

JANUARY 2016

# SPECIAL EDITION Newsletter



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## A Message from the Chair

Hello and Happy New Year!

The New Year is a great time to take on new challenges and amend current processes to move forward prosperously into the coming months; such is the case for 2016 with the Commission. I am writing to you personally, as the Board of Directors have recently made a number of important decisions that will impact the industry. Please take some time to read through this newsletter and share its contents with your colleagues.

The decisions announced here are to strengthen our ability to maintain consumer confidence in our industry and to keep regulation in line with current national regulatory trends.

If you have any questions, you may contact the Registrar, Brad Chisholm, at [bchisholm@nsrec.ns.ca](mailto:bchisholm@nsrec.ns.ca) or reach out to [any of the Commission's Board of Directors](#). I am



looking forward to the year ahead and what it will bring for our industry in Nova Scotia. From the Board of Directors to you, we wish you a happy and prosperous New Year.

*Dennis Richards, Chair*

## Commission Office Relocation

As briefly mentioned in our December bulletin, we are excited to announce that **the Commission's office will be relocating to the Bedford House office tower of Sunnyside Mall in Bedford on May 1, 2016.**

This unanimous decision by the Board of Directors is the result of a year-long evaluation of whether another office space would better provide the space and resources required for our team to continue to effectively regulate licensees, respond to consumer inquiries, investigate complaints and provide an efficient inspection program. Ultimately, the Commissioners concluded that our current space no longer satisfies those needs.

We understand that relocating our office will impact licensees and have created a [Q&A for licensees](#) to consult. If you have a question that does not appear in that publication, please contact us.

## BUYER BROKERAGE AGREEMENTS MANDATED FOR COMMON LAW

**NOTE: Buyer agency requirements for brokerages practicing designated agency have not changed.**

The Commission has worked extensively with licensees on improving the industry's understanding of agency relationships, their legislative requirements and when or how to use brokerage agreements.

**As of January 1, 2017**, the Commission will require:

- **existing buyer clients** (those already working with the brokerage as clients but not under a written agency agreement) of common law brokerages to complete a Buyer Brokerage Agreement prior to drafting an offer on a property.
- **new buyer clients** must complete a Buyer Brokerage Agreement upon forming an agency relationship with a brokerage.

This move establishes the client relationship up front and in writing, which is in line with Commission Bylaw 702, Article 3, which states:

*“The industry member shall fully disclose in writing to, and shall seek written acknowledgement of disclosure from, all parties to a transaction regarding the role and the nature of the service the industry member will be providing to the client versus the customer or other party to the transaction. The industry member shall also disclose their role to other industry members involved in the transaction. The industry member shall provide this agency disclosure before a relationship with a client develops.”*

Mandating these forms is important from a consumer perspective as it helps a new buyer client understand

what the brokerage obligations will be and how the brokerage will be paid. Furthermore, buyers will have also consented to the release of the certain conditions in their offer when purchasing a MLS® listing (i.e. SOBP) and will have service expectations or promises in writing (i.e. showing properties in specific areas).

From a licensee's perspective, mandating Buyer Brokerage Agreements gives brokers the ability to more easily maintain stock of their buyer clients and ensure compliance of the terms of their relationship with the brokerage, and will help identify potential conflicts (i.e. when two buyer clients of the same brokerage are interested in offering on the same property).

From a regulatory perspective, it is just as important to have all client relationships clearly expressed in writing for buyers as for sellers. In the absence of such a requirement, it is easy to inadvertently create implied agency obligations given the information commonly being provided to licensees by the buyers they are working with.

Both the Buyer Brokerage Agreement and the Buyer Designated Brokerage Agreement, in their current forms, are being reviewed by the Mandatory Forms Committee to bring improvements similar to those made in the new Seller Brokerage Agreement and Seller Designated Brokerage Agreement.

If you have specific suggestions for changes to these forms that you wish to bring to the Mandatory Forms Committee, please send them via email to Carolin MacDonald at [cmacdonald@nsrec.ns.ca](mailto:cmacdonald@nsrec.ns.ca).



# APPROVED SALES CORPORATIONS LICENSING FEES CHANGING

Keeping in line with other licensing categories, the Board of Directors has agreed to amend the initial licensing fee and renewal fee for Approved Sales Corporations to \$360 and \$330 respectively.

**This change will come into effect in July 1, 2016.**



## HST IMPLEMENTATION

The Commission will begin charging HST on licensing and administrative fees effective **April 1, 2016**. The Commission will **not** charge HST on fines.

Licensees are reminded that HST paid on business expenses is claimable as an input tax credit so this change will have no net out of pocket cost to licensees who are HST registrants.

For more information on how to claim this expense, contact the [Canada Revenue Agency](#).

## NEW TIME LINE FOR FIRST-TIME APPLICANTS

Effective immediately, all first-time applicants for licensing will have **six months** following the successful completion of their licensing exam to apply for a licence, extending that duration from the current 90 days.

