

Rule of the Authority

Real Estate Services Act

Annotated Version

BC Financial Services Authority is releasing proposed amendments to the Real Estate Services Rules (“Rules”) for public and licensee comment. The proposed amendments (the “Proposed Amendments”) are intended to speed up the outcomes of compliance and enforcement processes. The Proposed Amendments will allow BCFSA to increase its focus on more complex cases while ensuring that contraventions are responded to in a fair, consistent, and proportionate manner.

Key proposed changes to the real estate services administrative penalty framework (“Administrative Penalty Framework”) include:

- Creating two new categories in the Administrative Penalty Framework for unlicensed activity and cooperation with BCFSA investigations;
- Adding contraventions with respect to the improper use of required disclosures; and
- Expanding the list of infractions eligible for administrative penalties that fit within the parameters of [existing categories](#) B, C and D in s. 26 of the Rules.

If the Minister of Finance consents to the Proposed Amendments, BCFSA intends to bring the Rules in Appendix 1 into force in July 2024.

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

APPENDIX 1

- 1 Section 26 (1) of the Real Estate Services Rules, B.C. Reg. 209/2021, is amended by striking out “these rules” and substituting “the provisions”.**

Authority’s Comments

The Proposed Amendment to Section 26 (1) of the Rules is a minor housekeeping amendment intended to change the language from “rules” to “provisions” in order to ensure consistency with current and future Rules amendments.

- 2 Section 26 (2) is amended**

- (a) by striking out everything before paragraph (a) and substituting “For the purpose of determining the amount of an administrative penalty, designated contraventions are divided into Categories A to F as follows:”,**
- (b) in paragraph (a) by striking out everything before subparagraph (i) and substituting “the following provisions of these rules are in Category A:”,**
- (c) in paragraph (a) by repealing subparagraph (v),**

Authority’s Comments

The Proposed Amendment to Section 26 (2) of the Rules is intended to expand the number of administrative penalty categories set out in the Rules from four to six. It is also intended to align with the amendments in s. 26 (1) by changing language from “rules” to “provisions”. Finally, the amendment in subsection (c), repealing subparagraph 26 (2) (a) (v) of the Rules, is intended to remove the contravention of s. 75 of the Rules from Category A as it is proposed that this contravention is moved to Category D.

BCFSA proposes to change the categorization for a contravention of s. 75 of the Rules from Category A to Category D to create additional motivation for some brokerages to provide their annual filings on time.

- (d) in paragraph (b) by striking out everything before subparagraph (i) and substituting “the following provisions of these rules are in Category B:”,**
- (e) in paragraph (b) by adding the following subparagraphs:**

- (iv.1) section 28 (1) [managing broker responsibilities – general];
- (v.1) section 28 (6) [managing broker responsibilities – notice in writing to parties respecting deposits];
- (x) section 52 (3) [promptly disclose substantive change in information in required disclosure];
- (xi) section 54 [disclosure of representation in trading services];
- (xii) section 57 [disclosure to sellers of expected remuneration];
- (xiii) section 58 [disclosure of benefits – rental property and strata

management services];

(xiv) section 64 (3) *[disclosure to superintendent – dual agency in underserved remote location];*

(xv) section 73 (3) *[notice to superintendent – negative balance in trust account]; ,*

(f) by adding the following paragraphs:

(b.1) section 7 (3) [prohibition against providing real estate services outside licensee’s brokerage] of the Act is in Category B;

(b.2) the following provisions of the Real Estate Services Regulation are in Category B:

(i) section 8.2 (3) [include standard terms respecting assignment of contract];

(ii) section 10.6 (1) [controlling individual must meet all requirements to receive remuneration from personal real estate corporation];

(iii) section 10.6 (2) [no engagement of controlling individual by a brokerage];

(iv) section 10.7 (1) [personal real estate corporation must maintain attributes]; ,

Authority’s Comments

The Proposed Amendments are adding specific sections from RESA, its Regulations, and the Rules to Category B of the Administrative Penalty Framework. Category B infractions are generally characterized as minor matters with no or immaterial harm to consumers, and where imposing an administrative penalty is in the public interest.

Proposed additions to Category B relate to licensee responsibilities to keep BCFSAs and others informed, and improper use of several consumer disclosures which are required by the Rules. The addition of the proposed provisions, including disclosures, to the Framework is to incentivize licensees to comply with disclosure requirements. Infractions related to some disclosures are considered to pose too great a risk to consumers and/or the reputation of the real estate industry, and are proposed to be added to Category C.

