

## Inside this issue

About the Commission's discipline process .....	1
Failure to document cash back, licence, and intent .....	2
Unprofessional conduct.....	3
No agreement in place.....	4
Advertising violations.....	6
Failure to provide duty of care .....	7
Failure to provide duty of care and supervision.....	9
Poor paperwork, verbal agreements, failure to supervise .....	10
Violating client confidentiality and poor paperwork.....	11
Failure to disclose licence and intent on private purchases .....	12
Breach of trust .....	13
Brokerage audits—strike three (and four) and paying unlicensed entities.....	14

## About this newsletter

*As per the Commission's discipline publication threshold, Industry Members who receive a fine in excess of \$500 have their names published in the newsletter that is sent out to all Industry Members. The names are also published in the newsletter that appears on the Commission website for a period of 30 days.*

## About the Commission's discipline process

The Nova Scotia Real Estate Commission is responsible for the administration of the Real Estate Trading Act and the Commission Bylaw. Part of that responsibility is dealing with public complaints about a brokerage or an industry member.

The Commission investigates these complaints and if there is evidence to support a breach of the Act or Bylaw, charges are laid against the industry member. If there is insufficient evidence of a breach, or no breach occurred, the case is dismissed. The first option for most industry members facing disciplinary action is a settlement agreement.

If the Commission and the industry member agree to deal with the matter through a settlement agreement, the industry member must satisfy the penalty imposed.

If the industry member does not agree with a settlement agreement then the matter is referred to a full discipline hearing. After the Commission's and witnesses' evidence has been examined and cross examined at a hearing, the Hearing Panel decides whether the industry member is guilty of any of the charges brought forward at the hearing. The charges may include those proposed in the settlement agreement, but are not necessarily limited to those charges. If they are found guilty of any of the charges there is then an opportunity for both the Commission and the industry member to speak to appropriate penalties.

An industry member has the right to appeal the decision of the Hearing Panel to the Nova Scotia Court of Appeal, should they wish to and if there are grounds to do so.

## *Misnomer: Licensed REALTOR®*

*Industry Members are licensed by the Commission as salespeople, associate brokers, managing associate brokers, approved sales corporations and brokers. Industry Members are not “licensed REALTORS®”.*

*Being a REALTOR® means you are a member the Canadian Real Estate Association (CREA) at a national level and the Nova Scotia Association of REALTORS® (NSAR) or the Annapolis Valley Real Estate Board (AVREB) at a provincial level. CREA and its provincial counterparts are a professional membership organization and participation is voluntary.*

*CREA does not grant licenses, and you can be licensed to sell real estate without being a CREA member.*

## Case overview

The Commission received a complaint from a seller about a salesperson who personally prepared and submitted an Agreement of Purchase and Sale (APS) to purchase the seller’s property. The seller felt like the salesperson was trying to take advantage of them. The offer contained an untitled addendum requesting a large cash back upon closing. The APS contained no reference to the untitled addendum. The salesperson disclosed that they were a “licensed REALTOR®” and did not disclose their intended use of the property.

## Results

The salesperson was charged with violating Bylaw 702, Article 11 for failing to properly document the addendum on the APS and charged for violating Bylaw 702, Article 21 for failing to make proper disclosures of license status and intent. The salesperson was offered and rejected a settlement agreement and the matter went to hearing. The hearing panel found the salesperson guilty on both charges. In coming to a decision the hearing panel factored the salesperson’s seven years experience in the industry, as well as the importance of an industry member’s adherence to the rules when purchasing property on their own behalf so that there is no perception of trying to take advantage of the public.

## Penalty

The salesperson (now broker) was fined \$600 for violating Bylaw 702, Article 11, \$400 for violating Bylaw 702, Article 21, and ordered to pay full hearing costs of \$5605.26. In awarding hearing costs to the Commission, the hearing panel stated that the costs should not be borne by all industry members; as an experienced salesperson who violated the Bylaw, they are responsible for their own actions; it is not the responsibility of the industry to pay for the mistakes of the salesperson.

