

# DISCIPLINARY NEWSLETTER

PROTECTING THE PUBLIC THROUGH EFFECTIVE REGULATION



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# INTRODUCTION

## 1. AUDIT PROGRAM: A GUIDE TO REAL ESTATE AUDITS IN NOVA SCOTIA

The Nova Scotia Real Estate Commission Board of Directors has approved the implementation of a new audit program. **The effective date of the new audit program is January 1, 2019.**

The new program benefits both the public and the real estate industry by protecting the public interest through effective regulation.

A mandatory CPE course detailing the new program will commence in the fall of 2018 for all licensees.

### The new audit program will provide:

- Clarity and understanding of the audit process;
- A transparent rating system;
- Comprehensive audit fee formula based on the number of licensees; and
- A process that allows for licensees to be accountable for consistently poor performance instead of their broker.

## 2. DETAILING INVESTIGATIONS

Be advised that the Disciplinary Newsletter does not detail every case the NSREC investigates. Rather, these cases were found to be the most useful as a learning resource.

## 3. PUBLISHING DISCIPLINARY DECISIONS

The NSREC Disciplinary Newsletter publicizes decisions in accordance with the [NSREC Bylaw 839](#).

# BROKERAGE AUDITS

## CASE #1: CONTINUOUSLY RECEIVED A “NEEDS IMPROVEMENT” AUDIT RATING

Every year, the NSREC’s compliance auditors conduct trust account audits at each brokerage in Nova Scotia. In addition to the trust audits, each brokerage is subject to a brokerage audit every three years. Audit results fall into one of three categories: very good, good, and needs improvement. If a broker receives a “needs improvement” rating for transaction file review, they will continue to receive a brokerage audit until they have received a “good” rating for transaction file review. Any brokerage that receives three consecutive ratings of “needs improvement” for trust account record keeping or transaction file review are subject to disciplinary action.

A broker received her fourth consecutive “needs improvement” rating for transaction file review. When no settlement agreement was reached, the matter was referred to a discipline hearing.

The Discipline Hearing Panel found the broker demonstrated a lack of knowledge, skill, judgement or desire to be a competent broker. The findings of the panel demonstrated a lack of knowledge by the broker to implement procedures, review documents and most importantly understand agency.

Through their actions and behaviours, they substantially increased the costs of the investigation and the hearing and the panel strongly believed those costs should not be borne by the NSREC.

## PENALTY

The Panel found the broker in violation of:

- *Real Estate Trading Act*, Section 22 (1) (a)
- One count of violating Bylaw 703
- One count of violating Bylaw and 704 (d)

and ordered a one-year suspension, a letter of reprimand, and payment of \$1,000 fine and \$52,800.12 in legal fees.

Reinstatement of the broker’s licence following the one-year suspension is conditional upon retaking the broker’s course and passing the exam. If the broker licence is reinstated, maintenance is conditional upon having four “good” audits with an audit frequency of every six months.

# BROKERAGE AUDITS

In accordance with NSREC Bylaw 704 (d), brokers are responsible for: *ensuring the required trust accounts, trust account records and transaction files are maintained in accordance with the Act, the Regulations, the Bylaw and the Commission's Policies.*

The following brokers were charged with violating NSREC Bylaw 704 (d), and accepted settlement agreements with the NSREC:

## TRANSACTION FILE REVIEW VIOLATIONS

In November 2017, two brokers were charged and agreed with having violated NSREC Bylaw 704 (d) their third consecutive “needs improvement” rating for transaction file review. They were each fined \$500.

In April 2018, a broker was charged and agreed with having violated NSREC Bylaw 704 (d) for their fourth consecutive “needs improvement” rating for transaction file review. The broker was fined \$1,000.

In April 2018, a broker was charged and agreed with having violated NSREC Bylaw 704 (d) for their third consecutive “needs improvement” rating for transaction file review. The broker was were fined \$500.

## TRUST ACCOUNT RECORD KEEPING VIOLATIONS

In October 2017, a broker was charged and agreed with having violated NSREC Bylaw 704 (d) for their third consecutive “needs improvement” rating for trust account record keeping. The broker was also required to complete the trust record keeping portion of the broker licensing course. The broker was fined \$500.

# PUBLIC INITIATED INVESTIGATIONS

## CASE #2: ZONING AND MISLEADING ADVERTISING

A family recently sold their home and were looking for a rural property. The buyer had two requirements: an early closing date and a property to accommodate livestock.

After finding a property that was listed as a hobby farm, they submitted an offer that was accepted.

Shortly after the transaction closed, they were informed by a neighbour that livestock did not meet zoning requirements per municipal bylaws.

The buyer alleged that their licensee was aware of their desire to raise livestock throughout the real estate transaction.

