



nova scotia real estate  
**COMMISSION**

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

*Drafted and presented by the Audit Taskforce*

**Revised December 2019**

# Contents

- Chapter 1: Overview .....5**
- Introduction ..... 5
- Purpose of the audit program..... 5
- Areas of audit focus ..... 5
- What is a trust account audit? ..... 6
- What is a brokerage audit? ..... 6
- What is a change of broker audit? ..... 6
- What is a closing-out audit?..... 6
- What is a spot audit? ..... 7
- Process for booking an audit ..... 7
- Sampling process ..... 7
- Meeting with the broker ..... 8
- Post-audit process..... 8
- Audit report..... 8
- Audit rating ..... 8
- Broker remediation requirement ..... 8
- Terms used in this document..... 8
- Chapter 2: Audit Process Philosophy.....10**
- Audit process philosophy..... 10
- Chapter 3: Discrepancy Categories.....12**
- Categories ..... 12
- Errors..... 12
- Serious issues ..... 12
- Critical issues..... 12
- Multiple occurrences..... 12
- Determination of discrepancies..... 12
- Chapter 4: Trust Accounts .....14**
- Trust account inspection..... 14
- Testing a sample of individual trust fund transactions..... 14

Four trust account record keeping requirements.....	16
<b>Chapter 5: Transaction Files .....</b>	<b>21</b>
Transaction file review.....	21
File review process.....	21
<b>Chapter 6: Commercial Requirements .....</b>	<b>24</b>
Commercial requirements .....	24
Agency disclosure.....	24
Common law agency client relationship.....	24
Designated agency client relationship.....	24
Customer status.....	24
Transaction brokerage .....	25
Transaction file review.....	25
File review process.....	25
<b>Chapter 7: Licensee (Non-broker) Compliance.....</b>	<b>27</b>
Licensee (non-broker) compliance .....	27
Recording non-compliance .....	27
<b>Chapter 8: Audit Ratings and Frequency .....</b>	<b>29</b>
Audit ratings.....	29
Trust account audits.....	29
1. Testing a sample of individual trust fund transactions.....	29
2. Four trust account record keeping requirements.....	30
Trust audit rating .....	30
1. Sort and count the trust data.....	30
2. Analyze the trust data.....	30
3. Assignment of the trust rating .....	31
Transaction file review.....	31
Determination of the transaction file review sample.....	31
Transaction file audit rating.....	32
1. Sort and count the transaction file data .....	32
2. Analyze the transaction file data.....	32
3. Assign the transaction file review rating.....	33
Description of ratings.....	33

Audit frequency .....	34
1. Existing brokerage with no change of broker .....	35
2. Existing broker moves to another existing brokerage .....	35
3. Existing broker moves to first-time licensed brokerage .....	35
4. First-time broker at an existing licensed brokerage .....	35
5. First-time broker at a first-time licensed brokerage.....	36
<b>Chapter 9: Corrective Action.....</b>	<b>37</b>
Corrective action.....	37
Licensee (non-broker) compliance .....	37
<b>Chapter 10: Audit Fees .....</b>	<b>38</b>
Audit fees .....	38

# Chapter 1: Overview

---

## Introduction

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

## Purpose of the audit program

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

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

## Areas of audit focus

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

### Trust accounts

- deposits
- disbursements
- timelines
- accuracy
- record keeping

### Files

- completeness
- consistency

### Clauses

- clear
- understandable
- completeness

### Forms

- use of correct forms
- timeliness
- completeness

# Chapter 1: Overview

---

- accuracy

## **Execution**

- accuracy
- timeliness
- completeness

## **What is a trust account audit?**

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

## **What is a brokerage audit?**

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

## **What is a change of broker audit?**

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

## **What is a closing-out audit?**

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

# Chapter 1: Overview

---

## What is a spot audit?

A spot audit is a brokerage or trust audit that is conducted without prior notice to the broker. Spot audits typically result from audit results of Needs Improvement or At Risk rating.

## Process for booking an audit

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

### Form 1—the brokerage held trust funds and conducted trades

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

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

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

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

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

## Sampling process

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

For trust audits, there are two sampling elements:

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

# Chapter 1: Overview

---

## Meeting with the broker

The rating will not be assigned upon conclusion of the field work; however, the auditor will request to meet with the broker after the field work is complete to discuss the preliminary discrepancies identified. For audits carried out the Commission offices, that meeting will be done via conference call.

