

DISCIPLINARY News

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THE COMPLAINT PROCESS

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

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:

1. The Registrar initiates an investigation. He may also do so on his own should he determine it necessary for consumer protection purposes.
2. The respondent licensee and their broker (if applicable) are notified that an investigation has been initiated and sent a copy of the complaint (if applicable) as well as directions on how to reply.
3. The Commission's Compliance Investigator requests statements and supporting evidence from all parties directly involved. Other parties involved with the case, including other licensees, may also be contacted for statements or information, if required.
4. Upon its completion, the investigation report is turned over to the Registrar for their evaluation and decision.
5. The full investigation file including the Registrar's decision is reviewed by the Complaints Review Committee (CRC), who may accept, reject or make recommendations to amend the decision to:
 - a. recommend no charges;
 - b. 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.
 - c. refer the matter directly to the Discipline Committee.

When a case is referred to the Discipline Committee, 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 a Commission committee made up 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 for 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:

Three brokers were fined \$500 for three consecutive 'needs improvement' ratings for transaction file review.

REMINDERS & INSPECTION TRENDS

Buyer Brokerage Agreements mandatory for common law brokerages in the new year

Starting January 1, 2017, the Nova Scotia Real Estate Commission will require all brokerages to sign a brokerage agreement with buyers who agree to be clients of their brokerage. This move is aimed at enhancing consumer protection by improving transparency between the brokerage and buyer by clearly outlining expectations at the time they agree to work together.

Timing of the Buyer Brokerage Agreement

Every buyer does not have to sign a Buyer Brokerage Agreement. Brokerage Agreements are reserved solely for clients of a brokerage.

As licensees transition to using buyer brokerage agreements on a regular basis, it is important to understand when buyer clients should be signing these agreements. As of January 1, 2017:

- existing buyer clients of common law brokerages (those already working with the brokerage as clients but not under a written agreement) must complete a Buyer Brokerage Agreement prior to drafting an offer on a property.
- new buyer clients must complete a Buyer Brokerage Agreement upon agreeing to enter into an agency relationship with a brokerage.

Completing the Remuneration clause

If you have reviewed the new Buyer Brokerage Agreement or Buyer Designated Brokerage Agreement released in August, you'll notice that the Brokerage Remuneration clause has been revised.

After considering several different options and consulting with licensees and consumers, the remuneration clause was modified to suit a variety of business models by allowing brokerages to have discretion on how that clause is competed.

However the brokerage initially charges remuneration, two blank lines have been used for flexibility. Examples of what can be inserted are:

- a flat fee, i.e. \$1,000;
- a percentage of the purchase price, i.e. 3% of the purchase price;
- a range of percentages of the purchase price, i.e. 2%-3% of the purchase price;
- a range of a flat rate, i.e. \$1,000-\$2,000; or
- a combination of any of those options, i.e. \$100 plus 2% of the purchase price.

If the amount is unclear at the time the brokerage agreement is completed, or if the remuneration changes prior to the facilitation of an offer (i.e. from a range of 2%-3% of the purchase price to a set 2.5%), the brokerage agreement must be amended to reflect the actual remuneration once that amount is known and **before an offer is prepared**. As you see in the bolded note of the clause below the blank lines, licensees have a duty to disclose the amount the brokerage is to be paid to the buyer prior to an offer being made.

INVESTIGATIONS

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

CASE #1 • RELYING ON UNVERIFIED INFORMATION

Two American buyers, a husband and wife, were looking for a summer home in Nova Scotia. They were referred to a local licensee who showed them multiple properties while they were visiting the province. The buyers requested to view a specific property that interested them and the licensee advised that it was unavailable as it was being rented.

Not having read that in the listing information, the wife contacted the listing licensee directly and was informed that the property was not being rented and indeed for sale.

The buyers had also been interested in a different property, however when expressing so to the licensee assisting them, they were told that it was 'under offer'.

Based on these two situations, the buyers allege that they were provided misinformation concerning the few properties they were interested in, and were upset that they would have to make another trip to Nova Scotia to view the properties.

The investigation revealed that the licensee did not provide the buyers with a *Working with the Real Estate Industry* form during their initial meeting nor did they have them sign a *Buyer Designated Brokerage Agreement* when they established agency. The licensee claimed that had occurred between their initial phone call and the end of their first day of viewing properties. This is a violation of **Bylaw 702, Article 3**.

With respect to the two allegedly misleading conversations, on both occasions the licensee received information that they ultimately relayed to the buyers from third parties and did not explain to the clients that this information had not been verified. The licensee failed to ask the clients if they would like to have that information confirmed and instead saw it as accurate information that did not need verification. This is not in the best interests of the buyers and is a violation of **Bylaw 702, Article 2**.

In October 2016, the licensee was charged with one violation of Bylaw 702, Article 3 (\$500) and one violation of Bylaw 702, Article 2 (\$400), for a total of \$900 in fines.

LESSONS LEARNED

Clearly establishing your relationship with buyers and sellers is integral to public protection. The Commission Bylaw states that all real estate transaction files must contain a signed *Working with the Real Estate Industry* form for clients and customers of the brokerage. If a client relationship is formed, as the licensee admitted that it had in this case, then the client must be provided with a brokerage agreement which lays out all the services and responsibilities of both parties. This ought to have been signed at the time the relationship was established and agreed to.

