

Discipline Newsletter

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About this newsletter

The Commission Discipline Newsletter is published twice a year. 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 Web site 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 By-Law. Part of that responsibility is dealing with complaints from the public concerning a brokerage or an Industry Member.

The Commission investigates these complaints and if there are grounds to support that a breach of the Act or By-Law has occurred, then charges are laid against the Industry Member. At this point the Industry Member may agree to a Settlement Agreement, which includes specific charges and penalties. If they do, this Agreement is signed off by the Industry Member and the Registrar. It then goes to the Complaint Review Committee for review and approval.

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 will decide whether or not the Industry Member is guilty of any of the 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 Supreme Court of Nova Scotia and further to the Nova Scotia Court of Appeal, should they wish to and if there are grounds to do so.

Types of complaints

These cases are provided as learning opportunities for the industry and to highlight the consequences when a consumer's best interests are not protected. The complaints fall into the following categories:

- Failure to discover facts pertinent to the property
- Failure to act professionally
- Failure to comply with advertising requirements
- Failure to treat all parties fairly
- Failure to comply with audit findings

These cases do not cover all the issues involving complaints investigated by the Commission, but they are representative of the more serious and/or common issues.

Disclaimers don't hold up

Including a disclaimer on listing cuts stating that all measurements are to be confirmed by the buyer, or something to that effect, is very common. However, just because Industry Members use a disclaimer, it does not absolve them of their responsibilities to comply with the Real Estate Trading Act, the Commission By-Law and the obligation to provide duty of care. If you are charged with breaching By-Law 702, Article 10, and it is proven that you failed to verify the accuracy of information on a listing cut; you will be found guilty and fined, regardless of any disclaimers.

Protect your buyers

There is an important lesson to be learned from this case by purchasers of houses or condominiums:

Make it clear in the purchase offer that the stated size is warranted to be correct, or insert a provision in the offer that the purchase price will be reduced in the event the size of the house or the land beneath it turns out, before or after closing, to be overstated.

Failure to discover facts

Case overview

An Industry Member listed a condo as being 920 square feet. After the property changed hands, the new owner attended a hearing to appeal the Nova Scotia Property Valuation Services (PVS) property assessment. During the course of the hearing, PVS supplied documents to the owner that stated the condo was 800 square feet, not 920 square feet as stated in the listing cut. The owner submitted a complaint to the Commission about the difference in square footage. The Commission investigated the complaint and discovered that the square footage was indeed, overstated by 120 square feet.

Results

The Complaint Review Committee found the Industry Member breached By-Law 702, Article 10 for failing to take prudent steps to verify the square footage of the property when completing the listing documents.

Penalty

The Industry Member was fined \$400.

What happens if an Industry Member rejects a Settlement Agreement?

If an Industry Member rejects a Settlement Agreement, the matter goes to hearing. The Hearing Panel is selected from members of the Discipline Committee, which is comprised of Industry Members and members of the public, and the Commission and the Industry Member are the parties to the hearing. The Commission presents their case and evidence followed by the Industry Member. The Hearing Panel then deliberates and delivers their decision.

The Hearing Panel may find that the conduct is not deserving of sanction. However, if the Panel finds the conduct is deserving of sanction, one or more of the following orders may be made:

- reprimand
- fine up based on the severity of the breach
- payment of investigation or hearing costs
- suspension of, cancellation of, or conditions upon the Industry Member's authorization to trade in real estate in Nova Scotia
- completion of educational courses
- any order agreed to by both sides

Unprofessional conduct

Listing properties

When Industry Members list properties for sale, part of the process is a comparative market analysis to determine a list price. As demonstrated in previous Discipline Newsletters, reliance on old listing cuts has resulted in inaccurate listing information because the initial listing cut was wrong, or the property owners performed renovations, which changed layouts and square footage.

