

# Amendments to *The Real Estate Act*

The provincial legislature and the Lieutenant Governor in Council have approved several changes to *The Real Estate Act* and *The Real Estate Regulations* which came into force on May 20, 2020. Some of those changes are summarized below. For a complete summary, some highlights, and copies of the Act, Regulations, and Bylaws, please see the links on the Commission's website.

## Changes to the Act

A brokerage is permitted to operate additional, registered "branch offices" so long as certain requirements are met. To promote clarity and fairness among registrants, a definition of "branch office" has been included in the Act:

(b.1) "branch office" means a premises, other than the main office of a brokerage, from which registrants registered with a brokerage carry out trades in real estate if:

- (i) one or more registrants use the location for the purpose of trading in real estate;
- (ii) members of the public are invited to the premises for the purpose of trading in real estate; and
- (iii) there is signage or advertising for the premises by a registrant.

The Act has also been amended to expand the definition of "real estate" to include "any other property prescribed in the regulations." The Regulations have not been amended to include any other property.

A new section of the Act sets out the duty and objects of the Commission. The Commission's duty is (a) to serve and protect the public and (b) to exercise its powers and discharge its responsibilities in the public interest. The objects of the Commission are (a) to regulate the practice of registrants and to govern the registrants in accordance with the Act, Regulations and bylaws and (b) to assure the public of the knowledge, skill, proficiency, competency and trustworthiness of registrants in trades in real estate and other services provided by registrants.

An amendment of s. 6 of the Act allows the Commission to appoint one or two members to the Commission who practice in either commercial, farm or property management if such expertise is necessary.

New subsections of s. 26 authorize the Commission to refuse an application for registration where the applicant is not of good character or is otherwise unfit to be registered.

There are several changes made to the Commission's disciplinary powers under s. 38 of the Act:

- The maximum fine has been increased to \$25,000 per charge up to an aggregate of \$100,000.

- An order of a Hearing Committee requiring a registrant to pay a fine to the Commission may be registered as a judgment of the court and enforced pursuant to the court's process.
- The Lieutenant Governor in Council will be granted new authority to make regulations regarding the guidelines applicable to the Hearing Committee's ability to order that restitution be paid to an innocent member of the public.

Section 40 will be changed to permit the Commission to cancel a certificate of registration if the registrant has been convicted of an offence pursuant to the Criminal Code. Under the previous legislation, the Commission could only cancel a registration if the registrant was convicted of an indictable offence.

Sections 57 and 58 of the Act allow the Lieutenant Governor in Council to make regulations allowing for electronic signatures that are not accompanied by a witness' signature.

The updated s. 66 will prohibit a brokerage from collecting a commission based on the difference between the price at which a property is listed and the price at which the property is sold. Other calculations, including those that combine a percentage of the sale price and a lump sum, will be permissible.

Section 89.1 will be added to introduce the concept of special penalties. Special penalties will only be available to the Commission with respect to breaches that are straightforward and can reasonably be determined without a full hearing of the matter. The Regulations will contain a list of these provisions and prescribe the penalty for a breach of one of the enumerated sections.

### **Changes to the Regulations**

Pursuant to the new regulation, a witness will not be required where certain documents (e.g. offers, agency agreements, etc.) are signed or executed in accordance with the Commission Bylaw regarding electronic signatures.

Section 29 of the Regulations now provides a limited exclusion from the requirements of the legislation for registrants trading in their own real estate. The registrant must still complete the required disclosures pursuant to s. 65 of the Act.

### **Changes to the Bylaws**

The new Bylaw with respect to electronic signatures reads as follows:

625(1) Where the Act, the regulations or the bylaws require an agreement to include a written signature, the signature requirement will be satisfied by:

(a) an electronic signature that:

(i) is originally created by the signatory by way of:

(A) a handwritten signature;

(B) a keyboard allowing the signatory to enter in their name as their signature; or

(C) drawing their signature and initials in a custom fashion utilizing a mouse, stylus or their finger depending upon the device being used to access the signing;

(ii) is digitized and embedded permanently in the document to which it pertains; and

(iii) has attached to the document, a record from the electronic signature software or application provider which certifies when, where, and by whom the document was executed.

(2) Where the Act, the regulations or the bylaws require an agreement to be executed and/or signed in writing in the presence of a witness, this requirement will be satisfied by:

(a) an electronic signature meeting the requirements set out in subsection (1) above;

(b) the consent to execute documents by way of electronic signature has been established by the registrant representing the purchaser or the seller (each of which is referred to as a “signatory”) at the time the registrant is retained by the purchaser or the seller; and

(c) the registrant utilizes software which:

(i) accurately reflects the information set forth in the contract; (ii) is capable of providing detailed transaction logs accessible to the registrant and which allows each signing participant the ability to review signing progress/history for the document in question;

(iii) ensures the security of the signed document such that once signed by a signatory, the content of that document cannot be altered; and

(iv) ensures that once signed by a signatory, that signature cannot be moved or removed from where it was affixed by the signatory.