

RULE OF THE SUPERINTENDENT OF REAL ESTATE

Real Estate Services Act

ANNOTATED VERSION

The Office of the Superintendent of Real Estate is requesting feedback on proposed amendments to the Real Estate Rules ("Rules").

Key proposed changes to the Rules include:

- incorporating the Real Estate Council of British Columbia's English language proficiency requirement for new applicants into the Rules;
- creating a new requirement for licensees to complete designated continuing professional education courses, typically when significant new rules are introduced;
- designating the first continuing professional education course to be completed by trading services and rental property management licensees;
- creating new rules to address conflicts of interest where a licensee finds themselves potentially working with multiples parties that would constitute dual agency;
- clarifying that the disclosure of remuneration to sellers under section 5-11.1 must be expressed as a dollar amount if it is received as money.

If made, the Superintendent intends that the rules proposed in Appendix 1 would come into force immediately upon signing. The rules proposed in Appendix 2 would come into force on June 15, 2018, the same date that the new rules related to dual agency and enhanced consumer disclosures come into effect.

The Superintendent has rule making authority, and it is the role of the Real Estate Council of British Columbia (Council) to implement and enforce the Rules.

APPENDIX 1

The following proposed amendments are intended to come into force immediately upon signing by the Superintendent.

- 1 *The Rules made under the Real Estate Services Act, S.B.C. 2004, c. 42, are proposed to be amended by adding the following section:*

English language proficiency requirement

- 2-6.1** (1) In addition to any other requirements set out in section 10 [*qualifications for obtaining licence*] of the Act and established by these rules, an applicant for a new licence who is an individual must achieve a level 7 or higher on each of the parts applicable to reading, writing, speaking and listening, as tested by the Canadian English Language Proficiency Index Program—General Test.
- (2) An applicant is deemed to have satisfied the requirement to demonstrate English language proficiency under subsection (1) if the applicant
- (a) has graduated with a bachelor degree or higher from a degree program at an accredited university, college or technical institute where English is the primary language of instruction, or
 - (b) has been licensed to engage in real estate services in another Canadian jurisdiction with an English language proficiency requirement after satisfying that jurisdiction's requirement for English language proficiency.

Superintendent's Comments:

This proposed amendment will create a new section that incorporates the current English language proficiency requirement for new applicants into the Rules. These changes were announced by the Real Estate Council on July 21, 2017 and came into effect on September 1, 2017. More information on the English language proficiency requirement is available on the Council's website at: <https://www.recbc.ca/2017/07/council-updates-language-proficiency-requirements-for-new-licence-applicants/>

2 Section 2-8.1 (2) is proposed to be amended by repealing paragraphs (a) and (b) and substituting the following:

- (a) have taken the applicable courses for renewal for the real estate services and the level of licence in relation to which the application is made,
- (b) have passed any examinations corresponding to those courses, and
- (c) have taken, if the period established for completion has passed, any continuing professional education courses, and passed any examinations corresponding to those courses, set out in Schedule 1

3 The following section is proposed to be added:

Continuing professional education requirements for licensees

2-8.2 A licensee who is an individual must, in respect of the applicable licensed real estate services, do the following within the applicable time period set out in Schedule 1:

- (a) take the continuing professional education course or courses set out in Schedule 1;
- (b) pass any applicable examination corresponding to the course or courses.

4 The following Schedules are proposed to be added:

**SCHEDULE 1
Continuing Professional Education Requirements**

Licensed Real Estate Services (Column A)	Required Continuing Professional Education Courses and Examinations (Column B)		
	Course	Examination	Time Period for Completion
Trading Services	Rule Changes: Agency and Disclosure	Not applicable	Within four (4) months of the date on which the course becomes available
Rental Property Management Services	Rule Changes: Agency and Disclosure	Not applicable	Within four (4) months of the date on which the course becomes available
Strata Management Services	Not applicable	Not applicable	Not applicable

Superintendent's Comments:

The Superintendent proposes to amend the Rules to require licensees to complete new continuing professional education courses within a specified time period, typically when significant new rule changes are introduced. These courses are distinct from, and in addition to, the current Relicensing Education Program. Licensees who do not complete the new courses within the specified time period for completion may face administrative penalties and those who still have not completed them by the end of the licence renewal period will not be able to renew their licence.

