

## **New Brunswick Real Estate Association Act**

WHEREAS The New Brunswick Real Estate Association prays that it be enacted as hereinafter set forth;

AND WHEREAS it is desirable, in the interest of the public to continue The New Brunswick Real Estate Association as a body corporate under the name New Brunswick Real Estate Association for the purpose of advancing and maintaining the standards of the practice of trading in real estate carried on in New Brunswick, for governing and regulating registrants and providing for the interest of the public and the profession;

THEREFORE, His Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

### **Definitions**

1 The following definitions apply in this Act.

“Association” means the New Brunswick Real Estate Association continued under section 2. (*l’Association*)

“Chair” means the Chair of the Association who also sits as Chair of the Council. (*président*)

“Chief Executive Officer” means the person holding the office of Chief Executive Officer under subsection 8(1). (*chef de la direction*)

“Commission” means the Financial and Consumer Services Commission continued under the *Financial and Consumer Services Commission Act*. (*Commission*)

“complaint” means any complaint, report or allegation in writing signed by the complainant regarding a respondent who is a registrant or a former registrant. (*plainte*)

“Council” means the governing body of the Association under section 7. (*Conseil*)

“Court” means The Court of King’s Bench of New Brunswick. (*Cour*)

“Director” means the Director of Consumer Affairs appointed under the *Financial and Consumer Services Commission Act* and includes any person designated by the Commission or the Director to act on the Director’s behalf. (*Directeur*)

“directive” means a directive of the Committee of Examiners. (*directive*)

“minor infraction” means an infraction that, in the opinion of the Complaints Committee, is deserving of sanction but constitutes only a minor form of professional misconduct or incompetence. (*Infraction mineure*)

“Order” means an order, decision or findings of the Discipline Committee under section 33.

(*Ordonnance*)

“policy” or “policies” means a policy or policies of Council under section 7. (*politique ou politiques*);

“professional standards” means standards of professional conduct, standards of knowledge, standards of ethics, standards of practice or standards of qualification that relate to the practice of trading in real estate. (*normes professionnelles*)

“public representative” means a person who is not a registrant or former registrant and is appointed by the Director. (*représentant du public*)

“real estate board” means a real estate board established or continued under this Act or under any other Act.

“registrant” means a person registered under section 17 and holder of a licence under the *Real Estate Agents Act*. (“*membre*”)

“registrant in good standing” means a person who is:

- (a) the holder of a licence under the *Real Estate Agents Act*;
- (b) registered as a registrant under this Act;
- (c) not in arrears of any amount owing to the Association; and
- (d) not under suspension.

“Registrar” means the person holding the office of Registrar under subsection 16(1). (*Registraire*)

“respondent” means a registrant or a former registrant accused of professional misconduct or incompetence. (*intimé*)

## **The Association**

2(1) The New Brunswick Real Estate Association, continued by *An Act to Incorporate The New Brunswick Real Estate Association*, chapter 115 of the Acts of New Brunswick, 1994, is continued as a body corporate without share capital under the name “New Brunswick Real Estate Association” and, subject to this Act, has the capacity, rights, powers and privileges of a natural person.

2(2) All registrants shall constitute the Association.

## **Official Languages**

3 English and French are the official languages of the Association.

## **Objects**

4(1) The objects of the Association are to

- (a) regulate the practice of trading in real estate as a profession in order to serve and protect the public interest;
- (b) provide for the regulation, discipline, governance, and honour of persons trading in real estate, including the determination and the enforcement of the standards of knowledge, skill, efficiency, and the standards of qualification, professional conduct, and ethics;
- (c) promote public awareness of the role of the Association and the practice of trading in real estate as a profession, and to communicate and co-operate with other professional associations for the advancement of the best interests of the Association;
- (d) establish, promote, and advance the interests of the practice of trading in real estate in the best interests of the public;
- (e) encourage studies and provide assistance for special studies and research;
- (f) execute membership agreements for the benefit of registrants with other professional associations to serve and protect the public interest; and
- (g) administer this Act and perform such duties and exercise such powers in the furtherance of its objects as are imposed or conferred expressly or implicitly on the Association by this Act or by any other Act.

#### **By-laws**

5(1) The Association, in furtherance of its objects, may make by-laws not inconsistent with the provisions of this Act and the *Real Estate Agents Act* for

- (a) the composition of the Council;
- (b) the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (c) the establishment of categories of membership in the Association, including the conditions, obligations, and privileges associated with any categories of registration;
- (d) the location of a Head Office and other offices of the Association;
- (e) the execution of documents by the Association;
- (f) the custody and use of the Association seal;
- (g) the entering into of agreements on behalf of the Association as may be necessary, incidental or conducive to carrying out its objects, including membership affiliation agreements with

other professional associations;

- (h) the appointment of auditors; and
- (i) the administration of this Act and the performance of such duties and the exercise of such powers in the furtherance of its objects as are imposed or conferred on the Association by this Act expressly or implicitly and by any other Act.

**5(2)** A proposed new by-law or the amendment or repeal of an existing by-law shall be ratified by

- (a) a majority of Council and by a majority of the votes cast by the registrants, in attendance and in good standing, at any annual or special meeting, or
- (b) by two-thirds of the votes cast by the registrants, in attendance and in good standing, at any annual or special meeting.

**5(3)** A proposed new by-law, amendment, or repeal of an existing by-law shall be in writing signed by at least two registrants and shall, not less than 45 days before the meeting, be presented to the Chief Executive Officer.

### **Annual meeting**

**6(1)** There shall be an annual meeting of the Association at a time and place with procedures fixed by the policies.

**6(2)** Council or its delegate shall give notice of the annual meeting to each registrant of the Association in a manner determined in the policies.

