



Professional Standards Process Summary

Kingston and Area Real Estate Association
Ottawa Real Estate Board
Renfrew County Real Estate Board
Rideau St. Lawrence Real Estate Board

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Disclaimer

The information contained herein does not constitute legal advice nor should it be considered as a substitute for legal advice. The Professional Standards Procedures described in this document are governed by the provisions of Section 13.2 of the By-Law of the Ottawa Real Estate Board. Members are strongly urged to carefully review Section 13.2 of the By-Law and the Arbitration and Professional Standards Policies (“APS Policies”). The material in this document is intended to be a summary only and is not meant to override any of the provisions of the By-Law and APS Policies. The provisions of the By-Law and APS Policies shall govern.

For Further Information

If, after reading the enclosed information, you have any questions regarding the Professional Standards and Discipline Procedures, please email standards@oreb.ca. Board staff can only provide information regarding the procedures as set out in this pamphlet and in 13.2 of the By-Law of the Ottawa Real Estate Board and are not in a position to comment or advise on the merits of any case.

The Complaint

Complaints may either be initiated by the Professional Standards Department or received by the Board from some other source. Formal complaints must be in writing and may come from anyone - another Member of the Board, a member of the public, another real estate board, a member of another real estate board, a government agency, OREA, CREA, etc. Complaints must be made to the Board within sixty (60) days of the alleged occurrence or conduct giving rise to the complaint. Complaints may not be made anonymously.

The person or entity making the complaint (the "Complainant") is not a party to the proceeding. The proceeding is between the Board and its Member. At the most, the Complainant will be interviewed by the Researcher during the investigation stage and may become a witness if the matter proceeds to a professional standards hearing.

Mandate and Jurisdiction

The purpose of the Professional Standards process is to set out the orderly, competitive, and efficient operation of the PropTx MLS® System. In addition, the process intends to embody the core values of honesty, integrity, fairness, accountability and professionally competent service.

The Professional Standards Department, under the supervision of the Professional Standards Roster Chair, will make a decision as to jurisdiction based upon a review of the Complaint, a comparison of the RECO Code, the CREA Code, the PropTx MLS® Rules, PropTx Policies, PropTx Code of Conduct, agreements entered into with the Board, any other rule, regulation or policy of the Board. If the complaint is to be addressed, Researchers may be assigned to investigate the matter and collect evidence.

The Investigation

As part of the investigation, the Researcher may ask any Member questions related to the complaint. The Researcher may request any documentation to conduct the investigation and substantiate or refute the allegations contained in the complaint. Cooperation is required as per the APS Policies.

The Research Report

After the research is completed, a Research Report is prepared and filed with the Panel Secretary, along with all records, documents, or writings obtained during the research. This report is confidential and only available to Members involved in reviewing the complaint.

If an Allegation Statement is issued, the Panel Secretary will forward a copy of the Allegation Statement and the Researcher's Report, if any, to the Member. The Member has seven (7) days from the date of notice to file a Response.

The Allegation Statement

When an Allegation Statement is issued, the Member being complained about is referred to as the Respondent. The Allegation Statement will set out the specific misconduct or omission which the Respondent is alleged to have done or failed to do, specifying the particular section of these APS Policies, PropTx MLS® Rules, PropTx Policies, the PropTx Code of Conduct, and any other rule, regulation or policy of the Board or the particular paragraph of the CREA Code which the Respondent is alleged to have violated or with which the Respondent has not complied.

The Respondent has seven (7) days to submit their response to the Allegation Statement.

The Allegation Statement may be accompanied by a proposed Special Administrative Penalty or Offer to Settle as described below.

The Response

Once an Allegation Statement is issued, the Respondent has seven (7) days from the date of notice to file a Response with the Panel Secretary.

The Response should include all relevant information, as the Professional Standards Review Roster will make its final decision based on the Research Report, the evidence collected, the Allegation Statement, and the Response.

Failure by the Respondent to submit a Response does not prevent the Professional Standards Review Panel from continuing the process. Additionally, not submitting a Response does not prevent the Respondent from attending and presenting their case at the hearing.

