



Professional REALTORS® Improving our Industry

NLAR Open House Consultations  
January 22 – February 9, 2018

**Volume II**  
**RECOMMENDATIONS**  
A Clear Call for Modern Regulation





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**Summary of Recommendations**

In the Province of Newfoundland and Labrador, the real estate industry is regulated under the *Real Estate Trading Act* (the *Act*), which was initially written and passed in the 1960s with little substantive change since that time. In late 2017 Service NL, the government department that is tasked as the regulatory body under the *Act* launched a public consultation to review the legislation governing the industry.

The NL Association of REALTORS® make the following recommendations (with reference page numbers) to Service NL based on our research and consultation with members and consumers across Newfoundland and Labrador:

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## Background

In the Province of Newfoundland and Labrador, the real estate industry is regulated under the *Real Estate Trading Act* (the *Act*), which was initially written and passed in the 1960s with little substantive change since that time. In late 2017 Service NL, the government department that is tasked as the regulatory body under the *Act* launched a public consultation to review the legislation governing the industry.

The Newfoundland and Labrador Association of REALTORS® (NLAR) is an industry association representing 700 licensed real estate brokers and salespeople throughout the province. As an industry association we are a not-for-profit organization governed by a board of directors elected by the membership. Not every real estate licensee is a member of NLAR, though the approximately 95% have chosen to join us.

Modernization of the *Act* has been an advocacy priority for NLAR for quite some time. We feel that the standards that were set in the areas of education, advertising, professionalism and public protection in the 1960s have not kept pace with how the industry has evolved and how the real estate market now operates.

## Consultation

In response to the Service NL public engagement, NLAR held a series of consultation meetings with members and the general public in locations throughout the province. A total of sixteen meetings were held in eight locations. In all over 130 people participated in our review consultations.

Between January 22 and February 8, public and member-only meetings were in St. John's, Bay Roberts, Clarenville, Gander, Grand Falls-Windsor, Corner Brook, Happy Valley-Goose Bay and Labrador City. NLAR's meetings included an overview of the current legislation, an outline of the legislative review landscape across the country and in-depth discussion of many issues related to real estate regulation. Topics presented and discussed included those that Service NL had identified in its online questionnaire and additional issues that NLAR has been raising in its advocacy efforts.

This report contains NLAR's recommendations to government based on what we heard in our travels across the province in response to government's review. At all meetings we heard from licensees and consumers about the clear need to modernize how real estate agents are licensed, trained, and do business. We heard a call for better consumer protection and stronger enforcement tools. We clearly heard that there should be one set of rules that apply to every real estate licensee in the province; a code of conduct, continuous education, and clarity for the consumer.

We also heard that our industry is one that is built on integrity and public trust. If the regulatory system does not have the confidence of the public, our entire industry suffers. It is imperative that as we move forward to improve our regulatory regime that we strengthen public confidence and continue to build professionalism. NLAR has released a "What We Heard" report that accompanies these recommendations.

Before presenting specific recommendations on the questions and topics identified by Service NL in the questionnaire, we would like to discuss some common threads that were identified during our consultation meetings with member and consumers.

### Most licensees are NLAR members

Several of the questions presented relate to topics or issues in respect of which NLAR members already have obligations. For example, the questionnaire asks about a Code of Ethics for all licensees, or mandatory education and insurance programs. The 95% of licensees that are members of NLAR are already required to carry Errors and Omissions insurance, adhere to a Code of Ethics and undergo mandatory professional development as a condition of their membership. At several meetings the question was asked whether the public policy objective of having those items/protections in place could be best served by simply requiring all licensees to become members of NLAR and then have the regulations refer to the programs and requirements already in place through the association. This model is most similar to the New Brunswick co-regulated model. The economic argument of creating parallel requirements for the 5% of licensees who chose not to become members paid for by the taxpayer was highlighted in several meetings.

