

INPUT

LAND AND REAL ESTATE
ISSUES IN BRITISH COLUMBIA

BC's New Real Estate Landscape

INPUT

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PRESIDENT'S MESSAGE



DANIEL JOHN, RI
REIBC PRESIDENT

Welcome to another edition of *Input*. With so many changes to regulations in our industry this year, I am so grateful that we can call upon our industry colleagues to ensure that we can make sense of them all. I would like to take this opportunity to recognize REIBC's many volunteers for sharing their knowledge, expertise, and insights in this time of change.

The Board has been very busy since the last edition. REIBC is now being driven by a new mission statement: "To promote our diverse RI-designated members as distinguished professionals that are trusted, educated and experienced." With this mission always at top of mind, our organization has been aggressively implementing this change and has been reaching out to all members for support and feedback. Membership has seen an immediate uptick in member events across the province, as we have been reaching out to membership communities more frequently than in the past. REIBC is now providing more education through our just-about-monthly webinars on relevant and contemporary topics. Furthermore, we have been making strong pushes to promote the research we have been conducting, and it is being recognized internationally.

REIBC is excited to be a part of hosting the BC Land Summit. Mark your calendars, register, and join us in Vancouver on May 8-10, 2019, for the Summit and its keynote speakers Sheila Watt-Cloutier and Edward Glaeser and featured dinner presenter Mark Critch. And with spring now upon us, we can also look ahead to a busy month of June and I encourage you to attend the upcoming events. Our AGM and Annual Luncheon and Member Recognition event is being held on June 13. Our Annual Charity Golf Tournament (and dinner) at the Richmond Golf and Country Club in support of the Make-A-Wish Foundation of BC and Yukon is on June 26.

Raising the profile of REIBC and promoting its membership will continue to be our top priority. As we implement all these new changes to our organization, I would like to take this opportunity to thank you all for your continued feedback and support of the Institute.



COVER: Apartment buildings against mountains, with trees.
Photography by Shana Johnstone.

ARTICLES

- 8 Landlords in BC Experiencing
Unprecedented Change
Hunter Boucher, LandlordBC
- 14 Recent Changes to Residential Tenancy Law
Zuzana Modrovic, Tenant Resource Advisory Centre (TRAC)
- 20 Stepping Up BC's Energy Efficiency
Zachary May and Dale-Sofia Andersson, Building and Safety
Standards Branch, Ministry of Municipal Affairs and Housing
- 28 Working Together to Strengthen Consumer
Protection
Micheal Noseworthy, Office of the Superintendent of Real Estate
and Erin Seeley, Real Estate Council of BC
- 34 CMHC Outlook
Eric Bond, Braden Batch, and Taylor Pardy, CMHC
- 40 Regulatory Changes Bring Two New Taxes
Ed Furlan, RI
- 48 Open Banking in Canada?
Samantha Gale, Canadian Mortgage Brokers Association-BC

NOTES

- 2 PRESIDENT'S MESSAGE
- 4 FROM THE EO'S DESK
- 53 NEW MEMBERS

COLUMNS

- 25 ORGANIZATION PROFILE
BC Notaries Association
- 33 ON THE JOB
Greg Steves, RI
- 38 PRESIDENTS LUNCHEON
- 45 ASK A LAWYER
- 52 MEMBER PROFILE
Jeffrey Robert Simpson, RI

DIRECTORY

- 54 ASSOCIATIONS AND
SERVICES

FROM THE EO'S DESK



BRENDA SOUTHAM
EXECUTIVE OFFICER
AND EDITOR-IN-CHIEF

In 2016 the ball started slowly rolling down the hill when Premier Christy Clark announced that all authority for penalties, regulations, and rulemaking had been transferred away from the Real Estate Council of BC. As that ball kept rolling it started to pick up speed, and almost three years later we are experiencing massive changes to all sectors of real estate. With all of the changes now in effect, our authors for this edition of *Input* have provided readers with a window onto this new real estate landscape.

The Office of the Superintendent of Real Estate and the Real Estate Council have together written us an article about the recently applied consumer protection measures. They note that change is a constant and there are probably more changes to come.

The new BC Step Code, which is stepping up BC's energy efficiency, is described by BC's Building and Safety Standards Branch. This may be a temporarily forgotten area of real estate with all the news lately about residential sales, but this truly is a big piece of the real estate pie.

From the perspectives of landlords and tenants, respectively, LandlordBC and the Tenant Resource Advisory Centre (TRAC) each write about recent unprecedented changes to the Residential Tenancy Act and Residential Tenancy Branch processes and how they are working hard on behalf of their membership and stakeholders. Future changes are proposed, so we haven't heard the last on a topic that affects so many British Columbians.

Canada Mortgage Brokers Association-BC has written about open banking—an interesting concept that most of us haven't heard too much about. Change is coming, fast and furious, and regulation will be part of that change.

We couldn't forget about the new taxes and we asked Ed Furlan, RI, to explain the speculation tax and the new school tax. Our Ask a Lawyer column hits on yet another tax—the empty homes tax in Vancouver.

As well, CMHC provides an outlook on three key markets, and we round out the edition with our usual columns, including an introduction to the new BC Notaries Association. We thank all of our authors for contributing their expertise.

ABOUT

Input was established in 1976. It ran at 12 pages and stayed that size for a long time. It was more like a newsletter then; when something new happened in the real estate industry, one of our RIs wrote about it, but the publication didn't cover much industry information otherwise.

Many years later, *Input* runs at an average of 48 pages, sometimes a bit bigger or smaller, and our authors hail from around the globe. Our focus is on keeping readers informed with all aspects of the industry, particularly hot topics.

REIBC delivers *Input* to 4,000 people or organizations within the real estate industry.

Who receives *Input*?

- REIBC members
- REIBC subscribers
- PIBC members
- BC Notaries
- PAMA – Professional Association of Managing Agents
- SPA-BC – Strata Property Agents of BC
- Government ministries
- Real estate boards

WE WANT TO HEAR FROM YOU

Please let us know your ideas for upcoming issues and how you like the magazine—and check out our Facebook and Twitter pages for up-to-the-minute information on REIBC activities.

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Zuzana Modrovic is a practising lawyer in TRAC's direct representation program, focusing on assisting groups of tenants through dispute resolution proceedings. She graduated from UVic Law in 2012, worked as a poverty law advocate at the Kamloops and District Elizabeth Fry Society, and completed her articles with the Community Legal Assistance Society before coming to TRAC. When not in the office, she enjoys climbing rocks (which she is not very good at), making beer (which she is reasonably proficient at), and drinking beer (which she is a little too good at).

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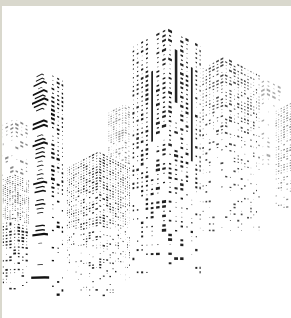
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LETTERS TO THE EDITOR

Input is a great magazine! I appreciate the information and always read it cover to cover. We use it as a resource long after publication. Keep up the superb work.

Kind Regards,

Garwin Wuerch, RI
Radcliffe Development Corporation

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ARTICLES



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Taylor Pardy is CMHC's acting regional economist for BC and spokesperson on housing markets throughout British Columbia, providing forecasts, analysis, and commentary on developments in the resale, rental, and new home markets. Taylor holds a bachelor of arts in Economics and a master of arts in Applied Economics and Policy Analysis from the University of Regina. Prior to joining CMHC, Taylor was a research assistant with the Canadian Home Builders' Association, conducting housing and labour market research.



Micheal Noseworthy is the Superintendent of Real Estate for British Columbia, the non-partisan public official responsible for leading the regulation of the real estate industry in BC. Mr. Noseworthy has been building the new office, establishing policies, and building relationships since taking on the inaugural role in 2016. He has extensive experience as a regulator and public sector leader, previously serving as a senior government regulator for Yukon and most recently serving as Yukon's Superintendent of Real Estate, Superintendent of Insurance, Registrar of Lotteries, and Registrar of Medical Practitioners. He also served as Yukon's Director of Residential Tenancies and Employment Standards and was awarded the Premier's Award of Excellence for his work as part of the team that developed Yukon's first-ever Housing Action Plan. A lawyer by profession, he also previously worked in Newfoundland and Labrador in a private practice that included real estate and administrative law. twitter.com/OSRealEstateBC



Erin Seeley is the executive officer of the Real Estate Council of BC (RECBC). Erin is an experienced senior leader with a wealth of experience, having served most recently as the executive director of the Immigration Programs Branch in the Ministry of Jobs, Tourism, and Skills Training where she was responsible for the strategic direction and operations of BC's immigration programs. Erin has also served as the executive director of Finance for two Crown corporations: the BC Immigrant Investment Fund and the BC Renaissance Capital Fund. Before joining the BC government in 2006, Erin worked in the technology sector as the manager of International Business Development for MDA (MacDonald Dettwiler & Associates) in Richmond. She has a BA from UVIC and an MA in International Studies from SFU. recbc.ca



Ed Furlan, RI, has more than 20 years of industry experience and is the senior director of Property Tax at Altus Group Vancouver. He has led a wide range of assignments within the property tax business. Ed has acted as the lead representation of assessment appeals for a number of high-profile Canadian clients and has extensive familiarity with assessment and taxation legislation in British Columbia. His focus has been on major real estate projects including office buildings, shopping centres, big-box retail, large warehousing, and specialty property such as airports and purpose-built facilities. Ed is a past board member and secretary/treasurer of the Downtown Vancouver Business Improvement Association (DVBIA).
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Samantha Gale is the CEO of CMBA-BC and the executive director of its national umbrella organization, CMBA. She was born in New Castle Upon Tyne, England, and obtained her law degree from UBC in 1991, following a bachelor of arts in Criminology from SFU. She was called to the BC Bar in 1992 and embarked on a real estate practice in Vancouver, until a move to become a government regulator for the Financial Institutions Commission (FICOM) in 1998. At FICOM, Samantha regulated mortgage brokers under the Mortgage Brokers Act and real estate developers under the Real Estate Development Marketing Act, amongst other endeavours. She also assisted the Ministry of Finance in the drafting of the Strata Property Act, the Real Estate Services Act, and the Real Estate Development Marketing Act. Looking for a change, she left government to join the Mortgage Brokers Association in 2012, which was later rebranded as the Canadian Mortgage Brokers Association-BC.
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COLUMNS



Jacqui Mendes is the chief executive officer of the BC Notaries Association. Jacqui has over 20 years of senior leadership experience in the non-profit and private sectors. She has worked with a number of leading member-based organizations with complex regulatory and governance frameworks; association work includes the Friends of the Tate Gallery in the UK and the BC Non-Profit Housing Association, which supports social housing providers around the province. Private sector experience includes senior operational, administrative, and technological leadership in retail and wholesale multi-national companies.
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Purpose-built rental apartments in Vancouver (all images).



LANDLORDS IN BC EXPERIENCING UNPRECEDENTED CHANGE

Hunter Boucher

Over the last two years, the rental housing industry has seen what many consider to be unprecedented legislative change. More changes occurred in the last 18 months than in the 14 previous years of the Residential Tenancy Act's existence. And with the recently released report from the provincial government's Rental Housing Task Force, more changes are likely to come into effect over the next few years.

While LandlordBC and our constituents, who operate within the rental housing industry, must wait to see how these potential changes unfold, we are able to provide some details and updates about the recent changes and how these changes impact the rental housing industry.

CHANGES TO FIXED-TERM TENANCIES AND VACATE CLAUSES

On October 26, 2017, the Honourable Selina Robinson, Minister of Municipal Affairs and Housing, introduced Bill 16. This bill, an amendment to the Residential Tenancy Act (RTA), covered many sections of the RTA and addressed significant industry concerns as well as some minor matters regarding the interpretation of the existing legislation.

The bill included limiting the use of fixed-term tenancies with vacate clauses and limiting situations where a landlord can apply for a rent increase that is above the set guideline announced by the Residential Tenancy Branch (RTB) on an annual basis. With near zero vacancy rates and rapidly increasing rents in various markets across British Columbia, there were instances where an unintended loophole in the RTA was being abused and utilized as a method by some rental housing providers

to increase rents for existing tenancies. These increases often went well beyond the maximum allowable increase prescribed in the Residential Tenancy Regulations, accompanied by the very real threat of tenants losing their housing.

Using the vacate clause to circumvent rent control and inflict a significant rent increase on tenants was widely viewed as misuse and abuse of the RTB process and did not keep with the spirit of the RTA. Leading up to the 2017 provincial election, both the Liberal government and the NDP opposition received significant pressure from tenants and tenant advocacy groups to make amendments that would eliminate the loophole. This became an election issue for both parties. One of the first orders of business following the formation of the newly elected NDP government was the introduction of this amendment and a single allowable exemption—that a landlord may utilize a vacate clause when they or a close family member are moving into the rental unit at the end of a fixed term. This is the only situation where a vacate clause can be enforced. The RTA defines a close family member as a spouse, child, or parent of the landlord.

