

# Policy Intentions Discussion Paper

## Regulation of Real Estate Teams

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February 2021

### INTRODUCTION

The Real Estate Council of British Columbia (RECBC) and the Office of the Superintendent of Real Estate (OSRE) are working together to identify and address regulatory issues related to real estate teams. The intent of this work is to establish a stronger regulatory framework for real estate teams, by clarifying existing requirements and practices and updating Real Estate Rules (Rules) and regulatory guidelines.

This discussion paper is intended to gather feedback on policy proposals related to the regulation of teams. A separate consultation would be conducted on draft Rule changes, depending on the feedback received on the policy proposals described below.

Despite the increasing use of teams, there is limited explicit regulation or guidance regarding this prevalent business practice. A survey conducted by OSRE in September 2018 identified teams as an area of concern for managing brokers as well as other licensees. Highlights from the survey include:

- » Concerns that some large teams may operate as “mini brokerages,” creating confusion among licensees and consumers.
- » Licensees at all levels indicated that they want more guidance in the regulatory framework about teams.
- » Many managing brokers would like to see process improvements related to the creation of teams, greater regulation of teams and enhanced professional guidance for licensees, including managing brokers.



Office of the  
Superintendent  
of Real Estate



While there was no clear consensus among licensees regarding how to resolve these issues, improvements to regulatory requirements and processes as well as development of regulatory guidelines were identified as potential solutions.

Currently, the Rules do not provide a definition of what a team is. Explicit regulation of teams is limited to requiring groups of licensees who advertise under a joint or team name to register that name with RECBC (except in limited circumstances). Many other requirements related to teams – for example, that teams are collectively the designated agent of all team members’ clients – are established through more general regulatory principles. As a result, the regulatory framework would benefit from greater clarity about how team members should conduct their professional activities in order to comply with the Rules.

The absence of explicit regulation of teams creates potential risks to consumers. For example, comments and correspondence received from both consumers and licensees have expressed confusion about the agency and fiduciary duties owed to clients by real estate team members. Another risk is that managing brokers may not be able to provide adequate daily oversight of team operations. RECBC’s compliance department and professional standards advisors regularly receive complaints and inquiries about teams, including undisclosed teams, dual agency by members of the same team and other conflicts of interest.

This discussion paper provides an analysis of specific issues related to real estate teams and makes proposals to improve the regulatory framework by:

1. Defining “teams” in the Rules
2. Requiring registration for all teams
3. Reserving the term “team” only for use by teams
4. Enhancing managing broker and brokerage control of teams

See **Appendix A** for key metrics and data pertaining to real estate teams in British Columbia.

### HAVE YOUR SAY!

You can help shape the future of real estate teams in BC by reading this discussion paper, considering the impacts on industry and consumers, and letting us know what you think. A survey link is provided at the end of this discussion paper.

# 1. DEFINING TEAMS IN THE RULES

## ➤ What is being proposed?

Amending the Rules to provide a regulatory definition of real estate teams and providing related guidance based on the following principles:

- » Teams must have at least two licensed members.
- » All team members must be related to the same brokerage.
- » Team members can only provide real estate services through their team.
- » Teams represent themselves to the public as a single entity (not limited to print advertising).
- » Licensees can only be a member of one team at a time.
- » Team members are collectively the designated agent of all clients of the team.

## ➤ Why is it being proposed?

A regulatory definition will help ensure greater consistency in the operation and conduct of teams. Creating a definition of “teams” in the Rules will provide a necessary foundation for regulatory guidelines and other proposed changes described later in this paper and follows the lead of several other jurisdictions in Canada and the United States.

From a regulatory perspective, teams exist to allow a group of licensees to represent the interests of a single client. The expectation is that client information is shared among team members to ensure continuity of service to a client and that all team members owe the same fiduciary duties to their shared client. As a result, the team’s members are collectively considered to be the designated agent of all the team’s clients. The table below provides additional rationale for each element of the proposed regulatory definition of teams.

