

N.B.A.R.E.A./A.E.I.N.B.

New Brunswick Association of Real Estate Appraisers

Association des évaluateurs immobiliers du Nouveau-Brunswick

TERMS OF REFERENCE

COMMITTEE: **DISCIPLINE COMMITTEE**

APPROVED: **April 20, 1994**

REVISED: **October 5, 2000**

COMMITTEE MEMBER QUALIFICATIONS: Must be a member of NBAREA in good standing and shall not be a member of the Complaints Committee or Standards Committee.

COMPOSITION: The Discipline Committee shall consist of four members appointed by the Board of Directors, one of whom shall not be a member of the Association, and will be appointed by the Lieutenant-Governor in Council. The Board shall name two alternate members to the Discipline Committee to be called upon by the chairperson to act as necessary. The Board shall appoint one member of the Committee to be Chairperson.

TERM OF OFFICE: The members of the Discipline Committee shall hold office for a period of two years. One half of the Committee members will retire each year but any member of the Committee may be eligible for reappointment. A list containing the names of the suggested Committee Members will be submitted to the Board of Directors for approval at its first meeting immediately following the Annual General Meeting. The Lieutenant-Governor in Council's Appointee shall be appointed every two years by the Lieutenant-Governor.

QUORUM: Five members of the Committee constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Committee present at the hearing.

DUTIES OF THE CHAIR:

1. The Chair is to provide the Executive Director with a detailed list of Committee Members within 14 days following the Annual General Meeting and the list must be available for approval by the Board of Directors at their May meeting.
2. The Chair will call meetings of the Committee as required.
3. The Chair (or appointee) will prepare and submit to the Executive Director an article (a paragraph or two) directed to the membership to be published in the newsletter of the Association. The Executive Director will notify the Chair 14 days in advance of the article being required.
4. The Chair will prepare and submit to the Executive Director no later than 15 days in advance of the Annual General Meeting, a detailed written report outlining the Committee's activity during the past year. The Chair (or appointee) is to be present at the Annual General Meeting to provide the report and the Executive Director shall be advised of the presenter accordingly, 15 days prior to the Annual General Meeting.
5. The Chair will prepare and submit to the Executive Director no later than 15 days in advance of each Board of Directors Meeting, a detailed written report outlining the Committee's recent activity.

DUTIES OF THE COMMITTEE:

Pursuant to the Act to Incorporate the New Brunswick Association of Real Estate Appraisers:

- 22(1) There shall be a Discipline Committee of five persons, four to be appointed by the Board and one, not a member of the Association, to be appointed by the Lieutenant-Governor in Council from a list of three names submitted by the Board.
- 22(2) Members of the Board who are not appointed to the Discipline Committee, with the exception of the secretary, shall be alternate members of the Committee and may be called upon by the chairperson of the Committee to act as necessary.
- 22(3) Subject to subsection (4), five members of the Committee constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Committee present at the hearing, and shall be in writing with reasons.
- 22(4) Where the Committee commences a hearing and not more than two members become unable to act, the remaining members may complete the hearing and shall have the same authority as the full committee.
- 22(5) The Board shall name one member of the Committee to be chairperson.
- 22(6) The Board, by resolution, may
 - a) refer a matter concerning the conduct or competence of a member to the Complaints Committee for investigation, or

- b) direct the Discipline Committee to hold a hearing and determine any allegation or professional misconduct or incompetence against a member.

23(1) The Discipline Committee shall,

- a) when so directed by the Board, or the Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a member of the Association; and
- b) perform such other duties as are assigned to it by the Board.

23(2) A member may be found guilty of professional misconduct by the Discipline Committee if

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

23(3) The Discipline Committee may find a member to be incompetent if in its opinion

- a) the member had displayed in carrying out the members' professional responsibilities a lack of knowledge, skill, or judgment, or disregard for the welfare of the public of such nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in the practice of real estate appraisal,
- b) the member is suffering from a physical or mental condition or disorder of such a nature or extent as to render the member unfit to engage in the practice of real estate appraisal.

