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REAL ESTATE SERVICES ACT

[SBC 2004] CHAPTER 42

Assented to May 13, 2004

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Part 1 — Introductory Provisions

Definitions

1 In this Act:

"associate broker" means a person licensed as an associate broker;

"brokerage" means a person licensed as a brokerage;

"brokerage trust account" means, in relation to a brokerage, an account maintained by the brokerage under section 26 [*obligation to maintain trust account*];

"bylaw" means a bylaw of the real estate council under section 84 [*general bylaws*] or 85 [*bylaws respecting licensing fees and assessments*];

"compensable loss" means loss that is compensable loss within the meaning of section 60 [*compensable loss*];

"compensation committee" means a hearing committee established to make determinations and assessments of compensable loss under Part 5 [*Payments from Special Compensation Fund*];

"compensation fund corporation" means the Real Estate Compensation Fund Corporation established under section 109 [*compensation fund corporation established*];

"conduct unbecoming a licensee", in relation to a licensee or former licensee, means conduct unbecoming a licensee within the meaning of section 35 (2) [*misconduct by licensee*];

"council member" means a member of the real estate council under Part 6 [*Real Estate Council*];

"deceptive dealing", in relation to a person providing real estate services as a licensee, means any of the following:

(a) an intentional misrepresentation, by word or conduct, or in any other manner, of a material fact in relation to real estate services, or in relation to a trade in real estate to which the real estate services relate, or an intentional omission to disclose such a material fact;

(b) a course of conduct or business that is intended to deceive a principal about the nature of the real estate services, or about the nature of a trade in real estate to which the real estate services relate;

(c) an artifice, agreement, device or scheme to obtain money, profit or property by illegal means;

(d) a promise or representation about the future that is beyond reasonable expectation and not made in good faith;

"discipline committee" means a hearing committee established to conduct hearings under Division 2 [*Discipline Proceedings*] of Part 4;

"elected council member" includes a member of the real estate council temporarily appointed under section 76 (5) [*election of council members*];

"engaged", in relation to a brokerage, means a person who is

(a) a licensee employed by the brokerage to provide real estate services on its behalf, or

(b) a licensee who is acting in an independent contractor relationship with the brokerage to provide real estate services on its behalf;

"false or misleading statement" includes an omission in relation to information that is required or authorized to be provided under this Act;

"financial services tribunal" means the Financial Services Tribunal under the *Financial Institutions Act*;

"foundation" means the Real Estate Foundation of British Columbia continued under section 90 [*foundation continued*];

"foundation fund" means the fund of the foundation under section 94 [*foundation fund*];

"hearing committee" means a hearing committee established under section 83 [*hearing committees*];

"insurance corporation" means the Real Estate Errors and Omissions Insurance Corporation continued under section 99 [*insurance corporation continued*];

"insurance fund" means the Real Estate Errors and Omissions Insurance Fund under section 103 (1) [*insurance fund*];

"issue", in relation to a licence, includes renew;

"licence" means a licence issued under Part 2 *[Licensing]*;

"managing broker" means a person licensed as a managing broker;

"money" includes currency, government or bank notes, cheques, drafts, money orders and amounts credited or received by electronic means;

"owner", in relation to rental real estate, includes a person entitled to possession of the real estate who exercises a right to sub-rent or sub-lease the real estate to another;

"party",

(a) in relation to a trade in real estate, does not include a licensee acting solely as a licensee, and

(b) in relation to a prospective trade in real estate, includes a potential party;

"principal", in relation to real estate services, means, as applicable,

(a) in the case of trading services, a party to a trade in real estate,

(b) in the case of rental property management services, other than trading services in relation to the rental of the real estate, the owner of the rental real estate to or on behalf of whom the services are provided, or

(c) in the case of strata management services, the strata corporation to whom or on behalf of whom the services are provided;

"professional misconduct", in relation to a licensee or former licensee, means professional misconduct within the meaning of section 35 (1) *[misconduct by licensee]*;

"providing", in relation to real estate services, includes

(a) offering to provide such services,

(b) holding oneself out as a person who provides such services, or

(c) soliciting for the purposes of the provision of such services;

"real estate" means

(a) real property,

(b) regardless of whether it is or is not an interest in real property, a cooperative interest, shared interest in land or time share interest, as these are defined in the *Real Estate Development Marketing Act*, and

(c) a right in relation to real property that is defined by regulation to be real estate,

but does not include a right in relation to real property that is excluded by regulation;

"real estate council" means the Real Estate Council of British Columbia continued under section 73 [*council continued*];

"real estate services" means

- (a) rental property management services,
- (b) strata management services, or
- (c) trading services;

"related" means,

- (a) in relation to a brokerage, a managing broker, associate broker or representative who is licensed in relation to the brokerage, and
- (b) in relation to a managing broker, associate broker or representative, the brokerage in relation to which the person is licensed;

"remuneration" includes any form of remuneration, including any commission, fee, gain or reward, whether the remuneration is received, or is to be received, directly or indirectly;

"representative" means a person licensed as a representative;

"rental property management services" means any of the following services provided to or on behalf of an owner of rental real estate:

- (a) trading services in relation to the rental of the real estate;
- (b) collecting rents or security deposits for the use of the real estate;
- (c) managing the real estate on behalf of the owner by
 - (i) making payments to third parties,
 - (ii) negotiating or entering into contracts,
 - (iii) supervising employees or contractors hired or engaged by the owner, or
 - (iv) managing landlord and tenant matters

but does not include an activity excluded by regulation;

"rental real estate" means real estate that is or is intended to be rented or leased;

"rules" means rules made by the real estate council under section 86 [*council rules*];

"special compensation fund" means the Real Estate Special Compensation Fund established under section 112 [*special compensation fund*];

"stakeholder" means a brokerage holding money as a stakeholder under section 28 [*money held as stakeholder*];

"strata corporation" means a strata corporation within the meaning of the *Strata Property Act* and includes a section within the meaning of that Act;

"strata management services" means any of the following services provided to or on behalf of a strata corporation:

- (a) collecting or holding strata fees, contributions, levies or other amounts levied by, or due to, the strata corporation under the *Strata Property Act*;
- (b) exercising delegated powers and duties of a strata corporation or strata council, including
 - (i) making payments to third parties on behalf of the strata corporation,
 - (ii) negotiating or entering into contracts on behalf of the strata corporation, or
 - (iii) supervising employees or contractors hired or engaged by the strata corporation

but does not include an activity excluded by regulation;

"superintendent" means the Superintendent of Real Estate appointed under the *Real Estate Development Marketing Act*;

"Superintendent of Financial Institutions" means the Superintendent of Financial Institutions appointed under the *Financial Institutions Act*;

"trade in real estate" means

- (a) a transaction for the purchase or sale of real estate, for the leasing of real estate or for any other form of acquisition or disposition of real estate, or
- (b) a prospective trade in real estate within the meaning of paragraph (a);

"trading services" means any of the following services provided to or on behalf of a party to a trade in real estate:

- (a) advising on the appropriate price for the real estate;
- (b) making representations about the real estate;
- (c) finding the real estate for a party to acquire;
- (d) finding a party to acquire the real estate;
- (e) showing the real estate;
- (f) negotiating the price of the real estate or the terms of the trade in real estate;
- (g) presenting offers to dispose of or acquire the real estate;

(h) receiving deposit money paid in respect of the real estate but does not include an activity excluded by regulation;

"wrongful taking", in relation to a person providing real estate services as a licensee, means any of the following:

- (a) a misappropriation or wrongful conversion of money or other property received by the person in relation to the real estate services;
- (b) an intentional failure to account for or pay over, within a reasonable time, any money or other property that
 - (i) was received by the person, and
 - (ii) belongs to one or more principals in relation to the real estate services.

Application of Act

2 (1) This Act applies to every person who provides real estate services to or on behalf of another for or in expectation of remuneration.

(2) In addition but subject to the rules, this Act applies to every licensee who provides real estate services, even if the licensee

- (a) provides real estate services on the licensee's own behalf,
- (b) provides real estate services to or on behalf of another but not for or in expectation of remuneration, or
- (c) would otherwise be exempted by this Act or the regulations from the requirement to be licensed in relation to the provision of those real estate services.

Part 2 — Licensing

Division 1 — Licence Requirements

Requirement for licence to provide real estate services

3 (1) A person must not provide real estate services to or on behalf of another, for or in expectation of remuneration, unless the person is

- (a) licensed under this Part to provide those real estate services, or
- (b) exempted by subsection (3) or the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.

(2) A licence required by this Part is additional to any licence, registration, certificate, enrollment or qualification required under any other Act.

(3) In addition to any exemption provided by regulation, the following are exempt from the requirement to be licensed under this Part:

- (a) a person acting under the authority of a court;
- (b) a trustee in bankruptcy, custodian, receiver, receiver manager or liquidator who is appointed under a provincial or federal enactment, in respect of real estate services undertaken by the person in that capacity;
- (c) an executor or administrator of an estate, in respect of real estate services provided in relation to real estate owned or held by the estate;
- (d) a trustee, in respect of real estate services provided under the terms of a will, marriage settlement or deed of trust;
- (e) a financial institution that has a trust business authorization under the *Financial Institutions Act*, in respect of real estate services provided in relation to real estate that it owns, holds or administers;
- (f) a practising lawyer as defined in section 1 of the *Legal Profession Act*, in respect of real estate services provided in the course of the person's practice.

No recovery of remuneration by unlicensed person

4 (1) No action may be brought or continued for remuneration in relation to real estate services unless, at the time the real estate services were provided, the person claiming the remuneration was

- (a) licensed under this Part to provide those real estate services, or
- (b) exempted by this Act or the regulations from the requirement to be licensed under this Part in relation to the provision of those real estate services.

(2) Subsection (1) does not apply to an action brought against a brokerage in relation to real estate services if the action is brought by a person who is licensed, or otherwise authorized, under the laws of a jurisdiction other than British Columbia to

- (a) provide those real estate services, and
- (b) act in a capacity equivalent to that of a brokerage under this Act.

Division 2 — Licence Levels, Categories and Relationships

Licence levels and categories

5 (1) The licence levels under this Part are as follows:

- (a) brokerage, being a licensee on behalf of which other licensees

must provide real estate services;

(b) managing broker, being a licensee responsible for a brokerage as provided in section 6 *[brokerage must have managing broker]*;

(c) associate broker, being a licensee who meets educational and experience requirements to be a managing broker, but is providing real estate services under the supervision of a managing broker;

(d) representative, being a licensee providing real estate services under the supervision of a managing broker.

(2) An individual may be licensed at any licence level.

(3) Unless permitted by the regulations, a partnership or corporation may be licensed only as a brokerage.

(4) Subject to the rules, a brokerage must have a brokerage licence for each branch office from which it operates.

(5) Within the licence levels under subsection (1), a person may be licensed within a category that is established by the rules on the basis of the real estate services permitted to be provided under the licence.

Brokerage must have a managing broker

6 (1) Subject to the rules, a brokerage

(a) must have one or more managing brokers licensed in relation to the brokerage, and

(b) may only provide real estate services that are permitted by the licence of a managing broker who is licensed in relation to the brokerage.

(2) A managing broker licensed in relation to a brokerage acts for the brokerage for all purposes under this Act, and is responsible for

(a) the exercise of the rights conferred on the brokerage by its licence,

(b) the performance of the duties imposed on the brokerage by its licence, and

(c) the control and conduct of the brokerage's real estate business, including supervision of the associate brokers and representatives who are licensed in relation to the brokerage.

Relationships between brokerages and other licensees

7 (1) Subject to subsection (2), a managing broker, associate broker or representative must be

(a) licensed in relation to a single brokerage, and

(b) engaged by that brokerage.

(2) If permitted by the rules, a managing broker may be licensed in relation to more than one brokerage if the brokerages are affiliated within the meaning of the rules.

(3) A managing broker, associate broker or representative

(a) must not provide real estate services other than on behalf of the brokerage in relation to which they are licensed, and

(b) is not entitled to and must not accept remuneration in relation to real estate services from any person other than the brokerage in relation to which they are licensed.

(4) A related licensee of a brokerage is, when acting for the brokerage, subject to any restrictions and conditions applicable to the brokerage licence in relation to which they are acting.

(5) A brokerage

(a) must not provide real estate services unless the services are provided on behalf of the brokerage by a managing broker, associate broker or representative who is licensed in relation to and engaged by the brokerage, and

(b) must not engage or allow a licensee who is licensed in relation to another brokerage to provide real estate services on behalf of the first brokerage unless the licensee is a managing broker licensed under subsection (2) in relation to both brokerages and engaged by both brokerages.

Division 3 — Licensing Authority

Applications in relation to licences

8 In this Part, unless otherwise provided, an application for a licence includes

(a) an application for a new licence, and

(b) an application for renewal, amendment or reinstatement of an existing licence.

Making an application for a licence

9 (1) In order to make an application under this Division, a person must submit to the real estate council an application that

(a) is in the form required by the real estate council,

(b) contains the information required by the bylaws,

(c) is certified in accordance with the bylaws,

(d) is accompanied by any other information and documentation

required by the bylaws, and

(e) is accompanied by the amounts required by the bylaws and the regulations.

(2) An application for a brokerage licence must identify the persons proposed to act as managing brokers licensed in relation to the brokerage.

(3) In the case of an individual who is

(a) licensed as a brokerage, and

(b) qualified to be a managing broker,

the individual is deemed to be a managing broker licensed in relation to the brokerage unless an application under subsection (2) in relation to the brokerage licence indicates that the individual will not be acting in that capacity.

(4) An application for a managing broker, associate broker or representative licence must identify the brokerage in relation to which the applicant proposes to be licensed.

(5) The real estate council may refuse to deal with an application until any amounts owed by the applicant to the real estate council, insurance corporation or compensation fund corporation, or required under this Act to be collected by the real estate council from the applicant, are paid.

Qualifications for obtaining licence

10 An applicant for a new licence or a licence renewal must satisfy the real estate council that they meet the following applicable requirements:

(a) the applicant is of good reputation and suitable to be licensed at the level and in the category for which the applicant is applying;

(b) in the case of an applicant who is an individual, the applicant

(i) is at least 19 years of age, and

(ii) meets the educational and experience requirements established by the rules;

(c) in the case of an applicant that is a partnership or corporation,

(i) the applicant's partners or directors and officers, as the case may be, are of good reputation, and

(ii) if a partner of the applicant is a corporation, the corporation's directors and officers are of good reputation;

(d) in all cases, the applicant has not

(i) been refused a licence under real estate, insurance, mortgage broker or securities legislation in British Columbia or another jurisdiction,

- (ii) held a licence that was suspended or cancelled under real estate, insurance, mortgage broker, or securities legislation in British Columbia or another jurisdiction,
- (iii) been disciplined by a professional body, or
- (iv) been convicted of an offence

for a reason that reveals the applicant as unfit to be a licensee;

(e) in all cases, the applicant meets any other qualification requirements established by the rules.

