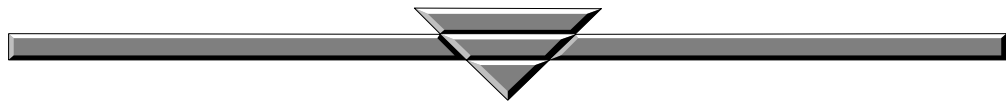


Real Estate Trading Act



Nova Scotia Real Estate Commission

“Please note that this is an unofficial version of the Real Estate Trading Act that has been modified with headings and layout to make it more convenient to use. The official statute should be consulted for any matters requiring legal interpretation.”

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An Act to Provide for the Regulation of Trading in Real Estate

Be it enacted by the Governor and Assembly as follows:

Title

1. This Act may be cited as the *Real Estate Trading Act*.

Definitions

2. (1) In this Act,
 - (a) **"Association"** means the Nova Scotia Real Estate Association;
 - (b) **"broker"** means an individual who holds a broker's license;
 - (c) **"brokerage"** means a business organization that holds a brokerage license;
 - (d) **"business"** means an undertaking carried on for the purpose of gain or profit and includes an interest in any such undertaking and, without limiting the generality of the foregoing, includes a boarding house, hotel, store, tourist camp and tourist home;
 - (e) **"business organization"** means a corporation or an unincorporated organization, including a sole proprietorship or a partnership, that is authorized by law to carry on business in the Province;
 - (f) **"buyer"** means a person acquiring an interest in real estate by purchase, exchange, option, lease or otherwise;
 - (g) **"by-laws"** means the by-laws of the Commission;
 - (h) **"Commission"** means the Nova Scotia Real Estate Commission;
 - (i) **"Complaints Review Committee"** means the Complaints Review Committee of the Commission;
 - (j) **"Discipline Committee"** means the Discipline Committee of the Commission;

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- (k) **"Fund"** means the Real Estate Recovery Fund;
- (l) **"license"** means a license issued pursuant to this Act;
- (m) **"Licensing Committee"** means the Licensing Committee of the Commission;
- (n) **"manager"** means a licensed individual who is designated by a broker as a manager on behalf of that brokerage;
- (o) **"Minister"** means the Minister of Business and Consumer Services;
- (p) **"official"** includes a partner, president, vice-president, secretary, treasurer, managing director, general manager, department manager or branch office manager and every person acting in a similar capacity whether so designated or not;
- (q) **"person"** includes an unincorporated organization, including a sole proprietorship or a partnership;
- (r) **"prescribed"** means prescribed by the regulations or the by-laws;
- (s) **"real estate"** includes
 - (i) real property, including leasehold property, or any interest therein,
 - (ii) a business, with premises, with or without fixtures, stock-in-trade, goods or chattels or any interest therein, in connection with the operation of the business, or
 - (iii) a portable dwelling, other than a holiday trailer or recreational vehicle wholly or mainly used for recreational purposes, that
 - (a) is designed for use and is used as a residence, and
 - (b) is situated on a site that is used or intended to be used, or that has been represented by the owner of the site as being intended to be used, for residential purposes, but does not include a mineral right;
- (t) **"records"** includes books, documents, papers, communications, correspondence, accounting records and any other information or data that is recorded, stored or retained by any means or device, including electronic means;
- (u) **"Registrar"** means the Registrar of the Commission;

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- (v) **"salesperson"** means a person who is licensed as a salesperson;
- (w) **"seller"** means a person disposing of an interest in real estate by sale, exchange, lease, option or otherwise;
- (x) **"Superintendent"** means the Superintendent of Real Estate of the Province or such other person as may be appointed at any time or from time to time by the Governor in Council to administer this Act;
- (y) **"trade" or "trading"** includes a disposition or acquisition of or transaction in real estate by sale, purchase, agreement for sale, exchange, option, lease, rental or otherwise and any offer or attempt to list real estate for the purpose of such a disposition or transaction, and any act, advertisement, conduct or negotiation, directly or indirectly, in furtherance of any disposition, acquisition, transaction, offer or attempt.

Exemptions

3. This Act does not apply to
- (a) any person not ordinarily trading in real estate who acquires real estate or disposes of real estate owned by that person or in which that person has a substantial interest, or an official or employee of any such person engaged in so acquiring or disposing of real estate;
 - (b) any
 - (i) assignee, custodian, liquidator, receiver, sheriff, trustee or other person in the course of acting pursuant to a statute or pursuant to a court order,
 - (ii) administrator of an estate, or
 - (iii) executor or trustee selling under the terms of a will, marriage settlement or deed of trust;
 - (c) any bank, trust, loan or insurance company or a credit union and the subject- matter of the trading is real estate owned by or pledged to it;
 - (d) any person who is a member in good standing of the Nova Scotia Barristers Society and the trading is in the course and as part of that person's practice as a barrister or solicitor; or
 - (e) any person who is licensed and in good standing with the Public Accountants Board of the Province of Nova Scotia, and the trading is in the course and part of that person's practice as a public accountant,

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- (f) any person or persons, any activity or activities or any class or classes of a person or class or classes of activity that are excluded from the application of this Act by the regulations.

Trading in Real Estate

- 4. (1) No person shall trade in real estate or hold out as being available to trade in real estate unless that person is licensed to do so, but only to the extent that the person is permitted to do so by the license and subject to any restrictions, terms and conditions contained in the license or under which the license was issued.
- (2) No brokerage shall trade in real estate except through a broker, a manager or a salesperson.
- (3) Every brokerage shall maintain in a bank an interest-bearing trust account, of a type specified in the by-laws.
- (4) Every trust account maintained pursuant to subsection (3) shall be under the supervision of a broker designated by the brokerage that maintains the account.
- (5) Each office from which a brokerage trades in real estate shall be under the supervision of a broker or a manager.

