

Ministerial Order: M417

*Real Estate Services Act*

## **RULES**

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*Real Estate Services Act*

**RULES**

**PART 1 – GENERAL**

**1-1 Definitions**

In these rules:

**accountant** means

- (a) a person who is a member, or is a partnership whose partners are members, of
  - (i) a Provincial or Territorial Institute/Ordre of Chartered Accountants within Canada, or
  - (ii) The Certified General Accountants Association of British Columbia,
- (b) a person who is certified, under section 222 of the *Business Corporations Act*, by the Auditor Certification Board, or
- (c) as an alternative for a brokerage that is a reporting issuer within the meaning of the *Business Corporations Act*, a person who is authorized under the *Securities Act* to make an auditor's report;

**Act** means the *Real Estate Services Act*;

**annual financial reports** means the records required to be filed with the council under section 7-7 [*annual financial statements, accountant's report and brokerage activity report*] of these rules;

**application for a licence** has the same meaning as in section 8 of the Act;

**branch office** means the premises that are identified in a brokerage's licence as the branch office from which the brokerage may provide real estate services under the licence;

**client** means, in relation to a licensee, the principal who has engaged the licensee to provide real estate services to or on behalf of the principal;

**council** means the real estate council continued under the Act;

**executive officer** means the executive officer of the council appointed under section 81 [*executive officer*] of the Act;

**family partner** means a person who is living and cohabiting with a licensee in a marriage-like relationship, including a marriage-like relationship between persons of the same gender;

**head office** means the premises that are identified in a brokerage licence as the office from which the brokerage may provide real estate services under the licence, unless these premises are identified as a branch office;

**licensee name** means, in relation to a licensee, the licensee name within the meaning of section 4-4 [*licensee names*] of these rules;

**mailing address for delivery** means a mailing address for delivery provided by a licensee to the council as referred to in section 2-17 [*mailing address for delivery*] of these rules;

**pooled trust account** means a trust account in which money is held on behalf of more than one person;

**public trust money** means all money held or received by a brokerage and to which section 27 (1), (2) or (3) [*payment into trust account*] of the Act applies, except remuneration that has already been earned, as determined in accordance with these rules, by the brokerage at the time it is held or received by the brokerage;

**publish**, in relation to real estate advertising, includes

- (a) causing or permitting real estate advertising to be published, and
- (b) displaying real estate advertising, or causing or permitting real estate advertising to be displayed;

**real estate advertising** means any form of identification, promotion, solicitation or representation relating to

- (a) real estate,
- (b) a trade in real estate, or
- (c) the provision of real estate services, including a sign or other notice relating to real estate, a trade in real estate or the provision of real estate services;

**related brokerage office** means, in relation to a licensee, the brokerage head office or branch office that is identified in the licensee's licence;

**service agreement** means an agreement between a brokerage and a client under which a licensee provides real estate services to or on behalf of the client;

**strata lot owner** means a person who is the owner, as defined in the *Strata Property Act*, of a strata lot;

**trust account** means, in relation to a brokerage,

- (a) a brokerage trust account maintained under section 26 [*obligation to maintain trust account*] of the Act, or
- (b) a commission trust account maintained under section 31 [*payment of licensee remuneration*] of the Act;

**trust account record** means the record referred to in section 8-2 (a) [*trust account and general account records*] of these rules as it applies to a trust account;

**trust ledger** means a trust ledger required under section 8-3 (a) [*pooled trust account records*] of these rules.

[10/18/2005 amended by adding definitions of "pool trust account" and "strata lot owner" effective 01/01/2006]

[06/20/2007 amended by adding definition of "trust account record"; and definition of "trust ledger" repealed and the above definition of "trust ledger" substituted effective 07/01/2007]

[12/06/2008 amended by adding definition of "public trust money" effective 01/01/2009]

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## PART 2 — LICENSING

### Division 1 – Licence Categories

#### 2-1 Licence categories

For each of the levels set out in section 5 (1) [*licence levels*] of the Act, the following categories of licences are established to permit the provision of the services referred to:

- (a) trading services;
- (b) rental property management services;
- (c) strata management services;
- (d) trading services and rental property management services;
- (e) trading services and strata management services;
- (f) rental property management services and strata management services;
- (g) trading services, rental property management services and strata management services.

[04/26/2005 section 2-1 repealed and the above section 2-1 substituted effective 01/01/2006]

### Division 2 – Brokerage Relationships and Offices

#### 2-2 Brokerage must have a managing broker – exception

- (1) Section 6 (1) (a) and (b) [*brokerage must have managing broker*] of the Act does not apply to a brokerage if
  - (a) the brokerage ceases to have a managing broker licensed in relation to the brokerage because the licence of the managing broker
    - (i) has not been renewed,
    - (ii) is suspended or cancelled, or
    - (iii) has become inoperative for any reason, and
  - (b) the council permits the brokerage to continue to provide the real estate services that were permitted by the licence of the managing broker.
- (2) The exception under this section applies for the period specified by the council in giving the permission referred to in subsection (1) (b).
- (3) If the council has given permission under subsection (1) (b), section 23 (3) [*related licences become inoperative*] of the Act does not apply to the licences of the brokerage and its related licensees until the end of the period referred to in subsection (2) of this section.

#### 2-3 Managing broker may be licensed in relation to a maximum of 4 affiliated brokerages

- (1) For the purposes of section 7 (2) [*relationships between brokerages and other licensees*] of the Act, a managing broker may, subject to subsection (2) of this section,

- (a) be licensed in relation to a maximum of 4 brokerages that are affiliated within the meaning of the *Business Corporations Act*, and
- (b) provide real estate services in relation to the licence of each of those brokerages.

[06/16/2009 subsection (1) repealed and the above subsection (1) substituted effective 07/01/2009]

- (2) The total of all brokerage licences in relation to which a managing broker is licensed under this section and section 2-4 [*related licensees of brokerages with branch offices*] must not exceed 4.
- (3) For certainty, section 7 (4) [*managing broker subject to brokerage's licence*] of the Act applies to the managing broker in relation to the specific brokerage licence in relation to which they are acting at any particular time.

[12/05/2009 section 2-3 repealed and the above section 2-3 substituted effective 01/01/2010]

#### **2-4 Related licensees of brokerages with branch offices**

- (1) If a brokerage holds one or more branch licences in addition to its head office licence, a managing broker, associate broker or representative who is a related licensee of the brokerage must be licensed in relation to a single licence of the brokerage.
- (2) As an exception to subsection (1), a managing broker may, subject to subsection (3),
  - (a) be licensed in relation to a maximum of 4 licences of a brokerage, and
  - (b) provide real estate services in relation to each of those brokerage licences.

[06/16/2009 subsection (2) repealed and the above subsection (2) substituted effective 07/01/2009]

- (3) The total of all brokerage licences in relation to which a managing broker is licensed under this section and section 2-3 [*managing broker may be licensed in relation to a maximum of 4 affiliated brokerages*] must not exceed 4.
- (4) For certainty, section 7 (4) [*managing broker subject to brokerage's licence*] of the Act applies separately to the managing broker in relation to the specific brokerage licence in relation to which they are acting at any particular time.

[12/05/2009 section 2-4 repealed and the above section 2-4 substituted effective 01/01/2010]

#### **2-5 Residential brokerage offices**

- (1) A brokerage may only have a residential office as its head office or as a branch office if
  - (a) the office is located in the residence of a related managing broker,
  - (b) the office is a separate office within the residence, and
  - (c) the local government bylaws applicable to the residence permit the brokerage business to be conducted from the residence.
- (2) In addition to the requirements of subsection (1), a brokerage may only have a residential office as its head office if the managing broker referred to in subsection (1) (a) is, as applicable,
  - (a) in the case of a brokerage that is a sole proprietor, the sole proprietor,
  - (b) in the case of a brokerage that is a partnership, a partner, or
  - (c) in the case of a brokerage that is a corporation, either

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- (i) a controlling shareholder of the corporation, or
  - (ii) one of only 2 shareholders of the corporation, the other of whom is the spouse or family partner of the managing broker.
- (3) Subject to any further restrictions or conditions contained in any local government bylaws that regulate residential business activities, only 2 licensees may be licensed in relation to a residential head office or residential branch office.

### Division 3 – Qualification Requirements

#### 2-6 Qualification hearings

If the council considers that there may be an issue as to whether an applicant is qualified to be licensed

- (a) in accordance with section 10 [*qualifications for obtaining licence*] of the Act, or
  - (b) at the level and in the category for which the applicant is applying,
- the council may direct that the matter is to be dealt with by way of a hearing conducted by a hearing committee.

#### 2-7 Educational requirements

- (1) *Courses* – The courses referred to in this Division are the courses established by or on behalf of the council for the purposes of licensee qualification.
- (2) *Failed examinations* – An applicant must not have failed an examination required under these rules within the last 90 days before again attempting the examination.
- (3) *Waiver* – The council may waive, on the basis of an applicant’s previous knowledge or training, some or all of the requirements of this Division in relation to
  - (a) a course,
  - (b) a corresponding examination, or
  - (c) a course and its corresponding examination.

#### 2-8 Educational requirements for new licensees

- (1) *Licensing courses* – In order to be issued a licence, an applicant for a new licence who is an individual must
  - (a) have taken the applicable licensing courses respecting the real estate services in relation to which the application is made, and
  - (b) have passed the examinations corresponding to those courses, no longer than 1 year before the date of the application.

[04/26/2005 amended section 1 by striking out “Pre-licensing” and substituting “Licensing” and section 1(a) by striking out “pre-licensing” and substituting “licensing” effective 07/01/2005]
- (2) *Applied practice courses* – Subject to subsection (3), in order to be issued a licence, an applicant for a new licence who is an individual must have taken the applicable applied practice courses, if any, respecting the real estate services



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in relation to which the application is made, no longer than 2 years before the date of the application.

- (3) *Temporary licence exception* – An applicant who has not completed the applied practice courses referred to in subsection (2) may be issued a temporary licence under section 14 [*temporary licences*] of the Act that is conditional on taking those courses, or having them waived by the council, within the period specified in the licence.
- (4) *Managing broker and associate brokers* – In addition to the other requirements under this section, an applicant for a new licence as a managing broker or associate broker, who is an individual, must
  - (a) have taken the applicable managing broker courses, if any, respecting the real estate services in relation to which the application is made, and
  - (b) have passed the examinations, if any, corresponding to those courses, no longer than 5 years before the date of the application.

[09/09/2008 subsection (4) repealed and the above subsection (4) substituted effective 11/01/2008]

### **2-8.1 Educational requirements for licence renewal**

- (1) This section applies to a licence renewal that takes effect on or after January 1, 2009.
- (2) In order to have a licence renewed, an applicant for licence renewal who is an individual must
  - (a) have completed the applicable continuing education courses respecting the real estate services and the level of licence in relation to which the application is made, and
  - (b) have passed the examinations corresponding to those coursesprior to the date the licence is renewed.

