


RECBC

REAL ESTATE COUNCIL
OF BRITISH COLUMBIA

Complaint and Discipline Procedures



Published for the information
of consumers and real estate
licensees.

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Introduction

This brochure outlines the investigative and disciplinary authority of the Real Estate Council of British Columbia arising from the *Real Estate Services Act*, Regulation, Rules and Bylaws. It also describes the Council's administrative, regulatory and disciplinary procedures. The Council is hopeful that this brochure will assist complainants and licensees who are responding to complaints so as to ensure that administrative, regulatory and disciplinary processes relating to professional conduct are handled in a uniform and fair manner.

What is the Real Estate Council

The Real Estate Council is a regulatory agency established by the provincial government. Its mandate is to protect the public by enforcing the licensing and licensee conduct requirements of the *Real Estate Services Act*. In particular, the Council is responsible for:

- licensing individuals and brokerages engaged in real estate sales, rental property and strata management activities
- monitoring and enforcing entry qualifications
- investigating complaints against licensees
- ensuring compliance
- conducting disciplinary hearings
- imposing administrative penalties or disciplinary sanctions.

The Council does not have the jurisdiction to adjudicate monetary or contract matters or assess or award damages, all of which come under the jurisdiction of the civil courts. Anyone who seeks to deal with monetary or contract matters must pursue a civil remedy through legal proceedings.

Licensee Conduct Concerns

If a concern develops for a consumer as a result of real estate services provided by a licensee, the following steps should be considered:

- Discuss the concern with the licensee.
- If the matter is still not resolved, discuss the concern with the managing broker in charge of the brokerage. Most concerns are settled by these two means.
- If the licensee is also a member of a local real estate board, it may be approached.

The board may be able to assist to informally resolve the concern. Real estate boards sometimes investigate conduct that may be in violation of their Code of Ethics and Standards of Business Practice. These boards will refer all matters to the Council where it appears that the *Real Estate Services Act*, Regulation or Rules have been contravened. Please visit www.bcrea.bc.ca for names and addresses of local boards.

If satisfaction is still not forthcoming, the concern should be referred to the Council.

Licensed Strata Managers

As of January 1, 2006, strata management became an activity for which a real estate licence is required* and the conduct of licensed strata managers became subject to the requirements of the *Real Estate Services Act*, over which the Real Estate Council has jurisdiction. However, the *Strata Property Act*, the legislation that governs the rights and obligations of strata corporations, strata councils and strata owners, remains a self-administered statute and there are no enforcement provisions for the Government of BC or the Real Estate Council. Under the *Strata Property Act*, it is up to the owners themselves, with the possible assistance of the courts or an arbitrator and/or mediator, to resolve disputes and ensure compliance with the provisions of the *Strata Property Act*.

Strata managers act under the direction of the strata council of the strata corporation, by which they are engaged. It is the strata corporation as a whole that is the client of the strata manager, not the individual owners. Therefore, if individual strata owners have concerns about a strata manager, they are advised to first take their concerns to their strata council for resolution and any action the strata council may see fit to take. This may include the strata council submitting a complaint to the Real Estate Council with respect to the conduct of the strata manager if the strata council believes the strata manager to have contravened the *Real Estate Services Act*. As a general policy, the Real Estate Council requires complaints regarding licensed strata managers to be submitted by strata councils, accompanied by a copy of the minutes of the council meeting that confirms the passing of a motion to submit such a complaint to the Real Estate Council.

*There is provision in the *Real Estate Services Act* that exempts a self-managed strata corporation from the licensing requirements when an owner is providing the strata management services. The owner is limited to managing no more than two strata corporations, provided the owner owns a strata lot in each of the strata corporations. In addition, a strata caretaker employed by a strata corporation or a caretaker employed by a brokerage providing strata management services is also exempt from the licensing requirements so long as certain conditions are met.

Complaints

A concern or complaint that cannot be resolved informally should be directed to the Council. The complaint should be in writing, signed by the complainant, and accompanied by any relevant supporting documentation. For your convenience, a complaint form is located at the back of this booklet. Forms are also available from the Council's website at **www.recbc.ca** or from the Council office at **604-683-9664** or toll-free in BC **1-877-683-9664**.

