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**NEWFOUNDLAND AND LABRADOR
REGULATION**

NLR 66/20



**NEWFOUNDLAND AND LABRADOR
REGULATION 66/20**

Real Estate Trading Regulations
under the
Real Estate Trading Act, 2019
(O.C. 2020- 174)

(Filed September 1, 2020)

Under the authority of section 47 of the *Real Estate Trading Act, 2019*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, September 1, 2020.

Gary Norris
Clerk of the Executive Council

REGULATIONS

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- Short title **1.** These regulations may be cited as the *Real Estate Trading Regulations*.
- Definitions **2.** In these regulations
- (a) "Act" means the *Real Estate Trading Act, 2019*; and
- (b) "department" means the department presided over by the minister.
- Errors and omissions liability insurance **3.** The errors and omissions liability insurance required under paragraphs 7(1)(f) and 11(d) of the Act shall
- (a) have a minimum limit of \$1,000,000;
- (b) be issued by an insurance company that is authorized to carry on business in the province; and
- (c) be in a form satisfactory to the superintendent.
- Examinations **4.** (1) For the purposes of subsection 7(3) of the Act
- (a) a person applying for a licence under paragraph 6(1)(a) of the Act shall have successfully completed the Office Management and Brokerage Examination approved by the superintendent not more than 2 years before applying for a licence; and
- (b) a person applying for a licence under paragraph 6(1)(b) of the Act shall have successfully completed the Fundamentals of Real Estate Examination approved by the superintendent not more than 2 years before applying for a licence.
- (2) A person shall not write the Office Management and Brokerage Examination referred to in paragraph (1)(a) unless the person
- (a) has had a salesperson licence for at least 2 years; or

- (b) has been actively trading in a province of Canada for a total of 2 years during the 3 year period immediately before requesting to write the examination.

Deposits

5. For the purposes of subsection 26(2) of the Act a deposit may be paid electronically directly to a broker's trust account.

Trust account audits

6. (1) A broker shall engage a person who is a public accountant licensed under the *Chartered Professional Accountants and Public Accountants Act* to

- (a) conduct an audit of a trust account established under section 26 of the Act; and
- (b) provide a report in the form approved by the superintendent.

(2) A broker shall submit a report referred to in subsection (1) to the superintendent not more than 90 days after the end of the preceding fiscal year.

(3) A broker shall prepare a semi-annual report relating to the trust account which shall be in the form approved by the superintendent and which shall include a balance sheet and a copy of the monthly bank reconciliations for the preceding 6 month period.

(4) The semi-annual report referred to in subsection (3) shall be signed by the broker or the designated representative.

Trust account reconciliations

7. (1) A broker shall prepare a monthly trust account reconciliation within 30 days of receipt of the broker's monthly bank statements relating to the trust account.

(2) A trust account reconciliation referred to in subsection (1) shall

- (a) reconcile the trust account bank balance to the trust account liability for the same period; and
- (b) state the amount of money held in trust for each person.

(3) A broker shall immediately notify the superintendent where a trust account reconciliation referred to in subsection (1) reveals

- (a) a disbursement not authorized under section 26 of the Act;
or
- (b) a negative balance in the trust account.

Trust account
disputes

8. Where there is a dispute regarding a deposit held in a trust account and the broker is not able to resolve the dispute, the superintendent may direct disbursement of the deposit where

- (a) a party to the dispute
 - (i) submits an application to the superintendent in the form set by the superintendent,
 - (ii) provides a statutory declaration that reasonable efforts were taken to attempt to resolve the dispute, and
 - (iii) serves the application on the other party to the dispute in accordance with subsection (2);
- (b) the superintendent conducts a hearing to determine entitlement to the deposit;
- (c) the superintendent issues an order following the hearing and sends a copy of the order to the parties to the dispute by prepaid registered mail; and
- (d) 30 days have elapsed from the date of the order and an appeal of the order has not been filed.

(2) For the purposes of subparagraph (1)(a)(iii), a party to a dispute may serve an application on the other party to the dispute by

- (a) giving it personally to the other party;
- (b) sending it to the other party by prepaid registered mail or prepaid express post; or
- (c) sending it electronically where
 - (i) the application is provided in the same or substantially the same form as the application,

(ii) the other party has provided an electronic address for receipt of documents, and

(iii) the application is sent to that electronic address; or

(d) sending it to the other party by a courier service to an address provided by the other party.

