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## **New Legislation Effective May 20, 2020**

The provincial legislature and the Lieutenant Governor in Council have approved several changes to *The Real Estate Act* and *The Real Estate Regulations*. These changes are intended to improve the function of the Commission, provide guidance where needed, and to recognize the changes in technology used by members of the organized real estate industry to improve the quality and accessibility of the service provided to members of the public.

In order to facilitate the implementation of the new legislation, the Commission staff has prepared a summary of the changes that will be coming into force on May 20, 2020:

### **Changes to the Act**

A brokerage is permitted to operate additional, registered “branch offices” so long as certain requirements are met. Until now, the term “branch office” has not been formally defined in the legislation. To promote clarity and fairness among registrants, a definition of “branch office” has been developed and will be included in the *Act*.

A “branch office” is a premise, 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* will also be amended to expand the definition of “real estate” to include “any other property prescribed in the regulations.” At this point, the definition of “real estate” is closed and an amendment to the *Act* would be needed to include any new categories in the definition. Allowing for a more expedient expansion of the definition will allow the Lieutenant Governor in Council and the Commission to adapt to a changing market more efficiently and ensure the legislation can deal with property other than conventional real estate, such as mobile homes or ready-to-move homes.

A new section will be added to the *Act* setting out the duty and objects of the Commission.

The duties of the Commission are (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.

The purpose of this new section is to clarify the role of the Commission in the regulation of the real estate industry and to provide context for the development of Commission policies, bylaws and initiatives. This section reinforces the Commission’s duty to serve and protect the public and to carry out its responsibilities in the public interest.

At present, the elected and publicly appointed members of the Commission are entitled to appoint one registrant who is trading in industrial, commercial or investment real estate or property management to the Commission. An amendment of s. 6 of the *Act* will allow the Commission to

appoint one or two such members to increase the representation of these specialties on the Commission if the other Commission members believe it to be necessary.

Section 12 of the *Act* will be amended to allow the Commission to make its Annual Report available to stakeholders electronically.

The bylaws will be divided into two categories: (1) bylaws respecting the administration of the Commission and (2) regulatory bylaws regarding the education, registration and practice of registrants. While changes to the regulatory bylaws will still have to be approved by the Superintendent of Real Estate, the Commission will be able to make and amend administrative bylaws on its own initiative. This will give the Commission greater autonomy by allowing the Commission to amend its own processes more efficiently.

New subsections will be added to s. 26 authorizing the Commission to refuse an application for registration where the applicant is not of good character or is otherwise unfit to be a registrant or, where the applicant is a brokerage, any director, officer, shareholder or partner, as the case may be, of the brokerage is not of good character.

There will be 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. The increase in the maximum fines ensures that sanctions ordered against registrants can continue to act as deterrents against registrant misconduct. If the maximum fine is too low, there is concern that fines will not sufficiently discourage registrants from acting improperly.
- A copy of an order of a Hearing Committee will be sent to a registrant, the complainant, and the registrant's brokerage.
- 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. This change will improve the Commission's ability to collect fines ordered by a Hearing Committee.
- 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.

Previously, only the registrant who is the subject of a disciplinary decision has had the right to appeal the decision to the superintendent, the court and the court of appeal.

Section 43 will be amended to allow the registrar to appeal a decision of the Hearing Committee if the registrar considers it to be in the public interest to do so. Similarly, s. 44 will be amended to allow the registrar to appeal a decision or order of the superintendent to the court if the registrar considers this course of action to be in the public interest.

Pursuant to s. 47 of the *Act*, the Commission will no longer be required to levy an assessment to contribute to the Real Estate Assurance Fund in a year in which the amount of the fund exceeds the minimum amount, which will be raised to \$350,000 by an amendment of s. 48 of the *Act*.

Section 49 will be amended to extend the deadline for a claimant to submit notice of a claim on the fund to the Commission to 90 days after the brokerage receives notice of an undisputed claim or the claimant has obtained judgment with respect to the claim.

Sections 57 and 58 of the *Act* will be amended to allow the Lieutenant Governor in Council to make regulations allowing for electronic signatures that are not accompanied by a witness' signature. Section 57 will also be updated to expand the allowable calculations of commission set out in s. 66 of the *Act*.

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 83 will be updated to expand the Lieutenant Governor in Council's authority to make regulations.

Section 83.1 will be added and will require the Commission to pay fees prescribed in the regulations to the superintendent in connection with the administration of the *Act* and regulations.