Council authority to investigate or require additional information

11 The real estate council may

- (a) conduct an investigation, or
- (b) require the applicant to provide the real estate council with additional information, documents or verification,

to the extent the real estate council considers necessary for the evaluation of an application under section 9 [*making an application for a licence*].

Continuance of licence during renewal application process

12 If a licensee has applied for renewal of a licence in accordance with section 9 [*making an application for a licence*] before the earlier of

- (a) the end of the licence term, and
- (b) if applicable, a date established under the rules,

the licence continues in effect beyond the end of its term until the real estate council notifies the licensee of its decision with respect to the application.

Refusal to issue or renew licence

13 (1) If an applicant does not satisfy the real estate council respecting the qualification requirements under section 10 [*qualifications for obtaining licence*], the real estate council may refuse to issue the licence.

(2) In addition, in the case of an applicant for a new brokerage licence, the real estate council may refuse to issue the licence if the real estate council considers that the applicant has a legal name or trade name that is likely to confuse or mislead the public.

(3) Before refusing to issue a licence, the real estate council must give notice to the applicant and provide the applicant with an opportunity to be heard respecting the matter.

(4) If the real estate council refuses to issue a licence, it must

- (a) provide the applicant with written notice of the refusal and the

reasons for it, and

(b) advise the applicant of the right to appeal under Division 4 [Appeals to Financial Services Tribunal] of Part 4.

Temporary licences

14 The real estate council may issue a temporary licence that

(a) requires the licensee to meet one or more specified conditions within a specified period of time or by a specified date, and

(b) is cancelled, effective at the end of that specified period or on that specified date, if the conditions are not met by that time.

Conditions and restrictions in relation to a specific licence

15 (1) Subject to this section, the real estate council may, as it considers necessary or desirable in relation to a specific licence,

(a) impose conditions and restrictions on the licence,

(b) vary a condition or restriction applicable to the licence, or

(c) remove a condition or restriction applicable to the licence.

(2) The powers under subsection (1) (a) or (b) to impose or vary a condition or restriction are exercisable only

(a) on or before the date on which the licence is issued, with effect on and after that date, or

(b) on the written application or with the written consent of the licensee.

(3) Before imposing or varying a condition or restriction as referred to in subsection (2) (a), the real estate council must give notice to the applicant and provide the applicant with an opportunity to be heard respecting the matter.

(4) If the real estate council imposes or varies a condition or restriction as referred to in subsection (2) (a), it must

(a) provide the applicant with written notice of the condition or restriction and the reasons for it, and

(b) advise the applicant of the right to appeal under Division 4 [Appeals to Financial Services Tribunal] of Part 4.

(5) The power under subsection (1) (c) to remove a condition or restriction is exercisable at any time on the real estate council's own initiative or on the written application of the licensee.

Amendments to reflect conditions and restrictions on related licences

16 (1) If

- (a) new licence conditions or restrictions apply to a brokerage licence, or
- (b) existing conditions or restrictions on a brokerage licence are varied or removed,

the real estate council may amend the licences of the related licensees of the brokerage to reflect the conditions and restrictions applicable to the brokerage licence.

(2) If

- (a) new licence conditions or restrictions apply to a managing broker licence, or
- (b) existing conditions or restrictions on a managing broker licence are varied or removed,

the real estate council may amend the licence of the related brokerage to reflect the conditions and restrictions applicable to the managing broker licence.

Conditions and restrictions are part of licence

- 17** A condition or restriction that applies to a licence under this Act is part of the licence in respect of which it applies, whether included in the licence, attached to it or contained in a separate document.

Licence amendments

- 18** The real estate council may amend a licence in any of the following circumstances:
- (a) on the written application or with the written consent of the licensee;
 - (b) as provided in section 15 [*conditions and restrictions in relation to a specific licence*];
 - (c) as provided in section 16 [*conditions and restrictions on related licences*];
 - (d) to give effect to an order under Division 2 [*Discipline Proceedings*] or Division 3 [*Authority of Superintendent*] of Part 4;
 - (e) to give effect to a rule under section 86 (2) (b) [*rules respecting general restrictions and conditions*].

Division 4 — Inoperative, Suspended and Cancelled Licences

When licences may become inoperative, suspended or cancelled

- 19** (1) A licence is subject to automatically becoming inoperative in accordance

with

- (a) section 22 (1) [*licensee ceases to be engaged by brokerage*], or
- (b) section 23 (1) or (3) [*effect on related licensees if licence becomes inoperative*].

(2) A licence is subject to suspension or cancellation in accordance with any of the following:

- (a) automatically in accordance with
 - (i) section 14 (b) [*cancellation of temporary licences*],
 - (ii) section 104 (3) [*failure to pay insurance assessment*],
 - (iii) section 113 (3) [*failure to pay compensation assessment*],
 - or
 - (iv) section 116 (4) [*failure to provide required security*];
- (b) by order of the real estate council under section 24 [*cancellation or suspension if qualification not met*];
- (c) by order of a discipline committee under Division 2 [*Discipline Proceedings*] of Part 4;
- (d) by order of the superintendent under Division 3 [*Authority of Superintendent*] of Part 4.

Restriction on licensee if licence inoperative or suspended

20 A licensee must not provide real estate services at any time that the licensee's licence is inoperative or suspended.

Surrender of licence and impounding of records

21 (1) A person whose licence becomes inoperative or is suspended or cancelled must immediately

- (a) cease to hold themselves out as a licensee, and
- (b) surrender the licence to the real estate council.

(2) If the licence of a person whose licence becomes inoperative or is suspended or cancelled is in the possession of the related brokerage, that brokerage must immediately surrender the licence to the real estate council.

(3) The real estate council may

- (a) impound the records of a brokerage whose licence has become inoperative or has been suspended or cancelled, and
- (b) retain those records for a period of 2 years or until the licence is reinstated, whichever is earlier.

Licence inoperative if licensee ceases to be engaged by brokerage

- 22** (1) If a managing broker, associate broker or representative ceases to be engaged by the brokerage in relation to which the person is licensed,
- (a) that person's licence becomes inoperative, and
 - (b) the person ceases to be licensed in relation to the brokerage,
- effective as of the time that the person ceases to be engaged by the brokerage.
- (2) On application of a person whose licence has become inoperative under subsection (1), the real estate council may, if satisfied that the person continues to be otherwise qualified for the licence,
- (a) reinstate the licence in its previous form if the person is re-engaged by the same brokerage, subject to any applicable amendments under section 16 [*conditions and restrictions on related licences*], or
 - (b) reinstate the licence with necessary amendment if the person is engaged by another brokerage.

Effect on related licensees if licence becomes inoperative

- 23** (1) If a brokerage licence becomes inoperative or is suspended or cancelled, the licence of any related licensee becomes inoperative, effective as of the time at which the brokerage licence becomes inoperative or is suspended or cancelled.
- (2) In relation to a licence that becomes inoperative under subsection (1), if
- (a) the related brokerage licence is reinstated, and
 - (b) the related licensee is licensed in relation to, and engaged by, the brokerage at the time of that reinstatement,
- the licence of the related licensee is automatically reinstated.
- (3) Subject to the rules, if the licence of the only managing broker for a brokerage becomes inoperative or is suspended or cancelled, the licences of the brokerage and its related licensees become inoperative, effective as of the time at which the managing broker licence becomes inoperative or is suspended or cancelled.
- (4) In relation to a licence that becomes inoperative under subsection (3), if the managing broker licence referred to in that subsection is reinstated in relation to the same brokerage, the licences of
- (a) that brokerage, and
 - (b) the related licensees who are licensed in relation to that brokerage and engaged by the brokerage at the time of that reinstatement,

are automatically reinstated.

(5) For certainty, a licence that is reinstated under this section is subject to section 7 (4) [*licensee is subject to restrictions and conditions applicable to brokerage licence*].

Cancellation or suspension of licence if qualification not met

24 (1) If an applicant for a licence made a false or misleading statement in or in relation to their application, respecting a matter referred to in section 10 [*qualifications for obtaining licence*], the real estate council may, by order,

(a) cancel the licence, or

(b) suspend the licence until satisfied that the licensee is qualified to hold the licence.

(2) Before cancelling or suspending a licence under this section, the real estate council must give notice to the licensee and provide the licensee with an opportunity to be heard respecting the matter.

(3) If the real estate council makes an order under this section, it must

(a) provide the licensee with written notice of the cancellation or suspension and the reasons for it, and

(b) advise the licensee of the right to appeal under Division 4 [*Appeals to Financial Services Tribunal*] of Part 4.

Part 3 — Trust Accounts and Other Financial Matters

Brokerage records

25 A brokerage must maintain proper books, accounts and other records in accordance with the rules, and must keep these records in British Columbia.

Obligation to maintain trust account

26 (1) A brokerage must maintain, in accordance with the rules, one or more interest bearing trust accounts with one or more savings institutions in British Columbia.

(2) An account required under subsection (1) must be designated as a trust account both in the brokerage's records and in the records of the savings institution holding the account.

Payment into trust account

27 (1) A licensee engaged by a brokerage must promptly pay or deliver to the brokerage

(a) all money held or received from, for or on behalf of a principal in relation to real estate services, and

(b) all money held or received on account of remuneration for real estate services, including a share of remuneration received from another brokerage and whether or not the remuneration has already been earned.

(2) A brokerage must promptly pay into a brokerage trust account

(a) all money held or received from, for or on behalf of a principal in relation to real estate services, and

(b) all money held or received on account of remuneration for real estate services, including a share of remuneration received from another brokerage.

(3) For the purposes of this section, if money referred to in subsection (1) or (2) is held or received by a person who is

(a) an officer, director, controlling shareholder or partner of a brokerage,

(b) an employee of a brokerage or of a related licensee of a brokerage, or

(c) a person acting in an independent contractor relationship with a brokerage or with a related licensee of a brokerage,

the money is deemed to be held or received by the brokerage or related licensee, as applicable.

(4) Subsections (1) and (2) do not apply to money held or received by a licensee providing trading services in relation to a trade in real estate if,

(a) by written agreement that is separate from any agreement giving effect to the trade in real estate, all principals in relation to the trading services agree that subsections (1) and (2) do not apply, and

(b) any conditions established by the rules are met.

(4.1) Despite subsection (2) (b), remuneration that has already been earned, as determined in accordance with the rules, by a brokerage may be paid,

(a) if none of the remuneration is payable to another brokerage, into a commission trust account maintained by the brokerage, or

(b) if none of the remuneration is payable to either another brokerage or a related licensee, into a brokerage account other than

(i) a brokerage trust account, or

(ii) a commission trust account maintained by the brokerage.

(4.2) [Repealed 2007-7-82.]

(5) Subject to the rules, a brokerage must ensure that no money, other than

money referred to in subsection (1) or (2), is paid into its brokerage trust accounts.

Circumstances in which brokerage holds money as stakeholder

28 (1) Subject to subsection (3), this section applies to money held or received in respect of a trade in real estate for which there is an agreement between the parties for the acquisition and disposition of the real estate.

(2) If the brokerage holds the money in a brokerage trust account, then, despite any rule of law to the contrary, the brokerage holds that money as a stakeholder and not as agent for one of the parties to the trade in real estate,

(a) unless or until the parties agree otherwise in writing, or

(b) unless or until circumstances established by the regulations apply.

(3) This section does not apply to the following:

(a) rents or payments under an option to purchase, if collected on a periodic and regular basis;

(b) security deposits and pet damage deposits paid by tenants under the *Residential Tenancy Act*;

(c) payments prescribed by regulation.

Interest on trust account

29 (1) A brokerage that is credited by a savings institution with interest on money held in a brokerage trust account

(a) holds the interest in trust for the foundation, and

(b) must cause the savings institution to pay the interest to the foundation in accordance with the regulations.

(2) Subsection (1) does not apply if the brokerage holds the money under a duty under the *Residential Tenancy Act* to pay the interest to a tenant.

(3) Subject to subsection (4), subsection (1) does not apply to money deposited in a separate trust account maintained by a brokerage for a principal, in which case the interest is to be paid to or in accordance with the instructions of the principal.

(4) If money deposited in an account referred to in subsection (3) becomes held by the brokerage as a stakeholder, subsection (1) applies to that money unless the parties to the trade in real estate agree otherwise in writing, in which case the interest is to be paid in accordance with the agreement.

Withdrawals from trust account

30 (1) Money in a brokerage trust account, other than money that the brokerage

holds as stakeholder, may be withdrawn only if it is one or more of the following:

- (a) money paid into the trust account by mistake;
- (b) interest paid in accordance with section 29 [*interest on trust account*];
- (c) money authorized to be withdrawn under section 31 [*payment of licensee remuneration*];
- (d) unclaimed money transferred under section 32 [*unclaimed money held in trust*];
- (e) money paid into court under section 33 [*payment of trust funds into court*];
- (f) money paid in accordance with a court order;
- (g) money paid to or in accordance with the instructions of the principal to whose credit the money was deposited.

(2) Money in a brokerage trust account that the brokerage holds as stakeholder may be withdrawn only

- (a) as provided in subsection (1) (a) to (f),
- (b) in accordance with a written agreement of the parties to the trade in real estate, or
- (c) in accordance with the regulations.

(3) This section does not apply to a deposit received by a brokerage under section 18 of the *Real Estate Development Marketing Act* and, instead, that deposit must be dealt with in accordance with that Act.

Payment of licensee remuneration

31 (1) Money in a brokerage trust account that is intended as remuneration for a licensee may be withdrawn from the account when it has been earned as determined in accordance with the rules.

(2) Money withdrawn from a brokerage trust account under subsection (1) must be paid by the brokerage as follows:

- (a) any share of the remuneration that is payable by the brokerage to another brokerage must be paid to the other brokerage directly out of the brokerage trust account;
- (b) any net share of the remuneration that is payable by the brokerage to a licensee engaged by the brokerage must be paid, at the brokerage's option,
 - (i) to that licensee directly out of the brokerage trust account,
 - or

- (ii) into a commission trust account maintained by the brokerage in accordance with the rules and, from that account, to or on behalf of the licensee.

