

# Real Estate Trading Act, 2019

Service NL

September 2019

# Overview

- Real Estate Trading Act introduced in 1965
- Review undertaken in 2012 – no amendments at that time
- Commitment to new review in Minister’s mandate letter and The Way Forward
- Newfoundland and Labrador Association of Realtors (NLAR) conducted own consultations, released “What We Heard” and Recommendations
- Engagenl.ca survey conducted, “What We Heard” document released

# Change “agent” to “broker”

- To adopt the term “broker” in place of “agent” as is the norm in six other provinces
- Bill would replace the term “agent” with “broker” – s. 2(1)(c)

# Licensing requirements

- To provide more stringent requirements to register as a real estate broker or salesperson
- Bill would allow the Superintendent to set the form of the application- 7(1)(a)
- A criminal background check and other information would be required – s. 7
- Licensees would have to notify the Superintendent of information changes– s. 12(f)
- Regulations would prescribe the requirements, qualifications and conditions for issuing licences and allow the Superintendent to modify licence requirements by modifying the application form requirements – s. 47
- The Minister would set fees and establish forms – s. 48

# Continuing education

- To allow for continuing education requirements for real estate brokers and salespersons
- The Superintendent would have authority to prescribe continuing education requirements – s. 5(1)(b)

# Incorporation

- To allow salespersons to establish and operate a personal real estate corporation, similar to other independent contractors in other industries
- Bill would allow establishment of personal real estate corporation – s. 10
- A personal real estate corporation could apply for a licence – s. 9
- A licence could be issued to such a corporation – s. 6(1)(e)
- Proclamation would be subject to addressing Service NL's IT system changes

# Errors and omissions insurance

- To require real estate brokers and salespersons to maintain errors and omissions insurance to protect professionals whose clients could claim damages as a result that professional's negligent actions
- Bill would require errors and omissions insurance – s. 7(1)(f)
- Amount of insurance to be set in Regulations. \$1 million is industry standard

# Code of conduct

- NLAR has a code of conduct for its members but there is no legislative requirement today
- Bill would allow the Superintendent to establish a Code of Conduct – s. 5(1)(a)
- Further details to be provided in Regulations, including ability for Superintendent to suspend, revoke or cancel a licence for a breach of the Code – s. 47



# Conflict of interest

- To establish restrictions on salespersons providing real estate and mortgage brokerage services
- Bill would restrict a licensed real estate salesperson from providing real estate services and mortgage brokerage services to the same client or related business transaction – s. 28

# Referrals

- To establish disclosure requirements regarding referrals by real estate brokers and salespersons for related services such as mortgage or inspection services
- Bill would provide for disclosure where a referral may be made for a fee, remuneration or benefit – s. 20
- Code of Conduct expected to provide further details

# Recovery fund

- To create a real estate recovery fund to protect consumers from financial loss in cases where a broker or salesperson is convicted of an offence, has a civil judgment made against them, or declares bankruptcy
- To replace current bond requirements over time
- The Bill would create the fund, to be financed by industry participants and managed by Service NL – s. 25
- Regulations would set out how licensees would contribute to the fund, and the administration of the fund – s. 47

# Trust deposits

- To streamline the release of trust deposits, where the conditions in a purchase and sales agreement have not been met
- Bill would allow the deposit to be released according to the terms of the contract signed – s. 26(4)
- Bill would enable the Superintendent to direct the disbursement of the deposit – s. 26(4)(e)
- Further details to be reflected in Regulations – s. 47

# Aged trust deposits

- To establish a mechanism for disbursement of aged trust deposits without going to court
- Bill would allow Superintendent to adjudicate disputes over trust deposits – s. 27
- Bill would allow unclaimed trust money held for more than two years to be paid into the Real Estate Recovery Fund – s. 27
- Regulations to enable the Superintendent to make decisions on disputed trust deposits – s. 47

# Administrative fines & penalties

- To establish administrative fines and conditions for minor infractions, and provide authority to publish administrative decisions
- Bill would allow for administrative fines to be assessed by the Superintendent for specific contraventions of the Act – s. 35
- Maximum fine would be \$10,000 – s. 36(1)(c)
- Specific contraventions and time, amount and manner of payment of fines would be set in Regulations – s. 47

# Court-imposed fines

- To increase fines under the Act from the current range of \$1000 to \$2000, to strengthen the regulatory system and promote greater compliance
- Bill would increase maximum fine for individuals or incorporated bodies to \$50,000 where the person is found guilty of an offence for contravention of the Act – s. 45

# Orders

- To allow the Superintendent to issue orders to correct a situation deemed not in the best interest of the consumer
- Bill would allow the Superintendent to issue an order to suspend or cancel a licence, impose conditions on a licence, pay a fine up to \$10,000, or some other order prescribed in the Regulations – s. 36
- Appeals of Superintendent's orders could be made to existing Financial Services Appeal Board



# Housekeeping and proclamation

- Provide for appointment of the Superintendent and Deputy Superintendent by the Minister, rather than Lieutenant-Governor in Council – s. 4
- Plain language amendments – throughout Act
- Reorganization and modernization – throughout Act
- Coming into force January 1, 2020 except sections dealing with recovery fund and personal real estate corporations, which would be proclaimed once administrative measures are in place – s. 54



**Thank you**