



nova scotia real estate
COMMISSION

Audit Program:
A Guide to Real Estate
Audits in Nova Scotia

Drafted and presented by the Audit Taskforce

Contents

Chapter 1: Overview

Introduction	4
Purpose of the audit program.....	4
Areas of audit focus	4
What is a trust account audit?	5
What is a brokerage audit?	5
What is a change of broker audit?	5
What is a closing-out audit?.....	5
What is a spot audit?	6
Process for booking an audit	6
Sampling process	6
Post-audit process.....	7
Audit report.....	7
Terms used in this document.....	7

Chapter 2: Audit Ratings and Frequency

Discrepancy categories	9
Audit ratings.....	10
Audit frequency	13
1. Existing brokerage with no change of broker	13
2. Existing broker moves to another existing brokerage	14
3. Existing broker moves to first-time licensed brokerage	14
4. First-time broker at an existing licensed brokerage	14
5. First-time broker at a first-time licensed brokerage.....	14

Chapter 3: Trust Accounts

Trust account review	16
Deposits directly into trust accounts	16
Disbursements directly from trust accounts	16
Trust account record keeping requirements	17
General.....	22

Chapter 4: Transaction Files

Transaction file review	23
-------------------------------	----

File review process.....	23
Chapter 5: Commercial Requirements	
Commercial requirements	26
Agency disclosure.....	26
Common law agency.....	26
Designated agency	26
Customer status.....	26
Transaction brokerage, if applicable.....	27
File review process.....	27
Chapter 6: Licensee (Non-broker) Compliance	
Licensee (non-broker) compliance	29
Recording non-compliance	29
Chapter 7: Corrective Action	
Corrective action and administrative penalties.....	31
Licensee (non-broker) compliance	32
Chapter 8: Audit Fees	
Audit fees	33

Chapter 1: Overview

Introduction

The Nova Scotia Real Estate Commission is responsible to ensure consumer confidence through the administration of the Real Estate Trading Act and the Commission Bylaw. Real estate in Nova Scotia is self-regulated. Professional self-regulation is, in essence, the protection of the public interest. This is provided for in Bylaw.

Purpose of the audit program

To fulfil its mandate of ensuring consumer confidence and protecting the public interest, an audit of brokerage trust accounts and transaction documents is carried out. The audit does three things:

1. It promotes assurance that brokerage transactions with consumers are handled appropriately, in a timely manner, are accurate and fully documented.
2. It identifies issues within the brokerage and serves as an in-house instructional tool and, on a broader basis, becomes part of the Commission's communication and educational programs.
3. The audit process also assists brokers in managing the risks associated with managing a brokerage in its provision of services to consumers.

Areas of audit focus

The audit team will perform substantive tests in the following areas:

Trust accounts

- deposits
- disbursements
- timelines
- accuracy
- record keeping

Files

- completeness
- consistency

Clauses

- clear
- understandable
- completeness

Forms

- use of correct forms
- timeliness

Chapter 1: Overview

- completeness
- accuracy

Execution

- accuracy
- timeliness
- completeness

What is a trust account audit?

A trust account audit is a comprehensive review of a brokerage's adherence to the regulatory requirements set out for trust accounts. The purpose of the trust account audit is to test a representative sample of trust account transactions processed through the brokerage to assess whether or not the brokerage followed Commission requirements for depositing and disbursing trust funds and for record keeping. A sample of transaction files involving trust deposits is selected. General observations of the trust records are made and monthly bank statements are reviewed for any sign of trust shortages. Contractual information concerning each deposit is compiled from the transaction files and used to test the brokerage's trust accounting procedures.

What is a brokerage audit?

The brokerage audit includes both a trust account audit and the review of a sample of real estate transaction-files. Transaction files are picked at random on trades carried out by each licensee at the brokerage. Transaction files are reviewed to ensure compliance with Commission transaction file requirements as well as trade practices and to ascertain if agreements are correctly written and executed. A brokerage audit is always accompanied by a trust audit.

What is a change of broker audit?

When there is a change of broker at a brokerage, a change-of-broker audit is conducted for the time period from the last audit up to the effective date of the incoming broker. This ensures that the supervision and record keeping practices of the outgoing broker and the incoming broker are assessed on their individual performance. The format is that of a trust account audit unless the brokerage has an audit history of receiving an audit rating of less than three on their transaction files (see page 10) on their most recent audit report. In that case, the outgoing broker will receive a brokerage audit. The results of the brokerage audit will be addressed to the incoming broker and copied to the outgoing broker.

What is a closing-out audit?

The Commission conducts a closing-out audit within 30 days of the brokerage licence being terminated. The format is that of a trust account audit unless the brokerage has an audit rating of less than three for transaction files. In that case, the outgoing broker will receive a brokerage audit.

Chapter 1: Overview

What is a spot audit?

A spot audit is a brokerage or trust audit that is conducted without prior notice to the broker. Spot audits typically result from audit results of less than three rating.

Process for booking an audit

The auditor contacts the broker to establish the audit type to be conducted. The email suggests an audit date, describes the audit period, and includes three audit forms as attachments. The broker completes the audit form that is applicable for the brokerage's practice:

Form 1—the brokerage held trust funds and conducted trades

For brokerages that conducted trades and held trust monies, the broker must complete and return Form 1 by the date specified in the auditor's email. Once the audit date is confirmed, the broker is sent an engagement notification, which confirms the audit date and sets out a list of items that must be provided at the audit.

Form 2—the brokerage did not hold trust funds but did conduct trades

For brokerages that conducted trades, but did not hold trust monies, the same process is followed as outlined in Form 1 above, for brokerage audits. If there is no trust activity, the broker completes and returns Form 2 and a bank statement or a letter from their financial institution confirming that no trust funds were held and that the brokerage has an active trust account.

