



By-law

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**Unless otherwise indicated the most
recent changes to the By-law are indicated
in bold typeface.**

PART ONE – DEFINITIONS

The Board of Directors struck a By-law Task Force to review and assess the adequacy of the current Commission By-law. The By-law Task Force is charged with preparing a report for the Board of Directors with recommended changes to ensure the by-laws are current and consistent with the Commission's mandate.

The By-law Task Force presented their report and revised By-law of Part One—Definitions at the March 2025 Board meeting.

The Board approved their report and the revised by-law. While by-law revisions are traditionally highlighted in bold text, this preamble has been added to this section to denote that Part One of this By-law has been revised in its entirety.

Definitions

101

ACT means The Real Estate Trading Act.

102

ADVERTISING means any form of identification, promotion, solicitation, or representation made by or on behalf of a licensee relating to: real estate, a trade in real estate, or the provision of real estate services.

103

AGENT means a licensee who is authorized in writing to act for or represent another person in a trade in real estate.

104

AGREEMENT means a written contract between two or more parties pertaining to a trade in real estate.

105

AGREEMENT OF PURCHASE AND SALE means, where stated in this By-law, agreements of purchase and sale for real property and letters of intent, offers to lease, and lease agreements for commercial properties.

106

ASSOCIATION means the Nova Scotia Association of REALTORS®.

PART ONE – DEFINITIONS

107

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

108

AUDIT means an inspection of brokerage records.

109

AUDITOR means a person authorized by the Commission to conduct audits in accordance with the By-law and applicable Commission Policies.

110

BACKUP OFFER means a second accepted agreement of purchase and sale on a property that is already subject to an agreement of purchase and sale that is conditional on the first agreement becoming null and void.

111

BANK means a chartered bank or a credit union.

112

BRANCH OFFICE means an office licensed by the Commission as a branch 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.

113

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.

114

BROKER-MANAGED PERSONS means managing associate brokers, associate brokers, salespeople, approved sales corporations, employees, unlicensed assistants, and others who perform duties on behalf of the brokerage.

PART ONE – DEFINITIONS

115

BROKERAGE means a business organization licensed by the Nova Scotia Real Estate Commission as a brokerage, and that 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 licensees of the brokerage.

116

BROKERAGE AGREEMENT means a written agency agreement and includes the following:

- (a) Seller Brokerage Agreement;
- (b) Seller Designated Brokerage Agreement;
- (c) Buyer Brokerage Agreement;
- (d) Buyer Designated Brokerage Agreement; and
- (e) Representation Agreement.

117

BUSINESS DAYS are Monday to Friday, excluding federal, provincial, and municipal holidays in the Province of Nova Scotia.

118

BUSINESS ORGANIZATION means a corporation or an unincorporated organization, including a sole proprietorship or a partnership, that is authorized by law to carry on business in the Province.

119

BUYER means a person acquiring or attempting to acquire an interest in real estate by purchase, exchange, commercial lease, option or otherwise.

120

CLIENT means a person, as defined in the By-law, who has entered into a Brokerage Agreement to be represented in an agency relationship by a brokerage or designated agent for the purpose of a trade in real estate under the Act and By-law.

121

COMMISSION means the Nova Scotia Real Estate Commission.

PART ONE – DEFINITIONS

122

COMPLETED TRANSACTIONS means transactions are deemed to be completed when confirmation of has been received per the requirements of the Brokerage Transaction and Trust Account Policy.

123

COMMERCIAL REAL ESTATE means real estate used or intended to be used to generate income and includes real estate used for retail, office, industrial, investment, institutional purposes and residential real estate comprising more than four residential premises. For the purposes of trading under the Act, commercial real estate does not include residential property management or the leasing of residential tenancies.

124

COMMON-LAW AGENCY means a brokerage agency model under which the brokerage agreement and the agency relationship are between the brokerage and the client. All licensees of the brokerage represent all clients of the brokerage and are deemed to know all relevant information about those clients.

125

COMMON-LAW AGENT means a common law brokerage including all licensees of the brokerage.

126

COMMON-LAW BROKERAGE AGREEMENT means a brokerage agreement between a common-law brokerage and a client for the provision of real estate services.

127

CONCURRENT REPRESENTATION means a situation in which a brokerage or a designated agent represents two or more parties to a trade whose interests are in conflict.

128

CONDITIONAL LICENCE means a licence issued to an applicant that is subject to any terms and conditions imposed under the Act or the By-law that the Registrar or a Commission committee considers necessary.

129

CONFIDENTIAL INFORMATION includes any information concerning the client including, but not limited to, the client's financial or personal situation, the client's real estate and the transaction involving the client.

PART ONE – DEFINITIONS

130

CONFLICT OF INTEREST means the existence or perceived existence of a substantial risk that a licensee's loyalty to or representation of a client would be materially and adversely affected by the licensee's own interest or the licensee's duties to another client, a former client, or another person.

131

CONTINUOUS REGISTRATION means a licensee is deemed continuously licensed if they have not had a lapse in registration of more than 30 days.

132

DAY or DAYS not prefaced by "business" means consecutive calendar days including all holidays.

133

DESIGNATED AGENCY means an agency model under which the brokerage agreement is between the brokerage and the client, but the agency relationship exists only between the client and the licensee(s) designated by the brokerage in the brokerage agreement as the designated agent. Licensees of the brokerage represent only the clients for which they are the designated agent and are not privy to any information about any other clients of the brokerage.

134

DESIGNATED AGENT means the licensee or the licensees designated in the brokerage agreement by the brokerage to serve as a sole agent for a client in a trade in real estate.

135

DESIGNATED AGENCY BROKERAGE AGREEMENT means a brokerage agreement between a designated-agency brokerage and a client for the provision of real estate services.

136

EDUCATION COMMITTEE makes recommendations to the Commission Board of Directors about salesperson and broker licensing courses and continuing professional development courses.

137

EMPLOYEE, for the purposes of By-law 733 and 734, in a management capacity, means directors, officers, owners, and managers of a brokerage, including unlicensed and licensed persons. Employee, in a non-management capacity, means employees of the brokerage without management duties, including licensed and unlicensed persons.

138

EXECUTION means signing a document, such as, but not limited to, an agreement or lease.

PART ONE – DEFINITIONS

139

EXECUTED means all required signatures have been obtained on a document, such as, but not limited to, an agreement or lease.

140

FAMILY MEMBER means the family members of licensees and includes spouses, parents, parents-in-law, grandparents, siblings, step-siblings, siblings-in-law, children, step-children, grandchildren, and step-grandchildren.

141

FINANCE COMMITTEE is a committee of the Commission that makes recommendations to the Commission Board of Directors about Commission finances.

142

FORMS COMMITTEE is a committee of the Commission that makes recommendations to the Commission of Directors regarding new and existing Commission-mandated forms.

143

GIFT is something of value given as a show of appreciation or a thank you for:

- (a) doing business with a licensee; or
- (b) assisting the licensee in some manner.

A gift is not an incentive, an inducement, a referral fee or remuneration sharing.

144

IN WRITING means any permanent form of communication including a document, an electronic record, audio recording, video recording, facsimile and “written” has a corresponding meaning.

145

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

146

INDIVIDUAL means a natural person who is not a corporation and does not hold a real estate licence.

PART ONE – DEFINITIONS

147

INDUCEMENT means anything that is offered or provided by a licensee to a party to a real estate transaction and is intended to either assist or cause that party to complete a real estate transaction.

148

INVESTIGATOR means a member of the Commission staff or another person appointed by the Registrar to conduct investigations into the conduct of licensees and provide written investigation reports of their findings to the Registrar.

149

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

150

LICENSEE means a person licensed by the Commission to trade in real estate.

151

LICENSEE DATABASE means the licensing database maintained by the Commission.

152

MAIN OFFICE means the brokerage office registered with the Commission as the main office.

153

MIDNIGHT means the last moment of a given day occurring before commencement of the next day.

154

OFFER means a written Agreement of Purchase and Sale or commercial letter of intent, offer to lease, or lease agreement, or any other written offer that is executed by the offering party.

155

OPINION OF VALUE means an unbiased written report prepared by a licensee on behalf of the licensee's brokerage.

- (a) For residential properties, the report provides a suggested list price or price range of a property for a potential seller client or a suggested purchase price or price range of a property for a potential buyer client.
- (b) For commercial properties, the report provides a suggested lease or list price for a commercial landlord or a suggested purchase or lease price for a commercial tenant.

PART ONE – DEFINITIONS

(c) An opinion of value is determined by one of the following methods:

- (i) comparative market analysis;
- (ii) cost approach; or
- (iii) income approach.

156

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

157

PERSONAL INFORMATION means factual or subjective information, recorded or not, about an identifiable individual, including:

- (a) the individual's name, address or telephone number;
- (b) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations;
- (c) the individual's age, sex, sexual orientation, marital status or family status;
- (d) an identifying number, symbol or other particular assigned to the individual;
- (e) the individual's fingerprints, blood type or inheritable characteristics;
- (f) information about the individual's health-care history, including a physical or mental disability;
- (g) information about the individual's educational, financial, criminal or employment history;
- (h) anyone else's opinions about the individual;
- (i) the licensee representing the individual; and
- (j) the individual's personal views or opinions, except if they are about someone else.

158

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

159

REAL ESTATE means land and any permanent structures, like a building, or improvements attached to the land, whether natural or man-made.

PART ONE – DEFINITIONS

160

RECORDS means books, documents, papers, notices, waivers, agreements, acknowledgements, disclosures, files, communications, correspondence, accounting records and any other information or data that is recorded, stored or retained by any means or device including electronic means.

161

REMUNERATION, per by-law 768, includes any form of remuneration paid to a licensee in the course of business, including any commissions, fees, or other items of monetary value.

162

RESPONDENT means a licensee or a former licensee who is subject of an investigation under Part 8 of this by-law.

163

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.

164

RESTRICTED LICENCE means a licence issued to an applicant with restrictions that limit the scope of practice imposed under the Act or the By-law that the Registrar or Commission Committee considers necessary.

165

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

166

SELLER means a person attempting to dispose or disposing of an interest in real estate by sale, exchange, commercial lease, option or otherwise.

167

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

168

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

PART ONE – DEFINITIONS

169

SPOUSE, for the purposes of by-law 140, means a person who is married to or living and cohabiting with a licensee in a marriage-like relationship.

170

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

171

TRANSACTION BROKERAGE means a relationship in which a brokerage or designated agent provides facilitation services to more than one client in the same trade.

172

TRANSACTION BROKERAGE AGREEMENT means a written service agreement between a brokerage or designated agent and more than one client to the same trade which sets out the terms and conditions under which the brokerage or designated agent will provide facilitation services to those clients in that same trade.

173

TRANSACTION FACILITATOR is a brokerage or a designated agent who has been engaged under a Transaction Brokerage Agreement to provide facilitation services to more than one client in the same trade.

174

TRUST ACCOUNT means an account or accounts in a bank located in the province of Nova Scotia that is maintained in accordance with the Act and the By-law into which trust funds to a trade in real estate are deposited, held, and disbursed on behalf of brokerage clients and unrepresented parties.

175

UNLICENSED ASSISTANT means an assistant of a licensee who is not licensed to trade in real estate and performs only duties on behalf of the licensee that do not require a real estate licence.

176

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

PART ONE – DEFINITIONS

177

UNPROFESSIONAL CONDUCT includes conduct that:

- (a) is harmful to the best interests of the public, licensed persons or the Commission;
- (b) is fraudulent;
- (c) breaches the Act, the regulations, the by-laws or policies, or any terms and conditions to which the licensee is subject;
- (d) fails to comply with any order or direction from the Discipline Committee or the Registrar;
- (e) demonstrates a lack of knowledge, skill or judgment, a disregard for the best interests of the public, or that demonstrates the licensee's ungovernability; or
- (f) is conduct in a licensee's private capacity that brings or may bring the reputation of the profession into disrepute or which may reflect adversely on the licensee's integrity, competence or fitness.

178

UNREPRESENTED PARTY means a party to a trade in real estate who has chosen to forego agency representation and is not a client of a brokerage or a designated agent for a trade in real estate.

PART TWO – COMMISSION ADMINISTRATION

Commission Administration

These by-laws are made pursuant to section 8 of the Act.

Rules of Order

201

Except where specifically outlined in the Act, the Regulations, the By-law or the Policies, Robert's Rules of Order apply to all meetings of the Commission.

The Commission

202

The Commission, is responsible for:

- (a) the general administration of the Act, the Regulations, and all matters related to the administration of the By-law;
- (b) establishing standards for applicants and licensees in the real estate industry, which will promote high standards of professionalism, competence and integrity for the protection of consumers; and
- (c) the creation of policies that support the efficient administration of the Act, the Regulations and the By-law, in the public interest.

Board of Directors

203

The Commission may also be referred to as the Board of Directors, and when so acting they have all of the authority, rights and obligations of the Commission under the Act, the Regulations, the By-law and the Policies.

Conduct of a Member of the Commission

204

In carrying out the responsibilities of the Commission, a member of the Commission must:

- (a) act at all time in the public interest in carrying out their responsibilities under the Act, the Regulations, the By-law and the Commission Policies; and
- (b) comply with the Nova Scotia Real Estate Commission Code of Conduct.

PART TWO – COMMISSION ADMINISTRATION

Confidentiality

205

- (a) Every person appointed pursuant to the Act, authorized to do anything pursuant to the Act or employed in the administration of the Act must 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) must not disclose or communicate any of the matters mentioned in subsection (a) to any person except:
 - (i) as required in connection with the administration of the Act, the Regulations, the By-law, the Policies or any proceedings pursuant to the Act, the Regulations, the By-law or the Policies;
 - (ii) to one's own legal counsel or legal counsel for the Commission, or to a Hearing Panel of the Commission;
 - (iii) with the written consent of the person to whom the information relates; or
 - (iv) as otherwise required by law.
- (c) No person described in subsection (a) is 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, the By-law or the Policies.
- (d) Notwithstanding subsections (a) and (b), the Commission or Registrar may publish or make available to the public any material and/or information obtained pursuant to the Act when the Commission or the Registrar is of the opinion that it is in the public interest to do so.

Commission Appointments

206

In accordance with section 7(1) of the Act, Commission members are elected or appointed as follows:

- (a) three members who are not licensed persons, appointed by the Governor in Council;
- (b) three licensed members elected by the licensed individuals;
- (c) a licensed member representing the commercial sector appointed by the Commission in accordance with the By-law;
- (d) three licensed members appointed by the Association; and
- (e) the Registrar as a non-voting member.

PART TWO – COMMISSION ADMINISTRATION

Qualification for Licensed Members of the Commission

207

To be eligible to serve as a member of the Commission, a licensee must:

- (a) hold a valid real estate licence;
- (b) not have been convicted of an offence pursuant to the Act, the Regulations, or the By-law resulting in
 - (i) a disciplinary suspension within the past 10 years; or
 - (ii) a disciplinary 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.

- (c) not be a director, officer, board member or employee of another real estate organization whose role is to defend the interests of the industry.

Procedures for the Election of Members of the Commission

208

The election of members of the Commission pursuant to section 7(1)(b) of the Act is to be conducted as follows:

- (a) all elected members of the Commission pursuant to 7(1)(b) of the Act must be licensees;
- (b) all licensees are entitled to vote for the election of a licensee as a member of the Commission;
- (c) members of the Commission are elected for a term not exceeding three (3) years and serve no more than two (2) consecutive terms;
- (d) on or before sixty (60) days prior to the Annual General Meeting, the Commission will make available to all licensees, a nomination form and a notice requesting that the nomination of licensees for election as members of the Commission be received at the office of the Commission no later than thirty (30) days prior to the Annual General Meeting;
- (e) the nomination of a licensee for election as a member of the Commission must be in writing on the form approved by the Commission and signed by ten (10) licensees, none of whom is the nominee, and must be received at the office of the Commission no later than thirty (30) days prior to the Annual General Meeting;

PART TWO – COMMISSION ADMINISTRATION

- (f) two (2) business days after the last day for the receipt of nominations, the Commission will make available to all licensees a list of nominees;
- (g) brokerages and approved sales corporations are not eligible to vote in the election;
- (h) election is by electronic ballot unless otherwise required;
- (i) the election process is managed by the Registrar;
- (j) the nominee with the greatest number of votes cast by voting delegates will be declared elected;
- (k) the date of the election of a member of the Commission will commence at least three (3) business days before and close one (1) day before the Commission Annual General Meeting; and
- (l) in the event of a tie, the Chair or the Vice-Chair of the Commission will draw at random from paper ballots inscribed with the names of the tied candidates, one of the candidates' names. The Chair or the Vice-Chair of the Commission will declare the person whose name appears on the ballot drawn as the elected member of the Commission.
- (m) where an elected member ceases to be a member for any reason prior to the expiration of that member's term of office, their vacancy will be filled by a special election. Where the vacancy occurs after January 1 of the year in which the member's term ends, the election may be held in conjunction with the annual election.