[11/25/2006 section 2-8.1 added effective 01/01/2007]

[09/09/2008 subsection (2) repealed and the above subsection (2) substituted effective 11/01/2008]

### **2-9 Education re-qualification on reinstatement**

- (1) This section applies to a representative licence that has
  - (a) become inoperative under section 22 (1) [*person ceases to be engaged by brokerage*] of the Act,
  - (b) been suspended under section 116 (4) [*person fails to provide required security*] of the Act, or
  - (c) been voluntarily surrendered to the council.
- (2) In order to have the licence reinstated, an applicant who has less than 5 years of continuous licensing at some time before the licence became inoperative, was suspended or was surrendered must meet the requirements of
  - (a) section 2-8 (1) (b) [*pre-licensing examinations*] of these rules, and
  - (b) section 2-8 (2) [*applied practice course*] of these rules.
- (3) For the purpose of this section, if an applicant ceased to be licensed for
  - (a) a period of 30 days or less,

- (b) a period approved by the council during which the applicant was on parental leave, or
  - (c) a period during which the applicant was registered under the *Mortgage Brokers Act*,
- the applicant is deemed to have continued to be licensed during that period.

## 2-10 Experience qualifications for managing brokers and associate brokers

- (1) *Previous experience in B.C.* – In order for an individual to be licensed for the first time as a managing broker or associate broker, the applicant must have been providing real estate services as a licensee for at least 2 years during the 5 years before the date of the application.  
[09/09/2008 subsection (1) repealed and the above subsection (1) substituted effective 11/01/2008]
- (2) *Exceptions* – The council may waive the requirements of subsection (1) if satisfied that
  - (a) the applicant has had experience and training equivalent to that which he or she would have obtained if he or she had provided real estate services as a licensee as required by that subsection, or
  - (b) in the case of an applicant for a managing broker licence, there is an immediate need of a managing broker in the location where the applicant proposes to carry on business.
- (3) *Experience in an equivalent capacity in another jurisdiction* – Without limiting subsection (2) (a), for the purposes of that subsection an applicant is considered to have the experience and training equivalent to that referred to in subsection (1) if the applicant
  - (a) previously provided real estate services in a capacity equivalent to one or more of a brokerage, managing broker and associate broker,
  - (b) provided the services referred to in paragraph (a) in
    - (i) another jurisdiction of Canada,
    - (ii) the United States of America, or
    - (iii) another jurisdiction acceptable to council,for a continuous period of at least 2 years during the 5 years before the date of the application, and
  - (c) was licensed, or otherwise authorized, under the laws of the other jurisdiction to provide the services referred to in paragraph (a).
- (4) *Experience in another jurisdiction combined with B.C. experience* – Without limiting subsection (2) (a), for the purposes of that subsection an applicant is considered to have the experience and training equivalent to that referred to in subsection (1) if the applicant
  - (a) previously provided real estate services in a capacity equivalent to a representative,
  - (b) provided the services referred to in paragraph (a) in a jurisdiction referred to in subsection (3) (b) for a continuous period of at least 2 years during the 5 years before the date of the application,
  - (c) was licensed, or otherwise authorized, under the laws of the other jurisdiction to provide the services referred to in paragraph (a), and

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- (d) provided real estate services as a licensee in British Columbia for a period of not less than 1 year during the 5 years before the date of the application.

#### **2-11 Financial qualification for brokerages**

In order to be licensed, an applicant for a new licence as a brokerage must satisfy the council that the applicant is in sound financial circumstances.

### **Division 4 – Licences**

#### **2-12 Licence certificates**

- (1) A licence issued by the council must be in the form of a licence certificate.
- (2) A licence certificate must indicate the following:
  - (a) the level of licence as referred to in section 5 (1) [*licence levels*] of the Act;
  - (b) the category of licence as referred to in section 2-1 [*licence categories*] of these rules;
  - (c) the effective date of the licence;
  - (d) in the case of a brokerage licence,
    - (i) the legal name of the brokerage,
    - (ii) the licensee name of the brokerage, if it is different from the legal name, and
    - (iii) the head office or branch office from which the licensee is authorized to provide real estate services under the licence;
  - (e) in the case of a managing broker, associate broker or representative licence,
    - (i) the legal name of the licensee,
    - (ii) the licensee name of the related brokerage, and
    - (iii) the related brokerage office in relation to which the individual is licensed.

#### **2-13 Term of licence**

- (1) The term of a licence is
  - (a) 2 years from the effective date of the licence, ending at the end of the day before the second anniversary of that date, or
  - (b) in the case of a temporary licence, as specified in the licence.
- (2) For the purposes of section 12 (b) [*continuation of licence during renewal application process*] of the Act, a licensee must apply for licence renewal no later than 30 days before the end of their current licence term.

#### **2-14 Partnership brokerage licence is specific to partnership**

- (1) A brokerage licence issued to a partnership is specific to the partnership as it exists at the time of application for the licence.

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- (2) If a partnership continues but with different partners, the brokerage licence is cancelled effective 14 days after the change or at the end of a longer period permitted by the council.

#### **2-15 Temporary licences for executors, administrators and committees of estates**

- (1) The council may issue a temporary licence to
  - (a) the executor or administrator of the estate of a deceased individual who was licensed as a brokerage or managing broker, or
  - (b) the committee of the estate of an incapacitated individual who was licensed as a brokerage or managing broker,permitting the executor, administrator or committee to carry on the real estate business formerly carried on by the individual for the purpose of the winding up of the business or for the purpose of the transfer or sale of the business as a going concern.
- (2) The maximum term for a licence under this section is 12 months.
- (3) A licence under this section may be made subject to any conditions and restrictions that the council considers appropriate in the circumstances.

#### **2-16 Voluntary surrender**

A licensee may voluntarily surrender their licence to the council, in which case it becomes inoperative unless and until reinstated by the council before the end of its term.

### **Division 5 – Communications with Council**

#### **2-17 Mailing address for delivery**

- (1) A licensee must provide to the council a mailing address for delivery to the licensee.
- (2) If the mailing address for delivery to a licensee changes, the licensee must promptly deliver a notice to the council updating the licensee's mailing address for delivery.

#### **2-18 Effective delivery to licensees**

All notices required by the Act to be given to a licensee are effectively delivered to the licensee if mailed to the licensee at the licensee's latest mailing address for delivery.

#### **2-19 Licensee must reply promptly to council**

- (1) A licensee must respond promptly to any inquiry addressed to the licensee by the council.
- (2) The licensee's response
  - (a) must be in writing, unless the executive officer allows it to be provided otherwise, and

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- (b) if applicable, must be provided to the executive officer no later than the date set by the executive officer.

**2-20 Brokerage must give immediate notice respecting solvency**

A brokerage must immediately notify the council if it is not able to pay its debts as they become due.

**2-21 Licensee must give notice of discipline, bankruptcy or criminal proceedings**

- (1) For the purposes of this section:
  - discipline sanction** includes a warning, reprimand, fine, educational requirement, imposed restriction or condition, suspension or cancellation, or any other sanction arising from a disciplinary matter.
- (2) A licensee must promptly notify the council, in writing, if any of the following circumstances apply:
  - (a) the licensee is subject to any disciplinary or regulatory proceedings in which the licensee may be or has been made subject to a discipline sanction under legislation in British Columbia or another jurisdiction regulating
    - (i) real estate, insurance or securities activities, or
    - (ii) mortgage brokers, accountants, notaries or lawyers;
  - (b) the licensee has any court order or judgment made against the licensee in relation to
    - (i) real estate services,
    - (ii) a dealing in insurance, mortgages or securities, or
    - (iii) misappropriation, fraud or breach of trust;
  - (c) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, has any court order or judgment made against the business in relation to
    - (i) real estate services,
    - (ii) a dealing in insurance, mortgages or securities, or
    - (iii) misappropriation, fraud or breach of trust;
  - (d) the licensee is charged with or convicted of an offence under a federal or provincial enactment or under a law of any foreign jurisdiction, excluding
    - (i) highway traffic offences resulting only in monetary fines or demerit points, or both, and
    - (ii) charges initiated by a violation ticket as defined in the *Offence Act* or by a ticket as defined in the *Contraventions Act* (Canada);
  - (e) the licensee is the subject of any bankruptcy, insolvency or receivership proceedings;
  - (f) any business that the licensee owns, or of which the licensee has been a director, officer or partner at any time during the past 2 years, is the subject of any bankruptcy, insolvency or receivership proceedings.
- (3) In addition to providing a written notice, the licensee must provide
  - (a) particulars, and

- (b) any additional information or documentation, as requested by the council.
- (4) In the case of notice required to be provided by an associate broker or representative, the licensee must give a copy of the notice under subsection (2) to the managing broker of the related brokerage.

## 2-22 Brokerage must give notice of business changes

- (1) A brokerage must promptly notify the council in writing of the following:
  - (a) a change in the telephone number, fax number or email address of a brokerage's head office or branch office;
  - (b) if any related managing broker, associate broker or representative ceases to be engaged by the brokerage, and the reasons for this;
  - (c) in the case of a brokerage that is a partnership,
    - (i) any change in the partners and whether, as a result of licence cancellation under section 2-14 [*partnership brokerage licence is specific to partnership*] of these rules, an application for a new brokerage licence is intended to be made, or
    - (ii) any change in the nature of the partnership, such as registration as a limited liability partnership;
  - (d) in the case of a brokerage that is a corporation,
    - (i) any change in the directors or officers of the corporation, or
    - (ii) any fundamental change to the corporation, such as an amalgamation or continuation;
  - (e) a change in the end date of the brokerage's fiscal year;
  - (f) a change in the savings institutions, or branch location of a savings institution, at which the brokerage maintains accounts.
- (2) If notice is required under subsection (1) (d) because a new director or officer is appointed or elected, within 30 days after the appointment or election, the brokerage must submit to the council the information and statements required under section 4-5 (2) (c) [*materials that must accompany applications – directors and officers*] of the bylaws for each new director or officer.

### 2-22.1 Personal real estate corporation must give notice of business changes

A personal real estate corporation must promptly notify the council in writing if it does not continue to maintain the attributes described in section 10.3 [*corporate qualifications*] of the regulation.

[09/09/2008 section 2-22.1 added effective 11/01/2008]

## Division 6 – Discipline and Other Enforcement

### 2-23 Administrative penalties

The administrative penalties for contravention of a rule specified by regulation under section 56 (1) [*rules subject to administrative penalties*] of the Act are as follows:

- (a) \$250 for a first contravention;

- (b) \$500 for a second contravention;
- (c) \$1000 for a third or subsequent contravention.

