

nova scotia real estate
COMMISSION

**Complaint,
investigation,
and discipline
process**



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Preface

The information contained herein does not constitute legal advice nor should it be considered as a substitute for legal advice. The complaint review and discipline procedures described in this pamphlet are governed by the provisions of the *Real Estate Trading Act*, the *Commission By-Law* and *Policies and Procedures*. Industry Members are strongly urged to carefully review Sections 16 to 25 of the *Act* and Section 8 of the *By-Law*. The material in this pamphlet is intended to be a summary only and is not meant to override any of the provisions of the *Act* or *By-laws*. The provisions of the *Real Estate Trading Act* and *Commission By-laws* govern.

For further information

If, after reading the enclosed information, you have any questions regarding the procedure of complaint review and discipline, see the Complaints and Investigations section of our Web site (www.nsrec.ns.ca) or contact the Licensing Officer at the Nova Scotia Real Estate Commission. Note, however, that the Licensing Officer acts only as an administrator for the Commission and may only provide information regarding the procedures as set out in this pamphlet, the *Real Estate Trading Act* and *Commission By-law* and is not in a position to comment or advise on the merits of any case.

Introduction

This booklet explains the complaint, investigation, and disciplinary procedures as defined in the *Act* and the *Commission By-Law* and followed by the Nova Scotia Real Estate Commission (the Commission). The Commission provides this booklet to inform and assist complainants and Industry Members responding to complaints, and ensure that disciplinary matters are handled in a uniform and fair manner.

The complaint

The Commission deals with complaints from consumers, Inc Members, real estate financial institutions, and police agencies. The Registrar also has the authority to order an investigation if information comes forth from sources other than a formal written complaint. In particular, information that may constitute a serious threat to the public interest will result in an investigation. The Registrar can initiate a complaint without receiving a formal complaint from another party.

The person or entity making the complaint (the complainant) is not a party to the proceeding. The proceeding is between the Commission and the Industry Member. At most, the complainant is interviewed by the Compliance Officer during the investigation stage and may become a witness if the matter proceeds to a discipline hearing.

After the Commission receives a complaint, copies of the complaint are sent to the



Industry Member and the Industry Member's broker; a letter is sent to the complainant acknowledging receipt. The Industry Member must submit a written response to the complaint to the Commission, which is then forwarded to the complainant. If the complainant wishes, they can submit additional correspondence to rebut or refute the Industry Member's response.

Mandate and jurisdiction

The complaint is forwarded to the Commission Registrar. The Registrar's mandate is to examine the validity of a complaint and investigate the actions of the Industry Member. The Commission investigates conduct that appears to:



- be in breach of the Real Estate Trading Act or By-Law
- be contrary to the standards of practice expected of an Industry Member
- demonstrate incompetence, recklessness or intent
- put consumers or other Industry Members at risk
- undermine public confidence in the industry, harm the integrity of the industry or bring the industry into disrepute

This is referred to as “conduct deserving of sanction.”

Only the Complaint Review Committee, the Discipline Committee and the Registrar have jurisdiction over Industry Members.

The Registrar must first determine whether the complaint falls within the Commission's jurisdiction. If it does, the Registrar may then direct the Compliance Officer to examine and determine the validity of the complaint. The Compliance Officer (the investigator) investigates the matters described in the complaint and collects information relating to the alleged conduct.

As part of the investigation, the Compliance Officer may speak with the complainant and other individuals who are familiar with or may have information relating to the matter.

The Compliance Officer can request any documentation needed to conduct the investigation and substantiate or refute the allegations in the complaint. *Section 17 (4)* of the *Act* requires Industry Members to cooperate with the Compliance Officer. *Section 702, Article 31* of the *Commission By-Law* states:

Should an Industry Member be asked to cooperate in any way in connection with a disciplinary investigation or proceeding pertaining to alleged unethical practice, the Industry Member shall place all pertinent facts before the proper Committee of the Commission.

The Compliance Officer also interviews the Industry Member subject to the complaint.

The Compliance Officer sends the Industry Member a copy of the written complaint and a request to respond to the complaint in a substantive manner as specified in *Section 810* of the *Commission By-Law*. Failure to reply typically leads to further charges.

Registrar's decision

After the Compliance Officer completes the investigation, a summary report (the *Investigation Report*) is given to the Registrar. The Registrar reviews the *Investigation Report* and the material collected by the Compliance Officer and determines whether there is sufficient evidence to issue an *Allegation Statement* against the Industry Member. Because the Investigation Report is a confidential document, only the Registrar and the Complaint Review Committee permitted to view it.



No charges—complaint dismissed

If the Registrar determines that there isn't sufficient evidence to support an *Allegation Statement*, the Registrar recommends closing the file with no further action taken. The complainant is notified of the Registrar's decision and has 20 business days to request the Complaint Review Committee review the Registrar's decision. The complainant must state why the Complaint Review Committee should consider overturning the Registrar's recommendation to close the file. Upon receipt of a request for a review, the Complaint Review Committee examines the Compliance Officer's Investigation Report and the Registrar's reasons for closing the file. The Complaint Review Committee may uphold the Registrar's decision to close the file or may order the Registrar to prepare an *Allegation Statement*.