The Commission

- 5. There is hereby established a body corporate to be known as the Nova Scotia Real Estate Commission.
- 5A The Commission has the power to acquire and hold real and personal property and alienate that property at pleasure.
- 6. The Commission is not, for any of its purposes, an agent of Her Majesty in right of the Province and its powers shall be exercised in its own right and not as an agent of Her Majesty.
- 7. (1) The Commission consists of
 - (a) three members who are not licensed persons, appointed by the Governor in Council;
 - (b) three licensed individuals elected by the licensed individuals;

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- (c) three members appointed by the Association; and
 - (d) subject to subsection (2), the Registrar.
- (2) The Registrar may not vote on any question before the Commission.
 - (3) Except for the Registrar, each member of the Commission holds office for a term not exceeding three years.
 - (4) Where a member of the Commission ceases to be a member of the Commission for any reason prior to the expiration of that member's term of office, the body that appointed that member shall appoint another member to the Commission to serve for the unexpired portion of the term of office.
 - (5) A member of the Commission may be re-appointed, but in no case shall a member serve more than two consecutive terms.
 - (6) The members of the Commission shall elect one of their number as the Chair of the Commission and one of their number as Vice-chair of the Commission.
 - (7) Where the Chair of the Commission is absent or unable to act or the office of Chair is vacant, the Vice-chair shall act as Chair and in so acting has all the powers and shall perform all the duties of the Chair.
 - (8) The Commission shall pay to each of its members any remuneration for services and allowances for travelling and other expenses that may be determined by the Commission.
 - (9) The Commission shall appoint such officers and employees as it considers necessary to carry out its purposes.
 - (10) A majority of the voting members of the Commission constitutes a quorum and a majority vote of the voting members present at a meeting of the Commission determines any question.
 - (11) No action for damages lies against the Commission, the Complaints Review Committee, the Discipline Committee, the Licensing Committee, any past or present member of any of those Committees, the Registrar or the Minister for
 - (a) any act or failure to act or any proceeding initiated or taken in good faith under this Act; or
 - (b) any decision, order or resolution made or enforced in good faith under this Act.

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(12) No action lies against any person for the disclosure of any information or any document or anything contained in a document pursuant to this Act unless the disclosure is made with malice.

7A Every person involved in the administration of this Act and any member of the Commission or a committee of the Commission shall maintain confidentiality with respect to all information that comes to that person's knowledge regarding licensees and applicants for licences except

- (a) in connection with the administration of this Act and the regulations respecting discipline and proceedings arising thereunder;
- (b) to one's own legal counsel;
- (c) as otherwise required by law; or
- (d) with the written consent of the person to whom the information relates.

By-Laws

- 8.** (1) The Commission may make by-laws
- (a) respecting the management of the property of the Commission;
 - (b) governing procedures for the election of the Chair and Vice-chair of the Commission;
 - (c) prescribing the duties of the members of the Commission, the Registrar and officers and employees of the Commission;
 - (d) prescribing the organization and procedures of the Commission and regulating the Commission in the performance of its duties;
 - (e) establishing any committees that the Commission considers necessary or as are designated by this Act and prescribing the manner of election or appointment of members to those committees;
 - (f) prescribing the remuneration and allowances for expenses for members of the Commission and members of committees;
 - (g) respecting the reporting and publication of decisions and reports of the Commission and its committees and the Discipline Committee;

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- (h) respecting the calling, holding and procedures of meetings of the Commission, including annual and special meetings;
- (i) prescribing application forms for persons applying for licenses, reinstatement and renewals of licenses and the manner in which the applications are made;
- (j) prescribing procedures governing the granting and renewal of licenses and the conditions to be met for the granting or renewal of licenses;
- (k) respecting the qualifications, standards and tests of competency for obtaining a license, a renewal of a license or the reinstatement of a license with power to prescribe qualifications, standards and tests of competency for different classes of license;
- (l) setting the amounts of fees for licenses and other fees payable to the Commission, with power to prescribe the times of payment and penalties for late payment;
- (m) prescribing the terms of licenses, with power to prescribe different terms for different types of license;
- (n) prescribing standards of professional conduct, competency and proficiency for licensed persons;
- (o) providing for a code of ethics for licensed persons;
- (p) setting standards regarding the manner and method of practice of licensed persons;
- (q) prescribing procedures for
 - (i) investigation of complaints against licensed persons,
 - (ii) hearings respecting complaints against licensed persons;
- (r) prescribing the circumstances under which applicants are required to attend re-entry education programs and courses and approving programs and courses for that purpose;
- (s) prescribing or establishing classes, lectures, courses of study, systems of training, periods of service and examination for licenses and applicants for licenses;

