




## RULE OF THE SUPERINTENDENT OF REAL ESTATE

### *Real Estate Services Act*

The Superintendent of Real Estate orders that, effective March 15, 2018, the Rules made under the *Real Estate Services Act* are amended as set out in the attached Schedule.

NOV 08 2017

Date

  
Micheal Noseworthy  
Superintendent of Real Estate

*(This part is for administrative purposes only and is not part of the Rules.)*

**Authority under which Rules are made:**

Act and section: Real Estate Services Act, S.B.C. 2004, c. 42, ss. 56 and 89.2

Other: Real Estate Services Regulation, B.C. Reg. 506/2004, s. 6.1.1

## SCHEDULE

**1** *The Rules made under the Real Estate Services Act, S.B.C. 2004, c. 42, by Minister's Order M417/2004, are amended in section 1-1 (1) by adding the following definitions:*

**cooperating brokerage** means a brokerage that provides trading services to or on behalf of a buyer in respect of a trade in real estate;

**designated agent** means one or more licensees designated by the licensee's or licensees' related brokerage as the exclusive licensee or licensees, of all of the licensees related to that brokerage, to provide real estate services to a client of the brokerage in respect of a trade in real estate;

**dual agency** means the representation, in respect of a trade in real estate, by the brokerage of the following:

- (a) both the seller and the buyer as clients;
- (b) both the lessor and the lessee as clients;
- (c) both the assignor and the assignee as clients;
- (d) 2 or more buyers, lessees or assignees, as the case may be, as clients who have conflicting interests in respect of the trade in real estate;

**listing brokerage** means a brokerage that provides trading services to or on behalf of a seller in respect of a trade in real estate;

**unrepresented party** means, in respect of a trade in real estate, a party to the trade in real estate who is not a client of a licensee for the trade in real estate.

**2** *The following section is added:*

**Administrative penalties**

**2-23** For the purposes of section 56 (1) [*contraventions that may be subject to administrative penalties*] of the Act, contraventions of the following rules are designated as contraventions to which Division 5 [*Administrative Penalties*] of Part 4 of the Act applies:

- (a) Rule 2-17 [*mailing address for delivery*];
- (b) Rule 2-19 [*licensee must reply promptly to council*];
- (c) Rule 2-20 [*brokerage must give immediate notice respecting solvency*];
- (d) Rule 2-21 [*licensee must give notice of discipline, bankruptcy or criminal proceedings*];
- (e) Rule 2-22 [*brokerage must give notice of business changes*];
- (f) Rule 3-1 (3) [*managing broker responsibilities*], except as it relates to the maintenance of trust accounts;
- (g) Rule 4-1 [*display and keeping of licences*];
- (h) Rule 4-2 [*business signs required*];
- (i) Rule 4-3 [*restrictions relating to home and other personal offices*];
- (j) Rule 4-5 [*licensee names must be indicated*];
- (k) Rule 4-6 [*restrictions and requirements related to advertising generally*];
- (l) Rule 4-8 [*advertising in relation to specific real estate*];

- (m) Rule 7-7 [annual financial statements, accountant's report and brokerage activity report];
- (n) Rule 8-1 [financial records];
- (o) Rule 8-2 [trust account and general account records];
- (p) Rule 8-3 [pooled trust account records];
- (q) Rule 8-3.1 [preparation of records after termination];
- (r) Rule 8-4 [general records];
- (s) Rule 8-5 [trading records];
- (t) Rule 8-6 [rental property management records];
- (u) Rule 8-7.1 [strata management records];
- (v) Rule 8-9 [records must be kept up to date];
- (w) Rule 8-9.1 [electronic records];
- (x) Rule 8-10 [retention of records];
- (y) Rule 8-11 [brokerage obligations when winding up business].