Proposed change	Rationale
Teams must have at least two licensed members.	The main benefit to consumers of working with a team is to receive the combined expertise of all licensed team members. A single licensee who advertises their services under a team name is potentially misleading for consumers.
All team members must be related to the same brokerage.	Licensees may only provide real estate services on behalf of and receive payment for real estate services through the brokerage that holds their licence. Consequently, all team members must be related to the same brokerage.
Team members can only provide real estate services through their team.	Provides clarity in representation in trading services and ensures that team members cannot hop on and off a team to circumvent regulatory requirements.
Teams represent themselves to the public as a single entity (not limited to advertising).	Provides clarity in representation in trading services. Any group of licensees that represents itself to the public as a single entity will be included in the regulatory definition of a team, not just those that advertise together under a team name. See the <i>What Makes A Team</i> textbox for additional information.
Licensees can only be a member of one team at a time.	As all team members owe the same agency and fiduciary duties to the team’s client, this proposal provides clarity for licensees and consumers and reduces the potential for conflicts of interest with respect to clients of multiple teams.
Team members are collectively the designated agent of all clients of the team.	Provides clarity for licensees and consumers and protects client confidentiality as clients expect to benefit from the collective expertise of all team members.

## ➤ What does this mean in practice?

- » Teams with only one licensed member – which account for approximately 30% of registered teams – will need to align with the new regulatory definition (i.e. by adding another licensee, no longer advertising as a team or no longer engaging in conduct that suggests they are working as a team – such as the activities listed in the *What Makes a Team* textbox).
- » Unlicensed assistants will no longer be considered formal team members. Teams can continue to utilize unlicensed assistants, but they will no longer be required to be registered with the regulator. Managing Brokers and other licensees remain responsible to ensure their unlicensed assistants do not engage in activities for which a license is required.
- » Teams will not be limited to only those groups of licensees who advertise under a joint or team name. Any group of licensees that represents itself to consumers as one entity -- whether in advertising or otherwise – will also be captured in the regulatory definition of teams.
- » In order to protect against conflicts of interest, whether actual or perceived, licensees who are on a team will not be able to provide real estate services outside of the team. This is consistent with the current approach to registered teams and will continue to mean that licensees cannot jump on and off teams for different real estate transactions.

### AGENCY AND TEAMS

Real estate teams represent themselves as a single entity to consumers. Teams offer clients assured access to a knowledgeable licensee at all times and the benefit of the team members' collective expertise. From a regulatory perspective, the expectation is that information is or may be shared among all team members and, as a result, designated agency is required from all team members to ensure clarity in representation in trading services and to protect client confidentiality.

Because all team members owe the full set of agency and fiduciary duties to their combined set of clients, licensees working on the same team cannot represent multiple clients with conflicting interests in the same transaction (except where the exemption to the restriction on dual agency applies). If team members were able to separate their duties to clients in the same transaction, the same conflicts of interest would arise as if a single licensee were representing multiple clients in the same transaction.

## ➤ Discussion Questions:

- » Do you have any feedback on the proposed regulatory definition of a real estate team?
- » What, if any, unintended consequences might arise from the proposed regulatory definition?
- » Do you have any other comments regarding a regulatory definition of teams?

### WHAT MAKES A TEAM?

It is easy to recognize a team when they publish joint advertising under a team name, such as ads placed in newspapers or on television, social media or public transit, as well as the use of a team name on signage, business cards, promotional flyers, emails and brochures, etc.

However, advertising is not the only means by which licensees may represent themselves to clients or the general public as a team. Any activity that would lead a reasonable person to believe that two or more licensees from the same brokerage are regularly working together to represent clients could be an indication that the licensees are part of a team. Examples of activities that may indicate that a group of licensees is working together as a team may include:

- » Having a licensed assistant;
- » Regularly invoking each other's expertise while representing clients;
- » Sharing a phone number, other than a brokerage phone number, or other contact information (e.g. e-mail address) that is provided to clients;
- » Habitually fielding calls or inquiries from one another's clients (e.g. on a rotating schedule);
- » Jointly attending meetings – whether with clients, other licensees, or third parties – where confidential client information is discussed;
- » Listing multiple licensees on written service agreements or disclosures of representation in trading services;
- » Referring to themselves by a joint name, other than in advertising materials (e.g. on office documents or voicemail);
- » Regularly hosting open houses for each other's listings;
- » Sharing or having shared access to confidential client information;
- » Having a standing commission sharing agreement between multiple licensees.

