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OVERVIEW

An Act to Incorporate the New Brunswick Association of Real Estate Appraisers assented to April 20, 1994 regulates the practice of real estate appraisal and governance of its members in order to serve and protect the public interest.

To carry out these objects, the Association is empowered, pursuant to:

1. The Act;
2. The Association’s By-Laws;
3. The Code of Conduct;
4. The Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) or The Uniform Standards of Professional Appraisal Practice (USPAP)

The Association is empowered, pursuant to ss. 6 (a) of the Act, “to provide for the discipline, government, control and honour of persons practising the profession of real estate appraisal in the Province, including the power to determine standards of professional conduct”. If a formal complaint is filed, the Association is charged with the responsibility of considering and investigating the conduct and/or competence of any member of the Association and determining whether any such member is guilty of professional misconduct and/or incompetence.

The Complaint & Discipline Procedures Manual is intended as a guide for the administration of the complaint and discipline process relating to professional misconduct and/or incompetence of its members under sections 20 to 25 of the Act.
DEFINITIONS

BOARD OF DIRECTORS: The Association’s Board is entrusted with serving the public interest in the discharge of a series of important functions with respect to the complaint/disciplinary process. The Board also has the power to refer a matter concerning the conduct and/or competence of a member to the Complaints Committee or Discipline Committee. Should a review of the process be required, the Board is designated to complete the review.

COMPLAINT COMMITTEE: To review and filter complaints of professional misconduct or incompetence, filed in writing with the Registrar, or from a Board resolution; and to dispose of those in which there is no jurisdiction or are completely without merit. The complaint must relate to one or the other for the Association to have jurisdiction to proceed with the complaint. The Committee carries out the investigation on those complaints with merit and finalizes this process as set out in section 21(3) of the Act.

COMPLAINANT: Any person, whether a member of the Association or not, may file a complaint alleging professional misconduct or incompetence against a member. The NBAREA Board may also file a complaint by resolution. The Complainant may be required to provide testimony at any discipline proceeding.


COMPLIANCE COMMITTEE: To review reports and meet with respondents whose reports have been referred to them under S.21(3)(c) of the Act by the Complaints Committee to decide whether the complaint should be referred back to the Complaints Committee or resolved by reaching an amicable resolution.

The Committee shall consist of three members appointed by the Board of Directors, one of whom shall be named Chairperson. The Board shall appoint two alternate members who may be called upon by the Chairperson, if required.

Committee members must be a member in good standing of NBAREA. No person who is an active member of the Complaints or Discipline Committee shall be a member of the Compliance Committee. Three members constitute a quorum.

CONFLICT OF INTEREST: It is considered present when there is a financial implication or it is a family member or member of your firm. Is not justified just because you know someone.

DISCIPLINE COMMITTEE: This is the body that ensures real estate appraisers continue to meet the professional and ethical standards expected of them. When so directed by the Board, or the Complaints Committee, conduct hearings for the purpose of
determining allegations of professional misconduct or incompetence against a member of the Association. If a determination is made that the allegations have merit, the Committee then decides the appropriate discipline to apply.

**Act 20(3)** No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

**Act 22(2)** Members of the Board who are not appointed to the Discipline Committee, with the exception of the Secretary, shall be alternate members of the Committee and may be called upon by the Chairperson of the Committee to act as necessary.

**DISCIPLINE HEARING:** To serve and protect the public interest, this is a very formal hearing where most often both parties are represented by counsel and there is a court reporter in attendance.

**EXECUTIVE DIRECTOR/REGISTRAR:** Referred to as the “Registrar” throughout the document. The administrative channel through which the Complaint, Compliance and Discipline Committees carry out their respective functions. This role helps to ensure the integrity of the complaint, compliance and discipline process. He/she is not a member of the Committees and does not make any decisions or determinations in relation to the Committees decisions. He/she should be a resource person in providing guidance to the Committee should that be required and in coordinating the hearing process from receipt of a complaint to the closure of the file.

**INCOMPETENCE:** **NBAREA Act 23(3)** The Discipline Committee may find a member to be incompetent if in its opinion

a) The member has displayed in carrying out the members’ professional responsibilities a lack of knowledge, skill, or judgement, or disregard for the welfare of the public of such nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in the practice of real estate appraisal,

b) The member is suffering from a physical or mental condition or disorder of such a nature or extent as to render the member unfit to engage in the practice of real estate appraisal.

