

Real Estate Rules and Regulatory Instruments

Managing Broker Webinar
June 30, 2022

BCFSA BC Financial
Services Authority

Classification: Protected A



Agenda

- Welcome and Introductions

Part I

- Overview of BCFSA Regulatory Instruments
- Rule-Making Process
- Real Estate Teams Consultation Feedback
- Questions

Part II

- BCFSA's Report Focused on Enhancing Consumer Protection in B.C.'s Real Estate Market
- Questions

Speakers

**BRUCE
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Practice
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Overview BCFSA Regulatory Instruments including Rules

Overview of BCFSA Regulatory Instruments

WHAT ARE REGULATORY INSTRUMENTS?

- BCFSA established regulatory directives and guidance that directly inform the business activities of regulated entities
- “Codify” and “communicate” how BCFSA expects or requires regulated entities to conduct their business or work with consumers
- Have been established to increase consistency in BCFSA’s approach across regulated sectors

WHAT KINDS OF REGULATORY INSTRUMENTS DOES BCFSA USE?

- BCFSA uses four (4) main types of regulatory instruments:
 1. Rules
 2. Regulatory Statements
 3. Guidelines
 4. Advisories

Overview of BCFSA Regulatory Instruments – Rules

ABOUT RULES

- Established regulatory requirements that regulated entities and individuals **must** follow
- Carry same legal weight as requirements contained in an Act or Regulation created by the Government
- BCFSA can apply regulatory sanctions for non-compliance with a Rule
- Cabinet can also make rules by regulation, which are deemed to be the Rules of BCFSA

IN WHAT AREAS CAN BCFSA MAKE RULES?

- BCFSA currently has rule-making authority in relation to the following sectors:
 - Financial Institutions including Credit Unions, Trust Companies and Insurance Companies
 - Real Estate Services including Trading Services (Real Estate Agents), Rental Property Management Services and Strata Management Services
- Rule-making authority is quite broad and extends to most facets of a regulated entity's operations

Rule-Making Process

Rule-Making Process

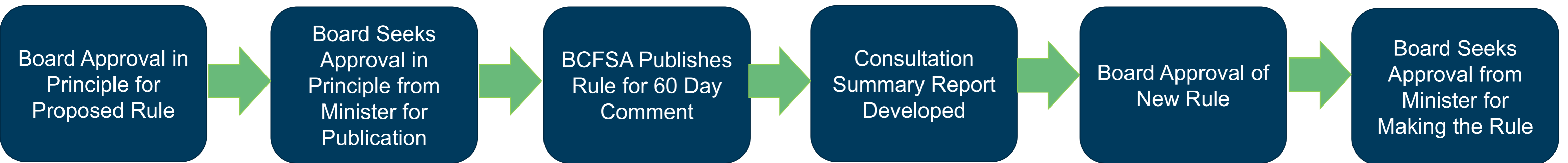
FORMAL PROCESS GUIDED BY REGULATION

- Rule-making powers are governed by the [Financial Services Authority Rule-Making Procedure Regulation](#) and require Ministerial approval to both publish rules for consultation as well as to enact rules
- Regulation identifies separate processes for new/amended rules as well as for urgent rules
- The Regulation also establishes very specific timelines for Ministerial review and publication of rules for comment
- Prior to advancing to the Board for consideration, BCFSA engages in considerable policy work surrounding any new or amended rules, often including preliminary consultations with industry to gauge stakeholder feedback and identify any red flags

Rule-Making Process

OVERVIEW OF PROCESS (NEW RULES)

- Will typically follow extensive policy work and preliminary consultations with industry to identify any red flags



- Public consultation period
- Annotated proposed rules are published with plain language commentary on purpose and intent

- Informed by consultation summary report and an analysis of key issues

- Minister has 30 days to review; if no response received, BCFSA may proceed
- Considerable risk proceeding with deemed consent
- BCFSA engages legislative drafter from Ministry of Attorney General to draft rules

- BCFSA develops a roll-up of consultation feedback including responses to feedback received
- Report will be published

- Minister has 60 days to review; if no response received, deemed consent
- The earliest the board can bring a rule into force is 30 days after officially making the rule

Real Estate Rules Consultation

Proposed Rules for Teams

- Defining “real estate team”
- Requiring all teams to register with BCFSA and for team advertising to identify the team’s name
- Teams must be composed of at least two licensed members

Consultation Recap

Proposed Rules for Teams

- Team members cannot provide trading services outside of their team
- Team members are collectively the designated agent of all the team's clients
- Licensees can only be a member of one team at a time
- All team members must be related to the same brokerage.