Unclaimed money held in trust

32 (1) A brokerage may transfer money held in trust by a brokerage to the administrator appointed under the *Unclaimed Property Act*, if

- (a) the brokerage has made reasonable efforts to ascertain the identity of or to locate the person entitled to claim the money and to notify that person about the money, and
- (b) despite those efforts, the money has been unclaimed for longer than one year after the applicable time prescribed for the purposes of this section.

(2) Money transferred under subsection (1) is deemed to be an unclaimed money deposit under the *Unclaimed Property Act*.

Payment of trust funds into court

33 (1) If, in relation to money held in trust by a brokerage, it appears to the brokerage that

- (a) there are adverse claimants to the money,
- (b) the identity of one or more of the persons entitled to it is unknown, or
- (c) there is no person capable of giving, or authorized to give, a valid discharge for it,

the brokerage may apply to the Supreme Court for an order for payment of the money into court.

(2) An application under this section must be accompanied by an affidavit setting out the following as applicable and to the extent possible:

- (a) the nature of the real estate services in respect of which the money was held or received;
- (b) the names and addresses of the principals in relation to those real estate services;
- (c) the date and terms on which the brokerage received the money;
- (d) the names and addresses of all claimants to the money of whose claims the brokerage is aware;
- (e) particulars of any claim for remuneration by the brokerage, or a related licensee of that brokerage, arising out of the real estate services.

(3) An application under this section may be made without notice to any other person unless otherwise ordered by the court.

(4) On an application under this section, the court may make an order for payment of the money into court, and payment into court under the order discharges the brokerage from liability for the amount paid.

(5) Money paid into court under an order under this section must not be paid out of court except by order of the court, which may do one or more of the following:

(a) order payment of all or part of the money to the person or persons entitled to it on terms the court considers appropriate;

(b) direct the trial of an issue;

(c) make any other order that the court considers appropriate, including an order for the payment of costs to the brokerage that made the application.

Part 4 — Discipline Proceedings and Other Regulatory Enforcement

Division 1 — General Matters, Complaints and Investigations

Licensee includes former licensee

34 For the purpose of this Part, "**licensee**" includes a former licensee in relation to matters that occurred while the person was a licensee.

Misconduct by licensee

35 (1) A licensee commits professional misconduct if the licensee does one or more of the following:

(a) contravenes this Act, the regulations or the rules;

(b) breaches a restriction or condition of their licence;

(c) does anything that constitutes wrongful taking or deceptive dealing;

(d) demonstrates incompetence in performing any activity for which a licence is required;

(e) fails or refuses to cooperate with an investigation under section 37 [*investigation by council*] or 48 [*investigations by superintendent*];

(f) fails to comply with an order of the real estate council, a discipline committee or the superintendent;

(g) makes or allows to be made any false or misleading statement in a document that is required or authorized to be produced or

submitted under this Act.

(2) A licensee commits conduct unbecoming a licensee if the licensee engages in conduct that, in the judgment of a discipline committee,

- (a) is contrary to the best interests of the public,
- (b) undermines public confidence in the real estate industry, or
- (c) brings the real estate industry into disrepute.

(3) A brokerage that is a partnership or corporation may be found to have committed professional misconduct or conduct unbecoming a licensee if a partner, officer, director or controlling shareholder of the brokerage does one or more of the things referred to in subsection (1) or (2).

Complaints against licensee

36 (1) A person may make a complaint to the real estate council if the person believes that a licensee may have committed professional misconduct or conduct unbecoming a licensee.

(2) A complaint must be in writing and must include particulars.

(3) Unless a complaint is made anonymously, the real estate council must

- (a) acknowledge receipt of the complaint, and
- (b) on disposition of the matter, inform the complainant of the disposition.

Investigations

37 (1) On its own initiative or on receipt of a complaint, the real estate council may conduct an investigation to determine whether a licensee may have committed professional misconduct or conduct unbecoming a licensee.

(2) An investigation may be carried out by

- (a) one or more council members,
- (b) an officer or employee of the real estate council, or
- (c) a person retained by the real estate council for this purpose.

(3) For the purposes of an investigation, a person carrying out the investigation may do one or more of the following:

- (a) at any time during business hours, inspect and copy records that are located on the business premises of
 - (i) a licensee or former licensee, or
 - (ii) an officer, director, controlling shareholder or partner of a licensee or former licensee;
- (b) require a person referred to in paragraph (a) to

- (i) answer, or meet with the investigator to answer, inquiries relating to the investigation, and
- (ii) produce information, records or other things in the person's possession or control for examination by the investigator.

(4) A person referred to in subsection (3) (a) must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purposes of an investigation under this section.

Court order for search and seizure

38 (1) The real estate council may apply to the Supreme Court for an order authorizing the seizure of records or other evidence, wherever located, belonging or relating to a licensee from the person named in the order, if there are reasonable grounds to believe that the licensee may have committed professional misconduct or conduct unbecoming a licensee.

(2) An application under subsection (1) may be made without notice to any other person unless otherwise ordered by the court.

(3) An application under subsection (1) must be supported by an affidavit stating

- (a) the grounds for believing that the licensee may have committed professional misconduct or conduct unbecoming a licensee, and
- (b) the grounds for believing that the seizure will produce evidence relevant to that matter.

(4) On an application under subsection (1), the court may make an order

- (a) designating the person who will conduct the seizure and authorize that person to conduct it,
- (b) setting the time and place the seizure will take place, and
- (c) giving any other directions necessary to carry out the seizure.

(5) This section does not apply to records or other evidence subject to solicitor-client privilege.

Division 2 — Discipline Proceedings

Discipline committees

39 (1) The real estate council must establish one or more hearing committees under section 83 [*hearing committees*] as discipline committees for the purposes of this Part.

(2) A member of a discipline committee who is not a member of the real estate council must be

- (a) a licensee, or

(b) a lawyer, an accountant or another person who the real estate council considers is an expert in relation to relevant matters.

(3) A discipline committee that consists of a single council member may deal with a matter under this Division only

(a) if the affected licensee does not object, or

(b) to make an order under section 43 (4) [*failure to comply with original order*], 45 [*orders in urgent circumstances*] or 46 [*orders to freeze property*].

(4) Subject to subsection (3), the real estate council may assign a discipline committee to deal with a particular matter for which a notice under section 40 [*notice of discipline hearing*] has been issued.

Notice of discipline hearing

40 (1) Following an investigation under section 37 [*investigations*], the real estate council may issue a notice to the affected licensee advising that a hearing by a discipline committee is to be held respecting the licensee.

(2) The notice must

(a) describe the nature of the complaint or other matter that is to be the subject of the discipline hearing,

(b) specify the time and place set for commencement of the hearing, and

(c) advise the licensee that the discipline committee is entitled to proceed with the hearing in the absence of the licensee.

(3) The notice must be given to the licensee, at least 21 days before the time set for the discipline hearing, as follows:

(a) in the case of notice to a current licensee, by personal service or by delivery in accordance with the rules;

(b) in the case of notice to a former licensee, by personal service;

(c) as an alternative in any case, in accordance with an order under section 125 [*substituted service*].

Consent orders

41 (1) At least 14 days, or a shorter period permitted by the real estate council, before the time set for the discipline hearing, the licensee who received a notice under section 40 [*notice of discipline hearing*] may deliver to the real estate council a written proposal that includes the licensee's consent to a discipline committee making a specified order under section 43 [*discipline orders*] without conducting a hearing.

(2) If a proposal under subsection (1) is received, the real estate council

- (a) may postpone the time set for commencing the hearing until the proposal has been dealt with in accordance with this section, and
- (b) if the hearing is to be conducted after the postponement, must give notice of the time and place of the hearing in accordance with section 40 (3) [*delivery of hearing notice*].

(3) The real estate council may refer or decline to refer a proposal to a discipline committee.

(4) If a proposal is referred under subsection (3), the discipline committee may accept the proposal, in which case

- (a) the discipline committee may make the proposed order, and
- (b) no further proceedings may be taken under this Division or Division 5 [*Administrative Penalties*] with respect to the matter, other than to enforce the terms of the order as proposed or to deal with a contravention of the order.

(5) Regardless of whether or not a proposal has been referred, accepted or rejected, the proposal may not be used, without the consent of the licensee who made the proposal,

- (a) in any proceeding under this Act with respect to the matter, other than
 - (i) as referred to in subsection (4) (b),
 - (ii) an appeal of the order by the superintendent under section 54 (1) (d) [*appeals by superintendent*], or
 - (iii) for the purposes of considering a claim under Part 5 [*Payments from Special Compensation Fund*], or
- (b) in any civil proceeding with respect to the matter.

Discipline hearings

42 (1) If notice of a discipline hearing has been given in accordance with section 40 (3) [*notice*], a discipline committee may proceed with the discipline hearing, whether or not the licensee appears in person and whether or not the licensee is represented by legal counsel at the hearing.

(2) For the purposes of a discipline hearing, sections 34 (3) and (4) [*power to compel witnesses and order disclosure*], 48 [*maintenance of order at hearings*] and 49 [*contempt proceeding for uncooperative witness or other person*] of the *Administrative Tribunals Act* apply to the discipline committee.

Discipline orders

43 (1) After a discipline hearing, the discipline committee must

- (a) act under this section if it determines that the licensee has

committed professional misconduct or conduct unbecoming a licensee, or

(b) in any other case, dismiss the matter.

(2) If subsection (1) (a) applies, the discipline committee must, by order, do one or more of the following:

(a) reprimand the licensee;

(b) suspend the licensee's licence for the period of time the committee considers appropriate or until specified conditions are fulfilled;

(c) cancel the licensee's licence;

(d) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;

(e) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;

(f) require the licensee to enroll in and complete a course of studies or training specified in the order;

(g) prohibit the licensee from applying for a licence for a specified period of time or until specified conditions are fulfilled;

(h) require the licensee to pay amounts in accordance with section 44 (1) and (2) [*recovery of enforcement expenses*];

(i) require the licensee to pay a discipline penalty in an amount of

(i) not more than \$20 000, in the case of a brokerage or former brokerage, or

(ii) not more than \$10 000, in any other case.

(3) An order under subsection (2) may provide that,

(a) if the licensee fails to comply with the order, or

(b) if the licensee fails to comply with one or more specified restrictions or conditions of the licensee's licence,

a discipline committee may suspend or cancel the licence under subsection (4).

(4) If the licensee fails to comply as specified by a provision under subsection (3), a discipline committee may, by order, suspend or cancel the licensee's licence, as applicable, without the need for giving the licensee further notice or the opportunity to be heard.

(5) A discipline committee may, by order, on the application of or with the consent of the licensee subject to the order, vary or rescind an order made under this section.

Enforcement expenses and discipline penalties

44 (1) A discipline committee may, by an order under section 43 (2) (h) [*recovery of enforcement expenses*], require the licensee to pay the expenses, or part of the expenses, incurred by the real estate council in relation to either or both of the investigation and the discipline hearing to which the order relates.

(2) Amounts ordered as referred to in subsection (1)

(a) must not exceed the applicable limit prescribed by regulation in relation to the type of expenses to which they relate, and

(b) may include the remuneration expenses incurred in relation to employees, officers or agents of the real estate council, or members of the discipline committee, engaged in the investigation or discipline hearing.

(3) Money received by the real estate council on account of a discipline penalty under section 43 (2) (i) [*discipline penalties*] may be expended by the real estate council only for the purpose of educating the public, and licensees and other participants in the real estate industry in British Columbia, about

(a) the operation and regulation of the industry, and

(b) issues related to real estate and real estate services.

(4) An amount ordered to be paid under section 43 (2) (h) or (i) is a debt owing to the real estate council and may be recovered as such.

Orders in urgent circumstances

45 (1) A discipline committee may act under this section if the committee considers that

(a) there has been conduct in respect of which a discipline committee could make an order under section 43 [*discipline orders*] against a licensee,

(b) the length of time that would be required to complete an investigation or hold a discipline hearing, or both, in order to make such an order would be detrimental to the public interest, and

(c) it is in the public interest to make an order under this section against the licensee.

(2) If the circumstances referred to in subsection (1) apply, the discipline committee may, by order, do one or more of the following:

(a) suspend the licensee's licence;

(b) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;

(c) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business.

(3) Despite any other provision of this Division, a discipline committee may make an order under subsection (2)

(a) whether or not notice of a discipline hearing has been issued under section 40 [*notice of discipline hearing*],

(b) without giving notice to the licensee, and

(c) without providing the licensee an opportunity to be heard.

(4) A discipline committee may, by order,

(a) on its own initiative, rescind an order under this section, or

(b) on the application of or with the consent of the licensee subject to the order, vary or rescind an order made under this section.

(5) Promptly after an order under subsection (2) is made, the real estate council must give to the licensee

(a) a copy of the order and written reasons for it, and

(b) written notice that a discipline hearing may be held respecting the matter.

(6) Without affecting the authority of the real estate council to initiate a discipline hearing, a licensee who is the subject of an order under subsection (2) may require a discipline hearing to be held by delivering written notice to the real estate council.

(7) Within a reasonable time after receiving a written notice under subsection (6), the real estate council must issue a notice under section 40 [*notice of discipline hearing*], subject to the difference that the time for issuing the notice is at least 14 days before the time set for the discipline hearing, rather than 21 days, unless the licensee agrees to a shorter period.

(8) After a discipline hearing respecting a licensee who is subject to an order under this section, the discipline committee must

(a) rescind the order under this section and make an order under section 43 [*discipline orders*], if it determines that the licensee has committed professional misconduct or conduct unbecoming a licensee, or

(b) in any other case, rescind the order under this section.

Orders to freeze property

46 (1) If it considers this to be in the public interest, a discipline committee may make an order under this section at the same time that, or at any time after, an order under section 43 [*discipline orders*] or 45 [*orders in urgent circumstances*] is made against a licensee.

(2) If subsection (1) applies, the discipline committee may, by order directed

to the licensee, do either or both of the following:

- (a) prohibit the licensee from withdrawing any of the licensee's property, or any of it identified in the order, from the possession of another person named in the order who has the property on deposit, under control or for safekeeping;
- (b) require the licensee to hold all property, or any of it identified in the order, that is in the licensee's possession or control in trust for
 - (i) a receiver or receiver manager who has been appointed, or whose appointment has been or is to be applied for, under section 59 [*court order for appointment of receiver*], or
 - (ii) a custodian, trustee, receiver manager, receiver or liquidator who has been appointed, or whose appointment has been applied for, under any other enactment.