Coincidental with these changes, the government announced a \$6.9 million funding increase (over a three-year period) for the RTB, and the formation of a Compliance Unit within the RTB mandated to address any significant abuses of the RTA that occur from both landlords and tenants. This change strengthens the existing framework for administrative penalties and provides the RTB with greater investigative powers, allowing it to address issues pertaining to serial abuse of the legislation. The Compliance Unit has hired its leadership and is currently finalizing its terms of reference and overall structure. LandlordBC is hopeful that it will become operational in early 2019.

THE LEGALIZATION OF CANNABIS

As we entered 2018, the focus of the rental housing industry shifted to the topic of cannabis legalization. Landlords and property managers were concerned as to how the growing, cultivation, and smoking of legalized cannabis and cannabis products would impact their rentals. Specific concerns brought to the attention of LandlordBC included property insurance issues, health concerns, damage to property as a result of personal grow operations, and the infringement on the quiet enjoyment of tenants who may find the use of cannabis

disruptive. These concerns were addressed on April 26, 2018, in section 160 of Bill 30: Cannabis Control and Licensing Act.

Bill 30 included an amendment to the RTA that outlined significant protections for landlords against the growing of cannabis in their rental units for existing tenancies, regardless of what was outlined in the original tenancy agreement. This protection also extended any existing prohibition against the smoking of tobacco to include cannabis. These protections are in place for tenancy agreements entered before the Cannabis Control Date of October 17, 2018. For tenancy agreements entered on or after October 17, 2018, landlords must include terms that explicitly prohibit the growing, smoking, and vaping of cannabis in their rental units and on the residential property. It must be stressed that this applies to written residential tenancy agreements; clauses agreed to verbally are not enforceable. Interestingly, the standard agreement provided by the RTB does not address these topics. However, the proprietary residential tenancy agreement provided by LandlordBC for our members was amended in early 2018 to include these protections, henceforth ensuring that our members were mitigating their risk and prepared for the incoming change.

LandlordBC worked with the Honourable Mike Farnworth, Minister of Public Safety and the Solicitor General, and the BC Cannabis Secretariat to ensure that the rental housing industry's concerns were properly represented and considered as part of the legalization process, and we were pleased that they were. The changes to the RTA struck a balance in terms of protecting a landlord's right to mitigate damage to their rental unit, and they ensure tenants living in smoke-free environments can continue to do so.

ENDING TENANCIES AND ADDRESSING "RENOVICTIONS"

As 2018 continued, we saw another amendment to the RTA. On May 17, Bill 12, which was introduced on April 12 by the Honourable Selina Robinson, received Royal Assent. This bill included changes to an existing notice to end tenancy and the creation of a new notice to end tenancy. While the freshly created four-month notice to end tenancy was new, the situations to use this notice were not and had previously existed on the two-month notice. Most significantly, these situations include cases where the unit must be vacated to allow for repairs, renovations, or demolition.



Ending tenancies in order to complete major repairs or upgrades to a residential rental building, often referred to as “renovictions” in the media, typically make the headlines. However, the fact remains that on occasion, landlords need to end tenancies for major repairs, renovations, upgrades, or demolition.

—Hunter Boucher

Ending tenancies in order to complete major repairs or upgrades to a residential rental building, often referred to as “renovictions” in the media, typically make the headlines. However, the fact remains that on occasion, landlords need to end tenancies for major repairs, renovations, upgrades, or demolition. Bill 12 aims to provide further protections for tenants who are facing eviction for superficial renovations or when the landlord is not acting in good faith in terms of what repairs are required. Bill 12 included the following:

- an extension of the notice period from two months to four months
- an increase to the dispute deadline from 15 days to 30 days
- an increase in the penalty for serving a notice in bad faith that includes up to 12 months of additional compensation
- a newly introduced right-of-first-refusal provision specific to buildings of five or more units

On the surface these changes appear significant. However, there are protections for landlords that were also included. Prior to this amendment, landlords who did not follow through on the repairs or property upgrades provided as the reason for issuing the notice to end tenancy could face a penalty of two months of additional compensation. This penalty could be issued regardless of the reasons the development plans fell through. Under the amended RTA, an arbitrator can

consider the circumstances that lead to a landlord’s decision to halt or delay the project. Additionally, the right of a tenant to return to the unit after repairs or renovations have been completed is contingent on market rent. This gives landlords a viable way to recoup the labour and materials costs.

THE RENTAL HOUSING TASK FORCE

On April 10, 2018, Premier John Horgan announced the formation of a new task force that would evaluate rental housing in BC. This led to the development of the Rental Housing Task Force, chaired by MLA Spencer Chandra Herbert, and included MLA Adam Olsen and MLA Ronna-Rae Leonard. The task force’s objective was to engage with landlords, tenants, advocacy groups, and industry associations to seek feedback on how the legislation and RTB processes could be improved to better serve all those involved in the industry. The task force findings were to be reported back to Premier Horgan and Housing Minister Robinson by the fall of 2018.

The Rental Housing Task Force met with stakeholders throughout the summer of 2018 and hosted 11 town hall meetings in communities across the province. Additionally, they met with advocacy groups, including LandlordBC, and accepted written submissions from stakeholders.

This first recommendation and change that came as a result of the Rental Housing Task Force findings was released in September 2018 following the RTB announcement of a 4.5% maximum allowable rent increase for 2019. This maximum increase was widely reported as the highest increase since 2004 and, in response, the Rental Housing Task Force released the following suggestions:

1. Change the rent control formula from inflation (2.5% for 2019) + 2%, to inflation only, thus removing the addition of the 2%. This early recommendation was accepted by Premier Horgan and Minister Robinson and was quickly followed by a change to the Residential Tenancy Regulations that resulted in the 2019 rent increase being reduced to 2.5%.
2. Improve access to above-guideline rent increases when significant work, such as repairs or renovations, have been completed by the landlord. The process of updating the legislation and regulations to reflect this change is pending and LandlordBC continues to be active in the development of this new policy.

The task force's final report included a list of 23 recommendations and was released on December 12, 2018. From LandlordBC's standpoint, the findings of the report are fair and work to strike a balance between a tenant's right to secure, sustainable rental housing and a landlord's right to protect their rental property and operate their business in a financially feasible manner. Many of the recommendations strengthen pre-existing legislation, provide a clear interpretation of industry processes, and increase enforcement against those who continue to attempt to operate outside the legislative framework. Additional recommendations include ways in which the Residential Tenancy Act and Residential Tenancy Branch processes can be modernized, such as allowing email as a method of service and recording RTB dispute resolution hearings.

It is LandlordBC's opinion that one of the most notable of the recommendations was that rent will continue to be tied to the tenant and not the rental unit. LandlordBC successfully advocated that tying rent to the unit would have a negative impact on the development of new purpose-built rental stock across British Columbia and deter landlords from investing in repairs and upgrades for existing buildings. The task force agreed, and landlords can continue to consider the market when they enter into a new tenancy upon turnover. The ability to do this is especially important given the change to the rent control formula to inflation only.

BIG CHANGES, BUT VALUES INTACT

Over the past year and a half, unprecedented change has taken place within BC's rental housing industry. Furthermore, with many of the Rental Housing Task Force recommendations still needing to be considered, more change is on the horizon. Some of the recent or proposed changes are significant, yet the core rights and responsibilities of landlords and tenants remain, for the most part, true to the values originally intended when the RTA was introduced.

LandlordBC is working diligently to advocate on behalf of the rental housing industry, while also providing resources, education, and support to those operating as landlords and rental housing property managers.

Images provided by LandlordBC; photography by Monika Sosnowska.



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RECENT CHANGES TO RESIDENTIAL TENANCY LAW

Zuzana Modrovic

As a tenant advocacy organization, TRAC's purpose is to promote the legal protection of residential tenants across British Columbia by providing legal information, education, support, and research on residential tenancy matters. We strive for greater security of tenure for tenants in BC through improvements to legislation, policy, and legal processes.

Residential tenancy in BC is a hot topic. With a miniscule vacancy rate and skyrocketing rents, tenants often find themselves in dubious housing situations, unsure they will be able to find a rental unit they can afford when they are forced to move. In response, the BC Government has made changes to tenancy laws seeking to improve protection for tenants.

There have been several recent changes to the Residential Tenancy Act (RTA) and Residential Tenancy Branch (RTB) processes. This article will mainly focus on the changes related to rental rates, evictions, and the dispute resolution process. There have been other changes to tenancy legislation, policy, and rules that will not be discussed here.

ADJUSTING THE RENT INCREASE FORMULA

In April 2018, the BC Government appointed the Rental Housing Task Force. This group was created to provide the government with recommendations for further changes to rental housing legislation. The first recommendation was to change the formula for the annual allowable rent increase, set out in the Residential

Tenancy Regulation (RTR), from inflation plus 2% to just inflation. The government implemented this recommendation and the allowable rent increase for 2019 is 2.5%.

RESTRICTING THE "VACATE CLAUSE"

Tenancies are generally one of two types: periodic or fixed-term. A periodic, or month-to-month, tenancy is a tenancy with no fixed end date. It continues until it is ended by the landlord or tenant in accordance with the RTA. A fixed-term tenancy is one with a specified end date included in the tenancy agreement. Along with the set end date, the tenancy agreement should specify what will happen when the term ends. Prior to recent changes, the usual options were that the tenancy continued on a month-to-month basis or another fixed term, or that the tenant must vacate the unit. The second option was unqualified; landlords could require a tenant to move at the end of the fixed term for any reason. The term in the tenancy agreement requiring a tenant to move out at the end of the fixed term is called a "vacate clause."

Prior to the change in legislation, tenants and advocates noticed that landlords were using vacate clauses to accomplish things that would otherwise be contrary to the RTA. For example, landlords used the threat of enforcing vacate clauses to pressure tenants to enter into new fixed-term agreements with drastically higher rents. In a rental market with a healthy vacancy rate, tenants facing a choice between a massive rent increase or vacating a unit can feasibly choose the latter, but with vacancy rates in some BC communities hovering around 0%, this is not a viable option.





In December 2017, the BC Government responded by amending the RTA to restrict how landlords may use a vacate clause. A vacate clause in a tenancy agreement is now only enforceable in sublet situations and circumstances prescribed in the RTR. Currently, the only circumstance prescribed in the RTR is when a landlord, or landlord's close family member, intends in good faith to occupy the unit at the end of the fixed term.

This change should prevent landlords from exploiting vacate clauses to increase rents unreasonably. Now, if a landlord threatens to enforce a vacate clause unless the tenant agrees to pay a large rent increase, the tenant can ask the RTB to determine that the vacate clause is unenforceable because the landlord (or close family member) did not intend in good faith to occupy the unit. The government left an option to erode this protection relatively easily though, as additional circumstances in

which vacate clauses will be enforceable can be added to the RTR, which is easier to amend than the RTA.

ELIMINATING THE "GEOGRAPHIC RENT INCREASE"

Around the same time, we also saw a growing number of landlord applications for "geographic rent increases." Provisions of the RTA and RTR permitted landlords to make applications to increase rents above the maximum allowable amounts where the rental rate for a unit was significantly lower than rental amounts for comparable units in the same geographic area.

Often the threat of an application to raise the rent 50% or more was enough to pressure tenants into agreeing to smaller increases that were still well above the maximum. Tenants reasonably worried their landlords might

succeed in such applications given that rents around them were rising rapidly.

This led to a somewhat absurd result—landlords could use the threat of a geographic rent increase application to pressure tenants to agree to increases above the legislated limit, and then use those higher rental rates as part of their evidence to support their applications for geographic rent increases for tenants who did not agree.

To avoid this problem the government eliminated geographic rent increases all together by amending the RTR in December 2017. Landlords can still make applications to raise rents beyond the legal limit for other reasons, however, such as for completing significant and unforeseeable repairs.

EXTENDED NOTICE PERIOD FOR SOME “LANDLORD’S USE” EVICTIONS

Section 49 of the RTA provides that a landlord can issue a notice to end tenancy to reclaim property for the landlord’s use. What constitutes landlord’s use for the purpose of ending a tenancy is limited to what is set out in that section. For example, a landlord can end a tenancy if the landlord, or landlord’s close family, wishes to occupy the unit, but they cannot end the tenancy to rent the unit to another tenant at a higher rent.

Prior to the legislative change in May 2018, all landlord’s use evictions required a notice period of two months. The amended section now requires four months’ notice to be given for eviction notices issued under section 49(6) of the RTA, including (but not limited to) evictions for demolition, repairs, or renovations. Other landlord’s use evictions, such as landlord occupancy, still require a two-month notice period.

