

DISCIPLINARY DECISIONS AND HEARING PROCESSES

This information is intended to assist industry members who become involved in RECA disciplinary processes. It is intended to provide preliminary information about how disciplinary processes operate. Discipline may have serious implications for industry members and industry members should be well-informed.

Disciplinary processes are initiated at the conclusion of an investigation. The executive director may decide to close an investigation file with no further action, issue an advisory note, a letter of reprimand or an administrative penalty, or refer the matter for hearing.

RECA's disciplinary processes accord with the *Real Estate Act*, and the principles of natural justice and fairness. They are intended to be transparent and respectful of an industry member's due process legal rights.

DISCIPLINARY OUTCOMES

A Executive Director

Advisory Note

While strictly not considered disciplinary action, an advisory note is a letter of advice to an industry member. When an advisory note is issued, the executive director is of the view that the industry member should be aware of a situation that could lead to misconduct. Advisory notes will include suggestions for conduct adjustments. If it is determined that an advisory note is appropriate, the advisory note will be issued to the industry member and the file will be closed.

Letter of Reprimand

In all conduct matters, an investigation file is independently reviewed by a case presenter on behalf of the executive director to determine whether or not there is sufficient evidence of conduct deserving of sanction. If it is determined that there is sufficient evidence of conduct deserving of sanction with respect to one minor and/or straight-forward issue, the executive director may issue a letter of reprimand.

Should an industry member disagree with the letter of reprimand, he or she has the right to appeal it within 30 days after date of receipt of the letter of reprimand. More information on the appeal process can be found in s.40.1(2) of the *Real Estate Act*.

Administrative Penalty

RECA case presenters conduct an independent review of investigation files on behalf of the executive director to determine whether or not there is sufficient evidence of conduct deserving of sanction. If it is determined that there is sufficient evidence of conduct deserving of sanction with respect to, typically, one or two straight-forward, though potentially serious issues, the executive director may issue an administrative penalty. The administrative penalty will provide a general overview of the facts that led to the contravention of the legislation and include the amount of the penalty. Administrative penalty amounts are set out in Schedule 1 of the Bylaws made pursuant to the *Real Estate Act*.

Should a person who received an administrative penalty disagree with the administrative penalty, the person has the right to appeal within 30 days after the date on which the notice of administrative penalty is served on the person. More information on the appeal process can be found in section 33 of the Bylaws made pursuant to the *Real Estate Act*.

B Hearing Panel

Function of a Hearing Panel

A Hearing Panel is assembled to consider individual cases of industry members whose conduct is alleged to be conduct deserving of sanction.

The panel hears evidence and submissions presented by the case presenter on behalf of the executive director and the industry member (or lawyer). Once the panel has heard all evidence and submissions, it considers the evidence before it and issues a decision on its findings, including whether the industry member's conduct is deserving of sanction and if so, the appropriate sanction and possibly costs.

Composition of a Hearing Panel

Hearing panels are comprised of three members. The panel will consist of RECA Council, including industry and/or public members, and other industry members. The Hearing Panel will consider the matter in full and make a decision as to whether or not the executive director has met the legal burden proving conduct deserving of sanction.

Settlement Option - Consent Agreement

Before the Notice of Hearing, which outlines the allegations of misconduct, is issued and formal hearing processes commence, an industry member may be given an opportunity to consider participating in the consent agreement process. In such a case, the case presenter for the

executive director will have reviewed the investigation file and believes there is conduct deserving of sanction. Once this has occurred, the case presenter will contact the industry member by telephone, discuss hearing processes, the case, disclosure of the investigation file, the facts leading to the belief that there is conduct deserving of sanction and an appropriate level of sanction and costs. The proposed sanction will be based on RECA case precedents and other authorities. Because the consent agreement process is voluntary and consensual, at this stage there is no formal referral of the conduct matter to a Hearing Panel for a formal hearing.

Upon an industry member's request, the case presenter for the executive director will draft a consent agreement for the industry member's review and consideration for agreement. It will include a statement of facts, conclusion of breach, sanction and costs. The consent agreement is entered into on a consensual basis by both the executive director and industry member. If the industry member and the executive director are prepared to agree to the contents of the consent agreement, the industry member will sign the consent agreement and swear an affidavit of execution. The executive director will then sign the consent agreement. The consent agreement, together with case authorities supporting it, will be provided to a ratification hearing panel for its consideration. The ratification hearing panel will decide whether it will ratify (approve) or reject the consent agreement.

