



BRITISH COLUMBIA  
REAL ESTATE  
ASSOCIATION

# the bulletin

## Time of Change for BC Real Estate

It's certainly been a busy time for BC REALTORS®. Not only have you seen record home sales, but in recent months there's also been no shortage of announced changes to professional real estate practice. The active market, especially in the Lower Mainland, drew attention to the real estate sector. However, the initial focus on housing affordability mistakenly became linked to real estate practice, as misconduct by a few licensees dominated headlines.

Public perception and politics then took over and reinforced a false connection between real estate practice and housing affordability. As a result, significant changes to the province's real estate regulatory regime to improve practices and increase consumer protection quickly evolved.

### What Are the Changes?

In February, the Minister of Finance asked the Real Estate Council of British Columbia to create an Independent Advisory Group (IAG). On June 28, the IAG made 28 recommendations covering four areas: transparency and ethics; compliance and consequences; governance and structure; and licensee and public education.

The next day, the BC government announced that it would end self-regulation for the real estate sector and, on July 29, changes to the *Real Estate Services Act* paved the way. This end to self-regulation means that, once the changes take effect, the new, dedicated Superintendent of Real Estate will have rule making authority (instead of the Council), more oversight of the Council and that most members of the Council will not be real estate practitioners.

As of August 19, none of the changes to real estate practice were yet in force.

With no warning, BC Premier Christy Clark also announced an additional 15 per cent Property Transfer Tax (PTT) for foreign nationals on July 25. Effective only one week later on August 2, the tax began being applied to residential real estate in the Greater Vancouver Regional District.

### What's BCREA Been Doing in Response?

#### IAG Recommendations

Organized real estate has a long history of advocating for consumer protection and supporting the professionalism of Realtors. From that foundation, and caught in the tide of public perception and political will, BCREA has publicly supported the IAG recommendations and the creation of a dedicated Superintendent of Real Estate. The Association has been actively meeting with and writing to MLAs and government staff, presenting to the IAG, working with the Real Estate Council as closely as possible and consulting with brokers to support Realtors and help ensure that their voice is heard.

BCREA has also distributed news releases to help increase awareness of REALTOR® professionalism. In addition, to provide members with further information, the Association created videos of BCREA President Deanna Horn discussing what BCREA's doing about the IAG recommendations ([youtu.be/-59QuYBiX48](https://youtu.be/-59QuYBiX48)) and of BCREA CEO Robert Laing providing an overview of BCREA's actions related to the changes, along with an update on the status of the IAG recommendations ([youtu.be/VK8pJznrkU](https://youtu.be/VK8pJznrkU)).



### PTT for Foreign Buyers

Following announcement of the additional PTT, and in an effort to ensure market stability, consumer confidence and fairness, BCREA, the Real Estate Board of Greater Vancouver (REBGV) and the Fraser Valley Real Estate Board (FVREB) urged BC Finance Minister Mike de Jong to at least include a provision that would allow transactions that were already underway to be exempt from the new tax. However, the Minister was not at all sympathetic to that request.

*(continued on page 3)*

I N S I D E	
President's Report Challenges and Opportunities	Pg 2
Real Estate Sector Time of Change for BC Real Estate <i>(continued)</i>	Pg 3
Practical Points Updates to Your Standard Forms	Pg 4
Real Estate Sector REALTORS® of BC: Six Boards Move Forward	Pg 5
Education New Online Manufactured Home Course	Pg 6
Economics What Will Happen Next in BC's Real Estate Market?	Pg 6
Legally Speaking Boo You Really Want to Know?	Pg 7
Legally Speaking Recent Regulation Regarding Assignments	Pg 8

# President's Report

## Challenges and Opportunities

In so many ways, these are challenging times to be a REALTOR®. In the more than 30 years of having my real estate licence, I've never seen such a period of change.

An active market. New taxes. Losing self-regulation. The potential amalgamation of boards. Legislative changes. It can feel overwhelming.

I know there is a lot of support from Realtors all around the province for the Independent Advisory Group (IAG) recommendations. That's because most of us already put our clients first and take our professionalism seriously. Doing so is just good business.

