

**Ministry of Finance****BRIEFING DOCUMENT**

**To:** Honourable Carole James  
Minister of Finance and  
Deputy Premier

**Date Requested:**

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**TITLE:** Single Regulator for Real Estate

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**PURPOSE:**

**(X) FOR DECISION**

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**DATE PREPARED:** September 17, 2019

**TITLE:** Single Regulator for Real Estate

**ISSUE:** Government has committed to creating a single regulator for real estate and a decision is required on the implementation of that commitment.

**BACKGROUND:**

In September 2018, government released the Real Estate Regulatory Review (Perrin Report) that recommended that the Office of the Superintendent of Real Estate (OSRE) and the British Columbia Real Estate Council (RECBC) be merged into a single regulator within what is now the British Columbia Financial Services Authority (BCFSA). The BCFSA is responsible for regulating mortgage brokers, private pensions, and financial institutions.

This recommendation was reiterated in the report Combatting Money Laundering in BC Real Estate. Both reports also recommended that government consider expanding regulation in the real estate sector to developers, appraisers and home inspectors.

RECBC is responsible for education, investigations, and discipline of real estate licensees, while OSRE is responsible for unlicensed activity and rule-making. It also has an oversight function with respect to RECBC.

Government has viewed the recommendation for a single regulator for real estate positively but has been silent on the form for that single regulator. Cabinet direction will likely be needed on the single regulator prior to submitting a Request for Legislation.

An overview of recent history of regulation in the real estate sector in BC is given in the Appendix.

**DISCUSSION:**

The creation of a single regulator is intended to address several concerns:

- Oversight and culture: RECBC has resisted attempts by OSRE to exercise the Superintendent's statutory oversight function, culminating in a judicial review of the oversight provisions. Despite a judicial decision generally in favour of OSRE, OSRE and RECBC continue to disagree about the extent of OSRE's oversight powers.

Disputes about OSRE's oversight of RECBC have generally arisen where OSRE has directed RECBC to revisit a specific investigation or disciplinary matter that the Superintendent considered was not adequately pursued. This resistance suggests that the culture at RECBC has not yet transitioned to one of a Crown agent and that

pre-2016 concerns about a culture of industry capture at RECBC have persisted despite the change to a government-appointed board in 2016.

- Investigative Capacity: Capacity at RECBC is weak with respect to investigative functions in terms of both resources and expertise. OSRE has a stronger investigative team than RECBC as all of OSRE's investigators are required obtain Special Constable Status. Government priorities with respect to anti-money laundering and improving regulation within the real estate sector have created a need for stronger investigative capacity, greater information sharing, and the need to develop a risk-based approach to regulating market conduct.
- Discipline: The disciplinary process for real estate licensees is inefficient and cumbersome. In most cases, a discipline committee requires at least three members, the majority of whom must be Council members. This requirement limits the number of discipline hearings that could be held expediently. It also reduces the incentive for the Council to pursue disciplinary measures.

#### **OPTIONS:**

Both options for restructuring real estate regulation would include significant changes to the discipline framework to create a more efficient process. (Although a concrete proposal for restructuring the discipline process is not yet final, the proposal will not require the board members under either of the two options below to participate directly in disciplinary matters.)

#### **Option 1: Include the regulation of real estate in the mandate of the BCFSA.**

Under this option, the BCFSA would have responsibility for real estate in addition to its existing responsibilities. Any other real estate sectors that become regulated because of the province's anti-money laundering initiatives would also fall under the mandate of the BCFSA.

#### **Implications:**

- Real estate regulation would attach to an existing regulatory framework. The BCFSA is a newly developed and modern regulatory structure that has been created following considerable analysis. It has a framework that could with some adjustment accommodate real estate regulation.
- Enhanced government alignment with the regulator. Including real estate in the BCFSA could enhance the alignment of real estate regulation with government priorities by bringing it into an organizational culture that has better collaborative roots with government than exist in the current real estate regulatory framework.
- Synergies may exist between real estate and other sectors regulated by the BCFSA. Information about bad actors in the real estate sector may be helpful in the

regulation of mortgage brokers if both were the responsibility of a single regulator. These synergies were one of the main factors behind Perrin's recommendation to house the single regulator in the BCFSA.

Furthermore, the activities of real estate regulation (licensing, education, complaints, investigation, discipline) are common with regulatory activities of other sectors regulated by the BCFSA. Combining real estate with the other regulatory sectors could lead to operational efficiencies (HR policies, IT/IM, government reporting).

- Capacity of the BCFSA. Adding real estate regulation to the mandate of the BCFSA may stretch the capacity of the BCFSA during a time when it is establishing itself as a new Crown, particularly if new sectors (money services businesses, developers, appraisers, home inspectors) were to become regulated as part of the province's anti-money laundering initiatives.

