



Bylaw

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Please note – The most recent changes to the Bylaw are indicated in bold typeface.

PART ONE – DEFINITIONS

Definitions

101

ACT means *The Real Estate Trading Act*.

102

ADVERTISEMENT means the use of space or time in a public medium (including the use of the internet), or the use of a commercial publication such as a brochure or handbill, or any marketing activity, to communicate with the general public or a segment thereof, for the purpose of promoting a trade in real estate.

103

AGENT means an industry member who is expressly or implicitly authorized to act for or represent another person in a trade in real estate.

104

AGREEMENT means a legal contract between two or more parties and includes a Listing Agreement, a Buyer Agency Agreement, an Agreement of Purchase and Sale (includes offer, counter offer, addendum(s), and amendment(s)), price changes on an existing Agreement and a completed Transaction.

105

ASSOCIATION means the Nova Scotia Association of REALTORS®.

105A

APPROVED SALES CORPORATION means a body corporate that has been licensed as an Approved Sales Corporation by the Nova Scotia Real Estate Commission.

106

BRANCH OFFICE means an office that is located apart from the main office and includes:
(a) any enclosed, self-contained, commercial space, leased or owned, from which real estate services generally may be offered or provided;
(b) any facility that may be deemed to be a branch office by the Commission.

107

BROKER means an individual who is licensed as a broker by the Nova Scotia Real Estate Commission, who is employed by or associated with a licensed brokerage in Nova Scotia, and is registered with and authorized to operate a brokerage and trade in real estate on behalf of that brokerage.

108

BROKERAGE means a person licensed by the Nova Scotia Real Estate Commission as a brokerage, and who is authorized to trade in real estate in Nova Scotia as a brokerage, or advertise or hold itself out as a real estate brokerage to the public, and includes all the industry members licensed with the brokerage.

109

BUYER means a person acquiring or attempting to acquire an interest in real estate by purchase.

110

CLIENT - A client is any person that is in an agency relationship with a licensed person. This relationship may be formalized, as in a Listing Agreement or Buyer's Contract, or it may be verbal or as a result of actions of the licensed person. The client relationship ends once the purchase or lease negotiated closes. If an Industry Member does not provide disclosure as per Article 3, then it will be assumed you are in a client relationship.

PART ONE – DEFINITIONS

111

COMMISSION means the Nova Scotia Real Estate Commission.

112

COMPLETED TRANSACTIONS - Without restricting the generality of the Real Estate Trading Act, the following circumstances are deemed to be completed transactions:

- (a) in the case of a sale of real estate, when the title has been registered at the Registry;
- (b) in the case of a lease, when final lease documentation has been signed; or
- (c) upon special written agreement of the parties to the transaction.

113

CONCURRENT REPRESENTATION means a situation in which a brokerage or an industry member represents two or more parties to a trade whose interests are seen to be in conflict.

114

CONFIDENTIAL INFORMATION includes any information concerning the client including the client's financial or personal situation, the client's real estate and the transaction involving the client.

115

CONTINUOUS REGISTRATION means an industry member will be deemed to be continuously licensed provided that he/she has not had a lapse in registration of more than 30 days.

116

CUSTOMER means a person who has not engaged or employed the brokerage in an agency capacity or as the person's transaction broker.

117

DESIGNATED AGENCY means a relationship in which one or more industry members, licensed with the same brokerage, are designated in writing by the brokerage to act as sole agents for a buyer or a seller with respect to the same trade.

118

DESIGNATED AGENT means an individual industry member who is designated in writing by a brokerage to serve as sole agent for a buyer or a seller in a trade in real estate.

119

DESIGNATED AGENCY AGREEMENT means a written service agreement between a brokerage and a buyer or a seller which sets out the terms and conditions under which one or more different individual industry members licensed with the brokerage are designated as the agent of the seller or of the buyer, respectively, in the same trade.

120

DUAL AGENCY means a relationship in which a brokerage or an individual industry member represents, as agent, both the buyer and the seller in the same trade.

121

EXCLUSIVE BUYER BROKERAGE AGREEMENT means a written service agreement between a brokerage and a buyer under which the buyer grants the brokerage exclusive authority to act as agent for the buyer and the exclusive right to locate for the buyer an interest in real estate and by which the buyer may agree to compensate the brokerage on any purchase effected by the brokerage, another brokerage or the buyer.

122

EXCLUSIVE SELLER BROKERAGE AGREEMENT means a written service agreement between a brokerage and a seller under which the seller grants the brokerage exclusive authority to

PART ONE – DEFINITIONS

act as agent for the seller and the exclusive right to offer for sale the seller's interest in real estate and by which the seller agrees to compensate the brokerage on any sale effected by the brokerage, another brokerage or the seller.

123

FACILITATION SERVICES means services that do not require the exercising of discretion or judgment, or the giving of confidential advice or advocating on behalf of either the buyer or the seller and may include:

- (i) providing real estate statistics and information on property including comparable property information available through listing services or other local databases;
- (ii) providing standard form agreements of purchase and sale and other documents and assisting in their preparation in accordance with the instructions of the customer;
- (iii) providing names of real estate service providers, but not recommending any particular service provider to the customer;
- (iv) presenting to a customer, in a timely manner, all offers and counter offers to and from the buyer and the seller, as the case may be, regardless of whether the property is already the subject of a contract;
- (v) conveying to the buyer and the seller, as the case may be, in a timely manner all information that customer wishes to have communicated to the other;
- (vi) keeping the customer informed regarding the progress of the transaction; and
- (vii) complying with the provisions of the *Real Estate Trading Act*, its regulations and the Bylaw of the Nova Scotia Real Estate Commission.

123A

FINANCE COMMITTEE makes recommendations to the Commission Board of Directors about Commission finances. Committee membership is defined in the NSREC Finance Committee Policy.

124

FRAUD or **FRAUDULENT** include, in addition to their ordinary meanings, in connection with a trade in real estate:

- (a) any intentional misrepresentation by word, conduct or manner of a material fact;
- (b) an intentional omission to disclose a material fact;
- (c) a promise or representation as to the future that is beyond reasonable expectation and that is not made in good faith;
- (d) the failure, within a reasonable time, to properly account for or pay over any money received to the person entitled to it;
- (e) the failure on the part of an Industry Member to disclose to all parties concerned whether he or she is acting as a principal or an agent in a trade;
- (f) any course of conduct or business calculated or put forward with the intent to deceive the public, the buyer or the seller about the value of any real estate;
- (g) the failure on the part of the Industry Member to disclose to a seller of real estate, for whom he or she acts directly or indirectly, any offer (written or verbal) that he or she has received to acquire that real estate;
- (h) the failure on the part of an Industry Member to disclose to a buyer of real estate, for whom he or she acts directly or indirectly, a counter offer made by the seller to that buyer;

PART ONE – DEFINITIONS

- (i) the gaining or attempt to gain, a commission, fee or gross profit that is so large and so exorbitant that it is unconscionable and unreasonable;
- (j) generally, any artifice, agreement, device, scheme, course of conduct or business to obtain money, profit or property by any of the means set out in sub-clauses (a) to (i) or otherwise contrary to law or by wrongful or dishonest dealing; and
- (k) any other activity or practice that is prescribed in the regulations;

125

GIFT is something of value given as a show of appreciation or a thank you for doing business or assisting the industry member in some manner.

126

INCENTIVE means anything that is advertised, communicated or offered by a Brokerage to the public or a person for the purpose of attracting business to the Brokerage and includes a promise, good, service, game of chance or anything else of value.

127

INDUCEMENT means anything that is offered or provided by an Industry Member to a person who is, or could be, a party to a real estate transaction and is intended to either assist, persuade, or cause that person to enter into a particular real estate transaction.

128

INDUSTRY MEMBER means a person licensed by the jurisdiction to trade in real estate.

129

INVESTIGATING OFFICER means a member of the Commission staff appointed by the Commission, on a motion, to review the conduct of Industry Members and give reports to the Registrar and Commission.

130

LEASE means a written contract by which a lessor, in consideration of rent, conveys real estate to a lessee for a specified period.

131

LISTING is an agency agreement between a seller and a Brokerage to market the seller's property.

132

MAIN OFFICE means an office that is located at the address shown on the Broker's licence.

133

MANAGER is an Associate Broker who has responsibility, under the supervision of a Broker, for the management of an office (main or branch).

134

MARKETING ACTIVITY means any advertisement, any publication or communication in any medium with a client, prospective client or the general public in the form of an advertisement, promotional activity or material, or any other means by which a trade in real estate is promoted.

135

NON-EXCLUSIVE BUYER BROKERAGE AGREEMENT means a service agreement between a brokerage and a buyer under which the buyer grants the brokerage non-exclusive authority to act as agent for the buyer to locate for the buyer an interest in real estate and by which the buyer may agree to compensate the brokerage only if the brokerage is the effective cause of the purchase.

PART ONE – DEFINITIONS

136

NON-EXCLUSIVE SELLER BROKERAGE AGREEMENT means a service agreement between a brokerage and a seller under which the seller grants the brokerage non-exclusive authority to act as agent for the seller to offer for sale the seller's interest in real estate and by which the seller agrees to compensate the brokerage only if the brokerage is the effective cause of the sale.

136A

NSREC MANDATORY FORMS COMMITTEE makes recommendations to the Commission Board of Directors regarding new and existing Commission-mandated forms. Committee membership is defined in the NSREC Mandatory Forms Committee Policy.

137

PERSON includes a corporation and the heirs, executors, administrators or other legal representatives of an individual to whom the context can apply according to law.

138

Repealed 2012.

139

PURCHASE includes an exchange, option, lease or other acquisition of an interest in real estate.

139A

RESPONSIBLE LICENCE HOLDER means the Broker, Managing Associate Broker, Associate Broker or Salesperson designated by an Approved Sales Corporation as being responsible for all acts of the Approved Sales Corporation.

140

SALE includes an exchange, option, lease or other disposition of an interest in real estate.

141

SELLER means a person disposing or attempting to dispose of an interest in real estate by sale.

142

SERVICE AGREEMENT means an agreement that establishes a relationship between a brokerage and a person which identifies the responsibilities of each party and includes the services to be performed by the brokerage and the commission or remuneration payable, if any.

143

SOLE AGENCY means a relationship in which a brokerage or industry member acts as the agent of only one party in a trade.

144

SUB-AGENT means a brokerage to whom a buyer's or seller's brokerage or designated agent delegates, in whole or in part, the performance of the buyer's or seller's brokerage's or designated agent's mandate.

144A

TEAM is two or more industry members licensed with the same brokerage, including licensed assistants, who

- (a) Work together on a regular basis to provide real estate brokerage services;
- (b) Represent themselves to the public as being part of one entity; and
- (c) Designate themselves by a collective name, such as team or group.

A team member shall belong to one team only and shall not provide real estate services independently of the team.

PART ONE – DEFINITIONS

145

TRADE includes one or more of the following:

- (a) a disposition of, an acquisition of or a transaction in real estate, by sale or purchase;
- (b) an offering, advertisement, listing or showing of real estate for sale or purchase;
- (c) an offer to purchase or offer to sell;
- (d) the solicitation, negotiation or obtaining of a contract, agreement or any other arrangements for any one or more of the things mentioned in this clause, either directly or indirectly;
- (e) holding oneself out as trading in real estate;
- (f) any conduct, act or negotiation, in the furtherance or attempted furtherance of any one or more of the things mentioned in this clause; but the provision of information alone does not constitute furthering or attempting to further for the purposes of subsection (f).

146

TRANSACTION BROKERAGE means a relationship in which a brokerage or industry member provides facilitation services to the buyer and the seller in the same trade.

147

TRANSACTION BROKERAGE AGREEMENT means a written service agreement between a brokerage and the buyer and the seller in a trade which sets out the terms and conditions under which the brokerage will provide facilitation services to the seller and the buyer in the same trade.

148

TRANSACTION FACILITATOR is an industry member who has been engaged under a Transaction Brokerage Agreement to provide facilitation services to the buyer and the seller in the same trade.

149

TRUST ACCOUNT means an account maintained in accordance with the Act to which trust funds are deposited, held and disbursed on behalf of several clients or several accounts for the same client.

150

WRITTEN OFFER means an offer that is reduced to writing, to purchase, offer to lease or any proposal by one party to another party to trade in real estate.

151

IN WRITING means any permanent form including an electronic record, audiotape or videotape and “written” has a corresponding meaning.

PART TWO – COMMISSION ADMINISTRATION

Commission Administration

Objectives

201

The Commission is responsible for the general administration of the Act, its regulations and all matters related to the administration of the Bylaw. The Commission is responsible for establishing standards for applicants and industry members in the real estate industry, which will promote high standards of professionalism, competence and integrity for the protection of consumers.

Execution of Documents

202

Pursuant to the Act, the Registrar has authority to sign documents respecting the licensing or non-licensing of any person; the filing or non-filing of any document or material required or permitted to be filed with the Commission; any other matter pertaining to such licensing, non-licensing, filing or non-filing.

Banking and Financial Dealings of the Commission

203

The Chairperson, Vice Chairperson and Registrar or any two of them, shall serve as signing Officers for the purpose of executing all cheques, notes, contracts and negotiable instruments. The Registrar may designate a staff person as an alternate for their signature.

204

Approved contracts, documents or any like instruments in writing requiring the seal of the Commission, shall be signed by the Chairperson, Vice Chairperson, Registrar or any member of the Commission or any two of them, provided that the contracts are in the ordinary course of the Commission's business. Those not requiring the Commission seal may be entered into on behalf of the Commission by the Chairperson, Vice Chairperson, Registrar or any one of them, or any other person specifically authorized by the Commission through a motion at a regularly constituted meeting.

205

The Commission may delegate the functions, powers and duties of any Commission member, including the power to serve as a signing Officer to other Commission members or Officers.

Application of the Funds of the Commission

206

All fees collected by the Commission shall be deposited to the Commission's bank account maintained in a bank within the Province of Nova Scotia.

PART TWO – COMMISSION ADMINISTRATION

Fiscal Year and Annual Audit

207

The fiscal year of the Commission shall be from January 1 to December 31.

208

The Commission shall require an annual audited financial statement.

Commission Appointments

209

- (a) The Nova Scotia Association of REALTORS® shall appoint three (3) members of the Commission.
- (b) The Industry Members shall elect three (3) members of the Commission at the Annual General Meeting.
- (c) The Governor in Council shall appoint three (3) members who are not licensed persons.
- (d) The Commercial Committee shall recommend a person from the commercial sector to the Board of Directors to sit as a Commissioner. The recommendation must be provided to the Commission Board of Directors in writing no later than January 31st of the year the current appointment expires.

Election Procedures

210

Pursuant to the Clause 7(1)(b) of the Act, and Section 209 of the Bylaw, all industry members shall be entitled to vote for the election of Commission members.

211

All elected members of the Commission pursuant to 7(1)(b) of the Act must be industry members.

212

The date of the election of members shall be in conjunction with the Commission annual meeting.

213

Members shall be elected/appointed for a term to a maximum of three (3) years and serve no more than two (2) consecutive terms. No more than four (4) members may be elected/appointed in any given year.