Form 3—the brokerage did not hold trust funds and did not conduct any trades

For brokerages with no trust and no trading activities, the broker must complete and return Form 3 by the date specified in the auditor's email. The completed Form 3 must be accompanied by a letter or statements from their financial institution that shows there was no trust activity for the duration of the audit period and that the brokerage has an active trust account.

Sampling process

When a brokerage audit is performed, the transaction file review sample selection is by licensee. The auditors will pull a minimum of three transaction files per licensee. In some cases, the sample may be smaller, as some licensees may have only completed one or two trades, or larger, as some licensees may have completed 50 transactions.

For trust audits, there are two sampling elements:

- For the period under review, the four trust-record keeping requirements are examined for each month;
- For trust transactions, the audit sample size will be a minimum of 10% trust transaction files.

Chapter 1: Overview

For the trust component of a brokerage audit and for trust audits, the sample selection is based on a percentage of files for which trust funds were held as well as a review of the four-trust account record keeping requirements and overall general requirements.

Post-audit process

Once the audit is complete, the auditor will review and compile the assessment documents created during the audit and prepare a report. Auditors will make best efforts to provide brokers with their audit reports in a timely manner. Following which, brokers will have an opportunity to discuss their audit report with the auditor. The audit report presents the broker with an opportunity to use the issues identified as an educational tool, to provide training for the licensees at the brokerage.

Audit report

The audit report will document the audit review period and a summary of the findings that resulted in the ratings. The details of the discrepancies will be documented in a spreadsheet that accompanies the audit report.

Terms used in this document

Buyer—an individual acquiring property, either by purchase or lease. When buyer is used in this document, it refers to both property buyers and commercial tenants.

Broker designate—a person engaged by the brokerage, designated to perform any duty of the broker that is not restricted by Bylaw. (The broker is still ultimately responsible for the all brokerage activities.)

Client—an individual who has engaged the services of a real estate brokerage in an agency relationship capacity.

Customer—an individual who has engaged the services of a real estate brokerages in a non-agency relationship capacity.

Execute—to do all that is required to make the document legally binding. For example, a contract is executed when all acts necessary to make it valid are carried out, including signing and delivery.

Discrepancy – an issue that has been determined to be either critical, serious or an error (see Page 9).

Risk management—The process of identifying, monitoring, and managing potential risks to minimize the negative impacts those risks may have on the organization and the clients and customers they serve.

Seller—an individual disposing of property, either by purchase or lease. When seller is used in this document, it refers to both property sellers and commercial landlords.

Trade—"trade" or "trading" includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, commercial lease or rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act,

Chapter 1: Overview

advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt.

Buyers' or sellers' lawyer—includes lawyer's staff, i.e. paralegals.

Chapter 2: Audit Ratings and Frequency

Discrepancy categories

The issues identified in trust and brokerage audits are categorized as described in the following sections. These discrepancies form the basis of the resulting audit rating level.

Errors

These are relatively minor errors which are not likely to put consumers, licensees, and/or brokerages at risk. These errors may be more about licensees not paying attention to detail. For example, incorrect information on a trade record sheet, not including client contact information on brokerage agreements, incorrect agency box selected on the *Working with the Real Estate Industry Form*.

Serious issues

These are issues not considered critical but may put consumers, licensees, and/or brokerages at risk if continued. For example, but not limited to, improperly struck clauses, failure to adhere to timeframes, not correctly identifying number of pages, not having and maintaining confirmation of closings for the release of trust funds.

Critical issues

These are issues that, if continued, put consumers, licensees, and/or brokerages at risk (these could be committed by certain licensees and/or generally across the brokerage). For example, but not limited to, fraud, breach of trust, breach of agency, and breach of contract.

Chapter 2: Audit Ratings and Frequency

Audit ratings

The following table provides an overview of audit outcomes. Each of the ratings is described in detail below the table.

Rating	Audit sample results (percentage calculated as discrepancies divided by number of transaction files reviewed)*	Trust audit frequency	Transaction file review frequency
5—Excellent	0% critical ≤ 10% serious ≤ 25% errors	2 Years	4 Years
4—Good	≤ 3% critical ≤ 15% serious ≤ 30% errors	1 Year	3 Years
3—Needs Improvement	≤ 5% critical ≤ 20% serious ≤ 35% errors	1 Year	1 Year
2—At Risk	> 5% critical > 20% serious > 35% errors	6 Months	6 Months
1—Disciplinary Action	<ul style="list-style-type: none"> • Immediately if suspected breach of trust or fraud activity is identified; • 2 consecutive at-risks; 3 consecutive needs improvements 		

How the number of trust files are determined

For trust audits, each of the four record keeping items is treated as a file for each month under review, which is then added to the number of files reviewed. This total is used as the total number of files for the purpose of calculating the percentages.

*Determination of discrepancies

Multiple occurrences of the same discrepancy within a single transaction file will count as one discrepancy. If the same discrepancy occurs multiple times across multiple transaction files, one instance of the discrepancy will be counted per transaction file. For example:

Multiple occurrences of failing to initial struck clauses within one transaction file will be counted as one (1) serious discrepancy.

Multiple occurrences of failing to initial struck clauses and the total number of pages is not identified on the APS within one transaction file will be counted as two (2) serious discrepancies.

Chapter 2: Audit Ratings and Frequency

Transaction file review example

60 files reviewed

8 files contain 2 error discrepancies = 16	$16/60 = 26.6\%$ Errors	GOOD
--	-------------------------	------

3 files contain 2 serious discrepancies = 6	$6/60 = 10.0\%$ Serious	EXCELLENT
---	-------------------------	-----------

1 file contained 1 critical discrepancy = 1	$1/60 = 1.7\%$ Critical	GOOD
---	-------------------------	------

Audit rating is GOOD.