## FROM THE COMPLIANCE TEAM

### What documents are required to be kept in a transaction file?

The Commission Bylaw outlines what documents must be included in a real estate transaction file in Bylaw 621, which states:

*(a) Real estate transaction files shall contain the following:*

- (i) a trade record sheet signed by the broker or managing associate broker;*
- (ii) a listing addendum (cut) sheet;*
- (iii) signed acknowledgement of the agency disclosure brochure or confirmation that it has been provided;*
- (iv) if applicable, a completed Seller and/or Buyer Brokerage Agreement(s) signed by the seller(s) or buyer(s);*
- (v) any amendments to the Seller and/or Buyer Brokerage Agreement(s) signed by the seller(s) or buyer(s);*
- (vi) a completed Agreement of Purchase and Sale signed by all parties;*
- (vii) any amendments to the Agreement of Purchase and Sale signed by all parties;*
- (viii) if applicable, a counter offer signed by all parties;*
- (ix) if available, a Property Condition Disclosure Statement (PCDS) signed by all parties;*
- (x) if applicable, a Transaction Brokerage Agreement or Limited Dual Agency Agreement signed by all parties;*
- (xi) if applicable, any Customer Status Acknowledgment forms;*
- (xii) confirmation from the seller/sellers' lawyer advising that the transaction has successfully closed; and*
- (xiii) all other documentation pertaining to the transaction.*

What is, as Bylaw 621(a)(xiii) states, “all other documentation pertaining to the transaction”?

***See following page.***

# What documents are required to be kept in a transaction file?

*(continued)*

A good rule of thumb is: if your brokerage is provided with documentation from your client(s) that is related to the transaction (i.e. inspection reports or condo documentation), the broker is required to maintain that information in the brokerage transaction file. Any licensees who accept client's documentation on behalf of the brokerage are obligated to provide such documentation to the broker in accordance with Bylaw 705(c).

If some documents provided by the client are considered irrelevant to the transaction, return the documents to the client and not maintain this information.

## WHAT IS CONSIDERED TRADING IN REAL ESTATE?

Your real estate licence authorizes you to trade in real estate in Nova Scotia as it is defined in the Real Estate Trading Act.

Simply put, trading in real estate is acting on behalf of a consumer to buy or sell real property, which includes land and any dwellings attached to or included with the land, such as houses, apartment buildings, condominiums, commercial space and mobile homes. Trading also includes commercial leasing and commercial property management.

### *What is not considered Trading in Real Estate?*

Trading does not include residential leasing and property management, selling time shares, businesses without land (like a mobile food truck), business equipment not including land (like hair salon furnishings), facilitating a new construction on already owned land and trailers or mini homes without land.

### *Why do I need to know the difference?*

When a licensee engages in unregulated activities, i.e. activities that are not considered trading, the following industry and consumer safeguards do not apply:

- E&O insurance coverage protects licensees from financial loss due to errors, omissions or negligent acts occurring in the course of their duties as defined by provincial licensing legislation. If a licensee engages in unregulated activities, it is important to check with [REIA](#) to see if the activity

is covered, and if not, licensees may wish to obtain additional coverage.

- The Commission's complaints and investigation process applies to regulated activities. A consumer may file a complaint against licensee regarding unregulated activity only if it relates to a licensee or a brokerage misleading the consumer into believing the services provided were in the course of regulated brokerage activity.
- Likewise, the Recovery Fund, which exists to provide consumers in cases financial compensation for fraud and breach of trust, only applies to regulated activities under the Act.

### *I understand the difference and I still want to provide unregulated services*

Brokerages and licensees are free to engage in unregulated activities, it just means extra steps need to be taken to ensure both the licensees and the consumers are informed and protected. When advertising and providing unregulated services, like residential leasing, it needs to be clear to consumers that the services are outside the scope of regulated brokerage activities.

Brokerages may wish to approach unregulated services, like residential property management, by providing them under alternative banners such as a brokerage-affiliated property management business. This diminishes the risk to the brokerage and paints a clearer picture for the consumer. When entering into service agreements for unregulated activities, those services must be clearly documented in writing and the consumer needs to know that the brokerage or industry member is operating outside of trading in real estate and the consumer-protection mechanisms listed above do not apply. Putting these promises in writing and discussing them with the consumer ensures that all parties understand the scope of work to be delivered.



# CLAUSES THAT ARE NOT APPLICABLE ON REAL ESTATE AGREEMENTS MUST BE INITIALED BY ALL PARTIES

The Commission has noted more and more instances where various clauses are being left blank in agreements if they are considered inapplicable.

For clarification, when a clause in an agreement is not applicable, strike the clause and have it initialed by all parties to the agreement.

## ADDING A SECOND BUYER TO AN AGREEMENT OF PURCHASE AND SALE

You have a situation where a second buyer needs to be added to the Agreement of Purchase and Sale (APS); how do you do that properly?

**STEP ONE:** If not already obtained, any additional documents required for buyers such as: Working with the Real Estate Industry form, Buyer (Designated) Brokerage Agreement, Customer Status Acknowledgements, etc. Subscribe Share Past Issues Translate would need to be completed with the new buyer.

**STEP TWO:** Complete an amendment to the APS, adding the new buyer. The following clauses for the amendment clearly outline the addition of the new buyer (insert the individual's name where the clauses reference [new party]): "a. [New party] is entering into the amendment to become a party to the agreement of purchase and sale ("the Agreement") dated\* the [date] day of [month] between [name of originally listed buyer] as buyer and [name(s) of seller(s)] as seller. The Agreement and the existing parties to the Agreement are entering into this amendment to accept the [new party] being added to the Agreement as buyer; and" "b. [New party] confirms their acceptance of all of the terms of the Agreement. \*Date refers to the date of acceptance.

**STEP THREE:** The added buyer and all of the original parties must all sign the amendment to the APS consenting to the additional buyer being added.

**STEP FOUR:** (Optional) Have the added buyer initial and date the bottom of each page of a copy of the original APS, the PDS, the Schedule of Leased/Rented Equipment and any other relevant real estate documents, as evidence that the new buyer clearly read and understood all terms.

## CONTACT US

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