214

On or before sixty (60) days prior to the Annual meeting, the Commission shall mail to all industry members, a nomination form and a notice requesting that the nomination of industry members for election as members of the Commission be received at the office of the Commission thirty (30) days prior to the annual meeting.

215

The nomination of an industry member for election as a member shall be in writing on the form approved by the Commission signed by ten (10) industry members, neither of whom is the nominee, and shall be received at the office of the Commission thirty (30) days prior to the annual meeting.

PART TWO – COMMISSION ADMINISTRATION

216

After the last day for the receipt of nominations, the Commission shall prepare a slate of nominees to be presented to the industry.

217

No corporation or partnership is eligible for election.

217A

An Approved Sales Corporation shall not be eligible to vote.

218

Election shall be by electronic ballot.

219

To be declared elected, any nominee shall have the greatest number of the votes cast by voting delegates.

220

In the event of a tie, the Chair of the Commission shall put into a box one paper for each candidate and having the name of each candidate written on it and shall draw by chance from the box one such paper. The Chair shall declare the person whose name appears on the paper so drawn, as the elected member of the Commission.

221

When a position cannot be filled through the election process, the Commission shall request the Association to appoint, in accordance with the Bylaw, a person to serve that term.

Appointment of Chairperson and Vice-Chairperson

222

Forthwith after the election and appointment of the members, the Commission shall meet and elect from their number a Chairperson and Vice-Chairperson.

223

The Chairperson shall preside at all meetings of the Commission and the Executive Committee. He/she shall appoint the standing committees of the Commission, with the approval of the Commission. In addition, the Chairperson shall perform such other duties as may from time-to-time be assigned to him/her by the Commission and it shall be the Chairperson's duty to be vigilant and active in promoting the objectives of the Commission.

224

The Vice-Chairperson shall perform the duties and exercise the powers of the Chairperson in the event of the Chairperson's absence or disability. In addition, the Vice-Chairperson shall perform such other duties as may from time-to-time be assigned to him/her by the Commission.

PART TWO – COMMISSION ADMINISTRATION

225

In the event that the position of Chairperson or Vice-Chairperson becomes vacant at any time, the Commission shall select a successor, from the Commission, at its next regularly scheduled meeting.

Appointment and Duties of the Registrar

226

Pursuant to Section 10 of the Act, the Commission shall engage a Registrar who:

- (a) shall hold office at the pleasure of the Commission serving as chief administrative Officer of the Commission;
- (b) may be appointed as the second (2nd) signing authority for all cheques, notes, contracts, and negotiable instruments, if necessary;
- (c) shall be the Secretary-Treasurer of the Commission; and he/she shall attend all meetings and keep a record of all proceedings of the Commission and its committees;
- (d) shall have other duties as may be prescribed by the Commission from time to time.

227

The Commission, by majority vote, shall have the authority to nullify any decision of the Registrar.

Appointment of Employees and Executive Committee

228

- (a) The Commission may contract with parties or individuals for the provision of administration, clerical or equipment services and may, additionally, enter into an employer/employee relationship with the required number of individuals to perform a designated function of a Commission responsibility.
- (b) The Chairperson and Vice-Chair form the Chairperson and Vice-Chair of the Executive Committee. The Chairperson and Vice-Chair must appoint one Commission member to the Executive Committee and may appoint a second Commission member. The Registrar attends Executive Committee meetings at the discretion of the Executive Committee.

Resignation of Members of the Commission

229

Resignation of a member shall become effective on acceptance by the members at a regularly constituted meeting and upon the Commission being satisfied that a replacement process has been affected.

230

Pursuant to 7(1)(A) and 7(4) of the Act, the Governor-in-Council shall be requested forthwith to appoint a person to serve the remaining portion of the term.

231

- (a) Pursuant to Subsection 7(4) of the Act, the Association shall forthwith appoint an industry member to serve the remaining portion of the term.

PART TWO – COMMISSION ADMINISTRATION

(b) Where an elected member ceases to be a member of the Commission for any reason prior to the expiration of that member's term, the Association shall appoint a replacement industry member to the Commission to serve until the next Annual Meeting of the Commission where an election can be held to fill the position.

232

In the event a member ceases to be licensed, he shall be deemed to have resigned effective the day he ceases to be licensed.

233

Termination through absence - The Commission may terminate a Commission member for missing three consecutive meetings.

Duties of Members of the Commission

234

Commission members are responsible to exercise the powers, functions and duties delegated to the Commission pursuant to the Bylaw.

235

The Commission is responsible to establish standards for applicants and industry members in the real estate industry that will promote high standards of professionalism, competence and integrity in the general real estate industry.

236

The Commission is responsible to serve as a link between the general real estate industry and consumers of the services.

237

The Commission is responsible for the general administration of the Act. The Commission will maintain written Policies and Procedures to assist in the administration and interpretations of the Act and the Bylaw.

238

The Commission is responsible for all matters related to the administration of the Bylaw including budgeting for administration of the Act.

Taking Office by Members of the Commission

239

Those members declared to be elected/appointed shall take office as members of the Commission at the next meeting of the members.

PART TWO – COMMISSION ADMINISTRATION

Remuneration and Reimbursement for Expenses

240

Pursuant to section 7(8) of the Act the Commission shall pay to the members remuneration for:

- (a) services: a per diem as approved annually in the budget;
- (b) travel: as approved annually in the budget;
- (c) other expenses: as approved annually in the budget.

Rules of Order

241

Except where specifically outlined in the Act or these Bylaw, Roberts Rules of Order shall apply to all meetings and procedures of the Commission.

Annual General Meeting

242

An annual meeting of industry members shall be held, within four (4) months of the end of the fiscal year, at a time and place to be fixed by the Commission.

243

All industry members are entitled to fourteen (14) days' notice of the Annual Meeting. A notice to an Approved Sales Corporation shall be served upon the Responsible Licence Holder.

244

Notice of the meeting is to contain details of all business to be transacted at the meeting.

The Register

245

The register shall contain a list of all current industry members, their office address and telephone numbers. The register shall be updated on a monthly basis.

Voting

246

In accordance with Section 210, each voting delegate is entitled to one (1) vote on each question at all meetings of industry members.

247

Repealed.

PART TWO – COMMISSION ADMINISTRATION

Commission Meetings

248

The Chairperson may call a meeting of the Commission at any time. Every Commission member shall be sent notice of every meeting of the Commission by letter, telephone or otherwise at least five days prior to the meeting date. The Commission may meet at any time without notice provided that a quorum of the Commission members waive notice of the meeting.

249

Any three members of the Commission may, with written notice to the Chairperson, call a meeting of the Commission.

250

Pursuant to Section 7.10 of the Act, quorum is any six members of the Commission.

251

A majority vote is a majority of those present eligible to vote.

252

The Chairperson will have a vote on all motions and in the event of a tie, the motion shall be deemed to be defeated, without the Chairperson having a casting vote.

Immunity

253

No action lies or shall be instituted against:

- (a) the Commission or any member of the Commission; or
- (b) any person acting under the authority of the Commission;

for any loss or damage suffered by a person by reason of anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by any of them pursuant to or in the exercise or supposed exercise of any power conferred by the Act, the regulations or the Bylaw or in the carrying out or supposed carrying out of any decision or order made pursuant to the Act, the regulations or the Bylaw or any duty imposed by the Act, the regulations or the Bylaw.

Confidentiality

254

- (a) Every person appointed pursuant to the Act, authorized to do anything pursuant to the Act or employed in the administration of the Act shall preserve confidentiality with respect to all matters that come to their knowledge in the course of their duties pursuant to the Act.
- (b) A person described in subsection (a) shall not disclose or communicate any of the matters mentioned in subsection (a) to any person except:

PART TWO – COMMISSION ADMINISTRATION

- (i) as required in connection with the administration of the Act, the regulations or the Bylaw or any proceedings pursuant to the Act, the regulations or the Bylaw;
 - (ii) to their lawyer; or
 - (iii) with the consent of the person to whom the information relates.
- (c) No person described in subsection (a) shall be required to give testimony in any civil action or proceedings with regard to information obtained in the course of their duties or employment or in the exercise of their authority, except in a proceeding pursuant to the Act, the regulations or the Bylaw.
- (d) Notwithstanding subsections (a) and (b), the Commission may publish or make available to the public any material and information obtained pursuant to the Act when the Commission is of the opinion that it is in the public interest to do so.

Committee Term Appointments

255

- (a) Committee appointments are for a term of one year.
- (b) When a term is completed, the committee member may be reappointed at the discretion of the Commission.
- (c) To be eligible to serve on a committee, an industry member must not have been convicted of an offence pursuant to the Act, the Regulations, or the Bylaw resulting in
 - (i) a suspension within the past five years; or
 - (ii) a licence restriction; or
 - (iii) a fine greater than \$500 within the past two years; or
 - (iv) a fine of \$500 or less within the past year.
- (d) Any industry member who serves on a Commission Committee immediately ceases to be a committee member if the member
 - (i) ceases to hold a valid real estate licence
 - (ii) declares bankruptcy;
 - (iii) becomes a director, officer, board member or employee of another real estate organization whose role is to defend the interests of the industry;
 - (iv) is convicted of a summary or indictable offense;
 - (v) is convicted of an offence pursuant to the Act, the Bylaw, or the Regulations;
 - (vi) contravenes the Code of Conduct, Ethics and Professional Responsibilities for Commission Members;
 - (vii) uses their position as board member for private gain, influence, or to hinder the activities of the board;
 - (viii) misses three meetings without just cause in a 12-month period; or
 - (ix) if the majority of the other committee members consider that the matter is sufficiently serious to justify the member's removal.

PART THREE – LICENSING

Classes of Licence

301

For the purposes of the Act and the Bylaw there shall be the following classes of licences:

- (a) Brokerage;
- (b) Broker;
- (c) Managing Associate Broker;
- (d) Associate Broker;
- (e) Salesperson; and
- (f) Approved Sales Corporation

302

A brokerage is a person licensed by the Commission as a brokerage and is authorized to trade real estate in Nova Scotia as a brokerage, or advertise or hold itself out as a real estate brokerage to the public.

303

A broker is an individual who:

- (a) holds the qualifications of a broker;
- (b) is licensed as a broker by the Commission;
- (c) is employed by or associated with a licensed brokerage in Nova Scotia; and
- (d) is licensed with and authorized to operate a brokerage and trade in real estate on behalf of that brokerage.

304

A managing associate broker is an associate broker who is designated as a manager and is authorized to operate and/or manage a brokerage under the supervision of a broker and trade in real estate on behalf of that brokerage.

305

An associate broker is an individual who:

- (a) holds the qualifications of an associate broker;
- (b) is licensed as an associate broker by the Commission;
- (c) is employed by or associated with a licensed brokerage in Nova Scotia;
- (d) is licensed with and authorized to trade in real estate on behalf of that brokerage.

306

A salesperson is an individual who:

- (a) holds the qualifications of a salesperson;
- (b) is licensed as a salesperson by the Commission;
- (c) is employed by or associated with a licensed brokerage in Nova Scotia; and
- (d) is licensed with and authorized to trade in real estate on behalf of that brokerage.

306A

An Approved Sales Corporation is a person that:

- (a) meets the requirements of Section 37A of the Act;

PART THREE – LICENSING

- (b) is licensed to trade real estate in Nova Scotia by the Commission as an Approved Sales Corporation;
- (c) employs or is associated with a Responsible Licence Holder; and
- (d) is associated with a licensed Brokerage in Nova Scotia.

Brokerage Licensing

307

- (a) The brokerage name must be pre-approved by the Registrar prior to application;
- (b) the brokerage must be registered with the Registry of Joint Stocks;
- (c) the brokerage must establish an interest-bearing trust account with a bank in the province of Nova Scotia; and
- (d) the brokerage signage must be approved by the Registrar.

308

- (a) Brokerages are required to maintain a service address in the province of Nova Scotia.
- (b) Brokerages must maintain their paper records in Nova Scotia and if not stored at the brokerage office(s), the broker must notify the Commission of the storage location.

Signage

309

- (a) The Registrar must pre-approve the format of all signage used by brokerages as to the following:
 - (i) the sign must show the brokerage's name as it appears on the licence;
 - (ii) the sign must conform with municipal regulations; and
 - (iii) the sign must be distinctive from that of existing signage of other brokerages.
- (b) Signage by an industry member at a personal residence is not permitted unless the location is registered as a branch office.

Branch Offices

310

All office locations of a permanent nature where industry members have signage and conduct business, excluding the main brokerage office location, must be registered as a branch office. Satellite offices, kiosks and project offices are deemed branch offices under this Bylaw.

Broker Licensing

311

- (a) An application for licensing as a broker meets the educational requirements if the applicant has completed the broker licensing course or has equivalent education approved by the Commission and has successfully challenged the broker licensing exam.
- (b) An applicant for broker must have:
 - (i) three years' experience as a licensed salesperson; and

PART THREE – LICENSING

- (ii) conducted a minimum of 20 residential real estate transactions, including five transactions where the applicant represented the buyer in single agency and five transactions where the applicant represented the seller in an agency relationship; or
- (iii) conducted a minimum of 10 commercial real estate transactions; or
- (iv) equivalent experience approved by the Commission.

Associate Broker / Managing Associate Broker Licensing

312

- (a) An application for licensing as an associate broker/managing associate broker meets the educational requirements if the applicant has completed the broker licensing course or has equivalent education approved by the Commission and has successfully challenged the broker licensing exam.
- (b) An applicant for managing associate broker or associate broker must meet the same experience requirements as a broker applicant.

Salesperson Licensing

313

- (a) An applicant for licensing as a salesperson meets the educational requirements if the applicant has completed the real estate salespersons licensing course or has equivalent education approved by the Commission;
- (b) Successfully challenged the salesperson licensing exam; and
- (c) Provided proof of high school graduation or an equivalency approved by the Registrar.

Approved Sales Corporation

313A

A person applying for a licence as an Approved Sales Corporation must:

Be registered with the Registry of Joint Stock Companies with a name acceptable to the Commission;

- (a) Provide to the Registrar a written acknowledgement, in such form as may be required by the Registrar, from the Responsible Licence Holder acknowledging that the Responsible Licence Holder has agreed to act in respect of any Trade carried out by the Corporation;
- (b) Provide to the Registrar a written acknowledgement, in such form as may be required by the Registrar, from the Brokerage supervising the Responsible Licence Holder acknowledging that the Brokerage shall be responsible for any Trade by the Approved Sales Corporation;
- (c) Provide to the Registrar its registered office and all offices where it shall conduct business;
- (d) Provide to the Registrar a list of the names and addresses of all legal and beneficial holders of all shares of the Approved Sales Corporation; and
- (e) Provide to the Registrar a list of the names and addresses of all officers and directors of the Approved Sales Corporation;

PART THREE – LICENSING

Name of Approved Sales Corporation

313B

An Approved Sales Corporation shall be registered only with the name of the Responsible Licence Holder, as such name appears on the licence held by the Responsible Licence Holder, followed by the word “Limited” or such other name as the Registrar may approve.

Restrictions on Trade by Approved Sales Corporation

313C

A Trade for an on behalf of an Approved Sales Corporation shall only be conducted:

- (a) by the Responsible Licence Holder appointed by the Approved Sales Corporation and approved by the Registrar as the individual responsible for any Trade by the Approved Sales Corporation; and
- (b) On behalf of and only in the name of the Brokerage associated with the designated Salesperson for the Approved Sales Corporation in accordance with the Act and Bylaws.

