

# DISCIPLINARY News

March 2016 ● Vol. 8 ● Issue 1

## THE COMPLAINT PROCESS

The Nova Scotia Real Estate Commission (the Commission) is responsible for the administration of the Real Estate Trading Act and our Bylaw, part of which includes receiving complaints about brokerages and licensees, and investigating and taking disciplinary action when necessary.

You will notice as you read on that while two licensees may be charged with the same violation, the penalties may be different. This is because the Commission assesses each case individually as each investigation is distinct and often complicated in its own way.

Each case also goes through several levels of procedure. When a complaint is made that warrants a full investigation, the following steps are taken:

- a. The Registrar initiates an investigation. He may also do so on his own should he deem it necessary.
- b. Notification that an investigation has been initiated is sent to the respondent licensee and their broker, if applicable, along with a copy of the complaint if applicable, and directions on how to reply.
- c. The Commission's Compliance Investigator requests statements and supporting evidence from all parties involved. Other parties involved with the case, including other licensees, may also be contacted for statements or information if required.
- d. Upon its completion, the investigation report is turned over to the Registrar for his decision.
- e. The Registrar's decision as well as the full investigation file is reviewed by the Complaints Review Committee (CRC), who may accept, reject or make recommendations to amend the decision to:
  - i. recommend no charges;
  - ii. recommend charges through a settlement agreement. If the licensee accepts the proposed settlement agreement, they must satisfy the imposed penalty. If the licensee does not agree with the proposed settlement agreement, the matter is referred to the Discipline Committee.
  - iii. refer the matter to the Discipline Committee.

The CRC or the Registrar may refer the matter to the Discipline Committee, where a panel is appointed and a formal hearing will make a final decision on the matter.

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## WHAT IS THE COMPLAINTS REVIEW COMMITTEE?

The Complaints Review Committee (CRC) is comprised of industry and public volunteers from across the province.

The role of the CRC is to:

- review all of the Registrar's complaint decisions;
- accept, reject or make recommendations to amend the decisions;
- make recommendations to the Commission Board of Directors on conduct, trade practices and standards of business practice; and
- hear requests for review of the Registrar's decision to dismiss a complaint.

# BROKERAGE INSPECTIONS

Every year, the Commission's Compliance Inspectors conduct trust account inspections (formerly known as *audits*) on each brokerage in Nova Scotia. In addition to trust inspections, each brokerage is subject to a full brokerage inspection every three years which includes a review of the brokerage transaction files and trust record keeping. The Commission may increase the frequency of inspections for a specific brokerage if necessary. Inspection results fall into one of three categories: 'very good', 'good', and 'needs improvement'. Any brokerage that receives three consecutive ratings of 'needs improvement' is subject to a \$500 fine and the penalty increases if the brokerage receives a fourth or fifth consecutive rating of 'needs improvement'.

## **Three consecutive needs-improvement inspections:**

Four brokers were fined \$500 for three consecutive 'needs improvement' on trust inspections and required to retake the trust account portion of the broker's licensing course.

## **Four consecutive needs-improvement inspections:**

One associate broker was fined \$1000 for four consecutive 'needs improvement' results on trust inspections.

# REMINDERS & INSPECTION TRENDS

## **Updated Record Keeping Requirement for E-Signatures**

Last year, the Commission released a bulletin to the industry on the use of e-signatures in facilitating agreements and service contracts. Since its release, we have received some questions and comments on the policy and its practicality.

After several constructive discussions with licensees, the Commission has amended its policy on document retention with regards to electronic signatures. Brokerages are no longer required to maintain physical copies of certificates of authenticity (confirmations including the service name, a time stamp and the confirmation number to authenticate the signature) in brokerage transaction files.

**However, in lieu of the physical copies, these confirmation documents must be saved electronically at the brokerage** should the Commission require a copy for inspection or investigative purposes. Be mindful that electronic signature services will evolve and if a service becomes obsolete the Commission will still require access to confirmation documents.

The Commission would also like to remind licensees that the Commission does not promote, prefer or otherwise endorse a particular brand of electronic signature software. The broker is directly responsible for verifying that any electronic signature service used to produce signatures creates legally binding brokerage/service agreements and agreements of purchase and sale for real estate. Failure to do so may result in disciplinary action. The Commission recommends that brokers obtain legal advice as part of this verification process.