(3) If subsection (1) applies, the discipline committee may, by order, require a person having in British Columbia, on deposit, under control or for safekeeping, any property of the licensee to hold all of that property, or any of it identified in the order.

(4) An order under this section may be made without advance notice to a person affected by the order but, promptly after making the order, the discipline committee must give a copy of the order to the person to whom it is directed.

(5) A discipline committee may, by order, vary or rescind an order under this section on its own initiative or on the application of a person affected by the order.

(6) Property affected by an order under this section continues to be affected by the order and remains frozen as provided in the order until the property is released under subsection (5) or is dealt with in accordance with a court order.

(7) If a savings institution is the holder of property described in subsection (3), the order applies only to the offices, branches or agencies of the savings institution that are specified in the order.

(8) If

- (a) a person to whom an order under subsection (3) is directed is uncertain respecting the application of the order to any property, or
- (b) a claim is made to the property by a person not named in the order,

the person may, on giving notice to the real estate council, apply to the Supreme Court for an order under subsection (9).

(9) On an application under subsection (8), the court may order the disposition of the property as it considers appropriate.

Publication of orders

- 47** (1) As soon as practicable, the real estate council must
- (a) subject to the regulations, publish a copy of each order under this Division, and
 - (b) provide a copy of each order under this Division to the superintendent.
- (2) The real estate council must provide a copy of an order required to be published under subsection (1) (a) to any person requesting the copy, on payment of a reasonable fee as established by bylaw.
- (3) The real estate council may publish a copy of any order that is required to be published by the superintendent under section 53 (1) (a) [*publication of regulatory action*].

Division 3 — Authority of Superintendent

Investigations, hearings and other authority

- 48** (1) The superintendent may conduct an investigation to determine whether
- (a) a person who does not hold a licence has engaged in any activity for which a licence under this Act is required, or
 - (b) a licensee has, in a way that is seriously detrimental to the public interest,
 - (i) contravened this Act, the regulations or the rules,
 - (ii) breached a restriction or condition of their licence, or
 - (iii) done anything that constitutes wrongful taking or deceptive dealing.
- (2) Subject to subsection (3), the superintendent may issue a notice of hearing and conduct a hearing following an investigation under subsection (1).
- (3) In relation to an investigation under subsection (1) (b),
- (a) the superintendent must notify the real estate council before issuing a notice of hearing, and
 - (b) the superintendent may issue the notice of hearing only if
 - (i) no notice under section 40 [*notice of discipline hearing*] has been issued by the real estate council, and
 - (ii) no order under section 45 [*orders in urgent circumstances*] has been made by a discipline committee.
- (4) The following provisions of this Part apply to the superintendent acting under this Division, in relation to an unlicensed person or a licensee, as if the superintendent were the real estate council or a discipline committee

exercising authority under the applicable provision in relation to a licensee:

- (a) section 37 [*investigations*];
- (b) section 38 [*court order for search and seizure*];
- (c) section 40 [*notice of discipline hearing*];
- (d) section 41 [*consent orders*], in relation to orders that the superintendent may make under section 49 [*orders respecting unlicensed activity*] or 50 [*orders against licensees in the public interest*];
- (e) section 42 [*discipline hearings*];
- (f) section 46 [*orders to freeze property*].

Orders respecting unlicensed activity

49 (1) This section applies if, after a hearing under section 48 (2) [*superintendent hearings*], the superintendent determines that the person subject to the hearing did not hold a licence under this Act at a time when the person engaged in any activity for which such a licence was required.

(2) The superintendent may, by order, do one or more of the following with respect to a person referred to in subsection (1):

- (a) require the person to cease the activity;
- (b) require the person to carry out specified actions that the superintendent considers necessary to remedy the situation;
- (c) require the person to pay amounts in accordance with section 44 (1) and (2) [*recovery of enforcement expenses*];
- (d) require the person to pay a penalty in an amount of
 - (i) not more than \$20 000, in the case of a corporation or partnership, or
 - (ii) not more than \$10 000, in the case of an individual.

(3) The superintendent may, by order, on the application of or with the consent of the person subject to the order, vary or rescind an order made under this section.

Orders against licensees in the public interest

50 (1) This section applies if, after a hearing under section 48 (2) [*superintendent hearings*], the superintendent determines that a licensee has, in a way that the superintendent considers is seriously detrimental to the public interest,

- (a) contravened this Act, the regulations or the rules,
- (b) breached a restriction or condition of their licence, or
- (c) done anything that constitutes wrongful taking or deceptive

dealing.

(2) In the circumstances referred to in subsection (1), the superintendent may, by order, do one or more of the following:

- (a) suspend the licensee's licence for the period of time the superintendent considers appropriate or until specified conditions are fulfilled;
- (b) cancel the licensee's licence;
- (c) impose restrictions or conditions on the licensee's licence or vary any restrictions or conditions applicable to the licence;
- (d) require the licensee to cease or to carry out any specified activity related to the licensee's real estate business;
- (e) require the licensee to pay amounts in accordance with section 44 (1) and (2) [*recovery of enforcement expenses*];
- (f) require the licensee to pay a penalty in an amount of
 - (i) not more than \$20 000, in the case of a brokerage or former brokerage, or
 - (ii) not more than \$10 000, in any other case.

(3) The superintendent may, by order, on the application of or with the consent of the licensee subject to the order, vary or rescind an order made under this section.

Superintendent's orders in urgent circumstances

51 (1) The superintendent may act under this section if the superintendent considers that

- (a) there has been conduct in respect of which the superintendent could make an order under section 49 [*orders respecting unlicensed activity*] or 50 [*orders against licensees in the public interest*], and
- (b) the length of time that would be required to complete an investigation or hold a hearing, or both, in order to make such an order would be detrimental to the public interest.

(2) If the circumstances referred to in subsection (1) apply,

- (a) in relation to a person referred to in section 49 [*orders respecting unlicensed activity*], the superintendent may make an order as referred to in subsection (2) (a) and (b) of that section, and
- (b) in relation to a licensee, the superintendent may make an order as referred to in section 45 (2) [*discipline committee orders in urgent circumstances*].

(3) Section 45 [*discipline committee orders in urgent circumstances*] applies in

relation to the superintendent's authority under this section as if the superintendent were a discipline committee or the real estate council acting in respect of a licensee.

Court filing of superintendent's orders

52 (1) If the superintendent considers that a person has failed to comply with an order of the superintendent under this Division, the superintendent may file a certified copy of the order with the Supreme Court.

(2) An order filed under subsection (1) has the same force and effect, and all proceedings may be taken on it, as if it were an order of the Supreme Court.

Publication of regulatory action

53 (1) As soon as practicable, the superintendent must

(a) subject to the regulations, publish each order of the superintendent under this Division, and

(b) provide a copy of each order made by the superintendent under this Division to the real estate council.

(2) The superintendent must provide a copy of an order required to be published under subsection (1) (a) to any person requesting the copy, on payment of the prescribed fee.

Division 4 — Appeals to Financial Services Tribunal

Appeals

54 (1) Appeals to the financial services tribunal may be made as follows:

(a) the applicant may appeal a refusal to issue a licence;

(b) the licensee affected may appeal the imposition of restrictions and conditions on a licence under section 15 (2) (a) [*conditions and restrictions in relation to a specific licence — issuance or renewal*];

(c) the licensee affected may appeal the cancellation or suspension of a licence under section 24 [*cancellation or suspension if qualifications not met*];

(d) the person subject to the order, or the superintendent, may appeal an order of a discipline committee under Division 2 [*Discipline Proceedings*] of this Part;

(e) the person subject to the order may appeal an order of the superintendent under Division 3 [*Authority of Superintendent*] of this Part.

(2) The real estate council is entitled to be a party to an appeal under

subsection (1) (a) to (d).

(3) The superintendent is entitled to be a party to an appeal under subsection (1) (d) or (e).

(4) Subject to this Division, sections 242.2 [*practice and procedure*] and 242.3 [*judicial review*] of the *Financial Institutions Act* apply in relation to an appeal under this section.

Effect of filing notice of appeal

55 (1) An order

(a) of a discipline committee under section 45 [*orders in urgent circumstances*] or 46 [*orders to freeze property*], or

(b) of the superintendent under Division 3 [*Authority of Superintendent*] of this Part

is not stayed by the filing of a notice of appeal under section 54 [*appeals*] and may not be stayed under section 242.2 (10) (a) (i) [*tribunal member hearing appeal may stay order*] of the *Financial Institutions Act*.

(2) An appealable decision, other than one referred to in subsection (1), is stayed by the filing of a notice of appeal under section 54 [*appeals*], but the stay may be lifted under section 242.2 (10) (a) (ii) [*tribunal member hearing appeal may lift stay*] of the *Financial Institutions Act*.

Division 5 — Administrative Penalties

Designated contraventions and penalty amounts

56 (1) The Lieutenant Governor in Council may, by regulation,

(a) designate contraventions of specified rules as being subject to administrative penalties under this Division, and

(b) set the maximum amount of administrative penalty that may be established under subsection (2), which may be a different maximum for different specified rules.

(2) The real estate council may, by rule, establish the amount of administrative penalty that may be imposed in respect of each contravention of a specified rule, which may be

(a) different for different levels or categories of licence, and

(b) different for first and subsequent contraventions.

Council may impose administrative penalties

57 (1) If the real estate council is satisfied that a licensee has contravened a rule that has been designated under section 56 (1) (a) [*designated*

contraventions], the real estate council may issue a notice imposing on the licensee an administrative penalty in the amount established under subsection (2) of that section.

(2) The notice under subsection (1) must do the following:

- (a) indicate the rule that has been contravened;
- (b) indicate the amount of the administrative penalty that is imposed;
- (c) advise the licensee of the licensee's right to be heard respecting the matter;
- (d) advise the licensee that, if the licensee does not, within 14 days or a longer period allowed by the real estate council, request such an opportunity to be heard,
 - (i) the licensee is deemed to have acknowledged contravening the rule, and
 - (ii) the administrative penalty becomes due and payable to the real estate council.

(3) Notice under subsection (1) must be given as follows:

- (a) in the case of notice to a current licensee, by personal service or by delivery in accordance with the rules;
- (b) in the case of notice to a former licensee, by personal service;
- (c) as an alternative in any case, in accordance with an order under section 125 [*substituted service*].

(4) The real estate council must provide the licensee with an opportunity to be heard if this is requested and, following the opportunity, may

- (a) cancel the administrative penalty if it is satisfied that the licensee exercised due diligence to prevent contravention of the rule, or
- (b) confirm the administrative penalty, in which case it becomes due and payable to the real estate council.

(5) The amount of an administrative penalty imposed under this section is a debt owing to the real estate council and may be recovered as such.

(6) Money received by the real estate council on account of administrative penalties under this section may be expended by the real estate council only for an educational purpose referred to in section 44 (3) [*use of discipline penalty money*].

(7) If an administrative penalty has been imposed under this section,

- (a) no further proceedings may be taken under this Part in respect of the matter, other than to enforce payment of the penalty, and
- (b) without the consent of the licensee, the fact that the penalty has

been imposed may not be used

- (i) in any proceeding under this Act with respect to the matter, other than as referred to in paragraph (a), or
- (ii) in any civil proceeding with respect to the matter.

Division 6 — Applications to Court

Application for injunction

58 (1) The real estate council or superintendent may apply to the Supreme Court for an injunction restraining a person from contravening, or requiring a person to comply with,

- (a) this Act, the regulations, the rules or the bylaws, or
- (b) an order of a discipline committee or the superintendent under this Part.

(2) The court may grant an injunction sought under subsection (1) if the court is satisfied that there is reason to believe there has been or will be a contravention of this Act, the regulations, the rules, the bylaws or an order referred to in that subsection.

(3) The court may grant an interim injunction until the outcome of an application under subsection (1).

Court order for appointment of receiver

59 (1) If

- (a) an order has been made under section 43 [*discipline orders*] or 50 [*superintendent orders in the public interest*] cancelling a licence, or
- (b) an order has been made by a discipline committee or the superintendent under section 45 or 51 [*orders in urgent circumstances*] cancelling or suspending a licence,

the real estate council or superintendent, as applicable, may apply to the Supreme Court for the appointment of a receiver or receiver manager of all or any part of the property of the licensee.

(2) On an application under subsection (1), if the court is satisfied that the appointment of a receiver or receiver manager is in the best interests of

- (a) the creditors of the licensee,
- (b) persons from, for or on whose behalf the licensee has received money or other property in respect of real estate services, or
- (c) other persons, any of whose property is in the possession or under the control of the licensee,

the court may, by order, appoint a receiver or receiver manager of all or any part of the property of that licensee.

(3) An application under subsection (1) may be made without notice to any other person, in which case the court may make a temporary order under subsection (2) appointing a receiver or receiver manager for a period not longer than 15 days.

(4) A receiver or receiver manager appointed under this section

(a) is the receiver or receiver manager of all or any part of the property that is subject to the court order, and

(b) if authorized by the court, may wind up or manage the business and affairs of the licensee and exercise powers necessary or incidental to the winding up or management.

Part 5 — Payments from Special Compensation Fund

Division 1 — Compensable Loss

Definitions

60 For the purposes of this Part:

"claim" means a claim under section 61 [*claim for compensation*];

"compensable loss" means loss suffered by a person in relation to real estate services that is the amount of money that

(a) was held or received by

(i) a licensee,

(ii) an officer, director, controlling shareholder or partner of the responsible brokerage,

(iii) an employee of the licensee, of the responsible brokerage or of another related licensee of that brokerage, or

(iv) a person acting in an independent contractor relationship with the licensee, with the responsible brokerage or with a related licensee of that brokerage,

from, for or on behalf of a principal in relation to real estate services, including any amount that is or is intended to be remuneration to a licensee, and

(b) was, as applicable,

(i) misappropriated or wrongfully converted by a person referred to in paragraph (a) (i) to (iv),

(ii) intentionally not paid over or accounted for, by a person

referred to in paragraph (a) (i) to (iv), to the person entitled to the money, or

(iii) obtained by the fraud of a person referred to in paragraph (a) (i) to (iv),

but does not include loss that

(c) is claimed by a licensee or former licensee as remuneration to the licensee or former licensee,

(d) was caused by conduct that occurred before section 61 (1) [*claim for compensation*] came into force,

(e) was caused by conduct of a licensee acting under an exemption provided by Part 9 of the rules, or

(f) is prescribed by regulation;

"final" means,

(a) in relation to a court decision, a court decision that has become final because of the lapse of time for being appealed or because it is a decision of the highest court to which the initial decision was appealed, and

(b) in relation to an order or determination under Part 4 [*Discipline Proceedings and Other Regulatory Enforcement*], an order or determination that has become final because of the lapse of time for appeal or because it was made or confirmed on appeal under this Act;

"licensee" includes a former licensee in relation to matters that occurred while the person was a licensee;

"responsible brokerage" means, in relation to a compensable loss, the brokerage that

(a) held or received, or

(b) under section 27 [*payment into trust account*], should have held or received,

the money referred to in the definition of "compensable loss".

