



BILL NO. 56

Government Bill

*3rd Session, 61st General Assembly
Nova Scotia
60 Elizabeth II, 2011*

An Act to Amend Chapter 28 of the Acts of 1996, the Real Estate Trading Act

CHAPTER 27
ACTS OF 2011

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
MAY 19, 2011**

The Honourable John M^{ac}Donell
Minister of Service Nova Scotia and Municipal Relations

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 28
of the Acts of 1996,
the Real Estate Trading Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 28 of the Acts of 1996, the *Real Estate Trading Act*, as amended by Chapter 50 of the Acts of 2001, is further amended by

(a) striking out “Real Estate Association” in the first and second lines of clause (a) and substituting “Association of Realtors”;

(b) striking out “manager” in the first and in the second lines of clause (n) and substituting “managing associate broker”;

(c) striking out “Business and Consumer Services” in the first and second lines of clause (o) and substituting “Service Nova Scotia and Municipal Relations”; and

(d) striking out “lease, rental” in the third and fourth lines of clause (y) and substituting “commercial lease or rental”;

2 (1) Subsection 4(1) of Chapter 28 is repealed and the following subsection substituted:

4 (1) No person shall trade in real estate or hold out as being available to trade in real estate unless that person is licensed to do so or is otherwise permitted to do so by this Act, the regulations and the by-laws, but only to the extent that the person is permitted to do so by this Act, the regulations and the by-laws or by the licence and subject to any restrictions, terms and conditions contained in the licence or under which the licence was issued.

(2) Subsection 4(2) of Chapter 28 is amended by striking out “manager” in the second line and substituting “managing associate broker”.

(3) Subsection 4(5) of Chapter 28 is amended by striking out “manager” in the third line and substituting “managing associate broker”.

3 (1) Subsection 7(1) of Chapter 28 is amended by adding immediately after clause (b) the following clause:

(ba) a licensed individual representing the commercial sector appointed by the Commission in accordance with the by-laws;

(2) Section 7 of Chapter 28, as amended by Chapter 50 of the Acts of 2001, is further amended by adding immediately after subsection (10) the following subsection:

(10A) The Chair, or the Vice-chair while acting as Chair, may not vote at a meeting of the Commission except in the case of a tie vote.

4 Subsection 8(1) of Chapter 28, as amended by Chapter 50 of the Acts of 2001, is further amended by

(a) adding immediately after clause (a) the following clause:

(aaa) prescribing the process for the appointment of a licensed individual representing the commercial sector as a member of the Commission;

(b) adding immediately after clause (h) the following clause:

(ha) regulating trading in real estate through corporations;

(c) adding immediately after clause (p) the following clause:

(pa) prescribing the methods of calculation of remuneration payable to a brokerage for a trade in real estate;

(d) striking out “manager” in the second and in the third lines of clause (aa) and substituting in each case “managing associate broker”; and

(e) adding immediately after clause (ad) the following clause:

(ada) respecting procedures to be followed by a brokerage for the purpose of subsections 32(4) and (5);

5 Clause 10(2) (c) of Chapter 28 is amended by striking out “manager” in the second line and substituting “managing associate broker”.

6 Chapter 28 is further amended by adding immediately after Section 16 the following Section:

16A (1) There shall be a Complaints Review Committee appointed by the Commission and consisting of at least three persons.

(2) The Commission shall designate a member of the Commission as Chair of the Complaints Review Committee.

(3) The Complaints Review Committee shall perform such duties and have such powers as are conferred on it by this Act, the regulations and the by-laws.

7 (1) Section 17 of Chapter 28 is amended by adding immediately after subsection (3) the following subsection:

(3A) During the course of an investigation, the investigator may do one or more of the following:

(a) enter the business premises of any licensed person and inspect and copy any records located there pertaining to a licensed person or formerly licensed person or any transaction in which the licensed person or formerly licensed person is or was involved;

(b) require any licensed person or formerly licensed person to answer questions relating to the investigation or meet with the investigator about the investigation;

(c) require any licensed person or formerly licensed person to produce for examination by the investigator any information, records or

other things in the possession or control of the licensed person or formerly licensed person.

(2) Subsection 17(4) of Chapter 28 is amended by adding “and must not withhold, destroy, conceal or refuse to provide any information or thing reasonably required for the purpose of an investigation under this Section” immediately after “investigation” in the third line.

8 Section 21 of Chapter 28 is amended by adding immediately after subsection (2) the following subsections:

(3) The Commission may apply to the Supreme Court of Nova Scotia for an order to extend the suspension of a licence beyond the ninety-day period referred to in subsection (2), and the Court may order the extension if the Court is satisfied that

(a) the time to complete the investigation and decision of the Discipline Committee will exceed the ninety-day period referred to in subsection (2); and

(b) the licensed person should be suspended pending the outcome of the investigation or decision of the Discipline Committee.

(4) Upon written notice, the Registrar may suspend the licence of a licensed person who refuses to co-operate with an investigation until such time as the licensed person has co-operated with the investigation.