Incompetence is when a member’s professional services or conduct are so deficient as to render them unfit to practice, often demonstrated as a pattern of behaviour over time. A person may be incompetent despite being physically and mentally capable, if they are unwilling to meet the necessary requirements of an appraiser. Habitual negligence (a consistent pattern) may amount to incompetence if the habit or course of conduct is
so serious to show a lack of capacity to be an appraiser. Incompetence is the more serious finding and needs a stronger basis in evidence.

**NBAREA MEMBER:** A registered member in good standing with the New Brunswick Association of Real Estate Appraisers.

**NEGLIGENCE:** Is a mistake that causes harm (loss) to someone which typically involves a civil law suit which allows people to recover their financial loss. Expecting a member to practice without making any mistakes is unreasonable – only some mistakes will be serious enough to constitute professional misconduct.

**GROSS NEGLIGENCE:** The negligence is very severe, reckless or wanton and the law suit is likely not sufficient to protect the public from the appraiser’s conduct, and professional misconduct proceedings may be appropriate.

**PROFESSIONAL MISCONDUCT:** *NBAREA Act 23(2) – A member may be found guilty of professional misconduct by the Discipline Committee if*

1. **a)** *The member has been convicted in a court of competent jurisdiction of an offence in which, in the opinion of the Committee, is relevant to the member’s suitability to practise real estate appraisal, or*
2. **b)** *The member has been guilty, in the opinion of the Committee, of professional misconduct.*

Professional Misconduct is knowingly misleading a party. The Standards to be applied can be taken from numerous sources – the Code of Ethics and Standards of Practice, as well as general knowledge and common sense of what constitutes inappropriate behaviour for a member of the profession. The Committees must use their judgment, experience and expertise to determine what is and is not professional misconduct. What are the professional requirements that an appraiser, acting reasonably, should be held to? Is the breach so serious, or such a departure from the expected standards of conduct of an appraiser, that it should be considered professional misconduct?

23(3) (b) could include such things as alcoholism, drug addiction, or a medical condition that renders the person unable to carry out the responsibilities of practice.

**OFFENCES:** *Act 26 Except as provided in this Act or the by-Laws, any person not registered to practise as a real estate appraiser under this Act, or whose registration is revoked or suspended, and who*

1. **a)** *practises as a real estate appraiser*
b) uses the title of real estate appraiser or any designation thereof permitted by this Act. Or makes use of any abbreviation of such title or any name, title or designation which may lead to the belief that the person is a real estate appraiser,

c) advertises or in any way or by any means holds him or herself out as a real estate appraiser, or

d) acts or holds him or herself out in such manner as to lead to the belief that he or she is authorized to fill the position of or to act as a real estate appraiser.

RESPONDENT: Any member of the Association may be the subject of a written complaint or of a Board resolution.
GENERAL INFORMATION

The Act is written to allow considerable flexibility even though basic procedures must be followed. It is possible to exercise a good degree of discretion in processing complaints as long as the overall procedure and basic requirements are understood and respected.

Because the Registrar is often the first line of contact between members of the public and Association, it is important the Registrar be involved in the entire process, provide support to the Committees, attend meetings and assist with all procedural matters. It is simply to see that the process is followed and provide a definable link at a neutral level. The Registrar helps to ensure the integrity of the complaint and discipline process.

Maintenance of all files regarding complaints is the responsibility of the Registrar.

All complaints must be treated on an individual basis because they are all different.

If more than one complaint is received against the same individual, each complaint must be dealt with individually and on its own merits. If the Registrar is aware that someone is consistently being reported, that history remains confidential and cannot be considered.

If a complaint is filed against a member who completed an appraisal report/valuation on a property in another province, the jurisdiction for the complaint rests with the Provincial Association where the property is located. NBAREA only deals with complaints regarding valuation of properties located within the Province of New Brunswick.

If a complaint is filed on a “DRAFT” report, the complaint will not proceed. A complaint will only be considered on a Final Report.

If a complaint is filed against a registered NBAREA member regarding a property within the Province and at the same time other litigation is going on regarding this property, the complaint won’t be processed by NBAREA until the court case/expropriation hearing is finalized.
COMPLAINTS COMMITTEE

20(1) There shall be a Complaints Committee composed of
a) One member of the Board who shall be chairperson, and
b) Two other members of the Association appointed by the Board

20(2) The Board shall name two alternate members to the Complaints Committee to be called upon by the chairperson to act as necessary.

20(3) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

20(4) Three members of the Complaints Committee constitute a quorum.

ROLE OF THE COMPLAINTS COMMITTEE

To review and filter complaints of professional misconduct or incompetence and to dispose of those in which there is no jurisdiction or are completely without merit. The complaint must relate to one or the other for the Association to have jurisdiction to proceed with the complaint.