Making assumptions that the information you receive from a third party is accurate is not in the best interest of your clients. It is a licensee's obligation to do their best to ensure that the information that they relay to their clients, regarding properties or otherwise, is confirmed to be accurate. In this case, the information in both listings in this case could have been verified by the listing licensee or their Broker.

CASE #2 • IMPROPERLY DISCLOSING AGENCY ROLE

Two buyers were interested in a waterfront property. After a telephone conversation with the seller's licensee, the buyers and the licensee spent an hour viewing the property.

The buyers, a husband and wife, decided to place an offer on the property and the licensee sent them a partially completed *Agreement of Purchase and Sale*, a *Working with the Real Estate Industry* form and a *Transaction Brokerage Agreement* to sign. Upon receiving the forms back, the licensee presented the offer and the *Transaction Brokerage Agreement* to the sellers, and returned to the buyers with only the seller's *Counter Offer*.

Both the buyer's offer and the seller's counter offer included separate clauses on which party would pay the HST on the property, though it remained unclear as to whether HST was actually applicable. The seller believed that HST would be applicable but did not have that information verified. The transaction was ultimately terminated when the buyer's lawyer learned that HST was not applicable.

The buyers made multiple allegations regarding the licensee's conduct in the transaction, including; the condition of the property was misrepresented by it being implied that the well and septic were both functional, and that they were led to believe that their offer should contain the application of HST which affected their offer price. The investigation did not support that the licensee stated that the well and septic was functional, merely that the seller had indicated in conversation surrounding the property that there had previously been a well and septic and that no one was certain of the condition of either.

As a result of the investigation, it was clear that the licensee did not handle agency correctly as they entered into agency with the buyers without having the written acknowledgement to do so. The licensee revealed in the investigation that they had entered into an agency relationship with the buyers during the period between their initial phone and the time they concluded the property visit. This is a violation of **Bylaw 702, Article 3**, which requires a client's signed acknowledgment to enter into an agency relationship, before a client relationship is formed.

In entering into an agency relationship with the buyers while already in agency with the sellers, the licensee violated their fiduciary duty to the seller to avoid conflict. This is a violation of **Bylaw 702, Article 2**, for not acting in the best interest of the seller.

In November 2016, the licensee was charged with violation of Bylaw 702, Article 2, (\$500), and one violation of Bylaw 702, Article 3, (\$500) to a total of \$1000 in fines.

The licensee was also cautioned for paperwork discrepancies.

LESSONS LEARNED

Transaction brokerage should not be considered an easy solution to agency complications. Entering into transaction brokerage vastly limits the support the client receives and is often not in their best interest. In this case, the licensee had entered into implied agency with the buyers while already having committed to an agency relationship with the sellers. It is the licensee's responsibility to address the issue of agency and representation with the consumer at the outset of the relationship, ideally when they first meet. It is crucial in the protection of all parties that the correct agency paperwork be filled out and documented in order for all parties to have a clear understanding of what duties are owed to them.

Finally, when HST may be applicable in the sale of a property, the seller should be advised to consult with a lawyer to confirm.

CASE #3 • FAILURE TO DISCLOSE COMPETING OFFERS

A buyer noticed that a home that they had always been interested in was for sale and contacted their licensee to schedule a viewing. Upon viewing the property, the buyer decided to put in an offer. The buyer's licensee was told by the listing designated agent, a team, that there was a lot of interest in the property but that no offers had been received. When the buyer submitted their offer, they asked that they be kept informed if any other offers came in. The licensee of the team who received the buyer's offer acknowledged that it was received and requested that the offer be relayed to another team member, as they would be out of town.

Later that evening, the buyer's licensee received notification that the sellers had accepted another offer, which came as a surprise as the buyers had not been notified they were competing.

As a result of the investigation, the evidence supported that although the buyers had been informed that there was "a lot of interest" in the property, the buyers were not notified they were competing when other offers came in, which is a violation of **Bylaw 702, Article 12**. The evidence supports that although this was not done with intent, there was a communication break down within the team while the interested competing buyers were offering on the property.

In September 2016, the licensee who was facilitating the offers on behalf of the seller was charged with one violation of Bylaw 702 Article 12, (\$500).

LESSONS LEARNED

When there are competing offers, a licensee acting on behalf of the seller must disclose to all potential buyers or their agents that there are multiple offers, unless otherwise instructed by the seller in writing. They must not, however, disclose to any other person the specific terms and conditions of other offers.

When a brokerage designates a team as a designated agent, all members of the team are deemed to have the same information pertaining to their client. In this case, there was a miscommunication between team members with respect to notifying all buyers that they were in a competing situation. Teams should consider implementing internal communication strategies to ensure all members of the team are on the same page and fulfilling their necessary duties.

THE CLAUSE BOOK IS BACK

The Clause Book has been revised and republished on the Commission website. It has also been provided to the Nova Scotia Association of REALTORS®.

The purpose of this resource is to assist licensees in determining the appropriate language for basic conditions in agreements. The clauses have been written in a standard format that are in conformity with the Act and Bylaw and may be amended to better reflect unique situations.

A big thank you to the Commission's Forms Committee for taking on the task of revising the previous Clause Book and working diligently to improve this resource for licensees.

[Read the Clause Book here](#)

COMPLIANCE TEAM

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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
601-1595 Bedford Highway, Bedford, NS, B4A 3Y4

compliance@nsrec.ns.ca

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