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## PART 3 – GENERAL RESPONSIBILITIES OF LICENSEES

### 3-1 Managing broker responsibilities

- (1) *Supervision* – A managing broker must
  - (a) be actively engaged in the management of their related brokerage,
  - (b) ensure that the business of the brokerage is carried out competently and in accordance with the Act, regulations, rules and bylaws, and
  - (c) ensure that there is an adequate level of supervision for related associate brokers and representatives and for employees and others who perform duties on behalf of the brokerage.
- (2) *Knowledge of improper conduct* – If the managing broker has knowledge of conduct that the managing broker considers
  - (a) may constitute professional misconduct, or conduct unbecoming a licensee, on the part of a related licensee, or
  - (b) may be improper or negligent conduct, in relation to the provision of real estate services, on the part of
    - (i) a related licensee, or
    - (ii) an employee of the brokerage or any other person associated with the brokerage,the managing broker must take reasonable steps to deal with the matter.
- (3) *Accounts and records* – A managing broker must
  - (a) ensure the trust accounts and records of the brokerage are maintained in accordance with the Act, regulations, rules and bylaws, and
  - (b) ensure proper management and control of documents and other records related to licensing and regulatory requirements.
- (4) *Notice to parties respecting deposits* – A managing broker must ensure that all parties to an agreement giving effect to a trade in real estate are immediately notified if
  - (a) a deposit contemplated by the agreement that, if received, would be held by the related brokerage as a stakeholder under section 28 of the Act has not been received, or
  - (b) a deposit cheque or other negotiable instrument that the brokerage received in respect of a deposit referred to in paragraph (a) has not been honoured.
- (5) Notice under subsection (4) must be given in writing or confirmed in writing.

[10/18/2005 amended by adding subsections (4) and (5) effective 01/01/2006]

### 3-2 Associate broker and representative responsibilities

- (1) *Records* -- An associate broker or representative must promptly provide to the managing broker the original or a copy of all records referred to in
  - (a) section 8-4 [*general records*],
  - (b) section 8-5 [*trading records*],



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- (c) section 8-6 [*rental property management records*], or  
(d) section 8-7.1 [*strata management records*]  
of these rules that are in the possession of the associate broker or representative and that were prepared by or on behalf of the associate broker or representative, or received from or on behalf of a principal.
- (2) *Keeping managing broker informed* – An associate broker or representative must
- (a) keep the managing broker informed of the real estate services being provided, and other activities being performed, by the associate broker or representative on behalf of the brokerage, and
- (b) immediately notify the managing broker if a deposit referred to in section 3-1 (4) (a) [*anticipated stakeholder deposit*] of these rules has not been received.
- (3) *Response to managing broker* – An associate broker or representative must promptly respond to any inquiry that is addressed to the licensee by the managing broker.
- (4) *Supervision of employees* – An associate broker or representative must ensure that there is an adequate level of supervision for their employees and others who perform duties on their behalf.
- (5) *Knowledge of improper conduct* – An associate broker or representative must promptly notify the managing broker on learning of conduct that the associate broker or representative considers may be conduct referred to in section 3-1 (2) [*managing broker responsibilities*] of these rules, whether that conduct is
- (a) the licensee's own conduct,
- (b) the conduct of an employee of the licensee or of another person who performs duties on the licensee's behalf, or
- (c) the conduct of any other person in relation to which the managing broker has responsibility under section 3-1 (2) of these rules.
- [10/18/2005 section 3-2 repealed and the above section 3-2 substituted effective 01/01/2006]

### 3-3 Duties to clients

- (1) Subject to subsection (2), if a client engages a brokerage to provide real estate services to or on behalf of the client, the brokerage and its related licensees must do all of the following:
- (a) act in the best interests of the client;
- (b) act in accordance with the lawful instructions of the client;
- (c) act only within the scope of the authority given by the client;
- (d) advise the client to seek independent professional advice on matters outside of the expertise of the licensee;
- (e) maintain the confidentiality of information respecting the client;
- (f) without limiting the requirements of Division 2 [*Disclosures*] of Part 5 [*Relationships with Principals and Parties*], disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate;
- (g) communicate all offers to the client in a timely, objective and unbiased manner;

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- (h) use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring;
  - (i) take reasonable steps to avoid any conflict of interest;
  - (j) without limiting the requirements of Division 2 [*Disclosures*] of Part 5 [*Relationships with Principals and Parties*], if a conflict of interest does exist, promptly and fully disclose the conflict to the client.
- (2) By agreement between the brokerage and the client, one or more of the duties under subsection (1) may be modified or made inapplicable.

[10/18/2005 section 3-3 added effective 01/01/2006]

### **3-4 Duty to act honestly and with reasonable care and skill**

When providing real estate services, a licensee must act honestly and with reasonable care and skill.

[10/18/2005 section 3-4 added effective 01/01/2006]

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## PART 4 – BUSINESS PRACTICES

### Division 1 – General

#### 4-1 Display and keeping of licences

A brokerage must

- (a) keep the brokerage licence for its head office prominently displayed in the head office,
- (b) if applicable, keep any branch office licence prominently displayed in the branch office, and
- (c) keep the licences of all related licensees available for public inspection at the related brokerage office.

#### 4-2 Business signs required

A brokerage must

- (a) display, on or near the door of its head office and any branch offices, a sign that clearly shows the brokerage's licensee name, and
- (b) have its licensee name listed in the building directory, if any, for the places where the offices are located.

#### 4-3 Restrictions relating to home and other personal offices

- (1) For the purposes of this section:

**personal office** in relation to a licensee means an office from which the licensee provides real estate services, other than a related brokerage office, and includes an office that is in the residence of the licensee or any other person.

- (2) The following rules apply if a licensee maintains a personal office from which the licensee provides real estate services:
  - (a) no sign may be placed outside the office or the building in which the office is located, or from where it is visible from outside the office or building, that indicates real estate services are provided from the office;
  - (b) the phone for the office must not be answered in the name of the related brokerage of the licensee;
  - (c) the licensee must not indicate the office address on any real estate advertising or on any other records relating to the provision of real estate services.

### Division 2 – Licensee Names

#### 4-4 Licensee names

- (1) *Brokerage* – The licensee name of a brokerage is, as applicable,

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- (a) the legal name of the brokerage, unless another name is indicated on the brokerage licence under paragraph (b), or
  - (b) the trade name of the brokerage if this has been approved by the council, has been registered with the Registrar of Companies and is indicated on the brokerage licence.
- (2) *Individual licensees* – The licensee name of a managing broker, associate broker or representative who is an individual is, as applicable,
- (a) the legal name or a recognizable short form of the legal name of the individual, unless another name is approved under paragraph (b), or
  - (b) the name that is approved by the council.
- [09/09/2008 subsection (2) repealed and the above subsection (2) substituted effective 11/01/2008]
- (3) *Personal real estate corporation* – The licensee name of a personal real estate corporation is the legal name of the corporation.
- [09/09/2008 subsection (3) added effective 11/01/2008]

#### **4-5 Licensee names must be indicated**

- (1) A licensee must ensure that their licensee name is clearly indicated in the course of providing real estate services.
- (2) In addition to the obligation under subsection (1), a managing broker, associate broker or representative must clearly indicate the licensee name of their related brokerage in the course of providing real estate services.

### **Division 3 – Advertising**

#### **4-6 Restrictions and requirements related to advertising generally**

- (1) A licensee must not publish real estate advertising unless it complies with this section.
  - (2) In all cases, the licensee name of the brokerage must be displayed in a prominent and easily readable way.
  - (3) If real estate advertising identifies a managing broker, associate broker or representative, this must be done
    - (a) if that person is an individual, by using the licensee name of the individual, or
    - (b) if that person is a personal real estate corporation or a controlling individual of a personal real estate corporation, by using the licensee name of the personal real estate corporation only.
- [09/09/2008 subsection (3) repealed and the above subsection (3) substituted effective 11/01/2008]
- (4) If real estate advertising includes an office address for the licensee, this must be the address of the related brokerage office.
  - (5) If the council approves a team name for a group of related licensees, real estate advertising may also identify the group by this team name.

**4-7 False or misleading advertising prohibited**

A licensee must not publish real estate advertising that the licensee knows contains a false statement or misrepresentation concerning real estate, a trade in real estate or the provision of real estate services.

**4-8 Advertising in relation to specific real estate**

A licensee must not publish real estate advertising indicating that specific real estate is being offered for sale or other disposition unless the owner of the real estate, or an authorized agent of the owner, has consented to the advertising.

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## PART 5 – RELATIONSHIPS WITH PRINCIPALS AND PARTIES

### Division 1 – Contractual Matters

#### 5-1 Written service agreements required in some cases

- (1) *Requirement for service agreement* – Unless waived by the prospective client, a brokerage must have a written service agreement in accordance with this section if
  - (a) the brokerage is to provide trading services to an owner of real estate in relation to the offering of that real estate for sale or other disposition,
  - (b) the brokerage is to provide rental property management services to an owner of rental real estate, or
  - (c) the brokerage is to provide strata management services to a strata corporation.

[04/26/2005 subsection (1) repealed and the above subsection (1) substituted effective 01/01/2006]
- (2) *When agreement must be entered into* – A service agreement required under subsection (1) must be entered into as follows:
  - (a) in relation to trading services referred to in subsection (1) (a), before the brokerage represents the client in offering the real estate for sale or other disposition;
  - (b) in relation to rental property management services referred to in subsection (1) (b), before providing any of those services;
  - (c) in relation to strata management services referred to in subsection (1) (c), before providing any of those services.

[04/26/2005 subsection (2) repealed and the above subsection (2) substituted effective 01/01/2006]
- (3) *Completion and content requirements* – A service agreement required under subsection (1) must
  - (a) be signed by the client and an authorized signatory of the brokerage, and
  - (b) clearly state all terms and conditions of the agreement, including the matters required by this section.
- (4) *Specific content requirements* – In all cases, a service agreement required under subsection (1) must include the following:
  - (a) the name of the client and the licensee name of the brokerage;
  - (b) the address of the real estate in relation to which services are provided under the agreement;
  - (c) the date on which the agreement is effective;
  - (d) in the case of a service agreement for trading services, the date on which the agreement expires and, in any other case, the duration of the agreement;
  - (e) a general description of services to be provided by the brokerage;

(f) the remuneration to be paid under the agreement and the circumstances in which it will be payable;

(g) provision respecting the use and disclosure of personal information.

[04/26/2005 subsection (4) repealed and the above subsection (4) substituted effective 07/01/2005]

[08/01/2006 amended subsection (4)(d) by adding "in the case of a service agreement for trading services, the date on which the agreement expires and, in any other case," effective 09/01/2006]

(5) *Rental property management agreements* – In the case of a service agreement required under subsection (1) respecting the provision of rental property management services, the service agreement must also include the following:

(a) the circumstances in which the agreement may be terminated by either or both of the client and the brokerage;

(b) the scope of the authority of the brokerage or a related licensee when acting on behalf of the owner, including any authority to

(i) sign cheques or make disbursements on behalf of the owner, and

(ii) enter into contracts on behalf of the owner;

(c) the timing, frequency and nature of accounting statements and other records to be provided by the brokerage to the owner;

(d) how security deposits, pet damage deposits and other deposits are to be dealt with;

(e) a description of the records to be kept by the brokerage on behalf of the owner.