**3 Section 3-3.1 (2) (b) is amended by striking out “section 5-10 (a) [disclosure of representation and relationship in trading services]” and substituting “section 5-10 (1) [disclosure of representation in trading services]”.**

**4 Section 3-3.2 is amended**

**(a) by repealing subsection (1), and**

**(b) in subsection (3) (b) by striking out “section 5-10 (a) [disclosure of representation and relationship in trading services]” and substituting “section 5-10 (1) [disclosure of representation in trading services]”.**

**5 Section 5-1 (4) is amended by adding the following paragraph:**

(f.1) in the case of a service agreement for trading services that provides for a portion of remuneration to be paid by a listing brokerage to a cooperating brokerage, the following information:

- (i) if there is a cooperating brokerage,
  - (A) the remuneration to be paid by the seller to the listing brokerage,
  - (B) the remuneration to be paid by the listing brokerage to the cooperating brokerage, and
  - (C) the remuneration to be retained by the listing brokerage;

(ii) if there is no cooperating brokerage, the remuneration to be paid by the seller and to be retained by the listing brokerage.

**6 Section 5-8 (1) (a) is amended by striking out “except for disclosure under section 5-10 (b) [disclosure of representation and relationship in trading services] of these rules,”.**

**7 Section 5-10 is repealed and the following substituted:**

**Disclosure of representation in trading services**

- 5-10** (1) Before providing trading services to or on behalf of a party to a trade in real estate, a licensee must disclose to the party whether or not the licensee will represent the party as a client.
- (2) A disclosure made under subsection (1) must be in a form approved by the council and include the following information:
- (a) the duties and responsibilities of licensees to clients and unrepresented parties;
  - (b) how to file a complaint about a licensee's conduct.
- (3) Unless a licensee solicits or receives information from a party about the party's motivation, financial qualifications or needs in respect of real estate, a disclosure to the party is not required under subsection (1) when the licensee is only
- (a) hosting an advertised open house, or
  - (b) providing factual responses to general questions from the party.

**Disclosure of risks to unrepresented parties**

- 5-10.1** A licensee who makes a disclosure under section 5-10 (1) to an unrepresented party in respect of a trade in real estate while representing a client to that trade in real estate must also disclose, in a form approved by the council,
- (a) the risks to an unrepresented party of receiving assistance from the licensee due to the licensee's duties and responsibilities to the client of the licensee,
  - (b) the limited assistance that the licensee may provide to the unrepresented party, and
  - (c) a recommendation that the unrepresented party seek independent professional advice in respect of the trade in real estate.

**8 The following section is added:**

**Disclosure to sellers of expected remuneration**

- 5-11.1(1)** When an offer to acquire real estate is presented to a seller by the seller's licensee, a licensee who is providing trading services to or on behalf of the seller must make a disclosure to the seller in accordance with this section.
- (2) The disclosure under subsection (1) must be in a form approved by the council and include the following information:
- (a) the remuneration to be paid by the seller to the listing brokerage;
  - (b) the remuneration to be paid by the listing brokerage to the cooperating brokerage, if applicable;
  - (c) the remuneration to be retained by the listing brokerage;
  - (d) any remuneration a licensee receives or anticipates receiving under section 5-11 (1) (a).

9 *The following Division is added to Part 5:*

**Division 4 – Dual Agency**

**Restriction on dual agency in trading services**

- 5-16** (1) A brokerage must not engage in dual agency.
- (2) The designation of one or more licensees as a designated agent does not constitute dual agency under this section unless the licensee designated as the designated agent represents the parties referred to in paragraph (a), (b), (c) or (d) of the definition of “dual agency” as clients in respect of a trade in real estate.

**Dual agency in under-served remote location**

- 5-17** (1) Despite section 5-16, a brokerage may engage in dual agency in respect of a trade in real estate if the real estate is in a remote location that is under-served by licensees and where it is impracticable for the parties to be provided trading services by different licensees.
- (2) Before providing any trading services that constitute dual agency, a licensee must
- (a) make a disclosure to each party, in a form approved by the council, that includes
- (i) a statement of the brokerage, signed by the managing broker, clearly setting out the reasons why subsection (1) applies, and
- (ii) the following terms and information:
- (A) the duties and responsibilities of the licensee to the clients of the licensee in a dual agency relationship;
- (B) the risks associated with a dual agency relationship, and
- (b) enter into a written agreement of dual agency with each party under section 3-3.1 [*modification of duties*] after making a disclosure under paragraph (a).
- (3) A brokerage must provide the council with the disclosure made under subsection (2) (a) promptly after entering into a written agreement of dual agency under subsection (2) (b).