Claim for compensation

61 (1) In order to make a claim for compensation from the special compensation fund, a person must apply in writing to the real estate council within the time limit established by subsection (2), including

(a) particulars of the conduct on which the claim of compensable loss is based,

(b) if the person is relying on a court decision, a copy of the decision,

and

(c) any other information required by the real estate council.

(2) The time limit for making a claim is 2 years after the earlier of the following:

(a) the date on which the person making the claim became aware that the compensable loss occurred;

(b) if the licence of the responsible brokerage was cancelled at any time after the conduct that caused the compensable loss, the date of that cancellation.

Referral to compensation committee

62 (1) After reviewing a claim, the real estate council must refer the matter to a compensation committee if it considers that there is reason to believe the person making the claim suffered a compensable loss.

(2) If more than one claim has been made in relation to a licensee, the real estate council may refer the claims to a single compensation committee to be considered together.

Compensation committee may conduct, postpone or decline hearing

63 (1) The compensation committee to which a claim has been referred under section 62 [*referral to committee*] must consider the claim and may, at this stage,

(a) conduct a hearing to determine whether the person making the claim suffered a compensable loss and, if applicable, assess the amount of that loss,

(b) decline to make such a determination or assessment, or both, on the basis that it considers the matter would more effectively be dealt with by a court proceeding, or

(c) postpone conducting a hearing pending the conclusion of a discipline hearing or court proceeding.

(2) For the purposes of a compensation hearing, sections 34 (3) and (4) [*power to compel witnesses and order disclosure*], 48 [*maintenance of order at hearings*] and 49 [*contempt proceeding for uncooperative witness or other person*] of the *Administrative Tribunals Act* apply to the compensation committee.

(3) The compensation committee may, at any point during a hearing under subsection (1) (a), decline to make the determination or assessment, or both, on the basis that it considers the matter would more effectively be dealt with by a court proceeding.

(4) If a compensation committee declines under subsection (1) (b) or (3) and a court subsequently makes the determination or assessment, or both, the claim must be reconsidered by a compensation committee, which may or may not be the original compensation committee that considered the claim.

Certification of compensable loss

64 If a compensation committee has

- (a) determined that the person making a claim suffered a compensable loss, and
- (b) assessed the amount of that compensable loss,

the committee must issue a certificate specifying the amount of the compensable loss.

Relationship with other proceedings

65 (1) If a matter that is the subject of a claim has also been the subject of a court proceeding in British Columbia, a final decision of the court that

- (a) makes a finding on evidence that a person has suffered a compensable loss within the meaning of this Act,
- (b) assesses the amount of a compensable loss within the meaning of this Act, or
- (c) makes both such a finding and such an assessment,

is binding on the compensation committee dealing with the matter.

(2) For certainty, subsection (1) does not apply in relation to a default judgment or a judgment by consent.

(3) If a matter that is the subject of a claim has also been the subject of a final order under section 43 [*discipline orders*] or 50 [*superintendent orders in the public interest*], a decision by the discipline committee or superintendent that makes a finding on evidence that

- (a) the licensee committed wrongful taking, or
- (b) the licensee committed wrongful taking in relation to the person making the claim

is binding on the compensation committee in relation to its determination of whether there has been compensable loss.

(4) For certainty, subsection (3) does not apply in relation to an order of a discipline committee under section 41 [*consent orders*] or an order of the superintendent under section 48 (4) (d) [*application of section 41 to superintendent*].

(5) A determination by a compensation committee that a licensee has caused

compensable loss is not, for the purposes of Part 4 [*Discipline Proceedings and Other Regulatory Enforcement*], a determination that the licensee has committed wrongful taking.

Notice of court and discipline proceedings

- 66** (1) A person who has made a claim must provide written notice to the real estate council of any court proceeding in relation to the conduct that is the subject of the claim
- (a) in which the person is a party, or
 - (b) of which the person is aware.
- (2) A licensee who receives
- (a) notice of the commencement of any action or other court proceeding that could result in a decision referred to in section 65 (1) [*court proceedings*], or
 - (b) a notice under Part 4 [*Discipline Proceedings and Other Regulatory Enforcement*] that could result in a decision referred to in section 65 (3) [*discipline or superintendent proceedings*],
- must immediately provide written notice to the real estate council and the compensation fund corporation of the commencement or notice and of the particulars of the matter.

Corporation may participate in court and discipline proceedings

- 67** The compensation fund corporation is entitled to become a party to an action or other proceeding that may result in
- (a) a decision referred to in section 65 (1) [*court proceedings*], or
 - (b) a decision referred to in section 65 (3) [*discipline or superintendent proceedings*].

Division 2 — Compensation Payments

Compensation to be paid based on certificate

- 68** Subject to this Division, if
- (a) a compensation committee has issued a certificate under section 64 [*certificate of compensable loss*] in respect of a claim by a person, and
 - (b) the person delivers the certificate to the compensation fund corporation,

the compensation fund corporation must pay the person the amount of the compensable loss specified in the certificate, less any portion of that amount

that has been previously recovered by the person entitled to it or for which that person has otherwise been previously compensated.

Maximum compensation to any one claimant

69 The maximum amount that may be paid to a single claimant

(a) in relation to a claim that is made in respect of a single event of misappropriation, wrongful conversion, failure to pay over, failure to account for money or obtaining money by fraud, or

(b) in relation to one or more claims that are made in respect of a single responsible brokerage, where the claims relate to conduct that is a course of dealing involving more than one such event,

is the amount prescribed by regulation.

Maximum compensation if brokerage licence cancelled

70 (1) If the licence of the responsible brokerage is cancelled, the maximum total amount that may be paid, after the date of that cancellation, in respect of claims relating to the brokerage is the amount prescribed by regulation.

(2) Subsection (1) applies to all claims relating to the responsible brokerage for which compensation from the special compensation fund has not been paid on or before the date of the cancellation, regardless of whether the claims were made under section 61 [*claim for compensation*] before or after the licence was cancelled.

(3) If the compensation fund corporation considers that the maximum under subsection (1) may apply to restrict payment of claims in relation to a responsible brokerage,

(a) the corporation may

(i) postpone payment in relation to one or more claims, or

(ii) pay only a portion of the amount of compensable loss in relation to one or more of the claims

until the application of the maximum is determined, and

(b) if the maximum does apply, the corporation must prorate payments between the eligible claimants.

Rights of corporation in respect of claim

71 (1) On making a payment under section 68 [*payments from fund*], regardless of whether it is a payment of all or only part of the loss suffered by the person claiming the compensable loss, the compensation fund corporation is subrogated for the amount paid to all rights of recovery of that person as against any other person.

(2) The compensation fund corporation may commence or maintain an action in respect of the rights referred to in subsection (1) in its own name or in the name of the person claiming the compensable loss.

Claimant to repay fund if alternative compensation received

72 (1) If

(a) a payment is made to a person under section 68 [*compensation to be paid*], and

(b) the person afterwards receives compensation from some other source in relation to the compensable loss,

that person must pay to the compensation fund corporation money equal to

(c) the payment under section 68 [*compensation to be paid*], if the value of the compensation received from the other source is equal to or greater than that payment, or

(d) the value of the compensation received from the other source, if it is less than the payment under section 68 [*compensation to be paid*].

(2) If the person fails to pay the compensation fund corporation as required by subsection (1), the corporation has a cause of action against the person for the amount unpaid.

Division 3 — Payments to Complete Trades or Prevent Loss

Direction to pay to complete trade or prevent loss

72.1 (1) This section applies whether or not a claim has been made under section 61.

(2) The real estate council must not act under this section unless it is satisfied that

(a) a person has suffered a compensable loss,

(b) money is required to

(i) complete a trade in real estate in which the person is involved, or

(ii) prevent further significant compensable loss to the person,

(c) it would be in the public interest to use money from the special compensation fund to complete the trade or prevent the loss, and

(d) if the person makes a claim for compensation under Division 1, section 70 [*maximum compensation if brokerage licence cancelled*] is not likely to apply in respect of the claim.

(3) If the real estate council is satisfied of the matters set out in subsection

- (2), the real estate council may
- (a) determine the amount of money required for the purposes of subsection (2) (b), and
 - (b) subject to subsection (4), direct the compensation fund corporation to pay the amount referred to in paragraph (a) to
 - (i) a receiver or receiver manager appointed under section 59 [*court order for appointment of receiver*], or
 - (ii) if there is no appointment under section 59, the real estate council.
- (4) A direction under subsection (3) (b) must not be made
- (a) without the consent of
 - (i) the person referred to in subsection (2) (a), and
 - (ii) the chair of the compensation fund corporation, or a person acting in the place of the chair, and
 - (b) until the real estate council has fulfilled any prescribed requirement.

Payment to complete trade or prevent loss

- 72.2** (1) Subject to subsection (2), if the compensation fund corporation receives a direction under section 72.1 [*direction to pay to complete trade or prevent loss*] to pay an amount, the compensation fund corporation must pay the amount to the person specified in the direction.
- (2) The maximum amount that may be paid under subsection (1) in respect of a single trade in real estate is the amount prescribed by regulation.
- (3) The person who receives money under this section may use the money only for the benefit of the person referred to in section 72.1 (2) (a), and only for a purpose described in section 72.1 (2) (b).

Rights of corporation

- 72.3** (1) On making a payment under section 72.2 [*payment to complete trade or prevent loss*], regardless of whether it is a payment of all or part of the loss suffered by the person referred to in section 72.1 (2) (a), the compensation fund corporation is subrogated to all rights of recovery of that person as against any other person, for the amount paid less any amount re-paid, or that must be re-paid, under section 72.4 (1).
- (2) The compensation fund corporation may commence or maintain an action in respect of the rights referred to in subsection (1) in its own name or in the name of the person referred to in section 72.1 (2) (a).

Repayment to fund

72.4 (1) If

- (a) a receiver or receiver manager, or the real estate council, receives money under section 72.2 [*payment to complete trade or prevent loss*], and
- (b) all or part of the money is not required for the purposes described in section 72.1 (2) (b),

the receiver, receiver manager or real estate council must pay the amount that is not required to the compensation fund corporation.

(2) If a person referred to in section 72.1 (2) (a) benefits from money paid under section 72.2 and afterwards receives compensation from some other source in relation to the compensable loss referred to in section 72.1 (2) (a), the person must pay to the compensation fund corporation money equal to

- (a) the amount of the benefit, if the value of the compensation received from the other source is equal to or greater than that amount, or
- (b) the value of the compensation received from the other source, if it is less than the amount of the benefit.

(3) If a person fails to pay the compensation fund corporation as required by subsection (1) or (2), the corporation has a cause of action against the person for the amount unpaid.

Part 6 — Real Estate Council

Real Estate Council of British Columbia

73 (1) The Real Estate Council continued under the *Real Estate Act*, R.S.B.C. 1996, c. 397, is continued under this Act as a corporation under the name "Real Estate Council of British Columbia".

(2) The objects of the real estate council are to

- (a) administer this Act and the regulations, rules and bylaws,
- (b) maintain and advance the knowledge, skill and competency of its licensees, and
- (c) uphold and protect the public interest in relation to the conduct and integrity of its licensees.

Council membership

74 (1) The real estate council consists of the following 16 council members:

- (a) 13 individuals, licensed under this Act and qualified in accordance with the bylaws, who are to be elected or temporarily appointed in

accordance with section 76 [*election of council members*];

(b) 3 individuals, not licensed under this Act, who are to be appointed by the Lieutenant Governor in Council.

(2) The continuing council members may act even if there is a vacancy on the real estate council.

(3) An act of the real estate council is not invalid because of a defect that is afterwards discovered in the election or appointment of one or more council members.

Corporate matters

75 (1) The real estate council may acquire and dispose of real and personal property for its purposes.

(2) Subject to subsection (3), the *Business Corporations Act* does not apply to the real estate council.

(3) The Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Business Corporations Act* apply to the real estate council.

Election of council members

76 (1) Subject to this section, the election of council members is to be conducted in accordance with the bylaws.

(2) For the purpose of electing the council members, British Columbia is divided into the following districts:

District No.	Area
1	County of Vancouver
2	County of Victoria
3	County of Nanaimo
4	The portion of the County of Westminster north of the south bank of the Fraser River
5	The portion of the County of Westminster south of the Fraser River
6	County of Yale
7	Counties of Kootenay, Cariboo and Prince Rupert

(3) Representation by elected council members is to be as follows:

(a) District No. 1, 3 managing broker members and 1 representative member;

(b) District No. 2, 1 managing broker member;

(c) District No. 3, 1 managing broker member;

(d) District No. 4, 1 managing broker member;

(e) District No. 5, 1 managing broker member;

- (f) District No. 6, 1 managing broker member;
- (g) District No. 7, 1 managing broker member;
- (h) Districts No. 2, 3, 6 and 7 jointly, 1 representative member;
- (i) Districts No. 4 and 5 jointly, 1 representative member;
- (j) all districts jointly, 1 managing broker member or representative member who is licensed to provide rental property management services or strata management services.

(4) Subject to the bylaws, an associate broker is deemed to be a managing broker for the purposes of this section.

(5) If

- (a) an elected council member dies, resigns or is incapable of performing the council member's duties under this Act,
- (b) an elected council member is disqualified under section 78 *[disqualification]*, or
- (c) there is a vacancy on the real estate council because no council member was elected,

the real estate council may temporarily appoint a person, who is licensed in the appropriate district, holds the appropriate licence and is otherwise qualified, as council member until a successor is elected.