The evidence supported that the buyer's licensee did not take significant steps to confirm, or advise that their client confirm if livestock could be kept on the property.

The buyer's licensee was charged with and agreed to having violated Bylaw 702, Article 2, for not protecting their client's interests.

In addition, the seller's licensee was also found in violation for advertising the property as a hobby farm without verifying this information. This inaccurate advertising was misleading and the seller's licensee was charged with and agreed to having violated Bylaw 708 (a) ii.

## PENALTY

The buyer's licensee was fined \$500 for violating Bylaw 702, Article 2.

The seller's licensee was fined \$400 for violating Bylaw 708 (a) ii.

# PUBLIC INITIATED INVESTIGATIONS

## CASE #3: FAILURE TO PROVIDE SIGNED DOCUMENTS

A seller decided to list their home and contacted a local licensee. After speaking with the licensee, the seller agreed to list their property. The seller signed a Property Disclosure Statement and a Seller Brokerage Agreement.

The true copy of the Property Disclosure Statement and Seller Brokerage Agreement were not provided to the seller at the time of signing. The seller contacted the brokerage to retrieve a copy of the signed real estate documents. After receiving a copy of the Seller Brokerage Agreement weeks later, the seller discovered that their licensee had shredded the Property Disclosure Statement without the seller's consent.

The seller's licensee was charged with and agreed to having violated two counts of Bylaw 702, Article 11. The first violation pertained to the licensee failing to provide true copies of real estate documents to the seller at the time of signing. The second violation was due to several paperwork discrepancies found within the Seller Brokerage Agreement.

The licensee was also found in violation of one count of Bylaw 702, Article 2, for deliberately shredding a completed and signed Property Disclosure Statement without the seller's knowledge or consent.

The broker was also charged with and agreed with the charge of failing to ensure the documentation was adequately maintained in accordance with the *Real Estate Trading Act* and NSREC Bylaw. This is a violation of Bylaw 704 (d).

### PENALTY

The licensee was fined \$800 (\$400/each violation) for violating two counts of Bylaw 702, Article 11, and fined \$400 for violating one count of Bylaw 702, Article 2 (\$1,200 in total).

The broker was fined \$500 for violating Bylaw 704 (d).

## CASE #4: FAILURE TO DISCLOSE COMPETING OFFERS

A potential buyer submitted an offer after viewing a property. A few days after the offer was submitted, the potential buyer's licensee was informed that another offer had been accepted.

The potential buyer was confused as there was no mention of competing offers. The potential buyer's licensee confronted the seller's licensee. The seller's licensee stated an offer was submitted earlier that day from another buyer, and the seller verbally countered late in the afternoon. The potential buyer's licensee submitted their offer later that evening, but there was no mention of competing offers. The following morning, the seller's licensee spoke to their seller on how they wished to handle the two outstanding offers. The seller responded they only wanted to deal with the first offer.

In this case, the seller's brokerage practices designated agency. The decision to disclose the existence of competing offers was up to the seller, as stated in the Seller Designated Brokerage Agreement. The evidence showed that neither box was chosen in the clause that gives the designated agent direction on how to manage offers/competing offers. Due to this clause being left blank, the seller's licensee should have advised their client that in the absence of instruction to the contrary, they are required to advise both buyers they were in a competing-offer situation.

The seller's licensee was charged with and agreed to having violated Bylaw 702, Article 11 for not having the specific terms, conditions, obligations and commitments of the real estate transaction in writing. The seller's licensee was also charged with and agreed to having violated Bylaw 702, Article 12, because they failed to present all written offers and counter-offers, unless instructed by the seller in writing.

### PENALTY

The licensee was fined \$400 for violating Bylaw 702, Article 11, and \$400 for violating Bylaw 702, Article 12.

# PUBLIC INITIATED INVESTIGATIONS

## CASE #5: LEAVING A PROPERTY UNSECURED

A seller listed their home in mid-winter. As the home was unoccupied, the seller had their neighbours keep an eye on the property. One neighbour observed suspicious behaviour after noticing the lights were left on two nights in a row. The neighbour contacted the seller's licensee and informed them the lights in the home were left on.

The seller's licensee went to the property and discovered that a break and enter had taken place. The backdoor was damaged and a chair was used to keep the door ajar. The perpetrator left a note apologising and said they had caused the damaged because they were looking for a warm shelter for the night.

A viewing took place at the home earlier that day. During the viewing, the buyer's licensee noticed the back door was open, but thought it was open to air out the home.

After the viewing was complete, the buyer's licensee did not further investigate the reason the door was left open. Instead, the buyer's licensee locked the front door and left the back door as discovered, and made no reports of suspicion to the seller's licensee or the police.