It is important to note the audit rating is based on the category with the highest audit sample results. For example, if the results show equal to or less than 0% critical, 15% serious, and 20% errors, the 15% serious is the determining factor and the audit rating would be Four—Good.

Explanation of ratings

For a brokerage audit, two separate and independent ratings are assigned; one for the trust audit and one for the transaction file review.

Five—Excellent

A broker in this category is in a strong compliance position. The broker has sufficient knowledge of the Act, Bylaw, and Commission Policies and provides a high level of brokerage supervision and in-house training to ensure compliance with audit requirements.

A broker in this category has had a trust account audit and/or transaction files reviewed and the auditor found the following percentages of discrepancies within audited files: 0% critical, no more than 10% serious, and no more than 25% errors.

This rating includes brokers exhibiting an equal emphasis on compliance and brokerage oversight. This emphasis is evidenced by a proactive compliance program and limited violations. There is an engaged file review process and sufficient controls and confirmations to provide ongoing assurance of file quality.

Four—Good

A broker in this category is in a satisfactory compliance position. The broker has sufficient knowledge of the Act, Bylaw, and Commission Policies and adequate brokerage supervision and in-house training to ensure compliance with audit requirements.

A broker in this category has had a trust audit and/or transaction files reviewed and the auditor found the following percentages of discrepancies within the audited files: no more than 3% critical, no more than 15% serious, and no more than 30% errors.

Chapter 2: Audit Ratings and Frequency

This rating is representative of a broker who has a program of compliance, formal or informal, that is sufficient to prevent systemic violations on a given issue. An individual transaction file may have multiple problems where checks and balances failed, but those problems are isolated and are not found repeatedly in other files. Despite the number of violations, there are no significant issues and the auditor would not recommend a formal response delineating specific requirements for corrective action.

Three—Needs Improvement

A broker in this category is in a less than satisfactory compliance position. Brokers in this category are a cause for concern. The numerous violations discovered are an indication that the broker has not devoted sufficient time and attention to compliance. In addition, previously identified practices resulting in violations may remain uncorrected. Brokerage policies and procedures may exist but are less than satisfactory or are not being followed. Although the broker may have the ability to effectuate compliance, increased efforts are necessary. Operating procedures and controls have not proven effective and require strengthening. This may be accomplished by, among other things, designating additional staffing and developing and implementing a comprehensive and effective compliance program. By identifying a broker with marginal compliance early, the broker may implement additional measures to eliminate violations and prevent further deterioration of the broker's less than satisfactory compliance position.

A broker in this category has had a trust audit and/or transaction files reviewed and the auditor found the following percentages of discrepancies within the audited files: no more than 5% critical issues, no more than 20% serious issues, and no more than 35% errors.

This rating is indicative of an operation with systemic compliance and/or documentation problems. Critical issues will be present, although these violations will not be egregious or widespread. The auditor will direct the broker to develop and implement a plan of corrective action and provide a formal response to the Commission.

Two—At Risk

A broker in this category requires close attention and monitoring to promptly correct the serious compliance problems. Numerous violations are present. Practices resulting in violations cited at previous audits often remain uncorrected. Compliance training is poor or nonexistent. The broker has not exerted sufficient efforts to ensure compliance. Audit findings may indicate a lack of interest in administering an effective compliance program, which may have contributed to the seriousness of the broker's compliance problem. Internal procedures and controls have not proven effective and are seriously deficient. Prompt action in response to corrective action ordered by the Commission may enable the broker to correct the deficiencies and improve the broker's compliance position.

A broker in this category has had a trust audit and/or transaction files reviewed and the auditor found the following percentages of discrepancies within the audited files: more than 5% critical issues, more than 20% serious issues, and/or more than 35% errors.

Chapter 2: Audit Ratings and Frequency

This rating is reflective of a broker with widespread documentation problems as well as record-keeping related issues. Immediate correction is required.

One—Disciplinary Action

A broker in this category is subject to disciplinary proceedings. The broker is substantially in noncompliance with the Act, the Bylaw, and the Commission Policies. The broker has demonstrated an unwillingness or inability to operate within the scope of the Act, the Bylaw, and the Commission Policies. Previous efforts on the part of the Commission to obtain voluntary compliance have been unproductive. Serious repeat violations are present.

This rating is reflective of a broker with widespread documentation problems, numerous transaction-related issues, and an intentional refusal or inability to maintain adequate records. The Commission will take formal enforcement action for failure to take prompt corrective action.

Audit frequency

Audit frequency will be based on the brokerage's history of trust account and transaction file audit results. The broker's audit history will also be factored into the audit frequency. The audit ratings provide guidelines for audit frequency based on past broker performance as well as where the broker and brokerage fall in the following categories.

1. Existing brokerage with no change of broker

- a) Brokerage audit:** audit periods of six months, one year, three years and four years based on the rating of the previous brokerage audit.
- Five (Excellent) – next brokerage audit in the fourth year following the year of the audit (ex: if you had an audit in 2019, your next brokerage audit would be in 2023)
 - Four (Good) – next brokerage audit in the third year following the year of the audit
 - Three (Needs Improvement) – brokerage audit every year
 - Two (At Risk) – will have an audit within six months
 - One (Disciplinary Action) – immediate disciplinary action, at the discretion of the Registrar
- b) Trust audit:** audit periods of six months, one year, and two years based on rating of the previous trust audit.
- Five (Excellent) – next trust audit in the second year following the year of the audit (ex: if you had an audit in 2019, your next audit would be in 2021)
 - Four (Good) – trust audit every year
 - Three (Needs Improvement) – trust audit every year
 - Two (At Risk) – will have a trust audit within six months, at the discretion of the Registrar
 - One (Disciplinary Action) – immediate disciplinary action, at the discretion of the Registrar

Chapter 2: Audit Ratings and Frequency

For brokers who obtain a trust audit rating of five, their subsequent audit will require them to complete and sign an audit form and provide bank statements upon request; however, they will not have a detailed trust audit in the year an audit is not required.

