

Inside this issue

About the Commission's discipline process.....	1
Trading without a licence	2
Interference with a competitor's client	3
Not acting in best interest and poor paperwork.....	4
Unprofessional conduct..	5
Inappropriate transaction brokerage, failures to disclose, failure to inform	6
Inappropriate transaction brokerage (continued); Advertising without authority	7
Poor paperwork and advertising the wrong price.....	8
Brokerage audits—strike three.....	9

Publication policy

As per the Commission's discipline publication threshold, industry members who receive a fine in excess of \$500 (one fine over \$500, not one or more fines under \$500, which may total more than \$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.

Complaints are investigated by the Commission's compliance staff. The compliance staff prepares an investigation report for each case, which is then reviewed by the Registrar. The Registrar determines whether there was a breach of the Act or Bylaw and in cases where there was a breach, lays charges and penalties. The cases are then presented to the Complaint Review Committee who may reject or approve the Registrar's decision.

After the committee reviews the cases and makes any adjustments to the proposed charges, the industry member is sent a statement of allegations and a settlement agreement. If the industry member accepts 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.

Mandatory continuing education

Industry members may not realize it, but when they don't complete their continuing professional education (CPE) credits, they incur severe disciplinary action, i.e. a licence suspension. Licence suspensions can be extremely costly.

You must immediately cease trading in real estate. This means your listings are assigned to another industry member at your brokerage, as are any buyers you have under contract, and you cannot solicit new clients. You must take down all your advertising and cease all trading activities.

Your E&O coverage also ceases until your licence is renewed.

Brokers and their industry members are responsible for ensuring continuing education requirements are completed by June 30th and that any industry member who does not have their courses completed, ceases trading on July 1st, including taking down for-sale signs and websites.

Case overview

When an industry member fails to complete their continuing education requirements by June 30th, their licence is not renewed July 1st and they must immediately cease all trading activities. This includes taking down for-sale signs, individual websites and removing unlicensed industry members from brokerage websites.

The following industry members did not complete their education requirements by June 30th, 2012 and continued to trade in real estate, which is a violation of Real Estate Trading Act, Section 4.

Four salespeople were charged with violating Act Section 4 and fined \$750.

Five brokers were charged with violating Bylaw 704 (f) by having an unlicensed person appear as licensed to trade in real estate on their websites. The brokers were each fined \$750.

Bylaw 702, Article 28

"The agency or other contractual relationship of a competitor shall be respected by all industry members. Negotiations concerning exclusively listed property or with any party who is exclusively represented shall be carried on with the client's agent and not with the client directly, except with the consent of the client's agent. Prospecting tenants is not a breach of this article."

When a consumer has a client relationship with an industry member, that relationship must be respected by other industry members. All negotiations must take place between the respective industry members, not the clients, unless the clients give written instruction otherwise.

Abusive/rude behaviour

When the Commission receives complaints about an industry member displaying rude and or abusive behaviour, it can be difficult to prove. Circumstances change, however, when an industry member receives repeated complaints alleging the same bad behaviour, because it demonstrates a pattern of behaviour, not an isolated incident.

Case overview

The Commission received a complaint from sellers who were unhappy with the conduct of the salesperson who represented the buyers on the sale of their house. The sellers alleged the salesperson was abrasive and rude and negotiated inclusions directly with the one of the sellers after showing up early for a showing.

When the complaint was investigated, there was insufficient evidence to prove the salesperson was ill mannered; however, there was evidence to prove the salesperson negotiated directly with one of the sellers.

Results

The salesperson was charged with violating Bylaw 702, Article 28, for failing to respect the contractual relationship of a competitor.

Penalty

The salesperson was fined \$500.

Consent to enter a property

Any time an industry member enters a property, they must have the property owner's consent to do so.

While it may be tempting, especially when a property is vacant like the one in this case, to save time and enter the property without getting the seller's consent, it is prohibited.

Entering a property without permission is also trespassing, which is a summary offence under the Protection of Property Act.

Case overview

The Commission received a complaint from sellers about the conduct of the salesperson who listed their house. The sellers alleged the salesperson did not explain the seller brokerage agreement, did not provide them with a true copy of the agreement, accessed the house without permission, and gave the buyers access to the house without their permission. The sellers also alleged a number of service issues; however service issues are outside the Commission's jurisdiction.

When the compliance officer investigated the case, they found issues with the paperwork, including witnessing faxed signatures, missing initials, and failing to document a verbally agreed upon out-clause in the brokerage agreement. The salesperson also entered the property without the sellers' permission to perform a second water test on behalf of the buyers and permitted the buyers to enter the property without the sellers' permission.