**6(3)** The accidental omission to give notice of the annual meeting to any registrant or the non-receipt of the notice by any registrant does not invalidate any action taken at a meeting.

### **Council**

**7(1)** The responsibility for the administration of this Act and the management of the Association shall be vested in a Council which shall consist of at least seven Council members, including a Chair and other officers as may be provided in the by-laws.

**7(2)** Council shall also include at least three public representatives in a manner consistent with the by-laws.

**7(3)** The Chief Executive Officer is, by virtue of the office, a non-voting member of the Council.

**7(4)** The number of Council members, their respective terms of office, the manner of their appointment, nomination or election, and their respective qualifications shall be established and governed by the by-laws or policies and such by-laws or policies may provide for additional and alternate Council members, for the filling of Council vacancies and for the appointment of

additional public representatives.

7(5) The Council shall exercise all the powers and functions of the Association save and except where stated otherwise in this Act.

7(6) The Council may enact policies not inconsistent with the provisions of this Act and the *Real Estate Agents Act* to administer this Act, manage the Association, and carry out the powers and functions of the Association.

7(7) Without limiting the generality of the foregoing, the policies may provide for

- (a) the notice period and the practice and procedure in respect of annual and special general meetings of the Association;
- (b) the appointment of non-voting persons, by virtue of their office, to the Council for such term as Council determines;
- (c) meetings of Council or committees whether in person, by teleconference, video conference, or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of Council or committee participating shall be deemed to be present in person at the meeting;
- (d) banking, finance, and borrowing money;
- (e) the application of the funds of the Association and the investment and reinvestment of any of its funds not immediately required, and for the safekeeping of its securities;
- (f) the establishment and payment of scholarships, fellowships, and other educational incentives, benefits, and awards by the Association;
- (g) the payment of necessary expenses of the Council and committees in the conduct of their business;
- (h) the management of the property of the Association, including real property being acquired, alienated, mortgaged, charged, disposed of, leased or rented;
- (i) gifts, donations and bequests received or made by the Association;
- (j) professional liability insurance and a professional liability claims fund;
- (k) the establishment of real estate boards and the Association's work with them in achieving the objects of the Association and the real estate boards;
- (l) the appointment, the composition, the powers, the functions, the procedure and the operations of committees;

- (m) the ability to make or terminate appointments and fill vacancies on committees;
- (n) the quorum, number of members, the terms of office, qualifications and the manner of appointment of the Discipline Committee, the Complaints Committee, the Professional Standards Committee, the Committee of Examiners, the Finance and Audit Committee or any other committee established by Council;
- (o) professional standards in accordance with subsection 12(5);
- (p) the review of a registrant's professional conduct or competence;
- (q) all things that may be delegated or assigned to it by the Director under the *Real Estate Agents Act*;
- (r) registrant fees or special assessment in accordance with section 10 and any penalty or consequence associated with the failure to pay such fees;
- (s) the arbitration of disputes for commission or fees charged by a registrant relating to trading in real estate in accordance with section 36;
- (t) nominations criteria; or
- (u) any action it considers necessary for the promotion, protection, interest, welfare, or to attain the objects of the Association.

7(8) The policies are valid, binding and effective from the date they are enacted by Council.

7(9) A new policy or the amendment or repeal of a policy is not effective unless a majority of the members of Council then in office vote in favour of it, and it comes into force upon approval by Council or such later date as provided in the policy.

### **Chief Executive Officer**

8(1) Council shall appoint a Chief Executive Officer of the Association.

8(2) The Chief Executive Officer shall provide for the management of the Association's property, assets, and of its affairs and business including the employment of staff.

8(3) The Chief Executive Officer reports to Council.

### **Authorized practice**

9 Only persons who are registrants in good standing shall be entitled to trade in real estate.

### **Payment of fees**

**10(1)** Every registrant shall pay to the Association annual fees or special assessments in an amount and by such date as fixed by the policies in accordance with the recommendation of the Finance and Audit Committee.

**10(2)** Subject to subsection (3), a registrant who fails to pay the annual fees as required by subsection (1) is no longer in good standing and loses all rights and privileges conferred under this Act and the registrant's registration may be suspended until payment of the fees.

**10(3)** If payment is not made as provided by subsection (1), within three years after the last date on which payment could be made, the person's name cannot be added to the register except upon application to Council for approval, in which case the Council may, after consideration of the circumstances,

- (a) direct the Registrar to add the person's name to the register upon payment of such fees as it considers appropriate, but in no event less than payment for one full year;
- (b) require the person to pass such examinations as it considers necessary; or
- (c) impose such other conditions as it considers in the public interest.

### **Appointment of committees**

**11(1)** Council shall establish and appoint the following committees

- (a) Professional Standards Committee;
- (b) Committee of Examiners;
- (c) Finance and Audit Committee;
- (d) Complaints Committee; and
- (e) Discipline Committee.

**11(2)** Council may establish other committees as Council considers appropriate.

### **Professional Standards Committee**

**12(1)** There shall be a Professional Standards Committee appointed by Council, composed of

- (a) at least four registrants in good standing, one of whom shall be named chair by Council, and
- (b) at least one public representative.

**12(2)** None of the Professional Standards Committee members shall be Council members.

**12(3)** The quorum, number of Professional Standards Committee members, their terms of office, qualifications, and the manner of their appointment shall be established and governed by the

policies and the policies may regulate the procedures, functions and operations of the Professional Standards Committee.

**12(4)** The Professional Standards Committee may establish professional standards relating to trading in real estate.

**12(5)** A new professional standard, or the amendment or repeal of a professional standard, is not in force until it has been approved by Council in a policy.