Along with the longer notice period, a tenant who receives a four-month notice to end tenancy has 30 days to file for Dispute Resolution at the RTB, as opposed to the 15-day deadline to dispute a two-month notice.

INCREASING SECTION 51(2) COMPENSATION

Section 51 deals with compensation for tenants who move out in accordance with a section 49 notice to end tenancy. Section 51(2) speaks to tenant compensation

where the landlord fails to follow through with the stated purpose for ending the tenancy. This section is intended to deter landlords from issuing landlord’s use eviction notices in bad faith.

Before the May 2018 amendments, landlords who failed to do what they said they intended to do with the unit on the section 49 notice were liable to pay the tenant the equivalent of two months’ rent under the terminated tenancy agreement. This was not an effective deterrent. Landlords issued section 49 eviction notices, intending all along to rent the unit to new tenants at a significantly higher rent. They knew that even if they had to pay two months’ rent to the former tenant they would recoup the cost quickly.

The government’s response was to increase the compensation amount under section 51(2). Now, where a tenant can prove that the landlord has failed to take steps to accomplish the stated purpose for ending the tenancy or has failed to use the property for the stated purpose for at least six months, the tenant may be entitled to the equivalent of 12 months’ rent. If a landlord can show that the failure was due to circumstances beyond their control, an arbitrator may find that the landlord does not have to pay.

If the circumstances in which landlords are excused from section 51(2) compensation are defined strictly and narrowly, this change could be an effective deterrent to landlords who would otherwise issue section 49 notices in bad faith.

REQUIRING PURCHASER CONTACT INFORMATION ON SECTION 49(5) EVICTION NOTICES

A landlord may issue a two-month notice to end tenancy when they enter into an agreement to sell a tenanted property, all of the conditions of sale have been met, and the purchaser gives the landlord a written request to end the tenancy for one of the reasons permissible under section 49(5)—for example, if the purchaser intends in good faith to occupy the unit.

As of May 2018, a notice to end tenancy issued under this section now requires the purchaser’s contact information to be included on the notice form. This change allows a tenant to name the purchaser in an application for Dispute Resolution for 12 months’ rent as

Prior to the change in legislation, tenants and advocates noticed that landlords were using vacate clauses to accomplish things that would otherwise be contrary to the RTA ... In a rental market with a healthy vacancy rate, tenants facing a choice between a massive rent increase or vacating a unit can feasibly choose the latter, but with vacancy rates in some BC communities hovering around 0%, this is not a viable option.

—Zuzana Modrovic

compensation under section 51(2) where the tenant has evidence that the purchaser has not used the property for the stated purpose of ending the tenancy.

ADDING A “RIGHT OF FIRST REFUSAL”

The “right of first refusal” in section 51.2 of the RTA was also added as part of the May 2018 amendments. This section applies where a tenant is evicted for repairs or renovations from a unit in a property with five or more rental units. The gist of this change is that where a landlord ends a tenancy for repairs and renovations and the tenant informs the landlord that the tenant wants to exercise the right of first refusal, the landlord must offer the unit to the tenant and provide the tenant a new tenancy agreement at least 45 days before the renovations are completed. If the landlord fails in this obligation, the landlord may be liable to pay the tenant 12 months’ rent as compensation.

The trouble is that the landlord can set the rent in the new tenancy agreement at any rate regardless of what the rent under the previous tenancy agreement was, so it is unlikely that many tenants will be able to make use of this section.

COMMON LAW UPDATE

Court decisions are used to inform the interpretation of the RTA. One notable decision to come out of BC courts this year was *Baumann v. Aarti Investments*, 2018 BCSC 636, which dealt with evictions for renovations under section 49(6) of the RTA. This section allows a landlord to evict a tenant where the landlord intends to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. The general principle affirmed in *Baumann* was that “the purpose of section 49(6) of the RTA is not to give landlords a means for evicting tenants; rather, it is to ensure that landlords are able to carry out renovations,” and that “it is inconsistent with this underlying principle to permanently end a tenancy where the tenant is agreeable to vacating the premises for the duration of the repairs.” The Residential Tenancy Branch Policy Guideline #2 (Ending a Tenancy for Landlord Use) has incorporated much of this reasoning from *Baumann*.

THE RTB ONLINE SYSTEM

While the RTB still accepts paper applications for Dispute Resolution, applicants are now encouraged to submit applications and evidence through the RTB online portal. This has made some aspects of the process easier and some more difficult. Submitting evidence and ensuring that all parties have the same evidence before them in the same order at the hearing has been an ongoing challenge. One solution some advocates have utilized is to scan all documents to be used as evidence into one PDF document with numbered pages.

Overall, we have seen some positive recent changes for improving security of tenure for BC tenants. There are still many improvements needed, some of which are reflected in the Rental Housing Task Force’s recent *Rental Housing Review – Recommendations and Findings* report, and many which are not. TRAC, along with other advocacy groups, will continue to push for these changes and to work to educate tenants and landlords about their rights and responsibilities.

Photography by Shana Johnstone.

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STEPPING UP BC'S ENERGY EFFICIENCY

Zachary May and Dale-Sofia Andersson

Recent changes in the British Columbia Building Code (BCBC) are placing a renewed focus on energy efficiency in buildings, creating change for builders, building owners and managers, and those living in new buildings. The Province of British Columbia first introduced energy efficiency as a BCBC objective in 2008, initially through prescriptive requirements for insulation for smaller buildings. When a performance path was added in 2014, builders had the option of using either prescriptive or performance approaches to comply with the BCBC's energy-efficiency requirements.

When deciding how to meet the requirements of the BCBC, most BC builders have pursued the prescriptive approach. Following this approach, buildings must satisfy a checklist of individual requirements for insulation, windows, furnaces, water heaters, lighting, and other equipment and systems, but there is no requirement to evaluate how well these components work together as a system.

The performance approach—the alternative option for complying with the energy-efficiency requirements of the BCBC—establishes design outcomes for the building as a system and leaves it to the design and building team to decide which materials and components best achieve the outcomes. The BC Energy Step Code, enacted in April 2017, offers a specific form of this approach. This article will describe what the BC Energy Step Code is, how it came to be, its novel regulatory features, and expected future direction.

THE BC ENERGY STEP CODE

Despite its name, the BC Energy Step Code is not a separate code; it is an optional energy-efficiency compliance path within the BCBC.

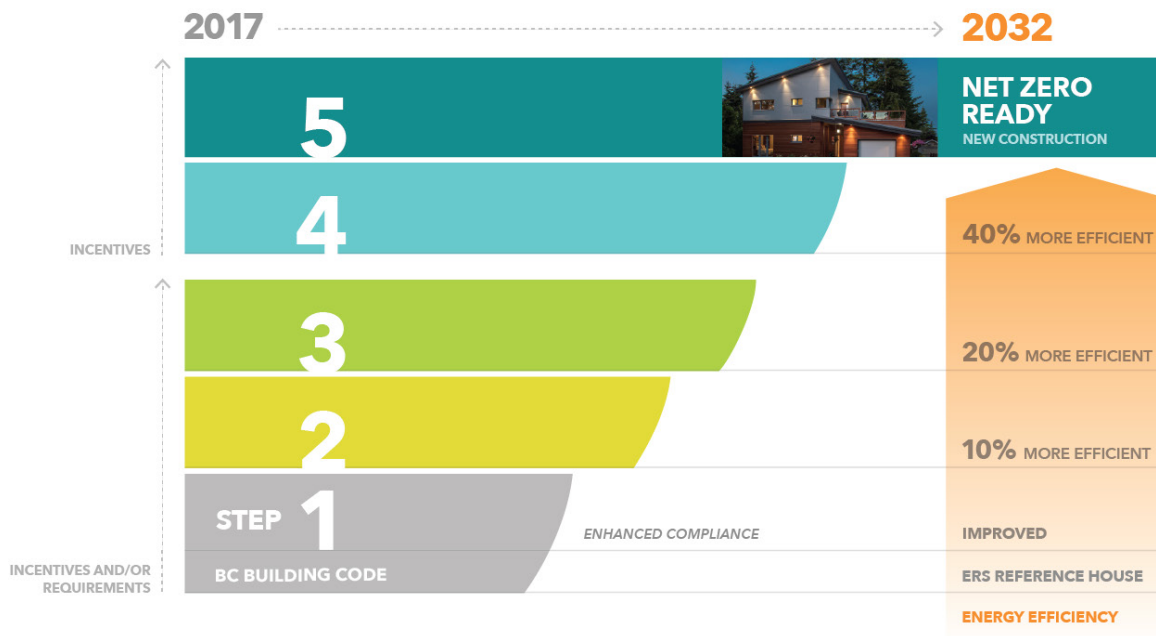
The BC Energy Step Code sets performance design requirements for new construction and groups them into “steps” that apply across various building types and regions of the province. There are five steps for Part 9 residential buildings and three or four steps for Part 3 buildings, depending on the occupancy type; each step represents a higher level of energy efficiency. Despite the different number of steps for different building types, they all create a roadmap from the current minimum code toward the goal of having all buildings designed to a net-zero energy-ready standard by 2032.

Net-zero energy-ready buildings are designed to be so efficient they could meet all or most of their own energy consumption requirements with on-site renewable energy technologies.

The BC Energy Step Code is intended to apply to new construction because the most cost-effective time to invest in a building's energy efficiency is when it is first built. Though building teams using the performance path

BCBC Energy-Efficiency Compliance Paths

PART 3 BUILDINGS	PART 9 BUILDINGS
<ul style="list-style-type: none">• National Energy Code for Buildings 2015• ASHRAE 90.1-2016• BCBC 10.2.3. Energy Step Code	<ul style="list-style-type: none">• National Energy Code for Buildings 2015• BCBC Subsections 9.36.2. through 9.36.4. Prescriptive Requirements• BCBC 9.36.5. Performance Path• BCBC 9.36.6. Energy Step Code



Part 9 – Houses and small buildings: These buildings are three storeys or less and have a building area or footprint no more than 600 square metres (approximately 6,500 square feet). This category includes single-family homes, duplexes, townhomes, small apartment buildings, and small stores, offices, and industrial shops.

approach will each decide how best to meet the requirements of a given step, in general, new buildings employ six key strategies to improve their energy efficiency:

1. Ensure a tightly sealed building envelope
2. Boost insulation
3. Ventilate effectively (i.e., heat recovery)
4. Minimize thermal bridges
5. Carefully consider the size, location, and performance of windows
6. Specify efficient, appropriately sized mechanical equipment

High-performance buildings (as they are known) provide multiple benefits to those who live and work in them because they:

- improve comfort, by better managing temperature
- improve health, by better managing fresh air throughout the building
- reduce noise, through better insulation and airtightness

- require less energy, helping occupants lower their energy bills (and reduce greenhouse gas emissions)
- are more durable

THE BUILDING ACT: THE FOUNDATION OF THE BC ENERGY STEP CODE

The origins of the BC Energy Step Code go back to the 2015 Building Act. A key objective of the Building Act was to bring greater consistency to the technical building requirements in force across BC. To achieve this, the Building Act gave the Province the primary authority to establish technical building requirements, meaning the technical requirements for the construction, alteration, repair, and demolition of buildings, such as found in the BC Building Code.

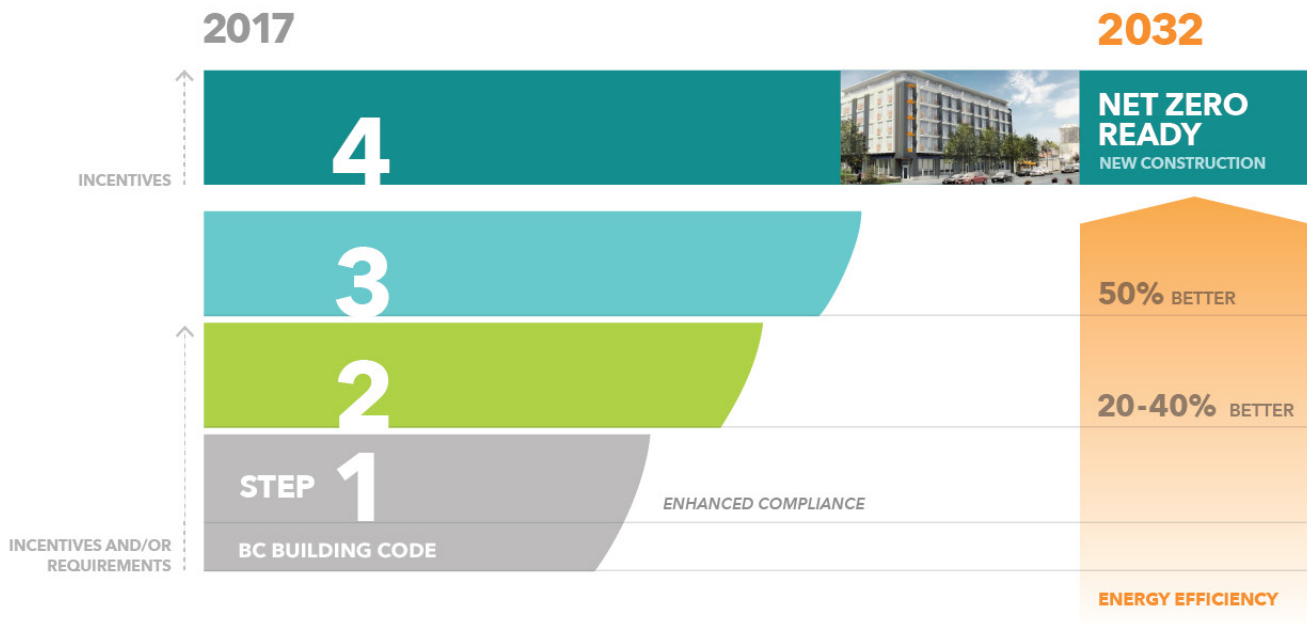
THE BC BUILDING CODE (BCBC)

The BCBC is the provincial regulation that governs how new construction, building alterations, repairs, and demolitions are completed. It establishes minimum requirements for safety, health, accessibility, fire and structural protection of buildings, and energy and water efficiency, and it applies throughout the province except in the City of Vancouver and on some federal lands.

