Your role in helping to reduce money laundering also has ethics-based implications, because society expects professionals to protect the public wherever possible.

### [Click here for more information on AML resources](#)

Real estate licensees are highly knowledgeable about the real estate market and the flow of funds in transactions, and diligent in knowing their clients (for example, through verifying identities and determining beneficial ownership of relevant entities). As a competent real estate licensee, you are expected to notice the warning signs of money laundering and take appropriate action. Being 'part of the solution' can help enhance the overall reputation of the profession and can help enhance public trust. Throughout this ethics course, you will be provided with opportunities to consider your ethical obligations in this regard.

### **What to Expect From Your Managing Broker... and What They Expect From You**

Your managing broker takes on many roles: sales manager, coach, mentor, standards enforcer, and advisor, among others. A skilled managing broker makes the job look easy, but it is not. There is always a lot more going on behind the scenes. You should have high expectations of your managing broker, but also recognize that they have high expectations of you. Throughout the course, you will be reminded of these mutual expectations.

# Module One: Foundational Elements

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In this module, you will review several of the foundational elements from BCFSA's *Ethics for the Real Estate Professional* course, a required course in the previous licensing cycle. Solidifying these foundational elements will assist you to fully appreciate the more advanced and nuanced topics that will follow in later modules of this course. To reinforce your ability to apply these ethical foundations to your practice, you will re-acquaint yourself with concepts of decision-making, agency, the key duties owed to clients and non-clients, conflicts of interest, and disclosure, all through the lens of an ethical real estate licensee.

**If you took the *Ethics for the Real Estate Professional* course, this module serves as a refresher, although several different dimensions or perspectives relating to the foundational elements will be examined. If you did not take the *Ethics for the Real Estate Professional* course, this module will help you develop a solid foundation to build upon as you progress through topics in this course.**

## LEARNING OBJECTIVES

**After completing this module, you will be able to:**

1. Define agency and identify the key ways in which agency relationships can be created;
2. Explain and distinguish between the key duties owed to clients and non-clients;
3. Define a conflict of interest and describe how a real estate licensee can approach handling and managing a conflict of interest; and
4. Identify the four general principles for disclosure to clients.



## INTRODUCTION

The foundation of your practice as a real estate licensee must be made up of core values that guide everything that you do. Like in a building's construction, the foundation does not typically draw the attention of outsiders, but without it, the building fails. One of the central goals of BCFSA's *Ethics for the Real Estate Professional* course, a required course in the previous licensing cycle, was to lay a foundation of professionalism for your practice as a real estate licensee. A critical component of professionalism is the ability to identify, evaluate, and manage ethical issues in your day-to-day practice.

For some, the course work and discussions of the *Ethics for the Real Estate Professional* course are a distant memory. Others might not have had the benefit of taking it. In any event, periodically reviewing the key aspects of professionalism is valuable because it reinforces the core concepts that should drive your practice. Regardless of your experience, age, geographic location, or service-type, this foundation is no less important.

In this module, you will review several of the foundational elements from the *Ethics for the Real Estate Professional* course. Solidifying these foundational elements will assist you in learning about some of the more advanced and nuanced topics that will follow in later modules, as these topics can always be traced back to the foundational elements.

Keep in mind that you cannot build a strong building upon a weak foundation.



## AGENCY

Agency is a relationship in which one person, the *agent*, is granted with the authority to represent and act for another person, the *principal*, in dealings with others. There are multiple reasons why people seek the services of an agent, but the key reason is because the agent has knowledge, skills, and abilities that they do not.

The most common way in which agency relationships are created is through express agreement, whether that agreement is oral or written. Under the Real Estate Services Rules, these agency agreements are referred to as “service agreements.” Service agreements are not always required under the Real Estate Services Rules. However, as a matter of professionalism, it is difficult to justify situations in which a written service agreement should not be insisted upon by the licensee. Written service agreements help to set the appropriate expectations for both parties in the agency relationship. Setting and managing expectations is a critical component of professionalism and greatly reduces the risk of professional discipline and lawsuits.

Agency relationships can also be created by implication, where an agency relationship is implied based on the conduct of the parties. Implied agency most often arises in the real estate services industry when a consumer is led to believe, through the conduct of the real estate licensee, that the licensee is acting as their agent in a transaction. As stated in the Real Estate Errors and Omissions Insurance Corporation’s March 2021 *Risk Report*:

Implied agency can put a licensee in a precarious position: you are agent often without knowing it. If found to be an implied agent, you owe the same fiduciary duties you would to your actual client, including disclosure, loyalty, and confidentiality, and could face the same consequences for not meeting those duties.

Implied agency can result in differing expectations between the real estate licensee and the consumer, which can lead to misunderstandings. For example, the consumer might disclose confidential information to the licensee without knowing that the licensee has no duty to keep that information confidential, especially if they are already acting as an agent for another party in the transaction. Furthermore, the consumer might not seek true independent representation of their own, believing that they are being adequately protected by the licensee.

**From your previous Legal Update courses, you know that the key risks of implied agency for real estate licensees are:**

- Lawsuits from the principal in the implied agency relationship for breach of fiduciary duty; and
- Disciplinary proceedings against the licensee by the regulator for a breach of the Real Estate Services Rules, Duties to Clients.

Other breaches of the Real Estate Services Rules might also result. For example, if you are acting as a listing agent and are found to have entered into an implied agency relationship with a buyer for the property, you could be disciplined for breaching the Real Estate Services Rule which prohibits dual agency.

Agency itself is a legal concept, but as with many obligations, it has ethical implications as well. As an agent, you are trusted by the principal, and they are relying on you to act according to what is best for them. Not meeting that obligation – even if agency is only implied – would be seen as acting without integrity or due care, as the client or consumer will feel taken advantage of.

Implied agency continues to be a risk for real estate licensees, particularly for trading services licensees. The following case suggests that implied agency can result from trying to help those close to you in real estate transactions, even if you do not intend on acting as their agent.<sup>5</sup>

<sup>5</sup> Johnston, Chris, “The perils of implied agency”, [www.reeoic.com/licensees](http://www.reeoic.com/licensees).

In 2020 CanLII 12248 (BC REC), a licensee introduced his hair stylist – the complainant – who had minimal written English skills, to a pre-sale development project. The licensee gave her information about the project, told her he would help her with the transaction paperwork, and arranged for her to obtain VIP pricing for a unit. It is likely the licensee did this to help the complainant, who he knew for some time, gain access to VIP pricing in a building in which the licensee himself had purchased a unit. It is also likely that he never intended to act as the complainant's agent, but merely intended to introduce her to a potentially profitable real estate project. In the agency disclosure forms the licensee provided to her, the licensee was not listed as an agent. In fact, the licensee acting for the developer, Mr. P, was listed as the complainant's agent, despite the fact that Mr. P had never met or agreed to work with the complainant. The complainant became dissatisfied with the licensee's inadequate explanation of the \$30,000 discount on the purchase price that she had expected, along with misinformation about her ability to assign her unit. Importantly, the complainant stated that throughout all of her communications and meetings with the licensee, his actions led her to believe that he was acting as her agent in the purchase of the unit. Ultimately, upon reflection, the licensee conceded that an implied agency relationship was created between himself and the complainant. The licensee was disciplined for multiple breaches of the Real Estate Services Rules, many of them stemming from his duties to provide disclosure of representation and his duties to act in the best interests of his client and with reasonable care and skill. As a result of these breaches, the licensee's licence was suspended for 45 days, and he was ordered to pay a discipline penalty, pay enforcement expenses, and complete an ethics course and a remedial education course.

Real estate licensees are permitted to provide certain limited services to consumers, outside of an agency relationship. However, if your actions "cross the line" into services typical of an agent to their client, or you fail to make it clear to a consumer that you are not acting as their agent, you might unknowingly enter into an implied agency relationship with that consumer.

## THE IMPORTANCE OF CLEARLY DEFINED RELATIONSHIPS WITH CONSUMERS

The difference between being a client, who is owed fiduciary duties and benefits from a real estate licensee's knowledge, skills, and abilities, versus an unrepresented party, who is not owed fiduciary duties and does not generally benefit from a licensee's knowledge, skills, and abilities, is immense.

The Real Estate Services Rules create disclosure obligations that are designed to clarify the role the real estate licensee wishes to play with respect to each consumer.

**The Real Estate Services Rules provide for mandatory disclosure forms and agreements such as the:**

- Disclosure of Representation in Trading Services form;
- Disclosure of Risks to Unrepresented Parties form;
- Disclosure for Residential Tenancies form;
- Disclosure of Risks Associated with Dual Agency form; and
- Agreement Regarding Conflict of Interest Between Clients.

As you will read about later in this module, disclosure is a key component of transparency, which in turn is an important element of demonstrating honesty and integrity and building trust. Ethical real estate licensees are vigilant in establishing clearly defined relationships with consumers because they know that, for example, obtaining informed consent rather than simply running through a mandatory checklist will always set the relationship off on the "right foot". Extra care in this process might be necessary when dealing with vulnerable individuals such as those who are new to real estate transactions or services, those who have limited English language proficiency, those with mental disabilities or other capacity issues, and those who find themselves in otherwise stressful circumstances, such as job loss or marital separation.

## DUTIES TO CLIENTS

The most important duties that an agent owes to their principal are fiduciary duties. The word “fiduciary” comes from the Latin word “fiducia”, which means “trust”.

Generally speaking, a fiduciary relationship involves the placing of trust, confidence, and reliance in the fiduciary, who has the ability to exercise their power to impact the beneficiary. In the context of real estate services, the beneficiary is typically the client. The law recognizes that, because principals place their trust and confidence in their agents, they might be particularly vulnerable to their agents’ misconduct. As such, the law places special duties, known as fiduciary duties, upon agents not to abuse their position for their own interests or for the interests of someone other than the beneficiary. Fiduciary duties are among the most sacred and special legal duties. Continuing to be worthy of the trust placed in you is a key ethical imperative.

The overarching fiduciary duty is the duty of loyalty, which requires the agent to act solely for the benefit of the principal and put the principal’s interests ahead of all others, including the agent’s personal interests. Within this overarching duty, there are additional, more specific fiduciary duties.

First, there is the duty to **avoid conflicts of interest**. Conflicts will be explored in further detail later in this module. Next is the duty of **full disclosure**. An agent must make full disclosure with respect to the real estate services being provided to the client, as well as disclosure of all information within their possession that might affect the value of the property or the principal’s decision. Disclosure will also be reviewed in further detail later in this module. Another fiduciary duty is the duty of **confidentiality**, which prohibits the agent from disclosing any information about the client that is not available to the public, unless the principal agrees to such disclosure. Unlike the other fiduciary duties, which end when the agency relationship ends, the duty of confidentiality continues to apply forever. The duty of confidentiality can become difficult to work through when real estate licensees find themselves on the opposite side of a transaction from a former client. The last specific fiduciary duty is the duty to **obey lawful instructions**.

As a final point, the fiduciary duties above are essentially mirrored in the Real Estate Services Rules. This means that complying with the Real Estate Services Rules will most likely keep you onside of your common law obligations and will support the basis of your ethical practice. However, the reverse is also true — if you do not comply with the Real Estate Services Rules, you could find yourself in trouble not only from a professional discipline perspective, but also in terms of legal proceedings from the client for breach of your fiduciary duties.

## DUTIES TO NON-CLIENTS

The primary party to whom licensees owe duties is their client. However, in discharging your duty of loyalty to your client, you may not completely disregard everyone else's interests. You owe limited duties to third parties. These third parties could be the licensees or parties on the other side of the real estate transaction (in the trading services context); tenants or service providers such as contractors, plumbers, and landscapers (in the rental property management context); or individual strata lot owners or tenants in the strata complex (in the strata management context).

On the following pages you will review the three sources of duties owed to non-clients.

### I. Conduct Unbecoming a Licensee - Section 35(2) of RESA

Conduct unbecoming a licensee is defined in the *Real Estate Services Act* ("RESA") as conduct that is contrary to the best interests of the public, undermines public confidence in the real estate industry, or brings the real estate industry into disrepute. Clearly, conduct unbecoming includes more than just a real estate licensee's conduct towards their clients. It can also include conduct towards non-clients, as there is still the potential for harm to the interests of the public and the reputation of the real estate industry if interacting with non-clients is done in an unprofessional manner.

### II. Honesty - Section 33 of the Real Estate Services Rules

When providing real estate services, real estate licensees must act honestly. Honesty is the practice of acting in a manner that is sincere, truthful, and free of deceit. Along with integrity, honesty is a core value of professionalism. Honesty and integrity are essential to building trust. When a licensee acts dishonestly towards third parties, not only do they lose the trust of that party, but the trust in the entire profession can suffer.

Dishonesty might mean different things to different people. Some might perceive dishonesty as including telling a lie, telling a "half-truth," being silent when you know someone is mistaken, and simply being silent and withholding information.

**Note that there are times when you are not allowed to share information with third parties, such as when it is confidential or when it is not in your client's interest to do so. Meeting your obligations without acting dishonestly is discussed further in Module Three.**

There are a variety of statistics and research papers that suggest people are more likely to share a negative consumer experience than a positive consumer experience, perhaps due to the fact that negative emotions generally involve more thinking, and the information is processed more thoroughly than positive emotions.<sup>6</sup> Some studies suggest that dissatisfied customers typically tell 9 to 15 other people about their experience, and it takes roughly 40 positive customer experiences to undo the damage of a single negative review.<sup>7</sup> The ubiquity and ease of use of social media has the power to magnify negative experiences more than ever before. It is difficult to imagine a stronger source of a negative experience for a consumer than dishonesty from the professionals involved in that experience.

### III. Reasonable Care and Skill - Section 34 of the Real Estate Services Rules

When providing real estate services, a licensee must act with reasonable care and skill. The concept of reasonable care and skill comes from tort law, in the area of negligence. Acting with reasonable care and skill is not about honesty, but rather about another principle of ethics, namely diligence. For example, information provided to third parties should reflect reasonable diligence. This means that one must have a reasonable basis for believing in the truth of the information provided, before providing it.

<sup>6</sup> [www.nytimes.com/2012/03/24/your-money/why-people-remember-negative-events-more-than-positive-ones.html](http://www.nytimes.com/2012/03/24/your-money/why-people-remember-negative-events-more-than-positive-ones.html)

<sup>7</sup> [www.inc.com/andrew-thomas/the-hidden-ratio-that-could-make-or-break-your-company.html](http://www.inc.com/andrew-thomas/the-hidden-ratio-that-could-make-or-break-your-company.html)



# Choose your topic

## TRADING SERVICES

Anjanette receives an offer for her clients' property. The sellers want at least \$25,000 more before they are willing to agree to sell it. Anjanette telephones the buyers' agent, Abbas, and thanks him for the offer, but falsely tells Abbas that there have been multiple offers for the property, and that if Abbas' clients want it, they will have to put forth a stronger offer. The buyers agree to increase their offer by another \$30,000, and the sellers accept. The sellers are extremely happy with Anjanette, and the buyers are happy because Abbas helped them beat out the other buyers for the property. But is this really a win for everyone involved.

## STRATA MANAGEMENT

A roofing company has offered Mai, a strata manager, a significant incentive on any roof repair or replacement work she is able to refer to the company. Mai is unaware of any buildings she manages that require roofing work to be done, but she strongly encourages all the strata councils to consider some preventative work. Mai might think her words are innocent as they are mere suggestions, but strata council members depend on their strata manager for trusted advice. Is Mai acting with honesty and integrity? How would the reputation of the roofing company be affected if it is later discovered that Mai had told the strata councils that the preventative work was strongly recommended by the roofing company? Not only can a real estate licensee's action tarnish the reputation of their own industry but also the reputation of others.

Also, Mai should be aware that she might be running afoul of the Real Estate Services Rules that address benefits in relation to rental property management services and strata management services; these will be discussed in more detail later in this module.

## RENTAL PROPERTY MANAGEMENT

Radley, a rental property manager, has two prospective tenants who are interested in renting his client's property. The first tenant has an average credit score, but his references raised some concerns about paying rent on time.

The second tenant has an above average credit score. She informs Radley that in three months, two of her best friends from Ireland will be moving to Canada and staying with her until they find their own place. This tenant has requested a \$100 discount on the monthly rent because she knows she has fantastic references.

Radley withholds the information about the requested \$100 discount from the landlord and strongly encourages the landlord to accept the first tenant's application, because of the risk that the second applicant's friends from Ireland will stay in the property for a long time and it will become a "party house." Radley does not want any discount to his rental management fee as a result of the decreased rent amount but does not disclose these thoughts to the landlord.

Is Radley acting honestly? What duty does he owe to the two prospective tenants? Would it make a difference if Radley asked the second tenant how long her friends would stay and she responded that they would stay for no longer than two weeks?

<sup>6</sup> [www.nytimes.com/2012/03/24/your-money/why-people-remember-negative-events-more-than-positive-ones.html](http://www.nytimes.com/2012/03/24/your-money/why-people-remember-negative-events-more-than-positive-ones.html)  
<sup>7</sup> [www.inc.com/andrew-thomas/the-hidden-ratio-that-could-make-or-break-your-company.html](http://www.inc.com/andrew-thomas/the-hidden-ratio-that-could-make-or-break-your-company.html)

## DEALING WITH UNREPRESENTED PARTIES

An unrepresented party is defined in the Real Estate Services Rules, in respect of a trade in real estate, as a party to the trade in real estate who is not a client of a licensee for the trade in real estate. Unrepresented parties are typically buyers, sellers, tenants or landlords. The Real Estate Services Rules contain a key disclosure obligation on real estate licensees who, in the course of representing their client in a trade in real estate, deal with unrepresented parties. These licensees have the requirement to make a disclosure to that unrepresented party through either a Disclosure of Risks to Unrepresented Parties form, for unrepresented buyers, sellers, and commercial tenants or a Disclosure for Residential Tenancies form, for unrepresented residential tenants. These forms:

- Disclose the risks to an unrepresented party of receiving assistance from the licensee due to the licensee's duties and responsibilities to their client, who is the other party in the transaction;
- Disclose the limited assistance that the licensee may provide to the unrepresented party; and
- Recommend that the unrepresented party seek independent professional advice in respect of the trade in real estate.

The potential for harm from unprofessional conduct of a real estate licensee is magnified when the consumer involved is unrepresented, as they lose the benefit of professional advice to help them with processing information, asking further questions, and making decisions. Above all else, real estate licensees should always seek to demonstrate integrity by dealing fairly and in good faith, negotiating with unrepresented parties without being misleading, and not taking advantage of vulnerable individuals.

## CONFLICTS OF INTEREST

It is both a fiduciary duty and a duty under the Real Estate Services Rules for real estate licensees to take reasonable steps to avoid conflicts of interest. It is also an ethical obligation. A conflict of interest is a situation where there is a substantial risk that the agent's representation of a client would be negatively affected by the agent's own interest or by the agent's duties to another current client, a former client, or a third party.

A common misconception is that the presence of a conflict of interest means that some wrongdoing has occurred. In fact, being in a conflict of interest does not automatically mean that the licensee has done something wrong or is offside of their requirements under RESA or the Real Estate Services Rules. However, because conflicts of interest result in a greater risk to clients and third parties, conflicts need to be avoided, where possible, or otherwise handled promptly and appropriately.