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- (t) setting standards for continuing education and requiring the participation of licensed persons in continuing education to meet license renewal requirements;
- (u) governing the reinstatement of licenses that have been suspended or cancelled;
- (v) setting requirements for the maintenance of licenses;
- (w) regulating advertising by licensed persons;
- (x) prescribing the form, content and maintenance of a register of licensed persons and the information to be provided by applicants for licenses for the purpose of the register;
- (y) respecting the investigation and inspection of methods of practice of licensed persons by the Commission;
- (z) requiring reports from licensed persons with respect to their operations and prescribing the content of those reports;
- (aa) respecting the designation of an individual as the acting broker or acting manager in the temporary absence of a broker or manager, respectively;
- (ab) establishing the rights and responsibilities for each type of license and establishing additional types of license;
- (aba) prescribing standards for agency relationships;
- (ac) respecting the requirements for agreements in addition to those prescribed in this Act;
- (ad) respecting the keeping of trust money and trust accounts, with power to
 - (i) provide for the investigation of complaints regarding trust money and trust accounts,
 - (ii) provide for the inspection and auditing of trust money and trust accounts,
 - (iii) prescribe the records to be kept by brokerages with respect to trust money and trust accounts,
 - (iv) require reports from brokerages with respect to their trust money and trust accounts, and

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- (v) prescribe the types of trust accounts that shall be opened and maintained by brokerages pursuant to this Act;
 - (ae) fixing the amount of any assessment to be levied for the Fund;
 - (af) respecting the manner in which the Commission deals with the Fund and any interest in the Fund;
 - (ag) respecting records to be kept by licensed persons, including records with respect to trades in real estate;
 - (ah) providing for the charging of fees for any services provided by the Commission;
 - (ai) respecting the types of notices and service of notice that may be served electronically;
 - (aj) respecting joint participation by the Commission with any educational institution or any person, group, association, organization or body corporate having goals or objectives similar to those of the Commission;
 - (ak) respecting payment to the Commission of interest on trust accounts by financial institutions;
 - (al) prescribing the manner and form of applications to the Commission for review of a decision of the Registrar;
 - (am) prescribing the manner in which the Complaints Review Committee deals with complaints pursuant to this Act and the powers of the Committee in dealing with such complaints;
 - (an) prescribing the procedure to be followed in appeals to the Commission;
 - (ao) prescribing any other matter or thing that the Commission considers necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2) Within thirty days of making a by-law or an amendment to a by-law, the Commission shall file a copy of the by-law or the amendment with the Superintendent.
- (3) The by-laws are to be open for inspection by all persons, without fee, during normal office hours of the Commission.

Meetings

- 9.**
- (1) The Commission shall call an annual meeting of licensed persons in accordance with the by-laws.
 - (2) On a resolution of the Commission, a special meeting of licensed persons may be held for the transaction of the business that is specified in the resolution.
 - (3) An annual or special meeting shall be held at a time and place determined by the Commission in accordance with the by-laws.
 - (4) The Registrar shall send a notice of an annual or special meeting to each licensed person at least fourteen days before the meeting.
 - (5) The procedure at annual or special meetings shall be determined by by-law.

Registrar

- 10.**
- (1) There shall be a Registrar of the Commission appointed by the Commission who shall perform such duties and have such powers as are imposed or conferred on the Registrar by this Act, the regulations or the by-laws.
 - (2) Subject to this Act, the regulations and the by-laws, the Registrar may license an individual to trade in real estate by issuing to that individual, upon application by that individual,
 - (a) a broker's license, where the individual is responsible for the trust account and the business of a brokerage;
 - (b) a salesperson's license, where the individual is responsible to a broker or manager;
 - (c) such other types of license that may, from time to time, be determined by the Commission.
 - (3) Subject to this Act, the regulations and the by-laws, the Registrar may license a business organization to trade in real estate by issuing to that business organization a brokerage license.

Licence Applications

11. (1) Any person may apply for a license by
 - (a) completing and submitting to the Registrar an application in the form prescribed by the Commission;
 - (b) paying to the Commission an application fee in an amount fixed by the by-laws;
 - (c) paying to the Commission a contribution to the Fund in such amount as is fixed by the by-laws;
 - (d) providing the Registrar with evidence satisfactory to the Registrar that the person has complied with this Act, the regulations and the by-laws with respect to the license for which the application is made;
 - (e) where the application is for a licence other than a brokerage, providing to the Registrar the name and address of the brokerage with which that person will be trading in real estate; and
 - (f) where the application is for a brokerage license, providing to the Registrar the name of the broker who will be responsible for the trust account and the business of the brokerage.
- (2) Where the Registrar has received an application for licensing and the Registrar is satisfied that the applicant has complied with the provisions of this Act, the regulations and the by-laws with respect to the license for which the application is being made, the Registrar may license the applicant.
- (3) Every license expires at the time determined by the by-laws, but may be renewed in the manner and form set out in the by-laws and upon payment to the Registrar of the fee fixed by the by-laws and upon the Registrar being satisfied that all the conditions that, under the by-laws, are to be met before the license is renewed, have been met.
- (4) A license is not transferable and expires on the death of the person to whom it is issued.
- (5) A license issued to a business organization expires when the business organization ceases to trade.

Refusal of Licence

12. (1) In an application for a licence, the applicant shall satisfy the Registrar that
- (a) the past conduct of the applicant or the applicant's officers or directors provides reasonable grounds for believing the applicant will carry on the business in accordance with this Act, the regulations and the by-laws; and
 - (b) where the applicant is applying for a brokerage license, the applicant's officers or directors can reasonably be expected to be financially responsible in the conduct of their business.
- (2) The Registrar shall not refuse to license a person or refuse to renew or reinstate a license without giving the applicant for the license or the renewal or reinstatement an opportunity to appear before the Licensing Committee.
- (3) The Registrar shall notify an applicant, in writing, of the Registrar's decision and provide written reasons for the decision.

Conditional Licence

13. (1) The Registrar may issue a license to an applicant subject to any terms and conditions that the Registrar considers necessary.
- (2) After giving the holder of the license an opportunity to be heard, the Licensing Committee may
- (a) make the license subject to any new or additional terms; or
 - (b) amend or revoke any terms to which the license is subject.
 - (c) Every licensed person shall comply with the terms of that person's license.

