

New Brunswick Real Estate Association

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New Brunswick real estate association
Association des agents immobiliers du Nouveau-Brunswick



Complaints & Discipline Process

DISCLAIMER

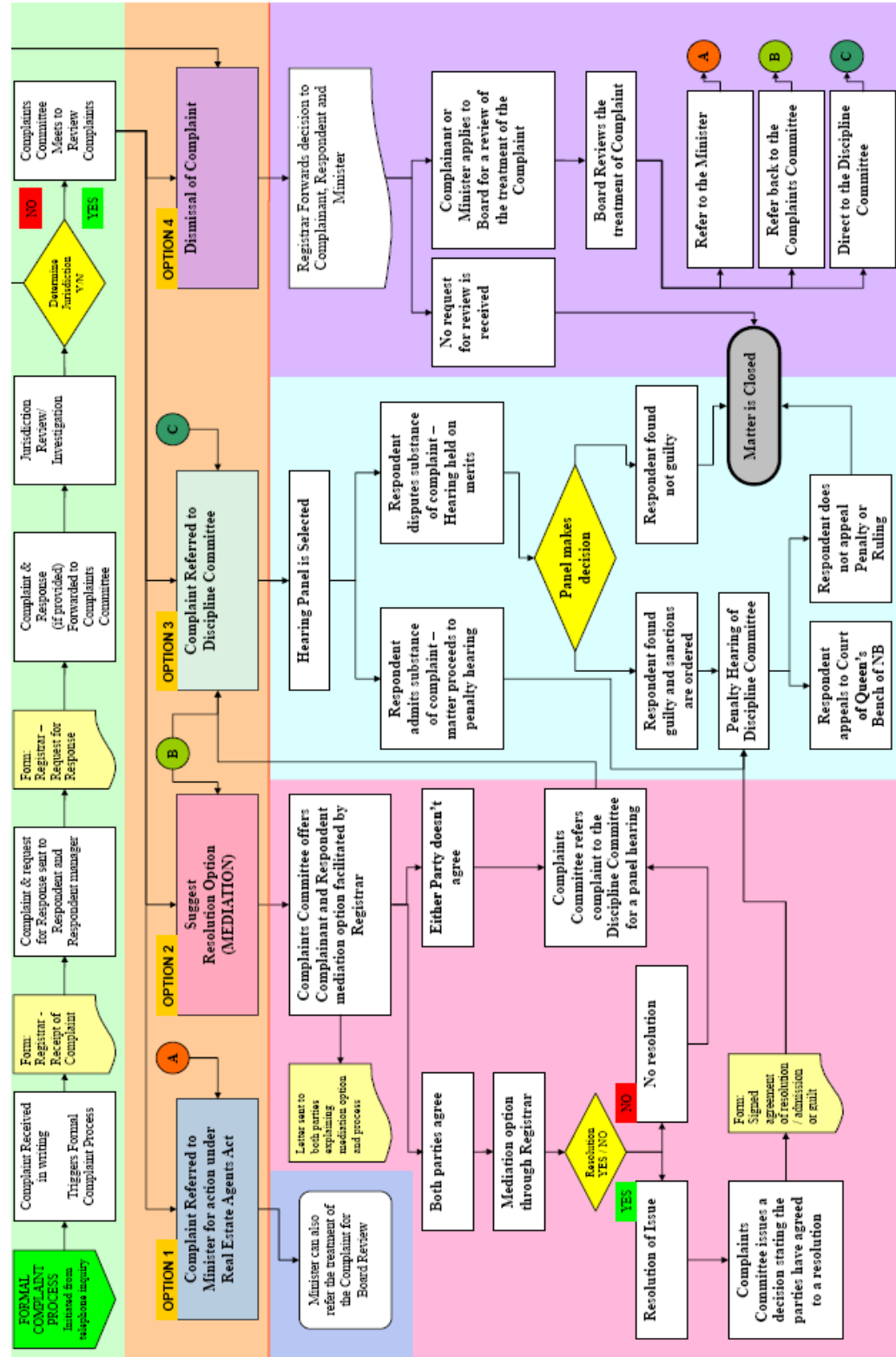
The information contained herein does not constitute legal advice nor should it be considered as a substitute for legal advice. The complaints and discipline procedures described in this pamphlet are governed by the provisions of the Real Estate Agent Act, the Act to Incorporate the New Brunswick Real Estate Association, the Association By-Law and the REALTOR® Code. This material is intended to be a summary only and is not meant to override any of the provisions of the Act, By-Law or REALTOR® Code.