Procedures for Appointed Members of the Commission by the Association

209

- (a) All Association-appointed members of the Commission must be licensees.
- (b) Appointments may be submitted by the Association in a format approved by the Commission.
- (c) Appointments will be announced at the Annual General Meeting.
- (d) Members of the Commission are appointed for a term not exceeding three (3) years and must serve no more than two (2) consecutive terms.
- (e) Brokerages and approved sales corporations are not eligible for appointment.
- (f) When an appointed member of the Commission is unable to complete their term, the Association will be asked to appoint another licensee to serve the remainder of the term.

PART TWO – COMMISSION ADMINISTRATION

Procedures for Appointments of Licensed Members of the Commission Representing the Commercial Committee

210

- (a) All Commercial-Committee appointed members of the Commission must be licensees.
- (b) Recommendations for appointment may be received from the Commission's Commercial Committee.
- (c) Appointments will be announced at the Annual General Meeting.
- (d) Members of the Commission are appointed for a term not exceeding three (3) years and serve no more than two (2) consecutive terms.
- (e) Brokerages and approved sales corporations are not eligible for appointment.
- (f) When an appointed member of the Commission is unable to complete their term, the Commission will request the Commercial Committee recommend a licensee to replace the resigning member. If approved by the Commission, the recommended licensee will be appointed to serve the remainder of the term.

Procedures for Appointed Public Members of the Commission

211

- (a) Public members are appointed by the Governor in Council for a term not exceeding three (3) years and must serve no more than two (2) consecutive terms.
- (b) The appointment will be announced to licensees when known.
- (c) Licensees are not eligible for appointment.
- (d) When an appointed member of the Commission is unable to complete their term, the Commission will request that the Governor in Council appoint another unlicensed person to serve the remainder of the term.

Assuming Office by Members of the Commission

212

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

Resignation of Members of the Commission

213

In the event a member of the Commission resigns, the member must provide the Chair of the Commission with written notice of their resignation and effective resignation date. If the

PART TWO – COMMISSION ADMINISTRATION

commission does not receive the resignation date in writing, the resignation will be deemed effective the date resignation was communicated to the Chair.

Removal from the Commission

214

A member of the Commission ceases to be a member of the Commission if they:

- (a) are a licensee member and cease to hold a valid real estate license, with the exception of movement of a licence from one brokerage to another for a period not to exceed seven days;
- (b) declare bankruptcy;
- (c) are convicted of a summary conviction or indictable criminal offence;
- (d) are convicted of an offence pursuant to the Act, By-law or Regulations;
- (e) are found to have breached the Nova Scotia Real Estate Commission Code of Conduct; or
- (f) miss two consecutive meetings or three meetings within a 12-month period without reasonable justification.

Appointment of Chair and Vice-Chair

215

At the next Commission meeting following the Annual General Meeting, the Commission will elect from their number a Chair and Vice-Chair as their first order of business.

216

In accordance with the Chair's Terms of Reference, the Chair presides at all meetings of the Commission and the Executive Committee. In addition, the Chair performs other duties as assigned to them by the Commission.

217

The Vice-Chair performs the duties and exercises the powers of the Chair in the event of the Chair's absence or inability to act in the Chair capacity. In addition, the Vice-Chair performs such other duties as may be assigned to them by the Commission.

218

In the event that the position of Chair or Vice-Chair becomes vacant at any time, the Commission will elect a successor, by majority vote, from the Commission as soon as practical, but no later than its next regularly scheduled meeting.

PART TWO – COMMISSION ADMINISTRATION

Appointment of Executive Committee

219

The Chair and Vice-Chair are the Chair and Vice-Chair of the Executive Committee. The Chair and Vice-Chair will appoint two (2) additional Commission members to the Executive Committee, one of which must be a public appointee. The Registrar attends Executive Committee meetings at the discretion of the Executive Committee.

Appointment and Duties of the Registrar

220

Pursuant to Section 10 of the Act, the Commission will appoint a Registrar, who may also be referred to as the Executive Director. The Registrar:

- (a) has all of the authority, rights and protections of the Registrar under the Act and By-law;
- (b) is appointed as the second signing authority for all cheques, notes, contracts, and negotiable instruments, if necessary;
- (c) is the Secretary-Treasurer of the Commission;
- (d) may attend all meetings and keep a record of all proceedings of the Commission and its committees;
- (e) makes recommendations to the Commission when appropriate;
- (f) administers the operational affairs of the Commission; and
- (g) carries out other duties as may be prescribed by the Commission.

Execution of Documents

221

Pursuant to the Act, the Registrar has authority to sign documents on behalf of the Commission, including those 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 or any matter pertaining to Registrar's authority in the By-law.

Meetings

222

- (a) The Chair may call a meeting of the Commission at any time with 10 days' notice. Every Member of the Commission will be sent written notice of every meeting of the Commission by email or letter. The Commission may meet at any time without notice provided that a quorum of the members of the Commission waive notice of the meeting.

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- (b) Any three members of the Commission may, with 10 days written notice by email or letter to the Chair, call a meeting of the Commission.
- (c) Pursuant to Section 7(10) of the Act, a quorum is any six members of the Commission.
- (d) A majority vote is a majority of those present who are eligible to vote.

Remuneration and Reimbursement for Expenses

223

The members of the Commission will receive remuneration in accordance with the Policies.

Committees and Task Force Appointments

224

- (a) At or before the first regular quarterly meeting of the Commission following the Annual General Meeting, the Chair will appoint the standing committees and task forces of the Commission in consultation with the Executive Committee and the Registrar for approval by the Commission.
- (b) The Chair of the Commission will appoint from the Commission members, a chair of each standing committee.
- (c) Standing committee chairs will report the business of their committee at each Commission meeting.
- (d) Task force chairs will report to the Commission or the Registrar as required, based on requests made by the Commission and after the completion of their task(s).

Committee and Task Force Member Eligibility for Licensees

225

To be eligible to serve on a Commission Committee or Task Force, a licensee must:

- (a) hold a valid real estate license;
- (b) not have been convicted of an offence pursuant to the Act, the Regulations, or the By-law resulting in:
 - (i) a disciplinary suspension within the past 10 years; or
 - (ii) a disciplinary 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.

PART TWO – COMMISSION ADMINISTRATION

(c) not be a director, officer, board member or employee of another real estate organization whose role is to defend the interests of the industry.

Committee Appointment Terms

226

(a) Committee appointments are for a term of one (1) year, however, The Commission, in its discretion may change the committee structure or remove a committee member at any time.

(b) When a term is completed, a committee member may be reappointed at the discretion of the Commission.

Conduct of Committee and Task Force Members

227

A member of a committee or task force must:

(a) comply with the Nova Scotia Real Estate Commission Code of Conduct; and

(b) act at all times in the public interest in carrying out their responsibilities under the Act, the Regulations, the By-law and the Commission Policies.

227A

The Licensing Committee Chair may appoint a subcommittee and empower the subcommittee to hear any review of a decision as set out in section 14 of the Act.

227B

The Discipline Committee Chair may appoint a subcommittee and empower the subcommittee to assess Recovery Fund claims and order payments as set out in section 41 of the Act.

Appointment of Staff

228

The Commission may contract with parties or individuals for the provision of administration, consultation, clerical, equipment or other 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.

Immunity

229

No action lies or can be instituted against:

(a) the Commission, or any member of the Commission; or

PART TWO – COMMISSION ADMINISTRATION

(b) any person or employee 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, the By-law, the Policies or in the carrying out or supposed carrying out of any decision or order made pursuant to the Act, the Regulations or the By-law or any duty imposed by the Act, the Regulations, the By-law, or the Policies.

Banking, Operational, and Financial Dealings of the Commission

230

The Chair or the Vice-Chair and the Registrar, 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.

231

Approved contracts, documents or any like instruments, in the normal course of the Commission's business, valued at no more than \$5,000, may be signed by the Chair, the Vice Chair, or the Registrar.

232

The functions, powers and duties of the Chair or Vice-Chair, including the power to serve as a signing officer may be delegated, in writing, to other members of the Commission.

Application of the Funds of the Commission

233

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

Fiscal Year and Annual Audit

234

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

235

The Commission requires an annual audited financial statement.

Annual General Meeting

236

An Annual General Meeting of licensees must be held, within four (4) months of the end of the fiscal year, at a time and place to be fixed by the Commission. The Commission will report on the

PART TWO – COMMISSION ADMINISTRATION

activities of the past year, announce new members of the Commission and conduct such other business as set out in the notice of meeting.

237

All licensees are entitled to fourteen (14) days' notice of the Annual General Meeting. A notice to an approved sales corporation will be served upon the responsible licence holder.

238

Notice of the Annual General Meeting must include the meeting agenda.

The Register

239

The register must contain a list of all current licensees, their office address, email address and telephone numbers.

Emergency Circumstances

240

The Commission may extend or vary the time for doing, or manner of performing, any requirement under this By-law, if the Commission determines it necessary as a result of emergency circumstances. Emergency circumstances may include, but not be limited to, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, epidemics, pandemics, quarantines, and interruptions, and states of emergency or other actions of government. As much notice as possible, given the circumstances, must be provided to licensees of any change which could impact their rights and obligations under the By-law.

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

Recovery Fund Minimum

241

Should the minimum amount of the Real Estate Recovery Fund specified in the Regulations be deemed insufficient by the members of the Commission to ensure adequate compensation from the payment of claims from fraud or breach of trust by a licensee, the members may set a higher amount.

PART THREE – LICENSING

Classes of Licence

301

For the purposes of the Act and the By-law there are the following classes of licences:

- (a) brokerage;
- (b) branch office;
- (c) broker;
- (d) managing associate broker;
- (e) associate broker;
- (f) salesperson; and
- (g) approved sales corporation

302

A brokerage is a business organization that:

- (a) is licensed by the Commission as a brokerage and is authorized to trade real estate in Nova Scotia as a brokerage;
- (b) advertises or holds itself out as a real estate brokerage to the public;
- (c) is managed by a broker licensed with the brokerage; and
- (d) in accordance with by-law 701(c) a designated-agency brokerage with a broker who conducts trades in real estate must have a managing associate broker licensed with the brokerage.

303

A branch office is an office that:

- (a) is licensed by the Commission as a branch office.
- (b) other than the main brokerage office location;
- (c) of a permanent nature where licensees display signage and conduct business; and
- (d) includes satellite offices, kiosks, and project offices.

304

A broker is an individual who:

PART THREE – LICENSING

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

305

A managing associate broker is an individual who:

- (a) is licensed as a managing associate broker by the Commission;
- (b) is employed by or associated with a licensed brokerage in Nova Scotia; and
- (c) is licensed with and authorized to operate and/or manage a brokerage under the supervision of a broker and trade in real estate on behalf of that brokerage.

306

An associate broker is an individual who:

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

307

A salesperson is an individual who:

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

308

An approved sales corporation is a business organization that:

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

PART THREE – LICENSING

Issuing of Licence

309

- (a) The Registrar will issue a licence to each brokerage, branch office, 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 Registrar will issue a conditional licence subject to the requirements set out in the Audit Policy for first-time brokers. The Commission will conduct audits in accordance with the Audit Policy and upon satisfying the audit requirements, the conditions will be removed. The audit schedule may be adjusted at the discretion of the Registrar.

Temporary or Conditional Licence

310

- (a) The Registrar may, at the time 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 By-law, but the Registrar determines it is in the public interest to do so.
- (c) A temporary licence granted under this By-law may be issued for a period of time prescribed by the Registrar, but the term must not exceed eight months.

Licence Eligibility

311

Applicants for licensing must be:

- (a) at least nineteen (19) years of age;
- (b) able to legally work in Canada;
- (c) of good character; and
- (d) proficient in the English language.

Criminal Record Checks

312

- (a) The following individuals must provide a criminal record check acceptable to the Commission, no older than six months, when they apply to be licensed:
 - (i) first-time salesperson applicants;

PART THREE – LICENSING

- (ii) first-time associate broker, managing associate broker, and broker applicants; and
- (iii) licensees who are unlicensed for more than 90 days.

(b) The Commission will deal with any information received pursuant to 312(a) in accordance with the Commission's Criminal Record Policy.

Requirements for a Brokerage Licence

313

A business organization applying for a licence as a brokerage must:

- (a) have the brokerage name approved by the Registrar prior to application;
- (b) register the brokerage with the Registry of Joint Stocks;
- (c) establish an interest-bearing trust account with a financial institution in the province of Nova Scotia;
- (d) maintain a service address for the brokerage in the province of Nova Scotia; and
- (e) have the brokerage signage approved by the Registrar. The signage must:
 - (i) show the brokerage's name as it appears on the licence;
 - (ii) conform with municipal regulations; and
 - (iii) be distinctive from that of existing signage of other brokerages.

Requirements for a Branch Office licence

314

All branch offices must be licensed with the Commission. A branch office application must:

- (a) have the written authorization of the broker; and
- (b) the office location must comply with municipal requirements.

Requirements for a Broker/ Managing Associate Broker / Associate Broker Licence

315

An individual applying for a broker, a managing associate broker or associate broker licence must have:

- (a) completed the Nova Scotia broker licensing course or had equivalent education approved by the Commission;
- (b) successfully challenged the broker licensing exam;
- (c) three years' experience as a licensed salesperson; and

PART THREE – LICENSING

- (d) 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
- (e) conducted a minimum of 10 commercial real estate transactions; or
- (f) equivalent experience approved by the Commission.

Requirements for a Salesperson Licence

316

An individual applying for a salesperson licence must have:

- (a) completed the Nova Scotia salesperson licensing course or had 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.

Successful Completion of the Licensing Courses

317

A student of the Nova Scotia Broker Licensing Course or the Nova Scotia Salesperson Licensing Course is deemed completed when the Commission receives notification from the NSAR that the course is completed.

Procedures for the Nova Scotia Salesperson Examination

318

- a) **Students of the Nova Scotia Salesperson Licensing Course must comply with the requirements of the NSREC Exam Rules for writing the Nova Scotia Salesperson Examination.**
- b) **International applicants who have been approved by the Commission to challenge the Salesperson Examination must comply with the requirements of the NSREC Exam Rules for writing the Nova Scotia Salesperson Examination.**
- c) **The pass mark for the Nova Scotia Salesperson Examination is a minimum of 70.4%.**

Procedures for the Nova Scotia Broker Examination

319

- (a) The exam procedures for students of the Nova Scotia Broker Licensing Course are:
 - (i) Exam registration—The examination registration will be accepted only after the NSAR has notified the Commission that the course is complete.

PART THREE – LICENSING

- (ii) Required notice—Registration for the examination must 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.
- (iii) Notification—Upon being accepted for examination, students will be advised concerning the exact place of the examination, the starting hour and the length of the examination period.
- (iv) Identification—Government issued photo ID is required by the examiner to prove identification of the person challenging the exam.
- (v) 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, result in the forfeit of the examination fee.
- (vi) Pass mark—the minimum passing grade on the broker exam is 70 per cent.
- (vii) Supplemental exams—A student may write one supplemental exam after failing their initial examination. A student that fails the exam twice must wait one year from the date the student finished the licensing course before being eligible to retake the licensing course.

(b) The exam procedures for international applicants who have been approved by the Commission to challenge the Nova Scotia Broker Exam are subsection (a) (ii) through (vii).

Licensing Examination Dates

320

Examination dates will be scheduled as prescribed by the Commission. Applications to write must be made by submitting the appropriate form and fees.

Qualifying Period for Examinations and First-Time Licensing

321

- (a) A student who has completed the salesperson licensing course or broker licensing course must successfully challenge the exam within twelve months of completion of the course.
- (b) Should a student 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) A student who has successfully challenged the salesperson licensing exam or broker licensing exam must apply for the respective licence within 180 days of passing the exam.
- (d) Should an individual fail to become licensed within 180 days of passing the exam, they must write and pass the exam again before they are eligible to apply for a licence. If the student does not become licensed within 180 days of passing the supplemental exam, they are no longer eligible for licensing.

