



WHAT WE HEARD REPORT

REAL ESTATE AGENTS' LICENSING ACT – PUBLIC ENGAGEMENT

SEPTEMBER | 2023

If you would like this information in another official language, call us.

English

Si vous voulez ces informations dans une autre langue officielle, contactez-nous.

French

Kīspin ki nitawihitīn ē nīhīyawihk ōma ācimōwin, tipwāsinān.

Cree

Tłıchq̄ yatı k'èè. Dı wegodi newq̄ dè, gots'ō gonede.

Tłıchq̄

ʔerihit'ís Dēne Sųfıné yatı t'a huts'elkēr xa beyáyatı theᓯᓯ ʔat'e, nuwe ts'ēn yóftı.

Chipewyan

Edı gondı dehgáh got'je zhatıé k'éé edat'éh enahddhę nıde naxets'é edahí.

South Slavey

K'áhshó got'jne xədə k'é hederı ʔedjht'é yerınwę nıde dúle.

North Slavey

Jii gwandak izhii ginjık vat'atr'ijáhch'uu zhit yınohthan jı', diits'at ginohkhii.

Gwich'in

Uvanittuaq ilitchurisukupku Inuvialuktun, ququaqłuta.

Inuvialuktun

Ć^bđ< n n^{sb}Δ^c ʌrljđł^c Δ^đ n đ^c ʔ^{sb} ʔ^l ʔⁿ b, đ^c n^a đ^c đ^{sb} ʔ^c ʔ^a ʔ^c.

Inuktitut

Hapkua titiqqat pijumagupkit Inuinnaqtun, uvaptinnut hivajarlutit.

Inuinnaqtun

Indigenous Languages:

867 767-9346 Ext.71037

French:

867-767-9348

866-561-1664 Toll Free

Table of Contents

Background.....	2
A. The Real Estate Agents' Licensing Act.....	2
B. Public and Stakeholder Engagement.....	2
What We Heard.....	4
1. Expanding and Clarifying Licensing.....	4
2. Disciplinary Process and Public Disclosure.....	6
3. Code of Conduct.....	7
4. Standardized Forms.....	9
5. Dual Agency.....	9
6. Physical Business Office.....	11
7. General Comments.....	12
Conclusion.....	15
A. Summary Table.....	15
B. What's Next?.....	16

Background

A. The Real Estate Agents' Licensing Act

The [*Real Estate Agents' Licensing Act*](#) (REALA) came into force on January 1, 1991 and the accompanying Regulations came into force in 1992. Other than minor amendments, neither REALA nor its Regulations have been comprehensively updated since its enactment.

REALA and its Regulations are responsible for:

- Defining and establishing qualifications for those “trading” in real estate;
- Regulating and licensing of those covered under the Act;
- Administering licensing fees and bonds;
- Establishing criteria for investigative powers under the Act, including offences and punishments; and
- Regulating trading inside and outside of the Northwest Territories (NWT).

Specific concerns regarding REALA have been raised by Members of the Legislative Assembly, industry professionals and residents of the NWT over the past decade. These concerns have included the topics of property disclosure, dual agency, the operation of real estate private sale websites, the regulation of adjacent professions, the introduction of the Canadian Real Estate Association's Realtor Code and increasing transparency overall. In response to these concerns, the Minister of Municipal and Community Affairs (MACA) committed to review REALA and conduct engagement in order to determine if a legislative update was warranted.

B. Public and Stakeholder Engagement

In 2022, MACA began a preliminary legislative review of REALA to determine where REALA should be prioritized amongst MACA's efforts to review and update the other pieces of legislation which the department administers.