Complainants and any other witnesses called by the Council will receive reasonable and necessary travelling and lodging expenses in accordance with the Supreme Court Rules. Please note that in some cases when complaints are received from outside the province, the Council may require complainants to agree to attend a disciplinary hearing should a hearing be ordered.

Initial Complaint Assessment

Complaints received from consumers are carefully reviewed by the Council staff to determine whether:

- the Council has jurisdiction to act, i.e. where there has been professional misconduct or conduct unbecoming on the part of a licensee;
- the complaint can be informally resolved;
- the complainant is aware that the Council cannot remedy a civil wrong, i.e. where there has been a negligent act or omission on the part of a licensee;
- the complainant understands the professional and ethical responsibilities of the licensee in the particular transaction;
- the complainant has included with their complaint all information and documentation sufficient for the commencement of an investigation, if necessary.

A Council Compliance Officer may telephone the complainant at the initial complaint assessment stage to develop a better understanding of the issues surrounding the complaint and to ensure that the complainant understands the Council's investigation and discipline processes.



Resolution of Complaints

Complaints can be processed and resolved in a number of ways, including summarily, as a result of being closed administratively or through the imposition of an administrative penalty, or formally, as a result of a disciplinary hearing.

1. Closed Administratively

Approximately 50% of all complaints received by the Council are closed administratively. A complaint file may be closed at any stage where it is found that:

- the Council has no jurisdiction over the matter (i.e. including matters that are not related to a licensee providing real estate services, as that term is defined in the *Real Estate Services Act*);
- there is no evidence of professional misconduct or conduct unbecoming a licensee;
- the complaint has been dealt with to the complainant's and the Council's satisfaction by the brokerage or licensee;
- the complaint has been withdrawn. The Council is not compelled to cease an investigation or disciplinary hearing even if the complainant indicates a desire to withdraw a complaint.

2. Administrative Penalties

Contraventions of designated Council Rules may result in the Council imposing an administrative penalty on a licensee. Examples include failure to comply with advertising rules and failure to maintain proper books and records. Where the Council intends to impose an administrative penalty, it will first notify the licensee of the rule that has been contravened, the amount of the administrative penalty to be imposed, and advise the licensee of the licensee's right to be heard respecting the matter. Administrative penalties, which can range from \$250 to \$1,000, are not considered disciplinary sanctions and, as such, do not form a part of a licensee's public disciplinary record.

Formal Complaint Handling Process

For those complaints that are not resolved summarily, a copy of the entire complaint will be sent to the licensee involved, including the managing broker at the brokerage where the licensee is employed. The licensee is asked to provide a written response to the complaint against them. In addition, the Council may request that the licensee respond to questions posed by the Council about the matters that gave rise to the complaint or other concerns arising from the complaint.

The licensee and their managing broker are also asked to provide copies of all documents and records that relate to the complaint. The licensee is advised that their response, or questions arising from their response, may be forwarded to the complainants for their comments in order to assist the Council with its investigation. The Council is bound by the provisions of the *Freedom of Information and Protection of Privacy Act* of British Columbia when releasing documents to any party.

a) Investigation

Where a complaint has been received from a consumer or a licensee, the Council may conduct an investigation to determine whether a licensee has committed professional misconduct or conduct unbecoming a licensee within the meaning of the *Real Estate Services Act*. The Council may also conduct an investigation on its own initiative. This could include, for example, where the Council becomes aware of a court decision or news report that suggests professional misconduct or conduct unbecoming on the part of a licensee.