23(4) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may do one or more of the following:

- a) revoke the member's right to practise real estate appraisal;
- b) suspend the member's right to practise real estate appraisal for a stated period, not exceeding twenty-four months;
- c) accept the undertaking of the member to limit the professional work of the member in the practice of real estate appraisal to the extent specified in the undertaking;
- d) impose terms, conditions and limitations on the right to practise real estate appraisal including, but not limited to, the successful completion of a particular course or courses of study, as are specified by the Committee;

- e) impose specific restrictions on the right to practice real estate appraisal including, but not limited to, requiring the member to
 - i) engage in the practice of real estate appraisal only under the personal supervision and direction of another member,
 - ii) not alone engage in the practice of real estate appraisal,
 - iii) accept periodic inspections by the Committee, or its delegate, of the books, accounts, records and work of the member in connection with the member's practice,
 - iv) report to the Registrar, or to such committee of the Board as the Committee may specify, on such matters with respect to the member's practice for such period and times, and in such form, as the Committee may specify;
- f) require that the member be reprimanded or counselled and, if considered warranted, direct that the fact of the reprimand or counselling be recorded on the register;
- g) revoke or suspend for a stated period of time the designation of the member by the Association as a specialist in any branch of the practice of real estate appraisal;
- h) impose such fine as the Committee considers appropriate, to a maximum of five thousand dollars, to be paid by the member to the Treasurer;
- i) require the member to repay, waive or reduce the fee charged by the member in respect of the practice of real estate appraisal related to the finding of professional misconduct or incompetence;
- j) subject to subsection (5), direct that a finding or order of the Committee be published in an official publication of the Association in detail or in summary and either with or without the name of the member;
- k) fix the costs of any investigation or procedures by the Complaints Committee and the Discipline Committee to be paid by the member;
- l) direct that the imposition of a penalty be suspended or postponed for such a period and upon such term or for such purpose as may be specified by the Committee, but not limited to,
 - i) the successful completion by the member of a particular course or courses of study,

ii) the production to the Committee of evidence satisfactory to it that any physical or mental condition or disorder in respect of which the penalty was imposed has been overcome.

- 23(5) The Discipline Committee shall cause an order of the Committee revoking or suspending the right to practise real estate appraisal to be published, with or without the reasons therefor.
- 23(6) The Discipline Committee shall cause a determination by the Committee that an allegation of professional misconduct or incompetence was unfounded to be published upon the request of the member against whom the allegation was made.
- 23(7) Where the Discipline Committee revokes, suspends or restricts the right to practise real estate appraisal on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision unless the court to which the appeal is taken otherwise orders.
- 23(8) Where the Discipline Committee revokes, suspends or restricts the right to practise real estate appraisal on a ground other than incompetence, the decision does not take effect until the time for appeal from the decision has expired, or until an appeal has been disposed of or abandoned, except that when the Committee considers it is necessary for the protection of the public it may otherwise order.
- 23(9) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct of the member.
- 23(10) Where a proceeding is commenced before the Discipline Committee and the term of office of a member expires or is terminated, whether as a member of the Board or the Committee, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office of the member had not expired or been terminated.
- 24(1) In proceedings before the Discipline Committee, the Association and the member whose conduct is being investigated are parties to the proceedings.
- 24(2) A member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine, a reasonable time before the hearing, any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.
- 24(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject matter of the hearing other than as a member of the Board considering the referral of the matter to the Discipline Committee, or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject matter of the hearing with any person or with any party

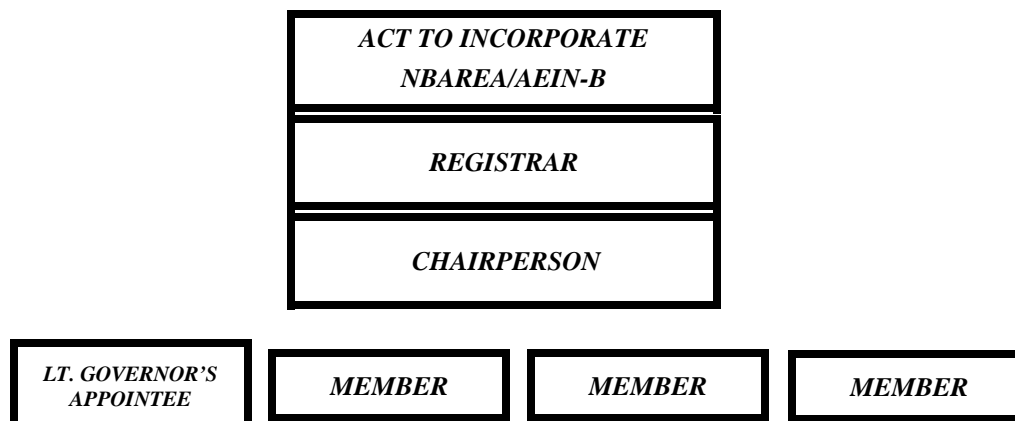
or his representative except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice.