The buyer's licensee was charged with and agreed to having violated Bylaw 702, Article 35. The buyer's licensee had a professional obligation to ensure the property was secure upon leaving, or in the event it could not be secured, it was the buyer's licensee's responsibility to immediately notify the listing brokerage.

### PENALTY

The licensee was fined \$500 for violating Bylaw 702, Article 35.

## CASE #6: FAILING TO ENSURE WRITTEN AGREEMENTS ARE IN PLACE

A seller contacted a licensee to sell their commercial property. The licensee agreed to represent them, and had the seller sign an engagement letter with an expiry date. Upon signing the engagement letter, the seller paid an "engagement fee," per this agreement.

Time passed and the agreement expired. The licensee requested that the seller alter the expiry date on the engagement letter and enter a new date. The seller agreed and revised the expired agreement. The expiry date passed once again and the seller did not renew. After a year and a half, with no updated representation agreement, the same licensee approached the seller with a letter of intent from a potential buyer who was being treated as a customer. The offer was not accepted.

Despite no agreement being signed, the licensee approached the seller and insisted remuneration for their services, despite the failed offer and no written agreement was in place.

The licensee was charged with and agreed to having violated the *Real Estate Trading Act*, Section 21 (1), as a result of not fully disclosing remuneration in writing.

In addition, the licensee was also charged with and agreed to having violated Bylaw 702, Article 3, for failing to have the seller sign a written representation agreement that disclosed the licensee's role and nature of services. Per the Bylaw, this agency disclosure must be stated prior to beginning and establishment of a relationship.

### PENALTY

The licensee was fined \$500 for violating *Real Estate Trading Act*, Section 27 (1), and \$500 for violating Bylaw 702, Article 3.

# PUBLIC INITIATED INVESTIGATIONS

## CASE # 7: REMOVAL OF CLIENT'S PROPERTY WITHOUT THEIR KNOWLEDGE OR CONSENT

A seller had a vacation property listed. The seller visited their property and noticed a framed photograph was missing. The seller asked their licensee the whereabouts of the photograph. The licensee admitted to taking the photograph, but only to repair it and promised to return it after the repair was complete.

Time passed and while the seller was on Facebook, they noticed a picture of the photograph, in question, was shown under the licensee's private-art collection album.

The seller confronted the licensee who admitted that they took the photograph, and made a copy of the photo while it

was removed from the property. The licensee apologized for their actions. The matter was referred to the Discipline Committee.

### PENALTY

A hearing panel found the broker in violation of *Real Estate Trading Act*, Section 22 (1) (a) and (c), and Bylaw 702 Article 1, 2, 34, 35, 39 (a) and (v).

The penalty was a four-month suspension, \$4,000 fines and \$26,270.07 in legal costs.

# NSREC INITIATED INVESTIGATIONS & LICENCE SUSPENSIONS

## CASE #8: FORGING SIGNATURES

A broker was reviewing a pending transaction when they noticed something peculiar with the real estate documents, given to them by one of the brokerage's licensees.

The first discrepancy was during the signing of the Buyer Brokerage Agreement, where the licensee listed the remuneration amount received incorrectly. Upon review, the broker directed the licensee to obtain an amendment to the Buyer Brokerage Agreement to correct the remuneration error made on the Buyer Brokerage Agreement.

The licensee contacted the buyer and they agreed to sign an amendment, however the licensee incorrectly provided them with a wrong version of an amendment form. After the licensee noticed a signature error, the licensee contacted the buyer on the phone to say they had to sign another version of the correct form. The buyer verbally instructed the licensee to sign the document on their behalf.

There was no power of attorney in place authorizing the licensee to sign on behalf of their client. When the broker reviewed the amendment, the licensee did not sign their name on the buyer's behalf (ex: John Doe, Power of Attorney, on behalf of "buyer A"). Instead, the licensee signed the buyer's name in a similar style as the buyer's signature, and then witnessed it with their own signature.

The broker confronted the licensee advising them that the signatures did not look authentic.

The licensee admitted they signed the buyer's signature. The buyer also confirmed they had given the licensee the authority to sign on their behalf, but they did not provide written authority to do so (ex. power of attorney).

A power of attorney allows the licensee to sign on their behalf. A power of attorney does not permit a licensee to forge a buyer's signature, as this licensee had done.

The investigation found the licensee was in violation of the *Real Estate Trading Act*, Section 22 (1) (a) and (b), for unprofessional conduct for forging a buyer's signature.

### PENALTY

The licensee was charged with and agreed to having violated Section 22 (1) (a) and (b) of the *Real Estate Trading Act*.

The penalty was a \$1,000 fine and a one-month licence suspension. At the time this was brought to the NSREC's attention, the licensee's then-broker terminated their licence and reported the incident to the NSREC. This absence satisfied his suspension as time served.