



Report from Council

April 2008 Volume 43, No. 7

7th Special Report to Licensees

Licensing Requirements, Exemptions and Scenarios for Rental Property Managers and Strata Managers

This Special Report provides important information for individuals who provide rental and/or strata management services to clients. In 2002, the Council produced a similar document that dealt with rental property management services. With the introduction of the *Real Estate Services Act* (RESA) and the subsequent licensing of strata managers, the Council has updated the document and included a section on strata management. Each section begins with an introduction of who needs to be licensed, followed by licensing exemptions, and concludes by providing a number of specific examples outlining real world scenarios.

RESA and Rental Property Management

The Real Estate Council of BC (RECBC) was established in 1958 with the enactment of the *Real Estate Act* and given an expanded mandate in 2005 under RESA. It currently administers the licensing of all individuals, partnerships or corporations who “provide real estate services to or on behalf of another, for or in expectation of remuneration.”¹ RECBC also determines educational and other qualifications for real estate professionals, enforces licensee conduct requirements, investigates complaints against licensees, and imposes disciplinary sanctions under the Act.

Part 1: Who needs to be licensed?

Rental property management is a real estate service² that requires licensing. It is defined as any of the following provided to, or on behalf of, an owner of rental real estate:

1 Section 3(1) of RESA

2 “real estate services” means
(a) rental property management services,
(b) strata management services, or
(c) trading services; (Section 1 of RESA)

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Real Estate Council of British Columbia

900 - 750 West Pender St.
Vancouver, B.C., Canada
V6C 2T8
Phone 604-683-9664
Toll-free 1-877-683-9664
Fax 604-683-9017
info@recbc.ca
www.recbc.ca
Office Hours:
Monday-Friday 8:30am - 4:30pm

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STATISTICS

(APRIL 2008)

REPRESENTATIVES: 16,761

ASSOCIATE BROKERS: 1,841

MANAGING BROKERS: 1,360

BROKERAGES: 1,421

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

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- (a) trading services³ in relation to the rental of the real estate;
- (b) collecting rents or security deposits for the use of the real estate;
- (c) managing the real estate on behalf of the owner by
 - (i) making payments to third parties,
 - (ii) negotiating or entering into contracts,
 - (iii) supervising employees or contractors hired or engaged by the owner, or
 - (iv) managing landlord and tenant matters (**Section 1 of RESA**)

This definition of rental property management includes services offered on a wide range of property types, including: residential properties such as single-family homes, duplexes, apartments or condominiums; commercial properties such as office buildings, shopping malls, industrial warehouses, office space, retail space and recreational properties.

Unless one of the following exemptions applies, individuals or firms performing any of the above services for remuneration must meet the licensing and other requirements of RESA.

Exemptions

1. Exemption for employees of a property's owner (**Section 2.1 of the Regulation**)

(1) An individual is exempt from the requirement to be licensed under Part 2 of the Act in respect of real estate services if all the following apply:

- (a) the real estate services are provided to or on behalf of a principal⁴ in relation to those services;
- (b) the individual is the employee of the principal referred to in paragraph (a);
- (c) the individual is not providing real estate services to or on behalf of any person other than the principal referred to in paragraph (a).

2. Exemption for caretakers providing services to different owners (**Section 2.13 of the Regulation**)

(1) This section applies to an individual who

- (a) is employed as a caretaker or manager by the owners of different residential real estate properties, and
- (b) is employed by those owners to provide rental property management services in relation to those properties.

(2) Subject to subsection (3), the individual is exempt from the requirement to be licensed under Part 2 of the Act in respect of the rental property management services referred to in subsection (1) if all the following apply:

- (a) the individual is an employee of each of the owners;
- (b) the owners have agreed among themselves that the individual may provide the rental property management services;
- (c) the individual is not providing rental property management services to or on behalf of any person other than the owners.