At this point we are not prepared to recommend that the province move to a NB-like co-regulated model, however we are interested in exploring with government how we can work together to make sure that similar public policy objectives are met, should government choose to do. So, for example, if government were to decide that all licensees were to adhere to a Code of Ethics, we'd be interested in exploring if/how the existing REALTOR Code and NLAR professional discipline process could possibly fill that role. Similarly, the educational offerings under our REALTOR® Professional Development program could fill the requirements for a regulated requirement for PD for all licensees.

The Association is offering to explore these opportunities with Service NL before final drafting of legislation.

### Public Protection through a Recovery Fund

There are several discussion items in the questionnaire that relate to public and licensee protection through bonds, insurance, etc. At the same time, NLAR is looking to clean-up and simplify the trust deposit process. At several meetings the concept of self-insurance, self-bonding or better public protection through the industry was brought up as suggestion.

Several other provinces operate a Recovery Fund, or similar industry-funded mechanism to provide public protection against losses due to theft, fraud, negligence, etc.

We would be interested in exploring with Service NL, the feasibility of establishing a similar fund for the province of NL. It could initially be seeded by remittance of long-standing unclaimed deposit funds (currently sitting in broker's trust accounts). Licensees currently pay about \$150,000 per year in bonding fees, which Service NL admittedly says provides inadequate protection, which could also be directed into the fund.

### Recommendation:

1. We are recommending that the Association and Service NL jointly explore the feasibility of creating a Recovery Fund and look at models in place in other jurisdictions for guidance.



## Geography Matters

It is often said the all real estate is local. We were reminded in many discussions that the dynamic of the industry in rural and remote parts of the province is very different from the Northeast Avalon in many ways; number of brokerages, number of licensees, volume of transactions, reliance on distance technology, cost of business, in some cases average property values, and more.

We heard repeatedly that measures proposed to be taken in the new legislation need to work for the entire province, not just the St. John's area (where the bulk of the licensees operate). A government-mandated CPD program has to be equally available in Labrador West as it is in Stephenville or St. John's. Restrictions on dual agency or double-ending will have greater repercussions in rural and remote areas than they will in larger town and cities.

### **Recommendation:**

2. It is recommended that Service NL apply a rural/remote lens to any policy decisions or legislative changes that arise out of this review process.

## More Modern, Inclusive Regulation

We heard loud and clear that the legislation needs to be re-written needs and viewed through a more inclusive lens.

For example, the *Act* currently has no provision for a licensee to “park” a license for a period of time. If a licensee terminates their licence for a period beyond two years, they are treated as a new licensee and must start from the beginning again, registering for the pre-license program (currently \$1500) and writing the entrance exam again. Several people pointed out the implications this has for young women who may elect to place their careers on hold to start a family, or for licensees who become seriously ill or injured, or need to care for an elderly family member. As self-employed individuals, they are not entitled to receive maternity leave benefits, sick leave or family leave, but they shouldn't be faced with having to restart their careers from the very beginning again. A lawyer who takes three years off to start a family doesn't have to go back to day one at Law School again.

Similarly, the pre-license training program is delivered as a text-based self-study program with multiple choice exams written at four locations of the College of the North Atlantic. NLAR and Service NL currently offer little in the way of accommodations for students who require them as a result of learning disabilities or other challenging needs, or those who can't travel great distances to write an exam (Labrador City to Goose Bay, for example). Supports should be available to pre-license trainees to overcome obstacles or who need something beyond the standardized program and testing.

### **Recommendation:**

3. It is recommended to Service NL that the new legislation be more inclusive and forward thinking and allow for broader participation in the industry.

## Property Inspectors Need Regulation

The majority of residential transactions are subject to a successful home inspection, and the inspector's report carries a great deal of weight. In many disputed sales, the dispute is centered on something that

was uncovered during the inspection. Despite the importance of the inspection, it is not commonly understood by consumers that the sector is unregulated. Consumers have no way of knowing if an inspector is qualified or experienced. There is no standard “home inspection”. Each inspector has their own protocol. There is no required training to be an inspector.

While home and property inspectors are not the focus of the current consultation, it was clearly heard in all meetings that there are issues with property inspections across the province.

