

SUPERINTENDENT OF REAL ESTATE RULES

The Superintendent's rules in effect June 15, 2018, will transform the way real estate is practiced in BC, putting 'consumers first and moving from a sales-focused industry to a client-centered profession.'

Following are RECBC and BCREA excerpts as at June 13, 2018* for some of the **important basic concepts, rules and steps you can take now to help prepare for the changes ahead.**

To fully learn about the changes to agency and disclosure rules, visit the RECBC searchable 'one stop shop' [License Knowledge Base](#). The Knowledge Base is host to a library of articles, guides, FAQs and video and audio content designed to help you understand and comply with the changes to agency and disclosure rules. You will also find the new disclosure forms in the Knowledge Bases.

*The new RECBC disclosure forms are being made available in advance of the effective date of the Rules for informational purposes only and are marked "Not in Effect". They should **not** be used until June 15, 2018.*

BCREA: What you need to know

BCREA's updated forms will be available on WEBForms by the end of the day on June 14. Effective June 15 **discard any print or electronic copies of previous WEBform versions** as these forms will no longer be compliant with the *Real Estate Services Act* (RESA.)

BCREA has prepared a [resource page](#) including a thorough summary of the changes and samples of the revised versions of some of the most commonly used forms.

Online Course Rule Changes: Agency & Disclosure

- To increase awareness of the regulatory changes.
- All trading services and rental property management licensees will receive an email from the Council between May 25 and June 8, 2018 with a link that allows you to register for a course offering. Your registration (link delivery) is based on your licence expiry date.
- Course deadline: **72 hours** to complete. Cost: \$75.

The Rule Changes

- Prohibiting limited dual agency in almost all cases; *and*
- Requiring new disclosures about commissions, services to expect from a licensee, and the risks of being an unrepresented party in a real estate transaction.

The Principles of Agency

As a licensee there are four fundamental duties to clients;

1. Undivided loyalty
2. Confidentiality
3. Managing conflicts of interests; *and*
4. Informed consent.

Remember your Role and your Client's Role

You are a trusted advisor with special expertise. While it is up to you to advise your client, it is the client who makes the decisions. Don't let your clients abdicate their important role as the decision makers.

Ensure they have information they need to make decisions in their own best interests.

Five Agency Steps with Clients

1. Have I clearly explained agency relationships to my client, and my fiduciary duties?
2. Have I explained the limits to the services that I can offer to an unrepresented party – and the services I cannot provide?
3. Have I explained to my clients the options for managing any conflicts of interest that might arise?
4. Do my clients understand that while I can offer them expert advice, that ultimately they are the decision-makers?
5. How would my actions look to a discipline committee?

Material Information

You **must** share “all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate” with your clients.

So what is material information? A material fact is anything that could affect a buyer’s decision to buy, or a seller’s decision to sell. In other words, you need to tell your client any facts that could cause a reasonable person to make a different decision about the transaction. And you need to make sure that you’ve made reasonable efforts to gather material information.

Listing agents can use the Council’s [Listing Checklist](#) as a guide to help ensure they collect all the relevant information about a property. Buyer’s agents should verify all listing information – particularly any information that is important to their client.

Disclosure of Representation in Trading Services (replaces WWAR)

Mandatory Form: [Disclosure of Representation in Trading Services](#) and [Guide](#)

Replaces Working With A REALTOR (WWAR) brochure. Make this disclosure to a consumer before providing any trading services. You do NOT need to make this disclosure if you are only hosting an open house, or answering general questions provided you don’t exchange information with a consumer about their motivation, financial qualifications or real estate needs.

Disclosure of How Personal Information will be Treated

BCREA Webform: [Privacy Notice and Consent form](#)

A standalone form to comply with the *Personal Information Protection Act*.

WWAR satisfied this requirement so familiarize yourself with this new form and incorporate it into your business to be sure you’re complying with the Personal Information Protection Act after June 15.

Disclosure to Sellers of Expected Remuneration (listing & cooperating brokerage)

Mandatory Form: [Disclosure to Sellers of Expected Remuneration](#) and [Guide](#)

NOTE: This form does not replace the existing Disclosure of Remuneration.

You **must** make this disclosure each time your seller client receives an offer. That includes all counter-offers coming from a buyer to your seller client. You **must** present the disclosure at the same time that you present the offer. It also informs the seller of any other payment you will receive, or expect to receive, as a result of the trade.

When there are multiple offers going to your seller, you can give the disclosures to your seller after the buyers’ agents have presented the offers IF:

1. You present a Disclosure to Seller of Expected Remuneration Form for each offer, and
2. If you make all of the disclosures before the seller accepts any of the offers.

If the seller makes a counter-offer to the price of any of the offers, we recommend that you make a new disclosure for transparency and consistency. Deliver copies to your brokerage.

Unrepresented Buyers & Referral Fees

Existing Form: [Disclosure of Remuneration](#)

At the outset of your relationship with the seller, discuss how you will deal with potential unrepresented buyers. Explain that if you refer unrepresented buyers to another licensee, you may receive a referral fee from that licensee.

That way, if the situation arises, you can say “remember when we talked about unrepresented buyers and referrals? I have been approached by an unrepresented buyer and I am going to refer the buyer to a licensee who has offered to pay me a referral fee.” By discussing the situation in advance, you’ll help to prevent misunderstandings later on.

When you receive or anticipate receiving a referral fee you **must** promptly disclose the referral fee in writing – you can use the Council’s Disclosure of Remuneration form. Make sure you include:

- The source (who is paying the referral fee);
- The amount, or if the amount is unknown, the likely amount or method of calculation of the amount; and
- Any other relevant facts related to the referral fee.