Consultation Recap

Proposed Rules for Trust Accounting

- Repealing the annual requirement for brokerages to provide their financial institution with certain pooled trust account information.

Consultation Recap

Consultation Process Overview

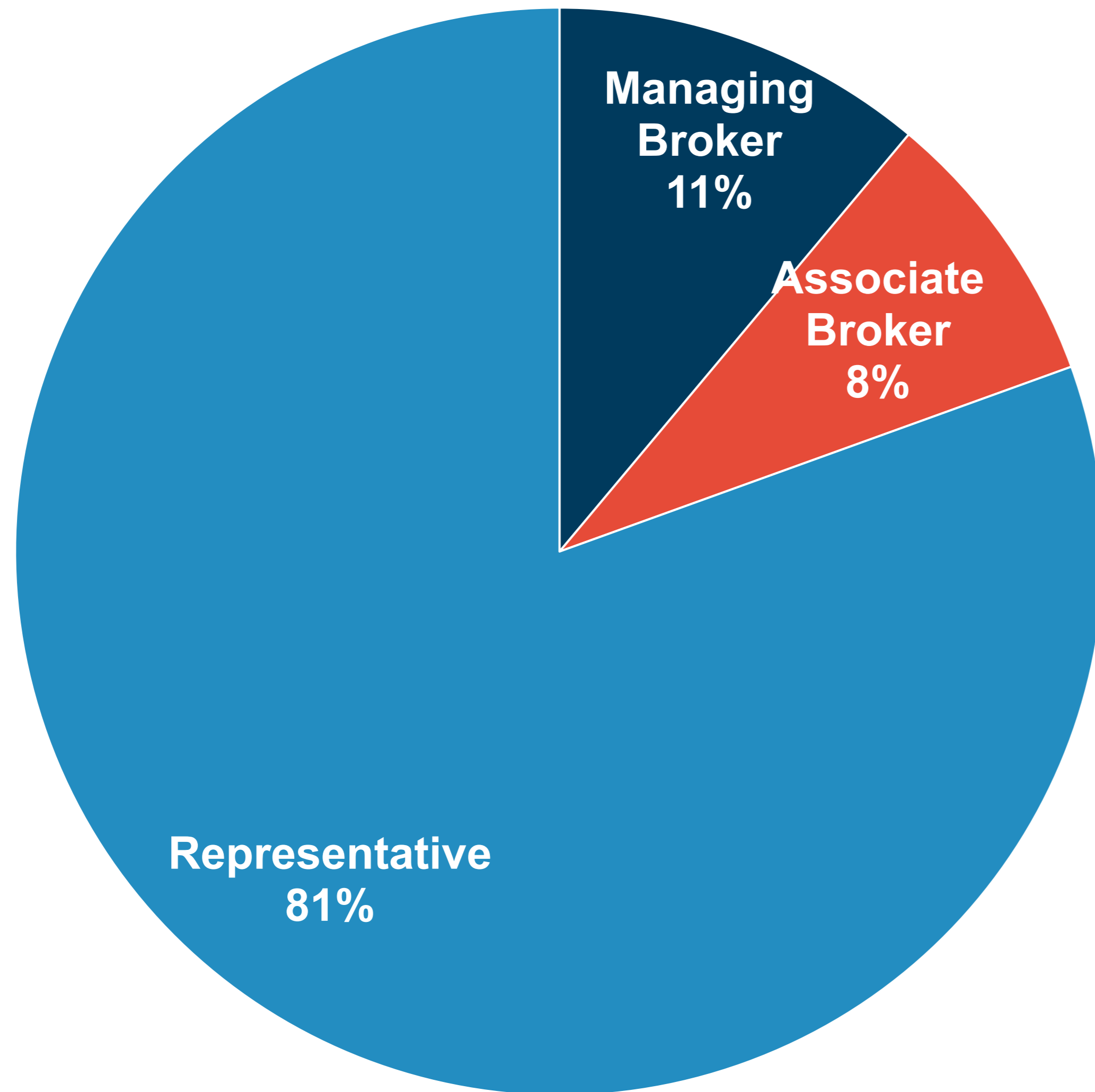
- BCFSA undertook a consultation on proposed amendments to the Rules related to:
 - Real estate teams
 - Trust account reporting requirements
- Comment period ran from February 23 to April 24, 2022

