

Report from Council

Special Report to Licensees

Amendments to the Council Rules, Bylaws and Licensing Fees and Assessments Bylaw

The following amendments to the Council Rules, Bylaws and Licensing Fees and Assessments Bylaw were approved by the Council at its meeting on September 9, 2008. These amendments relate to two issues.

The first group of amendments relates to personal real estate corporations ('PREC's'). Regulations passed by the government in January established the ability of individual real estate licensees, similar to other professionals such as dentists, accountants and lawyers, to license a PREC effective January 1, 2009. PRECs may allow real estate licensees to gain the tax advantages of incorporation. PRECs will be licensed at the same level and category as the individual who

establishes the PREC. For example, if Joe Smith, who is licensed as an associate broker to provide trading services, wishes to license a PREC, that PREC will also be licensed as an associate broker to provide trading services. Joe Smith will have his own licence, and Joe Smith's PREC will have its own licence. Joe Smith will be referred to as the 'controlling individual' of Joe Smith's PREC. **Particular attention should be paid to the amendment to section 4-6 of the Council Rules which defines the allowable advertising by a PREC and its controlling individual.**

The second group of amendments to the rules relates to a new requirement that bro-

kerages, which provide strata management services, deliver to their strata corporation clients a copy of the account reconciliations they have prepared in relation to each trust account maintained on behalf of that client. This group also clarifies the time frame all brokerages have to complete monthly reconciliations of trust accounts.

The Council Rules and Bylaws related to PRECs take effect November 1, 2008, and the rules related to strata management and the reconciliation of trust accounts take effect January 1, 2009.

The amended wording is displayed in light blue in the sections below. ■

Rule Changes Related to Personal Real Estate Corporations

Description

2-8 Educational requirements for new licensees

- (4) *Managing broker and associate brokers*—In addition to the other requirements under this section, an applicant for a new licence as a managing broker or associate broker, **who is an individual**, must
- (a) have taken the applicable managing broker courses, if any, respecting the real estate services in relation to which the application is made, and
 - (b) have passed the examinations, if any, corresponding to those courses, no longer than 5 years before the date of the application.

Establishes that only the controlling individual, not the PREC, must satisfy these educational requirements.

2-8.1 Educational requirements for licence renewal

- (2) In order to have a licence renewed, an applicant for licence renewal **who is an individual** must
- (a) have completed the applicable continuing education courses respecting the real estate services and the level of licence in relation to which the application is made, and
 - (b) have passed the examinations corresponding to those courses prior to the date the licence is renewed.

Only the controlling individual, not the PREC, must satisfy ongoing relicensing education requirements.

2-10 Experience qualifications for managing brokers and associate brokers

- (1) *Previous experience in B.C.*—In order for an individual to be licensed for the first time as a managing broker or associate broker, the applicant must have been providing real estate services as a licensee for at least 2 years during the 5 years before the date of the application.

Experience requirements do **not** apply to PRECs.

2-22.1 Personal real estate corporation must give notice of business changes

A personal real estate corporation must promptly notify the council in writing if it does not continue to maintain the attributes described in section 10.3 [corporate qualifications] of the regulation.

Requires a PREC to notify the Council if it no longer meets the attributes established for original licensing.

4-4 Licensee names

- (2) *Individual licensees*—The licensee name of a managing broker, associate broker or representative who is an individual is, as applicable,
 - (a) the legal name or a recognizable short form of the legal name of the individual, unless another name is approved under paragraph (b), or
 - (b) the name that is approved by the council.
- (3) *Personal real estate corporation*—The licensee name of a personal real estate corporation is the legal name of the corporation.

The licensee name of a PREC is its legal name, which is defined by the regulation as

- the legal name, a recognizable short form of the legal name, or the licensee name of the controlling individual of the PREC, and
- the term “personal real estate corporation.”

4-6 Restrictions and requirements related to advertising generally

- (1) A licensee must not publish real estate advertising unless it complies with this section.
- (2) In all cases, the licensee name of the brokerage must be displayed in a prominent and easily readable way.
- (3) If real estate advertising identifies a managing broker, associate broker or representative, this must be done
 - (a) if that person is an individual, by using the licensee name of the individual, or
 - (b) if that person is a personal real estate corporation or a controlling individual of a personal real estate corporation, by using the licensee name of the personal real estate corporation only.
- (4) If real estate advertising includes an office address for the licensee, this must be the address of the related brokerage office.
- (5) If the council approves a team name for a group of related licensees, real estate advertising may also identify the group by this team name.

In addition to the name of the related brokerage, advertising that identifies an individual who has a PREC must use the licensee name of the PREC, not the individual’s name. For example, if Joseph Smith has a PREC with the licensee name of Joe Smith Personal Real Estate Corporation, advertising must refer to Joe Smith Personal Real Estate Corporation, not Joseph Smith.