Charges and the Allegation Statement



If the Registrar determines that there is sufficient evidence to support the allegation, an *Allegation Statement* is issued against the Industry Member (now called the respondent). The *Allegation Statement* summarizes the basis and subject of the charges and includes the particular paragraphs, sections or articles of the *Act*, *Commission By-Law* and *Policies and Procedures* that the respondent allegedly breached. At the discretion of the Registrar, a proposed *Settlement Agreement* may be included with the *Allegation Statement*. A copy of the *Allegation Statement* will be sent to the respondent's broker.

The reply

After the *Allegation Statement* is issued, the respondent has a specified number of days from its receipt to submit a response (the reply). At this point, the respondent has two options: plead not guilty and proceed to a formal hearing; or admit to improper conduct and request a *Settlement Agreement*. The use of a *Settlement Agreement* is solely at the Registrar's discretion.

If the respondent admits to improper conduct, the Registrar prepares a *Settlement Agreement*. The Complaint Review Committee reviews the *Settlement Agreement* and can approve it as presented, give tentative approval with amendments required or send the matter to the Discipline Committee. If the respondent

denies the allegations, the Registrar sends the matter to the Discipline Committee for a formal hearing. The Complaint Review Committee decisions are not subject to review or appeal.

A respondent's failure to deliver a reply does not prevent the Registrar and Complaint Review Committee from continuing with the process. As well, failure to submit a reply does not prevent the respondent from attending and presenting their case at the Discipline Hearing.



Settlement Agreements

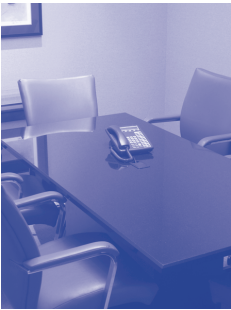
In instances where the Registrar deems it appropriate, a *Settlement Agreement* is included with the *Allegation Statement*.

The *Settlement Agreement* states the sections of the *Act*, *Commission By-Law* or *Policies and Procedures* that the respondent allegedly breached. It also states the penalty the Registrar deems appropriate relative to the *Allegation Statements* made. The *Settlement Agreement* includes a section the respondent signs to indicate that they accept the terms of the *Settlement Agreement*. The respondent must return the signed *Settlement Agreement* to the Commission by the date specified in the agreement or the *Allegation Statement* is passed on to the Discipline Committee for a formal hearing.

If the respondent accepts the *Settlement Agreement*, the Registrar recommends

acceptance to the Complaint Review Committee. The Committee can reject or accept the *Settlement Agreement*. If rejected, the Committee can recommend changes to the *Allegation Statement* or to the penalty. The Committee can also recommend the allegations be handled by the Discipline Committee through a formal hearing.

If the Complaint Review Committee accepts the *Settlement Agreement*, no further action is taken.



The Discipline Committee

The Discipline Committee's role is to hold discipline hearings. For each case referred to a hearing, a Discipline

Hearing Panel is chosen from the members of the Discipline Committee. The Discipline Hearing Panel consists of at least three members, one of whom is named the Discipline Hearing Panel Chairperson.

Notice of hearing and disclosure of evidence statement

The Commission notifies the respondent of the discipline hearing a minimum of 30 days prior to the hearing date (the Notice of Hearing). A *Disclosure of Evidence Statement* is enclosed with the *Notice of Hearing*. This *Disclosure of Evidence Statement* provides the respondent with a brief description of

the witnesses who may be called by the prosecutor (the person prosecuting the case on behalf of the Registrar) as well as copies of the documentation that the prosecutor may present as part of the Registrar's evidence. There is no reciprocal obligation on the part of the respondent to provide a similar *Disclosure of Evidence Statement*.

Parties to the discipline hearing

The Commission and the respondent are the parties to the discipline hearing. The Commission prosecutor may be a lawyer, the Compliance Officer, or another person appointed by the Registrar.



The respondent can represent themselves or be represented by a lawyer (provided that five days prior notice has been given).

The Discipline Hearing Panel can also retain legal counsel to advise it on matters of law and procedure, however, they are not required to provide notice of legal representation to the parties. The lawyer for the Discipline Hearing Panel is independent from the lawyer for either the respondent or the prosecution.

The complainant is not a party to the proceedings but may be called as a witness by one of the parties.



Hearing Procedure

At the start of the hearing, the chairperson of the Discipline Hearing Panel (the chairperson) sets the stage and describes the procedure using the Chairperson's script. The witnesses are either sworn or affirmed and then asked to leave the room. Witnesses (other than the respondent) are permitted in the hearing room during their testimony and cross-examination only. The hearing is either audio- or video-taped or a recording secretary takes notes for a written transcript.

The prosecution has the onus of proving the allegations against the respondent (also called the burden of proof). This means that the respondent is presumed innocent until the prosecution puts sufficient evidence before the Discipline Hearing Panel to convince it that, on a balance of probabilities (more likely than not) that the respondent did what is alleged in the *Allegation Statement*. A balance of probabilities is a less stringent test than the true criminal burden of proof beyond a reasonable doubt.