**12(6)** The approval process of Council shall include a consultation period as prescribed by a policy.

**12(7)** Professional standards, once in effect, are binding on the Association, the registrants, former registrants and Council and failure to follow the professional standards may constitute professional misconduct or incompetence.

### **Committee of Examiners**

**13(1)** There shall be a Committee of Examiners appointed by Council, composed of

(a) at least three registrants in good standing, one of whom shall be named chair by Council; and

(b) at least two public representatives.

**13(2)** None of the Committee of Examiners members shall be members of Council.

**13(3)** The quorum, number of Committee of Examiners members, their terms of office, qualifications, and the manner of their appointment shall be established and governed by policies and the policies may regulate the procedures, functions and operations of the Committee of Examiners.

### **Finance and Audit Committee**

**14(1)** There shall be a Finance and Audit Committee appointed by Council, composed of at least three Council members, one of whom shall be named chair by Council.

**14(2)** The quorum, number of the Finance and Audit Committee members, their terms of office, qualifications and the manner of their appointment shall be established and governed by policies and the policies may regulate the procedures, functions and operations of the Finance and Audit Committee.

### **Registration**

**15(1)** The Committee of Examiners shall provide for and conduct educational programs and examinations to qualify persons for licensing under the *Real Estate Agents Act*.

**15(2)** The Committee of Examiners shall recommend to the Director for licensing under the

*Real Estate Agents Act* persons who

- (a) successfully complete the required educational programs and examinations, and
- (b) pay the required fees in respect of the required educational programs and examinations.

**15(3)** Any person recommended under subsection (2) shall be registered as of the date of licensing as a registrant in good standing entitled to trade in real estate.

**15(4)** Subject to the approval of Council, the Committee of Examiners may delegate to the Registrar such functions for the approval of an application for registration as it considers appropriate.

**15(5)** Subject to the approval of the Director, the Committee of Examiners may make directives

- (a) prescribing the proofs to be furnished as to education, good character and experience;
- (b) prescribing the subjects for examination of candidates to be licensed to trade in real estate;
- (c) prescribing the annual mandatory continued professional development requirements;
- (d) relating to examinations, the duties and functions of examiners, and the place examinations are to be held;
- (e) prescribing the reconsideration process under subsection (7); and
- (f) respecting such other matters as the Committee considers necessary or advisable for the more effectual discharge of its functions or exercise of its powers.

**15(6)** The directives are binding on the Association, the registrants, former registrants, and Council.

**15(7)** If the Committee of Examiners or the Registrar refuses to approve a person for registration that person may request a reconsideration to the Committee of Examiners in writing within thirty days of receipt of notification of the decision of the Committee of Examiners or the Registrar.

## **Registrar**

**16(1)** Council shall appoint a Registrar of the Association.

**16(2)** In circumstances in which the Registrar is not able to act, or it is not appropriate that they do so, Council may appoint an individual to act as Registrar for a specified purpose and with all of the powers of the Registrar under this Act and in accordance with the policies.

**16(3)** The Registrar shall

- (a) maintain a register of all registrants of the Association;

- (b) conduct or provide for the conduct of research on behalf of the Complaints Committee;
- (c) provide for the prosecution of complaints before the Discipline Committee;
- (d) engage counsel to assist in the prosecution of complaints or as otherwise required;
- (e) prepare notices of hearing;
- (f) ensure that all decisions of the Complaints Committee or the Discipline Committee are implemented; and
- (g) perform other functions inherent to the position.

### **Register**

17(1) The Registrar shall maintain a register in which shall be entered the name of every registrant, and may issue a certificate of registration to every person who is registered.

17(2) Upon payment of the applicable annual fees, and provided the person is in good standing and in compliance with this Act, the by-laws, the policies, and the directives, the Registrar shall enter the person as a registrant in the register for the applicable year.

17(3) Any person affected by a decision of the Registrar with respect to registration not otherwise contemplated under this Act may appeal to Council in writing within 30 days after receipt of notification of the decision of the Registrar.

17(4) The Registrar shall publish and maintain for inspection by any person at the Association's Head Office, free of charge, an alphabetical list, together with the address, of all registrants.

17(5) The Registrar shall forthwith enter into the register of the Association

- (a) the result of every proceeding before the Discipline Committee that resulted in a sanction against the registrant; and
- (b) if the Order of the Discipline Committee that resulted in the sanction against the registrant is appealed, a notation that it is under appeal.

17(6) When an appeal of the Order of the Discipline Committee is finally disposed of, the notation referred to in paragraph (5)(b) shall be removed and the register adjusted accordingly.

17(7) For the purpose of paragraph (5)(a), "result", when used in reference to a proceeding before the Discipline Committee, means the Committee's Order and the sanctions imposed and in the case of a finding of professional misconduct, a description of the nature of the professional misconduct.

17(8) The Registrar shall provide the information contained in the register referred to in subsection (5) to any person who inquires about a registrant or a former registrant who has received

disciplinary sanctions.

17(9) Upon payment of a reasonable fee established by policy, the Registrar shall provide a copy of the information contained in the register referred to in subsection (5) that pertain to a registrant or a former registrant to a person who requests a copy.

17(10) Despite subsection (9), the Registrar may provide, at the Association's expense, a written statement of the information contained in the register in place of a copy.

### **Researcher**

18(1) The Registrar may appoint one or more researchers to research whether a registrant has committed an act of professional misconduct or is incompetent if

- (a) the Complaints Committee has received a complaint about a registrant and has requested that the Registrar appoint a researcher; or
- (b) the Registrar has reason to believe that a registrant has committed an act of professional misconduct or is incompetent.

