



# **Association Bylaws**

**Alberta Real Estate Association**  
January 2017

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# **BYLAWS**

## **ALBERTA REAL ESTATE ASSOCIATION**

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### **INCORPORATION**

**A SOCIETY INCORPORATED UNDER THE SOCIETIES ACT OF ALBERTA**  
**February 11, 1947**

#### **1. NAME**

The name of the Association is THE ALBERTA REAL ESTATE ASSOCIATION (the Association).

#### **2. OPERATIONS**

The operations of the Association are to be carried on throughout the Province of Alberta.

# BYLAWS

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## **BYLAW 1 - MEMBERSHIP**

1. The members of the Association shall consist of the following classes:
  - (a) Professional Members;
  - (b) Real Estate Board Members;
  - (c) Honourary Life Members; and
  - (d) Other Members.
  
2. The classification of membership and conditions of membership are:
  - (a) **Professional Members**
    - (i) shall be those persons who are members of a Real Estate Board Member;
    - (ii) shall make application for membership in the Association;
    - (iii) shall make application for and thereafter be a member in good standing in the Canadian Real Estate Association in accordance with the Charter, Bylaws, Rules, Regulations, REALTOR® Code, Standard of Business Practices, Principles of Competition and policies of the Canadian Real Estate Association;
    - (iv) who hold a real estate broker's license shall:
      - A. upon applying for membership in the Association, immediately present applications for each associate broker or associate employed by the member at the time of the application; and
      - B. upon the employment of associate brokers or associates subsequent thereto, immediately present an application for membership in the Association for each such associate broker or associate;
    - (v) shall be entitled to exercise voting rights as herein described and provided for; and
    - (vi) shall pay all membership dues as herein provided for.
  - (b) **Real Estate Board Members**
    - (i) shall be Real Estate Boards operating in the Province of Alberta and registered under the laws of the Province of Alberta;
    - (ii) shall be restricted in number to one Real Estate Board Member for each boundary or jurisdictional area;
    - (iii) shall maintain the following classes or equivalent classes of membership:

- A. Professional Board Members who shall be broker, associate broker or associate members of the Real Estate Board Member; and
  - B. Honourary Members who shall be individuals recognized for special reasons by the Real Estate Board Member.
- (iv) shall make written application for membership in the Association which application shall be accompanied by:
- A. a roster containing the names and addresses of all its members in good standing; and
  - B. an application for membership for each of those classes of members set forth in paragraph 2(b)(iii) herein;
- (v) shall, subsequent to its application, immediately present applications for membership for each new member of the Real Estate Board Member falling within the classes set forth in paragraph 2(b)(iii) herein; and
- (vi) shall be non-voting, non-assessable members.

**(c) Honourary Life Members**

- (i) shall be persons so elected by unanimous vote of the Board of Directors of the Association at a regularly called meeting, provided the names of such nominees are mailed to each Director at least thirty (30) days before each meeting;
- (ii) shall not be required to pay any membership dues except such dues as are payable if the Honourary Member maintains some other class of membership in the Association;
- (iii) shall be entitled to exercise voting rights as herein described and provided for; and
- (iv) shall not be entitled to hold office unless such right is granted by unanimous vote of the Board of Directors at the election meetings as aforementioned.
- (v) The Association President shall be designated an Honourary Life Member of the Association upon successfully completing his/her term as President.

**(d) Other Members**

- (i) shall include classes of membership, the nature of the membership type and associated membership conditions, in addition to those set forth in paragraphs 2(d)(ii)-(vi) herein, to be approved by the Board of Directors;
- (ii) shall be person(s) or organization(s) that do not hold a license and/or are not registered to trade in real estate in Alberta;
- (iii) shall not be entitled to exercise voting rights;

- (iv) shall not be entitled to hold office unless such right is granted by unanimous vote of the Board of Directors;
  - (v) shall make application for membership in the Association; and
  - (vi) shall pay all membership dues as approved by the Board of Directors.
3. All applicants for membership shall agree in writing in a form satisfactory to the Board of Directors of the Association to adopt and abide by the Constitution and Bylaws of the Association and to abide by the REALTOR® Code, Standards of Business Practices, Privacy Code and Principles of Competition.
  4. Applicants shall be enrolled as members of the Association only after approval for membership is given by the Board of Directors and the applicants have met the uniform and reasonable financial and educational criteria or standards of competence, integrity and character that are reasonably necessary for the protection of the public.
  5. Except where otherwise provided in the Bylaws, members of the Association in good standing shall have the privilege of:
    - (a) participating in all the activities of the Association;
    - (b) applying for and receiving the advice and assistance of the Association, at the sole discretion of the Board of Directors;
    - (c) exercising voting powers as herein described and provided for; and
    - (d) standing for office in the Association as herein described and provided for.
  6. Members may withdraw from the Association by giving written notice:
    - (a) to the Real Estate Board in which a Professional Member is a member; or
    - (b) to the Association, if the member is a Real Estate Board Member or an Honourary Life Member;provided that:
    - (c) such written notice of withdrawal shall only become effective when accepted by the Board of Directors of the Association;
    - (d) the withdrawing member shall not be relieved of any indebtedness for dues or monies payable to the Association; and
    - (e) on the written notice of withdrawal the member loses all rights and privileges in the Association.

## **BYLAW 2 - BOARD OF DIRECTORS**

1. There shall be a Board of Directors consisting of:
  - (a) Two (2) members of the Calgary regional real estate board appointed by CREB®;
  - (b) Two (2) members of the Edmonton regional real estate board appointed by the REALTORS® Association of Edmonton;
  - (c) One (1) member from each of the remaining regional real estate boards in Alberta appointed by each such real estate board;
  - (d) The Immediate Past-President of the Association, who shall be one of the Directors specified in any one of the subsections (a), (b) or (c) above.
2. The Board of Directors shall meet at least three (3) times each year at the call of the President, or any five (5) members of the Board of Directors upon written notice of at least fifteen (15) days to all Directors at the time and place specified in the call.
3. Subject to the provisions of Bylaw 18, the Board of Directors shall not incur any obligation or authorize any expenditure of money in excess of the available cash in hand without resolution of the Association at the Annual Meeting or at a special meeting called for that purpose.

Surplus funds may, at the discretion of the Board of Directors, be utilized for any purpose which in their opinion shall be beneficial to the interest of the Association and/or its members. No part of the income of the Association is to be payable to, or made otherwise available for the personal benefit of any member unless, in the opinion of the Board of Directors, to do so would be beneficial to the interests of the Association.

4. The Office of Director shall be vacated if:
  - (a) a Director shall resign his office by delivering to the Chief Executive Officer of the Association a written resignation which shall be effective when accepted by the Board of Directors;
  - (b) he is legally certified as mentally incompetent; or
  - (c) he ceases to be a member of the Association.
5. The appointments pursuant to subsection (a), (b), and (c) of Bylaw 2(1) shall be in writing and shall be delivered to the Chief Executive Officer prior to December 31 of the applicable calendar year.
6. The appointment procedures and term of office are as follows:
  - (a) The Boards that appoint Directors in the even-numbered years are those that serve the Calgary region and all other regional real estate boards of the South Region, which, for these purposes, comprises the geographical area in Alberta inclusive of Red Deer and all areas south.

