

Disciplinary Process Summary

Introduction

The New Brunswick Real Estate Association (“NBREA”) oversees a comprehensive complaints and discipline process to determine if its Members have committed acts of professional misconduct or are incompetent (the “Disciplinary Process”). The Disciplinary Process is administered through NBREA’s Office of the Registrar (the “Registrar”).

The following statutes, by-laws, and other documents are relevant to the Disciplinary Process:

1. *The New Brunswick Real Estate Agents Act* (the “Agents Act”);
2. *An Act to Incorporate The New Brunswick Real Estate Association* (the “Act”);
3. NBREA’s By-Laws;
4. NBREA’s Procedural Manual for Disciplinary Matters; and
5. The REALTOR® Code.

This Disciplinary Process Summary is an overview of the Disciplinary Process and is not a substitute for the information in the above noted documents and is not intended to be legal advice.

Disciplinary Process Overview

Allegations of professional misconduct or incompetence against a Member of NBREA must be in writing and filed with the Registrar (the “Complaint”).

1st Stage – Complaints Committee

The Registrar provides written confirmation to the Complainant (the person filing the Complaint), the Respondent (the Member named in the Complaint), and the Respondent’s Manager that a Complaint is being considered and investigated by the Complaints Committee. The Respondent is provided 2 weeks to provide a written submission to the Complaints Committee (the “Reply”).

The Complaints Committee reviews the Complaint and Reply and determines if the matter is within its jurisdiction and if additional documents or information is required.

Voluntary Resolution

The Complaints Committee has the important function, when possible, of resolving Complaints. In certain circumstances, the Complaints Committee will facilitate a meeting with the Complainant and the Respondent, to determine if a voluntary resolution is possible. There is no obligation for the Complaints Committee to recommend a voluntary resolution and it will only attempt to do so at its discretion.

Conclusion of the Complaints Committee Process

When the Complaints Committee has concluded its investigation and consideration of the Complaint, including any voluntary resolution, it will do one of the following (the “Decision”):

- 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 Agents Act;
- 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, the by-laws, or the Agents Act.

The Complaints Committee’s written Decision and reasons are provided to the Complainant, the Respondent, the NBREA Board (the “Board”), and the Minister of Justice and Consumer Affairs (the “Minister”).

Either the Complainant or the Minister may apply to the Board for a review of the Decision (the “Review”). The Review is not a new proceeding and the Board does not investigate the Complaint or substitute its judgment for that of the Complaints Committee. Specifically, the Board considers allegations of bias or breaches of procedural fairness by the Complaints Committee and determines if the Complaint should be forwarded to the Discipline Committee.

2nd Stage – Discipline Committee Hearing (the “Hearing”)

When the Complaints Committee refers a matter to the Discipline Committee it must hold a Hearing. Participants in a Hearing, in addition to the Respondent include: the Discipline Committee (5 individuals, including 1 appointed by the Minister); the NBREA Prosecutor (a legal professional, responsible for the carriage of the Complaint on behalf of NBREA); the Registrar (responsible for administration of the hearing); the Court Reporter (responsible for ensuring a written record of the proceedings); and any witnesses required by the Prosecutor or the Respondent to provide evidence.

Pre-Hearing Conference

Recognizing that Hearings require significant resources, financial and otherwise, NBREA has formalized procedures to simplify and/or resolve matters without the necessity of a full hearing (the “Pre-Hearing Conference”). A Pre-Hearing Conference is held in person or by telephone conference in the absence of the Discipline Committee on a without prejudice basis. The Pre-Hearing Conference is an important procedural tool for the Prosecutor and the Respondent and its use is intended to help reduce the costs for each party to the Hearing.

Hearing Procedure

When the Discipline Committee is required to hold a Hearing to determine issues of professional misconduct or incompetence, its procedures must comply with the “rules of natural justice” and “procedural fairness”, which include the right to counsel, notice of hearings, compliance with rules of evidence. It encompasses a number of principles premised on the basic right to:

1. a fair and unbiased hearing;
2. be informed of the alleged wrongdoing;
3. hear the evidence in support of the allegations;
4. have an adequate opportunity to prepare and present evidence in defense; and
5. have the decision made by only those who have heard the evidence.

Discipline Decisions

After hearing the evidence, the Discipline Committee determines if there has been professional misconduct or incompetence. The standard of proof required for this determination must be “clear, strong and convincing” and does not require the virtual certainty of “beyond a reasonable doubt”, as applied in criminal prosecutions. In legal terms it is based on a “balance of probabilities” as in non-criminal or civil cases.