Section 89.1 will be added to introduce the concept of special penalties. Some breaches of the legislation are very straightforward. For example, s. 58(1)(b)(i) of the *Act* requires that an offer to purchase obtained by a registrant clearly show, prior to execution by the buyer, the date on which the offer is made. Prior to the addition of special penalties, such a breach would require the Commission to conduct an investigation, initiate disciplinary action and empanel a Hearing Committee to hear the matter and determine that a breach had taken place.

Special penalties allow the Commission to streamline the discipline process by allowing the Commission to order a fine without having to set the matter down for a hearing.

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, the contravention of which may give rise to special penalties. The *Regulations* will also prescribe the penalty for a breach of one of the enumerated sections.

A person who receives such an order demanding payment must immediately pay the Commission. If the special penalty is not paid within 15 days, the Commission may file a copy of the penalty notice with the court and enforce it as a judgment.

### **Changes to the Regulations**

An exemption to the witness requirement will be added to the *Regulations*. Pursuant to the new provision, 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. The bylaws will set out the elements of the electronic signature software that will be recognized as sufficient to confirm the identity of the individual signing the document and when and where the document was signed.

A new provision will be added to provide Hearing Committees with additional guidance regarding the making of orders requiring a registrant to pay restitution to a person. Pursuant to the new section of the *Regulations*, the Hearing Committee may order restitution where, in the opinion of the

Commission, the value of the loss suffered by a person as a result of the registrant's professional incompetence or professional misconduct can be calculated without expert evidence. The Hearing Committee is empowered to issue an order requiring a registrant to pay up to \$30,000 in restitution. If an order for restitution is intended to replace a buyer's deposit that was lost as a result of a registrant's actions, the amount ordered as restitution cannot exceed the amount of the buyer's deposit.

The *Regulations* will specify the list of breaches that can be addressed by way of a special penalty rather than a full disciplinary hearing. As noted above, special penalties will only be available with respect to infractions that are straightforward and do not require much in the way of context, such as a failure to include a required element of an offer to purchase pursuant to s. 58 of the *Act* or failing to respond to a request for information from a review officer of the Commission within the time allotted as required by s. 8(4) of the *Regulations*. A list of provisions that are eligible for special penalties is set out below.

Section 29 of the *Regulations* will be expanded to provide a limited exclusion from the requirements of the legislation for registrants trading in their own real estate. This exclusion will allow registrants to list properties they own or in which they have a material interest with another brokerage or to engage another brokerage to assist them in the purchase of real estate. The trade must go through a brokerage and the registrant cannot accept commission for the trade in real estate. The brokerage representing the registrant cannot act on behalf of another party to the trade. The registrant must still complete the required disclosures pursuant to s. 65 of the *Act*.

### **Changes to the Bylaws**

Bylaw 625 will be revised to allow for expanded use of electronic signatures in real estate transactions. The new Bylaw 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”.

There will be no formal document buyers and sellers must sign to give their consent to execute documents electronically. The registrant representing a party to a transaction will simply have to obtain some written indication from his or her client that the client consents to the use of electronic signatures in the course of the transaction. This consent could, for example, take the form of an email or text message sent by the client or a memorandum signed by the client.

### **Summary of Special Penalties**

<b>Provision</b>	<b>Description</b>	<b>First Contravention</b>	<b>Subsequent Contravention within 10 yrs</b>
33(1) of the <i>Act</i>	Instances in which registrants must provide notice to the Commission e.g. opening or closing a trust account, a change in the directors of a corporation, etc.	\$1,500	\$3,000
33(2) of the <i>Act</i>	A registrant must provide written notice to the Commission within five days of a change in the registrant’s address for service.	\$1,500	\$3,000
33(3) of the <i>Act</i>	A brokerage must notify the Commission at least 10 days prior to the discontinuance of the brokerage’s operations or a merger with another brokerage.	\$1,500	\$3,000
54(2) of the <i>Act</i>	A brokerage must provide written notice to the Commission within five days of a broker, branch manager, associate broker or salesperson ceasing to represent the brokerage.	\$1,500	\$3,000
57 of the <i>Act</i>	The required elements of an agency agreement.	\$1,500	\$3,000
58 of the <i>Act</i>	The required elements of an offer to purchase.	\$1,500	\$3,000
71(1)(a) of the <i>Act</i>	The requirement that a brokerage maintain at least one trust account.	\$1,500	\$3,000
8(4) of the <i>Regulations</i>	Registrants must respond to the request of a review officer of the Commission by the date set out in the request.	\$1,500	\$3,000
18.1(2) of the <i>Regulations</i>	Registrants must maintain errors and omissions insurance.	\$1,500	\$3,000

For further information please contact the Commission.