Some conflicts are unavoidable. For example, as humans, we are all self-interested. A professional being paid for services must weigh their own financial interests with the interests of their client, and ensure they act in the client's best interest. For example, there is incentive to accept a client or transaction that is outside of your expertise or "comfort zone," because you want to earn remuneration. However, doing so would be inappropriate unless you can ensure that the client's needs will be fully met (for example, by ensuring you have sufficient time to learn what you need to know, and consulting regularly with your managing broker to ensure you act competently in the situation).

Other conflicts are avoidable, such as purchasing or leasing a client's property, or accepting referral fees from a service provider that performs work for your clients.

One of the preliminary steps in addressing a conflict of interest is to first determine whether it is a conflict that can, or should, be simply avoided altogether. This decision depends upon your assessment of the avoidable risk and potential outcomes, from both a financial and – even more importantly – reputational perspective.

In the case of unavoidable conflicts, or avoidable conflicts that the real estate licensee has willingly accepted, the licensee must promptly and fully disclose the conflict to the client, in order to demonstrate transparency and integrity. Disclosure must occur early, be continuous in the face of changing circumstances, contain full and complete information, and – even when not required – should be in writing. Disclosure will be discussed in greater detail later in this module.

The reason why conflicts of interest are so important for licensees goes back to the concept of trust. In order for a profession to have value, the public needs to trust that the members of the profession are acting in the public's interest rather than in their own self-interest. At an individual level, this means that your clients and prospective clients need to trust that you will put their interests ahead of all other interests. Along these lines, it is sometimes helpful to think about the conflict of interest not from the licensee's point of view, but from the client's point of view. Would the client perceive there to be a conflict of interest, even if there is no actual conflict of interest?

In the *Ethics for the Real Estate Professional* course, an entire module was dedicated to conflicts of interest. Rather than simply repeating the information in that module, consider the following scenarios where conflicts have arisen.

## Trading Services

Aziz is a trading services licensee who lives in a strata complex. Due to his real estate expertise and good reputation in the neighbourhood, his neighbours within the complex convinced him to volunteer to sit on their strata council. Aziz fulfilled the requirements of the Real Estate Services Rules that apply when serving on a strata council within a strata in which the licensee is an owner. For example, before serving on the strata council, he disclosed in writing to the strata corporation that he would not be acting as a licensee for the council, and that RESA would not apply to his conduct. He also provided disclosure to his brokerage, including recognition that he could not have sole signing authority for withdrawals or expenditures of any strata corporation funds, and that he could not charge any fees for his role as a council member.

After serving on the council for two years, Aziz is approached by a fellow strata lot owner, Sun-ye, who wants to sell her strata lot, and wants Aziz to list it for her. Sun-ye recognizes that Aziz knows more about the strata than anyone else and that he has been a trustworthy strata council member. She asks Aziz if he has any concerns with taking the listing. What should Aziz do?

Clearly, Aziz has found himself in an interesting position. He owes duties to the strata corporation as a strata council member (which are set out in the *Strata Property Act*), he will owe agency and fiduciary duties to Sun-ye if he takes the listing, and he has his own interests in earning a commission and being a strata lot owner in the complex. There are conflicts of interest present here that Aziz needs to manage.

Some questions that Aziz might want to consider are:

- What would he do if a potential buyer was not someone that he would want living in his community?
- How can he manage the information he might possess due to his role as a strata council member, his duty to disclose certain information as a listing agent, and his duty to act in the best interests of Sun-ye?
- Could he put his own interests aside if certain offers are made on Sun-ye's property that could lower the value of his own strata lot?

Imagine instead that Aziz was working with a buyer, Billie, who became interested in purchasing a strata lot within Aziz' complex, which was listed with a different agent. Think about the potential conflicts again and consider similar questions relating to concurrently managing personal interests, duties as a strata council member, and duties to Billie. For example, what if the strata council had just started informally considering the possibility of a special levy, but nothing had been formally discussed – can/should Aziz inform Billie of this fact? What if Aziz, due to his position on the strata council, knew that the neighbour next to the unit that Billie was interested in purchasing has a history of disruptive and noisy behavior – should Aziz inform Billie of this fact?

This situation provides clear examples of how conflicts of interest can create particular issues regarding the information a licensee knows and what they can disclose. If Aziz accepts Billie as a client, Aziz would owe a duty of confidentiality to strata council, but a conflicting duty of full disclosure to Billie, and would not be fully able to meet both duties at the same time.

If you are interested in potential issues that could arise in these situations, see 2019 CanLII 40175 (BC REC), where a licensee acting for a buyer faced disciplinary proceedings in connection with the buyer's purchase of a strata lot in a complex in which the licensee was both an owner and strata council member.

**Annie is a licensee working with a buyer client, Brianne. Annie showed Brianne a property and while conducting the showing, Annie became interested in purchasing the property for herself. Think about what types of conflicts could arise if Annie actively pursued purchasing this property, and how Annie could manage these conflicts.**

**Some questions that you should consider:**

- Does it matter how long ago Brianne viewed the property?
- Does it matter that Brianne is no longer interested in the property?
- Does it matter why Brianne is no longer interested in the property?
- Was Annie's advice and guidance to Brianne when viewing the property influenced by Annie's own interest in the property?
- Does it matter whether Annie wants the property as a personal residence as opposed to an investment?
- What if Annie negotiates the property for herself and is able to negotiate the price to a level that she suspects might be attractive to Brianne?

## Strata Management Services

Malati's brokerage provides strata management and rental property management services. It might not be instinctive, but could a conflict of interest arise here? Imagine that Malati is the strata manager of a building where she also helps one of the strata owners, Lenard, rent out his unit. The building needs to be rain screened, and owners will be asked to vote on an increase in strata fees to cover the costs. As a strata manager, Malati is supportive of increasing strata fees. However, Malati knows that if the strata fees go up, Lenard will sell his unit and terminate the tenancy, and therefore Malati will no longer receive the rental management fee for managing Lenard's unit. What should Malati do if Lenard asks for her advice on how to vote?

Malati could help Lenard understand the information provided by the strata council, to help him make an informed decision, but she cannot provide advice on the vote because of the conflict of interest. Malati should explain this to Lenard. Note that this conflict of interest is why the *Strata Property Act* does not permit strata managers to hold proxies.

## Rental Property Management Services

Roger is the rental property manager of a property that is owned by Lachlan. Lachlan lives out of town and asks Roger to help complete some renovations on the property. Lachlan authorizes Roger to reimburse himself for any renovation expenses incurred from the rental funds received. Is there any issue with this arrangement?

This is not an uncommon scenario<sup>8</sup> but often times, work that a rental property manager might be authorized to manage (i.e., maintenance work) can easily turn into more extensive renovation work, and the parties have to consider whether this extra work is part of the rental property management services agreement. If not, and the rental property manager proceeds to carry out the extra work, there could be a conflict of interest if the rental property manager is motivated to hire certain contractors who will provide him with a kickback or even do some of the work himself. In addition, it is important to note that the rental property manager's errors and omissions insurance might not cover work outside of what is described in the rental property management services agreement.

The Real Estate Services Rules require rental property managers to disclose to their client any benefit they anticipate receiving directly or indirectly from expenditures made by or on behalf of their client, and BCFSA advises rental property managers to use the Disclosure of Remuneration (Payments and Benefits): Rental Property Management Services form for this type of disclosure.

Note that strata managers have to be careful when hiring contractors as well because if they are to receive any benefit at all from a particular contractor, this is a conflict of interest and, under the Real Estate Services Rules, it must be disclosed to the strata corporation using the Disclosure of Remuneration (Payments and Benefits): Strata Management Services form.

In some instances, strata managers have been disciplined by the regulator for not disclosing material information or conflicts of interest to their clients.<sup>9</sup> Note that even though the definition of “associate” under the Real Estate Services Rules might not be so wide as to capture family members like siblings and children, or friends, a licensee who does not disclose benefits that an affiliated party might receive can be considered to be in a conflict of interest situation, and runs the risk of acting contrary to the Real Estate Services Rules, including the duty to act honestly.

Another part of the Real Estate Services Rules to be mindful of is the part which relates to the management of rental real estate owned by licensees and their family, and the management of a strata corporation by a licensee who is a strata lot owner. These are all situations where conflicts can arise and where the Real Estate Services Rules have specific requirements. The Real Estate Services Rules provide that licensees are exempt from RESA and the Real Estate Services Rules in relation to these services but only if certain requirements are met including written disclosure to the various parties involved.

### **Identifying and Addressing Conflicts of Interest**

The primary goal of this module is to introduce you to examples of conflicts that you might not have thought about before, to further develop your skill in identifying conflicts early. Remember, ethical decision-making starts with the “Think” (‘Steps 1 [Consider] and 2 [Identify] of the Framework for Ethical Decision-Making’). The central focus with most conflicts is how one manages or addresses them.

One way to approach these conflict scenarios is to determine whether you, as the licensee involved, would be able to manage the conflict by maintaining objectivity in serving your client(s). In other words, would you be able to ignore any other interest aside from your client’s interests and not allow them to influence your judgment or behavior? If, after a thorough and honest assessment, the answer is “no”, you cannot continue to act within that conflict of interest.

However, what if your answer is “yes” – does that mean that you can continue to act within the conflict of interest? Remember that the Real Estate Services Rules require real estate licensees to “take reasonable steps” to avoid conflicts of interest. But who decides what is reasonable? Clearly, what is a reasonable step will always be highly dependent on the specific situation, and there is no “one size fits all” answer. However, in approaching conflict scenarios like those presented earlier, rather than looking at the situation from your perspective as the licensee, think about it from other perspectives.

Firstly, you can use the reasonable and informed third party test. To do this, imagine that the situation is being evaluated by a third party who has the relevant knowledge and experience to understand and evaluate the appropriateness of your decision in an impartial manner. If such a person were to weigh all of the relevant facts and circumstances of the situation, what would they likely conclude?

Secondly, you can modify this test slightly and put yourself in your managing broker’s shoes. Under the Real Estate Services Rules, managing brokers must be actively engaged in the management of their brokerage, ensure that the business of the brokerage is carried out competently and in accordance with the law, and ensure that there is an adequate level of supervision for all brokerage personnel. Ask yourself: Would my managing broker agree that continuing to act is a good idea? When in doubt, you can simply ask your managing broker for their opinion and advice. In fact, your brokerage should already have set policies in place for managing certain conflicts.

Finally, you can put yourself in the position of the client in the situation and ask yourself what you would expect from the agent acting on your behalf. This type of thinking follows the “golden rule”: treat others how you want to be treated.

<sup>8</sup> 2018 CanLII 26042 (BC REC)

<sup>9</sup> 2014 CanLII 88884 (BC REC)

If you determine that you can continue acting in the conflict of interest situation, while maintaining objectivity in serving your clients interests, remember that the Real Estate Services Rules also require that you promptly and fully disclose the conflict to the client to get their consent for you to continue to act for them. But disclosure and consent are not enough. Acting within conflicts, even with your client's permission, puts you at a greater risk of receiving a complaint against you (and/or being sued) by a client if they believe you did not meet your legal and ethical duties to them. You still need to ensure that you remain aware of changes in the situation and continue to be transparent with your client. You should carefully watch for signals that your client is expecting more from you than is reasonable under the current situation, or where they are not protecting their own interests, and remind them that they should consider seeking independent advice wherever appropriate. Keeping detailed notes of conversations and interactions with your client is a best practice to avoid later misunderstandings or situations where the client claims a different set of facts or events occurred within the transaction. Finally, ensure that your managing broker is kept informed and is able to oversee the situation effectively.

Ultimately, disclosure does not absolve you from your duty to act in the best interest of your client at all times. You cannot continue to represent a client if you cannot fulfill your fiduciary duties, even if you have made the required disclosures and obtained the client's agreement.

In addition, remember to be aware of apparent or perceived conflicts of interest. These are situations where there is no actual conflict of interest, but a reasonable person might think that there is. These types of perceptions, if not addressed, can lead to a loss of trust in the same way that a real conflict can. To avoid any perception of a conflict of interest that does not actually exist, anticipate situations that might place you in a perceived conflict of interest and be transparent with your clients and colleagues, within the bounds of confidentiality.

## DISCLOSURE

Disclosure is a key component of transparency, which in turn is an important element of demonstrating honesty, integrity, and building trust. The Real Estate Services Rules prescribe a variety of specific disclosures that licensees are required to make in certain situations (e.g., disclosure of representation in trading services, disclosure of interest in trade, disclosure to sellers of expected remuneration, disclosure for residential tenancies, disclosure of payments and benefits for rental property owners and strata corporations).

The *Ethics for the Real Estate Professional* course examined some of these specific disclosures in detail. Some of these disclosures are meant to be provided to clients, while others are meant to be provided to other parties in a real estate transaction.

The duty of full disclosure is both a fiduciary duty and a duty owed to clients under the Real Estate Services Rules. While the common law and Real Estate Services Rules are minimum standards that must be met to comply with the law, ethical professionals do not settle for mere compliance with the law. Rather, they practice disclosure to clients with the end goal in mind: fully informed consumers reflect the professionalism of those in real estate industry.

**There are four general principles for disclosure to clients:**

- Early disclosure ensures that decision-making can occur most efficiently;
- Continuous updating of disclosures is needed as situations change;
- Full disclosure ensures that clients can make the most well-informed decisions with all material information; and
- Disclosure in writing minimizes miscommunications and provides evidence that the requirements were met.

In sum, ethical and transparent disclosure requires early, continuous, and full written disclosure. Clients must feel confident in the information and advice that they are provided by their real estate licensee. They need to know that you owe your loyalty to them and them alone. Disclosure confirms that understanding. In addition to being required by law, it demonstrates the highest ethical standards of professionalism. Inadequate disclosure can lead to clients, consumers, and the public in general thinking that the licensee is hiding information or being purposefully deceptive. This negatively impacts trust.

When thinking about the duty of full disclosure owed to clients, remember, when in doubt, disclose!

## CONCLUSION

As was stated at the beginning of this module, you cannot build a strong building upon a weak foundation. This module focused on establishing and reinforcing a number of foundational elements for ethical real estate practice. As you progress through the rest of the modules of this course, pay close attention to how most, if not all, of the topics presented can be traced back to the foundational elements in this module. Think of these foundational elements as a compass that can help you navigate your way through the complicated, nuanced, and multi-dimensional issues that you might face in your practice as a real estate licensee.



# Module Two: Real Estate Licensees in Social Justice

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This module explores the role of real estate licensees in advancing social justice initiatives in the housing and commercial property markets. The module is applicable to rental property management services, strata property management services, and trading services. As you work through this module, you will learn about the common systemic barriers and inequalities that arise in the real estate market, as well as the role that unconscious bias plays in perpetuating systemic discrimination. You will also learn how you can deliver real estate services in a manner that promotes more diversity and inclusion, and in a way that supports environmentally sustainable communities.

## LEARNING OBJECTIVES

**After completing this module, you will be able to:**

1. Identify common inequities and systemic discrimination in the housing and commercial property markets;
2. Understand how unconscious bias can influence your real estate services and affect others' property ownership and rental opportunities;
3. Identify the laws that protect people's property rights;
4. Understand how to deliver real estate services in a way that better promotes diversity and inclusion; and
5. Appreciate the role you can play in building a more environmentally sustainable community.





## INTRODUCTION

**"There's no place like home."**

Where you live can have a significant impact on how you live. From our career opportunities to our social circles, our recreational pursuits to our travel options, our "home base" affects how we define ourselves and how we find our place in the community. Similarly, where we locate our businesses and other organizations we own or manage, and how available quality commercial space is to us can impact the ability of our organizations to grow and thrive.

As a real estate licensee, you play an essential role in the housing and commercial property markets and can have a significant influence on the composition and development of our local communities. With this role in mind, it is important for real estate licensees to remain mindful of the systemic barriers and inequalities that persons face in the real estate market and learn how to deliver real estate services in a way that fosters a more diverse and more inclusive home base for everyone.

Diversity refers to having people with a wide range of different personal characteristics, life experiences, visible traits, individual ideas, and unique perspectives included in a group.

Inclusion refers to creating an environment in which people with different characteristics, traits, backgrounds, ideas, and perspectives feel valued and respected for those differences.

## SYSTEMIC DISCRIMINATION IN THE REAL ESTATE MARKET

Systemic discrimination refers to a pattern of behaviour, policies, programs, and practices that perpetuate inequalities and unfair limitations on opportunities for minority members of society. Systemic discrimination is often unintentional. That is, there is no outward or conscious intention to treat minority members of our population less favourably than non-minority members. Rather, it is a product of day-to-day systems and structures that unconsciously perpetuate inequities and inequalities within the organization or sector itself.

If systemic discrimination is a product of largely unconscious activities, then how is it detected?

Typically, systemic discrimination is observed by looking at the extent of unequal outcomes and opportunities given to minority members within the organization or sector. These outcomes become evident when comparing the experiences of majority members of the organization or sector with the members of historically disadvantaged groups, such as visible and ethnic minorities, members of

the LGBTQIA2S+ community, persons with disabilities, single parents, older adults, young adults, persons with particular religious backgrounds, and persons of a certain socio-economic status. For example, while an organization's practice might appear to be neutral on its face, its application might differentially impact and actually disadvantage members of these minority communities. Markers of systemic discrimination include limited opportunities for advancement, diminished access to resources or other benefits, and exclusion from social circles and business networks.

The real estate market, like any market, is not immune from systemic discrimination. Preconceived notions about race, religion, place of origin, sexual orientation, gender identity, gender expression, and socioeconomic background, for example, can seriously diminish a person's access to safe and affordable residential housing and commercial leasing opportunities. In turn, this can create additional disadvantages for other aspects of life, such as one's health, education, and employment. Ultimately, the first step in addressing these systemic barriers is to acknowledge them.



### Spotting Systemic Discrimination

How might you identify systemic discrimination? What examples can you think of?

Trading Services	Steering clients towards certain residential neighbourhoods or commercial leasing areas based on the clients' race and a community's racial demographics.
Strata Property Management Services	Only hiring resident building managers with English as their first language.
Rental Property Management Services	Rejecting a rental application because the applicant does not demonstrate strong literacy skills.

## WHAT'S IN A NAME?

In a 2011 study of rental housing discrimination in the United States published by the *Journal of Housing Economics*, the role of race and socioeconomic status in the rental housing application process was examined ("Subtle Discrimination in the Rental Housing Market: Evidence from E-mail Correspondence of Landlords," *Journal of Housing Economics*, Vol. 20, No. 4 [December 2011]: 276-284).

The study consisted of an "internet field experiment" conducted using simulated interactions between real landlords and mock rental applicants in various cities (Atlanta; Boston; Chicago; Dallas; Washington, D.C.; Houston; Los Angeles; New York; Seattle; and San Francisco). Researchers compiled mock e-mail messages to prospective landlords over Craigslist enquiring about a rental unit advertised as being available for rent. Some of the e-mails were compiled using first names and surnames that had a high likelihood of association with minority groups (e.g., Darnell, Hakim, Jamal, Kareem, Rasheed, Tremayne), whereas others were submitted with a high likelihood of association with a Caucasian background (e.g., Brad, Brendan, Matthew, Neil, Todd, Greg). Some of the e-mails also included grammatical and spelling errors, informal greetings, and casual closing remarks. Apart from these features, the rental inquiries were kept equivalent. The question remained: would the applicants be treated the same?

