



Bahar Academy[®]
Canadian Private school

PROPERTY MANAGEMENT

Chapter 2: Real Estate Service Act of BC

COURSE OUTLINE

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- * Organizations in Real Estate Industry

2

- * BCFSa
- * Superintendent of Real Estate
- * Real Estate Foundation
- * E&O
- * RE Compensation

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- * Voluntary Organizations:
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Introduction

In **2004**, the provincial government introduced two new statutes that governed the sale of real estate in BC: the Real Estate Services Act (**RESA**), and Real Estate Development Marketing Act (**REDMA**).

RESA: Focused on activities of real estate professionals who provide trading services related to real estate, rental property management services, and strata management services.

REDMA: Focused on activities of real estate developers marketing various forms of real estate developments such as strata lots, cooperatives, and shared interests.

In **2016**, the provincial government amended RESA and transferred the rule making powers from the primary regulators (Real Estate Council of BC (**RECBC**) and the Office of the Superintendent of Real Estate (**OSRE**) to a dual regulator system between the OSRE and RECBC to increase oversight of the real estate industry and enhance consumer protection.

In **2021** RESA was amended once again to integrate RECBC and OSRE with the British Columbia Financial Services Authority (**BCFSA**).

The amendments added the regulation of real estate service to the scope of BCFSA's regulatory functions and the overall intention of these amendments to RESA was to create a **single**, modern, efficient and integrated regulator of British Columbia's financial services sector.

BCFSA sets and enforces standards of conduct under RESA and protects consumers from unlicensed real estate services activities.

5 Statutory Organizations:

- 1- British Columbia Financial Services Authority (BCFSA)
- 2- Office of Superintendent of Real Estate (OSRE)
- 3- Real Estate foundation of BC (REFBC)
- 4- Real Estate Errors and Omissions Insurance Corporation (E&O)
- 5- Real Estate Compensation Fund Corporation (RECFC)

(Membership to all of these Statutory Organizations is mandatory)

4 Voluntary Organizations

- 1- **Canadian** Real Estate Association (CREA)
- 2- **British Columbia** Real Estate Association and Local Boards (BCREA)
- 3- Real Estate Institute of **Canada** (REIC)
- 4- Real Estate Institute of **British Columbia** (REIBC)

1- BCFSA

(The Regulatory and Licensing Body)

BCFSA is a single crown regulatory agency in BC that has the regulatory responsibility over the British Columbia financial services sectors and possesses certain powers and **duties** under the RESA includes:

The main objective is to **protect the public** that standards of practice are provided by licensed **real estate professionals**, and are not being performed by **unlicensed persons**.

- Licensing** (issuing and renewing)

- Education** (required for licensing and supplementary education)

- Disciplinary proceedings** (hearing, redo education, suspend or cancel the license)

- Real Estate Development Marketing**

- Mortgage brokers**

- BCFSA is also **responsible for**: Credit unions, The Credit Union Deposit Insurance, Corporations of BC, Pension Plans, Trust Companies, and Insurance Companies

2- Superintendent of Real Estate

- Superintendent is the **chief executive officer** of BCFSA
- Superintendent is appointed by BCFSA's Board of Directors
- Carry out investigations and disciplinary functions in relation to licensees, and unlicensed persons
- Is given the power to the position of:
the Superintendent of Financial Institutions, Registrar of Mortgage Brokers, and other similar positions
- All licensing application must be made to Superintendent
- The standard form of disclosure statement is set out by **Superintendent** and contains the material fact (REDMA)

3- Real Estate Foundation

- it is also called **Real Estate Law Reform**
- Made up of 5 members of Board of Governors, for a period of 3 to maximum 6 years term
- Responsible to improve the profession of real estate
- Carry out activities, projects, and researches for public or real estate professional in relation to real estate services
- Funded from the interest earned on the **trust accounts** of brokerages

4- Real Estate Errors and Omissions Insurance Corporation (E&O)

- It is created as an affordable method of **protecting licensees** from financial loss due to error and omission
- Made up of 7 Directors (1 appointed by the **Lieutenant Governor**, the other **3s by the BCREA**, and the other **3s by the first 4 appointed**)
- funded by Premiums form part of the licensee's fees; failure to pay would result in immediate suspension
- Compulsory insurance program to **protect the public** against negligent acts