9 (1) Subsection 24(1) of Chapter 28 is amended by

(a) striking out “Supreme Court of Nova Scotia” in the second and third lines and substituting “Nova Scotia Court of Appeal”; and

(b) striking out “thirty days” in the third line and substituting “twenty-five days, calculated in accordance with the *Nova Scotia Civil Procedure Rules*,”.

(2) Section 24 of Chapter 28 is further amended by adding immediately after subsection (2) the following subsection:

(2A) The *Nova Scotia Civil Procedure Rules* governing appeals to the Nova Scotia Court of Appeal that are not inconsistent with this Act apply *mutatis mutandis* to appeals to the Court of Appeal pursuant to this Section.

10 Section 27 of Chapter 28 is repealed and the following Section substituted:

27 (1) Any remuneration agreed to be paid to a brokerage for a trade in real estate, including the method of calculation of remuneration, shall be fully disclosed and agreed to in writing.

(2) Remuneration may be calculated by any method specified in the by-laws.

11 Subsection 28(2) of Chapter 28 is amended by striking out “manager” in the first and in the last lines and substituting in each case “managing associate broker”.

12 Subsection 32(4) to (6) of Chapter 28 are repealed and the following subsections substituted:

(4) Where a buyer has met the terms of the agreement, terminated the agreement and has requested the return of the deposit and the seller has refused to release the deposit, the brokerage must follow the procedures set out in the by-laws.

(5) Where a seller has met the terms of the agreement and the buyer has not, and the seller has requested the forfeiture of the deposit and the buyer has refused to release the deposit, the brokerage shall follow the procedures set out in the by-laws.

(6) Where a dispute between a buyer and a seller over trust money is not resolved at the closing or upon termination, the brokerage shall continue to hold the money in trust until the parties agree to its disposition or there is an order by a court of competent jurisdiction.

(6A) Where unclaimed money remains in a brokerage trust account for a period of two or more years after the closing or the termination of the agreement and the broker is unable to locate the parties or settle the matter pursuant to subsection (4) or (5), the Commission may order the brokerage to transfer the unclaimed money to the Commission which shall hold the money in trust pursuant to subsection (6B).

(6B) The Commission shall use the funds transferred to the Commission for such public or charitable purpose, including the education of licensed persons, as the Commission specifies.

13 Chapter 28 is further amended by adding immediately after Section 32 the following Section:

32A (1) Where

(a) the Registrar is conducting or has concluded an investigation pursuant to Section 17;

(b) criminal proceedings or proceedings in respect of non-compliance with this Act, the regulations or the by-laws are about to be or have been instituted against any licensed person and, in the opinion of the Registrar, are connected with or arise out of a transaction in the business of the licensed person; or

(c) the Registrar has reason to believe that the trust funds in a licensed person's trust account are less than the amount for which the licensed person is accountable,

the Registrar may on written notice

(d) direct any person having on deposit or under that person's control or for safekeeping any funds or securities of the licensed person to

(i) hold those funds or securities, or

(ii) pay those funds or securities into or deposit those funds or securities with a prothonotary of the Supreme Court of Nova Scotia; or

(e) direct the licensed person to refrain from withdrawing funds or securities of the licensed person from any person who has them on deposit, under control or for safekeeping.

(2) Where funds are subject to a direction under subclause (d)(i) or clause (e),

(a) the funds may not be released until the Registrar in writing revokes the direction or consents to release any particular fund or security from the direction; and

(b) the Registrar may send a notice to those persons whom the Registrar is readily able to identify as having an interest in those funds or securities stating that the funds or securities are being held.

(3) Where funds are subject to a direction under subclause (d)(ii), the Registrar shall send to those persons whom the Registrar is readily able to identify as having an interest in those funds or securities a notice stating that

(a) the funds or securities have been paid into or deposited with a prothonotary of the Supreme Court of Nova Scotia; and

(b) a person may apply to the Supreme Court of Nova Scotia for an order directing payment or distribution of all or part of the funds or securities to one or more persons.

(4) An application under clause (3)(b) must be served on the licensed person in accordance with the *Nova Scotia Civil Procedure Rules*.

(5) The Registrar may publish in a form and manner that the Registrar considers appropriate information about the subject-matter of an investigation under clause (1)(a).

14 Subsection 35(1) of Chapter 28 is amended by striking out “manager” in the second last line and substituting “managing associate broker”.

15 Chapter 28 is further amended by adding immediately after Section 37 the following Sections:

37A (1) Subject to subsections (2) and (3), a corporation may engage in the trading of real estate in accordance with the by-laws.

(2) A majority of the voting shares of a corporation engaged in the trading of real estate must be beneficially owned by one or more licensed individuals.

(3) The majority of directors and officers of a corporation engaged in the trading of real estate must be licensed individuals.

37B (1) The relationship of a licensed individual to a corporation that is engaged in the trading of real estate, whether as a shareholder, director, officer or employee, does not affect, modify or diminish the application to the licensed individual of the provisions of this Act, the regulations and the by-laws.

(2) The liability of an individual arising from that individual or any other individual engaging in the trading of real estate is not affected by reason only that the services are provided by a corporation.

16 Clause 38(1)(c) of Chapter 28 is amended by striking out “manager” in the first line and substituting “managing associate broker”.