Licensing Committee

14. (1) There shall be a Licensing Committee of the Commission, appointed by the Commission, consisting of such persons as the Commission determines, each of whom holds office for such term as the Commission determines, but who ceases to be a member of the Committee upon becoming unable to perform the duties of a member of the Committee or upon ceasing to be a member of the Commission.

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- (2) A person who is aggrieved by a decision of the Registrar may apply, in the manner and form prescribed by the by-laws, to the Licensing Committee to review that decision.
 - (3) On a review pursuant to subsection (2), the Licensing Committee may
 - (a) direct the Registrar to issue a license to the applicant or renew or reinstate a license in a manner the Licensing Committee considers appropriate; or
 - (b) confirm the Registrar's decision.
 - (4) On a review pursuant to this Section, the applicant may appear in person before the Licensing Committee in support of the application.
 - (5) The Registrar shall cause the applicant to be informed, in writing, of the decision of the Licensing Committee regarding the review.
 - (6) A person aggrieved by a decision of the Licensing Committee may apply to the Commission to have the decision reviewed.
- 15.** The Licensing Committee or Registrar may
- (a) require further information or material to be submitted by an applicant for a license or renewal or reinstatement of a license;
 - (b) require verification of any information or material that has been submitted or that is to be submitted.
- 15A**
- (1) Where a person whose licence has been suspended pursuant to this Act or the regulations does or attempts to do anything contrary to this Act or the regulations, the Commission may apply to the Supreme Court of Nova Scotia for an injunction to restrain the person from doing or attempting to do anything contrary to this Act or the regulations.
 - (2) Where a person who is not licensed pursuant to this Act does or attempts to do anything contrary to this Act or the regulations, the Commission may apply to the Supreme Court of Nova Scotia for an injunction to restrain that person from doing or attempting to do anything contrary to this Act or the regulations.

Discipline Committee

16. (1) There shall be a Discipline Committee of the Commission appointed by the Commission consisting of at least five persons, one of whom is not a licensed individual.
- (2) There shall be a Chair of the Discipline Committee designated by the Commission who shall be a member of the Discipline Committee and a member of the Commission.
- (3) The Discipline Committee shall perform such duties and has such powers as are imposed or conferred on it by this Act, the regulations and the by-laws.
- (4) The Discipline Committee may appoint a subcommittee and empower the subcommittee to perform any duty or execute any power of the Discipline Committee.

Complaints

17. (1) Where the Registrar receives a complaint that a licensed person has engaged in unprofessional conduct or is in breach of this Act, the regulations or the by-laws, the Registrar, or a person nominated by the Registrar, shall investigate the matter.
- (2) Where the Registrar has reason to believe that a licensed person has engaged in unprofessional conduct or is in breach of this Act, the regulations or the by-laws, the Registrar is deemed to have received a complaint for the purpose of subsection (1).

Investigations

- (3) For the purpose of conducting an investigation pursuant to this Section, the person conducting the investigation may inquire into and examine the business affairs of the person who is the subject of the investigation, and may examine and inquire into any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with the complaint.

Co-operation with Investigation

- (4) Every person who is the subject of an investigation pursuant to this Section shall co-operate in the investigation.
- (5) A person who conducts an investigation pursuant to this Section may carry out the investigation notwithstanding that the person who is the subject of the investigation has ceased to be a licensed person or is in arrears in payment of any fees imposed by or pursuant to this Act.

Hearings

- (6) Where, after an investigation, the Registrar has reason to believe that the person who is the subject of the investigation has engaged in unprofessional conduct or is in breach of this Act, the regulations or the by-laws, the Registrar shall refer the matter to
 - (a) the Complaints Review Committee, where the licensed person agrees, pursuant to Section 20; or
 - (b) the Discipline Committee.
- (7) Where a matter is referred to the Discipline Committee pursuant to this Section, the Discipline Committee shall hold a hearing, shall give to the person who is the subject of the hearing thirty days notice in writing of the substance of the complaint against that person with the time and place of the hearing into the complaint against that person and of the evidence referred to the Discipline Committee and shall permit that person to appear at the hearing in person or by counsel and
 - (a) present any evidence relevant to the matter, including evidence that is relevant to any penalty that may be imposed pursuant to this Act;
 - (b) cross-examine witnesses; and
 - (c) make representations to the Discipline Committee including representations on any penalty that may be imposed pursuant to this Act.
- (8) Where, during the course of a hearing, the evidence shows that the person whose conduct is the subject of the hearing may be guilty of an offence different from or in addition to the offence the person was found guilty of by the Discipline Committee, the Discipline Committee shall notify that person of that fact.

- (9) Where the Discipline Committee proposes to proceed with the hearing of allegations that are different from the allegations of which the person taking the appeal was found guilty, the Discipline Committee shall adjourn the hearing for any period that the Discipline Committee considers sufficient to give that person an opportunity to prepare a defence to the new allegations, unless that person consents to continue the hearing.
- (10) Unless a cancellation or suspension is set aside on an appeal, the person whose license has been cancelled or suspended shall not trade in real estate within the Province.

Authority

- 18. For the purpose of exercising the powers conferred upon it by this Act, the Discipline Committee has all the powers, privileges and immunities of a commissioner appointed pursuant to the Public Inquiries Act and the Discipline Committee may establish rules of procedure for the purpose of such hearings.