- (b) The Boards that appoint Directors in the odd-numbered years are those that serve the Edmonton region and all other regional real estate boards of the North Region, which, for these purposes, comprises the geographical area in Alberta north of Red Deer.
  - (c) Each appointment pursuant to subsections (a), (b), (c) and (d) of Bylaw 2(1) at all times shall be two (2) year appointments. A Director shall not be eligible for re-appointment as such for the year immediately following any six (6) successive years in which he is Director. However, if a Director is elected as an Officer during such six (6) year period, he may maintain his office as Director until his term as Officer has ended.
7. If there is a vacancy on the Board of Directors in the position of a member who was appointed pursuant to subsections (a), (b) and (c) of Bylaw 2(1), then the Real Estate Board who previously appointed such member may appoint a substitute member to fill the balance of the term for that vacant position.
  8. The appointed Board of Directors term of office shall be January 1 to December 31 inclusive.

### **BYLAW 3 - OFFICERS**

1. The Officers of the Association shall be a President, President-Elect, Vice President, the Chief Executive Officer and a Treasurer, and the Immediate Past President holding active membership in the Association and willing to serve. The President shall not be eligible for re-election as such for the year immediately following any two (2) successive years in which he is President. The office of the Chief Executive Officer and Treasurer may be held by the same person.
2. Within sixty (60) days prior to December 31, the Board of Directors shall meet and elect the President-Elect and Vice President for the subsequent year. Their term of office shall be one (1) year commencing January 1 to December 31, inclusive.  
  
If there is a vacancy in the position of President, President-Elect or Vice President, the Board of Directors shall meet and elect a successor. Such successor's term of office shall end on December 31 of that calendar year.
3. All Officers of the Association, with the exception of the Chief Executive Officer and the Treasurer, shall be members of the Board of Directors.
4. The President and President-Elect shall have been Directors of the Association for at least one (1) term immediately preceding the date of their election.
5. The Board of Directors shall appoint members for Alberta to the Assembly of the Canadian Real Estate Association in accordance with the Bylaws of the Canadian Real Estate Association.
6. The Board of Directors may hire a Chief Executive Officer who, in turn, may retain consultants and engage such employees as he shall deem necessary from time to time, and such persons shall have such authority and shall perform such duties as shall be prescribed by the Chief Executive Officer at the time of appointment. The Chief Executive Officer shall pay such staff from Association funds allocated in the annual operating budget approved by the Directors.



## **BYLAW 4 - DUTIES OF OFFICERS**

1. The **President** shall be the Chief Elected Officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have authority to represent the Association and act in its name, subject only to its declared policies. He shall see that all orders and resolutions of the Board of Directors are carried into effect and he, the President-Elect or Vice President with the Chief Executive Officer or other Officers appointed by the Board of Directors for the purpose, shall sign all Bylaws and other documents requiring the signatures of the Officers of the Association. He shall appoint all Board Committee Chairpersons, and shall be an ex-officio member of all Committees.
2. The **President-Elect**, or in lieu thereof the **Vice President**, shall, in the absence or disability of the President, perform the duties as shall from time to time be imposed upon him by the Board of Directors. In the absence or disability of both the President-Elect and Vice President, the Board of Directors shall appoint one of their number to discharge the duties of the President.
3. There shall be a Chief Executive Officer who shall be hired by the Board of Directors which shall determine the terms of his remuneration. He shall be the Chief Administrative Officer of the Association, subject to the President, and shall perform such other duties as may be delegated to him by the Board of Directors or the President.

The Chief Executive Officer or his Designate shall attend all meetings of the Association and of the Board of Directors, and act as Secretary thereof and record all votes and minutes of all proceedings in the books to be kept for that purpose. He shall be an ex-officio member of all committees and sit as a non-voting member on the Board of Directors. The Chief Executive Officer shall be custodian of the records and of the Seal of the Association, which he shall deliver only when authorized by a resolution of the Board of Directors to do so and to such person or persons as may be named in the resolution.

He shall provide a fidelity bond in such amount as shall be determined by the Board of Directors; the expense of such bond shall be paid by the Association.

4. The **Treasurer** shall be appointed by the Board of Directors and need not be a member of the Association. He shall be the custodian of the Association funds and securities and, subject to the control of the Board of Directors, shall be the disbursing Officer of the Association as well as of special funds or securities held or administered by the Association. The Chief Executive Officer may also be appointed Treasurer.

He shall deposit the funds and securities in such depositories as the Board of Directors may designate and shall be relieved of responsibility therefor while in the custody of such depository subject, however, to any liability under his bond.

He shall provide a fidelity bond in such amount as shall be determined by the Board of Directors; the expense of such bond shall be paid by the Association.

5. The **Signing Officers** of the Association shall be any two (2) of the President, the Chief Executive Officer and the Treasurer, or any one (1) of these and the Past-President, President-Elect or Vice President, provided that no person may sign in more than one capacity. The Board of Directors shall have the power by resolution to appoint alternate Signing Officers.

## **BYLAW 5 - COMMITTEES**

1. There shall be Board Committees, the Chairpersons of which shall be appointed by the Governance Committee subject to the approval of the Board of Directors.
2. There shall be such other Committees and/or Task Forces as may be designated by the Board of Directors, the Chairpersons of which shall be appointed by the President or the Chief Executive Officer, as required.
3. The duties and functions of Board Committees and/or Task Forces shall be as assigned to them by the Board of Directors or the President while the duties and functions of all other Committees and/or Task Forces shall be as assigned to them by the Board of Directors, the President or the Chief Executive Officer.
4. All actions of Board Committees and/or Task Forces shall be subject to the approval of the Board of Directors while all actions of other Committees and/or Task Forces shall be subject to the approval of the Board of Directors or the Chief Executive Officer.

## **BYLAW 6 - SUSPENSION AND TERMINATION**

1. The Board of Directors may, after reasonable notice and hearing, fine, suspend or terminate the membership of any member who fails to comply with the Bylaws of the Association or the intent of the REALTOR® Code of the Association, or who has been convicted of a criminal offence that reflects on the integrity and character of the member, provided that Professional Board Members shall be subject first to the Bylaws of the local Real Estate Board of which they are a member. On such suspension or termination the member shall lose all rights and privileges in the Association.
2. Notwithstanding any other provisions contained herein to the contrary, the Board of Directors shall immediately terminate the membership of any member, except an Honourary Member who does not maintain some other class of membership in the Association, who is not a member in good standing of the local Real Estate Board Member, if the jurisdiction within which he practices has such a member, and of the Canadian Real Estate Association.
3. The Board of Directors may at their discretion suspend or terminate the membership of any member who has failed to pay, after thirty (30) days notice, any dues or other monies payable to the Association provided that Professional Board Members shall be subject first to the Bylaws of the local Real Estate Board of which they are a member.
4. Any member fined, suspended or whose membership has been terminated shall have the right to appeal the decision of the Board of Directors to the Court of Queen's Bench, Alberta.