PATHWAY TO 2032: PART 3 (CONCRETE RESIDENTIAL)



PATHWAY TO 2032: PART 3 (WOOD-FRAME RESIDENTIAL)



Part 3 – Large and complex buildings: These buildings are four storeys and taller and greater than 600 square metres in building area or footprint. This category includes larger apartment buildings, condos, shopping malls, office buildings, hospitals, care facilities, schools, churches, theatres, and restaurants.

Under section 5 of the Building Act, if a matter is regulated in a provincial building regulation, any technical building requirements for that matter established in local government bylaws became of no legal force at the end of a two-year transition period ending December 15, 2017. Prior to that date, many local governments had

established higher-than-code energy-efficiency requirements for new construction, often as part of their climate action initiatives. This change created a challenge: to find a way to support local governments' goals for climate action while at the same time addressing the Province's consistency objective.

On the basis that “two heads are better than one, and many are better still,” the Province convened a multi-sectoral working group to help resolve the challenge. The Energy Efficiency Working Group proposed the idea of a “step code”—a set of incremental performance steps for new buildings that progress from current BCBC requirements to net-zero energy-ready buildings. This approach provided a consistent provincial standard to replace the patchwork of different local requirements, neatly achieving the provincial and local government goals and providing industry with greater certainty about future regulation.

NOVEL APPLICATION OF THE BC ENERGY STEP CODE

As an optional compliance path within the BCBC, any builder can choose to build to the requirements of the BC Energy Step Code. In addition, any local government or regional district can choose to require or incentivize builders to meet one or more steps of the BC Energy Step Code as an alternative to the BCBC’s prescriptive requirements. The approach enables each local government to determine locally the most appropriate step(s) for its community and was a direct recommendation of the Energy Efficiency Working Group.

The BC Energy Step Code is unusual in that local governments have authority to require it or not, and, if they do, to the extent they deem appropriate for their communities. To provide this authority, the Province identified two matters as unrestricted under the Building Act.

Unrestricted matters are topics identified in the Building Act General Regulation and regulated in the BCBC (or other provincial building regulations) for which local governments also have authority to set their own requirements in bylaws. The two unrestricted matters that enable the BC Energy Step Code are the conservation of energy and the reduction of greenhouse gases; they are unrestricted on condition that local governments require buildings to be constructed as described in the BC Energy Step Code requirements and that they not modify or impose additional requirements.

Local governments have shown strong interest in adopting the BC Energy Step Code in policies and bylaws. To date, 34 local governments have started to consult on implementing the BC Energy Step Code in their jurisdictions, 20 of which now reference the BC Energy Step Code. Some do this solely through incentives, others by requiring specific steps, and others by using a mix of incentives and requirements—all based on the capacity of their local building industry and the energy-efficiency

programs they had in place prior to December 2017. Once a local government sets a requirement for the BC Energy Step Code, builders must follow it. Despite the multiple policies and approaches, there is still only one standard across BC—helping builders train and prepare.

FUTURE DIRECTIONS

When the BC Energy Step Code came into force in April 2017, requirements were available for a limited number of building types and climate zones. With time, the intent is that the BC Energy Step Code will grow and evolve, which it already has. With the launch of the new 2018 BCBC in December, requirements are now available as follows:

- Part 3 Buildings: expanded to include all Climate Zones for three occupancy groups only:
 - C: residential occupancies, with unique metrics for hotels/motels that reflect the heavier energy loads of these Group C occupancies
 - D: business and personal services occupancies, with unique metrics for offices that reflect the lighter energy loads of these Group D occupancies
 - E: mercantile occupancies
- Part 9 Buildings: requirements available for all Climate Zones for Group C (residential) occupancies only

In December 2018, the Province released CleanBC—a strategy for using clean and renewable energy in transportation, buildings, and industry. Under the strategy, new buildings will need to be designed to be net-zero energy-ready by 2032. Over the coming years, compared to the current base BCBC, buildings will be:

- 20% more energy efficient by 2022
- 40% more energy efficient by 2027
- 80% more energy efficient by 2032 – the net-zero energy-ready standard

Meeting these timelines will require further work and the development of additional BC Energy Step Code requirements for more building types. It is generally expected that meeting these timelines will require taking a performance-based approach to construction, rather than a prescriptive one—an approach that is still relatively new for many in industry.



Lesak House; passive house residence, Kelowna, BC, equivalent to Step 5 (Part 9).

THE ENERGY STEP CODE COUNCIL

The Energy Efficiency Working Group's successful collaboration in developing the Step Code concept highlighted the value of continuing the partnership. To that end, the working group has continued under a new name—the Energy Step Code Council—and with a new mandate: to support the implementation of the BC Energy Step Code. Representatives from government, industry, utilities, professional associations, and academia serve as council members.

As an advisory body, the council does not have any formal regulatory or administrative authority but provides a venue for stakeholders to share and discuss concerns and options, and it serves as a bridge between the provincial government, utilities, and local governments and the building, development, and design sectors. The council has been recognized for its efforts, having received a Climate and Energy Action Award from the Community Energy Association in 2017, and, more recently, a Land Award in the Built Environment Category in 2018 from the Real Estate Foundation of British Columbia.

The council's Technical Subcommittee has been the primary forum for the development of new BC Energy Step Code requirements and for the review and amendment of existing requirements. This innovative format allows for input, discussion, and evaluation by a wide range of technical experts and other stakeholders prior to review and consideration by the Province.

The good news is that many builders have been using performance standards to build high-performance homes for years; nonetheless, a significant transformation is required to shift the entire industry in this direction by 2032—a transformation the Energy Step Code Council is supporting.

CONCLUSION

The BC Energy Step Code is the latest innovation in the BCBC's shift to higher energy-efficiency requirements for construction in BC. It gives industry a clear sense of where the Province is heading on energy efficiency and creates predictable steps for builders and local governments to follow.

The BC Energy Step Code's novel application, whereby local governments can require or incentivize it as they wish, allows communities to reference the steps most appropriate for their local situation, yet in a manner that is consistent across BC. The optional nature of the BC Energy Step Code also gives industry time to upgrade skills, learn new techniques, and identify new products and suppliers in anticipation of the 20% improvement to the BCBC in 2022.

Although BC is at the forefront of greater energy efficiency, it is not going it alone. The federal government's 2017 Build Smart Buildings Strategy has set a goal that "provinces and territories adopt a 'net-zero energy ready' model building code by 2030"—two years prior to BC's 2032 goal. The model code is being developed by Codes Canada with the active involvement of BC stakeholders. In BC and across Canada, one thing is clear: energy-efficient buildings are the way of the future.

For more information, visit www.energystepcode.ca.

Images provided by Building and Safety Standards Branch in the Ministry of Municipal Affairs and Housing.

ORGANIZATION PROFILE

BC NOTARIES ASSOCIATION

Jacqui Mendes



Associations are a valuable resource and support for professionals across all sectors, providing members with a competitive advantage in their busy professional lives. Members depend on their association to keep them up to date with important industry trends, new legislative rulings, and advances in technology. As well as providing a forum for members to share ideas and develop new ways to improve their industry, associations are critical to successful advocacy and effective communication with key stakeholders. Notaries public in BC now have a new association, incorporated in June 2018, to support and promote the profession across the province.

AN OLD PROFESSION

Notaries are the oldest continuing branch of the legal profession. Their distinguished history dates back to 1700 BC where they drew up deeds of agreement for one of the first forms of recorded law, the Babylonian Codex Hammurabi. Notarial seals have historical origins and are important to the process of establishing the authenticity of a document. In Ancient Rome, where they were called *scribae* (scribe), *tabellius* (writer), or *notarius* (notary), the role of the notary was to provide legal assistance, authenticate documents, and keep official archives. As the Roman Empire declined, the role of the Catholic Church increased in society, developing an administrative nature. Many of the clergy found it helpful to retain the service of a notary and, as a consequence, the Vatican became responsible for the appointment of notaries. The Worshipful Company of Scriveners in the City of London, England, was granted its first ordinances in 1373 and six firms of scrivener notaries still practice in London.

WHAT NOTARIES DO TODAY

Today notaries are found practicing worldwide as two distinct types: civil law notaries (also called Latin notaries), and common law notaries public. British Columbia notaries are unique in the Canadian common law context



(outside of Quebec), indeed in North America, in their scope of practice. Notaries are appointed by the Supreme Court of British Columbia, governed by the BC Notaries Act, and have been regulated by the Society of Notaries Public of British Columbia for nearly a century.

The 384 practicing BC Notaries provide a range of specialist non-contentious legal services throughout communities in the province. A key component of the provincial real estate industry, notaries undertake the majority of residential real estate conveyancing; services include purchases, sales, mortgages, and family transfers. BC Notaries also help their clients prepare for the future with wills, powers of attorney, and representation agreements. Notaries continue their ancient tradition of trust through notarizing signatures and certifying true copies of documents for use in Canada and around the world. In the legal services sector, notaries bring accessibility: most notary offices are walk-in at street level, and their clients will see a notary in person. A number of notaries combine their practices with other areas of expertise such as accounting, taxation, conflict resolution, and immigration services; they are very much part of the grassroots of their communities.

BC Notaries are trained experts in their areas of practice. They must complete an undergraduate degree and a master's degree (arts) in Applied Legal Studies, as well as write statutory exams administered by provincially appointed examiners. Annual continuing education is mandatory to ensure notaries continue to provide expert legal advice and support to the public. All BC Notaries receive ongoing training in matters of real estate, wills, and estate planning as well as notarizations for use in Canada and around the world.

A NEW ASSOCIATION

For decades the Society of Notaries Public of BC has been a strong representative for BC Notaries, while always remaining vigilant in its mandate to protect the

public through self-regulation. In 2016, the board of directors of The Society of Notaries Public (the Society) agreed to a 10-year strategic plan that envisioned the separation of its regulatory functions from its trade and member activities. The Society would continue to be the regulator and the champion for public protection and a new association would be created as a champion for the notary profession and to provide further benefits and representation. With the growth in notary numbers, the increasing complexity of business marketing and the fast-changing technology landscape, the new association would provide enhanced services, enabling the Society to concentrate on its core mandate of public protection.

On June 26, 2018, the BC Notaries Association (the Association) was officially registered as a member-funded society. Three classes of membership are available: Practicing Notary, Student, and Retired Notary. Association staff and volunteer board members have been working hard for the last seven months on establishing all the systems and processes necessary for a new organization. As well as setting up the organization, the essential work of continuing education, member promotion, communications, and advocacy was carried on simultaneously. Even at times of great change and transition, member support activities never stop; the show must always go on!

The volunteer board of the Association currently comprises five directors who are geographically diverse. Board President Daniel Boisvert was commissioned as a notary public in 2008 and currently practices in the town of Tsawwassen within the City of Delta. Vice President Morrie Baillie, notary, was a 2013 notary graduate and practises in Victoria. Notary Lorne Mann is wearing the hats of Secretary and Treasurer and has practised in Creston since he was commissioned in 1989. The Association board is growing as members step up to be appointed as directors; notary Brendon Rothwell from Kelowna and notary Rimpdy Sadhra from Burnaby have recently become new directors. The first BC Notaries Association Annual General Meeting and full board election will be held in September 2019 during the Notary Fall Conference in Kelowna.

The notaries have traditionally held two annual conferences. The spring conference offers the full 12 annual education credits; the second offers 9 credits and is the framework for hosting the Annual General Meetings of both the BC Notaries Association and the Society of Notaries Public. Notaries' continuing education needs are the primary focus at both conferences, where members are provided with high-quality and timely education sessions that speak to the evolving legislative, technological, and cultural landscapes. Conferences are also a great networking opportunity for busy professionals to meet their peers from all around the province; notaries have always been a tightly knit, supportive community. Peer-to-peer relationships and mentoring are also

supported by the fifteen notary chapters around the province that meet regularly to host continuing education events and discuss hot topics at the regional level.