This list is not exhaustive. It is intended to provide examples of activities that may indicate to regulators and consumers that a group of licensees may be working as a team.

## 2. REQUIRING REGULATION OF ALL TEAMS

### ➤ What is being proposed?

Amending the Rules to add a requirement for all teams to register with the regulator.

### ➤ Why is this being proposed?

Requiring the registration of all real estate teams – including those that do not advertise under a joint or team name as well as immediate family members who currently operate under a registration exemption – will enable the regulator to track how many teams are in operation, which licensees are operating as a team, the size of teams, and other relevant teams-based data. Current data is limited to teams that are required to register for advertising purposes.

Requiring all teams to register will provide consumers and licensees with a clearer understanding of the representation being provided and duties owed to a team's clients.

### ➤ What does this mean in practice?

- » All licensees who meet the definition of a team will be required to register with the regulator. This includes teams made up of family members who currently operate under a registration exemption and teams who work together but do not advertise under a joint or team name.
- » Registration information will continue to be included in a publicly-accessible registry of teams and their members.
- » The regulator is considering implementing a modest fee for team registrations and membership changes to offset administrative costs related to team registrations and roster changes, based on the principle of cost recovery.

### ➤ Discussion questions: Team registration requirements

- » What is a reasonable transition period to allow existing teams to come into compliance with new rules (e.g. teams with a single-licensed member; registration of existing unregistered teams)?
- » Do you have any comments regarding team registration requirements?

## WHAT ABOUT TEAM LEADERS?

Many existing real estate teams have a functional “team leader.” For example, where a team name contains a personal name (e.g. Joe Blogg Real Estate Team), the individual whose personal name appears in the team name is often seen as the team leader by the team’s members and its clients.

From an operational perspective, appointing a team leader may make sense to ensure the team functions smoothly. However, there is currently no regulatory requirement for teams to identify or register a leader, nor are there any prescribed qualifications for team leaders.

The purpose of this project is to establish a stronger regulatory framework for real estate teams, by clarifying existing requirements and practices, and updating Rules and regulatory guidelines. As a result, OSRE and RECBC are not considering creating new requirements related to team leaders at this time.

### 3. RESERVING THE TERM “TEAM” ONLY FOR USE BY TEAMS

#### ➤ What is being proposed?

Developing guidelines or amending the Rules to prevent brokerages from registering a trade name that includes the term “team.”

#### ➤ Why is this being proposed?

Restricting brokerages from using the word “team” in their brokerage name will help prevent public confusion regarding brokerages and teams, and what agency duties are owed under the different service models. Members of the public do not have a good understanding of brokerages, nor do they understand the differences between brokerage agency and designated agency. Teams will always collectively owe designated agency duties to their clients, whereas brokerages may offer brokerage agency or designated agency. If brokerages are allowed to use the term “team” in their brokerage name, it may introduce further public confusion as to the nature of a brokerage and what duties they owe as agents.

## ➤ What does this mean in practice?

- » Only real estate teams will be allowed to register a name that includes the term “team.” Brokerages will not be able to register a new name that includes the term “team.”
- » A small number of brokerages currently use “team” in their name; legacy options will be explored to minimize the impact of re-branding on these brokerages.

## ➤ Discussion questions:

- » Which, if any, terms other than “team” should be reserved for exclusive use of real estate teams? Why?
- » Which, if any, terms should be reserved for the exclusive use of brokerages? Why?
- » Do you have any other comments regarding team name considerations?

# 4. ENHANCING MANAGING BROKER AND BROKERAGE OVERSIGHT OF TEAMS

## ➤ What is being proposed?

Amending existing forms and developing regulatory guidelines to strengthen the managing broker’s role in the oversight of teams.