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Role of the Council

The Real Estate Council is a regulatory agency established by the provincial government. Its mandate is to protect the public interest by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. The Council is responsible for licensing individuals and brokerages engaged in real estate sales, rental and strata property management. The Council also enforces entry qualifications, investigates complaints against licensees and imposes disciplinary sanctions under the Act.

Report from Council

The *Report from Council* newsletter is published six times per year. Past issues can be found at www.recbc.ca.

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STATISTICS
September 2008

Representatives: 17,062 Associate Brokers: 1,808
 Managing Brokers: 1,376 Brokerages: 1,433

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9-1 Management of rental real estate owned by licensee

- (1) This section applies to [an individual licensed as](#) a managing broker, associate broker or representative who provides rental property management services on their own behalf in relation to their own real estate.

This clarifies that the exemption that allows licensees to manage rental real estate owned by themselves without the Act applying does **not** apply to PRECs.

9-2 Management of rental real estate owned by licensee's family

- (1) This section applies to [an individual licensed as](#) a managing broker, associate broker or representative who provides rental property management services that
- (a) are provided
 - (i) to or on behalf of their spouse, family partner, son, daughter or parent, in relation to rental real estate owned by that other person,
 - (ii) to or on behalf of a partnership in relation to real estate owned by the partnership, if the only partners of the partnership are two or more of any of the following:
 - (a) the licensee;
 - (b) a spouse or family partner of the licensee;
 - (c) a son, daughter or parent of the licensee; or
 - (iii) to or on behalf of a corporation of which the only shareholders are one or more of the individuals referred to in subparagraph (ii), and
 - (b) are not provided for or in expectation of remuneration.

This clarifies that the exemption that allows licensees to manage rental real estate owned by their family without the Act applying does **not** apply to PRECs.

9-3 Management of strata corporation by licensee who is an owner

- (1) Subject to this section, the Act and these rules do not apply to [an individual licensed as](#) a managing broker, associate broker or representative who is a strata lot owner in relation to strata management services provided to or on behalf of the strata corporation of which the licensee is a member by reason of being a strata lot owner, if all the following conditions are met:
- (a) the licensee provides strata management services under this section to no more than 2 strata corporations;
 - (b) the licensee discloses in writing to the strata corporation, before providing the services, that
 - (i) even though they are licensed under the *Real Estate Services Act*, they are not acting as a licensee in this case,
 - (ii) the licensee is not regulated under the *Real Estate Services Act* in relation to the strata management services, and
 - (iii) the strata corporation is not entitled to the same protections applicable under the *Real Estate Services Act* to persons who deal with licensees who are not acting under this section of the rules;
 - (c) the licensee provides a copy of the written disclosure under paragraph (b) to the managing broker of the related brokerage;
 - (d) the licensee does not have sole signing authority for withdrawals of any funds of the strata corporation and does not otherwise have sole authority for expenditures of any funds of the strata corporation;
 - (e) the strata management services are not provided for or in expectation of remuneration.

This clarifies that the exemption that allows licensees to provide strata management services to strata corporations in which that licensee owns a strata lot without the Act applying does **not** apply to PRECs.

<p>2-3 Notice of election</p> <p>On or before March 15 in each year, the executive officer must deliver to all licensees <i>who are individuals</i></p> <ul style="list-style-type: none"> (a) a notice of the positions on council for which elections are to be held, including notice that any nominations of candidates must be received at the council office not later than the first Monday in April of that year, and (b) a nomination form. 	<p>PREC's will not receive a notice of election.</p>
<p>2-4 Nomination of candidates</p> <ul style="list-style-type: none"> (2) In order to nominate a candidate, <ul style="list-style-type: none"> (a) a nominator for a managing broker council member must be an <i>individual who is a managing broker</i>, (b) a nominator for a representative council member must be an <i>individual who is a representative</i>, and (c) a nominator for the council member under section 76 (3) (j) [<i>rental property management and strata management representation</i>] must be an <i>individual who is licensed to provide rental property management services or strata management services</i>. 	<p>PREC's will not be able to nominate individuals to run for election as a Council member.</p>
<p>2-7 Entitlement to vote</p> <ul style="list-style-type: none"> (1) A licensee is entitled to vote under section 76 (3) (a) to (i) [<i>district representation members</i>] only <ul style="list-style-type: none"> (a) for the district in which the licensee's related brokerage office is located, (b) in the case of a managing broker council member, if the licensee is a managing broker, <i>and</i> (c) in the case of a representative council member, if the licensee is a representative, <i>and</i> (d) <i>if the licensee is an individual</i>. (2) As a further restriction to subsection (1) in the case of a managing broker who is licensed in relation to two brokerage offices that are in different districts, the managing broker is entitled to vote only for the election of council members for one of the districts. 	<p>PREC's will not be entitled to vote in Council elections</p>
<p>4-4 Applications for new licences</p> <ul style="list-style-type: none"> (2) <i>Applications by individuals for representative, associate broker or managing broker licences</i>—In addition to the requirements of subsection (1), an application <i>by an individual</i> for a new licence as a representative, associate broker or managing broker must contain, or have attached to it, the following: <ul style="list-style-type: none"> (a) the applicant's residential address and phone number; (b) any name other than the applicant's legal name (such as a nickname, shortened name or hyphenated name), which might be used by the applicant for advertising purposes; (c) the name of the proposed related brokerage, the proposed related brokerage office address and the phone number and any fax number for that office; (d) if the individual is not a Canadian citizen, evidence of immigration or work visa status; (e) unless this requirement is waived by the council in the case of an applicant who has been previously licensed, information relating to the education and experience of the applicant, including 	<p>Clarifies what must be included in an application for a new licence for a natural person.</p>