The Professional Standards Review Panel

When an Allegation Statement is sent to the Respondent, a Professional Standards Review Panel is appointed. The panel consists of three or four Members, one of whom is designated as the Chair.

Upon receiving the Response, the Professional Standards Review Panel will:

- Determine the Respondent has not engaged in the conduct set out in the Allegation Statement and no further action will be taken
- Administer a Special Administrative Penalty
- Require the Respondent (or in the case of a Member that is a Brokerage, its Broker of Record) to attend and successfully complete a specified educational course
- Require the Respondent to take such corrective action to rectify the conduct that gave rise to the Allegation Statement
- Issue a warning letter
- Proceed to a Professional Standards hearing

If the Respondent wishes to contest the sanctions imposed by the Professional Standards Review Panel, they must file a request within seven (7) days of receiving the decision.

The panel may consider any prior findings of violations within the past two years of any rules, policies, or guidelines of the Board, or the CREA Code or Rules.

Special Administrative Penalties

If the panel determines that the complaint warrants a Special Administrative Penalty, the Respondent can choose to pay the penalty within fourteen (14) days of receiving the notice. Paying the penalty in full will result in a recorded violation for the Complaint, and the matter will not proceed to a Professional Standards hearing.

If the Respondent does not wish to pay the penalty and prefers to proceed to a hearing, they must request a referral to a Professional Standards Hearing Panel within seven (7) days of receiving the notice.

The amounts for Special Administrative Penalties are detailed in Article 7 of PropTx APS Policies.

Agreement to Settle

If the Respondent is referred to a Professional Standards hearing, they will be notified of the option to request an Offer to Settle. This is not a plea-bargaining tool but an alternative resolution process available before a hearing. If requested, the Professional Standards Chair will review the file and propose an Offer, which the Respondent can accept or decline.

If a request for an Offer to Settle is not received within fourteen (14) days of the notice, the matter will be referred to the Professional Standards Hearing Roster.

If the Respondent requests an Offer to Settle but disagrees with the terms, they can reject the Offer and proceed to a hearing. The Offer is made on a “without prejudice” basis, meaning it cannot be discussed at the hearing.

If the Respondent accepts the Agreement to Settle, they must comply with all terms.

The Professional Standards Hearing Roster

The Board maintains a Professional Standards Hearing Roster. When a matter is referred to a hearing, a Professional Standards Hearing Panel is selected from this roster. The panel consists of three or four Members, one of whom is designated as the Chair.

The hearing panel may retain legal counsel to advise on matters of law and procedure. This counsel can attend the hearing but will not participate in deliberations or decisions.

Notice of Hearing

The Respondent is notified of the hearing at least twenty-one (21) days before the scheduled date. Along with the Notice of Hearing, the Allegation Statement, complaint documents and Response are provided.

Parties to the Discipline Hearing

The parties to the hearing include the Respondent, the Case Presenter, and the Professional Standards Hearing Panel. Each party may be represented by a lawyer, provided that fourteen (14) days’ notice is given.

If the Respondent or Case Presenter intends to call witnesses, notice must be given at least fourteen (14) days prior to the hearing. Any documents, written statements, or audio/visual records must be submitted to the panel at least fourteen (14) days before the hearing, unless the Panel Chair decides otherwise.

Hearing Procedure

At the start of the hearing, the Chair outlines the procedure. Witnesses are affirmed and then asked to leave the room, only returning for their testimony and cross-examination. The panel will have received copies of the Allegation Statement, Complaint, accompanying documentation, Research Report, and Respondent's Reply, if any. A certified court reporter will record the proceedings.

The Case Presenter bears the burden of proof, meaning the Respondent is presumed innocent unless sufficient evidence is presented to convince the panel of the alleged misconduct.

Presenting the Case and Evidentiary Matters

Since the Professional Standards Review Panel has the onus of establishing its position, the Case Presenter proceeds first. The case is presented through submissions, witnesses' testimony, if any, and documentary evidence. The Case Presenter witnesses testify, if any. First, the Case Presenter asks questions in order to have them explain their version of events. The Respondent then has the opportunity to cross-examine those witnesses, subject to the right of the Case Presenter to re-examine, for clarification purposes only.

