

REAL ESTATE

Complaints and Investigation Procedures

COVERING:

- Residential Homes
- Rural Real Estate
- Condominiums
- New Home Sales
- Commercial Real Estate
- Property Management



THE MANITOBA
SECURITIES
COMMISSION



The Manitoba Securities Commission: Real Estate Division

The Manitoba Securities Commission's Real Estate Division (the "Commission") regulates the activities of real estate brokers, salespersons and property managers ("registrants"), who must be registered under *The Real Estate Brokers Act* (the "Act") to practice in the industry. The Registrar is the Chief Administrative Officer under the *Act* and functions within the Real Estate Division of the Commission.

The Real Estate Division staff includes an investigator who conducts inquiries into real estate complaints. Section 33 of the *Act* states that the Commission, of its own motion, may, upon receipt of a written complaint inquire into, hear and determine any matter within its jurisdiction arising out of the *Act*, and may make or authorize the making of an inquiry to ascertain whether any fraudulent act or offence against the *Act* or the regulations has been, is being, or is about to be, committed.



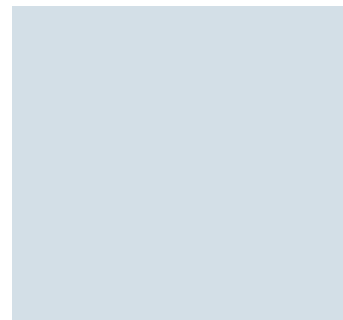
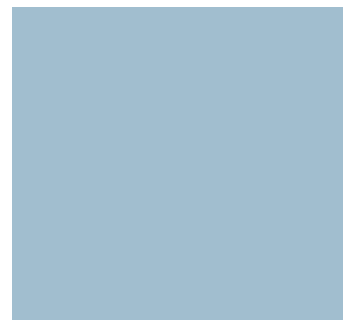
The Commission's Jurisdiction

This brochure explains the jurisdiction and policies of The Manitoba Securities Commission for investigating complaints, the investigation process, and results of a complaint filed with the Commission. The information in this brochure does not constitute legal advice nor should it be considered a substitute.

The Commission may investigate any complaint alleging an infraction of the *Act* or regulations has been committed in connection with a trade or transaction as defined in the *Act*. The Commission may initiate prosecutions against offenders and discipline registrants.

The Commission has no authority to determine the rights or responsibilities of the parties to a real estate contract (e.g., offer to purchase or lease agreement); or to litigate disputes concerning such agreements; or to adjudicate costs or damages resulting from a real estate contract or the actions of a registrant. Registrants must be bonded or covered by the Real Estate Reimbursement Fund administered for members by the Manitoba Real Estate Association (MREA). The Commission has the authority under the *Act* to order the bonding company or the MREA, in appropriate cases, to reimburse individuals whose funds were misappropriated in a fraudulent real estate transaction.

Time limits for initiating prosecutions are outlined in the *Act*. Section 46 states that a complaint must be made to the Commission or charges laid within two years from the time the offence is committed. There is no time limit, however, for other disciplinary action the Commission may take as a result of a complaint, such as convening a hearing to consider a registrant's fitness to operate in the industry.



If I file a complaint, will my identity be disclosed to the person I am complaining about?

It may be difficult to avoid revealing the identity of the Complainant simply because of the issues or the transaction being investigated. A Complainant may be called as a witness if the complaint results in a prosecution or hearing.

Is there any protection available for the deposit that I paid to my real estate broker?

Every broker registered under the *Act* must be covered either by the Reimbursement Fund or a surety bond. If a real estate deposit, rent or other trust money obtained by a registrant is misappropriated, the Commission may order the surety company or Reimbursement Fund to reimburse the claimant.

The protection under bonding is limited to the amount of the bond, which ranges from \$10,000 to \$100,000 depending on the size of the real estate brokerage company.

FAQ

How to File a Complaint

An investigation usually begins with a written complaint made from a consumer or another registrant, the "Complainant." The subject of the complaint is the "Respondent." In some cases, the Commission may initiate complaints based on information suggesting illegal activity or other inappropriate conduct in a real estate trade or transaction.

The Commission requests that complaints be made in writing so that issues are clearly identified. The Complainant will be asked to provide copies of all relevant documents, including the real estate contract and any other documents that may pertain to the investigation.

Full details should also be provided of any alleged verbal representations, including the name of the person who made the alleged verbal representations and, if possible, the times and dates on which the alleged representations were made.

