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nova scotia real estate  
**COMMISSION**

**Audit Task Force  
Report and Recommendations**

March 26, 2018

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

## Audit Task Force Report

In late 2016, the Board of Directors of the Nova Scotia Real Estate Commission appointed a Task Force with a mandate to “review and assess NSREC’s current compliance program and to prepare a report for the Board describing the results of the assessment, including any recommendations for changes” (Appendix A – Terms of Reference).

The Nova Scotia Real Estate Commission is the regulatory body for trading in real estate in Nova Scotia. Established in 1997, the Commission is an independent non-profit agency that supervises the activities of all real estate licensees in the province.

The Commission’s mandate is to ensure consumer confidence and protection of the public in matters related to real estate transactions. In this regard the Commission is responsible for:

- administering and enforcing the Real Estate Trading Act, its regulations and the Commission Bylaws;
- setting performance standards that govern trading in real estate;
- setting licensing requirements and entrance standards; and
- investigating complaints and imposing disciplinary sanctions under the Act.

The Commission’s authority for audits and setting Brokerage/Broker responsibilities are set out in the Act and the Bylaws (see Appendix B).

The audit process has evolved over time and is well understood by the Commission’s staff. However, the process was not formally documented nor shared with the industry. The Complaints Review Committee has supported more comprehensive audit standards and, over the course of the last five or six years, the audit process became more thorough.

In part, the decision to call for a review was based on comments the Commission received that the audit process was too heavy-handed, picky and not well understood. As the Task Force started its work, it invited input from the industry. Of the feedback received, those three points were the general theme. In addition, the Task Force received suggestions that there be a process for holding individual licensees accountable for discrepancies and that audit fees be reviewed.

As a starting point, a detailed description of the current audit process was prepared for the Task Force to review. While that description pointed out that there was a fairly consistent process followed, it also became clear why it appeared to be somewhat subjective to Brokers ... because there were no obvious measuring tools that gave confidence of consistency and uniformity to the audits.

One of the first questions the Task Force asked itself was ... Why does the Commission do audits?

The Act and the Bylaws are very specific when it comes to how trust funds are handled, how agency is dealt with, how agreements are prepared and executed, as well as professional conduct, among other things. Essentially, the audit is a review mechanism to ensure that licensees are following trust, disclosure, transactions and file requirements.

The presence of audits speaks to consumer confidence. There is a better chance of consumers having confidence in the real estate industry, and the brokerages/salespeople they are dealing with, when they

know that brokerages and licensees are held accountable by an independent authority. Given the legislative requirements and the Commission's mandate, one logical and proactive way to fulfill its responsibilities is to audit brokerage trust accounts and transaction files.

A second question was ... Has the audit process produced positive results? From 2000 to 2014, there were an average of 34 investigations per year (with a high of 48 in 2013). From 2015 to 2017, there was a noticeable drop in investigations, with an average of 17 per year. To take this one step further, information was gathered from ARELLO (a US/CDN regulator organization) to compare audits and recovery fund payouts and further, a comparison was made of audits and investigations from provinces across Canada. (See Appendix C). Is there a correlation between a tougher audit regime and fewer investigations and/or recovery fund payouts? It would seem so.

Of course, there may be other reasons as well; such as, continuing education courses, a higher level of education established for admission to the salesperson course, and a more frequent audit schedule for first time brokers. It is also important to note that many of the CPE courses are developed based on discrepancies discovered in the audits.

The Task Force came to the conclusion that audits have a benefit both to the public and to the industry and should be maintained. However, The Task Force also agreed that the process should be improved, and the following should be provided for:

- Clarity and understanding of the audit process by industry stakeholders (both residential and commercial);
- A transparent and objective rating system;
- A fair cost of audits charged to all brokerages, relative to size; and
- A system that provides for holding licensees accountable for consistently poor performance rather than just brokers.

