

DISCIPLINARY News

September 2016 • Vol. 8 • Issue 2

THE COMPLAINT PROCESS

The Nova Scotia Real Estate Commission (the Commission) is responsible for the administration of the Real Estate Trading Act and Bylaw, which includes receiving complaints about brokerages and licensees, investigating complaints and taking disciplinary action when necessary.

While two licensees may be charged with the same violation, the penalties may be different. This is because the Commission assesses each case individually as each investigation is distinct and often complicated in its own way.

Each case also goes through several levels of procedure. When a complaint is made that warrants a full investigation, the following steps are taken:

1. The Registrar initiates an investigation. He may also do so on his own should he determine it necessary for consumer protection purposes.
2. The respondent licensee and their broker (if applicable) are notified that an investigation has been initiated and sent a copy of the complaint (if applicable) as well as directions on how to reply.
3. The Commission's Compliance Investigator requests statements and supporting evidence from all parties involved. Other parties involved with the case, including other licensees, may also be contacted for statements or information, if required.
4. Upon its completion, the investigation report is turned over to the Registrar for his evaluation and decision.
5. The full investigation file including the Registrar's decision is reviewed by the Complaints Review Committee (CRC), who may accept, reject or make recommendations to amend the decision to:
 - a. recommend no charges;
 - b. recommend charges through a settlement agreement. If the licensee accepts the proposed settlement agreement, they must satisfy the imposed penalty. If the licensee does not agree with the proposed settlement agreement, the matter is referred to the Discipline Committee.
 - c. refer the matter to the Discipline Committee.

The CRC or the Registrar may refer the matter to the Discipline Committee, where a panel is appointed and a formal hearing will make a final decision on the matter.

IN THIS ISSUE

- 1 The Complaint Process
- 2 Brokerage Inspections
- 2 Reminders & Inspection Trends
- 3 Investigations



WHAT IS THE COMPLAINTS REVIEW COMMITTEE?

The Complaints Review Committee (CRC) is comprised of industry and public volunteers from across the province.

The role of the CRC is to:

- review all of the Registrar's complaint decisions;
- accept, reject or make recommendations to amend the decisions;
- make recommendations to the Commission Board of Directors on conduct, trade practices and standards of business practice; and
- hear requests for review of the Registrar's decision to dismiss a complaint.

BROKERAGE INSPECTIONS

Every year, the Commission's Compliance Inspectors conduct trust account inspections (formerly known as audits) on each brokerage in Nova Scotia. In addition to trust inspections, each brokerage is subject to a full brokerage inspection every three years which includes a review of the brokerage transaction files and trust record keeping. The Commission may increase the frequency of inspections for a specific brokerage if necessary. Inspection results fall into one of three categories: 'very good', 'good', and 'needs improvement'. Any brokerage that receives three consecutive ratings of 'needs improvement' is subject to a \$500 fine and the penalty increases if the brokerage receives a fourth or fifth consecutive rating of 'needs improvement'.

Three consecutive 'needs improvement' inspections:

Three brokers were fined \$500 for three consecutive 'needs improvement' ratings for transaction file review.

In April 2016, a broker was fined \$2,500 for three consecutive 'needs improvement' ratings for transaction file review. The fine imposed took into account a disciplinary history involving transaction file review issues. As a result, the broker is also required to participate in a spot inspection within 4 months at the brokerage's expense.

Four consecutive 'needs improvement' inspections:

In May 2016, a broker was fined \$1000 for four consecutive 'needs improvement' ratings for trust account record keeping. The brokerage will be required to participate in a spot inspection at the brokerage's expense.

Demonstrated history of 'needs improvement' ratings in inspections:

In February 2016, a broker was fined \$500 for three consecutive 'needs improvement' ratings for transaction file review and five consecutive 'needs improvement' ratings for trust record keeping. The broker is restricted to holding an associate broker or salesperson licence and must retake the broker licensing course and pass the broker exam to reapply for a Broker or Managing Associate Broker licence.

REMINDERS & INSPECTION TRENDS

Audit Task Force

The Chair of the Commission, Robert Wambolt, has struck a task force to review the entirety of the Commission's inspection program.

This group, chaired by Commissioner and lawyer, Jessica May, will review all aspects of the inspection program, including but not limited to: how inspections are conducted, the frequency at which they are conducted, the rating system used, the fees imposed and the communication made throughout the process.

The task force is expected to present their findings to the Board of Directors in early 2017.

The members of the task force are:

- **Jessica May**, Commissioner, Task Force Chair
- **Anne Da Silva**, Broker, Keller Williams Select Realty
- **Brian Lugar**, Managing Associate Broker, Novacorp Properties Limited
- **Gary Morse**, Commissioner, Managing Associate Broker, Royal LePage Atlantic
- **Linda Smardon**, Managing Associate Broker, EXIT Realty Metro

If you have any questions or comments for the task force, please contact the Commission at compliance@nsrec.ns.ca.