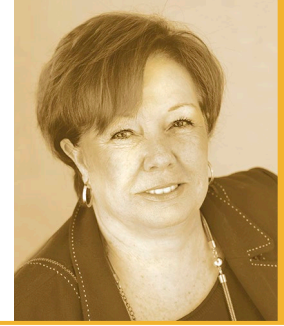
Yet, it's hard not to feel thrown under the bus by the government's recent announcements. We told Minister de Jong we've been hearing that message from many Realtors. The Minister heard this and told us plainly that he values our work and the expertise we can bring to making sure that the IAG recommendations are implemented properly.

We are preparing a submission to the

government outlining what we've heard from you about an outright ban on limited dual agency. Consumer choice would be limited by such a move, especially in small communities, for commercial Realtors and also for all of us with long-standing relationships with clients. We believe there's a way to protect the consumer that still lets them work with their Realtor of choice.

Another big concern we are hearing is that several of the IAG recommendations could impose much greater workloads on managing brokers. As with any change, the devil will be in the details, and we are working hard to ensure that the government hears from brokers about the impact on their businesses.

Aside from the IAG recommendations, the additional 15 per cent Property Transfer Tax for residential property transactions involving foreign nationals in Greater Vancouver was announced. For three days following that announcement, and before it was approved in the legislature, we contacted the Minister's office and



President Deanna Horn

several other government leaders to strongly recommend that they grandfather existing contracts. Unfortunately, this was to no avail.

Despite these challenges, once the new Superintendent of Real Estate is appointed, we will be working hard to establish a positive working relationship and help implement the IAG recommendations to help avoid any unintended negative impacts on you as Realtors, as well as on consumers or on the market.

Deanna Horn  
President



## Board of Directors 2016-2017

### Core Ideology

#### Core Purpose

Ensuring the continued value of REALTORS® to consumers.

#### Core Values

- Member board vitality
- REALTOR® success
- REALTOR® professionalism
- Quality of Life
  - Ensuring economic vitality
  - Providing housing opportunities
  - Preserving the environment
  - Protecting property owners
  - Building better communities
- Public trust

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# Real Estate Sector

(continued from page 1)

BCREA and REBGV representatives also met with housing critic David Eby to discuss the PTT, upcoming changes to real estate practice and housing affordability.

In addition, BCREA's mobile tax calculator has been updated to accommodate the new, additional 15 per cent PTT. To view the updated calculator, visit [www.bcrea.bc.ca/taxapp](http://www.bcrea.bc.ca/taxapp).

The Real Estate Council introduced a clause for Realtors to use when drafting contracts involving foreign nationals, called Buyers are Foreign Entities, which is available on WEBForms® ([webforms.realtorlink.ca](http://webforms.realtorlink.ca)). For more information about the new tax and the related clause, read the *Updates to Your Standard Forms* article on page 4.

## What's Next?

In short order, the new Superintendent of Real Estate will be appointed, and that office will have the authority to create and amend rules that pertain to real estate licensees, authority that right now rests with the Council.

Many of the IAG recommendations will be implemented either by rules or policies, and so it's critical that BCREA and organized real estate be prepared with solutions to ensure that unintended negative consequences are avoided. However, until the dedicated Superintendent of Real Estate is appointed, several of the IAG recommendations will still be in limbo.

In the meantime, BCREA is working with all BC real estate boards on three key projects:

- preparing a submission to the Superintendent, the Real Estate Council and the Minister of Finance; the document will address all 28 recommendations, with focus on the introduction of a regulatory code of ethics and concern about the



recommended ban on limited dual agency and the increased workload for managing brokers;

- consulting with brokers at broker meetings and focus groups; and
- creating consistent communications approaches to reach out to Realtors and the public.

BCREA has compiled a video ([youtu.be/P3FmUuH81Dg](https://youtu.be/P3FmUuH81Dg)) discussing the ways that the Association advocates for Realtors and an overview of the next steps described above.

BCREA will be following-up with the Minister of Finance to reinforce our concern with the way the additional PTT was implemented. In that letter, the Association will also request that future changes (some of which can be made by regulation) include exemptions for transactions that are already underway.