## About settlement agreements

The first option for most Industry Members facing disciplinary action is a settlement agreement. In the majority of cases, the Registrar writes a proposed settlement agreement, which outlines the alleged violations and corresponding penalty. The settlement agreement, along with the investigation file, is presented to the Complaint Review Committee. The Committee may approve, reject, or amend the settlement agreement.

If the Complaint Review Committee accepts or amends the settlement agreement, the industry member can accept the agreement and satisfy the penalty or reject it and go to hearing. If the Complaint Review Committee rejects the Settlement Agreement, it may recommend that the matter be dealt with through a hearing.

## **When can you sign for someone else?**

*The only time you can sign for someone else is when you have a power of attorney granting you that authority.*

*A power of attorney is an agency agreement where a person is authorized to execute documents under seal on behalf of another party. The power of attorney must be in writing and the authority granted is limited to the terms of the document.*

*Industry Members who have been granted power of attorney, or are working with a consumer who has been granted power of attorney need to ensure power of attorney signatures are executed properly. As an Industry Member signing on behalf of another person, you sign your own name followed by "as power of attorney" or "POA". When a consumer is signing on behalf of another person, the same process is followed. If two signatures are required, for example, a couple, the person with power of attorney signs their own name (for their signature) and then signs their own name again followed by "as power of attorney" or "POA". A copy of the power of attorney document is retained in the transaction file.*

*Signing someone else's name is fraud, which is a criminal offense.*

## **Case overview**

The Commission received a complaint from a broker's business partner alleging that the broker forged their signature on a real estate document. When the Compliance Investigator looked into the complaint, the broker admitted that they did forge the signature and then had a salesperson employed by the brokerage witness the signature.

### **Results**

The broker did forge the signature. The Complaint Review Committee also found the industry member who witnessed the forged signature at fault. The purpose of having signatures witnessed is so if questions are raised regarding the signature on a document, a witness may be called upon to testify that the individual whose name is on the document signed the document in their presence.

### **Penalty**

The broker was fined \$2,000 and received a 30-day licence suspension for violating Act Section 22.

The salesperson was fined \$400 for violating Bylaw 702, Article 2.

### **Updated Penalty**

When a licence is suspended, one of the requirements is to cease all advertising. The broker did not adequately comply with this requirement. As a result, the broker's licence was suspended for an additional 30 days.

## **Get it in writing**

*Bylaw 702, Article 15, states "The industry member shall not advertise a property without the seller's/landlord's written authority, nor shall the advertised or offered price of a property be other than that which was agreed upon with the seller/landlord."*

*In both of these cases, properties were advertised without the written consent of the seller, a violation of Bylaw 702, Article 15. When working with a seller, regardless of an industry member's desire to market the property as quickly as possible, no advertising may commence until the Seller Brokerage Agreement is signed. There is no grey area when it comes to advertising properties without written consent. If it happens and a complaint is filed, the advertisement is clear and undeniable evidence of a failure to comply with the bylaw.*

## **Case overview 1**

A broker advertised a property in the Real Estate Book without a written brokerage agreement in place. The seller complained to the Commission after viewing the property in the publication. The broker explained the advertisement appeared as a result of an error in judgment.

### **Results**

The broker violated Bylaw 702, Article 15, by not having a signed Seller Brokerage Agreement in place.

### **Penalty**

The broker was fined \$1,000 for violating Bylaw 702, Article 15.

## **Case overview 2**

A broker placed a property on the MLS® system without a written brokerage agreement in place. The sellers complained to the Commission after viewing the property on realtor.ca. Upon investigation, the broker blamed their administrator for placing the property on the MLS® system in error.

### **Results**

The broker violated Bylaw 702, Article 15, by not having a signed Seller Brokerage Agreement in place. The Registrar and Complaint Review Committee also found that blaming the administrator for the error was irrelevant because the broker is ultimately responsible for the activities of the brokerage, including ensuring all brokerage agreements are in writing.

### **Penalty**

The broker was fined \$1,000 for violating Bylaw 702, Article 15.