PART THREE – LICENSING

Continuing Professional Education

322

- (a) All licensees must complete the annual continuing professional education requirements prescribed by the Commission for their licence by June 15th of each year.
- (b) Should a licensee fail to complete the requirements, their licence will not be renewed until proof that the requirements have been met is provided to the Registrar.
- (c) Upon receipt of a licensee's written application and upon payment of a fee pursuant to By-law 402, the Registrar may grant one 30-day extension beginning July 1st for completion of the continuing professional education requirements.
- (d) A person licensed between July 1st and December 31st must complete the mandatory course.
- (e) A person licensed between January 1st and June 30th is not required to complete any continuing professional education for that licensing cycle.

Errors and Omissions Insurance

323

- (a) All licensees are required to maintain ongoing coverage under the errors and omissions insurance policy administered by the Nova Scotia Association of REALTORS® (NSAR).
- (b) The Registrar will immediately suspend the licence of a licensee, upon notice by the NSAR, that a licensee has failed to:
 - (i) pay the annual premium;
 - (ii) pay the deductible required, on notice from the NSAR, when called for as part of a claim; or
 - (iii) complete all required training related to the errors and omissions program;

Once the requirements have been met, the licensee may apply, in a form and manner prescribed by the Registrar, to have their licence reinstated.

Naming an Approved Sales Corporation

324

An approved sales corporation must 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.

PART THREE – LICENSING

Requirements for an Approved Sales Corporation Licence

325

A person applying for an approved sales corporation licence must:

- (a) have the approved sales corporation name approved by the Commission;
- (b) register their approved sales corporation with the Registry of Joint Stock Companies;
- (c) provide to the Registrar:
 - (i) 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;
 - (ii) 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 is responsible for any trade by the approved sales corporation;
 - (iii) its registered office and all offices where it will conduct business;
 - (iv) a list of the names and addresses of all legal and beneficial holders of all shares of the approved sales corporation; and
 - (v) a list of the names and addresses of all officers and directors of the approved sales corporation.

Restrictions on Trade by Approved Sales Corporation

326

A trade for an on behalf of an approved sales corporation may 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 responsible licence holder for the approved sales corporation in accordance with the Act and By-laws.

Advertising an Approved Sales Corporation

327

An approved sales corporation must not be identified in any advertising unless the advertising indicates the name of the brokerage as advertiser and is approved by the Registrar.

PART THREE – LICENSING

Licensing from Other Canadian Jurisdictions

328

- (a) 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; and
 - (iii) a signed Out of Jurisdiction Certification form.
- (b) 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:
 - (i) a licensing and discipline history acceptable to the Commission;
 - (ii) a current criminal record check acceptable to the Commission; and
 - (iii) a signed Out of Jurisdiction Certification form.

Licensing from Outside Canadian Jurisdictions

329

- (a) To be eligible for licensing in Nova Scotia, a licensee from outside Canada must be transferring from a regulated jurisdiction with an occupational standard. This means the jurisdiction has pre-licensing education, an entrance exam, legislation that sets out standards of practice for the profession, mandatory continuing education, and is governed by a regulatory body.
- (b) An applicant for licensing as a broker, managing associate broker or associate broker who is presently licensed as a broker outside Canada in a qualifying jurisdiction or who was licensed as a broker within the preceding year in a qualifying jurisdiction must successfully challenge the Commission's jurisprudence exam and provide the Commission with:
 - (i) a licensing and discipline history acceptable to the Commission;
 - (ii) a current criminal record check acceptable to the Commission; and
 - (iii) a signed Out of Jurisdiction Certification form.
- (c) An applicant for licensing as a salesperson who is presently licensed as a salesperson in a qualifying jurisdiction or who was licensed as a salesperson within the preceding year in a qualifying jurisdiction must successfully challenge the Commission's jurisprudence exam and provide the Commission with:

PART THREE – LICENSING

- (i) a licensing and discipline history acceptable to the Commission;
- (ii) a current criminal record check acceptable to the Commission; and
- (iii) a signed Out of Jurisdiction Certification form.

Reinstating Licence

330

- (a) An applicant for licensing who was previously licensed in Nova Scotia within the preceding two (2) years prior to the date of application is eligible for reinstatement provided the applicant has:
 - (i) satisfied any disciplinary decisions to which they were subject;
 - (ii) no outstanding investigations/disciplinary matters or audits to which they were subject; and
 - (iii) completed all required continuing professional education courses;
- (b) Previously licensed individuals that do not reinstate their licence within two years of their last termination date are not eligible to apply for a licence unless they have:
 - (i) satisfied any disciplinary decisions to which they were subject;
 - (ii) no outstanding investigations/disciplinary matters or audits to which they were subject; and
 - (iii) completed the salesperson licensing course and successfully challenged the salesperson licensing exam;

After which they are considered a first-time applicant and may apply for a salesperson's licence.

Changing Licensing Class

331

- (a) A licensee who holds:
 - (i) a broker licence is deemed qualified to hold a managing associate broker or associate broker licence;
 - (ii) a managing associate broker licence is deemed qualified to hold a broker or associate broker licence; and
 - (iii) an associate broker licence is deemed qualified to hold a broker or managing associate broker licence.

PART THREE – LICENSING

(b) A licensee 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 licence as a broker, a managing associate broker or an associate broker licence.

Renewing Broker and Brokerage Licences

332

Brokers are responsible for renewing their broker licence, the brokerage licence, and any branch office licences by June 30th of each year. Licence renewal applications and fees must be submitted to the Commission in a form and manner prescribed by the Registrar.

333

A broker will not be permitted to renew the brokerage licence unless all administrative fees or penalties or other outstanding fees have been received and accepted by the Commission prior to the renewal deadline.

Renewing Managing Associate Broker, Associate Broker, Salespeople, and Approved Sales Corporation Licences

334

Managing associate brokers, associate brokers, salespeople, and approved sales corporation licence holders are responsible for renewing their licence(s) by June 30th of each year. Licence renewal applications and fees must be submitted to the Commission in a form and manner prescribed by the Registrar.

Licence Expiry

335

Unless terminated, suspended or cancelled earlier, every licence expires at 11:59 p.m. on June 30th next following the date of issuance.

Falsifying Information in the Licensing Process

336

- (a) Repealed.
- (b) Submitting false information in the course of applying for a licence is an offence under this by-law, and may result in the refusal of the application, disciplinary proceedings and/or the suspension or cancellation of any licence issued thereupon.

PART THREE – LICENSING

Licensing Applications

337

- (a) All applications for licensing must be completed by every applicant on a form designated by the Commission.
- (b) Applicants must use their full, legal name on applications. Applicants for salesperson, associate broker, managing associate brokers and brokers may provide a nickname to use in place of their given (first) name, if they wish to use the nickname in their promotional materials and advertising.

338

The following licensing forms are approved by the Commission:

- (a) Brokerage Licence Application
- (b) Branch Office Licence Application
- (c) Broker/ Managing Associate Broker Licence Application
- (d) Salesperson/ Associate Broker Licence Application
- (e) Approved Sales Corporation Licence Application
- (f) 30-Day Licence Extension
- (g) Schedule A (to form part of all new applications)
- (h) Schedule B (to form part of all reinstatements over 30 days)
- (i) Credit Card Authorization
- (j) Out of Jurisdiction Certification
- (k) Licence Reinstatement (reinstatements under 30 days)
- (l) Notice of Termination
- (m) Exam Application

Licensing Fees

339

All applications for licensing must be accompanied by the applicable fees in a form and manner prescribed by the Registrar and as outlined in Part Four of this By-law.

PART THREE – LICENSING

Maintenance of Licence

340

No licensee may engage in any conduct which, in the opinion of the Registrar, would interfere with their ability to carry out the responsibilities of a licensee, which would harm the reputation of, or the public trust in, the real estate industry in Nova Scotia or which would otherwise lead to the conclusion that their continued licensing, without action by the Commission, would be contrary to the public interest.

Notice of Termination

341

The Registrar will terminate a licence when given notice in a form and manner prescribed by the Registrar, by a:

- (a) broker, managing associate broker, associate broker, salesperson, or approved sales corporation who is terminating their representation of a brokerage; or
- (b) a brokerage terminating a broker's, managing associate broker's, associate broker's salesperson's, branch's or approved sales corporation's representation of that brokerage.
- (c) Where a brokerage terminates the representation of a licensee, written notice must be provided to the licensee.

Authorization of Registrar

342

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
- (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

343

Upon reasonable demand by the Board of Directors, the Registrar will provide the Board with a list of all licensees and details of all licences issued or denied under the authority delegated to the Registrar.

PART THREE – LICENSING

Refusal to Licence or Reinstate Licence

344

The Registrar may refuse to issue a licence to an applicant where the Registrar has formed the opinion that it would not be in the public interest to license that applicant. This may include, but not be limited to any of the following:

- (a) the applicant has provided false or misleading information to the Registrar in the course of applying for a licence;
- (b) where there are outstanding judgements against the applicant, without there being reasonable arrangements in place to satisfy them;
- (c) bankruptcy, insolvency, or receivership proceedings;
- (d) criminal investigations, charges, or criminal proceedings; or
- (e) active civil proceedings when the applicant is the defendant and the statement of claim alleges misrepresentation, theft, fraud, breach of trust or fiduciary duties in the provision of goods or services.

Notification to Applicant of Licence Refusal and Right of Review

345

- (a) Where the Registrar refuses an application for a licence or reinstatement of a licence, the Registrar will notify the applicant in writing.
- (b) The refusal letter must include:
 - (i) the reasons for the Registrar's decision;
 - (ii) an indication of the applicant's right to a review of the decision by the Licensing Committee; and
 - (iii) an indication that the applicant may exercise their right to such a review by informing the Registrar within 30 days of the date of the refusal letter.
 - (iv) a copy of Part Three of this Bylaw related to licence reviews.
- (c) If an applicant exercises their right to a review of the Registrar's decision under this Bylaw, then the Registrar's decision is not final until the Committee has rendered its decision under subsection 356, and no further review is requested under subsection 357.

PART THREE – LICENSING

Requesting the Review

346

- (a) In order to request a review, the applicant must, within 30 days of the date of the refusal letter, submit a written request to the Chair of the Licensing Committee, for a review of the Registrar's decision by the Licensing Committee.
- (b) The applicant's request for review must outline the basis for the review and any new information the applicant wishes the Committee to consider.
- (c) The request for review, and any new information provided by the applicant, will be copied to the Registrar. The Registrar will provide the Chair with a copy of the refusal letter which was sent to the applicant.

Licence Review Panel

347

- (a) The Chair of the Licensing Committee will appoint a Review Panel of not less than three Committee members to consider the application for review of the Registrar's decision to refuse a licence or refuse a reinstatement of a licence. (The "Review Panel".)
- (b) The Chair of the Licensing Committee will appoint one of those members to be the Chair of the Review Panel.
- (c) No one who acted as a decision-maker in reaching the original licensing decision may serve on the Review Panel.
- (d) Licensing Committee members are required to receive training on the conducting of a review, prior to participating on a Review Panel.

348

Upon their appointment, the Review Panel will be provided with:

- (a) the request for review;
- (b) any further information provided by the applicant; and
- (c) the Registrar's refusal letter.

349

The Review Panel will set its own procedures for conducting the review and may request any other information they consider relevant from the applicant, the Registrar, or from third parties.

PART THREE – LICENSING

Scheduling the Review

350

- (a) The review must take place within a reasonable time frame, and if possible, within 60 days of the Panel's receipt of the request for review.
- (b) An applicant may choose to appear before the Review Panel in person. Such an appearance may be effected through a virtual process, if determined appropriate by the Panel.
- (c) If an applicant chooses to appear before the Review Panel in person, a date for the appearance will be set by the Review Panel after consultation with the applicant and the Registrar.

Written Submissions

351

The parties have the right to provide written submissions to the Review Panel, in such form, manner, and timing as directed by the Review Panel.

352

Unless otherwise directed by the Review Panel, if the parties are appearing before the Review Panel:

- (a) any written submissions by the applicant must be made at least 20 days before the appearance before the review panel; and
- (b) any written submissions by the registrar must be made at least 10 days prior to the appearance before the review panel.

353

The Review Panel may, at any time, request further information or submissions, if they consider it necessary in order to render a decision.

The Review

354

The Review Panel must review all submissions and additional information provided by the Parties.

355

If an appearance before the Review Panel has been requested by the applicant:

- (a) both parties will have the opportunity to appear, with or without legal counsel.

PART THREE – LICENSING

- (b) unless otherwise directed by the review panel, the party's submissions to the review panel must be confined to those set out in the documents and submissions provided in advance of the hearing.
- (c) the review panel may request further information from either party.

The Review Decision

356

- (a) After considering the submissions of the parties, the Review Panel may confirm the Registrar's decision or direct that the Registrar issue a licence to the applicant in a manner the Review Panel considers appropriate. The Panel may require terms, conditions, or restrictions be imposed on the applicant's licence as a condition of being licensed.
- (b) A decision under subsection (a) must be reached within 15 days of the last date the parties appear in front of the Review Panel, or the date of the final written submissions of the parties.
- (c) The review decision must be provided in writing, to both parties.
- (d) If the Review Panel directs the Registrar to issue a licence to the applicant, the Registrar must register the applicant within 14 days of the Panel's decision.

Review by the Commission

357

If the Review Panel confirms the Registrar's decision to refuse the licence, the applicant may, within 30 days of the Panel's decision, apply to the Commission to have the Panel's decision reviewed under section 14(6) of the Real Estate Trading Act. If no application for review by the Commission is submitted within 30 days, the Registrar's decision to refuse the applicant's licence becomes final.

Prosecution

358

Pursuant to Section 43 of the Act, the Commission will actively pursue the enforcement of licensing and may take such steps to encourage prosecution of unauthorized individuals trading in real estate.

Auctioneers

359

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.

PART FOUR – FEES AND REPORTING OBLIGATIONS

Fees and Reporting Obligations

New Licences

401

The licensing fees for each category of licence are as follows:

- (a) Brokerage \$435
- (b) Branch office..... \$435
- (c) Broker \$435
- (d) Managing associate broker \$435
- (e) Associate broker..... \$435
- (f) Salesperson \$435
- (g) Approved sales corporation \$435

Renewals

402

- (a) Brokerage \$385
- (b) Branch office..... \$385
- (c) Broker \$385
- (d) Managing associate broker \$385
- (e) Associate broker..... \$385
- (f) Salesperson \$335
- (g) Approved sales corporation \$385
- (h) 30-day extension for CPE requirements..... \$1,000
- (i) Any licence renewal submitted after June \$435
- (j) Any licence renewal submitted on a paper application..... \$435

403

Annual audit fees for brokerages are determined by the number of licensees registered with a brokerage as of the licence renewal notice sent to each brokerage in May of each year.

PART FOUR – FEES AND REPORTING OBLIGATIONS

- (a) Brokerages that have trust and trading activity are charged a \$400 base audit fee and \$10 per licensee.
- (b) Brokerages that do not have trust, but do have trading activity are charged a \$250 base audit fee and \$10 per licensee.
- (c) Brokerages that do not have trust and do not have trading activities are charged an audit fee of \$150.
- (d) At the direction of the Registrar, brokerages may be subject to additional audits and may be charged an audit fee in accordance with this by-law.
- (e) Brokerages that are audited as a result of investigations and disciplinary measures will be charged an audit fee in accordance with this by-law.

Review of a Registrar's Licensing Decision

404

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

Real Estate Recovery Fund Levy

405

The Real Estate Recovery Fund levy for first-time licence applications is as follows:

- (a) broker/ managing associate broker \$100
- (b) associate broker/ salesperson \$100
- (c) brokerage \$200

Transfer of Licence Fees

406

Transfer of licence from one brokerage to another:

- (a) within 30 days of termination \$200
- (b) after 30 days of termination \$385

Administrative Fees and Penalties

407

- (a) A \$50 fee will be charged for the following:

PART FOUR – FEES AND REPORTING OBLIGATIONS

- (i) the return of an NSF cheque which was payable to the Nova Scotia Real Estate Commission; **and**
- (ii) **repealed**
- (iii) the preparation of correspondence, for a licensee, outlining their licensing history in the province of Nova Scotia.

(b) When a brokerage changes its name there will be a \$100 fee charged.

(c) When a brokerage fails to provide the properly completed documentation to the compliance auditor within the timeframes requested, the brokerage may be assessed a \$100 administrative penalty.

(d) When the licence of licensee is suspended for failure to comply with an investigation or an audit, a \$400 fee will be charged to reinstate the suspended licence.