The researchers discovered that inquiries submitted with Caucasian-sounding names were 6.3 percent more likely to elicit positive responses than those indicative of minority groups. The e-mails fraught with grammatical and spelling errors elicited an even more pronounced disparity. For those emails, Caucasian-sounding names elicited 17.5 percent more positive responses than names that appeared to represent a member of a minority group. In addition, landlords were found to reply faster to Caucasian-sounding names, as well as provide more fulsome responses to these applicants. The researchers concluded that the unequal treatment witnessed in the study highlighted the prevalence of "subtle discrimination" and racial bias in the housing market.

## THE ROLE OF UNCONSCIOUS BIAS

**Imagine that you are a buyer's agent, meeting with prospective clients for the first time at an open house.**

As you read each of the two scenarios below, picture the scene, and walk through the situation in your mind.

### SCENARIO 1:

The buyers arrive earlier than your scheduled showing and drive up to the door in a spotless luxury vehicle. They emerge from their car carrying a leather-bound folio containing data from other listings in the area. They are both sharply dressed and are quick to introduce themselves to you. They provide you with their business cards and inquire about your familiarity with other properties in the neighbourhood. They conclude their brief tour of the property by letting you know they will be in touch.

### SCENARIO 2:

The buyers arrive minutes before the open house is scheduled to conclude. They drive up to the door in a company minivan with two child car seats in the back and crushed crackers on the floor. They emerge from their van dressed casually and carrying a couple of other open house sheets. They briefly greet you, and spend a lot of time touring the property, opening closets and cupboards. When the buyers leave, they write down their name and number on one of your notepads.

**Now ask yourself the following questions:**

How did you picture each of these pairs of buyers?

What is/are their race?

How old are they?

What is/are their gender?

What do they do for work?

How are they related to one another?

Do they have any children?

Are they "serious buyers"?

Would you follow up with them following the open house? Why or why not?

How we see the world can have a significant impact on how we engage with one another. Whether we know it or not, our own personal experiences, backgrounds, and environmental conditions shape the choices we make and our day-to-day decisions, which can have an impact on those around us. If you have ever made a decision based on your "gut feeling" or "instinct", then you already appreciate the role that unconscious bias plays in your everyday decision-making.

Unconscious bias refers to our automatic and unintentionally generated beliefs and attitudes that influence our day-to-day activities and interactions with one another. Because they are unconscious, we are typically unaware of them. However, what we might perceive to be conscious, deliberate actions on our part might in fact be driven by our unconscious beliefs and attitudes. It is important to recognize these biases and appreciate how they can affect our choices and behaviour.



## Types of Unconscious Bias

### Confirmation Bias

The tendency for people to seek information that re-affirms their pre-existing beliefs or assumptions, oftentimes ignoring or overlooking information that contradicts those pre-existing views.

### Affinity Bias

The propensity to show a preference for people who share our own personal characteristics and qualities: “birds of a feather flock together.”

### Attribution Bias

The tendency to attribute our own successes to our skills and our failures as being outside of our control, while attributing others' accomplishments to “mere luck” and others' failures to a lack of ability or skills.

### Halo Effect

The tendency to only focus on the good qualities of someone who possesses a quality we like, at the expense of overlooking negative aspects.

### Horns Effect

The tendency to form a negative judgment about someone on the basis of one negative trait, which runs the risk of ignoring their positive qualities.

### Group Think

The propensity to conform to others' actions and beliefs at the expense of our own independent thinking in order to conform to the views of a majority group or seek their acceptance.

### Perception Bias

The tendency to believe something about all members of a group based on stereotypes and mistaken assumptions, making it impossible to render any objective judgment about individual members of that group.

Biases can have negative and positive consequences. Although unconscious bias is a way that our brains can efficiently categorize the world and assist us with making quick decisions about our surroundings, bias can also limit our experiences and narrow our interactions with others. Unconscious biases can also result in limiting others' opportunities through forms of subtle discrimination.

**For example, unknowingly changing our communication styles with others, such as:**

- Displaying friendly or unfriendly body language (e.g., level of eye contact);
- Using a welcoming or unwelcoming demeanour (e.g., tone of voice);
- Engaging in lengthy conversations or cutting off discussions; and
- Making more or less time available to an individual.

The more we recognize the existence of our own unconscious biases, the more we can consciously improve our communications and interactions with others.

As an example, in Module One, [you were introduced to Aziz](#), a trading services licensee who lives in a strata unit and has been approached by a fellow strata lot owner who wants Aziz to list her property for her. In Module One, you considered how self-interest might impact Aziz' actions, but it is also worth additionally considering how bias might lead to discriminatory practices. For example, what if the potential buyer is an individual with a disability, and the strata might be required to make costly alterations to the common areas for accessibility? What if the majority of owners, including Aziz, are from the same ethnic background, and Aziz is concerned that a potential buyer from a different background might not "fit in"?



**Working it out**

Review the following scenarios describing the decision of a real estate licensee.

Do these scenarios suggest any unconscious bias at work? Why or Why not?

**Trading Services**

Andrew's client Christel is a young entrepreneur who is looking to lease a commercial space for her new business. Christel uses a wheelchair for mobility. Without discussing Christel's preferences, Andrew narrowed the list of properties under consideration to the two properties that would require the least renovation work, to spare Christel from having to view too many properties and to make it as easy as possible for her to get her business settled in the new space.

**Strata Property Management Services**

Michelle has been the strata manager at "Harmony Estates" for the last five years. Recently, the building's resident manager quit, and Michelle has been searching to find a suitable replacement for the strata council. The strata council president asks Michelle to avoid interviewing applicants with young children, explaining that the building is wood-framed, and children are known to make a lot of noise. When reviewing job applications, Michelle schedules interviews to single applicants first.

**Rental Property Management Services**

Rakesh is touring a couple through a rental property. Although there are a lot of available one-bedroom and two-bedroom rental units available, Rakesh decides to focus his tour on the two-bedroom units because the couple is young and appear to be able to afford a higher rent, based on their designer attire and accessories. The couple has not requested any housing preferences.

There often will be seemingly valid reasons for the actions, but consider whether the underlying assumption or reason for the action relates to bias or systemic discrimination.

#### **Trading Services:**

Although Andrew probably thinks he is being helpful and doing what is best for Christel, it is also possible that he is acting on a biased belief that Christel is less capable and needs to be shielded from challenges. Christel might actually prefer to view more properties and might be expecting to complete more significant renovations to make the new commercial space ideal for her business operations. By limiting Christel's viewing options, Andrew might be unknowingly and unintentionally hindering her commercial opportunities.

#### **Strata Management:**

Although Michelle must work with the strata council to select a suitable resident manager for the strata, the council president's request to eliminate consideration of applicants with children has the potential of denying otherwise qualified parents the opportunity to work for the strata. The council president's concern of future disruption might be based on their own confirmation bias or perception bias arising from a negative interaction with children living inside or outside of the strata. As Michelle does not simply take direction from the council president, she might be able to better understand this request by speaking with the rest of the strata council.

#### **Rental Property Management:**

Rakesh's decision not to show one-bedroom rental units to the young couple suggests the presence of confirmation bias. Rakesh's assumptions that the young couple would only choose to reside in a two-bedroom suite is strictly based on their physical appearance and expensive personal belongings. It is quite possible that the couple would accept or even prefer a one-bedroom option over a two-bedroom space. Without knowing more about the couple and asking them about their specific housing preferences, it is impossible for Rakesh to know whether his assumptions are correct.

## **REAL ESTATE ACCESSIBILITY LAWS**

As you have learned, the presence of systemic discrimination in the housing market can create serious housing barriers for property owners and renters alike. One of the ways that these barriers are addressed is through B.C.'s laws.

In British Columbia, the Human Rights Code, RSBC 1996, c. 210 (the "HRC") governs human rights law. It sets the minimum standard by which we expect all persons to be treated: equally, respectfully, and free from discrimination. The purposes of the HRC are found in section 3, and reflect the principles and values that are held closely together with our human rights:

- (a) To foster a society in British Columbia in which there are no impediments to full and free participation in the economic, social, political and cultural life of British Columbia;
- (b) To promote a climate of understanding and mutual respect where all are equal in dignity and rights;
- (c) To prevent discrimination prohibited by this Code;
- (d) To identify and eliminate persistent patterns of inequality associated with discrimination prohibited by this Code; and
- (e) To provide a means of redress for those persons who are discriminated against contrary to this Code.

The HRC plays an important role in the real estate market, offering various protections for property owners and renters alike. As a real estate licensee, it is important to become familiar with these legislated protections:

- **Section 8** prohibits a person from discriminating against others respecting an accommodation, service or facility customarily available to the public without a “*bona fide* and reasonable justification”;
- **Section 9** prohibits a person from discriminating against others respecting the opportunity to purchase a property that is represented as being available for sale, or that discriminates against others with respect to a term or condition of the purchase;
- **Section 10** prohibits a person from denying another person the right to rent a property or discriminating against others with respect to a term in their tenancy agreement absent certain exceptions.

All of these sections list various personal characteristics that are protected from discrimination under the HRC. While each section contains its own list of protections, there are similarities as it pertains to race, colour, ancestry, place of origin, marital status, disability, sex, sexual orientation, gender identity, and gender expression for all of these segments of the housing market.

### BEST PRACTICE TIP

For a full list of protected areas of discrimination and protected personal characteristics, it is best to consult the HRC directly. A current version of the HRC is always available online at the website of the B.C. Human Rights Tribunal.

If an owner, prospective purchaser, tenant, or rental applicant feels that they have been discriminated against contrary to their housing rights under the HRC, they can file a complaint with the B.C. Human Rights Tribunal to seek compensation and other remedies to address the discrimination and prevent future discrimination.

## PROMOTING DIVERSITY & INCLUSION

Although our province has given the Human Rights Tribunal the power to remedy discriminatory acts and prohibit systemic discrimination, each of us already has the ability to promote a more diverse and inclusive housing market. Change starts at the individual level and by recognizing our own unconscious biases, we can work to improve our interactions with our clients, our colleagues, and our community.

### THE MORE YOU KNOW...

In 1998, the *Implicit Association Test* ("IAT") made its online debut. Developed by three social psychologists from Harvard University, the University of Washington, and University of Virginia, the test was designed to measure the strength of a person's implicit stereotypes and unconscious bias that the researchers theorized "people may be unwilling or unable to report." The test presents participants with various word association and sorting activities and has since been adapted to measure biases pertaining to race, gender, sexuality, age, and religion. Although the IAT does not claim to provide a valid interpretation of a person's unconscious attitudes and beliefs, it continues to be the most popular test for studying unconscious bias and has been extensively used as an educational tool to facilitate discussions about identifying and addressing systemic discrimination.

The IAT can be accessed here: <https://implicit.harvard.edu/implicit/takeatest.html>

Once we acknowledge that unconscious bias exists, we can work to address it. Studies have shown that simply slowing down our decision-making processes has the effect of minimizing the influence that unconscious bias plays in our day-to-day tasks, which can encourage more mindful and deliberate interactions. This is another important benefit of using a systematic decision-making process, such as the Ethical Decision-Making Framework.

As an individual real estate licensee, what actions can you take to promote diversity and inclusion?



**[Click here to open the Ethical Decision-Making Framework](#)**

As an individual, you can:

- Recognize that biases are not inherently bad and help others realize this, to foster more open conversations;
- Honestly self-assess your own biases and ask trusted colleagues to help in your assessment;
- Get to know a more diverse set of individuals to better understand their perspectives and be better able to debunk preconceived assumptions;
- Be curious and open minded about other cultures and beliefs;
- Actively seek out points of view that challenge your own and engage in respectful debate;
- Recognize that your social media and/or news feeds are delivering content to you based on algorithms that track how you react to content. This feeds confirmation bias and can result in "tunnel vision" because alternative viewpoints are not reflected in the information received;
- Call out inappropriate behaviour when you see it; and
- Support colleagues who are taking action to make a difference.

**At the brokerage level, diversity and inclusion can be promoted by:**

- Implementing standardized procedures as opposed to open practices which can reflect individual biases (e.g., a standardized rental application form and standardized interview questions that ask for the same information from every applicant);
- Requiring regular diversity and inclusion training, and ensuring consistent participation and representation from employees and senior management;
- Developing year-round educational initiatives and keeping track of participation levels;
- Publishing clear policies that support diversity and inclusion initiatives inside and outside of the workplace;
- Remaining vigilant in monitoring and confronting bad behavior, discriminatory language, and exclusionary activities;
- Encouraging and supporting the brokerage's involvement in social justice initiatives; and
- Promoting a working environment where colleagues are comfortable reporting concerns and asking questions.



How many of these do you see in your own brokerage? Even the most subtle changes in perception can have a profound impact for our profession.

## SUSTAINABILITY

In the Introduction to this course, you were introduced to the concept of sustainability and its importance to the B.C. provincial government's priorities. Building a sustainable economy that creates opportunities for everyone is an important principle for all British Columbians. As important as this principle is, however, it is sometimes more elusive for marginalized members of the community, as discussed in the module so far.

A key part of building a sustainable economy is striving for improved stewardship over land, air, and water, and responding to climate change. These are becoming more and more important for all members of society to acknowledge and act on. As a real estate licensee, you play a critical role in building more vibrant and sustainable communities across B.C. that everyone in our society can benefit from.

### **Dollars and Sense....**

In July 2021, the *Residential Tenancy Act* was amended to encourage more environmentally sustainable housing developments. Landlords who incurred a capital expenditure to reduce energy consumption at their rental property or reduce greenhouse gas emissions became eligible to obtain a higher than standard rent increase. Given the strict limitations placed on increasing the rent for residential properties in B.C. over the last several years, this legislative amendment opened the door for more thoughtful building design and ultimately, offered a critical financial incentive to construct more modernized and sustainable rental housing stock.

To learn more about the additional rent increase available for capital expenditures, read the news release from the B.C. Residential Tenancy Branch available here: [www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb151.pdf](http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb151.pdf)

### **Self-Reflection:**

Think about what you can do as a real estate licensee to demonstrate that you value sustainability and stewardship.

### **For example, real estate licensees can:**

- Ensure adequate due diligence when acting for clients who are buying, selling, developing, or leasing property with environmental sensitivities;
- Help consumers understand the objectives behind government programs to increase availability of affordable housing, regardless of whether one agrees with the way the government is trying to achieve the objectives;
- Commit to Environmental, Social, and Governance (“ESG”) principles within their own brokerage;
- Compile information on local community or development initiatives that support these goals and highlight them in discussions with clients;
- Alert clients to housing laws that make it easier to offer more environmentally sustainable housing options (e.g., the 2021 amendments to the *Residential Tenancy Act* that permit landlords to obtain an additional rent increase as a result of incurring a capital expenditure to reduce greenhouse gas emissions and energy consumption);
- Compile information on options for renovating that consider environmental issues, including grants and other support/incentives available; and
- Choose to hire service providers that commit to environmentally sound practices (e.g., for strata/rental property managers who hire services).

### **CONCLUSION**

As a real estate licensee, you have a large network with whom you interact. As a result, you are an important and visible role model in your community. Displaying a commitment to social equality, environmental stewardship and other important values not only demonstrates leadership but also encourages others to consider the importance of social justice issues in their own decision-making.



# Module Three: Personal and Professional Integrity

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This module looks at what it means to act with integrity in your professional relationships with clients, other real estate licensees, unrepresented parties, and the public. Acting with integrity must be at the core of all of your professional relationships, because it is essential to building a strong personal brand and reputation, and to the success of the real estate profession as a whole. You will explore what it means to act with integrity with specific examples and demonstrate how acting with integrity serves not only your client's interests and the interests of the public, but also serves your own personal interest as a real estate licensee.

## LEARNING OBJECTIVES

**After completing this module, you will be able to:**

1. Understand why acting with integrity is essential to your success as a real estate licensee and to the future success of the real estate industry as a whole;
2. Illustrate what it means to act with integrity in your dealings with your clients, other licensees, unrepresented parties, your managers, and the public; and
3. Understand how to apply integrity in all of your professional dealings to minimize risk and to enhance your professional reputation.



## INTEGRITY IS THE KEY TO YOUR PROFESSIONAL REPUTATION

In Book II of Plato's *Republic*, there is a famous dialogue between Glaucon and Socrates on the origins of justice and the need for laws in society. Glaucon uses the story of *The Ring of Gyges* as a parable to demonstrate that society needs laws to prevent people from acting solely in their own self-interest. In the story, the shepherd, Gyges, finds a magical ring that gives him the power of invisibility. With the ring, Gyges is able to satisfy his every desire without fear of any consequences. He seduces the queen, murders the king, and takes absolute power for himself. Glaucon argues that if identical rings were given to an unjust man and a just man, both would act unjustly because the concern for one's own advantage and self-interest is too strong and can only be tempered through compulsion.

Integrity is the counterpoint to the Gyges tale. Integrity is the quality of acting honestly and justly even when you have the benefit of invisibility, even when there is no one to judge you, and even when acting dishonestly would serve your own interests. Glaucon argued that no one would act with integrity without the fear of legal sanction or retribution, but this is where professionalism comes in. Professionals act in a manner that demonstrates integrity because doing so is in the public interest, and because demonstrating integrity supports the reputation of the profession as well as their own self-respect and personal reputation.

Personal reputation is a real estate licensee's most valuable asset. Most successful practitioners will tell you that it takes years, if not decades, to build your reputation. A good reputation brings innumerable benefits. It is what makes people want to hire you, do business with you, trust you with important information, and promote your services to others. A good reputation is also invaluable when problems arise because your words will carry the weight of authority and the ring of truth.

But, as precious as a good reputation is, it is easily lost. Billionaire businessman and philanthropist Kevin Plank warns: "Trust is built in drops and lost in buckets." This is perhaps truer today than ever before. In today's age of social media and instant messaging, accusations are accepted at face value without the benefit of a fair trial – and once the story goes public, reputations might be irreparably damaged.

What the Gyges tale overlooked is the interconnectedness between integrity, reputation, and professional success. The real estate profession is not a zero-sum game, where one person needs to lose in order for another to win. The interests of the individual real estate licensee are actually best served when everyone wins: the client; the other licensee and their client; and the industry as a whole.

The aim of this module is to explore how professional integrity should be at the core of everything you do and should inform your dealings with your clients, your managing broker, other licensees and parties, and the public generally. In each of these interactions, you have a professional responsibility to act with integrity, but the motivation to act with integrity should not be about avoiding litigation or professional discipline. Instead, it should be about building your reputation and improving the industry of which you are a part.

## INTEGRITY IN YOUR DEALINGS WITH YOUR CLIENT

### Your most important relationship is with your client.

#### *Ethical obligations of fiduciaries*

As you have learned previously, under the law, the relationship between a licensee, as agent, and a client, as principal, gives rise to special obligations known as “fiduciary duties.” A “fiduciary” is a person who takes on a special responsibility to act for another and has the power or discretion to affect their interests. Because the person in the role of a fiduciary has significant power over the principal’s interests, the law holds the fiduciary to a strict standard that has ethical underpinnings.

When acting as a fiduciary, you cannot withhold material information from the principal, and must always act in the principal’s best interests. You must disclose all expected remuneration from whatever source and cannot have competing loyalties that might create a conflict of interest. These principles are reflected in the [Real Estate Services Rules](#).