## Post-audit process

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

## Audit report

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

## Audit rating

An audit rating(s) are identified in the audit report. If the audit results in a rating of Needs Improvement or At Risk, the auditor will review the rating with the compliance manager prior to sending it to the broker. Once received, if the broker wants a review of their rating, the broker must make a written submission to the Registrar requesting a review. The request must be made in writing and have supporting reasons as to why they are disputing the audit rating. The Registrar's decision will be final.

## Broker remediation requirement

In the event the audit rating results in a Needs Improvement or At Risk, the broker will be required to provide the auditor with a written action plan outlining what steps they will take to ensure similar discrepancies do not continue in the future.

## Terms used in this document

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

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

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

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

# Chapter 1: Overview

---

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

**Discrepancy** – an issue that has been determined to be either critical, serious or an error.

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

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

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

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

## Chapter 2: Audit Process Philosophy

---

### Audit process philosophy

The Commission mandate is to ensure consumer confidence and protect the public in their real estate transactions. An audit of brokerage files and trust accounts is a tool used by the Commission in fulfilling that mandate.

Should audits be punitive to deter incorrect broker and licensee behaviour relative to transactions and related documentation? Or, should the audit process be designed to educate, so that brokers and licensees can learn from their mistakes and do better in the future?

Audits can't fix the past; they can only influence future performance. Therefore, unless the audit identifies activities by the brokerage that are egregious (fraud, breach of trust, etc.), the philosophical approach should be that audits are designed to be educational, unless the concerns are found to be repetitive year after year.

There are various levels of discrepancy that can be identified in an audit: simple errors that have little or no effect on consumer risk; discrepancies that are more serious and could eventually lead to putting a consumer at risk if they continue to occur; and, those that are critical and need to be addressed immediately to ensure that consumers are not at risk. The central question is: does the identified discrepancy put a consumer at risk now or potentially in the future and, what risk is there to a consumer if there is a pattern of repeated discrepancies? The nature of a discrepancy is the important consideration. The combination of these considerations is the lens through which every action or requirement identified in the program was filtered to determine its level of seriousness.

It is virtually impossible for an audit process to describe every single discrepancy that may occur in file documentation. Auditors must use discretion and common sense when dealing with issues and the various nuances that play out as transactions proceed and documentation is prepared. Anything that is not covered specifically in the Audit Program need only be considered for addition to the program if it may be "critical" or "serious". Otherwise, the default should be to "error".

Given that audits can't fix the past—only influence the future—something should be considered critical only if it could have an immediate negative consumer impact. Fraud and breach of trust are in this category. Lack of files (multiple number), which prevents the audit from being carried out effectively, may also be critical. A pattern of "serious" discrepancies and, to a lesser degree, "errors" may be indicative of a problem that one-off serious items or errors don't indicate. In addition, weak performance that is not improved upon in subsequent years may be indicative of ineffective brokerage processes. However, again, a certain amount of auditor discretion and common sense must be applied as part of the audit process.

The rating system is not the primary focus of the audit program: education is. The audit rating is simply a way of quantifying a level of performance so that a brokerage knows how they and their licensees are performing their required functions relative to certain standards or expectations.

## Chapter 2: Audit Process Philosophy

---

There are four rating categories: Excellent, Satisfactory, Needs Improvement and At Risk. An Excellent rating means the brokerage and licensees are doing a great job and the consumer has not been placed at risk. A Satisfactory rating means the fundamentals are generally well done. If a brokerage always receives a Satisfactory rating, they are doing fine and there is little risk to the consumer. However, there are a few areas where there could be some improvement. A Needs Improvement rating should not be considered a failure by the brokerage; however, it indicates that improvements are needed to ensure the brokerage doesn't slip into the At Risk category and eventually put consumers at serious risk. If the result is an At Risk rating, there is a fundamental problem with brokerage processes and documentation, licensee attention to detail, or both, and corrective action must be taken by the brokerage to address the issues identified. There may be a fine line between one result and another and, as such, the audit staff may apply discretion in assigning a final result depending on answers they receive to questions posed to the brokerage, past audit performance, and other circumstances identified.

The Audit Program is a tool which brokers can use as part of their brokerage's internal training program(s). Audits provide the brokerage with cumulative knowledge of areas where specific education needs to be provided individually or collectively in the brokerage. Both are tools to assist the broker in managing risk within the brokerage and, ultimately, to consumers.