Now, more than ever, we need to advocate for our profession in a climate of increasing regulation, where the digital space has become part of the service landscape. Advocacy to government and key industry stakeholders and partners is a critical part of the work of the BC Notaries Association. Notaries have extensive experience in their areas of practice, and the Association would like to put that experience at the service of the provincial government to inform policy and legislative change for the benefit of consumers. The Association participates in policy and legal reviews, stakeholder roundtables, and regularly seeks meetings with provincial and local government.

The board of the new BC Notaries Association recently engaged in its first strategic planning process, which included in its outcomes the new vision and mission statements. Vision: That people highly value the legal services of BC Notaries. Mission: The BC Notaries Association connects, advocates for, promotes and supports its members.

RELATIONSHIPS ARE VALUED

As a new organization, the BC Notaries Association was very honoured to receive the Mortgage Broker Corporate Partner Award from the Canadian Mortgage Brokers of BC. The award "recognizes an organization who has collaborated closely with CMBA-BC on initiatives, projects, education and events that benefit our members." CMBA-BC noted that "The BC Notaries Association shares a very similar mission and values to CMBA-BC, with a mandate to enhance member education and skills. Their team has been tremendous in the support of our Association's educational offerings for both new and experienced brokers, and we look forward to building on this partnership in 2019." The award was presented at the CMBA-BC annual conference, which took place February 25-26, 2019, at the J.W. Marriot Parq.

This award demonstrates the value of relationships, which the Association is very intentional about pursuing. Closer bonds are being forged with other stakeholders in the real estate sector, including the Real Estate Institute of BC; we align with the Institute's mission of promoting members as distinguished professionals that are trusted, educated, and experienced. The Association is also partnering with organizations in the personal planning space to better serve clients' needs.

The Association looks forward to supporting our notary members and working with our industry partners for decades to come.

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WORKING TOGETHER TO STRENGTHEN CONSUMER PROTECTION

Micheal Noseworthy and Erin Seeley

Just three short years ago, controversy erupted about the real estate industry in BC, putting regulation squarely in the spotlight. Allegations of unethical conduct by real estate agents made headlines, along with accusations that the regulator was failing to prevent “bad apples” in the industry.

Since then, real estate regulation in BC has seen profound change. Not only were new consumer protection measures introduced last summer, but greater financial penalties for rule-breakers are now in force and more stringent educational requirements are in place for new and experienced real estate professionals.

Introducing a new era of consumer protection in real estate for British Columbians has been the goal for BC’s real estate co-regulators, the Office of the Superintendent of Real Estate (OSRE) and the Real Estate Council of BC (RECBC), ever since 2016, when legislative changes made OSRE an independent office with enhanced oversight of RECBC. An ambitious goal? Definitely. Timely, relevant, and necessary? Without question.

Consumer protection has always been at the heart of the Real Estate Services Act since its introduction in 2005. Real estate professionals across BC work hard each day to provide expert advice and professional services that help their clients to make informed decisions, whether they are involved in buying or selling real estate or acting as a strata or rental property manager. But as property prices climbed to new heights month over month throughout 2015 and 2016, it became clear that consumers deserved even stronger protections when entering into the biggest financial transaction of their lives.

In June 2016, an independent report by a panel of experts convened by RECBC and chaired by then Superintendent of Real Estate Carolyn Rogers





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—Erin Seeley and Micheal Noseworthy

recommended a number of changes to the way real estate is regulated in this province. That same summer, amendments to the Real Estate Services Act were passed in a special sitting of the legislature. Among them: the authority to make rules for the conduct of real estate professionals was transferred to the Superintendent of Real Estate, and RECBC transitioned from a self-regulatory organization governed by an industry-dominated board to a Crown agency led by a council of public members appointed by the provincial government.

Those changes were put in place to strengthen the consumer protection framework of the Real Estate Services Act, and they paved the way for other regulatory changes that have followed.

AN END TO DUAL AGENCY

Throughout the early months of 2017, OSRE staff met with real estate professionals from each of the 11 real estate boards in BC to discuss potential changes to the regulation of real estate services that would enhance consumer protection. At the time (and as with other jurisdictions in North America), when two or more clients of a BC real estate professional developed

competing interests in a property, the real estate professional had the option to offer those clients "limited dual agency."

Two buyers each hoping to buy the same property? A buyer client interested in putting in an offer on a seller client's property? Despite the fact that the parties' interests were opposed, the rules then in place provided that, if the clients agreed, the real estate professional could reduce his or her fiduciary duties to each of them and continue representing both clients in the transaction.

But were the interests of clients being adequately served under this arrangement? Even when dual agency was practised with the very best of intentions by ethical real estate professionals, each of the consumers involved received less advice and fewer services than if they were separately represented.

After consultation with real estate professionals and the public, in the fall of 2017 the Superintendent introduced rules that would largely eliminate the practice of dual agency in BC.

Consumers have a right to expect the undivided loyalty of the real estate professional they have engaged to assist them. The new rules mean that in almost all cases, real





estate professionals can only represent one client in a transaction. There are limited exceptions. In a province as large and geographically diverse as BC, circumstances may arise where a consumer isn't able to get their own independent representation. So in cases where a property is remote, there is a lack of other real estate professionals in the area, and where it would not be possible for both consumers to get their own separate representation, the rules still enable real estate professionals to offer dual agency, after ensuring that the consumers are fully informed about the risks inherent in this type of representation.

The new rules for dual agency came into force on June 15, 2018, making BC consumers the first in North America to benefit from the assurance that their agent is working to protect solely their interests in a real estate transaction.

CONSULTATION AND ENGAGEMENT ARE KEY TO EFFECTIVE REGULATORY CHANGE

Without question, the elimination of dual agency has impacted the business practices of many real estate professionals. However, as regulators, we have a responsibility to British Columbians to put the public interest first. Effective regulation also demands thorough consultation

with stakeholders to ensure that any new rules are easily understood, efficient, and produce the intended result. Seeking input from real estate professionals through consultations and engagement is a significant part of our job to protect the public.

In recent months, staff from RECBC, OSRE, and the Ministry of Finance have held roundtables with industry members across the province to review the role and responsibilities of managing brokers in BC's changing real estate landscape. The purpose of this project is to ensure that the regulatory framework for managing brokers continues to protect consumers and fosters a strong culture of professionalism among real estate professionals in light of significant changes to industry business models over the last decade.

In order to ensure that any regulatory or rule changes that are proposed are effective and accurately reflect industry practice, a direct consultation with the managing broker community was needed. We have sought out the viewpoints of a wide variety of managing brokers and will continue to seek out the opinions of interested and affected groups in future consultations as well.

The first step to gather industry perspectives was through an online survey conducted in September 2018.

The second step involved meetings between the consultation team and managing brokers in Prince George, Kelowna, Cranbrook, Vancouver, and Victoria to explore the key issues, challenges, and potential solutions that had been identified through the survey.

The survey results and feedback from the roundtables will be used to develop a discussion paper with high-level options that will be released in the spring or summer of 2019. Additional engagement activities are planned to gather feedback on the discussion paper from real estate professionals, industry stakeholders, and the public.

CHANGE IS A CONSTANT

In the years ahead, consumers and real estate professionals in BC may see further changes to the regulatory structure for real estate. In September, Finance Minister Carole James stated that she was dedicated to ensuring a coordinated approach to real estate regulation that will enhance consumer protection and better serve the public interest. No matter what happens, both regulators

believe in a coordinated approach and continue to work together to promote public trust in licenced real estate professionals.

Ultimately, the public should always have confidence that real estate professionals are educated, highly skilled, and knowledgeable. British Columbians expect regulation to be fair and transparent; rules and standards well understood and smartly enforced. This is how you elevate a profession and enhance consumer protection over the long term. For 60 years, real estate regulators in BC have worked to ensure that consumers are protected in real estate transactions—but we're excited about the next chapter.

Home for sale (Shana Johnstone); Realtor with clients and their dog (iStock: Rawpixel); Consultation (iStock: Nomad).

RI

Supporting sustainable land use and real estate practices in British Columbia.

Since 1988, the Real Estate Foundation of BC has granted more than \$85 million on projects that enhance communities and protect nature.



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ON THE JOB



WHAT DO YOU DO IN YOUR PROFESSIONAL ROLE?

As the Assistant Deputy Minister responsible for the Office of Housing and Construction Standards, my job is to give government advice on a wide range of housing and construction-related issues. I am responsible for the Residential Tenancy Branch, which provides education and dispute resolution services to landlords and tenants across the province. I am also responsible for the Building and Safety Standards Branch, which administers the BC Building Code and associated technical standards associated with construction and the built environment.

HOW DO YOU SPEND YOUR DAY?

My day usually starts with a scan of media clippings covering a wide range of housing, local government, or provincial political issues. When the Legislature is sitting I will decide if any materials are required to support the minister during the Question Period or in response to anticipated media inquiries. Usually I will then turn my mind to meeting with my executive team on a wide range of policy or regulatory issues related to our portfolio.

Developing regulations or legislation is a multi-year process involving significant policy work, stakeholder consultation, technical research, and cross-ministry collaboration. My days are often spent exploring various aspects of our regulatory regime by working across government and with key stakeholders as required to meet the government's mandate.

WHAT PREPARED YOU FOR THIS ROLE?

I have an undergraduate degree in Geography and Urban Studies from Simon Fraser University and a master's degree in City Planning from the University of Manitoba. I spent two years working in the real estate department at Canada Post while I was in grad school, followed by a short stint doing property assessments for the City of Winnipeg. I joined the Housing Branch of the provincial government in 2000 and have been with the Province since that time.

WHAT DO YOU FIND CHALLENGING ABOUT IT?

The hardest part is managing the expectations of all the stakeholders who have a keen interest in housing or the built environment. Understanding how legislation or regulations work and the risk of unintended consequences is tremendous. Solutions always seem easy until you start to fully map out their impacts.

GREG STEVES, RI



**ASSISTANT DEPUTY MINISTER,
MINISTRY OF
MUNICIPAL AFFAIRS
AND HOUSING,
OFFICE OF HOUSING
AND CONSTRUCTION
STANDARDS**

WHAT DO YOU ENJOY ABOUT YOUR WORK?

Problem solving! I get fired up when presented with unusual or urgent problems that need innovative solutions. I get energized by the idea of change and trying to do things differently.

ARE THERE COMMON MISUNDERSTANDINGS ABOUT THE WORK YOU DO?

The biggest misunderstanding is how quickly we can change regulations or legislation. The typical change to a provincial law takes approximately two years and all changes go through intense scrutiny by policy makers, lawyers, and elected officials.

IS THE WORK YOU DO TYPICAL FOR YOUR TYPE OF POSITION?

The work I do is typical for my position and similar to other executive positions across government. What is possibly different is the amount of subject matter knowledge or expertise that I bring to the job. While many executives have rounded out their resume with time spent in a number of portfolios, I have always worked in housing or real estate-related areas.

WHAT GOALS ARE YOU WORKING TOWARD?

In addition to supporting government in meeting its affordable housing commitments, my work right now is driven by two main goals. The first is to better understand and reflect the challenges facing Indigenous people in the regulatory and program work that my office undertakes. This understanding involves more than just consulting with Indigenous governments and organizations but truly working toward integration and reconciliation. Second, I want to look at how resilient our built environment is. The aftermath of subsequent flood and fire seasons has me questioning how resilient BC communities are and if more can be done to increase our collective resilience to future events.



CMHC OUTLOOK

VANCOUVER AND ABBOTSFORD-MISSION

Eric Bond

RESALE MARKET SALES AND PRICES TO MOVE LOWER IN THE VANCOUVER CMA

Over the next two years, the resale home markets of the Vancouver and Abbotsford-Mission Census Metropolitan Areas (CMAs) will be characterized by lower sales, higher inventories of homes for sale, and lower home prices compared with recent market highs. This shift in conditions marks the end of the “two speed” market conditions that had prevailed in the region since mid-2016, whereby lower-priced properties experienced higher demand and price growth compared with higher-priced properties. As 2018 progressed, demand and home prices softened across all market segments and local geographies. Slowing population and employment growth and rising mortgage rates have impacted demand for some properties in the Vancouver CMA.

This reality, when combined with housing policy changes from all levels of government, has resulted in an evolution of short- to medium-term home price expectations compared with where they were one to two years ago. Changes in these expectations, in line with market conditions, will have a particular impact on the higher-end segment of the market, where property prices are largely equity driven. While existing home sales are expected to rebound in 2019 from the trough in 2018 in order to be more in line with the region’s growing population, resales will remain below the levels seen in 2015–2017. Newly constructed homes coming onto the resale market will also lend some support to sales through the end of the forecast horizon.