(g) in paragraph (c) by striking out everything before subparagraph (i) and substituting “the following provisions of these rules are in Category C:” ,

(h) in paragraph (c) by adding the following subparagraphs:

(x.1) section 31 (4) (b) *[no disclosure by brokerage of confidential information respecting a client];*

(xvii) section 53 *[disclosure of interest in trade];*

(xviii) section 55 *[disclosure of risks to unrepresented parties];*

(xix) section 56 *[disclosure of remuneration];*

- (xx) section 57.1 *[disclosure to certain clients of right of rescission]*;
- (xxi) section 64 (2) (a) *[disclosure to parties – dual agency in under-served remote location]*;
- (xxii) section 65 *[addressing conflicts of interest when acting for multiple clients]*; ,

(i) by adding the following paragraphs:

(c.1) the following provisions of the Act are in Category C:

- (i) section 27 (1) *[payments to brokerage by licensee]*;
- (ii) section 27 (2) *[payments into brokerage trust account by brokerage]*;
- (iii) section 27 (5) *[restriction on money that can be paid into brokerage trust account]*;
- (iv) section 66 (2) *[notice of court and discipline proceedings]*; ,

(c.2) the following provisions of the Real Estate Services Regulation are
in

Category C:

- (i) section 8.2 (4) *[notice if licensee aware that buyer's proposed contract does not include standard term respecting assignment of contract]*;
- (ii) section 8.2 (5) *[notice if licensee's proposed contract does not include standard term respecting assignment of contract]*;
- (iii) section 8.2 (6) *[notice requirements if proposed contract does not include standard term respecting assignment of contract]*;
- (iv) section 8.2 (7) *[notice by licensee providing trading services to the seller if proposed contract does not include standard term respecting assignment of contract]*; ,

Authority's Comments

The Proposed Amendments are adding specific sections from RESA, its Regulations, and the Rules to Category C of the Administrative Penalty Framework. Proposed expansions to this category include multiple disclosures that pose a greater risk of harm to consumers.

Currently, contraventions in this category apply to a broad range of circumstances, including licensee interactions with non-clients. Some disclosure requirements are proposed to be added to Category C, instead of Category B, because they represent a greater risk of harm to consumers or are duties owed to client and non-clients (e.g., related to conflicts of interest). The provision of certain disclosures at the appropriate time are part of a licensee's professional obligation owed to clients and, in some cases, non-clients (e.g., s. 53 of the Rules which requires disclosure of an interest in trade).

(j) in paragraph (d) by striking out everything before subparagraph (i) and substituting “the following provisions of these rules are in Category D:” ,

(k) in paragraph (d) by adding the following subparagraphs:

- (iii.1) section 28 (4) *[managing broker responsibilities – trust accounts];*
- (xii.31) section 75 *[annual financial statements, accountant’s report and brokerage activity report]; , and*

(l) by adding the following paragraphs:

(d.1) the following provisions of the Act are in Category D:
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(i) section 5 (4) *[brokerage licence required for each branch office];*

(ii) section 21 (2) *[brokerage must surrender inoperative, suspended or cancelled licence];*

(iii) section 25 *[brokerage records];*

(iv) section 26 *[brokerage must maintain trust account in British Columbia];*

(v) section 29 *[interest on trust account];*

(vi) section 30 (2) *[permitted withdrawals from brokerage trust account that the brokerage holds as stakeholder];*

(d.2) section 3.1 *[interest on trust account to foundation]* of the Real Estate Services Regulation is in Category D;

Authority’s Comments

The Proposed Amendments are adding specific sections from RESA, its Regulations, and the Rules to Category D of the Administrative Penalty Framework. Additions to Category D include contraventions that involve time sensitive requirements or otherwise have a temporal element.

Contraventions in this category contain a mix of brokerage and individual licensee requirements. Administrative penalties under this category consist of a base amount plus an additional amount calculated on a daily basis until compliance is achieved. The purpose of a daily penalty is to encourage timely compliance and the provision of accurate information. More information on the administration of daily penalties can be found on [BCFSA’s website](#).

BCFSA proposes to change the categorization for a contravention of s. 75 of the Rules from Category A (\$1,000 for a first contravention) to Category D (\$1,000 for a first contravention plus \$250 per day). It is expected that moving this contravention from Category A to Category D will create additional motivation for some brokerages to provide their annual filings on time.

- (e) the following provisions are in Category E:
- (i) section 74 (1) [*superintendent review of brokerage accounts and other records*] of these rules;
 - (ii) section 37 (4) [*cooperation with superintendent's investigation*] of the Act;

Authority's Comments

The proposed addition of Section 26 (2) (e) creates a new category for the Administrative Penalty Framework, Category E. This category is focused on cooperation with BCFSA investigations and is intended to motivate persons who are compelled to provide information to promptly comply, which will improve investigative efficiency as well as the overall effectiveness of the Framework.

The proposed inclusion of requirements to cooperate with investigations in the Administrative Penalty Framework would not change the current collaborative approach to investigations; the addition of these contraventions gives BCFSA tools to encourage timely cooperation with an investigation where there is failure or reluctance to comply.