While the process is called an "audit", the process involves an inspection of trust fund activity and a review of brokerage files. Regardless of the process name, the intent of the process is to be educational relative to the brokerages record keeping and documentation, with the ultimate goal of ensuring and maintaining consumer confidence in the real estate industry and consumer protection in real estate transactions involving licensees.

Audit Task Force

July 21, 2019

Jessica Kaulback, Chair

Anne Da Silva

Brian Lugar

Gary Morse

Linda Smardon

Robert Wambolt

# Chapter 3: Discrepancy Categories

---

## Categories

The issues identified in trust and brokerage audits are categorized as described in the following sections. These discrepancies form the basis of the resulting audit rating level. Determining discrepancies may require a level of subjectivity. In these circumstances, the auditor may apply and use discretion.

### Errors

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

### Serious issues

These are issues not considered critical but may put consumers, licensees, and/or brokerages at risk if continued. For example, but not limited to, failure to adhere to timeframes, and not correctly identifying number of pages.

### Critical issues

These are issues that, if continued, put consumers, licensees, and/or brokerages at risk (these could be committed by certain licensees and/or generally across the brokerage). For example, but not limited to, failure to prepare a trust control ledger.

## Multiple occurrences

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

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

Multiple occurrences of not properly executing all documents and the total number of pages has not been identified on the APS, within one transaction file, will be counted as two (2) serious discrepancies.

## Determination of discrepancies

Auditors will apply the above definitions when assigning discrepancies to any items not specifically identified in this program.

## Chapter 3: Discrepancy Categories

---

Depending on the circumstances, auditors may use their discretion to lower a discrepancy level (e.g. from serious to error) where a discrepancy identified in this program is only partially wrong or incomplete.

If a specific discrepancy is repeated that required action in a broker's past audit report, the discrepancy level may be increased. For example, an Error could be increased to a Serious, or a Serious could be increased to a Critical. Or, if a discrepancy is repeated significantly within the same audit file the discrepancy level may be increased.

# Chapter 4: Trust Accounts

---

## Trust account inspection

Act 4(3): *Every brokerage shall maintain in a bank an interest-bearing trust account, of a type specified in the by-laws.*

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

- Testing a sample of individual trust fund transactions.
- Review and assessment of the four-trust account record keeping requirements

If the brokerage does not have trust activity and their financial institution does not provide monthly bank statements, the broker must obtain a letter from their financial institution prior to the audit indicating there is an active trust account and that there has been zero activity during the audit period. Failure to comply with this reporting requirement will be forwarded to the Registrar.

## Testing a sample of individual trust fund transactions

All transaction files where trust funds were held must be provided for the audit. **SERIOUS**

### Deposits directly into the trust account

1. When a deposit is required by an agreement the deposit clause must identify the amount, the due date and where it is to be held. **SERIOUS**
2. Each deposit to a brokerage trust account must be supported by documentation by a trust deposit record that identifies the date, the payee, and the transaction. If the transaction is not identified in the document provided by the financial institution, it may be added by the brokerage. **SERIOUS**
3. When trust deposits are received in accordance with the accepted agreement, the deposit funds must be deposited into the brokerage's trust account within two business days following the date of receipt by a brokerage representative. **SERIOUS**
4. When a trust deposit is identified as not received per the terms of the *Agreement of Purchase and Sale*, the Seller(s) must be notified in writing by the broker or broker designate. **SERIOUS**

### Disbursements directly from trust account

1. Funds may only be disbursed from a brokerage's trust account as follows:
  - a) To a brokerage's trust account, lawyer's trust account, Commission's trust account (unresolved/unclaimed trust funds), and clearly directs that it is to be deposited to trust. **SERIOUS**
  - b) To the brokerage's general account for remunerations owed after successful completion of a transaction. **CRITICAL**

## Chapter 4: Trust Accounts

---

- c) Trust funds from terminated transactions must be disbursed in accordance with the written agreement (must specify to whom) from all parties to the transaction, their respective lawyers, per court order or per the Bylaw. **SERIOUS**
  - d) Early release of trust funds must be in accordance with the written agreement of all the parties or the respective lawyers' written instructions. **SERIOUS**
2. Each disbursement from a brokerage trust account must be supported by documentation from the financial institution that identifies the date, the payee, the financial institution processing date, and the transaction. (If the transaction is not identified in the document provided by the financial institution, it may be added by the brokerage.) **SERIOUS**