Updated NEW Broker Inspection Requirements

(This article is a reprint from the Commission News Bulletin released on July 20th, 2016)

The Commission's Board of Directors have approved bylaw amendments presented by the Licensing Committee. This decision was made after various inspections revealed that many first-time brokers were not meeting the minimum passing requirements.

NEW BROKERAGE INSPECTION SCHEDULE

In the case of first-time broker applicants, the Commission will conduct three inspections in the broker's first year of licensing, two of which must achieve a minimum of a 'good' rating. A fourth inspection will be conducted in the first half of the broker's second year of licensing, which must also obtain a minimum of a 'good' rating. Should a broker fail to achieve the required minimum rating, they shall continue to be audited twice a year until such a time that, at minimum, a 'good' rating is achieved. These inspections shall be at a cost to the broker.

All first-time brokers will now be issued a conditional licence upon initially licensing until the time that they have completed their inspection requirements. At that point, the condition on the licence will be removed.

INVESTIGATIONS

The following cases are provided as learning opportunities for the industry. These cases do not reflect every matter investigated by the Commission, but are representative of the more serious or consistent issues. Disciplinary actions are disclosed in accordance with Commission Bylaw 839.

CASE #1 • TRANSACTION BROKERAGE TURMOIL

A potential buyer (the complainant) offered on a piece of land that was listed by their licensee's common law brokerage. In speaking with the seller's licensee, the complainant's licensee learned that there was already an offer on the property. When the complainant submitted their offer, they were reminded of the competing offer situation. Both offers were facilitated through transaction brokerage. The complainant's offer was not accepted, and at that point, they learned that the buyer named in the accepted offer was also a licensee at the brokerage. This considered, the complainant questioned whether or not the seller was presented with their offer while alleging that their licensee may have relayed the terms of their offer to the successful buyer and colleague.

When the complainant's offer was rejected, they expressed their dismay to the broker. The broker attempted to mediate the issue by arranging a meeting with all parties to discuss how the transaction unfolded. The complainant was also given the chance to resubmit their offer, which they declined.

The evidence in this case supports that the brokerage improperly entered into transaction brokerage. As a common law brokerage, it cannot act or be perceived to act impartially when the successful buyers and their licensee have a clear association with the brokerage – as client and employee.

The evidence supports that the seller's licensee did not approach their broker to discuss this transaction, though they did indicate to the broker that they were interested in offering on the brokerage's listing. The broker did not discuss the matter further with the licensee until the unsuccessful buyer relayed their dissatisfaction. At this point, the broker organized a meeting with all parties to try and resolve the issue.

The evidence also revealed a multitude of issues with each of the licensees involved in the transaction.

The seller's licensee:

- entered into a transaction brokerage agreement when the two buyers clearly could not be treated or perceived to be treated impartially;
- advised the complainant's representative that they were in competition prior to the complainant's offer being received;
- verbally amended the offer expiry date without reflecting that change in writing; and
- facilitated offers on the property before the seller brokerage agreement came into effect.

continued on page 4...

In April 2016, the listing salesperson was charged with one violation of Bylaw 702, Article 2 (\$500), one violation of Bylaw 702, Article 12 (\$500) and one violation of Bylaw 705(d) (\$500). The salesperson was also cautioned for facilitating offers prior to the seller brokerage agreement being in effect.

The buyer's salesperson was charged with one violation of Bylaw 702, Article 2 (\$500) and one violation of Bylaw 702, Article 12 (\$500). The salesperson was also cautioned for preparing unclear clauses.

The purchasing salesperson was charged with one violation of Bylaw 702, Article 2 (\$500).

The broker was charged with one violation of Bylaw 704(c) (\$1000).

continued from page 3...

The complainant's licensee:

- inappropriately had the complainant enter into a transaction brokerage agreement when they had a clear association with the buyer. Entering into a transaction brokerage agreement was not in the seller's best interest;
- did not obtain a written extension of the complainant's offer when the seller wanted to delay the presentation of offers; and
- drafted two poorly written and unclear clauses in the agreement of purchase and sale.

The salesperson and successful buyer of the property:

- entered into a transaction brokerage agreement inappropriately with the seller of a property that their brokerage had listed.

The broker:

- allowed the salesperson and successful buyer to enter into a transaction brokerage agreement when it was inappropriate to do so; and
- did not properly supervise the licensees at the brokerage involved in the transaction.