23(2) A member may be found guilty of professional misconduct by the Discipline Committee if
a) The member has been convicted in a court of competent jurisdiction of an offence in which, in the opinion of the Committee, is relevant to the member’s suitability to practise real estate appraisal, or
b) The member has been guilty, in the opinion of the Committee, of professional misconduct.

23(3) The Discipline Committee may find a member to be incompetent if in its opinion
a) The member has displayed in carrying out the members’ professional responsibilities a lack of knowledge, skill, or judgment, or disregard for the welfare of the public of such nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in the practice of real estate appraisal,

b) The member is suffering from a physical or mental condition or disorder of such a nature or extent as to render the member unfit to engage in the practice of real estate appraisal.

NOTE: 23(3)(b) The solicitor advised the Committee needs to be very careful in this determination as a serious degree of incompetence is required.
**FILING A COMPLAINT**

Under subsection 21(1) of the Act, virtually anyone may file a complaint. The Complaint must be completed on [http://www.nbarea.org/wp-content/uploads/2015/04/Complaint-Form.pdf](http://www.nbarea.org/wp-content/uploads/2015/04/Complaint-Form.pdf), the prescribed NBAREA form, and must contain the signature of the complainant along with the date.

The NBAREA complaints form is filed with the Registrar under Paragraph 21(1) either in person, by mail or electronic mail to make certain that the formal process has been invoked. This is advised as all complaints are considered extremely serious in nature.

21(1)

*Upon receipt of a complaint in writing filed with the Registrar, or a resolution from the Board under subsection 22(6) referring a matter to the Complaints Committee for investigation, the Committee shall consider and investigate the conduct or competence of any member of the Association, but no action shall be taken by the Committee under subsection 3 unless,*

Members of the Complaints, Compliance and Discipline Committee can file a complaint if they declare a conflict of interest and are excluded from the process.

In situations where facts exist that should result in a complaint, but none is forthcoming from the public or a member of the Association, then consultation must take place to determine how one should be filed. Only the Board can file a complaint on behalf of the Association. This can apply in the event a Complainant seeks to withdraw a written complaint.

There may be occasions when the Complaints Committee is required to consider and investigate matters even before a written complaint is filed; for example, a referral to the Committee by the Board under subsection 22(6). If sufficient information can be verified that would justify a complaint, then arrangements for a written complaint to be filed with the Registrar must be made. This is done by Resolution and can be signed by the Secretary of the Board. This Resolution becomes evidence.

22(6)

*The Board, by resolution, may*

a) *Refer a matter concerning the conduct or competence of a member to the Complaints Committee for investigation, or*

b) *Direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence against a member*
The Board should only refer a matter to the Complaints Committee if it is considered to be very serious and in very limited situations. An example of when the Board could do this is if someone had died and no one was able to make the complaint.

**SUBJECT MATTER OF COMPLAINT**

Subsection 21(1) of the Act provides that the Complaints Committee “shall consider and investigate the conduct or competence of any member of the Association”, the nature of the conduct that may be considered is not unlimited. The Complaints Committee’s mandate is to deal directly with the complaint as presented. It is not the mandate to go beyond the complaint and try to find other issues within the report.

The complaint should detail **ALL** the areas that the Complainant is concerned about and contain adequate information so that the parties involved understand clearly what those concerns are. If the Complainant has concerns with potential breaches of the Code of Conduct, CUSPAP/USPAP, By-Laws or the Act, it is important to include sufficient information to identify these possible breaches.

If the complaint is regarding standards or a portion of the Complaint directly or indirectly relates to standards, the Complaints Committee is to forward the complaint, along with the reply, to the Compliance Committee for investigation and recommendation. The Complaint Committee continues to deal with all issues of the complaint that are not standards related.

The Complaints Committee set a reasonable time to receive the Compliance Committee’s decision.

**PROCEDURES**

The Registrar shall attend the meetings and record the proceedings of each. The minutes of the meeting shall be forwarded to the Committee Members no later than 14 days after the date of the meeting.

