

# Rule of BC Financial Services Authority

## *Real Estate Services Act*

### *Annotated Version*

BC Financial Services Authority (“BCFSA”) is requesting feedback on proposed amendments to the Real Estate Services Rules (“Rules”).

Key proposed changes to the Rules include:

#### *Teams*

- Defining “real estate team”;
- Requiring all real estate teams to register with BCFSA and for real estate team advertising to identify the team’s name;
- Clarifying that:
  - Teams must be composed of at least two licensed members;
  - 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; and
  - All team members must be related to the same brokerage.

#### *Trust Accounting*

- Repealing the annual requirement for brokerages to provide their financial institution with certain pooled trust account information if the brokerage designates its trust accounts as professional trustee accounts.

If the Minister of Finance consents to the amendments, BCFSA intends to enforce the Rules in Appendix 1 starting January 1, 2023.

As per the *Real Estate Services Act*, BCFSA has rule-making authority and is responsible for the implementation and enforcement of the Rules.

Corresponding draft real estate teams regulatory information as well as frequently asked questions are available [here](#). Draft trust account regulatory information as well as frequently asked questions are available [here](#).

## APPENDIX 1

**1 Section 1 of the Real Estate Services Rules, B.C. Reg. 209/2021, is amended by adding the following definition:**

“**real estate team**” means a group of two or more licensees that is registered as a real estate team under Division 4 of Part 4;

### BCFSA’s Comments

The proposed amendment to section 1 adds a definition of “real estate team” to the Rules. Defining this term will help to formalize the new regulatory requirements for teams as well as clarify existing requirements. A real estate team means a group of two or more licensees that is registered as a real estate team with BCFSA. Rules outlining registration requirements for real estate teams are found in Division 4 of Part 4 below.

**2 Section 26 (2) is amended**

**(a) in paragraph (c) by adding the following subparagraphs:**

- (xii) section 42.4 (1) [*real estate team – member of only one team*];
- (xiii) section 42.4 (2) [*real estate team – members’ trading services provided through team only*];
- (xiv) section 42.4 (3) [*real estate team – team’s trading services provided by members only*];
- (xv) section 42.4 (4) [*real estate team – members related to same brokerage*];
- (xvi) section 42.4 (5) [*real estate team – designated agency*]; , **and**

**(b) in paragraph (d) by adding the following subparagraphs:**

- (xii.1) section 42.2 (1) [*real estate team – registration requirement*];
- (xii.2) section 42.3 (2) [*real estate team – notification of change*];
- (xii.3) section 42.4 (6) [*real estate team – clear indication of name*].

### BCFSA’s Comments

The proposed amendments to section 26 (2) would expand the list of Rules where a contravention may be eligible for an administrative penalty, to include the new Rules proposed for real estate teams.

Contraventions of the Rules regarding the requirement to register a team, to notify BCFSA of changes to a team, or to clearly indicate the team name would be eligible for administrative

penalties in Category D. This category includes minor matters that present a low risk of harm to consumers and may be time sensitive. The remaining Rules would be eligible for administrative penalties under Category C, which covers the substantial duties licensees owe to clients and unrepresented parties. For more information on administrative penalties, please refer to BCFSAs [Administrative Processes for Administrative Penalties](#).

BCFSA is responsible for enforcing licensee conduct requirements in the Real Estate Services Rules. This includes using its discretion to determine whether the unique circumstances of a contravention of a rule designated in section 26 (2) are appropriate for disposition by administrative penalty.

**3 Section 40 (5) is repealed and the following substituted:**

- (5) Real estate advertising published by a real estate team must identify the team's name.
- (6) Subject to subsection (7), if a member of a real estate team publishes real estate advertising with respect to trading services, the advertising must identify the team's name.
- (7) Subsection (6) does not apply to real estate advertising with respect to rental property management services that are trading services in relation to the rental of real estate.

**BCFSA's Comments**

Section 40 lays out restrictions and requirements regarding real estate advertising. At present, section 40 (5) states, *"If the superintendent approves a team name for a group of related licensees, real estate advertising may also identify the group by that team name."*

BCFSA proposes that section 40 (5) be repealed and replaced with the amended text above. This change will require real estate advertising published by a team to clearly identify the team's name. It will also require a licensee who is a member of a team to include the team's name in any advertising they publish. These new requirements are intended to ensure that the public and other licensees clearly understand when they are dealing with a real estate team.

Section 40 (7) ensures that advertising requirements for real estate teams do not inadvertently capture advertising for rental property management services. Team members who are licensed for rental property management services as well as trading services may continue to advertise their rental property management services without including their team name.

**4**      *The following Division is added to Part 4:*

**Division 4 – Real Estate Teams**

**BCFSA’s Comments**

Together with the amendments to section 1, this new Division under Part 4 of the Rules sets out the substantive requirements for real estate teams.

**Definition**

**42.1** In this Division, “**trading services**” does not include rental property management services that are trading services in relation to the rental of real estate.

**BCFSA’s Comments**

Section 42.1 ensures that the proposed Rules pertaining to real estate teams do not apply to rental property management services.

**Requirement to register**

**42.2** (1) A group of two or more licensees must register with the superintendent as a real estate team if the licensees in the group do any of the following in the course of providing trading services:

- (a) subject to subsection (2), represent themselves to the public as a single entity;
- (b) are regularly engaged as designated agents of the same client;
- (c) regularly work together in a manner that is consistent with the licensees being implied agents of the same party.