Restrictions on Trade by Corporation

313D

No corporation may engage in the trading of real estate unless it:

- (a) Holds an Approved Sales Corporation licence and the Responsible Licence Holder has a license issued by the Commission in good standing; or
- (b) Holds a Brokerage Licence.

Advertising

313E

An Approved Sales Corporation shall not be identified in any advertising unless the advertising indicates the name of the Brokerage as advertiser and is approved by the Registrar.

Change in Class of Licence

314

- (a) An industry member who holds a broker licence is deemed qualified to hold a managing associate broker or associate broker licence and an industry member who holds an associate broker licence is deemed qualified to hold a broker or managing associate broker licence.
- (b) An industry member who holds a broker, managing associate broker or associate broker licence and who changes to a salesperson status and maintains the broker education requirements, is deemed qualified should they wish to reactivate their broker, managing associate broker or associate broker licence.

315

Applicants for licensing must be at least nineteen (19) years of age and must be able to legally work in Canada.

PART THREE – LICENSING

Registration in another Jurisdiction

316

- (a) Canadian Jurisdictions: Broker-level applicants—An applicant for licensing as a broker, managing associate broker or associate broker who is presently licensed as a broker in another jurisdiction, or who was licensed as a broker in another jurisdiction within the preceding year, must provide the Commission with:
 - (i) a licensing and discipline history acceptable to the Commission;
 - (ii) a current criminal record check acceptable to the Commission;
 - (iii) an affidavit swearing the applicant meets the experience requirements to become a broker in Nova Scotia; and
 - (iv) and a signed Out of Province Certification form.
- (b) Canadian Jurisdictions: Salesperson—An applicant for licensing as a salesperson who is presently licensed as a salesperson in another jurisdiction, or who was licensed as a salesperson in another jurisdiction within the preceding year, must provide the Commission with a licensing and discipline history acceptable to the Commission, a current criminal record check acceptable to the Commission, and a signed Out of Province Certification form.

Re-Registration Within Two (2) Years

317

An applicant for licensing as a broker, managing associate broker, associate broker or salesperson meets the educational requirements if the applicant has been licensed in accordance with the Act within the preceding two (2) years prior to the date of application and has completed all required continuing education courses. Previously licensed individuals that do not reinstate their licence within two years of their last termination date are considered new applicants on any future application.

Qualifying Period

318

- (a) An applicant who has successfully completed the salesperson licensing course or broker licensing course must successfully challenge the exam within twelve months of completion of the course.
- (b) Should an applicant fail to successfully challenge the exam within twelve months, they must retake the salesperson licensing course or broker licensing course, as appropriate, before being permitted to challenge the exam again.
- (c) An applicant who has successfully completed the required licensing course, but has never been previously licensed must obtain a licence within 180 days of passing the exam.

Successful Completion of the Online Licensing Course

319

Online students must complete all modules within six months of registration. Successful completion of the online licensing course means that the applicant has submitted and obtained a pass mark of seventy (70) percent on each course module. In the event the applicant obtains less

PART THREE – LICENSING

than seventy (70) percent on any module, the module must be re-done and re-submitted within the registration period of six months.

Successful Completion of a Challenge

320

Successful completion of a challenge means that the classroom licensing course is not a requirement nor are the assignments for the licensing course by correspondence. A pass mark of seventy (70) percent must be obtained on the appropriate examination(s). Should the applicant fail the examination challenge, then the applicant must write the exam challenge again until the applicant achieves a mark of seventy (70) percent.

Examination Procedures

321

General procedures for licensing exams

- (a) Failure to pass—The applicant must take the course over in its entirety if he/she has not achieved seventy (70) per cent within two exam attempts.
- (b) Failure to write—Failure to appear for an examination, once the date has been set, will, unless other acceptable arrangements have been authorized by the Commission, be treated as if the examination had actually taken place.
- (c) Notification—Upon being accepted for examination, applicants shall be advised concerning the exact place of the examination, the starting hour and the length of the examination period.
- (d) Required notice—Registration for the examination shall be received in the Nova Scotia Real Estate Commission office by 4:00 p.m., seven (7) days prior to the appointed examination date of the designated month within the selected centre.
- (e) Submission of Online Salesperson Licensing Course modules—The examination registration shall be accepted only after all modules have been submitted and a pass mark of 70 per cent is obtained on each module.
- (f) Supplemental exams—An applicant may write a maximum of one supplemental examination after failing their initial examination. An applicant that fails the exam twice must wait one year from the date the applicant finished the licensing course before being eligible to retake the licensing course.
- (g) Identification—Photo IDs may be required by the examiner to prove identification of the person challenging the exam.
- (h) Repealed.

Examination Dates

322

Examination dates will be on the second Friday of each month or as prescribed by the Commission. Applications to write must be made by submitting the appropriate form and fees.

PART THREE – LICENSING

Continuing Professional Education (CPE)

323

- (a) All industry members must complete the annual CPE requirements prescribed by the Commission for their licence prior to June 15th of each year. Should an industry member fail to complete the requirements, their licence will not be renewed until proof that the requirements have been met is provided to the Registrar.
- (b) Upon receipt of an industry member's written application and upon payment of a fee pursuant to Bylaw 402, the Registrar may grant one 30-day extension beginning July 1st for completion of the continuing professional development requirements.
- (c) A person licensed between July 1st and December 31st must complete three CEUs, or if there is a mandatory course, they must complete the mandatory course.
- (d) A person licensed between January 1st and June 30th is not required to complete any CPE for that licensing cycle.
- (e) Industry members are permitted to carry over a maximum of three CEUs into the next licensing cycle.

Licence Renewal

324

All applications for licence renewal must be submitted to the Commission postmarked prior to June 15th.

325

Unless suspended or cancelled earlier, every licence expires at midnight on June 30th next following the date of issuance.

326

All brokerages, who fail to submit the application for licensing of their brokerage, its broker, managing associate brokers, associate brokers and salespeople postmarked prior to June 15th each licensing year, may be charged full licence fees as a new brokerage including all Real Estate Recovery Fund fees according to the applicable category, unless exceptional circumstances exist.

327

A brokerage licence will not be renewed unless all administrative fees or penalties or other outstanding fees have been received and accepted by the Commission prior to the licensing date.

Licensing Forms

328

The making of a false affidavit on an application for licensing may constitute a criminal offence and may be punishable by law. Any statutory declaration (affidavit) containing a material falsity may result in the refusal of the application and the suspension or cancellation of any licence issued thereupon.

PART THREE – LICENSING

Applications

329

- (a) All applications for licensing shall be completed by every applicant on a form designated by the Commission.
- (b) Applicants must use their full, legal name on applications and may provide a nickname (except brokerages), if that industry member wishes to use the nickname in their promotional materials and advertising.

330

The following shall be the approved licensing forms provided by the Commission:

- (a) Application for Licensing as a Brokerage
- (b) Application for Licensing as a Broker / Managing Associate Broker
- (c) Application for Licensing as an Associate Broker
- (d) Application for Licensing as a Salesperson
- (e) Application for Licensing as an Approved Sales Corporation
- (f) Application for Licence Renewal as a Brokerage
- (g) Application for Licence Renewal as a Broker or Associate Broker or Salesperson or Approved Sales Corporation
- (h) Application for one 30-day extension for CPE requirements
- (i) Licensing Schedule A (to form part of all new applications)
- (j) Licensing Schedule B (to form part of all renewals)
- (k) Reinstatement of Licence
- (l) Notice of Termination
- (m) Exam Application

Refusal to Licence

331

The Registrar may refuse to issue a licence to a person where the Registrar has formed the opinion that:

- (a) the person has provided false or misleading information to the Registrar in the course of applying for a licence;
- (b) the person is someone against whom a member of the public has obtained a judgment arising out of that person's action as an industry member and no reasonable arrangements have been made to satisfy it; or
- (c) it would not be in the public interest to license that person.

Should an applicant be refused a licence under this section then the Registrar shall inform the applicant of their right of review of the Registrar's decision under Section 12(2) of the Act.

332

An individual whose licence has been suspended or cancelled in one class is not eligible to be licensed in any other class until the suspension or cancellation period has expired, unless otherwise provided for in a discipline decision.

PART THREE – LICENSING

Criminal Record

333

- (a) The following individuals
 - (i) First-time salesperson applicants
 - (ii) First-time associate broker, managing associate broker, and broker applicants
 - (iii) Any industry member who is unlicensed for more than 90 days must provide a criminal record check acceptable to the Commission, no older than six months, when they apply to be licensed.
- (b) The Commission shall deal with any information received pursuant to 333(a) in accordance with the Commission Policy & Procedures for licensing.

Notice of Discipline, Judgments or Bankruptcy

334

An industry member must immediately notify the Registrar, in writing, when:

- (a) the industry member is disciplined by any real estate board or association, or any professional or occupational body;
- (b) the industry member has any judgment(s) rendered against the industry member in relation to a trade in real estate, fraud or breach of trust;
- (c) any business the industry member owns or has participated in as a director or officer, has any judgment(s) rendered against the business in relation to a trade in real estate, fraud or breach of trust; or
- (d) the industry member is the subject of any bankruptcy proceedings;
- (e) any business owned by the industry member, or is a director or officer, is the subject of any bankruptcy or receivership proceedings; or
- (f) the industry member is convicted of any criminal offence or any other offence under the law of any country, province or state, excluding provincial or municipal highway traffic offences resulting in monetary fines only.

Notice of Termination

335

The Registrar will terminate a licence when given notice, on the form designated “Notice of Termination”, by either:

- (a) a broker, managing associate broker, associate broker, salesperson, or approved sales corporation who is terminating their representation of a brokerage;
- (b) or a brokerage terminating a broker’s, managing associate broker’s, associate broker’s salesperson’s, or approved sales corporation representation of that brokerage.

In either case, the terminating party must provide the other party with a copy of the Notice of Termination. The brokerage must submit the completed Notice of Termination to the Registrar within two business days (excluding Saturdays, Sundays and holidays) of when the termination became effective.

PART THREE – LICENSING

Fees

336

All applications for licensing must be accompanied by the applicable fees as outlined in Part Four of this Bylaw.

Issue of Licence

337

- a) The Commission shall issue a licence to each brokerage, broker, managing associate broker, associate broker, salesperson, and approved sales corporation licensed pursuant to the Act; and
- b) in the case of first-time broker applicants, the Commission shall issue a conditional licence. The Commission shall conduct three audits in the broker's first year of licensing, two of which must achieve a good rating, and conduct a fourth audit in the first half of the broker's second year of licensing, which must obtain a good rating. The audit schedule may be adjusted at the discretion of the Registrar. These audits shall be at a cost to the broker. Should a broker fail to achieve the audit ratings set out in this Bylaw, the broker shall continue to be audited twice a year until a good audit rating is achieved.

Corporate Entities

338

Without limiting the generality of Section 4 of the Act, where the partnership is formed in whole or in part by corporate entities with one of the corporate entities acting as the designate, this corporate entity shall designate one of its officials as the broker in the partnership application for licensing.

Notice of Changes

339

Brokerage – A brokerage shall immediately notify the Registrar in writing of:

- (a) the termination or resignation of the broker or any managing associate broker, associate broker, salesperson or approved sales corporation who is licensed with the brokerage;
- (b) an industry member changing from one office of a brokerage to another;
- (c) a change in the address, phone numbers or email address of the brokerage's business office registered with the Commission;
- (d) a change in the bank in which the brokerage maintains a trust account;
- (e) a change in the partners if the brokerage is a partnership; or
- (f) a change in the directors or officers of a corporation if the brokerage is a corporation.

340

Brokers, managing associate brokers, associate brokers and salespeople shall notify the Registrar in writing within five days of:

- (a) a change of their name; or
- (b) a change of personal phone numbers, home address or email address; or

PART THREE – LICENSING

340A

An Approved Sales Corporation shall, no later than Five (5) days of the change, notify the Registrar in writing of:

- (a) A change of its name;
- (b) A change of its phone numbers or registered office;
- (c) A change in the Responsible Licence Holder;
- (d) A change in its Officers or Directors; and
- (e) Any change in issued shares or of the shareholders of the Approved Sales Corporation.

Broker's Designate

341

A broker, in their temporary absence, may appoint an industry member of the brokerage to have signing authority for the brokerage for the purpose of salesperson licence applications and termination of licences. This authority will not be effective until it is signed and approved by the Registrar. All requests for signing authority must be accompanied by a sample signature from the designated industry member. All signing authorities expire on June 30th each year.

342

A broker may appoint the managing associate broker(s) of the brokerage's branch office(s) to have signing authority for all matters pertaining to that branch office. Notification of this delegation of authority must be made in writing to the Commission and must be accompanied by a sample signature from the designated managing associate broker.

Temporary or Conditional Licence

343

- (a) The Registrar may, on or subsequent to issuing a licence, make the licence subject to any terms, conditions or restrictions with respect to trading in real estate that the Registrar considers appropriate.
- (b) The Registrar may issue a temporary licence to a person where that person does not meet the qualifications under this Bylaw, but the Registrar determines it is in the public interest to do so.
- (c) A temporary licence granted under this Bylaw may be issued for a period of time prescribed by the Registrar, but the term shall not exceed eight months.

Authorization of Registrar

344

Pursuant to Section 10 of the Act, the Commission delegates to the Registrar the power to:

- (a) license or reinstate applicants and grant licences pursuant to Section 10 and 11 of the Act; and

PART THREE – LICENSING

- (b) grant a licence to an applicant subject to any terms, conditions and restrictions under the provisions of Section 13 (1) of the Act, provided that the applicant consents to abide by the terms, conditions and restrictions imposed; or
- (c) deny applications for licensing pursuant to Section 12 of the Act.

Licensing Information

345

Upon reasonable demand by the Commission, the Registrar shall provide the Commission with a list of all industry members and details of all licences issued or denied under the authority delegated to the Registrar.

Notification of Applicant

346

If an applicant is refused a licence or is refused reinstatement of a licence, the Registrar shall advise the applicant of the reasons why the licence cannot be issued and shall inform the applicant that he/she has a right to be heard before the Licensing Committee under the provisions of Section 14 of the Act.

Licensing Hearing Process

347

Upon receipt of a written request from an applicant to be heard pursuant to Section 14(2) of the Act, the Registrar shall, within seven days of receiving a written request, fix a date for a hearing.

348

The Registrar shall notify the applicant of the date, time and place of the hearing.

349

Any applicant requesting to be heard and who is unable to appear for valid reasons on the specified date shall immediately contact the Commission office so that an application may be made to adjourn the hearing to an alternate date.

350

The Commission is not responsible for expenses incurred by or on behalf of the named applicant to attend a hearing. The named applicant and their legal counsel is entitled to be in attendance throughout the hearing.

351

The Licensing Committee may accept any evidence that it considers relevant to the matter and is not bound by rules of law concerning evidence.

PART THREE – LICENSING

352

The Licensing Committee may employ any legal or other assistance that it considers necessary and the applicant may be represented by counsel at the applicant's expense.