Presenting the case and evidentiary matters

Because the prosecution has the onus of establishing its position, the prosecutor goes first. The prosecutor typically starts with an opening statement and then presents the case through submissions, witnesses' testimony

and/or documentary evidence. When prosecution witnesses testify, the prosecutor asks them a series of questions which explain their version of the events. The respondent then has the opportunity to cross-examine these witnesses, subject to the right of the prosecutor to re-examine, for clarification purposes only.

After the prosecutor presents their case, the respondent presents their position through submissions, witnesses' testimony and/or documentary evidence. When the respondent's witnesses testify, the respondent or the respondent's lawyer asks them questions to have them explain their version of the events. The prosecutor then has the opportunity to cross-examine these witnesses, subject to the right of the respondent to re-examine, for clarification purposes only. After all of the evidence has been presented, each party can present a short summation, in the same order—prosecutor, respondent and then prosecutor for clarification purposes only. The Hearing Panel then adjourns to deliberate and make a decision.

Documents are introduced into evidence only when and if they become relevant. Once a witness refers to a document, it is introduced into evidence and marked as an exhibit.

The parties should ensure that they bring enough copies of each document for the panel members, the recording secretary and the other party.

The discipline hearing is not governed by the strict rules of evidence. It is governed by the best evidence rule, which means that there is a continuum of evidence from good

to bad and the Panel weighs all the evidence received according to the continuum. The Hearing Panel has the broad power to admit any evidence, including hearsay evidence, and determines what weight to give each piece of evidence when making its decision. The parties should ensure that they provide all of their evidence at the Discipline Hearing because an appeal is not a re-hearing and no new evidence is permitted at the appeal.

The Discipline Hearing Panel can ask questions of the parties, however, it is not the function of the Discipline Hearing Panel to present evidence on behalf of either party.

Finding of guilt

If the Hearing Panel finds the respondent guilty, the Hearing Panel reconvenes the hearing.

The prosecutor makes penalty recommendations to the Hearing Panel based on what the Registrar believes is appropriate for the offense. The Respondent is then given an opportunity to address the Hearing Panel regarding penalties. The Hearing Panel then adjourns and decides on penalties. A written decision then follows.



The discipline hearing decision

The Discipline Hearing Panel decision is delivered in writing, with reasons, and forwarded to the respondent and the Registrar within 10 days of the decision, but not to the

complainant. The complainant is advised by letter, either after the Discipline Hearing or after the appeal (if applicable), whether the Panel found that the respondent engaged in improper conduct, and if were found guilty, what penalty was specified. If there is an appeal, the complainant does not receive this letter until after the appeal is completed.

The Discipline Hearing Panel may levy one or more penalties as set out in Section 19 (1&2) of the Act. In addition to any penalty, the Discipline Hearing Panel may award the costs of the Discipline Hearing against the respondent as permitted under Section 19 (3) of the Act.

If the respondent fails to comply with the decision of the Discipline Hearing Panel within the time frame specified in the decision (except where an appeal is permitted and is commenced), the Registrar can suspend the respondent's license.



Appeal procedures

The Discipline Hearing Panel decision is forwarded to the respondent. If the respondent chooses to appeal the decision,

they must file a Notice of Appeal with the Supreme Court of Nova Scotia within 30 days of receiving the decision. The Commission must be notified in writing a minimum of 14 days before the court date for the appeal.

Only the respondent (now called the appellant), has the right to appeal a Discipline Hearing Decision. The Commission cannot initiate appeal proceedings; however, the Commission may participate in an appeal at its sole discretion. The Commission can reply to the Notice of Appeal filed by the appellant and can also appear at the appeal hearing to argue its position.

At the appeal, the appellant must convince the Court that they were either denied natural justice or that the Discipline Hearing Panel did not have the jurisdiction to make the decision. The Commission strongly suggests appellants consult with legal counsel regarding reasons for appeal and appeal procedures.

An appeal is not a re-hearing, it is an examination of the previous hearing to determine if an error was made in the judicial process. No new evidence is submitted during an appeal and there are no witnesses.

In its decision, the Court may do one of the following:

- dismiss the appeal (uphold the Discipline Hearing Panel decision)
- grant the appeal (overturn the Discipline Hearing Panel decision)
- amend the Discipline Hearing Panel decision as the Court deems appropriate
- refer the matter back to the Discipline Committee for a new discipline hearing in whole or in part
- impose any of the penalties that could be imposed by the Discipline Hearing Panel.

The Appellant can appeal the decision or the penalty or both.

Additional resources

Nova Scotia Real Estate Commission:
www.nsrec.ns.ca

Real Estate Trading Act:
www.nsrec.ns.ca/media.php?mid=424

Commission By-Law:
www.nsrec.ns.ca/media.php?mid=423

The Courts of Nova Scotia:
www.courts.ns.ca

Nova Scotia Real Estate Commission

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Dartmouth, NS

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