Fund

9. (1) A licensee shall pay money into the fund in the amount set by the minister as follows:

(a) at the time the person submits an application for a licence; and

(b) at any other time at the direction of the superintendent in accordance with subsection (3).

(2) The minister shall maintain a minimum balance of \$200,000 in the fund.

(3) Where the balance of the fund falls below the minimum balance referred to in subsection (2), the superintendent may direct licensees to pay money into the fund in the amount determined by the minister.

(4) A licensee is not entitled to a refund of any monies paid into the fund.

(5) Notwithstanding subsection (4), where a person pays money into the fund in accordance with paragraph (1)(a) and the person is not granted a licence, the superintendent shall refund the money to the person.

Payment from fund

10. (1) A person who has a claim against a licensee referred to in paragraph 25(1)(a), (b), (c) or (d) of the Act may apply to the superintendent for compensation from the fund.

(2) The superintendent may pay a claim referred to in subsection (1) where the person applying for compensation

(a) submits an application in the form set by the superintendent; and

(b) satisfies the following conditions:

(i) where the claim results from fraud or a breach of trust committed by the licensee, the person

(A) provides a copy of the judgment of the court, and

(B) submits the application referred to in paragraph (a) within one year of the judgment,

(ii) where the claim results from bankruptcy declared by the licensee, the person

(A) provides a copy of an order issued under the *Bankruptcy and Insolvency Act* (Canada), and

(B) submits the application referred to in paragraph (a) within one year of the order, and

(iii) where the claim results from the licensee's failure to disburse or account for money held in a trust account, the person

(A) provides a copy of the superintendent's order made under section 8,

(B) provides a statutory declaration stating that the broker did not disburse the deposit in accordance with the superintendent's order under section 8 in the time period stated in the order, and

(C) submits the application referred to in paragraph (a) within one year of the superintendent's order.

(3) Notwithstanding subsection (2), the superintendent shall not pay more than

(a) \$25,000 to any one applicant in relation to a claim against a broker; or

(b) \$50,000 to all applicants in relation to a claim against a broker.

(4) Where the aggregate of all claims against a broker exceeds \$50,000, the superintendent shall pay the claims on a pro rata basis.

(5) Where a payment has been made from the fund, the superintendent is subrogated to the rights, remedies and securities to which the person receiving the payment was entitled as against the broker whose conduct gave rise to the payment and those rights, remedies and securities may be enforced or realized, as the case may be, in the name of the superintendent.

Audit of fund

11. (1) The fund shall be audited annually by a person who is a public accountant licensed under the *Chartered Professional Accountants and Public Accountants Act*.

(2) The report required under subsection 25(7) of the Act shall include the following information for the preceding fiscal year:

- (a) the amount paid into the fund by licensees;
- (b) the total amount of accrued interest, dividends and other returns earned upon the investment of money in the fund;
- (c) the details of the securities in which monies from the fund were invested;
- (d) the details regarding each claim paid from the fund;
- (e) the amount paid from the fund for administrative expenses; and
- (f) the balance of the fund at the end of the preceding fiscal year.

(3) The superintendent shall publish a copy of the report referred to in subsection (2) on the department's website.

(4) The fiscal year of the fund is April 1 to March 31.

Hearing required

12. For the purposes of subsection 36(1) of the Act, the superintendent shall conduct a hearing where the superintendent

- (a) receives a report from an inspector; and

- (b) determines that an order under subsection 36(1) of the Act or section 14 may be required.