In this case, the broker relied entirely on the listing cut from the last time the house was sold. This was a risky venture given the property was occupied by a hostile tenant who could have taken out their frustration on the interior of the property. To do an accurate CMA and listing cut, and comply with the Commission By-Law requirement to discover all facts pertinent to a property, Industry Members need to view, measure and evaluate the interior as well as the exterior of the property.

Case 1 overview

A broker was hired to sell a property they had listed and sold six years previously. When the broker arrived at the property, the tenant of the property told the broker that the person who hired them did not have title to the property and therefore did not have the authority to list the property. The broker refused to listen to the tenant and took exterior photos, installed a for-sale sign, and listed the property on MLS®. The tenant and the broker argued several times over the listing of the property and at one point, the broker showed up unannounced at the tenant's place of work to request keys. The tenant filed a complaint with the Commission. During the course of the investigation, it was discovered that the person who hired the broker did not, in fact, have title to the property. The title actually belonged to a bankruptcy trustee, which meant that the broker did not have the authority to list the property. The tenant had been served an eviction notice and if the broker had waited a few more weeks for the tenant to vacate, the entire situation could have been avoided.

Results

The Complaint Review Committee found that the broker should have investigated the matter further and held off on listing the property until the tenant had vacated. As a result, the broker violated By-Law 702, Article 10 for failing to discover all pertinent facts about a property. The Committee also found it was unprofessional for the broker to show up at the tenant's work place without permission, which was a violation of By-Law 702, Article 35.

Penalty

The broker was fined \$400 for each violation.

Case 2 overview

A broker submitted a complaint against an Industry Member. The broker's complaint was that the Industry Member took a key from a property the broker had listed without their knowledge or consent. When the Commission Compliance Officer investigated the issue, it was obvious that the Industry Member did in fact take the key because it was clearly stated in an e-mail from the Industry Member to the broker that they had done so.

Results

The Complaint Review Committee found the Industry Member violated Commission By-Law 702, Article 35 for taking a key from a seller's house without the knowledge and consent of the seller/seller's representative.

Penalty

The Industry Member was fined \$400.

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 act in a professional manner.

Unprofessional conduct (continued)

Case 3 overview

The Commission received a complaint from a buyer who claimed an Industry Member prevented them from viewing a property the Industry Member had listed and on which they were interested in submitting an offer. Originally, the listing Industry Member was supposed to show the buyer properties, however after some communication between the parties, the consumer opted to engage the services of a different brokerage. The buyer still wanted to see the property the Industry Member had listed, however, requests to view the property were at first not returned, after which the Industry Member stated the property was sold. Because the property still showed up as active in Filogix, the Industry Member working with the buyer made several more requests to show the property, which were also refused. The buyer then submitted a complaint with the Commission.

When the Commission Compliance Officer investigated the complaint, it revealed that the listing Industry Member entered into a verbal agreement with different buyers and that a written agreement was not finalized until three days later, which meant that the property was not actually sold at the time the listing Industry Member said it was. The investigation also revealed that the listing Industry Member used unprofessional language in e-mails about the buyer, calling him an “objectionable ***hole” and an “English chiseler”. When the Agreement of Purchase and Sale (APS) was reviewed, the agency section of the agreement was completed incorrectly, indicating that the buyer and the seller were both in agency relationships with the brokerage and the Transaction Brokerage section was also completed.

Results

The Complaint Review Committee found the Industry Member violated Real Estate Trading Act, Section 29 for not having a written agreement in place. They also found that the Industry Member violated Commission By-Law 702, Article 35 for using unprofessional language about a potential buyer, and Commission By-Law 702, Article 11 for not completing the agency section of the APS correctly.

Penalty

The Industry Member was fined \$400 for each violation, totalling \$1,200.

*The broker
is ultimately
responsible*

Industry Members must know the rules regarding real estate advertising and are individually responsible for abiding by these rules. However, given the current structure of real estate brokerage in Nova Scotia, salespeople are not fully autonomous from a legal standpoint. They carry on their activities as employees of brokers or as persons authorized to act on the brokers' behalf (contractors).