(3) On receipt of money collected in relation to any of the rental real estate properties, including all money collected

³ "trading services" means any of the following services provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate;
 - (b) making representations about the real estate;
 - (c) finding the real estate for a party to acquire;
 - (d) finding a party to acquire the real estate;
 - (e) showing the real estate;
 - (f) negotiating the price of the real estate or the terms of the trade in real estate;
 - (g) presenting offers to dispose of or acquire the real estate;
 - (h) receiving deposit money paid in respect of the real estate
- but does not include an activity excluded by regulation; (**Section 1 of RESA**)

⁴ "principal", in relation to real estate services, means, as applicable,

- (a) in the case of trading services, a party to a trade in real estate,
- (b) in the case of rental property management services, other than trading services in relation to the rental of the real estate, the owner of the rental real estate to or on behalf of whom the services are provided, or
- (c) in the case of strata management services, the strata corporation to whom or on behalf of whom the services are provided; (**Section 1 of RESA**)

as rent, security deposits or pet damage deposits, the exempt caretaker or manager must promptly deliver the money to the owner of the rental real estate property in relation to which it was paid.

3. Exemption for caretakers or managers employed by brokerages (*Section 2.14 of the Regulation*)

(1) Subject to subsection (2), an individual who is employed as a caretaker or manager of rental real estate by a brokerage that is licensed to provide rental property management services is exempt from the requirement to be licensed under Part 2 of the Act in respect of any of the following activities in relation to those real estate services:

- (a) if the caretaker or manager complies with subsection (2), collecting money in relation to the rental real estate, including money collected as rent, security deposits or pet damage deposits;
- (b) showing the rental real estate to prospective tenants;
- (c) receiving and presenting applications in respect of the rental of the rental real estate from prospective tenants;
- (d) supervising employees or contractors hired or engaged by the brokerage;
- (e) communicating between landlords and tenants respecting landlord and tenant matters.

(2) On receipt of money referred to in subsection (1)(a), the exempt caretaker or manager must promptly deliver the money to the brokerage.

(3) Subsection (1) does not apply to a caretaker or manager who negotiates or enters into contracts on behalf of the brokerage or the owner of the rental real estate.

Keep in mind:

1. The relationship between the brokerage and the unlicensed person must be that of 'employer-employee' according to the criteria of the Canada Revenue Agency. If in doubt, brokerages may want to seek accounting or legal advice to ensure that such a relationship exists. The unlicensed caretaker/manager cannot act as an independent contractor providing services on behalf of the brokerage.
2. Services provided under this exemption must be limited to those identified above. Advising the landlord on what constitutes appropriate or 'market' rent, negotiating the terms of a lease and signing rental agreements are not permitted. Brokerages and their managing brokers are responsible for ensuring that the services offered by unlicensed caretakers/managers do not go beyond what is permitted in the Regulation and may be subject to discipline proceedings for failing to do so.

4. Exemption for BCHMC and related non-profit organizations (*Section 2.15 of the Regulation*)

(1) In this section:

"**British Columbia Housing Management Commission**" means the British Columbia Housing Management Commission continued under the *Ministry of Lands, Parks and Housing Act*;

"**non-profit organization**" means an organization constituted exclusively for charitable or benevolent purposes with no part of its income being payable to or otherwise available for the personal benefit of any of its members or shareholders.

(2) An individual is exempt from the requirement to be licensed under Part 2 of the Act in respect of rental property management services if the individual is providing the services in relation to rental real estate that is

- (a) administered by the British Columbia Housing Management Commission, and
- (b) rented to tenants based on the tenant's income.

(3) A non-profit organization is exempt from the requirement to be licensed under Part 2 of the Act in respect of rental property management services if the non-profit organization

- (a) has entered into an agreement with the British Columbia Housing Management Commission, and
- (b) is providing the rental property management services in relation to rental real estate referred to in subsection (2).

5. Exemption in relation to assignment of rents (*Section 2.16 of the Regulation*)

A savings institution, or a mortgage broker registered under the *Mortgage Brokers Act*, is exempt from the requirement to be licensed under Part 2 of the Act in respect of rental property management services if the savings institution or mortgage broker is acting on behalf of a person who has granted an assignment of rents to the savings institution or mortgage broker.

