



Report from Council

August 2007 Volume 43, No. 1

6th Special Report to Licensees Amendments to *Real Estate Services Act*, Council Rules and Bylaws

The provincial government recently amended section 27 of the *Real Estate Services Act* (RESA) as shown below. As a result of this change and extensive consultation with the Strata Management Advisory Group, the Rental Property Management Advisory Group, and representatives of the Financial and Corporate Sector Policy Branch of the Ministry of Finance, a number of amendments to the Council Rules and Bylaws were developed.

In May of this year, the Real Estate Council gave licensees notice of the

proposed amendments to the Council Rules and Bylaws. Most of the proposed amendments are intended to streamline and/or clarify record keeping and accounting requirements for brokerages.

The Rule and Bylaw changes were approved by the Council at its meeting in June and take effect July 1, 2007. The following tables highlight the change to section 27 of RESA as well as the sections of the Rules and Bylaws and provide a description of the purpose and intended effect of each

change.

Also included in this *Special Report* are two other amendments to RESA relating to the Special Compensation Fund. In addition, the Report contains a number of consequential amendments to RESA that resulted from changes to the *Public Inquiry Act*.

Licensees are encouraged to familiarize themselves with all of these changes. A consolidated version of the Council Rules and Bylaws is posted on the Council's website at www.recbc.ca.

Real Estate Services Act	Description
Section 27(4) to (4.2) of the Real Estate Services Act is repealed and the following substituted: (4) Subsections (1) and (2) do not apply to money held or received by a licensee providing trading services in relation to a trade in real estate if, (a) by written agreement that is separate from any agreement giving effect to the trade in real estate, all principals in relation to the trading services agree that subsections (1) and (2) do not apply, and (b) any conditions established by the rules are met. (4.1) Despite subsection (2)(b), remuneration that has already been earned, as determined in accordance with the rules, by a brokerage may be paid, (a) if none of the remuneration is payable to another brokerage, into a commission trust account maintained by the brokerage, or (b) if none of the remuneration is payable to either another brokerage or a related licensee, into a brokerage account other than (i) a brokerage trust account, or (ii) a commission trust account maintained by the brokerage.	Subsection (4) allows the parties to a trade in real estate to enter into a written agreement, separate from the agreement giving effect to the trade, for deposit monies to be held by someone other than the brokerage. This does not apply to monies held with respect to rental property management or strata management services. Subsection (4.1) defines circumstances when remuneration that has already been earned in accordance with the rules (see sections 5-15 and 5-15.1 of the Council Rules) may be deposited into a commission trust account (i.e. when no portion is owing to another brokerage), or into a general account (i.e. when all of the remuneration is owing to the brokerage itself).



Real Estate Council of British Columbia

900 - 750 West Pender Street
Vancouver, B.C. 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 8:30a.m. - 4:30p.m.

REAL ESTATE COUNCIL OF B.C.

CHAIR
SATNAM T. SIDHU
VICE-CHAIR
JUDI WHYTE
EXECUTIVE OFFICER
ROBERT O. FAWCETT

COUNCIL MEMBERS

ROSEMARY BARNES
BRYON BRANDLE
WILLIAM BROWN
CYNTHIA A. CHEN
ALLAN CORBETT
JOHN FINLAYSON
DANNY LEUNG
WILLIAM H. LIM
GERRY MARTIN
JIM McNEAL
ANN PETRONE
RAMESH RIKHI
WAYNE STRANDLUND
LIZ TUTT

STATISTICS

(AUGUST 2007)

REPRESENTATIVES: 15,877
ASSOCIATE BROKERS: 1,879
MANAGING BROKERS: 1,363
BROKERAGES: 1,403

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.

Canada Post

Return undeliverable addresses to:
Real Estate Council of BC
#900-750 West Pender Street
Vancouver, BC V6C 2T8
PM# 40016497