Therefore, brokers have special responsibilities as employers to oversee the work of the salespeople carrying on activities on their behalf. Brokers must take all reasonable means to make sure that the people they employ comply with the provisions of the Real Estate Trading Act and the Commission By-Law. Brokers must therefore ensure that their own advertising and any advertising done on their behalf by their salespeople is consistent with the rules.

Advertising infractions

Case 1 overview

An Industry Member, after an interview with potential sellers, took a photograph of the exterior of a home ran an advertisement in the Real Estate Book without the seller's written consent or knowledge. The home owners listed with a different Industry Member and submitted a complaint to the Commission about the advertisement.

Results

The Complaint Review Committee found the Industry Member breached Commission By-Law, Article 16, for advertising a property without written authority.

Penalty

The Industry Member was fined \$1,000.

Case 2 overview

An Industry Member was notified several times for failing to comply with brokerage and representative identification requirements in advertising. Specifically, the brokerage name was absent in some advertising mediums and the Industry Member's last name was not included in any advertising. After a couple months had passed and no corrections were made, the Commission met with the Industry Member and their broker to address the issue. At the meeting, it was agreed that the Industry Member would correct their advertising. The Industry Member never corrected their advertising and the matter was brought before the Complaint Review Committee.

Results

The Complaint Review Committee found the Industry Member breached Real Estate Trading Act, Section 28 (2) for advertising without brokerage identification and Commission By-Law Article 702, Article 14 for advertising under a first name only.

The Complaint Review Committee found the broker breached Commission By-Law 703 (b) and (c), for failing to adequately supervise the activities of the brokerage's Industry Members.

Penalty

The Industry Member was fined \$1,000.

The broker was fined \$1,000.

Failure to document agency, verbal agreement

Completing the Agency Relationships section

The improperly completed agency section in this case and in the case on page 4 is a problem that is routinely identified during transaction-file audits. The agency section is made up of three parts, (a), (b), and (c). It is extremely important to note that section (c) is for transaction brokerage only, where both the seller and the buyer are clients of the same brokerage under common law or clients of the same Industry Member or team under designated agency. All other relationships are documented in sections (a) and (b) only.

Case overview

A couple was working with an Industry Member to purchase their first home. After viewing several properties, the couple put an offer on a property listed by the Industry Member's brokerage. A building inspection determined that the furnace needed to be replaced. To complete the transaction, the broker, who was representing the seller, and who was also the seller's father, agreed to replace the furnace with another used furnace, however nothing was put in writing. There was confusion between the parties over the age of the furnace, with the buyers believing the furnace was some 10 years newer than it actually was. As a result, the buyers submitted a complaint to the Commission.

During the course of the investigation, the Compliance Officer found that the agency section of the APS was completed incorrectly and that agency was not explained to the first-time buyers in a meaningful way.

Results

The Complaint Review Committee found the Industry Member and broker violated By-Law 702, Article 3, for improperly completing the agency section of the APS. The Complaint Review Committee also found the confusion about the furnace could have been avoided had the furnace been properly documented in writing.

Penalty

The Industry Member was fined \$400 for completing the agency section of the APS incorrectly and fined \$400 for failing to put an agreement (an amendment) in writing.

The broker was fined \$400 for completing the agency section of the APS incorrectly and fined \$400 for failing to put an agreement (an amendment) in writing.

Brokerage audits—strike three

Raising the Bar course raises 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. Of the 212 brokers overseeing brokerages in the province, 113 have no formal broker-specific education. 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. All brokers in the province have taken the Raising the Bar course and as a result, will be held to a higher standard.

Case 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 meet with the broker to discuss any problem areas identified and address any questions the broker may have. The Compliance Auditors follow up with a letter, 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.

Two brokerages received \$500 fines.

Two brokerages received \$1000 fines.