The Association is also looking at the products and services we deliver and how we can make changes in the spirit of the IAG recommendations. Some of those include inviting the Council to expand its participation on BCREA's Standard Forms Committee, translating guides for standard forms into languages other than English and encouraging members to take more Professional Development Program courses.

For further information related to real estate practice in BC, including recent news releases and reference materials, visit [www.bcrea.bc.ca/about/repractice](http://www.bcrea.bc.ca/about/repractice).

We welcome your feedback! Provide your input and ask questions about BCREA's advocacy role, by contacting the Association's Manager of Government Relations Norma Miller at [nmiller@bcrea.bc.ca](mailto:nmiller@bcrea.bc.ca).

## Updates to Your Standard Forms

Standard forms are a vital tool for REALTORS® in their business. With so many changes taking place over the past few months, a couple of updates have been made to the forms that you use regularly which you should be aware of.

### Assignments

Following a flurry of media coverage related to assignments, the BC government made changes to ensure that real estate consumers have a tool to engage in a discussion about whether they want their contracts to be assignable.

On May 10, the provincial government amended the Real Estate Services Regulation to require changes in the way the assignment of real estate contracts are addressed. As a result, effective May 16, real estate contracts prepared by licensees must now state that the contract cannot be assigned without the written consent of the seller, and that any profit from an assignment goes to the initial seller. This applies to both residential and commercial transactions, with the exception of development units. Clients can also instruct licensees to omit or change the clauses.

For more information, see the August issue of *Legally Speaking, Recent Regulation Regarding Assignments*, on page 8 and watch the Real Estate Council of BC's [Understanding BC's New Contract Assignment Requirements](#) video.

### PTT for Foreign Nationals

On July 25, the province announced that effective August 2 an additional 15 per cent Property Transfer Tax (PTT) would be applied to residential real estate transactions involving foreign nationals in the Greater Vancouver Regional District



(not including Tsawwassen First Nations Lands or other areas of the province).

Following that announcement, BCREA worked with legal counsel to prepare a new clause, called Buyers are Foreign Entities, for Realtors to use when drafting contracts involving foreign nationals.

The clause helps to ensure that if the buyer is a “foreign entity” or a “taxable trustee,” they are aware that an additional 15 per cent PTT is to be paid on the fair market value of the residential property being purchased equal to the total of:

- a) 1 per cent of the purchase price on the first \$200,000;
- b) 2 per cent of the purchase price that exceeds \$200,000 but does not exceed \$2,000,000;
- c) 3 per cent of the purchase price that exceeds \$2,000,000; plus
- d) an additional PTT equal to 15 per cent of the purchase price.

Realtors should be aware that a foreign national is defined as an individual who is not a Canadian citizen or permanent resident. For transactions that involve a company purchasing property, a foreign company is defined as one that is not incorporated in Canada, or is incorpo-

rated in Canada but controlled in whole or in part by a foreign national or other foreign corporation. The tax also only applies to residential properties, not commercial, and is in addition to the regular PTT to be paid upon closing.

Furthermore, the additional tax is payable even if there would normally be an exemption available. For example, transfers between related individuals, transmission to a surviving joint tenant and other such items now attract the additional tax.

So how will the proceeds from the additional 15 per cent PTT on foreign nationals be used? All proceeds will be used for a Housing Priority Initiatives Fund for provincial housing and rental programs. The fund will be created later this year and, following an initial investment from government of \$75 million, will then be topped up with proceeds from the additional PTT on foreign nationals.

For more information about the new tax see the government's [Tax Information Sheet](#).

To view these updated contracts and the Buyers are Foreign Entities clause, login to [WEBForms®](#).

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## REALTORS® of BC: Six Boards Move Forward

For the past year and a half, the presidents of each of the 11 BC real estate boards and BCREA have participated on a Presidents Working Group to question, research and develop a more efficient operating model for organized real estate in the province. Following an extensive research process, they arrived at the recommendation to amalgamate BC real estate boards and BCREA into one provincial entity, tentatively named Realtors of BC.

In early July, the Realtors of BC proposal reached a critical milestone. Representing about 86 per cent of BC Realtors, six real estate boards—plus BCREA—have agreed to enter a due diligence process that will enable real estate boards still participating in the initiative to fulfill their fiduciary obligations to each of their organizations. This will ensure there are no unknown legal or financial surprises as we continue moving towards amalgamating into a new organization.