NEW HOME CONSTRUCTION EXPECTED TO SLOW FOLLOWING RECORD STARTS

With resale market home prices moving lower and a record number of new units currently under construction across the region, housing starts are expected to decline in the Vancouver CMA over the next two years. Completions of new units are expected to continue running ahead of household formation into 2019, necessitating a pullback in new construction as projected inventories of unsold units rise. New condominium apartment developments may face longer sales periods over the

forecast horizon as consumers have more options in a rising inventory environment.

From a tenure perspective, new rental projects are expected to comprise a greater share of the construction mix, due to tight rental market conditions and a more favourable development environment in many municipalities in the region. With the record pace of units under construction, the availability and costs of materials and labour in the region could restrain the viability of some new developments. Given that there are a number of large infrastructure projects planned for the region, these constraints are expected to remain in the medium term even with lower residential construction.

In the Abbotsford-Mission CMA, the pace of new construction is expected to follow the trend for the overall region, with lower starts forecast as builders focus on completing existing projects following record starts in 2017.

RENTAL MARKET DEMAND TO REMAIN HIGH

Rental demand is expected to remain high throughout the forecast period, resulting in continued low vacancy rates and rising rents across the region. Demand will be underpinned by positive net migration and sustained challenges with ownership housing affordability for many households despite lower home prices. In September 2018, there were 7,819 rental apartments under construction in the Vancouver CMA, equal to 7.2% of the current rental universe. As these units complete over the next two years, the vacancy rate is expected to rise slightly; however, it will remain low in absolute terms, reflecting the strong demand for rental housing in the region.

In the Abbotsford-Mission CMA, vacancy rates are forecast to rise a bit quicker as fewer interprovincial migrants move to the area and new rental units are added to the stock. With the rental market expected to remain tight across the region, average rents will continue increasing faster than inflation. The increasing share of new, typically more expensive, rental units in the market as well as rents for existing units rising to market levels with the turnover of long-term tenants will contribute to higher average rent levels.



Conrad by Cressey, an affordable rental building in East Vancouver.

VICTORIA

Braden Batch

STARTS WILL RECEDE FROM RECORD-BREAKING PACE

Housing starts are forecast to decline from a peak reached in 2017. Fundamental demand-side factors, such as population growth, employment growth, and affordability, indicate more modest levels of construction moving forward. In addition, the rate of price growth has retreated from recent double-digits, bringing growth to annual appreciation in the single digits. With price growth moderating, it is expected that production on higher cost projects will also moderate.

Housing starts in the Victoria CMA finished 2018 at the highest annual number for the region since 1976, but the trend over the forecast horizon is for annual starts to ease and be more consistent with the levels seen in 2016.

The inventory of new homes on the high end of the price spectrum has trended up from a low point and is relatively more abundant than one year ago. The relative affordability of multi-family units appears to be driving low inventory in that segment, but as projects currently under construction complete, the inventory of homes will

increase. The number of housing units under construction in Victoria's housing market this year is the highest seen in a generation and poses a risk to rapidly rising inventory levels if the large number of units under construction are not absorbed in a timely manner.

RESALE MARKET FACING AFFORDABILITY HEADWINDS

Sales, like starts, have adjusted downwards from a peak. Into 2018, sales declined considerably on weakening fundamentals. The declining trend in sales coincides with a slower pace of interprovincial migration and tighter credit market conditions, similar to other BC markets. With more modest population and employment growth over the forecast horizon, supports for higher sales are less likely. With rising mortgage rates and overvaluation detected by the Metro Victoria Housing Market Assessment, affordability will be a challenge for new buyers in the resale homes market.

While price growth in 2018 slowed, it remains above inflation and continues to outpace what would be



An affordable rental building in Victoria's Cook St. Village.

expected given fundamental factors. Our outlook is for the pace of price growth to slow over the forecast horizon. Partially, this slowing in average price growth will come from a shift to more condo sales as opposed to single-detached sales. It is likely that condo prices will continue to rise, albeit at a slower pace, until more supply is introduced into the market over the next two years. Available listings of single-detached properties have already trended back to a level that indicates that buyers have plenty of options, and this will moderate price growth of single-detached homes.

RENTAL VACANCY RATES WILL START TO RISE

The vacancy rate in Metro Victoria will start to migrate over the 1% mark. The primary driver of the increase will

come from the introduction of new supply. Units already under construction will expand the universe of purpose-built rental significantly. The rate of rental construction being experienced has not occurred in Metro Victoria since the late 1970s and is a direct response to the fact that the vast majority of new households formed in Victoria is choosing to live in rental accommodation rather than own property.

Similar to the outlook in the Vancouver CMA, average rents in the Victoria CMA are expected to increase with the addition of newly built apartments, but also due to turnover. The average rent paid in Metro Victoria is currently well below the price paid by new entrants to the market. As older units turn over, their rents will be increased to reflect the new price level. As such, the average rent will increase, in part, as the lower end of the price distribution catches up to current market prices.

KELOWNA

Taylor Pardy

RESALE MARKET ACTIVITY SLOWING BASED ON SOFTENING FUNDAMENTALS

In the first eight months of 2018, MLS® sales activity was down 19% relative to the same period in 2017, representing a full 31% decline relative to the peak pace of sales seen in 2016. As a result of slowing demand, active listings on the market in any given month have been on the rise and, at the time of writing, inventory levels were at a similar level to those seen in 2014. This slowing in activity largely comes on the heels of key shifts in housing market fundamentals, including rising mortgage rates and slowing population growth, driven by a decline in interprovincial migration into BC which began, in earnest, in the third quarter of 2017. Slowing interprovincial migration into the Kelowna area can be partially explained by a recovery in the pace of economic growth in the Prairie provinces, creating greater competition for labour and drawing individuals back to Alberta, in particular.



Thunderbird Manor, a rental building geared for Indigenous elders in the Okanagan.

The combination of shifting fundamentals, slowing sales, and rising inventories is anticipated to result in a flatter price growth profile over the forecast horizon as competition for individual units, regardless of the market segment, relaxes and market conditions become more balanced. The Kelowna CMA is anticipated to maintain a slower pace of resale market activity more in line with the 2013-2014 period with some recovery in the pace of sales anticipated in 2019 and 2020. Additional risks to the resale market outlook include additional housing-related policy changes, faster-than-anticipated mortgage rate increases, and stronger-than-anticipated economic growth in the Prairie provinces.

NEW HOME CONSTRUCTION MODERATING BASED ON SLOWING POPULATION GROWTH

Housing starts ended 2018 down 29% relative to 2017, with declines seen in both the single-detached and multi-unit segments.

As population growth slows and resale market inventory maintains at a higher level than the historic lows seen over the past two years, annual housing starts are also

anticipated to moderate due to the rising level of supply in the new home and resale markets. However, demand for multi-unit options is anticipated to continue to remain fairly robust as price points for multi-unit options remain attractive to young adults moving into homeownership as well as incoming retirees and downsizers.

The rental market is anticipated to see some upward movement in the vacancy rate.

The apartment vacancy rate in Kelowna is anticipated to increase gradually over the forecast horizon as population growth slows, new supply enters the market, young working-age individuals enter homeownership, and price growth in the area slows. Multi-unit rental options will continue to see fairly robust demand as a larger proportion of individuals aged 25-34 years and those 55 years and older choose rental, reflecting shifting preferences.

Images provided by CMHC; photography by Gabriel Teo; rendering by Vernon Native Housing Society.

RI

PRESIDENTS LUNCHEON

Clayton Olson, RI
REIBC Governor, Vancouver District



With nearly 200 people in attendance at REIBC's 2018 Presidents Luncheon, Stephanie Allen, Vice President of Project Planning and Partnerships at Catalyst Community Development Society, Jennifer Johnstone, President and CEO of Central City Foundation, and Mandy Hansen, Principal at Insight Specialty Consulting had a wide-ranging conversation on the value, risk, and return of building inclusive communities. The event was held on December 6, 2018, at the Hyatt Regency Hotel.

The first question that was addressed was, "What exactly does "inclusion" entail, and how does it relate to successful community building?" The simple answer is that inclusive communities include everyone. Due to affordability, this often times is not the case, especially in the inner city. Successful and vibrant communities benefit from inclusivity. This means offering basic services while also promoting arts and culture. This means finding ways to bridge the gap between the "establishment" and the "creatives." This includes finding ways for people to live in communities that they might not be able to afford, supporting social services and non-profits while also preserving the culture that make these communities so desirable in the first place.

Catalyst is trying to support affordable housing in inclusive communities in a variety of ways. Catalyst is a not-for-profit real estate developer that focuses on building new rental homes that are affordable to individuals and families earning total incomes between \$20,000 and \$100,000. Catalyst typically aims to offer rents that are 10%-40% below market, and works to maintain, and sometimes reduce, rents over time. With the support of mission-aligned investors, Catalyst collaborates with non-profit organizations and municipalities to help increase affordable housing options over time. This ultimately leads to communities that are more inclusive, helping to create more diverse neighbourhoods and truly livable communities.



From left: Mandy Hansen, Stephanie Allen, Jennifer Johnstone, and REIBC President Daniel John.

Central City Foundation plays a significant role in supporting and growing inclusive communities by providing funding and support for various programs, capital projects, and social purpose real estate. Significant value is created in our communities by charities and non-profit societies, and it is important to create stability for these organizations by providing them safe, secure, and affordable spaces to operate in.

The conversation wrapped up with a discussion about how the narrative surrounding inclusive communities is starting to change with community acceptance on the rise. Developers and community planners are placing greater emphasis on building inclusive communities, and the YIMBY (Yes In My Back Yard) movement seems to be gaining steam. The overall sentiment seems to be that we are not quite there yet in terms of maximum inclusivity, but we are on our way.





REGULATORY CHANGES BRING TWO NEW TAXES

Ed Furlan, RI



Last year was a busy one for the BC Government. In its 2018 budget, released on February 20, 2018, the government introduced some regulatory changes in real estate in the form of a pair of new annual taxes on properties. These now infamous taxes are the speculation and vacancy tax (the “speculation tax”) and the additional school tax.

SPECULATION TAX

First announced in the provincial budget last February, the speculation tax has since been amended with some relief provisions—on October 16, 2018, when released as Bill 45. The draft legislation also brought sorely needed clarifications surrounding details of the speculation tax. Still, this tax is effective beginning in 2018, and affected taxpayers must make their first payment before July 2, 2019.

WHO IS AFFECTED?

The speculation tax is an annual tax payable by owners of residential properties in designated taxable areas. This includes owners who are corporations, trustees, or partners.

Owners may be exempted under three main exemption categories:

1. The property is the owner’s principal residence.
2. The property is tenanted, or:
 - a. in 2018, the property must have been rented out for at least three months of the year;
 - b. beginning in 2019 and for subsequent years, the property must be rented out for at least six months of the year; short-term rentals for periods of less than one month do not count towards the total.
3. The property is under construction or renovation.

Based on the exemptions described above, the BC Government estimates that more than 99% of British Columbians are exempt from this tax.

It should be acknowledged that for development properties, any building activity would qualify for an exemption of the speculation tax for that property ... Therefore, actual construction does not need to commence in order for the exemption to apply.

—Ed Furlan

It should be acknowledged that for development properties, any building activity would qualify for an exemption of the speculation tax for that property. The legislation defines “building activity” quite loosely as it can be any of the following: applying for financing; applying for a permit or other necessary approval; entering into contracts for designing, building, or engineering; demolishing existing improvements; clearing or excavating the site; and constructing. Therefore, actual construction does not need to commence in order for the exemption to apply.

All owners of residential properties in the designated taxable areas must complete a declaration. It should be noted that individuals or entities that do not complete their declarations will automatically receive tax notices charging them at the maximum tax rate.

WHAT IS THE SPECULATION TAX RATE?

The speculation tax rate varies depending on the owner’s status of residency. The tax will be levied on owners of residential properties as at December 31 of each taxation year.

For 2018:

- 0.5% of the property’s assessed value for all properties subject to the speculation tax

For 2019 and subsequent years:

- 0.5% of the property's assessed value for residents of British Columbia and other Canadian citizens or permanent residents
- 2% of the property's assessed value for all other property owners (e.g., foreign owners and satellite families)

The assessed value of residential properties is determined on July 1 of each calendar year. However, it should be noted that BC Assessment, the Crown corporation that provides assessments for tax purposes on all properties in British Columbia, provides annual assessments based on a uniform valuation date of July 1 of the prior year. Therefore, as an example, a 2019 assessment as provided by BC assessment is based on the property's July 1, 2018, fair market value. However, this should be distinguished from the speculation tax rate calculation, which is based on the assessed value of July 1 of the calendar year. In other words, the 2018 speculation tax will be calculated using the 2019 assessment as provided by BC Assessment.