Results

The salesperson was charge with two violations of Bylaw 702, Article 11, for poor paperwork; and for failing to provide a true copy of the brokerage agreement; and Bylaw 702, Article 2, for failing to protect the interests of the client.

Penalty

The salesperson was fined \$400 for each violation (\$1200 total).

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 accompanies a statement of allegations (charge letter), that 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 or reject the settlement agreement.

If the committee accepts 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.

Duty of care

Real estate brokerages owe a duty of care to clients as well as a limited duty of care to customers.

Industry Members must conduct themselves in accordance with a standard of care expected of knowledgeable practitioners.

Failure to do so exposes brokerages and Industry members to liability for professional negligence as well as the Commission discipline process.

The standard of care is based on how ordinary and prudent members of the industry would conduct themselves under similar circumstances.

The standard expected is not of perfection, but of reasonableness according to how knowledgeable, well-trained practitioners would act.

It is expected that all industry members have an understanding of agency and the duties it imposes, including the duty to account for property and the duty to respond in a timely manner.

Case overview

The Commission received a complaint from sellers about a salesperson who showed their vacant home. The sellers alleged the salesperson unplugged a sump pump in the basement while showing their home and that evening there was a rainstorm and the basement flooded. The property had to be taken off the market for four months while the damage to the basement was repaired. The sellers were upset that they were not informed that the sump pump was disconnected in a timely manner.

When the Commission investigated, the compliance investigator found the salesperson did unplug the sump pump. The industry member called the listing salesperson to say the sump pump was unplugged, but the salesperson member only listened to half of the message that day. It wasn't until the next day that the listing salesperson listened to the full message, by which time the basement was flooded.

Results

The salesperson that unplugged the sump pump was charged with violating Bylaw 702, Article 35, for unprofessional conduct.

The listing salesperson charged with violating By-law 702, Article 2, for not protecting the best interests of their client.

Penalty

Both industry members were fined \$400.

Interest must be disclosed

Bylaw 702, Article 21 states "The industry member shall not present an offer or acquire an interest in property either directly or indirectly for themselves, any member of their immediate family or any entity in which the industry member has a financial interest, without making the industry member's status as a licensed person and their intent for the purchase known to the seller in writing..."

A failure to comply with Bylaw 703, Article 21 is easily proven: either the disclosure is made in writing, which can be produced, or the disclosure was not made.

Keep your broker informed

Industry members trade on behalf of the brokerage with which they are licensed. As such, it is necessary to keep the broker apprised of all trading activity. In this case, the salesperson cancelled the listing and engaged in a private trade without the broker's knowledge or permission.

Overview

The Commission received a complaint from buyers about the conduct of a salesperson whose house they attempted to purchase. The buyers were working with a salesperson at the same brokerage as the listing salesperson/ seller and entered into transaction brokerage. The buyers scheduled an inspection, but the inspection could not be completed because the water was turned off and the oil tank was empty. This was despite the fact that the salesperson/seller knew they were doing an inspection. The buyer decided to terminate the offer and submit a new (second) offer verbally through their salesperson. The salesperson/seller verbally accepted. A few days after the verbal acceptance, the buyers' industry member wrote a new offer and had the buyers sign it. When the buyer's salesperson presented the signed offer, the salesperson/seller stated that the offer would be a backup offer only as another offer was already accepted. The salesperson/seller counter offered the buyers' second offer, which was rejected. Several days later, the salesperson/seller withdrew the house from the market and sold it privately. The buyers believe the salesperson/seller's conduct was unethical, unprofessional and offensive.

When the Commission investigated the complaint, the compliance investigator found that the brokerage entered into a transaction brokerage relationship with the complainants despite the fact that one of the salespeople was the seller and they both worked for the same common-law brokerage. As a result, neither salesperson could fulfill their duties required under the Bylaw. Both salespeople effected verbal agreements. The salesperson/seller failed to disclose their licence status, a multiple offer situation, and an agency relationship with the successful buyer. The salesperson/seller also failed to keep the broker up to date.

Results

The seller/salesperson was charged with violating By-law 702, Article 2, for entering into transaction brokerage when unable to fulfill their duties; violating Bylaw 702, Article 3, for failing to disclose their relationship with the successful buyers; Bylaw 702, Article 11, for verbal agreements; By-law 702, Article 12, for not disclosing a multiple offer; Bylaw 702, Article 21, for not disclosing licensed status; and Bylaw 705(d) for not keeping the broker up to date.

The other salesperson was charged with violating By-law 702, Article 2, for entering into transaction brokerage when unable to fulfill their duties; and Bylaw 702, Article 11, for verbal agreements.