## **BYLAW 7 - ARBITRATION**

1. The Board of Directors may appoint as required an Arbitration Panel whose function shall be to adjudicate commission disputes and controversies over financial matters, where:
  - (a) a member brings a complaint against another member who is not a member of the same Real Estate Board; or

- (b) the matter has been referred to the Association by the board of directors of a Real Estate Board; or
  - (c) one disputing party is not a member but the non-member consents in writing to binding arbitration.
2. The Board of Directors and the Arbitration Panel shall be governed by Rules and Regulations established by the Association.

### **BYLAW 8 - ETHICS AND STANDARDS OF BUSINESS PRACTICE**

1. The Board of Directors may appoint as required a Professional Standards Panel whose function shall be to investigate and consider the conduct of any member, where:
- (a) a complaint is brought by a member who is not a member of the same Real Estate Board, or
  - (b) the board of directors of a Real Estate Board asks the Association to handle a complaint against the member.
2. The Board of Directors and the Professional Standards Panel shall be governed by Rules and Regulations established by the Association.

### **BYLAW 9 - MEETINGS**

1. Once each calendar year there shall be an Annual General Meeting of the Association held in the Province of Alberta. The Board of Directors shall determine the time and place of such meeting.
2. Special meetings of the Association may be called by the President or the Board of Directors, and a special meeting shall be called upon written petition signed by ten (10) percent of members.
3. Notification of the time and place of all meetings of the Association shall be given in the name of the President or Chief Executive Officer to each member of the Association at least ten (10) days before such meeting, but accidental omission to notify any member or the non-receipt of such notice by any member shall not invalidate the proceedings of any meeting of the Association.
4. The President or Board of Directors may determine the order of business of any meeting of the Association and the time and place at which it shall be held.

### **BYLAW 10 - QUORUM**

1. The following numbers of members shall constitute a quorum at:
- (a) A meeting of the Board of Directors - a majority.
  - (b) Any meeting of the Association - fifty (50) members.
  - (c) Meetings of Committees - a majority of the members of the Committee shall constitute a quorum.

## **BYLAW 11 - FISCAL YEAR**

1. The fiscal year of the Association shall be from November 1 to October 31 inclusive.

## **BYLAW 12 - DUES**

1. The Board of Directors shall determine prior to each fiscal year the schedule of annual dues for the ensuing year to be paid by the classes of membership as set out in Bylaw 1, Sections 1 and 2 and such dues shall be payable in full annually in advance.
2. In all cases where membership in the Association is contingent upon membership in a local Real Estate Board, the local Real Estate Board Member shall:
  - (a) in January of each year file with the Association the names and addresses of all of its members; and
  - (b) collect on behalf of and pay to the Association the annual dues of each of its members, provided that the names and addresses of new members enrolled by the Real Estate Boards during the year shall be filed with the Association accompanied by the appropriate annual dues.
3. Each person attending the Annual Conference of the Association shall pay such registration fee as shall be determined by the Board of Directors, provided there shall be no registration fee to attend the Annual General Meeting or any special or general meeting of the Association.

## **BYLAW 13 - REALTOR® CODE, STANDARDS OF BUSINESS PRACTICES, PRIVACY CODE AND PRINCIPLES OF COMPETITION**

1. The Association adopts and will comply with the REALTOR® Code, Standards of Business Practices and Principles of Competition of the Canadian Real Estate Association (CREA). The members of the Association, as a requirement for their continued Association membership, must also comply with CREA's REALTOR® Code, Standards of Business Practices and Principles of Competition.
2. The Association and its members will comply with CREA's Privacy Code provided that CREA's Privacy Code (the 10 published principles) does not conflict with the *Personal Information Protection Act*, S.A. 2003, c.P-6.5 (PIPA). In the event that the Privacy Code of CREA may be in conflict with PIPA, the Association and its members must comply with PIPA.
3. The Association and its members will comply with the Association's privacy policies as published and the Association and its members' personal information practices will comply with PIPA.

## **BYLAW 14 - AMENDMENT OF THE BYLAWS**

1. At any Annual General Meeting or special meeting of the Association, the Bylaws of the Association may be repealed, added to, or altered by a special resolution passed by a majority vote of not less than 75% of the members of that meeting. The substance of the proposed amendments shall be delivered to each member of the Association at least twenty-one (21) days prior to the meeting at which the amendments will be voted upon. Such delivery to the member shall be made at the last Alberta business address for that member which is on file at the office of the Association.

## **BYLAW 15 – AMENDMENT OF THE RULES AND REGULATIONS**

1. The Board of Directors may from time to time make, amend and repeal any Rule or Regulation of the Association.
2. The Chief Executive Officer shall, in any manner he deems proper, publish to the members any decision of the Board of Directors to make, amend or repeal any Rule or Regulation.
3. A member shall not violate any Rule or Regulation of the Association.

## **BYLAW 16 - AUDITORS**

1. The Board of Directors shall appoint an Auditor at the first meeting following each Annual Meeting of members. The accounts of the Association shall be audited at least annually and an audited statement submitted for approval to the membership at the Annual Meeting. The remuneration of the Auditor shall be fixed by the Board of Directors.

## **BYLAW 17 - LEGAL COUNSEL**

1. The Board of Directors may retain legal counsel and fix the terms of compensation.

## **BYLAW 18 - EXERCISE OF BORROWING POWERS**

1. The borrowing powers of the Association are limited:
  - (a) to the establishment of an operating line of credit in an amount not to exceed the current fiscal year's operating budget, the establishment and terms of which must be authorized by the Board of Directors at a regularly called meeting; and
  - (b) at no time, shall association borrowing exceed association assets; and
  - (c) in all other circumstances, to such amounts and on such terms as may be authorized at a special meeting of the Association called for the purpose of considering same or at the Annual Meeting of the Association.

## **BYLAW 19 - SEAL AND RECORDS OF THE ASSOCIATION**

1. The Seal of the Association shall be used only with the joint signatures of the President and the Chief Executive Officer or Treasurer and shall remain in the custody of the Chief Executive Officer of the Association.
2. The votes and minutes of all proceedings of meetings of the Association and of the Board of Directors shall be recorded by the Chief Executive Officer of the Association or, in his absence, by a Secretary appointed at any such meeting. The minutes shall be given into the custody of the Chief Executive Officer of the Association and for retention.
3. The financial records shall remain in the custody of the Treasurer of the Association.

4. The records and the Seal of the Association shall be delivered by the Chief Executive Officer only when authorized by a resolution of the Board of Directors to do so and to such person or persons as may be named in the resolution.
5. The books and records of the Association may be inspected by any member of the Association at the place of business of the Chief Executive Officer or Treasurer at any time during business hours upon five (5) days written notice having been given to the Chief Executive Officer or Treasurer of intention so to do.

#### **BYLAW 20 - RULES OF ORDER**

1. When the order of procedure is not established by the Constitution or Bylaws of the Association, the latest edition of *Robert's Rules of Order* shall be recognized as the authority governing the meetings of the Association, its Directors and Committees.
2. The Chairperson may vote upon any question, but having done so shall not have a casting vote in the event of a tie. In the event of there being no majority in favour of a motion, the motion shall be declared lost.