The Investigative Process

The Commission conducts investigations independently. Neither the Complainant nor Respondent are party to the investigation, although they may be interviewed or called as a witness if the investigation proceeds to a prosecution in Provincial court or hearing before the Commission. The Commission does not release copies of the complaint letter to third parties unless the Complainant agrees. At the conclusion of the investigation, the Complainant and Respondent will be notified of the outcome.

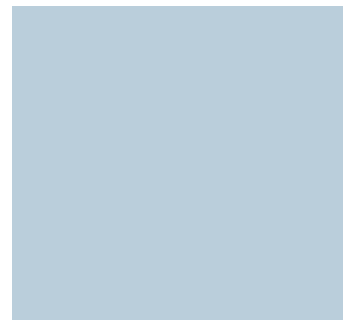
When a complaint is received, it is examined to determine its merits and whether it falls within the scope of the Commission's jurisdiction. If the complaint does not meet these criteria, the Complainant will be notified and the file closed.

If the complaint appears to have merit and falls within the Commission's jurisdiction, it will be investigated. The investigator usually begins by providing the Respondent details of the complaint. The Respondent is invited to address the allegations and provide copies of all relevant documents. This request may be made in writing or at a personal interview.

The investigator has the authority to inspect or examine the books, records, vouchers, cash, documents and accounts — including the trust accounts—of any broker.

The investigator must be granted free access to all books, accounts, correspondence, documents, records and bank accounts and any other records of a broker concerning real estate trades and transactions.

A registrant who refuses, withholds, conceals, falsifies or refuses to produce any document, book, record or any other matter has committed an offence and is liable, upon summary conviction, to the penalties prescribed in Section 42 of the *Act*.



The Real Estate Board or Real Estate Association has already investigated this complaint. Why is the Commission also investigating it?

In some cases, a complaint is filed with a local Real Estate Board or the Manitoba Real Estate Association and the Commission. This can lead to two investigations that have different purposes. The Board or Association is concerned with members' conduct under the Code of Ethics and the right to membership in the Board or Association. The Commission considers registrants' fitness for registration.

Will I receive a periodic update on the status of the investigation?

Information as to the progress of an investigation will not be provided, as this could jeopardize the independence of the investigation.

FAQ

The Investigative Process (continued)

The Commission can also issue an Investigation Order that gives the investigator(s) named in the Order the full powers of investigation as vested in the Court of Queen's Bench, including the right to compel witnesses to attend and provide evidence under oath, and to search and seize documents.

The investigator may:

- ask anyone connected with the complaint to answer relevant questions
- request anyone to produce books, documents or records that are relevant
- photocopy documents or records that are produced
- look into matters that are usually private, such as personal bank records or daily diaries, if they directly relate to the business or transaction being investigated

If evidence of criminal activity is obtained during an investigation, the investigator may request the complaint be referred to the appropriate law enforcement authority for a criminal investigation.

The time it takes to complete an investigation is dependent on the workload of the investigator, complexity of the complaint, and the availability of the Respondent and witnesses to provide information. It can take several months or longer. Information as to the progress of the investigation will not be given as the process of gathering evidence is confidential until such time as a hearing or prosecution begins.

You may call an investigator in the Real Estate Division of the Commission if you have any questions about the investigative process after reading this brochure.

Please note: *the investigator acts only as an administrator for the Commission and may provide information as to the procedures for filing and investigating complaints, but is not in any position to comment on the merits or progress of an investigation.*



The Investigator's Responsibilities

The investigator must gather all relevant facts carefully, fairly and objectively.

All witnesses will be interviewed and may be requested to provide a written statement. The investigator may elect to record conversations with witnesses, and if so, they will be advised in advance. If the investigator has reason to believe the Respondent committed an offence under the *Act* for which a prosecution may be initiated, the investigator will advise the Respondent. The Respondent will be informed of the right to remain silent, the right to seek legal advice before providing information, and that any information given may be used as evidence.

The investigator will attempt to meet with the Respondent at mutually acceptable times. Information obtained by the investigator will be kept confidential as far as the investigation process allows. However, if the matter proceeds to a hearing or prosecution, the information obtained by the investigator may become public.

The Investigator's Report

Upon completion of the inquiry, the investigator submits a report of the results to the Director of Enforcement.

The Director will:

- direct that no further action be taken, if there is insufficient evidence of wrongdoing, and notify the Complainant and Respondent accordingly; or
- refer the matter to the Commission; or
- decide the results of the investigation do not warrant disciplinary action at the time, but warn the Respondent that a recurrence could result in disciplinary action.