2. Existing broker moves to another existing brokerage

In a case where an existing broker moves to an existing brokerage, audit frequency will be based on the brokerage history of trust account and transaction file audit results. The incoming broker will be provided with the audit results for the previous three years. The results are intended to provide the new broker with an overview of the brokerage's trust and record keeping processes. Any licence restrictions that were applied to the broker at the previous brokerage will be applied at the new brokerage. In the event the incoming broker was left in a situation where the previous broker attained a less than four rating, regardless of that particular broker's past ratings, the Registrar shall have the discretion to put a licence restriction on that broker.

3. Existing broker moves to first-time licensed brokerage

Audit frequency is based on the audit results of the broker at their previous brokerage(s) and any licence restrictions placed on the broker at the previous brokerage will continue at the new brokerage. A broker who has a history of less than three rating for trust account and transaction file audit results will continue to be audited at the same frequency at the new brokerage. Likewise, a broker who has a history of good and/or excellent trust account and transaction file audits will be audited at the same frequency as they were at their previous brokerage.

4. First-time broker at an existing licensed brokerage

A first-time broker at an existing licensed brokerage presents less risk than a first-time broker at a first-time licensed brokerage, however, the level of risk is dependent on the supervisory structure of the brokerage. The incoming broker will be provided with the audit results for the previous three years. The results are intended to provide the new broker with an overview of the brokerage's trust and record keeping processes. As first-time brokers, all brokers in this category fall under the new broker audit schedule. See Audit schedule for first-time broker applicants.*

5. First-time broker at a first-time licensed brokerage

A first-time broker at a first-time licensed brokerage is considered highest risk. All in this category fall under the new broker audit schedule. See Audit schedule for first-time broker applicants.*

Chapter 2: Audit Ratings and Frequency

***Audit schedule for first-time brokers**

All first-time brokers will receive two audits in their first year, the first within six months provided there has been trading activity. The initial audit fee covers the cost of the first two audits.

If at least one of the audit results in less than four rating, a third audit will be conducted within six months of the last audit and a regular audit fee will be charged. Under the first-time broker schedule, if during the second audit the rating of four or higher is achieved for transaction file review, but the broker receives a rating of less than four on trust, then the third audit will consist only of a trust audit.

If the broker receives a Good or an Excellent result on their first two audits, they will have a third audit within 12 months of their last audit. Future audit frequency will be based on the Audit Rating table.

If no transactions exist to be reviewed (file and trust) the compliance auditor will confirm this with the broker prior to setting an audit date. The first audit will be postponed to 12 months from the date the broker was issued a broker licence. This new date will be considered the first audit.

Chapter 3: Trust Accounts

Trust account review

When conducting a trust audit the auditor reviews the brokerage's trust record-keeping system to ensure compliance with Commission requirements relating to:

- Deposits received and made to trust accounts;
- Disbursements made from trust accounts;
- Record keeping; and
- Other general trust account matters.

Deposits directly into trust accounts

1. When trust deposits are received in accordance with the accepted agreement, the deposit must be deposited into the brokerage's trust account within two business days following the date of receipt by a brokerage representative. **CRITICAL**
2. When a trust deposit is identified as not received per the terms of the *Agreement of Purchase and Sale*, the Seller(s) must be notified in writing by the broker or broker designate. **CRITICAL**

Disbursements directly from trust accounts

1. Funds may only be disbursed from a brokerage's trust account as follows:
 - a) To a brokerage's trust account, lawyer's trust account, Commission's trust account (unresolved/unclaimed trust funds), and clearly directs that it is to be deposited to trust. **SERIOUS**
 - b) To that brokerage's general account for remunerations owed after successful completion of a transaction; **CRITICAL**
 - c) Trust funds from terminated transactions must be disbursed in accordance with the written agreement (must specify to whom and the method of payment) from all parties to the transaction, their respective lawyers, per court order or per the Bylaw. **SERIOUS**; or
 - d) Early release of trust funds must be in accordance with the written agreement of all the parties or the respective lawyer's written instructions. **SERIOUS**
2. Each disbursement from a brokerage trust account must be supported by documentation from the financial institution that identifies the date, the payee, and the transaction. (If the transaction is not identified in the document provided by the financial institution, it may be added by the brokerage.) **CRITICAL**

Chapter 3: Trust Accounts

Examples of how funds may be disbursed

1. Cheque
2. Electronic funds transfer
3. Email money transfer
4. ExactDeposit

Regardless of disbursement method, verifiable third-party proof of the transaction must be maintained.

Trust account record keeping requirements

There are four mandatory trust record keeping reports that a brokerage must prepare and maintain. There are also a number of requirements in addition to the four reports. Regardless of whom the broker appoints to prepare the monthly trust account record keeping, the ultimate responsibility remains with the broker.

1. Trust control ledger

- Bylaw 622: *Every Brokerage shall keep as part of its records, with respect to its trades in real estate, a paper or electronic **trust ledger**.... The trust ledger shall contain a record of all:*
- i) *Funds that the Brokerage receives in trust;*
 - ii) *Funds that the Brokerage holds in trust;*
 - iii) *Interest on funds that the Brokerage holds in an individual trust; and*
 - iv) *Disbursements the Brokerage makes from funds received in trust.*

This is a chronological book of accounts in which data from specific transactions is recorded. It is a book of final entry summarizing all of a company's trust account transactions, through offsetting debit and credit accounts.