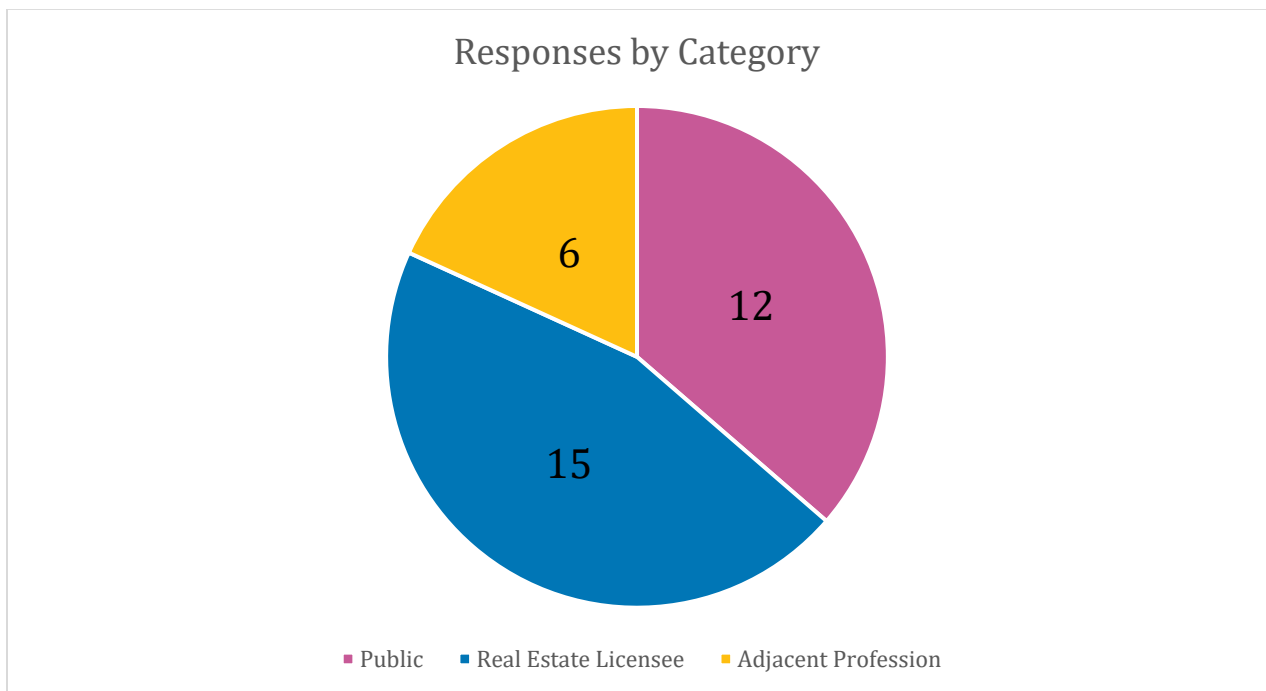
The initial list of issues identified in REALA were drawn from a jurisdictional scan of Canada where the real estate industry-related legislation had been recently updated (Manitoba and Newfoundland and Labrador) or where the jurisdiction is close or similar to the NWT (Alberta and the Yukon).

Based on this research, MACA released the *Review of the Real Estate Agents' Licensing Act Survey Questionnaire* (the survey) on February 27, 2023, and encouraged engagement through a public press release and newspaper ad to engage with the public and industry stakeholders to determine if legislative changes are required. Responses were accepted until April 17, 2023.

MACA sent letters directly to 61 stakeholders informing them of the engagement and inviting their participation. This list of stakeholders included Northwest Territories-based real estate salespersons, home inspectors, property managers, lawyers, financial institutions, and several organizations that included the Yellowknife Chamber of Commerce, the NWT Chamber of Commerce, the NWT Association of Communities, the Local Government Administrators of the NWT and the NWT Association of Realtors (NWTAR).

In total, MACA received 33 survey responses from the public, real estate agents or salespersons (licensees) and others employed in a profession connected to the real estate industry (adjacent professionals), including property managers, mortgage brokers, lawyers or other similar professions. This What We Heard Report is based on these responses. Please see the table below for a breakdown.

Table 1: Number of Responses by Self-Identification Category



What We Heard

This section of the report follows the outline of the survey in that it includes a short summary of the issue presented and then follows with the questions asked and an analysis of the responses received.¹ The analysis represents the overall themes heard from respondents; it does not represent where a particular suggestion was identified by only one respondent.

The survey was focused on six main issues outlined in the following topics:

1. Expanding and Clarifying Licensing
 - 1.1 Additional Licensing
 - 1.2 Private Sale Services
2. Disciplinary Process and Public Disclosure
3. Code of Conduct
4. Standardized Forms
5. Dual Agency
6. Physical Business Office

1. Expanding and Clarifying Licensing

As it currently exists, REALA only covers the licensing and regulation of persons who “trade” real estate. Trading is currently defined in REALA as “(a) a transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise, (b) an offer or attempt to list real estate for a transaction referred to in paragraph (a), or (c) an advertisement, negotiation or other act which directly or indirectly furthers a transaction, offer or attempt referred to in paragraph (a) or (b).” While the term “property manager” is defined in the Regulations, the term is not explicitly used or defined in the Act. Some other jurisdictions in Canada including Manitoba and Alberta have expanded their legislation to include professionals adjacent to the real estate industry. In addition, there has been increasing interest in regulating or otherwise clarifying the impact and role of online services that assist with the sale of real estate.