Printed on recycled paper



Real Estate Services Act	Description
Section 60 is amended in the definition of "compensable loss" (a) in paragraph (a) by adding "including any amount that is or is intended to be remuneration to a licensee, " after "from, for or on behalf of a principal in relation to real estate services," (b) by repealing paragraph (c) and substituting the following: (c) is claimed by a licensee or former licensee as remuneration to the licensee or former licensee, , and (c) by striking out "or" at the end of paragraph (d), by adding ", or" at the end of paragraph (e) and by adding the following paragraph: (f) is prescribed by regulation; .	Clarifies that, while compensable loss may include money that could become remuneration owing to a licensee at some point in the future (e.g. on the completion of a trade in real estate), a licensee or former licensee is not eligible make a claim for compensable loss with respect to remuneration that has been misappropriated, wrongfully converted, or intentionally not paid to them. Allows identifying, by government regulation, other types of loss which are not to be covered by the compensation fund.
Part 5 is amended by adding the following Division: Division 3 — Payments to Complete Trades or Prevent Loss Direction to pay to complete trade or prevent loss 72.1 (1) This section applies whether or not a claim has been made under section 61. (2) The real estate council must not act under this section unless it is satisfied that (a) a person has suffered a compensable loss, (b) money is required to (i) complete a trade in real estate in which the person is involved, or (ii) prevent further significant compensable loss to the person, (c) it would be in the public interest to use money from the special compensation fund to complete the trade or prevent the loss, and (d) if the person makes a claim for compensation under Division 1, section 70 [maximum compensation if brokerage licence cancelled] is not likely to apply in respect of the claim. (3) If the real estate council is satisfied of the matters set out in subsection (2), the real estate council may (a) determine the amount of money required for the purposes of subsection (2) (b), and (b) subject to subsection (4), direct the compensation fund corporation to pay the amount referred to in paragraph (a) to (i) a receiver or receiver manager appointed under section 59 [court order for appointment of receiver], or (ii) if there is no appointment under section 59, the real estate council. (4) A direction under subsection (3)(b) must not be made (a) without the consent of (i) the person referred to in subsection (2)(a), and (ii) the chair of the compensation fund corporation, or a person acting in the place of the chair, and (b) until the real estate council has fulfilled any prescribed requirement.	These amendments to Part 5 of <i>RESA</i> relate to situations where public money, supposed to be held in trust by a brokerage, has been misappropriated, wrongfully converted, or intentionally not paid over. These changes give the Council the ability to act quickly where a member of the public requires the replacement of these funds in order to complete a trade or prevent further significant loss. The Council may determine the amount of the loss, and direct the compensation fund corporation to pay that amount to a receiver or receiver manager if one has been appointed by the court, or otherwise to the Council, for disbursement to the person who has suffered the loss. Safeguards are established, including that the chair, or a person acting in the place of the chair, of the compensation fund corporation must agree to the payment.

Real Estate Services Act	Description
Payment to complete trade or prevent loss 72.2 (1) Subject to subsection (2), if the compensation fund corporation receives a direction under section 72.1 <i>[direction to pay to complete trade or prevent loss]</i> to pay an amount, the compensation fund corporation must pay the amount to the person specified in the direction. (2) The maximum amount that may be paid under subsection (1) in respect of a single trade in real estate is the amount prescribed by regulation. (3) The person who receives money under this section may use the money only for the benefit of the person referred to in section 72.1(2)(a), and only for a purpose described in section 72.1(2)(b). Rights of corporation 72.3 (1) On making a payment under section 72.2 <i>[payment to complete trade or prevent loss]</i>, regardless of whether it is a payment of all or part of the loss suffered by the person referred to in section 72.1(2)(a), the compensation fund corporation is subrogated to all rights of recovery of that person as against any other person, for the amount paid less any amount re-paid, or that must be re-paid, under section 72.4(1). (2) The compensation fund corporation may commence or maintain an action in respect of the rights referred to in subsection (1) in its own name or in the name of the person referred to in section 72.1(2)(a). Repayment to fund 72.4 (1) If (a) a receiver or receiver manager, or the real estate council, receives money under section 72.2 <i>[payment to complete trade or prevent loss]</i>, and (b) all or part of the money is not required for the purposes described in section 72.1(2)(b), the receiver, receiver manager or real estate council must pay the amount that is not required to the compensation fund corporation. (2) If a person referred to in section 72.1(2)(a) benefits from money paid under section 72.2 and afterwards receives compensation from some other source in relation to the compensable loss referred to in section 72.1(2)(a), the person must pay to the compensation fund corporation money equal to (a) the amount of the benefit, if the value of the compensation received from the other source is equal to or greater than that amount, or (b) the value of the compensation received from the other source, if it is less than the amount of the benefit. (3) If a person fails to pay the compensation fund corporation as required by subsection (1) or (2), the corporation has a cause of action against the person for the amount unpaid.	This maximum amount that may be paid in respect of a single trade in real estate has been set by regulation at \$35,000. The compensation fund corporation is given the right to be subrogated to all rights of recovery, should the person receiving the payment subsequently recover some or all of the loss from another source. Any portion of the payment which is not required for its original purpose must be repaid to the compensation fund corporation. If the person who receives the payment subsequently receives compensation from some other source, that amount must be repaid to the compensation fund corporation.