## ➤ Why is this being proposed?

Managing brokers play a central role in ensuring brokerages and individual licensees uphold regulatory requirements. Managing brokers have expressed an interest in having a stronger role in overseeing teams, consistent with their supervision and compliance duties at brokerages. Neither the Rules, nor existing team-related forms, require managing broker or brokerage involvement/approval to create teams or add team members.

To support managing broker oversight of teams, we are proposing to require managing broker sign-off on forms related to the registration of teams and any subsequent team roster changes where a team member is added. This will ensure that managing brokers are aware of the makeup and registration of teams involving the brokerage’s related licensees and formally sign-off on the operation of teams within the brokerage.

Regulatory guidelines and related tools and resources will help managing brokers identify issues related to teams and set appropriate brokerage controls, policies and procedures to address them.

### ➤ What does this mean in practice?

- » Managing brokers will need to approve team registrations and membership changes. Managing brokers will be able to prevent the formation of a team or adding a member by refusing to sign the registration form.
- » Managing brokers would not be able to prevent someone from leaving a team or dissolving a team.
- » Managing brokers will need to establish brokerage policies and procedures regarding teams (e.g. membership, names, business premises).

### ➤ Discussion questions:

- » Do you have any comments regarding the proposal to provide a more formal role for managing brokers in approving the creation or membership of teams?
- » Do you have any comments regarding oversight of teams by managing brokers or brokerages?

## HAVE YOUR SAY!

You can help shape the future of real estate teams in BC by sharing your feedback on the proposals described in this discussion paper.

- » Are there other issues in relation to teams where additional Rules and/or regulatory guidance changes should be considered?
- » Do you have any additional comments on the regulation of real estate teams?

Please [click here](#) to take our survey.

## Appendix A

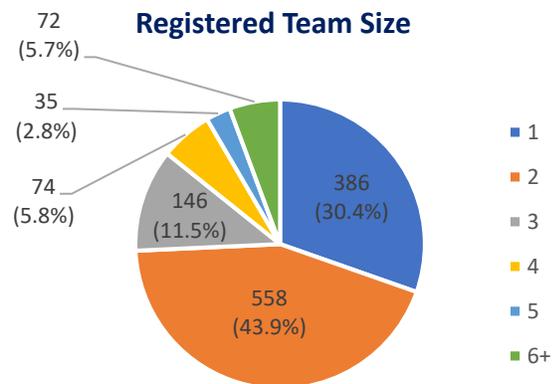
### Overview of Real Estate Teams Data in British Columbia

#### Key Metrics

- » There are 1,271 real estate teams registered with RECBC, with a total of 3,194 members.
- » The largest registered team has 39 members.
- » The largest number of registered teams related to the same brokerage is 31; the next largest is 26.

#### Team Size

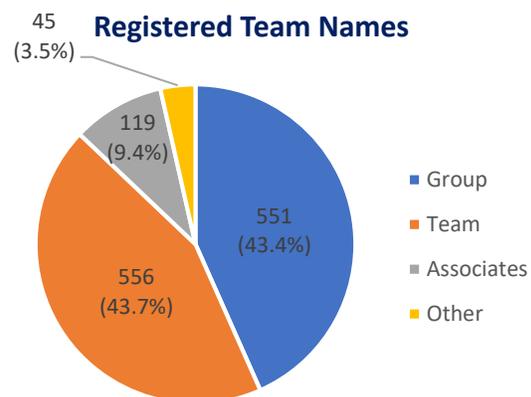
- » Registered teams with three licensed members or less account for the vast majority of registered teams (85.8%).
- » 30.4% of registered teams have only one licensed member. Another 43.9% of registered teams have two licensed members.
- » A small proportion of registered teams (14.3%) have 4 or more licensed members.
- » There are 21 registered teams (1.7%) that have 10 or more licensed members and 7 teams (0.6%) that have 20 or more licensed members.



\* Percentage total exceeds 100% due to rounding.

#### Team Names

- » Almost half (43.7%) of registered teams use the term “team” in their name.
- » Another 43.4% of registered teams use the term “group.”



Source: RECBC Registration Database as at December 31, 2020