1.1 Additional Licensing

Other professions that work in real estate – including home inspectors, and real estate appraisers – are often regulated or licensed under real estate acts across Canada. REALA currently does not address these professions.

¹ All percentages presented below have been rounded to the nearest whole number for simplicity.

1.1 What We Asked:

- Should Home Inspectors be licensed under the Act?
- Should Real Estate Appraisers be licensed under the Act?
- Are there other professions that should be licensed under the Act? If yes, what other professions should be licensed?

1.1 What We Heard:

- 23 of 33 respondents (70%) were in favour of including Home Inspectors under the Act.
 - 100% of public respondents were in favour.
 - 47% of real estate licensees and 67% of adjacent professionals were in favour.
- 22 of 33 respondents (67%) were in favour of including Real Estate Appraisers under the Act.
 - 92% of public respondents were in favour.
 - 47% of real estate licensees and 67% of adjacent professionals were in favour.
- 24 of 33 respondents (73%) were not in favour of adding other professions under the Act.
 - 75% of public respondents were opposed.
 - 80% of real estate licensees and 50% of adjacent professionals were opposed.

1.2 Private Sale Services

Under REALA, those who “trade” in real estate are required to be licensed under the Act. REALA is silent on individuals or businesses that offer services that assist a homeowner in selling their house privately, including online services. These services could include providing a “For Sale” sign or assisting the private seller with advertising the property for sale, including web advertising.

While not standard across Canada, there are jurisdictions, such as Manitoba’s [Real Estate Services Act](#), that regulate these businesses as “private sales services”.²

1.2 What We Asked:

- Should private sales services, such as real estate advertising websites, that do not fall under the definition of trading in real estate, be required to be regulated under the Act? If yes, how should these services be defined?

² Manitoba *Real Estate Services Act*, C.C.S.M. c. R21, Section 1.

- Please explain why you feel that private sale services should or should not be regulated under the Act.

1.2 What We Heard:

- 22 of 33 respondents (67%) were not in favour of defining and regulating private sale services under the Act.
 - 83% of public respondents were not in favour of defining and regulating private sale services under the Act.
 - 53% of real estate licensees and 67% of adjacent professionals were not in favour of defining and regulating private sale services under the Act.
- Amongst those not in favour of expanding licencing to include private sale services, respondents emphasized that these are private individuals making transactions, and should not be regulated under this Act. In addition, the point was made that as long as these companies do not offer the same services as those regulated under REALA, they should not be regulated.
- Amongst respondents in favour of expanding licencing to include private sale services, particularly those that identified themselves as real estate licensees, the main consideration was to better define those services that provide advertising without the representation of a licenced salesperson, including a disclaimer differentiating their services from those of licenced salespersons.

Other Comments

- Based on the written responses received, there was significant concern surrounding the over-regulation of private sales, which respondents made clear should be viewed as the risk and responsibility of private individuals, rather than something to be regulated by legislation.

2. Disciplinary Process and Public Disclosure

Given the high degree of public trust required of members of the real estate industry, multiple jurisdictions in Canada permit the release of information of those disciplined under their respective acts. Acts such as Newfoundland's [Real Estate Trading Act](#) and Manitoba's [Real Estate Services Act](#), allow for the publication of information, including the name of the registrant and the outcome of any disciplinary actions. REALA is currently silent on the publishing of disciplinary outcomes.

2. What We Asked:

- When someone licensed has broken the requirements of the Act, should information about that violation be released to the public?
- Are you aware of the current disciplinary process under the Act?

- Aside from the possibility of public disclosure, would you like to see any other modifications to the disciplinary process?