The Task Force agreed at the outset that, for this project to be successful, it was important to get as much industry feedback as possible. So, in addition to an open call for feedback at the beginning of the process, the Task Force decided to hold Focus Group meetings and get feedback on its draft report and recommendations. There were two Focus Groups, each comprised of five Brokers/Managing Associate Brokers representing the various geographical areas of the province, along with a mixture of common law and designated brokerages, various brokerage sizes and audit results, and representatives from both the commercial and residential sectors. All draft recommendations other than penalties and fees were reviewed by the Focus Groups.

Both Focus Groups, each with its own independent review of the draft material, fully endorsed the work of the Task Force and the recommendations being made to the Board of Directors. One of the Focus Group participants summarized the feeling of the group ... "Finally, we'll now have something that is tangible, reasonable and realistic."

The attached report sets out the following:

- An introduction to the audit process;
- A description of the audit ratings and audit frequency;
- Items reviewed in a Trust Audit, including degree of seriousness;
- Items examined in a Transaction Audit, including degree of seriousness;
- Commercial requirements;
- A schedule of audit fees

- Licensee (Non-Broker) compliance, including a mechanism for holding licensees accountable for non-compliance; and
- Penalties that may be assessed.

The report is formatted and presented in a way that it can be used as a “Guide to the Audit Process” to facilitate a better understanding of and expectations from the audit process by Brokers and to provide an educational tool for licensees to ensure that everyone is well aware of trust and transaction file requirements.

The Task Force recommends the following:

1. That the Board of Directors adopt the attached Audit Program as the Commission’s documented audit process, to be effective January 1, 2019;
2. That necessary and appropriate Bylaw revisions be developed and implemented;
3. That the documented Audit Program be established as a Guide to the Audit Process for compliance staff, brokers and non-broker licensees; and
4. That a CPE course be developed and established as a mandatory course for all licensees in the 2018-19 licensing cycle.

The Task Force feels it is important that Brokers be made aware of the new Audit Program as soon as possible. Therefore, once approved by the Board of Directors, the Audit Program will be made available to Brokers. All licensees will be made aware of the mandatory course requirements and Brokers will be encouraged to complete the course early in the licensing cycle.

The Task Force believes this documented Audit Program will bring clarity and objectivity to the audit process and gives recognition to the fact that all licensees have responsibilities and are accountable for their work. The Task Force believes that the Audit Program is about more than just compliance. It is as much an educational tool to help guide Brokers and Licensees do a better job and, ultimately, to help ensure consumer confidence and public protection in their real estate transactions.

Respectfully submitted

Audit Task Force

- Jessica May, Chair
- Linda Smardon
- Anne DaSilva
- Robert Wambolt
- Brian Lugar
- Gary Morse

## Appendix A

### Terms of Reference NSREC Audit Task Force

**Purpose:**

The Chair of the NSREC Board of Directors struck an Audit Task Force to review and assess NSREC's current compliance audit program and to prepare a report for the board describing the results of the assessment including any recommended changes.

**Report to:**

NSREC Board of Directors

**Members:**

- Jessica May — Commissioner- (lawyer), Chair
- Gary Morse — Commissioner - (managing associate broker) residential
- Linda Smardon — Commissioner – (broker) residential
- Anne Da Silva — (broker) residential and commercial
- Brian Lugar — (broker) commercial
- Robert Wambolt — (associate broker) residential

**Scope:**

The Audit Task Force will review and assess the NSREC audit program including but not limited to the following:

- Types of audits
- Purpose and benefits of audits
- Audit procedures
- Costs and fees
- Audit ratings
- Audit reports to brokers
- Discipline and penalties
- Costs to the NSREC
- Commission Bylaw and Policies

**Resources and Budget:**

- NSREC staff
- Meeting costs (Travel and committee fees)
- Professional fees

**Governance:**

- Decisions will be by majority consent

**Additional Notes:**

- Role of Chair – oversee and guide committee, reporting to BOD
- Role of members – analyse information, discuss and vote on issues presented
- Role of NSREC staff – record progress and other tasks as need

## Appendix B

### NSREC Authority for Audits

#### Audit Authority

The authority to establish requirements for record keeping, carry out inspections and conduct audits can be found in section 8 (1) of the Real Estate Trading Act. This section provides the Commission with the ability to create bylaws around these matters. The Commission Bylaw Part 6 outlines audit requirements and procedures.

