

DISCIPLINARY News

March 2017 • Vol. 9 • Issue 1

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, as 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.

IN THIS ISSUE

- 1 The Complaint Process
- 2 Brokerage Inspections
- 2 Reminders & Inspection Trends
- 3 Investigations
- 4 Recent Articles



WHAT IS THE COMPLAINTS REVIEW COMMITTEE?

The Complaints Review Committee (CRC) is made up of licensees 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 'needs improvement' rating is subject to a \$500 fine and the penalty increases if the brokerage receives a fourth or fifth consecutive 'needs improvement' ratings.

Three consecutive 'needs improvement' inspections

One broker was fined \$500 for three consecutive 'needs improvement' ratings for transaction file review.

Four consecutive 'needs improvement' inspections

Louissette Higgins, Broker of Modern Realty was fined \$1,000 for four consecutive 'needs improvement' ratings for transaction file review.

REMINDERS & INSPECTION TRENDS

Put the Self in Self Regulation!

The Commission invites interested licensees to nominate themselves to fill one three-year term with the Commission's Board of Directors. [Download the Form](#)

Licensees must be in good standing to be eligible to be nominated. Good standing requires the nominee to have not been found guilty of violating the Commission's Act or Bylaw, resulting in fines totaling more than \$500, in the past two years.

The Commission Board of Directors meet five times per year and the newly elected Commissioner has the opportunity to serve on other Commission committees.

If you have questions about the application requirements, election process or time commitment involved, please contact Peggy Kell at pkell@nsrec.ns.ca.

Important Changes to Voting

We know that it is not always easy for licensees to travel to the Halifax area to join us at our Annual General Meeting and vote in our election. This year we want to make it easier for those who are out of town, and also encourage greater participation in the voting process by moving our election online!

That's right, for this year's election for the Commission's Board of Directors, you will be able to cast your ballot from the comfort of your home, office or where ever you have an internet connection.

More information will be sent out in the early April detailing specifically how, and when, to cast your ballot.

Buyer Brokerage Agreements: Don't just ask your clients to sign!

Our Compliance Team has been made aware of several instances where licensees are presenting a brokerage agreement to their buyers, with no further information on the agreement and simply asking the client to sign.

The Buyer Brokerage Agreement was mandated by the Board of Directors because it clearly indicates to the roles and responsibilities of the brokerage and the buyer while they are looking for their next home. Handing your clients a Buyer Brokerage Agreement with no explanation of what it is they are signing is not in their (or your) best interest and can have serious repercussions. Licensees are encouraged to use what they learned in the Buyer Brokerage Agreement info session to help guide those discussions.

For more information, visit www.nsrec.ns.ca/bba.

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 • MISLEADING ADVERTISING

A first-time home buyer purchased a home with the assistance of a licensee from a common law brokerage. The seller was also a client of the brokerage and both the buyer and seller had entered into a Transaction Brokerage Agreement. The property was advertised as having a gravel driveway, however, shortly after the transaction closed the buyers found out that the driveway and part of their deck was technically part of a neighboring property that was also sold by the same seller.

The investigation revealed that the licensee representing the seller was advised by the seller at the time of the listing that the property boundaries were unclear and that no surveyors location certificate existed. While this information was listed in the listing cut for the neighboring property, it was not included in the listing cut of the property the buyers had purchased. Not including this information in both listing cuts was not in the seller's best interest and a violation of **Bylaw 702, Article 2**.

The evidence in this case also supports that although the seller's licensee was aware that the location of the driveway boundaries was unclear, they still advertised that the property the buyer's ultimately purchased included the gravel driveway. This was misleading, inaccurate, and a violation of **Bylaw 708(a)(i)(ii)(iii)**.

In January 2017, the seller's licensee was charged with one violation of Bylaw 702, Article 2 (\$500) and one violation of Bylaw 708(a)(i)(ii)(iii) (\$400), for a total of \$900 in fines.

The broker was cautioned for poor licensee supervision.



LESSONS LEARNED

Brokers are responsible to ensure all brokerage advertising is accurate and not misleading. In this case, where the seller had indicated outright to the licensee representing them for both properties that they were unsure where the property line was between the properties, that information ought to have been either clarified or at the very minimum made clear in both listings.

The seller's licensee should have asked their client if they wanted to have those crucial details verified so that potential buyers would not be misled to believe that the wrong property included the driveway.

Remember that an advertisement may be considered misleading even if it is not demonstrated that a consumer was actually misled. It is only necessary to show that the advertisement is capable of misleading a reasonable consumer.