Licensee Exemptions (*Section 2(2) of RESA*)

(2) ... **subject to the Rules**, this Act (RESA) applies to every licensee who provides real estate services, **even if the licensee**

- (a) provides real estate services on the licensee's own behalf,
- (b) provides real estate services to or on behalf of another but not for or in expectation of remuneration, or

(c) **would otherwise be exempted by this Act or the Regulations** from the requirement to be licensed in relation to the provision of those real estate services. (**Section 2(2) of RESA**)

In so far as rental property management is concerned, this section of RESA means licensees can rely only on the two following exemptions which pertain to the licensee's own or family property. Aside from these exemptions, a person licensed to provide only trading or strata management services must generally become licensed to provide rental property management services.

6. Exemption for licensees managing their own property (Section 9.1 of the Council Rules)

- (1) This section applies to a managing broker, associate broker or representative who provides rental property management services on their own behalf in relation to their own real estate.
- (2) The Act and these Rules do not apply to the licensee in relation to the rental property management services so long as the licensee does all of the following:
 - (a) provides these services in their own name and not in the name of their related brokerage;
 - (b) does not, in any real estate advertising with respect to the rental real estate, indicate the name, address or telephone number of their related brokerage or of any place where the licensee is engaged in their capacity as licensee;
 - (c) discloses to each potential tenant of the rental real estate, promptly but in any event before the person enters into a tenancy agreement, that
 - (i) even though they are licensed under the *Real Estate Services Act*, they are not acting as a licensee in this case, and
 - (ii) the licensee is not regulated under the *Real Estate Services Act* in relation to the rental real estate;
 - (d) discloses in writing to the managing broker of the related brokerage that the licensee will be providing rental property management services on their own behalf in relation to their own real estate.

7. Exemption for licensees managing family property (Section 9.2 of the Council Rules)

- (1) This section applies to 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.
- (2) The Act and these Rules do not apply to the licensee in relation to the rental property management services so long as the licensee does all of the following:
 - (a) complies with the requirements of section 9-1(2)(a), (b) and (c) [*management of rental real estate owned by licensee*] of these Rules;
 - (b) before providing the services, discloses in writing the matters referred to in section 9-1(2)(c) of these Rules to
 - (i) the spouse, family partner, son, daughter or parent to or on behalf of whom the licensee is providing the services, or
 - (ii) in the case of services provided to or on behalf of a partnership or corporation, each spouse, family partner, son, daughter or parent who is a partner or shareholder;
 - (c) provides to the managing broker of the related brokerage, as applicable,
 - (i) in the case of services to which paragraph (b) applies, a copy of the written disclosure under that paragraph, or
 - (ii) in the case of services provided to or on behalf of a corporation of which the only shareholder is the licensee, written disclosure that the licensee will be providing rental property management services to or on behalf of that corporation.

Part 2: Common Licensing Scenarios

Scenario #1

In managing an apartment complex for its owner, Acme Property Management Corporation (Acme) employs a 'resident caretaker' or 'on-site manager' who shows apartments to prospective tenants, collects security deposits and rents, arranges needed repairs and schedules regular maintenance on the property. This resident manager also negotiates and executes leases.

What real estate licences are required?

Since Acme is acting on behalf of a third party for remuneration, it must hold a real estate **brokerage licence**. This licensing of the corporation does not automatically entitle any of the corporation's officers, directors, shareholders, or employees to engage in leasing activities.

In addition, Acme's property management services must be supervised by a **managing broker** who is licensed to provide rental property management services and all other persons employed by Acme as leasing or rental agents must be licensed as **representatives (or associate brokers)** to provide rental property management services under the *Real Estate Services Act*.

If, in this scenario, the resident manager was instructed to immediately remit any security deposits and rents to the brokerage for deposit into its trust accounts and if he or she were not involved in negotiating and executing leases, no licence would be required under the exemption for resident caretakers cited above. (**Section 2.14 of the Regulation**)

However, since the resident manager does negotiate and execute leases, a **representative's (or associate broker's) licence** is necessary. Failure to have him/her licensed could result in disciplinary action being taken against the brokerage and Acme's managing broker.

Scenario #2

Joan, who is licensed as a representative to provide trading services, promises to look after a rental unit she recently sold. She hopes that when the owner is ready to sell, he will give her the listing and in gratitude will refer her to his friends.

Is Joan adequately licensed?