WHEN IS THE SPECULATION TAX DUE?

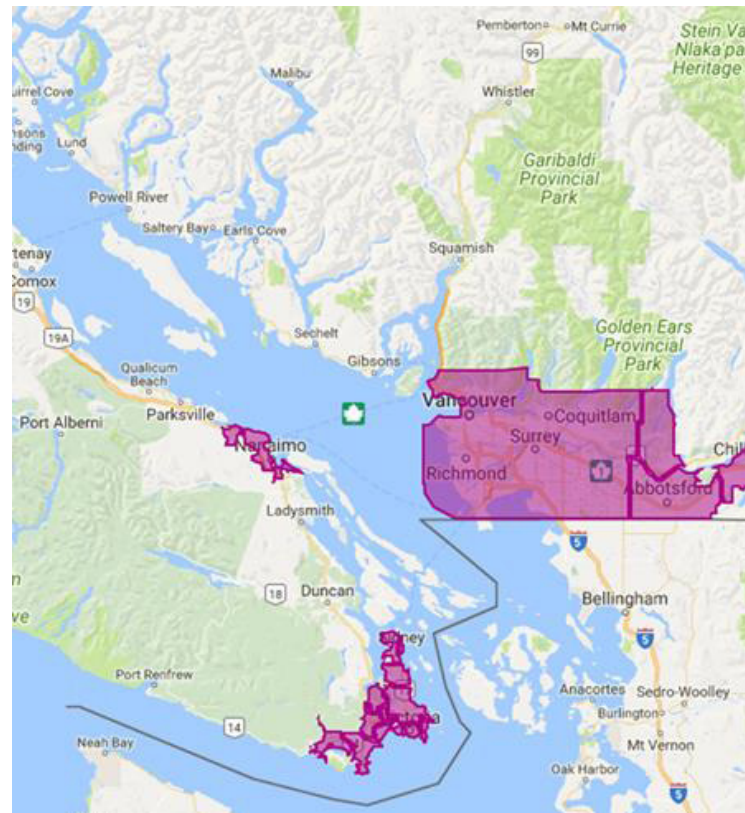
All residential property owners in affected areas of the province will have to complete an annual declaration. The BC Government has indicated that further information and details on the declaration process will be mailed to all residential property owners within the taxable regions by mid-February. The government has also indicated that a new online declaration application will be available by late January. The annual deadline to complete the declaration is March 31 of each year.

Following the submission of all declarations, tax notices will be mailed out to affected property owners in April. The speculation tax payment is then due on the first working day of July in each year. For example, in this year, it is due on July 2, 2019.

WHERE DOES THE SPECULATION TAX APPLY?

Following are the designated taxable regions:

- municipalities within Capital Regional District
- municipalities within Metro Vancouver Regional District, excluding Bowen Island, Village of Lions



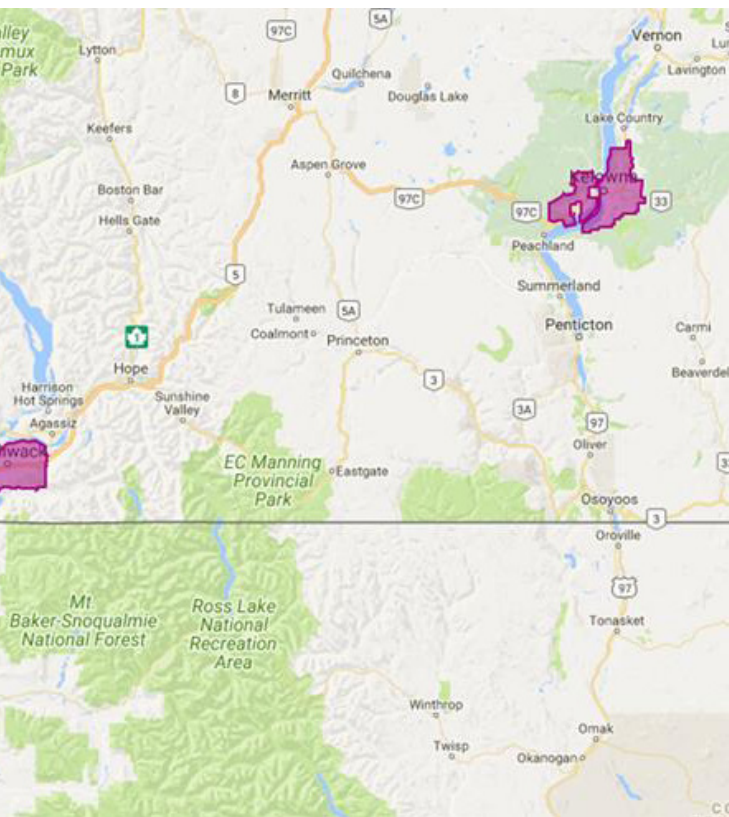
Bay, and Electoral Area A, but including UBC and the University Endowment Lands

- City of Abbotsford, District of Mission, City of Chilliwack
- City of Kelowna and City of West Kelowna
- City of Nanaimo and District of Lantzville

Reserve lands, treaty lands, and lands of self-governing Indigenous Nations are not part of the taxable regions. Islands that are accessible only by air or water are not part of the taxable regions.

Some residential properties are excluded from the speculation tax even though they are located within a taxable region. These include residential properties owned by:

- an Indigenous Nation
- municipalities, regional districts, governments, and other public bodies
- registered charities



Taxable regions.

- housing co-ops
- certain not-for-profit organizations

WHY HAS THE BC GOVERNMENT INTRODUCED THE SPECULATION TAX?

Working to address BC's ongoing housing crisis, the BC Government claims that it has designed the speculation tax to "prevent housing speculation and help turn vacant and underutilized properties into homes for people who live and work in BC." According to the government's website, the aim of levying the highest tax rate on foreign owners and satellite families is to ensure that those with limited social and economic ties to the province pay the largest share of the tax.

It is important to note that the speculation tax is different from the City of Vancouver's empty homes tax, which is a municipal levy charged through the City's Vacancy Tax Bylaw No. 11674. Unfortunately, if you own residential property in the City of Vancouver, you may have to pay both the speculation tax and the empty homes tax.

THE (ADDITIONAL) SCHOOL TAX

School tax is already collected on property owners' annual property tax notices. However, the BC Government announced in its 2018 provincial budget an additional school tax, which is to apply to most high-valued residential properties in the province beginning in 2019.

WHO IS AFFECTED?

The additional school tax will apply to property owners of most high-valued residential properties in the province, including owners of:

- detached homes
- stratified condominium or townhouse units
- most vacant land

It should be noted that non-stratified rental buildings with four or more housing units are exempted.

Mixed-use properties are also affected. However, only the residential portion (in other words, the portion of the assessed value that is classified as Class 1 - Residential) will be taxable.

Property owners who are seniors or families with children can defer this tax at low interest rates if they cannot afford to pay the tax on a current basis. Those who elect to opt into a deferral program do not have to pay the tax until they sell the property.

WHAT IS THE ADDITIONAL SCHOOL TAX RATE?

The additional school tax rate is:

- 0.2% on the residential portion assessed between \$3,000,000 and \$4,000,000
- 0.4% on the residential portion assessed over \$4,000,000

For mixed-use properties, only the residential portion above \$3,000,000 will be taxable.

The BC Government has estimated that the additional school tax will generate \$250 million in tax revenue over the next three fiscal years. The government believes that within the province, residential properties have appreciated dramatically in the last decade, specifically those in the Metro Vancouver region. Therefore, there have been “additional resources” that have been gained from those properties. In other words, the government has introduced the additional school tax because it believes those property owners can afford to pay a little bit more to provide support to help build affordable housing.

—Ed Furlan

WHEN IS THE ADDITIONAL SCHOOL TAX DUE AND WHERE DOES IT APPLY?

The additional school tax will be charged on your annual property tax notice. Depending on the municipality that the property is located in, the annual property tax notice should be mailed out in May, and, for most municipalities, it is due in July.

The additional school tax will apply to all qualifying properties throughout British Columbia. Unlike the speculation tax, the school tax applies to all areas of the province.

WHY HAS THE BC GOVERNMENT INTRODUCED THE ADDITIONAL SCHOOL TAX?

The BC Government has estimated that the additional school tax will generate \$250 million in tax revenue over the next three fiscal years. The government believes that within the province, residential properties have appreciated dramatically in the last decade, specifically those in the Metro Vancouver region. Therefore, there have been “additional resources” that have been gained from those properties. In other words, the government has introduced the additional school tax because it believes those property owners can afford to pay a little bit more to provide support to help build affordable housing.

The revenues raised by the additional school tax go into general revenues—it is not specifically for schools.

Interestingly, Vancouver’s city council has decided to oppose the additional school tax. In December 2018, the council voted 7-3 to ask the BC Government to withdraw the tax.

EXAMPLE OF NEW TAX IMPACTS

Now that we’ve reviewed these two new taxes, we should review their impact on property tax liability. For example, imagine that we have a vacant \$5,000,000 residential property in the City of Vancouver. In 2018, the total property tax required from this property was \$12,341.

In 2019, the speculation tax applies on this vacant property. If the property owner is a Canadian citizen or a permanent resident, the annual tax rate is 0.5%. This will add \$25,000 to the 2018 property tax total, bringing it up to \$37,341. Add to this the additional school tax of \$6,000 (assuming the assessment and the tax rate remain constant from one year to the next), and the owner will now be required to pay \$43,341.

However, if the property owner is a foreigner or a member of a satellite family, the annual tax rate for the speculation tax is 2%. This will add \$100,000 to the 2018 property tax total, which, including the additional school tax, will now reach a whopping \$118,341.

Now, of course, this is all before the City of Vancouver’s empty homes tax, which would add another \$50,000 to the total property taxes of the hypothetical property....

Rezoning application (Shana Johnstone); Taxable regions map (flickr: Province of BC/Speculation Tax Details).

RI

ASK A LAWYER

John McLachlan, RI, LLB

Q: *What can you tell us about Vancouver's new empty homes tax? And what happens in the event of a dispute?*

A:

In an effort to address the lack of housing in Vancouver, the city council enacted the Vacancy Tax Bylaw on November 16, 2016, which brought into force an empty homes tax on vacant or deemed vacant residential property in Vancouver. The objective of the tax is to return empty or under-utilized properties to use as long-term rental homes for people who live and work in Vancouver.

Each year, every owner of residential property in Vancouver will have to make a declaration which will determine if the property is subject to the empty homes tax. This tax is in addition to the Province's speculation and vacancy tax. If you own residential property in Vancouver, you may end up having to pay both taxes.

In its first annual report since the tax was introduced, the City of Vancouver found that of the 186,000 homes in Vancouver, 2,538 of them were vacant for the purposes of the empty homes tax. The City estimates that it will receive approximately \$38 million in total revenue under the tax and that approximately \$21 million had been collected as of November 2018. Of those funds, the City has allocated \$8 million to various affordable housing initiatives. With regard to costs, the City reported that it cost \$7.5 million to implement the tax and the first year operating costs were \$2.5 million.

As to whether the tax will have an impact on the rental housing market and housing affordability, the tax is still in its infancy and it remains to be seen whether the tax will have any discernible effect. Based on the relatively small number of homes that have been deemed to be vacant, it appears that the impact on the rental housing market will be minimal.

WHAT IS THE EMPTY HOMES TAX?

The purpose of the tax is to encourage residential property owners to either live in, rent, develop, or sell their properties instead of holding them for investment or renting them for nightly or short-term stays.

The tax imposes a vacancy tax of 1% of assessed value on "vacant" residential properties located in Vancouver. Property is deemed "vacant" if it is not either the principal residence of an individual or "occupied" by a tenant or subtenant for terms of at least 30 days at a time for a sufficient portion of the year. The tax will apply if the property is "vacant" for more than 180 days in a calendar year. The property will also be deemed to be "vacant" if the property owner fails or neglects to file a declaration as to occupancy each year by the prescribed date. This year the date was February 4, 2019. The tax is based on the use of the property in the preceding calendar year (the tax for 2019 is based on the use of the property during 2018).

There are limited exemptions under the bylaw. Some of the key exemptions are:

- Property being renovated or developed, provided that all permits have been issued, the property is vacant for safety and the owner is carrying out renovations without unnecessary delay
- Stata rental restrictions, where there is a rental restriction, passed prior to November 16, 2016, and rentals are at the maximum and the owner is on a wait list to rent out the unit

As to whether the tax will have an impact on the rental housing market and housing affordability, the tax is still in its infancy and it remains to be seen whether the tax will have any discernible effect.