(e) When a broker fails to comply with the Brokerage Records and Production Policy, the Commission may, at the discretion of the Registrar, issue an administrative penalty. The penalty may be of an amount up to and including the annual brokerage audit fee set out in By-law 403.

408

The Commission will charge \$5/page to produce a hearing transcript.

Exam Fees

409

- (a) Exam fee \$100
- (b) Supplemental exams \$100
- (c) Examination re-mark for a second attempt
with a minimum mark of 65 per cent..... \$100

Notice of Discipline, Judgments or Bankruptcy

410

A licensee must immediately notify the Registrar, in writing, when:

- (a) the licensee is disciplined by any real estate board or association, or any professional or occupational body;
- (b) the licensee has any judgment(s) rendered against the licensee in relation to a trade in real estate, fraud or breach of trust;

PART FOUR – FEES AND REPORTING OBLIGATIONS

- (c) the licensee is the subject of any bankruptcy proceedings;
- (d) any business the licensee owns or has participated in as a director or officer, has any judgment(s) rendered against it in relation to a trade in real estate, fraud or breach of trust; or
- (e) any business owned by the licensee, or for which the licensee is a director or officer, is subject to any bankruptcy or receivership proceedings; or
- (f) the licensee is charged with or 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 points and/or monetary fines only.

Notice of Changes

411

A brokerage must immediately notify the Registrar in writing of a:

- (a) licensee changing from one office of a brokerage to another;
- (b) change in the address, phone numbers or email address of the brokerage's main office or branch office registered with the Commission;
- (c) change in the financial institution in which the brokerage maintains a trust account;
- (d) change in the partners if the brokerage is a partnership; or
- (e) change in the directors or officers of a corporation if the brokerage is a corporation.

412

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

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

413

An approved sales corporation must, no later than five 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;

PART FOUR – FEES AND REPORTING OBLIGATIONS

- (d) a change in its officers or directors; and
- (e) any change in issued shares or of the shareholders of the approved sales corporation.

414

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.

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 Finance Committee and the Discipline Committee members for the day-to-day administration of the Fund.

Levies

503

The Commission may set Recovery Fund fees, as specified in Part Four of the By-law, in addition to licence fees for every licensee.

504

Levies assessed to licensees pursuant to section 404 of this by-law are to be paid upon application for licensing.

505

No licence will be issued to an applicant for an initial licence or a higher class of licence, if the Recovery Fund fee is not paid.

506

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

507

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

Minimum Amount of the Fund

508

The Commission may charge licensees a Special Recovery Fund Assessment if the Fund falls below the minimum set by the Regulations or the minimum set by the members of the Commission per by-laws 241 and 509, whichever is greater.

509

In accordance with by-law 241, the minimum amount of the Real Estate Recovery Fund set by the members of the Commission is \$600,000.00.

PART FIVE – REAL ESTATE RECOVERY FUND

Fund Administration

510

- (a) The Recovery Fund is administered by the Finance Committee.
- (b) The Finance Committee is responsible for overseeing the investments of the Recovery Fund.
- (c) All money credited to the Fund will be immediately deposited or caused to be deposited, separate and apart from any other money of the Commission, in an investment account in a financial institution or the investment arm of a financial institution in the Province of Nova Scotia approved by the Finance Committee.
- (d) Account fees will be paid from the income of the Recovery Fund investments. If the investment income is insufficient to pay the account fees, the fees will be paid from the Commission's general account.
- (e) Payments from the Fund will be determined by the Discipline Committee or otherwise in accordance with the by-law.

511

Signing authority for the Fund account is the same as those specified in Section 230 of this By-law.

512

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

Annual Report

513

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

- (a) a report respecting the recovery fund and all deposits made into the fund and all payments made from the fund during the previous fiscal year; and
- (b) financial statements respecting the fund for the previous fiscal year; and
- (c) such other information as the minister requires.

Application to the Fund

514

An application to the Fund made pursuant to section 41(1) of the Act must be submitted to the Registrar, who will in turn refer it to the Chair of the Discipline Committee.

PART FIVE – REAL ESTATE RECOVERY FUND

515

The Registrar may make such further inquiries and obtain such further information as necessary for proper consideration of the application.

516

The Chair of the Discipline Committee will appoint three members from the Discipline Committee to consider the application.

517

Before making a decision, the Discipline Committee in the course of investigating the claim may, in their discretion:

- (a) hear from the applicant and/or the licensee in person and/or in writing;
- (b) conduct a hearing on any matters the committee determines are necessary to make its recommendation; and
- (c) consider any further information relevant to the claim provided by the registrar.

518

Where the Discipline Committee is satisfied, on the basis of the application, that an applicant has suffered loss or damage resulting from a licensee engaging in fraud or breach of trust, the Committee may recommend to the Commission that an amount be paid to the applicant in accordance with the Act, the By-law and any related policies.

519

A decision on the application must be made in writing and provide reasons for the decision. A copy of the decision must be provided to the applicant and the licensee. Any recommendation with respect to a payment from the Fund will be placed on the agenda of the next meeting of the Commission.

520

A decision by the Discipline Committee to refuse to recommend compensation from the Fund is final and binding.

521

Any decision by the Commission to make a payment from the Fund, and the amount of such payment, is final and binding.

PART FIVE – REAL ESTATE RECOVERY FUND

522

A recommendation by a Discipline Committee pursuant to section 19(1) (g) of the Act will be directly referred to the Commission. No further application is required.

Payment of Claims

523

Payment from the Recovery Fund may be made in any amount that the Discipline Committee recommends by order, pursuant to the Act, to a person who, in the opinion of the Committee, has suffered loss or damage resulting from a licensed person engaging in fraud or breach of trust.

524

- (a) Payment from the Recovery Fund will be made when the Discipline Committee recommends that an amount be paid to a claimant resulting from:
 - (i) an order of the discipline committee; or
 - (ii) a claim arising from judgment obtained by the claimant against a licensee and
 - 1) the judgment has become final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed; and
 - 2) is not satisfied within thirty days of the date on which it became final.
- (b) Where a claim has been made pursuant to subsection (b), the commission will pay the claimant the amount the discipline committee recommends, but in no event will that amount be more than the amount of the unsatisfied judgment.
- (c) No claimant may claim under both (a) and (b).

525

Subject to by-law 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 within one year from:

- (a) the date on which a judgment pursuant to section 41(1) of the Act became final; or
- (b) the discovery of the act or acts giving rise to the claim.

526

Payments from the Fund are limited to the maximum amount in the Fund.

PART FIVE – REAL ESTATE RECOVERY FUND

527

- (a) Where any payment has been made from the Fund, the Commission is subrogated to the rights, remedies and securities to which the claimant receiving the payment has against the person liable to pay the judgment or whose conduct has caused the loss or damage and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Commission.
- (b) No payment will be made from the Fund unless the claimant agrees to assign their rights to the Commission pursuant to this section.

528

The maximum amount that may be paid from the Fund arising from:

- (a) a single real estate transaction is \$35,000.
- (b) multiple claims against a licensee, an aggregate limit of \$350,000.

529

Pursuant to section 41(1) and (2) of the Act, where a licensee fails to pay a claim, the licensee may be deemed to have demonstrated unprofessional conduct to carry on the business in respect of which their licence was granted and may be subject to a licence suspension under section 19 of the Act.

Investments

530

The Commission may invest any part of the Recovery Fund not required for disposition in any security or class of securities in which the Finance Committee members are authorized by law to invest funds.

Protection of the Fund

531

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

532

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

PART FIVE – REAL ESTATE RECOVERY FUND

- (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;
- (f) any purpose incidental and conducive to the attainment of any of these purposes; and
- (g) administrative costs of the fund.

533

The Registrar serves 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.

Winding up the Fund

534

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

PART SIX – TRUST ACCOUNTING AND RECORD KEEPING

Trust Accounting and Record Keeping

Trust Accounts

601

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

602

- (a) A broker must maintain an interest-bearing trust account in a financial institution in the province of Nova Scotia for the safekeeping of all real estate trust deposits held by the brokerage.
- (b) The trust account, its cheques, and its trust records must state the name of the brokerage as it appears on the brokerage licence and clearly indicate, in writing, that it is a trust account.
- (c) The broker must keep and maintain bank statements, cheques, and bank-issued trust deposit records for the trust account.
- (d) A broker must 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.
- (e) The trust account must not incur service fees and any fees charged by the financial institution for the trust account must be paid from another account.
- (f) Interest earned on the trust account must not be deposited into or maintained in the trust account, except in the case of an individual trust account per by-law 603.
- (g) In accordance with section 32(1) of the Act, every broker must instruct the financial institution to remit interest earned on the brokerage trust account to the Commission at least semi-annually. The Commission is responsible for any service charges by the financial institution to remit these funds.

603

In accordance with section 33 of the Act, a brokerage may open and maintain an individual trust account per the terms of an agreement of purchase and sale and provide the interest earned on any funds held in trust to the party specified in the agreement. The brokerage may charge a buyer or a seller, as the case may be, an administration fee that does not exceed \$100.

Management of Trust Accounts

604

- (a) The broker is responsible for ensuring that the management of the trust account and the trust account records are created, updated, and maintained in accordance with the Act, the Regulations, the By-law and the Brokerage Transaction and Record Keeping Policy.

PART SIX – TRUST ACCOUNTING AND RECORD KEEPING

- (b) The broker must prepare and maintain the following trust account record keeping requirements:
 - (i) trust control ledger;
 - (ii) monthly bank reconciliations;
 - (iii) monthly trust liability listings; and
 - (iv) individual trust records.
- (c) For each trust account the brokerage maintains, the broker must keep and separately maintain all records per the Brokerage Transaction and Record Keeping Policy.

Handling of Trust Funds

605

- (a) It is the responsibility of the broker to ensure that all trust funds received by the brokerage that are payable to that brokerage to be held in trust per an agreement, are deposited, recorded and maintained in accordance with the By-law and the Brokerage Transaction and Trust Account Policy.
- (b) If a brokerage receives a deposit on behalf of a buyer client and the funds are payable to another brokerage or law firm to be held in trust per an agreement, the brokerage must, no later than the deposit deadline:
 - (i) deliver the funds to the other brokerage or law; or
 - (ii) amend the agreement to hold the deposit in the brokerage's trust account with the written consent of all parties to the agreement.
- (c) If a brokerage receives a cash deposit on behalf of a buyer client and the funds are payable to another brokerage or a law firm to be held in trust per an agreement, the buyer's brokerage must, no later than the deposit deadline:
 - (i) deliver the funds to the other brokerage or law firm; or
 - (ii) deposit the cash in their trust account and then disburse the funds to the other brokerage or law firm or amend the agreement to continue holding the deposit in the buyer's brokerage trust account with the written consent of all parties to the agreement.
- (d) the brokerage must ensure that all funds, including cash funds, that are to be paid to a brokerage in trust are deposited directly into the brokerage trust account. Trust funds must not be deposited to any personal account or any other non-trust bank account.

PART SIX – TRUST ACCOUNTING AND RECORD KEEPING

606

The funds held in the trust account must be for property located in the province of Nova Scotia.

607

Brokerage remuneration must not be disbursed from the trust account to the operating account until the transaction is completed.

608

A broker must not deposit remuneration received from another brokerage for completed transactions in the trust account.

609

Funds from completed transactions must be disbursed to the brokerage's operating account and then paid to the brokerage, its licensees, or other brokerages.

610

Monies payable to the seller for any amount held in trust in excess of the total remuneration, including any cooperating remuneration, specified in the brokerage agreement must be paid from the trust account, upon receipt of written instruction from all parties to the transaction.

Transactions that Fail to Complete

611

- (a) At the time a transaction fails to complete, the broker holding the trust funds must advise the parties to the transaction that the brokerage is obligated to hold the trust funds in the trust account until:
 - (i) the parties to the transaction agree, in writing, as to how the money is to be disbursed; or
 - (ii) the brokerage is ordered, by a court of competent jurisdiction, to disburse the trust funds in a specified manner.
- (b) At the time the transaction fails to complete, the broker must also advise the parties that if no resolution is made regarding the disbursement of the funds within two years of the date the funds were deposited, the broker must disburse the unclaimed funds to the Commission to be held for an additional four years, after which, if the parties have not agreed to how the funds will be disbursed, the funds become the property of the Commission to be used in accordance with the Act.
- (c) After the unclaimed funds have been held in the brokerage trust account for two years from the deposit date, the broker must notify the parties that the funds are being disbursed to the Commission and any application by either party to request the funds must be made to the Commission.

PART SIX – TRUST ACCOUNTING AND RECORD KEEPING

(d) After four years, if no mutual written agreement between the parties or court order has been provided to the Commission, the unclaimed funds become the property of the Commission per section 32 of the Act.

Brokerage Trust and Transaction File Record Keeping

612

All licensees must comply with the requirements of the Brokerage Transaction and Trust Account Policy.

613

- (a) The broker is responsible for ensuring that the transaction files of the brokerage are created, updated, and maintained in accordance with the Act, the Regulations, the By-law and the Brokerage Transaction and Trust Account Policy.
- (b) Real estate brokerage transaction files must be kept separate from any other files that may be maintained at the brokerage.
- (c) Designated agency brokerages must store files in such a manner that licensees have access only to files for which they are the designated agent.

614

- (a) Brokers are required to keep all and any information, records, 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.
- (b) Requests from Commission must be in writing and specify the format in which records are to be produced. This includes, but is not limited to, transaction files, trust records, and employment records.
- (c) Licensees must not make any false or misleading statements in any financial records, reports, or transaction documents required to be furnished under the Act, the By-law, or the Commission Policies.

615

- (a) Brokers must keep real estate trade and trust account records for a seven (7) year period from the time the documents are executed.
- (b) If a brokerage is sold or ceases operation, the broker is responsible for ensuring the safekeeping of the brokerage trust and transaction file records for seven years from the time the documents are executed.

PART SIX – TRUST ACCOUNTING AND RECORD KEEPING

Trade Record Sheet

616

Every broker must maintain a trade record sheet for each trade. The trade record sheet must contain the following information:

- (a) the nature of the trade;
- (b) a description of the real estate that is sufficient to identify it;
- (c) the purchase price or commercial lease amount 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 remuneration, the name of the party paying it and to whom it gets paid.

Audits

617

- (a) 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:
 - (i) the amount of funds in the trust account of the broker is the amount for which they are accountable;
 - (ii) the broker maintains proper records as required by the Act, the By-law and the Commission Policies; and
 - (iii) the broker is otherwise complying with the requirements of the Act, the By-law and the Brokerage Transaction and Trust Account Policy.
- (b) The person conducting the audit may demand the production of all or any of the brokerage records, including but not limited to books, documents, correspondence, accounts and records pertaining to the trust account(s) and transaction files of the brokerage. The person may also make reproductions of files at the time of audit and these reproductions may be used as evidence for administrative and disciplinary purposes.
- (c) All records and transaction files for the current calendar year and the previous calendar year must be readily available in accordance with the Commission Policies and produced, without delay, at the request of the person doing the audit.

PART SIX – TRUST ACCOUNTING AND RECORD KEEPING

Compliance with Audits

618

In accordance with section 21 of the Act, the Registrar may suspend the licence of any broker who fails to:

- (a) cooperate with an audit, including but not limited to, failing to:
 - (i) make timely responses to the Commission staff or authorized person no later than the deadline established;
 - (ii) respond completely, truthfully, and substantively to all communications and requests for information and/or records; or
 - (iii) provide any materials including, but not limited to, trust account records and transaction files.
- (b) create and maintain records in accordance with the Act, By-law and the Commission Policies.
- (c) abide by a licence restriction that is relevant to the audit.

Trust Account Audits

619

The Commission will conduct a trust audit of each brokerage in accordance with the Commission Audit Policy. In addition, with reasonable cause, the Registrar may at any time direct auditors to conduct an additional trust audit(s) on a brokerage.

Brokerage Audits

620

The Commission will conduct a brokerage audit of each brokerage in accordance with the Commission Audit Policy. In addition, with reasonable cause, the Registrar may at any time direct auditors to conduct an additional brokerage audit(s) on a brokerage.

Other Audits

621

Upon the closing, transfer or merger of a brokerage, or when there is a change of brokers, audits will be conducted in accordance with the Commission Audit Policy.

Conveyance of Documents for Auditing

622

The Registrar will determine the method of conveyance of documents to be audited from the brokerage to the Commission. If the broker and the Registrar agree to an alternate method of delivery of files, an administrative fee will apply and those costs will be borne by the broker.