## **Follow-up: What is Trading in Real Estate?**

We received a number of great questions on an article in our January Special Edition Newsletter entitled, "What is Considered Trading in Real Estate?" (*January 2016, Pg 4*) and would like to share a few and their responses.

**Q:** The article states that facilitating the sale of new construction on land already owned by the buyer or mini homes without land is not a trade in real estate. Does this mean that all mini homes are not considered a trade in real estate?

**A:** If the mini home is to remain on the land and the buyer will be leasing the land in the park or purchasing the land as well then yes, that is considered a trade in real estate. If the mini home will be removed for various reasons (it's old or doesn't comply with park regulations) then no, this is not a trade in real estate.

**Q:** Hair salons were listed as an example of what is not considered a trade in real estate. Why is this?

**A:** The sale of a salon must be in respect to the property, not the contents therein. Facilitating the sale of hair salon contents (products, equipment, furnishings) does not equate to the sale of land. Licensees facilitating the sale of a business must ensure that they are facilitating the lease or purchase of the property, otherwise it is not a trade in real estate.

## **Licensees Acting Outside of their Licence Capacity**

As outlined in section 704 of the Bylaw, brokers have different roles and responsibilities than those with a managing associate broker, associate broker or salesperson licence.

For instance, supervisory roles over other licensees including offering advice to licensees on trades/real estate, reviewing transaction files and approving advertising are restricted to those with a broker or managing associate broker licence.

The Commission has seen several cases over the last few years where licensees have assumed responsibility for work that is outlined specifically for a different licence class. We would like to remind licensees that doing so may result in disciplinary action.

Brokers may assign their responsibilities to another managing associate broker in their office as they see fit, however that direction must be put in writing and the Commission must be notified when doing so.

# INVESTIGATIONS

The following cases are provided as learning opportunities for the industry. These cases do not cover every matter investigated by the Commission, but are representative of the more serious and consistent issues. Disciplinary actions are distributed to licensees in accordance with [Commission Bylaw 839](#).

## CASE #1 ● NOT DEFINING RELATIONSHIP OR HAVING A WRITTEN AGREEMENT WHEN CHARGING A FEE

A licensee approached a landlord (customer) who had a potential commercial tenant for a long-term lease. The potential tenant (client) was interested in the space and made arrangements to move forward with the transaction, however the deal did not close as the prospective tenant had an unexpected financial setback in their business. The landlord had paid the brokerage a fee prior to the lease becoming effective.

The landlord then found another tenant through a different licensee and paid an additional remuneration to another brokerage. They asserted that the initial brokerage should be obligated to return the remuneration as the deal fell.

The Commission does not rule on the merit of financial claims between licensees and consumers. However, the investigation did identify several paperwork discrepancies with the initial licensee, such as:

- the licensee did not have a written fee agreement between the brokerage and the landlord;
- the licensee did not identify themselves or the brokerage on the offer to lease;
- the licensee did not inform his broker of the offer to lease or the subsequent lease agreement until days after it was already executed; and
- the licensee did not provide their brokerage with a signed designated agency agreement at the time the agency relationship was established with the tenant.