It is proposed to do this through a series of amendments, as follows:

- Section 2-8.1 will be amended to create a requirement for licensees to complete any new continuing professional education courses within the renewal period. Note that licensees will also continue to be required to complete the applicable Relicensing Education Program requirements prior to renewing their licence.
- A new section, section 2-8.2, will be added to create a new requirement for licensees to complete any new continuing professional education courses designated by the Superintendent within a specified time period.
- A new schedule, Schedule 1, will be included in the Rules and will designate the first continuing professional education course that is required. Licensees who provide trading services and/or rental property management services will be required to complete a new continuing professional education course on dual agency and consumer disclosures within four (4) months of the date on which the course becomes available.
- In addition, section 2-23 [*Administrative Penalties*] will be amended to enable the Real Estate Council to impose administrative penalties in cases where licensees fail to complete any continuing professional education courses within the specified time period for completion (see Appendix 2 for details).

This proposal takes into consideration feedback received from licensees, many of whom requested additional information and guidance on how recent amendments to the Rules that come into force on June 15, 2018 related to dual agency and revised consumer disclosures will apply in daily practice.

The Council will continue to be responsible for administering licensing and qualification requirements.

APPENDIX 2

The following proposed amendments are intended to come into force on June 15, 2018, the same date that the new rules related to dual agency and enhanced consumer disclosures come into effect.

1 *The Rules made under the Real Estate Services Act, S.B.C. 2004, are proposed to be amended by adding the following subsection to section 5-11.1:*

- (3) If the remuneration under subsection (2) is to be received as money, the remuneration must be expressed as a dollar amount.

Superintendent's Comments:

Under section 5-11.1 of the Rules, licensees are required to disclose their expected remuneration related to an offer that is presented to a seller. This proposed amendment will require disclosures under section 5-11.1 to be made as a dollar amount where remuneration is to be received as money. The disclosure may not be made as a percentage. This will ensure that sellers clearly understand how licensees will be compensated and how remuneration may vary on different offers.

This rule does not affect other requirements of section 5-11.1, such as how non-monetary remuneration is disclosed.

2 *The following section is proposed to be added to Division 4 of Part 5:*

Addressing conflicts of interest when acting for multiple clients

- 5-18** (1) If the provision of trading services by a licensee to or on behalf of multiple clients in respect of a trade in real estate would constitute dual agency, other than under section 5-17 [*dual agency in under-served remote location*], the licensee must either:
- (a) not provide trading services to any client in respect of that trade in real estate, or
 - (b) represent only one of the clients, as a client, in respect of that trade in real estate.
- (2) A licensee must not represent a client under subsection 1 (b) unless the licensee has obtained written agreement from all clients in respect of the trade in real estate that meets the requirements of subsection (3).
- (3) The written agreement referred to in subsection (2) must be in a form approved by the council and must include all of the following information:
- (a) a description of the conflict of interest;
 - (b) a description of the duties and responsibilities the licensee will no longer have to the client with whom the licensee is terminating its client representation;

- (c) a statement that the licensee may have confidential information about the client with whom the licensee is terminating its client representation, and that the licensee is prohibited from disclosing any of that information;
- (d) a statement that the advice and information that the licensee may provide to the client that the licensee will continue to represent may be limited due to the licensee's ongoing duty to maintain the confidentiality of the information of the client with whom the licensee will terminate its client representation; and
- (e) a recommendation that the clients seek independent professional advice in respect of that trade in real estate.