The participating real estate boards are the BC Northern Real Estate Board, Fraser Valley Real Estate Board, Kamloops and District Real Estate Association, Okanagan Mainline Real Estate Board, Real Estate Board of Greater Vancouver and South Okanagan Real Estate Board.

### The Vote

To provide all BC real estate boards with sufficient time to fully engage members and ensure they have enough information to make an informed decision, the member

vote will be held on **Tuesday, December 6, 2016**. This will be a historic opportunity to have a say about the future of your profession.

Voting will take place at each participating real estate board and will be carried out based on their current bylaws.

For more details about the vote, visit [realtorsofbc.ca/the-vote](http://realtorsofbc.ca/the-vote).

### The Outcome

For this initiative to move forward four real estate boards, consisting of 15,000 members, and BCREA must vote yes. With a dominant yes vote, transitional planning would begin immediately to incorporate your board into Realtors of BC.

With a dominant no vote, your current board structure would remain in place, though the other boards that vote in favour will participate in Realtors of BC.

For more details and a breakdown of how Realtors of BC would operate, visit [realtorsofbc.ca/about-bc-realtors/how-it-would-operate](http://realtorsofbc.ca/about-bc-realtors/how-it-would-operate).

### Next Steps

To assess levels of awareness and support for the proposed Realtors of BC amalgamation and important steps moving forward, licensees from participating real estate boards across the province were polled in late July.

Key takeaways included that, of Realtors

who completed the poll a high majority, 88 per cent, were aware of the initiative and of those individuals, 75 per cent were in strong support of it. However, valuable feedback was provided that half of the members polled reported feeling that they didn't have enough information to make an educated decision on December 6.

This requirement for better communication and further information will be an imperative priority for the initiative moving forward to inform and engage with members.

As noted in the polling results, key topics of importance will include:

- a breakdown of the proposed organizational structure,
- further information on how member services will be delivered,
- more comprehensive financial analysis, and
- more details on the new organization's potential governance.

### Learn More

For detailed information on the topics listed above and much more, see the comprehensive list of frequently asked questions by visiting [realtorsofbc.ca/frequently-asked-questions](http://realtorsofbc.ca/frequently-asked-questions).

If you have further questions or would like to provide your feedback, contact [info@realtorsofbc.ca](mailto:info@realtorsofbc.ca).



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# REALTORS® of BC

# Education

## New Online Manufactured Homes Course

You are listing a manufactured home. Have there been alterations? Has it been registered on the Manufactured Homes Registry? Does it have the proper labels, stickers and permits for a successful transaction? A new online course, *Manufactured Homes: What a REALTOR® Should Know*, is now available to help you determine whether this home meets regulations and requirements.

The Manufactured Homes course is accredited for three Category B Professional Development Program (PDP) credits and will explore potential issues, questions and requirements to consider prior to listing a manufactured home. Learners will hear about the challenges of working with manufactured homes, and both legal and BC Safety Authority perspectives on related stickers, labels and work permits required for additions.

Upon completing this course, Realtors will:

- be able to identify regional perspectives about the trading services activity and challenges with manufactured homes;
- be familiar with legal definitions, regulations and information about manufactured homes; and
- be familiar with protocols when listing a manufactured home, identifying alterations and additions, and verifying when Canadian Standards Association stickers, Silver Labels and work permits apply.

This two to three-hour online course is the first episode of the PDP On Demand Product series, a suite of online webinar learning experiences. This talk series

combines informal TED® Talk-like video elements with online learning activities and is offered by BCREA through REvia, the Real Estate Knowledge Network.

To learn more about this course and to register, visit [www.revica.ca/manufactured-homes-what-realtors-need-to-know](http://www.revica.ca/manufactured-homes-what-realtors-need-to-know).



# Economics

## What Will Happen Next In BC Real Estate Market?

With real estate being a red hot topic in the media lately, BCREA's Economics Team has compiled a series of reports to examine market statistics and potentially correct some common misconceptions.