18(2) A researcher appointed by the Registrar may at any reasonable time, and upon producing proof of their appointment, enter and inspect the business premises of a registrant and examine anything found there that the researcher has reason to believe will provide evidence in respect of the matter being researched.

18(3) No person shall, without reasonable excuse, cause to be obstructed or obstruct a researcher while the researcher is performing their duties under this Act.

18(4) No person shall withhold, conceal or destroy, or cause to be withheld, concealed or destroyed, anything that is relevant to research under this Act.

### **Court intervention**

19(1) Upon the application, without notice, of a researcher, a judge of the Court who is satisfied on information by oath or solemn affirmation that the researcher has been properly appointed may issue a warrant authorizing the researcher to enter a building, receptacle, electronic device or place and search for and examine or remove anything described in the warrant when there are reasonable grounds for believing that

- (a) the registrant being researched has committed an act of professional misconduct or is incompetent, and
- (b) there is in a building, receptacle, electronic device or place, anything that will provide evidence in respect of the matter being researched.

19(2) A researcher shall report the results of the research to the Registrar in writing, who shall

process it as a complaint against a respondent.

**19(3)** A researcher entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force.

## **Complaint**

**20(1)** A complaint against a respondent shall be in writing, signed by the complainant and filed with the Registrar.

**20(2)** Any person may file a complaint, including the Registrar and the Director in circumstances where no complaint has been filed and it is in the public interest that a complaint be filed.

**20(3)** In the course of the Registrar's gathering of information, the Registrar may file an additional complaint or additional complaints against the respondent.

**20(4)** Upon receipt of a complaint, the Registrar shall notify the respondent of the complaint and provide a period of at least two weeks during which the respondent may submit in writing any reply the respondent may wish to make concerning the matter.

**20(5)** Upon receipt of the respondent's reply or if the expiration of the deadline for filing the reply has passed, the Registrar may

- (a) require additional information or production of documents by the respondent;
- (b) gather further information relating to the matter;
- (c) refer the complaint to the Complaints Committee; or
- (d) dismiss the complaint if, in the opinion of the Registrar, it is frivolous, vexatious or not within the jurisdiction of the Association.

**21(1)** When the complaint is referred to the Complaints Committee under paragraph 20(5)(c), it shall include the complaint, the reply of the respondent and any documentation relevant to the complaint.

**21(2)** When the complaint is dismissed under paragraph 20(5)(d), the Registrar shall file a decision with the Complaints Committee with written reasons and a copy of this decision shall be forwarded to the complainant and to the respondent.

**21 (3)** A complainant or the Director, if not satisfied with the disposition of the complaint by the Registrar, may request in writing a review by the Complaints Committee.

**21(4)** Upon receipt of a request under subsection (3) the Complaints Committee may dispose of the complaint in accordance with section 24.

**21(5)** The Complaints Committee shall advise the complainant and the respondent in writing of the disposition of a complaint under subsection (4) and shall give reasons.

### **Disclosure of information to authorities**

**22(1)** The Registrar may disclose to a law enforcement authority any information respecting possible criminal activity on the part of a registrant or any other person that was obtained while gathering information regarding a complaint or a potential complaint.

**22(2)** No action or other proceeding shall be instituted against the Registrar for filing a report in good faith under subsection (1).

### **Interim suspension by Registrar**

**23(1)** If the Registrar believes that a registrant's practice presents or is likely to present serious harm to the public, the Registrar may

- (a) impose conditions on the registrant; or
- (b) suspend the registrant's registration, pending a hearing of the matter by the Complaints Committee.

**23(2)** Upon imposing conditions on the registrant under paragraph (1)(a) or suspending the registrant's registration under paragraph (1)(b), the Registrar shall immediately refer the matter to the Complaints Committee.

**23(3)** A panel of the Complaints Committee shall hold a hearing where the respondent may make representations into the interim suspension under paragraph (1)(b) within ten days after the referral by the Registrar.

**23(4)** The hearing under subsection (3) is a new hearing and does not constitute an appeal of the Registrar's decision.

**23(5)** Upon imposing conditions on the registrant under paragraph (1)(a) or suspending the registrant's registration under paragraph (1)(b), the Registrar shall inform the Director as soon as practicable.

### **Complaints Committee**

**24(1)** There shall be a Complaints Committee, appointed by Council, composed of

- (a) at least two registrants in good standing, one of whom shall be named chair by Council; and
- (b) at least one public representative.

**24(2)** The quorum, number of Complaints Committee members, their terms of office, qualifications, and the manner of their appointment shall be established and governed by the policies and the policies may regulate the procedures, functions, and operations of the Complaints Committee and may permit the establishment of panels of the Complaints Committee to act for and to carry out and exercise all the duties and powers of the Complaints Committee provided that each panel shall include at least one public representative.

**24(3)** None of the Complaints Committee members shall be members of Council.

**24(4)** No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

**24(5)** The Complaints Committee shall consider complaints referred to it, but no action shall be taken by the Committee under subsection (10) before

(a) the respondent has been provided with a copy of the complaint and given at least two weeks to submit in writing to the Committee any explanations or representations the respondent may wish to make concerning the matter; and

(b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

**24(6)** In its effort to examine all records and other documents relating to the complaint, the Complaints Committee may require the respondent to produce all documents and disclose all information that may be relevant to the complaint.

**24(7)** Failure of the respondent to comply with subsection (6) constitutes professional misconduct.

**24(8)** Subject to subsection 23(3) the Committee is not required to hold a hearing or to give any respondent an opportunity to make oral submissions before making a decision or giving directions under this section; however, a respondent may, in the discretion of the Committee, be requested to appear before it to respond to the complaint or the matter under consideration.