2. What We Heard:

- 21 of 33 respondents (64%) were in favour of the public disclosure of information regarding confirmed violations of the Act.
 - 83% of public respondents were in favour of the public disclosure of information regarding confirmed violations of the Act.
 - 40% of real estate licensees and 83% of adjacent professionals were in favour of the public disclosure of information regarding confirmed violations of the Act.
- 20 of 33 respondents (61%) reported that they were not aware of the current disciplinary process under the Act.
 - 83% of public respondents reported that they were not aware of the current disciplinary process under the Act.
 - 27% of real estate licensees and 100% of adjacent professionals reported that they were not aware of the current disciplinary process under the Act.

Other Comments

- In response to the question of suggested modifications to the disciplinary process, there was support among the responses received for generally improving and updating the disciplinary process, including the need for increased resource allocation and greater enforcement.³ In addition, there was concern expressed about the nature of the current disciplinary process, specifically that rather than being a mechanism for public complaints, the majority of complaints have come from licensees against other licensees.

3. Code of Conduct

In addition to industry codes of conduct, some other jurisdictions in Canada have allowed for the implementation of a code of conduct under their Acts. In 2021, Newfoundland's *Real Estate Trading Act* established a [Code of Conduct](#) for licensees under their Act. This Code lays out the expectations in a way that is clear, accessible and easy to understand for both the public and those licensed under the Act. REALA is currently silent on the establishment of a Code of Conduct.

³ For further clarification, refer to the "Private and Public Regulation" topic in the General Comments section below for more details

3. What We Asked:

- Do you think the NWT should adopt a Code of Conduct under the Act?
- If yes, what should be covered under the Code?
- If no, please explain why you feel a Code should not be adopted.

3. What We Heard:

- 27 of 33 respondents (82%) were in favour of the NWT adopting a Code of Conduct under the Act.
 - 83% of public respondents were in favour of the NWT adopting a Code of Conduct under the Act.
 - 80% of real estate licensees and 83% of adjacent professionals were in favour of the NWT adopting a Code of Conduct under the Act.
- Amongst respondents in favour of the NWT adopting a Code of Conduct under the Act there were a variety of suggestions, including:
 - Adopt the Canadian Real Estate Association (CREA) code;
 - Adopt other jurisdictions' codes;
 - Clarify responsibilities and expectations of real estate licensees;
 - Make the disciplinary process clear and accessible;
 - Licensee professional development and education, including awareness of the content of the Act; and,
 - Standardization of disclosure and forms.
- Amongst respondents that were not in favour of the NWT adopting a Code of Conduct under the Act, the following issues were brought up:
 - That it would be an unnecessary administrative item in a small jurisdiction; and,
 - That it would be redundant given the private [code of ethics](#) already provided through the CREA.

4. Standardized Forms

Currently, REALA does not require agents and salespersons to use standardized forms, including purchase agreement and disclosure forms, when conducting real estate transactions. While not standard across Canada, the use of standardized forms is permitted or required in multiple jurisdictions, including Manitoba's Real Estate Services Act.

4. What We Asked:

- Should agents and/or salespersons be required to provide their client with standardized forms when conducting a real estate transaction in the NWT?
- If yes, which forms should be included in the Act?

4. What We Heard:

- 29 of 33 respondents (88%) were in favour of the requirement to use standardized forms.
 - 92% of public respondents were in favour of the requirement to use standardized forms.
 - 87% of real estate licensees and 83% of adjacent professionals were in favour of the requirement to use standardized forms.
- Respondents in favour of requiring standardized forms suggested a variety of forms to be included in the Act, including:
 - Forms used in other jurisdictions;
 - CREA standardized forms;
 - Property sale forms, including purchase agreement, condition removal, inspection and disclosure forms;
 - Agency disclosure and conflict of interest forms; and,
 - Listing agreement and information forms.

5. Dual Agency

Dual agency is the practice of a licensee or their company acting on behalf of both the buyer and the seller in a real estate transaction, thereby creating a possible conflict of interest. In other jurisdictions across Canada, dual agency is permitted, normally with the requirement that the licensee or licensees disclose as soon as possible this dual agency relationship to the clients. REALA is currently silent on dual agency, and therefore it has been understood to be implicitly permitted in the NWT.

5. What We Asked:

- Should the same real estate company be permitted to act for both the buyer and the seller in a transaction?
- Should the same salesperson be permitted to act on behalf of both the buyer and seller in a transaction?
- If dual agency were regulated in the NWT, should the buyers and sellers in a transaction be required to complete a form where all parties consent to the dual agency?
- Please explain why you feel that dual agency should or should not be permitted.