#### **BYLAW 21 - GENDER**

1. In these Bylaws wherever the pronoun “they” is used, it shall be read as singular or plural as the context requires.

#### **BYLAW 22 - INDEMNITY**

1. Every Director or Officer of the Association or other person who has undertaken or is about to undertake any liability on behalf of the Association shall be deemed to have assumed office or undertaken such liability on the express understanding and agreement and consideration that every such Director or Officer or person or their heirs, executors and administrators and estate and effects respectively shall, from time to time and at all times, be indemnified and save harmless out of the funds of the Association for and against:
  - (a) All costs, charges and expenses whatsoever which such Director, Officer or other person sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him for or in respect of any act, deed, matter or thing whatsoever theretofore or hereafter made, done or permitted by him in or about the execution of duties of his office or in respect of such liability; and
  - (b) All other costs, charges and expenses which he sustains or incurs in or about or in relation to the affairs of the Association, except such costs, charges or expenses as are occasioned by his own willful neglect or default.

2. No Director or Officer of the Association shall be liable for the acts, receipts, neglects or defaults of any other Directors or Officers, or for joining in any receipts of other acts for conformity, or for any loss of expense happening to the Association through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any of the monies, securities or affects of the Association shall be deposited, or for any loss occasioned by any error of judgement or oversight on his part, or for any other loss, damage or misfortune whatsoever which shall happen in the execution of the duties of his office or in relation thereto unless the same shall happen by or through his own willful act or default.

### **BYLAW 23 - DISSOLUTION**

1. In the event of a liquidation or dissolution of the Association, all assets remaining after the payment and satisfaction of all debts and liabilities of the Association shall be distributed or disposed of to some charitable organization or educational cause designated by the members of the Association at a special meeting called for that purpose.

### **BYLAW 24 - DEFINITIONS**

1. In these Bylaws, unless the context otherwise requires, the following words shall mean:
  - (a) “Act” means the *Real Estate Act*, R.S.A. 2000, c.R-5 (as amended from time to time).
  - (b) “broker”, “license”, “licensed”, “associate broker”, “associate” and “industry member” shall have the meanings of those words in the Act.

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## RULES AND REGULATIONS

These Rules and Regulations form part of AREA's Bylaws. Changes to the Rules and Regulations can be made with the approval of the AREA Board of Directors. Members will be notified as amendments to the Rules and Regulations occur.

### DEFINITIONS

1. Terms as defined in the AREA Bylaws shall have the same definition and meaning in these Rules and Regulations.
2. Unless the context requires otherwise, the following words shall mean:
  - (a) “**Appeal Panel**” (“Panel”) is the ad hoc panel established under the Rules and Regulations to hear an appeal of a decision rendered by a Professional Standards Panel.
  - (b) “**Appellant**” means either the Complainant or Defendant who is appealing the decision of a Professional Standards Panel.
  - (c) “**Arbitration Act**” means the *Arbitration Act* of Alberta and any amendments thereto.
  - (d) “**Arbitration Award**” (“Award”) means the award as determined by the Arbitration Panel.
  - (e) “**Arbitration Panel**” (“Panel”) is the ad hoc panel established under AREA's Bylaws to handle arbitration hearings as required.
  - (f) “**Claim**” means a dispute between two brokerage members relating to the division or disposition of commission paid or to be paid in respect of a transaction or transactions.
  - (g) “**Claimant**” means the brokerage making a Claim for arbitration.
  - (h) “**Complainant**” is either the brokerage or a member of the public making a Complaint regarding a member's conduct.
  - (i) “**Complaint**” is any formal statement, request or claim alleging a breach of conduct that is filed against a member and leads to a professional standards hearing.
  - (j) “**Defence**” means the Defendant's written reply to a Claim or Complaint.
  - (k) “**Defendant**” means the member brokerage against whom a Claim or Complaint has been made.
  - (l) “**Filing Fee**” means the fee payable to AREA from the parties in order to proceed with an arbitration, professional standards or appeal hearing.

- (m) “**Panelist**” is a member of an Arbitration, Professional Standards or Professional Standards Appeal Panel.
- (n) “**Professional Standards Panel**” (“Panel”) is the ad hoc panel established under AREA’s Bylaws to investigate and consider the conduct of any member.

## **LIABILITY**

1. No person may initiate, lay charges or commence legal proceedings for damages or other relief against any Arbitration, Professional Standards or Appeal Panelist, member Board, AREA, or any member of the Board of Directors, officer or employee of a member Board or AREA for what they did or failed to do in the conducting of an Arbitration, Professional Standards Hearing or Appeal Hearing. This rule is hereby confirmed as an absolute defence against such charges or proceedings and each person hereby waives his/her right to file such charges or proceedings.

## **JURISDICTION**

1. The Real Estate Council of Alberta (RECA) is the regulatory body responsible for the administration of the *Real Estate Act*, Rules, Regulations and Bylaws. One of RECA’s purposes is to set out and enforce standards of conduct and business practices for industry members. Activities under RECA’s jurisdiction, which will not be dealt with through AREA’s arbitration or professional standards process include:
  - breach of specific provisions of the *Real Estate Act*, Rules or Bylaws;
  - unlawful activities;
  - fraudulent activities;
  - misrepresentations (deliberate and intended to mislead or deceive);
  - breach of fiduciary duties; or
  - professional misconduct.

Only RECA can suspend or cancel the license of an industry member.

2. As a general rule, disputes between industry members relating to Board rules, listing and selling protocols, business arrangements or agreements that exist between them in the course of trading in real estate fall within the jurisdiction of the Real Estate Boards. Examples include:
  - wrongful use of MLS® listing forms;
  - failure to comply with rules respecting open houses;
  - interference of a member with another member’s sign; or
  - commission/fee disputes between members.

Only the Board can suspend or terminate a member’s Board membership.

3. AREA's jurisdiction over commission disputes, financial controversies or the conduct of any member is clearly set out in Bylaws 7 and 8. Members of the same Board must first submit any dispute to the local Board. Only the Board of Directors of a local Board may forward a dispute to AREA.

Members belonging to different Real Estate Boards may forward a dispute to AREA immediately for resolution. It is the responsibility of the member to inform the local Real Estate Board of his/her intention to forward the dispute to AREA. Members of the public will be encouraged to approach the local Board before filing a Complaint with AREA.

## **RULES AND REGULATIONS TO ACCOMPANY BYLAW 7 – ARBITRATION**

### **1. Disputes to be Arbitrated**

- 1.1 As a condition of their membership in organized real estate, members are required to submit disputes to arbitration. As a general rule, a dispute that goes to arbitration cannot be the subject of litigation.
- 1.2 The minimum disputed claim amount to be arbitrated by AREA is \$2,000. Claims below that amount must be submitted to an alternate process of settlement (e.g., facilitation or mediation).
- 1.3 Any member having a dispute shall file a Claim not later than one (1) year from the date upon which the circumstances giving rise to the dispute arose.
- 1.4 If a party to the dispute was a member when the Claim was first filed with AREA, and is now not a member, s/he remains subject to the Bylaws and Rules and Regulations, and the Arbitration Panel shall proceed to hear and determine the Claim.

