



Policy: Brokerage Records and Production Policy

BOD Approval: September 7, 2017

Storage duration and format

Real estate brokerages are required to maintain real estate trade and trust account records for a period of seven years, after which they can be destroyed. Brokers may choose to store their records in paper or electronic format.

Organization of files

Regardless of format, paper or electronic, brokers have the same responsibility under the Act, the Bylaw, and this Policy to store records both securely and in an organized and logical manner that permits the easy retrieval of files.

How these documents are ordered within a transaction file is determined by the broker, such as chronological or reverse chronological. The order must be logical and consistent across all transaction files. As an example, a broker may organize their transaction files in reverse chronological order as follows:

Reverse Chronological Order

1. Trade Record Sheet
2. Closing package, with copies of cheques etc.
3. Commission statement
4. Deal close report
5. Finance letter, insurance letter, pertinent emails. etc.
6. Any amendments in order of most recent
7. Copy of deposit check
8. Receipt of funds form, if applicable (this form is a FINTRAC requirement)
9. Counter offer, if applicable
10. Agreement of Purchase and Sale and all applicable Schedules
11. Property Disclosure Statement, if applicable
12. Transaction Brokerage Agreement, if applicable
13. Buyer (Designated) Brokerage Agreement, if applicable
14. Seller (Designated) Brokerage Agreement, if applicable
15. Customer Status Acknowledgement, if applicable
16. All listing documents, if applicable
17. Working with the Real Estate Industry form

Additional documentation

Depending on the trade, additional documents may need to be stored in the transaction file, see Bylaw 621 for what must be contained in a transaction file. Transaction files may also contain emails and working notes related to events and decisions that occurred during a trade. For example, if a client

instructs their licensee to waive a condition that exists for their benefit and that has not been satisfied, it is important for the licensee to include documentation in the file that demonstrates that the licensee advised the client of the potential consequences of waiving the condition and that the client, after due consideration, still chose to waive the clause.

Organization and legibility of records

It is important to note that when it comes to the production of files there is no difference between paper records storage and electronic records storage. If files are stored in a haphazard, illegible, or incomplete manner, whether that is a paper file folder with random documents stuffed in it or an electronic folder with those same random documents scanned into a single PDF, the broker is in violation of the requirement to keep proper records under the Bylaw and the storage policy.

It is also important to note that proper records storage is more than regulatory compliance, civil claims stemming from real estate transactions may occur years after a property was sold. Maintaining complete transaction files that are properly named and easily retrieved can provide written evidence necessary for a brokerage or a licensee's defense.

Repercussions of careless or haphazard records storage

If the files produced during an inspection are stored in haphazard manner or the files are incomplete, the compliance inspector will stop the inspection and instruct the broker to organize the files, after which, the compliance inspector will reschedule the inspection.

In cases where the broker has been instructed to organize their trust and transaction files and fails to do so, the broker may, at the discretion of the Registrar, be subject to administrative penalties or escalated to a disciplinary proceeding.

File security

Brokers are responsible for ensuring files are stored in a safe and secure location and made available upon demand. Paper records must be stored in Nova Scotia and, if records are not stored at the brokerage office(s), the broker must notify the Commission of the storage location.

Whether records are stored in the office, in a storage facility, or in a cloud, brokers are responsible for ensuring files are secure and accessed only by authorized individuals and that the access of those individuals is restricted to the files they are permitted to view.

The terms of reference for storage providers, both physical and virtual, must be compliant with the Act and the Bylaw. When a broker ceases to use the services of a storage provider, it is the broker's responsibility to ensure paper records are returned to the broker. Likewise, in the case of electronic records, the broker must ensure they are provided with a copy of the records.

Production of files

Brokers are required to produce files for inspection or investigation in the format, either printed or electronic, specified by the Commission.