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Sent by email: [HOUS.minister@gov.bc.ca](mailto:HOUS.minister@gov.bc.ca); [Ravi.Kahlon.MLA@leg.bc.ca](mailto:Ravi.Kahlon.MLA@leg.bc.ca)

Dear Minister Ravi Kahlon,

### **Re: Concerns Regarding New Notice to End Tenancy Requirements Impacting Buyers**

On July 3, 2024, your government announced significant changes that came into effect July 18, 2024, to protect residential tenants from tenancies terminated in bad faith. Under the *Residential Tenancy Act*, a landlord can end a tenancy for personal or caretaker use.

In preparing our members to understand the new complexities of buying and selling tenant-occupied properties, a number of concerns and areas of confusion became apparent with the new rules. We are taking this opportunity to raise these concerns with you, to explain where the confusion arises in attempting to implement the rules in real life, and to recommend some refinements that will smooth out the difficulties that have been introduced into legitimate real estate transactions involving tenanted properties.

We appreciate the efforts to protect tenants from bad-faith evictions and the need to provide more rental supply, but are concerned the policy changes appear to have been crafted without adequate consultation with related sectors in terms of the multitude of new and problematic issues these changes have caused.

It has now become inadvertently more difficult for buyers, especially first-time and high-ratio-insured buyers, many of whom are current tenants, to enter the housing market. The issues identified in detail below are quite significant and require immediate attention. Much of what has been introduced is resulting in instability and confusion in the rental market. This is not improving affordability and is inadvertently reducing the supply of rental homes, rather than increasing it. There is hardship being created for tenants and purchasers alike, which we are sure was not intended. We would like to see these problems resolved quickly.

Concerns being raised by real estate professionals include:

#### **Who does the new four-month eviction notice apply to?**

The new legislation makes no distinction between a buyer of a tenanted unit who just wants to move into their new home and a landlord who might be using a bad-faith eviction as a tool to raise rents

beyond the allowable limit. This lack of clarity alone has been the subject of consternation among buyers who aren't evicting tenants for some nefarious purpose. The conflating of these two very distinct purposes is unfair to buyers who just want to occupy the homes they have purchased within a reasonable timeframe.

### **Extended notice period**

The new requirement of providing four months' notice, instead of the previous two months, for evictions due to personal or caretaker use is posing a major hurdle. While this is a problem for all buyers, this is a particular problem for high-ratio-insured buyers, including first-time buyers, who generally need mortgage default insurance to secure their financing. Mortgage insurers do not insure rental properties, and the extended notice period makes it especially difficult for buyers to get vacant possession of their properties within the time allowed by financial institutions. Without the mortgage insurance in place, buyers, and especially first-time buyers, will not be able to secure the financing they need to complete their purchase.

### **Owners are stuck**

Combining a four-month eviction notice with a 30-day dispute notice produces an effective five-month period in which a buyer can't take possession of their new home. This is impractical for buyers moving from one home to another and is too long a period to wait between completions. They can't even rely on a short-term rental to bridge that time gap because of the new government rules restricting short-term rentals under 90 days.

### **Increased down payment requirements**

Without default mortgage insurance, lenders require a minimum down payment of 20 per cent for rental properties. High-ratio-insured buyers and first-time buyers typically do not have the financial capacity for such a significant down payment. Furthermore, a default-insured mortgage holder must receive vacant possession to qualify for a default-insured mortgage and cannot close on a purchase where the former tenant has not vacated the home. The home must be classified as owner-occupied to receive mortgage insurance from Canada Mortgage and Housing Corporation, Sagen, or Canada Guaranty.

### **Pre-approval limitations**

Mortgage lenders typically allow for a 90 to 120-day rate hold period when approving mortgages for real estate purchasers. The inability to guarantee vacant possession within the 90 to 120-day period for rate holds complicates the home buying process. If the closing date is extended beyond this period, the borrower must reapply, subjecting them to potential changes in rules, rates, funding denials, increased costs and the stress test. This uncertainty increases the financial risk for buyers and is resulting in some collapsed sales.

It may also increase risks for tenants who have already had to give their notice, even though the deal may collapse. The property owner is also on the hook for the fallout from collapsed sales. The extended notice period is problematic for everyone involved.

### **Insurance coverage issues**

Homeowner insurance will not cover a situation where a tenant refuses to leave the property. This adds another layer of risk and complexity for buyers who must ensure that the property is owner-occupied.