[04/26/2005 subsection (5) repealed and the above subsection (5) substituted effective 07/01/2005]

[08/01/2006 amended subsection (5)(a) by adding "of" effective 09/01/2006]

(5.1) *Strata management agreements* – In the case of a service agreement required under subsection (1) respecting the provision of strata management services, the service agreement must also include the following:

(a) an indication of whether the brokerage will be holding one or more of

(i) contingency reserve fund money,

(ii) operating fund money,

(iii) special levy money, and

(iv) other amounts

on behalf of the strata corporation;

(a.1) the circumstances, in addition to those set out in sections 24 (1) and 39 of the Strata Property Act, in which the agreement may be terminated by either or both of the client and the brokerage;

(b) any authority under section 30 (1) (g) [*withdrawals from trust account*] of the Act for the brokerage to transfer amounts

(i) between brokerage trust accounts maintained under section 7-9 (2) of these rules for the strata corporation, or

(ii) from such a brokerage trust account under section 7-9 (2) (a) of these rules to a pooled trust account for one or more strata corporations;

(c) the scope of the authority of the brokerage or a related licensee when acting on behalf of the strata corporation, including any authority to

(i) sign cheques or make disbursements on behalf of the strata corporation,

- (ii) enter into contracts on behalf of the strata corporation, and
- (iii) invest money held by the brokerage on behalf of the strata corporation;
- (d) the timing, frequency and nature of accounting statements and other records to be provided by the brokerage to the strata corporation, in addition to those required to be provided under section 7-9 (7) of these rules;
- (e) a description of the records that are to be kept by the brokerage on behalf of the strata corporation, including an indication of which, if any, of the records required under section 35 of the *Strata Property Act* that the brokerage will retain on behalf of the strata corporation;
- (f) provision respecting the use and disclosure of information respecting the strata corporation, including the use and disclosure of personal information respecting owners who are the members of the strata corporation.

[04/26/2005 amended by adding subsection (5.1) effective 01/01/2006]

[08/01/2006 amended by adding subsection (5.1)(a.1) effective 09/01/2006]

- (6) *Changes to agreement* – Any amendment of or addition to the terms of a service agreement required under subsection (1) must be in writing and signed by the client and an authorized signatory of the brokerage.
- (7) *Authorized signatory* – For the purposes of this section, an authorized signatory of a brokerage must be
  - (a) a related licensee of the brokerage,
  - (b) in the case of a brokerage that is a sole proprietorship, the sole proprietor, or
  - (c) in the case of a brokerage that is a corporation or partnership, a director, officer or partner of the brokerage.

## 5-2 Delivery of written agreements to clients

If a brokerage provides real estate services under a written agreement, whether or not the agreement is required by section 5-1 [*written service agreements required in some cases*] of these rules, the brokerage must deliver a copy to the client immediately on execution of the agreement.

## 5-3 Signing agreements on behalf of clients

- (1) Before signing a contract on behalf of a client, the licensee must have obtained written authorization for this from the client or an authorized agent of the client.
- (2) For certainty, the authorization required by subsection (1) may be provided by a service agreement or separately.

### 5-3.1 Presentation of offers

Unless otherwise instructed by the licensee's client, a licensee who receives a signed offer to acquire or dispose of real estate must promptly communicate the offer to the relevant party to the trade in real estate.

[10/18/2005 section 5-3.1 added effective 01/01/2006]



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**5-4 Acceptance of offer**

A licensee who has obtained a signed acceptance of an offer to acquire or dispose of real estate must promptly deliver a copy of the signed acceptance to

- (a) each of the parties to the trade in real estate, and
- (b) the related brokerage of the licensee.

**5-5 Inducing breach of contract prohibited**

A licensee must not induce any party to an agreement for a trade in real estate to break the agreement for the purpose of entering into an agreement with another party.

**5-6 Representations as to sale, resale, purchase, etc.**

- (1) In this section:

**inducement representation** means a representation or promise made by a licensee to a party to a trade in real estate, as an inducement for the party to acquire or dispose of real estate, that the licensee or any other person will

- (a) acquire, or resell or otherwise dispose of, the real estate or any other real estate,
- (b) procure a lease or an extension of a lease,
- (c) procure financing or an extension of financing, or
- (d) purchase or sell rights under financing.

- (2) A licensee must not make an inducement representation unless, at the time of making the inducement representation, the licensee delivers to the person to whom the representation is made a statement signed by
- (a) the licensee, and
  - (b) if applicable, the other person involved in the inducement representation, clearly setting out all the details of the inducement representation.

## Division 2 – Disclosures

**5-7 Definitions**

For the purposes of this Division:

**associate** in relation to a licensee means a person who is any of the following:

- (a) in the case of an individual licensee,
  - (i) a spouse or family partner of the licensee,
  - (ii) a trust or estate in which the licensee, or a spouse or family partner of the licensee, has a substantial beneficial interest or for which the licensee, spouse or family partner serves as trustee or in a similar capacity, or
  - (iii) a corporation, partnership, association, syndicate or unincorporated organization in respect of which the licensee, or a

- spouse or family partner of the licensee, holds not less than 5% of its capital or is entitled to receive not less than 5% of its profits;
- (b) in the case of a brokerage that is a corporation or partnership,
    - (i) a director, officer or partner of the brokerage,
    - (ii) a shareholder of the brokerage who holds more than 10% of the voting shares of the brokerage,
    - (iii) a trust or estate
      - (A) in which the brokerage, or a director, officer or partner of the brokerage, has a substantial beneficial interest, or
      - (B) for which the brokerage, or a director, officer or partner of the brokerage, serves as trustee or in a similar capacity, or
    - (iv) a corporation, partnership, association, syndicate or unincorporated organization in respect of which the brokerage, or a director, officer or partner of the brokerage, holds not less than 5% of its capital or is entitled to receive not less than 5% of its profits;

**principal** includes, in relation to the prospective provision of real estate services, a potential principal.

#### 5-8 Disclosures under this Division

- (1) Disclosures under this Division must
  - (a) be in writing, except for disclosure under section 5-10 [*disclosure of representation and relationship in trading services*] of these rules, and
  - (b) subject to subsection (1.1), be separate from a service agreement or any other agreement under which real estate services are provided and separate from any agreement giving effect to a trade in real estate.

[06/20/2007 repealed subsection (1)(b) and the above subsection (1)(b) substituted effective 07/01/2007]

- (1.1) The disclosure of remuneration that is required under section 5-11 (1) (a) [*remuneration not paid directly by the client*] of these rules may be made in one or both of
  - (a) a service agreement, and
  - (b) a record, other than an agreement giving effect to a trade in real estate, that is separate from the service agreement.

[06/20/2007 amended by adding subsection (1.1) effective 07/01/2007]

- (2) If, during the course of providing real estate services, there is any substantive change in information that the licensee is required to disclose to a person under this Division, the licensee must promptly disclose the change to the person in accordance with subsection (1).

#### 5-9 Disclosure of interest in trade

- (1) If, under a trade in real estate,
  - (a) a licensee is to directly or indirectly acquire real estate, or
  - (b) an associate of a licensee is to directly or indirectly acquire real estate and the licensee is providing real estate services to the associate,
 the licensee must make a disclosure in accordance with this section to the owner of the real estate.

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- (2) As an example of indirect acquisition, subsection (1) applies if a licensee or associate intends to acquire real estate currently owned by another person through acquisition by a third party who is subsequently to dispose of the real estate to the licensee or associate.
- (2.1) As an exception to subsection (1), an individual who is a licensee is not required to make a disclosure under that subsection if
- (a) the real estate is rental real estate that is being acquired by the licensee, or a spouse or family partner of the licensee, with the intention that the licensee, spouse or family partner will use the real estate for personal residential purposes during the term of the lease,
  - (b) the lease or agreement to lease the real estate is for a term not exceeding one year,
  - (c) the lease or agreement does not contain an option to purchase or a right of first refusal, and
  - (d) any option to renew or any other provision for renewal, whether or not it is included in the lease or agreement, does not extend the total lease period, including any renewal period, beyond one year.
- [01/18/2005 amended by adding subsection (2.1) effective 01/01/2006]
- (3) If, under a trade in real estate,
- (a) a licensee is to dispose of real estate, or
  - (b) an associate of a licensee is to dispose of real estate and the licensee is providing trading services to the associate,
- the licensee must make a disclosure in accordance with this section to the person acquiring the real estate.
- (4) Disclosure under this section must
- (a) be made promptly, but in any case before any agreement for the acquisition or disposition is entered into, and
  - (b) be in a form approved by the council.
- (5) The disclosure must contain the following information:
- (a) the name of the person to whom disclosure is being made;
  - (b) the legal description and street address of the real estate in relation to which disclosure is being made;
  - (c) an indication that the licensee is licensed under the *Real Estate Services Act* and, as applicable, that the licensee or an associate of the licensee to whom the licensee is providing trading services is acquiring or disposing of the real estate;
  - (d) in the case of an acquisition or disposition by an associate of the licensee, the name of the associate and a description of the licensee's relationship with the associate;
  - (e) in the case of an acquisition by a licensee or associate, the information required under subsection (6);
  - (f) in the case of a disposition by a licensee or associate, an indication of whether the licensee or the associate is disposing of the real estate as an owner or as a tenant of the real estate;
  - (g) the signature of the licensee and a witness other than a person to whom disclosure is to be made, and the date and place of signing.
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- (6) In the case of an acquisition by a licensee or associate, the disclosure must include the following as applicable:
- (a) the amount of remuneration or other money that is anticipated to be received by
    - (i) the licensee,
    - (ii) the associate or another associate of the licensee, or
    - (iii) another buyer or tenant,if the person to whom disclosure is being made accepts the licensee's or associate's offer to acquire the real estate;
  - (b) if the acquisition is as other than a tenant,
    - (i) an indication as to whether the real estate is to be, as applicable,
      - (A) held for personal, rental or other use, or
      - (B) resold, and
    - (ii) if the real estate is to be resold and the licensee or associate is negotiating or has negotiated the resale of the real estate, the terms of that resale;
  - (c) if the acquisition is as a tenant,
    - (i) an indication as to whether the real estate is to be, as applicable,
      - (A) held for personal or other use, or
      - (B) sublet, and
    - (ii) if the real estate is to be sublet and the licensee or associate is negotiating or has negotiated the sublease, the terms of that sublease.
- (7) The indication as to whether the real estate is to be held, resold or sublet, as referred to in subsection (6), must be based,
- (a) in the case of an acquisition by the licensee, on the licensee's intention at the time of making the disclosure, and
  - (b) in the case of an acquisition by an associate of the licensee, on the licensee's reasonable belief, at the time of making the disclosure, about the intentions of the associate at that time.

