

Discussion Paper: Dual Agency and Code of Ethics

Office of the Superintendent of Real Estate

The Office of the Superintendent of Real Estate (OSRE) is in the process of reviewing the recommendations outlined by the Independent Advisory Group (IAG). The following two recommendations have been identified as priorities moving forward and OSRE is seeking input from BC Real Estate Boards, the BC Real Estate Association and the BC Real Estate Council on how best to implement the recommendations prior to developing draft rules.

Recommendation 1: Create a comprehensive Code of Ethics and Professional Conduct and require licensees to affirm, in writing their compliance with the Code as part of regular relicensing requirements.

The IAG notes that an effective code compels a profession and the individuals operating in it to “do the right thing,” above and beyond following the rules. OSRE is seeking to develop a code that is easily accessed and understood by licensees and the public.

We are looking for input from industry on how to develop a code that is relevant and useful to licensees, while also enhancing consumer protections and reducing potential conflicts of interest.

Recommendation 2: Amend rules to no longer permit licensees engaged in trading services to offer dual agency.¹

The IAG defines dual agency and double ending as follows;

Dual agency, also known as limited dual agency, occurs when a licensee acts for both a buyer and a seller, or for more than one buyer, in a single transaction. The term “limited” is used because a licensee effectively contracts out of some of their obligations owing to one or both parties in the transaction.

Double ending refers to a licensee receiving both the buyer and seller portion of the commission on a transaction. This occurs most often when a licensee acts for both buyer and seller in a limited dual agency but it can also occur when either the buyer or seller is unrepresented by a licensee.

¹ This does not apply to designated agency.

The IAG recognizes that dual agency relationships place parties in an inherent conflict of interest because they allow licensees to represent parties with potentially divergent or opposing interests, provide opportunities for abuse, and can give rise to consumer confusion. OSRE is committed to implementing a rule which prohibits dual agency.

The IAG noted that a ban on dual agency may incent licensees to encourage consumers to remain unrepresented so the transaction can still be double ended. To address this concern, OSRE is also considering restricting licensees from benefiting financially when engaged by a seller and working with an unrepresented buyer in a transaction.

We are seeking feedback from industry on how best to implement the provisions so that consumer protection is enhanced and unintended consequences for the industry and the public are minimized.

Background

In February 2016, the IAG, a panel of experts led by the Superintendent, of Real Estate, conducted a review of real estate licensee conduct in the province. The IAG focused on examining how the current regulatory regime could be strengthened to enhance consumer protection and public confidence. On June 28, 2016 the IAG published its findings in a report, which outlined 28 recommendations in four board themes.

Following the release of the report, the Government of British Columbia made a series of changes affecting the regulation of the sector including giving new powers to OSRE. As part its new role, OSRE is now responsible for providing oversight to the Real Estate Council of British Columbia and developing rules governing the conduct of licensees.

The IAG's Report is available at: www.rebc.ca/wp-content/uploads/IAGReport_June2016.pdf

Input is received on a confidential basis in order to obtain valuable and forthright input to assist us in our policy decision making process. The Office of the Superintendent of Real Estate will treat submission as confidential records and will not publish individual submissions or attribute content. However, please note that all submissions received are subject to the *Freedom of Information and Protection Privacy Act*.