**24(9)** The Complaints Committee may engage such persons as it considers necessary including legal counsel to assist it in the consideration of complaints and shall determine its own rules of procedure.

**24(10)** The Complaints Committee, in accordance with the information it has received, may

(a) direct that the matter be referred, in whole or in part, to the Discipline Committee;

(b) direct that the matter not be referred under paragraph (a);

(c) direct that the matter be referred to the Director for action under the *Real Estate Agents Act*;

- (d) issue a written caution or warning to the respondent in circumstances considered by the Committee not to justify other forms of sanction;
- (e) subject to subsections (16) and (17), impose such minor sanctions as it considers appropriate, to a maximum of a fee of \$1,000 when, in the opinion of the Committee, a respondent has committed a minor infraction;
- (f) for the purpose of determining whether a respondent is professionally competent, order the respondent to submit to a medical or psychological examination or assessment if it appears to the Committee that the respondent may not be capable of conducting practice or may have been addicted to or influenced by the use of drugs or alcohol, or
- (g) take such action as it considers appropriate in the circumstances to resolve the complaint, as long as such resolution is not inconsistent with this Act, the by-laws, or the *Real Estate Agents Act*.

**24(11)** The Committee shall give its decision under subsection (10) to the Registrar in writing, including the reasons for its decision.

**24(12)** The Registrar shall send to the respondent, the Director and the complainant a copy of the written decision and reasons of the Committee.

**24(13)** Not later than 30 days after receipt of a decision under paragraphs (10)(b) and (d), a complainant or the Director who considers that a Complaints Committee had failed to take any matter into account in reaching its decision, may request the Committee in writing with reasons to reconsider its decision, in which case the Committee shall do so and advise the complainant or the Director in writing of its disposition of the reconsideration with reasons.

**24(14)** In making a decision under subsection (13), the Committee may take any action it could have taken when first making a decision under subsection (10).

**24(15)** A complainant, if not satisfied with the disposition of the complaint by the Committee under subsection (13), may make an application for judicial review of a Committee decision to the Court in accordance with the Rules of Court.

**24(16)** The respondent who is issued a minor sanction pursuant to paragraph (10)(e) may request to be heard before the Discipline Committee within ten days after the Complaints Committee decision.

**24(17)** A respondent who makes a request under subsection (16) is no longer subject to a minor sanction but may receive a sanction from the Discipline Committee in accordance with subsection 33(3).

### **Interim Suspension by the Complaints Committee**

**25(1)** In circumstances where the Complaints Committee makes a referral under paragraph 24(10)(a), the Committee may suspend the respondent's registration or place conditions on the respondent, pending completion of the proceedings before the Discipline Committee if it is of the

opinion that harm to the public could result from not suspending or placing conditions on the respondent.

**25(2)** In circumstances where the Registrar has imposed conditions or suspended the respondent's registration pursuant to section 23, the Committee may uphold the suspension or uphold the conditions on the respondent, pending completion of the proceedings before the Discipline Committee if it is of the opinion that harm to the public could result from not suspending or placing conditions on the respondent.

**25(3)** No order under paragraph (1) or (2) shall be made unless the respondent has been given a notice of the Committee's intention and the opportunity to make representations.

**25(4)** An order of the Complaints Committee under subsection (1) or (2) shall be in writing.

**25(5)** An order under subsection (1) or (2) continues in force until the matter is disposed of by the Discipline Committee, unless the order is stayed pursuant to an application under subsection (6).

**25(6)** A registrant against whom action is taken under paragraph (1) or (2) may apply to the Court for an order staying the decision.

**25(7)** When an order under paragraph (1) or (2) is made, the Association shall act expeditiously with respect to the hearing of the matter by the Discipline Committee.

**25(8)** The Registrar shall send the order under paragraph (1) or (2) to the Director as soon as practicable following the decision of the Complaints Committee.

### **Discipline Committee**

**26(1)** There shall be a Discipline Committee who shall sit in panels of three or five, which shall include one public representative presided over by the chair or a vice-chair, and decisions of a panel shall be by majority vote.

**26(2)** The quorum, number of Discipline Committee members, their terms of office, qualifications, and the manner of their appointment shall be established and governed by the policies and the policies may regulate the procedures, functions, and operations of the Committee and may permit the establishment of panels of the Committee to act for and to carry out and exercise all the duties and powers of the Committee provided that each panel shall include at least one public representative.

**26(3)** None of the Discipline Committee members shall be members of Council.

**26(4)** No person who is a member of the Complaints Committee shall be a member of the Discipline Committee.

**26(5)** The Discipline Committee may conduct its proceedings in accordance with its own rules of procedure and may do all things and engage such persons including legal counsel as it considers

necessary to provide for the hearing and consideration of any complaint and in no case is the Discipline Committee bound to follow the technical rules of evidence or procedure applicable in judicial proceedings.

**26(6)** The Director may refer a complaint to the Discipline Committee for a hearing.

**26(7)** The hearing under subsection 24(16) is a new hearing and does not constitute an appeal of the Complaints Committee's decision.

### **Prosecutorial discretion**

**27** The prosecution, on behalf of the Association, may elect not to proceed before the Discipline Committee and withdraw the complaint if there are no reasonable prospects that the respondent will be found guilty of professional misconduct or will be found to be incompetent.

### **Discipline Committee hearings**

**28(1)** In proceedings before the Discipline Committee, the Association and the respondent are parties to the proceedings.

**28(2)** The respondent shall be afforded an opportunity to examine, a reasonable time before the hearing, any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.

**28(3)** The respondent may be represented by legal counsel.

**28(4)** No member of the Discipline Committee shall participate in a decision of the Committee unless that member was present throughout the hearing and heard the evidence and argument of the parties.