You **must** also disclose the referral fee each time you present an offer to your seller. This ensures transparency, so the seller is fully informed about the remuneration you will receive based on each offer.

Disclosure to Unrepresented Parties Required

Mandatory Form: [Disclosure of Risks to Unrepresented Parties](#) and [Guide](#)

NOTE: Where it is required, the Disclosure of Risks to Unrepresented Parties should be made at the same time as the Disclosure of Representation in Trading Services.

To help ensure consumers can make informed decisions about whether to be represented by a licensee in a real estate transaction, licensees **must** make a new disclosure about unrepresented parties.

Before you can treat a consumer as an unrepresented party in a real estate transaction, you will need to:

- Inform the consumer of the risks of being unrepresented in a real estate transaction;
- Disclose the limits to the services a licensee can provide to an unrepresented party; and,
- Advise the consumer to seek independent professional advice.

Avoiding Conflicts of Interest (Dual Agency banned in almost all cases)

Dual Agency Mandatory Form: [Disclosure of Risks Associated with Dual Agency](#) and [Guide](#)

Mandatory Form: [Agreement Regarding Conflict of Interest Between Clients](#)

The Superintendent has provided a narrow exemption to the rule prohibiting dual agency.

Avoiding conflicts of interest and working in the best interests of your clients are two of the most important duties of a real estate licensee. Dual agency happens when a licensee represents, in a single transaction, two or more parties who have conflicting interests, such as:

- A buyer and a seller
- A buyer and a buyer

- A lessor and a lessee
- An assignor and an assignee

Conflicts between current clients that would lead to a dual agency situation include:

- Your buyer client asks you to provide advice on purchasing your seller client's property.
- Two different buyer clients each ask you to help them make offers on the same property.
- Your tenant client asks you to help them lease your landlord client's property.

You have **two options** to manage situations where to continue acting for both clients would amount to dual agency which is prohibited in almost all cases:

- Stop representing both clients. Refer each client to other real estate licensees to represent their interests in the transaction, or
- If both clients agree, continue acting for one client and refer the other client to another licensee. Before this can happen, **both clients must** read and sign the new mandatory Agreement Regarding Conflict of Interest Between Clients form (see link above.)

BASIC FAQs

Open Houses

Q: I am the designated agent of a seller and I plan to host an open house on or after June 15, 2018. I will be distributing an information sheet to each potential buyer who enters the property. The info sheet has basic facts about the home (e.g. it was built in 1920 and has new electrical and upgraded plumbing). Since the exemption in section 5-10 only applies when I am either "hosting an open house" or "providing factual responses to general questions," will I need to make the disclosures required under section 5-10 and 5-10.1 before handing out this information sheet?

A: No. When hosting an open house, you can greet consumers as they enter and hand them an information sheet about the property without having to make the disclosures required under sections 5-10 and 5-10.1 of the Rules. If a party approaches you at the open house and asks you general questions about the property, you can answer those questions.

However, if you find yourself getting into a more substantial discussion with a party at the open house, you should pause the discussion and make the disclosures required under sections 5-10 and 5-10.1 of the Rules. The goal is for you to be as frank and up-front as possible with unrepresented parties.

You **must** proactively disclose, at the earliest opportunity, that you are:

- Acting for the seller, and
- Obligated to share with the seller any confidential information provided to you by an unrepresented party.

Buyer working with a REALTOR®

Q: Do I have to make a disclosure to a consumer who is already working with a licensee?

A: If you are dealing with a consumer who is **accompanied by a licensee**, you will not be required to make the disclosure required under section 5-10 of the Rules.

If you are dealing with a consumer who is **not accompanied by a licensee**, you **must** make the disclosure required under section 5-10 — even if that consumer is currently in a client relationship with a licensee. For example, imagine you are hosting an open house. While there, you are approached by a potential buyer who begins asking you questions that could lead to them telling you confidential information, and they are represented by a licensee but are not currently accompanied by that licensee. In that case, you **must** make the disclosure required under section 5-10 of the Rules.

When Disclosure should be Made

Q: How is the disclosure of expected remuneration to be made where a number of offers and counteroffers are going back and forth between the parties?

A: A licensee acting for a seller **must** make a disclosure of expected remuneration in respect of each “offer to acquire real estate” that is prepared on behalf of a buyer and presented to the seller by the seller’s licensee.

While not strictly required by [section 5-11.1](#), Council recommends that, for the sake of consistency and transparency, a seller’s licensee also make the disclosure of expected remuneration to the seller in respect of any counter-offer being made by the seller or the buyer.

Multiple Offers Disclosure Management

Q: Four licensees have called me to ask to present offers to the seller of one of my. I will not see the offers in advance of the presentation to my seller or have knowledge of the prices to be offered. I know that in addition to the disclosure of remuneration already made on the listing agreement, I have to provide the seller with a disclosure of the expected remuneration that my brokerage would potentially earn for each offer that is presented. Can I make that written disclosure to the seller, in relation to each offer, after the buyers’ agents have presented the offers, but before the acceptance of any offer?

A: Yes, provided that you present a Disclosure to Seller of Expected Remuneration Form for each offer before a seller’s acceptance of any offer.

If any of the buyers make a counter-offer, you **must** make a new disclosure based on the buyer’s countered price before the seller accepts any offer.

If the seller makes a counter-offer to the price of any of the offers, Council recommends that you make a new disclosure based on the countered price.

Online Knowledge Base

Searchable, easy to navigate ‘one stop shop’ RECBC resource centre [HERE](#) where you will find [Disclosure forms/guides](#) required after June 15, [Agency resources](#), [Conflict of interest](#) advice and best practices.