If the Discipline Committee determines that there has been professional misconduct or incompetence, it has the authority to impose discipline, including, suspension or revocation of membership in the NBREA, fines up to \$5,000, and the recovery of costs associated with investigating and prosecuting the Complaint. There is no set limit to the amount of costs which can be imposed by the Discipline Committee.

Any appeal of a Discipline Committee decision is made to the New Brunswick Court of Queen’s Bench pursuant to s. 25 of the Act.

Registrar receives written Complaint, forwards copy to the Respondent and the Respondent's Manager. The Respondent is provided opportunity to provide written Reply.

COMPLAINTS COMMITTEE INVESTIGATES AND CONSIDERS WRITTEN COMPLAINT AND WRITTEN REPLY

Complaints Committee dismisses complaint:
1. No jurisdiction
2. No merit

Complaint Committee refers the Complaint to the Discipline Committee

Complaints Committee refers the Complaints to the Minister

Complaints Committee attempts a resolution or mediation of the Complaint

Complainant or Minister can request the Board to consider the dismissed Complaint

The Board confirms that the complaint is dismissed or the Board refers the complaint to the Discipline Committee

Complaint is resolved by the parties on a voluntary basis, or the Complaint is referred to the Discipline

DISCIPLINE COMMITTEE HEARING
Optional Pre-Hearing Conference and Potential Simplification or Resolution of Matter
Full Hearing or Penalty Hearing and Written Decision

Statutory Appeal to the New Brunswick Court of Queen's Bench pursuant to s.25 of the Act

Complaint Mediation

As part of the ongoing communication strategy of keeping Members informed of changes to the NBREA Complaints and Discipline Process, a summary of NBREA's Mediation Process regarding complaints is as follows and can also be found on NBREA's website (www.nbrea.ca).

Voluntary Resolution / Mediation Summary

Introduction:

As part of the complaints and discipline process overseen by the New Brunswick Real Estate Association ("NBREA"), the Complaints Committee has the authority to take such action as it considered 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 New Brunswick Real Estate Association* (the "Act"), the by-laws, or the *New Brunswick Real Estate Agents Act* (the "Agents Act"). When the Complaints Committee takes such action, it is referred to as a Voluntary Resolution / Mediation.

The Complaints Committee is under no obligation to facilitate a Voluntary Resolution / Mediation, however, in certain circumstances it will exercise discretion and request that the Complainant (the person who filed the Complaint), the Respondent (the member against whom the Complaint was made), and the Respondent's Manager meet to determine if a voluntary resolution of the Complaint is possible.

Status of Complaint:

When the Complaints Committee suggests Voluntary Resolution / Mediation, it has determined that the Complaint is within its jurisdiction and that all or part of it will be forwarded to the Discipline Committee.

It is noted that the decision of the Committee to recommend this process carries with it the implicit understanding that a resolution would not be inconsistent with the Act, the by-laws, or the Agents Act. Further, the Complaints Committee will only recommend this process when the allegations in the Complaint, even if proven true, do not impact the protection of the public at large.

When the process is recommended, it is the Complaints Committee's position that the parties would mutually benefit from a simplified process and there is a potential for reducing costs and resources for all involved.

Process:

A Voluntary Resolution / Mediation is non-mandatory and non-binding, which means that there will be no meeting between the Complainant and the Respondent without prior written consent. Further, there will be no resolution unless both parties agree.

Structure:

The Voluntary Resolution / Mediation will be facilitated by the NBREA Registrar or any other person designated by the Complaints Committee to aid the Registrar and will take place at a location designated by the Registrar.

Ground Rules:

The sessions are confidential and all participants, including Managers, the Registrar, or anyone involved, are expected to

execute a confidentiality agreement. All discussions and resolutions are privileged and cannot be disclosed at any future hearing of the NBREA.

Role of the Registrar:

The role of the Registrar is to facilitate the logistics of the meeting between the parties and to ensure the execution of all documents, including the confidentiality agreement and any agreement for resolution. Further, it will be appropriate for the Registrar to comment on the mechanics of Discipline Committee Hearings and the respective requirements of both parties, including resources and costs.

The Registrar's role is not to judge the validity of the Complaint or to predict how it would eventually be dealt with by the Discipline Committee.

Respectful Discussion:

Once the session begins, the parties are provided with an opportunity to fully express their individual positions and discuss the matter in a respectful and dignified manner. There is no situation where it will be appropriate for the parties to be subjected to abusive or intimidating behaviour and in such an event the Registrar will end the session immediately.

Resolution:

Once the session is concluded, the Registrar will report to the Complaints Committee and a written decision will be issued confirming the resolution or forwarding the matter to the Discipline Committee.