## **When can you make a claim for commission?**

*Bylaw 715 sets out the requirements to make a claim for commission.*

*(a) A brokerage may make claim for a commission when one of the following is in place, which specifies the commission to be paid:*

*(i) a Seller Brokerage Agreement;*

*(ii) an Agreement of Purchase and Sale;*

*(iii) a Buyer Brokerage Agreement;*

*(iv) a commission sharing agreement; or*

*(v) some other form of written agreement.*

*Unless one of these five requirements is met, there is no claim for commission.*

## **Case overview 3**

A salesperson showed a buyer relocating to Nova Scotia several properties; however, no Buyer Brokerage Agreement was signed. The buyer was unhappy with the services being provided and opted to work with another brokerage. When the buyer contacted the salesperson to inform them their services were no longer needed, the salesperson allegedly threatened to smear the buyer's reputation within their professional industry here in Nova Scotia. The industry member also told the buyer that they would be billed \$2,000 for real estate services and if it wasn't paid, the salesperson would contact the buyer's new employer for the money. The buyer submitted a complaint to the Commission.

### **Results**

The salesperson violated Bylaw 702, Article 35 for threatening to call the buyer's new employer; the salesperson violated Bylaw 715 for attempting to claim commission with no written agreement.

### **Penalty**

The salesperson was fined \$500 for violating Bylaw 702, Article 35, and \$400 for violating Bylaw 715.

## **Case overview 4**

A written complaint was received against a salesperson with whom the complainants had their property listed. The salesperson changed brokerages and the sellers claim the salesperson pressured them into moving their listing to the new brokerage. As per the brokerage policy, they opted to terminate the Seller Brokerage Agreement and sign with a different brokerage. Shortly thereafter, the sellers received a flyer in the mail advertising their property as listed by their former salesperson at the salesperson's new brokerage. During the course of the investigation, the salesperson provided misleading information to the Commission.

### **Results**

The salesperson violated Bylaw 709 by advertising a property without written permission and violated Bylaw 816 by providing misleading information to the Commission during the course of the investigation.

### **Penalty**

The salesperson was fined \$400 for violating Bylaw 709 and \$400 for violating Bylaw 816.

## **Advertising sold properties**

*Industry members can advertise a property as sold after all the conditions are met, but can only advertise the property (as sold or otherwise) until the property closes or the contract expires.*

*The reason for this is once the closing occurs or the date in the contract expires, the brokerage no longer has the authority to advertise the property. The seller authorizes the brokerage to advertise the property in the Seller Brokerage Agreement. When the Seller Brokerage Agreement expires, that authority to advertise ends.*

*Beyond this point, sold information may be used for CMAs and statistical purposes only, as stipulated in clause 5.1 of the Seller Brokerage Agreement, unless additional written permission is obtained.*

*Industry Members who wish to advertise a property as sold, must have the buyer's written permission because the buyer is now the property owner and the only one who can authorize it being advertised.*

*To advertise the sold price of the property, written permission must be obtained from both the buyer and the seller.*

## **Case overview 1**

The Commission sent a salesperson written notice to remove sold properties advertised on their website. The industry member had every property they ever sold, with sold prices, advertised on their website. Some of the sold properties dated back to 2001. The salesperson contacted the Commission and stated their website would be corrected. Some months later, the website still wasn't corrected. In addition, the salesperson had changed brokerages five months previously, but never updated the website to reflect the new brokerage.

### **Results**

The salesperson violated Bylaw 709 for advertising properties without written authorization and violated Bylaw 705 for trading in the name of a brokerage other than the one with which they were licensed.

### **Penalty**

The salesperson was fined \$400 for violating Bylaw 709 and received a letter of reprimand for violating Bylaw 705.

## **Case overview 2**

The Commission received a written complaint from a property owner about a photo of his vacation property appearing in a listing for a different plot of land. The owner was concerned that trespassing and theft may occur on his property as a result of the misleading nature of the listing cut. Based on the scene depicted in the photo, the owner thought it was very likely that the salesperson trespassed on the property while taking the photo. They contacted the salesperson and requested the photo be removed; however the salesperson refused, stating it was a picture of the lake, not the owner's property. It was not until after the owner complained to the Commission that the salesperson removed the photo from the listing.