The first Market Intelligence Report, *Myth of the Retreating Millennial*, examined the narrative that millennials are leaving Vancouver in droves because of high housing costs which has become a familiar one in the media, but is it correct? The report corrects the common misconception that millennials are retreating from Vancouver through an examination of population estimates for the region. The report reveals that millennials are, in fact, not retreating,

and that the population aged 20 to 34 years old has actually increased significantly in the city.

The second report, *What Happens Next to Home Prices?*, examines periods of rapid price acceleration, defined as 20 per cent or higher year-over-year growth, and the fact that an acceleration in prices is generally followed by a reversion of growth back to its long-run average within 12 months. This pattern is far from unusual in Vancouver. In fact, since 1981, there have been 46 months in which prices rose by more than 20 per cent on a year-over-year basis and 38 of those months occurred prior to 2010.

The Association's Economics Team plans to produce further Market Intelligence Reports to provide statistical insight on BC's real estate market as media trends surface. To read BCREA's Market Intelligence Reports, visit the Publications section of the following page [www.bcrea.bc.ca/news-and-publications/economics/forecasts-and-presentations](http://www.bcrea.bc.ca/news-and-publications/economics/forecasts-and-presentations).





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# LS Legally Speaking



Author *Jennifer Cleo*

## BOO YOU REALLY WANT TO KNOW?

Licensees often ask whether a death at a property must be disclosed by the seller, be it death by murder, natural causes, accident or suicide. The simple answer is no. However, there are practical considerations that may make disclosure of such events beneficial to the seller.

### Seller's Disclosure Duty

Sellers and their agents have a common law duty to disclose material latent defects of which they have knowledge, rendering the property dangerous or unfit for habitation. Latent defects—those not discoverable upon a reasonable investigation by a buyer or the buyer's home inspector—concern defects directly related to the intrinsic quality of the building or property itself which, applying an objective standard, materially affect the property's use or value. A licensee acting on behalf of a seller has the professional duty to disclose any material latent defects as defined by Section 5-13 of the Real Estate Council of British Columbia's Rules.

Events at a property, such as a suicide, or a murder in the home, or a claim that the

home is haunted, are often referred to as stigmas or stigmatizations. These do not affect the objective value of a property, though they may make a property less (or more) attractive to certain individuals due to subjective considerations. A seller is not required to disclose stigmas or stigmatizations.

It is the buyers' responsibility to ask questions about any personal considerations that could affect their enjoyment of a property. As stated in *Summach v. Allen*:<sup>1</sup> "...to allow defects to be determined by individual preferences would open the floodgates of litigation by remorseful purchasers and create an impossible standard of disclosure for vendors."

A Quebec Court,<sup>2</sup> considering the seller's duty to disclose his son's suicide ten years earlier at the property, put it this way: "The court has a great deal of difficulty in agreeing that elements whose importance depends on the sensitivity, phobias, sentiments, or purely personal and subjective apprehensions that are not related to the quality of the building should be subject to compulsory disclosure. Imposing such rules would place an impossible burden on the shoulders of a seller in assessing which of the events that had occurred in the house might be important in the mind of the buyer and therefore of consequence in terms of his decision."

### Seller's Duty When Asked

If a buyer asks the seller about an event or occurrence, such as a death at the property, the seller may either answer the question or decline to answer the question. However, the seller must not misrepresent or mislead the buyer. Thus,

a seller of a haunted mansion declining to answer a buyer's question as to whether the property is haunted should state that he is declining to answer the question rather than answering, "Not a ghost of a chance."

Failing to disclose a stigma may expose the seller to an expensive and time consuming lawsuit if the buyer subsequently learns of the stigma; disclosing a stigma will avoid that risk.

### Seller's Agent's Disclosure Duty

A seller's agent is not required to disclose a stigma to a buyer unless:

- i. The seller's agent also represents the buyer who has indicated a concern about the stigma; or
- ii. The seller's agent has been authorized by the seller to answer a buyer's question about the existence of the stigma.

As the law is continually changing, to avoid complaints or claims by sellers or buyers relating to the non-disclosure of stigmas, a seller's licensee should advise sellers in writing to obtain independent legal advice regarding their obligation to disclose known stigmas associated with their property.