Term of office for elected council members

77 (1) Subject to subsection (2), the term of office for an elected council member is 2 years or until a successor is elected or temporarily appointed.

(2) A person may not serve more than 6 consecutive years as an elected council member but may, after at least one year of not being a council member, be elected or temporarily appointed for further terms subject to this same restriction.

Disqualification of council members

78 (1) An elected council member ceases to hold office if the member ceases to be qualified for election.

(2) In addition, a council member ceases to hold office if

- (a) the member
 - (i) contravenes a provision of this Act or the regulations, rules or bylaws,
 - (ii) contravenes a provision of another provincial or federal enactment, or
 - (iii) becomes bankrupt, and

(b) a majority of the other council members consider that the matter is sufficiently serious to justify the member's removal.

Conduct of council members

79 (1) A council member must not act in a manner that results in, or creates the appearance of, the member

(a) using their position, or using non-public information obtained by reason of the member's role as council member, for the purpose of private gain,

(b) giving preferential treatment to any person in relation to the member's role as a council member,

(c) foregoing independence or impartiality in relation to the member's role as a council member,

(d) impeding the real estate council from carrying out its purposes, or

(e) adversely affecting the integrity of the real estate council.

(2) Subject to subsection (3), a council member who contravenes subsection (1) must resign.

(3) Instead of accepting a resignation under subsection (2), the real estate council may suspend the council member from all or any council activities for any period of time and subject to any terms and conditions that the real estate council considers appropriate.

Chair and vice chair

80 The chair and vice chair of the real estate council must be elected annually from and by the council members.

Executive officer

81 (1) The real estate council must appoint an executive officer, who is to be the chief administrative officer of the real estate council.

(2) A licensee is not eligible to be or remain executive officer.

Delegation of authority

82 (1) Subject to subsection (2), the real estate council may delegate, in writing, any or all of its powers or duties under this Act to

(a) a council member,

(b) a council committee, or

(c) an officer or employee of the real estate council.

(2) The real estate council may not delegate its power to make bylaws or rules

or its power to delegate under this section.

(3) A delegation under this section

- (a) may be made subject to any terms and conditions the real estate council considers appropriate,
- (b) is revocable, and
- (c) does not prevent the real estate council from exercising a delegated power or performing a delegated duty.

Hearing committees

83 (1) The real estate council may establish hearing committees of council for the purpose of conducting

- (a) discipline hearings under Division 2 [*Discipline Proceedings*] of Part 4,
- (b) compensation hearings under Part 5 [*Payments from Special Compensation Fund*], and
- (c) any other hearings required or authorized by this Act, the regulations, the rules or the bylaws to be conducted by a hearing committee or the real estate council.

(2) Subject to section 39 [*discipline committees*], a hearing committee may consist of

- (a) a single council member, or
- (b) at least 3 individuals, a majority of whom must be council members.

(3) If a hearing committee member is unable for any reason to continue to serve on the hearing committee after a hearing has been commenced, the vacancy does not invalidate the proceedings and the remaining members may continue the hearing and exercise the powers of the hearing committee.

(4) If a council member appointed as a hearing committee or as a hearing committee member ceases to hold office as a council member, the chair of the real estate council may authorize that individual to continue to exercise powers as a member of a hearing committee in any proceeding over which that individual had jurisdiction immediately before they ceased to be a council member.

(5) An authorization under subsection (4) continues until a final decision in the proceeding is made.

General bylaws

84 (1) Subject to the regulations, the real estate council may make bylaws it considers necessary or advisable for the conduct of its business and affairs.

(2) Without limiting subsection (1) but subject to the regulations, the real estate council may make bylaws respecting the following:

- (a) the conduct of council members and officers of the real estate council, including bylaws establishing a code of conduct;
- (b) the qualifications required for a person to be eligible for election as a council member, for temporary appointment as an elected council member, for election as chair or vice chair of the real estate council or for appointment as executive officer;
- (c) the qualifications required to vote for a particular elected council member position under section 76 (3) [*representation on council*];
- (d) the establishment of council committees, which may include individuals who are not council members, so long as the majority are council members;
- (e) the remuneration and allowances for expenses of council members, officers of the real estate council and members of any committees established by the real estate council;
- (f) procedures for the making of bylaws or the making of rules;
- (g) the practice and procedure of a hearing committee;
- (h) the form, content and manner of submitting applications, reports and other submissions to the real estate council;
- (i) any other matter for which bylaws are contemplated by this Act;
- (j) any other matters provided in the regulations.

Bylaws respecting licensing fees and assessments

85 (1) Subject to the regulations, the real estate council may make bylaws as follows:

- (a) establishing fees for and in relation to applications under section 9 [*making an application for a licence*];
- (b) imposing licence fees to be paid by a licensee in relation to the issuing of a licence;
- (c) imposing council assessments to be paid by licensees to cover the expenses of the real estate council for its operations and for matters under its administration.

(2) A bylaw under subsection (1) may

- (a) be different for different levels or categories of licence,
- (b) establish the manner in which and the time at which the fee or assessment must be paid, and
- (c) establish penalties or interest charges that are payable in the

case of late payment.

(3) The real estate council may, in a specific case, waive a fee or assessment established under this section.

Consolidation and revision of bylaws and rules

85.1 (1) Subject to the regulations, the real estate council may make bylaws giving effect to an editorial consolidation or revision of all or some of its bylaws and rules that does one or more of the following:

- (a) consolidates provisions and omits spent provisions;
- (b) alters the form, style, punctuation, numbering and arrangement of provisions;
- (c) corrects typographical errors.

(2) The authority under subsection (1) does not include the authority to make substantive changes to the bylaws or rules.

Council rules

86 (1) Subject to the regulations, the real estate council may make any rules

- (a) respecting licensing, or
- (b) regulating licensees in relation to the provision of real estate services

that it considers necessary or advisable.

(2) Without limiting subsection (1) but subject to the regulations, the real estate council may make rules as follows:

- (a) respecting licences and the issuing of licences, including rules
 - (i) establishing, within a licence level, different categories of licence that are restricted to particular real estate services as identified by the rules,
 - (ii) respecting the duration of licences,
 - (iii) respecting the education, experience or other qualifications for a person to obtain or renew a licence, including rules conferring discretion to determine equivalent qualifications,
 - (iv) respecting licensing in relation to branch offices of a brokerage, and
 - (v) providing for the granting of temporary licences to personal representatives of deceased licensees, including rules conferring discretion to establish conditions and restrictions applicable to a specific temporary licence;
- (b) establishing conditions and restrictions applicable to licences;

- (c) respecting the relationships between and among brokerages and their related licensees, including rules
 - (i) respecting the supervision of associate brokers and representatives by managing brokers, and
 - (ii) providing for a related licensee of a brokerage to act as a managing broker for the brokerage in the temporary absence of a managing broker for the brokerage;
- (d) requiring licensees to undertake continuing professional education;
- (e) establishing or adopting standards of conduct and business practice standards for licensees, including rules
 - (i) respecting the keeping and operation of trust accounts by licensees,
 - (ii) regulating the operation of offices by licensees,
 - (iii) respecting the use of business names by licensees,
 - (iv) respecting the form and content of advertising carried out by licensees,
 - (v) establishing or providing for the establishment of standard forms for use in providing real estate services, and requiring their use by licensees, and
 - (vi) respecting the making of disclosures by licensees in relation to the provision of real estate services;
- (f) requiring licensees to
 - (i) provide reports, returns and other information to the real estate council, and
 - (ii) allow the inspection and auditing of their books of account and other records by the real estate council;
- (g) requiring licensees to acquire, maintain or provide a bond or other form of security and, in relation to this,
 - (i) respecting the amount and form of such security and the terms and conditions under which it is to be provided, and
 - (ii) respecting the forfeiture of the security and the payment of claims against the security;
- (h) respecting any other matter for which rules are contemplated by this Act;
- (i) respecting any other matters provided in the regulations.

(3) The real estate council may make different rules under this section in relation to

- (a) different levels of licences,

(b) different categories of licences, and

(c) different circumstances as described in the rules.

(4) The real estate council may make different rules under subsection (2) (a) respecting the issuing of licences, the renewal of licences, the amendment of licences and the reinstatement of licences.

(5) A rule under this section

(a) may be made effective on

(i) the date on which it is made, or

(ii) a future date specified by the rule, and

(b) may be made applicable to current licensees either

(i) at the time the rule becomes effective, or

(ii) at the time of licence renewal.

(6) The authority of the real estate council to make rules under this section is subject to any restrictions or conditions established by regulation.

Procedures relating to bylaws and rules

87 (1) The bylaws and rules must be made in accordance with any applicable regulations.

(2) The real estate council must publish copies of its bylaws and rules.

(3) The *Regulations Act* does not apply to the bylaws or rules.

Council records

88 (1) The real estate council must keep proper records respecting its business and affairs, including the following:

(a) minutes of meetings of the real estate council;

(b) a copy of its bylaws and rules;

(c) a copy of every licence issued by the real estate council under this Act;

(d) a record of every refusal by the real estate council to issue a licence, including a copy of the reasons for that refusal;

(e) a copy of every order or other decision of a hearing committee;

(f) a copy of all records introduced as evidence at a hearing conducted by a hearing committee;

(g) a copy of every decision of the financial services tribunal on an appeal under Division 4 [*Appeals*] of Part 4 [*Discipline Proceedings and Other Regulatory Enforcement*].

(2) The real estate council

(a) must permit any person to inspect, at its office during ordinary business hours, any of the records required to be kept under

- (i) subsection (1) (b) [*bylaws and rules*],
- (ii) subsection (1) (c) [*licences*],
- (iii) subsection (1) (e) [*decisions of hearing committees*], but excluding orders that are not published under section 47 (1) (a) [*publication of discipline committee orders*], or
- (iv) subsection (1) (g) [*appeal decisions*], and

(b) must provide a copy or extract of those records to any person requesting the copy or extract, on payment of a reasonable fee as established by bylaw.

(3) The obligation under subsection (1) may be met by maintaining the records in print or in electronic format.

(4) Except as permitted by the regulations, the real estate council must not dispose of records required to be kept under subsection (1) before the end of the prescribed period after the creation of the record.

Annual report

89 (1) Not later than 3 months after the end of its fiscal year, the real estate council must prepare a report for that previous fiscal year which includes

- (a) an audited financial statement summarizing the income and expenditures of the real estate council, and
- (b) any other information that the real estate council considers relevant or necessary or that the minister requires.

(2) As soon as practicable after preparing the report, the real estate council must

- (a) provide a copy of the report to the minister and the superintendent, and
- (b) publish the report.

(3) The real estate council must provide a copy of the report to any person requesting the copy, on payment of a reasonable fee as established by bylaw.

(4) In addition to the report, the real estate council must provide the minister with financial statements or other information concerning the real estate council when required to do so by the minister.

Part 7 — Foundation, Insurance and Compensation Corporations

Division 1 — Real Estate Foundation

Foundation continued

- 90** (1) The Real Estate Foundation continued under the *Real Estate Act*, R.S.B.C. 1996, c. 397, is continued under this Act under the name "Real Estate Foundation of British Columbia".
- (2) The foundation is a corporation consisting of the members of its board of governors.
- (3) The foundation may acquire and dispose of real and personal property for its purposes.
- (4) Subject to subsection (5), the *Business Corporations Act* does not apply to the foundation.
- (5) The Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Business Corporations Act* apply to the foundation.

Foundation board of governors

- 91** (1) The board of governors of the foundation consists of the following 5 individuals:
- (a) 1 member appointed by the real estate council;
 - (b) 1 member appointed by the British Columbia Real Estate Association;
 - (c) 1 member appointed by the Real Estate Institute of British Columbia;
 - (d) 1 member, not licensed under this Act, appointed by the minister;
 - (e) the minister or another member appointed by the minister.
- (2) Subject to this section, the term of office for an appointed member of the foundation board of governors is 3 years or until a successor is appointed.
- (3) The body or person who appointed a member under subsection (1) may revoke the appointment at any time during the member's term of office.
- (4) An appointed member may not serve for more than 6 consecutive years but may, after at least one year of not being a member, be reappointed for further terms subject to this same restriction.
- (5) If an appointed member
- (a) dies, resigns or is incapable of performing the member's duties under this Act, or
 - (b) ceases to hold office under subsection (6),
- the body or person who appointed the member may appoint another individual as member, to hold office for the balance of the term that applied to the

member previously appointed to the office.

(6) An appointed member ceases to hold office

(a) if the member becomes bankrupt, or

(b) if

(i) the member contravenes a provision of this Act, the regulations or the rules, or a provision of another provincial or federal enactment, and

(ii) a majority of the other members consider that the matter is sufficiently serious to justify the member's removal.

Administration of foundation

92 (1) The foundation board of governors is responsible for administering the foundation.

(2) The members of the foundation board of governors must elect one of their number to be chair.

(3) The continuing members of the foundation board of governors may act even if there is a vacancy on the board.

(4) An act of the foundation or foundation board of governors is not invalid because of a defect that is afterwards discovered in the appointment of one or more members of the board.

Purposes of the foundation

93 (1) The purposes of the foundation are

(a) to undertake and carry out real estate public and professional education, real estate law reform, real estate research and other projects intended for the public or professional good in relation to real estate activities, and

(b) on written directions of the minister, to undertake and carry out projects and activities that the minister designates as being in the public interest.

(2) In giving directions under subsection (1), the minister may impose conditions, but must not require an expenditure for the projects and activities of more than 50% of the foundation's annual net revenue as this revenue is determined in accordance with the regulations.

Foundation fund

94 (1) The fund established by the foundation under the *Real Estate Act*, R.S.B.C. 1996, c. 397, is continued, to be maintained and used for the purposes of the foundation.

(2) Unless invested under section 96 [*investment*],

(a) all money received by the foundation from or on behalf of brokerages under section 29 [*interest on trust accounts*],

(b) other money received by the foundation, and

(c) any interest or other income received by the foundation from investment of the money referred to in paragraphs (a) and (b)

must be deposited to the credit of the foundation fund in a savings institution in British Columbia.

Amounts that may be paid from foundation fund

95 (1) The foundation board of governors may authorize payment out of the foundation fund

(a) for the purposes of the foundation, or

(b) to administer the fund, including expenses incurred by the foundation board of governors in carrying out the purposes of the foundation and remuneration paid to members of the board.

(2) In exercising the authority under subsection (1) (a), the foundation board of governors may apply the foundation fund for the purposes of the foundation in the manner the board decides, including by granting loans on terms and conditions the board determines.