To be fair, there are some highly qualified, highly reputable inspectors. There are many who are members of one of the industry associations who adhere to a code of ethics, professional standards, and meet strict industry registration guidelines. But there are those who do not, and we heard stories from several regions of the province of unqualified or unethical inspectors not adequately serving or protecting their clients.

NLAR is currently leading an initiative with other Atlantic provinces real estate associations and several of the home and property inspection associations to develop a position paper on regulation of this sector to present to government.

**Recommendation:**

4. We recommend that, once the Real Estate Trading Act is renewed, regulation of the home and property inspection industry become the next priority for Government.

**Service NL Questionnaire**

The following topics/questions were raised by Service NL in its consultation process.

**Do you think the Act needs more clarity with respect to trust deposits?**

**NLAR Response: Yes**

Generally, it was felt that the terms and conditions of the Purchase and Sale Agreement should determine the amount, timing of receipt and the fate of the deposit should the sale not complete.

A key issue we heard repeatedly in determining the return of the deposit is the notion of “good faith” negotiation and decision-making. In most transactions that fail for legitimate reasons, in which buyers make “good faith” or “best effort” attempts to meet the conditions of the offer, it is reasonable that the deposit be returned automatically to the buyer. Similarly, once a sale is considered firm (i.e., all conditions met), if the buyer decides not to proceed, it is reasonable that the deposit automatically be forfeited to the seller. The challenge for the system though, is to deal with the cases that are not as clear cut, or where parties are not acting in good faith. Currently, the only process available to those parties is the court system, usually Small Claims Court. An arbitration or dispute resolution mechanism outside the courts may be a more effective way to deal with these disputes.

During our meetings we were told by countless licensees of situations where disputes over deposits were never settled, meaning that money has stayed in broker’s trust accounts for many years. This leads to dissatisfied clients, added cost for brokers (each such stalled transaction is required to be audited and reported on each year), and tens (likely hundreds) of thousands of dollars held in limbo. This situation is poor public policy and cannot continue, as it serves no one well.

## Recommendations

5. If a conditional offer falls through after the buyer makes good faith efforts to fulfill the conditions, the deposit should automatically be returned to the buyer.
6. If a firm sale is cancelled by a buyer (or seller) for bad faith reasons, the deposit should automatically go to the other party.
7. Service NL and the industry should look at the dispute resolution processes of other provinces and adopt a mechanism to deal with these disputes that gives the Superintendent the authority to resolve them.
8. If a dispute remains unresolved for over one year, the deposit funds should be remitted to government to be held until resolution.
9. Government and industry should create a Recovery Fund to be seeded by remittance of disputed trust deposits more than 5 years old, currently in brokers' trust accounts.

## Other Trust Account Issues

**Cheques are on the way out.** Fewer and fewer consumers use cheques as a payment method in today's era of electronic banking. Many real estate licensees shared stories of clients looking for the option of providing a deposit by electronic means. Some brokerages and some financial institutions allow electronic receipt of funds by email, but many do not. It was generally felt that the *Act* should provide guidance on when this practice is allowable, and that the demand for electronic funds transfers is only going to increase over time.

### Recommendation:

10. The *Act* or Regulations should provide direction on what electronic payment means are permitted for deposits and how they are to be directed.

**Trust Accounts need protection.** There was a great deal of discussion at several meetings about the need for a mechanism to protect consumers against trust account mismanagement or fraudulent activity. The recent receivership of 50549 NL Inc (the former Exit Realty on the Rock) was raised on numerous occasions as an example of the need for trust accounts to be monitored more closely and to be "back-stopped" by some mechanism that would protect consumers and licensees in the case of trust funds inappropriately being removed from an account.

### Recommendations:

11. The Recovery Fund should protect consumers and licensees against breach of trust or other fraudulent or negligent behaviour related to trust accounts.
12. The current system of Trust Account audits be improved by the addition of random spot audits to be conducted by Service NL personnel.