### **2. Composition of the Arbitration Panel**

- 2.1 The Arbitration Panel shall have available a 'pool' of qualified persons nominated by the member Boards and approved by the Board of Directors.
- 2.2 The Panel consists typically of three (3) persons chosen to hear a specific dispute. One of the Panelists will be appointed chair. If information on rules and regulations is required of a Board whose member is involved in the dispute, the Executive Officer or staff person responsible for arbitrations may be asked to join the Panel in a resource capacity.

2.3 A Panelist must:

- (a) be in good standing with a real estate board for five (5) years;
- (b) not have received a fine from either the Real Estate Council of Alberta or the Board (excluding an administrative fine) within the last two (2) years;
- (c) not have had a license suspension;
- (d) be regarded as having a high level of integrity within the industry; and
- (e) sign a confidentiality agreement not to disclose or act upon any confidential information obtained in the course of being a Panelist.

Additional characteristics the Panel should look for in potential members are:

- (f) Experience – both in the practice of real estate and sitting on other panels;
- (g) Knowledge – a working knowledge of arbitration policies and procedures and, ideally, any relevant provincial legislation;
- (h) Diplomacy and Patience – a willingness to listen carefully and fully, and direct a hearing with tact and consideration;
- (i) Good Reasoning Powers – the ability to sift through all of the evidence presented and come to a logical conclusion; and
- (j) Sense of Equity – the ability to apply the facts as proven to basic concepts of fairness and law.

Panelists who fail the established criteria will be removed from the Panel.

2.4 Panelists may not serve on an Arbitration Panel in any dispute if:

- (a) they or their firm have a personal or a financial interest in the dispute; or
- (b) they are the employer, the employee, a business associate of, or related to any party of the dispute.

2.5 A party who wishes to object to the appointment of any particular Panelist must provide written notice to the Executive Vice President within fourteen (14) business days upon receiving notice of the composition of the Panel. Failure to do so may prevent the party from objecting at a later date.

### **3. Authority Granted to the Arbitration Panel**

- 3.1 When a member Board forwards a dispute to AREA, the Board effectively gives up jurisdiction of the matter and agrees to support and enforce any decision rendered by the Arbitration Panel. This may be set out in a memorandum of understanding signed by the Board and AREA.
- 3.2 If the Arbitration Panel is not prepared to hear the dispute, it may direct the parties involved to proceed to arbitration pursuant to the provisions of the *Arbitration Act*, Chapter A-43, RSA 2000 and amendments thereto, instead of an arbitration under Bylaw 7.

### **4. Authority of the Board of Directors**

- 4.1 The Board of Directors may appoint an individual or individuals to investigate and attempt to resolve a dispute through negotiation with the disputing parties. There will be no charge to the parties for these services.
- 4.2 With a majority vote of two-thirds, the Board of Directors may decide **not** to allow a specific dispute to be arbitrated.

### **5. Commencing Arbitration Proceedings**

- 5.1 A member filing a Claim (the Claimant) must submit it in letter form to the Executive Vice President. Such Claim shall contain:
  - (a) a brief and concise statement of the subject matter of the dispute;
  - (b) the amount claimed;
  - (c) any supporting documentation; and,
  - (d) a signed statement that the Claimant will abide by the decision of the Arbitration Panel and comply with the Award.
- 5.2 With the Claim, the Claimant must pay a Filing Fee of \$500 to AREA. No dispute shall be heard and determined by the Arbitration Panel until the Filing Fee has been paid. At the discretion of the Executive Vice President, a higher Filing Fee may be charged if costs are estimated to be greater. The Filing Fee for a non-member is to be based on estimated costs. If necessary, cost estimates may be set out in a memorandum of understanding signed by the parties.

Where the arbitration does not proceed to an Award, the Arbitration Panel may, at its discretion, direct that all or any portion of the Filing Fee be returned to the Claimant. Where the Award of the Panel is wholly or partially in favour of the Claimant, the Filing Fee shall be returned to the Claimant.

- 5.3 Upon receiving a Claim, the Executive Vice President shall notify the member against whom the Claim is made, hereinafter called the Defendant. The Defendant shall, within ten (10) business days of receiving such notification, deliver a Defence in writing signed by the Defendant and directed to the Executive Vice President. This Defence shall be accompanied by a \$500 Filing Fee and shall contain:
- (a) a brief and concise response to the Claimant's allegations;
  - (b) any supporting documentation; and,
  - (c) a signed statement by the Defendant to abide by the decision of the Arbitration Panel and comply with the Award.
- 5.4 If the Defendant fails to deliver such a Defence within the time specified, or fails or refuses to appear at a hearing hereinafter provided, the Board of Directors may direct the Arbitration Panel to proceed to hear and determine the matter upon the Claimant's own showing.
- 5.5 Disputes will not proceed to arbitration until the parties have met in an attempt to resolve the dispute. The Executive Vice President may, at his discretion, appoint a facilitator to assist the parties.
- 5.6 After the time specified for the delivery of the Defence, the Board of Directors shall either establish an investigative team of three (3) individuals or delegate investigative responsibilities to a staff person.
- Fees for any investigator(s) appointed by the Board of Directors are to be negotiated on a case-by-case basis, with travel and approved out-of-pocket expenses being reimbursed for out-of-town disputes.
- 5.7 The investigation will only evaluate the Claim to determine whether it warrants further consideration by an Arbitration Panel. All members shall cooperate fully with a member of an investigative team conducting an investigation.
- 5.8 Upon referring any matter to the Arbitration Panel, the Executive Vice President shall immediately obtain from the Claimant and Defendant a Consent to Arbitration signed by each of the parties. If either party to the arbitration proceeding declines to sign the Consent to Arbitration, the Board of Directors may recommend the member's Board suspend such member or take such disciplinary action as the Directors may consider proper.
- 5.9 After the time specified for the delivery of the Defence, the President shall appoint a Panel chair. The chair of the Arbitration Panel shall choose Panelists and set a time and place for the hearing. Notice thereof shall be sent by registered mail to the parties at least twenty (20) business days in advance of such date unless the parties thereto consent to a reduction in the time for giving such notice.

- 5.10 If notice of the hearing has been given to each party, it shall be the duty of each party to appear in person at the arbitration hearing at the time set for the hearing. In the event that the Claimant or the Defendant, as the case may be, fails to appear at the time set for the hearing and fails to give the Executive Vice President or the Panel chair at least forty-eight (48) hours in advance of the time set for the hearing a bona fide reason for his inability to attend, the Arbitration Panel, at its discretion, may:
- (a) either proceed with or adjourn the hearings; and
  - (b) rule against the absentee party by default; and
  - (c) assess costs against the absentee party.
- 5.11 Monies in dispute are to remain in a separate trust account and not disbursed, pending the decision of the Arbitration Panel.
- 5.12 The parties may, by mutual agreement, settle the dispute between themselves at any time. The Executive Vice President is to be informed of the settlement and the arbitration process will be terminated. A decision as to the disposition of the Filing Fees will then be made by the Arbitration Panel.