### **Results**

The salesperson, licensed since 2001, should have known better than to publish a photo of a property that was not listed. The photo clearly depicted the complainant's property, while the listed property was a lot on the other side of the lake.

### **Penalty**

The salesperson was fined \$400 for breaching Bylaw 708 for misleading advertising.

## **Verbal agreements do not protect anyone, including you**

*Bylaw 702, Article 11, requires all agreements regarding real estate transactions be in writing in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement.*

*The reason industry members are required to ensure all agreements are in writing is to protect all parties to the transaction. In this case, the financing clause in an agreement of purchase and sale was verbally extended, but never put into a written amendment. When the buyer tried to terminate before the last verbal extension, the seller refused, pointing to the expired financing clause in the agreement and the lack of written documentation to say otherwise. Had the industry members ensured the financing clause extension was in writing, the deal likely would have terminated without issue.*

## **Case overview 1**

The Commission received a written complaint from a former industry member about a salesperson with whom they entered into a customer relationship to purchase a house. The former salesperson alleged that the salesperson verbally extended the financing clause in the APS, but failed to obtain the required written extension. The salesperson was aware that the buyer was having an issue satisfying financing and instead of making all parties sign an amendment to extend, they agreed to extend the financing clause verbally. On the day of the extended financing clause deadline, the buyer was unable to obtain satisfactory financing and requested the transaction be terminated. The industry member made the buyer obtain a letter from the financial institution stating that financing was not approved. The seller refused to sign the termination form and also refused to release the \$5000 deposit, citing insufficient notice of termination.

When the Commission investigated the complaint, the investigator also noticed the salesperson made the following disclosure on the APS: “the buyer is a registered Realtor with NSAR”. The investigator also discovered that the salesperson’s broker failed to respond to numerous phone calls and emails from the buyer.

## **Results**

The salesperson violated Bylaw 702, Article 11 on two counts; one for not extending the financing clause with a written amendment and one for making erroneous disclosures on the APS. The salesperson was wrong to request a letter of failed financing when it was not stipulated in the contract and therefore not required.

The Committee found the broker at fault for failing to properly oversee the activities of the industry members employed by the brokerage.

## **Penalty**

The salesperson was fined \$400 for each violation of Bylaw 702, Article 11 (\$800 in total). The salesperson was also given a warning for requiring a letter of failed financing.

The broker was fined \$500 for violating Bylaw 703.

## ***Raising the Bar course raised everyone's bar***

*In the 2009/2010 licensing cycle, the broker's mandatory course was "Raising the Bar." This course was intended to inform the participants on what resources are available to them, as well as address the most common administration and supervision problems experienced in real estate brokerages. Raising the Bar was implemented because of the diverse broker-education background of industry members with broker designations. The goal of this course was to clearly communicate the Commission's expectations of broker-level industry members.*

*This enables the Commission to raise the standards of practice in the industry to where they should be, as well as act as a cutoff to the many excuses often made when issues arise.*

*The 2009/2010 licensing cycle ended on June 30th, 2010. Since that time, brokers have been held to a higher standard.*

## **Case overview 2**

The Commission received a complaint from a buyer who claimed a salesperson did not represent their best interests on the purchase of a property. The buyer complained after the property they purchased without viewing required extensive repairs. When the investigator interviewed the salesperson, the salesperson said the buyer had 44 days to conduct a property inspection written into the APS, but chose to forego an inspection. When the investigator reviewed the transaction file, they found the following issues:

- The salesperson was in an agency relationship with the seller. After receiving emails from the buyer about the subject property only, they had the buyer sign a Buyer Brokerage Agreement and then entered into transaction brokerage the same day. This put both the seller and buyer in a no representation relationship.
- The agency section of the APS was completed incorrectly.
- The 44-day timeline to conduct a property inspection was actually 14 days. The industry member never wrote an amendment to make it 44 days.
- The buyer brokerage agreement stated the buyer would pay a flat fee of \$1,850 if the seller did not pay a cooperating commission. If there was cooperating commission above \$1,850, the excess would be paid to the buyer. The brokerage charged the seller six per cent commission, the full remuneration stated in the Seller Brokerage Agreement, and also charged the buyer \$1,850.