### Examples of how funds may be disbursed

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

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

3. Fees associated with trust accounts must not be charged to the trust account. If any charges/fees incorrectly made to/from the trust account are not corrected by the financial institution, as directed by the brokerage, which must be within 30 days of the ending bank statement date for the period in which the charges/fees were made, the brokerage must have corrected the charge/fees within the following 10 days. **SERIOUS**
4. If trust funds are held for a transaction, documentation confirming closing must be maintained (filed) in a consistent manner. See acceptable examples of confirmation below. **ERROR**

### Examples of confirmation of closing

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

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

# Chapter 4: Trust Accounts

---

## Four trust account record keeping requirements

There are four mandatory trust record keeping reports that a brokerage must prepare and maintain. Those reports are:

1. trust control ledger,
2. individual trust records,
3. monthly trust liability listings, and
4. monthly trust account bank reconciliations

There are also a number of requirements in addition to the four reports. Regardless of whom the broker appoints to prepare the monthly trust account record keeping, the ultimate responsibility remains with the broker. If a brokerage does not have any trust activity for the respective months, for those months only it is not mandatory for the broker to maintain the four mandatory trust record keeping requirements.

### 1. Trust control ledger

Bylaw 622: *Every brokerage shall keep as part of its records, with respect to its trades in real estate, a paper or electronic trust ledger.... The trust ledger shall contain a record of all:*

- i) Funds that the brokerage receives in trust;*
- ii) Funds that the brokerage holds in trust;*
- iii) Interest on funds that the brokerage holds in an individual trust; and*
- iv) Disbursements the brokerage makes from funds received in trust.*

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

- a) A trust control ledger must be maintained. **CRITICAL**
- b) The trust control ledger must:
  - (i) Be maintained in chronological order **ERROR**
  - (ii) Identify all deposits/disbursements to/from the trust account **ERROR**
  - (iii) Identify date of deposit/disbursement; **ERROR**
  - (iv) Identify running balance after each transaction; **ERROR**
  - (v) Identify payee of disbursements; **ERROR**
  - (vi) Identify type of disbursement and identifier i.e. cheque number, EFT confirmation number, e-mail address; and **ERROR**

# Chapter 4: Trust Accounts

(vii) Identify information sufficient to identify the trade (any two of the following: transaction address, trade number, names of the parties). **ERROR**

## Example 1: Trust Control Ledger

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

## 2. Individual trust records

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

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

- a) A brokerage accounting system must include individual trust records. **CRITICAL**
- b) The trust records must:
  - (i) Identify all deposits/disbursements to/from the trust account **ERROR**
  - (ii) Be consistent with the information in the trust control ledger **ERROR**

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

# Chapter 4: Trust Accounts

## Example 2: Individual trust record

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

### 3. Monthly trust liability listings

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

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

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

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

# Chapter 4: Trust Accounts

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

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

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

## 4. Monthly trust account bank reconciliations

Bylaw 623: *Each trust account is to be reconciled monthly with the bank statement. The monthly trust account reconciliation must be signed and dated by the broker or managing associate broker...*

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

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

Options for preparing bank reconciliations:

- 1) When preparing a bank reconciliation, the bank reconciliation must be prepared as of the last day indicated on the bank statement. For example, if the bank statement date ends on January 29, the bank reconciliation is to be prepared as of January 29. The February bank reconciliation must include the remaining January dates (30 & 31).
- 2) For brokers who want to prepare their bank reconciliation to the last day of the month (i.e. January 31), they must print an online bank statement that covers the bank activity from the bank statement date to the last day of the month.

- b) The following are required as part of the bank reconciliation:

- (i) Monthly trust account bank statements must be maintained and the broker is required to provide them for the audit period. **SERIOUS**

## Chapter 4: Trust Accounts

- (ii) Trust account bank statements and trust cheques must identify the licensed brokerage name and identify the account as a trust account. **ERROR**
- (iii) Monthly trust account bank reconciliations must be verified, signed and dated by the broker or person appointed by the broker within 30 days of the statement end date. **ERROR**
- (iv) Outstanding disbursements—identify the disbursement confirmation number, payee, **date** and amount of cheque, and information sufficient to identify the trade (any two of the following: transaction address, trade number, names of the parties). **ERROR**
- (v) Outstanding deposits—identify the amount and **date** of the deposit and information sufficient to identify the trade (any two of the following: transaction address, trade number, names of parties). **ERROR**

### Example 4: Sample Bank Reconciliation

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

**Bank Reconciliation**  
**March 31, 2017**

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

# Chapter 5: Transaction Files

---

## Transaction file review

When conducting a transaction file review (brokerage audit), the auditors review individual transaction files for the three functions below:

1. Agreement of Purchase and Sale (APS) of property
2. Client/customer disclosures and agreements (client agreements, customer agreements/acknowledgments)
3. General disclosure and miscellaneous (working with the real estate industry forms, PDS, supplementary documentation, missing transaction files, trade record sheets etc.)