Penalties

- 19. (1) Where the Discipline Committee, by order, finds that a person is guilty of unprofessional conduct or is in breach of this Act, the regulations or the by-laws, it may, by order,
 - (a) cancel the person's license;
 - (b) suspend the license for a specified period;
 - (c) suspend the license pending the satisfaction and completion of any conditions specified by the Discipline Committee;
 - (d) permit the person to continue to be licensed only under conditions specified by the Discipline Committee, which may include, but are not restricted to, a condition that the person
 - (i) successfully complete specified classes or courses of instruction,
 - (ii) obtain treatment or counseling, or both;
 - (e) require the person to pay a fine;
 - (f) reprimand the person;

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- (g) recommend to the Commission that an amount fixed by the Discipline Committee be paid from the Fund, in accordance with the by-laws, to a person to compensate that person for loss or damage suffered by that person as a result of fraud or breach of trust.
- (2) In addition to an order made pursuant to subsection (1), the Discipline Committee may make any other order it considers just.

Assess Costs

- (3) In addition to an order made pursuant to subsection (1), the Discipline Committee may order the person who is found guilty of unprofessional conduct or who is found to be in breach of this Act, the regulations or the by-laws to pay to the Commission, within a fixed period, the costs of the investigation and hearing into that person's conduct and related costs, including the expenses of the Discipline Committee and the costs of legal services and witnesses.

Non-Compliance

- (4) Where a person, who is found guilty of unprofessional conduct or to be in breach of this Act, the regulations or the by-laws, fails to make a payment in accordance with an order issued pursuant to this Section, the Registrar may suspend that person's license until the order of the Discipline Committee is complied with.

Notice of Decision

- (5) The Registrar shall send a written notification of the manner in which a complaint has been disposed of by the Discipline Committee to
 - (a) the person who made the complaint, if any;
 - (b) the person who was the subject of the complaint; and
 - (c) the brokerage for which the person subject to the complaint is acting.

Court Order

- (6) Where a person does not comply with an order issued pursuant to this Section within the time period specified in the order and the time period for an appeal has expired, the Registrar may file a certified copy of the order with the Supreme Court of Nova Scotia and enforce the order as if it were an order of that Court.

Continuation of Action

- (7) The Discipline Committee may proceed, pursuant to this Act, with a matter or complaint pursuant to this Act and make a determination and impose a penalty, notwithstanding that the person who is the subject of the proceeding has ceased to be a licensed person or is in arrears in the payment of any fees imposed by or pursuant to this Act.

Voluntary Settlement

20. (1) A person, who is the subject of a complaint made pursuant to this Act, may tender to the Registrar a written proposed settlement agreement that includes
- (a) an admission that the person is guilty of professional misconduct or is in breach of this Act, the regulations or the by-laws, or both; and
 - (b) that person's consent to a specified disposition of the complaint, that may include the imposition of any penalty that may be imposed pursuant to this Act.
- (2) The Registrar shall submit to the Complaints Review Committee for acceptance or rejection a proposed settlement agreement tendered pursuant to subsection (1).
- (3) Where the Complaints Review Committee rejects a proposed settlement agreement tendered pursuant to subsection (1), the matter shall be proceeded with pursuant to this Act, but no admission contained in the proposed settlement agreement may be used against the person who tendered the agreement in further proceedings with respect to the matter.
- (4) Where the Complaints Review Committee accepts a proposed settlement agreement tendered pursuant to subsection (1), no further proceedings shall be taken with respect to the matter.

Suspension

21. (1) Where the Registrar is of the opinion that, on the basis of the allegations or the nature of the case, the person who is the subject of the investigation should be suspended pending dealing with the complaint or a decision of the Discipline Committee, the Registrar, with the prior approval of the Commission, may temporarily suspend the license.

- (2) A suspension made pursuant to subsection (1) expires on the earliest of
 - (a) ninety days from the date of the suspension, or a longer period of time where the licensed person consents;
 - (b) where the Discipline Committee decides that the holder of the license is not guilty of unprofessional conduct or is not in breach of this Act, the regulations or the by-laws, the day on which the decision is made; and
 - (c) where the Discipline Committee decides that the person who is the subject of the investigation is guilty of unprofessional conduct or is in breach of this Act, the regulations or the by-laws, the day on which the decision is made.

Unprofessional Conduct

- 22. (1) Unprofessional conduct is a question of fact, but any matter, conduct or thing, whether or not disgraceful or dishonourable, is unprofessional conduct within the meaning of this Act if it is
 - (a) harmful to the best interests of the public, licensed persons or the Commission;
 - (b) fraudulent;
 - (c) a breach of this Act, the regulations or the by-laws or any terms or restrictions to which a license is subject; or
 - (d) a failure to comply with an order of the Discipline Committee.
- (2) Whether or not a person is in breach of this Act, the regulations or the by-laws is a question of fact, but if a person displays
 - (a) a lack of knowledge, skill or judgement; or
 - (b) a disregard for the welfare of members of the public served by the real estate industry,of a nature or to an extent that demonstrates that the person is unfit to continue to be licensed pursuant to this Act, that person is in breach of this Act, the regulations or the by-laws for the purpose of this Act.

Criminal Convictions

23. The Discipline Committee may, by order, where
- (a) the holder of a license has been convicted of an indictable offence pursuant to the Criminal Code (Canada);
 - (b) the Discipline Committee receives a report of the Registrar made to the Committee respecting the conviction referred to in clause (a); and
 - (c) the Discipline Committee has given the holder of the licence an opportunity to be heard,
- take any action the Discipline Committee may take pursuant to Section 19.