Errors and Omissions Indemnity Plan:

- It is a condition of licensing and each licensee in any province must be insured under E & O Indemnity Plan
- **Limits of Liability:** E & O Insurance Corporation will pay all sum, up to a limit of \$1 million (the licensee will be liable to pay as a result of an error, omission or negligent act under RESA)
- **Defense Costs:** E & O Insurance Corporation will pay the licensee's defense costs (up to \$1 million) but they have the right to settle a claim without the licensee's consent
- **Deductible:** A \$2,000 deductible is payable by each licensee + \$2,000 by their managing broker (in total \$4,000) if the damages are paid but it is refundable if the claim was dismissed at a trial
- **Premium:** A \$350 annual premium per licensee(\$700 for the two year) and it is refundable if licensees surrenders their license during the first year
- **Policy Territory:** The coverage applies to all claims arising anywhere in Canadaes

Exemptions from (O & E) Coverage

- 1- Acting as an insurance agent/broker, builder, contractor, developer, mortgagee/lender, notary public, appraiser, or court appointed administrator.
- 2- Transaction with ownership interest
- 3- Commission or fees disputes
- 4- Bodily injury, sickness, disease, or death of any person
- 5- Dishonesty, fraudulent, criminal, or malicious acts or malicious omissions
- 6- Claims under the Human Rights Code
- 7- Residential Tenancy claims

5- Real Estate Compensation Fund Corporation

- Compensation will be paid to a person (client/customer) in relation to a real estate transaction for funds that were misappropriate, intentionally not paid by licensee or anyone else in the brokerage
- Made up of 5 member Board appointed by **BCREA**
- Funded by licensing fees

Voluntary Organizations

(Membership to all of these Voluntary Organizations is **optional**)

Ethics

1- Canadian Real Estate Association (CREA)

- It is a national organization comprising of **licensees and real estate boards** across the country, and **provincial real estate associations**
- Represent members at the **federal level**
- Created the **REALTOR code of ethics** (It consists of 3 parts: preamble (introduction and history); (a set of professional rules of conduct that must be adopted as the minimum standard by real estate boards.
- Stated that the REALTORS are **committed to provide professional services**, and Golden Rules (guideline for REALTORS); and standards of business practice with 29 articles)

2- BC Real Estate Association and Local Boards (BCREA)

- Comprised of the 10 real estate local boards and more than 23,000 REALTORS
(REALTORS has an option to join one of these boards)
- **REALTOR TradeMark**
- Access to MLS (Multiple Listing Service; without membership, no access)
- **Enforce ethics** (REALTOR Code **directly enforce** by the **Real Estate Local Boards**)
- Providing extensive communications network, **standard forms**, continuing education program for required membership in a real estate board, and publishing newsletters)

3- Real Estate Institute of Canada (REIC)

- Providing lifelong learning, awarding professional designations “**RI**”, providing networking opportunities, and promoting real estate industry

4- Real Estate Institute of BC (REIBC)

Comprised of members from a variety of sectors in RE Industry

- Responsible for advanced education
- Grant the Professional **designation** “**RI**” (one should meet the educational and experience standards for receiving this designation)

REDMA (Real Estate Development Marketing Act)

Regulates the marketing of “**development units**” in BC

- To **protect buyers** from developers by requiring developers to **disclose all material facts** about development units to them.
- To enable the efficient and profitable operation development section to protect the **developers’ benefits**.

Marketing Requirements

- **In order to protect purchasers:** developers must: Meet any preliminary **approvals** or requirements for the type of property, Assure the **purchaser’s title**, Prepare and **file a disclosure statement to superintendent**, Deliver Disclosure statement to ensure that investors or purchasers have adequate information to make **informed** purchase/investment decisions.

Disclosure Statement

A document prepared by the developer of a subdivision to ensure that investors or purchasers have adequate information for their purchase. (The standard exact form of disclosure statement is set out by **Superintendent** and contains the material fact)

- A copy of Disclosure Statement, must be **provided** to BCFSA and to purchasers, and the purchaser should have an opportunity to read and give a written acknowledgement to the developer.
- A **new disclosure statement is required** if: identity of the developer changes, the BCFSA gives notice for a new disclosure statement to be filed, or the court appoints a receiver or trustee in bankruptcy over the development property.

