



*House of Assembly
Newfoundland & Labrador*

REPORT OF THE

GOVERNMENT SERVICES COMMITTEE

RESPECTING THE DRAFT BILL ENTITLED

AN ACT RESPECTING THE REGULATION OF

REAL ESTATE TRADING IN THE PROVINCE

November 4th, 2019

On June 18th, 2019 the Government House Leader referred the draft Bill entitled *An Act Respecting The Regulation Of Real Estate Trading In The Province* to the Government Services Committee, pursuant to Standing Order 79(1) and requested, pursuant to Standing Order 79(3) that the Committee review the draft and report to the House with respect to same in the next sitting of the House of Assembly.

The Committee conducted public hearings on September 17th and September 30th. At the hearing on September 17th, the Committee heard submissions from Service Newfoundland and Labrador (SNL), the Department responsible for legislation relating to real estate trading; and the Newfoundland and Labrador Association of Realtors (NLAR). The Committee also invited submissions, oral or written, from the public. Mr. Ted Whalen, who is licensed as a mortgage broker and real estate salesperson, was the only member of the general public to make an oral submission

At the hearing on September 17th SNL informed the Committee that the current legislation had been proclaimed in 1965 and needed updating, and that the Department had conducted consultations on the Bill as had NLAR.

The submissions of SNL and NLAR (Results of SNL consultations: *What We Heard*; SNL presentation to the Committee; *NL Association of Realtors Open House Consultations – Volume I – What We Heard*; and *Volume II – Recommendations*) are posted on the Committee's webpage:

www.assembly.nl.ca/Committees/StandingCommittees/GovServices/ga49session1/

The Deputy Minister of Service NL told the Committee that the goal of the draft legislation was to provide the best framework for meeting the needs of consumers and ensuring that the real estate industry can provide a service on which the people of the Province can rely with confidence.

The Committee discussed with the representatives of SNL and NLAR the major elements of the proposed legislation. The following proposed changes were the major themes discussed during the Department's and NLAR's consultations, and at the public hearings of the Committee:

More stringent licensing requirements

The Superintendent of Real Estate Brokers and Salespersons would set the application form; criminal background checks would be required; the regulations would prescribe requirements, qualifications and conditions for issuing licences.

Continuing education for realtors

This element received the highest favorable rating from those who responded to the EngageNL questionnaire. The Superintendent would prescribe the requirements.

Personal incorporation for realtors

The ability to establish a personal real estate corporation is a modernization and recognition of a practice common in most jurisdictions. The benefit of this provision accrues to realtors and would not be obvious to or affect consumers.

Errors and omissions insurance for realtors

This insurance would protect real estate salespersons in the case of negligence claims for damages by clients.

Enforcement of regulations

The draft bill and regulations have provisions for imposing fines for administrative violations of sums up to \$10,000 and suspending, cancelling or imposing conditions on a licence.

The maximum fine for a person convicted of an offence under the proposed Bill is \$50,000 as against \$2000.00 under the current Act.

Streamlining of Trust deposits

Where there is a dispute over a trust deposit or it is unclear who is entitled to same the Superintendent upon application of one of the parties to the dispute could direct the disbursement of the deposit.

The Superintendent could also order the release of aged trust deposits which would otherwise have to be dealt with through the courts.

Establishment of a Recovery Fund

This provision would replace bonding and protect consumers in cases of fraud or bankruptcy on the part of realtors. Aged trust deposits would be able to be moved to the Recovery Fund at the direction of the Superintendent.

Establishment of a code of conduct

The bill would allow the Superintendent to establish a code of conduct. The Superintendent would also have the power to suspend, revoke or cancel a licence for a breach of the code.

Conflict of interest avoidance

Any relationship between a real estate salesperson and a service provider such as a home inspector to whom the salesperson referred a client would have to be disclosed to the client under the code of conduct. In the case of a referral to a service provider for which the salesperson might be entitled to a fee the Bill would require disclosure of the relationship, and the details of the fee, to the client.