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

## File review process

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

### 1. General

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

# Chapter 5: Transaction Files

---

- g) All supplemental documents required by any executed form must be maintained in the transaction file. **ERROR**

## Examples of supplemental documents contained in a transaction file

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

- h) For agreements that require contact information, the agreement must identify an address and phone number and/or email address for the seller/buyer. If this information is not provided, the clause must indicate “not provided” or be struck. The clause cannot remain blank. **ERROR**

## 2. *Working with the Real Estate Industry form*

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

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

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

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

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

# Chapter 5: Transaction Files

---

## **5. Buyer Designated/ Brokerage Agreement / Buyer Customer Status Acknowledgement**

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

## **6. Agreement of Purchase and Sale**

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

## **7. Counter Offer**

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

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

- a) A *Transaction Brokerage Agreement*, if applicable, must be signed and dated by all parties before the preparation of *Agreement of Purchase and Sale*. **SERIOUS**
- b) A completed trade record sheet must be maintained in the file. **ERROR**
- c) If property was co-listed between brokerages, the co-listing documentation must be in accordance with the [requirements](#) set out by the Commission. **SERIOUS**
- d) An accurate list of all teams/team members/copies of the [Commission Team Contract](#) must be maintained. **ERROR**

# Chapter 6: Commercial Requirements

---

## Commercial requirements

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

### Agency disclosure

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

### Common law agency client relationship

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

To establish a client relationship and/or provide relationship disclosure (landlord, tenant, seller, buyer):

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

### Designated agency client relationship

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

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

### Customer status

A customer relationship is a non-agency relationship and the brokerage and/or the licensee does not owe fiduciary duties to a customer. Customer relationships must be documented in writing and signed by the customer and a brokerage representative.

# Chapter 6: Commercial Requirements

---

## Transaction brokerage

The brokerage and/or designated agent cannot represent both the buyer and the seller in an agency relationship in the same transaction. As such, it is necessary to limit the role of the licensee in this situation to that of an impartial facilitator. **A Transaction Brokerage Agreement/written consent waiver states that the clients no longer receive fiduciary duties from the brokerage and/or the designated agent and documents the services provided.**

## Transaction file review

**When conducting a transaction file review (brokerage audit) on a brokerage that carries out commercial trading, the auditors review individual transaction files for the three functions below:**

- 1. Sale/lease of property**
- 2. Client/customer disclosures and agreements (client agreements, customer agreements/acknowledgments)**
- 3. General disclosure and miscellaneous (supplementary documentation, missing transaction files, trade record sheets etc.)**

## File review process

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

### 1. General

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

# Chapter 6: Commercial Requirements

---

## 2. Representation agreements/customer acknowledgements/ transaction brokerage agreements

- a) The Brokerage Agreement or written authority to act (agency) must include: **SERIOUS**
  - i. Identity of the seller/buyer/landlord/tenant
  - ii. Commencement and expiry dates
  - iii. Remuneration to be paid, **by whom and when**
  - iv. Services provided
  - v. Agency disclosure
  - vi. Price, if applicable
  - vii. Appointment of designated agent by broker, if applicable
- b) The commencement date **of the agreement/acknowledgement** must be the same date or an earlier date than the date of the APS and or letter of intent. **SERIOUS**
- c) The representation agreement/customer fee agreement/customer acknowledgement (**as applicable**) must be signed by the consumer on or before the preparation of the transaction agreement (APS, *Sale/Letter of Intent/Offer to Lease/Lease Agreement*). **SERIOUS**
- d) The remuneration recorded in the brokerage agreement must be the same amount as advertised/recorded on the trade record sheet/remuneration statement lawyer. **ERROR**
- e) For transaction brokerage to occur, a Transaction Brokerage Agreement, or other consent waiver to representation, must be signed and dated by all parties (all clients and brokerage representative) before the preparation of the offer to lease, lease, purchase agreement, or letter of intent. **SERIOUS**