## **6. The Arbitration Hearing**

- 6.1 The Arbitration Panel may consider evidence from parties and witnesses by:
- (a) unsworn, signed statements in writing;
  - (b) affidavits or statutory declarations;
  - (c) oral evidence which may or may not be on oath or affirmation; or
  - (d) other relevant material.
- 6.2 Any party making a written submission shall supply such number of copies as the Arbitration Panel may designate.
- 6.3 A party to an arbitration may be represented by another member of the Association, or by legal counsel, provided fourteen (14) business days' notice of such intention to be represented has been filed with the Panel chair and with all parties to the arbitration.
- 6.4 In any hearing where the Arbitration Panel hears oral evidence on oath or affirmation, the parties thereto shall be entitled to be present, give evidence, to call as a witness any person who has knowledge of the facts touching the dispute in question whether that person is a member or not, and to examine the witnesses.

- 6.5 The parties to the arbitration proceedings and their witnesses may submit to examination on oath, or affirmation in relation to any matter in dispute subject to any valid objection, and shall produce before the Arbitration Panel all books, deeds, papers, accounts, writings and documents within their possession or power which may be required or called for, and do all other things in relation to the matters in dispute which the Panel may require. All files and records relating to the arbitration are strictly confidential to the parties involved in the dispute.
- 6.6 The Arbitration Panel is not bound to observe the legal rules of evidence but shall endeavour to resolve the dispute with fairness, justice and equity according to established standards of practice in the real estate business. The decisions of the Panel shall not be challenged for failure to conform to judicial formalities and strict rules of law.

## **7. Decision of the Arbitration Panel**

- 7.1 In the event that any matter or question arises during the course of the arbitration proceedings which is not provided for in the Bylaws and these Rules and Regulations, then the ruling of the Arbitration Panel shall apply.
- 7.2 The decision made by the majority of the members of the Arbitration Panel shall constitute the decision. The Panel may:
- (a) dismiss the Claim;
  - (b) direct such disposition of the Claim or of the commission in dispute as to them seems proper; or
  - (c) assess the costs of the arbitration against the Claimant and/or the Defendant in such proportion as to them seems proper, (including all reasonable and necessary legal fees incurred by the Arbitration Panel).
- 7.3 The Award of the Arbitration Panel shall be:
- (a) in writing;
  - (b) signed by the Panel chair; and
  - (c) delivered forthwith to the Executive Vice President.
- 7.4 The proceedings of the Arbitration Panel shall be recorded in a book kept for that purpose in which shall be entered:
- (a) a summary of each dispute; and
  - (b) the grounds for, and the decision of, the Arbitration Panel.



- 7.5 Notwithstanding clause 7.4, the proceedings of the Arbitration Panel may be recorded on tape that shall be retained by the Executive Vice President for so long as directed by the Board of Directors.
- 7.6 A copy of the Arbitration Award shall be sent forthwith by mail to all parties to the arbitration proceedings. The Arbitration Award shall be final and binding upon the parties in all respects.

## **8. Failure to Comply With Award**

- 8.1 If a party fails to comply with an Arbitration Award within twenty (20) business days of receiving notice of the Award, such failure is deemed to be a breach of AREA's Bylaws. Subsequently, the party's membership may be suspended by the member's Board upon a recommendation from the AREA Board of Directors.

## **9. Right to Appeal**

- 9.1 There is no right to appeal an Arbitration Award.

## **10. Remuneration for Panelists**

- 10.1 Panelists will be paid \$60 per hour (plus GST) with reimbursement of travel and approved out-of-pocket expenses for out-of-town hearings.

## **11. Funding for the Arbitration Process**

- 11.1 Funds for the arbitration process may be obtained from:
- (a) the Filing Fees submitted by the disputing parties;
  - (b) an assessment of costs as decided by the Arbitration Panel;
  - (c) funds from the referring Real Estate Board; or
  - (d) at the discretion of the Board of Directors, from AREA funds.

**RULES AND REGULATIONS TO ACCOMPANY BYLAW 8 – ETHICS AND STANDARDS OF BUSINESS PRACTICE**

**1. Composition of the Professional Standards Panel**

- 1.1 The Professional Standards Panel shall have available a ‘pool’ of qualified persons nominated by the member Boards and approved by the Board of Directors.
- 1.2 The Panel shall consist of five (5) persons chosen to hear a specific dispute. One of the Panelists will be appointed chair. If information on rules and regulations is required of a Board whose member is involved in the Complaint, the Executive Officer or staff person responsible for professional standards may be asked to join the Panel in a resource capacity.
- 1.3 A Panelist must:
- (a) be in good standing with a real estate board for five (5) years;
  - (b) not have received a fine from either the Real Estate Council of Alberta or the Board (excluding an administrative fine) within the last two (2) years;
  - (c) not have had a license suspension;
  - (d) be regarded as having a high level of integrity within the industry; and
  - (e) sign a confidentiality agreement not to disclose or act upon any confidential information obtained in the course of being a Panelist.
- Panelists who fail the established criteria will be removed from the Panel.
- 1.4 Panelists may not serve on a Professional Standards Panel investigating any matter if:
- (a) they or their firm have a personal or a financial interest in the matter; or
  - (b) they are the employer, the employee, a business associate of, or related to any party to the matter.
- 1.5 A party who wishes to object to the appointment of any particular Panelist must provide written notice to the Executive Vice President within fourteen (14) business days upon receiving notice of the composition of the Panel. Failure to do so may prevent the party from objecting at a later date.

## **2. Authority Granted to the Professional Standards Panel**

- 2.1 The Professional Standards Panel has the power to act as a disciplinary body and shall conduct hearings to:
  - (a) investigate and consider the conduct of any member;
  - (b) enquire and determine whether any member has committed any infringement of the Bylaws, Code of Ethics, Standards of Business Practices, or has otherwise been guilty of conduct unbecoming a member; or
  - (c) examine any other matter referred to it by the Board of Directors.
- 2.2 The Professional Standards Panel shall have jurisdiction and shall hold hearings and consider complaints against members where the matter has been referred to it by the Board of Directors, provided that the member shall be subject first to the Bylaws of the Real Estate Board of which they are a member.
- 2.3 When a member Board forwards a dispute to AREA, the Board effectively gives up jurisdiction of the matter and agrees to support and enforce any decision rendered by the Professional Standards Panel. This may be set out in a memorandum of understanding signed by the Board and AREA.
- 2.4 The Professional Standards Panel reserves the right to determine that a particular matter is beyond its jurisdiction and that it not be referred to the Panel.
- 2.5 The Panel may, at its sole discretion, any time after receiving a Complaint or giving notice of a Complaint to a Defendant, determine that no further action be taken with respect to the Complaint, and record that decision in writing.
- 2.6 The Panel will deal only with Complaints against a member brought forward by the public, another member or a non-member, but will not hear disputes when brought by a member against a non-member.
- 2.7 If a party to the Complaint was a member when the Complaint was first filed with AREA, and is now not a member, s/he remains subject to the Bylaws, Rules and Regulations, Code of Ethics and Standards of Business Practices, and the Professional Standards Panel shall proceed to hear the Complaint.

