

Discipline Process Summary

NBREA AAINB

OFFICE OF THE REGISTRAR / BUREAU DU REGISTRAIRE

Introduction

The New Brunswick Real Estate Association ("NBREA") oversees a comprehensive complaints and discipline process to determine if its Registrants 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. The New Brunswick Real Estate Association Act (the "Act");
3. NBREA's By-Laws; and
4. The REALTOR® Code of Ethics.

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.



Complaint's Process

At a Glance

*S*tep 1

The Registrar receives a written Complaint. A copy of the Complaint is then forwarded to the Respondent and the Respondent's Manager. The Respondent is granted an opportunity to provide a written Reply.

In order to be considered, complaints must be submitted in writing by completing the complaint form with a signature. You can find a copy of our complaint form by clicking **here.**

Step 2

The Registrar reviews the information provided and determines whether additional information is required. At this stage, the Registrar can also dismiss a complaint if, in the opinion of the Registrar, it is frivolous, vexatious, or outside the jurisdiction of the Association.

Step 3

If the complaint is referred to the Complaints Committee, the Committee will review the file in whole, including the initial complaint, the Respondent's reply, and any research completed by the Registrar.

The Complaints Committee's written Decision and reasons are provided to the Complainant, the Respondent, and the Director of Consumer Affairs (the "Director").

Either the Complainant or the Director may request the Committee, in writing, with reasons, to reconsider its decision.

Complaint's Process

At a Glance

Step 4

If the complaint is forwarded to the Discipline Committee, the Committee must hold a hearing. After hearing the evidence, the Discipline Committee determines if there has been professional misconduct or incompetence.

If the Discipline Committee finds that a Respondent is guilty of professional misconduct or incompetence, it has the authority to impose discipline.

Disciplinary Process Overview

Step 1: Complaint Received

Allegations of professional misconduct or incompetence against a Registrant of NBREA are made in writing and filed with the Registrar (the "Complaint").

Step 2: Registrar Review

The Registrar provides written confirmation to the Complainant (the person filing the Complaint), the Respondent (the Registrant named in the Complaint), and the Respondent's Manager that a Complaint is being considered and investigated by the Registrar. The Respondent is granted 2 weeks to provide a written submission in response to the complaint. The Respondent should make their best effort to provide all requested information to the Registrar within the time frame provided.

Upon receipt of the Respondent's reply or if the expiration of the deadline for filing the reply has passed, the Registrar may:

1. Require additional information or production of documents by the Respondent;
2. Gather further information relating to the matter;
3. Refer the complaint to the Complaints Committee; or
4. Dismiss the complaint if, in the opinion of the Registrar, it is frivolous, vexatious or not within the jurisdiction of the Association.

Disciplinary Process Overview

Step 3: Complaints Committee Review

If the complaint is forwarded to the Complaints Committee by the Registrar, the Committee will review the Complaint and Reply and determine if the matter is within its jurisdiction.

Conclusion of Complaints Committee Process

When the Complaints Committee has concluded its investigation and consideration of the Complaint, it will do one of the following (the "Decision"):

1. Direct that the matter be referred, in whole or in part, to the Discipline Committee;
2. Direct that the matter not be referred under paragraph (a) and that it be dismissed;
3. Direct that the matter be referred to the Director for action under the *Real Estate Agents Act*;
4. Issue a written caution or warning to the Respondent in circumstances considered by the Committee;
5. Impose minor sanctions as it considers appropriate to a maximum of $1,000;
6. 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 conducing practice or may have been addicted to or influenced by the use of drugs or alcohol; or
7. Take such action as it considers appropriate in the circumstances to resolve the complaint, as along as such resolution is not inconsistent with this *Act*, the by-laws or the *Real Estate Agents Act*.

Disciplinary Process Overview

Step 3: Complaints Committee Review cont'd

The Complaints Committee's written Decision and reasons are provided to the Complainant, the Respondent, and the Director of Consumer Affairs (the "Director").

Not later than 30 days after receipt of a decision, either the Complainant or the Director who considers that the 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.

A complainant, if not satisfied with the disposition of the complaint by the Committee, may make an application for judicial review of a Committee decision to the Court.

Step 4: Discipline Committee 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 (3 or 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.

Disciplinary Process Overview

Step 4: Discipline Committee Hearing cont'd

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 non-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, and 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.

Disciplinary Process Overview

Step 4: Discipline Committee Hearing cont'd

Discipline Decisions

After hearing the evidence, the Discipline Committee determines if there has been professional misconduct or incompetence. The standard of proof required in a hearing before the Discipline Committee refers to the level of proof that must be met for the Discipline Committee to find a registrant guilty of an alleged offence. That level of proof, or threshold, is the civil standard of a "balance of probabilities" which is 51% or higher (i.e., is it more likely than not that the Respondent is guilty of one or more of the alleged offences).

If the Discipline Committee finds that a Respondent is guilty of professional misconduct or incompetence, it has the authority to impose discipline, including:

1. suspend or revoke the Respondent's registration in the Association;
2. reprimand or counsel the respondent;
3. require that the Respondent, within a fixed period of time, pay to the Association a fine, not exceeding $25,000 for each finding or $100,000 for all findings;
4. require the Respondent to refund, waive, or reduce the fee charged by the Respondent with respect to the trading in real estate;
5. direct that a finding or Order of the Committee be published with an official publication of the Association or on the website in detail or in summary form, with or without the respondent's name;

Disciplinary Process Overview

Step 4: Discipline Committee Hearing cont'd

6. direct the Registrar to give public notice of any Order of findings by the Committee that the Registrar is not otherwise required to give under the *Act*;
7. 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 period of time;
8. impose specified terms, conditions and limitations on the Respondent's right to trade in real estate for a specified period of time;
9. make such other Order as, in its opinion, is necessary and appropriate in the circumstances.

In addition to any action taken by the Discipline Committee, it may recommend to the Director that the respondent's licence to trade in real estate be cancelled or suspended or restricted by terms and conditions.

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