#### **Option 2: Create a new Crown to be the regulatory agency for real estate.**

This option would create a new stand-alone Crown to regulate real estate. The Crown's mandate would include:

- The current responsibilities of RECBC;
- The current regulatory responsibilities of Superintendent of real estate (e.g. unlicensed activity under *Real Estate Services Act*, and duties under the *Real Estate Development Marketing Act* and the *Strata Property Act*);
- The regulation of mortgage brokers: and
- The regulation of any other real estate sectors that may become regulated because of the Province's anti-money laundering initiatives.

The governance structure of the new Crown would largely parallel the structure of the BCFSA with a Board and one or more statutory decision makers.

#### **Implications:**

- Real estate regulation could stand alone. Real estate is quite different from other sectors regulated under the BCFSA:

*Number:* The number of real estate licensees to be regulated is significantly higher than the number of financial institutions, pension plans, and mortgage brokers regulated by the BCFSA.

*Individuals vs organizations:* Real estate regulation generally applies to individuals whereas the regulation of financial institutions, insurance and pensions applies to organizations.

*Less complexity:* Real estate regulation is less complex than the regulation of financial institutions and pension plans.



*Market Conduct vs Prudential:* The focus of real estate regulation is consumer protection and market conduct, whereas the focus of the regulation of financial institutions and pension plans is generally prudential.

*Economic significance:* The failure of a credit union or large insurer could have a significant impact on BC's economy, whereas the failure of a real estate licensee would not.

- Creating a new Crown is a high-profile initiative. Creating a new standalone Crown would require an increase in the province's oversight and responsibilities with respect to Crowns.
- Risk of mis-alignment with government priorities. Although a standalone Crown would have a government-appointed board, the experience of OSRE and RECBC suggests that a government-appointed board is not a guarantee that a standalone Crown would work collaboratively with government.

The perception is that the organizational culture at RECBC has not yet fully moved from one that might have been industry-captured to one that is more fully aligned with government's regulatory priorities. The risk that this culture could pervade a new standalone Crown is relatively high because staff at the Crown would likely be dominated by staff from RECBC.

#### RECOMMENDATION:

Option 1.

#### DECISION:

Option 1 / Option 2

Attachment

APPROVED / NOT APPROVED

  
 Carole James  
 Minister and Deputy Premier

OCT - 3 2019  
 Date

## **Appendix – Evolution of Recent Real Estate Regulation**

### ***Before 2016***

- The Real Estate Council of BC (RECBC) was a self-regulatory agency with 13 of 17 board members elected by licensees. It had rule-making authority (without ministerial approval, although government could make regulations to override the rules) and was responsible for education, licensing and regulatory enforcement related to licensees; and
- The Superintendent of Real Estate was responsible for regulating unlicensed activity, intervening in licensed activity in the case of harm to the public interest, approving disclosures under the *Real Estate Development Marketing Act* (REDMA), and approving matters under the *Strata Property Act* (SPA).

### ***Concerns with the Pre-2016 model***

#### RECBC did not adequately recognize market changes.

- Real estate had generally been low risk compared to other regulated sectors and RECBC was seen as an effective regulator. It had relatively full autonomy and the Superintendent devoted relatively few resources to its authority.
- After the 2009 recession, real estate prices escalated leading to greater incentives for misconduct by licensees and to increased media and public scrutiny. RECBC was slow to respond to the changing market.

#### Industry capture of RECBC.

- One perceived reason for RECBC's slow response to the changing market was that the Council was dominated by licensees who were reluctant to pursue significant regulatory action against fellow licensees.

#### Overextension of the Superintendent.

- Before 2016, the Superintendent of Real Estate had functioned within the Financial Institutions Commission (FICOM) and had held four concurrent cross-appointed statutory positions in FICOM. One of the major criticisms was that FICOM was not able to provide effective oversight of the real estate sector because real estate was just one sector amongst several sectors that the Superintendent was overseeing.

#### Unworkable disciplinary process.

A discipline committee required (and continues to require) at least three members, the majority of whom must be Council members. This requirement limited the number of

discipline hearings that could be held expediently. It also reduced the incentive for the Council to pursue disciplinary measures.

### **2016 Changes**

In 2016, the Superintendent of Real Estate established an independent advisory group (IAG) to recommend improvements to the regulation of real estate. Government made changes to the legislation regulating real estate licensees, some of which reflected the IAG report recommendations while others reduced RECBC's autonomy beyond the IAG recommendations.

The changes were:

#### **Creation of the Office of the Superintendent of Real Estate (OSRE).**

- In 2016, government hired a standalone Superintendent of Real Estate and expanded the Superintendent's office. The Superintendent was given statutory oversight responsibilities for RECBC and rule-making power.

#### **RECBC became a government body.**

- RECBC changed from being an independent industry elected board to a fully government appointed board to enhance government oversight of the agency.

#### **Strengthening regulatory provisions.**

- The changes to regulatory provisions included increasing maximum fines and administrative penalties for licensees, allowing the proceeds from misconduct to be paid to RECBC and increasing standards for brokerage representatives