- a) A trust control ledger must be maintained in chronological order and identify all deposits and disbursements from the trust account, including errors. **CRITICAL**
- b) The following criteria must be identified:
 - (i) Date of deposit/disbursement; **SERIOUS**
 - (ii) Amount of deposit/disbursement; **CRITICAL**
 - (iii) Running balance after each transaction; **SERIOUS**
 - (iv) Payee of disbursements; **CRITICAL**

Chapter 3: Trust Accounts

- (v) Type of disbursement and identifier i.e. cheque number, EFT confirmation number, e-mail address; and **SERIOUS**
- (vi) Information sufficient to identify the trade (any two of the following: transaction address, trade number, names of the parties). **SERIOUS**

Example 1: Trust Control Ledger						
XYZ Realty Ltd.						
Real Estate Trust Account						
Trust Account Control Ledger						
Date	Transaction/Purpose	Details/Payee	Disbursement Identifier	Debit	Credit	Balance
1-Jan-17	Black to Smith, 1st Street	Trust Deposit	EFT 2017-001		\$1,000.00	\$1,000.00
5-Jan-17	Baker to Rodgers, 55 Eagle St	Trust Deposit	EFT 2017-002		\$200.00	\$1,200.00
5-Jan-17	Black to Smith, 1st Street	Increase trust deposit	EFT 2017-001		\$1,000.00	\$2,200.00
15-Jan-17	Black to Smith, 1st Street	XYZ Realty Ltd. General Acct	Chq 001	\$2,000.00		\$200.00
15-Jan-17	Smith to Jones, 2nd Avenue	Trust Deposit	Email transfer: clori@gmail.com		\$5,000.00	\$5,200.00
6-Feb-17	Johnson to Public, 5th Avenue	Trust Deposit	EFT 2017-004		\$10,000.00	\$15,200.00
10-Mar-17	Smith to Jones, 2nd Avenue	XZY Realty Ltd. General Acct	Chq 002	\$2,000.00		\$13,200.00
10-Mar-17	Smith to Jones, 2nd Avenue	Sellers law firm "In Trust"	Chq 003	\$3,000.00		\$10,200.00
30-Mar-17	Matthews to Dixon, 110 Road	Trust Deposit	EFT 2017-005		\$500.00	\$10,700.00
31-Mar-17	Return Deposit - Matthews, 110 Road	Fallen Transaction	Chq 004	\$500.00		\$10,200.00

2. Individual trust records

Bylaw 622: *Every Brokerage shall... maintain a **separate record** for each person on whose behalf the Brokerage is acting.*

The **individual trust record** is a separate account of each transaction for which the brokerage holds trust funds.

- a) A brokerage accounting system must include individual trust records which identifies deposits and disbursements relative to individual transactions. **CRITICAL**
- b) The information contained in the individual trust records must be consistent with the information in the trust control ledger. **SERIOUS**

Brokers will not be doubly penalized for mistakes that appear in the trust control ledger that are replicated in the individual trust records.

Chapter 3: Trust Accounts

Example 2: Individual trust record

Name: Black to Smith		Trade # 2017-001		
Address: 1st Street, Anytown				
Date	Description	Debits	Credits	Balance
1-Jan-17	Deposit to Brokerage Trust Account		\$1,000.00	\$1,000.00
5-Jan-17	Deposit Increase		\$1,000.00	\$2,000.00
15-Jan-17	Disbursed to Brokerage General Account - Trust chq 0001	\$2,000.00		\$0.00

3. Monthly trust liability listings

Bylaw 623: *A **trust liability listing** must contain the following information for all trust funds held in accordance with Section 32 of the Act:*

- i. Information sufficient to identify the transaction;*
- ii. The Trust Account number and the name of the financial institution;*
- iii. The address relating to the transaction; and*
- iv. Amount of funds being held in trust for each transaction.*

A **trust liability listing** is a detailed list showing the outstanding balance of trust deposits for each transaction. Each month, the total of the trust liability listing must match the outstanding balance in the trust control ledger and the bank reconciliation.

- a) Monthly trust liability listings must be prepared. **CRITICAL** The listings must identify the following:
 - (i) Date of the deposit; **SERIOUS**
 - (ii) Amount of the funds; and **SERIOUS**
 - (iii) Information sufficient to identify the trade (any two of the following: transaction address, trade number, names of parties) **SERIOUS**

Chapter 3: Trust Accounts

Example 3: Trust Liability Listing (including both the special trust account(s) and the brokerage's trust account.)

XYZ Realty Ltd.
Real Estate Trust Account
Trust Liability Listing for March 31, 2017

Transaction	Date of Deposit	Trade	Funds held in trust
Baker to Rodgers, 55 Eagle St	5-Jan-17	2017-002	\$200.00
Johnson to Public, 5th Avenue	6-Feb-17	2017-004	\$10,000
Total Liability Brokerage Trust Account			\$10,200

4. Monthly trust account bank reconciliation

Bylaw 623: *Each Trust Account is to be reconciled monthly with the bank statement. The monthly trust account reconciliation must be signed and dated by the Broker or Managing Associate Broker.*

A bank account reconciliation is maintained to ensure that the trust account records and the trust account bank statements are in agreement. The information contained in a bank reconciliation determines whether there were errors made depositing or disbursing funds. It compares the ending balance of the trust bank statements to the trust records and identifies any differences, i.e. outstanding deposits or disbursements, and corrects any errors.

a) Trust account bank statements and disbursements must identify the licensed brokerage name and identify the account as a trust account. **SERIOUS**

b) Fees associated with trust accounts must not be charged to the trust account.