#### **5-10 Disclosure of representation and relationship in trading services**

Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose the following to the party:

- (a) the nature of the representation that the licensee will provide to the party;
- (b) as applicable,
  - (i) that the licensee, or a related licensee, is or expects to be providing trading services to or on behalf of any other person, in any capacity, in relation to the same trade in real estate,
  - (ii) that the licensee, or a related licensee, is or expects to be receiving remuneration relating to trading services referred to in subparagraph (i) from any other person, and
  - (iii) the nature of the licensee's relationship, or the relationship of the related licensee, with any person referred to in subparagraph (i) or (ii).

[07/19/05 deleted "agency" from the heading effective 07/19/05]

### 5-11 Disclosure of remuneration

- (1) This section applies if a licensee receives or anticipates receiving, directly or indirectly,
  - (a) remuneration as a result of providing real estate services to or on behalf of a client, other than remuneration paid directly by the client,
  - (b) remuneration as a result of recommending
    - (i) a home inspector, mortgage broker, notary public, lawyer or savings institution, or
    - (ii) any other person providing real estate related products or services to a client, or
  - (c) remuneration as a result of recommending a client to a person referred to in paragraph (b) (i) or (ii).
- (2) The licensee must promptly disclose to the client, and to the licensee's related brokerage,
  - (a) the source of the remuneration,
  - (b) the amount of the remuneration or, if the amount of the remuneration is unknown, the likely amount of the remuneration or the method of calculation of the remuneration, and
  - (c) all other relevant facts relating to the remuneration.

[07/19/05 deleted "additional" from the heading effective 07/19/05]

### 5-12 Benefits in relation to rental property management services and strata management services

To the extent that this is not already dealt with by section 5-11 [*disclosure of remuneration*] of these rules, if a licensee

- (a) anticipates receiving, directly or indirectly, a benefit from expenditures made by or on behalf of a principal to or on behalf of whom rental property management services or strata management services are or may be provided, or
- (b) anticipates that an associate of the licensee will receive, directly or indirectly, such a benefit,

the licensee must disclose to the principal, and to the licensee's related brokerage, the nature and extent of the benefit before the benefit is accepted.

[04/26/2005 added "and strata management services" to heading effective 01/01/2006]

[04/26/2005 section 5-12(a) repealed and the above section 5-12(a) substituted effective 01/01/2006]

### 5-13 Disclosure of latent defects

- (1) For the purposes of this section:
 

**material latent defect** means a material defect that cannot be discerned through a reasonable inspection of the property, including any of the following:

  - (a) a defect that renders the real estate
    - (i) dangerous or potentially dangerous to the occupants,

- (ii) unfit for habitation, or
- (iii) unfit for the purpose for which a party is acquiring it, if
  - (A) the party has made this purpose known to the licensee, or
  - (B) the licensee has otherwise become aware of this purpose;
- (b) a defect that would involve great expense to remedy;
- (c) a circumstance that affects the real estate in respect of which a local government or other local authority has given a notice to the client or the licensee, indicating that the circumstance must or should be remedied;
- (d) a lack of appropriate municipal building and other permits respecting the real estate.

[08/01/2006 amended subsection (1) by adding "material" in the definition effective 09/01/2006]

- (2) A licensee who is providing trading services to a client who is disposing of real estate must disclose to all other parties to the trade, promptly but in any case before any agreement for the acquisition or disposition of the real estate is entered into, any material latent defect in the real estate that is known to the licensee.
- (3) If a client instructs a licensee to withhold a disclosure required by subsection (2), the licensee must refuse to provide further trading services to or on behalf of that client in respect of the trade in real estate.
- (4) As an exception, disclosure to a party is not required under subsection (2) if the party has already received written disclosure of the material latent defect from the client who is disposing of the real estate.

[08/01/2006 amended by adding subsection (4) effective 09/01/2006]

### Division 3 – Commissions and Other Remuneration

#### 5-14 Remuneration restriction in relation to trades in real estate

- (1) A licensee must not request or enter into an agreement for payment of remuneration that is based on the difference between
  - (a) the price at which real estate is listed for sale, lease or other disposition, and
  - (b) the actual price for which it is sold, leased or otherwise disposed.
- (2) A licensee is not entitled to and must not retain any remuneration that is computed on a basis prohibited by subsection (1).

#### 5-15 When licensee remuneration can be paid out of trust account

- (1) Money in a brokerage trust account that is intended as remuneration for a licensee is to be considered earned, for the purpose of authorizing withdrawal under section 31 (1) [*withdrawal of remuneration from brokerage trust account*] of the Act, in the circumstances described in this section.
- (2) Subject to subsection (3), money that is held by the brokerage as a stakeholder under section 28 [*circumstances in which brokerage holds money as stakeholder*] of the Act may be withdrawn as follows:

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- (a) if the money is held in respect of a transaction for the leasing of real estate, on the earlier of
    - (i) the date the lease or assignment of lease is submitted to the land title office for registration,
    - (ii) the date the tenant has the right to take possession of the real estate, and
    - (iii) the date the tenant lawfully occupies the real estate;
  - (b) in the case of a transfer that is not registrable in the land title office, other than a transfer related to a transaction referred to in paragraph (a), on the date on which the real estate is transferred;
  - (c) in any other case, on the date on which the documents effecting the transfer are submitted to the land title office for registration.
- (3) If, in relation to money that is held as referred to in subsection (2),
- (a) the service agreement establishes a time at which remuneration is earned by the licensee, and
  - (b) that time is later than the time that would otherwise apply under subsection (2),
- the money may be withdrawn at the time referred to in paragraph (a).
- (4) Money held by the brokerage other than as a stakeholder may be withdrawn
- (a) subject to paragraph (b), in accordance with the service agreement or other agreement under which the applicable real estate services are provided, or
  - (b) at a time otherwise agreed to in writing by the client.

#### **5-15.1 Some remuneration not required to be paid into brokerage trust account**

- (1) Money received by a brokerage on account of remuneration for real estate services is to be considered earned for the purposes of section 27 (4.1) [*exceptions from payment into trust account*] of the Act in the circumstances described in this section.
- (2) Money that is received by a brokerage from a person other than a principal, on account of remuneration for real estate services may be paid in accordance with section 27 (4.1) (a) or (b) of the Act as follows:
  - (a) in the case of money received on account of remuneration for trading services, in accordance with the circumstances described in section 5-15 (2) [*money held as a stakeholder*] of these rules;
  - (b) in the case of money received on account of remuneration for rental property management services or strata management services,
    - (i) after the services for which the money was received by the brokerage have been provided, or
    - (ii) at a time or upon the happening of an event otherwise agreed to in writing by the person paying the money to the brokerage.

[06/20/2007 section 5-15.1 added effective 07/01/2007]

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## **PART 6 – DEALING WITH OTHER LICENSEES AND UNLICENSED PERSONS**

### **6-1 Payment to unlicensed persons prohibited**

- (1) A licensee must not pay, offer to pay or agree or allow to be paid, remuneration to a person in relation to real estate services if the person is required to be licensed in relation to those services but is not licensed.
- (2) Subsection (1) does not prohibit a brokerage from paying remuneration to a person who is licensed or otherwise authorized, under the laws of a jurisdiction other than British Columbia, to provide equivalent real estate services in the other jurisdiction.

### **6-2 Acting for unlicensed persons prohibited**

A brokerage must not provide real estate services to or on behalf of any person who is not a principal in relation to the real estate services unless the person is

- (a) licensed in relation to those services,
- (b) exempt from the requirement to be licensed in relation to those services,  
or
- (c) licensed or otherwise authorized, under the laws of a jurisdiction other than British Columbia, to provide equivalent real estate services in the other jurisdiction.



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## PART 7 – BROKERAGE ACCOUNTS AND FINANCIAL REQUIREMENTS

### 7-1 Agreement to pay other than into brokerage trust account

Section 27 (1) and (2) [*payment of money from principal*] of the Act does not apply to money held or received by a licensee if

- (a) the requirements set out in section 27 (4) (a) of the Act are met, and
- (b) the licensee or brokerage, as applicable, ensures that the money is paid to, or is made payable to and immediately delivered to, the person to whom the principals agreed that the money is to be paid or made payable to.

#### 7-1.1 Use of holding brokerage trust account

- (1) For the purposes of this section:

“holding brokerage” means a brokerage that, on behalf of another brokerage, receives or holds money relating to real estate services provided by the other brokerage;

“service brokerage” means a brokerage that, in relation to real estate services provided by the brokerage, arranges with another brokerage for the other brokerage to act as a holding brokerage in relation to those services.

- (2) If, by an agreement under section 27 (4) of the Act, the principals agree that money referred to in section 27 (1) or (2) of the Act that is held or received by a licensee is to be paid or made payable to a holding brokerage, the following rules apply:
- (a) the holding brokerage must deposit the money into a separate brokerage trust account maintained in the name of the service brokerage;
  - (b) money withdrawn from that brokerage trust account under section 31 (1) of the Act must be paid as follows:
    - (i) if the service brokerage has no related licensees other than a managing broker, in accordance with the instructions of the service brokerage;
    - (ii) in any other case, at the option of the service brokerage,
      - (A) into a brokerage trust account maintained by the service brokerage, or
      - (B) into a commission trust account maintained by the service brokerage.

[08/01/2006 amended by adding section 7-1.1 effective 09/01/2006]

### 7-2 Commission trust accounts

For the purposes of section 31 (2) [*payment of licensee remuneration*] of the Act, a brokerage may maintain one or more commission trust accounts in accordance with the following rules:

- (a) a commission trust account must be designated as a trust account both in the brokerage's records and in the records of the savings institution holding the account;
- (b) the only money that may be paid into the account is money that
  - (i) is intended as remuneration for the brokerage or for a licensee engaged by the brokerage, and
  - (ii) may be paid out of the trust account in accordance with section 5-15 [*when licensee remuneration can be paid out of trust account*] of these rules.

[08/01/2006 amended subsection (b)(i) by adding "for the brokerage or" effective 09/01/2006]

### 7-3 Requirement to notify savings institution of pooled trust accounts

If a brokerage has a pooled trust account with a savings institution other than a credit union, the brokerage must, within 30 days after April 30 of every year, provide to the institution

- (a) written notice that the account is a pooled trust account, and
- (b) a list identifying each person on whose behalf money is held in that account and specifying the amount held for each person as of April 30 of that year.

[10/18/2005 section 7-3 repealed and the above section 7-3 substituted effective 01/01/2006]

[08/01/2006 amended by deleting "before" and substituting "within 30 days after" effective 09/01/2006]

[08/01/2006 amended subsection (b) by adding "as of April 30 of that year" effective 09/01/2006]

### 7-4 Other trust account requirements

- (1) At least one related managing broker must be a signing authority on each trust account maintained by a brokerage.
- (2) For each trust account of a brokerage, the monthly reconciliation under section 8-2 (b) [*trust account and general account records*] and the monthly trust asset and liability reconciliation under section 8-3 (b) [*pooled trust account records*] must be reviewed, dated, and initialed by a related managing broker or by a person designated by a related managing broker.

[06/20/2007 subsection 7-4(2) repealed and the above subsection 7-4(2) substituted effective 07/01/2007]

- (3) A brokerage must arrange for all banking documents, including cheques, statements and deposit slips, relating to a trust account to include an indication that they relate to a trust account.