LESSONS LEARNED

While this case is complicated, it is most important to note that the licensees involved wrongly entered into transaction brokerage. The licensees could not act, or be perceived to act, impartially with seller - even if the parties agree. Ultimately, the seller should have been made aware of this conflict when the salesperson expressed interest in the property and been presented with the options of continuing without receiving any agency representation (treated as a customer) or be referred to another brokerage.

.....

CASE #2 • IMPROPERLY DISCLOSING AGENCY ROLE

A buyer, who put an offer on a cottage property, submitted a complaint after being made aware that the listing salesperson allowed the sellers to view the buyer's offer before the terms of the offer had been finalized. The buyer was under the impression that they were in a 'dual agency' relationship, and by showing their offer to the seller, the salesperson was not acting in their best interest.

The evidence supports that the salesperson did not advise the buyers that they would be relaying their unseen and unsigned offer to the sellers. The evidence further illustrated that while the buyer felt they were in a 'dual agency' relationship, the salesperson did not complete an agency brochure (which was still used at the time of this transaction) with the buyer at the time the buyer expressed interest in the property and relayed confidential information to the licensee, including the terms that they would include in the offer. Instead, the brochure was provided to the buyers with an unsigned Buyer Customer Acknowledgement and all three options of 'customer', 'client' and 'transaction brokerage' were checked off. Given this evidence, it is difficult to determine whether the buyers properly understood their relationship with the salesperson.

In April 2016, the salesperson was charged with one violation of Bylaw 702, Article 2 (\$500), and one violation of Bylaw 702, Article 3 (\$500).

LESSONS LEARNED

Assuming for a moment that all parties clearly understood that the salesperson was only representing the seller, the salesperson still had a duty of fairness to the buyers and was obliged to obtain their permission before sharing the draft offer with the seller.

This case also identified that the buyer had little understanding of whether they were in a client or customer relationship with their licensee. This confusion persisted when the buyer was presented with an agency brochure (with all three options of 'customer', 'client' and 'transaction brokerage' checked off) when the offer was already drafted. The correct time that the brochure was to be presented is when the buyers expressed interest in the property and prior to relaying terms that they would like to include in their offer.

CASE #3 • MISLEADING ADVERTISING

A member of the public contacted the Commission regarding a broker who had listed a property neighbouring theirs. They stated that the images used by the broker to showcase the property were partially of the neighbour's property. Several of the images were also claimed to be more than 20 years old and included small buildings that were no longer there. An investigation was initiated when the broker failed to respond to multiple requests from the Commission that the photos be removed.

The investigation determined that photos used to advertise the listing were indeed misleading. The broker was unwilling to remove the inaccurate photos though they did correct the description to include a qualifier that stated the small buildings no longer remained on the property.

In April 2016, the broker was charged with one violation of Bylaw 708(a) (\$500).

The broker also received a letter of reprimand for one violation of Bylaw 702, Article 35, for not responding to Commission requests to remove the misleading photo.

LESSONS LEARNED

Brokers are responsible to ensure all brokerage advertising is accurate and not misleading. Regardless whether it is the seller that provides the brokerage with incorrect photos, the broker is required to advertise their listings accurately and not be misleading.

All licensees have an obligation to respond to requests from Commission in a timely manner, particularly in relation to queries involving a complaint or investigation.

CASE #4 • FAILURE TO PROTECT THE CLIENT INTERESTS

A salesperson representing a seller received a seven page fax document from a buyer's representative of another brokerage that included an amendment and an addendum containing contradictory information. The seller's salesperson relayed the documents to the seller without reviewing the documents with the seller or advising on the implications.

In April 2016, a salesperson accepted a settlement agreement citing one violation of Commission Bylaw 702, Article 2. This was a repeat offence and the penalty was \$750.

Both Brokers were also charged with one violation each of Bylaw 704(a) (\$500).

COMPLIANCE TEAM

For information on investigations, contact:
Carolin MacDonald, Compliance Manager
cmacdonald@nsrec.ns.ca
902-468-3511 x303

Michelle McLeod, Compliance Investigator
mmcleod@nsrec.ns.ca
902-468-3511 x312

For information on inspections, contact:
Courtney LeBlanc, Compliance Inspector
cleblanc@nsrec.ns.ca
902-468-3511 x306

Mallory LeBlanc, Compliance Inspector
mleblanc@nsrec.ns.ca
902-468-3511 x308

Complaints must be in writing* and may be submitted by fax at 902-468-1016/800-390-1016 or by mail or email at:

Attention: Compliance

Nova Scotia Real Estate Commission
601-1595 Bedford Highway, Bedford, NS, B4A 3Y4

compliance@nsrec.ns.ca

**For information on our complaint requirements visit the [Complaints section](#) of our website.*