## **Results**

The Registrar and the Complaint Review Committee found it unfortunate that the buyer's property required extensive repairs, however, it was the buyer's decision not to conduct a property inspection. The Registrar found, and the Committee agreed, that both the salesperson and the broker failed to carry out their duties as required under the Act and Bylaw.

## **Penalty**

The salesperson was fined \$400 for violating Bylaw 702, Article 2 and \$400 for violating 702, Article 11.

The broker was fined \$500 for violating Bylaw 703, (b).

## **Brokers are expected to know the rules**

*In this case, both the salesperson and the broker were subject to serious penalties because of the sheer number of mistakes in one transaction.*

*As mentioned previously, the standard to which an industry member is held, is that of a reasonably prudent and knowledgeable industry member acting under the same circumstances. In this case, it is expected that reasonably prudent and knowledgeable industry member would know how to conduct a multiple-offer transaction. Further to that, if the industry member had questions about handling a multiple-offer, it is expected that the broker, who is responsible for overseeing all trading activities of the brokerage, possesses the knowledge and skills to correctly answer those questions.*

## **Case overview**

The Commission received a complaint from out-of-province buyers against the salesperson who represented them on the failed purchase of a property. The buyers were upset because the salesperson told them they had an accepted offer, at which time they stopped searching for a property and returned home. The buyers' salesperson was also the listing salesperson. After 12 days of no contact with the buyers, the salesperson told the buyers that their offer had been a back up offer and the sellers had accepted a previous offer. During the investigation, the investigator found extensive Bylaw violations on the part of the salesperson and the broker, including:

- A counter offer prepared on an offer that was rejected
- Treating a rejected counter offer as open when it was superseded by a new offer
- Failing to advise the seller of a back up offer until after a second offer was verbally rejected
- An accepted counter offer with the salesperson signing on behalf of one of the buyers without power of attorney
- Failing to provide the complainants with true copies agreements
- Providing the complainants with copies of an unsigned Agreement of Purchase and Sale with the words "back up offer" hand written on it and initialed and dated by the salesperson
- Providing the Commission with a different copy of the complainants' offer than the one provided to the buyers
- Poor paperwork, including:
  - An addendum and amendment to the listing agreement signed by only one of the sellers
  - Clauses struck but not initialed
  - Agency section completed incorrectly on the complainants' offer
  - Counter offer contained only the names of the buyers
  - Poor clause writing

## **Results**

The salesperson violated Bylaw 702, Articles 2, 11, 12, Bylaw 712, and Bylaw 721 numerous times. The broker violated Bylaw 703 (b), (c), (e), and 704 (a), for failure to properly supervise.

## **Penalty**

The salesperson was fined \$2000 and required to complete the salesperson licensing course and pass the exam to remain licensed. The salesperson terminated their licence on December 31, 2011.

The broker was fined \$2000.

## ***A terminated agreement is a dead agreement***

*In this case, both salespeople relied heavily on verbal agreements during the course of the failed transaction and continued to rely on verbal agreements for two months after the Agreement of Purchase and Sale was terminated.*

*The reliance on verbal agreements while the transaction was in play is a violation of Bylaw 702, Article 11. The reliance on verbal agreements after the agreement was terminated is a failure to understand and comply with the basic principles of contract law. When a contract is terminated, it no longer exists. You cannot negotiate terms on something that does not exist.*

## **Case overview**

The Commission received a written complaint from a buyer who alleged that the listing salesperson failed to notify their seller clients of the buyer's dissatisfaction with the well-water test within the required time frame. The investigation into the complaint revealed that the Agreement of Purchase and Sale was amended to address the well-water issue with the clause "Seller agrees to rectify volume and bacteria problems with the well prior to closing." The sellers accepted the amendment, however then discovered a new well had to be drilled to remedy the situation. The seller refused to drill a new well unless the buyers shared half the costs; however the APS was never amended. The buyer refused and requested the transaction be terminated. The buyer's salesperson provided written notice of termination one day before the closing date. Despite the termination, both parties continued verbal negotiations as if the transaction was still in play for an additional two months before the buyer requested the return of their deposit, which the seller refused. At this point the buyer submitted a complaint to the Commission.