### 7-5 Shortages in trust accounts

- (1) A brokerage must not make any payment out of a trust account if
  - (a) the payment would reduce the amount currently recorded in a trust account record or a trust ledger for the account to a negative balance, or
  - (b) the trust account record or trust ledger to which the payment relates is already at a negative balance.

[06/20/2007 subsection (1) repealed and the above subsection (1) substituted effective 07/01/2007]

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- (2) If at any time there is a negative balance referred to in subsection (1), the brokerage must take immediate steps to eliminate the negative balance.
  - (3) The brokerage must notify the council of a negative balance referred to in subsection (1) as follows:
    - (a) immediately, if a related managing broker considers that the negative balance may result in a person having a claim for a compensable loss in relation to the brokerage;
    - (b) in any other case, no later than 10 days after the day on which the negative balance arose, unless the brokerage is able to eliminate the negative balance in that time.

[08/01/2006 amended subsection (3)(b) by deleting "within 10 working days after" and substituting "no later than 10 days after the day on which" and deleting "arises" and substituting "arose" effective 09/01/2006]

#### **7-6 Council review of accounts and other records**

- (1) A brokerage must allow the council to review the brokerage's accounts, financial records and any other records relating to the dealings of the brokerage as a licensee or to the dealings of its related licensees as licensees.
- (2) The authority to review under this section includes the authority to inspect and the authority to audit.
- (3) If a review under this section shows that the brokerage's books and other records are not in proper order or are not kept up to date, the council may require the brokerage to pay all or part of the costs of the review, subject to the same limits that apply under section 44 (2) [*enforcement expenses*] of the Act.

#### **7-7 Annual financial statements, accountant's report and brokerage activity report**

- (1) A brokerage must, within 120 days after the end of each fiscal year of the brokerage, file with the council
  - (a) financial statements for that fiscal year,
  - (b) an accountant's report respecting that fiscal year, completed in accordance with the bylaws, and
  - (c) a brokerage activity report respecting that fiscal year, completed in accordance with the bylaws.
- (2) The financial statements must
  - (a) be audited by an accountant, in the case of a brokerage that is a public company as defined in the *Business Corporations Act*, or
  - (b) in any other case, have been subject, at a minimum, to
    - (i) a review engagement by an accountant, or
    - (ii) if authorized under subsection (2.1), a notice to reader prepared by an accountant.

[12/06/2008 subsection (2)(b) repealed and the above subsection (2)(b) substituted effective 01/01/2009]

- (2.1) The council may authorize a brokerage to file financial statements that have been subject to a notice to reader prepared by an accountant if all of the following conditions are met:
  - (a) for a minimum of 3 consecutive fiscal years immediately preceding the date of authorization, the brokerage has filed financial statements that

comply with subsection (2) (a) or (b) (i) and has satisfied the other requirements of this section as applicable;

- (b) during those 3 fiscal years there have been no significant trust account or general books and records exceptions
  - (i) reported in relation to the brokerage under section 4-9 [*annual accountant's report*] of the bylaws, or
  - (ii) discovered in relation to the brokerage in any review under section 7-6 [*council review of accounts and other records*] of these rules;
- (c) the council is satisfied that at the end of each of those 3 fiscal years the brokerage's current assets exceeded its current liabilities.

[12/06/2008 amended by adding subsection (2.1) effective 01/01/2009]

(3) An accountant who

- (a) audits, reviews the financial statements or prepares a notice to reader in relation to the financial statements, as contemplated by subsection (2) or (2.1), or
- (b) completes the accountant's report

must be independent of the brokerage and of any director, officer or partner of the brokerage or a related licensee of the brokerage.

[12/06/2008 subsection (3)(a) repealed and the above subsection (3)(a) substituted effective 01/01/2009]

(4) The brokerage must

- (a) disclose to an accountant referred to in subsection (3) every savings institution account that was opened, closed or maintained by the brokerage during the fiscal year,
- (b) provide the accountant with access to all financial and other records of the brokerage for the fiscal year, and
- (c) provide the accountant with any other information the accountant considers necessary to enable the accountant to conduct the audit, review the financial statements, prepare the notice to reader or complete the accountant's report, as required by this section.

[12/06/2008 subsection (4)(c) repealed and the above subsection (4)(c) substituted effective 01/01/2009]

(5) The council may withdraw an authorization given to a brokerage under subsection (2.1) if

- (a) the brokerage does not file financial statements that comply with this section,
- (b) a trust account or general books and records exception has been reported or discovered as described in subsection (2.1) (b) in relation to the brokerage, or
- (c) the council is not satisfied that the brokerage's current assets exceed its current liabilities at the end of any fiscal year.

[12/06/2008 amended by adding subsection (5) effective 01/01/2009]

(6) Before withdrawing an authorization given to a brokerage under subsection (2.1), the council must give the brokerage notice of its intention to do so and the reasons.

[12/06/2008 amended by adding subsection (6) effective 01/01/2009]

- (7) As an alternative to filing an accountant's report under subsection (1) (b), a brokerage that did not hold or receive any public trust money during the fiscal year to which the financial statements relate may file with the council a solemn declaration, completed in accordance with section 4-9.1 of the bylaws, respecting
- (a) that fiscal year, or
  - (b) if the brokerage did not carry on business for the entire fiscal year, that part of the fiscal year for which the brokerage did carry on business.

[12/06/2008 amended by adding subsection (7) effective 01/01/2009]

## 7-8 Requirement to ensure solvency and cover shortages

- (1) This section applies in any of the following circumstances:
- (a) if a brokerage notifies the council under section 2-20 [*notice respecting solvency*] of these rules that it is not able to pay its debts as they become due;
  - (b) if a brokerage notifies the council under section 7-5 (3) [*notice respecting shortages*] of these rules that there is a negative balance in a trust account record or trust ledger;
  - (c) the annual financial reports under section 7-7 [*annual financial statements, accountant's report and brokerage activity report*] of these rules disclose that, as of the end of the brokerage's fiscal year,
    - (i) the brokerage's current liabilities exceed its current assets, or
    - (ii) the brokerage's total liabilities exceed its total assets; or
  - (d) a review under section 7-6 [*council review of accounts and other records*] of these rules indicates
    - (i) a circumstance for which notice is required as referred to in paragraph (a) or (b), or
    - (ii) either of the circumstances referred to in paragraph (c).

[06/20/2007 subsection (1)(b) repealed and the above subsection (1)(b) substituted effective 07/01/2007]

- (2) The council may require the brokerage to do one or more of the following:
- (a) explain why the shortage or other deficiency arose;
  - (b) pay money into a trust account to cover a shortage in the trust account;
  - (c) re-establish the brokerage to a state of solvency;
  - (d) provide a bond or other form of security.
- (3) A requirement under subsection (2) (b) applies despite section 27 (5) [*restriction on payment into brokerage trust accounts*] of the Act and section 7-2 (b) [*restriction on payment into commission trust accounts*] of these rules.

## 7-9 Additional rules for strata management trust accounts and investments

- (1) This section applies to a brokerage that provides strata management services.
- (2) A brokerage must, for each strata corporation on behalf of which the brokerage holds or receives money, maintain the following brokerage trust accounts:
- (a) at least one separate trust account in the name of the strata corporation;

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- (b) if the brokerage is to hold contingency reserve fund money or special levy money on behalf of the strata corporation, at least one separate trust account in the name of the strata corporation for the contingency reserve fund money, the special levy money or both.

[06/20/2007 subsection (2) repealed and the above subsection (2) substituted effective 07/01/2007]

- (2.1) If a brokerage receives money that is subject to subsection (2) by means of direct electronic deposit into a brokerage trust account that receives funds on behalf of more than one strata corporation, the money must be transferred to the applicable trust account under subsection (2) no later than 3 days after the day on which it was received.

[08/01/2006 amended by adding subsection (2.1) effective 09/01/2006]

- (3) Amounts received by the brokerage on behalf of a strata corporation must be paid into the trust accounts under subsection (2) as follows:
- (a) if the amount received does not include contingency reserve fund or special levy money, it must be paid into an applicable trust account under subsection (2) (a);
  - (b) if the amount received is only contingency reserve fund money or special levy money or both, it must be paid into an applicable trust account under subsection (2) (b);
  - (c) if the amount received is partly contingency reserve fund money or special levy money or both,
    - (i) it must be paid into an applicable trust account under subsection (2) (a), and
    - (ii) the amount received in respect of contingency reserve fund money or special levy money must then be dealt with in accordance with subsection (4).
- (4) If subsection (3) (c) applies, within 7 days after the end of the month in which the contingency reserve fund money or special levy money was received, the brokerage must either
- (a) pay the money over to the strata corporation, or
  - (b) if the brokerage is to hold the money on behalf of the strata corporation, transfer it to an applicable trust account under subsection (2) (b).
- (5) If money in a trust account under subsection (2) (a) is transferred to a pooled trust account for one or more strata corporations, the brokerage must promptly
- (a) pay the money on behalf of the strata corporation, or
  - (b) transfer it to an applicable trust account under subsection (2) (a).
- (6) In the case of a trust account under subsection (2) (b), the brokerage must arrange for the trust account to be set up so that the signatures of at least two of the following are required in order for money to be withdrawn from the account:
- (a) a related managing broker;
  - (b) a member of the council of the strata corporation;
  - (c) another related licensee of the brokerage;
  - (d) a director or officer of the brokerage;

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- (e) a person employed or engaged by the brokerage who is authorized to practice as
    - (i) a lawyer under the *Legal Profession Act*,
    - (ii) a certified general accountant under the *Accountants (Certified General) Act*,
    - (iii) a chartered accountant under the *Accountants (Chartered) Act*, or
    - (iv) a certified management accountant under the *Accountants (Management) Act*.

[11/26/2005 subsection (6) repealed and the above subsection (6) substituted effective 01/01/06]

- (7) For each trust account under subsection (2), the brokerage must
  - (a) arrange for the savings institution to provide monthly statements respecting the account, and
  - (b) provide to the strata corporation, no later than 6 weeks after the end of the month for which a statement under this subsection was issued, a copy of
    - (i) that statement, and
    - (ii) the monthly reconciliation referred to in section 8-2(b) [*monthly reconciliations of bank statements*] of these rules in relation to that statement.

[09/09/2008 subsection (7) repealed and the above subsection (7) substituted effective 01/01/2009]

- (8) When making investments on behalf of a strata corporation, a licensee providing strata management services is subject to the same restrictions, if any, that apply under the *Strata Property Act* to the strata corporation in relation to its investments.
- (9) After the termination of a strata management service agreement, the brokerage must promptly transfer control of the strata corporation's money to the strata corporation or, if the strata corporation engages another brokerage to provide strata management services, to the other brokerage.
- (10) Despite subsection (9), the brokerage may retain sufficient funds to pay outstanding and anticipated invoices related to expenses incurred on behalf of the strata corporation before the termination of the service agreement.