Joan is providing rental property management services to another person in the hope of future remuneration, even though her current licence does not allow her to do so. If her conduct were reported to the RECBC, Joan could face disciplinary action. She must stop her unlicensed activity until properly licensed for rental property management with an appropriately licensed brokerage. Once properly licensed, a rental property management service agreement between her brokerage and client would be necessary, and if rent is to be collected by Joan, the trust accounting requirements of the *Real Estate Services Act* apply.

Scenario #3

John Smith, an unlicensed individual, owns a number of office buildings in Victoria. John wants to manage these buildings using his employees.

What real estate licences are required?

Neither John nor any of his employees are required to be licensed. A real estate licence is not required of an owner – whether a sole proprietorship, a corporation or an association – when personally selling, leasing or managing his or her own property, nor is a licence required by employees of the owner when renting, leasing or managing property owned by their employer, provided that they do not provide real estate services for any other person. (**Section 2.1 of the Regulation**)

Scenario #4

Joe Pipe, a plumber working for a mechanical services company, has a 40% interest in a real estate investment company called Three Brothers Investment Co. Joe's two brothers each own a 30% interest in the company, which has recently purchased an apartment complex. The brothers have decided that Joe should perform the rental property management services required for this investment.

Is a licence required?

No. By having a **substantial interest** in the real estate being managed, Joe is acting as a principal (owner) and as such is not subject to the requirements of the *Real Estate Services Act*.

Scenario #5

The ABC Group, a limited partnership, owns several shopping malls. Rather than employ an independent property management firm, ABC purchases a minority interest (10%) in Hill View Management, a separate corporation that will manage its properties, as well as those of other clients.

What real estate licences are required?

Since the affiliated management corporation, Hill View Management, is a separate legal entity acting as a leasing agent for ABC (see the next scenario) and other property owners, it must obtain licensing.

Hill View Management must hold a real estate **brokerage licence**, its rental property management services must be overseen by a **managing broker licensed to provide rental property management services**, and anyone providing those services on behalf of its clients must be licensed as **representatives (or associate brokers)** under the *Real Estate Services Act*.

Scenario #6

Canada First Realty Ltd., which owns numerous commercial and residential rental properties, forms a separate, wholly owned subsidiary called BZ Property Management Inc., for the sole purpose of managing its real estate.

What real estate licences are required?

Assuming BZ Property Management Inc. is a **legal entity separate from the owner of the property** having no substantial interest in the property, either directly (as part owner) or indirectly (through share ownership in Canada First Realty), it is acting on behalf of another person in providing real estate services. Therefore, BZ Property Management Inc. must meet all the requirements of the *Real Estate Services Act*. It must be licensed as a **brokerage**, employ a licensed **managing broker**, and have only **licensed representatives** engaged in rental property management.

If Canada First Realty Ltd. wishes to avoid a situation in which licensing is mandatory, it should have its own employees manage its real estate assets. (**Section 2.1(1) of the Regulation**)

Scenario #7

Ray, the managing broker at XYZ Property Management Ltd., a brokerage licensed to provide rental property management services, is asked to submit a proposal for the management of Berkshire Mews, a privately held cooperative. Ray is not being asked to manage individual rental units but to provide management to the complex on behalf of the cooperative itself, in a manner akin to strata management.

Can XYZ manage the Berkshire Mews?

Yes. However, Ray must take care to discover by what title the Berkshire Mews Cooperative corporation holds its underlying corporate interest in the Mews.

1. If the cooperative has a headlease and grants **subleases under that headlease** to its shareholders, then XYZ will be providing **rental property management** services. The property, in this instance, is 'rental real estate' because the cooperative interests are considered real estate⁵ and are intended to be rented or leased.
Since XYZ is licensed to provide rental property management, Ray can submit a management proposal.
2. If the cooperative's interest in the Berkshire Mews is freehold, it may offer **direct leases** to its members, rather than subleases under a headlease. In this case, once again the property is "rental real estate" because it is real estate that is leased.
Since XYZ is licensed to provide rental property management, Ray can submit a management proposal.
3. If the cooperative's corporate interest in the Berkshire Mews is freehold and the occupancy rights granted to its members arise under a shareholder's agreement that **does not involve a lease**, then the management services being proposed will not be considered real estate