## **Results**

Both salespeople involved in this transaction violated Bylaw 702, Article 11 for failing to ensure that agreements were in writing, and clearly outlined the terms and conditions. Both brokers were at fault for failing to adequately supervise the activities of the salespeople in their employ.

## **Penalty**

Both salespeople were fined \$400 for violating Bylaw 702, Article 11.

Both brokers were fined \$500 for violating Bylaw 704.

# Violating client confidentiality and poor paperwork

## Agency relationship obligations

**Undivided Loyalty:** *An Industry Member must act in the client's best interests. An Industry Member must put the client's interests ahead of anyone else's, including their own.*

**Reasonable Care and Skill:** *It is expected that Industry Members will perform at a level reasonably expected of competent real estate professionals. An Industry Member is not expected to have expertise beyond this, unless the Industry Member implies or states such expertise.*

**Obey Instructions:** *The Industry Member must obey the client's lawful instructions and not act beyond the authority granted by the client.*

**Confidentiality:** *All information received from a client or obtained as a result of representing that client must be kept confidential.*

**Full Disclosure:** *An Industry Member must disclose to the client all known material facts which may affect or influence the client's decision in the transaction.*

**Full Accounting:** *An Industry Member is accountable for all money or property entrusted to the Industry Member by the client.*

## Case overview

The Commission received a written complaint from a seller who was very upset with the managing associate broker that listed their property. The seller alleged the managing associate broker told the buyers, who were customers of the brokerage, that the seller was going through foreclosure proceedings. When the Compliance Investigator looked into the complaint, they found the managing associate broker did in fact tell the buyers that the seller was in foreclosure and moreover, that the information was incorrect. The seller was at risk of foreclosure, but no proceedings had commenced. Eventually the transaction fell. When the transaction file was reviewed, the Compliance Investigator noted a number of issues, including failing to:

- record the property type on the APS
- record the total number of pages
- complete the buyer portion of agency relationships section
- obtain the buyer's signature on the PCDS
- amend to the Seller Brokerage Agreement to reflect an agreed upon commission reduction
- obtain a price reduction in writing before telling the buyers the price was reduced

## Results

The managing associate broker violated Bylaw 702, article 37, for sharing confidential client information; Bylaw 702, article 11 for failing to amend the SBA before informing buyers of a price reduction; and Bylaw 702, article 11 for poor record keeping.

## Penalty

The managing associate broker was fined \$1,000 and required to complete the agency module of the salesperson licensing class for violating Bylaw 702, article 37 and fined \$400 for each violation of Bylaw 702, article 11.

## ***Acting as a principal in a real estate transaction***

*When an industry member acquires real estate, extreme care must be taken to ensure that an industry member's duty is not put into conflict with their interest as a principal in the transaction (e.g., as a buyer)*

*Act Section 38 requires the industry member to disclose their status as a licensed person as well as their intentions for the property.*

*The obligation created by Section 38 is that any real estate industry member involved, directly or indirectly, in the acquisition of real estate must make written disclosure regardless of any relationships that exist and regardless of whether the trade is conducted through a brokerage or a private sale.*

*While the Act exempts property owners from its authority, it is important for all industry members to know that their errors and omissions insurance exempts personal transactions. Any industry member who purchases or sells their own property is not covered under errors and omissions insurance should something go wrong.*

## **Case overview**

The Commission received a complaint about a salesperson purchasing properties without putting the trades through the brokerage and for failing to disclose their status as a licensed salesperson and their intentions for the property. When the Commission investigated the complaint, the investigator determined that the salesperson did purchase several properties privately, however the Real Estate Trading Act exempts property owners from its authority. The investigator did find the salesperson failed to make the appropriate disclosures. The salesperson's defense was that they were new to the industry and did not know better.

## **Results**

The salesperson's new-to-the-industry defense did not hold up. The properties were purchased without proper disclosure in 2010, some three years after the salesperson was first licensed.

## **Penalty**

The salesperson was fined \$400 for violating Bylaw 702, Article 21.