Public Consultation

Participation Overview

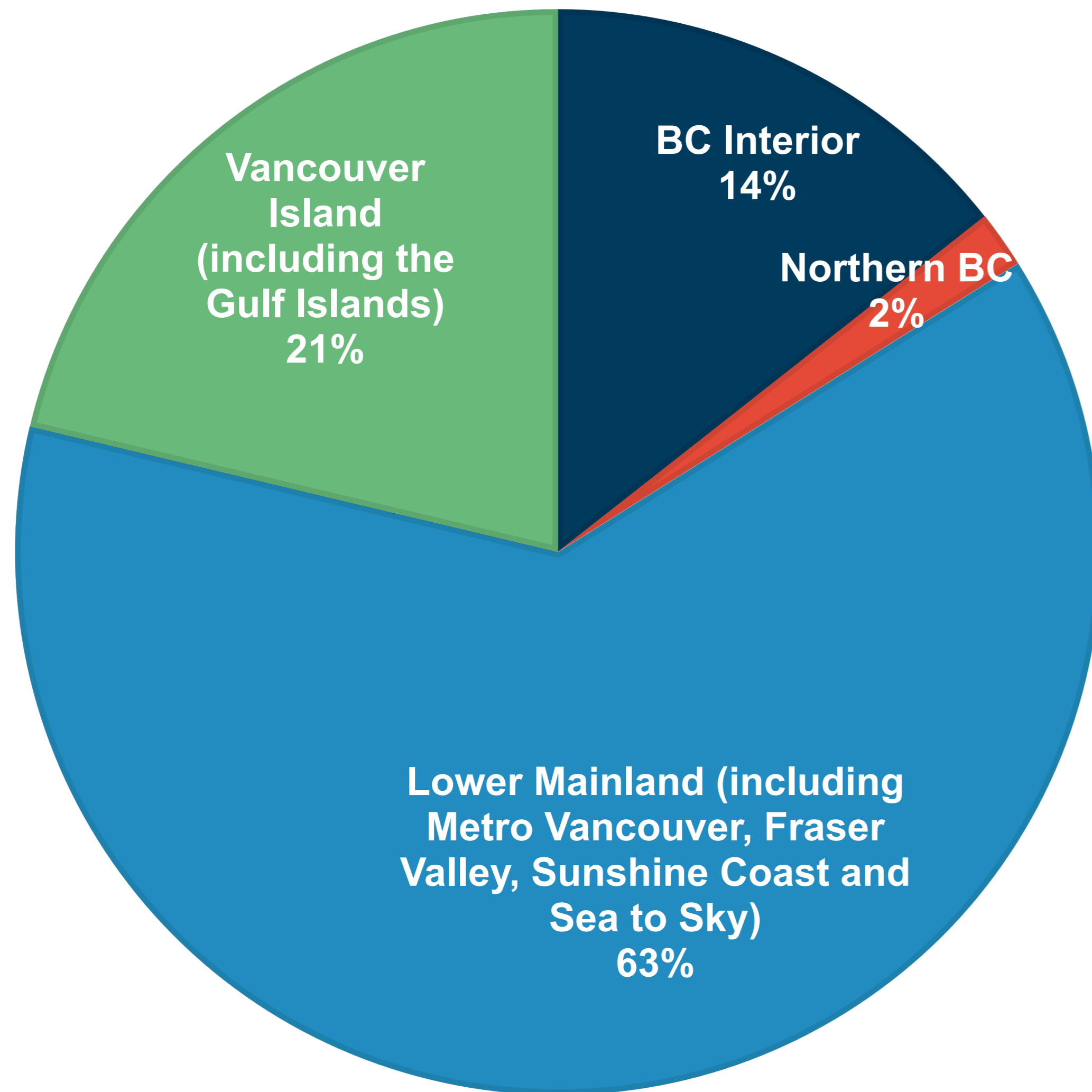
- **1,252 people** participated in the consultation.
- Of these individuals, **590 chose to provide comments** on various aspects of the proposed Rules for teams.
- **22 comments** were submitted regarding the proposed amendment to the **brokerage trust accounting Rule**.
- **ALL comments were reviewed and considered** by BCFSA, including the few submitted via email.