The basic purpose of the investigation is to determine whether a licensee has committed:

- professional misconduct by conduct that:
 - > contravenes the *Real Estate Services Act*, Regulation, Bylaws or the Rules
 - > contravenes a licence restriction or licence condition
 - > demonstrates incompetence in performing any activity for which a licence is required
 - > misappropriates or wrongfully converts money or other property entrusted to or received by the licensee in relation to the provision of real estate services
 - > fails to comply with an order of the Council, a Discipline Committee, or the Superintendent of Real Estate
- conduct unbecoming a licensee if the licensee engaged in conduct that:
 - > is contrary to the best interests of the public
 - > undermines public confidence in the real estate industry
 - > brings the real estate industry into disrepute.



b) Complaints Committee

The Council appoints a Complaints Committee that has the responsibility for reviewing those complaints that have not been summarily resolved, together with the responses received from the licensee and the results of the Council's investigation. The Complaints Committee, assisted by the Council staff, has the right to further investigate the facts and circumstances of the complaint and the response received from the licensee. This investigation may include an inspection of the books, documents and records of the licensee. If the Complaints Committee is satisfied that there is no indication of professional misconduct or conduct unbecoming a licensee, the Committee will dismiss the complaint and close the file, and the Complainant and the licensee are so informed. If it appears that a licensee may have committed professional misconduct or conduct unbecoming a licensee, then the recommendation of the Complaints Committee will depend upon the apparent seriousness of the contravention. The Complaints Committee may recommend:

- a letter of warning
- a formal disciplinary hearing.

The Council will not normally postpone an investigation or hearing pending the outcome of the proceedings where there are collateral civil or criminal proceedings pending and the issues in the proceedings are substantially the same as those in the complaint. However, a postponement may be considered if a request is made by either the complainant or licensee and it can be shown that there will be actual prejudice to either party if the Council continues with its investigation or hearing.

c) Letters of Warning

If the Complaints Committee considers that there has been minor or technical misconduct or conduct unbecoming by a licensee, a letter of warning can be sent to the licensee, in which case no hearing will be held.

If a letter of warning is issued and the licensee is of the opinion that they have not committed professional misconduct or conduct unbecoming a licensee, the licensee has, for a period of 30 days, the right to request a full hearing. It is important the licensee recognizes that in the event they request a full hearing and are found by the Discipline Committee to have committed professional misconduct or conduct unbecoming a licensee, the licensee may be reprimanded, suspended or dealt with in any of the other ways provided in section 43(2) of the *Real Estate Services Act*.

Letters of warning form part of a licensee's public record and, as such, letters of warning or a summary of them may be released to members of the public upon request after the 30 day appeal period has ended.

Formal Hearings

The Council has the authority, pursuant to sections 40 and 42 of the *Real Estate Services Act*, to hold a formal disciplinary hearing. The Council appoints a Discipline Committee to conduct the hearing. A Discipline Committee may consist of at least three individuals, a majority of whom must be Council members. If the licensee does not object, a Discipline Committee may consist of a single Council member. In either case, no member of a Discipline Committee will have reviewed the complaint at the Complaints Committee stage.

Once a hearing is ordered, the Council will send a letter to the licensee advising that a hearing will be scheduled. In due course, a notice of hearing, which outlines the alleged contraventions, is issued. At that time, the licensee is asked to consider whether they wish to enter into a consent order (see below). A licensee intending to engage a lawyer should consult their lawyer as soon as possible after receiving this notice in order to decide whether entering into a consent order may be preferable to a formal hearing. Any licensee named in a notice of hearing who is unable to appear on the specified date must immediately contact the Council office so that an application may be made to adjourn the hearing to an alternate date.

a) Agreed Statement of Facts

In some circumstances, the facts in a matter may be fairly straight forward and, as a result, there may be no argument regarding what happened. Also, a licensee may wish to admit to some or all of the Council's allegations. If the licensee and the Council staff agree, an agreed statement of facts may be submitted to the Discipline Committee. This could eliminate the necessity of calling witnesses and, while the hearing would still proceed, it could be reduced in scope and less costly for all parties involved.

b) Consent Orders

In the event that a licensee wishes to admit the allegations and consents to a Discipline Committee making a specified order under section 43 of the *Real Estate Services Act*, the licensee may make a proposal under section 41 to settle the matter by way of a consent order. This process avoids the necessity of a formal hearing and can save considerable time and expense for the licensee. A proposal includes an agreed statement of facts, appropriate admissions and a request as

to outcome on terms acceptable to the Council legal staff. Written notice must be given to the Council at least 14 days before the hearing date. Council legal staff can assist in the preparation of the proposal. It should be noted that monetary penalties and expenses incurred by the Council in the enforcement of the provisions of the *Real Estate Services Act* can be recovered by the Council through this process.