**Timeframe for receipt of deposit funds.** The current *Act* requires that deposit funds be deposited in the listing broker's trust account within two business days of receipt, however it makes no reference to the timeframe within which the funds must be received by the broker after the offer is accepted. Electronic documents often mean that negotiations occur by distance (not face to face with a client), so getting the

deposit funds in hand is often not convenient. We heard of cases where days, weeks or months went by and the deposit was not received – in some cases right up to the day of closing. Many felt that there should be a mandated period to receive the deposit after acceptance of an offer, otherwise the contract is vacated.

**Recommendation:**

13. The Act should contain a provision for a timeframe within which the receipt has to be received after acceptance of an offer. NLAR is suggesting two days is a reasonable time, but this issue may require some further research.

## Conflict of Interest

Do you think consumers are being harmed by these practices? (Dual Agency or Exclusive Listings)

**NLAR Response: Consumers are generally not being harmed by Dual Agency or Exclusive Listings.**

Many agreed that there was potential for harm and the current Act provides little protection or need for disclosure. As an association, we have seen complaints from consumers over situations that included the same agent representing both sides of a deal, but it is a rare occurrence. Our MLS® System reports over 4000 transactions each year with over 8000 consumers (each transaction has a buyer and a seller). We average two or three complaints per year over this type of behaviour, so it is clearly not a widespread problem. Many at our meetings felt that with stronger disclosure requirements and better enforcement tools in the Act, the public would be adequately protected. Under the REALTOR® Code, NLAR members are obligated to full agency disclosure at the earliest possible opportunity – a standard that should apply to all licensees.

As an association, NLAR encourages competition and adheres to the Canadian Real Estate Association's Pledge of Competition. We would see banning or restricting the use of Exclusive Listings as a requirement by government for licensees to participate in a co-operative selling system such as our MLS® System. There are many instances when an Exclusive Listing is a more appropriate approach, and in the client's best interests.

### **Need to define Dual Agency as being the individual, not brokerage**

In most jurisdictions in Canada "Dual Agency" is defined as a single individual representing both sides of a transaction, as Service NL defined it in their survey question above. However, in our current Act "agency" rests with the brokerage, so as it is defined, it means two licensees in the same company would be in a Dual Agency situation, if each represented one side of the transaction. This definition needs to be clarified so that it mirrors the rest of the country and refers to one individual, not everyone in the brokerage.

It was noted by many that "Dual Agency" and "double-ending" are not defined the same way. Dual Agency involves representation of both clients (with specific fiduciary responsibilities to both). In a double-ending situation, a licensee would represent one side (usually the seller) and provide service to the other, without invoking any fiduciary relationship.

There were two key themes that arose when discussing this issue: first, that rural and remote areas of the province rely much more heavily on dual agency, for a variety of reasons and; banning or restricting dual agency or exclusive listings reduces consumer choice and is seen as heavy handed.

**Strengthened disclosure requirements and real enforcement tools will better protect consumers.**

We often heard the need for more discussion and research on various models of client representation. Various provinces allow differing models of buyer representation, designated representation, and others. We heard from many that they would like to see more in-depth research on best practices and models in other jurisdictions. The virtual ban on Dual Agency that is forthcoming in British Columbia was generally not seen as being needed, or appropriate, here, given the nature of our population distribution around the province, and the lack of evidence of consumers genuinely being harmed by the practice. A reach out to other provinces, such as New Brunswick, Nova Scotia and Ontario was suggested by many, to see what protections they currently have in terms of licensee disclosure requirements and tools to enforce them.

**Recommendations:**

14. We recommend that Service NL does not implement a ban or restrictions on Dual Agency or Exclusive Listings.
15. The Act should define “Dual Agency” as applying to an individual salesperson, not an entire brokerage.
16. The Act and Regulations should contain stronger written disclosure requirements in cases of Dual Agency so that all parties are informed upfront, as early in the process as possible.
17. The Act should contain stronger enforcement mechanisms should a licensee fail to meet the disclosure requirements, including higher fines and the ability to suspend or terminate licences.
18. Mortgage brokers (and other industry professionals such as appraisers and home inspectors) should be prohibited from holding a real estate broker or salesperson licence.

## Code of Ethics

A Code of Ethics should be adopted as the measure of suitability for a person to remain in the real estate industry.