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Conduct and Trade Practices

Brokerage Supervision

701

- (a) A broker, or a managing associate broker who has been delegated management responsibilities, must:
 - (i) be actively engaged in the management of the brokerage;
 - (ii) ensure that the business of the brokerage is carried out competently and in accordance with the Act, the Regulations, the By-law and the Commission Policies;
 - (iii) ensure that there is an adequate level of supervision for managing associate brokers, associate brokers, salespeople, approved sales corporations, employees, unlicensed assistants, and others who perform duties on behalf of the brokerage (broker-managed persons); and
 - (iv) provide written policies and procedures to all broker-managed persons and by which all broker-managed persons are expected to operate, a copy of which must be made available to the Commission upon request.
- (b) A broker or managing associate broker is accountable for the misconduct of a broker-managed person, if the broker or managing associate broker:
 - (i) was not actively involved in the management of the brokerage;
 - (ii) failed to ensure an adequate level of supervision was in place for the broker-managed person;
 - (iii) was willfully blind to the misconduct of the broker-managed person;
 - (iv) was a participant in the misconduct;
 - (v) had knowledge of the misconduct of the broker-managed person and failed to take reasonable steps to stop such misconduct;
 - (vi) upon becoming aware of the misconduct failed to take reasonable steps to correct the misconduct or reduce any harm that may have resulted from the misconduct;
 - (vii) failed to notify the Registrar upon becoming aware of misconduct relating to fraud, deception, theft, or unlawful activities on the part of the broker-managed person;
 - (viii) failed to notify the Registrar upon becoming aware of a broker-managed person being charged with an offence under the Criminal Code of Canada; or
 - (ix) in such other circumstances where the actions or lack of actions by the broker contributed to, or resulted in a violation of the Act, the Regulations, the By-law or the Commission Policies.
- (c) In the case of a designated-agency brokerage with a broker who conducts trades in real estate, the managing associate broker of the brokerage must fulfill the duties of the

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brokerage per the terms of designated brokerage agreements for trades conducted by the broker. The managing associate broker fulfilling the duties of the brokerage cannot act as the designated agent representing the other party on trades conducted by the broker.

Scope of Practice by Licence Category

Broker and Managing Associate Broker Responsibilities

702

A broker or managing associate broker is responsible for:

- (a) being knowledgeable of and complying with the Act, the Regulations, the By-law, and the Commission Policies;
- (b) trading in real estate only in the name of the brokerage with which they are licensed;
- (c) trading in real estate only in the name of the broker or managing associate broker as it appears on their licence;
- (d) in the case of a managing associate broker, advising the broker of any foreseeable interruptions in the managing associate broker's availability to provide trading services;
- (e) ensuring real estate documents are reviewed upon execution to confirm compliance with the Act, the Regulations, the By-law, and the Commission Policies;
- (f) replying promptly and completely to any communication from the Commission including, but not limited to, investigations, audits, and the production of documents;
- (g) ensuring that the trust account, the trust account records, and the transaction files of the brokerage are created, updated, and maintained in accordance with the Act, the Regulations, the By-law and the Commission Policies;
- (h) ensuring adequate control and oversight, using the care and skill that a reasonably prudent broker would use, of the flow of funds in and out of the trust account;
- (i) ensuring that the seller is immediately notified in writing if a deposit to be held by the brokerage is not received per the terms of the agreement of purchase and sale or in the event the deposit cheque has not been honoured and seek the seller's instruction;
- (j) ensuring proper management and control of documents or records related to licensing, registrations and related regulatory requirements;
- (k) ensuring that all trading activities conducted on behalf of the brokerage are performed only by licensed persons and only in accordance with their respective licence classes and any conditions or restrictions placed on their licence;
- (l) reviewing and approving all advertising conducted by the brokerage and its licensees to ensure all advertising is in compliance with the Act, the Regulations, the By-law, and the Commission Policies; and

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(m) approving team names and team logos to ensure compliance with the Act, the Regulations, the By-law, and the Commission Policies.

Delegation of Broker Authority

703

- (a) A broker may delegate the broker's duties and responsibilities to a managing associate broker of the brokerage if:
 - (i) the particulars of the delegation of responsibilities by the broker to the managing associate broker are clear, in writing, and agreed to and understood by the broker and the managing associate broker;
 - (ii) the particulars of the delegation are communicated to broker-managed persons whose roles are affected by the delegation; and
 - (iii) the broker has a system in place to monitor the managing associate broker and verify that adequate supervision is being maintained.
- (b) In the event a broker delegates the broker's duties and responsibilities to a managing associate broker, the broker remains accountable for the conduct of the managing associate broker and all broker-managed persons.

Managing Associate Broker, Associate Broker and Salesperson Responsibilities

704

- (a) A managing associate broker, associate broker or a salesperson is responsible for:
 - (i) being knowledgeable of and complying with the Act, the Regulations, the By-law and the Commission Policies;
 - (ii) trading in real estate only in the name of the brokerage with which they are licensed;
 - (iii) trading in real estate only in the name of the managing associate broker, associate broker or salesperson as it appears on their licence;
 - (iv) ensuring all their advertising complies with the Act, the Regulations, the By-law and the Commission Policies;
 - (v) providing all documentation, trust deposits, and trade record sheets to the broker as required under the By-law and Commission Policies;
 - (vi) keeping the broker informed of all of their activities being performed on behalf of the brokerage;
 - (vii) advising the broker of any foreseeable interruptions in a licensee's availability to provide trading services;
 - (viii) informing the broker of any unlicensed assistant they have engaged; and

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- (ix) notifying the broker upon learning of a possible violation of the Act, the Regulations, the By-law or the Commission Policies by any managing associate broker, associate broker, salesperson, approved sales corporation, employee, or others who perform duties on behalf of a brokerage.
- (b) All licensees, whether they are employees or independent contractors, associate brokers, salespeople, or approved sales corporations, have the same responsibilities to the broker and to the Commission.

Recruitment and Licensing Disclosures

705

- (a) Brokers are required to provide the following disclosures to prospective individuals who are considering becoming licensed with the brokerage prior to those individuals making any commitment to that brokerage:
 - (i) a copy of the terms of engagement, in its entirety, that the individual would be required to sign;
 - (ii) all expenses the individual would be required to pay or reimburse during the time they are licensed with that brokerage;
 - (iii) all fees, changes in remuneration, or penalties that the individual would be responsible for when the individual's licence terminates with that brokerage; and
 - (iv) in the case where the individual would cease to be licensed with the brokerage, whether the brokerage will release consumers subject to service agreements that were entered into by the individual or team on behalf of the brokerage while licensed with the brokerage.
- (b) The disclosures must be made in writing and receipt thereof acknowledged in writing, prior to engagement of the prospective individual by the brokerage. The brokerage is responsible for maintaining copies of the signed disclosures and must provide a copy of the signed disclosures to the individual.

Terms of Licensee Engagement

706

- (a) The terms of engagement between the brokerage and the prospective individual must be set out in writing and agreed to by both the broker and the individual who is becoming licensed with the brokerage.
- (b) A prospective individual must have a seven-day period after execution of the terms of engagement to withdraw, without penalty, by giving written notice of the withdrawal to the brokerage.

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Duty to Act Honestly

707

A licensee is expected to act honestly and with integrity in carrying out business with clients, unrepresented parties, other licensees, the Commission, and members of the public.

Duty to Act with Reasonable Care and Skill

708

- (a) In carrying out business, a licensee must:
 - (i) be courteous and responsive to clients, unrepresented parties, and other persons; and
 - (ii) be competent, meaning that they must possess and demonstrate the necessary level of skill and judgment required with respect to any matter on which they are representing a party, or in which they are asked to provide information to unrepresented parties.
- (b) A licensee must not, in respect of a trade in real estate, provide opinions or advice to an unrepresented party.

Duty to be Available and Disclose Availability

709

- (a) Licensees must provide conscientious, diligent, and effective service to clients, unrepresented parties, and other parties in relation to trades in real estate.
- (b) The requirement of conscientious, diligent and effective service means that a licensee makes every effort to provide timely service to clients and other parties in relation to trades in real estate. If the licensee can reasonably foresee undue delay in providing services, clients and other parties must be so informed.

Duty to Operate Within Skillsets

710

- (a) A licensee must advise a person to obtain services from another person if the licensee is not able to provide the services with reasonable knowledge, skill, judgment, and competence or is not authorized by law to provide the services.
- (b) A licensee must not discourage a person from seeking a particular kind of service from another person if the licensee is not able to provide the service with reasonable knowledge, skill, judgment and competence or is not authorized by law to provide the service.
- (c) When the licensee is unable to render such service, either alone or with the aid of other licensees, the licensee must not accept the assignment or otherwise provide assistance in connection with the transaction.

Licensee's Duty to Discover

711

- (a) A licensee in an agency relationship with a seller has a fiduciary obligation to discover facts about the seller's property that a reasonably prudent licensee would discover to fulfill the

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licensee's obligation to protect the seller's interests and to avoid error, misrepresentation, omission or concealment of pertinent facts and ensure that any representations of the property that the licensee makes to the public are factual and accurate.

- (b) A licensee in an agency relationship with a buyer has a fiduciary obligation to make sufficient inquiries of the buyer to determine the buyer's needs and to discover facts about a property in which the buyer is interested that a reasonably prudent licensee would discover to fulfill the licensee's obligation to avoid error, misrepresentation, omission or concealment of pertinent facts that if known, might reasonably affect the buyer's decision to purchase the property.

Opinions of Value

712

- (a) When asked to give an opinion of value of real property, the licensee must advise the client only after careful and thorough analysis and interpretation of all factors affecting the value of the property.
- (b) A licensee must not provide an opinion or advice about the value of real estate to any person unless the licensee has education and experience related to the valuation of real estate.
- (c) A licensee must not provide an opinion of value on a property for which the licensee has a present or contemplated interest.
- (d) Fees charged for providing an opinion of value must not be based on the amount of value reported.

Do Not Discourage Expert Advice

713

A licensee must not discourage a client, an unrepresented person, or a party to a trade in real estate from seeking legal counsel or expert advice.

Care and Protection of Property

714

- (a) A licensee must have written authorization from a seller or seller's licensee to access the seller's property.
- (b) A licensee who accesses, provides access to or arranges to provide access to property that is the subject of a trade in real estate must take reasonable steps to secure and protect the property and its contents from any form of damage, loss or destruction.
- (c) A licensee must not knowingly permit any property to which they have access or arrange access to be used for unlawful or unintended purposes.
- (d) In carrying on business, a licensee must not provide any person with access to a property unless:
 - (i) a licensee is present with the person; or

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(ii) the seller has consented in writing to a licensee not attending the property with the person.

Do Not Discriminate

715

In carrying on business, a licensee must not discriminate against any person on the basis of a prohibited ground set out in the *Nova Scotia Human Rights Act*.

Do Not Abuse

716

In carrying on business, a licensee must not physically, sexually, emotionally or verbally abuse or harass any person.

Intimidation, Coercion, Etc.

717

In carrying on business, a licensee must not intimidate or coerce any person or subject any person to undue pressure.

Unprofessional Conduct

718

A licensee must not violate the Act, the Regulations, the By-law, the Commission policies, or a direction of the Commission and must not otherwise engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as:

- (a) being disgraceful, dishonourable, unprofessional or unbecoming of a licensee; and/or
- (b) likely to bring the profession into disrepute or to undermine public confidence in the regulation of licensees under the Act.

Conduct Unbecoming

719

- (a) Unprofessional conduct includes conduct unbecoming a licensee. Conduct unbecoming is conduct of a licensee that occurs outside the carrying on of business, but:
 - (i) brings into question the integrity of the licensee;
 - (ii) is contrary to the public interest; or
 - (iii) is likely to undermine public confidence in the real estate industry.
- (b) A brokerage that is a partnership or corporation may be found to have committed unprofessional conduct or conduct unbecoming a licensee if a partner, an officer, a director or a controlling shareholder of the brokerage does one or more of the things referred to in subsection (a) or by-law 718.

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Maintaining Professional Integrity And Judgment

720

A licensee who engages in another profession, business or occupation concurrently with the practice of real estate must not allow such outside interest to jeopardize the licensee's professional integrity, independence or competence.

Do Not Interfere in the Contracts of Others

721

- (a) The agency relationship of a brokerage or a licensee must be respected by all licensees. Communications concerning listed property or with any party who is solely represented must be carried on with the client's licensee and not with the client directly, except with the written consent of the client's licensee.
- (b) A licensee must not knowingly approach a seller whose property is currently listed for the purpose of soliciting a listing for their brokerage or a buyer that is under contract.

No Unlawful Conduct

722

A licensee must not counsel, advise or knowingly assist a person to contravene the Act, the Regulations, the By-law, the Commission Policies or any other law that:

- (a) is applicable to a trade in real estate; or
- (b) is relevant to carrying on a licensee's business with integrity and honesty.

Consumer Relationships/Obligations to Consumers

Common-law Agency Brokerages

723

For brokerages practicing common-law agency:

- (a) The brokerage agreement is between the client and the brokerage;
- (b) Representation and the agency relationship is between the client of the brokerage and all licensees of the brokerage; and
- (c) The broker and managing associate broker(s), where applicable, is responsible for:
 - (i) establishing written policies and procedures governing the activities of the brokerage and its licensees; and
 - (ii) supervising licensees to ensure that they fulfill their duties under the By-law.

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Designated Agency Brokerages

724

For brokerages practicing designated agency:

- (a) The brokerage agreement is between the client and the brokerage;
- (b) Representation and the agency relationship is only between the client and the licensee(s) designated by the brokerage in the brokerage agreement as the designated agent;
- (c) The brokerage, the broker, and any licensee not designated in the brokerage agreement does not represent the client and no agency obligations are owed; and
- (d) The broker, and managing associate broker(s), where applicable, is responsible for:
 - (i) establishing written policies and procedures to ensure clients' confidential information is available only to the licensee(s) designated as the designated agent;
 - (ii) establishing written policies and procedures governing the activities of the brokerage and designated agents licensed with the brokerage;
 - (iii) supervising the designated agent or agents to ensure that they fulfill their duties under the By-law.
 - (iv) communicating 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;
 - (v) ensuring any confidential information respecting a client is not disclosed to any other person unless authorized by that client or required by law; and
 - (vi) treating the interests of all clients in an even-handed, objective, and impartial manner unless otherwise stated in the brokerage agreement.

Working with the Real Estate Industry Form

725

When working with real estate consumers, at the earliest opportunity licensees must explain the Working with the Real Estate Industry form and have it signed by the consumer.

General Disclosure Requirements

726

- (a) Licensees have a professional responsibility to ensure that consumers have all the information necessary to make informed decisions regarding real estate services and transactions to which they are a party. Licensees must ensure that they provide and explain disclosures in accordance with the By-law, and in accordance with any agreement/acknowledgement with a client or an unrepresented party. In no case, may a licensee contract to provide fewer disclosures than set out in the By-law.

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(b) In addition to other disclosure requirements set out in this By-law, when acting in any capacity with respect to a transaction, the licensee must disclose, in writing, the capacity in which the licensee, or any other licensee, is acting to all parties to the transaction.

Disclosures When Working with a Prospective Seller Client

727

(a) Before entering into an agency representation agreement with a seller, a licensee must confirm the seller's authority to sell the property, address the seller's financial ability to sell the subject property, and explain the agency relationship, the contents of the representation agreement, and the services that will be provided to the seller.

(b) The explanations provided in subsection (a) must include:

- (i) a description of the services the brokerage and/or the designated agent will provide;
- (ii) the remuneration that will be owed to the brokerage, when the remuneration will be owed, and under what circumstances;
- (iii) the obligations of the brokerage, the licensee, and the seller;
- (iv) the duration of the contract; and
- (v) the reasons and manner in which the contract may be terminated.

(c) If the seller agrees to enter into an agency representation agreement with the brokerage, any releases, promises or guarantees of specific service(s) that are not captured in the standard wording of the agreement must be written into the contract and be acknowledged by the seller in writing.

(d) Any conflicts of interest, whether real or potential, must be addressed in accordance with by-law 733.

Disclosures When Working with a Prospective Buyer Client

728

(a) Before entering into an agency representation agreement with a buyer, a licensee must explain the agency relationship, the contents of the representation agreement, and the services that will be provided to the buyer.