Miscellaneous Amendments to RESA

The following amendments were made by Bill 6, the *Public Inquiry Act*, which received Royal Assent on March 29. These amendments took effect June 21, 2007.

Section 42 (2) of the Real Estate Services Act, S.B.C. 2004, c. 42, is repealed and the following substituted: (2) For the purposes of a discipline hearing, sections 34(3) and (4) [power to compel witnesses and order disclosure], 48 [maintenance of order at hearings] and 49 [contempt proceeding for uncooperative witness or other person] of the <i>Administrative Tribunals Act</i> apply to the discipline committee.	The Council's powers and protections with respect to discipline hearings used to be derived from the <i>Inquiry Act</i>. The source of these powers and protections is now the <i>Administrative Tribunals Act</i>.
Section 63 (2) is repealed and the following substituted: (2) For the purposes of a compensation hearing, sections 34 (3) and (4) [power to compel witnesses and order disclosure], 48 [maintenance of order at hearings] and 49 [contempt proceeding for uncooperative witness or other person] of the <i>Administrative Tribunals Act</i> apply to the compensation committee.	The Council's powers and protections regarding compensation hearings used to be derived from the <i>Inquiry Act</i>. The source of these powers and protections is now the <i>Administrative Tribunals Act</i>.
Section 129 (2) of the Real Estate Services Act, S.B.C. 2004, c. 42, is repealed and the following substituted: (2) For the purposes of a review, the person conducting the review has the powers and protection of a commission under sections 22(1), 23(a), (b) and (d) and 32 of the <i>Public Inquiry Act</i>.	Section 129 gives the Minister of Finance the right to review any action of the Council. The powers and protections of the person conducting that review of the Minister, which used to be derived from the <i>Inquiry Act</i>, are now derived from the <i>Public Inquiry Act</i>.
Real Estate Services Regulation	Description
Minimum payment to complete trade or prevent loss 5.3 For the purposes of section 72.2(2) of the Act, the maximum amount that may be paid in respect of a single trade in real estate is \$35,000.	Sets the maximum single trade in real estate compensable loss payout which the Council may make under the changes to Part 5 of RESA as noted above.

Council Rule and Bylaw Amendments

Council Rule	Description of Change
1-1 Definitions In these rules: trust account record means the record referred to in section 8-2(a)[<i>trust account and general account records</i>] of these rules as it applies to a trust account trust ledger means a trust ledger required under section 8-3(a) [<i>pooled trust account records</i>] of these rules.	'Trust account record' is a newly defined term used in the record keeping sections of the Council Rules. A trust account record is any record of information related to the receipt or disbursement of trust funds. The term 'trust ledger' is re-defined and associated with pooled trust accounts only. In pooled trust accounts money is held on behalf of more than one person. A trust ledger is created for each such person and a brokerage records receipts and disbursements on behalf of that person within that trust ledger. A description of the required trust ledgers is found in section 8-3 below.