5. What We Heard:

- 26 of 33 respondents (79%) were in favour of the same real estate company being permitted under the Act to work for both the buyer and the seller in a transaction.
 - 50% of public respondents were in favour of the same real estate company being permitted under the Act to work for both the buyer and the seller in a transaction.
 - 100% of real estate licensees and 83% of adjacent professionals were in favour of the same real estate company being permitted under the Act to work for both the buyer and the seller in a transaction.
- 18 of 33 respondents (55%) were in favour of the same real estate licensee being permitted under the Act to work for both the buyer and the seller in a transaction.
 - 25% of public respondents were in favour of the same real estate licensee being permitted under the Act to work for both the buyer and the seller in a transaction.
 - 73% of real estate licensees and 67% of adjacent professionals were in favour of the same real estate licensee being permitted under the Act to work for both the buyer and the seller in a transaction.
- 23 of 33 respondents (70%) were in favour of having a requirement under the Act where the buyers and sellers in a transaction complete a form where all parties consent to the dual agency, assuming dual agency was permitted under the Act.
 - 42% of public respondents were in favour of having a requirement under the Act where the buyers and sellers in a transaction complete a form where all parties consent to the dual agency.
 - 93% of real estate licensees and 67% of adjacent professionals were in favour of having a requirement under the Act where the buyers and sellers in a transaction complete a form where all parties consent to the dual agency.

- Many respondents that were in favour of dual agency acknowledged that there is a perceived or real conflict of interest in the case of the same licensee or even company working for both the buyer and the seller. At the same time, there was an understanding that given the small population of the NWT and in order to allow people to work with the licensee of their choosing, dual agency already takes place and should continue to be permitted.
 - Given this, the requirement that all parties are aware of the dual agency, as well as the imposition of mandatory disclosure were well-supported by respondents. This included a subset of responses that indicated that formal consent, beyond just awareness, should be required. Respondents indicated that these requirements would increase accountability and trust in the real estate industry.
- Amongst respondents not in favour of dual agency, there was concern expressed that the conflict of interest is inherent and unavoidable, and is not being properly disclosed, leading to the perception amongst some that the practice of dual agency can be deceptive.
 - This included concern that licensees are unable to act for both sides given the need for the licensee to act in trust for a client in a real estate transaction, and therefore are unable to fairly and equally represent both sides.
 - In addition, concern was expressed by some respondents that this conflict of interest also exists between different licensees under the same company.

6. Physical Business Office

Section 5 of REALA states that in order for an agent to be eligible to be licensed under the Act, they must maintain a business office in the NWT. Although this requirement is not standard across Canada, a similar provision exists in Yukon's [Real Estate Agents Act](#) and Nunavut's [Real Estate Agents' Licensing Act](#). In other jurisdictions, a registration is required to have an address for service and/or an email address.

6. What We Asked:

- Should the Act require that agents/agencies maintain a business office in the NWT?

6. What We Heard:

- 31 of 33 respondents (94%) were in favour of keeping a requirement in the Act that agents and agencies maintain a business office in the NWT.
 - 100% of public respondents were in favour of keeping a requirement in the Act that agents and agencies maintain a business office in the NWT.
 - 93% of real estate licensees and 83% of adjacent professionals were in favour of keeping a requirement in the Act that agents and agencies maintain a business office in the NWT.

7. General Comments

As part of the engagement process, MACA asked a number of questions that open-ended, including a closing section for general suggestions and ideas. These questions included:

- Do you have ideas on how to improve consumer confidence in the real estate industry?
- How can we enhance transparency and protection in real estate transactions?
- Do you have any further comments or suggestions for additional improvements to the legislation and/or regulation of the real estate industry?
- Are there measures you would suggest to modernize the process of real estate transactions, taking into account the use of electronic communication, social media and other developments since the Act was first introduced?

Feedback received from these concluding questions, as well as responses that do not fit within the bounds of the other questions asked throughout the survey have been summarized below. This feedback is grouped by major theme.