**NLAR Response: We strongly agree that there should be a Code of Ethics that applies to every licensee in the province.**

Real estate is an industry that is built on integrity and public trust. If the regulatory system does not have the confidence of the public, our entire industry suffers. A code of ethics that all licensees adhere to will build a stronger level of professionalism and public protection.

Recommendations:

19. The Act should require the industry adopt a code of ethics to govern all licensees.
20. The REALTOR® Code is seen to be the gold standard in the industry and should be set as a benchmark as the minimum standard acceptable.
21. A professional discipline process that includes industry participation should be implemented to deal with infractions of the code and complaints by the public.
22. Service NL and NLAR should explore efficiencies of working together on a common code of ethics and professional discipline process.

## Educational Requirements and Licensing

Does the pre-licensing course and/or the exam require changes?

**NLAR Response: Yes**

Many members expressed the view that the course **does not adequately prepare** new entrants to the industry for what they are expected to know and be responsible for. It was felt by many that it is too easy to get into the industry and that the training materials should do a better job at weeding out those who are just “kicking the tires”. Many participants felt that the training materials need to be more in-depth and do a better job of creating awareness of what the day-to-day demands of the job really are. The pre-license material should cover more in terms of ethical behaviour, contract writing, risk management and other topics generally covered by post-licence training opportunities.

There is too **much reliance on self-study** by new agents. Many felt that the program needed to be expanded to include some elements of formal education – either in-class or online instructor-led sessions.

The mode of delivery (paper-based binders mailed to registrants) was seen by many to **be out-dated and in need of modernization**. Material should be available online or at least electronically by downloadable pdfs.

The exams are paper-based and require the registrant to travel to one of four campuses of the College of the North Atlantic to be written, on a schedule determined by CNA. We heard of individuals who had to wait weeks, or months and travel hundreds of kilometres (e.g, from Labrador City to Goose Bay) to write the exam

**Recommendations:**

23. The pre-license training program should be restructured to include a number of courses, including an introductory module designed to better inform new entrants about what to expect when starting a long-term career in real estate.

24. The pre-license training program should be moved to an online delivery and testing format.
25. The program should include some elements of formal learning – not rely 100% on self study.
26. The pre-license program should include materials related to contract writing, code of ethics, agency and disclosure requirements.
27. Government should seek ways to improve professionalism in the industry by raising the requirements to get into the business.

Should there be restrictions placed on new licensees?

**NLAR Response: Yes**

New licensees should have some restrictions on their activities until they have had some level of mentoring or training by the industry and can demonstrate they have achieved a level of competency.  
New licensees

**Recommendation:**

28. The province should consider some sort of graduated salesperson licence. Using the analogy of our current graduated driver's licence program it was suggested by many that a new licensee have a "restricted" licence for a period of time, valid for residential sales only under the supervision of a broker/manager/experienced salesperson. After successful completion of a mentorship period, an unrestricted license would be granted.

**NOTE: The "restricted" license recommended above is not the same as the Restricted license as contained in the current Act.**

Should a new licensee be required to be under the supervision of an experienced salesperson?

**NLAR Response: Yes**

A better question would be "For how long should a new licensee be required to be under the supervision of an experienced salesperson?" There was general agreement that a mentoring or apprenticeship phase would result in better trained, more professional licensees, better prepared to represent their clients.

While we are supportive of a mentoring program, we do have concerns about how it could role out. Specifically, these are:

- It is likely more challenging to do in rural areas where the number of potential mentors is lower.
- There is a cost in terms of time and foregone sales by the mentor which needs to be considered in design of any mentorship program.
- Setting standards as to who can be a mentor and what qualifications they have or training they get needs a lot of thought.
- Don't need to build a "whole lot of bureaucracy" to administer what should be an industry-led initiative in compliance and monitoring.

The mentoring phase should include successful practical demonstrations of the skills needed to do common tasks – how to list a property, how to measure a house, how to complete an offer, how to negotiate a sale, etc., before being able to move on to an unrestricted license.