### **New portal issues**

Creating a portal to facilitate landlords to serve notices is a worthwhile idea. But some practical considerations need to be addressed to make the portal a viable tool:

#### **Implications of generational owners**

- Our research shows that many old-stock rental buildings have generational, mom-and-pop type owners who generally keep rents reasonable for tenants.
- These older-generation landlords may not know how to use these sophisticated “portals” – they may still use paper-based systems and are rarely technologically savvy. They often still use faxes and don’t rely on email.
- Requiring landlords to have a “BCeID” to access such mandatory online-only documents is not going to work in practice for this large class of landlords.
- By adding more and more regulation, these owners are just going to get fed up and sell (which is already happening). This results in a reduced stock of reasonably priced rental units, which is a harmful outcome for tenants.

#### **Privacy implications**

- The portal will require landlords to provide details about the persons moving into the home. The details of the new occupant of the home will be shared with the tenant. Apparently, this includes sharing a copy of the Contract of Purchase and Sale, which includes personal and confidential information about the buyer which was never intended to be accessed outside of the transaction. Inappropriate use of this and any other private information by a former tenant could compromise the future safety of the buyer, especially if the former tenant blames the buyer for evicting them. The buyer’s financial security could also be compromised.
- This new requirement is raising serious implications for the privacy of buyers. If a buyer is themselves moving into their newly bought unit, and it was always the intention that the unit be owner-occupied, then what is the justification for sharing any private information of the buyer with a former tenant? There is no bad-faith eviction in question here.

#### **Recommended changes**

1. Adjust the notice rules for conventional mortgage buyers to allow for vacant possession within no longer than a three-month time period.
2. Allow high-ratio insured buyers (including first-time buyers) who will be occupying the property to continue to have a two-month notice period because of the financial hardship caused by a longer delay in them taking possession of their property, and the likelihood of them running afoul of financing restrictions.

3. Require that the privacy of buyers be protected. Use existing, publicly accessible systems as the source of information on buyers to be reported by landlords to former tenants. Contracts of Purchase and Sale are not to be shared by anyone outside of the transaction in question, and certainly not by tenants who are not a party to the transaction. The information that is to be provided to former tenants can be done through the use of a new standard Statutory Declaration form signed by the new owner, without resorting to the sharing of a confidential contract or other personal information.
4. Provide a more paper-based alternative to the portal for use by less technically savvy landlords. Or allow the existing paper forms to still be used for giving tenants notice.
5. Eliminate the reporting requirement for buyers who intend to occupy their own unit. The buyer's intent could be documented by use of a Statutory Declaration or as part of the Property Transfer Tax return process. An early sale of the unit could be tracked through the Land Titles or BC Assessment systems. The government already has its own sources of information to verify the occupancy status of an owner and that the unit hasn't sold within the year. The tenant shouldn't be responsible for following up on a suspicion about a landlord's intent with respect to a unit's occupancy. The government itself already has the necessary proof at hand, which it readily uses for other purposes, for example, verifying fair market value associated with the Property Transfer Tax. Allow the rules for short-term rentals to accommodate property owners or buyers who are stuck between completions if the rental is needed for a period under 90 days.

We are being told by REALTORS®, mortgage brokers, and clients that the increasing regulatory burden and cost is making rental property owners question whether they will be staying in the business. Increasingly, they are choosing to sell either to institutional owners who increase rents to better meet costs of operation. Or they are selling to those who would redevelop older properties, and likely eliminate the more affordable units.

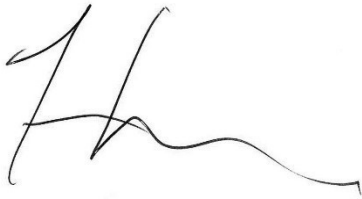
Our research indicates that owners of tenanted properties are finding it harder to sell these units, because of the regulatory load and costs imposed on landlords. There are many units that are being left vacant rather than having a tenant living there. This is even true for new condo units that are reaching completion. They are much easier to sell as vacant units so tenants are not getting the benefit of these coming onto the market. It is only recently that this kind of calculation has come into play in terms of owners' decisions to sell. This is hardly conducive to increasing the stock of rental units in the marketplace.

BCREA has been advocating for several years for the government to create a permanent housing roundtable. This would be a small but carefully curated group of housing policy experts comprised of representatives selected from the continuum of organizations that represent all aspects of the housing sector in BC. The issues raised in this letter are yet another example of why this working group is so vitally needed. The housing roundtable would be able to provide early advice to government in the creation of new or updated housing policy, would foster adequate pressure-testing of new policy, and would be a useful sounding board for government to consult with on the details of housing legislation and programs. These people are the experts in their fields and could help government make intelligent

and innovative decisions that will be based on correct and sound evidence. I urge you once again to consider the roundtable process.

We would welcome further discussion on any of the above concerns and recommendations.

Sincerely,



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