Once the Case Presenter has presented, the Respondent presents their position through submissions, witnesses' testimony and documentary evidence. The Respondent's witnesses testify, if any. First, the Respondent asks questions in order to have them explain their version of events. The Case Presenter then has the opportunity to cross-examine those witnesses, subject to the right of the Respondent to re-examine, for clarification purposes only.

Once the evidence has been presented, each party may present a short summation, in the same order – Case Presenter then Respondent.

The hearing panel may only ask questions of the parties for the purpose of clarification. The function of the hearing panel is to receive the evidence offered by each party in support of its respective position and to decide based wholly on that evidence. It is not the function of the Professional Standards Hearing Panel to identify or to present the evidence on behalf of either party.

The hearing is not governed by the strict rules of evidence. It is governed by the best evidence rule, which means that there is a continuum of evidence from good to bad and the panel weighs all the evidence received according to the continuum. The parties should ensure that they provide all of their evidence at the hearing since an appeal is not a re-hearing and no new evidence will be permitted at the appeal.

The Professional Standards Hearing Decision

The Professional Standards Hearing Panel may impose one or more penalties, including:

- A reprimand
- A fine between \$100 and \$50,000
- Require the Respondent to pay the costs of the Professional Standards Process
- Assign educational courses
- Recommend removal from any committee or task force and/or expulsion from the Board
- Require the Respondent take corrective action

In determining the penalty, the panel may consider any prior violations within the past two years.

The panel's decisions do not set precedents and are not cited in future complaints. Each complaint is decided on its own merits.

If the Respondent fails to comply with the panel's decision by the Compliance Date, the Board of Directors may terminate or suspend the Respondent's membership without further proceedings.

Appeal Procedures

The Respondent may appeal a decision made by a Professional Standards Hearing Panel by following the procedures outlined in the APS Policies. The appeal is heard by an appeal panel consisting of three or four Members from the Appeal Roster.

An appeal is not a rehearing. No new evidence is submitted since the Appeal is to be decided solely upon the evidence as contained in the record of the Professional Standards Hearing

To initiate an appeal, the Notice of Appeal must be filed within ten (10) days of receiving the Professional Standards Hearing Panel's decision.

The appeal must be submitted using Form B, and a filing fee of \$1000.00 plus HST, along with the cost of the transcript, must be paid within ten (10) days. Failure to meet these requirements will result in the dismissal of the appeal with no further right to appeal.

Only the Respondent, now referred to as the Appellant, has the right to appeal a hearing decision. If the Appellant fails to appear at the appeal, the appeal will be automatically denied, and the original hearing decision will be upheld. This is because the Appellant, as the party requesting the appeal, bears the burden of proving the grounds for the appeal.

During the appeal, the Appellant must demonstrate to the appeal panel that they were either denied natural justice or that the Professional Standards Hearing Panel lacked the jurisdiction to make the decision. It is recommended that Appellants consult with legal counsel regarding the reasons for appeal and the appeal procedures.

The Professional Standards Appeal Hearing shall include the following:

- Allegation Statement
- Response, if any
- Researcher's report, if any
- All notices sent to the parties in connection with the Professional Standards Hearing
- Transcript
- All Exhibits
- The decision of the Professional Standards Hearing Panel

Notice of the Appeal Hearing shall be forwarded to the Appellant at least twenty-one (21) days prior to the date of the Appeal.

The Professional Standards Appeal Panel by its decision may:

- Dismiss the appeal (uphold the hearing panel decision).
- Grant the appeal (overturn the discipline hearing panel decision).

- Amend the decision of the Professional Standards Hearing Panel as the appeal panel deems appropriate.
- Refer the matter back to the Professional Standards Hearing Roster for a new hearing in whole or in part.
- Impose any of the penalties as set out in Section 13 of Article 4.

The Professional Standards Appeal Panel decision shall be final and binding. Failure to comply with the decision, the Board of Directors may, at Membership of the Board or suspend the Respondent's Membership in the Board for such period as the Board of Directors may in its sole discretion determine.