Jennifer Cleo  
B.A., LL.B.

<sup>1</sup> *Summach v. Allen*, 2002 B.C.S.C. 119.

<sup>2</sup> *Knight v. Dionne*, 2006 Q.C.C.Q. 1260.

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Author *Brian Taylor*

## RECENT REGULATION REGARDING ASSIGNMENTS

In May 2016, in response to public concern over the flipping of single family residential properties in a surprisingly robust residential market, the provincial government amended the Real Estate Services Regulation concerning the assignment of Contracts of Purchase and Sale (CPS).<sup>1</sup>

The amendment is designed to ensure that buyers and sellers are properly advised about the implications of the potential assignment of the CPS. With that disclosure, the parties will be able to negotiate terms and conditions that best suit their particular circumstances.

Section 8.2 of the Regulation requires a licensee who prepares a contract for the purchase and sale of property to include in that CPS clauses providing that the CPS may not be assigned without the written consent of the seller and that the seller is entitled to any profit resulting from an assignment of the CPS. This requirement applies to a buyer's agent who prepares the CPS on behalf of a buyer/client or a listing agent who prepares the CPS for a buyer/customer. Note that development presale contracts under the *Real Estate Development Marketing Act* are specifically exempted from the requirements of section 8.2.

Section 8.2 (3) provides that, "unless otherwise instructed by the party to whom or on whose behalf the licensee is providing trading services," the licensee preparing the CPS has to include the required clauses. Where a buyer specifically instructs their buyer's agent in writing not to include the clauses, the buyer's agent is required to provide a written notice to the seller's agent or, if the seller is unrepresented, to the seller directly advising the seller to seek independent legal advice. The notice must be in the form approved by the Real Estate Council of British Columbia (Notice to Seller Regarding Assignment Terms) and cannot be included as a clause in the CPS.

Where the listing agent is simply preparing the CPS for a buyer who is a customer rather than a client, and the listing agent does not represent that buyer, it cannot be said that the listing agent is providing trading services to that buyer. Section 8.2 (3) deals only with instructions from a person to whom the licensee is providing trading services. Accordingly, a listing agent acting solely for the seller could not be instructed by a buyer to add, remove or amend the required clauses in an offer prepared by the listing agent. They are only obligated by section 8.2 to include the required clauses in any offer prepared by them. If a buyer/customer asked the listing agent to add, remove or amend the required clauses the listing agent should advise the buyer that, as a result of section 8.2, they are precluded by law from making those changes. However, if the buyer themselves physically added to, removed or amended the required clauses, the listing agent would be obliged to present that offer, as written, to the seller. In this situation, the listing agent would be wise to get written confirmation from the buyer that the buyer, and not the listing agent, made the changes.

If a listing agent receives a CPS that does

not contain the required clauses or those clauses have been added to or amended and the Notice to Seller Regarding Assignment Terms is provided, the listing agent has an obligation to ensure that their client, the seller, is informed about whether the CPS may be assigned. If the CPS may be assigned, the listing agent must inform their client about the conditions in the CPS regarding the right of assignment and the seller's right under the CPS to any profit resulting from the assignment, if applicable. In that case, the onus will fall to the licensee to establish that an adequate explanation was provided. A prudent licensee may wish to create written evidence of that explanation.

If the listing agent receives an offer prepared by a licensee acting for the buyer that has added to, removed or amended the required clauses, but does not contain the notice required to be prepared by the buyer's agent, the listing agent still has a duty to advise the seller of the implications of the addition, removal or amendment. The listing agent may even wish to advise their client to seek legal advice. Again, a prudent licensee may wish to create written evidence of their discussion with their client.

For more information, see the Council's frequently asked questions regarding the Regulation.<sup>2</sup>

Brian Taylor  
Bull Housser LLP

<sup>1</sup> Real Estate Services Regulation, B.C. Reg. 506/2004: [www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/10\\_506\\_2004](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/10_506_2004).

<sup>2</sup> Real Estate Council of British Columbia's online Contract Assignment Requirements FAQ: [www.recbc.ca/licensee/contract-assignment-faq.html](http://www.recbc.ca/licensee/contract-assignment-faq.html).