There are many existing models and best practices in the real estate industry across Canada and in other industries within the province that we could look at.

In some professions that require mentoring, the mentors can receive professional development credits toward their annual requirements in recognition of their time and effort. We would support a similar approach for the real estate industry.

**Recommendations:**

29. Government should work with the industry to develop a mentoring program for new salesperson licensees.
30. New salesperson licensees would be required to participate in the program until they can demonstrate practical application of skills required.
31. Mentors should be experience salespeople, managers or brokers who would have to meet specific criteria (minimum number of years in the business and/or transactions completed successfully) and be provided with mentorship training and tools.
32. Mentors should be able to earn professional development credits for their mentoring activity.
33. The mentoring program should incorporate some online delivery or courses to facilitate reaching licensees in rural areas who may not have a direct supervision.

Should there be different types of licences such as residential or commercial?

**NLAR Response:** No

While there are specializations, such as commercial sales or condominium sales, the salesperson licence (other than the restricted license for new licensees) should suffice.

The term “Agent” as referred to in the Act is out-dated and is confusing to the public. Consumers often refer to any licensee as an “agent”. The term “Broker” is a more widely used term in other jurisdictions.

A third type of non-restricted licence should be added – what in most provinces is called an “Associate Broker” licence. Currently the Act does not allow for anyone in a firm to act as a broker’s “designee” in cases of a broker’s absence, vacation, illness, etc. The associate broker is someone who can take on the responsibilities of a broker when required, but not have to fulfill other conditions of being a broker (trust account, etc.). This would be useful for large brokerages that have a management structure which includes managers, advisors, etc.

The associate broker license could also deal with some of the concerns around team leaders carrying the same license as those salespeople on the team.

**Recommendations:**



34. Government should remove reference to “Agent” in the act and use the terms “Broker” and “Salesperson” to refer to licenses.
35. Government should consider creating an “Associate Broker” license.

Should all licensees be required to complete ongoing continuing education?

**NLAR Response: Yes**

Mandatory professional development is the hallmark of a progressive, professional industry; one which cares about its image, its ability to better serve clients and be able to respond to changes in the marketplace.

For this reason, NLAR adopted a mandatory PD program for its members at its 2016 Annual General Meeting. The REALTOR® Professional Development Program (RPDP) requires that members of NLAR complete a minimum of 12 PD credits over a two-year cycle. The content of the program is overseen by an industry-led committee of seasoned brokers and salespeople. Failure to comply with the RPDP requirements can lead to suspension or termination of NLAR membership.

In our research, all the feedback we received is that NLAR is best positioned to deliver PD on behalf of the regulator.

**Recommendations:**

36. Government should implement a requirement for mandatory professional development for all unrestricted licensees.
37. We would encourage Service NL to work with NLAR as its exclusive professional development training provider, in an arrangement like the existing pre-license program.
38. NLAR will make its RPDP available to non-member licensees as a means to meet their PD requirements.
39. Regulator-required PD should be reasonably priced and must be equally available to all licensees throughout the province.

What factors should be considered to maintain a licence in the real estate profession?

The *Act* currently provides the Superintendent with little in terms of discretion when reviewing a licence application. There is nothing required in terms of criminal background checks or other similar police certificates of conduct, etc. Real estate licensees are put in positions of great trust and have to exercise sound judgement everyday. It is reasonable to expect that licensees meet a certain standard of behaviour and have background checks as part of the licensing regime.

A Code of Ethics as discussed above will also improve professionalism in the industry and can help favourably guide licensee behaviour.

**Recommendations:**

40. The Act should require new licensees and renewals to provide periodic criminal background checks (Certificate of Conduct, Vulnerable Sector Check, or a similarly appropriate certificate).
41. The Superintendent should have discretion to refuse to provide/renew a licence to an individual with recent serious property, theft, fraud or assault convictions, or other factors deemed to be relevant at the time.
42. In adopting this recommendation, sufficient latitude must be provided such that less serious, long-past, or pardoned offences do not unreasonably impact an applicant's ability to earn a living.