Hearings

- 13. (1) The superintendent may require a hearing to be conducted
 - (a) orally, including by telephone, teleconference or other electronic means which enables the parties to participate in the hearing instantaneously and simultaneously;
 - (b) in writing; or
 - (c) partly orally and partly in writing.
- (2) The superintendent may
 - (a) prescribe rules of procedure and evidence for a hearing;
 - (b) order the type and nature of information to be provided by a person to the superintendent before or during a hearing; and
 - (c) receive or accept evidence and information on oath, affirmation, affidavit or otherwise, whether or not that evidence or information is admissible as evidence in a court.
- (3) A person shall provide information as ordered by the superintendent under paragraph (2)(b).
- (4) For the purpose of a hearing,
 - (a) the superintendent and a person authorized by the superintendent have the powers, privileges and immunities that are or may be conferred on a commissioner under the *Public Inquiries Act, 2006*;
 - (b) the superintendent and a person authorized by the superintendent are considered to be an investigating body for the purpose of the *Public Investigations Evidence Act*;
 - (c) the superintendent and a person authorized by the superintendent shall have full right to examine and cross-examine a witness and to bring forward evidence in response and reply; and

(d) subsection 8(1) of the *Public Inquiries Act, 2006* shall apply to a witness.

(5) A person is not required to appear as a witness unless the person is paid or is offered the witness fee set by the minister.

Additional orders

14. In addition to the orders referred to in section 36 of the Act the superintendent may make one or more of the following orders:

- (a) an order requiring a licensee to complete training as determined by the superintendent;
- (b) an order prohibiting a licensee from withdrawing money from the licensee's trust account; and
- (c) an order stopping the circulation of advertising materials that the superintendent believes to be false or misleading and requiring the licensee to correct the false or misleading advertising materials.

Publication of
summary of order

15. Where the superintendent publishes a summary of an order issued under section 36 of the Act or under section 14, the summary shall include the following information:

- (a) the licensee's name and business address;
- (b) a summary of the facts and circumstances leading to the making of the order; and
- (c) the contents of the order in relation to the enforcement action taken.

Administrative
penalties

16. (1) The superintendent may order a licensee to pay an administrative penalty of not more than \$2,000 where the licensee contravenes

- (a) one or more of the following provisions of the Act:
 - (i) paragraphs 11(a), (b), (d), (e), (f) or (g),
 - (ii) section 12,
 - (iii) section 17,

- (iv) section 18,
 - (v) subsections 21(1) or (4), or
 - (vi) section 28; or
- (b) one or more of the following provision of these regulations:
- (i) section 6, or
 - (ii) section 7.

(2) The superintendent may order a licensee to pay an administrative penalty referred to in subsection (1) for each day or part of a day the contravention occurs or continues to occur.

(3) In determining the amount of the administrative penalty under subsection (1) the superintendent shall consider

- (a) the severity of the contravention;
- (b) the degree of wilfulness or negligence in the contravention;
- (c) whether there was any mitigation relating to the contravention;
- (d) whether steps were taken to prevent reoccurrence after the contravention;
- (e) whether the licensee has a history of non-compliance; and
- (f) any other factors the superintendent considers relevant.

(4) An administrative penalty imposed under these regulations shall be payable within 60 days from the date of the service of the notice under section 17.

Notice of
administrative
penalty

17. (1) Where the superintendent orders a person to pay an administrative penalty under these regulations, the superintendent shall give written notice to that person.

(2) A notice under subsection (1) shall include

- (a) the name of the licensee required to pay the administrative penalty;
- (b) the basis on which the administrative penalty was ordered; and
- (c) the address for payment of the administrative penalty.

(3) Notice under these regulations shall be given

(a) to a salesperson, by

- (i) personal delivery,
- (ii) registered mail or other mail delivery which produces a receipt or other proof of delivery, to the last known address of the salesperson, or
- (iii) facsimile telecommunication or other electronic communication; and

(b) to a broker, by

- (i) personal delivery to the registered office of the broker or to the designated representative;
- (ii) registered mail or other mail delivery which produces a receipt or other proof of delivery, to the registered office of the broker; or
- (iii) facsimile telecommunication or other electronic communication to the broker or designated representative.

(4) Where the superintendent orders a salesperson to pay an administrative penalty under these regulations notice shall be given to the salesperson and the broker of the salesperson.

Repeal

18. The *Real Estate Licensing Regulations, Consolidated Newfoundland and Labrador Regulation 994/96*, are repealed.

Commencement

19. (1) These regulations come into force on September 1, 2020.

(2) Notwithstanding subsection (1), subsections 9(2) and (3) come into force on September 1, 2021.

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Title of Act and Subordinate Legislation made thereunder	CNLR or NL Reg.	Amendment	NL Gazette Date & Page No.
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