[04/26/2005 section 7-9 added effective 01/01/2006]

[06/20/2007 subsections (9) and (10) added effective 07/01/2007]

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## PART 8 – BROKERAGE RECORDS

### Division 1 – Financial Records

#### 8-1 Financial records

- (1) A brokerage must prepare and retain such financial records in connection with its business as are necessary to ensure the appropriate and timely accounting of all transactions relating to real estate services provided by the brokerage and its related licensees.

[06/20/2007 subsection (1) repealed and the above subsection (1) substituted effective 07/01/2007]

- (2) The records required under subsection (1) must show and readily distinguish the following:
- (a) the amount of money held or received by the brokerage on its own behalf;
  - (b) the amount of money paid by the brokerage on its own behalf;
  - (c) the amount of money held or received on behalf of each other person including, if applicable, an indication of whether it was held or received on behalf of the person as a principal or as a licensee;
  - (d) the amount of money paid to or on behalf of each other person including, if applicable, an indication of whether it was paid to the person as a principal or as a licensee;
  - (e) the total amount of money held or received for or on behalf of other persons;
  - (f) the total amount of money paid to or on behalf of other persons.

[04/26/2005 subsection (2) repealed and the above subsection substituted effective 07/01/2005]

#### 8-2 Trust account and general account records

For each account maintained by a brokerage, the brokerage must retain all banking records relating to account transactions, including statements, and cancelled cheques and other source documents making or confirming deposits or withdrawals, and must prepare and retain the following records:

- (a) a record showing amounts received and disbursed, the reason for the receipt or disbursement, and any unexpended balance;
- (b) monthly reconciliations of banking statements to the record referred to in subsection (a), prepared in a timely fashion and, in any case, no later than 5 weeks after the end of the month being reconciled.

[06/20/2007 section 8-2 repealed and the above section 8-2 substituted effective 07/01/2007]

[09/09/2008 section 8-2 repealed and the above section 8-2 substituted effective 01/01/2009]

#### 8-3 Pooled trust account records

In addition to the records referred to in section 8-2 [*trust account and general account records*] of these rules, for each pooled trust account maintained by a brokerage, the brokerage must prepare and retain the following records:



- (a) separate trust ledgers as follows:
- (i) *in respect of money held or received on account of trades in real estate*—a separate trust ledger for each trade in real estate showing all amounts received and disbursed in relation to the trade and any unexpended balance in relation to the trade;
  - (ii) *in respect of money held or received on account of rental property management services*—a separate trust ledger for each principal showing all amounts received and disbursed in relation to the principal and any unexpended balance in relation to that principal;
  - (iii) *in respect of money held or received on account of strata management services*—a separate trust ledger for each principal showing all amounts received and disbursed in relation to the principal and any unexpended balance in relation to that principal;
  - (iv) *in respect of money held or received on account of remuneration for real estate services*—a separate trust ledger for each licensee or other intended recipient showing all amounts received and disbursed in relation to the recipient and any unexpended balance in relation to the recipient;

[04/26/2005 subsection (a) {previously subsection (c)} repealed and the above subsection (a) {previously subsection (c)} substituted effective 01/10/2006]

- (b) a monthly trust liability and asset reconciliation,
- (i) for money held by the brokerage as a stakeholder under section 28 [*circumstances in which brokerage holds money as stakeholder*] of the Act, listing each trade in real estate in relation to which the brokerage holds the trust money, and the amount being held in relation to each trade,
  - (ii) for money that is not held by the brokerage as a stakeholder, listing every person for which the brokerage holds trust money, and the amount being held for each person, and
  - (iii) reconciling the money held in the trust account to the unexpended balances in the trust ledgers for the account,

prepared in a timely fashion and, in any case, no later than 5 weeks after the end of the month being reconciled.

[06/20/2007 section 8-3 repealed and the above section 8-3 substituted effective 07/01/2007]

[09/09/2008 section 8-3 repealed and the above section 8-3 substituted effective 01/01/2009]

### 8-3.1 Preparation of records after termination

After the termination of a service agreement respecting the provision of real estate services, the brokerage must continue to prepare all financial records required under this Part that relate to the services that were provided by the brokerage to the client.

[06/20/2007 section 8-3.1 added effective 07/01/2007]

## Division 2 – Other Records

### 8-4 General records

- (1) A brokerage must retain the following records:

- (a) written disclosures under Division 2 *[Disclosures]* of Part 5 *[Relationships with Principals and Parties]* or Part 9 *[Licensee Exemptions]* of these rules and any related acknowledgments;
  - (b) written service agreements and any other records that establish the scope of authority of the brokerage respecting the provision of real estate services to a client;
  - (c) annual financial reports under section 7-7 *[annual financial statements]* of these rules.
- (2) A brokerage must prepare and retain a list, maintained separately for each fiscal year of the brokerage, of
- (a) all trades in real estate in which the brokerage is or was involved during that year,
  - (b) all rental properties that are or were managed by the brokerage during that year, and
  - (c) all strata corporations that are or were managed by the brokerage during that year.

[04/26/2005 subsection (d) repealed and the above subsection (d) substituted effective 01/10/2006]  
 [10/18/2005 subsection (a) repealed and the above subsection (a) substituted effective 01/01/2006]  
 [06/20/2007 section 8-4 repealed and the above section 8-4 substituted effective 07/01/2007]

## 8-5 Trading records

- (1) A brokerage must retain the following records with respect to trades in real estate in relation to which it provides trading services:
- (a) the contracts for the acquisition or disposition of real estate;
  - (b) any accounting statements prepared by or on behalf of the brokerage that are provided to a party by the brokerage in relation to the trade in real estate.;

[04/26/2005 subsection 1(c) repealed and the above subsection 1(c) substituted effective 07/01/2005]

- (2) If a brokerage or a related licensee holds or receives money in relation to a trade in real estate, the brokerage must prepare and retain a record sheet respecting the trade, in a form approved by the council, that includes the following information:
- (a) the nature of the trade in real estate;
  - (b) a description sufficient to identify the real estate involved in the trade in real estate;
  - (c) a deal number for the purposes of identifying the trade in real estate;
  - (d) the sale price or other consideration for the trade in real estate;
  - (e) the name and address of every party to the trade in real estate;
  - (f) the amount of money received that is required by section 27 *[payment into trust account]* of the Act to be paid into the brokerage's trust account and details of every disbursement of that money;
  - (g) the amount of remuneration paid or payable to any licensee or other person, the name of the party paying the remuneration and the name of the person who has received or is to receive it.

[06/20/2007 section 8-5 repealed and the above section 8-5 substituted effective 07/01/2007]

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**8-6 Rental property management records**

- (1) A brokerage must retain the following records with respect to its rental property management services:
  - (a) the tenancy agreements or other contracts for the rental of the real estate;
  - (b) any accounting statements prepared by or on behalf of the brokerage that are provided to clients;
  - (c) any invoices for expenditures incurred on behalf of clients.
- (2) A brokerage that provides rental property management services must prepare and retain a record of
  - (a) the tenants at each rental property managed by the brokerage, and
  - (b) the security deposits, pet damage deposits and other deposits paid by each tenant.
- (3) If requested by a former client, the brokerage must provide the following records to that former client or, if the former client engages another brokerage to provide such services, to the other brokerage:
  - (a) financial records referred to in section 8-2 [*trust account and general account records*] of these rules that relate to trust accounts maintained on behalf of the former client;
  - (b) unless they have already been provided to the former client, the records referred to in subsections (1) (a) [*tenancy agreements*] and (1) (c) [*invoices*] of this section;
  - (c) the records referred to in subsection (2) [*tenants and deposits*].
- (4) The records requested under subsection (3) must be provided by the brokerage by the later of the following two dates:
  - (a) the date that is 2 weeks following the date of the request;
  - (b) the date that is 4 weeks following the date of the termination.
- (5) Nothing in subsection (3) relieves the brokerage of its obligation to retain records under section 8-10 [*retention of records*] of these rules.

[04/26/2005 section 8-6 repealed and the above section 8-6 substituted effective 07/01/2005]

[06/20/2007 section 8-6 repealed and the above section 8-6 substituted effective 07/01/2007]

[06/20/2007 section 8-7 deleted effective 07/01/2007]

**8-7.1 Strata management records**

- (1) A brokerage must maintain separate books, accounts and other records with respect to each strata corporation to or on behalf of whom the brokerage provides strata management services.
- (2) A brokerage must retain the following records with respect to each strata corporation to or on behalf of whom the brokerage provides strata management services:
  - (a) any accounting statements prepared by or on behalf of the brokerage that are provided to the strata corporation;
  - (b) invoices for expenditures incurred on behalf of the strata corporation;
  - (c) any monthly statements provided to the strata corporation under section 7-9 (7) [*monthly statements from savings institutions*] of these rules.

[04/26/2005 section 8-7.1 added effective 01/01/2006]

- (3) If requested by a former client, the brokerage must provide the following records to that former client or, if the former client engages another brokerage to provide such services, to the other brokerage:
  - (a) financial records referred to in section 8-2 [*account records*] of these rules that relate to trust accounts maintained on behalf of the former client;
  - (b) unless they have already been provided to the former client, the records referred to in subsection (2) (b) [*invoices*] of this section.
- (4) The records requested under subsection (3) must be provided by the brokerage by the later of the following two dates:
  - (a) the date that is 2 weeks following the date of the request;
  - (b) the date that is 4 weeks following the date of the termination.
- (5) Nothing in this section
  - (a) relieves the brokerage of its obligation to retain records under section 8-10 [*retention of records*] of these rules, or
  - (b) limits a brokerage's obligation to ensure that records are given to the strata corporation as required by section 37 (1) [*strata manager obligation to return records*] of the *Strata Property Act*.

[04/26/2005 section 8-7.2 added effective 01/01/2006]

[06/20/2007 section 8-7.1 repealed and the above section 8-7.1 substituted effective 07/01/2007]

[06/20/2007 section 8-7.2 deleted effective 07/01/2007]

### **Division 3 – General Recordkeeping**

#### **8-8 Specific obligations not limiting**

The specific requirements established by this Part do not limit the requirements of section 25 [*brokerage records*] of the Act.

#### **8-9 Records must be kept up to date**

Records required under Division 1 [*Financial Records*] or 2 [*Other Records*] of this Part must be kept up to date.

##### **8-9.1 Electronic Records**

- (1) A record required under Division 1 [*Financial Records*] or 2 [*Other Records*] of this Part may be retained as an electronic record if the record can be readily transferred to printed form.
- (2) A person authorized under the Act, regulations, rules or bylaws to inspect, review or receive a record, may request, for the purpose of inspecting, reviewing or receiving the record, that the record be in printed form.
- (3) On receiving a request under subsection (2), a brokerage must promptly transfer the record to printed form.