5 A "cooperative interest" is considered 'real estate' and means an interest that includes both:
(a) a right
(i) of ownership, directly or indirectly, of one or more shares in the cooperative association, or
(ii) to be a partner or member, directly or indirectly, in the cooperative association, and
(b) as a result of the right described in paragraph (a), a right to use or occupy a part of the land in which a cooperative association has an interest; (Section 1 of *Real Estate Development Marketing Act*)

services at all. Although a cooperative interest is considered real estate, where no lease is involved, the services rendered in managing a cooperative do not fall under the definition of real estate services contained in RESA, which includes only:

- (a) rental property management services,
- (b) strata management services, or
- (c) trading services. (**Section 1 of RESA**)

In this case, Ray, or anyone else for that matter, can offer to manage Berkshire Mews. If Ray decides to do so, he must make sure that any money held on behalf of the Mews is not placed in accounts set up as a requirement of RESA but is held apart from all real estate trust funds.

Ray would also be wise to disclose to the cooperative's board that:

- (i) even though licensed under the *Real Estate Services Act*, XYZ is not acting as a licensee in this case, and consequently
- (ii) XYZ is not regulated under the *Real Estate Services Act* in relation to the management of Berkshire Mews; and
- (iii) any money held on behalf of the Berkshire Mews will not be protected by the *Real Estate Compensation Fund Corporation* nor will Ray be indemnified by the *Real Estate Errors and Omissions Insurance Corporation*.

RESA and Strata Management

RECBC was given an expanded mandate in 2005 with the introduction of RESA. The licensing requirement for those who provide strata management services became effective January 1, 2006.

Part 1: Who needs to be licensed?

Strata management is a real estate service⁶ that requires licensing. It is defined as any of the following provided to or on behalf of a strata corporation:

- (a) collecting or holding strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*;
 - (b) exercising delegated powers and duties of a strata corporation or strata council, including
 - (i) making payments to third parties on behalf of the strata corporation,
 - (ii) negotiating or entering into contracts on behalf of the strata corporation, or
 - (iii) supervising employees or contractors hired or engaged by the strata corporation
- but does not include an activity excluded by regulation. (**Section 1 of RESA**)

Unless one of the exemptions in the following part applies, individuals or firms performing any of the above services for remuneration must meet the licensing and other requirements of the *Real Estate Services Act*.

Exemptions

Strata Council Members

Since licensing is required of those providing real estate services "to or on behalf of another, for or in expectation of remuneration", licensing and the other requirements of RESA do not apply to strata council members who volunteer their time⁷. In addition, the following exemption applies to strata council members who are strata lot owners.

1. Exemptions for strata lot owners

a) Exemption for an owner not licensed under RESA (*Section 2.17 of the Regulation*)

6 "real estate services" means
(a) rental property management services,
(b) strata management services, or
(c) trading services; (Section 1 of RESA)

7 This paragraph does not apply to persons already licensed under RESA.

-
- (1) Subject to subsection (2), an individual is exempt from the requirement to be licensed under Part 2 of the Act in respect of strata management services if the individual
- (a) is the owner, as defined in the *Strata Property Act*, of a strata lot,
 - (b) provides the strata management services to or on behalf of the strata corporation of which the person is a member by reason of being the owner of the strata lot, and
 - (c) provides strata management services under the exemption provided by this section to no more than 2 strata corporations.
- (2) On receipt of any strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*, the exempt individual must promptly deliver the money to the strata corporation.

b) Exemption for an owner who is a licensee (*Section 9.3 of the Council Rules*)

- (2) ... **subject to the Rules, this Act (RESA) applies to every licensee who provides real estate services, even if the licensee**
- (a) provides real estate services on the licensee's own behalf,
 - (b) provides real estate services to or on behalf of another but not for or in expectation of remuneration, or
 - (c) **would otherwise be exempted by this Act or the Regulations** from the requirement to be licensed in relation to the provision of those real estate services. (*Section 2(2) of RESA*)

In so far as strata management is concerned, this section of RESA means licensees can only rely on the following exemption. Aside from this exemption, a person licensed to provide only trading or rental property management services must generally become licensed to provide strata management services.

- (1) Subject to this section, the Act and these Rules do not apply to 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.
- (2) On receipt of any strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*, the licensee must promptly deliver the money to the strata corporation.
- (3) Part 4 [*Discipline Proceedings and Other Regulatory Enforcement*] of the Act applies in relation to a contravention of subsection (2).