## 3. Items in a transaction file

- a) Signed transaction agreements. The transaction agreement must clearly identify the relationship between the brokerage, the licensee, and the consumer. **SERIOUS**
- b) Any subsequent amendments to the agreement. **SERIOUS**
- c) The deposit clause in the Agreement - if applicable, must specify: **SERIOUS**
  - i. the deposit amount
  - ii. when the deposit is due
  - iii. where it is to be deposited (trust account or otherwise)
  - iv. how it is to be released

# Chapter 7: Licensee (Non-broker) Compliance

---

## Licensee (non-broker) compliance

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

Consistently non-compliant licensees will be held accountable by the Commission if the broker can demonstrate they have taken corrective action towards the licensee, but the licensee has failed to respond accordingly.

### Examples of Corrective Action

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

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

## Recording non-compliance

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

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

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

## Chapter 7: Licensee (Non-broker) Compliance

---

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

# Chapter 8: Audit Ratings and Frequency

## Audit ratings

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

Rating	Trust audit frequency	Transaction file review frequency (Brokerage Audit)
Excellent	1 Year	4 Years
Satisfactory	1 Year	3 Years
Needs Improvement	1 Year	1 Year
At Risk	6 Months	6 Months



To educate brokers on compliance shortfalls, the Commission will clearly articulate where brokers are not compliant, why they are not compliant, and instruct the brokers on proper procedures to comply in the future. Two ratings will be assigned: one for Transaction File Review and one for Trust Account Record Keeping and Procedures.

The auditor reviews both trust record keeping and transaction files for compliance with the requirements. These findings create a dataset that is then analyzed by the auditor and evaluated to identify patterns/trends of non-compliance to be relayed to the broker. The distribution of discrepancies identified during the audit can be categorized into specific functions.

Upon completing their analysis, the auditor assigns an audit rating(s) of: Excellent, Satisfactory, Needs Improvement, or At Risk. This rating, along with a detailed list of discrepancies is presented in a report with a chart/graph to the broker, showing the frequency and distribution pattern of the discrepancies as they relate to each function.

## Trust account audits

The trust audit is comprised of two functions:

1. Testing a sample of individual trust fund transactions
2. Reviewing and assessing the four trust-account record keeping requirements

### 1. Testing a sample of individual trust fund transactions

A sample of files where the brokerage held trust funds is selected and information from those files is collected to test for compliance with deposits and disbursements requirements per the audit program.

The size of the sample varies depending on the following factors:

- Number of trades for which the brokerage held trust
- Audit history of the broker and compliance history of the broker

# Chapter 8: Audit Ratings and Frequency

---

The sample taken is based on the number of trust transactions the brokerage facilitated per month within the audit period. To obtain a representative sample, the sample size is a minimum of 10 per cent of trust transactions per month. To ensure the auditor has a representative sample, all trust transactions may be tested. For larger brokerages, it is based on a minimum sample of 10 per cent per month unless there is a need to pull more files, e.g. pattern, history of broker, etc.

## 2. Four trust account record keeping requirements

The auditor reviews the four trust account record keeping requirements (trust control ledger, individual trust records, monthly trust liability listings, and monthly trust account bank reconciliations), and assesses for compliance.

## Trust audit rating

In assigning the trust audit rating, the auditor:

1. Sorts and count the trust data
2. Analyzes the trust data
3. Assigns a trust rating

### 1. Sort and count the trust data

The auditor considers the following when sorting and counting audit data:

- a) How many discrepancies were identified?
- b) What was the assigned category of each discrepancy per the audit program (critical, serious, error)?
- c) How many of each category? What was the distribution, (i.e. one month or scattered throughout the audit period?)

### 2. Analyze the trust data

The auditor considers the following when analyzing trust data:

- a) **What is the frequency of discrepancies?** Did they occur regularly throughout the audit period or are they isolated? Infrequent discrepancies may be weighted lower depending on all other factors reviewed, i.e. one bank reconciliation was prepared incorrectly concludes it was a one-off and the broker is generally compliant with the requirement.
- b) **Is there a pattern of discrepancies?** Do they pertain to one particular type of discrepancy or are there a number of discrepancies made over a few months of the audit period? Overall, discrepancies that are concentrated in one particular area may represent more of a concern in regards to the broker's rating.
- c) **What is the broker's audit history?** Once the discrepancies have been analyzed, the auditor reviews the audit history and compliance record of the broker. If the broker has a poor audit history and the same discrepancies continue to appear in the most recent audit, the category of the discrepancy may be assigned a higher category discrepancy.