Material Fact

- A fact or a proposal which would affect a reasonable person's decision to buy or sell a property. Anything which may **affect** or could reasonably be expected to **affect** the value, price, or use of a unit or a development and should be disclosed to the other party such as material change or latent defects.

Typical Contents

- Includes: information about the developer, general description of the development, strata information, voting rights, limited common property, bylaw, parking, budgets, insurance, any kind of restrictions such as rental restrictions, environmental issues, construction and warranties, approvals and finances.

Rescission Rights

In the law of contracts, a rescission right is a **unilateral unmaking, or undoing the contract** from the beginning. The **two types** contained are:

1- Seven Days Rescission Rights

- The purchaser may always rescind **within 7 days**, for any reason by serving a written notice to developer within 7 days after the later of:
 - Date of contract
 - Date of developer receives written acknowledgement with respect to reading the disclosure statement

2- Rescission Rights for Disclosure Statement Breaches

- Failure to deliver a disclosure statement (indefinite rescission rights, even after title transferred it is a breach of REDMA), so the purchase agreement would be unenforceable and purchaser may not complete the transaction and there is no right for developers to bring a lawsuit against the purchaser.
- Failure to deliver an amendment to disclosure statement, (any material changes must result in an amendment and should deliver to the purchaser) **only if:**
 - An amendment should be reasonably relevant to the purchaser's decision to enter into the purchase agreement,
 - **Or** it has been no more than one year since the title has been transferred.

Real Estate Development Units: A development unit is defined in REDMA to a subdivision lot, bare land strata lot, strata lot, cooperative interest, timeshares interest, a shared interest in land or leasehold unit provided they are located in a development property.

Categories of **Development Property** under REDMA is defined a 5+ subdivision lots, 5+ bare land strata lots, 2+ cooperative interest, 2+ shared interest in land or 5+ leasehold units located in a development property.

The developers can only **market the development units** when :

- Strata plan has been deposited in the LTO(Land title Office)
- The building permit has been issued by municipality or government authority.
- In terms of buying a development plan, **deposits** from buyers should be placed with a brokerage, lawyer, notary, ... as a trustee in a trust account and developers can access the money for construction expenses.

The Regulatory Framework for Licenses in BC (According to RESA)

- RESA references are included: Regulations, Rules and Bylaws

1- Regulation

Made by Lieutenant governor (province executive officer) to regulate Fundamental aspects of Real Estate licensing and practice. The regulations deal with different matters **including:**

- Exemptions from licensing
- Fees payable by licensees
- Trust account issues
- Disciplinary proceedings
- Administrative penalties
- Required standard terms in certain contracts

Exemptions Within The Regulations:

- Employees of developers, notaries, appraisers and property inspectors, auctioneers, agents of expropriation authorities, individuals to refer others to a licensee, accountants to purchase and sale of a business
- Principal's employee who works and provides real estate service for the principal
- Individuals involved in mining, oil and gas activities
- Government and governments corporations
- Collection agents for their own business

2- Rules

- Created by BCFSA to regulate more of the **day-to-day activities** of licensees and respect licensing or regulating licensees in relation to the provision of real estate services.

3- Bylaws

- Created by BCFSA to regulate their internal business and affairs. The scope is anything it considers necessary for its business and affairs.

The Rules dealing with different matters including:

- Licensing (the term of the license is **2 years** and after that the licensee is subject to take some courses and renew the license)
- Regulating licensees
- General responsibilities of licensees
- Business practices
- Relationships with principals and parties
- Dealing with other licensees and unlicensed persons
- Brokerage accounts and financial requirements
- Brokerage records
- Licensees' exemptions

Exemptions Within The Rules:

- A person does not require a license if selling his/her **own** property
- Rental property and strata management licensees on their **own** behalf in relation to their own property
- A licensee should always refer to **RESA** to ensure of all the exemptions

Licensing System

RESA prescribes 4 levels of licenses:

Brokerage, Managing broker, Associate broker, and representative

The main purpose of **RESA** is to protect the public by ensuring that:

1- Establish minimum standards for licencing:

- Educational requirements
- Good reputation
- 19 years of age and older

2- Establish minimum standards of conduct:

- Once licenced what can you do, what must you do, what cannot you do

3- Appointed BCFSA as a single regulator and empowered the OSRE (from and within BCFSA) to perform key regulatory functions under RESA.