**When entering into a fiduciary relationship be sure to disclose the nature of your representation**

#### **Self-Reflection:**

From an ethics perspective, why are these legal requirements so important?

The requirements for fiduciaries help ensure that real estate licensees behave in a way that demonstrates to clients that they can be trusted to act in the client’s best interest rather than their own. Acting with integrity is crucial in the agent-principal or licensee-client relationship to build and maintain trust. If you are in doubt about whether a client needs to know certain details about the property, or the trade, or your remuneration, the answer is almost certainly “yes.” You are unlikely to run into difficulties by disclosing too much to a client.

In Module One, [you were introduced to Radley](#), a rental property manager trying to decide how to advise a client about which tenant to choose. Review that scenario now. How can Radley demonstrate integrity in this situation?

Radley can demonstrate integrity by ensuring that he/she:

- Determines all relevant information, such as how long the friends are expected to stay;
- Discloses all information to the client, including the requested discount; and
- Objectively relates the risks and benefits of each potential tenant, to help the client make an informed decision.

Full disclosure is essential but remember that you still have a duty of confidentiality to former clients. If the information that you think you should disclose to your client is confidential information (i.e., not publicly available) that you gained by working with a former client, then you have a conflict of interest. You have an obligation to your former client **not** to disclose, but you also have an obligation to your current client **to** disclose. Talk to your managing broker or to a practice standards advisor at BCFSA if you need help resolving this kind of conflict of interest.

#### **Who are you acting for?**

When it comes to dealing with your client and determining what is ethical in a given situation, it is critical to know **who you are acting for**.

Sometimes the question “who is my client?” becomes blurred when other people are involved in the transaction who exert a degree of power or influence over the client.

#### **Consider the following examples:**

- You are acting for a privately held company that is the registered owner of an industrial complex. The company has three directors, all of whom are family members. Rather than dealing with all of the directors, you receive your instructions from Director “A” who you assume is acting with the authorization of the other two. Director A speaks with such authority and confidence that it does not occur to you to ask for a Director’s Resolution authorizing him to sell the property.

- Your client is an elderly widow who lives in a building where your brokerage provides rental property management for about one-half of the units. Your client's daughter explains that her mother is no longer able to live on her own because she cannot afford the property taxes, so she plans to move in with her son, and wants to rent out her condo. You attend the property to meet with the owner to go over the rental management contract. The daughter attends the meeting as well, and when the owner asks why she must move, her daughter responds that it is because the home has become too costly to maintain.
- Your client is a strata corporation, whose strata council treasurer was recently elected. The treasurer gives you instructions to hire a waste management company that the strata council had replaced two years earlier because of concerns over quality of service.
- You are acting for a buyer who does not speak English. Your client attends your office with a friend who acts as her interpreter. The buyer wants to purchase an investment property and you write up an offer. The offer contains a representation that the buyer is aware of the City of Vancouver's vacant homes tax and has been advised to obtain independent legal advice regarding the tax implications of the purchase. You explain the key contract terms in English and the friend interprets what you are saying. The buyer seems to be uncertain about something, but the interpreter insists that the buyer does not have any questions.
- Your client is married but is the sole registered owner on title. When you meet with the client, his spouse is usually present and is often intoxicated. When the client asks whether it would be best to wait for market conditions to improve before listing the property, the spouse yells at him and says, "we've been over this a million times, let's just get on with it."

To act with integrity means always thinking about *the client's* best interests and not allowing your own immediate personal interest in closing the deal, or the interests of others, to influence your actions and advice. Ultimately, exercising due care and looking out for your client's interests is also in your best interest as a real estate licensee. While it might seem that the "end goal" in every transaction is to complete the sale and to earn your commission, this view is short-sighted. If the client is confused, under duress, or ill informed, they will eventually lose trust in you as they have time to reflect on the experience. If you have not fulfilled your duty to act in your client's best interests; if you haven't disclosed all material facts to your client; if you have been taking instructions from others without paying close attention to the client's circumstances; the client will come to understand that you weren't caring for them, and the damage to your reputation will be done.

A real estate licensee might also fail to recognize that their actions and advice are being biased by their own priorities, preferences, and risk tolerance, rather than staying focused on the client's needs and wishes. Remember that your client's goals are not always financial. A residential landlord might be much more interested in having a good tenant than attracting a tenant who will pay the most rent. A seller of a large rural property might be motivated by selling to the "right" buyer who will appreciate the natural beauty of the property rather than one who would likely develop it.

Similarly, [as you learned in Module Two](#), it is also important to be self-aware of how bias might impact your decision-making, for example when working with individuals with disabilities or those whose first language differs from your own. Be careful to ensure that you are actually meeting their needs and acting on their direction, rather than imposing your own ideas of what makes sense for them or being led by incorrect assumptions about limitations.

### **Are there others you have obligations to?**

As important as the client relationship is, however, a good licensee knows that they have professional and ethical responsibilities to others as well. While the licensee has a fiduciary obligation to act in the client's best interests, this does not justify demonstrating a lack of integrity, such as by acting dishonestly with others.

At the extreme, this includes ensuring that you respond appropriately if a client asks you to do something illegal or unethical, such as if you suspect money-laundering. You will examine these types of scenarios in the next module.

The following sections will help you appreciate that acting with integrity in all of your dealings – with whomever you are dealing – is critical to building a strong professional reputation and ensuing the success of the real estate industry as a whole.



**Click here for more information on AML resources**

### **INTEGRITY IN YOUR DEALINGS WITH OTHER LICENSEES**

As a real estate licensee, you have responsibilities to other members of the profession. The duty to act with integrity applies to all of your interactions, not just to your dealings with your clients.

#### **Self-Reflection:**

How do you demonstrate integrity in your dealings with other real estate licensees?

To help you think about how to answer this question, revisit this scenario from Module One, where the listing agent falsely told her colleague that there were multiple offers on the property. Note that you should not limit your answer to just the context in the scenario, but rather, use the scenario as a starting point.

#### **When dealing with professional colleagues, acting with integrity includes:**

- Providing the other real estate licensee with accurate information and not misrepresenting the facts;
- Extending professional courtesy;
- Not taking advantage of another real estate licensee's lack of experience or misconceptions about the property or the trade in real estate; and
- Disclosing material latent defects of which you are aware.

Although the Real Estate Services Rules require real estate licensees to deal with other licensees honestly and there is an expectation to act in good faith, acting with integrity goes beyond the rules and serves the common interest of the industry as a whole. Taking unfair advantage of another real estate licensee, engaging in sharp practice, or considering the other real estate licensee to be an adversary does not serve your interests as a professional, the interests of your client, or the common interest of the industry.

In Module Two, [you learned about affinity bias](#).

When working with other real estate licensees, it is important to recognize that affinity bias can lead to situations where you might favour working with another real estate licensee who is similar to yourself. This might feel comfortable for you, but it is not in the interest of the client, the public, or the profession.

Your client's interests might or might not be compatible with the other party at any point in the transaction. However, both sides ultimately have a common interest in negotiating a deal, and where a common interest can be found through negotiation, it should be based on both parties having access to – and understanding – the material information, with all parties transacting on an even and ethical playing field.

The benefits of parties on either side of a transaction sharing common interests might seem counter intuitive. You might think: "No, my obligation is to get the best deal for my client, regardless of whether it works for the other party. If I can sell higher/buy lower, etc., my client and I are better off." And while that might be true in the specific situation, there might be bigger-picture considerations. For example, in a sellers' or landlord's market, supply is limited, and buyers/tenants are challenged to find a place to buy/rent. This pressure is, in theory, good for the seller/landlord, as their property will be in high demand from multiple parties. But a buyer who writes a subject-free offer at their financial limit might not be able to complete, and a tenant forced to rent a property that is less than ideal will want to move as soon as they can, or might end up not being able to pay the rent after all. This ends up hurting the seller/landlord as well.

To underscore the point, consider what the profession would be like if real estate licensees only looked out for the interests of their own clients or themselves – in other words, if everyone possessed Gyges' ring. In such a world, there would be no basis for trust or reliance between licensees, with each party left to their own devices to do whatever is necessary to protect their own interests. The concept of 'trust, but verify' would be lost. Without trust, it would be very difficult, if not impossible, to resolve disputes either big or small, leaving the parties to resort to litigation or complaints to real estate boards or BCFSA to resolve their concerns. Anyone who has had the experience of dealing with litigation or formal complaints will appreciate how complex, time consuming, and expensive these processes can be.

It is also important to consider that the success of the real estate industry is dependent in large part in public confidence that licensees will act ethically, and that the information they provide will be reliable. With the development of 'for sale by owner' platforms that allow buyers and sellers to trade in real estate without engaging a professional, every licensee has a vested interest in maintaining public confidence in the industry.

This is not to say that your dealings with other real estate licensees should take priority over your other professional responsibilities. There might be times where you become aware that another licensee has acted unethically or has committed professional misconduct. Depending on the circumstances, you would be expected to report the matter to your managing broker and might also have a responsibility to report the misconduct to BCFSA to help maintain the accountability and integrity of the profession as a whole. Managing brokers have specific responsibilities in this regard, which will be discussed further for managing brokers in Module Six.

Reporting another licensee to BCFSA, however, should never be done for tactical reasons, such as trying to get an upper hand over a competitor, or out of vengeance. The consequences to the other real estate licensee of having to respond to a disciplinary complaint can be onerous and costly, and therefore you should take care to report concerns for the right reasons and in good faith.



## INTEGRITY IN YOUR DEALINGS WITH UNREPRESENTED PARTIES

In the course of your practice, you are bound to encounter people who do not have agency representation. In trading services, this situation typically arises where you are a listing agent and receive inquiries from unrepresented buyers, but as for sale by owner, platforms develop that allow people to market their properties without the assistance of a real estate licensee, buyers' agents can expect to increasingly interact with unrepresented sellers. Similarly, if you are managing rental properties or strata corporations, you might regularly interact with tenants or strata unit owners.

Your professional responsibility to act with integrity applies when you are dealing with unrepresented parties – perhaps even more so.

One of the most common challenges when dealing with unrepresented parties is to manage expectations. Tenants and strata unit owners might think that you are there to protect their interests, especially if you have developed a friendly rapport with them. It is not uncommon for an unrepresented buyer to claim that the seller's agent is also their agent. From a legal perspective, an "implied agency" relationship can arise when the unrepresented party reasonably believes that a licensee, by conduct or words, has consented to act as agent. The agent might not have intended to represent the unrepresented party, but from a legal and ethics perspective, the agent's intentions are not relevant; the important question is: *what did the unrepresented party reasonably believe?* As with many situations, perception is reality when it comes to trust relationships.

To mitigate the risk of an implied agency, and to ensure that both parties to the trade are aware of the material facts, real estate licensees have a responsibility and ethical obligation to clearly set out the nature of their agency before providing real estate services.

### Self-Reflection:

How do you demonstrate integrity in your dealings with unrepresented parties?

To help you think about how to answer this question, imagine the following scenario:

Ava is the listing agent for a property in the Fraser Valley that contains a house and a hobby farm. The property is in the Agricultural Land Reserve ("ALR"), and this fact is indicated on the title search and in the listing information. Ursula is an unrepresented buyer. When viewing the property, Ursula mentions to Ava that her husband likes to fix up old cars and does it as a side business on the weekends. While the municipal zoning would permit Ursula's husband to operate his side business from the property, Ava thinks that this activity would not be permitted within the ALR.

Note that you should not limit your answer to just the context in the scenario, but rather, use the scenario as a starting point.

Acting with integrity when dealing with an unrepresented party includes:

- Clearly disclosing the nature of your relationship with the unrepresented party at an early stage so as to avoid any suggestion of an implied agency;
- Explaining to the unrepresented party what you are prepared and able to do and what you cannot or will not do for them;
- Providing the unrepresented party with accurate information;
- Disclosing material latent defects that are known to you; and
- Recommending that the unrepresented party seek independent professional advice in respect of the trade in real estate. This might include representation from another real estate licensee and/or independent advice from a lawyer, accountant, or engineer, as appropriate (for example, with respect to what activities would be allowed or disallowed in the ALR).

If you fail to set out clearly the nature of your agency in your dealings with the unrepresented party, or if you allow them to think of you as acting on their behalf or in their interest, there is a significantly heightened risk that something will go wrong that could lead to litigation or a complaint to BCFSA of unethical behaviour. A fairly common situation that arises is where the unrepresented buyer asks the listing agent questions about the property and the listing agent agrees to respond to the questions and to make inquiries of third-party sources such as a local government or utility. In the scenario above, for example, Ursula might ask Ava to confirm that municipal by-laws would allow her husband to operate his side business. Ava might reasonably believe that she is acting in her client's – the seller's – best interests in responding to this information request because Ursula will be kept interested by promoting the property. The problem for Ava and the seller, however, is that once Ursula begins to rely on Ava for information, Ava might have a duty to disclose more than has been specifically requested – and this might include information that would not have had to be disclosed otherwise. In other words, Ava might be seen as acting unprofessionally and without integrity if she confirms whether the side business would be allowed under the municipal zoning but does not confirm and disclose the ALR restrictions if any. Ava could avoid this situation by advising Ursula that she is not able to confirm any restrictions on the property related to the husband's side business, and that Ursula should hire a real estate licensee to represent her, and/or seek advice from a real estate lawyer.



**[Visit BCFSA Knowledge Base for more information](#)**

#### **Additional examples:**

- If a real estate licensee tells a buyer that one section of the property is outside of the Agricultural Land Reserve yet fails to mention that there is an ongoing ALR boundary review in the area, they are misleading the buyer with a statement that is only half true.
- If a commercial property manager negotiates with a tenant and provides details on the current zoning but fails to mention that there is a zoning change application in process, they are withholding information that would be important to the tenant.

In each of these examples, the risk of implied agency can be avoided or mitigated if the real estate licensee clearly explains the nature of their relationship with the unrepresented party before responding to information requests and reminds the unrepresented party of the boundaries of that relationship whenever it seems that the unrepresented party might not be clear.

Although your duty to your own client is paramount, you do a disservice to your client, to yourself, and to the profession generally if you fail to act with integrity in your dealings with unrepresented parties. A number of BCFSA complaints result from unrepresented parties who believe they are the victims of an unscrupulous real estate licensee. Acting with integrity and being careful to document your interactions with unrepresented parties is the best way to minimize your risk of being accused of acting unethically, to protect you and your client from a future lawsuit, and to ensure that the parties to the transaction accurately understand the playing field and can take the steps required to protect their own interests.

## INTEGRITY IN YOUR DEALINGS WITH YOUR MANAGING BROKER AND BROKERAGE

Under the *Real Estate Services Act* and the *Real Estate Services Rules*, your managing broker has specific duties to oversee the practices of the brokerage and the conduct of licensees who represent the brokerage. This supervisory function is mandated by the *Real Estate Services Rules* to ensure that the interests of the public are protected.

Effective managerial oversight is key to maintaining public confidence in the industry and is a benefit to everyone involved in real estate, including individual licensees. No one benefits if there are mistakes within the transaction documents or there are breaches of the *Real Estate Services Rules*, or if general unethical behaviour is allowed to occur. Most mistakes, if identified at an early stage, can be addressed without adverse consequences, because if you have acted with integrity in your dealings with the parties, all parties will have a common interest in correcting the mistakes so that the transaction can complete as intended. Indeed, almost all litigation or discipline proceedings involve something that should have been identified and corrected at some stage of the process.

Acting with integrity when you are dealing with your managing broker increases the efficacy of the review process and minimizes the risk that something will go wrong and damage not only your professional reputation but also your client's interests.

### Self-Reflection:

How do you demonstrate integrity in your dealings with your managing broker and brokerage?

To help you think about how to answer this question, revisit [this scenario from Module One](#), where the buyer's agent became interested in a property she was showing to her client. Note that you should not limit your answer to just the context in the scenario, but rather, use the scenario as a starting point.

### Acting with integrity in dealing with your managing broker and brokerage includes:

- Immediately disclosing to your managing broker any concerns you have regarding your dealings with others, or the real estate;
- Seeking advice when you are concerned about your ability to competently respond to a particular issue, including appropriately managing a conflict of interest as seen in the scenario;
- When you make a mistake, informing your managing broker promptly so that steps can be taken to mitigate the consequences before the situation becomes worse; and
- Reporting misconduct, regardless of whether it is your own conduct that is inappropriate, the conduct of someone you employ, of another person who performs duties on your behalf, or of another person under the supervision of the brokerage.

A good real estate licensee knows that their managing broker is an invaluable resource. Use this resource often to improve your practice and to help build a strong reputation as a professional who acts with integrity.

## INTEGRITY IN YOUR DEALINGS WITH THE PUBLIC

Your professional reputation is your most important asset, and the success of the real estate profession depends on public trust. When public trust is undermined, the consequences can be far reaching.

In 2016, public trust in the real estate profession reached a low point culminating in the ending of industry self-regulation and the imposition of a much more onerous penalty regime. One need only peruse the pages of the *Vancouver Sun* or *Province* to see the extent of the damage. Stories persist that allude to deceitful and unscrupulous real estate licensees, which feeds a public perception that the profession is prone to abuses. These stories stem from the publicized actions of a few, but the consequences to all real estate licensees from this erosion of public trust are significant.

In addition to no longer being self-regulated and facing much stiffer sanctions, the development of online platforms that enable buyers and sellers to bypass the real estate profession poses an emerging threat to the industry. The best way to counter these trends is to make a concerted effort to act with integrity in your dealings with the public, and to encourage your professional colleagues to do the same. It will take the efforts of all stakeholders working together to ensure public trust in the industry is strong.

You interact with the public on a daily basis through your advertising, your websites and social media and your participation in community events.

### Self-Reflection:

How do you demonstrate integrity in your dealings with the public?

### Acting with integrity in your dealings with the public includes:

- Being honest in your advertising and avoiding misleading statements in your communications;
- Taking care in what you say and how you say it whenever you make public statements;
- Not disparaging other members of the profession or taking unfair advantage of others' mistakes for personal gain; and
- Making it a daily practice to treat everyone with respect.

As a real estate licensee, your most important asset is your professional reputation, and because of that, integrity should be a core part of everything you do. The real estate profession is not the world of the *Gyges' Ring* story. Real estate licensees do not do the right thing because the laws or the Real Estate Services Rules prescribe it: you do the right thing because it is the right thing to do and because it is in everyone's interest to do so, including your own.



# Module Four: Client Relationships

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The *Real Estate Services Act* and *Regulation*, and the *Real Estate Services Rules* outline a series of duties owed by all real estate licensees to their clients, regardless of which type of license they hold. Real estate licensees owe certain fiduciary duties to their clients. These fiduciary duties exist at common law, separate from the *Real Estate Services Act* and the *Real Estate Services Rules*. One fiduciary duty is to act in the best interests of the client. Beyond the black and white obligations outlined in the legislation, however, are ethical considerations that can inform a real estate licensee's conduct when developing a relationship with a client. These considerations not only help in compliance with legislation, but also elevate professionalism in the industry, and create a relationship of trust between consumers and real estate licensees.

## LEARNING OBJECTIVES

**After completing this module, you will be able to:**

1. Recognize how your personal and business circumstances impact the number of clients you can provide services to at any given time from an ethics perspective, and why it is sometimes necessary to decline representing a consumer who indicates they might wish to become a client;
2. Explain how to avoid activities that could be perceived by others as predatory and why ensuring your clients are providing informed consent is so important;
3. Explain to your clients when and why disclosures are being made to them, including disclosures that are not legally required but are in their best interest; and
4. Understand the risks to your own professional brand posed by referring clients to third party vendors, and how clear disclosures about your relationships to preferred vendors can enhance trust and demonstrate integrity.