353

The testimony of witnesses is to be under oath or affirmation administered by any member of the Licensing Committee.

354

Where the applicant fails to attend the hearing, the Licensing Committee, on proof of service of the "Notice of Hearing" may proceed with the hearing in the applicant's absence.

355

All examinations and cross-examinations of witnesses should be relevant to the specific issues being considered by the Licensing Committee.

356

The legal counsel for the Commission or the representative acting for the Commission will make a summation to the Licensing Committee as to what conclusions might properly be drawn from the evidence, and the named applicant or their counsel shall have a similar opportunity to make a summation. Submissions as to the appropriate decision may be included in such summations.

357

The Licensing Committee, after evaluating the facts concerning an application for licensing, shall:

- (a) confirm the decision of the Registrar; or
- (b) grant a licence pursuant to Section 10(2) or 13 of the Act.

358

The Licensing Committee shall provide a written decision to the named applicant by serving notice to the applicant pursuant to the Act, its regulations and the Bylaw within fifteen (15) days of its decision and advise the applicant of their right to a review by the Commission.

359

Upon notification of a review to the Commission, the Registrar shall file with the Commission:

- (a) all documents and materials that were before the Licensing Committee in the making of the decision or order; and
- (b) the decision or order of the Licensing Committee and any reasons provided by the Licensing Committee for the decision or order.

360

The applicant or the applicant's solicitor may obtain from the Registrar a copy of the documents filed with the Registrar pursuant to the review and on payment of the costs of producing them.

PART THREE – LICENSING

Re-Instatement After Cancellation

361

Pursuant to Section 25 of the Act, any person whose licence has been suspended or cancelled may reapply to the Licensing Committee for a new broker, managing associate broker, associate broker, salesperson, or approved sales corporation licence.

362

In determining an application for licensing after a period of cancellation, the Licensing Committee will consider the following factors, but will not be limited to making determination on these factors alone:

- (a) whether a material change in circumstances has occurred since cancellation;
- (b) whether the applicant has taken steps to demonstrate that he/she will carry on business in accordance with the Act, its Regulations and the Bylaw and will he/she conduct their business with integrity, honesty and trustworthiness;
- (c) whether the applicant has taken steps to rehabilitate himself/herself since cancellation, including educational programs;
- (d) whether the applicant has held any jobs since cancellation; and
- (e) whether the applicant has shown remorse.

Prosecution

363

Pursuant to Section 43 of the Act, the Commission shall actively pursue the enforcement of licensing and may take such steps to encourage prosecution of non-industry members. This includes non-renewal of licences at the expiration of their existing licence.

Auctioneers

364

Auctioneers involved in the process of selling real estate are considered to be trading and must be licensed under the Act unless the real estate being auctioned is under contract with a Brokerage.

Errors & Omissions Insurance

365

All industry members are required to maintain errors & omissions insurance coverage, as stipulated below, in order to maintain their licence:

- (a) by maintaining ongoing coverage under the Errors & Omissions Policy provided by the Real Estate Insurance Alliance (REIA); and
- (b) on notice by REIA, to the Registrar, that an industry member has failed to:
 - (i) pay the annual premium;

PART THREE – LICENSING

- (ii) pay the deductible required, on notice from REIA, when called for as part of a claim; or
- (iii) completed all required training related to the errors and omissions program;
the Registrar will immediately suspend the licence of the industry member until the requirements have been met.

PART FOUR – FEES

Licensing Fees

New Licences

401

The licensing fees for each category of licence shall be as follows:

- (a) Brokerage **\$400**
- (b) Broker **\$400**
- (c) Managing associate broker **\$400**
- (d) Associate broker **\$400**
- (e) Salesperson **\$400**
- (f) Approved sales corporation **\$400**

Renewals

402

- (a) Brokerage **\$350**
- (b) Broker **\$350**
- (c) Managing associate broker **\$350**
- (d) Associate broker **\$350**
- (e) Salesperson **\$350**
- (e) Approved sales corporation **\$350**
- (g) 30-day extension for CPE requirements **\$1000**

PART FOUR – FEES

403

Brokerage audit fees are determined by the number of industry members registered with a brokerage as of the licence renewal notice sent to each brokerage in May of each year.

(a)	No trust activity	\$320
(b)	1 - 5	\$450
(c)	6 - 15	\$510
(d)	16 - 25	\$575
(e)	26 - 50	\$705
(f)	51 - 100	\$900
(g)	100+	\$1,280

404

No licensing or Recovery Fund fees shall be levied if a sole proprietor, partnership or corporation changes its business name. An administration fee may be charged.

Review

405

A fee of \$100 must accompany a request for review of a licensing decision of the Registrar. When a decision to licence is made in favour of the applicant, then the full review fee shall be refunded to the applicant.

Real Estate Recovery Fund Levy

406

The Real Estate Recovery Fund levy for **first-time licence applications** shall be as follows:

Broker/ Managing Associate Broker	\$200
Associate Broker/ Salesperson	\$100

407

Branch office fee per location	\$350
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408

(a) Transfer of licence from one brokerage to another within 30 days	\$200
(b) Transfer of licence from one brokerage to another after 30 days	\$350

PART FOUR – FEES

Administrative Fees and Penalties

409

- (a) A \$50.00 fee will be charged for the following (unless exceptional circumstances exist):
- (i) the return of an NSF cheque which was payable to the Nova Scotia Real Estate Commission;
 - (ii) the issuance of a new licence resulting from the change of a brokerage's address or from the change of an industry member's name; and
 - (iii) the preparation of correspondence, for an industry member, outlining their licensing history in the province of Nova Scotia.
- (b) When a brokerage changes its name there shall be a \$100.00 fee charged.
- (c) When a brokerage fails to provide the properly completed documentation to the Commission Auditor within the timeframes requested, the brokerage may be assessed a \$100.00 administrative penalty.
- (d) When the licence of an industry member is suspended for failure to comply with an investigation or an audit, a **\$400.00** fee will be charged to reinstate the suspended licence.
- (e) When a broker fails to comply with the Brokerage Records Storage and Production Policy, the Commission, at the discretion of the Registrar, may issue an administrative penalty. The penalty may be of an amount up to and including the annual brokerage audit fee set out in Bylaw 403.

410

The Commission shall charge \$5.00/page to produce a hearing transcript.

Exam Fees

411

- | | |
|-------------------------|--------------|
| (a) Exam fee | \$100 |
| (b) Supplemental exams | \$100 |
| (c) Examination re-mark | \$50 |

Background Check

412

An administration fee of \$35 must accompany all new licence applications.

PART FIVE – REAL ESTATE RECOVERY FUND

Recovery Fund

501

Pursuant to section 39 of the Act the Recovery Fund is under the supervision and control of the Commission.

502

The Registrar is responsible to the trustees and the Finance Committee for the day-to-day administration of the Fund.

Levies

503

The Commission may set fees, as specified in Part Four of the Bylaw, in addition to licence fees for every industry member.

504

No assessment shall be levied if a sole proprietor, partnership or corporation changes its business name.

505

Any Recovery Fund levy assessed because of a change of licence must be paid to the Commission at the time of the licence change.

506

Levies assessed to industry members pursuant to section 406 of this Bylaw shall be paid yearly on the 15th day of June for the following twelve calendar months, or any part thereof.

507

Upon payment by an industry member of the assessment levied the industry member is registered with the Fund.

508

If an industry member fails to pay an assessment by the renewal date, specified in Section 506 of this Bylaw, the industry member shall be notified by the Registrar through registered mail or personal delivery that the industry member's licence will be cancelled if the assessment is not paid within five (5) banking days of said notice.

509

Registration with the Fund shall be deemed to continue as long as the industry member's licence is current and their assessment is paid in full.

510

No industry member is entitled to a refund of their Recovery Fund levy.

PART FIVE – REAL ESTATE RECOVERY FUND

511

If a licence application is rejected or withdrawn, the Commission shall pay to the applicant a full refund of the levy paid to the Fund in support of the application.

512

The Commission may charge industry members a Special Recovery Fund Assessment if the Fund falls below the minimum set by the Regulations or if the income from the investment of the money in the Fund is insufficient to pay the administrative costs associated with the Fund.

Register

513

The Registrar shall maintain a register showing the name and business address of every industry member currently registered with the Fund.

Fund Administration

514

The Fund consists of two separate interest bearing accounts:

- (a) Trust account - this account holds the principle amount of the Fund required for Recovery coverage;
- (b) Administrative account - this account holds all fees designated as administrative fees for the maintenance of the Fund.

515

All fees received as Fund assessments must be deposited to the administrative account with such amounts as specified by the Commission, from time to time, to be transferred to the trust account.

516

Signing authority for both the trust and administrative accounts shall be the same as those specified in Section 203 of this Bylaw.

517

The fiscal year of the Recovery Fund shall be January 1st to December 31st.

Annual Report

518

The Commission shall file with the superintendent an annual report, audited by a chartered accountant, not later than March 30th of the fiscal year end. The report shall contain the following covering the preceding fiscal year:

- (a) the total monies collected as assessments;
- (b) the total amount of accrued interest and details of the securities in which monies from the Fund are invested;

PART FIVE – REAL ESTATE RECOVERY FUND

- (c) the maximum amount of insurance or other coverage in effect pursuant to Section 40(2) of the Act;
- (d) the number and dollar amount of claims paid and the full particulars of such claims;
- (e) the expenditure of any interest income in excess of annual administrative costs pursuant to section 535 of this Bylaw,
- (f) monies disbursed for administrative expenses shown as:
 - (i) salaries,
 - (ii) supplies,
 - (iii) computer costs,
 - (iv) capital expenditures,
 - (v) bonding or insurance premiums, and
 - (vi) such other administrative expenses as approved by the Commission;
- (g) current balance on deposit in the Fund; and
- (h) such other information as is deemed necessary from time to time by the Superintendent.

Board of Trustees of the Fund

519

Three trustees, one of whom must be a Commission member, one appointed by the Association, and one industry member appointed by the Commission will be responsible for:

- (a) ensuring that the claims are properly processed;
- (b) directing the Commission on the payment of claims with a written report signed by the Chairman and at least one other trustee approving payment of the claim, details of the claim and the name of the industry member against which the claim was made; and
- (c) ensuring that the Recovery Fund is maintained at or above the minimum set by the Regulations, or until up to the amount, that there is sufficient protection in whole or in part against any claim or loss to the Fund in the amount up to the minimum. Once obtained, the Trustees are to ensure it is maintained and, if not, to advise the Commission and the Association immediately of the deficiency.

520

The appointed trustees shall possess the following qualifications;

- (a) (i) have, or have held, a Nova Scotia real estate licence for at least five consecutive years; and
 - (ii) have been a director or executive member of a Nova Scotia real estate board or the Association or Commission at some time in their career.
- (b) be in good standing and not have been involved as an individual, partner, officer or major shareholder in a sole proprietorship, partnership, firm or corporation which has filed a petition in bankruptcy or become insolvent, or in any other way became discharged from debts other than by payment in full thereof; and
- (c) any appointment of a trustee may be vetoed by the Commission who shall state just cause why the appointment should not be confirmed.

PART FIVE – REAL ESTATE RECOVERY FUND

521

All trustees are to be provided with a copy of the Trustees Act and are to conform with the Act in the performance of their duties. In the event that there is a discrepancy or conflict between the Trustee Act and the real estate legislation, the matter is to be referred to the Commission by the Chairperson for interpretation or decision.

522

The appointed trustees shall serve the following terms:

- (a) Trustees for a period of one year;
- (b) the Chairperson shall be appointed from among the trustees annually; and
- (c) the Commission shall have the right to remove any trustee for just cause such as illness, conflict of interest, incompetence, failure to attend properly announced meetings, or any other reasons as decided by the Commission. Trustees cannot be replaced based on opinions or vote pertaining to any matter placed before them.

523

The trustees shall meet at the call of the Chairperson at least once a year. A quorum shall consist of the Chairperson and one trustee. Trustees shall be paid a per diem rate as per the budget plus expenses incurred in attending the meetings and the allowable expenses as outlined in the Commission Bylaw.

524

Meetings of the fund trustees may be called by the Chairperson of the Board of Trustees or the Chairperson of the Commission. During the interim between meetings, the Chairperson shall direct the affairs of the fund so far as possible in conference with other members and subject to their ratification.

Claims

525

Subject to section 526, no claimant is entitled to be paid from the fund unless an application in writing for compensation from the fund is received by the Commission:

- (a) within one year from the date on which a judgment pursuant to section 41(1) of the Act became final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed; and
- (b) in the event the licence of the industry member with respect to whom the judgment has been obtained expires, is revoked or cancelled, within three years of such expiration, revocation or cancellation; and

in the case of a single claim arising from a single real estate transaction, one year has elapsed from the date of the filing of the claim, or if more than one claim is filed arising from a single real estate transaction, one year has elapsed from the date of the filing of the first claim.

PART FIVE – REAL ESTATE RECOVERY FUND

526

No claimant is entitled to be paid from the fund where the notice of claim is received by the Commission after the maximum amount from the fund, as prescribed by Section 533 of these Bylaw, has been paid or claimed by means of the filing of a notice of claim which is subsequently paid.

527

The Commission is deemed to hold in trust all money credited to the fund and shall immediately deposit that money, or cause it to be deposited, separate and apart from any other money of the Commission, in a trust account in a bank in the province of Nova Scotia.

528

Claims against the fund must be based on fraud or breach of trust in respect to a trade in real estate.

529

Subject to this Bylaw, where any application has been made and a judgment or a decision by the Commission in favour of the applicant has been reached, the Commission shall pay, to the person entitled to enforce the judgment or decision, the amount of the unsatisfied portion of the judgment.

530

Where any payment has been made from the fund, the Commission is subrogated to the rights, remedies and securities to which the person receiving the payment has against the person liable to pay the judgment and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Commission.

531

- (a) The maximum amount that may be paid from the fund arising from a single real estate transaction:
- (i) to any claimant for a claim against a salesperson or an associate broker is \$25,000.00;
 - (ii) to any claimant for a claim against a broker or managing associate broker is \$50,000.00; and
 - (iii) if there is more than one claim against a brokerage for a total of \$100,000.00.
- (b) If the total value of claims against a brokerage exceeds \$100,000.00, claimants shall be paid on a pro rata basis.

532

Pursuant to Section 41(3) of the Act where a brokerage fails to pay a claim, the brokerage may be deemed, to have demonstrated professional misconduct to carry on the business in respect of which the brokerage's licence was granted and may be subject to disciplinary action under Section 19 of the Act.

PART FIVE – REAL ESTATE RECOVERY FUND

Investments

533

The Commission may invest any part of the fund not required for disposition in any security or class of securities in which trustees are authorized by law to invest trust funds.

Protection of the Fund

534

The Commission may, in a manner and on such terms and conditions it considered advisable, enter into contracts with insurers by which the fund may be protected in whole or in part against any claim or loss to the fund and the costs incurred by the Commission under any such contracts may be defrayed from the fund.