If the decision is to ratify the consent agreement, the Hearing Panel chair will approve and sign the consent agreement. Once approved, the consent agreement becomes an Order of the Hearing Panel and is enforceable. The industry member is served with a copy of the decision. If the consent agreement is rejected, the panel may identify areas of concern and suggestions for resolution. If those suggestions are not acceptable to the executive director and/or the industry member and the parties are unable to come to new terms that satisfy the wishes of the ratification hearing panel, the formal hearing process will commence.

NOTICE OF HEARING

Under the legislation, the formal hearing process begins with a referral for hearing. A document is issued called the Notice of Hearing. The Notice of Hearing sets out the allegations of misconduct against the industry member, including particulars (the alleged facts of the case), allegations of contraventions of legislation and conduct deserving of sanction. It also sets the date, time and place of the hearing.

DISCLOSURE OF THE INVESTIGATION FILE

The industry member is provided with the Notice of Hearing and full disclosure of the investigation file containing all of the evidence gathered during the course of the investigation. The case presenter for the executive director will attempt to establish the misconduct case

on the basis of the contents of the investigation file. The investigation file will also be used by the industry member to defend the allegations of misconduct.

The contents of the investigation file are not provided to the Hearing Panel. The onus is on the case presenter or the industry member to bring evidence forward to the Hearing Panel.

In most cases, in advance of the hearing, the panel members will have only received the Notice of Hearing. The panel members are independent and impartial. At the hearing, it will be up to the case presenter for the executive director and the industry member to admit any contents of the investigation file they believe are relevant and important as evidence before the Hearing Panel. This is usually done through a sworn witness who has direct knowledge of the evidence and can provide the panel members with information.

ADJOURNMENTS

If the industry member is unable to attend at the date set out in the Notice of Hearing, he or she may apply to have the hearing moved to a later date (an adjournment). Should an adjournment be needed, the industry member should make an application as soon as possible prior to the hearing date.

Adjournment Application Process

If this is the first application for an adjournment, the industry member must write a letter applying for an adjournment addressed to the RECA hearings coordinator. This letter should set out the reason for the adjournment request, the length of the adjournment requested and include alternate dates of availability.

The case presenter for the executive director will be asked to respond to the industry member's adjournment application. If the case presenter does not disagree with the adjournment request, he or she will indicate this in writing to the hearings coordinator.

The hearings coordinator will provide the industry member's adjournment application and the response from the case presenter for the executive director to the Hearing Panel. The panel will consider the application and issue a written decision which will, if the application is approved, set a new date, time and location for the hearing.

The process for subsequent adjournment applications is the same as set out above. However, once the written application is received from the industry member, the hearings coordinator will schedule a teleconference for the Hearing Panel to hear the application, all parties will attend and the panel will issue a written decision as above.

BEFORE THE HEARING

Industry members should begin preparing their case before the date scheduled for the hearing. Some of the things they may wish to consider in preparation include any potential witnesses they may wish to call and any documentary evidence they wish to present. It is very important that the industry member comes to the hearing fully prepared to present their case.

THE HEARING

It is important that the industry member attend the hearing on the date and time scheduled in the Notice of Hearing prepared to present their case to the Hearing Panel. The industry member should arrive with a copy of the Notice of Hearing, witnesses, documentary evidence, other evidence and submissions, and be ready to proceed on the hearing day.

It is the responsibility of the case presenter on behalf of the executive director to prove the alleged conduct deserving of sanction (misconduct), that is, the legal burden of proof is on the executive director. If the industry member disputes the misconduct allegations, it is important that they attend the hearing prepared to refute and defend against the allegations as set out in the Notice of Hearing. It is not enough for the industry member to simply disagree with the allegations. The industry member must be prepared to call their case.

Be Prepared to Call Evidence

There are various options an industry member may wish to consider when preparing their case for a hearing. Should the industry member wish to or should they be called to give evidence, they should be prepared to testify in their own case. They will be required to take an oath or make an affirmation before testifying before the Hearing Panel.

The industry member may be asked to make submissions at the beginning and end of the hearing. Submissions are not evidence and are usually in the nature of a summary of the case. An industry member should have any and all documents with them at the hearing for panel consideration. If the industry member presents evidence to the Hearing Panel, that evidence will be marked as exhibits. An industry member may consider calling witnesses on the industry member's behalf to testify at the hearing. Witnesses may include any person(s) who has direct first-hand knowledge with regard to the issue(s) at the hearing. Finally, an industry member should be prepared to answer questions from the case presenter for the executive director and the Hearing Panel.