**28(5)** If a proceeding is commenced before the Discipline Committee, and the term of office of a member of the Committee expires or is terminated, other than for cause, before the proceeding is disposed of, the member shall be deemed to remain a member of the Committee for the purpose of completing the proceeding as if that member's term of office had not expired or been terminated.

**28(6)** A copy of the decision of the Discipline Committee shall be served upon the respondent and the complainant.

### **Notice of hearing**

**29(1)** The Registrar shall prepare a notice of hearing which shall be served at least ten days before the date of the hearing on

- (a) the complainant;
- (b) the respondent;
- (c) the Association; and

(d) all members of the Discipline Committee.

**29(2)** The notice of hearing shall set out the charges made against the respondent that are being referred to the Discipline Committee along with the date and time of the hearing.

**29(3)** The charges may be amended with leave of the chair of the Committee.

**29(4)** The Discipline Committee, on being satisfied with proof of service that the respondent was served with a notice of hearing and the respondent fails to appear at the hearing, may continue with the hearing and deem the respondent to have admitted to the substance of the complaint, and make whatever decision is considered appropriate.

### **Joint submission**

**30** The prosecution, on behalf of the Association, and the respondent may present a joint submission on the merits, on the sanctions or on both.

### **Evidence**

**31(1)** The Discipline Committee, or someone designated by it to act on its behalf, may by summons in a form prescribed by policy, require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports, or other documents as appear necessary for the purpose of the hearing.

**31(2)** For the purpose of subsection (1), the Committee may order that the records, reports or other documents be produced prior to the hearing at a date specified by the Committee.

**31(3)** A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Discipline Committee all records, reports or other documents that are in that person's custody or control.

**31(4)** The testimony of any witness may be taken under oath or affirmation which may be administered by the chair of the Discipline Committee or any person designated to do so on the chair's behalf.

**31(5)** If a person on whom a summons has been served, either personally or by leaving a copy of the summons with some adult person at that person's last or most usual place of residence or business, fails to appear before the Discipline Committee, or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, the Committee may by application to the Court, cause the person to be cited for contempt under the provisions of the Rules of Court in the same manner and to the same extent as if the alleged contempt took place in proceedings before the Court.

**31(6)** The oral evidence taken before the Discipline Committee shall be recorded and, if requested, copies of the transcript shall be furnished to the parties at their own expense.

**31(7)** All findings of the Discipline Committee shall be based exclusively on evidence admitted before it.

**31(8)** Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.

### **Public hearings**

**32(1)** Subject to subsection (2), Discipline Committee hearings shall be open to the public.

**32(2)** The Discipline Committee may order that the public, in whole or in part, be excluded from a hearing or any part of a hearing if it is satisfied that

- (a) financial, personal, or other matters that would otherwise be disclosed are of such nature that it is consistent with the public interest that they not be disclosed; or
- (b) the safety or security of a person may be jeopardized.

**32(3)** The Discipline Committee may make whatever order it considers necessary to prevent public disclosure, including orders prohibiting publication, broadcasting, or any other means of communication that the Committee considers may risk disclosure.

**32(4)** No order shall be made under subsection (3) that prevents the publication of anything that is otherwise available to the public.

**32(5)** The Discipline Committee may order that the public be excluded from the part of a hearing dealing with a motion for an order under subsection (2).

**32(6)** The Discipline Committee may make any order it considers necessary to prevent public disclosure of matters disclosed in a submission relating to any motion under this section, including any order it could make under subsection (3).

**32(7)** The Discipline Committee shall state at the hearing the reasons for any order made under this section.

**32(8)** In making an order under subsection (2), the Discipline Committee

- (a) shall allow the parties and their legal or other representatives to attend the hearing, and
- (b) may allow such other persons as it considers necessary to attend all or part of the hearing.

**32(9)** Despite anything contained in this section, public attendance at a hearing does not constitute authorization to take photographs, record sound, videotape, or otherwise mechanically,

electronically, or by any other means record the proceedings, and no such recording is permitted, unless specifically authorized by the Discipline Committee.

**32(10)** It is professional misconduct for any registrant to disclose or in any way facilitate the disclosure of matters ordered by the Discipline Committee not to be disclosed.

### **Professional misconduct and sanctions**

**33(1)** A respondent may be found guilty of professional misconduct by the Discipline Committee if

- (a) the respondent has been convicted in a court of competent jurisdiction of an offence which, in the opinion of the Committee, is relevant to the respondent's suitability to trade in real estate; or
- (b) the respondent has been guilty, in the opinion of the Committee, of professional misconduct.

**33(2)** The Discipline Committee may find a respondent to be incompetent if in its opinion

- (a) the respondent has displayed in carrying out the registrant's professional responsibilities a lack of knowledge, skill, or judgment, or disregard for the welfare of the public of such nature or extent to demonstrate the registrant is unfit to carry out the responsibilities of a person engaged in trading in real estate; or
- (b) the respondent has a physical or mental condition or disorder of a nature and extent that makes it desirable in the interests of the public, that the respondent no longer be permitted to engage in trading in real estate or that the practice of trading in real estate be restricted.