## HOW MANY CLIENTS IS TOO MANY?

As noted earlier in the course, there are several duties you owe to your clients, both under common law, and as required by the Real Estate Services Rules. All of these duties ultimately boil down to an obligation to act solely in the best interest of each and every client. But doing so takes time, which is a limited resource for any professional. When trying to determine how many clients is *too many* clients, it is important to identify how much of your time each client will need for you to meet their expectations and the duties you owe to them. You need to be realistic in this assessment, and make sure that your desire, and/or your brokerage's desire for more business and financial reward, is not overshadowing your ethical obligations to each client.

It is always prudent to discuss the client's expectations at the outset of the agency relationship. It is important to have a clear understanding of a potential client's needs and expectations before accepting them as a client but be careful not to provide advice prior to entering into an agency agreement. In other words, you should ask questions to make sure you understand the scope of what they need, but do not start giving guidance or answering their questions until they become your client. Consumers expect when they enter into an agency relationship with a real estate licensee, the real estate licensee will provide as much time as needed to fulfill the expected services diligently. Having a clear understanding of your client's needs, and the level of knowledge, expertise, and time that will be required to meet those needs will help you determine if you are able to properly assist the potential client.

To help determine whether taking on a new client is not only feasible, but appropriate, ask yourself:

- What services does this client need from me?
- Is the client a sophisticated consumer or will they require additional time and assistance to ensure they understand each step of the real estate transaction and the risks and benefits of each decision they will need to make?
- How much time will be required to facilitate this transaction, and do I have enough time in my schedule to provide the services?
- Do I have the required knowledge and expertise regarding the type of property this client is seeking to purchase, sell, rent/lease, or have managed?
- If I am working with a team of real estate licensees, have I advised the client of that fact, and do they approve of working with multiple real estate licensees throughout the process?
- If I was in my client's position, would I be satisfied with the level of service I am able to provide to the client?

If any of the answers to the questions above give you pause, the best course of action from an ethics perspective might be to consider referring that client to another real estate licensee in order to ensure the client has the best possible experience.

By taking on a greater number of clients than you can reasonably provide full services to, you create the risk of long-term reputational harm to both you and your brokerage. Unsatisfied clients will often share negative experiences and reviews both online and within their sphere of influence. They might not be aware that the lack in service was related to your overbooked schedule and might instead believe that a general lack of professionalism by you, your brokerage, or even the real estate industry as a whole is to blame.

**Clients turn to real estate licensees with what might be among the biggest decisions of their lives. It is important that you do not become de-sensitized to the significance or the dollar values of the transactions. To you, million-dollar transactions might be commonplace, but that might not be the perspective of your client.**

This can be detrimental to you and your brokerage's ability to expand your client base, and can make it challenging to build trust with clients and potential clients.

Additionally, negative experiences of consumers could potentially lead to unsophisticated buyers/sellers and landlords taking on additional risks by choosing to represent themselves in real estate transactions, which, due to their lack of training, can be risky and not in the best interest of the public.

 Your brokerage counts on you to reflect and demonstrate ethical values in all that you do. In turn, you should expect support from your Managing Broker and colleagues to help manage client workloads.

In earlier Modules, [you met Radley](#), a rental property manager. Imagine that Radley's clients are concentrated in downtown Vancouver. How many clients could he comfortably manage? Now imagine instead that Radley specializes in rural communities and has clients spread out over a large geographic area, requiring significant travel. Would he be able to take on the same number of clients?

Clearly, a real estate licensee is better able to provide all the contracted services to their client when operating in a small geographic area as opposed to trying to provide those same services to clients spread out over a large area of the province. These examples highlight the fact that each brokerage and real estate licensee must look at their particular circumstances in determining the right number of clients to work with at any given time.

Evaluate your own situation – how many clients can you comfortably manage and how many new clients could you add?

Complete the following table. How does this compare to your typical client load and new client acceptance processes?

### How Many Clients do you take on?

Work hours you have available per month (on average)

Hours per month spent on general administration, training, and other non-client activities (on average)



Hours per month available for client tasks (on average)

Typical time (in hours) needed per month by a client who is an ongoing/repeat client (including travel and administration time)



Number of ongoing/repeat clients you typically have

Hours per month allocated to ongoing/repeat clients



Hours available for new clients

Average time needed per month by a client who is new (including travel and administration time)

Number of new clients that can be managed

This exercise is not meant to give you a single “magic” number, but rather serves to reinforce the need to systematically evaluate your client load over time. In addition, how would you factor in a “one off” client who might need significantly more time than is typical? It is important to always include a buffer in your schedule so that you can address obstacles or clients who need more attention than anticipated.

**Depending on your situation, your client load might best be considered as part of discussions at the brokerage level, in terms of overall client load and time management, particularly if you work in rental property or strata management.**

It is also important to remember that even if you enter into an agency relationship because you believe you are able to provide all the services required by the client, circumstances can change. Should a client suddenly require more of your time, or an issue arises for your client that you do not have the required experience or expertise to resolve, it might be prudent to refer them to another real estate licensee or expert who can assist.

## CHOOSING WISELY WHEN TO DECLINE A CLIENT

### Why you should not want to represent anyone and everyone

Being selective when determining which potential clients you or your brokerage are willing to represent in an agency relationship is important. The same way a potential client considers several factors in determining whether or not you are a “good fit” to represent them, you as a real estate licensee should also vet a potential client.

When a potential client is seeking the services of a real estate licensee, they ultimately want to find someone who can provide the services they need to meet their objective of buying, selling or leasing a property, or having that property managed. To that end a potential client will consider several objective and subjective factors. Objective factors might include:

- The services you provide;
- Confirmation, by visiting BCFSA’s website, that you are licensed to provide the services being offered;
- The fees you charge;
- The types of marketing plan you can provide; or
- Your past experience with similar types of properties they are looking to sell, buy, lease, or have managed.

But there are also several subjective factors that a potential client might consider that are driven by their experiences and personal preferences. These factors might include:

- Deciding whether your personality will mesh with theirs, or simply whether or not they like you after meeting with you;
- Whether they trust you to act in their best interest; and
- How competent you are, or they perceive you to be, including how good they think you might be at negotiating the best deal for them or managing their property.

Depending on the answers to all of these questions, a potential client will make an informed decision to engage your services or not.



As a real estate licensee, it is important for you to vet your clients in a similar way to ensure a successful relationship. You have an ethical duty to act in the best interest of your clients and not only provide them with all the services you have contracted to, but also to execute those services to the best of your ability. To do that you should consider some objective and subjective factors when meeting a potential client such as:

- Whether or not you have the time and resources to fully provide all the services being requested by the potential client;
- Whether or not you can provide the services being requested in a way that meets the potential client's expectations;
- Whether you have the required knowledge to facilitate the type of transaction the potential client is requesting (i.e., a buyer who is looking specifically for a cooperative property, or a property owner who wants to rent out a gas station);
- Whether there are any circumstances leading to a potential conflict of interest;
- Determining if your personality and their personality can lead to a successful business relationship; and
- Whether there is indication that the potential client might request you to participate in unlawful or unethical behaviour to facilitate a transaction for them- such as not renting a property to a person based on protected characteristics identified in the Human Rights Code or not disclosing a known material latent defect to a buyer or tenant when it is required.

In some instances, you might discover that you want to represent a particular client for reasons that benefit you or your brokerage, such as the potential to earn a large commission or service fee. Remember, though, that your first priority must be your client's best interests. If you are not able to fulfill all your ethical and legislative duties to the client for any reason, it might be best to refer that client to another real estate licensee, regardless of the opportunity cost or loss of benefit.

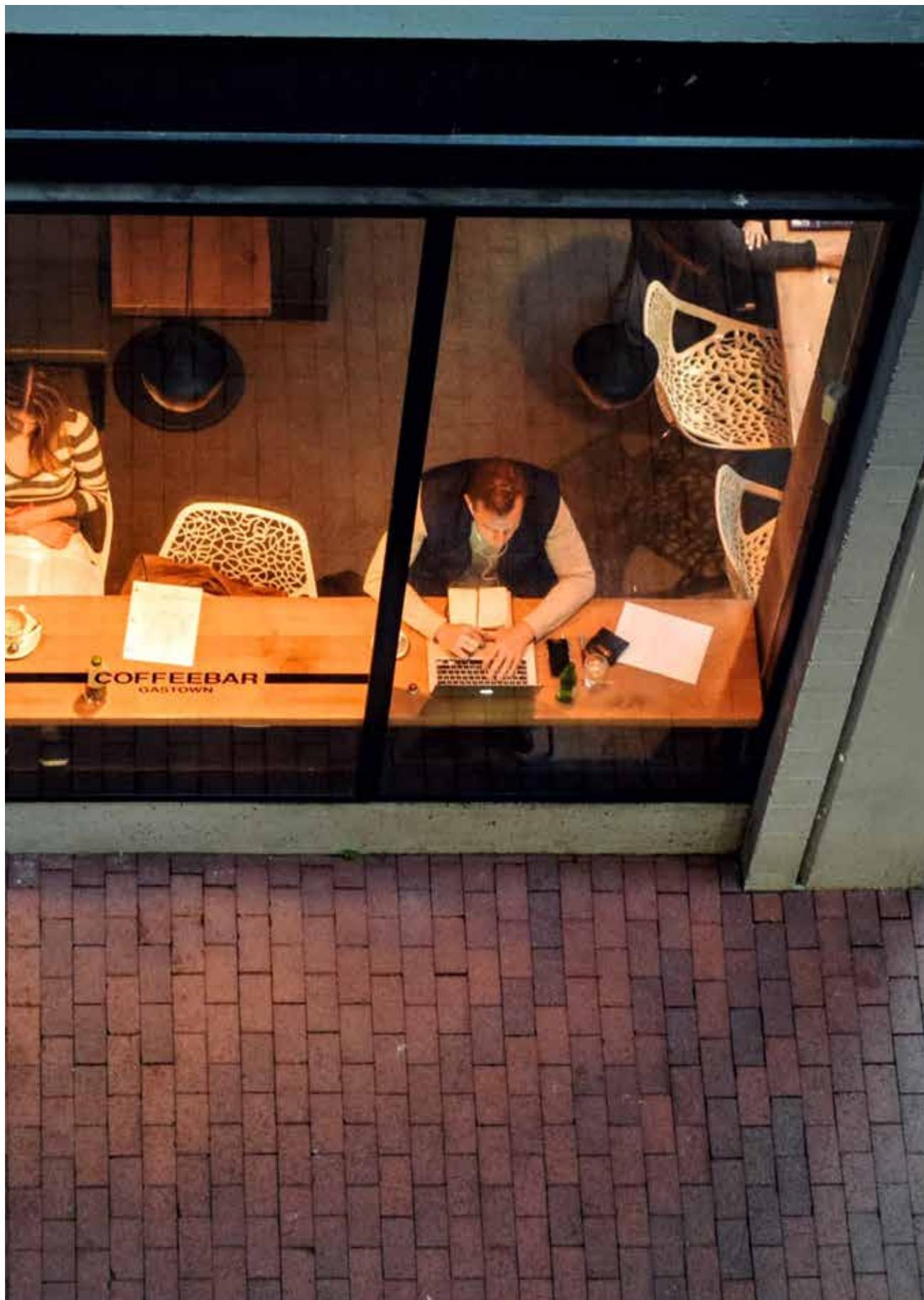
In other situations, you might contemplate not accepting a client because you do not think they are a good fit with you. But recall from Module Two that it is important to understand how biases might be impacting decision-making. Are you choosing to not represent someone because of legitimate limitations on your part, or simply because of a bias against working with certain individuals?

### **Consumer Conduct**

Beyond understanding how to determine whether your conduct as a real estate licensee is ethical when dealing with clients, you should understand that ignoring or promoting unethical or illegal conduct on the part of your client is also unethical. As noted above, if a potential client requests that you engage in conduct that is unethical or illegal, you should advise them that you cannot represent them. Additionally, as an ethical real estate licensee, it might not be in anyone's best interest to refer that consumer to another real estate licensee who might be willing to follow that request.

If you have already entered into an agency relationship with a client and they request that you do something unethical or illegal, you must advise them that you cannot follow that instruction and if they are insistent, that you would need to terminate the agency relationship with them. This not only protects yourself, but also helps maintain the integrity of the industry as a whole.

Under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCMLTFA"), all real estate licensees must verify the identity of clients and consumers they work with by requesting and documenting specific information about the identity of the person.



## CONSIDER THE FOLLOWING EXAMPLE:

André, a seasoned real estate licensee is entering into an agency relationship with Barry who is interested in buying a property. As part of André's due diligence, he completes the required disclosures with Barry. André presents Barry with a FINTRAC form so that Barry's identifying information can be collected per *PCMLTFA* requirements. Barry asks several questions about what the information on the form could be used for, to which André answers. Barry reaches into his pocket, but then indicates that he forgot his wallet, does not have his identification on him and asks André if it is required, to which André replies that it is. Barry promises to bring identification to their next meeting, but instead, later that day Barry contacts André on FaceTime and shows André his identification on the camera. André advises Barry that per FINTRAC guidelines he would need to verify the authenticity of the photo identification in person, to which Barry replies "sure, we can do that next time." André then uses the Land Owner Transparency Register to determine if Barry is a beneficial interest holder in other property, which he is not.

André makes a mental note to check Barry's identification next time they met, but during the next few meetings, he never gets the opportunity. Barry is always in too much of a rush or has left his identification in the car. André reminds Barry, but does not want to push too hard, because he knows Barry is very busy and somewhat impatient, and he is an important client, both in terms of the current purchase and the potential for future referrals.

After finding the ideal property André helps Barry draft an offer. Part of that offer is a five per cent deposit which is to be paid into André's brokerage's trust account upon subject removal by way of a bank draft. When it comes time to provide André with the bank draft, Barry informs André that there is a problem with his bank account and wants to know if André will accept the deposit in cash, put the funds in André's personal bank account, and then order a bank draft on his own account that could be deposited in the brokerage trust account.

Remembering his training on anti-money laundering, André got nervous. He knew that his client not wanting to complete the FINTRAC form, and now asking him to accept deposit funds into his personal account, which was against the *Real Estate Services Act* and the *Real Estate Services Rules*, were red flags for money laundering.

In the case above it is clear that multiple red flags in Barry's conduct should have given André pause. Probing questions, such as asking Barry why he was hesitant to complete the FINTRAC identification form and explaining to Barry the obligation for his brokerage to deposit any funds he received promptly into the brokerage trust account— and never into his own personal account— might have also garnered additional information about Barry's motivations for these requests.

With the additional information, a discussion with André's managing broker could have resulted in the decision not to continue with the agency relationship, or at the very least to report the transaction as a suspicious transaction to FINTRAC if Barry's responses did not alleviate the concern.

For more information on AML, please review the AML guidance [here](#).



[Click here for more information on AML resources](#)

## AVOIDING PREDATORY PRACTICES

Predatory practice is an attempt by a person to gain something by exploiting the vulnerabilities of others for personal gain.

Most people, when asked about predatory business practices, would immediately provide examples of misconduct where a businessperson engaged in concrete, black and white, unethical, or illegal conduct by taking advantage of a consumer. But when protecting a client's interests, anything that can be perceived as predatory – whether it actually is or not – can be just as damaging to the agency relationship and can have long term negative impacts on the reputation of the brokerage and industry.

One way to determine whether your actions could be viewed as predatory is to employ the “headline test”. Ask yourself: If a consumer spoke to the media and a story was written about your conduct, what would the story say, and how would the public view it? By viewing your actions as presented in a news story or through the eyes of an impartial observer, you might be able to more clearly identify behaviours and conduct that could be viewed by others as predatory.

### Practices that are actually predatory

As noted above, a predatory practice is one where the actions of a real estate licensee exploit a client for personal gain, often by coercing them to accept less favourable terms. One of the key examples of a predatory practice can be seen in marketing strategies. False and misleading advertising is not only prohibited by the Real Estate Services Rules but is also example of an unethical and predatory practice. Making vague statements such as “I guarantee I can sell your house in 90 days!” with no disclaimer outlining the restrictions that might accompany that offer can lead a consumer to believe that their home will sell in 90 days, at the listing price of their choosing. The facts, however, might be very different. The real estate licensee might require that the seller list at a price determined by the licensee, and that the seller agree to price reductions recommended by the real estate licensee until the property sells. In this case, the vague nature of the marketing statement was created to mislead consumers into entering into an agency relationship without all the information they need to make an informed decision.

Aggressive marketing is another example of a predatory practice that is designed to pressure a consumer into entering an agency relationship. Examples of aggressive marketing include repeated cold calls to a consumer who asked that the calls stop, repeated visits to a consumer's home asking if they are ready to list their home despite being told they are not interested in selling, and preying on those in financial distress by claiming that your services can resolve their problems.

The aim of an aggressive or predatory marketing campaign is to wear down and coerce the consumer into complying with the wishes of the real estate licensee. In some instances, a consumer might finally concede to the wishes of the real estate licensee because they feel intimidated by that person, or they feel that it is the only way to have the pressure being applied eased, or because they become convinced that it is the only way to avoid ending up in an even worse situation. In any event, aggressive marketing is ultimately a means of taking advantage of someone's vulnerability and is not in line with the concept of treating consumers in an ethical manner.

In all these cases, the results of the actual predatory practices are clearly aimed at satisfying the real estate licensee's desire to earn a commission or increase their client base. The needs and interests of the consumer or client are secondary. In some cases, by essentially removing the ability of a consumer to make an informed decision that is in their best interest, a consumer might also be financially or otherwise harmed.

### Practices that might be perceived as predatory

Perceived predatory practices can be more challenging to identify, because they require viewing one's own actions through the eyes of another person and identifying what that person might view as predatory, even if it is not intended as such.

An example of a practice that might be perceived as predatory is marketing targeted to specific segments of the population who could be considered vulnerable. This would include marketing to seniors, persons with disabilities, or newcomers to Canada who might not be fluent in English or have a full understanding of how the real estate sales or rental market functions. While there might be no intent to deceive or exploit vulnerable consumers, and while, in fact, you might have expertise in working with those groups which is beneficial, others might view the action as predatory. Just as with actual predatory practices, reputational harm from perceived predatory practices can impact your ability— and your brokerage's ability— to grow your client base because of reputational harm through negative reviews and gossip.

While there is no way to prevent third parties from forming opinions based on your business practices, being proactive is the best way to respond to those who might incorrectly view your business practice as predatory. For example, if you are marketing your services to the elderly because that is the segment of the population you specialize in dealing with, document all the steps you take to ensure your client has a full understanding of your services and that their needs and interests are being met. Discuss your business model with your managing broker so that if a concern is raised, your managing broker can dispel any misconceptions from third parties. Just as with advertising practices that can be considered predatory, ensure that your marketing provides supporting statements for all claims being made. When in doubt, err on the side of caution.

Also be aware that sometimes a client might provide you a lawful instruction that, when followed, could lead to you engaging in a predatory practice, actual or perceived.