## Bonding and Insurance

It is clear that bonding is poorly understood and does not adequately protect either the consumer or the licensees at current levels. NLAR members are required to carry Errors and Omissions insurance to protect against honest mistakes carried out in the course of their business.

### **Recommendations:**

43. The Act should require all licensees to carry errors and omissions insurance.
44. Government should consider removing the requirement to be bonded and have such coverage provided by a Recovery Fund as outlined in Recommendation 1.

## Salespeople

The reference to employee-employer relationship when referring to commission-based salespeople is confusing and limiting in most cases. Most business models in the industry rely on sales people as self-employed contractors, although there are models starting to appear that see salespeople hired as salaried employees, with regular hours and benefits. NLAR encourages competition within the industry and would not support legislative change that would preclude such business models from operating in our market.

That said, in our current environment salespeople are independent contractors. In fact, in the case of the Receivership of 50549 NL Inc., the receivers determined that the independent contractor agreements that company had in place with its salespeople, enabled it to view the outstanding commissions payable to the salespeople as "imbued with a trust" and as such they belonged to the contractor, not the brokerage. So clearly they are self employed.

Salespeople are not covered by the traditional safety net of employment (worker comp, CPP, EI, vacation pay, sick leave, etc.). In many provinces, given the independent nature of their status,

salespeople are allowed to form personal corporations to offset the risks associated with self-employment.

We heard a call for more clarity around the structure and branding of teams within a brokerage as well. The previously discussed “Associate Broker” licence might be one way to provide team leaders with the necessary knowledge and responsibility required by someone in a supervisory role.

#### **Recommendations:**

45. Government should clarify the independent contractor status of commissioned sales licensees.
46. Salespeople should be permitted to self-incorporate.
47. There needs to be clear rules around what activities unlicensed assistants can and cannot do as part of a team.

### Public Protection

The Act needs improved tools to ensure that consumers and licensees are adequately protected, and the standards of behaviour that we expect in our industry can be enforced. Fines are too low and too infrequently issued. As a mechanism, bonds are a last-effort to collect on a judgement or civil ruling, and at today’s rates are insufficient to fully cover most liabilities.

#### Recommendations:

48. Maximum fines should be set in the Regulations every five years to an amount roughly equivalent to the average commission on an average priced residential sale.
49. Enforcement tools should escalate from minimum fines to maximum fines to suspension or termination of a licence for repeat offenders.

### Modernization and Clarity

Consumers and members alike told us that they are confused by what they see online and there needs to be greater clarity to protect everyone. The evolution of the online marketplace and development of alternative business models has led to a proliferation of services, websites, data capture sites, lead generation tools, social media portals and other online points of presence. Advertising has moved from largely a print environment in the 1960s to the digital age with its virtual tours, Facebook Live open houses, Instagram photo sharing and FSBOs on YouTube.

Unlicensed marketing firms are confused with licenced full-service real estate brokerages. Data scraping aggregator sites are stealing proprietary data from our MLS® System and related brokerage sites and using it to drive traffic to their unlicensed portals. We heard complaints about automated tools posting agent listing data on Facebook and other sites, but not meeting the advertising requirements of the Act. And we certainly heard frustration from licensees about what the rules of the game are, in trying to fit their social media marketing activities into print advertising rules written in the 1960s.

## Recommendations:

50. Government should simplify the definition of “Trading in Real Estate” in clear language so that consumers understand which services can only be provided by licensees.
51. The Act needs advertising rules that can be applied to the online marketplace and should provide greater clarity about how they are applied to various online points of presence.
52. The Act should provide consumers with the necessary information so that when searching online, it is readily apparent if a website is owned and operated by a licensed broker, or some other unlicensed entity.
53. The Act should require that branding and advertising for real estate teams within brokerages makes it readily apparent that the team is associated with a brokerage.

## Conclusion

The recommendations in this report are presented after due research, thought and consideration. The objective should be to implement a modern regulatory regime that best protects the public and industry participants now and for the next generations. As a group of professional REALTORS® seeking to improve our industry, NLAR respectfully submits these recommendations for Government to consider.





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