Note that, under this exemption, the strata management services may not be "provided for or in expectation of remuneration" and that the manager may not hold money on the strata's behalf.

2. Exemption for caretakers, resident managers and other employees

a) An employee of one strata corporation (*Section 2.1 of the Regulation*)

An individual is exempt from the requirement to be licensed in respect of real estate services, including strata management, if all the following apply:

- (a) the real estate services are provided to or on behalf of a principal in relation to those services;
- (b) the **individual is the employee of the principal** referred to in paragraph (a);
- (c) the individual is not providing real estate services to or on behalf of any person other than the principal referred to in paragraph (a).

In the case of strata management services, 'principal' is defined as "the strata corporation to whom or on behalf of whom the services are provided". (*Section 1 of RESA*)

As a result, a caretaker or other employee of the strata corporation to whom or on behalf of whom the services are provided, resident on the premises or otherwise, may provide strata management services if he or she is an employee in accordance with the criteria of the Canada Revenue Agency. The strata corporation, as employer, is free to decide the extent to which its employee may act on its behalf and may, for example, give him or her

complete control of the strata corporation's money, authority to enter into contracts on behalf of the strata corporation, and so on.

Note that this exemption applies only to an individual, not to a limited company, sole proprietorship or partnership and that it applies exclusively to employees of only one strata corporation.

b) An employee of more than one strata corporation (Section 2.18 of the Regulation)

An individual employed as a caretaker or manager by more than one strata corporation "is exempt from the requirement to be licensed under Part 2 of the Act in respect of collecting strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*." He or she may receive, but not hold, strata money. Any money collected under this exemption must be promptly delivered for deposit to the strata corporation on whose behalf it was collected. As opposed to a caretaker employed by only one strata corporation, he or she may not provide the following strata management services:

- (a) ... holding strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*;
- (b) exercising delegated powers and duties of a strata corporation or strata council, including
 - (i) making payments to third parties on behalf of the strata corporation,
 - (ii) negotiating or entering into contracts on behalf of the strata corporation, or
 - (iii) supervising employees or contractors hired or engaged by the strata corporation and any activity excluded by regulation; (**Section 1 of RESA**)

c) An employee of a brokerage (Section 2.18 of the Regulation)

Since a caretaker or unlicensed manager employed by a brokerage is not employed by a strata corporation, the exemption in Section 2.1 of the Regulation does not apply. Accordingly, the only strata management service such an individual may provide is collecting money on behalf of the strata.

- (1) Subject to subsection (2), an individual who is employed as a caretaker or manager by a strata corporation, or by a brokerage that provides strata management services to or on behalf of a strata corporation, is exempt from the requirement to be licensed under Part 2 of the Act in respect of collecting strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*.
- (2) On receipt of money referred to in subsection (1), the exempt caretaker or manager must promptly deliver the money to the strata corporation or brokerage, as applicable.

As in the case of a caretaker employed by several strata corporations, a caretaker or unlicensed manager employed by a brokerage cannot provide the other strata management services listed in Section 1 of RESA (see definition of strata management on page 7).

3. Exemption for owner developers (Section 2.19 of the Regulation)

2.19 In relation to a strata corporation, the owner developer, as defined in the *Strata Property Act*, is exempt from the requirement to be licensed under Part 2 of the Act in respect of strata management services provided to or on behalf of the strata corporation, but only until control of the strata corporation's money is required to be transferred under section 22 of the *Strata Property Act*.⁸

4. Exemption for collection agents (Section 2.2 of the Regulation)

A person who is a collection agent licensed under the *Business Practices and Consumer Protection Act* is exempt from the requirement to be licensed under Part 2 of the Act in relation to real estate services provided in the course of the person's business as a collection agent within the meaning of the *Business Practices and Consumer Protection Act*.