Day of Hearing

Upon arriving at the Real Estate Council of Alberta office, the industry member should make themselves known to the receptionist. The hearings coordinator will show the industry member to the hearing room and any accompanying witnesses to the witness waiting area. The hearing will commence promptly at the scheduled time.

Standard Steps in a Hearing

Phase 1

Conduct Deserving of Sanction

1. Hearing Begins:
 - a. The chair will start the hearing, introduce Hearing Panel members and explain the hearing procedure to the parties.
2. Preliminary Objections:
 - a. The chair will ask if there are any preliminary objections to the composition of the panel and/or the hearing's jurisdiction.
3. Burden of Proof, Opening Statements and Case Presentation:
 - a. The case presenter on behalf of the executive director will:
 - i. present their case first. The burden is on the case presenter to prove the misconduct allegations;
 - ii. give the first opening statement (the industry member may choose to give an opening statement immediately following or may wait until they open their case);
 - iii. call witnesses (the industry member may cross examine these witnesses) and may re-direct after cross examination;
 - iv. present any other evidence to the panel.
 - b. The industry member will:
 - i. give an opening statement second (either following the case presenter see 3 (a)(i) above or at the beginning of presenting their case);
 - ii. call witnesses (case presenter may cross examine these witnesses) and the industry member may re-direct after cross examination;
 - iii. present any other evidence to the panel.
4. Closing statements:
 - a. The case presenter will make closing statements first;
 - b. The industry member will make closing statements second; and,
 - c. Rebuttals will follow, if any.
5. Phase 1 Hearing Complete:
 - a. The chair will formally close the hearing.

Witnesses

Witnesses are not permitted in the hearing room until after they have fully provided their testimony. Witnesses will wait in an assigned waiting area. After a witness has been called and has entered the hearing room, they will be instructed on where to sit and the hearings coordinator will have them swear to the truth of their testimony after which questions may be asked.

Note to Industry Member

The closing statement is the final submission and may assist in bringing the industry member's case together. No new evidence can be introduced during closing statements. If the industry member wishes to give evidence, it must occur at the designated time and in accordance with hearing processes.

Once the Phase 1 portion of the hearing regarding conduct is complete, the industry member is usually free to leave. The decision of the panel on conduct deserving of sanction may take some time to prepare. The panel attempts to issue its written decision within 30 days of hearing completion though this is not always possible. The industry member will be notified by the hearings coordinator when the decision is complete at which point a copy of the decision will be provided to them.

If the Hearing Panel determines there was no conduct deserving of sanction, no further steps are involved in the process and the matter is finished.

If the Hearing Panel determines there was conduct deserving of sanction, Phase 2 of the hearing process will begin. The Hearing Panel chair may request submissions in writing or the chair may wish to reconvene the hearing in person on a date agreed to by all parties for the presentation of evidence and submissions on sanction and costs.

Phase 2

Sanction and costs:

1. Case presenter will:
 - a. present any evidence and cases to support an appropriate sanction and costs in light of the Phase 1 decision on conduct deserving of sanction.
2. The industry member will:
 - a. present any evidence and cases to support an appropriate sanction and costs in light of the Phase 1 decision on conduct deserving of sanction.

Sanctions may include suspension/cancellation of authorization, fines, costs of the investigation, and terms and conditions such as education requirements.

Once the Phase 2 hearing on sanction and costs is complete, the decision of the Hearing Panel may take some time to prepare. The panel attempts to issue its written decision within 30 days of hearing completion though this is not always possible. The industry member will be notified by the hearings coordinator when the decision is complete.

Agreements

Opportunities exist for the case presenter for the executive director and the industry member to agree on the facts of the case, conduct deserving of sanction and an appropriate sanction and costs throughout RECA's hearing processes.

RIGHTS OF APPEAL

Should an industry member not be satisfied with the Hearing Panel's decision and wish to appeal, he or she must file a written Notice of Appeal in accordance with the *Real Estate Act* and the *Practice and Procedures Guidelines for Hearing and Appeal Panels*. The appeal must be filed within 30 days of the date of service (notification) of the Hearing Panel's complete decision on the industry member.

FOR MORE INFORMATION, PLEASE CONTACT THE
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