Increase Public Understanding of the Act

- In order to establish an understanding of the general base of knowledge of respondents regarding REALA and the real estate industry MACA asked the following multi-choice questions:
 - In your opinion, do you believe that a buyer/seller fully understands the realtor/client relationship and the role of the representative/real estate agent?
 - Do you feel the real estate industry is adequately regulated in the NWT?
 - Is there confusion on how the GNWT regulates the real estate profession?
 - Do you think the way real estate business is conducted in the NWT is similar to other jurisdictions in Canada?
- Answers to these questions, as well as written responses throughout the survey indicate that there is a lack of clarity about REALA and the role it plays in regulating the real estate industry. Specifically, only 36% of respondents, including 25% of the public respondents indicated that they felt a buyer or seller fully understood the relationship between a licensee and the client, as well as the role of the licensee in a real estate transaction.
- Just 30% of respondents overall felt the industry was adequately regulated, including 40% of real estate licensee respondents. In addition, 70% of respondents overall felt there was confusion about how the GNWT regulates real estate licensees.

- With regards to how the NWT's legislation compares to peoples' understanding of or experiences with other jurisdictions' legislation, 73% of all respondents felt that the way real estate business is conducted in the NWT is similar, at least in part, to other jurisdictions in Canada.
- Respondents made suggestions that would increase understanding of the Act and improve transparency and the trust of consumers in the real estate industry. These suggestions included:
 - Running a public knowledge campaign and providing educational resources to inform the public of the Act and their rights under the Act, including the complaint process and possible outcomes of such complaints;
 - Making the actual document of the Act easier to find and more accessible, including making the document searchable; and
 - Encouraging consumer understanding of the real estate transaction process and their role in such transactions.

Increase and Enforce Transparency and Disclosure Requirements

- Many respondents indicated throughout the survey that they were in favour of increasing and enforcing transparency and disclosure through the Act. When asked to provide suggestions to increase consumer confidence and increase transparency, respondents provided the following suggestions:
 - Immediate and mandatory disclosure by agents of potential conflicts of interest, including dual agency arrangements, conflicts of interest between agents, or other conflicts of interest; and
 - Full disclosure regarding the state of the property by all parties.

Improve and Expand the Act

- Respondents were strongly in favour of modernizing and updating the Act to address a changed real estate industry and gaps that exist in the current legislation. This included:
 - Improving clarity of definitions and requirements under the Act;
 - Increasing and clarifying regulations to strengthen consumer protection and trust in the real estate industry;
 - Standardizing forms that are regulated under the Act; and
 - Improving educational requirements for licensees, including continuing training and education.

Private and Public Regulation of the Real Estate Industry

- Some respondents, especially those that identified themselves as licensees under REALA, expressed varying degrees of concern about MACA's perceived historical inability or unwillingness to engage on or enforce REALA, or what respondents felt should be enforced under REALA. Respondents indicated that the NWTAR has been increasingly organizing and working to introduce the rules and code of ethics of the CREA into the Northwest Territories.
- However, many of these same real estate licensee respondents expressed concern that given the small nature of the private industry in the NWT and a perceived lack of enforcement under REALA, that the complaints and accountability processes have been lacking in substance. Respondents indicated that NWTAR may not be able to hold any or all real estate licensees accountable as part of the CREA and the NWTAR's regulations. This included a suggestion that given the fact that the NWTAR is comprised of real estate licensees, there is a lack of impartiality with regards to the private complaints process. In addition, concern was expressed throughout the survey by real estate licensees that the complaint and disciplinary process under REALA is largely unknown to the public and instead has been used by real estate licensees to make a complaint against each other.
 - There was confusion amongst all three self-identification categories for the survey as to the roles and responsibilities of the NWTAR and MACA, including the disciplinary role and processes of each body.