(b) The explanations provided in subsection (a) must include:

- (i) a description of the services the brokerage and/or the designated agent will provide;
- (ii) the remuneration that will be owed to the brokerage, when the remuneration will be owed, and under what circumstances;
- (iii) the obligations of the brokerage, the licensee, and the buyer;
- (iv) addressing the buyer's financial ability to purchase real estate;
- (v) the duration of the contract; and

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- (vi) the reasons and manner in which the contract may be terminated.
- (c) If the buyer agrees to enter an agency representation agreement with the brokerage, any releases, promises or guarantees of specific service(s) that are not captured in the standard wording of the agreement must be written into the contract and be acknowledged by the buyer in writing.
- (d) Any conflicts of interest, whether real or potential, must be addressed in accordance with by-law 733.

Obligations to Clients

729

- (a) The obligations of a common-law brokerage or a designated agent in an agency relationship with a seller are:
 - (i) to act in the best interests of the seller;
 - (ii) to act in accordance with the lawful instructions of the seller;
 - (iii) to maintain the confidentiality of information respecting the seller;
 - (iv) to take reasonable steps to avoid any conflict of interest;
 - (v) to disclose, in accordance with by-law 733, a conflict of interest if it exists to the seller, promptly and fully;
 - (vi) to disclose, in a timely manner, to the seller all relevant information, material facts, and defects affecting the property or the transaction known to the brokerage or the designated agent;
 - (vii) to account for all money or property belonging to the seller that is entrusted to the brokerage or the designated agent;
 - (viii) to exercise reasonable care and skill in the performance of their duties and obligations to the seller;
 - (ix) to act only within the scope of the authority given by the seller;
 - (x) to act only as the seller's agent;
 - (xi) to advise the seller to seek independent professional advice on matters outside of the expertise of the brokerage or the designated agent;
 - (xii) to only sign on behalf of a seller if the brokerage or the designated agent has a written power of attorney;
 - (xiii) to explain all forms and documents to the seller prior to execution;
 - (xiv) to not appoint another brokerage or designated agent to act on behalf of the seller as sub-agent without the seller's prior written consent;
 - (xv) to use best efforts to market the property and to promote the interests of the seller;

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- (xvi) at the earliest reasonable opportunity, to advise any buyer interested in the property that the brokerage or designated agent is the seller's agent;
- (xvii) to assist the seller in negotiating favourable terms and conditions with a buyer and in preparing and complying with a legally binding agreement for the property;
- (xviii) to disclose to buyers all material latent defects affecting the property known to the brokerage or the designated agent;
- (xix) to present, in a timely, objective and unbiased manner, all offers, counter-offers, and backup offers to and from the seller even when the property is already subject to an agreement;
- (xx) to keep the seller fully informed regarding the progress of the transaction; and
- (xxi) to be honest with the seller on all matters related to the transaction.

(b) The obligations of a common-law brokerage or a designated agent in an agency relationship with a buyer are:

- (i) to act in the best interests of the buyer;
- (ii) to act in accordance with the lawful instructions of the buyer;
- (iii) to maintain the confidentiality of information respecting the buyer;
- (iv) to take reasonable steps to avoid any conflict of interest;
- (v) to, in accordance with by-law 733, disclose a conflict of interest if it exists to the buyer, promptly and fully;
- (vi) to disclose, in a timely manner, to the buyer all relevant information and material facts affecting a property or the transaction known to the licensee;
- (vii) to account for all money or property belonging to the buyer that is entrusted to the brokerage or the designated agent;
- (viii) to exercise reasonable care and skill and act honestly in the performance of their duties and obligations to the buyer;
- (ix) to act only within the scope of the authority given by the buyer;
- (x) to act only as the buyer's agent;
- (xi) to advise the buyer to seek independent professional advice on matters outside of the expertise of the brokerage or designated agent;
- (xii) to only sign on behalf of a buyer if the brokerage or the designated agent has a written power of attorney;
- (xiii) to explain all forms and documents to the buyer prior to execution;

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- (xiv) not to appoint another brokerage or designated agent to act on behalf of the buyer as sub-agent without the buyer's prior written consent;
- (xv) to use best efforts in locating a property in the specified market area that meets the material requirements identified by the buyer and to promote the interests of the buyer;
- (xvi) at the earliest reasonable opportunity, advise any seller in whose property the buyer is interested that the brokerage or the designated agent is the buyer's agent;
- (xvii) 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 and other available properties known to the brokerage or the designated agent;
- (xviii) to take reasonable steps to discover material facts pertaining to any property for which the buyer is considering making an offer;
- (xix) to disclose to the buyer the existence and terms of any competing offers known to the brokerage or designated agent for a property in which the buyer is interested;
- (xx) to assist the buyer in negotiating favourable terms and conditions with a seller and in preparing and complying with a legally binding agreement;
- (xxi) to disclose to buyers all defects affecting the property known to the brokerage or designated agent;
- (xxii) to convey, in a timely, objective, and unbiased manner, all offers, counter-offers, and backup offers to and from the buyer even when the buyer is already a party to an agreement of purchase and sale;
- (xxiii) to keep the buyer fully informed regarding the progress of the transaction; and
- (xxiv) to be honest with the buyer on all matters relating to the transaction.

Disclosures to Unrepresented Parties

730

- (a) If a brokerage or a designated agent represents a client in respect of a trade in real estate that includes an unrepresented party in respect of the same trade, the brokerage or designated agent must provide the following information in writing to the unrepresented party and obtain signed acknowledgement:
 - (i) a recommendation that the unrepresented party seek independent professional advice;
 - (ii) a disclosure that the brokerage or the designated agent represents a client in respect of the trade, and that notwithstanding any assistance the brokerage or the designated agent may provide to the unrepresented party, they:
 - 1) are not representing the unrepresented party in the transaction;

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- 2) have a duty to act in the best interest of their client and not the unrepresented party;
- 3) have no obligation to the unrepresented party with respect to avoiding conflicts of interest or negotiation of favourable terms; and
- 4) are not providing advice to the unrepresented party;

- (iii) a description of the type of assistance that the brokerage or designated agent is permitted to provide to the unrepresented party;
- (iv) an explanation of the risks to the unrepresented party that may arise from continuing as an unrepresented party, including the benefits of client representation that cannot be offered to the unrepresented party by the brokerage or the designated agent;
- (v) that choosing to obtain agency representation later in the transaction may obligate the unrepresented party to pay remuneration for that representation.
- (vi) an outline of any direct or indirect costs to the unrepresented party related to the transaction.

- (b) If the unrepresented party has been provided the disclosure set out in this section, including the recommendation they seek independent professional advice, but decides to proceed with the transaction without representation, the licensee will obtain a written acknowledgement from the unrepresented party that:
 - (i) they have been provided the disclosures set out in subsection (a);
 - (ii) independent professional advice has been recommended to them; and
 - (iii) they have either chosen not to obtain such advice, or having obtained such advice, have decided to proceed with the transaction without representation.

Agency Conflicts and Alternatives—Referring to Another Brokerage or Designated Agent, Unrepresented Parties, and Transaction Brokerage

731

- (a) If a brokerage or a designated agent has an agency relationship with a seller and a buyer and the buyer is interested in the seller's property, the brokerage or the designated agent may offer to continue to represent the party, be it the seller or the buyer, with whom it first entered into an agency relationship, subject to any conflicts of interest, and the brokerage or the designated agent will offer the option:
 - (i) if a designated agency brokerage, to designate another licensee of the brokerage to represent the other party in an agency relationship or to recommend the other party to another brokerage where the other party can receive the benefit of an agency representation or treat the other party as an unrepresented party.
 - (ii) if a common-law brokerage, to refer the other party to another brokerage where the party can receive the benefit agency representation or treat the other party as an unrepresented party.

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- (b) If the buyer and a seller have been presented with the options in subsection (a)(i) or (ii) and still wish to continue the transaction with the same brokerage or designated agent, the buyer and the seller may be offered the option of entering into a transaction brokerage relationship to facilitate the sale or lease of the property.
- (c) If the parties wish to continue with transaction brokerage, the brokerage or the designated agent must disclose the differences between the obligations the brokerage or the designated agent would have if it represented only one client in respect of the trade and the obligations the brokerage or the designated agent would have if the parties were in a transaction brokerage including that the brokerage or designated agent will no longer:
 - (i) act in the best interest of the client;
 - (ii) act only on behalf of the client;
 - (iii) provide advice to the client;
 - (iv) use best efforts to protect and promote the client's negotiating position at all times;
 - (v) avoid the conflict of interest between clients;
 - (vi) negotiate favourable terms for the client; and
 - (vii) advocate on behalf of either party.
- (d) The brokerage or the designated agent must disclose to the parties the total remuneration the brokerage will receive from the transaction.
- (e) After making the disclosures in subsection (c) and (d) the brokerage or the designated agent will provide both the buyer and the 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.
- (f) If the parties authorize the brokerage or the designated agent to enter into a transaction brokerage relationship by signing the transaction brokerage agreement, the brokerage or the designated agent is now acting in the capacity of a transaction facilitator and 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 the following facilitation services:
 - 1) provide real estate statistics and information on property including all comparable property information available through the listing services or other local databases;

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- 2) provide agreements of purchase and sale, lease or other relevant documents and act as a 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, objective, and unbiased manner, all offers, counter-offers, and backup offers to and from the buyer and seller regardless of whether the property is already the subject of an agreement;
- 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 transaction facilitator;
- 2) to the seller, all material facts relevant to the buyer's ability to purchase the property known to the transaction facilitator; and
- 3) to the buyer, a decision by a seller to not proceed with the transaction or to the seller, a decision by the buyer not to proceed with the transaction;

(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 the 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 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 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 (f)(v)(1) and (2), personal information relating to the buyer or the seller and other information disclosed at any time in confidence by either to the transaction facilitator; and

(viii) 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

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- 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.

Disclosure to Clients of Remuneration from Other Sources

732

- (a) If a licensee anticipates receiving remuneration, either directly or indirectly, other than the remuneration paid to the licensee through the brokerage by the client, as a result of the licensee:
 - (i) Providing real estate services to or on behalf of the client; or
 - (ii) Recommending to the client:
 - 1) A home inspector, mortgage broker, surveyor, lawyer, or financial institution; or
 - 2) Any other person providing products or services related to real estate; or
 - (iii) Referring the client to a person referred to in subsection (a) (ii) (1) or (2);the licensee must promptly disclose the source and amount and obtain their client's written consent to receive the remuneration.
- (b) If a licensee recommends a family member to the client as defined in the By-law or as an associate as defined in the Act in relation to the provision of real estate products or services, this relationship must be disclosed to the client in writing at the time the recommendation is made.
- (c) A licensee may only receive remuneration per the terms of the service agreement with the client. To receive any remuneration outside the terms of the service agreement, the licensee must obtain the written consent of the client.

Disclosure of Conflict of Interest

733

Subject to by-law 734, a licensee must not provide real estate services, including representation, to a prospective client or client or continue to provide services to a client where the interests of the licensee conflict or may conflict with the interests of the client unless the licensee has:

- (a) disclosed to the client or prospective client any transaction or relationship that gives rise to or could reasonably be expected to give rise to a conflict of interest;
- (b) advised the client or prospective client to seek independent professional advice with respect to the disclosure made under subsection (a);
- (c) taken all reasonable steps to ensure that the client or prospective client has demonstrated a reasonable understanding of the conflict or prospective conflict of interest; and
- (d) obtained informed consent from the client or prospective client, in writing, to the provision of services by the licensee despite the conflict or prospective conflict of interest.

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Disclosure of Interest in Trade

734

(a) A licensee trading in real estate on the licensee's own behalf or on behalf of the licensee's family member, either directly or indirectly, must disclose in writing:

- (i) to a buyer or a seller who is not represented by a licensee:
 - 1) the name of the licensee and that the licensee is licensed to trade in real estate under the Act;
 - 2) the name of the brokerage with which the licensee is licensed;
 - 3) any interest, direct or indirect, that the licensee or licensee's family member has in the transaction; and
 - 4) if acquiring real estate, the intentions of the licensee or licensee's family member for the real estate, including whether it is for personal use, investment, and/or resale; and
 - 5) any information known to the licensee that could materially affect the value of the real estate.
- (ii) to the licensee representing a buyer or a seller:
 - 1) the name of the licensee and that the licensee is licensed to trade in real estate under the Act;
 - 2) the name of the brokerage with which the licensee is licensed;
 - 3) any interest, direct or indirect, that the licensee or licensee's family member has in the transaction; and
 - 4) if acquiring real estate, the intentions of the licensee or licensee's family member for the real estate, including whether it is for personal use, investment, and/or resale.

(b) When any individual is employed in a management position or is an owner in all or part of a common law brokerage, and/or licensed with a common law brokerage wishes to directly or indirectly purchase or offer to purchase a property that the brokerage has under contract to sell, before an offer is prepared the brokerage must:

- (i) disclose to the seller the existence of a conflict of interest;
- (ii) disclose to the seller the name of the prospective buyer and the nature of their relationship to the brokerage;
- (iii) disclose to the seller any confidential information of the seller that the prospective buyer may have already received;
- (iv) disclose to the seller who will be representing the prospective buyer with respect to the transaction;

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- (v) disclose to the seller the intentions of the buyer for the real estate, including whether it is for personal use, investment, and/or resale; and
- (vi) provide the seller with an opportunity to seek legal and independent advice; and if the seller wishes to receive independent representation from another brokerage, refer the seller to another brokerage. If the seller wishes to proceed with the transaction without representation, the brokerage must treat the seller as an unrepresented party.
- (c) If a non-management employee with no material interest in the common-law brokerage wishes to purchase the property of a seller client, the employee's relationship with the brokerage must be disclosed to the seller client before an offer is prepared.
- (d) When any individual employed by, in a management or ownership capacity, of a designated-agency brokerage or the designated agent specified in the seller brokerage agreement wishes to directly or indirectly purchase or offer to purchase a property that the brokerage has under contract to sell, before an offer is prepared the brokerage must:
 - (i) disclose to the seller the existence of a conflict of interest;
 - (ii) disclose to the seller the name of the prospective buyer and the nature of their relationship to the brokerage;
 - (iii) disclose to the seller any confidential information of the seller that the prospective buyer may have already received;
 - (iv) disclose to the seller who will be representing the prospective buyer with respect to the transaction;
 - (v) disclose to the seller the intentions of the buyer for the real estate, including whether it is for personal use, investment, and/or resale; and
 - (vi) provide the seller with an opportunity to seek legal and independent advice; and if the seller wishes to receive independent representation from another brokerage, refer the seller to another brokerage. If the seller wishes to proceed with the transaction without representation, the brokerage must treat the seller as an unrepresented party.
- (e) If a non-management employee with no material interest in the designated agency-brokerage wishes to purchase the property of a seller client, the employee's relationship with the brokerage must be disclosed to the seller client before an offer is prepared.

Disclosure of Material Latent Defects

735

- (a) For the purposes of this by-law, a material latent defect means a defect that cannot be discerned through a reasonable inspection of the property, including, but not limited to, any of the following:
 - (i) a defect that renders the real estate:
 - 1) dangerous or potentially dangerous to the occupants;

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- 2) unfit for habitation; or
- 3) unfit for the purpose for which a party is acquiring it; if
 - A. the party has made that purpose known to the licensee; or
 - B. the licensee has otherwise become aware of that purpose;

- (ii) a defect that would involve significant expense to remedy, such that it would reasonably be seen to have impacted the decision of the buyer to purchase the property; **or**
- (iii) any outstanding notices, directives, or orders with respect to the property, that are not a matter of public record.

- (iv) **repealed.**

- (b) A licensee who is providing real estate services to a client who is disposing of real estate must provide written disclosure to all other parties to the trade, promptly and before any agreement for the acquisition or disposition of the real estate is entered into, any material latent defect in the real estate that is known to the licensee.
- (c) A client who instructs a licensee to withhold a disclosure required under subsection (b) is giving an unlawful instruction and the licensee must refuse to provide further trading services to or on behalf of that client in respect of the trade in real estate, unless the client agrees to provide the disclosure.
- (d) Disclosure to a party is not required under subsection (b) if the party has already received written disclosure of the material latent defect from the client who is disposing of the real estate.

Disclosure and Lawful Instruction

736

Licensees must follow the lawful instruction of their clients, seek clarity of instruction when necessary to carry out the instructions of the client, and to obtain the instruction in writing where possible.

Disclosure of Competing Offers

737

- (a) If a brokerage or a designated agent in an agency relationship with a seller receives a competing offer or offers, the brokerage or the designated agent must follow the direction of the seller as to whether to disclose to every person who is making one of the offers:
 - (i) that there are competing offers; and/or
 - (ii) the number of competing offers.
- (b) The brokerage or designated agent must not disclose the contents of any offer.