Appeal

24. (1) Any person may appeal from any order made by the Discipline Committee to a judge of the Supreme Court of Nova Scotia within thirty days after the order is made, and the judge, on hearing the appeal, may make such order either confirming, amending or setting aside the order appealed from or for further inquiries by the Discipline Committee into the facts of the case as to the judge seems right.
- (2) The appeal shall be by motion, notice of which shall be served upon the Registrar at least fourteen days before the time fixed for hearing the appeal, and shall be founded upon a copy of the proceedings before the Discipline Committee, the evidence taken and the decision or report of the Discipline Committee in the matter, certified by the Registrar and the Registrar shall, upon the request of any person desiring to appeal, at the expense of that person, furnish that person with a certified copy of all evidence, proceedings, reports, orders and papers upon which the Discipline Committee has acted.
- (3) Notwithstanding subsection (2), a decision of the Discipline Committee shall not be used in a civil action against a licensed person.

Reinstatement

25. (1) Where a license is suspended or cancelled, the Registrar may reinstate the license of the person whose license has been suspended or cancelled if that person
- (a) applies to the Registrar on a form provided by the Registrar;

- (b) pays the fee as fixed by the by-law; and
 - (c) produces evidence satisfactory to the Registrar that the applicant has complied with the provisions of any order of suspension or cancellation and the provisions of this Act, the regulations and the by-laws with respect to licensing in the applicable category.
- (2) Where a license is cancelled or suspended pursuant to this Act, the Registrar shall strike the name of the holder of the license from the register or indicate the suspension on the register, as the case may be, and cause a notice of the cancellation or suspension to be published in a newspaper circulating throughout the Province.
- (3) Where a license is suspended or cancelled pursuant to this Act, any rights or privileges that the holder of the license had as a result of holding the license are removed for the period during which the license is suspended or cancelled.

GENERAL

Agency Agreement

26. (1) In this Section, "agency agreement" means
- (a) a written agreement entered into by a licensed person respecting the listing of real estate for sale; or
 - (b) an agreement entered into by a licensed person respecting the finding by the licensed person of real estate for purchase by another person.
- (2) Where a licensed person has entered into an agency agreement, the licensed person shall disclose in writing to each other party to the agreement any other agency obligation that the licensed person has that relates to the agreement.
- (3) No action lies against any person and no person is guilty of unprofessional conduct by reason only of that person making a disclosure in accordance with subsection (2).

Commissions

27. Any commission or remuneration payable to a brokerage for a trade in real estate shall be a fixed amount or a fixed percentage of the sale price or the rental, as the case may be.

Advertising

28. (1) No brokerage shall advertise a trade in real estate unless the advertising indicates the name of the brokerage as the advertiser.
- (2) Subject to subsection (1), no manager or salesperson shall advertise a trade in real estate unless the advertisement indicates the name of the brokerage for which the manager or salesperson is authorized to act.

Offers

29. Every offer to purchase real estate obtained by a licensed person shall be in writing.
30. (1) Every offer to purchase real estate obtained by a licensed person, before execution by either the seller or the buyer, shall clearly show
- (a) the date on which the offer is made;
 - (b) the names and addresses of the buyer and seller;
 - (c) the street address or a description sufficient to identify the real estate that is the subject-matter of the offer;
 - (d) the price offered;
 - (e) the terms and conditions of the purchase;
 - (f) the amount of the deposit, if any, made at the time of the offer;
 - (g) a brief description and list of any chattels that are to be included in the sale price;
 - (h) the date of possession and whether possession is to be vacant or otherwise;
 - (i) the date of adjustments;
 - (j) the date by which the offer is to be accepted;
 - (k) the date on which the sale is to close; and
 - (l) the name of the brokerage.
- (2) Where an offer to purchase or sell real estate is submitted through a licensed person and is accepted, the acceptance shall show the date of the acceptance.

- (3) Every offer to purchase or sell real estate shall be executed by the person making the offer and the acceptance of the offer shall be executed by the person who accepts the offer and upon such execution a true copy of the offer and acceptance shall be delivered to the person who executes it.
- (4) An offer or acceptance is not invalid by reason only that it does not comply with this Section but, where a licensed person, acting in bad faith, does not comply, the licensed person may not recover any commission with respect to the trade.

Agreements

- 31. (1) Every agreement entered into by a licensed person for the purchase or sale of real estate shall
 - (a) contain an expiry date; and
 - (b) be executed by all parties to the agreement, and the licensed person shall, upon execution, provide a true copy of the agreement to each party to the agreement.
- (2) An agreement is not invalid by reason only that it does not comply with subsection (1) but, where a licensed person, acting in bad faith, does not comply, the licensed person may not recover any commission under the agreement with respect to the trade.

Trust Accounts

- 32. (1) Every licensed person who receives money to be held in trust by a brokerage with respect to a trade in real estate shall deposit the money in an interest-bearing trust account that is opened and maintained in accordance with this Act and shall instruct the bank to remit the interest earned thereon to the Commission semi-annually and such interest, including interest accruing due, is the property of the Commission.
- (2) A brokerage is not liable by virtue of the relationship between the broker and a party to a trade in real estate or the licensed person and a cestui que trust to account to any party to a real estate trade for interest earned on money deposited in a bank pursuant to subsection (1).
- (3) A brokerage is responsible for any service charges or fees associated with the operation of a trust account.
- (4) Where a dispute between a buyer and a seller over trust money is not resolved at the closing, the brokerage holding the money in trust may ask an arbitrator to settle the dispute.