Council Rule	Description of Change
5-8 Disclosures under this Division (1) Disclosures under this Division must (a) be in writing, except for disclosure under section 5-10 [<i>disclosure of representation and relationship in trading services</i>] of these rules, and (b) subject to subsection (1.1), be separate from a service agreement or any other agreement under which real estate services are provided and separate from any agreement giving effect to a trade in real estate. (1.1) The disclosure of remuneration that is required under section 5-11(1)(a) [<i>remuneration not paid directly by the client</i>] of these rules may be made in one or both of (a) a service agreement, and (b) a record, other than an agreement giving effect to a trade in real estate, that is separate from the service agreement. (2) If, during the course of providing real estate services, there is any substantive change in information that the licensee is required to disclose to a person under this Division, the licensee must promptly disclose the change to the person in accordance with subsection (1).	The previous version of section 5-8 required that disclosures to be made under Part 5 Division 2 of the Council Rules had to be made in writing, and separate from a service agreement or other agreement giving effect to the trade in real estate. Such disclosures included the Disclosure of Interest in Trade (section 5-9), the disclosure of remuneration (section 5-11) or benefits (section 5-12), and the disclosure of material latent defects (section 5-13). Subsection (1.1) now allows the disclosure of remuneration required under section 5-11(a) (that is, remuneration not paid directly by the client) to be made either within a service agreement or in some other written record, such as the sample Disclosure of Remuneration forms available on the Council web site at www.recbc.ca. This disclosure may <i>not</i> be made in a contract of purchase and sale or an agreement to lease or rent as these are 'agreements giving effect to the trade in real estate'.
5-15.1 Some remuneration not required to be paid into brokerage trust account (1) Money received by a brokerage on account of remuneration for real estate services is to be considered earned for the purposes of section 27(4.1) [<i>exceptions from payment into trust account</i>] of the Act in the circumstances described in this section. (2) Money that is received by a brokerage from a person other than a principal, on account of remuneration for real estate services may be paid in accordance with section 27(4.1)(a) or (b) of the Act as follows: (a) in the case of money received on account of remuneration for trading services, in accordance with the circumstances described in section 5-15 (2) [<i>money held as a stakeholder</i>] of these rules; (b) in the case of money received on account of remuneration for rental property management services or strata management services, (i) after the services for which the money was received by the brokerage have been provided, or (ii) at a time or upon the happening of an event otherwise agreed to in writing by the person paying the money to the brokerage.	Recent amendments to section 27 of RESA, effective July 1, 2007, remove the requirement for a brokerage to pay into a trust account remuneration that has already been earned, and which does not belong to any licensee other than the brokerage itself. This new section 5-15.1 establishes when remuneration that is received from a person other than the brokerage's principal may be considered earned for this purpose. It distinguishes between remuneration related to trading services, and remuneration related to rental property or strata management services. In the case of remuneration related to trading services, it may be considered earned based on the same criteria as if the money had been held as a stakeholder and the trade had completed [see section 5-15(2) of the Council Rules]. In the case of remuneration received in relation to rental property or strata management services, it may be considered earned either after the services have been provided, or at some other time agreed to in writing by the person paying the money. For example, if a strata management brokerage is to be paid by a buyer's agent for the preparation of a Form B and related attachments, the fee to prepare these documents may be considered earned once the documents have been prepared and given to the buyer's agent, or at whatever other time the buyer's agent has agreed to in writing (e.g. once the photocopying has been completed).

Council Rule	Description
7-4 Other trust account requirements (1) At least one related managing broker must be a signing authority on each trust account maintained by a brokerage. (2) For each trust account of a brokerage, the monthly reconciliation under section 8-2(b) <i>[trust account and general account records]</i> and the monthly trust asset and liability reconciliation under section 8-3(b) <i>[pooled trust account records]</i> must be reviewed, dated, and initialed by a related managing broker or by a person designated by a related managing broker. (3) A brokerage must arrange for all banking documents, including cheques, statements and deposit slips, relating to a trust account to include an indication that they relate to a trust account.	Sections 7-4, 7-5 and 7-8 ensure that certain requirements related to trust accounts apply to pooled and non-pooled trust accounts. Section 7-4 clarifies the requirement that the managing broker (or a person designated by that managing broker) review, date, and initial all monthly trust account reconciliations and trust asset and liability reconciliations prepared by the brokerage. Note that while a managing broker may designate another person to perform these functions, that managing broker continues to be responsible and accountable for these functions being done properly. Managing brokers not familiar with these accounting functions should ensure they receive sufficient independent accounting advice to be satisfied the functions are performed in compliance with the <i>Real Estate Services Act</i> and the Council Rules and bylaws.
7-5 Shortages in trust accounts (1) A brokerage must not make any payment out of a trust account if (a) the payment would reduce the amount currently recorded in a trust account record or a trust ledger for the account to a negative balance, or (b) the trust account record or trust ledger to which the payment relates is already at a negative balance. (2) If at any time there is a negative balance referred to in subsection (1), the brokerage must take immediate steps to eliminate the negative balance. (3) The brokerage must notify the council of a negative balance referred to in subsection (1) as follows: (a) immediately, if a related managing broker considers that the negative balance may result in a person having a claim for a compensable loss in relation to the brokerage; *(b) in any other case, no later than 10 days after the day on which the negative balance arose, unless the brokerage is able to eliminate the negative balance in that time.	The changes in this section simply require that a brokerage must not create a trust shortfall in either a trust account record or a trust ledger.
7-8 Requirement to ensure solvency and cover shortages (1) This section applies in any of the following circumstances: (a) if a brokerage notifies the council under section 2-20 <i>[notice respecting solvency]</i> of these rules that it is not able to pay its debts as they become due; (b) if a brokerage notifies the council under section 7-5(3) <i>[notice respecting shortages]</i> of these rules that there is a negative balance in a trust account record or trust ledger; (c) the annual financial reports under section 7-7 <i>[annual financial statements, accountant's report and brokerage activity report]</i> of these rules disclose that, as of the end of the brokerage's fiscal year, (i) the brokerage's current liabilities exceed its current assets, or (ii) the brokerage's total liabilities exceed its total assets; or (d) a review under section 7-6 <i>[council review of accounts and other records]</i> of these rules indicates (i) a circumstance for which notice is required as referred to in paragraph (a) or (b), or (ii) either of the circumstances referred to in paragraph (c).	Only subsection (1) has been changed, and that change applies the Council's ability to require a brokerage to rectify a shortfall in either a trust account record or a trust ledger.