Activities Requiring a License under RESA

Only persons who have the Real Estate License or Exempt from the license can provide a real estate service with expectation of remuneration.

To start a job as a licensee, a person needs to acquire one of these licenses:

-Rental Property Management (Collecting rents, security deposits, managing real estate on behalf of the owner, ...)

-Strata Management Services (Collecting/ holding strata fees, contributions, levies,..., exercising delegated powers and duties of a strata corporation or strata council)

-Real Estate Trading Services (Advising on price, finding property, showing, negotiating, presenting offers, receiving deposits all in relation to Real Estate, ...) **Trade** means: transaction for purchase, sale, lease,..., assignment of any kind of contract, and a prospective trade. **Real Estate Trade Record Sheet** includes: the sale price or any kind of consideration, The nature of trade in RE, The name and address of all parties on the trade).

Categories of License

RESA provides 4 different categories of licenses under the Rules.

This category is based on the services provided and these services will permit and determine the category of license (**Trading, Strata management, Rental management**). The license category of the managing broker will determine the category of services provided by the brokerage and its licensees.

Applying for a License

An application must be submitted to **BCFSA** in order to obtain a license. To obtain any of these licenses, the brokerage must be identified, because a person may only be licensed in relation to **one brokerage** or provide real estate services on behalf of the brokerage to which they are licensed.

To issue a license, **BCFSA** will conduct an **investigation** about that person, and for any misleading, untrue information, a license may be refused, suspended or canceled. The person who applies for the license must not be convicted of an offense, disciplined by a professional body, or have been disciplined under real estate, insurance, mortgage broker, or any other legislation and jurisdiction in BC.

1- Brokerage

It is a **license** that authorizes a brokerage to provide real estate services through a managing broker, associate broker or representative.

It is not a person but a client always **signs a contract** with a brokerage not with any persons within the brokerage such as a licensee (brokerage is the provider and designates individual licensees to do the actual work). A licensee should always work for a brokerage in order to keep the license active. All compensations earned in connection with the real estate services must first go to brokerages' trust account, and then brokerage will pay the licensee's remuneration and licensees can never accept any kind of remunerations or gifts from anyone other than their brokerage, otherwise a breach of contract would happen)

Brokerage must maintain all of these records and keep them for at least **7 years**: maintain proper books, records of real estate's rules, financial and non-financial records, required records files and submit to BCFSA, annual records to BCFSA (3 things: financial statements, accountant's report, and brokerage activity report), and accounts (minimum ONE **Trust account**)

2- Managing Broker

The licensee who is responsible for brokerage and other licensees and must provide real estate services.

Requirements:

- 1- At least 19 years and older;
- 2- Be of good reputation
- 3- Meet the educational and experience requirements
4. **Two years** frequent experience with no gap within the last 5 years (licensed)

Responsibilities

- Responsible for exercising the rights conferred on the brokerage, as well as for the performance of the duties imposed on the brokerage by its license
- Controls/ conducts of brokerage's business and supervise of associate brokers and representatives
- Must be actively engaged in the management of the brokerage and ensure that all business is carried out in accordance with **RESA**
- Must take reasonable steps to deal with any issues of professional misconduct or negligent conduct.

3- Associate Broker

This licensee who meets all the educational requirements, and experience to be a managing broker, but prefers to provide services under the managing broker's supervision.

4- Representative (Licensee)

- **At least 19 years or older**
- **Be of good reputation**
- **Meet the educational and requirements**

Perform:

- 1- Rental Management
- 2- Strata Management
- 3- Trading Services experience

Responsibilities of the Licensees

- Provide all the records (contracts, disclosure forms, accounting statements, ... under RESA) for the managing broker
- Keep informed the managing broker of all their activities
- Respond promptly to managing broker
- Supervise all other employees work on the brokerage
- Promptly notify managing broker of misconduct of themselves, or others in the brokerage

Unlicensed Assistants

Can:

- Unlock property to show
- Filing/bookkeeping
- Draft documents (e.g. draft a contract)
- To be witness for signatures
- Arrange a property for repairs

Cannot:

- Cannot be a host for showing and open house
- Cannot provide guidance
- Cannot present or negotiate offers
- Cannot communicate with consumers
- Cannot obtain or renew contracts

Teams

A group of licensed and unlicensed people from a single brokerage who agree to work as a team to provide a better level of service to gain experience.