—John McLachlan

- Property sold in the prior year; a purchaser of a property will be exempt from payment based on the prior year's use
- The occupier is in a hospital or long-term or supportive care facility; this exemption will not be allowed for more than two consecutive years
- The owner has passed away and a grant of probate or grant of administration of the estate has not yet been issued
- The property was occupied by a registered owner for a minimum of 180 days; the property does not need to be the principal residence of a registered owner if the registered owner worked in Vancouver and occupied it for the minimum required days

Properties that are not exempt include vacation homes, property used for nightly rentals (e.g., AirBnB), properties that are listed for sale or rent without success, and bare land that is assessed as residential.

False declarations can result in fines of up to \$10,000 per day in addition to the payment of the tax.

Further, declarations may be subject to an audit by the City. If your property is subject to an audit, you will have to provide evidence in support of your declaration; no evidence is required to be submitted with your declaration—this is only if you are audited.

If you are audited, the types of evidence that the City expects to see in support of a declaration include: ICBC vehicle insurance and registration; government-issued identification such as driver's license, BCID card, MSP invoice, or income tax returns; insurance certificates for homeowner's insurance.

If the audited property is rented, the City will need evidence in support, such as tenancy agreements, bank statements showing reoccurring rental income, tax returns, or information from a long-term tenant proving occupancy.

In other instances, you will have to provide evidence in support of the declaration to prove that the property fits within one of the enumerated exemptions, such as a grant of probate, a letter from the care facility confirming that you or the tenant is undergoing medical or supportive care, or proof that the property is undergoing redevelopment or rezoning.

HOW DO I DISPUTE A DETERMINATION THAT MY PROPERTY IS VACANT?

If you disagree with the determination by the City, the property owner can file a notice of complaint, along with any supporting evidence, and have the file reviewed by the vacancy tax review officer. This year, the deadline for filing a complaint is April 12, 2019. If you have been issued a supplementary vacancy tax notice, you must file a notice of complaint within 34 days from when the notice was issued.

Last year, there were 2,132 property owners who failed to make a property status declaration and, as a result, those properties were initially deemed to be vacant and subject to the tax. In addition, complaints were also filed where a property owner was selected for an audit and disagreed with the City's determination and failed to provide supporting evidence during the audit.

Once a complaint has been filed, the review officer must, within a reasonable time, consider the complaint and any evidence submitted, make a determination in writing, and mail it to the homeowner. The review officer may also ask for further information prior to making a determination.

For 2018, the review officer received 1,459 complaints, of which 1,207 were accepted and 252 were rejected and remained subject to the tax.

Property owners whose complaints are rejected are required to either pay the tax or request a review of their file from the external review panel. The deadline to submit a review request is within 30 days of the date of deemed receipt of the determination of the vacancy tax review officer. Note that the determination of the vacancy tax review officer is deemed to have been received 4 days after mailing regardless of whether the determination was actually received or not.

The request for a review is sent to an external review panel at the Alternative Dispute Resolution Institute of British Columbia. The review panel will, within a reasonable time, consider the review request based on the materials provided and will make a determination and advise the owner in writing of the determination. There is no right to a hearing and the determination will be made based solely on the information provided with the review request. Unlike with the review officer, the review panel does not have the ability to request additional information.

As at November 2018, the review panel had completed 47 reviews and had accepted eight of them.

It is intended that a determination by the review panel is to be final and there is no specific avenue of appeal from a determination of the review panel. It may be that a decision of the review panel or the bylaw itself may be subject to a legal challenge by way of judicial review, but I am unaware of any application being filed as yet.

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OPEN BANKING IN CANADA?

Samantha Gale

Do you ever get the feeling that the world around us is evolving with such speed and intensity that it's impossible to keep up?

For many years, Canada's financial sector has been sheltered from the frenetic pace of change experienced by many other businesses. This industry has been a bastion of conservatism, where tried and tested business practices, predictability, stability, and relationships cultivated cautiously over time have continued to be the norm. During the first two decades of the twentieth century, the Canadian financial sector has, for many practical and legal reasons, been reticent to embrace the transformative technological trends reshaping our daily lives, but as we enter the 2020s, there are a plethora of new ideas and innovations bubbling under the surface that are poised to reimagine the way we borrow, spend, and plan our financial futures.

Other jurisdictions have been at the forefront of new paradigms in banking, including the United Kingdom, the European Union, Japan, and Australia. Until recently, Canada's banking industry seemed like an unlikely candidate to be among the vanguard, and many were surprised when the Department of Finance recently took an important step forward by launching a public consultation on the merits of open banking.

WHAT IS OPEN BANKING?

What exactly is open banking, and what does it mean for the mortgage brokering and lending sector? According to the Department of Finance, "[o]pen banking is a framework where consumers and businesses can authorize third party financial service providers to access their financial transaction data, using secure online channels. The benefit to consumers and businesses is that it allows them to access new products and services that enable them to better manage their financial affairs. In

jurisdictions that have adopted open banking systems, participating service providers must meet standards with respect to privacy, security, and operational stability."¹

In a nutshell, an open banking environment is one where a multitude of financial technology (fintech) developers can plug into the vast troves of financial data available from the banks, parse it to discover novel information about consumer habits—such as spending, savings, and investing—then package those insights into personalized services available to their users.

Imagine downloading the latest app that could analyze your credit card payments and recommend ways in which you could save on interest, or an app that would seek out investment opportunities tailored specifically to your risk tolerances, income goals, and personal values. Imagine having a full picture of where your business wasted money last year, or a recap of your best financial decisions to date. These are the kinds of innovations that open banking technology is poised to deliver.

Let's consider the future of mortgages and how open banking might assist prospective borrowers to make better-informed decisions by way of an example:²

Dominique and Addison are contemplating purchasing a larger home in the next two years but they are unsure about how bigger mortgage payments might impact their finances. Before making a decision, they look at the past two years' worth of transactions to see what insights they can glean.

In the absence of open banking, this fact-finding task can be time consuming. The partners have a number of financial accounts across different providers and need to review their respective bank, credit card, and investment statements and then categorize these transactions. They then need to analyze the data,

1 Finance Canada. "A Review into the Merits of Open Banking," Government of Canada, January 2019.

2 Ibid. Example adapted.



make projections, and determine if they are on track to reach their financial goals.

With open banking, Addison and Dominique could authorize the sharing of their financial transaction data held by their financial institutions with a fintech that offers money management services. The fintech would review and consolidate their transaction history and categorize and provide insights into their spending, including the ability to set savings goals.

CHALLENGES AND BENEFITS OF OPEN BANKING

Open banking offers the tantalizing opportunity to help consumers be more aware and better educated about their personal finances, but until now, practical tools have been rare, and gaining access to consumer financial data has been problematic for developers. Under the framework of open banking, however, that access would become much easier.

You may have heard the term API before. An “application programming interface” is software that allows databases from two different systems to talk to each other, exchange meaningful information, and export that data for different applications. The ability to transfer vast swaths of data between firms and analyze it for new insights is possible today with existing technology, but the real barrier is the legal framework and the stringent privacy and regulatory requirements faced by banks.

There are other challenges to open banking that must be overcome as well.

For example, when the bank is collecting financial data about its clients, who owns that data? Can the data be commoditized and sold by banks to third parties for big bucks? How would the process of opting-in and opting-out of data sharing work from a consumer privacy point of view? Who is at fault if there is a data breach and records are compromised?



These are all questions that need to be addressed. Furthermore, if Finance Canada were to proceed with open banking, it would need to review the law around data ownership with a view to resolving its legal ambiguity and, more importantly, to ensure that consumers have the power to share data with service providers on their own terms. Canadian laws need to be amended so that it is clear that customers and not financial institutions own personal financial data. Currently, there is no legal requirement compelling financial institutions to transfer data to third-party APIs upon the direction of the consumer.

Some say that data is the new gold. High-priced data means that only big business can afford to play the game. A concentration of data in the hands of a few players would undoubtedly result in oligopolies or even monopolies controlling business and possessing the dangerous potential to manipulate consumers. The issues around Facebook's sale of data from 50 million users to Cambridge Analytica are probably still fresh in everyone's minds as we contemplate the merits of open banking.

While there would certainly be privacy risks in an open banking environment, advocates for open banking tout its many benefits. Clearly open banking has the potential to empower small business by providing more automation of their banking systems. More specifically, fintech tools can better track cash flow and provide better and more efficient payment systems, affordability calculators, sales tax support services, payroll management, inventory control, and myriad other financial services.

In the United Kingdom, there is clear evidence that open banking has directly stimulated investment in innovative new programs designed to enhance the individual's capacity to manage personal finances. Services have been found to be more insightful and intuitive. There is also an expectation of enhanced competition among the financial services sectors, leading to more competitive pricing and greater transparency. Dependence on financial institutions is expected to loosen as programs enable consumers to more readily switch service providers.

In addition, within the open banking landscape, consumers still require the protection of the regulated financial service sectors, such as licensed mortgage brokers, realtors, and securities advisors. In the new era of fake news

Open banking offers the tantalizing opportunity to help consumers be more aware and better educated about their personal finances, but until now, practical tools have been rare, and gaining access to consumer financial data has been problematic for developers.

—Samantha Gale

and data manipulation, there is clearly an even stronger rationale than at any previous time for customers to be protected through regulation and by trusted, licensed advisors.

OPEN BANKING AND MORTGAGES

In the mortgage origination context, the rationale for sharing borrower information has always existed. Mortgage brokers, since their emergence in the 1970s as regulated intermediaries, have provided mortgage lenders with a seemingly endless trail of information and documentation to facilitate the approval process and ensure underwriting rigour. Borrowers used to hand-deliver or fax to their broker wads of paper representing bank statements, tax documents, contracts, and the like. Now, of course, these documents are digitized and sent electronically by email or a third-party electronic conduit. Many mortgage brokers have elected to pursue a financial service business model where they manage their borrower's renewal information and dispense advice on credit repair or debt consolidation savings.

Given the services already provided by brokers, open banking may not radically change the current mortgage borrower's consumer experience. There is already a trend in the mortgage brokering industry towards the adoption of fintech, and the proliferation of fintech tools will surely make the process more efficient and accessible. Fintech is clearly a catalyst for evolution and not revolution.

The Finance Department's Advisory Committee on open banking is expected to provide a report later this year. When they do, we'll be sure to keep you plugged in and up to speed on the latest developments.

Information sharing (iStock: PeopleImages); Analyzing statements (iStock: sturti).

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MEMBER PROFILE

JEFFREY ROBERT SIMPSON, RI

**DIRECTOR AND
MANAGING BROKER,
KAIZEN CRE SOLUTIONS INC.**



When Jeffrey Simpson sought to name his company, the word “kaizen” (definition: a Japanese business philosophy of continuous improvement) resonated deeply with him. “I want to be continuously improving the delivery of services I provide,” Jeffrey explains. “Broadly speaking, I am likewise focused on becoming a better person, husband, father, friend, and business partner.”

As the director and managing broker of Kaizen CRE Solutions, Jeffrey enacts this philosophy daily by working to add value to real estate assets. In his practice he works with clients to conceptualize the highest and best use of a property and then manages a team of consultants through the design process. Once entitlements are secured, he oversees construction and stabilizes revenues. “It is very fulfilling to take a piece of land through this entire cycle,” he says.

Jeffrey’s perspective on professional achievements has evolved over the

course of his career. Where once the goal was to execute a project on time and on budget, that standard is no longer good enough. “Now I am passionately pursuing triple bottom line outcomes—earning a profit for sure,” says Jeffrey, “but also positively impacting the lives of people and being intentional about safeguarding the environment.”

At home in Victoria, Jeffrey spends his volunteer time managing a number of real estate responsibilities for Pacific Centre Family Services Association, where he also shovels sidewalks, waters trees, and sweeps the driveway. What draws him here? “The core values of this NPO are perfectly aligned with mine,” he explains. “They have developed a wonderful culture amongst the staff and board, and they are making a huge difference in the lives of hundreds of people every year through their programs.”

Having lived in Scottsdale, Arizona, and in Puerto Vallarta, Mexico, before moving to Victoria, Jeffrey has witnessed the effects of homelessness both domestically and abroad. “My hope is that one day I will put my experience and love for humanity to work by delivering housing to impoverished areas of the world where the need is particularly acute,” he says.

Jeffrey’s personal achievements include having taught most every subject related to the real estate profession, authored several published articles, and developed curriculum specific to the development process. But more than these, he is proud of his family. “I have four children and a spouse who enrich my life in so many ways,” he says. “They are a constant source of joy and it is a real blessing to be a part of their growth and development.”

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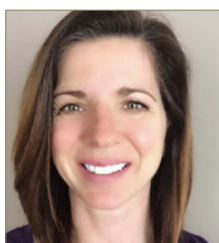
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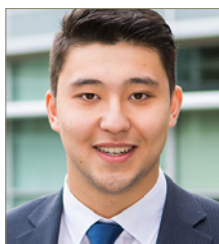
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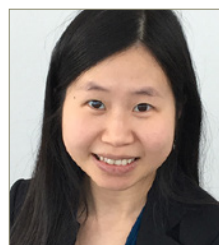
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