### FOR EXAMPLE, CONSIDER THE FOLLOWING SCENARIO:

Rick is a rental property manager for Larry the landlord. Tim is a tenant in one of the properties managed by Rick. Larry has wanted to evict Tim for a while because Tim's rent is lower than what Larry could get from a new tenant. Tim has never missed a rent payment. Tim's mother, who lives in Alberta, is quite ill and was recently hospitalized. Tim left to visit his mother on May 30 and is not expected to return until June 12. Tim forgot to pay rent on June 1. Larry instructs Rick to serve a notice to end tenancy on June 2 by leaving it at the rental property. In that way, notice will be deemed to have been provided on June 5 and Tim will not see the notice until after the five days to pay rent have expired.

Taking advantage of Tim's vulnerable situation could be categorized as predatory.

## INFORMED CONSENT

### **What is informed consent?**

Informed consent occurs when the person giving consent grants permission to proceed with a specified action once all material information has been disclosed to enable them to be informed of risks and benefits before granting that permission. Only when a client provides informed consent can it be said that their interests were protected.

### **The concept of informed consent applies to almost every aspect of a real estate transaction including:**

- When a consumer is reviewing a service agreement and determining whether to enter into an agency relationship with you;
- When you are drafting an offer to purchase for a buyer client and deciding which terms and conditions precedent to include;
- When a seller is reviewing an offer submitted by a buyer and trying to understand all the terms and conditions precedent being proposed by a buyer;
- When a tenant is reviewing a lease agreement and trying to decide if they want to rent a property;
- When you are explaining the risks and benefits of various rules and bylaws being contemplated by a strata corporation;
- When you disclose a conflict of interest to a client and they must understand the risks of allowing you to modify the agency relationship in order to decide whether to proceed with facilitating the transaction or whether to seek other representation; and
- When your listing client is agreeing to allow another designated real estate licensee from your brokerage to host an open house when you are not able to be there.

As an example of how informed consent can be important in a conflict of interest situation, revisit [this scenario from Module One](#), where Malati is providing strata and rental property management services. Disclosures to clients will be particularly important to ensure that they are fully informed and can make appropriate decisions as to how to proceed.

Regardless of the reason informed consent is being sought, consumers and clients depend on you as the expert to ensure they have the information needed to give it. Informed consent starts from a place of trust. You are the expert, and consumers and clients trust and rely on the notion that you will protect them by ensuring they understand what is occurring throughout the real estate transaction, and that you will give them all the information they need to successfully navigate the transaction.

When consumers make decisions based on misunderstandings or falsehoods, or without key pieces of information, there is a greater chance that they will either regret the decision or face an outcome that was not anticipated as a result of that decision. When this happens, a client might lose trust in your ability to guide them through the transaction because they believe that you are not knowledgeable enough to protect them, or worse, that there was an attempt to deceive them by denying them the accurate information.

**In these types of situations, consumers or clients might file a complaint or pursue legal action against the agent. Regardless of whether a complaint or legal action is pursued, the loss of trust and resulting reputational damage can have a significant impact on a real estate licensee's professional and ethical brand.**

This loss of trust can lead to a loss of trust in you, the brokerage, and the industry as a whole.

### ***When you are no longer the expert***

At times, a client might ask you a question that you are not equipped to answer. These questions could be related to construction issues in a property, be legal or financial in nature, or even be about a type of property you are not familiar with, such as a real estate licensee who focuses on commercial hotel sales being asked about gas stations; or a condo specialist who is asked to assist with a land assembly. While you are deemed, in the eyes of the client, to be the expert, it is risky and unethical to provide advice or offer information you are not trained to provide, because it could result in harm to your client. Every real estate licensee wants their clients to believe they have all the answers, but realistically, no one has all the answers to everything.

#### **Sometimes to protect your client, you might need to:**

- Advise your client that you will need to do some research to obtain the information they need;
- Recommend that your client seek independent third-party advice to get the information they need, such as from a building inspector, engineer, lawyer, or professional accountant; and
- Suggest that you and your client terminate your agency relationship so that they can seek representation from someone who is better equipped to meet their needs.

Remember, as with every client relationship, what you do must always be to further your client's interests and not yours. You will earn more respect and trust by referring a client to someone qualified to assist them than by faking competence.

### **FOR EXAMPLE, CONSIDER THE FOLLOWING SCENARIO:**

Aiko is a real estate licensee who works with commercial tenants. She represents Greg and Esperanza, two young entrepreneurs who have just incorporated a start-up business. Greg and Esperanza are very enthusiastic about their new business. They acknowledge that they could run their business from their homes for at least a year or two, but they are excited to get commercial space and feel like a "real business." Of all the spaces they are shown, Greg and Esperanza are interested in the most expensive one, which provides the largest remuneration to Aiko.

Aiko knows that Greg and Esperanza will need to provide guarantees to the landlord. Aiko has acted for numerous entrepreneurs and is well aware that a lot of new businesses fail, but is not knowledgeable enough to assess their business and assist with financial and operational planning. Greg and Esperanza ask Aiko for advice on whether to secure leased space now or wait for a while.

#### **What should Aiko do?**

Aiko should advise the entrepreneurs to seek advice from a professional accountant who can help them evaluate the benefits and risks of leasing space now and help them plan to achieve success. She might be tempted to encourage Greg and Esperanza to lease space now but doing so without them having a solid plan for success and an evaluation of risks and benefits would not be in the clients' best interest.

## Vulnerable populations

Vulnerable populations consist of any group who might be at greater risk for being taken advantage of, or susceptible to making decisions without a full understanding of the consequences of those decisions. This might include elderly people, those with cognitive impairments, and even those who are new to Canada and might not speak the language fluently or understand real estate processes here, as discussed earlier.

As a real estate licensee, you have an ethical duty to use every tool in your toolbox to reasonably determine whether those who are seeking out your services understand and appreciate the impacts of the decisions they are making.

### Some tips to help you make those determinations include:

- Discussing with a consumer why they want to acquire or dispose of real estate and ensuring those reasons appear rational;
- Recommending a consumer seek independent professional legal or accounting advice if their reason for acquiring or disposing of real estate hinges on a financial or legal issue you are not trained to give advice on;
- Meeting in person or video chatting with the consumer to discuss the proposed transaction;
  - Physical cues such as looking around, or quizzical expressions might assist in determining if that person truly understands what you are saying to them.
  - Suggesting a translator when a language barrier exists will also help ensure clear communication.
- Asking questions about potential powers of attorney for the elderly or those who appear to exhibit diminished mental capacity; and
- Avoiding pressure tactics designed to take advantage of the heightened sense of anxiety that most people feel when dealing with large scale transactions.

While you are not trained to make determinations about someone's mental capacity, the suggestions above will help reduce the possibility of a consumer, or their family member, complaining that they were misled or taken advantage of. If you are unsure as to whether you should be working with a consumer, raise your concerns with your managing broker and together you can decide on the best course of action.

## DISCLOSURES

Under *RESA* there are several disclosures that must be made to both existing clients and unrepresented consumers. Some of these disclosures must be made on BCFSA approved forms, some just need to be in writing, while others can be made in any form, written or verbal. But what about information that is not required by legislation to be disclosed? Do you have an ethical obligation as a real estate licensee to disclose information when there is no mandate to do so?

To answer this question, you must consider the purpose of a disclosure. Disclosing information to a consumer is the provision of information that might not be known to that consumer so that they can use that information to make informed decisions. It has already been noted that providing your client with all the information they need to make an informed decision is crucial.

While *RESA* cannot anticipate every specific challenge that might give rise to the need for a disclosure to be made, it does include a more general duty that you disclose all known material information respecting the real estate and real estate services to your client.

And since you cannot determine what your client might feel is material to them, following the adage of “when in doubt, disclose” is a prudent way of upholding your ethical obligation to protect your client’s interest above all else. This is true, even when the information being disclosed could be detrimental to you, such as your client losing interest in a property.

When consumers make informed decisions, they are more likely to be satisfied with the outcomes of these decisions. As a by-product, consumers who make fully informed decisions because their real estate licensee has provided them all the information to do so, will more likely be satisfied with the services of that real estate licensee and brokerage. This is also positive for the entire industry.

For an example of ensuring full and appropriate disclosures, let us build on the previous scenario where Esperanza and Greg are looking at leasing commercial space. Imagine now that Aiko refers Greg and Esperanza to Vyan, a CPA who Aiko has been good friends with since university. Vyan is very competent at evaluating new business risks. Aiko is not receiving any commission from Vyan, but wonders if she should tell Esperanza and Greg that she and Vyan are friends.

### How would you advise Aiko?

Full disclosure would be appropriate in the situation, especially to manage the risk of a perceived conflict of interest, and to ensure informed consent on the part of the clients.



## PREFERRED VENDORS LIST

As you build your business and list of trustworthy contacts, you become not only relied on as an expert in real estate transactions including sales, commercial leases, rentals or strata management, you also become a resource for your clients when they need third party service providers such as home inspectors, mortgage brokers or contractors. But in order to avoid potentially harming your client financially or creating perceived or actual conflicts that could impact your reputation, there are a number of considerations to keep in mind when asked to provide referrals.

While you might have had a positive experience with a third-party vendor and might even have had clients who have endorsed their services, every individual is unique, and this can create variances in the opinions about the vendor. A mortgage broker, for example, who is known for being aggressive in getting the best deal, might come across to some consumers as arrogant or rude. A contractor who has been rated positively because they take their time to ensure each job is done to perfection might be viewed by consumers with a time constraint as being slow or inefficient. There is no way to anticipate definitively whether a client and third-party vendor will work well together.

A client who has a negative experience working with a third-party vendor you referred might blame you for making the referral.

**While your intentions might have been noble, the client might perceive the situation as:**

- You putting your desire to earn a referral fee ahead of what is best for them; or
- You recommending the third party vendor because of a personal or familial relationship.

Remember, the perception of wrongdoing can be just as damaging to your reputation as an actual unethical act. In fact, the perception of an undisclosed conflict might be more detrimental because the client might create their own narrative, such as assuming there is a personal relationship with the third-party vendor where none exists.

To help limit the risks and ensure your ethical duty to put your client's interests first are met, it is always advisable to refer several vendors to a client. In addition to providing a list of referrals, it is important to disclose any actual or perceived conflicts of interest between you and the potential vendors, to help ensure your client can make a fully informed decision about who to work with. It is also prudent to suggest that clients do their own due diligence and not rely solely on your recommendation. Suggesting they research other vendors and interview your referred vendors will serve as a reminder to the client that they are ultimately responsible for making the decision of who to hire. You must also disclose if you anticipate receiving a referral fee. These tips could help in situations like the one you have been considering where Aiko is representing Esperanza and Greg. Providing the names of several professional accountants, suggesting they ask their entrepreneur friends for additional professionals to consider, and ensuring any real or perceived conflicts are made known will help Aiko ensure that her clients are not overly reliant on Aiko's recommendation, and that they do their own due diligence.

As with all of the situations you have learned about in this module, ensuring that your clients can clearly see that you are acting ethically in their best interest will help build trust and help them make fully informed decisions to meet their goals and objectives.

## CONCLUSION

Throughout this module you've seen how ethical considerations can, and should, inform a real estate licensee's conduct when developing a relationship with a client. These considerations help you stay in compliance with legislation. They also enhance the level of professionalism in the industry, and help foster a relationship of trust between consumers and real estate licensees.

# Module Five: Ethical Business Practices

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Throughout this course, you have been focusing on a number of concepts and situations in which ethical decision-making and behavior are essential to building your professional brand and driving trust in yourself and in the profession overall. But ethical decision-making and behavior do not just happen automatically – each of us needs to examine our own day-to-day business practices with an eye to designing and implementing practices that demonstrate the values and ethical principles that are important.

## LEARNING OBJECTIVES

**After completing this module, you will be able to:**

1. Discover the professional brand you want to achieve, consistent with your ethical responsibilities;
2. Identify business practices that align with your desired professional brand;
3. Understand how long-term thinking and practical business efforts can lead to better ethical decision making;
4. Understand how to use a systematic approach such as the Ethical Decision-Making Framework to continuously improve business processes in response to situations faced; and
5. Understand how unethical activities outside of your real estate practice might impact you professionally.



## WHAT IS MEANT BY 'BUSINESS PRACTICES'?

Business practices are the formal and informal policies, procedures, routines, and systems you use to conduct your business.

These include things like:

- Client screening and acceptance policies;
- Practices used for setting and agreeing on client expectations;
- Your go-to strategies and methods for listing a property, choosing a vendor, screening tenants, etc.;
- Your communication tools and style;
- Your education and professional development plan;
- Your marketing plan;
- The type of brokerage you choose; and
- Your criteria for choosing colleagues with whom to co-list, or to team with.

Business practices might be set out in formal policies, particularly at a brokerage or team level, or they might be less formal. Regardless of their level of formality, business practices should be supported by a considered and consistent approach to business ethics. In other words, your ability to develop and maintain a consistent set of business practices will flow directly from taking a consistent approach to prioritizing business ethics and core values.

## WHAT PROFESSIONAL BRAND DO YOU WANT TO CONVEY?

Your business practices provide the playbook that drives your actions. These actions communicate your professional brand to everyone you deal with, so it is important to ensure that your practices and actions reflect the professional brand you want to convey to others.



***It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you'll do things differently.***

**Warren Buffet**

Remember too that although it might be trendy to speak of a professional brand, the concept can be misleading. A professional brand is more than just marketing. Ethical behaviour is the difference between a brand and a *professional* brand.

**The course material you have worked through has illustrated for you that:**

- A professional brand is, in essence, one's professional reputation. It can be good or bad, depending on the professional's actions and behaviour; and
- A good reputation is often the product of consistent, professional, and ethical business practices.

Think of the people – including other real estate licensees – that you admire, or who have a good reputation. Why is that the case? It is probably not because they have a slick website or a catchy slogan.

In the introduction to the course, you were challenged to consider your brand. Think about all of the concepts you have explored so far in this course, and the importance of ethics in driving trust. Based on the concepts you found to be most relevant and important, have your ideas changed or strengthened regarding what you want your reputation to be?

To revisit this idea, think about how you would want a client or other real estate licensees to describe you. Would you want them to describe you as: Professional? Casual? Aggressive? Dedicated? Caring? Competent? Diligent? Successful? Classy? Relatable? Knowledgeable? Charismatic? Understated? Rude? Relentless?

How would the words you chose impact the level of trustworthiness you would expect to achieve?

How ethical would you expect to be seen?

What do you think would be your reputation – your professional brand?

## Play the Long Game

Like gardening, building and maintaining a professional brand is a long-term, ongoing project. The fruits of those efforts are not realized immediately.

Consequently, the largest temptation to ignore your ethical principles and act contrary to your professional brand occurs when there is a prospect of an instant reward. That reward might be in the form of compensation, in avoiding an uncomfortable situation, or something else of value to you.

Indeed, the greatest test of your professional brand occurs when it is difficult to act in accordance with that brand. Remember the story of Gyges in Module Three? It is in those tests that your reputation will be cemented.

Think of a time when someone you know acted contrary to their short-term interests in order to stay true to their values. What did you think of that person at the time? What do you think of them now?

Now, think about a time someone acted contrary to their professed values. What did you think of that person at the time? What do you think of them now?

You probably hold the person who put their values ahead of their short-term interests in high esteem. That person probably has a good reputation, that was almost certainly earned over a period of years of applying consistent, professional and ethical business practices.

Conversely, you probably do not have complete trust in the person who acted contrary to their professed values in order to benefit in the short term.

### Self-Reflection:

Think about your own values and business practices. Are there times when you stuck to your values even though it would have been beneficial to not do so? Are there times you compromised your values for a short-term benefit? How do you think those situations have impacted your professional brand?

Maintaining a professional brand requires long-term thinking. Situations you find yourself in must be evaluated individually, but also as part of a larger whole. When confronted with options, you must ask yourself: "Which course of action is most consistent with my values; with my professional brand?"

This is often easier said than done. Not all ethical dilemmas are easily solved. Remember that the framework for ethical decision making is a foundation to rely upon when faced with difficult choices. Using it will force you to slow down and think about whose interests are affected and the implications of the choices you might make.



[\*\*Click here to open the Ethical Decision-Making Framework\*\*](#)

## How Colleagues Perceive You

It is likely that the first people who will recognize your professional brand are other real estate licensees. They are your colleagues with whom you must work on a regular basis. You might be negotiating with another real estate licensee on a Tuesday about your listing, and then again on Wednesday about another property altogether. As a licensee and professional, you know that sometimes you rely on your relationship with another licensee or professional to get past a sticking point in a negotiation, manage a client's unreasonable expectations, or deal with an unforeseen problem.

Through experience and industry chatter, other real estate licensees will quickly form an opinion about you and your professional brand. They will have a perception as to whether you are honest, trustworthy and ethical. They will adjust their conduct toward you based on those perceptions. Having no set of core values, or consistently acting contrary to those values, can quickly lead to an unwanted reputation. You might become known for being unreliable, untrustworthy, or willing to do or say anything for a 'quick buck.'

### Self-Reflection:

Think of a time you had to rely on another real estate licensee to help solve or manage an issue. Was it made easy or difficult because you or the other professional had – or did not have – a reputation for ethical business practices? Can you think of another real estate licensee with whom that situation would have been easier? Harder? What are those real estate licensees' reputations?

Consider the real estate licensee who represents a purchaser who needs an extension of the completion date. How do you think that request will be received if that real estate licensee has a reputation for being dishonest? On the other hand, how do you think that request will be received if that real estate licensee has a reputation for honesty and integrity? While the request might not be granted in either case, it is far more likely that the need for the request will be accepted at face value if communicated by a real estate licensee with a strong reputation for ethical business practices.

These examples should illustrate to you that ethical business practices are not only the right thing to have, they can also yield positive, practical benefits. A real estate licensee who consistently applies ethical business practices will better manage client expectations, have better relationships with clients and other professionals, and be able to rely on that brand to navigate difficult situations.

## MATCHING YOUR BUSINESS PRACTICES TO YOUR PROFESSIONAL BRAND

Anyone can claim to be honest, hard working, trustworthy, or anything else. Saying it does not make it so. Nevertheless, deciding the characteristics for which you hope to be known is an important step in determining the professional brand you hope to achieve.

However, it is no simple matter to create that professional brand such that you are perceived by members of the public and other real estate licensees as having those characteristics. There can be a stark difference between how you hope to be perceived and how you are actually perceived – i.e., your reputation.

You have probably met someone with whom you were at first quite impressed, but over time became disappointed in. That person likely did a good job of communicating the professional brand they hoped to achieve. But, over time, that person demonstrated that their business practices did not correspond to the brand they were selling.

This might have been the result of creating expectations that they could not meet, or professing values that were not reflected in their business practices.

In many professions, one must compete for a client. That creates an incentive to be overly optimistic when pitching to a prospective client. A home renovation contractor might provide a low quote and an aggressive timeline, while also promising constant communication and transparency. These promises might help get the contract, but they also set the client's expectations. The problem arises when the contractor cannot meet the expectations that have been created.

Conversely, you might have met someone who was honest, even in situations where telling the truth seemed contrary to their interests, or if the message they conveyed was not popular. Over time, you might have come to realize that that person was reliable and trustworthy. They might not have said what you wanted to hear, but you knew you could rely on their word.