Review by the Commission

If the complaint is referred to the Commission, the Commission will review the evidence and determine whether there is sufficient evidence or justification to proceed with disciplinary action. This could include authorizing charges under the *Act* or establishing a date for a hearing before the Commission.

Charges Under the Act

If the Commission directs that charges are to be laid, Commission staff will prepare and file the charges in court. The Respondent will be served with a summons to appear in court on the date stated in the summons. It is suggested that anyone charged under the *Act* seek legal advice as to handling of the matter in court.

The penalties for a summary conviction under the *Act* are set out in Section 42 (5): for a first offence, not less than \$100 and not more than \$2,000; for a second offence, not less than \$100 and not more than \$4,000.

In the case of either a first, second or subsequent offence, either in default of payment of any fine imposed or in addition to a fine, the defendant is liable to imprisonment for up to six months.

Can the information I give be used in court?

If the complaint results in a prosecution, the rules of the court may require evidence be given by a Complainant, the Respondent or any witness with information that could assist the court.

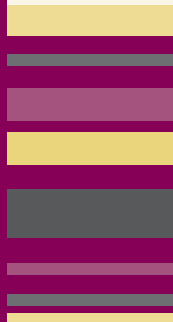
How long will it take to investigate my complaint?

The time needed to complete an investigation depends on the workload of the investigator, complexity of the complaint, and availability of parties to provide information. Often it may take several months or longer to complete an investigation.

If I settle the matter with the Respondent, will the Commission stop its investigation and can I withdraw my complaint?

Once a complaint is filed, it must be investigated. If the Respondent settles with the Complainant, this may be taken into account in any disciplinary action taken by the Commission.

FAQ



***Will the Commission get my money back, and/or provide for my damages?
Can I cancel the deal?***

The Commission investigates and deals with the conduct of registrants. The return of deposits or other funds and other issues regarding the contract that may be the subject of a dispute between the buyer and seller must be resolved between them or by the courts.

You would be advised to seek legal advice in these matters. If the investigation shows that a registrant misappropriated clients' trust money, the Commission may convene a hearing to consider whether a claim should be made on the broker's surety bond or the Real Estate Reimbursement Fund to reimburse the client(s).

If my case seems to be a trivial matter, will the Commission still pursue?

The Act requires the Commission to investigate all written complaints.

FAQ

Hearing by the Commission

If the Commission decides to convene a hearing, the Respondent will be served with a formal Notice of Hearing and Statement of Allegations setting out the issues to be considered. The Respondent has the right to be represented by counsel and will be afforded the opportunity of addressing the relevant issues. Should the Respondent fail to appear at the hearing having been duly served, the Commission may proceed in a party's absence and make such decision or finding, as it considers appropriate.

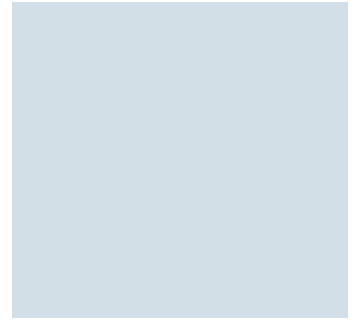
The Commission acts in a quasi-judicial capacity. Usually the proceedings are recorded by a court reporter, and copies of transcripts may be obtained from the court reporter for a fee. Witnesses are required to give evidence under oath. The Commission will hear the evidence and determine what action, if any, is warranted. A decision may be given at the hearing or reserved to a later date. The terms of the decision are then set out in an Order issued by the Commission.

The Commission's Powers

Section 11(1) of the *Act* states that the Commission may, by order, suspend a registration for a stated term or until a condition has been met, and after notice and hearing, cancel a registration if it is in the public's interest to do so.

The Commission may take one or more of the following actions as the result of a hearing:

- reprimand and/or warn the Respondent
- authorize charges to be laid
- suspend or cancel the Respondent's registration
- order payment to be made by the bonding company or the Reimbursement Fund to claimants where the Commission finds that a registrant or employee of a broker has committed a fraudulent act in connection with a transaction in real estate
- accept a proposal from the Respondent to settle the matter by consent agreement
- order the Respondent to pay the costs of the investigation and hearing
- conclude that no further action is warranted



Contact Us:



Our free, objective guides and brochures can help you learn more about real estate, securities, investing, insurance, credit unions, cooperatives, and more.

They're available on The Manitoba Securities Commission website at **mbsecurities.ca**.

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