If service charge(s) are applied to the trust account, the charges must be corrected upon discovery and not to exceed 30 days. Documentation must be maintained that demonstrates the correction or efforts to correct the situation with their financial institution. **SERIOUS**

c) A monthly trust account bank reconciliation must be prepared and agree with the corresponding liability listing and trust control ledger balance. **CRITICAL**

d) Monthly trust account bank reconciliations must be verified, signed and dated by the broker or person appointed by the broker within 30 days of the statement end date. **ERROR**

e) Monthly trust account bank reconciliations must identify the following:

(i) Outstanding disbursements—identify the disbursement confirmation number, payee, amount of cheque, and information sufficient to identify the trade (any two of the following: transaction address, trade number, names of the parties); **SERIOUS** and

Chapter 3: Trust Accounts

- (ii) Outstanding deposits—identify the amount of the deposit and information sufficient to identify the trade (any two of the following: transaction address, trade number, names of parties). **SERIOUS**

Example 4: Sample Bank Reconciliation

**XYZ Realty Ltd.
Real Estate Trust Account**

**Bank Reconciliation
March 31, 2017**

Bank statement ending balance as of March 31, 2017	\$10,200.00
<u>Add:</u> Outstanding deposits	
<i>03/30/17: Buyer: Matthews, 110 Road</i>	
	\$500.00
	\$10,700.00
<u>Less:</u> Outstanding withdrawals/cheques	<u>Chq or EFT #</u>
<i>03/31/17: Buyer: Matthews, 110 Road (fallen sale)</i>	<i>Chq 004</i>
	(\$500.00)
Balance per trust control ledger	\$10,200.00

Chapter 3: Trust Accounts

General

The following are included in the evaluation of the trust audit:

1. If trust funds are held for a transaction, documentation confirming closing must be maintained (filed) in a consistent manner. See acceptable examples of confirmation below. **SERIOUS**
2. The broker is responsible for identifying any unresolved/unclaimed trust funds in the trust account which will be remitted to the Commission upon request. **SERIOUS**

Examples of confirmation of closing

1. Written confirmation from the sellers' lawyer confirming closing;
2. Written documentation from the sellers confirming closing;
3. A photocopy of the cheque from the sellers' lawyer; or
4. A well-documented confirmation on the trade record sheet of a phone call to/from the sellers' lawyer confirming closing. This note must include the date and time and must be signed off by the broker or broker designate.

(Note: In the case of a lease, confirmation can come from the landlord.)

Chapter 4: Transaction Files

Transaction file review

When conducting a transaction file review (brokerage audit), the auditors review individual transaction files to ensure that:

- The pertinent documents are included in the file;
- Current forms are being used; and
- The forms are properly drafted, completed and executed.

The broker is responsible for ensuring that files are complete prior to the start of the audit. The brokerage audit is based on the contents of the files at the time of the audit.

File review process

All transaction files will be reviewed to the following standards, as applicable:

1. General

- a) All transaction files requested must be available for review. **CRITICAL**
- b) The Bylaw lists all of the mandatory forms. If a mandatory form is required, it must be maintained in the file. **CRITICAL**
- c) All documents must be: **CRITICAL**
 - i. legible;
 - ii. completed in full using clear and understandable language; and
 - iii. correctly executed by all parties (signed, dated, and initialed in the appropriate sections of the forms);
- d) All deleted clauses must be identified as such by a line struck through the clause or by inserting “n/a” or “delete” (without obscuring the initial wording of the clause), and must then be initialed by all parties. **SERIOUS**
- e) All schedules to an agreement must be identified as forming part of the agreement (APS, SBA, BBA, etc.) **ERROR**
- f) All supplemental documents required by any executed form must be maintained in the transaction file. **ERROR**

2. Working with the Real Estate Industry form

- a) Signed by each client/customer of the brokerage on or before the date any buyer or seller agreement agreements/ acknowledgement is signed. **CRITICAL**
- b) The appropriate agency box must be selected. **ERROR**
- c) The brokerage and the real estate representative must be identified. **ERROR**

Chapter 4: Transaction Files

3. *Seller Designated/ Seller Brokerage Agreement/ Fee Agreement/ Seller Customer Status and Fee Agreement / Mere Posting Agreement*

- a) The date this agreement is signed by the seller must be the same date or an earlier date than the effective date (the date this agreement commences). **CRITICAL**
- b) This agreement must be signed by the sellers on or before the date the *Agreement of Purchase and Sale* was prepared. **CRITICAL**
- c) The remuneration recorded on the trade record sheet/remuneration statement to the lawyer must be in accordance with the remuneration recorded in this agreement. **ERROR**

4. *Amendment to Seller/Buyer Designated Buyer/Seller Brokerage Agreement*

- a) If the expiry date is amended, the amendment must be signed and dated by all parties on or before the expiry date. **CRITICAL**

5. *Buyer Designated/ Brokerage Agreement*

- a) The date this agreement is signed by the buyer must be the same date or an earlier date than the effective date (the date this agreement commences). **CRITICAL**
- b) The effective date of this agreement must be the same date or an earlier date than the date the *Agreement of Purchase and Sale* is prepared. **CRITICAL**
- c) The remuneration recorded on the trade record sheet/remuneration statement to the lawyer must be in accordance with the remuneration recorded in the brokerage agreement **or** subsequent written notification of this remuneration change (i.e. email) must be maintained in the transaction file. **ERROR**

6. *Agreement of Purchase and Sale*

- a) The number of pages must be completed and reflect the total number of pages as prepared and presented. **SERIOUS**
- b) The *Agreement of Purchase and Sale* must be accepted within the time frame specified in the agreement. If not, the acceptance time must be altered and initialed by all parties. **SERIOUS**

7. *Counter Offer*

- a) The counter offer must be accepted within the time frame specified in the offer. If not, the acceptance time must be altered and initialed by all parties. **SERIOUS**

8. *Miscellaneous, including, but not limited to the following*

- a) A *Transaction Brokerage Agreement*, if applicable, must be signed and dated by all parties before the preparation of *Agreement of Purchase and Sale*. **CRITICAL**

Chapter 4: Transaction Files

- b) A completed trade record sheet must be maintained in the file. **ERROR**
- c) If property was co-listed between brokerages, the co-listing documentation must be in accordance with the [requirements](#) set out by the Commission. **SERIOUS**
- d) An accurate list of all teams/team members/copies of the Commission Team Contract must be maintained. **ERROR**

Examples of supplemental documents contained in a transaction file

1. Power of attorney
2. Written verification of the authority to dispose of the property (such as executors/personal representatives)
3. Copies of documents requested in *Agreement of Purchase and Sale* (for example, condo documents, power bills, etc.)