Consultation Results



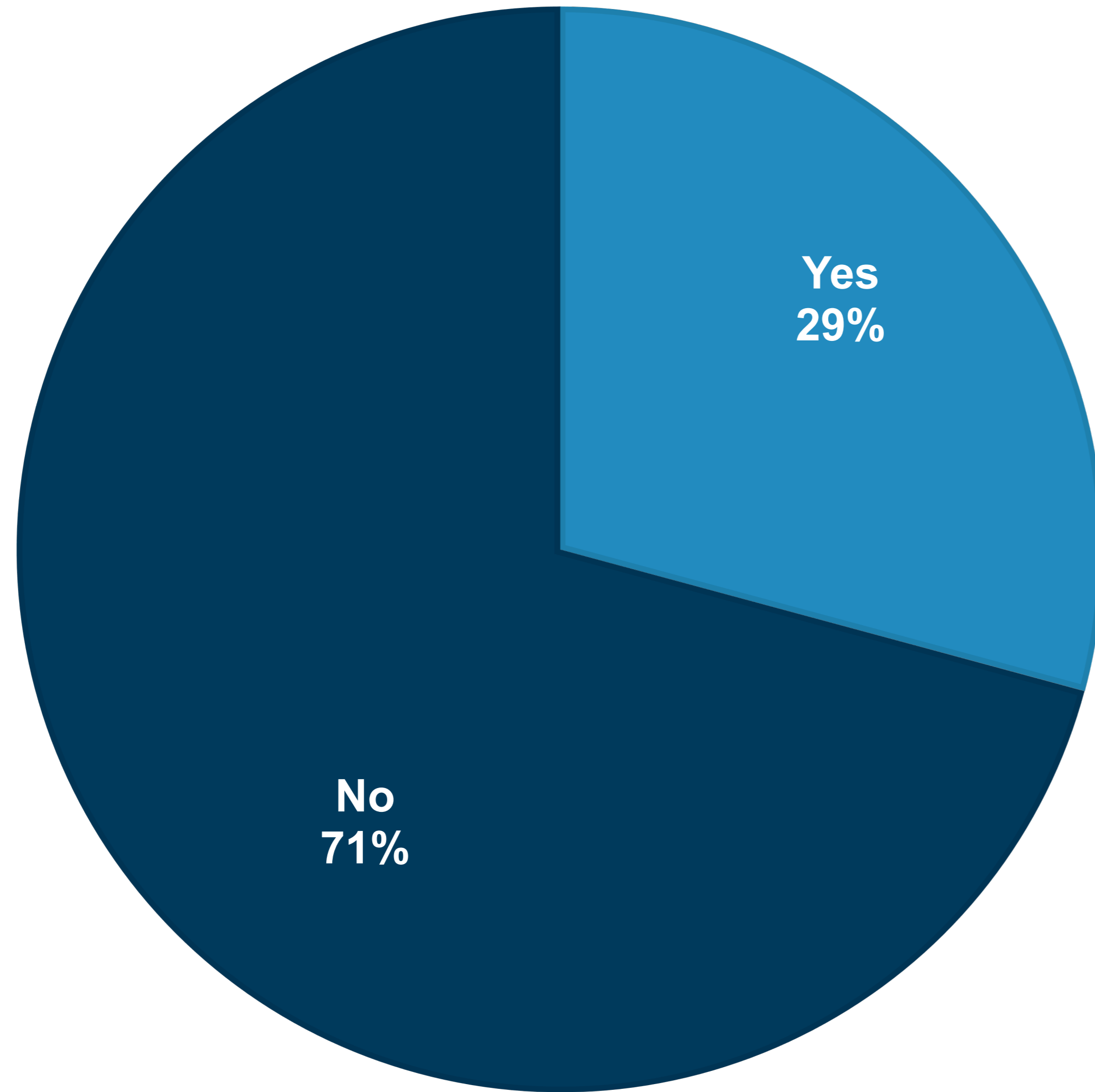
Licence Levels of Respondents

Licensees made up the majority of respondents (97.8%)



Areas of the Province

Where respondents live and work



Who Responded

Percentage of respondents who identified that they are currently a member of a team

Key Themes - Teams

- Team size
- Training and education
- Agency and teams
- Team and brokerage confusion
- Commercial real estate brokerages
- Requirement to register
- Red tape

What We Heard

Key Themes – Trust Accounting

- General support
- Annual reporting
- Deteriorating diligence
- Anti-money laundering

What We Heard



Approvals

BCFSA Board
Minister of Finance



**Consultation Summary Feedback Reports
published**



**Proposed Enforcement
Dates (if approved)**

Trust Accounting Oct 1, 2022
Teams April 1, 2023



Materials development



Implementation activities

Next Steps

Resources

Brokers Brief

**Practice
Standards
Advisors**

Website

Questions?