# Chapter 8: Audit Ratings and Frequency

---

Along with the rating, the auditor categorizes the discrepancies into two components. The first component is to test a sample of individual trust fund transactions. The second component is to review and assess the four-trust account record keeping requirements. The auditor categorizes the data and then interprets the data to determine if the discrepancies pertain to one component or to both. This allows the auditor to identify where the broker requires improvement. This information is provided to the broker for educational purposes as a graphed chart.

## 3. Assignment of the trust rating

The audit rating is based on the analysis of the data collected. For example, Brokerage A and Brokerage B receive trust audits. 20 trust files were reviewed in the 12-month audit period. Five serious discrepancies were identified at each audit. Brokerage A has a documented history of the same trust discrepancies. Brokerage B does not. Broker A would receive an audit rating of Needs Improvement. Broker B would receive a Satisfactory rating.

## Transaction file review

Transaction file functions may include the following:

- Sale/lease of property
- Client/customer disclosures and agreements (client agreements, customer agreements/acknowledgments)
- General disclosure and miscellaneous (supplementary documentation, missing transaction files, trade record sheets etc.)

Part of how the Commission educate brokers is to illustrate what functions their corresponding discrepancies fall into. This allows brokers to understand in which areas they need to educate themselves to make improvements. This will be included in the audit report as graph.

## Determination of the transaction file review sample

A sample of closed/terminated transaction files, including mere posting files, involved by the brokerage will be reviewed by the auditor for compliance. The sample will include transactions files of each licensee (minimum of three per licensee).

The size of the transaction file review sample will vary depending on the following:

- Number of transactions the brokerage was involved in
- Number of licensees at the brokerage
- The audit/discipline history of the broker

For example, a brokerage with 10 licensees, each of whom were involved in three transactions, would have all 30 files reviewed. For a brokerage with four licensees, each of whom were involved in 50

# Chapter 8: Audit Ratings and Frequency

---

transactions, would have more than three trades per licensee reviewed or minimum of 10 per cent to ensure the auditor has a representative sample.

## Transaction file audit rating

In assigning the transaction file review audit rating, the auditor:

1. Sorts and counts the transaction file data
2. Analyzes the transaction file data
3. Assigns a transaction file rating

### 1. Sort and count the transaction file data

The auditor considers the following when sorting and counting the transaction file data:

- a) How many discrepancies were identified?
- b) What was the assigned category of each discrepancy per the audit program (critical, serious, error)?
- c) How many of each category?
- d) What was the distribution, i.e. one licensee or as result of everyone at the brokerage?

### 2. Analyze the transaction file data

The auditor considers following when determining the transaction file review rating:

- a) **What is the frequency of discrepancies?** Did they occur regularly throughout the audit period or were they isolated? Infrequent discrepancies may be weighted lower depending on all other factors reviewed.
- b) **Is there a pattern of discrepancies?** Do they pertain to one particular type of discrepancy or are there a number of different discrepancies made over a few months of the audit period? Overall, discrepancies that are concentrated in one particular area may represent more of a concern in regards to the broker's rating.
- c) **What is the broker's audit/discipline history?** Once the discrepancies have been analyzed, the auditor reviews the audit history and compliance record of the broker. If the broker has a poor audit history and the same discrepancies continue to appear in the most recent audit, the assigned category of the discrepancy may be assigned a higher category. The auditor will also look to see if there is improvement from the last audit.

Similar to the trust analysis with the rating, the auditor categorizes the discrepancies into the three general functions:

- Sale/Lease of property documents,
- Client/customer disclosures and agreements (client agreements, customer agreements/acknowledgments)
- General disclosure and miscellaneous (supplementary documentation, missing transaction files, trade record sheets etc.)

# Chapter 8: Audit Ratings and Frequency

---

The auditor categorizes and interprets the data to determine if the discrepancies pertain to one function or multiple functions. This allows the auditor to identify where the broker requires improvement. This information is provided to the broker for educational purposes in a graphed chart.