[06/20/2007 section 8-9.1 added effective 07/01/2007]

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**8-10 Retention of records**

- (1) Subject to subsection (1.1), a brokerage must retain the records required under Division 1 [*Financial Records*] or 2 [*Other Records*] of this Part for at least 7 years after their creation unless a shorter period is authorized in writing by the council.
- (1.1) A brokerage must retain the records required under section 8-6 (1) (a) [*tenancy agreements*] and (2) [*tenants and deposits*] of these rules for at least 7 years after the earlier of
  - (a) the date on which the tenancy agreement or the tenancy to which the agreement pertains ends, and
  - (b) the date on which the rental property management service agreement with respect to which the records are being held terminatesunless a shorter period is authorized in writing by the council.
- (2) The records referred to in subsections (1) and (1.1)
  - (a) may be retained as copies of the original records, and
  - (b) must be made available at the head office of the brokerage for the purposes of a review under section 7-6 [*council review of accounts and other records*] of these rules.

[06/20/2007 section 8-10 repealed and the above section 8-10 substituted effective 07/01/2007]

**8-11 Brokerage obligations when winding up business**

A brokerage that ceases to carry on the business of a brokerage must do the following:

- (a) immediately surrender to the council the brokerage's licences and the licences of all related licensees that are in the possession of the brokerage;
- (b) promptly submit to the council a report respecting the winding up, completed in accordance with the bylaws;
- (c) if requested by the council, submit to the council one or more of the financial statements and reports required under section 7-7 [*annual financial statements, accountant's report and brokerage activity report*] of these rules;
- (d) as requested by the council, provide to the council
  - (i) any other financial records of the brokerage, and
  - (ii) any further information about the business of the brokerage;
- (e) arrange for the records referred to in section 8-10 [*retention of records*] of these rules to be kept, for the period referred to in that section, by
  - (i) another brokerage,
  - (ii) an accountant, lawyer or notary public, or
  - (iii) another person acceptable to the council.

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## PART 9 – LICENSEE EXEMPTIONS

### 9-1 Management of rental real estate owned by licensee

- (1) This section applies to an individual licensed as a managing broker, associate broker or representative who provides rental property management services on their own behalf in relation to their own real estate.  
[09/09/2008 subsection (1) repealed and the above subsection (1) substituted effective 11/01/2008]
- (2) The Act and these rules do not apply to the licensee in relation to the rental property management services so long as the licensee does all of the following:
  - (a) provides these services in their own name and not in the name of their related brokerage;
  - (b) does not, in any real estate advertising with respect to the rental real estate, indicate the name, address or telephone number of their related brokerage or of any place where the licensee is engaged in their capacity as licensee;
  - (c) discloses to each potential tenant of the rental real estate, promptly but in any event before the person enters into a tenancy agreement, that
    - (i) even though they are licensed under the *Real Estate Services Act*, they are not acting as a licensee in this case, and
    - (ii) the licensee is not regulated under the *Real Estate Services Act* in relation to the rental real estate;
  - (d) discloses in writing to the managing broker of the related brokerage that the licensee will be providing rental property management services on their own behalf in relation to their own real estate.

[04/26/2005 amended by adding subsection 2(d) effective 07/01/2005]

### 9-2 Management of rental real estate owned by licensee's family

- (1) This section applies to an individual licensed as a managing broker, associate broker or representative who provides rental property management services that
  - (a) are provided
    - (i) to or on behalf of their spouse, family partner, son, daughter or parent, in relation to rental real estate owned by that other person,
    - (ii) to or on behalf of a partnership in relation to real estate owned by the partnership, if the only partners of the partnership are two or more of any of the following:
      - (A) the licensee;
      - (B) a spouse or family partner of the licensee;
      - (C) a son, daughter or parent of the licensee; or
    - (iii) to or on behalf of a corporation of which the only shareholders are one or more of the individuals referred to in subparagraph (ii), and
  - (b) are not provided for or in expectation of remuneration.

[10/18/2005 subsection (1) repealed and the above subsection (1) substituted effective 01/01/2006]

[09/09/2008 subsection (1) repealed and the above subsection (1) substituted effective 11/01/2008]

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- (2) The Act and these rules do not apply to the licensee in relation to the rental property management services so long as the licensee does all of the following:
- (a) complies with the requirements of section 9-1 (2) (a), (b) and (c) *[management of rental real estate owned by licensee]* of these rules;
  - (b) before providing the services, discloses in writing the matters referred to in section 9-1 (2) (c) of these rules to
    - (i) the spouse, family partner, son, daughter or parent to or on behalf of whom the licensee is providing the services, or
    - (ii) in the case of services provided to or on behalf of a partnership or corporation, each spouse, family partner, son, daughter or parent who is a partner or shareholder;
  - (c) provides to the managing broker of the related brokerage, as applicable,
    - (i) in the case of services to which paragraph (b) applies, a copy of the written disclosure under that paragraph, or
    - (ii) in the case of services provided to or on behalf of a corporation of which the only shareholder is the licensee, written disclosure that the licensee will be providing rental property management services to or on behalf of that corporation.

[04/26/2005 amended by adding subsection 2(c) effective 07/01/2005]

[10/18/2005 subsections 2(b) and 2(c) repealed and the above subsections 2(b) and 2(c) substituted effective 01/10/2006]

### 9-3 Management of strata corporation by licensee who is an owner

- (1) Subject to this section, the Act and these rules do not apply to an individual licensed as a managing broker, associate broker or representative who is a strata lot owner in relation to strata management services provided to or on behalf of the strata corporation of which the licensee is a member by reason of being a strata lot owner, if all the following conditions are met:
- (a) the licensee provides strata management services under this section to no more than 2 strata corporations;
  - (b) the licensee discloses in writing to the strata corporation, before providing the services, that
    - (i) even though they are licensed under the *Real Estate Services Act*, they are not acting as a licensee in this case,
    - (ii) the licensee is not regulated under the *Real Estate Services Act* in relation to the strata management services, and
    - (iii) the strata corporation is not entitled to the same protections applicable under the *Real Estate Services Act* to persons who deal with licensees who are not acting under this section of the rules;
  - (c) the licensee provides a copy of the written disclosure under paragraph (b) to the managing broker of the related brokerage;
  - (d) the licensee does not have sole signing authority for withdrawals of any funds of the strata corporation and does not otherwise have sole authority for expenditures of any funds of the strata corporation;
  - (e) the strata management services are not provided for or in expectation of remuneration.

[09/09/2008 subsection (1) repealed and the above subsection (1) substituted effective 11/01/2008]

- (2) On receipt of any strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*, the licensee must promptly deliver the money to the strata corporation.
- (3) Part 4 [*Discipline Proceedings and Other Regulatory Enforcement*] of the Act applies in relation to a contravention of subsection (2).

[10/18/2005 section 9-3 added effective 01/01/2006]



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## PART 10 – TRANSITION

### 10-1 Conversion of former unrestricted licences

On the coming into force of the Act, an unrestricted licence under the former *Real Estate Act* is deemed to be a licence of the category established by section 2-1 (c) [*trading services and rental property management services*] of these rules.

### 10-2 Temporary licences for grandparented manufactured home dealers

(1) In this section:

**grandparented manufactured home dealer** means a person who was, on December 31, 2004, exempt under the Motor Dealer Exemption Regulation, B.C. Reg. 189/88, from Part 1 of the *Real Estate Act*, R.S.B.C. 1996, c. 397;

**manufactured home sale services** means trading services related to the disposition of a manufactured home where the disposition does not involve an interest in real estate other than

- (a) a month-to-month lease or tenancy agreement, or
- (b) the assignment of a month-to-month lease or tenancy agreement respecting the real estate on which the manufactured home is situated.

(2) Even though a grandparented manufactured home dealer is not qualified under section 2-8 (1) [*pre-licensing course and exams*] of these rules, the council may issue to that person a temporary trading services licence that is

- (a) restricted to the provision of manufactured home sales services, and
- (b) conditional on the person meeting those qualification requirements, or having them waived under section 2-7 (3) [*waiver*] of these rules, by November 1, 2006.

[10/18/2005 amended subsection 2(b) by striking out "June 30, 2006" and substituting "November 1, 2006" effective 01/01/2006]

### 10-3 Temporary licences for strata management services

(1) In this section:

**grandparented strata management services provider** means a person who was providing strata management services for a period of at least 3 months in 2005.

[10/18/2005 amended subsection (1) by striking out "for a period of at least 3 months immediately before January 1, 2006" and substituting "for a period of at least 3 months in 2005" effective 01/01/2006]

(2) Even though a grandparented strata management services provider is not qualified under section 2-8 (1) [*pre-licensing course and exams*] of these rules, the council may issue to that person a temporary strata management services licence that is conditional on the person meeting those qualification requirements, or having them waived under section 2-7 (3) [*waiver*] of these rules, by January 1, 2007.

**10-4 Transitional implementation in relation to service agreements and disclosures**

- (1) As exceptions to the immediate application of
- (a) section 5-1 [*written service agreements required in some cases*] of these rules,
  - (b) section 5-8 (1) [*disclosures must be in writing*] of these rules, in relation to disclosures under
    - (i) section 5-11 [*disclosure of remuneration*] of these rules,
    - (ii) section 5-12 [*benefits in relation to rental property management services and strata management services*] of these rules, or
    - (iii) section 5-13 [*disclosure of latent defects*] of these rules, and
  - (c) section 5-9 (3) [*disclosure of interest in trade where real estate sold or otherwise disposed by licensee or associate*],

a licensee must comply with those sections as soon as reasonably practicable, but is not otherwise required to comply with them until January 1, 2006.

[04/26/2005 amended subsection 1(c) by striking out "July 1, 2005" and substituting "January 1, 2006" effective 07/01/2005]

- (2) As an exception to the immediate application of section 5-9 [*disclosure of interest in trade*] in relation to disclosures under subsection (1) [*disclosure of interest in trade where real estate acquired by licensee or associate*] of that section, a licensee may, as an alternative until January 1, 2006, make disclosure in accordance with section 38 [*acquisition of real estate by a licensee, or the associates of a licensee*] of the *Real Estate Act*, R.S.B.C. 1996, c. 397, using the form that was established by the Disclosure Regulation, B.C. Reg. 124/84.

[04/26/2005 amended subsection 2 by striking out "July 1, 2005" and substituting "January 1, 2006" effective 07/01/2005]

- (3) *Grandparented strata management services*—As an exception to subsection (1), if
- (a) strata management services are being provided to a principal immediately before January 1, 2006 under an agreement,
  - (b) the agreement contemplates that the services will continue to be provided after that date, and
  - (c) as of that date, the person providing the services is required to be a licensee,

the person providing the services must comply with section 5-1 [*written service agreements*] of these rules as soon as reasonably practicable, but is not otherwise required to comply with that section in relation to those services until January 1, 2008.

[04/26/2005 amended by adding subsection (3) effective 01/01/2006]

[08/01/2006 amended by deleting "January 1, 2006" and substituting "July 1, 2007" effective 09/01/2006]

[06/20/2007 amended by deleting "July 1, 2007" and substituting "January 1, 2008" effective 07/01/2007]