

Service NL Real Estate Trading Act Review What We Heard

Service NL is responsible for administering the Real Estate Trading Act and the Real Estate Licensing Regulations, which govern the licensing of real estate agents and salespersons and the regulation of real estate trading in the province. The Act came into force in 1964 and, although there have been some changes to this legislation, there has not been a major update since that time.

Guided by The Way Forward and the mandate letter for the Minister of Service NL, a review of the Act was undertaken. To inform the review, Service NL sought input from stakeholders and the public regarding a number of key issues related to real estate trading, including: trust deposits; conflict of interest; code of ethics; licensing requirements and education; bonding and insurance; and salespeople.

- In total, 90 questionnaires were submitted through the EngageNL online portal during the consultation period (December 21, 2017 – March 2, 2018).
- Of those, 50 per cent indicated they lived on the Northeast Avalon and another 30 per cent lived in the eastern part of the province.
- Just over 37 per cent indicated they were a real estate salesperson, 20 per cent were real estate agents and 38 per cent were from the general public.
- While not all respondents provided written comments, they did answer all other questions.

The Newfoundland and Labrador Association of REALTORS® held a series of consultation meetings with their members and the general public throughout the province in early 2018. They submitted two reports: “What We Heard” and “Recommendations” which are available for review on their website at: www.nlar.ca/tradingactreform

Issue 1: Trust Deposits

Eighty-eight percent of respondents indicated the Real Estate Trading Act required greater clarity with respect to trust deposits. Many of the comments further reinforced the need for clarity both in the Act and in the purchase/sale agreement.

The Newfoundland and Labrador Association of REALTORS® provided the following recommendations with respect to trust deposits (see below). This was a common theme in the comments as well.

- “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.”
- “If a firm sale is cancelled by a buyer (or seller) for bad faith reasons, the deposit should automatically go to the other party.”
- “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 of Real Estate Agents and Salespersons the authority to resolve them.”

The need for a dispute resolution process, outside of the court system, was a common recommendation. One respondent wrote, “As it stands, if someone doesn't want to go to court they have no recourse and the deposit is trapped in a trust account.”

Issue 2: Conflict of Interest

When asked if consumers are being harmed by practices where there was the potential for a conflict of interest, 62 per cent of respondents replied yes. It is interesting to note that 95 per cent of the general public replied yes to this question while only 39 per cent of industry replied yes.

Specifically, 41 per cent felt exclusive listings should be banned (equally supported by industry and the general public) while, 47 per cent felt there should be restrictions on this practice.

A dual agency is when a real estate salesperson represents both the buyer and seller for the same transaction.

- Thirty-four per cent felt dual agency should be banned as a buyer is restricted to using one real estate salesperson only, and no other real estate salesperson can participate in the sale.
- Sixty-eight per cent of residents would like to see dual agency banned.
- Although only 10 per cent of real estate salespersons agreed with the ban, 49 per cent would like to see more disclosure requirements.

While the general public want more restrictions and disclosure, 22 per cent of brokers and 47 per cent of salespersons do not want more restrictions. In addition, 83 per cent of respondents indicated that real estate salespeople should not be registered under the Mortgage Brokers Act. This was also supported by the Newfoundland and Labrador Association of REALTORS®.

The Newfoundland and Labrador Association of REALTORS® submission stated “Consumers are generally not being harmed by dual agency or exclusive listings” and they recommended that Service NL not implement a ban on either. The Newfoundland and Labrador Association of REALTORS® recommended stronger disclosure requirements and dual agency be defined to apply to individual salespersons not the agency. They also stated “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.”

Issue 3: Code of Ethics

The adoption of a code of ethics for the real estate industry is supported by 96 per cent of respondents.

Of the 90 respondents the top three choices for inclusion in the code of ethics were:

- Disclosure requirements at 92 per cent;
- Conflict of interest at 87 per cent; and
- Incentives, inducements, gifts and commission sharing at 83 per cent.

Seventy-eight per cent also felt that a best interest standard, brokerage supervision and responsibilities and advertising standards should also be included in a code of ethics. Disclosure and conflict of interest were areas most often sighted as areas requiring further guidelines and rules.

The Newfoundland and Labrador Association of REALTORS® supports the adoption of a code of ethics and recommends the implementation of a discipline process to handle infractions. One component of a strong regulatory system is enforcement; it is needed to develop stronger levels of professionalism and public protection.

Issue 4: Licensing Requirements and Education

When asked about licensing requirements and education:

- Sixty per cent of respondents indicated that changes were required to the pre-licensing course and/or exam.
- Sixty-two per cent stated that there should be restrictions placed on new licensees.
- Eighty-four per cent indicated that new licensees should be mentored by an experienced salesperson for a period of time after obtaining their license.
- In addition, 93 per cent per cent of respondents supported ongoing continuing education for licensees.

The Newfoundland and Labrador Association of REALTORS® responses echoed the responses above. They provided various supplementary recommendations with respect to the above issues.

Respondents were equally divided on whether there should be different types of licences. The most common types suggested were residential and commercial licence types. NLAR indicated different licence types were not needed.

When asked what other factors should be considered to maintain a licence in the real estate profession, over half of the comments support continuing education. There was also support for compliance with a code of ethics, maintaining professional behaviour and providing a suitable Certificate of Conduct. There was also some support for salespeople needing to complete a minimum number of transactions to stay in the business.

Issue 5: Bonding and Insurance

With respect to bond requirements for the industry, there were mixed responses.

For both an agency and a salesperson, 55 per cent indicated bonds amounts should increase while 40 per cent supported staying at current levels. Seventy-five per cent of the general public felt bond amounts should be increased.

The vast majority felt insurance should be used to replace the bond requirement. The Newfoundland and Labrador Association of REALTORS® suggested setting up a Recovery Fund financed by industry members as an alternative to the bond.

The requirement to purchase insurance to cover negligence, errors, dishonesty and/or fraud was supported by 84 per cent of respondents as well as by The Newfoundland and Labrador Association of REALTORS®.

Issue 6: Salespeople

There were 50 responses to the question of whether changes are needed to allow for and provide more clarity to the various roles that have evolved in the industry. Close to half the respondents requested changes which would permit salespeople to incorporate. This recommendation was echoed by the Newfoundland and Labrador Association of REALTORS®.

Other common themes include clarity around the role of unlicensed assistants and receptionists and the use of real estate teams. Respondents also felt real estate agencies should be more responsible for their salespeople.

The Newfoundland and Labrador Association of REALTORS® recommends removing the term “agent” and replacing it with the term “broker” which is more in keeping with industry use; there was support for this in the survey as well.

Issue 7: General Comments

Do you have any further comments or suggestions for additional improvements to the legislation and regulation of the real estate industry? Are there measures you would suggest to modernize the Act taking into account the use of electronic communication, social media and other developments since the Act was first introduced?

When asked if respondents had any further comments or suggestions for modernizing the Act, 47 people responded. The most common themes are requests for advertising and social media use guidelines and changes to address the use of e-commerce for payments and signatures. Increased professionalism of the industry was mentioned by a number of respondents as well as the need for greater oversight and enforcement of consequences for offences.

The Newfoundland and Labrador Association of REALTORS® recommended increased public protection with standards, greater enforcement of the legislation including the use of adequate fines. They also spoke to current bond amounts being too low to fully cover liabilities.

They also addressed the issue of modernizing the Act especially as it pertains to electronic commerce and greater clarity in the Act with respect to advertising and marketing.