**33(3)** If the Discipline Committee finds that a respondent is guilty of professional misconduct or is incompetent, it may, by order, do one or more or a combination of the following:

- (a) revoke the respondent's registration in the Association, in which case the Committee may order that the respondent not be permitted to apply for reinstatement before a period of time it specifies has elapsed;
- (b) suspend the respondent's registration in the Association for a stated period, not exceeding twenty-four months;
- (c) reprimand or counsel the respondent;
- (d) require that the respondent, within a fixed time, pay to the Association a fine in a specified amount not exceeding \$25,000 for each finding and not exceeding \$100,000 in the aggregate for all findings;
- (e) require the respondent to refund, waive, or reduce the fee charged by the respondent with respect to the trading in real estate related to the finding of professional misconduct or incompetence;
- (f) direct that a finding or order of the Committee be published in an official publication of the Association or the website in detail or in summary form and either with or without including the name of the respondent, and in such other manners or media as it considers appropriate;

- (g) direct the Registrar to give public notice of any order or findings by the Committee that the Registrar is not otherwise required to give under this Act;
- (h) fix the costs of any research or procedures by the Complaints Committee and the Discipline Committee to be paid by the respondent within a fixed time;
- (i) impose specified terms, conditions and limitations on the respondent's right to trade in real estate for a specified period of time or until specified conditions are satisfied, including the requirement to successfully complete specified courses of study or requiring that the respondent engage in trading in real estate only under the personal supervision and direction of another registrant; and
- (j) make such other order as in its opinion is necessary and appropriate in the circumstances.

**33(4)** In addition to any action taken by the Discipline Committee under subsection (3) it may recommend to the Director one or more of the following:

- (a) that the respondent's licence to trade in real estate be cancelled or suspended;
- (b) that the Director restrict the respondent's licence by imposing terms and conditions.

**33(5)** The Discipline Committee shall cause an order of the Committee revoking or suspending a respondent's registration in the Association to be published, with or without reasons, and shall immediately notify the Director in writing of the revocation or suspension.

**33(6)** If all the allegations of professional misconduct or incompetence were unfounded, the respondent may elect to have, or not to have, the decision of the Discipline Committee published.

**33(7)** An Order of the Discipline Committee under subsection (3) takes effect immediately, or at such other time as the Committee may direct, despite that an appeal has been taken from the Order.

**33(8)** If the respondent fails to comply with any terms of the Order of the Discipline Committee, the Association may, after the expiration of 14 days after the date of the release of the Order or the date provided in the Order for compliance, whichever is later, file a copy of the Order, exclusive of the reasons for the Order, in the form prescribed by policy, in the Court, at which point the Order shall be entered as a judgment of the Court and is enforceable as such.

## **Appeal**

**34(1)** A party to proceedings before the Discipline Committee may appeal within 30 days after the date of the Order of the Committee to the Court by way of Notice of Application in accordance with the Rules of Court.

**34(2)** Upon the request of a party desiring to appeal, and upon payment of the fee, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the Order appealed from.

**34(3)** An appeal under this section may be on questions of law, facts, or jurisdiction, and the Court may

- (a) affirm or rescind the decision of the Discipline Committee;
- (b) direct the Discipline Committee to take any action which it has the power to take; or
- (c) refer the matter back to the Discipline Committee for rehearing in whole or in part, in accordance with such directions as the Court considers proper.

### **Mandatory report for termination and suspension**

**35(1)** An agent who terminates or suspends the employment of a registrant or who imposes restrictions on the practice of a registrant for reasons of professional misconduct or incompetence shall file with the Registrar within 30 days after the termination, suspension, or imposition a written report setting out the reasons.

**35(2)** The Registrar may process the report as a complaint of professional misconduct or incompetence against the registrant.

**35(3)** The Registrar shall send the report to the Director as soon as practicable.

### **Arbitration of commissions**

**36(1)** In the event of a dispute between two or more registrants with respect to a commission or fees charged by a registrant relating to the practice of trading in real estate, a registrant may apply to a board of arbitration who must adjudicate the dispute in a manner provided for in the policies.

**36(2)** The decision of the board of arbitration is binding upon the registrants.

**36(3)** Where a registrant has failed to comply with any terms of the decision of the board of arbitration under subsection (1), any registrant affected by the decision may, after the expiration of 14 days after the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file a copy of the decision, exclusive of the reasons for the decision, in the form prescribed by policy, in the Court, at which point the decision shall be entered as a judgment of the Court and is enforceable as such.

### **Injunction**

**37** The Association may apply to the Court in accordance with the provisions of the Rules of Court for an injunction restraining and enjoining any person from practising or attempting to practise trading in real estate or from doing or attempting to do anything contrary to the provisions of this Act or contrary to any by-law or policy enacted under the authority of this Act.

### **Fines**

**38** All fees, fines, and penalties payable or recoverable under this Act shall belong to the Association.

## **Real estate boards**

**39(1)** Council may approve the establishment of local associations to be known as real estate boards.

**39(2)** A real estate board established under subsection (1) may not use a name, or change its name, unless it is approved by Council and registered with the Association.

**39(3)** Upon compliance with subsection (2), a real estate board established under subsection (1) is deemed to be a body corporate without share capital under this Act with the right to exercise powers under section 40.

**39(4)** A real estate board established under subsection (1) shall

- (a) have a board of directors and officers, and shall provide for the eligibility, nomination, election, number and term of office of members of its board and officers;
- (b) provide for calling and regulating meetings of the board of directors and the membership of the Real estate board and the method of voting.

**39(5)** A real estate board established under subsection (1) shall report to the Association within 30 days after the election of its board of directors

- (a) the names of its directors and officers;
- (b) the term of office of its officers; and
- (c) the official address of the office of the real estate board.

**39(6)** A real estate board established under subsection (1) shall report to the Association any changes with respect to the information required under subsection (5), within 30 days after such change.

**39(7)** All information reported to the Association under subsection (5) and (6) shall be recorded and kept up to date by the Association and shall be made available for inspection by the public during normal business hours or confirmed in writing upon the request of any person.

**40(1)** Real estate boards may enact their own by-laws to exercise their own affairs and carry out their powers and functions.