BCFSA's Report - Enhancing Consumer Protection in B.C.'s Real Estate Market

BC Financial Services Authority

- Integrated regulator of B.C.'s financial services sector
- Responsible for 10 statutes, including the *Real Estate Services Act*

AREAS OF REGULATION (AS OF AUGUST 1, 2021)

- Credit Unions
- Insurance Companies
- Mortgage Brokers
- Pension Plans
- Real Estate Services
- Real Estate Development Marketing
- Trust Companies

BCFSA is also accountable for administering the Credit Union Deposit Insurance Corporation of British Columbia (“CUDIC”).



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Background

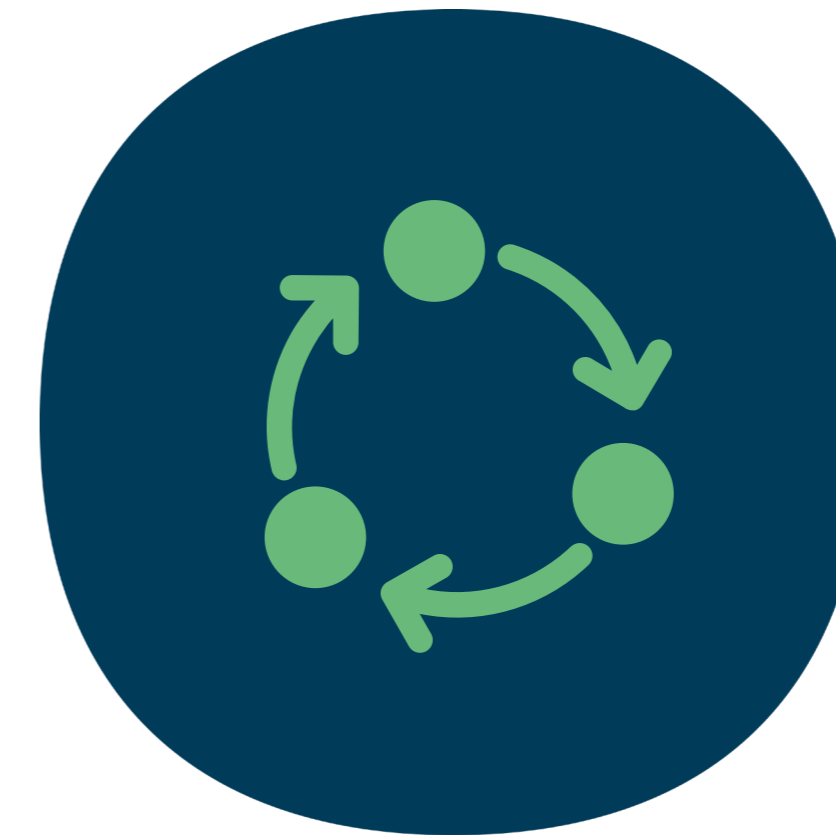
- On November 4, 2021, the B.C. Minister of Finance announced the Government's intention to create a legislated cooling-off period for resale and newly-built homes.
- The Minister directed BCFSA to engage with stakeholders on:
 - Parameters for a legislated cooling-off period;
 - Potential additional measures to address unconditional offers; and
 - Potential alternatives and enhancements to address 'blind bidding'.



BCFSA's Advice



Intended as a **package of enhancements** to improve consumer protection.



Applies across the **lifecycle of a real estate transaction**, from the initial listing of the property, to the closing date of the contract.

BCFSA'S Advice: Impacts Across the Lifecycle of a Real Estate Transaction



Next Steps

- Government will review our advice when developing regulations to implement a legislated homebuyer protection period.
- Other possible measures will be up to Government to consider based on the advice that BCFSA has provided.
- BCFSA looks forward to discussing its advice with the Government as it works to enhance consumer protection in B.C.'s real estate market.



Consultation Process

Consultation Process

- Our goals were to hear diverse perspectives, to support informed participation, and to provide targeted input back to government.
 - Comprehensive environmental scan to identify potentially impacted groups, industry segments, or organizations
 - To support informed participation, BCFSA shared a discussion paper with participants well in advance of its consultation sessions.
 - BCFSA examined how to operationalize a cooling off period.