Use of Excess Funds

535

Any amount in the fund in excess of the minimum prescribed by Regulations may be used by the Commission for any of the following purposes:

- (a) the examination, research, revision, and reform of the real estate industry;
- (b) to promote public and professional education relating to the real estate industry;
- (c) to encourage and enforce good business practices in the profession;
- (d) to sponsor and support just and desirable legislation affecting the real estate industry;
- (e) to promote standardization within the real estate industry; or
- (f) any purpose incidental and conducive to the attainment of any of these purposes; and
- (g) administrative costs of the fund.

536

The Registrar shall serve as secretary of the fund and will be responsible for performing the usual duties of that office including correspondence, preparation of minutes of meetings, recording decisions, and so forth.

Minimum Amount of the Fund

537

The minimum amount of the fund shall be set by the Regulations.

Winding up the Fund

538

Winding up of the fund is pursuant to section 42 of the Act and the Regulations.

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

Trust Accounting & Record Keeping

601

All trust accounts referred to in this Part are as established pursuant to Sections 4(3) and 32 of the Act.

602

- (a) A broker shall maintain a trust Account for the safekeeping of all deposits held by that brokerage.
- (b) Records for the recording and storage of trust deposits shall be maintained in accordance with the Policies & Procedures.

603

Funds received on an accepted agreement must be deposited within a reasonable amount of time after receipt. Normally this would be within 48 hours of receipt excluding weekends and holidays.

604

All complaints to the Commission concerning trust funds shall be in writing.

605

The Commission may authorize a person to initiate and conduct an investigation, without a written complaint, for the proper administration of the Act.

606

The Commission may appoint an investigator who shall forthwith investigate the complaint and promptly report their findings to the Registrar for action.

Inspection and Auditing

607

The Commission, or any person authorized by the Commission in writing, may at any reasonable time inspect all or any of the books, documents, papers, correspondence and records pertaining to the trust account and transaction files of a brokerage to determine whether:

- (a) the amount of funds in the trust account of the broker is the amount for which he/she is accountable;
- (b) the broker maintains proper records as required by the Act, the Regulations and Bylaw; and
- (c) the broker, the managing associate broker, associate broker, salesperson or approved sales corporation is otherwise complying with the requirements of the Act, the Regulations and with the Bylaw of the Commission.

608

- (a) The person making the inspection may demand the production of all or any of the books, documents, correspondence, accounts and records pertaining to the trust account and transaction files of the brokerage.

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

- (b) All records and transaction files for the current calendar year and the previous calendar year must be readily available and produced, without delay, at the request of the person doing the inspection.

609

The Commission shall suspend or cancel the licence of a broker who fails to make their trust records available for inspection.

General

610

The Commission may suspend or cancel the licence of a broker who does not maintain proper records.

Trust Account Audits

611

The Commission will conduct an annual trust account audit of each brokerage. The Commission will notify each brokerage one month prior to the trust account audit date, when the audit will be conducted, and will specify the period that the audit will cover and what records must be made available.

Brokerage Review

612

- (a) The Commission will carry out a full trust account and record keeping brokerage review of each brokerage on a three year cycle, with one third of the brokerage reviews being carried out each year.
- (b) Additional brokerage reviews will be carried out, based on risk assessment factors, as follows:
- (i) trade practices history of the brokerage;
 - (ii) brokers that hold conditional licences;
 - (ii) frequency of complaints involving a specific brokerage; and
 - (iii) frequency of issues arising that involve a specific brokerage.

613

Every brokerage shall maintain, in a financial institution, interest-bearing trust accounts in the brokerage's name, followed by the words "Real Estate Trust Account". A brokerage shall use this name only for trust accounts. This name shall appear on all trust account records including, but not limited to, deposit books and cheques.

614

The broker is to ensure that all disbursements from trust accounts are made by cheque or electronic transfer. If by cheque, the broker shall maintain trust cheques numbered consecutively. The trade in real estate must be identified on cheques drawn on the trust account. All voided cheques must be accounted for. Electronic transfers must be carried out as per the requirements specified in the Policies & Procedures.

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

615

Pursuant to Section 32(1) of the Act, in respect to their trust account, every broker shall instruct their financial institution to remit, at least semi-annually in April and October, interest earned for the preceding six (6) month period ending March 31 and September 30 respectively. Each payment to be accompanied by the "Interest-Bearing Trust Account" form approved by the Commission for that purpose. If there is a service charge to remit these funds, it is the responsibility of the Commission.

616

If a director or broker of a brokerage files for bankruptcy, the broker shall notify the Commission, in writing, within five days of the filing.

617

Every broker and managing associate broker, as applicable, is responsible to ensure that all records, books and accounts are kept up-to-date. The broker will remain accountable and responsible for all trust funds until a full accounting has been made to the parties involved.

618

All real estate trade and trust account records shall be maintained in accordance with the Commission's Records Storage and Production Policy.

619

- (a) Repealed.
- (b) Real estate brokerage transaction files must be kept separate from any other files that may be maintained at the brokerage, such as mortgage broker or insurance files.

620

Every broker shall keep proper records with respect to trades in real estate and shall enter in those records with respect to each trade:

- (a) the nature of the trade;
- (b) a description of the real estate that is sufficient to identify it;
- (c) the true consideration for the trade;
- (d) the names of all parties to the trade;
- (e) the amount of deposit received and a record of the disbursement of the deposit; and
- (f) the amount of the commission or other remuneration, the name of the party paying it and to whom it gets paid.

Transaction Files

621

- (a) Real estate transaction files shall contain the following:
 - (i) a trade record sheet signed by the broker or managing associate broker;
 - (ii) a listing addendum (cut) sheet;
 - (iii) signed acknowledgement of the agency disclosure brochure or confirmation that it has been provided;

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

- (iv) if applicable, a completed Seller and/or Buyer Brokerage Agreement(s) signed by the seller(s) or buyer(s);
 - (v) any amendments to the Seller and/or Buyer Brokerage Agreement(s) signed by the seller(s) or buyer(s);
 - (vi) a completed Agreement of Purchase and Sale signed by all parties;
 - (vii) any amendments to the Agreement of Purchase and Sale signed by all parties;
 - (viii) if applicable, a counter offer signed by all parties;
 - (ix) if available, a Property Condition Disclosure Statement (PCDS) signed by all parties;
 - (x) if applicable, a Transaction Brokerage Agreement or Limited Dual Agency Agreement signed by all parties;
 - (xi) if applicable, any Customer Status Acknowledgment forms;
 - (xii) confirmation from the seller/sellers' lawyer advising that the transaction has successfully closed; and
 - (xiii) all other documentation pertaining to the transaction.
- (b) All clauses in real estate agreements shall be specific, clearly written and understandable.
 - (c) Photocopies and facsimile copies of documents must be clear and readable.
 - (d) An industry member must have written power of attorney to sign on behalf of a client.

622

Every brokerage shall keep, as part of its records, with respect to its trades in real estate, a paper or electronic trust ledger in which it shall maintain a separate record for each person on whose behalf the brokerage is acting. The trust ledger shall contain a record of all:

- (a) funds that the brokerage receives in trust;
- (b) funds that the brokerage holds in trust;
- (c) interest on funds that the brokerage holds in an individual trust; and
- (d) disbursements the brokerage makes from funds received in trust.

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

- (a) information sufficient to identify the transaction;
- (b) the trust account number and the name of the financial institution;
- (c) the address relating to the transaction; and
- (d) the amount of funds being held in trust for each transaction.

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

Handling of Funds

624

Pursuant to Section 33 of the Act, a broker may hold an interest-bearing trust account for a buyer or seller with the agreement of the buyer and seller, and the party to whom the interest is payable must be stated in writing.

625

- (a) It is the responsibility of the broker/managing associate broker to ensure that all trust funds received by a broker, managing associate broker, associate broker, salesperson or approved sales corporation of the brokerage are properly deposited to their trust account.
- (b) In situations where an Agreement of Purchase and Sale calls for a deposit to be held in trust, and the brokerage does not receive the funds as specified in the agreement, the broker shall notify the client immediately, in writing, that the funds have not been received.

626

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.

- (a) Account service fees must not be deposited into or removed from the trust account.
- (b) Interest earned on the trust account must not be deposited into the trust account, except in the case of an individual trust account.

627

A broker shall not pass through the trust account commissions received on completed transactions from other brokerages.

628

Disbursements of the brokerage's commission from the broker's trust account to the general account shall be made only after the transaction is completed.

629

Payments of commission to the broker, managing associate brokers, associate brokers, salespeople, approved sales corporation or other brokerages shall not be made by the broker from the trust account.

630

Monies payable to the seller for any amount held in trust in excess of the commission shall be paid from the trust account, upon receipt of written instruction from all parties to the transaction.

Withdrawal of Trust Funds

No Dispute

631

Any time a transaction is not proceeding and there is a request for the return of deposit based on the terms agreed to in the transaction, the brokerage shall do one of the following:

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

- (a) get a release signed by all parties to the transaction and return the trust funds to the buyer or seller as agreed to in the release; or
- (b) when it is not possible to contact the seller or get a clear answer from the seller on the release of the trust funds to the buyer, the brokerage is to send a notice, in writing, to the seller and copied to the buyer, explaining that the brokerage will release the trust funds to the buyer within 14 days of this notice being sent to the seller. Should the seller object to the release of the trust funds to the buyer, this notice will require the seller to provide the brokerage with written notice of legal proceedings being taken by the seller to either complete the transaction or force the buyer to forfeit the trust funds to the seller. Once the 14 days after notice have passed, without a written objection from the seller being received by the brokerage, the brokerage may release the trust funds to the buyer.
- (c) when it is not possible to contact the buyer or get a clear answer from the buyer on the release of the trust funds to the seller, the brokerage is to send a notice, in writing, to the buyer and copied to the seller, explaining that the brokerage will release the trust funds to the seller within 14 days of this notice being sent to the buyer. Should the buyer object to the release of the trust funds to the seller, this notice will require the buyer to provide the brokerage with written notice of legal proceedings being taken by the buyer to either complete the transaction or force the seller to return the trust funds to the buyer. Once the 14 days after notice have passed, without a written objection from the buyer being received by the brokerage, the brokerage may release the trust funds to the seller.

Disputed Transaction

632

Any time more than one party to a transaction is making demands for any trust funds for which the brokerage is responsible, the brokerage shall hold the trust funds in the trust account until:

- (a) the parties to the transaction agree, in writing, as to how the money shall be disbursed;
- (b) the brokerage is ordered, by a court of proper jurisdiction, to disburse the trust funds in a specified manner; or
- (c) until the trust funds are disbursed to the Commission.

633

- (a) A broker or managing associate broker shall disburse trust funds from a trust account in accordance with Section 32 of the Act for:
 - (i) money paid to a buyer from funds which have been deposited into a trust account to the buyer's credit;
 - (ii) money required for payment to the brokerage on account of services rendered in accordance with the Act, its Regulations and Bylaw;
 - (iii) disbursement made on behalf of a party to the transaction for any amount in excess of money required for payment to the brokerage on account of services rendered;
 - (iv) disbursements made on behalf of a buyer for the forfeiture of a deposit;
 - (v) money paid into the trust account by mistake;
 - (vi) interest paid to the Commission pursuant to Section 32 (1) of the Act; or
 - (vii) money held in trust and paid to the Commission in accordance with Section 632(c) of this Bylaw.

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

- (b) Trust monies can only be disbursed in accordance with trust account requirements. All disbursements must be made by cheque or electronic transfer, as specified in the Policies & Procedures. Four types of disbursements are allowed:
- (i) Disbursement of commission - commissions owing can be transferred to the seller's brokerage general account, by cheque or electronic transfer, only upon completion of the transaction. Confirmation of completion must be obtained from the seller's solicitor and recorded on file.
 - (ii) Disbursement of excess funds before closing to the seller or their agent (i.e. lawyer) - If the deposit exceeds the amount of commission to be earned, the excess may be disbursed from trust, by cheque or electronic transfer, to the seller or their agent (i.e. lawyer) upon written request from the seller and written authorization from the buyer. The written request and authorization are to be maintained on file.
 - (iii) Refund of deposit to buyer - If the agreement fails to complete because conditions cannot be met, trust monies are to be disbursed by cheque or electronic transfer to the buyer. The reason for non-completion is to be noted on the file. A written request from the buyer to release the deposit and written authority from the seller releasing the deposit must be maintained on file.
 - (iv) Forfeit of deposit to seller - If the agreement fails to complete because conditions were not met by the buyer, trust monies are to be disbursed by cheque or electronic transfer to the seller. The reason for non-completion is to be noted on the file. A written request from the seller to release the deposit and written authority from the buyer or an order by a court releasing the deposit must be maintained on file.

634

No industry member shall make or permit to be made any false or misleading statement in any financial records or reports required to be furnished under the Act, its Regulations or the Bylaw.

Closing Out Audit

635

- (a) Whenever there is a change of broker at a brokerage an audit will be completed by a Commission auditor for the time period from the last audit up to the date the broker is terminated.
- (b) Whenever a brokerage ceases operation, an audit will be completed by a Commission auditor covering the time period from the date of the last audit up to the later of the date the brokerage ceased operating, or when all trust funds have been dispersed. The audit will be carried out within 30 days of the last transaction closing and the trust deposit being withdrawn from the trust account. Unclaimed or trust funds still in dispute must be transferred to the Commission's trust account, along with the relevant transaction records, when the brokerage ceases to operate.
- (c) In a situation where two brokerages are merging, the two brokers can enter into an agreement, with the approval of the Registrar, to transfer the trust funds from the brokerage that is ceasing to operate to the brokerage that will continue. There must be a written agreement between the brokerages and a closing out audit will be completed by a Commission auditor once the transfer of trust funds by the brokerage ceasing to operate is complete.

PART SIX – TRUST ACCOUNTING & RECORD KEEPING

Brokerage Fee

636

Where a brokerage holds money in trust pursuant to Section 33 of the Act, the brokerage may charge a buyer or seller, as the case may be, an administration fee that does not exceed \$100.00.

Unclaimed Trust Funds

637

The Commission will transfer any trust funds that are unclaimed, as per Section 32 of the Act, to an education fund to be maintained and administered by the Commission. This fund is to be used for the education of industry members.

Should any person come forward and make a claim for a trust deposit that was transferred to this fund, the Commission will pay out of this fund the amount claimed provided the claimant can supply satisfactory evidence as to their claim to the trust deposit. A claim must be made within six years of the date the trust deposit was placed in the brokerage's trust account.

Cash Deposit

638

When a buyer's brokerage receives a cash deposit from a buyer, the brokerage may deposit the cash deposit in the buyer's brokerage's trust account. This procedure can be used whether or not the buyer's offer has been accepted. If the offer is accepted, the buyer's brokerage shall transfer the deposit to the seller's brokerage trust account as per the terms of the accepted offer. Should negotiations not result in a transaction the buyer's brokerage shall return the deposit to the buyer.

Audit Location

639

- (a) When conducting an inspection, audit, or review, the Commission shall determine whether the inspection, audit, or review is to be conducted at the location of the brokerage, or through the forwarding of the required books, documents, papers, correspondence and records to the Commission.
- (b) In cases where the inspection, audit, or review is to be conducted at the location of the Commission, delivery to the Commission office and return to the brokerage shall be conducted as specified by the Commission and the Commission shall bear the required costs.