- (f) the following provisions of these rules are in Category F:
- (i) section 66 (1) [*payment by licensee to unlicensed persons prohibited*];
 - (ii) section 67 [*brokerage acting for unlicensed persons prohibited*];
- (g) the following provisions of the Act are in Category F:
- (i) section 3 (1) [*licence required to provide real estate services*];
 - (ii) section 7 (5) (a) [*brokerage relationship with other licensees*];
 - (iii) section 7 (5) (b) [*brokerage relationship with licensee licensed in relation to another brokerage*];
 - (iv) section 20 [*no real estate services if licence is inoperative or suspended*];
 - (v) section 21 (1) [*licensee must surrender inoperative, suspended or cancelled licence and cease holding themselves out as licensee*].

Authority's Comments

The proposed additions of Section 26 (2) (f) and (g) create a new category for the Administrative Penalty Framework, Category F. This category is focused on unlicensed and restricted activity.

The requirement to be licensed goes to the heart of regulation and is fundamental to consumer protection and the reputation of the real estate industry. Licensing gives consumers confidence that persons who engage in real estate services or represent those that have engaged in real estate services, have received the proper training and are competent to practice. Unlicensed activity puts consumers at risk. Thus, these additions are intended to protect consumers from persons conducting work for which they are not licensed.

3 Section 27 is amended:

- (a) in subsection (1) by striking out** “a rule listed in Category A in section 26 (2) (a)” **and substituting** “a provision in Category A set out in section 26 (2) (a)”,
- (b) in subsection (2) by striking out** “a rule listed in Category B in section 26 (2) (b)” **and substituting** “a provision in Category B set out in section 26 (2) (b), (b.1) or (b.2)”,
- (c) in subsection (3) by striking out** “a rule listed in Category C in section 26 (2) (c)” **and substituting** “a provision in Category C set out in section 26 (2) (c), (c.1) or (c.2)”,
- (d) in subsection (4) by striking out** “a rule listed in Category D in section 26 (2) (d)” **and substituting** “a provision in Category D set out in section 26 (2) (d), (d.1) or (d.2)”,
- (e) in subsection (4) (b) by striking out** “specified rule” **and substituting** “specified provision” **and by striking out** “under section 56” **and substituting** “set out in section 56 (2)”, **and**

Authority’s Comments

The proposed amendments to Section 27 (1) to (4) of the Rules are housekeeping amendments intended to ensure the amounts of administrative penalties align with the proposed additions as outlined above. The proposed amendments do not contain a change to the penalty amounts for the existing four administrative penalty categories (Categories A to D).

(f) by adding the following subsections:

- (5) For each contravention of a provision in Category E set out in section 26 (2) (e), the amount of the administrative penalty is as follows:
 - (a) a base penalty amount as follows:
 - (i) \$1 000 for a first contravention;
 - (ii) \$5 000 for a subsequent contravention;
 - (b) an additional \$1 000 for each day or part of a day on which the contravention of the specified provision continues up to the maximum amount set out in section 56 (2) [*designated contraventions and penalty amounts*] of the Act.

Authority’s Comments

The proposed addition of subsection 27 (5) is intended to provide a framework for allowable minimum and maximum penalty amounts for the new proposed Category E, which relates to obligations of licensees and unlicensed persons to comply with BCFSA investigations.

For persons who fail to comply with a request to cooperate, the method for calculating the penalty amount would be similar to the [process](#) currently used for Category D. Generally, BCFSA uses a collaborative approach to investigations and all persons are provided with

reasonable timelines to provide relevant documents and, if necessary, participate in an interview. Prior to issuing daily penalties, persons subject to an investigation will have multiple opportunities to comply.

Creating a new administrative penalty category with a greater daily penalty amount than exists in Category D, creates a strong incentive to cooperate with investigations. It will remain open to a person to request an extension of time by demonstrating any extenuating circumstances.

- (6) For each contravention of a provision in Category F set out in section 26 (2) (f) or (g), the range of amounts of the administrative penalty is as follows:
- (a) between \$5 000 and the maximum amount set out in section 56 (2) of the Act, for a first contravention;
 - (b) between \$10 000 and the maximum amount set out in section 56 (2) of the Act, for a subsequent contravention.

Authority's Comments

The proposed addition of subsection 27 (6) is intended to provide a framework for allowable minimum and maximum penalty amounts for the new proposed Category F. The flexible penalty amount under this category reflects the broad range of unlicensed activity that may be captured, and level of harm posed by each case.

To determine the appropriate penalty amount for Category F, BCFSA will consider the unique circumstances of each case, similar to other Canadian regulatory administrative penalty frameworks, such as:

- The scale and scope of the conduct;
- The promptness with which non-compliant activity is ceased;
- The level of cooperation with BCFSA; and
- The person's compliance history.