Investment of foundation money

96 The foundation may invest any part of the foundation fund, not presently required for disposition, as permitted under the provisions of the *Trustee Act* respecting the investment of trust property by a trustee.

Audit of foundation accounts

97 The accounts of the foundation must be audited annually by a person appointed by the foundation board of governors who is authorized to be an auditor of a company under sections 205 and 206 of the *Business Corporations Act*.

Annual report

98 (1) Not later than 3 months after the end of its fiscal year, the foundation must prepare a report for that previous fiscal year which includes

(a) an audited financial statement summarizing the income and expenditures of the foundation, and

(b) any other information that the foundation board of governors considers relevant or necessary or that the minister requires.

- (2) As soon as practicable after preparing the report, the foundation must
 - (a) publish the report, and
 - (b) provide a copy to the minister, the superintendent, the real estate council, the British Columbia Real Estate Association and the Real Estate Institute of British Columbia.
- (3) The foundation must provide a copy of the report to any person requesting the copy, on payment of any reasonable fee established by the foundation.
- (4) In addition to the report, the foundation must provide the minister with financial statements or other information concerning the foundation fund and the foundation when required to do so by the minister.

Division 2 — Real Estate Errors and Omissions Insurance Corporation

Insurance corporation continued

- 99** (1) The Real Estate Errors and Omissions Insurance Corporation is continued as a corporation consisting of the members of its board of directors.
- (2) The insurance corporation may acquire and dispose of real and personal property for its purposes.
- (3) Subject to subsection (4), the *Business Corporations Act* does not apply to the insurance corporation.
- (4) The Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Business Corporations Act* apply to the insurance corporation.

Board of directors

- 100** (1) The board of directors of the insurance corporation consists of the following individuals:
- (a) 4 directors appointed by the real estate council;
 - (b) 3 directors appointed by the British Columbia Real Estate Association.
- (2) Subject to this section, the term of office for a director is 3 years or until a successor is appointed.
- (3) The body who appointed a director under subsection (1) may revoke the appointment at any time during the director's term of office.
- (4) A director may not serve for more than 6 consecutive years but may, after at least one year of not being a director, be reappointed for further terms subject to this same restriction.
- (5) If a director
- (a) dies, resigns or is incapable of performing the director's duties under this Act, or

(b) ceases to hold office under subsection (6),

the body who appointed the director may appoint another individual as director, to hold office for the balance of the term that applied to the director previously appointed to the office.

(6) A director ceases to hold office

(a) if the director becomes bankrupt, or

(b) if

(i) the director contravenes a provision of this Act, the regulations or the rules, or a provision of another provincial or federal enactment, and

(ii) a majority of the other directors consider that the matter is sufficiently serious to justify the director's removal.

Administration of insurance corporation

101 (1) The board of directors of the insurance corporation is responsible for administering the insurance corporation.

(2) The directors of the insurance corporation must elect one of their number to be chair.

(3) The continuing directors of the insurance corporation may act even if there is a vacancy on the board.

(4) An act of the insurance corporation or board of directors of the insurance corporation is not invalid because of a defect that is afterwards discovered in the appointment of one or more directors.

Insurance arrangements and plans

102 (1) For the purpose of enabling licensees to obtain indemnity against liability arising out of negligent errors or omissions in the provision of real estate services, the insurance corporation must do one or both of the following:

(a) make arrangements for insurance for licensees against that liability;

(b) establish, administer, maintain and operate indemnity plans to provide indemnity against that liability.

(2) Subject to the regulations, the insurance corporation may establish terms and conditions in relation to arrangements for insurance and indemnity plans under subsection (1).

(3) For the purposes of this Division, the insurance corporation is entitled to have access to licensing records kept by the real estate council under this Act.

Insurance fund

103 (1) The Real Estate Errors and Omissions Insurance Fund is continued, to be used for the purposes described in section 102 (1) [*insurance arrangements and indemnity plans*].

(2) Unless invested under section 106 (1) [*investment*],

(a) the money collected under section 104 [*insurance fund assessments and deductibles*], and

(b) any interest or other income received by the insurance corporation from the investment of that money

must be deposited to the credit of the insurance fund in a savings institution in British Columbia.

(3) The insurance fund

(a) is the property of the insurance corporation and is not subject to a trust in favour of a person who

(i) claims to have suffered a compensable loss or a loss caused by a licensee or former licensee, or

(ii) has obtained judgment against a licensee or former licensee, and

(b) may not be subject to any process of seizure or attachment by a creditor of the insurance corporation.

Insurance fund assessments and deductibles

104 (1) The insurance corporation may

(a) levy assessments on licensees for the purposes of the insurance fund,

(b) levy different assessments against different classes of licensees as defined by the insurance corporation, and

(c) establish terms and conditions in relation to the payment of assessments.

(2) Every licensee must pay to the insurance corporation, on or before the time set by the insurance corporation,

(a) any assessment levied against the licensee under subsection (1), and

(b) any deductible amount paid by the insurance corporation on behalf of the licensee in respect of insurance arranged under section 102 (1) (a) or an indemnity plan established under section 102 (1) (b).

(3) If a licensee has not paid an amount referred to in subsection (2) on or before the time set for payment, the licensee's licence is suspended as of the

next day.

(4) A licence that is suspended under subsection (3) is automatically reinstated as soon as the licensee pays to the insurance corporation the full amount due by the licensee, together with interest on that amount at a rate determined by the insurance corporation.

Amounts that may be paid from fund

105 The insurance corporation may authorize payment out of the insurance fund for expenses incurred

(a) for the purposes of section 102 (1) [*insurance arrangements and plans*],

(b) to administer the fund, including expenses incurred by the directors of the insurance corporation in carrying out the purposes of the insurance fund and remuneration paid to directors,

(c) to investigate, adjust and settle claims,

(d) for any other matter relating to the protection and maintenance of the fund, or

(e) for any other prescribed matter.

Investment and insurance

106 (1) The insurance corporation may invest any part of the insurance fund, not presently required for disposition, as permitted under the provisions of the *Trustee Act* respecting the investment of trust property by a trustee.

(2) The insurance corporation may, in a manner and on terms and conditions it considers advisable, enter into contracts with insurers by which the insurance fund may be protected in whole or in part against any claim or loss to the insurance fund.

(3) The insurance corporation has an insurable interest in the insurance fund and in the protection of the insurance fund against loss.

Annual report

107 (1) Not later than 3 months after the end of its fiscal year, the insurance corporation must prepare a report on the insurance fund and all dispositions made from it during that previous fiscal year.

(2) As soon as practicable after preparing the report, the insurance corporation must

(a) publish the report, and

(b) provide a copy to the minister, the superintendent, the Superintendent of Financial Institutions, the real estate council and

the British Columbia Real Estate Association.

(3) The insurance corporation must provide a copy of the report to any person requesting the copy, on payment of any reasonable fee established by the insurance corporation.

(4) In addition to the report, the insurance corporation must provide the minister or the Superintendent of Financial Institutions, as applicable, with audited financial statements or other information concerning the insurance fund and the insurance corporation when required to do so by the minister or Superintendent of Financial Institutions.

Role of the Superintendent of Financial Institutions

108 (1) The Superintendent of Financial Institutions may investigate and inquire into any matter relating to the insurance fund, and sections 215 [*investigation*] and 216 [*immunities and witnesses*] of the *Financial Institutions Act* apply to the investigation or inquiry.

(2) If, after giving the insurance corporation an opportunity to be heard, the Superintendent of Financial Institutions considers that the ability of the insurance corporation to meet its present or future obligations is uncertain, the Superintendent of Financial Institutions may, by order,

(a) impose conditions on the continued operation of the insurance corporation, or

(b) direct that the directors of the insurance corporation cease to have control of the insurance corporation.

(3) If an order is made under subsection (2) (b),

(a) effective at the time the order is made,

(i) the directors of the insurance corporation cease to hold office, and

(ii) the Superintendent of Financial Institutions becomes the sole director and member of the insurance corporation, and

(b) while the order remains in effect, the Superintendent of Financial Institutions has the powers and duties otherwise vested in and imposed on the directors of the insurance corporation.

Division 3 — Real Estate Compensation Fund Corporation

Compensation fund corporation established

109 (1) The Real Estate Compensation Fund Corporation is established as a corporation consisting of the members of its board of directors.

(2) The compensation fund corporation may acquire and dispose of real and personal property for its purposes.

(3) Subject to subsection (4), the *Business Corporations Act* does not apply to the compensation fund corporation.

(4) The Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Business Corporations Act* apply to the compensation fund corporation.

Board of directors

110 (1) The board of directors of the compensation fund corporation consists of the following individuals:

- (a) 3 directors appointed by the real estate council;
- (b) 2 directors appointed by the British Columbia Real Estate Association.

(2) Subject to this section, the term of office for a director is 3 years or until a successor is appointed.

(3) The body who appointed a director under subsection (1) may revoke the appointment at any time during the director's term of office.

(4) A director may not serve for more than 6 consecutive years but may, after at least one year of not being a director, be reappointed for further terms subject to this same restriction.

(5) If a director

- (a) dies, resigns or is incapable of performing the director's duties under this Act, or
- (b) ceases to hold office under subsection (6),

the body who appointed the director may appoint another individual as director, to hold office for the balance of the term that applied to the director previously appointed to the office.

(6) A director ceases to hold office

- (a) if the director becomes bankrupt, or
- (b) if
 - (i) the director contravenes a provision of this Act, the regulations or the rules, or a provision of another provincial or federal enactment, and
 - (ii) a majority of the other directors consider that the matter is sufficiently serious to justify the director's removal.

Administration of compensation fund corporation

111 (1) The board of directors of the compensation fund corporation is responsible for administering the compensation fund corporation.

(2) The directors of the compensation fund corporation must elect one of their number to be chair.

(3) The continuing directors of the compensation fund corporation may act even if there is a vacancy on the board of directors.

(4) An act of the compensation fund corporation or the board of directors of the compensation fund corporation is not invalid because of a defect that is afterwards discovered in the appointment of one or more directors.

Special compensation fund

112 (1) The compensation fund corporation must establish a fund, to be known as the Real Estate Special Compensation Fund, for the purpose of providing compensation in accordance with Part 5 [*Payments from Special Compensation Fund*].

(2) Unless invested under section 115 (1) [*Investment*],

(a) the money collected under section 113 [*compensation fund assessments*], and

(b) any interest or other income received by the compensation fund corporation from the investment of that money

must be deposited to the credit of the special compensation fund in a savings institution in British Columbia.

(3) The special compensation fund

(a) is the property of the compensation fund corporation and is not subject to a trust in favour of a person who

(i) claims to have suffered a compensable loss or a loss caused by a licensee or former licensee, or

(ii) has obtained judgment against a licensee or former licensee, and

(b) may not be subject to any process of seizure or attachment by a creditor of the compensation fund corporation.

Compensation fund assessments

113 (1) The compensation fund corporation may

(a) levy assessments on licensees for the purposes of the special compensation fund,

(b) levy different assessments against different classes of licensees as defined by the compensation fund corporation, and

(c) establish terms and conditions in relation to the payment of assessments.

(2) Every licensee must pay to the compensation fund corporation, on or before the time set by the compensation fund corporation, any assessment levied under subsection (1).

(3) If a licensee has not paid an assessment under subsection (1) on or before the time set for payment, the licensee's licence is suspended as of the next day.

(4) A licence that is suspended under subsection (3) is automatically reinstated as soon as the licensee pays to the compensation fund corporation the full amount due by the licensee, together with interest on that amount at a rate determined by the compensation fund corporation.

Amounts that may be paid from fund

114 In addition to amounts required to be paid under Part 5 [*Payments from Special Compensation Fund*], the compensation fund corporation may authorize payment out of the special compensation fund for expenses incurred

(a) to reimburse the real estate council for its expenses in relation to dealing with claims under that Part,

(b) to administer the fund, including expenses incurred by the directors of the compensation fund corporation in carrying out the purposes of the fund and remuneration paid to directors,

(c) to process claims against the fund,

(d) for any other matter relating to the protection and maintenance of the fund, or

(e) for any other prescribed matter.

Investment and insurance

115 (1) The compensation fund corporation may invest any part of the special compensation fund, not presently required for disposition, as permitted under the provisions of the *Trustee Act* respecting the investment of trust property by a trustee.

(2) The compensation fund corporation may, in the manner and on the terms and conditions it considers advisable, enter into contracts with insurers by which the special compensation fund may be protected in whole or in part against any claim or loss to the special compensation fund.

(3) The compensation fund corporation has an insurable interest in the special compensation fund and in the protection of the special compensation fund against loss.

Special compensation fund minimum capital requirement

116 (1) If the capital of the special compensation fund at any time falls below the

minimum amount of capital prescribed for the purpose of this section, the compensation fund corporation must immediately advise the real estate council.

(2) If

(a) the capital of the special compensation fund is less than the minimum amount of capital referred to in subsection (1), or

(b) the real estate council considers it in the public interest to do so, the real estate council may, by order, require licensees or classes of licensees to provide security against liability for compensable loss,

(c) in the amounts specified by the real estate council,

(d) in a form satisfactory to the real estate council,

(e) by the time specified in the order, and

(f) for the period specified in the order.

(3) An order under subsection (2) may make different provisions for different classes of licensees as defined in the order.

(4) If a licensee that is subject to an order under subsection (2)

(a) does not provide the security as required by the order, or

(b) ceases to provide the security as required by the order,

the licence of the licensee is suspended as of the next day after the date on which, as applicable, the security was to be provided or the security ceased to be provided.

(5) On application of a licensee whose licence is suspended under subsection (4), the real estate council must reinstate the licence if

(a) the licensee provides evidence satisfactory to the real estate council that the required security is now provided, or

(b) the order under subsection (2) is rescinded.

Annual report

117 (1) Not later than 3 months after the end of its fiscal year, the compensation fund corporation must prepare a report on the special compensation fund and all dispositions made from it during that previous fiscal year.

(2) As soon as practicable after preparing the report, the compensation fund corporation must

(a) publish the report, and

(b) provide a copy to the minister, the superintendent, the real estate council and the British Columbia Real Estate Association.

(3) The compensation fund corporation must provide a copy of the report to

any person requesting the copy, on payment of any reasonable fee established by the compensation fund corporation.