PART SEVEN – CONDUCT & TRADE PRACTICES

Preamble

701

It shall be the duty of all industry members to have knowledge and to be aware of all laws regulating the real estate industry in Nova Scotia.

Standards of business practice have been rising consistently, and every industry member is expected to conform to the higher standards as they become the norm. In considering whether an industry member may have breached any provision, the accepted and normal standards of practice in the profession are taken into account by the Commission. The following code of conduct and standards of business practice are accepted standards of the Commission. The standards set out herein are not all inclusive and there are additional standards which are applicable in appropriate circumstances and which may be published by the Commission from time to time. The following standards are intended to be guidelines to be taken into account when particular situations are considered by industry members and the Commission.

Standards of Business Practice

702

Article 1 The business of an industry member shall be conducted in strict accordance with the current terms and conditions of the Act, the Regulations, the Bylaw and Policies & Procedures of the Commission.

Article 2 The industry member shall protect and promote the interests of their client. This primary obligation does not relieve the industry member of the responsibility of dealing fairly with all other parties to the transaction.

Article 3 The industry member shall fully disclose in writing to, and shall seek written acknowledgement of disclosure from, all parties to a transaction regarding the role and the nature of the service the industry member will be providing to the client versus the customer or other party to the transaction. The industry member shall also disclose their role to other industry members involved in the transaction. The industry member shall provide this agency disclosure before a relationship with a client develops.

Article 4 The industry member should ensure written representation agreements whenever possible in order to avoid misunderstandings with their clients and customers. Releases, promises and guarantees of specific service(s) must also be in writing.

Article 5 The industry member shall, prior to the signing of any agreement, fully inform the signing party regarding the type of expenses for which he/she may be normally liable.

Article 6 The industry member is obliged to render a skilled and conscientious service, in conformity with standards of competence which are reasonably expected in the specific real estate disciplines in which the industry member engages. When the industry member is unable to render such service, either alone or with the aid of other industry members, the industry

PART SEVEN – CONDUCT & TRADE PRACTICES

member should not accept the assignment or otherwise provide assistance in connection with the transaction.

- Article 7** The industry member shall endeavour to be informed regarding the essential facts which affect current market conditions in order to be in a position to counsel their clients and/or to assist customers in a responsible manner.
- Article 8** In providing an opinion of value of real property, an industry member shall not undertake to provide such an opinion if it is outside the industry member's field of experience to do so, unless this fact is disclosed to the client or unless assistance is obtained from another person who has experience in this area. In all other circumstances, the industry member shall not provide an opinion of value on property in which the industry member has a present or contemplated interest without first disclosing this fact to the client. Fees charged for providing an opinion of value shall not be based on the amount of value reported.
- Article 9** When asked to give an opinion of value of real property, the industry member shall advise the client only after careful and thorough analysis and interpretation of all factors affecting the value of the property.
- Article 10** The industry member has an obligation to discover facts pertaining to every property for which the industry member accepts an agency which a reasonably prudent industry member would discover in order to fulfil the obligation to avoid error, misrepresentation, or concealment of pertinent facts. The industry member shall disclose, in writing whenever possible, any known material latent defects to their clients or other industry members involved in a transaction.
- Article 11** The industry member shall ensure that agreements regarding real estate transactions are in writing in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of the parties to the agreement. A copy of each final agreement shall be furnished to each party upon their signing or initialling, and shall be dealt with in accordance with the instructions of the parties involved.
- Article 12** An industry member shall present all written offers and counter-offers as objectively and quickly as possible. This must be done within the specified timeframes or a written extension must be obtained. An industry member shall not withhold or delay the presentation of an offer without the express written consent of the client. When there are multiple offers, an industry member 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, but must not disclose to any other person the specific terms and conditions of other offers.
- Article 13** An industry member, at the time of signing an exclusive written agreement, must have written notification from the seller that the seller requests the Brokerage to co-operate or to not co-operate with other Brokerages in the marketing of the seller's property.

PART SEVEN – CONDUCT & TRADE PRACTICES

- Article 14** No broker, managing associate broker, associate broker or salesperson shall trade in real estate under any names other than the names on their licence. Should the industry member wish to use a nickname in their trading, then the nickname must be registered as per Section 329 of this Bylaw. No Approved Sales Corporation shall trade in real estate except through the services of its Responsible License Holder.
- Article 15** The industry member shall not advertise a property without the seller's/landlord's written authority, nor shall the advertised or offered price of a property be other than that which was agreed upon with the seller/landlord.
- Article 16** The industry member shall ensure a true presentation in all advertising. Properties and services shall not be advertised without identifying the firm, or where applicable, the individual industry member, in accordance with the Act.
- Article 17** Signs in respect of the sale, rent, lease, development or exchange should not be placed on any property by more than one industry member, unless authorized by the owner/landlord. Industry members shall not interfere with another real estate brokerage's sign.
- Article 18** The industry member shall not accept compensation from more than one party to a transaction without the written consent of their client(s).
- Article 19** industry members shall disclose to a client or customer if there is any financial benefit the industry member or their brokerage may receive as a result of recommending real estate products or services to that party.
- Article 20** The industry member shall not accept any rebate or profit on expenditures made for a client without the client's consent or accept any rebate or profit on expenditures for a customer without the customer's knowledge.
- Article 21** The industry member shall not present an offer or acquire an interest in property either directly or indirectly for themselves, any member of their immediate family or any entity in which the industry member has a financial interest, without making the industry member's status as a licensed person and their intent for the purchase known to the seller in writing. In selling/leasing property owned by the industry member, or in which the industry member has interest, the interest shall be revealed to the buyer/tenant in writing.
- Article 22** The industry member shall not discourage parties to a transaction from seeking legal counsel.
- Article 23** The industry member shall not knowingly permit any property in the industry member's charge to be used for unlawful purposes.
- Article 24** The industry member shall not deny professional services to any person for reasons of race, creed, colour, sex, familial status, marital status, age, or national origin. The industry member shall not be party to any plan or agreement to discriminate against a person or persons on the basis of race, creed, colour, sex, familial status, age or national origin.

PART SEVEN – CONDUCT & TRADE PRACTICES

- Article 25** An industry member, when acting in a professional capacity, shall not physically, sexually, emotionally or verbally abuse a client, customer, a member of the public, another industry member or any other third party.
- Article 26** The industry member shall never publicly discredit a competitor. If the industry member's opinion is sought regarding the specific transaction, it should be rendered with strict professional integrity and courtesy.
- Article 27** The business of an industry member shall be conducted so as to avoid controversies with other industry members.
- Article 28** The agency or other contractual relationship of a competitor shall be respected by all industry members. Negotiations concerning exclusively listed property or with any party who is exclusively represented shall be carried on with the client's agent and not with the client directly, except with the consent of the client's agent. Prospecting tenants is not a breach of this article.
- Article 29** An industry member shall not seek information about a competitor's transaction to be used for the purpose of closing a transaction themselves, or for the purpose of interfering with any other contractual undertaking.
- Article 30** An industry member shall not knowingly approach a seller or landlord whose property is currently listed for the purpose of soliciting a listing for their brokerage on property that is currently listed or a buyer that is under contract.
- Article 31** Should an industry member be asked to co-operate in any way in connection with a disciplinary investigation or proceeding pertaining to alleged unethical practice, the industry member shall place all pertinent facts before the proper Committee of the Commission.
- Article 32** An industry member is required to give written notice to the Commission within five days after being served with a statement of claim in any litigation concerning a trade in real estate in which the industry member is named as a defendant. Notification shall include a copy of the statement of claim.
- Article 33** All brokers and/or managing associate brokers must be available to serve the public on a regular and consistent basis and provide the standards of competence necessary to service the public.
- Article 34** An industry member shall not make any statement or participate in the creation of any document or statement that the industry member knows or ought to know is false or misleading.
- Article 35** An industry member shall not engage in an act or omission relevant to the practice of the profession that, having regard for all circumstances, would reasonably be regarded by industry members or the public as disgraceful, dishonourable or unprofessional.

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Article 36 No licensed person shall induce any party to a lease, to break the existing tenancy agreement, except when terms satisfactory to both the landlord and a tenant have been agreed to in writing.

Article 37 An industry member shall not disclose confidential information about their client except with the informed consent of the client or as required or authorized by law. The duty of confidentiality continues after the professional relationship with the client has ended. An industry member may disclose confidential information without consent in order to prevent or assist authorities to prevent, investigate or prosecute an offence, to defend the industry member against an allegation by the client of negligent or improper conduct.

Article 38 Repealed.

Obligations

Article 39 Industry members are required to fulfill the following obligations when they are in an agency relationship with either a buyer or seller.

- (a) The basic obligations of an industry member who is in a sole agency relationship with a seller are:
- (i) to use best efforts to market the property and to promote the interests of the seller;
 - (ii) at the earliest reasonable opportunity, to advise any buyer interested in the property that the industry member is the seller's agent;
 - (iii) to act as only the seller's agent;
 - (iv) to obey all lawful instructions of the seller;
 - (v) to fulfill its fiduciary obligations of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the seller's interests and those of the industry member or buyers;
 - (vi) not to appoint another brokerage to act on behalf of the seller as sub-agent without the seller's prior written consent;
 - (vii) to exercise reasonable care and skill in the performance of the agreement;
 - (viii) to assist the seller in negotiating favourable terms and conditions with a buyer and in preparing and complying with a legally binding agreement of purchase and sale for the property;
 - (ix) to disclose to buyers all material latent defects affecting the property known to the industry member;
 - (x) to present, in a timely manner, all offers and counter-offers to and from the seller even when the property is already the subject of an agreement of purchase and sale;
 - (xi) to disclose, in a timely manner, to the seller all relevant facts affecting the transaction known to the industry member;
 - (xii) to keep the seller fully informed regarding the progress of the transaction;
 - (xiii) to advise the Seller to obtain expert advice on matters of importance to the seller;
 - (xiv) to comply with the provisions of the Real Estate Trading Act and its regulations, and the rules and Bylaw of the Nova Scotia Real Estate Commission.

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- (b) The basic obligations of an industry member who is in a sole agency relationship with a buyer are:
- (i) to use best efforts in locating a property in the specified market area(s) that meets the material requirements identified by the buyer and, generally, to promote the interests of the buyer;
 - (ii) at the earliest reasonable opportunity, to advise any seller in whose property the buyer is interested that the industry member is the agent of the Buyer;
 - (iii) to act as only the buyer's agent;
 - (iv) to obey all lawful instructions of the buyer;
 - (v) to fulfill its fiduciary obligations of loyalty, confidentiality and of full disclosure of all conflicts of interest that may arise between the buyer's interests and those of the industry member, sellers or competing buyers;
 - (vi) not to appoint as sub-agent another brokerage without the buyer's prior written consent;
 - (vii) to exercise reasonable care and skill in the performance of this agreement;
 - (viii) to seek out and advise the buyer in a timely manner of available properties in the market area which may meet the buyer's requirements, including those listed with other brokerages, those "for sale by owner" and other available properties known to the industry member;
 - (ix) to discover relevant facts pertaining to any property for which the buyer is considering making an offer;
 - (x) to disclose, in a timely manner, to the buyer all relevant facts known to the industry member affecting a property or transaction;
 - (xi) to advise the buyer to obtain expert advice as to matters of importance to the buyer;
 - (xii) to present, in a timely manner, all offers and counter-offers to and from the buyer even when a property is already the subject of an agreement of purchase and sale;
 - (xiii) to keep the buyer fully informed regarding the progress of the transaction;
 - (xiv) to disclose to the buyer the existence and terms of any competing offers known to the industry member for a property in which the buyer is interested;
 - (xv) to assist the buyer in negotiating favourable terms and conditions and in preparing a legally binding Agreement of Purchase and Sale;
 - (xvi) to comply with all relevant provisions of the Real Estate Trading Act and its regulations, and the rules and Bylaw of the Nova Scotia Real Estate Commission.

Disclosure

Article 40

Industry members are required to make the following disclosures:

- (a) Before eliciting or as soon as practicable upon receiving confidential information from any person concerning that person's real estate needs, motivation, financial qualifications, or in any event before entering into a

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service agreement, an industry member must disclose (in writing) to that person:

- (i) the nature of the services that the industry member will provide,
 - (ii) whether the industry member is acting in the trade or anticipated trade on behalf of any other person, in any capacity,
 - (iii) if a member of a team, the names of all industry members on the team,
 - (iv) any conflict of interest that may exist, and
 - (v) any other facts that may be likely to influence the person's decision.
- (b) If, subsequent to this disclosure, there is any material change in the facts which have been disclosed, the industry member must immediately disclose the change to that person.
- (c) The best efforts of the industry member shall be used to obtain written acknowledgement of all disclosures made by the person to whom it was made.
- (d) The duty of disclosure is not triggered merely by:
- (i) a bona fide “open house” showing,
 - (ii) preliminary conversations or “small talk” concerning price range, location and property styles, or
 - (iii) responding to general factual questions from a potential buyer or seller.
- (e) An industry member shall not provide any services to the client or potential client in a trade or anticipated trade in which the industry member has, or will have a conflict of interest without first receiving the written and informed consent of the party.
- (f) "Conflict of interest" means a real or apparent incompatibility between an industry member's interests and the interests of the client or potential client including:
- (i) whether the industry member has any interest in the property which is subject to the trade,
 - (ii) whether the industry member is, or will be, receiving remuneration relating to the trade from any other person,
 - (iii) the nature of the industry member's relationship with any other person involved in the trade.

Article 41 No industry member may sign any document on behalf of another industry member without the written permission of that industry member.

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Brokerage Supervision

703

A broker or a managing associate broker is required to adequately supervise the activities of the industry members and other personnel for whom he/she is responsible. In determining the adequacy of the supervision, the Commission will consider the following factors, but will not be limited to making a determination on these factors alone:

- (a) whether the broker or managing associate broker was physically available to supervise and actively engaged in the management of the brokerage;
- (b) must ensure the business of the brokerage is carried out competently and in accordance with the Act, the Regulations, the Bylaw and the Policies & Procedures;
- (c) whether the broker or managing associate broker has undertaken all reasonable steps to ensure compliance by all associate brokers, salesperson and other employees;
- (d) whether the broker or managing associate broker has established written policies and procedures; and
- (e) whether the broker or managing associate broker took corrective and remedial action when a violation by an associate broker, salesperson or other employee was discovered.

Broker Responsibilities

704

A broker or managing associate broker shall be responsible for:

- (a) reviewing and acknowledging all real estate agreements, including, but not limited to, those related to agency relationships and offers to purchase;
- (b) reviewing all advertising to ensure compliance with the Act, the Regulations, the Bylaw and the Commission's Policies;
- (c) ensuring there is an adequate level of supervision for associate brokers, salespeople and approved sales corporations within the brokerage and for employees who perform duties on behalf of the brokerage;
- (d) ensuring the required trust accounts, trust account records and transaction files are maintained in accordance with the Act, the Regulations, the Bylaw and the Commission's Policies;
- (e) ensuring proper management and control of documents or records related to licensing, registrations and related regulatory requirements;
- (f) ensuring that the brokerage utilizes only licensed persons to perform the duties of industry members on behalf of the brokerage; and
- (g) providing all industry members and personnel with written policies and procedures by which they are expected to operate.
- (h) approving team names, team logos, and maintaining a current written record of the brokerage's real estate teams and team members.