*An incorrect subsection 7-5(3)(b) was inadvertently circulated during the consultation process. Licensees should be aware that a brokerage has a duty to report a negative balance in either a trust account record or a trust ledger no later than 10 days after the day on which the negative balance arose, unless the brokerage is able to eliminate the negative balance in that time.

Council Rule	Description
7-9 Additional rules for strata management trust accounts and investments (1) This section applies to a brokerage that provides strata management services. (2) A brokerage must, for each strata corporation of behalf of which the brokerage holds or receives money, maintain the following brokerage trust accounts: (a) at least one separate trust account in the name of the strata corporation; (b) if the brokerage is to hold contingency reserve fund money or special levy money on behalf of the strata corporation, at least one separate trust account in the name of the strata corporation for the contingency reserve fund money, the special levy money or both. (9) After the termination of a strata management service agreement, the brokerage must promptly transfer control of the strata corporation's money to the strata corporation or, if the strata corporation engages another brokerage to provide strata management services, to the other brokerage. (10) Despite subsection (9), the brokerage may retain sufficient funds to pay outstanding and anticipated invoices related to expenses incurred on behalf of the strata corporation before the termination of the service agreement.	Recent amendments to section 27 of RESA (see last page of this document), effective July 1, 2007, removed the unintended possibility of a brokerage entering into an agreement with a strata corporation or a landlord to not hold money in trust. Reference to such an agreement has been removed from subsection (2). Subsections (3) through (8) are unchanged. Subsections (9) and (10) establish a requirement to transfer control of a strata corporation's money, subject to a reasonable holdback, after termination of a service agreement.
8-1 Financial records (1) A brokerage must prepare and retain such financial records in connection with its business as are necessary to ensure the appropriate and timely accounting of all transactions relating to real estate services provided by the brokerage and its related licensees. (2) The records required under subsection (1) must show and readily distinguish the following: (a) the amount of money held or received by the brokerage on its own behalf; (b) the amount of money paid by the brokerage on its own behalf; (c) the amount of money held or received on behalf of each other person including, if applicable, an indication of whether it was held or received on behalf of the person as a principal or as a licensee; (d) the amount of money paid to or on behalf of each other person including, if applicable, an indication of whether it was paid to the person as a principal or as a licensee; (e) the total amount of money held or received for or on behalf of other persons; (f) the total amount of money paid to or on behalf of other persons.	The previous version of this section required a brokerage to 'keep' certain financial records. This section now requires a brokerage to 'prepare and retain' these records.