5. Various other exemptions (Section 3 of RESA)

In addition to any exemption provided by Regulation, the following are exempt from the requirement to be licensed under this Part:

- (a) a person acting under the authority of a court;
- (b) a trustee in bankruptcy, custodian, receiver, receiver manager or liquidator who is appointed under a provincial or federal enactment, in respect of real estate services undertaken by the person in that capacity;
- (c) an executor or administrator of an estate, in respect of real estate services provided in relation to real estate owned or held by the estate;

⁸ Within one week after the first annual general meeting, the owner developer must

- (a) transfer control of the strata corporation's money to the newly elected council, and
- (b) deliver to the newly elected council any keys, garage door openers or other means of access that the owner developer possesses for the purposes of exercising the powers and performing the duties of the council. (Section 22 of the *Strata Property Act*)

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- (d) a trustee, in respect of real estate services provided under the terms of a will, marriage settlement or deed of trust;
 - (e) a financial institution that has a trust business authorization under the *Financial Institutions Act*, in respect of real estate services provided in relation to real estate that it owns, holds or administers;
 - (f) a practicing lawyer as defined in section 1 of the *Legal Profession Act*, in respect of real estate services provided in the course of the person's practice.

Part 2: Common Licensing Scenarios

Scenario #1

Joan Pennywise, wanting a bit of extra income in her retirement, has offered to provide accounting services for several small strata corporations.

Does Joan have to be licensed?

Joan can provide accounting services to strata corporations without licensing provided she neither 'collects nor holds' money on their behalf.

As 'collecting money' includes the receipt of cheques, albeit cheques made out to that strata corporation and deposited by Joan directly into its accounts, the strata council must take responsibility for receiving and depositing all cash and cheques. Joan may help the strata corporation set up pre-authorized, direct deposit payments for owners but may not handle (i.e. receive, deposit or expend) money in any form.

There is nothing to prevent Joan from recommending payment of invoices and preparing cheques for signing by the strata council, as long they are issued from accounts over which she has no signing authority.

Scenario #2

NW9999, a self managed strata, is facing a building envelope remediation project and wants either a project manager acting as agent for the strata corporation or an accountant to receive and hold in trust the funds levied for the project, negotiate and enter into contracts on behalf of the strata corporation, and supervise and make payment to employees and contractors hired or engaged by the strata corporation to do the work.

Is a licence required?

All of the above services require licensing under RESA. Unless the project manager or accountant hired by the strata corporation is a real estate licensee, they will not be able to provide the services required by NW9999.

Scenario #3

VR9999 is about to begin an expensive building envelope remediation project which its current management company feels unqualified to manage. The strata council of VR9999 is obtaining quotes from other strata management licensees for management of the remediation project but intend to keep their current management company, from whom they feel they are getting good service.

Can two licensees be engaged by the same strata corporation?

There is nothing in RESA that would prevent VR9999 from engaging two strata management licensees, one to do the regular management of the complex and one to manage the envelope remediation under separate service agreements. VR9999 should, however, review its current strata management service agreement to ensure it is not an exclusive service agreement in this respect.

Scenario #4

Strata management services are provided to LMS0000 by its resident caretaker. While he is on holiday, the strata council of LMS0000 hires a temporary replacement for him.

Is licensing required?

Since the caretaker is managing the strata corporation under the exemption for employees, his or her replacement must be put on the payroll and satisfy the criteria for employees set by the Canada Revenue Agency.

Scenario #5

BCS0000 wants to become self managed.

Are there any regulatory requirements for this?

There are no regulatory requirements to be met before BCS0000 begins management of its own affairs. The conduct of its council will be governed by the *Strata Property Act*, a self-administered statute with no enforcement provisions for the RECBC or any other regulatory body.

The *Strata Property Act*, Regulation and helpful pamphlets designed for strata councils can be found on the website of the Superintendent of Real Estate at www.fic.gov.bc.ca/strata/actregs.htm.

BCS0000 might want to consider joining an organization such as the Condominium Home Owners' Association (CHOA), which promotes the understanding of strata property living and the interests of strata property owners by providing advisory services, education, advocacy, resources, and support for its members. Advisory staff are available in New Westminster, Penticton and on Vancouver Island. Phone 604-584-2462 or 1-877-353-2462 or visit their website: www.choa.bc.ca.

Scenario #6

VIS9999 pays strata agent, John J. John, who is an owner in the complex to provide strata management services. JJJ is a real estate licensee licensed only to provide trading services and rental property management.

Does JJJ require further licensing?