## **3. Authority of the Board of Directors**

- 3.1 The Board of Directors may appoint an individual or individuals to investigate and attempt to resolve a Complaint through negotiation with the parties. There will be no charge to the parties for these services.

#### **4. Commencing the Professional Standards Hearing Process**

4.1 Any person desiring to lodge a Complaint against a member, hereinafter called the Complainant, shall first file such Complaint with the member's local Board. If the Complaint is forwarded to AREA, such Complaint must be sent to the Executive Vice President. The Complaint shall identify the Complainant and contain a brief and concise statement of the subject matter of the Complaint. No action will be taken on anonymous Complaints. The Complainant must also indicate whether the Complaint has been filed with any other real estate bodies (e.g., the local Board, RECA).

4.2 If a member files a Complaint against another member, a \$500 Filing Fee is required to be attached to the Complaint. The disposition of the Filing Fee will be determined at the discretion of the Panel. The Filing Fee for a non-member is to be based on estimated costs. If necessary, cost estimates may be set out in a memorandum of understanding signed by the parties.

If a member of the public is filing a Complaint, then a Filing Fee is to be based on estimated costs.

4.3 No action will be taken on a Complaint received by AREA more than one (1) year after the occurrence of the event.

4.4 Upon receiving a Complaint, the Executive Vice President shall notify the member against whom the Complaint is made, hereinafter called the Defendant. The Defendant shall within ten (10) business days of the sending of such notification deliver a written Defence to the Executive Vice President.

4.5 If the Defendant fails to deliver such a Defence within the time specified, or fails or refuses to appear at a hearing hereinafter provided, the Board of Directors may direct the Professional Standards Panel to proceed to hear and determine the matter upon the Complainant's own showing.

4.6 Complaints will not proceed to a hearing until there has been an attempt to resolve the Complaint by other means. The Executive Vice President may, at his discretion, appoint a facilitator to assist the parties.

4.7 After the time specified for the delivery of the Defence, the Board of Directors shall either establish an investigative team of three (3) individuals or delegate investigative responsibilities to a staff person.

Fees for any investigator(s) appointed by the Board of Directors are to be negotiated on a case-by-case basis, with travel and approved out-of-pocket expenses being reimbursed for out-of-town disputes.

- 4.8 The investigation will only evaluate the Complaint to determine whether it warrants further consideration by a Professional Standards Panel. All members shall cooperate fully with a member of an investigative team conducting an investigation.
- 4.9 Upon completion of the investigation, the Board of Directors may determine:
- (a) the evidence warrants proceeding to a hearing; or
  - (b) that no further action be taken with respect to the Complaint, in which case correspondence explaining same will be forwarded to all parties involved in the Complaint.

There is no right to appeal such decision of the Board of Directors.

- 4.10 If a Complaint is forwarded to a Professional Standards Panel, the President shall appoint a Panel Chair. The chair of the Professional Standards Panel shall choose Panelists and set a time and place for the hearing. Notice thereof shall be sent by registered mail to the parties at least twenty (20) business days in advance of such date unless the parties thereto consent to a reduction in the time for giving such notice.
- 4.11 If notice of the hearing has been given to each party, it shall be the duty of each party to appear in person at the time set for the hearing. In the event that the Complainant or the Defendant, as the case may be, fails to appear at the time set for the hearing, and fails to give the Executive Vice President or the Panel chair at least forty-eight (48) hours in advance of the time set for the hearing a bona fide reason for his inability to attend, the Professional Standards Panel, at its discretion, may:
- (a) either proceed or adjourn the hearing; and
  - (b) rule against the absentee party by default; and
  - (c) assess costs against the absentee party.
- 4.12 The Professional Standards Panel shall expeditiously consider and deal with all matters.

## **5. The Professional Standards Hearing**

- 5.1 A Professional Standards Panel may require the Complainant and the Defendant to both sign a confidentiality agreement prior to proceeding with a hearing.
- 5.2 The Professional Standards Panel may consider evidence from parties and witnesses by:
- (a) signed statements in writing;
  - (b) affidavits or statutory declarations;
  - (c) oral evidence which may or may not be on oath or affirmation; or
  - (d) other relevant material.

- 5.3 Any party making a written submission shall supply such number of copies as the Professional Standards Panel may designate.
- 5.4 A party to a hearing may be represented by another member of the Association or by legal counsel, provided fourteen (14) business days' notice of such intention to be represented has been filed with the Panel chair and with all parties to the hearing.
- 5.5 The Professional Standards Panel shall:
- (a) receive evidence under oath;
  - (b) allow parties to the hearing to call as witnesses any person who has knowledge of the facts touching the matters in question; and
  - (c) allow cross examination of any witnesses.
- 5.6 The broker of the Defendant's brokerage is required to attend the hearing with the Defendant.
- 5.7 The parties to the hearing and their witnesses shall submit to examination on oath, or affirmation in relation to any matter subject to any valid objection, and shall produce before the Professional Standards Panel all books, deeds, papers, accounts, writing and documents within their possession or power which may be required or called for, and do all other things in relation to the matter which the Panel may require. All files and records relating to the hearing are strictly confidential to the parties involved in the hearing.
- 5.8 The Professional Standards Panel is not bound to observe the legal rules of evidence but shall endeavour to decide the matter with fairness, justice and equity according to established standards of practice and ethics in the real estate business. The decision of the Panel shall not be challenged for failure to conform to judicial formalities and strict rules of law.

## **6. Decision of the Professional Standards Panel**

- 6.1 In the event that any matter or question arises during the course of a hearing which is not provided for in the Code of Ethics, Standards of Business Practices, Bylaws and these Rules and Regulations, then the ruling of the Professional Standards Panel shall apply.

- 6.2 The decision made by the majority of the members of the Professional Standards Panel shall constitute the decision. The Panel may direct one or more of the following courses of action:
- (a) dismiss the Complaint;
  - (b) reprimand the member;
  - (c) issue an advisory letter instructing the member to take corrective action;
  - (d) levy a fine or assessment against the member, within the bylaws and rules and regulations of the member's Board;
  - (e) assess the costs of the hearing against the Complainant and/or the Defendant in such proportion as to them seems proper (including all reasonable and necessary legal fees incurred by the Professional Standards Panel);
  - (f) require the member to attend any education course(s), including the passing of any examinations pertaining to the course(s);
  - (g) order that all or part of the Filing Fee be returned to the Complainant;
  - (h) forward the findings to any regulatory or policing body;
  - (i) recommend to the AREA Board of Directors that the member's Board suspend the member; or
  - (j) take such further action as the Panel deems advisable.

6.3 The decision of the Professional Standards Panel shall be:

- (a) in writing;
- (b) signed by the Panel chair; and
- (c) delivered forthwith to the Executive Vice President.

The decision shall contain the reasons for the decision and, if applicable, one or more dissenting opinions, but the decision shall not indicate which Panelists dissented.