CASE #2 • CO-MINGLING FUNDS IN TRUST

At a routine audit, a broker had reported that there were zero trust transactions during an audit period. Whenever this is reported, the brokerage must submit to the Compliance Inspector both a signed declaration stating that there were zero trust transactions, and either bank statements or a letter from their financial institution for validation.

After the Inspector made several requests for both the declaration and its validating letter or statement, the matter was referred to the Compliance Manager. At this point, the brokerage had provided the signed declaration, but not its validation.

Further time passed after the initial request and neither a bank statement nor a letter from the financial institution was provided to the Commission and as a result, the Registrar suspended the licence of the broker for violating **Bylaw 702, Article 35**.

Upon having their licence suspended, the former broker informed the Commission that while they did not have any brokerage trust funds in the account, they did move their own funds through the account for another business venture outside of trading in real estate. This is a violation of **Bylaw 626**, which states that only funds related to trading in real estate can be deposited into the brokerage's trust account.

LESSONS LEARNED

The Commission Bylaw does not permit brokerages to hold any funds in their trust account which are not real estate trust funds (i.e. funds that are not tied to a real estate transaction). As Bylaw 626 states, "A broker shall not co-mingle their own money with trust funds. The only funds that may be deposited into a brokerage trust account are funds to be held in trust".

While the broker's licence in this instance was reinstated upon providing the requested documentation and a detailed description on why funds were co-mingled, it will no longer be this easy. **As of February 1, 2017**, the Commission's Board of Directors agreed to add **Bylaw 409(d)** which requires any licensee whose licence is suspended for failure to cooperate with the Commission's audit process to pay a full licensing fee of \$360 to have their licence reinstated.

CASE #3 • FAILURE TO COOPERATE

A seller contacted the Commission shortly after terminating their seller brokerage agreement with a brokerage. The seller became concerned when they received a call from the broker, after terminating their listing, requesting payment of an early termination fee.

Upon being made aware of the seller's concern, the Registrar requested the seller's transaction file from the broker. The file was sent electronically in a format that was encrypted and could not be opened. After numerous unsuccessful requests for the transaction file in an alternative format, the Registrar opened an investigation. Once notified that an investigation was opened, the broker submitted the transaction file via fax.

Upon reviewing the transaction file, it was determined that the broker did not have a written agreement allowing the brokerage to charge a fee for the early termination of the seller brokerage agreement. The broker claimed that they had had a conversation with the seller on fees at the time the seller brokerage agreement was signed, though this obligation was not reflected in writing, which is a violation of **Bylaw 702, Article 11**.

LESSONS LEARNED

Brokers are required to fully cooperate with Commission compliance staff on all audit/investigation-related requests. Failing to do this, especially when in respect to failing to provide documentation that public funds are secure, can result in the broker's licence being suspended.

In January 2017, the broker was charged with one violation of Bylaw 702, Article 35 (\$500), and one violation of Bylaw 626 (\$500), for a total of \$1,000 in fines.

In January 2017, the broker was found in violation of Bylaw 702, Article 11 (\$500).

The broker was also cautioned for not providing documents to the Commission staff when requested.

RECENTLY PUBLISHED ARTICLES



Co-listing a Property

There are times when a seller may ask to co-list a property with another brokerage. This could be in hopes of greater exposure, or for assurance that they will have support should they want to work with...



How to treat excess deposits

Occasionally, there are cases where the deposit provided by the buyer is greater than the real estate remuneration (i.e. commission fee) to be paid. In these cases, before the excess funds...



What do we mean when we say something is required 'in writing'?

The Commission talks a lot about ensuring you have items in writing. While the term may seem straight forward, there are some important rules to remember...



DID YOU KNOW: Electronic signature's date stamp replace the 'Dated' line

When a consumer completes a brokerage agreement, service contract or purchase agreement with software to secure an electronic signature, and the signature field includes a date stamp...



Proactively Deal with Expiring Agreements

All real estate agreements expire. A specific date is always included to identify to the consumer the time period that they have agreed to receive services from the brokerage...

COMPLIANCE TEAM

For information on investigations, contact:
Carolin MacDonald, Compliance Manager
cmaconnald@nsrec.ns.ca

902-468-3511 x303

Michelle McLeod, Compliance Investigator
mmcLeod@nsrec.ns.ca

902-468-3511 x312

For information on inspections, contact:
Courtney LeBlanc, Compliance Inspector
cleblanc@nsrec.ns.ca

902-468-3511 x306

Mallory LeBlanc, Compliance Inspector
mleblanc@nsrec.ns.ca

902-468-3511 x308

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.*