Address Technology in the Act

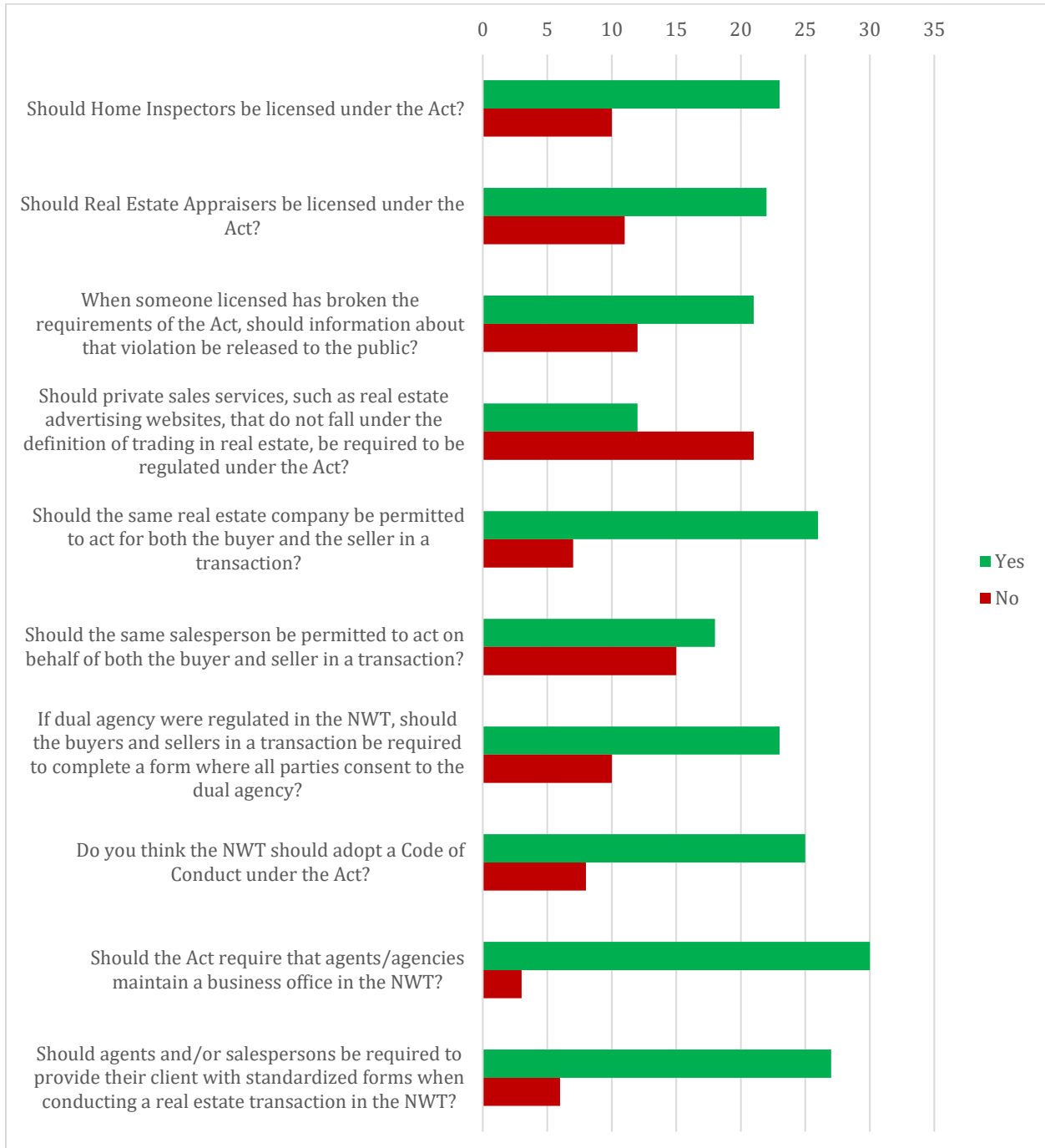
- Given the age of the legislation, REALA does not address the role of the Internet or the use of electronic communication in the real estate industry. When asked about how the Act could address these topics, respondents suggested regulation on the following topics:
 - Accurate Multiple Listing Service and listing information, including virtual tours and listing transparency (such as date-stamped photographs, length of time listing has been posted and information regarding the most recent sale of the property);
 - Online communication and advertising, including the use of social media, online advertisements and blog posts; and,
 - Ensuring electronic communication and the use of electronic documents is understood and secure.

Conclusion

A. Summary Table

In general, respondents supported the idea that the Act needs to be amended. See the table below for a summary of the responses to the questions on the main issues in the survey.

Table 2: Summary of Responses on Main Issues



B. What's Next?

The Department would like to acknowledge and thank all of those who took the time to participate in the engagement process.

Based on the responses in this survey, respondents largely supported that changes to the Act needed to be made to better regulate the industry and address concerns. Based on the feedback received, MACA has decided to move forward with a full legislative review of the Act, including legislative amendment in the 20th Legislative Assembly.