Who would you rather hire or do business with? Do you want to hire the smooth talker who tells you what you want to hear, but cannot deliver? Or would you rather hire the licensee who you can count on to be honest and reliable, even if that means delivering less than ideal news?

The incentives to act contrary to ethical business practices can be strong. It is easy to say whatever you think a potential client wants to hear and then hope things work out – or, if they do not, you can blame forces beyond your control. You might think that by the time something goes wrong, the client is likely to stick with you rather than fire you and hire a new real estate licensee. You might be right. But at what cost? You will never know how many potential clients do not hire you, or do not even consider hiring you, because of the reputation you have earned for yourself. For those that do hire you, there will inevitably be more headaches caused by unmet expectations.

Your professional brand is more than just how you deal with clients. It is also how you conduct yourself in all of your dealings. The manner in which you conduct business says far more than any advertisement or slogan can. When it comes to your professional brand, actions speak louder than words.

## ETHICAL BUSINESS PRACTICES GO BEYOND JUST 'FOLLOWING THE RULES'

It can be easy to confuse ethical business practices with simply following the Real Estate Services Rules. While complying with the Real Estate Services Rules is undoubtedly a component of ethical business practices, it is far from the whole story.

No set of rules can contemplate every scenario that might arise. For that reason, many of the Real Estate Services Rules that govern licensees are intentionally stated in general terms. For example, the Real Estate Services Rules set out a licensee's duty to clients but does not prescribe any particular behaviour. It sets out, in general terms, the duties owed by a licensee to a client. Precisely how those duties are fulfilled will depend on the circumstances of a given situation. Applying the Real Estate Services Rules requires professional judgment informed not only by the content of the Real Estate Services Rules, but also by an understanding of ethical business practices.

As an example, [revisit this scenario from Module One](#).

The Real Estate Services Rules do not prescribe specific procedures that must be followed, but Roger needs to ensure that he has implemented business practices to maintain appropriate limits and avoid overstepping authorized boundaries. These practices might include the use of a property management services agreement template that requires clarifying what is, and is not, included in the agreement, and what the client's expectations are in various situations.

Another source of ethical obligations is the *Real Estate Services Act*. Under the Act, a licensee may be disciplined for "conduct unbecoming a licensee."<sup>10</sup> Conduct unbecoming a licensee is defined as conduct that:

- (a) is contrary to the best interests of the public,
- (b) undermines public confidence in the real estate industry, or
- (c) brings the real estate industry into disrepute.<sup>11</sup>

The concept of "conduct unbecoming a licensee" is infused with ethics. One cannot measure whether one's conduct is unbecoming without understanding ethical principles and ethical business practices.

Properly understood, the Real Estate Services Rules are not merely a statement of rules with which licensees must comply. Rather, they are the expression of an underlying requirement that licensees act in accordance with ethical principles and apply ethical business practices.

Attempts to get around the rules might not only be ineffective, but they miss the point of the Real Estate Services Rules and result in the licensee being found to have committed conduct unbecoming a licensee. Moreover, being known as a real estate licensee who looks for ways to get around the Real Estate Services Rules is wholly inconsistent with an ethical framework to your business practices. If you were known as that type of real estate licensee, what do you think would be your reputation? How do you think that would impact how others deal with you? How would potential clients view you?

### Use of Standard Forms

BCFSA has a number of standard forms that should be incorporated into your standard business practices. Not only is use of the forms mandatory in some instances, all forms have been reviewed and approved, and are continuously updated. The forms should not be viewed as a chore or a "necessary evil", but rather as a key component of your ethical business practices.



[Click here for BCFSA standard forms](#)

For example, a trading services licensee may use the Disclosure of Representation in Trading Services form as a guide for a more detailed discussion with a prospective or new client as to the approach that will be implemented by the licensee. It can be the starting point for a discussion about the licensee's business philosophy and how the licensee will deal with situations that might come up while acting for the client.

### Where There Are No Prescribed Forms

The prescribed forms do not provide a complete set of business practices. For situations where there is no prescribed form, real estate licensees should use professional judgment to develop their own robust set of business practices, tools, and templates they can follow.

<sup>10</sup> Real Estate Services Act, S.B.C. 2004, c. 42, s. 43

<sup>11</sup> Real Estate Services Act, S.B.C. 2004, c. 42, s. 35(2)

Table A provides some examples of business practice topics and provides two contrasting approaches to setting business practices. Which of these would align with your practice? Are you more aligned with approach A or B? How does this impact your professional brand?

**Table A**

Business practice topic	Approach A	Approach B
Client screening and acceptance policies.	<ul style="list-style-type: none"> <li>• Ad hoc, with the primary goal of never turning away a client;</li> <li>• Completion of required forms just in time; and</li> <li>• Determine client expectations on the fly, to maximize flexibility.</li> </ul>	<ul style="list-style-type: none"> <li>• Structured, using an intake questionnaire with established criteria to determine outcome;</li> <li>• Incorporation of required forms into preliminary meetings;</li> <li>• Set and agree on client expectations, with sign-off by both parties on key items; and</li> <li>• Consideration of resources needed and available to adequately serve client's needs before accepting a new client.</li> </ul>
Go-to strategies and methods for listing a property, choosing a vendor, screening tenants, etc.	<ul style="list-style-type: none"> <li>• Committed to getting the job/deal done; and</li> <li>• Using pressure situations to your advantage.</li> </ul>	<ul style="list-style-type: none"> <li>• Committed to due care; and</li> <li>• Emphasizing quality of service over using or being swayed by pressure tactics.</li> </ul>
Communication tools and style.	<ul style="list-style-type: none"> <li>• As needed, using the most efficient means possible; and</li> <li>• Disclose when needed, no more, no less.</li> </ul>	<ul style="list-style-type: none"> <li>• Committed to full disclosure; and</li> <li>• Transparent and straightforward communication, using the most effective means of ensuring understanding.</li> </ul>
Education and professional development plan.	<ul style="list-style-type: none"> <li>• Stay onside of required courses, but otherwise learn as you go.</li> </ul>	<ul style="list-style-type: none"> <li>• Plan required courses well in advance and participate actively;</li> <li>• Self-assess areas for additional development annually and undertake additional education/training/research; and</li> <li>• Seek out a mentor and/or serve as a mentor.</li> </ul>
Marketing plan.	<ul style="list-style-type: none"> <li>• Bold and impressive marketing; and</li> <li>• Promise what they want to hear.</li> </ul>	<ul style="list-style-type: none"> <li>• Understated marketing; and</li> <li>• Set realistic expectations.</li> </ul>
Dealing with conflicts of interest.	<ul style="list-style-type: none"> <li>• Deal with conflicts on a case-by-case basis as they arise; and</li> <li>• Focus on ensuring a conflict does not get in the way of getting a deal done.</li> </ul>	<ul style="list-style-type: none"> <li>• Attempt to identify potential conflicts before representing a client;</li> <li>• Develop a plan with the client to resolve a conflict, if one arises; and</li> <li>• Have a predetermined plan, in consultation with the client, if a conflict cannot be satisfactorily resolved (e.g., referral to another licensee).</li> </ul>
Choice of brokerage, team, colleagues to work with.	<ul style="list-style-type: none"> <li>• Competitive approach; and</li> <li>• Focus on maximizing personal success.</li> </ul>	<ul style="list-style-type: none"> <li>• Collaborative approach; and</li> <li>• Focus on quality and supporting each other in meeting clients' needs.</li> </ul>

In situations where there is no BCFSA-required form, it can be beneficial to look for other resources, from BCFSA or elsewhere, to guide your business practices. For example, while a Disclosure of Representation in Trading Services form might not exist for other forms of real estate services, that should not stop a licensee from having a similar conversation prior to signing a service agreement.

 The “[Working With a Strata Management Company](#)” guide is helpful for both strata management brokerages and potential strata corporation clients as this helps to identify both the role and expectations of a strata manager/ brokerage.

Implementing ethical business practices can help you both avoid and manage issues. For example, having a structured intake process is a useful way to manage a client’s expectations, clearly explain the ethical framework in which you operate, and help you in vetting clients, as discussed in Module Four. An upfront discussion about your business practices might reveal that a client has a fundamentally different view than you as to how you should conduct your business. A potential client might take the approach that anything goes so long as it is legal. That might not align with your ethics and your business practices. An early discussion about your ethics and business practices might save you, and your potential client, a great deal of headache if you can identify this difference early on and either reconcile it or choose not to represent that individual.

With respect to ongoing client relationships, it is particularly important to ensure that you have business practices that help you avoid and manage conflicts of interest. [Recall this scenario from Module One](#).

Developing business practices that support ethical decision making includes setting up policies and procedures to avoid and properly manage conflicts of interest, even if the Real Estate Services Rules would not specifically prohibit the relationships or services causing them. In the scenario above, Malati’s business practices might include a policy to not provide rental property management services to strata lot owners of stratas managed by the brokerage, in order to avoid conflicts of interest. Remember that you are obligated to take reasonable steps to avoid any conflict of interest.

## RELYING ON YOUR BUSINESS PRACTICES TO BE YOUR ROADMAP

Having well-established business practices that support you in making ethical decisions can help you avoid mistakes and errors in judgment, especially in challenging situations. For example, when you are very busy, having well-established practices and routines to rely on can help ensure that essential steps are not forgotten, or that you do not cut corners in communication or documentation.

Having business practices that you can rely on can be especially important to guide you through more complicated business aspects such as meeting your anti-money laundering obligations. [Think back to the scenario in Module Four](#), where André noticed unusual behaviour from a client. These types of situations are not common, but it is essential that you respond appropriately as a professional if you do encounter a situation that exhibits money-laundering risks. In addition, your ongoing AML obligations are ones that should be included in your considerations when designing and developing your business practices. Without solid business practices that incorporate the required steps and documentation, there is a greater risk of missing something important, potentially allowing yourself to be unwittingly drawn into a money-laundering scheme.

### [Click here for Your AML Obligations & Tools](#)

To keep your business practices reliable and fit-for-purpose, you should review and revise them regularly to adapt to:

- Changes in regulatory requirements;
- Changes in services offered; and
- Lessons learned through professional development and through challenges faced and managed.

## DEALING WITH THE UNEXPECTED

Despite all of your efforts, unforeseen issues might arise. No amount of foresight can predict all of the challenges a licensee might face. Moreover, ethics can often feel like an abstract concept – simply being told to “make the ethical choice” can seem unhelpful in a moment of great uncertainty.

Although ethics cannot be reduced to an immutable set of rules that simply need to be followed, resolving ethical dilemmas is not merely applying one’s subjective sense of right and wrong. As you face new challenges, use a systematic approach such as the framework for ethical decision-making, or another similar framework you are comfortable with, to help determine the way to respond. Doing so will ground your decision-making in a process that is designed to help you identify all of the relevant considerations from different perspectives and arrive at a considered, rather than reactive or totally subjective, solution.

Applying the framework for ethical decision-making not only aids in arriving at ethical decisions consistent with your professional brand, it can also assist in arriving at practical solutions to difficult problems. These practical solutions can then be built into your business practices to make it easier to avoid the problem in the future or to get to the right answer more quickly the next time around.

### ‘Legal’ and ‘Ethical’ are Not Always the Same Thing

It is important to bear in mind that just because conduct is legal, it is not necessarily ethical, and your business practices should reflect this.

## FOR EXAMPLE, CONSIDER THE FOLLOWING SCENARIO:

Lena owns a property in an area where property values and rental prices have recently increased significantly. Rae manages the rental property for Lena. Lena is interested in persuading her tenants to leave, so that the property can be rented at a higher amount or sold unoccupied. Consistent with this objective, Lena starts to access the property frequently, often giving Rae questionable reasons for requiring access. Lena also directs Rae to give the minimum amount of notice required for landlord access, even though more notice could easily be provided.

What should Rae do?

### Suggested response:

Using the framework for ethical decision-making, Rae might decide to explain to Lena that if she were to follow Lena’s instructions, she would be acting unethically, and risk bringing the industry into disrepute and would therefore potentially commit conduct unbecoming a licensee. Rae would then attempt to persuade Lena to change her instructions.

In the example above, what business practices could Rae have put in place to avoid this? [Refer to Table A to help form your response.](#)

If Rae had a structured and thorough client screening and acceptance process, perhaps she could have vetted her client and discovered that Lena was not the type of client Rae was prepared to act for. Or perhaps she could include standard terms in her agreements with clients to address these concerns at the outset and set a standard for what Rae will and will not do. Being proactive and setting expectations appropriately can go a long way in avoiding such situations.

## Having Difficult Conversations

Balancing your obligations to a client and your ethics can be a difficult task. A client might want you to take a course of action that is both legal and not a breach of any Real Estate Services Rules, but you might find that course of action unethical and inconsistent with your professional brand. As you learned in Module Four, proper client vetting might have alerted you to this problem before agreeing to represent the client. However, even robust vetting is imperfect. What do you do if the challenge arises in the middle of a negotiation? It might be practically or ethically impossible to fire your client.

In situations where clients give instructions that go against your ethical values, the way you handle the conversation can make the difference between an amicable agreement on how to proceed and an awkward parting of ways. Helping clients see how it is in their best interest to do the right thing can ensure that your ethical values and your duties to the client stay in alignment.

For example, what if a seller client asks you not to disclose certain information to a prospective buyer or buyer's real estate licensee (for example, a recent death on the property). While that might be legal, and not in breach of any Real Estate Services Rules, non-disclosure could risk exposing the client to a future lawsuit if/when the buyer finds out about the non-disclosed issue. Instead, early disclosure might build a relationship of trust that would help in getting a deal done, with only a negligible impact on the marketability or sale price of the property.

In this situation, the seller might change their mind if you explain to them that there are numerous cases in which unhappy buyers have sued sellers for non-disclosure. You can explain to your client that even when the sellers win, they will have incurred unrecoverable costs and endured significant stress in defending those lawsuits. Those sellers might have preferred, with the benefit of hindsight, to have been advised to make disclosure even though it was not required.

Your business practices should include proactive consideration of how to address these types of situations so that you are ready to deal with them when they arise.

## FOR EXAMPLE, CONSIDER THE FOLLOWING SCENARIO:

Abhishek is the real estate licensee for Bailie and Beckett. The clients have made an accepted offer that is subject to a satisfactory home inspection. The home inspection does not reveal any concerns with the property. Nevertheless, Bailie and Beckett want Abhishek to attempt to negotiate a lower price. They instruct Abhishek to tell the listing real estate licensee that Bailie and Beckett are considering not removing the home inspection condition but will consider doing so if the seller will discount the price.

What business practices could Abhishek have established that might have allowed him to avoid this situation in the first place, or at least make it easier to manage now? [Refer to Table A to help form your response.](#)

Once again, having structured client screening and acceptance policies that include frank discussions to set expectations about ethical actions could have avoided this situation. Maintaining a transparent and straightforward communication style can help Abhishek explain why this request is inappropriate and encourage his clients to continue the process in good faith.

## YOUR PROFESSIONAL BRAND DOES NOT GET LEFT AT THE OFFICE

Conduct outside of the provision of real estate services might impact you professionally, even if such practices are not directly within the purview of BCFSA.

It is likely that many people know that you are a real estate licensee, even if they have never been clients and are not in the real estate industry themselves.

These individuals include your neighbours, friends, social acquaintances, parents of your children's friends, and others. You might even consider these people part of your network of potential clients and referral sources.

Your interactions with these individuals will inevitably affect your professional reputation. If you are rude to referees at your daughter's soccer matches, the other parents will notice. If you are thoughtful and considerate with your neighbours, they will notice.

How do you think others view you, as a professional, based on your conduct when not working? Do you think they neatly separate the two, or do they view them as parts of a whole?

Your profession, and professionalism, is not something that you take off like a jacket at the end of the workday. The things you say and do away from work impact how others see you as a person and as a professional. It is difficult, if not impossible, to maintain a professional brand if you act inconsistently with that brand when you are not working.

## CONCLUSION

Remember that as a real estate licensee, you are both an independent professional and a member of a large and interconnected community of professionals. Many members of the public have preconceived notions about lawyers, judges, doctors, nurses, engineers, and, yes, real estate licensees. Similarly, the public has high expectations of professionals, and holds them to a higher standard.

As discussed in Module Three, as a real estate licensee, you must keep your focus on the goals and preferences of your client, and not let your own biases, preferences, or perceptions cloud your guidance. Clients' goals are not always purely financial, so it is important to adopt and apply standard business practices that elicit your clients' goals, priorities, preferences, and risk tolerance to help you arrive at ethical client-centred decisions and a positive outcome, even in challenging circumstances.

Finally, remember that the conduct of every individual real estate licensee can impact the public perception of all real estate licensees, so it is important to continually strive for excellence. Your professional brand, your actions, and your business practices impact not only your success but the success and reputation of the profession as a whole. Thoughtfully developing, reviewing, and maintaining your ethical business practices will help you achieve the highest level of professionalism.

# Module Six: The Managing Broker Role

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## **Building and Nurturing and Ethical Culture in Real Estate Brokerages**

Managing brokers have an essential role in developing and maintaining public trust in their brokerage and in the real estate profession. Managing brokers set the “tone from the top”. Their actions establish and support what constitutes acceptable behavior among their licensees. A managing broker’s licensees look to them for guidance and support and, in turn, the managing broker must be able to trust that the actions of their licensees are presenting the brokerage positively to the public. Establishing and maintaining an ethical culture within the brokerage is foundational to this goal and to the success of the profession as a whole.

This module concentrates on what you as a managing broker can do to build and nurture an ethical culture in your brokerage.

### **LEARNING OBJECTIVES**

**After completing this module, you will be able to:**

1. Explain the responsibilities of brokerages and managing brokers in promoting public trust;
2. Identify key tools and techniques you can use to build and maintain an ethical culture in your brokerage; and
3. Identify and plan for specific challenges related to conflicts of interest within your brokerage.



## RESPONSIBILITIES OF THE BROKERAGE AND MANAGING BROKER IN PROMOTING PUBLIC TRUST

Public trust given to a profession and its professionals is an honour but is not guaranteed. It comes through a profession's sustained and dedicated effort and unwavering commitment to excellence, integrity and vigilance. Be it personal or professional, individual or collective, remember Warren Buffet's advice: it can take decades to build a good reputation but only minutes to destroy it. When it comes to public trust, the actions of a few can help or harm the reputation of the many.

Public expectations for acceptable professional and private behaviour, and the responsibility for oversight of employees, contractors and/or representatives of organizations, are based on the long-held belief that the person at the top is responsible for what happens on their watch. Increasingly, societal expectations of what constitutes acceptable behaviour by those working for, or representing organizations and companies, has come to include the personal as well as the professional behaviour of those individuals. There are many recent examples of employees and those in leadership positions being held accountable for their private behaviour when that behaviour discredits the organization or profession with which someone is associated. For example, several Canadian politicians who left the country during the COVID-19 pandemic to go on holiday, contrary to health officers' guidelines, were pressured into leaving their posts. Similarly, a business executive was forced to resign his position as CEO of a large casino operator after he and his wife chartered a plane and travelled to the Yukon to get an early COVID-19 vaccine, by misleading authorities as to their residency.

