

PART ONE – DEFINITIONS

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®.

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.

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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.

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.

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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.

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.

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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.

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.

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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.

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.

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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.
- (c) An opinion of value is determined by one of the following methods:
 - (i) comparative market analysis;
 - (ii) cost approach; or
 - (iii) income approach.

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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.

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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.

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.

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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.

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.

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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.

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.

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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.