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- (5) Where unclaimed money remains in a brokerage trust account for a period of at least two years and the broker is unable to locate the parties or settle the matter pursuant to subsection (4), the Commission may bring an action on behalf of all brokerages to dispose of all unclaimed money.
- (6) On an application pursuant to subsection (5), the court may order that the funds be paid to the Commission to be used for such public or charitable purpose, including the education of licensed persons, as the Commission specifies in its application.
- (7) Any person may recover trust funds that have been transferred to the Commission pursuant to this Section by application to the Commission within six years after the funds were deposited to the brokerage trust account.
- (8) An application pursuant to subsection (7) shall be made in accordance with the by-laws.
- (9) This Section applies to funds paid in trust before or after the coming into force of this Section.

Individual Trusts

33. Notwithstanding anything contained in this Act, an agreement for purchase and sale may provide that interest on any funds held in trust for any party to the agreement shall be held in an individual trust account opened and maintained by the brokerage that is acting as the licensed person in the transaction and be payable to that party, and subsections 32(1) and (2) do not apply.

Annual Report

34. (1) Within three months next after the end of each of its' fiscal years, the Commission shall prepare and submit to the Minister a report consisting of
 - (a) a general summary of its' transactions, activities and affairs;
 - (b) a report respecting the Fund and all deposits made in it and all payments made from it during the previous fiscal year and financial statements respecting the Fund for the previous fiscal year; and
 - (c) such other information as the Minister requires.
- (2) Upon receiving a report pursuant to subsection (1), the Minister shall lay a copy of the report before the House of Assembly if it is then sitting or, if it is not then sitting, distribute a copy of the report to each member of the Assembly.

Promises

- 35.** (1) No licensed person shall, as an inducement to purchase, sell or exchange real estate, make any representation or promise unless, at the time of making the representation or promise, the licensed person delivers to the person to whom the representation or promise is made a statement, signed by the licensed person and the broker or manager, fairly setting forth all the details of the representation or promise made.
- (2) The statement referred to in subsection (1) shall be signed by the person to whom the representation or promise is made.

Interference

- 36.** No licensed person shall induce any party to an agreement for listing, sale, purchase or rental of real estate to break the agreement for the purpose of entering into another such agreement for listing, sale, purchase or rental of real estate.

Employment

- 37.** (1) No brokerage shall employ, permit or engage to trade in real estate a person who is employed by another brokerage or a person who is not licensed or pay a commission or other remuneration to such person.
- (2) No licensed person shall pay a commission or other remuneration to a person who is required by this Act to be licensed but who is not licensed.

Associates

- 38.** (1) For the purpose of this Section, a person is an associate of a licensed person where
- (a) the licensed person is a partnership, that person is a member of the partnership;
 - (b) the licensed person is a corporation, that person is a director or officer of the corporation or has a material interest in the corporation;
 - (c) that person is a manager or a salesperson employed by the licensed person;
 - (c) that person is the spouse of the licensed person; or
 - (e) if that person is a corporation or an unincorporated organization including a sole proprietorship, a partnership, association or syndicate, the licensed person has a material interest in the organization or corporation.

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- (2) For the purpose of this Section, a person has a material interest in a corporation or an unincorporated organization, including a sole proprietorship, partnership, association, syndicate or other unincorporated organization
 - (a) in the case of a corporation, if that person beneficially owns not less than five per cent of its issued shares;
 - (b) in the case of an unincorporated organization, including a sole proprietorship, partnership, association, syndicate or other unincorporated organization, if that person holds not less than five per cent of its capital or is entitled to receive not less than five per cent of its profits.
- (3) Where either a licensed person or the associate of a licensed person directly or indirectly purchases, offers to purchase, sells or offers to sell real estate or an interest in real estate, the licensed person or associate, as the case may be, shall disclose to the buyer or seller in writing
 - (a) that the licensed person or associate, as the case may be, is either the licensed person or an associate of the licensed person;
 - (b) any information within the knowledge of the licensed person, or associate, as the case may be, that could materially affect the value of the real estate;
 - (c) whether or not the licensed person or associate, as the case may be, intends to negotiate, is negotiating or has negotiated a resale of the real estate and, if so, details of such negotiations; and
 - (d) the amount that is being offered for the real estate.
- (4) Clauses (3)(b) and (c) do not apply where a licensed person purchases or offers to purchase real estate as agent for another person and
 - (a) the other person is not a licensed person or an associate of the licensed person;
 - (b) the compensation paid or payable to the licensed person does not exceed that usually paid for the service; and
 - (c) the licensed person discloses to the seller that the licensed person is acting as agent for a principal, whether or not the name of the principal is disclosed.

- (5) Subject to subsection (4), where a licensed person or an associate of the licensed person fails to comply with subsection (3) or (4), the licensed person or the associate, as the case may be, is liable to compensate the seller or buyer for any direct loss suffered by the seller or buyer by reason of the failure to comply.

Recovery Fund

- 39.** (1) The Real Estate Assurance Fund, established pursuant to Chapter 384 of the Revised Statutes, 1989, the Real Estate Brokers Licensing Act, is continued under the name Real Estate Recovery Fund.
- (2) The Fund is under the supervision and control of the Commission.
- (3) The purpose of the Fund is to pay, in whole or in part,
- (a) any amount that the Discipline Committee recommends, pursuant to this Act, be paid to a person who, in the opinion of the Committee, has suffered loss or damage resulting from a licensed person engaging in fraud or breach of trust;
 - (b) any judgment obtained against a licensed individual where the judgment is based on fraud or breach of trust in respect of a trade in real estate and a recommendation has been made by the Discipline Committee; or (c) to pay to any person any sum of money as that person and the Commission agree upon as the consideration to be paid to that person for the transfer to the Commission of any right of action that person has against a licensed person where the right of action is based on fraud or breach of trust in respect of a trade in real estate.
- (4) Subject to the regulations, the Commission may, from time to time, collect money by the levy of assessments, in addition to license fees on every licensed person.
- (5) The money collected pursuant to subsection (3) and any income from the investment of that money shall be credited to the Fund.
- (6) The Commission shall deal with the Fund and any income from the Fund in the manner set out in the by-laws.