Council Rule	Description
8-2 Trust account and general account records For each account maintained by a brokerage, the brokerage must retain all banking records relating to account transactions, including statements, and cancelled cheques and other source documents making or confirming deposits or withdrawals, and must prepare and retain the following records: (a) a record showing amounts received and disbursed, the reason for the receipt or disbursement, and any unexpended balance; (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 monthly accounting cut-off date for the account.	This section simply amalgamates and clarifies record keeping requirements that are the same for general accounts and all trust accounts. It does not place any new or additional requirements on a brokerage, nor should it have any effect on the independent review conducted by an accountant in relation to the annual Accountants Report. In subsection (a), the 'reason for the receipt or disbursement' means a description of the money received or expended; e.g. 'rent', 'maintenance', 'remuneration', etc. Subsection (b) clarifies the requirement that has always been in place that a brokerage must reconcile all of its accounts, whether they are general or trust accounts, on a monthly basis.
8-3 Pooled trust account records In addition to the records referred to in section 8-2 [<i>trust account and general account records</i>] of these rules, for each pooled trust account maintained by a brokerage, the brokerage must prepare and retain the following records: (a) separate trust ledgers as follows: (i) <i>in respect of money held or received on account of trades in real estate</i>—a separate trust ledger for each trade in real estate showing all amounts received and disbursed in relation to the trade and any unexpended balance in relation to the trade; (ii) <i>in respect of money held or received on account of rental property management services</i>—a separate trust ledger for each principal showing all amounts received and disbursed in relation to the principal and any unexpended balance in relation to that principal; (iii) <i>in respect of money held or received on account of strata management services</i>—a separate trust ledger for each principal showing all amounts received and disbursed in relation to the principal and any unexpended balance in relation to that principal; (iv) <i>in respect of money held or received on account of remuneration for real estate services</i>—a separate trust ledger for each licensee or other intended recipient showing all amounts received and disbursed in relation to the recipient and any unexpended balance in relation to the recipient; (b) a monthly trust liability and asset reconciliation, (i) for money held by the brokerage as a stakeholder under section 28 [<i>circumstances in which brokerage holds money as stakeholder</i>] 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 monthly accounting cut-off date for the account.	This section establishes record keeping requirements, in addition to those found in section 8-2 above, that are specific to pooled trust accounts. These are not new or additional requirements. They have simply been clarified based on feedback the Council has received. The term 'trust funds' has been changed to 'trust money' in this section for consistency with other sections of the rules.

Council Rule	Description
8-3.1 Preparation of records after termination After the termination of a service agreement respecting the provision of real estate services, the brokerage must continue to prepare all financial records required under this Part that relate to the services that were provided by the brokerage to the client.	This section requires a brokerage, after the termination of a service agreement, to continue to prepare financial records for the period during which the services were being provided. For Example: A rental property management service agreement expires July 31st. The brokerage continues to provide management services until July 31st, however it is not able to finalize the financial accounting services it was providing until it completes the monthly account reconciliations related to the month of July. The brokerage must continue to prepare financial records until it is able to 'close the books' for activities that occurred in the month of July. While this section is new, it simply amalgamates in this requirement that was formally found in sections 8-7 and 8-7.1.
8-4 General records (1) A brokerage must retain the following records: (a) written disclosures under Division 2 [<i>Disclosures</i>] of Part 5 [<i>Relationships with Principals and Parties</i>] or Part 9 [<i>Licensee Exemptions</i>] of these rules and any related acknowledgments; (b) written service agreements and any other records that establish the scope of authority of the brokerage respecting the provision of real estate services to a client; (c) annual financial reports under section 7-7 [<i>annual financial statements</i>] of these rules. (2) A brokerage must prepare and retain a list, maintained separately for each fiscal year of the brokerage, of (a) all trades in real estate in which the brokerage is or was involved during that year, (b) all rental properties that are or were managed by the brokerage during that year, and (c) all strata corporations that are or were managed by the brokerage during that year.	This section clarifies and narrows the scope of what general records must be retained by the brokerage. Of particular note is the elimination of the requirement that a brokerage retain copies of 'all significant correspondence sent or received by the brokerage'. The scope of this requirement has been narrowed to retaining all written service agreements and any other records that establish the scope of authority of the brokerage respecting the provision of real estate services. However, brokerages should be aware that it is often in their own best interest to retain copies of any significant correspondence related to their provision of real estate services. A further clarification in subsection (1)(c) is that the financial reports that a brokerage must retain are the ones that a brokerage is required to file annually with the Council.
8-5 Trading records (1) A brokerage must retain the following records with respect to trades in real estate in relation to which it provides trading services: (a) the contracts for the acquisition or disposition of real estate; (b) any accounting statements prepared by or on behalf of the brokerage that are provided to a party by the brokerage in relation to the trade in real estate; (2) If a brokerage or a related licensee holds or receives money in relation to a trade in real estate, the brokerage must prepare and retain a record sheet respecting the trade, in a form approved by the council, that includes the following information: (a) the nature of the trade in real estate; (b) a description sufficient to identify the real estate involved in the trade in real estate; (c) a deal number for the purposes of identifying the trade in real estate; (d) the sale price or other consideration for the trade in real estate; (e) the name and address of every party to the trade in real estate; (f) the amount of money received that is required by section 27 [<i>payment into trust account</i>] of the Act to be paid into the brokerage's trust account and details of every disbursement of that money; (g) the amount of remuneration paid or payable to any licensee or other person, the name of the party paying the remuneration and the name of the person who has received or is to receive it.	The changes to this section narrow the scope of financial records that a brokerage must retain to those that are prepared by or on behalf of the brokerage in the course of providing real estate services. The previous wording of subsection (1)(b) was substantially broader, requiring for example that a brokerage had to retain copies of all financial statements they had been given to a party in relation to a trade in real estate; e.g. the two years of a strata corporation's financial statements delivered to the buyer of a strata lot.