Once a draft proposal has been settled by the licensee and the Council's legal staff, it will then be reviewed by a Discipline Committee called a Consent Order Review Committee. This committee may accept, reject or counter the proposal. If the proposal is accepted, the committee will issue a consent order on the terms set out in the proposal. As part of the consent order process, the licensee is required to waive their right to appeal. As with any Council decision, the Superintendent of Real Estate has the right to appeal a consent order. If a licensee and the Council legal staff cannot agree on the facts or what would be an appropriate penalty, a formal hearing will be scheduled.

c) Legal Counsel

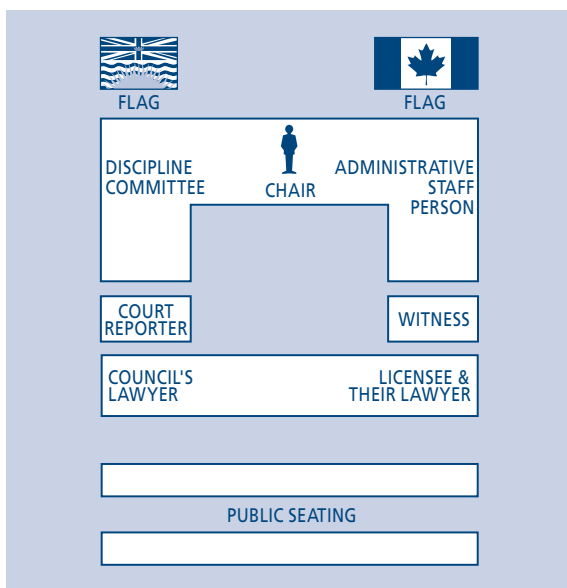
The complainant and the licensee, at their expense, may be represented by a lawyer. The Council has no obligation to retain a lawyer for either the complainant or the licensee. The Council will appoint a lawyer to present evidence at the hearing.

d) Hearing Procedure

While hearing procedures may vary with particular situations, the following procedures will generally be followed:

- The hearings are usually held at the Council's office in Vancouver. On occasion, hearings will be held in other locations within the province. Hearings are public proceedings and the public is welcome to attend.
- A Court reporter is present at all hearings to record all of the evidence and submissions. Anyone may obtain a transcript of part or all of a hearing at their expense by making arrangements with the reporter. The name of the reporter for a particular hearing may be obtained from the Council office.
- The hearing room is arranged so that the members of the Discipline Committee and the Council's administrative support staff are seated together. A table is provided in front of the Discipline Committee where the licensee and their lawyer, if any, may sit. The lawyer acting for the Council also sits at a table before the Discipline Committee.
- After calling the hearing to order, the Chair will read the allegations and then ask all present to identify themselves for the record.
- The lawyer acting for the Council will, if appropriate, make opening comments as to the issues to be considered by the Discipline Committee.

- The licensee or their lawyer has the option of making opening comments before the Council calls any evidence or waiting until the Council's case has been completed.



- The lawyer acting for the Council will then call the complainant and any other witnesses to give evidence. After their evidence in chief, they may be asked questions by way of cross-examination by the licensee or their lawyer.
- At the end of the cross-examination, if any members of the Discipline Committee are unclear as to the circumstances or uncertain as to an answer given by a witness, they may indicate to the Chair any question that they feel is required to clarify the matter. The lawyer acting for the Council and the licensee or their lawyer may make submissions as to the appropriateness of questions before the witness answers the question.
- The notice of hearing will normally require the licensee to produce all documents, including accounting records relating to the matters at issue and actual production of that material may be requested at any point in the hearing.
- After all of the Council witnesses have testified, the licensee or their lawyer may give opening comments prior to giving evidence, if they have not already done so. The licensee can then give evidence and call their own witnesses.
- The licensee or their lawyer may complete their examination in chief and the licensee will then be subject to cross-examination by the lawyer acting for the Council and other licensees, if any.
- After all of the evidence is heard, the lawyer acting for the Council will make submissions to the Discipline Committee as to what conclusions might properly be drawn from the evidence and the licensee or their lawyer shall have a similar