PART SEVEN – CONDUCT AND TRADE PRACTICES

Documentation

Residential Mandatory Forms

738

(a) The following forms have been approved by the Commission for use in residential transactions by all licensees. The use of these forms, as applicable, in residential transactions is mandatory.

- (i) Form 100—Working with the Real Estate Industry
- (ii) Form 110—Unrepresented Buyer Acknowledgement
- (iii) Form 112—Unrepresented Seller Acknowledgement and Fee Agreement
- (iv) Form 200—Seller Brokerage Agreement
- (v) Form 201—Seller Designated Brokerage Agreement
- (vi) Form 203—Mere Posting Service Agreement
- (vii) Form 210—Equipment Schedule
- (viii) Form 211—Property Disclosure Statement
- (ix) Form 212—Property Disclosure Statement for Vacant Land
- (x) Form 220—Amendment to Seller Buyer Brokerage/Designated Brokerage Agreement
- (xi) Form 221—Temporary Withdrawal or Termination of Seller Buyer Brokerage Agreement/Designated Brokerage Agreement
- (xii) Form 222—Amendment to Service Agreement
- (xiii) Form 223—Assignment of Seller Buyer Brokerage Agreement/Designated Brokerage Agreement
- (xiv) Form 224—Temporary Withdrawal or Termination of Service Agreement
- (xv) Form 300—Buyer Brokerage Agreement
- (xvi) Form 301—Buyer Designated Brokerage Agreement
- (xvii) Form 400—Agreement of Purchase and Sale
- (xviii) Form 402—Resale Condominium Schedule
- (xix) Form 403—Agreement of Purchase and Sale for New Construction
- (xx) Form 404—Vacant Land Schedule
- (xxi) Form 405—HST Rebate Schedule
- (xxii) Form 406—Mini/Mobile Home Schedule

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- (xxiii) Form 407—Multi-Unit Residential Income Properties Schedule
- (xxiv) Form 408—Buyer Waiver of Conditions
- (xxv) Form 410—Counter Offer
- (xxvi) Form 411—Transaction Brokerage Agreement – Common Law
- (xxvii) Form 412—Transaction Brokerage Agreement – Designated Agency
- (xxviii) Form 420—Addendum Schedule "___"
- (xxix) Form 421—Amendment to Agreement of Purchase and Sale
- (xxx) Form 430A—Sale of Buyer's Property Schedule
- (xxxi) Form 430B—Sale of Buyer's Property Seller Notice to Buyer
- (xxxii) Form 430C—Sale of Buyer's Property Buyer Notice to Seller
- (xxxiii) Form 431—Water and Septic Schedule
- (xxxiv) Form 440—Termination of Agreement of Purchase and Sale and Release of Deposit
- (xxxv) Form 441—Deposit Disclaimer for New Construction
- (xxxvi) Form 442—Change Order
- (xxxvii) Form 443—Deficiencies

(b) If a licensee receives a document in lieu of one of the mandatory forms that is drafted by the legal counsel or another person of one of the parties to a trade in real estate, the licensee must ensure the document used complies with Act sections 26, 27, 29, and 30, the By-law, and the Brokerage Transaction and Trust Account Policy or the licensee must amend or counter, as appropriate, the document to comply.

(c) A licensee may revise any form to a trade in real estate by adding or deleting content; however, the additions or deletions must not directly or indirectly conflict with the requirements of subsection (b) or remove the obligations or requirements of licensees set out in the Act, the By-law or the Commission Policies.

(d) The licensee has a fiduciary obligation to review all real estate documents with their client to ensure that the client's interests are protected.

Commercial Forms

739

Licensees conducting commercial transactions must ensure that the disclosures and contracts used comply with the requirements set out in Act sections 26, 27, 29, and 30, the By-law and the Brokerage Transaction and Trust Account Policy.

PART SEVEN – CONDUCT AND TRADE PRACTICES

Written and Legible Real Estate Transaction Documentation

740

- (a) Licensees have an obligation to ensure that all real estate transaction documentation, whether prepared by the licensee or received by the licensee, is in writing, in clear and understandable language, expressing the specific terms, conditions, obligations and commitments of all the parties and executed and initialed, if applicable.
- (b) All real estate transaction documentation must remain legible, regardless of the manner in which the content of the documents is altered and how the documents are shared between the parties.
- (c) A true copy of any real estate transaction document that is signed and/or initialed by a client, an unrepresented party or another person must be provided to that party at the time of signing.

Signing Agreements on Behalf of Others

741

- (a) If a client or an unrepresented party is signing on behalf of another party to the agreement, the client or unrepresented party must be authorized to do so and the licensee must obtain a copy of that authorization for the transaction file.
- (b) To sign on behalf of a client, a licensee must obtain a power of attorney granting the licensee authorization to sign a document on the client's behalf.

Service and Representation Agreements

742

- (a) Service and representation agreements must be in writing and a licensee must deliver to the client or the unrepresented party a true copy of the agreement upon its signing.
- (b) Licensees must deliver a copy of the agreement to the licensee's brokerage as soon as possible after the agreement is entered into.
- (c) Licensees must confirm that a seller has the authority to market and sell the property.
- (d) A licensee must not knowingly make an inaccurate representation about services provided by the licensee or the licensee's brokerage.
- (e) Any offer of services or other promises made to a client or unrepresented persons that are not contained in the standard wording of a brokerage agreement or an unrepresented acknowledgement form must be added, in writing, to the agreement/acknowledgement prior to execution.

PART SEVEN – CONDUCT AND TRADE PRACTICES

Agreement of Purchase and Sale, Schedules, and Addendums

743

- (a) Agreements of purchase and sale and any attached documents, such as schedules and addendums, must be in writing and the schedules and/or addendums must be referenced on the agreement of purchase and sale.
- (b) When a licensee prepares an agreement of purchase and sale for a buyer client or an unrepresented buyer, upon signing and initialing the agreement and any schedules or addendums, the licensee must provide a true copy of that offer to the buyer and the seller's licensee or, if unrepresented, to the seller.

Presentation of Offers

744

Unless otherwise instructed by the licensee's seller client or unrepresented seller, a licensee who receives an offer from a buyer or a buyer's licensee must deliver, as soon as possible, a true copy to the seller.

Acceptance of an Agreement of Purchase and Sale

745

- (a) A licensee who has obtained a signed acceptance of an agreement of purchase and sale from the seller must deliver a true copy of the signed acceptance to:
 - (i) the seller;
 - (ii) the buyer's licensee or buyer; and
 - (iii) the licensee's brokerage.
- (b) A licensee who receives a copy of an accepted agreement of purchase and sale on behalf of a buyer must deliver a true copy to the buyer and the licensee's brokerage.

Submission of Documentation to the Brokerage

746

All real estate transaction documents related to a trade in real estate, regardless of acceptance, must be submitted to the licensee's brokerage.

Obligations to other Licensees and Consumers

Sharing Opinions on Other Licensees

747

A licensee must avoid ill-considered or uninformed criticism of the competence, conduct, or advice of other licensees. If a licensee's opinion is sought, it should be rendered with strict professional integrity and courtesy.

PART SEVEN – CONDUCT AND TRADE PRACTICES

Communicate and Interact Professionally with Licensees and Consumers

748

- (a) A licensee must not, in the course of business, send correspondence or otherwise communicate to a licensee or a consumer in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a licensee.
- (b) In dealings with licensees and consumers, a licensee must be courteous, civil, and act in good faith.

Respond in a Timely Manner to Licensees and Consumers

749

In the course of business, a licensee must:

- (a) answer with reasonable promptness all communications from licensees or consumers that require an answer; and
- (b) be punctual in fulfilling all commitments.

Inadvertent Communications

750

- (a) A licensee who receives a communication relating to the representation of another licensee's client or to a trade in real estate and knows or reasonably should know that the communication was inadvertently sent must promptly notify the sender and destroy or delete the communication.
- (b) A licensee who inadvertently sends a communication related to the representation of their client or to a trade in real estate to the wrong recipient must promptly notify their client of the error.

Obligations to the Regulator

Communicate Professionally with the Regulator

752

Licensees must reply promptly, courteously, and completely to any communication from the Commission in which a response is requested. If a deadline for a response has been specified, the licensee must respond on or before the deadline.

Duty to Cooperate with Audits and Investigations

753

A licensee must cooperate with Commission staff or appointees in regards to investigations and audits, including doing all of the following:

- (a) Responding promptly, truthfully, and completely to communications and requests for information and/or records;

PART SEVEN – CONDUCT AND TRADE PRACTICES

- (b) Compiling and submitting all documents in the format requested by the investigator/auditor;
- (c) Complying with any deadlines for the delivery of documents or statements; and
- (d) Complying with any direction of the Registrar, Commission staff or appointee that is relevant to the investigation or the audit.

Advertising and Promotion

Identification Requirements

Brokerage Names

755

- (a) The name of the brokerage that licensees use to trade in real estate is the name, exactly as it appears, on the licence issued to the brokerage.
- (b) The name of the brokerage must be clearly and prominently displayed in all advertisements and promotions by the brokerage.
- (c) The brokerage name/logo must be larger than any licensee name/logo or team name/logo or combination thereof in advertising.

Licensee Names and Nicknames

756

- (a) Subject to subsection (b), the name a broker, a managing associate broker, an associate broker, or a salesperson uses to trade in real estate is the name, exactly as it appears on the licence issued to the broker, managing associate broker, associate broker, or salesperson.
- (b) If a broker, a managing associate broker, an associate broker, or a salesperson has registered a nickname with the Commission to use in place of their first name they may use the nickname and their last name(s) to trade in real estate.
- (c) If a broker, a managing associate broker, an associate broker, or a salesperson uses their name in advertising and promotion, the name used must be the name as specified in subsection (a) or (b).
- (d) The name of the brokerage must be clearly and prominently displayed in all advertisements and promotions by a salesperson, an associate broker, a managing associate broker, or a broker.
- (e) The brokerage name/logo must be larger than any licensee name/logo or team name/logo or combination thereof in advertising.

Approved Sales Corporations

757

- (a) No approved sales corporation may trade in real estate except through the services of and in the name of its responsible licence holder.

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(b) An approved sales corporation must not be identified in any advertising unless the advertising indicates the name of the brokerage as advertiser and is approved by the Registrar.

Advertising Requirements and Restrictions

758

- (a) A licensee must have a written agreement with a seller to advertise a property. The advertised price of the property must be as stated in the agreement.
- (b) If real estate advertising includes an office address for the licensee, that address must be the address of the licensee's brokerage office or a licensed branch office.
- (c) Any promotional material distributed, excluding novelty items, must contain a statement whereby it states that it is not intended to solicit a buyer or a seller under contract.
- (d) Licensees must have written authorization to install a lockbox. The lockbox must be removed immediately upon the completion, termination, or expiry of the service agreement.

759

A licensee must not engage in any advertising, promotion, or representation made to the public that is:

- (a) false;
- (b) inaccurate;
- (c) reasonably capable of misleading the recipient or intended recipient;
- (d) in bad taste;
- (e) offensive or harmful to the best interests of the public or harmful to the image of the real estate industry; or
- (f) prohibited by law.

Signage

760

- (a) Licensees must have their for-sale and for-lease signage approved by the Registrar prior to use, in accordance with by-law 313(e).
- (b) A licensee must have a written agreement with a seller authorizing them to place a sign on a property designating it for sale, lease, development or exchange. The sign must be removed upon the request of the seller, the sale or lease of the property or the expiry of the agreement, whichever comes first.
- (c) Only one licensee may place a sign on a property designating it for sale, rent, lease, development or exchange, unless the owner provides written authorization to another licensee to also place a sign on the property.

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- (d) A licensee must not place signage at their personal residence unless the location is licensed as a branch office.
- (e) A licensee must have the written authorization of a property owner to install signage promoting the services of the licensee on the property of the owner.

Real Estate Teams

Team Composition

761

- (a) A team is two or more licensees who are licensed with the same brokerage, including licensed assistants, who:
 - (i) work together to provide real estate brokerage services;
 - (ii) represent themselves to the public as being part of one team; and
 - (iii) designate themselves by a collective name, such as team or group.
- (b) A team member belongs to one team only and does not provide real estate services independently of the team.

Team Supervision

762

- (a) In accordance with by-law 702, the trading activity of a team may be supervised only by the broker or a managing associate broker of the brokerage.
- (b) The broker is responsible for ensuring that all real estate teams of the brokerage are conducting themselves in accordance with by-law 761.

Team Advertising/Identification

763

- (a) Teams must not engage in any advertising, promotion, or representation made to the public that makes it appear as if:
 - (i) the team is a brokerage, including any branch office signage;
 - (ii) unlicensed persons are members of the team, unless identified as unlicensed; or
 - (iii) the team is a business or company with a corporate structure, regardless of corporate registrations.
- (b) Teams must clearly and prominently display the brokerage name in all advertising, promotions, or representations made to the public in such a manner that no recipient or intended recipient would reasonably believe that the team is a brokerage.

PART SEVEN – CONDUCT AND TRADE PRACTICES

Team Responsibilities and Disclosures Under Designated Agency

764

- (a) Designated agency brokerages must designate all members of a team as the designated agent for any client receiving real estate services from any member of the team.
- (b) Designated brokerage agreements must indicate the team name and list the names of all team members. If the members of the team change, the designated brokerage agreements must be amended to reflect the change.
- (c) The conflict that arises when a designated agency team represents a buyer client who wishes to purchase the property of the team's seller client must be resolved in accordance with by-law 731.

Team Responsibilities and Disclosures under Common Law

765

- (a) Common-law brokerage agreements must indicate the team name and list the names of all team members. If the members of the team change, the common-law brokerage agreements must be amended to reflect the change.
- (b) The conflict that arises when a common-law brokerage, including any teams of the brokerage, represents more than one client in a transaction must be resolved in accordance with by-law 731.

Remuneration

Calculation of Remuneration

766

- (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 (i), (ii) and (iii).
- (b) A consumer must be fully informed, in writing, of the remuneration they will be required to pay before entering into an agreement for brokerage services.

Requirements to Make a Claim for Remuneration

767

A brokerage must only make a claim for remuneration when at least one of the following is/are in place, which specifies the remuneration to be paid:

- (a) a Seller Brokerage Agreement/Seller Designated Brokerage Agreement;

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- (b) a Buyer Brokerage Agreement/Buyer Designated Brokerage Agreement;
- (c) a remuneration sharing agreement; or
- (d) some other form of written agreement.

Remuneration Paid by Licensing Brokerage Only

768

- (a) A licensee must not accept remuneration or any other financial payment or benefit directly from any source other than from the brokerage with which they are licensed for trades in real estate.
- (b) If a licensee changes brokerages and is owed remuneration under the terms of the licensee's contract with the previous brokerage, the previous brokerage pays the remuneration owing to the new brokerage and the new brokerage pays the licensee.
- (c) A licensee must not accept remuneration in respect of trades in real estate from any person who is required to be licensed under the Act, but is not licensed.

Trading Remuneration to Unlicensed Persons is Prohibited

769

A brokerage must not:

- (a) pay, offer to pay, agree, or allow to be paid a referral fee or any remuneration to a person in relation to real estate services if the person is required to be licensed in relation to those services but is not licensed; or
- (b) pay a remuneration directly or indirectly in connection with a trade in real estate to a brokerage that is licensed under the Act or under similar legislation in a jurisdiction outside of Nova Scotia when the brokerage has knowledge that the remuneration will be paid to or be shared with a person who is required to be licensed in relation to those services but is not licensed.

Remuneration to Unlicensed Assistants

770

- (a) A licensee may remunerate an unlicensed assistant in any manner that is agreed upon by the licensee and the assistant.
- (b) The method of remuneration must be documented in the employment or self-employment contract of the assistant and signed by the licensee and the assistant.

Incentives, Inducements, and Remuneration Sharing

771

- (a) An incentive or an inducement may be in the form of a remuneration rebate, provided the rebate is being made to a party to the transaction.

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- (b) An associate broker or salesperson must not, directly or indirectly, provide an incentive or inducement unless the details of the incentive or inducement are provided in writing and the broker or managing associate broker has provided written approval.
- (c) An incentive that is directly or indirectly advertised, communicated, or offered to any person must include the details of the incentive and any terms or conditions to which it is subject. The details, terms, and conditions of the incentive must be provided in writing prior to the signing of any contract, acknowledgement, or agreement.
- (d) A licensee may give a gift to a client, an unrepresented party, or any other person provided the gift is not an incentive, an inducement, a referral fee or remuneration sharing.