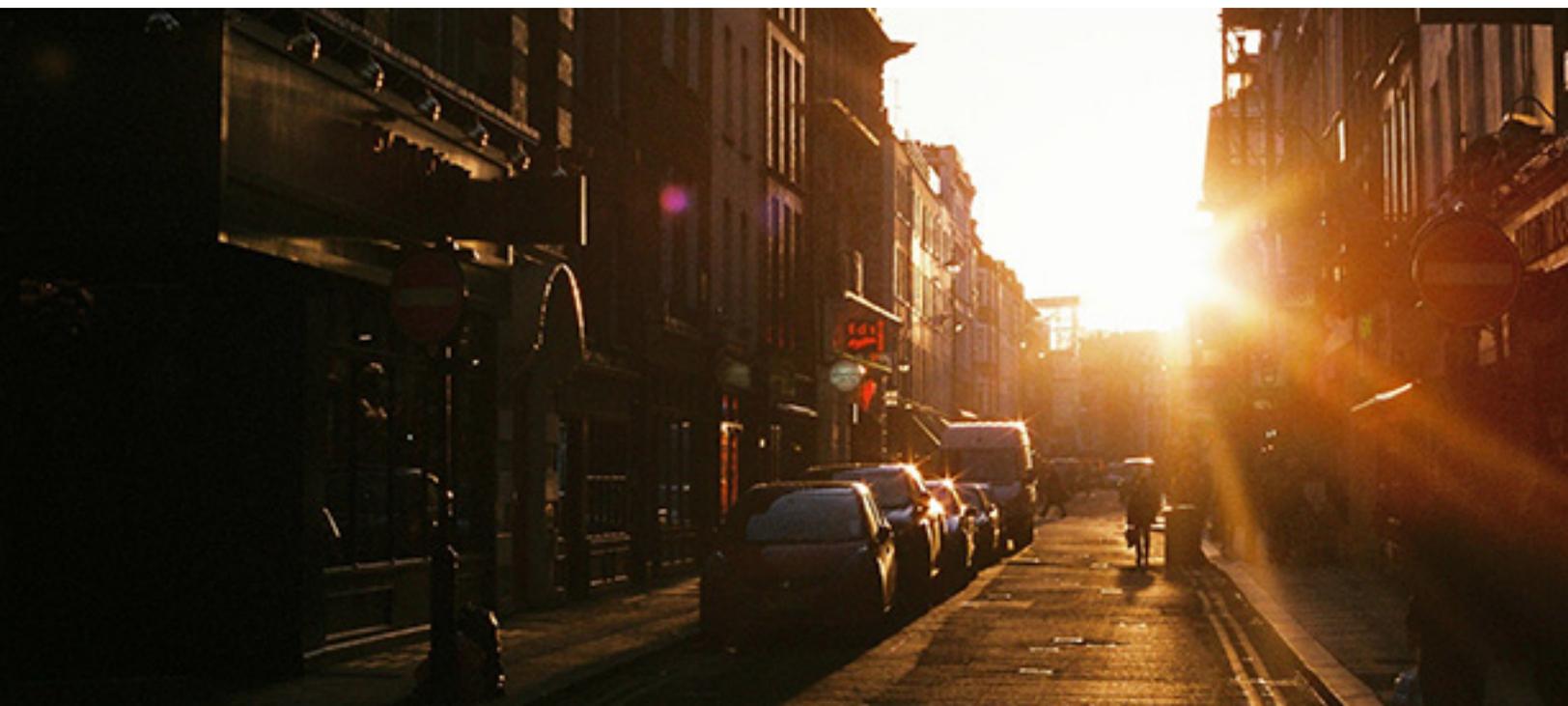
## LESSONS LEARNED

It is the responsibility of the licensee to ensure that they have the proper paperwork signed, as applicable, and to keep their broker informed of any activity they are facilitating. Although the evidence in this case supports that the licensee treated the tenant as a client via verbal instruction, they did not have, as required, a designated agency agreement in place.

**In January 2016, the licensee was charged with one violation of Bylaw 719(c) (\$400), one violation of Bylaw 702, Article 3 (\$400) and one violation of Bylaw 705(d) (\$400) for a total of \$1,200 in fines.**

**The licensee was also cautioned for not using the Working with a REALTOR® brochure (now the Working with the Real Estate Industry form).**

**The broker was cautioned for not closely supervising licensee activities and ensuring they understand their responsibilities per Bylaws 703 and 704.**



## CASE #2 ● ACTING OUTSIDE OF THE SCOPE OF YOUR LICENCE

A licensee represented a recently separated couple selling their matrimonial property. One selling party alleged that the licensee blatantly stepped outside of the scope of their work by creating a *Separation Agreement* for the purposes of the other seller obtaining financial assistance for the purchase of a new home. The complainant was unaware of the *Separation Agreement* until presented to them by the licensee and they claimed that the ordeal created undue stress and financial repercussions.

The investigation revealed that the licensee had in fact provided a *Separation Agreement* for one party in the transaction which demonstrated that the licensee failed to protect and promote the interests of both clients and did not treat both clients with equal fairness.

### LESSONS LEARNED

When representing two clients in a transaction, a licensee must fully understand their fiduciary duties and recognize that requests from clients can create a potential conflict. There is an obligation to disclose all pertinent information to the other party in the transaction, which becomes difficult when you have two clients (sellers in this case) that are going through a separation.