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Associate Broker and Salesperson Responsibilities

705 Associate brokers and salespeople shall be responsible for:

- (a) being knowledgeable and complying with the Act, the Regulations, the Bylaw and the Policies & Procedures;
- (b) trade in real estate only in the name of the brokerage with which they are licensed;
- (c) providing to the broker all documentation, trust deposits and trade record sheets as required under the Bylaw;
- (d) keeping the broker informed of their activities being performed on behalf of the brokerage; and
- (e) notifying the broker upon learning of a violation of the Act, the Regulations, the Bylaw or the Policies & Procedures by any associate broker, salesperson, approved sales corporation or employee associated with the brokerage.

All industry members, whether they are employees or independent contractors, salespeople, approved sales corporations or associate brokers, have the same responsibilities to the broker.

Record Keeping by Industry Members

706

Each broker is required to keep all and any information, reports, files, documents, etc. that pertain to any real estate transaction and to have the information readily available as may be required by the Commission from time to time. Requests shall be in writing from the Commission and shall specify the format in which records are to be produced. This includes, but is not limited to, transaction files, trust records and employment records.

707

It is the responsibility of the broker to keep real estate trade and trust account records for a seven (7) year period.

Advertising Standards

708

- (a) Any advertisement or incentive or the offering of any incentive or the participation in an incentive program to the public in any medium as an inducement to trade in real estate undertaken or authorized by an industry member must not be:
 - (i) false;
 - (ii) inaccurate;
 - (iii) reasonably capable of misleading the recipient or intended recipient;
 - (iv) in bad taste; offensive or harmful to the best interests of the public or harmful to the image of the real estate industry; or
 - (v) prohibited by law.
- (b) All industry member advertising must display the brokerage name in a prominent and easily readable manner.

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- (c) No industry member may advertise in such a manner as to cause confusion between the brokerage name or logo and any other name or logo that appears in the advertisement.
- (d) The brokerage name or logo must be the same size or larger than any industry member name or team name or industry member logo or team logo in advertising.

709

An industry member shall only advertise properties for sale or for lease when written authority has been obtained from the seller or the seller's lawful designate. The advertisement shall be in accordance with the lawful instructions of the seller or lawful designate.

710

Signs which designate property as being on the market, such as for sale, for rent, will develop to suit, etc. may not be placed on the property without the direct consent of the seller of that property or an authorized representative of the seller. Said advertising shall only be carried out during the currency of the agreement, and must be removed by the expiry date of the listing agreement or other written authority.

711

Any promotional material distributed (excluding novelty items) must contain a statement whereby it states that it is not intended to solicit a property already listed or a buyer under contract.

Mandatory Forms

712

All industry members in the province of Nova Scotia may use properly drafted forms for the purpose of trading in real estate, excepting the following approved residential forms, which shall be mandatory:

- (a) Form 100—Working with the Real Estate Industry
- (b) Form 110—**Buyer Customer Acknowledgement**
- ~~(c) Form 111—Seller Customer Status Acknowledgment~~
- (d) Form 112—**Seller Customer Acknowledgement and Fee Agreement**
- (e) Form 200—Seller Brokerage Agreement
- (f) Form 201—Seller Designated Brokerage Agreement
- (g) Form 203—Mere Posting Service Agreement
- (h) Form 210—**Equipment Schedule**
- (i) Form 211—Property Disclosure Statement
- (j) Form 212—Property Disclosure Statement Vacant Land
- (k) Form 220—**Amendment to Seller Buyer Brokerage/ Designated Brokerage Agreement**
- (l) Form 221—**Temporary Withdrawal or Termination of Seller Buyer Brokerage Agreement/Designated Brokerage Agreement**
- (m) Form 222—Amendment to Service Agreement
- (n) Form 223—**Assignment of Seller Buyer Brokerage Agreement/Designated Brokerage Agreement**
- (o) Form 224—Temporary Withdrawal **or Termination** of Service Agreement
- (p) Form 300—Buyer Brokerage Agreement

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- (q) Form 301—Buyer Designated Brokerage Agreement
- (r) Form 320—Repealed.
- (s) Form 400—**Agreement of Purchase and Sale**
- ~~(t) Form 401—Agreement of Purchase and Sale Part II: Residential Schedule~~
- (u) Form 402—Resale Condominium Schedule**
- (v) Form 403—Agreement of Purchase and Sale for Turn Key New Construction
- (w) Form 404—**Vacant Land Schedule**
- ~~(x) Form 405—Agreement of Purchase and Sale Part II: Vacant Land—Rural Schedule~~
- (y) Form 406—Mini/Mobile Home Schedule**
- (z) Form 407—Multi-Unit Residential Income Properties Schedule**
- (aa) Form 410—Counter Offer
- (bb) Form 411—Transaction Brokerage Agreement – Common Law
- (cc) Form 412—Transaction Brokerage Agreement – Designated Agency
- (dd) Form 420—**Addendum Schedule " _ "**
- (ee) Form 421—Amendment to Agreement of Purchase and Sale
- (ff) Form 430A—**Sale of Buyer's Property Schedule**
- (gg) Form 430B—**Sale of Buyer's Property Seller Notice to Buyer**
- (hh) Form 430C—Sale of Buyer's Property Buyer Notice to Seller**
- (ii) Form 431—**Water and Septic Schedule**
- (jj) Form 440—**Termination of Agreement of Purchase and Sale and Release of Deposit**
- (kk) Form 441—Deposit Disclaimer

The wording of the clauses may be changed with the consent of all parties to the Agreement.

713

A brokerage shall ensure that an Amendment to Agreement of Purchase and Sale and/or Notice/Waiver/Release form, if required under the terms of the agreement, is properly completed to remove the applicable terms and conditions on or before the expiry date of the terms and conditions of an offer. A copy of the Amendment to Agreement of Purchase and Sale and/or Notice/Waiver/Release form must be delivered to all parties to the transaction as soon as reasonably possible after execution of the document.

Authority to Sell

714

A Seller Brokerage Agreement or a Buyer Brokerage Agreement shall:

- (a) contain an expiry date;
- (b) not contain more than one expiry date;
- (c) provide for the amount of or the rate of commission payable in respect of the trade; and
- (d) provide for the terms or conditions on which the commission is payable in respect to the trade.

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Claim for Commission

715A

- (a) Remuneration must be calculated by one of the following methods:
 - (i) A percentage of the sale price;
 - (ii) A fixed amount;
 - (iii) Fees for specific services; or
 - (iv) A combination of any calculations in (a), (b) and (c).
- (b) A consumer must be fully informed of the remuneration they will be required to pay in writing before entering into a contract for brokerage services.

715

- (a) A brokerage may make claim for a commission when one of the following is in place, which specifies the commission to be paid:
 - (i) a Seller Brokerage Agreement;
 - (ii) an Agreement of Purchase and Sale;
 - (iii) a Buyer Brokerage Agreement;
 - (iv) a commission sharing agreement; or
 - (v) some other form of written agreement.
- (b) An industry member shall not accept a commission or any other financial payment directly from any source other than from the brokerage with which they are licensed.
- (c) A brokerage shall not pay a commission/referral fee to an unlicensed person.

Incentives, Inducements, Gifts, Commission Sharing

716

- (a) A gift cannot be money or a sharing of commissions or remuneration.
- (b) An incentive or an inducement may be in the form of a commission rebate, provided the rebate is being made to a party to the transaction.
- (c) A broker, managing associate broker, associate broker, salesperson or approved sales corporation must not, directly or indirectly, advertise, communicate or offer to any person an incentive except an incentive that is provided by and on behalf of the brokerage with which they are licensed. The incentive must be available to all consumers that are doing business with the brokerage, regardless of which industry member they are working with, subject to any terms of the incentive.
- (d) An associate broker, salesperson, or approved sales corporation must not, directly or indirectly, provide an inducement unless the details of the inducement are provided in writing and the broker or managing associate broker has provided written approval.
- (e) A brokerage must not pay a commission or other remuneration, directly or indirectly in connection with a trade or dealing, to a brokerage that is licensed under these rules or under similar legislation in a jurisdiction outside of Nova Scotia when the brokerage has knowledge that the commission or remuneration will be paid to, or be shared with, an unlicensed person.
- (f) An industry member may give a gift to a customer, a client or another person provided the gift is not a referral fee.

PART SEVEN – CONDUCT & TRADE PRACTICES

Disclosures to Prospective Industry Members by a Brokerage

717

All brokerages are required to provide the following disclosures to prospective industry members who are considering being licensed with that brokerage prior to that person making any commitment to that brokerage:

- (a) a copy of the contract, in its entirety, the industry member would be required to sign, if any;
- (b) all expenses the industry member would be required to pay or reimburse during the time they are licensed with that brokerage; and
- (c) all fees, changes in commission splits, or penalties that the industry member would be responsible for when the industry member's licence terminates with that brokerage.

718

- (a) The disclosures must be made in writing and receipt thereof acknowledged in writing, prior to engagement of the prospective industry member by the brokerage.
- (b) A prospective industry member shall have a seven day period after execution of the contract to withdraw, without penalty, by giving written notice of the withdrawal to the brokerage.
- (c) It is the responsibility of the brokerage to ensure that the industry member fully understands the terms of the engagement prior to entering into any written agreement.

Designated Agency

719

- (a) The basic obligations of an industry member who is acting as a designated agent for a seller or a buyer are the same as for an industry member who is in a sole agency relationship with a seller or buyer, as the case may be, and include those obligations that are set out in section 702, Article 39, of the Bylaw.
- (b) If a situation arises where a brokerage enters into a designated brokerage relationship with a buyer or seller, as the case may be, the brokerage shall:
 - (i) establish policies and procedures to protect a client's confidential information; and,
 - (ii) establish policies and procedures governing the activities of the brokerage and designated agents registered with the brokerage; and
 - (iii) communicate to clients its policies and procedures that ensure that a designated agent does not communicate any information prejudicial to the interests of the client to other members of the brokerage, including other designated agents.
- (c) All designated agency agreements must be in writing and must contain the following provisions:
 - (i) that the brokerage will designate an agent to serve as sole agent for the seller and will designate other industry members licensed with the brokerage to serve as sole agents of any buyers also represented by the brokerage who are interested in the property.

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- (ii) that if, for any reason, the designated agent ceases to be licensed with the brokerage, the brokerage will designate another member of the brokerage to serve as sole agent for the seller or the buyer, as the case may be.
- (iii) that the brokerage will not appoint another brokerage to act on behalf of the seller or the buyer, as the case may be, as a sub-agent without the seller's or buyer's written consent.
- (iv) that a seller or a buyer, as the case may be, agrees that an agency relationship will exist only with the designated agent and not with the brokerage.
- (v) that a seller or a buyer, as the case may be, acknowledges that the brokerage's responsibilities will be limited to:
 - (1) treating the interests of both a seller and a potential buyer of a property in an even-handed, objective manner;
 - (2) ensuring compliance by the designated agent with the brokerage's policies and procedures governing designated agents;
 - (3) supervising the designated agent and support staff to ensure the designated agent fulfills its mandate under the agreement.
- (vi) that the brokerage and the designated agent undertake that they have not, and will not, disclose any confidential information concerning the seller or the buyer, as the case may be, to any other member of the brokerage or other person unless:
 - (1) authorized by the seller or the buyer, as the case may be; or,
 - (2) required by law.
- (vii) that the designated agent's knowledge will not be attributed to the brokerage or to its designated agents representing buyers.

Transaction Brokerage – Under Designated Agency

720

- (a) If the situation arises where a brokerage represents a seller with whom it has a designated agency relationship and a buyer with whom it has a designated agency relationship is interested in the seller's property, in order to facilitate the purchase and sale of the property, the buyer and the seller and the brokerage may enter into a written Transaction Brokerage Agreement with respect to that property.
- (b) The brokerage will provide both the buyer and seller with the opportunity to review the Transaction Brokerage Agreement and to request further information concerning the Transaction Brokerage Agreement and transaction brokerage relationship described in it before signing the Agreement.
- (c) If the parties do not agree to enter into a Transaction Brokerage Agreement, the brokerage will continue to represent the party, be it the seller or the buyer, with whom it first entered into an agency relationship; and the brokerage will offer the option either:
 - (i) to designate another member of the brokerage to represent the other party as sole agent; or
 - (ii) to recommend the other party to another brokerage.
- (d) If the parties authorize the brokerage to enter into a transaction brokerage relationship, the Designated Buyer/Seller Brokerage Agreements will indicate how the brokerage will be

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remunerated and the Transaction Brokerage Agreement will provide that the designated agent now acting in the capacity of a Transaction Facilitator will:

- (i) treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner;
- (ii) exercise reasonable care and skill in the performance of its mandate under the agreement;
- (iii) obey the instructions of the buyer or the seller in so far as they are consistent with other terms of the agreement;
- (iv) perform for the buyer and the seller all necessary facilitation services, that is, services that do not require the exercise of discretion or judgment, or the giving of confidential advice or advocating on behalf of either the buyer or the seller, and, in particular, when requested by the buyer or the seller, the brokerage will:
 - (1) provide real estate statistics and information on property including all comparable property information available through the listing services or other local data bases;
 - (2) provide Agreements of Purchase and Sale, lease or other relevant documents and act as scribe in their preparation in accordance with the instructions of the buyer or the seller;
 - (3) provide the names of real estate service providers, but the brokerage will not recommend any particular service provider to the buyer or the seller;
 - (4) present in a timely manner, all offers and counter-offers to and from the buyer and seller regardless of whether the property is already the subject of a contract;
 - (5) convey to the buyer and the seller in a timely manner all information that either wishes to have communicated to the other; and
 - (6) keep the buyer and seller fully informed regarding the progress on the transaction;
- (v) disclose:
 - (1) to the buyer, all material latent defects affecting the property known to the brokerage; and
 - (2) to the seller, all material facts relevant to the buyer's ability to purchase the property known to the brokerage;
- (vi) not give false or misleading information to the buyer or the seller;
- (vii) not disclose without the informed written consent of the buyer or seller, as the case may be:
 - (1) that the buyer may be prepared to offer a higher price or terms other than those contained in the offer to purchase or the exclusive buyer brokerage agreement;
 - (2) that the seller may be prepared to accept a lower price or terms other than those contained in the offer to purchase or the exclusive seller brokerage agreement;
 - (3) the motivation of the buyer or seller for wishing respectively to purchase or sell the property; and
 - (4) subject to clause (4)(e) above, personal information relating to the buyer or the seller and other information disclosed at any time in confidence by either to the brokerage; and
- (viii) not conduct or influence the selection of:

PART SEVEN – CONDUCT & TRADE PRACTICES

- (1) an independent inspection of the property for the buyer and will not verify the accuracy or completeness of any information supplied or statements made by the seller concerning the property; or
 - (2) an independent inquiry into the financial status of the buyer for the seller and will not verify the accuracy or completeness of any financial information supplied by the buyer.
- (e) If the parties agree to enter into a Transaction Brokerage Agreement the brokerage will:
- (i) ensure that the industry member(s) licensed with the brokerage providing services to the buyer and seller under the agreement:
 - (1) comply with the brokerage policies and procedures governing transaction brokerage; and
 - (2) treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner;
 - (ii) supervise the industry member(s) of the brokerage and support the staff members providing services to the buyer and seller to ensure that they properly fulfill the agreement;
 - (iii) hold all monies received in accordance with the provisions of the Act.