## **Responding to an investigation inquiry**

As per Bylaw 809, the industry member subject to the complaint is required to respond to the complaint; however the investigator typically needs more information than what the industry member can provide. For example, if there are two industry members involved in the trade, the investigator may ask the industry member not subject to the complaint to provide information. Depending on the allegations, the investigator may need information from an industry member who may have shown the property or had some other involvement with the industry member subject to the complaint.

As per Bylaw 810, when responding to the complaint, the response must be in writing, unless the investigator instructs otherwise. The industry member must respond substantively to the complaint. This means the response must be thorough and answer all of the questions asked. The response must be provided as promptly and in any event, no later than the date set by the investigator.

## **Trust money**

*When a brokerage accepts a deposit, the money is held in trust and the broker becomes the trustee of those funds.*

*As a trustee, the broker has responsibilities under the Real Estate Trading Act, the Commission Bylaw, and the Trustee Act.*

*As the name trustee implies, a broker is placed in a position of trust every time a deposit is received. When funds are improperly disbursed from the trust account, a breach of trust occurs. As demonstrated in this case, breaches of trust are taken very seriously.*

## **Unprofessional conduct, Act Section 22**

*22. (1) Unprofessional conduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonorable, is unprofessional conduct within the meaning of this Act if it is*

*(a) harmful to the best interests of the public, licensed persons or the Commission;*

## **Case overview**

At the beginning of a routine audit, the broker told the Compliance Auditor they had accidentally made two electronic transfers from the trust account. The broker explained the wrong account was selected when performing online transfers. When the auditor examined the trust account, the two electronic transfers were identified along with 14 trust cheques written to cover business operating expenses and, ultimately, a \$4000 trust shortage. The auditor also noted the broker was not updating the trust records. The monthly trust account liability listing was inaccurate, reflecting the amount that should have been held in trust, not the diminishing balance, as shown on her monthly bank statements, which resulted in a \$4000 shortage. Additionally, in instances where the brokerage had taken bona fide trust funds, the credits and debits were documented on the trust account control ledger but the errors were not. All cheques were written from the same cheque book which was clearly marked “trust”, as were the trust cheques.

## **Results**

The Compliance Auditor ordered the broker to immediately replace the missing funds. The Registrar ordered the broker to remit all trust funds held by the brokerage to the Commission to be held in trust, and prohibited the brokerage from holding trust money on future transactions until the matter was investigated. The broker was charged with violating Real Estate Trading Act section 22(1)(a).

## **Penalty**

The broker received a six-month licence suspension, a \$2,500.00 fine, and to be licensed in the future, may apply for an associate broker or a salesperson licence only.

## ***Needs improvement***

*The following issues are commonly identified in needs-improvement audit findings:*

*Poor paperwork*

*Poor clauses*

*Inappropriate cash backs*

*Missing paperwork (Bylaw 621 lists the requirements)*

*No terminations for fallen deals*

*Trust funds released without written authority*

*Transaction brokerage when inappropriate*

*Failure to disclose licensed status and intent*

## **Case overview 1**

Every year, the Commission compliance auditors conduct yearly trust audits on each brokerage in Nova Scotia. In addition to the trust audits, each brokerage is subject to a brokerage and trust audit every three years. At the end of an audit, the compliance auditors may meet with the broker to discuss any problem areas identified and address any questions the broker may have. Broker participation in an audit meeting is optional, however, the Commission strongly recommends brokers attend. This is a broker's opportunity to address problem areas, ask questions, and discuss ways they can improve their audit results in the future. The compliance auditors follow up with a formal audit report, which reiterates their findings during the audit. Audits results fall in one of three categories: very good, good, and needs improvement. Any brokerage that receives three consecutive needs-improvement audits is subject to disciplinary action.

In 2011, three brokerages were fined \$500 for three consecutive needs-improvement audits. One brokerage was fined \$1,000 for four consecutive needs-improvements audits.

## **Case overview 2**

During the course of 2011 audits, two brokerages were identified for paying commissions to unlicensed corporations. While the Act was changed in the spring of 2011 to provide for incorporation, the ability to incorporate was not offered until March 1, 2012.

### **Penalty**

Two brokers were each fined \$1,000 for violating Bylaw 715 (c).