- (i) the dates of completion of examinations in courses established by or on behalf of the council for the purposes of licensee qualification, and
- (ii) official transcripts of any real estate-related post secondary courses, other than courses referred to in subparagraph (i);
- (f) in the case of an application for a managing broker licence, the applicant's consent to the council obtaining a credit rating check on the applicant;
- (g) a certification of the proposed related brokerage, signed by the managing broker or a director, officer or partner of the brokerage, approving the application and attesting that the applicant is of good reputation and is suitable for licensing.

(2.1) *Applications by personal real estate corporations for representative, associate broker or managing broker licences*—In addition to the requirements of subsection (1), an application by a personal real estate corporation for a new licence as a representative, associate broker or managing broker must contain, or have attached to it, the following:

- (a) the legal name of the controlling individual of the personal real estate corporation;
- (b) a confirmation that the applicant is in good standing with the corporate registry;
- (c) the name of the proposed related brokerage;
- (d) from the controlling individual,
 - (i) a confirmation that the personal real estate corporation has the attributes described in section 10.3 of the regulation,
 - (ii) an assurance that the personal real estate corporation will not conduct any business other than the provision of real estate services and ancillary services directly associated with the provision of real estate services, and
 - (iii) an application referred to in section 10.5 (1) (b) of the regulation;
- (e) a certification of the proposed related brokerage, signed by the managing broker or a director, officer or partner of the brokerage, approving the application;
- (f) a dated and signed certification by the controlling individual that the information and statements contained in the application or attachments are true and complete.

Establishes what must be included in an application for a new PREC licence.

4-6 Applications for licence renewal

- (2) *Renewal by an individual of a representative, associate broker or managing broker licence*—In addition to the requirements of subsection (1), an application by an individual for renewal of a representative, associate broker or managing broker licence must contain, or have attached to it, the following:
 - (a) the applicant's residential address and phone number;
 - (b) any name other than the applicant's legal name (such as a nickname, shortened name or hyphenated name), which might be used by the applicant for advertising purposes;
 - (c) the name of the related brokerage, and the related brokerage office address and the phone number and any fax number for that office;
 - (d) in the case of an application for renewal of a managing broker licence, the applicant's consent to the council obtaining a credit rating check on the applicant;

Clarifies what must be included in an application for the renewal of a licence for a natural person.

<p>(e) the signature of the managing broker, or of a director, officer or partner of the related brokerage, approving the application.</p> <p>(2.1) <i>Renewal by a personal real estate corporation of a representative, associate broker or managing broker licence</i>—In addition to the requirements of subsection (1), an application by a personal real estate corporation for renewal of a representative, associate broker or managing broker licence must contain, or have attached to it, the following:</p> <ul style="list-style-type: none"> (a) the legal name of the controlling individual of the personal real estate corporation; (b) an indication that all filings required by the corporate registry are up to date; (c) the name of the related brokerage; (d) from the controlling individual, <ul style="list-style-type: none"> (i) a confirmation that the personal real estate corporation continues to maintain the attributes described in section 10.3 of the regulation, (ii) an assurance that the personal real estate corporation will not conduct any business other than the provision of real estate services and ancillary services directly associated with the provision of real estate services, and (iii) an application for licence renewal under subsection (2) of these bylaws; (e) a dated and signed certification by the controlling individual that the information and statements contained in the application or attachments are true and complete; (f) the signature of the managing broker, or of a director, officer or partner of the related brokerage, approving the application. 	<p>Establishes what must be included in an application for the renewal of a PREC licence.</p>
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4-7 Applications for licence reinstatement

- (1) In this section:
 - licence reinstatement** means reinstatement of a licence after it
 - (a) became inoperative under section 22 (1) [*licensee ceases to be engaged by brokerage*] of the Act,
 - (b) was suspended under section 116 (4) [*failure to provide security*] of the Act, or
 - (c) became inoperative under section 10.7 (2) [*personal real estate corporation ceases to maintain attributes*] of the regulation, or
 - (ed) was voluntarily surrendered to the council.