Diverse Perspectives

DURING JANUARY AND FEBRUARY 2022, WE HELD OVER 20 CONSULTATION SESSIONS WITH A DIVERSE CROSS-SECTION OF MORE THAN 140 PARTICIPANTS AND ORGANIZATIONS:

GROUP

- Organized real estate
- Other real estate industry and owners associations
- Legal community
- Financial services providers, including mortgage brokers, lenders and insurance providers
- Home inspectors
- Appraisers
- Public sector and crown agencies
- Public interest organizations, academics and economists.

PARTICIPATING ORGANIZATION (EXAMPLE)

British Columbia Real Estate Association

Urban Development Institute

Canadian Bar Association (BC Branch)

Canadian Mortgage Brokers Association BC,
Insurance Brokers Association of BC

Home Inspectors Association BC

Appraisal Institute Canada BC

Consumer Protection BC, BC Housing

Sustainable Prosperity, BC Non-Profit Housing
Association

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What We Heard

OVERALL HIGHLIGHTS

Broad support for enhanced opportunities for due diligence.

We heard diverse and conflicting perspectives on how to achieve it.

- Lack of unanimity within and across participant groups

Homebuyer protection period is a significant change to real estate contract and transaction process.

Need to consider both buyers and sellers.

Market conditions vary across B.C.

Enhanced transparency supports consumer protection.

BCFSA's Advice:

Parameters of the Homebuyer Protection Period

Key Areas of Advice

PARAMETERS OF THE HOMEBUYER PROTECTION PERIOD

- Duration
- Waivers and Exemptions
- Termination Fee
- Buyer Disclosure of Active Offers
- Access to Property

HOMEBUYER PROTECTION PERIOD

A legislated timeframe that allows a prospective buyer to rescind an accepted offer to purchase a property if they are not satisfied with an aspect of their purchase.

Based on the Terms of Reference, a three-day homebuyer protection period would enhance the buyer's opportunity to conduct due diligence, while minimizing delays for sellers

Duration

BCFSA ADVISES THAT:

- The duration of the homebuyer protection period be **three clear business days**.
- “Clear” business days begin the following business day after the offer is accepted.

RATIONALE:

- Allows time for buyers to conduct due diligence activities such as:
 - A home inspection;
 - Confirming financing; and
 - Seeking legal advice.
- Minimizes delays for sellers.

Waivers and Exemptions

BCFSA ADVISES THAT:

- The homebuyer protection period should be **non-waivable**; and
- Government consider creating **narrow exemptions** to the homebuyer protection period:
 - Court-ordered sales/sales under court's conduct;
 - Sales by auction; and
 - Sales where the buyer has previously made an offer to purchase the same property within a prescribed time.

RATIONALE:

- Providing for waivers would be contrary to the consumer protection purpose.
- In situations where a narrow exemption applies, both parties to the sale can determine up front whether the sale is subject to the homebuyer protection period.

Termination Fee

BCFSA ADVISES THAT:

- A **modest termination fee** of between 0.1% and 0.5% of the purchase price be paid by buyers who exercise their right to use the homebuyer protection period.

RATIONALE:

- Reduces the potential for buyers to “option” multiple properties concurrently and then use the homebuyer protection period to decide which purchase to follow through.
- A nominal fee can help **deter frivolous offers**

Buyer Disclosure of Active Offers

BCFSA ADVISES THAT:

- Government consider requiring buyers to make a disclosure to sellers of any other offers that they have made that are currently active as a measure to enhance transparency during the offer process.

RATIONALE:

- This disclosure would provide information to the seller to guide their decision-making about accepting the offer, given the potential that the buyer may walk away from the purchase for reasons other than the results of their due diligence inspections.
- May give buyers pause in submitting multiple concurrent offers.

Access to Property

BCFSA ADVISES THAT:

- Sellers be required to provide **reasonable access** to the property during the homebuyer protection period for the buyer to perform due diligence.

RATIONALE:

- A legal right of access to the property should be provided for professionals engaged by the buyer to perform due diligence inspections.
- Without this right of access, or some other means of securing access to the property, the policy intent of the homebuyer protection period may fail to achieve its objectives.