- Must include at least two people, and one of whom should be licensed
- Team represents one collective agent (as one agent)
- All licensed team members must be with the same brokerage
- Cannot separate agency relationships among team members (such as one represent a buyer and one represent a seller in one transaction which will be a Dual Agency and it is prohibited)
- A licensee cannot be a member of more than one team at a time
- Name and member of the team should be registered with BCFSA, and team members must advise BCFSA in writing when they join or leave

Personal Real Estate Corporations

Available to managing brokers, associate brokers, and representatives, but it is more suitable for experienced agents. **A corporation licensed** under RESA that may be used by a licensee through which they **provide** real estate services as an individual licensee. A licensee can take advantage of incorporation, which may permit better planning of income and tax streams but it is more suitable for experienced license. It is like **a one person corporation**, and the licensee is the only director, shareholder, and president and will do all the activities and will be liable to the third parties.

PREC is a licensee who may only be licensed in relation to one brokerage or provide real estate services on behalf of the brokerage to which they are licensed.

Importance of Agency Law in Providing Real Estate Services

Why does someone hire an agent?

- 1- Agents possess knowledge, skills, and abilities that principal might not have
- 2- Geographic and other limitations
- 3- Lack of time or desire.

Agency Law: It is very important in providing Real Estate Services. Agency **is a relationship** in which one person (agent) acts on behalf of another (principal) in dealing with others.

The Role of the Fiduciary: Real estate agents are **fiduciaries**, and principals are **beneficiaries**. Relationship defined by trust and confidence where fiduciaries can exercise power over the beneficiary, and impact their interests.

Fiduciary duties:

- **Duty of loyalty** (it is the core of fiduciary duty; fiduciary must act solely for beneficiary's benefit at all time)
- **Duty of to avoid conflict of interest**
- **Duty of full disclosure**
- **Duty of confidentiality for always**
- **Duty to obey lawful instruction**

Receiver: A person authorized to exercise all of the powers necessary to wind up the business and affairs

Trust Accounts: an account that the account holder holds money/funds for, and on benefit of another party (the principal). A brokerage must have at least one trust account with one or more saving institutes in BC (e.g. to deposit money from a buyer by the brokerage).

- Licensees must promptly pay or deliver to the brokerage all the money or cheques and must deposit them into brokerages' trust account unless the money should deliver to a third party
- Hold/receive from/for/on behalf of a principal in relation to services
- Hold/ receive on account of remuneration for services
- Interests on brokerage trust accounts is payable to **Real Estate Foundation** (exception: interest will be payable according to principal's instruction, and principal may request the money to be hold in a separate trust account, (e.g. commercial buildings are expensive and deposits would be kept for a longer period so buyer may ask for the interest))

Withdrawals from Trust Accounts

Permitted only if:

- Money deposit to trust account by mistake
- Interest want to pay to Real Estate Foundation
- Money to pay for licensee's remuneration
- Unclaimed money under section 32 of RESA
- Money paid to court for arisen dispute between parties over their rights
- Money accordance with a court order
- To follow the principal's lawful instruction
- It cannot be used for personal or brokerage expenses

Discipline and Enforcement

The two categories of **Complaints** under **RESA** which sets out as an improper conduct by licensees:

1- Professional misconduct

2- Conduct unbecoming a licensee

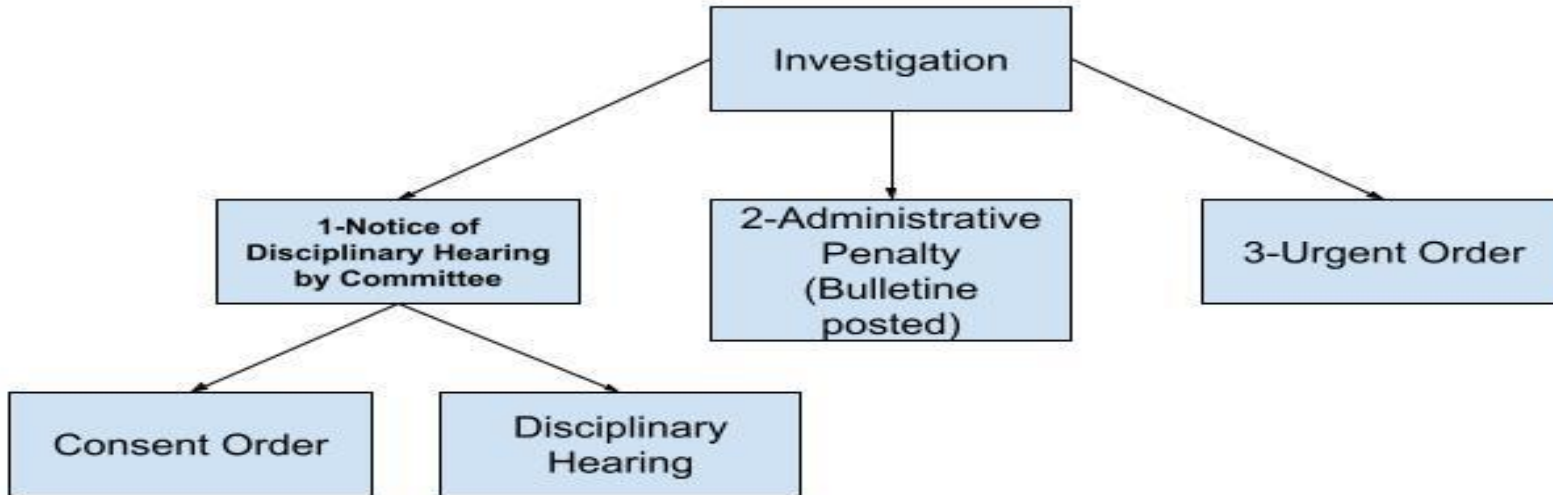
Professional Misconduct

- Contravene Act to RESA (Regulations or Rules)
- Breach a condition of license
- Wrongful taking or deceptive dealing
- Demonstrate incompetence
- Make any misleading or false statement
- Fail to comply with BCFSA's investigation, or order

Conduct unbecoming a licensee

- Contrary to the best interest of public
- Undermines public confidence on RE Industry
- Bring the RE Industry into disrepute

Discipline Process



Discipline Process

- **Investigation:** the “compliance committee” will review all the evidence to investigate the complaint, and will decide if the licensee is liable or not, and either dismiss the case or order the disciplinary hearing. BCFSA can conduct an investigation with or without receiving any complaint, and to determine whether a licensee has committed professional misconduct or conduct unbecoming a licensee, or not. Investigations include: licensees, former licensees, or anyone dealing with Real Estate Industry.
- **Notice of Disciplinary Hearing:** The notice includes: to describe the nature of complaint, time and place, and to know that the BCFSA will proceed to hearing with or without presenting the licensee. It must be given at least 21 days in advance of the hearing. After receiving the notice, a licensee may choose either disciplinary hearing or consent order.
- **Consent Order:** The licensee may decide to enter into an agreement with BCFSA and accept the misconduct.

Discipline Process

- **Administrative Penalty:** If the licensee accept the misconduct, without proceeding to Disciplinary hearing, the case will proceed to Administrative Penalty stage, and the misconduct will be posted on the BCFSA's Bulletin (**Bulletin Posted**)
- **Disciplinary Hearing:** If the licensee does not willing to consent, a disciplinary hearing will be held so the evidence will be gathered and delivered by the licensee's lawyer and witnesses will be called and as a conclusion the BCFSA will order whether the licensee committed a misconduct or not.
- **Urgent Order:** In the case of any misconduct to the public interest, BCFSA may make an urgent order, BCFSA without giving any notice, may be suspended, restricted or canceled the license, without giving any notice, or holding any disciplinary hearing, and the licensee will be only provided by the notice and the reasons.

Discipline Committees' Orders:

- Warning /reprimand
- Complete disciplinary education
- Restriction on a license/place a condition
- License Suspension/cancellation
- Pay all or part of hearing expenses
- Pay disciplinary penalties (up to \$250,000 for individuals and \$500,000 for brokerage for each contravention, and an extra \$5,000 by Superintendent as an administrative penalty)
- Return all compensation earned in relation to the transaction in which the misconduct occurred



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