PART EIGHT – DISCIPLINE

Delegation of Registrar Duties

801A

The Registrar may, in writing, delegate to one or more employees of the Commission any of the Registrar's powers, duties or functions under this Section.

Complaints

801

For the purpose of this by-law, a complaint includes any written allegation that a licensee has engaged in conduct, which, in the opinion of the Registrar, may constitute unprofessional conduct as defined in the Act and the By-law.

Complaints Review Committee

802

The Commission will appoint a Complaints Review Committee of at least three people, one of whom is not a licensee or a former licensee.

803

The role of the Complaints Review Committee is to:

- (a) provide feedback to the Registrar, when requested, with respect to the disposition of complaints; **and**
- (b) accept or reject Settlement Agreements pursuant to section 20 of the Act; **and**
- (c) **consider and issue final decisions on complaints referred to it by the Registrar pursuant to By-law 834.**

Complaints Appeal Subcommittee

804

The Chair of the Complaints Review Committee will appoint a Complaints Appeal Subcommittee, consisting of at least three (3) members of the Committee, one of whom is not a licensee or a former licensee. The Chair shall appoint one of the three members to be the Chair of the Subcommittee.

805

The role of the Complaints Appeal Subcommittee is to consider any request from a complainant for a review of a decision by the Registrar to dismiss a complaint.

PART EIGHT – DISCIPLINE

806

No member of the Complaints Appeal Subcommittee may have previously participated in any discussions or decisions with respect to the matter under review.

807

- (a) Any complaint made to the Commission that a licensee has engaged in unprofessional conduct must be made in writing, setting out **the allegations against the licensee and the facts as known to the complainant.**
- (b) By filing a complaint, the complainant is deemed to authorize the Registrar or their delegates to:
 - (i) disclose the complaint to the respondent and their broker;
 - (ii) make such other disclosures as may be necessary for the investigation of the complaint for proceedings under the Act and the By-law; and
 - (iii) authorize them to obtain the complainant's relevant file materials from any licensee.

808

Where the Registrar has reason to believe that a licensee has engaged in unprofessional conduct the Registrar may initiate a complaint without having received a formal complaint pursuant to by-law **807**.

809

- (a) The Registrar may dismiss a complaint at any time, **with or without initiating an investigation**, if satisfied that:
 - (i) the conduct complained of does not constitute **unprofessional conduct, a breach of the Act, the Regulations or the By-law.**
 - (ii) the complaint is trivial, frivolous, of a vexatious nature, or filed for improper purposes;
 - (iii) the complainant fails or refuses to cooperate with **the Registrar or their delegate**;
 - (iv) the complainant asks not to proceed with the complaint;
 - (v) an investigation **or further investigation** of the complaint would not be in the public interest.
- (b) **When dismissing a complaint pursuant to 809(a) the Registrar may provide advice to the licensee with respect to the subject matter of the complaint or any other matter that has come to the Registrar's attention as a result of the Registrar's review.**

PART EIGHT – DISCIPLINE

810

- (a) If the Registrar decides to dismiss a complaint without **initiating an investigation**, they must:
 - (i) deliver notification, in writing, to the complainant outlining the reasons why the complaint is being dismissed; and
 - (ii) advise the complainant, in writing, of their right to apply for a review of the Registrar's decision by the Complaints Appeal **Subcommittee**.
- (b) **Unless the Registrar determines it is contrary to the public interest, the respondent will receive a copy of the letter of dismissal and complaint.**

811

At any time following receipt of the complaint, the Registrar may attempt to informally resolve the complaint.

Investigations

812

Pursuant to Section 17(3) of the Act, the Registrar may authorize a person or persons to conduct an investigation into whether a licensee has engaged in unprofessional conduct.

813

The Registrar will notify a respondent, in writing, of the commencement of an investigation into their conduct and provide a copy of the complaint and the name of the Investigator who has been appointed to investigate the complaint.

814

An Investigator appointed by the Registrar will investigate the facts and circumstances of the complaint against any licensee and has the authority set out in section 17 of the Act.

815

The Investigator may require, from a respondent or any other licensee, a response to the complaint or any part of the complaint and may set a time within which a response is to be provided.

816

A licensee's response to a complaint must:

- (a) be in writing, unless the Investigator instructs otherwise;

PART EIGHT – DISCIPLINE

- (b) respond substantively to the allegation or allegations and any inquiries by the Investigator; and
- (c) be delivered to the Investigator as soon as practicable and, in any event, no later than the date set by the Investigator.

817

- (a) A respondent must co-operate fully with the investigation and must not:
 - (i) withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purpose of an investigation;
 - (ii) make or permit to be made any false or misleading statement when providing information to the Investigator or the Commission;
 - (iii) attempt to have the complainant withdraw a complaint; or
 - (iv) interfere with or obstruct an investigation.
- (b) A breach of this section may result in disciplinary charges or a suspension pursuant to section 21(1) of the Act.

818

The Investigator may investigate any other matter that arises during the course of an investigation and appears to be a breach of the Act, the Regulations or the By-law.

819

Upon the completion of their investigation, the Investigator will give to the Registrar a written report that summarizes the investigation and outlines whether the evidence collected during the investigation supports a finding that the respondent has engaged in professional misconduct or a breach of the Act, the Regulations or the By-law.

Registrar's Report

820

Upon receipt of the Investigator's report, the Registrar will prepare a report setting out a summary of the investigation findings, and if there is a finding of **unprofessional conduct**, include a proposed penalty. The Registrar may consult with the Complaints Review Committee regarding the Registrar's findings, proposed penalty or with respect to the approval of a proposed Settlement Agreement.

PART EIGHT – DISCIPLINE

Decision by Registrar

821

If, following review of the investigation report and any consultation with the Complaints Review Committee, the Registrar decides to dismiss the complaint, the Registrar must:

- (a) deliver notification, in writing, to the complainant, the respondent outlining the reasons why the complaint does not support a finding of unprofessional conduct; and
- (b) advise the complainant, in writing, of their right to apply for a review by the Complaints Appeal Subcommittee.

822

- (a) If, following review of the investigation report, the Registrar has reason to believe that the respondent has engaged in unprofessional conduct, the Registrar must provide the respondent with a copy of the formal allegations and either:
 - (i) **After any consultation with the Complaints Review Committee** provide the respondent with a proposed Settlement Agreement:
 - 1) pursuant to section 20 of the Act; or
 - 2) **that was preapproved by the Complaints Review Committee; or**
 - (ii) refer the matter to the Discipline Committee to be set down for hearing.
- (b) If a respondent who is offered a Settlement Agreement pursuant to section 20 of the Act **or who has been offered a proposed Settlement Agreement that was preapproved by the Complaints Review Committee**, fails to agree within the time set by the Registrar, the Registrar will then refer the matter to the Discipline Committee to be set down for hearing.

823

Notwithstanding the referral of allegations to the Discipline Committee, at any time prior to a hearing, the respondent may propose the resolution of the allegations against them through a written and signed Settlement Agreement.

824

A Settlement Agreement must include:

- (a) an admission that the respondent is guilty of **unprofessional conduct or breach of the Act, the Regulations or the By-law**; and
- (b) the respondent's consent to a specified disposition of the complaint.

PART EIGHT – DISCIPLINE

No Contest and Lifetime Withdrawal

825

Notwithstanding by-law **824**, where the respondent and Registrar agree that revocation and lifetime withdrawal from the industry is the appropriate sanction, a Settlement Agreement does not require an admission that the licensee is guilty of **unprofessional conduct or a breach of the Act, the Regulations or the By-law**, but may instead include a statement that the respondent does not contest the charge and does not admit guilt. **A Settlement Agreement in which a licensee pleads “no contest” forms part of the disciplinary history of the licensee.**

826

- (a) A Settlement Agreement must be submitted to the Complaints Review Committee for approval, who may, pursuant to section 20 of the Act:
 - (i) accept the proposed Settlement Agreement; or
 - (ii) reject the proposed Settlement Agreement.
- (b) **The Registrar may obtain the pre-approval of the Complaints Review Committee to a settlement agreement being proposed by the Registrar to a licensee. Any subsequent changes to the Settlement Agreement must be approved by the Complaints Review Committee. If the licensee accepts the settlement without modifications, the Committee’s preapproval constitutes approval as required pursuant to section 20 of the Act.**

827

For the purposes of the Act and the By-law, a Settlement Agreement is deemed to be a decision of the Discipline Committee.

Reviews of Dismissals

828

A complainant who is dissatisfied with a decision of the Registrar to dismiss a complaint, may apply, in writing, for a review of that decision to the Complaints Appeal Subcommittee. A request for a review must contain reasons for the Complaints Appeal Subcommittee to consider. The request must be received by the Commission within twenty (20) business days of being notified that their complaint was dismissed.

829

Upon receipt of a request for review, the Registrar will provide the Complaints Appeal Subcommittee with a copy of the complaint, **the Registrar’s decision, the request for review, if applicable**, the respondent’s reply, and any investigation report.

PART EIGHT – DISCIPLINE

830

The Complaint Appeal Subcommittee may request further information from the complainant or the Registrar. After their review is completed, they must:

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

831

The Complaints Appeal Subcommittee must either:

- (a) uphold the dismissal; or
- (b) refer the matter back to the Registrar for consideration of new information or further investigation.

832

The Complaints Appeal Subcommittee must provide written reasons for their decision to the complainant, the respondent, and the Registrar.

833

The decision of the Complaints Appeal Subcommittee **to uphold a dismissal** is final and binding.

834

Following further consideration or investigation of a complaint referred back by the Complaints Appeal Subcommittee, the Registrar will provide a report to the Complaints Review Committee who will make a final and binding determination as to the outcome of the complaint. **The Chair of the Complaints Review Committee will notify the Registrar, the complainant, and the respondent of their decision and provide reasons.**

Discipline Committee

835

The Commission will appoint a Discipline Committee consisting of at least five (5) persons, one of whom is not a licensee.

836

The Registrar's referral to the Discipline Committee must include a copy of the allegations against the respondent. Upon receipt of the referral, the Chair of the Discipline Committee will appoint a Hearing Panel per Section 16(4) of the Act consisting of not less than three (3) persons, one of whom is not a licensee, and appoint one of those persons as Chair of the

PART EIGHT – DISCIPLINE

Hearing Panel. For the purposes of this by-law and the Act, a Hearing Panel is considered to be a subcommittee of the Discipline Committee.

837

The Chair of the Discipline Committee will advise the Registrar and the respondent of the composition of the Hearing Panel.

838

As soon as practical following the appointment of a Hearing Panel, the Chair of the Panel will hold a prehearing conference to ensure the orderly hearing of the complaints and to set a date for hearing.

839

- (a) At least 30 days prior to a hearing date, the Registrar will send the respondent a Notice of Hearing containing:
 - (i) the date, time, and place of the hearing;
 - (ii) the statement of allegations against the respondent, including a specific outline of the Sections of the Act, the Regulations or the By-law that are alleged to have been breached; and
 - (iii) notification of the right of the respondent to be represented by counsel at the hearing.
- (b) The Notice of Hearing must be served on the respondent at least thirty (30) days prior to the hearing date.
- (c) The Notice of Hearing must be served on the respondent by registered mail to their last known address, or by such other means identified by the Registrar.

840

- (a) Any respondent who is named in a Notice of Hearing and is unable to appear for valid reasons on the specified date may apply to the Hearing Panel Chair for a rescheduling of the dates.
- (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.

841

The Hearing Panel has all the powers conferred by the Act, the Regulations, and the By-law, and has the powers, privileges, and immunities of a Commissioner under the Public Inquiries Act.

PART EIGHT – DISCIPLINE

842

The Hearing Panel may retain independent legal counsel to assist them in carrying out their duties under the Act and the By-law.

843

The Hearing Panel may determine its own procedure and may:

- (a) issue subpoenas and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Hearing Panel considers necessary for the full consideration of a charge;
- (b) order pre-hearing procedures, including pre-hearing conferences that are held in private, and direct the times, dates, and places of the hearing for those procedures;
- (c) order that a hearing, parts of a hearing or pre-hearing conference be conducted using a means of telecommunication that permits the parties and the panel to communicate simultaneously;
- (d) administer oaths and solemn affirmations;
- (e) adjourn or postpone a proceeding from time to time;
- (f) receive and accept such evidence and information on oath, affidavit or otherwise as the hearing panel in its discretion sees fit, whether admissible in a court of law or not;
- (g) prescribe the disclosure obligations of the parties prior to a hearing;
- (h) compel, at any stage of a proceeding, any person to provide information or to produce documents or things that may be relevant to a matter before it; and
- (i) receive and accept such evidence and information on oath, affidavit or otherwise as the Hearing Panel in its discretion sees fit, whether admissible in a court of law or not.

Parties to a Hearing

844

- (a) The parties to a hearing are the Commission and the respondent.
- (b) For greater certainty, a complainant is not a party to a hearing.

Evidence at Hearing

845

- (a) Subject to subsections (b) and (c), evidence is not admissible before the Hearing Panel unless the opposing party has been given, at least 10 days before a hearing:
 - (i) for written or documentary evidence, an opportunity to examine the evidence;

PART EIGHT – DISCIPLINE

- (ii) for expert evidence, the expert's qualifications and a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
- (iii) the identity of any other witness and a summary of the witness's anticipated evidence.

(b) The Hearing Panel may extend beyond ten (10) days the time required for an opposing party to be provided with evidence under clause (a)(ii).

(c) The Hearing Panel may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (a) and may make directions it considers necessary to ensure a fair hearing.

846

The Respondent who is the subject of the hearing is considered a compellable witness and they are required to give evidence as requested by the Hearing Panel at a hearing.

847

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

The Decision

848

- (a) A Hearing Panel decision must be in writing, include the reasons for their decision, and be rendered within a reasonable time frame.
- (b) A Hearing Panel Chair will provide a copy of the written decision to the Registrar when rendered.

849

The Hearing Panel Chair will send a written notification of the Hearing Panel's decision, to:

- (a) the person who made the complaint, if any;
- (b) the respondent; and
- (c) the brokerage with which the respondent is licensed and/or was licensed at the time of the allegations.

850

Where a respondent has been found guilty of professional misconduct, the Hearing Panel may direct that all or part of the costs incurred to investigate and hear a complaint against a respondent are to be paid by the respondent, and the time within which such payment must be made.

PART EIGHT – DISCIPLINE

851

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

852

- (a) In accordance with Real Estate Trading Act Section 25(2), where a licence is cancelled or suspended pursuant to the Act, the Registrar must provide such notice to the public and/or industry as the Registrar determines necessary in the public interest. At a minimum there must be a posting on the NSREC website that includes the licensee'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 led to the violations.
- (b) The notice must remain on the Commission website for the duration of the suspension/cancellation and for such other time as determined by the Registrar is required in the public interest.
- (c) The Registrar may send a notice to the industry with the names of any licensee whose:
 - (i) licence is not renewed as a result of failure to complete a required education course(s);
 - (ii) licence is not renewed or terminated by midnight on June 30th;
 - (iii) errors and omissions insurance coverage is terminated; or
 - (iv) licence is downgraded or restricted.

853

- (a) Administrative penalties and all other discipline may be published at the discretion of the Registrar, in accordance with the public interest. The Registrar may determine the contents of any publication, including whether the licensee is named.
- (b) Publications will remain on the website as determined by the Registrar to be in the public interest.

Discipline and Licence History Disclosure

854

When requested in writing, the Commission will disclose the following about a licensee:

- (a) the number of years licensed in a particular class of licence;
- (b) the total number of years licensed;
- (c) the name of the licensee's current brokerage;

PART EIGHT – DISCIPLINE

- (d) the full disciplinary history of a licensee; and
- (e) **If a disciplinary history exists, the name of the brokerage the licensee was licensed with at the time the conduct occurred.**

855

Records of suspensions or past license cancellations **and the name of the brokerage the licensee was licensed with at the time the conduct occurred** will be permanently attached to the license information of a licensee on the public view of the licensee database that is made available on the Commission website.

856

Records of administrative penalties and other discipline will be permanently attached to the license information of a licensee on the public view of the licensee database that is made available on the Commission website, unless otherwise determined not to be in the public interest by the Registrar.

857

For greater certainty, the discipline history will permanently remain attached to the licence of a licensee regardless of the duration of any unlicensed periods of time, unless otherwise determined not to be in the public interest by the Registrar.

858

Where the Registrar determines it is in the public interest, the Registrar may disclose information related to a complaint or investigation to the police authorities or to other regulatory authorities.