The current and draft legislation are silent on the question of dual agency in respect of a real estate salesperson acting for buyer and seller in the same transaction. It is therefore permissible for an agent to act for buyer and seller provided the dual agency is disclosed to both clients.

The draft bill does however prohibit a realtor who is also a mortgage broker from acting in both capacities for a client in respect of the same transaction.

The Committee agreed with most of the provisions of the draft bill. There were some differences of opinion in respect of clause 28 which was the subject of considerable discussion. This provision would prohibit the type dual agency in which a mortgage broker/real estate salesperson acts in both capacities in relation to the same transaction.

Mr. Ted Whelan, a mortgage broker/real estate salesperson who spoke to the Committee in favour of allowing these transactions, stated that the recommendations against this type of dual agency failed to take into account the level of federal regulation attaching to mortgage brokers and lending institutions. Mr. Whelan pointed out as well that the fiduciary duty of broker to client always applied. Further Mr. Whelan stated that he believed that being able to act in both capacities was in fact a benefit to the client because of the knowledge the broker/salesperson would have of both industries.

Having heard Mr. Whelan's presentation, your Committee decided to convene a second public hearing on September 30th to discuss Mr. Whelan's position with SNL and NLAR.

The CEO of NLAR told the Committee that the Association was actually opposed to dual agency in general, but that they recognized that in some circumstances to prohibit such transactions would present a hardship to consumers, suggesting that the pitfalls might be mitigated by proper disclosure requirements.

The CEO stated that the Association support the prohibition relating to mortgage broker/real estate salespersons enunciated in clause 28 included in the draft bill in the interest of consumer protection.

One example given as a reason for supporting the prohibition was a case in which a mortgage broker/real estate agent was the listing agent for the seller and mortgage broker for the buyer, as such a scenario would create an imbalance between the information available to the two parties to the transaction thereby putting the buyer at a disadvantage.

An official of Service NL explained to the Committee that in the case of malfeasance by a mortgage broker in such circumstances there would be no recourse for the buyer as the real estate legislation would not apply to the brokerage side of the transaction and there was little recourse in the *Mortgage Brokers Act*.

Some Committee members suggested that amendments to the *Mortgage Brokers Act* might address the objections expressed to clause 28 of the Real Estate Trading bill through the imposition of disclosure requirements and penalties.

Committee findings and recommendations

The Committee has considered the provisions of the draft bill, the information provided by the Service Newfoundland and Labrador, the submissions oral and written of the Newfoundland and Labrador Association of Realtors and the submission of Mr. Ted Whelan as well as the discussions which took place during the public hearings. It is the view of the Committee that the draft bill is broadly supported by the stakeholders, provides necessary safeguards for consumers and embodies the changes required to align our legislation and practices with those of other jurisdictions. The Committee further finds that the draft bill takes into account changes in business practices and communications which have taken place since the original legislation was enacted.

The Committee therefore agreed to recommend that the draft bill be introduced to the House without amendment and does hereby so recommend.

Further, in view of the presentation of Mr. Whelan and the discussions regarding clause 28 of the draft bill the Committee also agreed to suggest that Government review the *Mortgage Brokers Act* with a view to determining whether that legislation might be modified to enable mortgage broker/real estate salespersons to act for a client in both

capacities in the same transaction while protecting consumers in the case of potential or actual conflict of interest.

Note: The commencement date of the bill referred in April, January 2020, may require amendment to take into account the delay in reviewing the bill resulting from the dissolution of the Forty-Eighth General Assembly.

Respectfully submitted on behalf of the Committee,



**Pam Parsons, MHA, Harbour Grace – Port de Grave
Chair**

Committee Members

Barry Petten, MHA, Conception Bay South, Vice-Chair
Derek Bennett, MHA, Lewisporte - Twillingate
Honourable Derrick Bragg, MHA, Fogo Island – Cape Freels
Alison Coffin, MHA, St. John’s East – Quidi Vidi
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