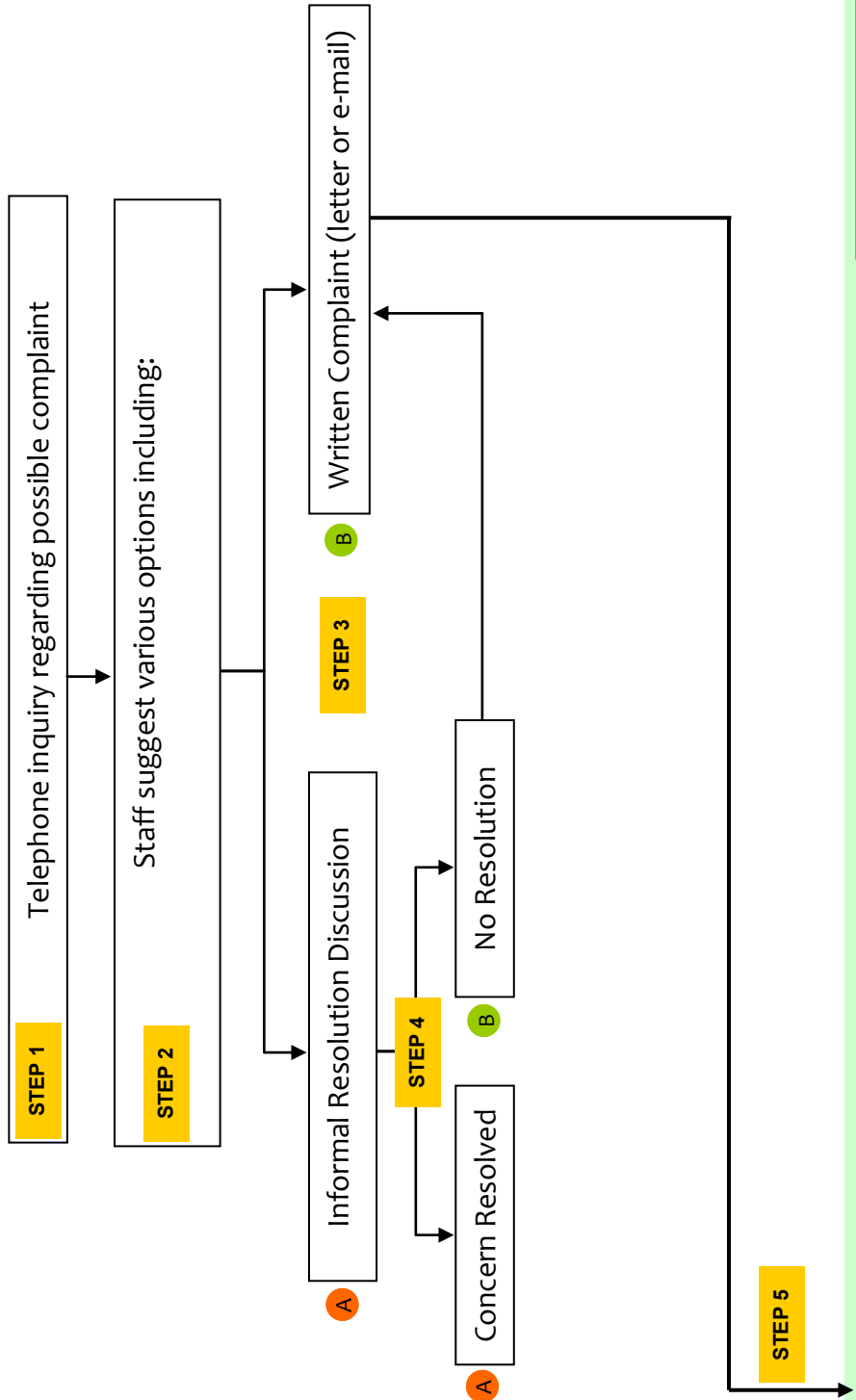
For Further Information

If after reading the enclosed information, you have any questions regarding the complaints and discipline procedures, please do not hesitate to contact the New Brunswick Real Estate Association. Please note the Association can only provide information on the process and cannot comment on the merits of any case.

INTRODUCTION

The purpose of this pamphlet is to outline the complaints and discipline procedures of the New Brunswick Real Estate Association, as set out in the Real Estate Agents Act and the Association By-Law. It is intended that this pamphlet will assist complainants and Members who are responding to complaints, and ensure that disciplinary matters are handled in a uniform and fair manner.