- 24(4) Hearings of the Discipline Committee shall be held in private unless the party whose conduct is being investigated requests otherwise by notice delivered to the Registrar at least five days before the day fixed for the hearing, in which case the Committee shall conduct the hearing in public except where
- a) matters involving public security may be disclosed; or
 - b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.
- 24(5) The Discipline Committee, or someone designated by it to act on its behalf, may be summons in a form prescribed by bylaw, require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports or other documents as appear necessary for the purpose of the hearing.
- 24(6) A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Discipline Committee all records, reports or other documents that are under custody or control of that person.
- 24(7) The testimony of any witness may be taken under oath or affirmation which may be administered by the chairperson of the Discipline Committee or any person designated to do so on behalf of the Chairperson.
- 24(8) If a person on whom a summons has been served, either personally or by leaving a copy of the summons with some adult person at his last or most usual place of residence or business, fails to appear before the Discipline Committee or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, the Committee may by application to a Judge of The Court of Queen's Bench of New Brunswick, cause the person to be cited for contempt under the provisions of the Rules of Court in the same manner and to the same extent as if the alleged contempt took place in proceedings before the Court of Queen's Bench.
- 24(9) The oral evidence taken before the Discipline Committee shall be recorded, and if a party requests a copy of the transcript it shall be furnished at the party's expense.
- 24(10) No member of the Discipline Committee shall participate in a decision of the Committee unless the member was present throughout the hearing and heard the evidence and argument of the parties.
- 24(11) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.

DUTIES OF THE COMMITTEE:

1. The Discipline Committee will become familiar with and adhere to the policies and procedures as developed on November 24, 1999 by the Association's solicitor, David Norman, QC and attached hereto.
2. The Registrar shall attend the meetings of the Discipline Committee and record the proceedings of each as well as prepare all other correspondence. The minutes of the meeting shall be forwarded to the Committee Members no later than 14 days after the date of the meeting.
3. The Committee will review its terms of reference, establish its short and long term action plans and provide suggestions, changes and intentions to the Executive Director no later than June 30th annually. The Executive Director will forward the information to the Board of Directors for approval.
4. The Discipline Committee is to prepare and deliver each year no later than June 30th, a detailed budget for the Committee for the upcoming year.
5. All Committee members must submit to the NBAREA within 30 days of incurrance, any expense claims, complete with receipts, for travel, meals etc., incurred while on Committee business. All expense claims must be submitted to the Association Office prior to the end of the fiscal year, December 31st. Expense claims submitted after the 31st of December will not be reimbursed.
6. The Discipline Committee will accept and proceed with the directions provided by the Board of Directors, Act, Bylaws and Strategic Plan of the Association in a timely manner unless the directions are contrary to the provisions for the Committee as per the *Act to Incorporate the New Brunswick Association of Real Estate Appraisers*.
7. The Committee will become familiar with the Association's flowcharts / time-line calendars attached hereto and will adhere to them accordingly.
8. The files of the Discipline Committee shall be maintained at the Association Office and will be the responsibility of the Registrar.
9. It will be the responsibility of the Executive Director to facilitate the application for the appointment of the Lieutenant Governor's Appointee to the Committee.

FLOW CHART - DISCIPLINE COMMITTEE



TIME-LINE CALENDER - DISCIPLINE COMMITTEE

JANUARY	FEBRUARY	MARCH
		1. Prepare and deliver to the Executive Director a report 15 days prior to the AGM.
APRIL	MAY	JUNE
1. Review Terms of Reference, with short/long term goals for Committee. 2. The Chair is to provide the Executive Director with a detailed list of Committee members 14 days after AGM. 3. Prepare and deliver to the Executive Director, a newsletter article for the Association Newsletter. 4. Deliver annual report to the membership at the AGM.		1. Deadline for Annual Terms of Reference, with short and long term goals to be delivered to the Board of Directors. 2. Deliver to the Executive Director a detailed budget request for the upcoming fiscal year by June 30 th .
JULY	AUGUST	SEPTEMBER
	1. Terms of Reference to be reviewed and approved by the Board of Directors.	
OCTOBER	NOVEMBER	DECEMBER