Chapter 5: Commercial Requirements

Commercial requirements

There are no standard commercial forms and as such, this chapter addresses audit requirements for commercial brokerages.

Agency disclosure

This section addresses the mandatory agency components to include in transaction files. When an agency relationship is first established with a client, this relationship must be documented in writing. Further, the relationships between the brokerage/brokerages and all parties to the purchase agreement or lease agreement must be disclosed in writing either before the purchase agreement, letter of intent, lease agreement and/or offer to lease is prepared **OR** disclosed in the agreement itself.

Common law agency

In common law agency, the agency is between the client and the brokerage. Under common law agency, all licensees within the brokerage are deemed to know all relevant transaction information about principals (consumers with whom the brokerage has an agency relationship).

To establish a client relationship and/or provide relationship disclosure (landlord, tenant, seller, buyer). Define what common law is, and that it has to be disclosed.

1. It must be documented in writing and signed by all parties—brokerage and client. The client or the client's lawful designate may sign this disclosure.
2. The disclosure must also explain the parties' duties and obligations.
3. If the brokerage is charging or receiving remuneration, it must be clearly identified.

Designated agency

Under designated agency, the agency relationship is only with the designated agent specified in the brokerage agreement, not with the brokerage, and not with any other licensees at the brokerage. Unlike common law, when any licensee at a designated agency brokerage enters into agency with a client only the licensees specified in the brokerage agreement as the designated agent represents the client.

Designated agency brokerages establish relationships/provide disclosure in the same manner as common law brokerages with one additional disclosure component. The disclosure must clearly explain that the broker is appointing a designated agent who will have fiduciary obligations, however the contract remains with the brokerage.

Note: Regardless of agency model, agency disclosure does not mean an exclusive contract.

Customer status

A customer relationship is a non-agency relationship and the brokerage and/or licensee does not owe fiduciary duties to a customer.

Chapter 5: Commercial Requirements

Transaction brokerage, if applicable

The brokerage and/or designated agent cannot represent both the buyer and the seller in an agency relationship in the same transaction. As such, it is necessary to limit the role of the licensee in this situation to that of an impartial facilitator. For transaction brokerage to occur:

1. The buyer and the seller must consent in writing to a transaction brokerage relationship. **CRITICAL**
2. The transaction brokerage agreement **OR** other consent waiver to representation must be signed **BEFORE** the preparation of offer to lease, lease, purchase agreement, or letter of intent. **CRITICAL**
3. This agreement must clearly state that the clients no longer receive fiduciary duties from the brokerage and/or designated agent and document the services offered. **CRITICAL**
4. This agreement must be signed by all parties (all clients and brokerage representative). **CRITICAL**

File review process

All transaction files will be reviewed to the following standards, as applicable:

1. General

- a) All transaction files requested must be available for review. **CRITICAL**
- b) All documents must be: **CRITICAL**
 - i. legible;
 - ii. completed in full using clear and understandable language; and
 - iii. correctly executed by all parties (signed, dated, and initialed in the appropriate sections of the forms);
- c) All deleted clauses must be identified as such by a line struck through the clause or by inserting “n/a” or “delete” (without obscuring the initial wording of the clause), and must then be initialed by all parties. **SERIOUS**
- d) All schedules to an agreement must be identified as forming part of the agreement (APS, SBA, BBA, etc.) **ERROR**
- e) All documents required by any executed form must be must be maintained in the transaction file. **ERROR**
- f) Changes to agreement in writing—by lawyer or amendment **CRITICAL**
- g) A completed trade record sheet must be maintained in the file **ERROR**

Items in a representation agreement file

1. Brokerage Agreement or written authority to act (agency) that includes: **CRITICAL**
 - a) Identity of the seller/buyer/landlord/tenant
 - b) Commencement and expiry dates

Chapter 5: Commercial Requirements

- c) Remuneration
 - d) Services provided
 - e) Agency disclosure
 - f) Price
 - g) Appointment of designated agent by broker, if applicable
2. a) The effective date must be the same date or an earlier date than the date of the *Agreement of Purchase and Sale* and or letter of intent **CRITICAL**
 3. a) The listing agreement must be signed by the sellers on or before the *Agreement of Purchase and Sale* and or letter of intent **CRITICAL**
 4. a) The remuneration recorded in the brokerage agreement must be the same amount as advertised/recorded on the trade record sheet/remuneration statement lawyer **ERROR**

Items in a sale and/or lease file

1. a) Signed *Agreement of Purchase and Sale/Letter of Intent/Offer to Lease/Lease Agreement* (in the agreement or other document, it must clearly identify the relationship between the brokerage, the licensee, and the consumer). **CRITICAL**
2. a) Any subsequent amendments to the agreement. **CRITICAL**
3. a) Deposit—if applicable, the agreement must specify the deposit amount, when the deposit is due, where it is to be deposited, and how it can be released, e.g. will be applied to lease or to remuneration owed? **CRITICAL**

Chapter 6: Licensee (Non-broker) Compliance

Licensee (non-broker) compliance

This element of review has been developed for the very few licensees (salespeople and associate brokers) who refuse to or are incapable of complying with transaction file requirements despite the broker's supervisory best efforts. This process, if followed, allows a rating of less than three for transaction file review to be exempted from a broker's audit rating and that less than three rating will be applied to the licensee. Broker participation in recording non-compliance by licensees is optional; however, brokers who do not record non-compliance by licensees will not be able to have less than three rating for transaction files exempted from their audit rating.