The Complaint and Investigation Process

The Role of the Registrar

The Registrar is the administrative channel through which the Complaints and Discipline Committees correspond and carry out their respective functions. The Registrar does not make decisions or determinations involving professional standard matters, but advises on appropriate procedures and coordinates the hearing process. This coordination involves sending and receiving all correspondence and providing all required forms.

The Complaint

Any person, whether a member of the Association or not, may file a complaint alleging professional misconduct or incompetence against a member. The person who files the complaint is the Complainant. In the interest of effective enforcement, no fee is required in filing a complaint.

A complaint should be made in writing, however, the Association may investigate oral complaints, and if the matter justifies, a written complaint can be prepared. A complaint from a member of the Association should specify the Code alleged to have been violated.

Once a complaint is received, the Registrar refers it to the Complaints Committee for consideration and investigation. A Copy of the complaint is also sent to the member named in the complaint as well as that member's manager—the member has two weeks to respond to the complaint

Jurisdiction

The authority of the Association with respect to disciplinary matters relating to professional misconduct and incompetence is found in the Act, and the Association must function within that legislative framework.

NBREA has adopted a Code of Ethics and Business Practices to guide the conduct of its members to ensure that this conduct is consistent with the public interest. The Complaints and Discipline Committee may only pursue a complaint that deals with a member's professional misconduct or incompetence. If the Committee determines that the complaint doesn't deal with professional misconduct or incompetence than they notify the Complainant and the Respondent in writing.

The Investigation

If the Complaints Committee determines that the complaint deals with professional misconduct or incompetence than further investigation may take place. A researcher has the power to require any member to produce all records and documents within the possession of that member which may be relevant to that matter. Failure to produce this information may subject the member to disciplinary action pursuant to the Code. After completing their investigation, the Researcher reports his or her findings to the Complaints Committee (not the Complainant, Respondent or Discipline Committee).

The Role of the Complaints Committee

When making the decision of whether to refer the complaint to the Discipline Committee, the Complaints Committee disregards all issues of weight and credibility (except where there is such a lack of weight or credibility as to make the complaint frivolous). The Complaints Committee's main consideration is whether there is sufficient information to reasonably support a charge of professional misconduct or incompetence.

The decision is put in writing and then signed by the Panel members or the Chairperson. It should include the reasons for the decision based on the findings of fact and any discipline imposed. It also may indicate if the decision was a majority decision or a unanimous decision.

When completed, the decision is given to the Registrar to be forwarded to the parties. A cover letter should also be sent to the Respondent, advising of the rights of appeal under section 25 of the Act. The decision must also be given to the Complainant.

If the Respondent does not file an Appeal and fails to comply with the Hearing Panel's decision, the membership of the Respondent may be terminated by the Board.

Appeal Procedure

A party to proceedings before the Discipline Committee may appeal a decision of the Discipline Committee. The appeal is to The Court of Queen's Bench of New Brunswick.

The Notice of Application for appeal must be filed within thirty days from the date of the decision, order or recommendation of the Discipline Committee.

The party wishing to appeal must request and pay for the reproduction of a certified copy of the record of proceedings, including the documents received in evidence and the decision, order or recommendation appealed from.

The Appeal may be on questions of law, fact or both. The Court may:

- a. Affirm, vary or rescind the decision of the Discipline Committee
- b. Exercise all powers of the Committee
- c. Direct the Committee to take any action which it has the power to take
- d. Substitute its opinion for that of the Committee, or
- e. Refer the matter back to the Committee for rehearing in whole or in part, in accordance with such directions as the Court considers proper.

The complaint is then read into the record or marked as an exhibit, or both. All the documents may then be presented by the parties and marked as exhibits.

The Association presents its case first. It has the onus of establishing its position through documentation and testimony. The Respondent has the right to object to the admissibility of evidence and to cross examine any witness called by the Association. After cross-examination by the respondent, the Association can re-examine the witness, but only to clarify points from cross examination.

The standard of proof in a professional misconduct or incompetence hearing must be clear, strong and convincing—a degree of proof that will produce a firm belief or conviction as to the allegations sought to be established. It does not require the virtual certainty of “beyond a reasonable doubt”, but rather on a “balance of probabilities”

After the Association has presented its whole case, the Respondent present its own case. The Association has the right to object to evidence as well as cross examine the Respondent’s witnesses. Following cross examination, Respondent may re-examine witnesses to clarify points from the cross examination.