## 3. Assign the transaction file review rating

The auditor considers following when determining the transaction file review rating:

- a) The audit rating is based on the analysis of the data collected. Even though the number of discrepancies between two brokerages may be similar, they may receive different ratings depending on the analysis.
- b) For example, Brokerage A and Brokerage B receive brokerage audits. 20 transaction files from each brokerage were reviewed. Brokerage A had 10 separate *serious* discrepancies identified from 10 different transaction files. Brokerage B also had 10 discrepancies; but they were isolated to one transaction file. Brokerage A had similar discrepancies identified in their last audit report. The widespread discrepancies identified at Brokerage A may indicate the internal controls of the brokerage are not working. As a result, Broker A's rating is needs improvement. Provided that Broker B has a satisfactory audit history, and the discrepancies appear to be isolated to one transaction file, the control system appears to be working and therefore Broker B would receive a satisfactory rating.

### Description of ratings

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

#### Excellent

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

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

#### Satisfactory

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

*This rating is representative of a broker who has a program of compliance, formal or informal, that is sufficient to prevent systemic violations on a given issue. An individual transaction file may have multiple problems where checks and balances failed, but those problems are isolated and are not found*

## Chapter 8: Audit Ratings and Frequency

---

*repeatedly in other files. Despite the number of violations, there are no significant issues and the auditor would not recommend a formal response delineating specific requirements for corrective action.*

### **Needs Improvement**

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

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

### **At Risk**

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

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

## **Audit frequency**

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

# Chapter 8: Audit Ratings and Frequency

---

## 1. Existing brokerage with no change of broker

a) **Brokerage audit:** audit periods of six months, one year, three years and four years based on the rating of the previous brokerage audit.

- Excellent—next brokerage audit in the fourth year following the year of the audit (ex: if you had an audit in 2019, your next brokerage audit would be in 2023)
- **Satisfactory**—next brokerage audit in the third year following the year of the audit
- Needs Improvement—brokerage audit every year
- At Risk—will have an audit within six months

b) **Trust audit:** audit periods of six months, one year, and two years based on rating of the previous trust audit.

- Excellent—next trust audit in the second year following the year of the audit (ex: if you had an audit in 2019, your next audit would be in 2021)
- **Satisfactory**—trust audit every year
- Needs Improvement—trust audit every year
- At Risk—will have a trust audit within six months, at the discretion of the Registrar

## 2. Existing broker moves to another existing brokerage

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

## 3. Existing broker moves to first-time licensed brokerage

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

## 4. First-time broker at an existing licensed brokerage

A first-time broker at an existing licensed brokerage presents less risk than a first-time broker at a first-time licensed brokerage, however, the level of risk is dependent on the supervisory structure of the

## Chapter 8: Audit Ratings and Frequency

---

brokerage. The incoming broker will be provided with the audit results for the previous three years. The results are intended to provide the new broker with an overview of the brokerage's trust and record keeping processes. As first-time brokers, all brokers in this category fall under the new broker audit schedule. See Audit schedule for first-time broker applicants.\*

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

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

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

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

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

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

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

## Chapter 9: Corrective Action

---

### Corrective action

Pursuant to the Act, the Commission has the authority to impose discipline penalties and to restrict, suspend, or cancel the licenses of brokers who do not maintain proper records. Upon completion of the audit, the broker will receive their detailed audit report which contains their audit rating(s). The expectation is that the broker will take the necessary steps when receiving a Needs Improvement or At Risk rating to improve compliance. If subsequent audit ratings show no improvement, the matter may be referred to the Registrar. The Registrar may then initiate a complaint to be investigated. Upon completion of the investigation, the Registrar may decide no charges are warranted or the broker may be required to have additional audits, at their cost. The Registrar may also decide that charges against the broker are warranted.

Continued noncompliance may result in further disciplinary action which may include but not limited to increased fines, licence restrictions, licensed downgrades, licence cancellations, and disciplinary publication.

### Licensee (non-broker) compliance

As set out in *Chapter 7: Licensee (non-broker) Compliance*, consistently non-compliant licensees, may be subject to disciplinary action if audits of their transaction files show continued less than Satisfactory rating and the broker can demonstrate that they have taken corrective action and the licensee still failed to correct the discrepancies. In these cases, the Registrar will initiate a complaint based on the broker's written reporting of the corrective actions. The complaint and subsequent investigation will proceed in accordance with the disciplinary procedures set out in the Bylaw.

# Chapter 10: Audit Fees

---

## Audit fees

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

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

### Audit fee examples

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

New broker audits are paid for through regular brokerage fee.