(2) Subsection (1) (a) does not apply if the single entity is a brokerage.

**BCFSA’s Comments**

Section 42.2 establishes the details of what constitutes a real estate team and requires all teams to register with BCFSA. The key triggers for registration are when a group of two or more licensees:

- represent themselves to the public as a single entity (not limited to advertising);
- regularly act as designated agents of the same client; or
- regularly work together in a manner that creates implied agency with the same party.

The intent of this Rule is to ensure consumers have clear information about who they are dealing with in the course of buying, selling, or leasing real estate, by requiring all licensees who present themselves as a team, or regularly work together in a manner that is consistent with a team, to register with BCFSA. While some teams clearly present themselves to the public through joint advertising under a team name, not all licensees currently working

together represent themselves as teams. This makes it difficult for the public and other licensees to know when they are working with a team and how a team is supposed to operate. Requiring groups of licensees that are functionally operating as real estate teams to register with BCFSa will better enable BCFSa to ensure that teams operate in a consistent and proper manner, avoid and appropriately manage conflicts of interest, and act with a high degree of professionalism.

The requirement to register has been purposefully designed to be flexible enough to capture licensees who may not be holding themselves out publicly as a team but who nevertheless work together on a regular basis to provide trading services in a manner that—through the actions and conduct of the licensees—would lead a party to believe that the licensees are acting as their agent. In other words, any activity regularly undertaken by a group of two or more licensees from the same brokerage that would imply an agency relationship with the same party would require these licensees to register as a team. Examples of activities that may indicate that a group of licensees is working together as a team may include:

- Having a *licensed* assistant;
- Regularly invoking each other's expertise while representing clients;
- Sharing a phone number, other than a brokerage phone number, or other contact information (e.g., e-mail address) that is provided to clients;
- Regularly fielding calls or inquiries from one another's clients (e.g., on a rotating schedule);
- Jointly attending meetings – whether with clients, other licensees, or third parties – where confidential client information is discussed;
- Listing multiple licensees on written service agreements or disclosures of representation in trading services;
- Referring to themselves by a joint name, other than in advertising materials (e.g., on office documents or voicemail);
- Regularly hosting open houses for each other's listings;
- Having shared access to confidential client information;
- Having a standing commission sharing agreement between multiple licensees.

This list is not exhaustive. It is intended to provide examples of activities that may indicate that a group of licensees may be working as a team, even if they do not represent themselves to the public as a single entity. If a group of two or more licensees are undertaking any of the activities listed above, consideration should be given as to whether to register with BCFSa as a team or whether a specific activity should be ceased to avoid the requirement to register.

BCFSa intends to provide additional guidance on these triggers in an upcoming regulatory guideline. For additional information on this topic, see BCFSa's [Frequently Asked Questions](#).

## Registration

- 42.3 (1)** In order to register as a real estate team, as required under section 42.2, a group of two or more licensees must submit to the superintendent an application in a form approved by the superintendent that contains the information required by the superintendent.

- (2) In order to change the name or membership of a real estate team, a licensee must submit to the superintendent an application in a form approved by the superintendent that contains the information required by the superintendent.

### **BCFSA's Comments**

Section 42.3 stipulates how a team must register with BCFSA and outlines the requirements to change the team's name or membership, which includes the submission of an application to the superintendent. These changes are intended to provide BCFSA with an accurate number of the teams in operation, the number of licensees who are members of teams, the size of teams, and other relevant data. This data will strengthen BCFSA's ability to enforce these proposed Rules and to make future policy decisions pertaining to teams.

### **Restrictions and requirements**

- 42.4** (1) A licensee may be a member of only one real estate team at any time.
- (2) A member of a real estate team must provide trading services through the team only.
- (3) A licensee must not provide trading services through a real estate team unless the licensee is a member of the team.
- (4) All members of a real estate team must be related to the same brokerage.
- (5) The related brokerage of the members of a real estate team must, under section 32 [*designated agency*], designate all members of the real estate team to provide, as designated agents, trading services to or on behalf of any client of any member of the team.
- (6) A real estate team must ensure that the team's name is clearly indicated in the course of providing trading services.

### **BCFSA's Comments**

Section 42.4 introduces Rules clarifying the responsibilities of individual licensees and brokerages in relation to real estate teams. These Rules are intended to provide real estate teams and team members with a clear operational framework. They will increase consumer protection and contribute to a greater public understanding of real estate teams. In particular, these Rules will increase awareness that team members are collectively the designated agent of all clients of the team, and therefore owe the same agency and fiduciary duties to each of the team's clients.

5      *Section 71 is repealed.*

**BCFSA’s Comments**

The proposed repeal of section 71 would harmonize the Real Estate Services Rules with the Canada Deposit Insurance Corporation’s (“CDIC”) requirements for federally regulated deposit-taking financial institutions.

CDIC is changing its deposit insurance protection rules in April 2022. These changes may allow professional trustees, such as brokerages licensed under the *Real Estate Services Act*, to designate certain accounts as professional trustee accounts with their financial institution and benefit from streamlined information reporting requirements, where they are eligible to do so. CDIC’s amendments to its rules will mean that brokerages will only need to provide beneficiary information to CDIC by request, rather than annually as section 71 previously required.

Brokerages are still required to maintain detailed trust account records in accordance with [sections 80 and 81](#) of the Rules.

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