Superintendent's Comments:

Licensees are required to take reasonable steps to avoid conflicts of interest and must always consider their fiduciary obligations to their clients. Licensees are expected to actively and pre-emptively avoid situations that will result in dual agency.

In the unexpected event that a licensee finds themselves potentially representing multiple clients in a transaction, a licensee has two options:

- 1) The licensee can recuse themselves from all clients in the transaction. In this situation, the licensee cannot continue to work with any of those clients as unrepresented parties for the transaction.
- 2) The licensee can continue to represent only one client in the transaction if they obtain the written agreement of all clients. The written agreement must be obtained at the time the conflict arises using a form developed by Council. It is a licensee's responsibility to ensure that all clients in the transaction fully understand the risks of entering into the agreement, and to recommend that all clients seek independent professional advice.

Brokerages are encouraged to develop policies and procedures respecting how conflicts of interest will be addressed, which should be communicated with clients at the outset of an agency relationship. However, a licensee is always required to obtain a written agreement from all clients at the time that the potential conflict arises.

As this amendment is directly linked to the new rules on dual agency, which are scheduled to come into force on June 15, 2018, the effective date for this amendment is also proposed to be June 15, 2018.

3 Section 2-23 is proposed to be amended by repealing paragraphs (a) to (y) and substituting the following:

- (a) section 2-8.2 *[continuing professional education requirements for licensees]*;
- (b) section 2-17 *[mailing address for delivery]*;
- (c) section 2-19 *[licensee must reply promptly to council]*;
- (d) section 2-20 *[brokerage must give immediate notice respecting solvency]*;
- (e) section 2-21 *[licensee must give notice of discipline, bankruptcy or criminal proceedings]*;
- (f) section 2-22 *[brokerage must give notice of business changes]*;
- (g) section 3-1 (3) *[managing broker responsibilities]*, except as it relates to the maintenance of trust accounts;
- (h) section 4-1 *[display and keeping of licences]*;
- (i) section 4-2 *[business signs required]*;
- (j) section 4-3 *[restrictions relating to home and other personal offices]*;
- (k) section 4-5 *[licensee names must be indicated]*;
- (l) section 4-6 *[restrictions and requirements related to advertising generally]*;
- (m) section 4-8 *[advertising in relation to specific real estate]*;
- (n) section 7-7 *[annual financial statements, accountant's report and brokerage activity report]*;
- (o) section 8-1 *[financial records]*;
- (p) section 8-2 *[trust account and general account records]*;
- (q) section 8-3 *[pooled trust account records]*;
- (r) section 8-3.1 *[preparation of records after termination]*;
- (s) section 8-4 *[general records]*;
- (t) section 8-5 *[trading records]*;
- (u) section 8-6 *[rental property management records]*;
- (v) section 8-7.1 *[strata management records]*;
- (w) section 8-9 *[records must be kept up to date]*;
- (x) section 8-9.1 *[electronic records]*;
- (y) section 8-10 *[retention of records]*;
- (z) section 8-11 *[brokerage obligations when winding up business]*.

Superintendent's Comments:

As described in Appendix 1, the Superintendent proposes to amend the Rules to require licensees to complete new continuing professional education courses within a specific time period, typically when significant new rule changes are introduced. Licensees who do not complete the new courses within the specified time period for completion may face administrative penalties.

These proposed amendments will repeal and replace section 2-23 of the Rules, which are scheduled to come into force on June 15, 2018, to incorporate the new continuing professional education requirements into the list of Rules that are subject to administrative penalties. The only substantive change to section 2-23 is the addition of subsection 2-23 (a).

If a licensee fails to complete the new continuing professional education requirement within the time period for completion, the licensee may be subject to administrative penalties under section 2-23 of the Rules. Administrative penalties give Council flexibility in determining how to address breaches of the rules that are technical in nature. This can help avoid the use of lengthy disciplinary processes for both licensees and Council where appropriate.

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