Council Rule	Description
8-6 Rental property management records (1) A brokerage must retain the following records with respect to its rental property management services: (a) the tenancy agreements or other contracts for the rental of the real estate; (b) any accounting statements prepared by or on behalf of the brokerage that are provided to clients; (c) any invoices for expenditures incurred on behalf of clients. (2) A brokerage that provides rental property management services must prepare and retain a record of (a) the tenants at each rental property managed by the brokerage, and (b) the security deposits, pet damage deposits and other deposits paid by each tenant. (3) If requested by a former client, the brokerage must provide the following records to that former client or, if the former client engages another brokerage to provide such services, to the other brokerage: (a) financial records referred to in section 8-2 [<i>trust account and general account records</i>] of these rules that relate to trust accounts maintained on behalf of the former client; (b) unless they have already been provided to the former client, the records referred to in subsections (1)(a) [<i>tenancy agreements</i>] and (1)(c) [<i>invoices</i>] of this section; (c) the records referred to in subsection (2) [<i>tenants and deposits</i>]. (4) The records requested under subsection (3) must be provided by the brokerage by the later of the following two dates: (a) the date that is 2 weeks following the date of the request; (b) the date that is 4 weeks following the date of the termination. (5) Nothing in subsection (3) relieves the brokerage of its obligation to retain records under section 8-10 [<i>retention of records</i>] of these rules.	The changes to this section have narrowed the scope of financial records that must be retained by a brokerage, with respect to the provision of rental property management services, to those financial records that have been prepared by or on behalf of the brokerage. It also clarifies that the invoices to be retained are those of expenditures incurred by the brokerage on behalf of clients. Some of the requirements of former section 8-7 have been moved into this section, and the section further narrows the scope of records that must be provided to a former client, if requested, when a service agreement has been terminated. A distinction in the previous version of the rules between records that must be retained in original form versus copies has been eliminated. The time frame in which records must be provided to former clients has been clarified in subsection (4).
8-7.1 Strata management records (1) A brokerage must maintain separate books, accounts and other records with respect to each strata corporation to or on behalf of whom the brokerage provides strata management services. (2) A brokerage must retain the following records with respect to each strata corporation to or on behalf of whom the brokerage provides strata management services: (a) any accounting statements prepared by or on behalf of the brokerage that are provided to the strata corporation; (b) invoices for expenditures incurred on behalf of the strata corporation; (c) any monthly statements provided to the strata corporation under section 7-9(7) [<i>monthly statements from savings institutions</i>] of these rules. (3) If requested by a former client, the brokerage must provide the following records to that former client or, if the former client engages another brokerage to provide such services, to the other brokerage: (a) financial records referred to in section 8-2 [<i>account records</i>] of these rules that relate to trust accounts maintained on behalf of the former client; (b) unless they have already been provided to the former client, the records referred to in subsection (2)(b) [<i>invoices</i>] of this section. (4) The records requested under subsection (3) must be provided by the brokerage by the later of the following two dates: (a) the date that is 2 weeks following the date of the request; (b) the date that is 4 weeks following the date of the termination. (5) Nothing in this section (a) relieves the brokerage of its obligation to retain records under section 8-10 [<i>retention of records</i>] of these rules, or (b) limits a brokerage's obligation to ensure that records are given to the strata corporation as required by section 37(1) [<i>strata manager obligation to return records</i>] of the <i>Strata Property Act</i>.	The same changes related to rental property management records made in section 8-6 above have been made in section 8-7.1 with respect to strata management records.