opportunity. The Discipline Committee will then deliberate as to whether there was any wrongdoing by the licensee. Should there be such a finding, a separate hearing to determine penalty and enforcement expenses will normally be held. The licensee may have the option, prior to the commencement of the hearing, of having both stages of the hearing heard together by signing a waiver foregoing their right to a separate hearing as to penalty and enforcement expenses. Having signed a waiver, the licensee may revoke that waiver at any time up to the conclusion of all of the evidence. In certain circumstances, despite having received a request for a waiver by a licensee, the two-step model will be employed due to either the complexity of the issues or the existence of the licensee's previous discipline record. When separate hearings with respect to the issues of penalty and enforcement expenses are held, the Discipline Committee may invite written or oral submissions on penalty and enforcement expenses.

e) Role of the Licensee

A licensee whose conduct is in question is entitled to be in attendance throughout the hearing. A licensee who is alleged to have contravened the *Real Estate Services Act*, Regulation, Bylaws or Rules is a compellable witness at a formal hearing. Sometimes there are a number of licensees involved in a transaction that has resulted in the filing of a complaint. To assess the conduct of all of the licensees involved in a fair and impartial manner, it may be necessary to require all licensees to give evidence at a formal hearing.

f) Witnesses

The Council and Discipline Committee, pursuant to subsection 42(2) of the *Real Estate Services Act*, have the same powers as a commissioner under the *Administrative Tribunals Act* to compel the attendance of witnesses and to require the production of documents. The licensee is responsible for having any witnesses that they wish to give evidence at the hearing attend to give evidence. Should a witness, who is in a position to give relevant evidence, be reluctant to attend the hearing, the Council's powers may be used to ensure the attendance of the witness. The licensee should provide the Council with appropriate advance notice should they wish to have the Council summons a witness. While a Discipline Committee is not bound to follow the formal rules of evidence, these rules are generally used as a guideline. Witnesses may be required to wait outside the hearing room prior to giving evidence, although they are entitled to attend the balance of the hearing after they have testified.

Complainants and any other witnesses called by the Council will receive reasonable and necessary travelling and lodging expenses in accordance with the Supreme Court Rules.

At times, witnesses may be concerned that their evidence at a Council hearing could be used against them in subsequent criminal or civil proceedings. Witnesses may ask for and be given the protection of either or both of the federal or provincial *Evidence Act*, which means that the evidence cannot be used against those witnesses in subsequent criminal or civil cases except in situations where it could be shown that the evidence given at the hearing was inconsistent with the evidence given in the subsequent case, in which case the original evidence could be used in a prosecution for perjury.

g) Role of the Complainant

The complainant may be represented by a lawyer at the hearing. All witnesses, including complainants, are examined and may be cross-examined, although such examination and cross-examination must be relevant to the issues being considered by the Discipline Committee.

The Council will have a lawyer in attendance at formal hearings who will be responsible to see that all relevant evidence is brought before the Discipline Committee.

Hearing Decision

After submissions, the hearing is concluded and the Discipline Committee will then retire to reach a decision. A written decision of the Discipline Committee is usually communicated within 30 days to the licensees and the complainant.

Sanctions

The *Real Estate Services Act* allows the Discipline Committee to impose a range of disciplinary sanctions if it determines that a licensee has committed professional misconduct or conduct unbecoming a licensee. If there is such a finding, section 43(2) of the *Real Estate Services Act* requires the Discipline Committee to, by order, do one or more of the following:

- reprimand a licensee;
- suspend the licensee's licence for a period of time and/or until specified conditions are met;
- cancel the licensee's licence;
- impose restrictions or conditions on the licensee's licence, or vary any applicable restrictions or conditions;
- require the licensee to cease or carry out any specified activity related to the licensee's real estate business
- enroll in and complete a course of study or training
- pay for enforcement expenses incurred by the Council
- pay a disciplinary penalty in an amount of not more than \$20,000 in the case of a brokerage or former brokerage, or not more than \$10,000 in any other case.