(4) In addition to the report, the compensation fund corporation must provide the minister or the real estate council, as applicable, with audited financial statements or other information concerning the special compensation fund and the compensation fund corporation when required to do so by the minister or real estate council.

Part 8 — General Provisions

Division 1 — Offences

Offences

118 (1) A person who does any of the following commits an offence:

- (a) contravenes section 3 [*requirement for licence to provide real estate services*];
- (b) contravenes section 27 [*payment into trust account*];
- (c) contravenes section 30 [*withdrawals from trust account*];
- (d) contravenes section 37 (4) [*interference with investigation*];
- (e) fails to comply with an order of the real estate council, a discipline committee or the superintendent;
- (f) subject to subsection (2), makes a false or misleading statement in a record required or authorized to be filed, submitted, provided or delivered under this Act.

(2) A person does not commit an offence under subsection (1) (f) if, at the time of the statement, the person did not know that the statement was a false or misleading statement and, in the exercise of reasonable diligence, could not have known that it was a false or misleading statement.

(3) If a corporation or partnership commits an offence under this Act, an officer, director, controlling shareholder, partner or managing broker of the corporation or partnership who authorizes, permits or acquiesces in the offence commits the same offence whether or not the corporation or partnership is convicted of the offence.

(4) Section 5 [*offence to contravene any enactment*] of the *Offence Act* does not apply to this Act or the regulations.

Penalties for committing offences

119 (1) A corporation that commits an offence under section 118 [*offences*] is liable

- (a) on a first conviction, to a fine of not more than \$50 000, and
- (b) on each subsequent conviction, to a fine of not more than \$100 000.

(2) An individual who commits an offence under section 118 [*offences*] is liable

- (a) on a first conviction, to a fine of not more than \$50 000, or to imprisonment for not more than 2 years, or to both, and
- (b) on each subsequent conviction, to a fine of not more than \$100 000, or to imprisonment for not more than 2 years, or to both.

Limitation period for commencing prosecution

120 (1) The time limit for laying an information for an offence under this Act is

- (a) 2 years after the date that the facts on which the information is based arose, or
- (b) if the superintendent issues a certificate described in subsection (2), 2 years after the date that the facts on which the information is based first came to the knowledge of the superintendent.

(2) A certificate purporting to have been issued by the superintendent, certifying the date that the facts on which the information is based first came to the knowledge of the superintendent,

- (a) is admissible without proof of the signature or official position of the person appearing to have signed the certificate, and
- (b) is proof of the certified matters.

Other remedies preserved

121 A proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

Division 2 — Other Matters

Information-sharing and confidentiality

122 (1) The real estate council and the superintendent may, for the purposes of their powers and duties under this Act, share information and records obtained under this Act.

(2) A person who, in the course of exercising powers and performing duties under this Act, obtains information or records that are submitted in accordance with a request or obligation under this Act, must not disclose the information or records to any person other than

- (a) for the purposes of administering this Act, the regulations, the rules and the bylaws,

(b) for the purposes of a proceeding for an offence, or

(c) as required under the *Freedom of Information and Protection of Privacy Act* or otherwise required by law.

(3) Except in respect of a proceeding under this Act, a person to whom subsection (2) applies may not be compelled in a civil proceeding to disclose or give evidence respecting any information or records obtained in the course of exercising the person's powers or performing the person's duties under this Act.

Communications privileged

123 (1) Subject to subsection (2), all information supplied and all records and things produced to the real estate council, a hearing committee, the superintendent, the insurance corporation or the compensation fund corporation with respect to a licensee, a former licensee or an applicant for a licence are privileged to the same extent as if they were supplied or produced in proceedings in a court, and no action may be brought against a person as a consequence of the person having supplied or produced them.

(2) Subsection (1) does not apply to a person who supplied information or produced records or things maliciously.

Municipal licences

124 Despite any other Act, a municipality must not impose on a licensee any licence fee or tax for carrying on the licensee's real estate business unless the licensee occupies or uses premises in the municipality for carrying on the licensee's real estate business.

Substituted service

125 (1) In relation to any requirement or authorization established under this Act that a notice or other document be served on a person, that service may be done by substituted service in accordance with an order under subsection (2).

(2) On application, the Supreme Court may order that a document referred to in subsection (1) may be served by substituted service in accordance with the order.

Deemed delivery if notice given in accordance with the rules

126 If a notice or other record is required or authorized to be given to a person in accordance with the rules, it is deemed to have been received by the person at the end of the period established by regulation.

Evidence of licence

127 A statement as to the existence, nonexistence or status of a licence under this

Act purporting to be certified by

- (a) the chair or vice chair of the real estate council,
- (b) the executive officer of the real estate council, or
- (c) another employee of the real estate council designated by the real estate council for this purpose

is proof in the absence of evidence to the contrary of the fact so certified, without proof of the signature or official position of the person certifying the statement.

Immunity from legal action

128 (1) In this section, "**protected individual**" means an individual who is or was any of the following:

- (a) a council member;
- (b) a member of a hearing committee;
- (c) the superintendent;
- (d) a member of the board of governors of the foundation or a director of the insurance corporation or the compensation fund corporation;
- (e) an employee of, officer of, or any other individual acting on behalf of or under the direction of, the real estate council, superintendent, foundation, insurance corporation or compensation fund corporation.

(2) Subject to subsection (4), no legal proceeding for damages lies or may be commenced or maintained against a protected individual, the real estate council or the government because of anything done or omitted

- (a) in the performance or intended performance of any duty, or
- (b) in the exercise or intended exercise of any power

under Division 2 [*Discipline Proceedings*] of Part 4, under a provision of that Division as it applies to the superintendent or under sections 49 to 51 [*superintendent's orders*].

(2.1) Subject to subsection (4), no legal proceeding for damages lies or may be commenced or maintained against a protected individual, the real estate council, the compensation fund corporation or the government because of anything done or omitted

- (a) in the performance or intended performance of any duty, or
- (b) in the exercise or intended exercise of any power

under Part 5 [*Payments from Special Compensation Fund*].

(3) Subject to subsection (4), no legal proceeding for damages lies or may be commenced or maintained against a protected individual because of anything done or omitted

(a) in the performance or intended performance of any duty under this Act, other than a duty under the provisions referred to in subsection (2), or

(b) in the exercise or intended exercise of any power under this Act, other than a power under those provisions.

(4) Subsections (2), (2.1) and (3) do not apply to a protected individual in relation to anything done or omitted in bad faith.

(5) Subsection (3) does not absolve the real estate council, government, foundation, insurance corporation or compensation fund corporation, as applicable, from vicarious liability arising out of anything done or omitted by a protected individual for which it would be vicariously liable if that subsection were not in force.

Minister may direct review

129 (1) The minister may, if the minister considers that the circumstances warrant this, appoint a person to review

(a) any matter relating to the real estate council, foundation, insurance corporation or compensation fund corporation, or

(b) any other matter in relation to this Act.

(2) For the purposes of a review, the person conducting the review has the powers and protection of a commission under sections 22 (1), 23 (a), (b) and (d) and 32 of the *Public Inquiry Act*.

(3) On completion of a review, the person conducting the review must make a report to the minister including, if so requested by the minister, the evidence, findings, comments, recommendations and any material in the possession of the person relating to the review.

(4) On receiving a report under subsection (3), the minister may, by order, direct the real estate council, foundation, insurance corporation or compensation fund corporation to take any action that the minister considers appropriate in the circumstances.

(5) The minister may publish all or part of a report under subsection (3) in any way the minister considers appropriate.

Power to make regulations

130 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) defining a word or expression used but not defined in this Act;
- (b) exempting classes of persons from the requirement to be licensed in order to provide real estate services and establishing restrictions and conditions in relation to an exemption;
- (c) conferring additional powers and imposing additional duties and restrictions on the real estate council and council members, including by prescribing matters respecting which the real estate council may or must make rules and bylaws;
- (d) imposing fees or assessments to be paid by licensees in relation to the issuing, reinstatement or amendment of a licence and, in relation to this,
 - (i) establishing different fees and assessments in relation to different levels or categories of licence,
 - (ii) establishing the manner in which and the time at which fees and assessments must be paid,
 - (iii) establishing penalties or interest charges that are payable in the case of late payment, and
 - (iv) requiring the real estate council to collect the fees, assessments, penalties and interest charges and to pay them to the superintendent;
- (e) respecting procedures for the making and giving notice of bylaws and rules by the real estate council, which may be different for different types of bylaws and different types of rules;
- (f) respecting the manner in which orders, reports and other records that are required to be published under this Act must be published;
- (g) allowing individuals to provide real estate services, as a managing broker, associate broker or representative, through a corporation of which they are the sole voting shareholder, the sole director and the president and, in relation to this,
 - (i) establishing restrictions and conditions, including establishing conditions under which such an individual is deemed to be engaged by a brokerage, and
 - (ii) providing any exceptions or modifications of this Act, or any additional provisions to this Act, that the Lieutenant Governor in Council considers advisable for the purposes of the application of the Act to licensees who are providing real estate services through such a corporation;
- (h) respecting any matter for which the real estate council may make

- rules or bylaws, including establishing for the purposes of subsection (3) what constitutes a conflict in relation to the regulation;
- (i) for any other matter for which regulations are contemplated by this Act.

(3) To the extent of any conflict between a regulation under this section and a bylaw or rule, the regulation prevails.

Part 9 — Transitional Provisions and Consequential Amendments

Transitional Provisions

Definition

131 In this Part, "**former Act**" means the *Real Estate Act*, R.S.B.C. 1996, c. 397.

Relationship between this Part and the remainder of this Act

132 To the extent of any conflict between

- (a) a provision of this Part or a regulation under this Part, and
- (b) a provision of another Part of this Act or a regulation under another Part of this Act,

this Part or the regulation under this Part prevails.

Licences continued

133 (1) A licence issued under the former Act is continued under this Act as follows:

- (a) an agent licence under the former Act is deemed to be a brokerage licence;
- (b) a nominee licence under the former Act is deemed to be a managing broker licence;
- (c) an agent licence under the former Act of an individual to whom a certificate was issued under section 9.15 of B.C. Reg. 75/61 is deemed to be an associate broker licence;
- (d) a salesperson licence under the former Act is deemed to be a representative licence.

(2) A licence referred to in subsection (1) continues to authorize the provision of real estate services that it authorized under the former Act, subject to the restrictions and conditions that applied under the former Act.

(3) The real estate council may

- (a) by rule, establish how the categories of licence within licensing

levels under the former Act apply under this Act, and

(b) amend continued licences to reflect this.

Transition to new council membership

- 134** (1) Subject to the regulations under this section, the members of the real estate council at the time that section 76 [*election of council members*] of this Act comes into force continue in office in accordance with the former Act.
- (2) The Lieutenant Governor in Council may make regulations providing for transition to the composition of the real estate council under this Act including, without limiting this,
- (a) allowing council members to continue in office to represent and to be elected to represent a District as established under the former Act,
 - (b) providing for a larger council membership than established by this Act,
 - (c) providing that the term of a council member ends earlier or continues longer, or that a council member may continue to hold office for longer, than the time that would otherwise apply, and
 - (d) providing for elections for a portion of the real estate council members to be held in alternate years.
- (3) The real estate council may appoint the first council member to hold office under section 76 (3) (j) [*property or strata management services member*] for the term specified in the appointment, subject to the limit that this may not be longer than 2 years.

Funding for special compensation fund

- 135** (1) For the purpose of providing initial funding for the special compensation fund,
- (a) the real estate council may make a grant of not more than \$500 000 to the compensation fund corporation, and
 - (b) the foundation may make a grant or loan from the foundation fund, or provide a guarantee secured by the foundation fund, to the compensation fund corporation.
- (2) An amount loaned or guaranteed under subsection (1) is deemed to be capital of the special compensation fund for the purposes of section 116 [*special compensation fund minimum capital requirement*].

Initial set of bylaws and rules

- 136** (1) For the purposes of implementing this Act, the minister may, by order,

make bylaws under section 84 [*general bylaws*] and rules under section 86 [*council rules*] that come into force on the date that those provisions come into force, and in relation to this,

- (a) the real estate council may not make such bylaws and rules, and
- (b) regulations referred to in section 130 (2) (e) [*procedure relating to bylaws and rules*] do not apply to a bylaw or rule made under this subsection.

(2) A bylaw or rule made by the minister under subsection (1) is deemed to have been made by the real estate council.

(3) Until the end of the first year after this Act comes into force, the real estate council may make a bylaw or rule without complying with regulations referred to in section 130 (2) (e) [*procedure relating to bylaws and rules*] if the minister approves the bylaw or rule, but subject to any conditions established by the minister.

Transitional regulations

137 (1) The Lieutenant Governor in Council may make regulations respecting any matters necessary for more effectively bringing into operation the provisions of this Act and for facilitating the transition from the operation of the former Act to this Act and for remedying any transitional difficulties encountered in doing so.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) for meeting or removing any difficulty arising out of the transition to this Act from the old Act, and for that purpose disapplying or varying any provision of this Act;
- (b) providing that, until a date specified by regulation, section 3 [*requirement for licence to provide real estate services*] does not apply in relation to the provision of strata management services or in relation to the provision of strata management services provided by an individual, partnership or corporation who is not a licensee;
- (c) providing that Part 5 [*Payments from Special Compensation Fund*] does not apply to loss that would otherwise be compensable loss if
 - (i) the loss was in relation to the provision of strata management services, and
 - (ii) the conduct that caused the loss occurred before a date prescribed by the regulation.

(3) The authority to make or amend a regulation under this section, but not the authority to repeal a regulation under this section, ends 3 years after the

date on which this section comes into force.

Consequential Amendments

[Note: See Table of Legislative Changes for the status of sections 138 to 148.]

Section(s)	Affected Act
138	<i>Business Practices and Consumer Protection Act</i>
139	<i>Community Financial Services Act</i>
140	<i>Debt Collection Act</i>
141	<i>Finance and Corporate Relations Statutes Amendment Act, 1998</i>
142	<i>Homeowner Protection Act</i>
143	<i>Homeowner Protection Amendment Act, 2001</i>
144	<i>Land Act</i>
145	<i>Mortgage Brokers Act</i>
146–147	<i>Real Estate Act</i>

Repeal of Consequential Amendments That May Become Inoperative

Section(s)	Affected Act
148	<i>Repeal of sections 138 to 140 of the Real Estate Services Act</i>

Commencement

149 This Act comes into force by regulation of the Lieutenant Governor in Council.