Protection of the Fund

40. (1) The Commission may invest any part of the Fund not required for disposition in any security or class of securities in which trustees are authorized by law to invest trust funds.
- (2) The Commission may, in a manner and on such terms and conditions it considers advisable, enter into contracts with insurers by which the Fund may be protected, in whole or in part, against any claim or loss to the Fund, and the costs incurred by the Commission under any such contracts may be defrayed from the Fund.
- (3) The Commission has an insurable interest in the Fund and in the protection of the Fund against loss notwithstanding that any loss is the result of the exercise of the discretion of the Commission pursuant to this Act.

Payment of Claims

41. (1) Where the Discipline Committee, by order, recommends that an amount be paid from the Fund to a person, to compensate that person for loss or damage suffered by that person as a result of the fraud or breach of trust of a licensed person or a person obtains a judgment against a person licensed or formerly licensed and the judgment
- (a) has become final by reason of lapse of time or of being confirmed by the highest court to which that judgment may be appealed; and
- (b) is not satisfied within thirty days of the date on which it became final,
- that person may apply to the Commission for compensation from the Fund.
- (2) Subject to the regulations, where an application has been made pursuant to subsection (1), the Commission shall pay from the Fund to the applicant the amount of the unsatisfied portion of the judgment or the amount that the Discipline Committee orders be paid to that person for loss or damage.
- (3) Where any payment has been made from the Fund, the Commission is subrogated to the rights, remedies and securities to which the person receiving the payment has against the person liable to pay the judgment or whose conduct has caused the loss or damage and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the Commission.

Shortfall and Wind Up

42. (1) Where the amount of the Fund at any time falls below the amount prescribed by the regulations, the Commission shall immediately advise the Superintendent.
- (2) The Superintendent may order that the Fund be wound up in accordance with the regulations where
- (a) the amount of the Fund is less than the prescribed amount and there is no viable plan to replenish the Fund; or
 - (b) the Superintendent considers it in the public interest to do so.

Unlicensed Trading

43. (1) Any person who trades in real estate without a license, violates this Act or any regulation or refuses or neglects to fulfill, perform, observe or carry out any duty or obligation created or imposed by this Act or the regulations is guilty of an offence and liable upon summary conviction to a penalty of not less than two thousand dollars and not more than five thousand dollars for the first offence or not less than five thousand dollars for the second or subsequent offence and, in the case of either a first or subsequent offence, in default of payment of any penalty imposed or in addition to such penalty, to imprisonment for a term of not more than six months.
- (2) Where a corporation is convicted under this Act or the regulations, the court may direct that, in default by the corporation of payment of the penalty imposed, proportionate parts thereof shall be paid by such officers, directors, officials or employees of the corporation, and in such amounts, as the court designates and, in default of payment by any person so designated, the court may impose a penalty of imprisonment for a term of not more than six months.
- (3) Every prosecution under this Act or the regulations shall be commenced within two years from the date upon which the offence is alleged to have been committed.

Regulations

44. (1) The Governor in Council may make regulations
- (a) excluding any person or persons, any activity or activities or any class or classes of person or class or classes of activity from the application of this Act;
 - (b) respecting the powers and duties of the Commission;
 - (c) prescribing the minimum amount of the Fund;
 - (d) respecting the manner in which the Fund may be wound up;
 - (da) respecting the content of annual reports to the Minister;
 - (e) defining any word or expression used but not defined in this Act;
 - (f) respecting any matter deemed necessary or advisable to carry out effectively the intent and purpose of this Act.
- (2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the Regulations Act.

Carry Over

45. (1) In this Section, "former Act" means Chapter 384 of the Revised Statutes, 1989, the Real Estate Brokers Licensing Act.
- (2) Where a business organization was licensed as a broker pursuant to the former Act and, immediately prior to the coming into force of this Act, the license was in good standing, the business organization is and is deemed to be licensed as a brokerage pursuant to this Act until the license expires or is suspended or cancelled.
- (3) Where an individual was licensed as a broker pursuant to the former Act and, immediately prior to the coming into force of this Act, the license was in good standing, the individual is and is deemed to be licensed as a broker pursuant to this Act until the license expires or is suspended or cancelled.
- (4) Where an individual was licensed as a salesman pursuant to the former Act and, immediately prior to the coming into force of this Act, the license was in good standing, the individual is and is deemed to be licensed as a salesperson pursuant to this Act until the license expires or is suspended or cancelled.

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- (5) Nothing in this Act affects any disciplinary proceeding lawfully commenced prior to the coming into force of this Act.
- (6) Any claim against the Fund that is outstanding immediately after the coming into force of this Act is and is deemed to arise after the coming into force of this Act.
- (7) The Superintendent may enter into an agreement with the Commission respecting the transfer of information on licenses issued pursuant to the former Act.

Repeal

- 46. Chapter 384 is repealed.

Proclamation

- 47. This Act comes into force on such day as the Governor in Council orders and declares by proclamation.

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