BCFSA's Advice:

Impacts Across the Lifecycle of a Real Estate Transaction

BCFSA'S Advice: Impacts Across the Lifecycle of a Real Estate Transaction



Advice for Pre-Offer Period

- **Pre-Offer Period**

Establish a **five-business-day pre-offer period** – the minimum time a property must spend on the market before any offer can be accepted by a seller.

- **Enhanced Disclosure at Time of Listing**

To further enhance transparency, require that **property disclosure forms, including key strata documents**, be made available to prospective buyers at the time of listing or offer for sale.



Advice for Bidding Process

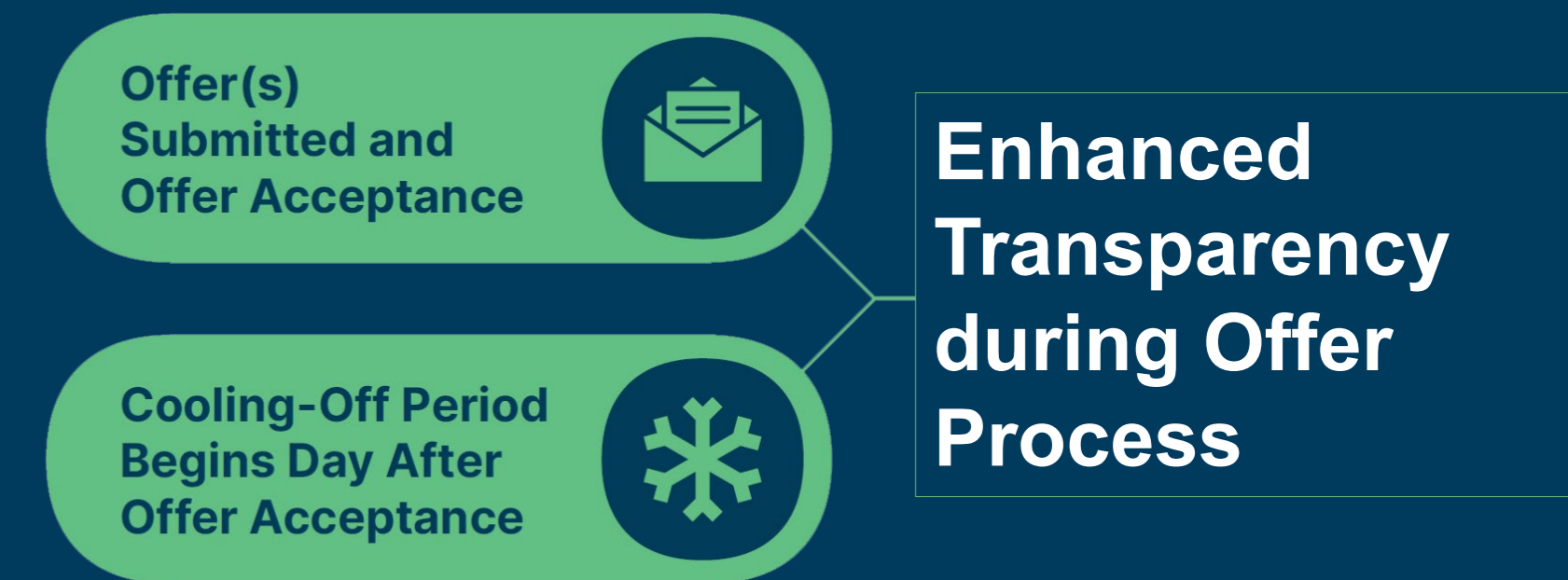
- **Auctions**

Further explore the use of **open-bid, open-end auctions**, including consideration of the implications of open bidding on B.C.'s real estate market.

Consider implementing a disclosure of the number and price of offers where a buyer is asked to revise their offer in a multiple bid situation (for example, in a bidding war).

- **Standard Contract Clauses**

Consider requiring inclusion of standard clauses related to financing, home inspection, insurance, and legal advice in the contract of purchase and sale.



Advice for Post-Sale

Disclosure of Offers

- Require that sellers make an **anonymized disclosure of offers** to all prospective buyers who submitted an offer.

Additional Negotiated
Conditions/Subject
Removal Period (if any)



Any Additional
Conditions/
Subjects Removed



Enhanced
Disclosure Upon
Binding Contract

Summary of BCFSA's Advice to Government

BCFSA'S Advice: Impacts Across the Lifecycle of a Real Estate Transaction



**Thank
you.**

Questions?