The broker was charged with violating Bylaw 704 (a) and (b) for lack of broker supervision and not reviewing documentation.

Inappropriate transaction brokerage

Transaction brokerage the act of being a facilitator. Under transaction brokerage, buyers and sellers are entitled to impartiality, reasonable care and skill in carrying out services, providing accurate information and following strict procedures regarding disclosure and non-disclosure. It is highly inappropriate for Industry Members to enter into transaction brokerage under the following circumstances.

Family, colleagues, and self

If you represent a family member or a business associate, the personal relationship you have with that person may cause others to question your ability to be impartial. Likewise, you cannot represent yourself impartially. Regardless of how well you handle a transaction brokerage situation, a personal relationship with one party of the transaction or self representation leaves you and your conduct open to speculation by the other party.

Ongoing agency relationship

Any time you have an ongoing agency relationship with a client; do not enter into a transaction brokerage relationship with them. For example, if you have an agency relationship with a builder, a developer, or a repeat seller, you cannot be perceived to act impartially towards opposing parties to a transaction.

Novice seller or buyer

When representing an inexperienced seller or a first-time home buyer, entering into a transaction brokerage agreement is doing a huge disservice to that person. Novice sellers and buyers need your help, advice and support—services that cannot be provided under transaction brokerage.

Penalty

The listing salesperson (and seller) was fined:

- \$750 for violating Bylaw 702, Article 2
- \$500 for violating Bylaw 702, Article 3
- \$500 for violating Bylaw 702, Article 11
- \$500 for violating Bylaw 702, Article 12
- \$400 for violating Bylaw 702, Article 21
- \$500 for violating Bylaw 705 (d)

The other salesperson was fined \$400 for each violation.

The broker was fined \$750.

Advertising without authority

The Commission received a complaint from a buyer who saw a for sale sign on a property they wished to view. When their salesperson contacted the listing brokerage, they were told the property was not listed.

When the compliance investigator contacted the listing brokerage, they were told that the property did have a for-sale sign, but it was not yet listed.

Penalty

The broker was charged with violating Bylaw 702, Article 15, for advertising a property without written permission.

Results

The broker was fined \$1000.

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 this case, the property was advertised without a valid brokerage agreement, a violation of Bylaw 702, Article 15.

When working with a seller, 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.

Overview

A complaint was submitted by a seller who was unhappy with the service received from the salesperson who listed their property. The complaint alleged a number of issues regarding the MLS® advertising of the property and signage, including advertising the wrong price, the wrong PID and as vacant land, not cottage/recreational. The seller said they were told by one industry member that the listing could not be found on MLS®, and that another industry member said the listing salesperson refused an offer on the property without their consent. The seller tried to have the listing cancelled, but the industry member and the broker refused to cancel the listing unless the seller paid \$500 to the brokerage. As a result of these issues, the seller filed a complaint.

When the Commission investigated the complaint, the compliance investigator found that the listing salesperson did not use the wrong PID, the property had two PIDs. The use of one PID over another did not hinder an MLS® search, however, that the property was listed as vacant land, not cottage/recreational may have been why the industry member could not find it on MLS®. However, the property was listed as vacant land, and the seller signed an addendum stating the property was vacant land, so it was advertised according to the brokerage agreement. The investigation revealed that the offer was presented to the seller and rejected by the seller.

The investigation found poor paperwork, including the brokerage and the seller having different copies of the brokerage agreement, both copies were incomplete, and the seller never received a true copy of the agreement. The property was advertised in a real estate publication at the wrong price and the salesperson attempted to mislead the Commission regarding the real estate publication.

Results

The listing salesperson was charged with three violations of By-law 702, Article 11, for not getting contracts/amendments in writing, incomplete and ambiguous clauses, and not providing the seller with a true copy of the agreement; violating Bylaw 702, Article 15, for advertising the wrong price; and violating Bylaw 709 for advertising the property without a valid brokerage agreement.

Penalty

The salesperson was fined \$750 for three violations of Bylaw 702, Article 11, and \$400 for violating Bylaw 702, Article 15 and Bylaw 709.

Needs improvement

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

Poor paperwork

Vague clauses

Inappropriate cash backs

Missing paperwork (Bylaw 621 lists the requirements)

No terminations for fallen deals

Trust funds released without written authority

Transaction brokerage where inappropriate

Failure to disclose licensed status and intent

Audit overview

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. The fine for three consecutive-needs improvement audits is \$500 and the fine increases if the brokerage receives a fourth consecutive needs-improvement audit.

Three consecutive needs-improvement audits

Five brokers were fined \$500 for three consecutive needs-improvement audits.