In the real estate profession, the person at the top of the brokerage is the managing broker. Since the *Real Estate Act* was first enacted in the late 1950s, B.C.'s real estate licensing regulator has held every real estate brokerage manager accountable for the actions of the licensees in their brokerage, regardless of whether a real estate licensee was employed or engaged via an independent contractor agreement. Additionally, B.C. courts have held managing brokers vicariously liable for their licensees' negligence, misrepresentations, and incompetence. That expectation – and managers' vicarious liability for their representatives' actions in the eyes of the courts, the regulator and professional associations – has continued through successive regulatory legislation, court decisions, and professional associations' discipline.

Ensuring that managing brokers are responsible for others' behaviour is an essential part of regulator's focus and its responsibility to protect the public, and although this accountability focuses on legal requirements, it also encompasses the broader expectations for ethical behaviour. It makes sense for you, in your role as managing broker, to foster and enforce an ethical mindset that is considered and practiced in everything licensees do. Done well, promoting an ethical culture in brokerages pays dividends in enhanced public protection and in bettering the reputation of the brokerage and of the profession overall. Managing brokers, therefore, are critical to the real estate profession's success in maintaining public trust. Since the collective reputation of your brokerage and profession rests on how the public perceives it, considering how ethical standards are met by your brokerage and its licensees is just as important as meeting regulatory requirements.

### Self-Reflection:

In Module Two, you learned about the concept of sustainability, and you explored how real estate licensees can positively impact sustainability initiatives. At the brokerage level, building your brand around ethical decision-making and protecting the public can be supported by committing to sustainability and environmental stewardship. To what extent have you considered this as part of your brand?

## ETHICS PERSPECTIVES ARE NOT CONSTANT

Building and maintaining a brokerage's ethical culture is a considerable responsibility, but is not easily accomplished. One reason why it is challenging is that ethical behaviour is based largely on values. Although most individuals share common values, we each place emphasis on values differently, and these combine to form our own value system that we bring to the workplace. What is considered right in one culture, or even from generation to generation, might not align with what is deemed collectively to be ethical today, or what is deemed appropriate in a particular professional role.

As an example of how perceptions of ethics and responses to ethical concerns change over time, consider that there are distinctions in how different generations think about ethics.

**Research suggests the following general themes<sup>12</sup>:**

- Boomers – born between 1946 and 1964 – tend to be more cynical about their organizations, and are less likely to turn a blind eye to questionable behaviours;
- Gen X – born between 1965 and 1980 – tend to be aligned with their organizations and prepared to handle ethics problems, but fearful of retaliation from upper levels in the organization;
- Millennials – born between 1981 and 1996 – tend to be most likely to observe or recognize misconduct but might not report it; and
- Gen Z – born between 1997 and 2012 – tend to have high expectations of organizations to act ethically and improve society.

Of course, not everyone fits their generational mold, but it is important to consider how different perspectives on ethics across your team might impact differences in opinions and behaviour. Moreover, since the study of ethics is not generally a focus in school or higher education- except where it is a specialty- it is not surprising that licensees might enter the profession with a varied grasp of the subject. Having all licensees undergo ethics training helps generate a more consistent understanding of their ethical obligations, but this must be reinforced on an ongoing basis by the brokerage and managing broker. Add to that the independent contractor relationship between brokerages and licensees and it is little surprise that it can be a challenge for managing brokers to develop, foster, and enforce a common ethical culture in their brokerages.

How many generations are represented in your brokerage? Do you see the characteristics noted above reflected in your licensees? In what ways do you alter your management or communication styles to adapt to dealing with different generations?

**Have you considered, for example:**

- Tapping into the wisdom and experience of Boomer licensees to guide younger professionals through mentoring;
- Implementing confidential reporting methods to help Gen X licensees overcome their concerns around retaliation;
- Encouraging Millennial licensees to come forward when they see things that concern them; and
- Empowering Gen Z licensees to be champions for change in the brokerage.

<sup>12</sup> See for example, the work of the Ethics and Compliance Initiative ("ECI") on Generational differences ([www.ethics.org](http://www.ethics.org)) and McKinsey & Company <[www.mckinsey.com/industries/consumer-packaged-goods/our-insights/true-gen-generation-z-and-its-implications-for-companies](http://www.mckinsey.com/industries/consumer-packaged-goods/our-insights/true-gen-generation-z-and-its-implications-for-companies)>

## TOOLS AND TECHNIQUES FOR PROMOTING AN ETHICAL CULTURE

As a managing broker, you face a variety of demands including regulatory compliance, maintaining brokerage profitability, and managing a group of licensees who for the most part are strongly independent contractors. Regardless of these sometimes-competing pressures, you are the captain of your own brokerage “ship” and your leadership is essential in achieving a strong ethical culture among your team. A managing broker’s conduct, professional guidance, and brokerage systems are always considered when licensee conduct is being examined. Similarly, these factors are considered by the public when it forms its opinion of the profession, so it is important to put the effort in to getting it right.

The following tools and techniques can help you effectively meet your responsibilities and manage the legal, regulatory, and professional risk you carry by virtue of your position.

### **Set the Right ‘Tone from the Top’**

Managing brokers play a key role in developing, enforcing, and maintaining the brokerage culture, including how much effort is expended in championing ethical behaviour. It is important to get the culture right and, maintain that culture through exemplary behaviour, both personal and professional, while also holding others accountable for their actions and reinforcing positive behaviour. Codes of conduct, mission statements and similar documents describing the high standards are meaningless if your own conduct is not exemplary in all respects. Leading by example is the keystone to ethical leadership. In all things, you set the example. Paying lip-service to ethical conduct, turning a blind eye to unprofessional business practices and/or engaging in those personally, severely weaken your credibility to licensees.

Remember, you are a role model for your licensees – you owe it to them, and to yourself, to act accordingly.

### **Provide a Clear Message of Accountability**

Regardless of the brokerage’s business model, you have considerable influence over the professional and personal actions of your licensees. As such, you have a responsibility to make it clear that unethical licensee conduct, whether professional or personal, will not be tolerated. To accomplish this, licensees must have a clear understanding of what is expected of them as well as what to do if they are unclear as to the appropriate conduct required.

Establishing an ethics-based culture requires licensees to understand where the information resources are if they are unsure what to do or if they are unclear as to how to interpret an ethical requirement.

### **Develop a Brokerage Policy Manual and Independent Contractor Agreement that Clearly Outline Licensees’ Ethical Obligations**

In Module Five, you evaluated how business practices guide your decision-making and act as an ethical roadmap. As managing broker, you have the opportunity – and responsibility – to design and implement business practices for your brokerage and all of the licensees in it. As you explored in Module Five, the practices you choose and the way you enforce their consistent use will have a significant impact on the professional brand of the brokerage, yourself, and your licensees.

The way a brokerage and its management establish their view of compliance, competency and ethical standards is through the business practices expressed in the Brokerage Policy Manual. These documents can be aspirational, stating the goals, vision, and values of the brokerage, or prescriptive, stating the rules and requirements of all licensees in the brokerage. Often, they are a blend of the two. Brokerage policy manuals describe in detail what the brokerage expects licensees to do with respect to documentation, regulatory requirements, inter-personal relationships, cooperation with other licensees, professionalism, and ethical standards.

Your brokerage manual should clearly explain the brokerage's systems and processes for maintaining compliance with all regulatory and ethical obligations, including AML requirements which are continuing to evolve and require ongoing attention by brokerages. The FINTRAC website includes news of recent penalties, including examples of brokerages that have fallen short of their obligations to put adequate systems and processes in place. This is not a list you want to be on!

A well drafted brokerage policy manual documents the company standards and its expectations, describing the expected standards and behaviour by licensees and, in return, those expected of the brokerage. But just having a manual will not, on its own, foster an ethical culture.

To have impact, the goals, vision, values, and expectations documented in the manual must also be visible in the day-to-day workings of the brokerage at all levels. In addition, the manual should be treated as a living document, regularly referred to, reviewed, and updated.

### **Hold Regular Brokerage Meetings**

Brokerage meetings are typically focused on operations and brokerage risk management, but these meetings also give you an opportunity to promote an ethical culture. Spending some time discussing ethical challenges and decision-making at every meeting helps licensees see ethics as a core part of their role and provides ample opportunity to discuss the situations they face. As an example, you might build ethics into your brokerage meetings as follows:

### **45-Minute Brokerage Meeting Template**

- Greeting and opening remarks  
(3 minutes)
- Recent sales and new listing review  
(10 minutes)
- “Celebrating What We Want To See More Of!”  
(5 minutes)
  - This portion could ask licensees to give a round of applause to someone for their good conduct, ethical behaviour, and/or for going above and beyond what is normally expected of licensees.
- “Spotlight on”  
(10 minutes)
  - This portion could focus on a variety of subjects including:
    - Recent BCFSA/Board disciplinary decisions;
    - A standard/rule in the Real Estate Services Rules, RESA, or brokerage policy manual;
    - An ethical requirement, for example those described in boards' code of ethics; and
    - A refresher on anti-money laundering requirements and red flags, and the brokerage's policies and procedures for compliance.
- Industry Update  
(10 minutes)
- Brokerage announcements  
(5 minutes)
- Closing Remarks  
(2 minutes)

As part of your meetings and/or training, consider incorporating the use of a systematic framework like the Ethical Decision-making Framework to help resolve ethical dilemmas encountered by licensees. From time-to-time (for example as regulatory requirements change) you should also consider the need for a meeting dedicated solely to ethics-related topics.

The pandemic has resulted in a wide comfort level with online meeting platforms. Online meetings make it easy for licensees to attend, resulting in better licensee attendance, in contrast with the sometimes-spotty pre-pandemic attendance at in-person brokerage meetings.

### **Hold Quarterly Reviews**

Even though licensees are mostly independent contractors they can, like most people, benefit from regular input from others. For brokerages, this input ought to come from you. Quarterly meetings are an ideal opportunity to review licensee competence, address knowledge or practice gaps, review brokerage ethics expectations, and to help licensees address their professional development. Post-meeting follow up should include a short, written review of the meeting's discussions including a bulleted list of to-dos to be completed before the next meeting. A "to-do" for example, could include the licensee attending a professional development course focusing on ethics or expected business conduct.

### **Make It Easy – Point Licensees to Information Resources**

Even though licensees receive regular communications from BCFSA, other regulators, real estate boards, and others, some are still unclear as to the many information resources available to them. For example, BCFSA's Knowledge Base and boards' member website contain a wealth of good information, including ethics content. At brokerage meetings, and in the brokerage policy manual, you should highlight these information resources to licensees, so they know where to find them when they need to.

### **Recruit Selectively**

Managing brokers are expected to recruit new talent to replace licensees who have either left the profession or who have moved on to other brokerages. The pressure from shareholders and company owners to maintain profitability drives the requirement to recruit. Without a robust licensee recruiting program, the brokerage is vulnerable if a licensee, or a group of licensees, decides to move elsewhere. Given the financial importance of recruiting, it can be tempting for a brokerage manager to be more focused on the brokerage licensee count than on whether a licensee recruiting candidate is well-suited to the brokerage business model and culture, especially with respect to its expectations regarding ethical conduct. But bringing a licensee with questionable ethics into the team is short-sighted and can be very detrimental. An ill-fitting recruit might become a disruption to the team, potentially undoing all the work done by the managing broker to promote the mix of professionals working under the brokerage banner. As managing broker, you should have well-established due diligence practices for recruiting that include reference checks and speaking to a candidate's former managing broker.

### **Tailor your Message to the Audience**

Managing brokers are responsible for communicating an ethical message. Paradoxically, while there have never been more ways to communicate with others, efforts to communicate might not be heard. Managing brokers who are successful communicators often have a good grasp of their brokerage's demographics and other useful information that may be harnessed in delivering targeted messaging. Managing brokers should consider who they are communicating with and how those individuals think, as well as their preferred communication styles. Do the brokerage's licensees think and communicate the same way? Understanding these factors might reveal communication gaps to be filled. These are especially important to identify when focusing on ethical conduct messaging. Targeted messaging on this subject should use multiple channels and different nuanced communications to increase awareness and reception.

## Get Help Amplifying Your Message

Managing brokers can get help amplifying their message by encouraging others in their brokerage to act as champions, for example, respected colleagues to which licensees are more predisposed to listen. An on-staff Compliance Officer can also reinforce the managing broker's messaging, or the managing broker can reinforce the Compliance Officer's message about ethical conduct if that is their role.

## Keep Communication Lines Open and Be Approachable

Be available to licensees to answer their questions and to guide their conduct. Ensure licensees feel comfortable coming to you with their questions and concerns. Foster a culture where questions are welcome, and where issues raised in good faith are received positively without pre-judgment. Ensure brokerage personnel understand that retaliation against a colleague who has raised a legitimate concern in good faith will not be tolerated.

### Self-Reflection:

Ask yourself: "Am I approachable?" licensees ought to be comfortable bringing issues to you for discussion. Being approachable also means being available at reasonable times to respond to their enquiries.

Except for BCFSA's practice standards advisors, a lawyer, or other qualified person, getting practice and ethics guidance from someone other than the managing broker is not a best practice. At brokerage meetings, you should periodically review this with licensees, as well as educating them as to who they should contact if they have a question. It might seem obvious that licensees should call you first. But this might not seem quite so obvious to all licensees. Some go to colleagues for advice, not wanting to bother the manager. Some go to real estate licensee online forums for advice. Taking guidance from the loudest voice in the room on social media can be a risky proposition. To reduce the risk of licensees going to sources other than the managing broker for advice, the brokerage policy manual should have a section devoted to identifying who licensees should contact for help, including BCFSA and BCREA departmental contact information.

## Ensure a Diverse and Inclusive Environment

In Module Two you examined ways to increase diversity and inclusion within the brokerage, such as through the development of clear, standardized policies and procedures, and ongoing training. These kinds of initiatives can encourage more open communication and can help foster a spirit of inclusion within the brokerage, as well as reducing the impacts of bias and discrimination by licensees.

## Use Annual Performance Reviews to Reinforce Positive Behaviour

The annual performance review of licensees is an ideal opportunity to review the brokerage's Independent Contractor Agreement and depending on the licensee, relevant portions of the Brokerage Policy Manual. You could also, for example, include in their Independent Contractor Agreements, a clause requiring licensees to uphold the highest standard of ethical behaviour in their professional and personal actions. In addition, you could create a brokerage Code of Conduct, perhaps based on BCFSA and board practice standards and have licensees re-commit annually to meeting these requirements.

Celebrating ethical conduct by giving an annual award in recognition of exemplary behaviour is a way to reinforce ethical conduct, to recognize the licensee who has been given the award and also, to encourage other brokerage licensees to strive to win it in future years.

### Self Reflection:

#### Ask yourself the following questions:

How strong is the ethical culture in your brokerage?

Do your licensees trust your judgement?

Are you their go-to person when they have questions?

Are you considered as being indispensable or as a nuisance?

Will your licensees take your instruction if they do not like what they hear?

Or will they ask around for different advice and follow that advice?

Which of the tools and techniques above will you focus on implementing to help drive ethical culture in your brokerage?

## ANTICIPATING, AVOIDING, AND MANAGING CONFLICTS OF INTEREST

Often, challenges in ethical decision-making stem from conflicts of interest. Given the multiple roles of the managing broker, conflicts of interest can arise in a variety of ways within the brokerage. It is important that these be anticipated in advance so that they can be avoided. When they cannot be avoided, having policies and procedures that are well understood by everyone in the brokerage can help ensure that conflicts of interest are appropriately disclosed and managed.

What conflict of interest situations have come up in your brokerage? How have you dealt with them?

You might have listed the following scenarios:

### **In-house double-end deal with designated licensees who are in conflict, both of whom ask you for advice.**

In this situation you might not be able to give advice because the two designated licensees are in conflict. You would need to stay neutral in your discussions to avoid favouring one position over the other, but you can- and should- help both licensees find answers to their questions. Consider whether another experienced licensee in the brokerage could act as an advisor or mentor to each designated licensee.

### **Having two of your licensees in a dispute, where you are closer to one licensee than the other.**

You might not be able to be objective if you are biased towards one licensee. Consider if there is another person at the brokerage to refer the matter to, such as an associate broker.

### **Selling property in competition with other licensees in the brokerage.**

Your self-interest in succeeding in your own transactions will be in conflict with your obligations to support the success of your licensees. In this situation, you will need to carefully plan how to separate both roles if it is possible to do so and ensure that licensees are still receiving the support they need. For example, you might choose to limit your activities to a specific niche not served by your licensees, and work with your associate broker to ensure that one of you is always available to assist licensees as needed.

### **Managing a brokerage that provides strata and rental property management services can lead to some unique conflict of interest situations.**

For example, if the- unlicensed- owner of the brokerage also owns various maintenance companies, they might want the brokerage to use these companies as the “contractor of choice” for all of the brokerage’s client’s properties. Notwithstanding that you have a requirement to disclose remuneration and benefits received, and anticipated to be received, by a licensee or an associate of the licensee (e.g. director/officer of the brokerage), the relationship to the contractor companies means that you should be fully transparent in the placing of contracts, preparation, and collection of quotes (including not permitting the contractors to know of or see quotes received from other contractors), and ensuring that the client is fully informed of all the relationships prior to making a decision on which contractor to use or which quote to accept.

## CONCLUSION

Managing brokers and the brokerage at which they are licensed are held accountable not just by regulators, but also in the court of public opinion. The brokerage's reputation and indeed, the collective reputation of the profession, depends on public trust and public opinion as to how the brokerage and its management and licensees conduct themselves. As managing broker, you are in a position to influence how licensees consider their careers. When focus is given to ethical conduct and the business and reputational rewards those bring, licensees' view of themselves and the potential longevity of their careers lengthens.

Those who consider themselves to be long term professionals are more likely to be open to continuous improvement and a close partnership with you.

Although it might seem sometimes that you have many masters and little direct control over the factors that govern your brokerage's success, you – the captain of the ship – have a responsibility to the brokerage owners, regulators and the public, not only for your own actions but also for those you engage or employ. Successful, ethical managing brokers are the ethical standard-bearers of the profession. This is a significant obligation not to be taken lightly.

## APPENDIX A: FRAMEWORK FOR ETHICAL DECISION-MAKING

### CONSIDER



- Consider the situation and identify the potential ethical issues:
- Determine the relevant facts (who, what, where, when, why, how).
- Identify/consider the ethical issues (Don't jump to solutions prematurely).
- Determine the relevant Rules and broader ethical expectations and obligations.

### IDENTIFY



- Identify the stakeholders:
- Who is my client and what duty do I owe them? What do they need/expect from me?
- Is there anyone else I owe duty to?
- Who else is affected by the current situation and/or will be affected by the decision I make?
- Who do I need to confer with and/or inform of the situation? (e.g. my managing broker)

### DETERMINE



- Determine feasible alternatives to be evaluated:
- What courses of action are possible in the situation?
- Are there short-term and long-term considerations that are relevant?

### EVALUATE



- Evaluate each alternative in terms of ethical consequences:
- Would I be acting in compliance with the Rules?
- Would I be meeting the broader ethical expectations and obligations?
- Remain alert for changing facts or circumstances that could affect your evaluation.

### DECIDE



- Decide on the best alternative and justify your choice:
- Justify your decision in terms of ethical consequences and compliance with Rules.
- Determine an implementation and communications plan. (Who do I need to inform of the situation and my decision? This includes considering what reporting obligations might apply in the situation.)
- Document your decision-making process.

### REFLECT



- Reflect on outcomes
- Consider whether your analysis of the issues and situation was correct.
- How can your process be improved for future decision-making?



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