Council Rule	Description
8-9.1 Electronic Records (1) A record required under Division 1 <i>[Financial Records]</i> or 2 <i>[Other Records]</i> of this Part may be retained as an electronic record if the record can be readily transferred to printed form. (2) A person authorized under the Act, regulations, rules or bylaws to inspect, review or receive a record, may request, for the purpose of inspecting, reviewing or receiving the record, that the record be in printed form. (3) On receiving a request under subsection (2), a brokerage must promptly transfer the record to printed form.	This new section allows for records to be retained in electronic form so long as the record can be readily transferred to printed form. The section also allows the Council to request that electronic records be transferred to printed form for inspection purposes.
8-10 Retention of records (1) Subject to subsection (1.1), a brokerage must retain the records required under Division 1 <i>[Financial Records]</i> or 2 <i>[Other Records]</i> of this Part for at least 7 years after their creation unless a shorter period is authorized in writing by the council. (1.1) A brokerage must retain the records required under section 8-6(1)(a) <i>[tenancy agreements]</i> and (2) <i>[tenants and deposits]</i> of these rules for at least 7 years after the earlier of (a) the date on which the tenancy agreement or the tenancy to which the agreement pertains ends, and (b) the date on which the rental property management service agreement with respect to which the records are being held terminates unless a shorter period is authorized in writing by the council. (2) The records referred to in subsections (1) and (1.1) (a) may be retained as copies of the original records, and (b) must be made available at the head office of the brokerage for the purposes of a review under section 7-6 <i>[council review of accounts and other records]</i> of these rules.	The changes to this section clarify the time frame for retention of rental property management records, and eliminate the distinction between original and copies of records.
10-4(3) Grandparented strata management services—As an exception to subsection (1), if (a) strata management services are being provided to a principal immediately before January 1, 2006 under an agreement, (b) the agreement contemplates that the services will continue to be provided after that date, and (c) as of that date, the person providing the services is required to be a licensee, the person providing the services must comply with section 5-1 <i>[written service agreements]</i> of these rules as soon as reasonably practicable, but is not otherwise required to comply with that section in relation to those services until January 1, 2008.	Extends until January 1, 2008 (at the latest) the requirement that all strata management service agreements must comply with section 5-1 of the Council Rules.

Council Bylaw	Description
4-9 Annual accountant's report (2) After the completion of the brokerage's fiscal year, the brokerage must prepare an accountant's report for the fiscal year containing the following information: (a) the start and end dates of the brokerage's fiscal year in relation to which the report is filed; (b) the address of the brokerage and of all branch offices of the brokerage that operated at any time during that fiscal year; (c) a list of each brokerage trust account, commission trust account and other savings institution account opened, closed or maintained by the brokerage during the fiscal year; (d) for each account listed under paragraph (c), (i) the name and branch location of the savings institution at which the account is or was kept, (ii) the account number, (iii) an indication of the type of account, and (iv) if the account was opened or closed, or both, during the fiscal year, the date of the opening or closing, or both, as the case may be. (3) The brokerage must provide the report prepared under subsection (2) to the accountant who is to complete the report in accordance with subsection (4), together with (a) the brokerage's financial statements for the fiscal year; (b) copies of any subordination agreements to which the brokerage is a party; (b.1) for each brokerage trust account, the monthly reconciliation referred to in section 8-2(b) <i>[trust account and general account records]</i> of these rules, for (i) all month ends that occurred during the fiscal year, and (ii) all month ends that occur after the end of the fiscal year but before the date of completion of field work undertaken by the accountant to prepare the report; (c) for each brokerage trust account that is a pooled trust account, monthly trust liability and asset reconciliations for (i) all month ends that occurred during the fiscal year, and (ii) all month ends that occur after the end of the fiscal year but before the date of completion of field work undertaken by the accountant to prepare the report; (d) any other information that the accountant considers necessary in order to fulfill the accountant's obligations under subsection (4).	The changes to this section of the bylaws require a brokerage to provide monthly reconciliations to its independent accountant for the purposes of filing the annual Accountants Report. These reconciliations must be provided at the time the accountant is conducting the annual review.

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

Copyright 2007 Real Estate Council of BC

Return undeliverable Canadian addresses to:

Real Estate Council of British Columbia
#900—750 West Pender Street, Vancouver, BC V6C 2T8
PM# 40016497