Once all the evidence has been presented, each party is given the opportunity to provide closing statements. The hearing is then adjourned so the discipline committee can deliberate and render a decision.

The Decision

Upon conclusion of the hearing the Panel meets to deliberate and makes its decision, when possible, this can be done immediately after the hearing. If the panel finds that the respondent has engaged in the conduct alleged in the complaint, they must decide on appropriate penalty.

The Panel has a wide choice of sanctions that it may imposed as set out in subsection 23(4) of the Act to Incorporate.

The Complaints Committee may take the following actions after the completion of the investigation:

- a. Direct that the matter be referred, in whole or in part, to the Discipline Committee
- b. Direct that the matter not be referred to the Discipline Committee
- c. Direct that the matter be referred to the Minister for action under the Real Estate Agents Act, or
- d. Take such action as it considers appropriate in the circumstances to resolve the complaint or matter under investigation as long as such action is not inconsistent with the Act to Incorporate, the by-laws, or the Real Estate Agents Act.

The Complaints Committee shall forward its decision to the Registrar in writing, including its reasons for the decision and the Registrar shall send it to the member complained against, the Board and the Minister. The Complainant or the Minister, if not satisfied with the disposition of the complaint by the Committee may apply to the Board for a review of the treatment of the complaint.

Voluntary Resolution

The Complaints Committee also has the important function, when possible, of resolving complaints between the parties without the necessity of a Discipline Committee hearing. The Complaints Committee can meet with the Complainant and the Respondent and suggest a voluntary resolution.

If the Complaints Committee feels there is potential professional misconduct or incompetence and if no voluntary resolution can be reached than they will refer the complaint to the Discipline Committee. The Association then takes on the role of the Complainant.

The Role of the Discipline Committee

Once a complaint has been referred to the Discipline Committee for hearing, the Chairperson of that committee must appoint a Hearing Panel to conduct the hearing. The panel consists of 5 members of the committee, including one member appointed by the minister and one who has been designated as Chairperson of the Panel.

Once a panel has been selected, the parties are then notified in writing of the members selected to serve on the Panel as well as the date of the hearing. The parties have 7 days to file an objection to any Panel members; they waive any grounds of disqualification after 7 days. A member of the panel may only be disqualified after 7 days if the remaining Panel members are made aware of any ground of disqualification. The Chairperson of the Discipline Committee determines whether a Panel member should be disqualified, or if the challenge is against the Chairperson the President of the Association determines.

The Hearing

Each party has a right to be represented by a lawyer at the hearing, as long as they notify in writing the other party and the Hearing Panel Chairperson not less than 5 days before the date set for the hearing. The Hearing Panel may also have legal counsel present to advise on issues of procedure and law – they must inform the parties of their intention to have legal counsel present.

Both Parties have the responsibility of developing and preparing their respective cases and the Association has the onus of establishing the complaint against the Respondent. If documentation is to be presented at the hearing both parties should make sufficient copies in advance for each of the Panel members and other party.

Witnesses

Each Party also has the right to have witnesses. With few exceptions, only persons who have personal knowledge of the matter may be called as witnesses. The party calling the witness has the responsibility of notifying that witness. The must also inform the Hearing Panel and the other party not less than 3 days before the hearing. If a party intends to present an affidavit at a hearing they must present a copy of the affidavit to the Hearing Panel and other party not less than 14 days before the hearing. If a witness is unable to attend a scheduled hearing date, the party calling the witness may request the hearing be postponed. If a member of the Association refuses to attend the hearing, that person should be reminded of Article 22 of the Code –

“Should a REALTOR® be asked to co-operate in any way in connection with a disciplinary investigation or proceeding, the REALTOR® shall place all pertinent facts before the proper Committee of the real estate Board or Association to which the REALTOR® belongs.”

Failure to appear

If a Respondent fails to appear at a scheduled hearing, the Panel may still proceed but should not do so without first determining whether the Respondent received proper notice. A telephone call should also be made to the Respondent to determine if he or she was detained by valid cause or is on the way to the hearing. Following the call the Panel may elect whether or not to adjourn the meeting to a later date

Hearing Process

The Chairperson commences the hearing by calling it to order and describes the hearing procedure. The witnesses may then be asked to leave the room until they are required to testify, which ensures that they are not influenced by another’s testimony. Witnesses shall be sworn in when they are called.