Transaction Brokerage – Under Common Law

721

- (a) If the situation arises where a brokerage represents a seller with whom it has an agency relationship and a buyer with whom it has an agency relationship is interested in the seller's property, in order to facilitate the purchase and sale of the property, the buyer and the seller and the brokerage may enter into a written Transaction Brokerage Agreement with respect to that property.
- (b) The brokerage will provide both the buyer and seller with the opportunity to review the Transaction Brokerage Agreement and to request further information concerning the Transaction Brokerage Agreement and transaction brokerage relationship described in it before signing the Agreement.
- (c) If the parties do not agree to enter into a Transaction Brokerage Agreement, the brokerage will continue to represent the party, be it the seller or the buyer, with whom it first entered into an agency relationship; and the brokerage will offer the option either:
 - (i) to treat the other party as a customer; or
 - (ii) to recommend the other party to another brokerage.
- (d) If the parties authorize the brokerage to enter into a transaction brokerage relationship, the Buyer/Seller Brokerage Agreements will indicate how the brokerage will be remunerated and the Transaction Brokerage Agreement will provide that the designated agent now acting in the capacity of a transaction facilitator will:
 - (i) treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner;
 - (ii) exercise reasonable care and skill in the performance of its mandate under the agreement;

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- (iii) obey the instructions of the buyer or the seller in so far as they are consistent with other terms of the agreement;
- (iv) perform for the buyer and the seller all necessary facilitation services, that is, services that do not require the exercise of discretion or judgment, or the giving of confidential advice or advocating on behalf of either the buyer or the seller, and, in particular, when requested by the buyer or the seller, the brokerage will:
 - (1) provide real estate statistics and information on property including all comparable property information available through the listing services or other local data bases;
 - (2) provide Agreements of Purchase and Sale, lease or other relevant documents and act as scribe in their preparation in accordance with the instructions of the buyer or the seller;
 - (3) provide the names of real estate service providers, but the brokerage will not recommend any particular service provider to the buyer or the seller;
 - (4) present in a timely manner, all offers and counter-offers to and from the buyer and seller regardless of whether the property is already the subject of a contract;
 - (5) convey to the buyer and the seller in a timely manner all information that either wishes to have communicated to the other; and
 - (6) keep the buyer and seller fully informed regarding the progress on the transaction;
- (v) disclose:
 - (1) to the buyer, all material latent defects affecting the property known to the brokerage; and
 - (2) to the seller, all material facts relevant to the buyer's ability to purchase the property known to the brokerage;
- (vi) ensure that the industry member(s) registered with the brokerage providing services to the buyer and seller under the agreement:
 - (1) comply with the brokerage policies and procedures governing transaction brokerage; and
 - (2) treat the interests of both the buyer and the seller in an even-handed, objective and impartial manner;
- (vii) supervise the industry member(s) of the brokerage and support the staff members providing services to the buyer and seller to ensure that they properly fulfill the agreement;
- (viii) hold all monies received in accordance with the provisions of the Act;
- (ix) not give false or misleading information to the buyer or the seller;
- (x) not disclose without the informed written consent of the buyer or seller, as the case may be:
 - (1) that the buyer may be prepared to offer a higher price or terms other than those contained in the offer to purchase or the exclusive buyer brokerage agreement;
 - (2) that the seller may be prepared to accept a lower price or terms other than those contained in the offer to purchase or the exclusive seller brokerage agreement;
 - (3) the motivation of the buyer or seller for wishing respectively to purchase or sell the property; and

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- (4) subject to clause (4)(e) above, personal information relating to the buyer or the seller and other information disclosed at any time in confidence by either to the brokerage; and
- (xi) not conduct or influence the selection of:
 - (1) an independent inspection of the property for the buyer and will not verify the accuracy or completeness of any information supplied or statements made by the seller concerning the property; or
 - (2) an independent inquiry into the financial status of the buyer for the seller and will not verify the accuracy or completeness of any financial information supplied by the buyer.

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All information provided on listing addendum sheets and related documents is to be accurate and current.

PART EIGHT – DISCIPLINE

Investigations

801

Pursuant to Section 17 (3) of the Act, the Commission may authorize persons to conduct an investigation for the proper administration of the Act pertaining to an industry member.

Complaints

802

Any complaint or allegation made to the Commission concerning the conduct of An industry member as it pertains to the Act, its regulations or Bylaw shall be made in writing, setting out the facts as known to the complainant.

803

The Commission may authorize a person to initiate and conduct an investigation, without a written complaint, for the proper administration of the Act.

Complaint Review Committee

804

The Commission may authorize industry members, who are eligible, to become members of a Complaint Review Committee.

805

The Complaint Review Committee is responsible for review of:

- (a) a decision by the Registrar to dismiss a complaint;
- (b) a decision where a Complainant is dissatisfied with a decision of the Registrar;
- (c) a proposed Settlement Agreement pursuant to Section 20 of the Act.

Discipline Committee

806

The Commission may appoint a Discipline Committee of not less than five (5) industry members or Commission Members, one of whom must not be an industry member, with a Commission Member designated as the Chairperson, to investigate for the proper administration of the Act, the Regulations and Bylaw and any matter referred to it by the Commission.

807

The Discipline Committee may request the Investigator to assist in the furtherance of any investigation that may be required pursuant to the Act, its regulations or the Bylaw.

PART EIGHT – DISCIPLINE

Notification of Investigation

808

The industry member shall be notified in writing of the complaint against him/her upon the commencement of an investigation by an authorized person.

809

The Investigator may require, from an industry member to whom a copy of the complaint has been delivered or any other industry member, a response to the complaint.

810

An industry member's response to a complaint shall:

- (a) unless the Investigator instructs otherwise, be in writing;
- (b) respond substantively to the allegation; and
- (c) be delivered to the Investigator as soon as practicable and, in any event, no later than the date set by the Investigator.

Inspection of Records, Etc.

811

A person authorized by the Commission shall investigate the facts and circumstances of the complaint or allegations against any industry member, which may include an inspection of the books, documents and records of any industry member, which may pertain to the complaint.

Investigation of Other Matters

812

A person authorized by the Commission may investigate any other matter which arises during the course of an investigation and appears to be a breach of the Act, its Regulations or Bylaw.

Recommendations

813

Upon the completion of its investigation, the authorized persons who conducted the investigation shall give to the Registrar a signed written report which summarizes the investigation and which contains a recommendation that:

- (a) no further action be taken as:
 - (i) the complaint does not fall within the Commission's jurisdiction;
 - (ii) the complaint is not valid; or
 - (iii) the complaint is trivial, frivolous or of a vexatious nature; or
- b) the complaint be referred to the Discipline Committee.

PART EIGHT – DISCIPLINE

814

If the Registrar decides no further action should be taken on the complaint, then he/she shall:

- (a) deliver notification, in writing, to the complainant, the industry member and the Complaint Review Committee outlining the reasons why no further action is required; and
- (b) advise the complainant, in writing, of their right to apply for a review by the Complaint Review Committee.

815

If in the opinion of the Registrar a violation has occurred, the Registrar shall advise the industry member and the complainant, in writing, that the complaint has been referred to the Discipline Committee.

816

No industry member shall make or permit to be made any false or misleading statement in any investigational information required to be furnished under the Act, its Regulations or the Bylaw.

Investigation Review Requested

817

A complainant who is dissatisfied with a decision of the Registrar may apply, in writing, for a review of that decision to the Complaint Review Committee. A request for a review must contain reasons for the Complaint Review Committee to consider. The request must be received by the Commission within 20 business days of notice of the Registrar's decision to the complainant.

818

The Complaint Review Committee shall, after its review and enquiries:

- (a) make a written report to the Registrar;
- (b) promptly advise the complainant and the industry member, in writing, of the results of its review.

Pre-Hearing

819

Prior to a hearing, where a report of the Registrar recommends that the Discipline Committee hear and determine a formal complaint in accordance with Section 17(7) of the Act, the Registrar shall make available to the industry member who is the subject of the hearing:

- (a) copies of all documents intended to be used at the hearing; and
- (b) disclosure of witnesses that are to be called at the hearing.

820

Prior to a hearing, the industry member who is the subject of a formal allegation statement will be permitted the opportunity to waive their right to a hearing, in writing to the Complaint Review Committee, and to admit to all allegations in the formal allegation statement.

PART EIGHT – DISCIPLINE

821

Where an industry member waives their right to a hearing, he/she shall sign a statement of facts or admissions and penalty (proposed Settlement Agreement) that will be submitted to the members of the Complaint Review Committee.

822

The Complaint Review Committee may pursuant to Section 20 of the Act:

- (a) accept the proposed Settlement Agreement; or
- (b) reject the proposed Settlement Agreement

823

A waiver of an industry member's right to a hearing under this part does not preclude:

- (a) the notification required under Section 17(7) of the Act; and
- (b) the industry member's right to appeal the penalty to the Discipline Committee.

Hearing Panel

824

The Discipline Committee may, on its own, appoint a Hearing Panel as per Section 16(4) of the Act consisting of not less than three (3) persons. For the purposes of this Bylaw and the Act, a hearing panel is considered to be a sub-committee of the Discipline Committee.

Notice of the Formal Hearing and Service of Documents

825

- (a) As soon as practical upon the appointment of a Hearing Panel, the Registrar will send the industry member a Notice of Hearing containing:
 - (i) a specific outline of the Sections of the Act, Regulations or Bylaw that are alleged to have been breached, when applicable, or reasons for considering penalties; and
 - (ii) notification of the time, date and place of the hearing and the right of the industry member to be represented by counsel at the hearing at least thirty (30) days prior to the hearing date;
 - (iii) notification that the industry member must have all pertinent documents available at the hearing;
 - (iv) the names of the members of the Hearing Panel.
- (b) The Notice of Hearing shall be served personally or mailed by registered mail to the last known address of the person to be served.

826

- (a) Any industry member who is named in a Notice of Hearing and is unable to appear for valid reasons on the specified date shall immediately contact the Commission office so that an application may be made to adjourn the hearing to an alternate date.

PART EIGHT – DISCIPLINE

- (b) The Hearing Panel may proceed with a hearing in the absence of the Respondent provided proof of notice of service is presented to the Hearing Panel.
- (c) industry members should notify the Commission at least five days prior to a Hearing if they are going to be represented by counsel.

Compellable Witnesses

827

All industry members, including the industry member who is the subject of the hearing, are considered compellable witnesses and they are required to give evidence as requested by the Hearing Panel at a hearing.

Industry Member Responsible for Own Expenses

828

The Commission is not responsible for expenses incurred by or on behalf of the named industry member to attend a hearing. The named industry member and their counsel is entitled to be in attendance throughout the hearing.

Evidence to be Relevant

829

All examinations and cross-examinations of witnesses must be relevant to the specific issues being considered by the Hearing Panel.

Location of Hearings

830

The hearing will be held within the province at locations determined by the Commission.

831

Where possible, the hearing will be held in the conference room at the Commission office located at 7 Scarfe Court, Dartmouth, NS.

Proceedings Recorded

832

The proceedings of all hearings will be recorded. The respondent or the respondent's solicitor may obtain a transcript of part or all of the hearing, at their expense, by making arrangements with the Registrar. Cost of the transcript is set out in Section 410 of this Bylaw.

833

The Chairperson of the hearing committee may from time-to-time adjourn the hearing.

PART EIGHT – DISCIPLINE

Hearing Procedure

834

The Discipline Committee shall determine the practice and procedures to be followed at hearings.

Commission to Provide a Decision

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The Hearing Panel decision shall be in writing. A copy of the decision is to be sent by registered mail or personal service to the industry member or their solicitor within ten (10) days of the decision advising the industry member of their right to an appeal to the Supreme Court of Nova Scotia within 30 days of this decision.

836

The Registrar shall advise the complainant of the status of the complaint.

Assessment of Costs Against an Industry Member

837

The Hearing Panel may assess all costs incurred to investigate a complaint against an industry member should that industry member be found in violation of the Act, Regulations or Bylaw by the Hearing Panel.

Payment of Expenses for Investigation

838

Members of the Discipline Committee and Hearing Panel may receive remuneration in the amount prescribed by the Commission as set from time to time.

Publication of Decisions

839

- (a) In accordance with Real Estate Trading Act Section 25, all newspaper notices must contain the industry member's name, the current and/or former brokerage, the violations, the length of cancellation or suspension, and the penalty. The Registrar may include an explanation of the events/behaviour that lead to the violations.
- (b) The Registrar must send a notice of any cancellation or suspension to the real estate industry and publish the notice on the Commission website. The notice must contain the industry member's name, the current and/or former brokerage, the violations, the length of cancellation or suspension, the penalty, and an explanation of the events/behaviour that lead to the violations. The notice remains on the Commission website for the duration of the suspension/cancellation.
- (c) The Registrar may send a notice to the industry with the names of any industry member whose
 - (i) licence fails to renew as a result of failure to complete required education course;
 - (ii) errors and omissions insurance coverage is terminated; or
 - (iii) licence is downgraded or restricted.

PART EIGHT – DISCIPLINE

- (d) Administrative penalties-Sanctions assessed by way of administrative penalty may be published without reference to the industry member's name.
- (e) Discipline decisions involving a fine of \$500 or less may be published in an industry discipline publication and placed on the Commission website without giving the name of the industry member or brokerage.
- (f) Discipline decisions involving a fine greater than \$500 may be published in industry discipline publication and placed on the Commission website. The publication will identify the name of the industry member, the current and/or former brokerage, and an overview of the case and the penalty. After a period of one year from the publication date, the industry member and the brokerage name(s) will be deleted from the website, but the description of the violation and the penalties will remain.
- (g) Discipline history disclosure - When requested in writing, the Commission may disclose the discipline history of an industry member. Violations involving fines greater than \$500, licence suspensions/cancellations, restrictions or downgrades will be disclosed for a five-year period prior to the date of the request. Violations involving, administrative penalties, fines less than \$500, course requirements, and letters of reprimand will be disclosed for a three-year period prior to the date of request.
- (h) Licence history disclosure-When requested in writing, the commission will disclose the following about an industry member:
 - (i) The number of years licensed in a particular class of licence;
 - (ii) The total number of years licensed; and
 - (iii) The name of the industry member's current brokerage.

Non-interference

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No industry member shall interfere with an investigation. An industry member who is the subject of an investigation, shall not attempt to have the complainant withdraw a complaint. Once a complaint has been initiated, only the Registrar may withdraw the complaint.

Limitation on Prosecution

841

No prosecution for a contravention of this Act or the regulations is to be commenced after the expiration of 24 months from the date the alleged contravention was discovered. This limit may be longer at the discretion of the Registrar if in the opinion of the Registrar prosecution or an action is required.

Reporting Criminal Matters

842

When the Registrar believes that a matter being investigated involves criminal activities, or as a result of the disciplinary process the Discipline Committee believes there have been criminal activities, the Registrar shall report those activities to the proper police jurisdiction.