Questions outside of normal selling/buying of real estate must be referred to the appropriate legal professionals. The licensee should have realized that the creation of such a form was well outside of the scope of trading in real estate, as well as showing bias to one client in the transaction. The licensee has duties to fully represent both sellers, not to provide services on the side for only one of the sellers in the transaction without the other's knowledge.

Licensees must not mislead their clients to falsely believe that they have qualifications or certifications outside of the scope of their real estate licence. Consumers must also be made aware of the potential implications when licensees performing duties outside of trading in real estate. For more information, see our recent article [\*\*What is Considered Trading in Real Estate\*\*](#) from our January newsletter.

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**In January 2016, the licensee was charged with one violation of Bylaw 702, Article 2 (\$400). Their broker was cautioned about their failure to responsibly supervise the licensees at their brokerage.**

## CASE #3 ● IMPROPER USE OF ELECTRONIC SIGNATURES

A client engaged a licensee to facilitate in the sale of their property. On four separate occasions when completing NSREC mandatory forms, the licensee had the seller "execute" real estate documents by using Adobe Acrobat (not a secure electronic signature provider) to insert electronic texts into real estate forms by typing the seller's names in a script font.

The licensee claimed that on all four occasions it was inconvenient to locate a printer and scanner for the purposes of obtaining the seller's bona fide authentic signature(s).

As a result of the investigation, the evidence supported that an unsecured and unverifiable method of obtaining e-signatures was used by the licensee and that their client's interests were not protected by allowing the seller to execute real estate documents in this manner.

### LESSONS LEARNED

The Nova Scotia Real Estate Commission does not promote, prefer or endorse a particular brand of electronic signature software, though it must be determined by the broker whether the tool used creates a legally binding contract. Read more on our electronic signature policy on page 2.

**In January 2016, the seller's licensee was charged with one violation of Bylaw 703, Article 2 (\$500) and also received a letter of reprimand for violating Bylaw 702, Article 11.**

**The buyer's licensee, their broker and the broker of the seller's licensee were all cautioned for failing to identify that the signatures were not legitimate.**

## CASE #4 ● IMPROPER HANDLING OF TRUST FUNDS

A buyer submitted a trust deposit for a condo unit and due to personal circumstances was not able to close the deal. The broker, however, released the funds to the seller's lawyer without the written consent of all parties. The buyer was not contacted in regards to the trust release and it was not until the seller's lawyer discovered the error and that it was brought it to the brokerages, and the Commission's, attention.

As a result of the investigation, it was found the funds had indeed been released in error and the Commission requested the return of the funds to the buyer's brokerage's trust account.

### LESSONS LEARNED

In order for trust funds to be released both parties or their lawyers must agree in writing to release the funds. In addition, broker supervision must ensure the proper processes are in place. For more information see [page 2 of Volume 7, Issue 2](#) of our discipline newsletter (released November 2015).

**In January 2016, Timothy Frotten, formerly broker of Coldwell Banker Supercity Realty and currently broker with Royal LePage Anchor, was charged with one violation of Bylaw 633(b)ii for releasing a deposit without the consent of all parties.**

**The penalty was a fine of \$1000.**

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## COMPLIANCE TEAM

**For information on investigations, contact:**  
**Carolyn MacDonald, Compliance Manager**  
cmacdonald@nsrec.ns.ca  
902-468-3511 x303

**Michelle McLeod, Compliance Investigator**  
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902-468-3511 x312

**For information on inspections, contact:**  
**Mallory LeBlanc, Compliance Inspector**  
mleblanc@nsrec.ns.ca  
902-468-3511 x308

**Crystal Yeo, Compliance Inspector**  
cyeo@nsrec.ns.ca  
902-468-3511 x306

*\*Note that Crystal is filling a maternity leave contract position ending May 2016.*

Complaints must be in writing\* and may be submitted by fax at 902-468-1016/800-390-1016 or by mail or email at:

**Attention: Compliance**  
Nova Scotia Real Estate Commission  
7 Scarfe Court, Suite 200  
Dartmouth, NS, B3B 1W4

**New address as of May 1, 2016,**  
602-1595 Bedford Highway, Bedford, NS, B4A 3Y4

**[compliance@nsrec.ns.ca](mailto:compliance@nsrec.ns.ca)**

*\*For information on our complaint requirement visit the [Complaints section](#) of our website.*



Additional information on the complaint and discipline processes can be found on the Commission's website at [www.nsrec.ns.ca](http://www.nsrec.ns.ca)