#### Act, Article 8

8. (1) The Commission may make by-laws:

- ( y ) respecting the investigation and inspection of methods of practice of licensed persons by the Commission;
- ( z ) requiring reports from licensed persons with respect to their operations and prescribing the content of those reports;
- (ad) respecting the keeping of trust money and trust accounts, with power to
  - (i) provide for the investigation of complaints regarding trust money and trust accounts,
  - (ii) provide for the inspection and auditing of trust money and trust accounts,
  - (iii) prescribe the records to be kept by brokerages with respect to trust money and trust accounts,
  - (iv) require reports from brokerages with respect to their trust money and trust accounts,
- (ag) respecting records to be kept by licensed persons, including records with respect to trades in real estate;

#### Bylaw, Part 6

##### 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.

##### 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.

**Appendix C**  
**Audit, Investigation and recovery fund statistics**

**ARELLO Statistics 2017 (ARELLO Digest 2017)**

The Association of Real Estate Licence Law Officials (ARELLO) is a membership association made up of real estate regulators mainly from the United States and Canada. ARELLO annually promotes reporting of activities including the payment of recovery funds to consumers for loss or damage.

The following information was provided by jurisdictions for 2017:

- Number of jurisdictions reporting – 40
- Total recovery funds paid – \$5,180,839
- Jurisdictions with mandatory audits – 18 ... 45%
  - Jurisdictions that paid recovery funds – 5 ... 29%
  - Recovery funds paid - \$998,841 ... 19.3%
- Jurisdiction without mandatory audits – 22 ... 55%
  - Jurisdictions that paid recovery funds – 8 ... 36%
  - Recovery funds paid - \$4,181,998 ... 80.7%

**Canadian Jurisdictions**

The following table summarizes 2016/17 statistics for BC, Alberta, Saskatchewan, Ontario and Quebec and Nova Scotia. All jurisdictions have some form of audit process for trust accounts and, in some cases, practice inspections. (\*Data from ARELLO 2017 Digest)

|              | Licensees | Brokerages | Audits | Investigations<br># /Licensees | Recovery \$<br>paid* | Audits Description   |
|--------------|-----------|------------|--------|--------------------------------|----------------------|--|
| BC           | 24951     | 1368       | 272    | 902 3.6%                       | \$173,702            | New brokers/<br>brokerages                                   |
| Alberta      | 15455     | 984        | 322    | 1074 6.9%                      | 0                    | Fairly robust audit<br>program                               |
| Saskatchewan | 1862      | 249        | 34     | 92 4.9%                        | 0                    | Aim for 3 year<br>audit cycle                                |
| Ontario      | 78000     | 3533       | 1015   | 2529 3.2%                      | \$95,000             | Based on prev<br>deficiencies                                |
| Quebec       | 16413     | 1188       | 301    | 1915 11.7%                     | \$363,401            | On site audits (301)<br>based on audit<br>report submissions |
| Nova Scotia  | 1578      | 190        | 207    | 17 1.1%                        | 0                    | Very robust audit<br>program                                 |

**Nova Scotia Statistics**

|      | Licensees | Investigations | Transactions |      | Licensees | Investigations | Transactions |
|------|-----------|----------------|--------------|------|-----------|----------------|--------------|
| 2000 | 1217      | 44             |              | 2009 | 1793      | 37             | 11261        |
| 2001 | 1225      | 39             |              | 2010 | 1809      | 28             | 11386        |
| 2001 | 1328      | 34             |              | 2011 | 1843      | 38             | 11641        |
| 2003 | 1395      | 38             |              | 2012 | 1919      | 29             | 11843        |
| 2004 | 1498      | 23             |              | 2013 | 1841      | 48             | 10395        |
| 2005 | 1614      | 30             |              | 2014 | 1746      | 28             | 10088        |
| 2006 | 1713      | 27             |              | 2015 | 1662      | 14             | 10356        |
| 2007 | 1764      | 31             |              | 2016 | 1584      | 17             | 11285        |
| 2008 | 1822      | 32             | 12327        | 2017 | 1578      | 20             | 11863        |