Enforcement Expenses

Enforcement expenses recoverable against a licensee by the Council under the *Real Estate Services Act* are as follows:

- for investigation expenses, \$100/hour for each investigator;
- for an audit carried out during an investigation leading to a hearing
 - > \$150/hour for an auditor regularly employed by the Council; and
 - > in any other case, \$400/hour;
- for reasonably necessary legal services:
 - > \$150/hour for a lawyer regularly employed by the Council; and
 - > in any other case, \$400/hour;
 - > for disbursements properly incurred in connection with the provision of legal services to the Council or the Discipline Committee, the actual amount of the disbursements;
- for each full or partial day of hearing, administrative expenses of:
 - > \$1,000 for a hearing before a Discipline Committee of one member;
 - > \$1,500 for a hearing before a Discipline Committee of 3 members; and
 - > \$2,000 for a hearing before a Discipline Committee of 4 or more members;
- for each day or partial day that a witness, other than an expert witness, attends a hearing at the request of the Council or a Discipline Committee, \$50;
- for an expert witness who attends a hearing at the request of the Council or a Discipline Committee, \$400/hour;
- the reasonable travel and living expenses for a witness or expert witness who attends a hearing at the request of the Council or a Discipline Committee;
- for other expenses, reasonably incurred, arising out of a hearing or an investigation leading up to a hearing, the actual amount incurred.

Appeal Process

A licensee affected by a decision of the Council or a Discipline Committee may appeal that decision by filing a Notice of Appeal with the Financial Services Tribunal (FST) within 30 days of the date of the decision, together with the FST appeal fee of \$850. Complete instructions on filing a Notice of Appeal are available on the Financial Services Tribunal's website at www.fic.gov.bc.ca/fst or by calling **604-953-5300**. Licensees may also write to:

Financial Services Tribunal

1200–13450 102nd Avenue Surrey, BC V3T 5X3.

Publication of Disciplinary Sanctions

Section 4.3 of the *Real Estate Services Act* states that orders under section 47 must be published on the Council's website at **www.recbc.ca** and, in addition, may be published by any method the Council considers appropriate.

Discipline decisions are posted in the *Disciplinary Decisions* section of the Council's website as follows:

- Licence reprimands [including those with multiple sanctions (e.g. courses, fines, etc.)] will be posted for a period of one year and then removed.
- Orders made under section 43(2)(d) to (i) of the *Real Estate Services Act* will be posted for a period of one year and then removed.
- Licence suspensions of less than one year [including those with multiple sanctions (e.g. courses, fines, etc.)] will be posted for a period of five years and then removed.
- Licence suspensions of one year or greater [including those with multiple sanctions (e.g. courses, fines, etc.)] and licence cancellations will be posted in perpetuity.
- Orders in urgent circumstances and orders to freeze property will be posted in perpetuity or until the order is rescinded.

The Council also publishes disciplinary decisions resulting from a discipline hearing or consent order in its *Report from Council* newsletters. Starting in 2006, the Council began posting its *Report from Council* newsletters, commencing with the February 2004 edition, on the Council's website, which is accessible to the public. Discipline decisions are not removed from the newsletters and they remain available for public viewing in perpetuity on the Council's website.

In situations where a licensee permanently resigns from the industry in the face of a disciplinary proceeding, a notice is included in the *Report from Council* newsletter and posted in perpetuity in the "Withdrawals from the Industry" section on the Council's website.

In the event of a licence suspension of more than one year, a licence cancellation, an order in urgent circumstances, or an order to freeze property, the Council may also issue a media release and/or paid advertisement in the appropriate media outlet.

The Council will also publish the full text of all disciplinary hearing decisions and consent orders on the CanLII website (www.canlii.org), an internet legal research database which is accessible to the public. Discipline decisions are not removed from the CanLII website and they remain available for public viewing in perpetuity on the CanLII website.

While discipline decisions are posted on the Council's website in accordance with the Council's policy, other companies, media outlets and private individuals often copy discipline decisions and post them on their own websites or use them for other purposes. The Council does not control the publication of Council discipline decisions on other websites and they may be available for public viewing for periods longer than that set by Council policy. This is also true of media news stories based on Council discipline decisions which may be posted on the media outlet's website and permanently available to the public.

In all cases, posting on the Council's website, on CanLII and publication in the *Report from Council* newsletter is to occur after any appeal period has expired.

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