**40(2)** Subject to this Act and the *Real Estate Agents Act*, any real estate board may

- (a) acquire and hold assets and property, both real and personal, by way of purchase, lease, grant, hire, exchange, or otherwise, and to dispose of such property by any means;

- (b) provide for the management of its property and assets, and of its affairs and business including the employment of staff;
- (c) borrow money for the purpose of carrying out any of the objects of the real estate board and give security for money borrowed on any of its real or personal property by way of mortgage, pledge, charge, or otherwise;
- (d) invest money of the real estate board not immediately required for any of its objects, in any manner as it may from time to time determine;
- (e) fix and collect membership fees;
- (f) assess members for any ordinary, special, or extraordinary expenditure that may be considered necessary or expedient to further any of the objects of the real estate board;
- (g) enter into agreements on behalf of the real estate board as may be necessary, incidental, or conducive to carrying out its objects, including membership affiliation agreements with associations and providing services for members;
- (h) exempt any person from the payment of fees, dues, or assessments for such reason and upon such terms and conditions as the real estate board may from time to time determine, and suspend members for non-payment;
- (i) receive gifts, donations, and bequests, and make gifts or donations for the promotion of the real estate board of the objects of the real estate board;
- (j) provide for the establishment of committees by the real estate board, prescribe their powers and duties, method of operation, including procedures at meetings for filling vacancies, and provide for the delegation of powers or duties of the board of directors to any committee;
- (k) establish categories of membership in the real estate board and prescribe the privileges, obligations, and conditions of membership;
- (l) provide for the establishment and payment of scholarships, fellowships, and other educational incentives, benefits, and awards by the real estate board;
- (m) subject to paragraph 4(1)(b), impose and recover penalties or forfeitures for breach of the real estate board's by-laws, rules, or policies;
- (n) arbitrate commission disputes between members of the real estate board in accordance with the real estate board policies;
- (o) do all other things as may be necessary or desirable to exercise the powers conferred by this Act or any other Act, or any incidental powers in furtherance of exercising their own affairs and carrying out their powers and functions.

**40(3)** By-laws made under subsection (1), rules, policies or otherwise of the real estate board shall not be inconsistent with or in conflict with this Act or the *Real Estate Agents Act*.

### **Dissolution of real estate boards**

**41(1)** A real estate board established under this Act shall not be dissolved unless by a majority resolution of its members at a meeting called for that purpose, and with the consent of Council upon being satisfied that the real estate board

- (a) has disposed of its property,
- (b) has no debts or liabilities, or
  - (i) its debts and liabilities have been duly provided for or protected, or
  - (ii) its creditors consent, and
- (c) has given notice of its intent to dissolve by publishing notice once in *The Royal Gazette* and once in a newspaper distributed in the area where it has its head office and carries on its activities.

### **Continuation of the New Brunswick Real Estate Board**

**42(1)** The following real estate board shall be deemed to continue as a body corporate without share capital under the same name, or such name as approved by Council from time to time:

New Brunswick Real Estate Board

**42(2)** Upon the continuation of a real estate board or a change of name under subsection (1), all proceedings may be continued or commenced by or against the board or under its new name that might have been continued or commenced by or against the board under its former name, and a board shall continue to possess all its property and continue to be subject to all liabilities, contracts, disabilities, and debts.

**42(3)** For greater certainty, nothing in this Act prohibits the New Brunswick Real Estate Board from being continued under another Act.

### **Exemptions**

**43** Persons exempt from the application of the *Real Estate Agents Act* are not required to register under this Act to trade in real estate.

### **Real Estate Agents Act**

**44** This Act is subject to the provisions of the *Real Estate Agents Act*, and all terms defined in that Act have the same meaning with the necessary modifications when used in this Act.

## **General**

**45(1)** No action lies against registrants, officers, directors or employees of the Association, Council, or any committees of the Association for anything done in good faith under the provisions of this Act, the *Real Estate Agents Act* or the by-laws, directives, standards, or policies of the Association.

**45(2)** Any action under the provisions of the *Real Estate Agents Act* in subsection (1) includes delegations or anything assigned to the Association by, the Director, or the Commission.

**45(3)** No registrant shall be personally liable for any debt of the Association beyond the amount of that registrant's unpaid fees, subscriptions, or unpaid Order of the Discipline Committee.

**45(4)** The Association shall indemnify any person referred to in subsection (1), (2) or (3) for any costs or expenses incurred in any legal proceedings taken against that person for anything done or not done by that person in good faith under the provisions of this Act, the *Real Estate Agents Act* or by-laws, directives, standards, or policies of the Association.

**46** All by-laws and policies shall be available for inspection by any person at the Head Office of the Association at all reasonable times during business hours, free of charge.

## **Transitional provisions**

**47(1)** *All persons who were members under An Act to Incorporate the New Brunswick Real Estate Association, chapter 115 of the Acts of New Brunswick, 1994, on the day this Act comes into force shall continue as registrants under this Act.*

**47(2)** *Despite any provision of this Act, in the two months following the commencement of this Act, Council may enact a new version of by-laws, and such by-laws shall be valid, binding and effective from the date of commencement of this Act until ratified, amended or repealed at the next annual meeting or special meeting of the Association.*

**47(3)** *All applications for admission as a member and all disciplinary proceedings in progress on the day this Act comes into force, shall be continued and disposed of under An Act to Incorporate The New Brunswick Real Estate Association, chapter 115 of the Acts of New Brunswick, 1994.*

**47(4)** *All complaints concerning matters of discipline or incompetence received after this Act comes into force shall be dealt with under this Act, despite when the subject matter of the complaint arose.*

## **Repeal**

**48** *An Act to Incorporate The New Brunswick Real Estate Association, chapter 115 of the Acts of New Brunswick, 1994, is repealed.*