Requires an application to be submitted for the reinstatement of a PREC licence which has become inoperative as a result of the PREC failing to maintain the attributes described in section 10.3 of the regulation.

4-8 Applications for licence amendment

- (1) *Amendments to representative, associate broker and managing broker licences*—A representative, associate broker or managing broker
 - (a) must apply for licence amendment if they are changing their legal name, and
 - (b) may apply for licence amendment to
 - (i) change the level or category of their licence, or
 - (ii) comply with section 10.4 (4) [*licensing of personal real estate corporation and its related controlling individual*] of the regulation.

Allows for the licence of a controlling individual to be amended to reflect their use of a PREC.

Licensing Fees and Assessments Bylaw Changes Related to Personal Real Estate Corporations

Description

1 Definitions

In this bylaw:

Act means the *Real Estate Services Act*;

application for a licence has the same meaning as in section 8 of the Act;

council means the real estate council.

2 Licensing fees and assessments

- (1) The following fees must be paid to the council at the time of application for a licence:
 - (a) for processing an application for a new licence, \$50;
 - (b) for processing an application for licence renewal, licence amendment or licence reinstatement, \$25;
 - (c) in addition to any licence fees established by the regulations, for every
 - (i) new licence,
 - (ii) licence renewal,
 - (iii) licence amendment, other than a change of name or address, or
 - (iv) licence reinstatement
 - (A) under section 22 (2) [*reinstatement after person ceases to be engaged by brokerage*] of the Act,
 - (B) under section 116 (5) [*reinstatement after person provides required security*] of the Act, ~~or~~
 - (C) under section 10.7 (3) [*reinstatement after ceasing to maintain corporate attributes*] of the regulation, or
 - (D) following voluntary surrender of the licence to the council,
 - (d) in the case of a new licence or licence renewal, the following applicable assessment to cover the expenses of the council for its operations and for matters under its administration:
 - (i) in respect of a brokerage licence, \$300;
 - (ii) in respect of a managing broker's licence, \$300;
 - (iii) in respect of an associate broker's licence, \$300;
 - (iv) in respect of a representative's licence, \$300.

The application fee and the licensing fee will apply equally to PRECs.

In addition to the above application and licensing fees, the \$300 assessment will also apply to PRECs.

Strata Management and Trust Account Reconciliation Rule Changes

Description

7-9 Additional rules for strata management trust accounts and investments

- (7) For each trust account under subsection (2), the brokerage **must**
 - (a) **must** arrange for the savings institution to provide monthly statements respecting the account, and
 - (b) **must** provide ~~a copy of the statement~~ to the strata corporation, ~~within 30 days no later than 6 weeks after the statement was issued by the savings institution~~; end of the month for which a statement under this subsection was issued, a copy of
 - (i) that statement, and
 - (ii) the monthly reconciliation referred to in section 8-2(b) [*monthly reconciliations of bank statements*] of these rules in relation to that statement.

Establishes the requirement and time frame for providing strata corporation clients with a copy of the bank statement, and the monthly reconciliation of that bank statement, for each account maintained for the client.

8-2 Trust account and general account records

For each account maintained by a brokerage, the brokerage must...prepare and retain...

- (b) monthly reconciliations of banking statements to the record referred to in subsection (a), prepared in a timely fashion and, in any case, no later than 5 weeks after the end of the monthly accounting-cut-off date for the account being reconciled.

Clarifies the maximum time frame allowed for the preparation of monthly account reconciliations.

8-3 Pooled trust account records

...for each pooled trust account maintained by a brokerage, the brokerage must prepare and retain...

- (b) a monthly trust liability and asset reconciliation,
 - (i) for money held by the brokerage as a stakeholder under section 28 [circumstances in which brokerage holds money as stakeholder] of the Act, listing each trade in real estate in relation to which the brokerage holds the trust money, and the amount being held in relation to each trade,
 - (ii) for money that is not held by the brokerage as a stakeholder, listing every person for which the brokerage holds trust money, and the amount being held for each person, and
 - (iii) reconciling the money held in the trust account to the unexpended balances in the trust ledgers for the account, prepared in a timely fashion and, in any case, no later than 5 weeks after the end of the monthly accounting-cut-off date for the account being reconciled.

Clarifies the maximum time frame allowed for the preparation of monthly pooled trust account reconciliations

Feedback?

Please send any comments about the *Report from Council* newsletter to:

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