Consistently non-compliant licensees will be held accountable if subsequent audits show a continued rating of less than three and the broker can demonstrate they have taken corrective action and the licensee failed to correct the discrepancies.

Examples of Corrective Action

Brokers must document and maintain in the transaction file the corrective action, including a description of the issue, the date addressed, the corrective action taken, and include supporting documentation.

1. meeting with licensee
2. additional training
3. documented requests for licensee to complete an action
4. instruction by email
5. documented phone call including date and time call was made

Recording non-compliance

As brokers perform these corrective actions, they indicate that they have done so and include it in the transaction file.

- At a minimum, a broker must complete three corrective actions to remedy a discrepancy.
- Having documented the corrective actions and the licensee's failure to comply, the broker will provide this documentation to the licensee.
- If the licensee corrects the issue, no further action is required. If the licensee continues to disregard the corrective action, the broker documents the failure to comply and the discrepancies will then be applied to the licensee and the broker will be exempt for this transaction file.

The purpose of this steps is to demonstrate in writing that the licensee has been repeatedly notified of their failure to comply and as a result, their actions may result in discipline.

Chapter 6: Licensee (Non-broker) Compliance

It is important to note that recording licensee non-compliance and broker actions to correct discrepancies is an ongoing activity as a transaction progresses. It is not something that can be done after a transaction closes or to prepare for an audit.

Chapter 7: Corrective Action

Corrective action and administrative penalties

The Commission has the authority to impose administrative penalties and to restrict, suspend, or cancel the licenses of brokers who do not maintain proper records. The schedule of corrective actions and administrative penalties focuses on broker education and instruction to improve future audit results. In cases where brokers receive needs-improvement or at-risk audit results, brokers will be subject to a spot audit conducted at a cost to the brokerage. If corrective action is not taken by the broker, an additional spot audit as well as an administrative penalty is levied to the broker. If the broker still fails to take corrective action, the broker will be subject to additional spot audits and increasingly higher administrative penalties to provide both a deterrent and an incentive to perform broker duties with greater care. If these penalties do not have the desired effect, consistently demonstrated less than three rating can result in a licence restriction to salesperson/associate broker.

Within 30 days of being notified that their licence will be restricted (**downgrade**), a broker may appeal the restriction (**downgrade**) to the Licensing Committee. The broker will follow the procedures for review set out in the Bylaw.

“At Risk” Audit Rating

Rating	Admin Penalty	Name Published	Audit (Cost to Broker)	Licence Downgrade
One (1) At Risk	No	No	Spot Audit in six (6) Months	No
Two (2) Consecutive At Risk	\$1,000	Yes	Spot Audit in six (6) Months	No
Three (3) Consecutive At Risk	\$2,500	Yes	Change of Broker Audit due to Licence Downgrade	Associate Broker/Salesperson

Chapter 7: Corrective Action

“Needs Improvement” Audit Rating

Rating	Admin Penalty	Name Published	Audit (Cost to Broker)	Licence Downgrade
One (1) Consecutive Needs Improvement	No	No	No	No
Two (2) Consecutive Needs Improvement	No	No	No	No
*Three (3) Consecutive Needs Improvement	No	No	Spot Audit in six (6) Months	No
*Four (4) Consecutive Needs Improvement	\$1,000	Yes	Spot Audit in six (6) Months	No
*Five (5) Consecutive Needs Improvement	\$2,500	Yes	Change of Broker Audit due to Licence Downgrade	Associate Broker/Salesperson

*Ratings of three (3), four (4), and five (5) “Needs Improvement” may be a combination of “Needs Improvement” and “At Risk” ratings. For example: Three (3) consecutive “Needs Improvement” ratings, followed by one (1) “At Risk” will constitute for four (4) consecutive “Needs Improvement” and will result in the rating to fall to the next rating category.

Fraud or Breach of Trust

Fraud/Breach of Trust	Referred to the Registrar for Investigation
-----------------------	---

Licensee (non-broker) compliance

As set out in *Chapter 6: Licensee (non-broker) Compliance*, consistently non-compliant licensees, may be subject to disciplinary action if audits of their transaction files show continued less than three rating and the broker can demonstrate that they have taken corrective action and the licensee still failed to correct the discrepancies. In these cases, the Registrar will initiate a complaint based on the broker’s written reporting of the corrective actions. The complaint and subsequent investigation will proceed in accordance with the disciplinary procedures set out in the Bylaw.

Chapter 8: Audit Fees

Audit fees

In accordance with the Bylaw, brokerage audit fees are determined by the number of licensees registered with a brokerage as of the licence renewal notice sent to each brokerage in May of each year.

- a) Brokerages that have trust and trading activity are charged a \$400 base audit fee and \$10 per licensee.
- b) Brokerages that do not have trust activity but do have trading activity receive a \$150 discount on the base audit fee.
- c) Brokerages that do not have trust and do not have trading activities are charged an audit fee of \$150.
- d) At the direction of the Registrar, brokerages may be subject to additional audits and may be charged a per-audit fee of \$500.
- e) Brokerages that are audited as a result of disciplinary measures will be charged an audit fee in accordance with the Commission Bylaw and Policies.

Audit fee examples

1. Brokerage with 10 licensees, no trust and no trading activity	\$150.00
2. Brokerage with 10 licensees, no trust but trading activity	\$350.00
3. Brokerage with 10 licensees, trust and trading activity	\$500.00
4. Brokerage with 50 licensees, trust and trading activity	\$900.00
5. Brokerage with 100 licensees, trust and trading activity	\$1400.00
6. Brokerage with 150 licensees, trust and trading activity	\$1900.00

New broker audits are paid for through regular brokerage fee.