

REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

PRACTICE NOTE NO. 1

Appeals to the Disciplinary Tribunal against
decisions of Complaints Assessment Committees

Effective: Wednesday, 29 September 2010

1 APPEALING TO THE DISCIPLINARY TRIBUNAL

- 1.1 Appeals against decisions of Complaints Assessment Committees (CACs) are brought under s 111 of the Real Estate Agents Act 2008 ("the Act"). Once an appeal is filed the parties to an appeal are dealing with the Disciplinary Tribunal, not the Real Estate Agents Authority.
- 1.2 The person bringing the appeal must complete all the details specified in the notice of appeal form. The notice of appeal form must be accompanied by the notice of determination of the CAC which is being appealed from.
- 1.3 The appeal is by way of rehearing before three members of the Disciplinary Tribunal. This means that the parties or their legal representatives need to be present at the hearing and must ensure that any witnesses they wish to rely on are also present to give evidence on oath.
- 1.4 Parties to an appeal will be required to prepare, file and serve briefs of evidence, an indexed bundle of documents, a chronology and written submissions prior to the hearing. Four hard copies and one electronic copy of all these documents must be filed with the Disciplinary Tribunal in advance of the hearing.

2 PARTIES TO THE APPEAL

- 2.1 Under s 106 of the Act every person whose rights may be affected by the appeal is entitled to appear and be heard at the hearing and be represented by counsel. In general, the parties to an appeal will be:
 - The appellant (either the complainant or the licensee)
 - The first respondent is the CAC
 - The second respondent (either the licensee or the complainant)
- 2.2 At the time the appellant files the notice of appeal with the Disciplinary Tribunal, the appellant must serve a copy of the notice of appeal on the other parties referred to in the paragraph 2.1 and provide proof of service to the Tribunal. Proof of service is evidenced by providing a copy of the dated cover

letter/fax/email sent to the other parties. The appeal will be rejected as incomplete if proof of service is not apparent.

- 2.3 On receipt of a notice of appeal, and proof that the other parties to the appeal have been served with the notice of appeal, the Disciplinary Tribunal will allocate and notify all the parties of the date and time of an initial telephone conference. The initial telephone conference will be held by the Chairperson of the Disciplinary Tribunal, or in his absence, the Deputy Chairperson.

3 INITIAL TELEPHONE CONFERENCE.

- 3.1 No later than two working days prior to the date of the initial telephone conference, the parties are to file a joint memorandum, or if the parties cannot agree, each party is to file a separate memorandum, addressing the following:

- The issues on the appeal
- The names of the witnesses the appellant and second respondent intend to call to give evidence
- An estimate of the time required to hear the appeal, based on the number of witnesses, the nature of the evidence they will give, and any submissions to be made
- The timetable by which the appellant, and then the second respondent, will file and serve the briefs of evidence for their witnesses and the indexed bundle of documents they wish to rely on

4 BRIEFS OF EVIDENCE AND BUNDLE OF DOCUMENTS

- 4.1 A brief of evidence is a document which sets out in writing the evidence that will be given by the witness at the hearing before the Disciplinary Tribunal. It must be confined to factual matters relevant to the issues on the appeal.
- 4.2 In most cases the Disciplinary Tribunal will require the witness to read his or her brief of evidence, after the witness has taken the oath or affirmation. The witness may then be cross-examined by the other parties to the appeal or their representatives.
- 4.3 The bundle of documents to be filed and served by the appellant and second respondent respectively should be limited to documents which are relevant to the issues on the appeal and which the appellant or second respondent wish to rely on in support of their case. Bundles of documents must be indexed and paginated. Where a witness refers to a document that witness's brief of evidence must reference the page number of the document in the bundle.

5 SECOND TELEPHONE CONFERENCE

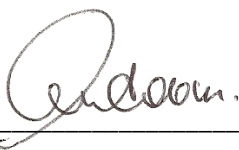
- 5.1 At the initial telephone conference the Disciplinary Tribunal will set a date for a second telephone conference scheduled after the appellant and second respondent have filed and served their briefs of evidence and indexed bundle of documents.
- 5.2 The purpose of the second telephone conference is to address any outstanding matters ahead of the hearing, to set a timetable for the parties to file and serve written submissions and chronologies, and, wherever possible, to narrow the issues on the appeal. No later than 2 working days before the second telephone conference the parties must file a joint memorandum, or in the absence of agreement, separate memoranda, addressing these matters.

6 THE HEARING

- 6.1 The hearing will proceed as a formal court hearing. The Disciplinary Tribunal will limit the evidence to be heard to that which is necessary for the Disciplinary Tribunal to determine the matters in dispute on the appeal.

7 DISCIPLINARY TRIBUNAL MAY REGULATE PROCEDURES AS IT SEES FIT

- 7.1 The Disciplinary Tribunal may regulate its procedures as it sees fit and is therefore free to depart from the procedures set out in this practice note if justified in a particular case.
- 7.2 Where the determination of the CAC being appealed from is a decision not to inquire into a complaint, the Disciplinary Tribunal may hold a short hearing based on the written record which was before the CAC, together with any submissions the parties wish to make, solely for the purpose of determining whether the complaint should be inquired into. In such cases it is not necessary for the appellant or second respondent to file briefs of evidence or indexed bundles of documents prior to the hearing. The Disciplinary Tribunal may adopt a similar procedure in other cases as it sees fit.
- 8 The Tribunal has a strict policy regarding adjourning Issues and Setting Down conferences. Whilst a party or their counsel may file a request for an adjournment, this will only be adjourned in special circumstances.



Judge M F Hobbs
Chairman Real Estate Agents Disciplinary Tribunals