If he were not a licensee, JJJ could be paid for providing strata management services to VIS9999 under the exemption found in Section 2.17 of the Regulation (see Exemption #1(a) above). Licensees, however, cannot rely on this exemption.

- (2) ... subject to the Rules, this Act (RESA) applies to every licensee who provides real estate services, even if the licensee...
- (c) would otherwise be exempted by this Act or the regulations from the requirement to be licensed in relation to the provision of those real estate services. **(Section 2(2) of RESA)**

With regard to strata management services, the only exemption from the licensing and other requirements of RESA made available to a licensee in the Council Rules is found in Section 9.3 (Exemption #1(b) above). Under that exemption, JJJ may not provide strata management services "for or in expectation of remuneration."

If he wishes to be paid, JJJ must acquire the appropriate licensing. Then he may provide remunerated strata management services in the name of and on behalf of his related brokerage (presuming the brokerage is licensed to provide strata management services).

Furthermore, until he is licensed properly, JJJ runs the risk of disciplinary action by the RECBC and, in the event of a dispute with VIS9999, of losing his management fees since he is prohibited by RESA from bringing or continuing an action for remuneration in relation to his unlicensed real estate services.

Scenario #7

The strata council of LMS9999 deals mostly with Percy, the unlicensed assistant of their strata agent Penelope.

Must Percy be licensed?

Percy may not act, or appear to act, as an agent of the strata corporation. This means he may not provide any services which require licensing by exercising

- ... delegated powers and duties of a strata corporation or strata council, including
 - (i) making payments to third parties on behalf of the strata corporation,
 - (ii) negotiating or entering into contracts on behalf of the strata corporation, or
 - (iii) supervising employees or contractors hired or engaged by the strata corporation and any activity excluded by Regulation;
- (Section 1 of RESA)**

Operating within these restrictions still leaves Percy several ways to assist Penelope in managing LMS9999. He can, for example;

- answer calls from residents of the complex,
- take dictation,
- attend council meetings with Penelope,
- assist at general meetings of the strata corporation,
- prepare and edit or proof read minutes on Penelope's behalf,
- draft letters and prepare information certificates for her to review and sign,
- perform bookkeeping services under her direction,
- ask tradespersons to send her quotes,
- provide any other service that does not fall within the definition of 'strata management services'.

Scenario #8

C. George, a licensee, is elected to sit on the strata council of a strata corporation where he is an owner. The strata has a management company and C. George is a member of no other strata corporation's council.

What is required of Mr. George?

The licensing and other requirements of RESA must be met by "every licensee who provides real estate services". (**Section 2(2) of RESA**) Since what strata council members do falls within the definition of real estate services (strata management services) any licensee who is a member of a strata council must meet the requirements of the licensee exemption above (Exemption #1(b) above).

Mr. George must therefore

- disclose in writing to the strata corporation, before sitting on the strata council that;
 - even though licensed under the *Real Estate Services Act*, he is not acting as a licensee in this case,
 - he is not regulated under the *Real Estate Services Act* in relation to his activities on the strata council, and
 - 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.
- He must provide a copy of the written disclosure to the managing broker of his related brokerage.
- He must not have sole signing authority for withdrawals of any funds of the strata corporation and not otherwise have sole authority for expenditures of any funds of the strata corporation.
- He must accept no remuneration for being on the strata council.

Scenario #9

Grosspar Holdings owns 6 units in BCS9999 and offers to provide strata management services.

Can Grosspar Holdings manage BCS9999?

The exemption in Section 2.17 of the Regulation that enables a strata lot owner to provide strata management services is limited to individuals who are owners. It does not apply to a sole proprietorship, a partnership or a corporation. Grosspar Holdings cannot provide strata management services without licensing and meeting the other requirements of RESA.

Further Information

Licensees with questions may visit the Frequently Asked Questions section of the RECBC website at www.recbc.ca or contact the RECBC at 604-683-9664, toll-free 1-877-683-9664 or email info@recbc.ca.

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

Real Estate Council of British Columbia
 #900—750 West Pender Street
 Vancouver, BC V6C 2T8
 Tel: 604-683-9664
 Toll-free: 1-877-683-9664
 Email: info@recbc.ca

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#900—750 West Pender Street, Vancouver, BC V6C 2T8
PM# 40016497