6.4 The proceedings of the Professional Standards Panel and any appeal thereof shall be recorded in a book kept for that purpose in which shall be entered:

- (a) a summary for each hearing; and
- (b) the grounds for, and the decision of, the Professional Standards Panel.

- 6.5 Notwithstanding clause 6.4, the proceedings of the Professional Standards Panel and any appeal thereof may be recorded on tape that shall be retained by the Executive Vice President for so long as directed by the Board of Directors.
- 6.6 The enforcement of the decision shall be stayed until:
- (a) the time for lodging an appeal has expired; or
  - (b) if any appeal is commenced, until such time as the appeal is determined.
- 6.7 Where an appeal is not filed within twenty (20) business days after the decision is received by the parties, the decision of the Professional Standards Panel will be communicated by the Panel to the member's Board.

## **7. Failure to Comply With Decision**

- 7.1 Any member who fails to comply with a decision of the Panel within twenty (20) business days of receiving the decision may have his/her membership suspended by the member's Board upon a recommendation from the AREA Board of Directors.

## **8. Right to Appeal**

- 8.1 Any party has the right to appeal a decision rendered by a Professional Standards Panel.

## **9. Grounds for Appeal**

- 9.1 The Appellant can only appeal the decision of the Professional Standards Panel if:
- (a) the Panel misapplied or misinterpreted the Code of Ethics, Standards of Business Practices, Bylaws or Rules and Regulations;
  - (b) there was a procedural deficiency or lack of procedural due process in the initial hearing; or
  - (c) the penalty imposed was inappropriate.

## **10. The Appeal Process**

- 10.1 An Appellant shall, within twenty (20) business days after receiving a copy of the decision, deliver to the chair of the Professional Standards Panel:
- (a) a written notice of appeal containing a brief and concise statement of the grounds for appeal;
  - (b) a \$500 Filing Fee; and



- (c) a notice stating whether or not the Appellant wishes legal representation at the appeal.

In the event of default of any of these requirements, the appeal shall not be valid.

- 10.2 Where the appeal does not proceed to a decision, the Board of Directors may, at its discretion, direct that all or a portion of the Filing Fee be returned to the Appellant. Where the decision of the Board of Directors be wholly or partially in favour of the Appellant, the Filing Fee shall be returned to the Appellant.
- 10.3 When a notice of appeal is delivered to the Professional Standards Panel, the chair shall select an Appeal Panel for the purpose of hearing the appeal. The Panel shall be composed of two members selected from the 'pool' of qualified persons for Professional Standards Panels, plus one AREA director.
- 10.4 Panelists shall not hear an appeal if they:
  - (a) have a personal or financial interest in the matter;
  - (b) were on the Professional Standards Panel which heard the matter which is the subject of the appeal; or
  - (c) are closely related to the Appellant, or any officer, director, shareholder, partner or employee of the Appellant;

unless they are a party to the appeal hearing and shall then appear in their own right.

- 10.5 The Appellant shall have the right to object to the appointment of any particular Panelist and must provide written notice to the Professional Standards Panel within fourteen (14) business days upon receiving notice of the composition of the Appeal Panel. Failure to do so may prevent the Appellant from objecting at a later date.

## **11. The Appeal Hearing**

- 11.1 The Professional Standards Panel determines a date for the appeal hearing, and may wish to confer with the Appellant to select a mutually convenient date. The date will allow the Appellant at least fourteen (14) business days to obtain written transcripts of the professional standards hearing.
- 11.2 The notice of the appeal hearing must be delivered to the Appellant at least fourteen (14) business days before the date scheduled for the appeal.
- 11.3 At any time prior to the appeal hearing being formally called to order, the Appellant may revoke and terminate his appeal by delivering written notice to the Professional Standards Panel. If there is no other appeal submission for that dispute then:
  - (a) the Appeal Panel shall not hear the appeal;
  - (b) the initial decision of the Professional Standards Panel is the final decision; and

- (c) if the withdrawal notice is received by the Panel less than five (5) business days prior to the scheduled appeal hearing, the Panel has the right to assess costs against the Appellant. The Panel may apply the Filing Fee towards an award of costs.
- 11.4 An appeal is not a re-hearing. There are no witnesses, no examination or cross examination procedures. The parties will not be allowed to introduce any new evidence at the appeal hearing. The appeal is to be decided solely on the evidence and the materials contained in the record of the hearing as outlined below. The record of the hearing includes the following:
- (a) the written Complaint;
  - (b) the written Defence, if any;
  - (c) all notices sent to the parties by the Professional Standards Panel;
  - (d) any transcript or other summary of the evidence of the professional standards hearing, including any tape recordings of the proceeding;
  - (e) all exhibits entered into evidence at the hearing; and
  - (f) the decision of the Professional Standards Panel, including any reasons for the decision.
- 11.5 The broker of any Appellant must be in attendance at the appeal hearing and must provide all appropriate documentation.

## **12. Decision of the Appeal Panel**

- 12.1 The Appeal Panel makes its decision based on the materials contained in the record of hearing and the Appellant's submission.
- 12.2 By a majority vote, the Appeal Panel can make the following decisions:
- (a) dismiss the appeal;
  - (b) amend the decision of the Professional Standards Panel;
  - (c) remit the matter back to the Professional Standards Panel for a new hearing in whole or in part, and, at their discretion, by a differently constituted Panel;  
or

- (d) impose any of the penalties that the Appeal Panel has the authority to order, as specified in the Code of Ethics, Standards of Business Practices, Bylaws and/or Rules and Regulations. In this regard, it is important to note that the Appeal Panel has the right to increase the amount or extent of any penalty ordered by the Professional Standards Panel.

12.3 The Appeal Panel will determine the disposition of the Filing Fee.

12.4 The decision of the Appeal Panel must be in writing and signed by the Panel chair. The written decision must clearly set out the disposition of the appeal.

12.5 A copy of the decision of the Appeal Panel is to be forwarded by the Professional Standards Panel to the Appellant within ten (10) business days of receipt of the decision from the Appeal Panel.

12.6 The decision of the Appeal Panel is considered final and binding and may be communicated to the member's Board. In accordance with the Real Estate Council's requirements, it is the responsibility of the member to inform RECA of any penalty that may have been imposed by the Panel.

### **13. Failure to Comply with Decision of Appeal Panel**

13.1 Any member who fails to comply with a decision of the Appeal Panel within twenty (20) business days may have his/her membership suspended by the member's Board on a recommendation of the AREA Board of Directors.

### **14. Remuneration for Panelists**

14.1 Panelists will be paid \$60 per hour (plus GST) with reimbursement of travel and approved out-of-pocket expenses for out-of-town hearings.

### **15. Funding for the Professional Standards or Appeal Hearing Process**

15.1 Funds for the professional standards or appeal hearing process may be obtained from:

- (a) the Filing Fees submitted by the parties;
- (b) an assessment of costs or fines as decided by the Professional Standards or Appeal Panel;
- (c) funds from the referring Real Estate Board; or
- (d) at the discretion of the Board of Directors, from AREA funds.