**STEP 1:** The Registrar acknowledges receipt of the complaint (Form 2) and ensures the Complainant knows that should this reach the Discipline Committee they are expected to be summoned and provide evidence at the hearing. All costs associated with travel or lost wages is the responsibility of the Complainant. The Association is responsible for costs associated with renting the space and equipment required to allow the testimony to happen if the complainant resides outside the Province.
**STEP 2:** The Registrar immediately sends a registered letter in both official languages to the Respondent enclosing a copy of the Complaint and requests a Reply from the Respondent. The Respondent should be given a fixed date in writing to respond. (Form 1)

21 (a)  
*The member whose conduct or competence is being investigated has been given a copy of the complaint or resolution and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member may wish to make concerning the matter; and*

**STEP 3:** The Registrar polls the committee to determine if there is a conflict of interest.

**STEP 4:** The Registrar provides a copy of the entire Complaint to the Complaints Committee.

**STEP 5:** Upon receipt of the Respondent’s Reply by the Association, a copy of the entire Reply is forwarded to the Complaints Committee in accordance with 21(1) (a) of the Act. The Respondent can reply in either language and the language in the Reply is the language that will be used throughout the complaint and discipline process.

**STEP 6:** The Complaints Committee decide whether it is within the jurisdiction of the Association.

If not, the complainant must be advised by letter of the decision by the Committee that the subject matter of the complaint is outside the jurisdiction of the Association. This decision is forwarded to all parties by the Registrar. It may be that the complainant has other remedies such as a civil dispute that should go to court. (Form 6 – not referring)

**INVESTIGATION**

**STEP 7:** If it is within the jurisdiction of the Association, an investigation is commenced.

**STEP 8:** Should the Complaints Committee request addition information from the Respondent or Complainant as part of the investigation, the reply will be forwarded to the Committee.

**STEP 9:** If the complaint in whole or in part is regarding standards, the Complaints Committee forward it to Compliance for investigation and recommendation while proceeding with their review.

The mandate of the Complaints Committee is to investigate the complaint. There does not have to be a complete and exhaustive investigation as some complaints may be self-evident, where little or no investigation beyond considering the complaint itself is required.
Other complaints may be complicated to the point where expert evidence is required, hence the need to retain a qualified person to do a report. It is important to ensure the person investigating has no conflict of interest and is qualified to give evidence on the particular topic as there is a possibility that the person doing the investigation will have to give evidence before the Discipline Committee. Any member of the Association, including the Registrar, can assist or be directed to do investigations or arrange that such be carried out by others.

The Complaints Committee does not require Board approval for expenditures of this nature because of confidentiality; but it if the costs are extremely high, it is good protocol to advise the Board.

The investigation by the Complaints Committee or the Compliance Committee can be done either by phone, interview or in writing:

   a) Request information from the complainant.
   b) Request information from the respondent
   c) Informal interview by the Committee with one or both of the complainant and respondent
   d) Appointment of an independent person which would only be done in complicated cases and if a written report is required, which would only be in the case of an expert. This is costly.

21(b)

The Committee has examined or has made every reasonable effort to examine available records and other documents relating to the complaint.

21(2)

The Committee is not required to hold a hearing or to give any member an opportunity to make oral submissions before making a decision or giving directions under this section; however a member complained against may, in the discretion of the Committee, be requested to appear before it to respond to the complaint.

STEP 10:  If the Complaint and Reply were forwarded to the Compliance Committee, Complaints receive the recommendation of the Compliance Committee prior to making the final decision.

STEP 11:  DECISION

The Complaints Committee should consider and decide:

   a) Whether there is any opportunity to resolve the matter in compliance with paragraph 21(3)(c)
   b) If 21(3)(c) cannot be applied, whether any further investigation is necessary
   c) If no further investigation is necessary, the Committee must comply with paragraphs 21(3)(a) or (b)
Paragraph (c) is intended to enable the Committee to resolve minor matters that would not justify the complaint being referred to the Discipline Committee. This would include such things as misunderstandings, problems with communication between the parties, the correction of some matter that would satisfy the complainant such as the respondent agreeing to following through with a previous commitment. Once the Committee has made its determination under 21(3) (a) there is no longer an opportunity for resolution.

21(3)(c)

(a) Take such action as it considers appropriate in the circumstances to resolve the complaint as long as such action is not inconsistent with the Act or the by-laws.

The Complaints Committee can under 21(3) (c) consider similar recommendations as set out in 23(4) but it must do it in a more informal approach. Paragraph (c) will only be useful if both the Complainant and Respondent agree to the final disposition. For example: The Committee can accept a voluntary payment; would the Respondent agree to take a course, etc. The Committee can also request reimbursement of the costs associated with the review.

In the case of minor alleged offences, the Complaints Committee may direct the solicitor to engage in discussions with the Respondent to determine whether a voluntary resolution to the written complaint or Board resolution may be reached.

In the event the solicitor and the Respondent are able to come to an agreement on a proposed resolution, the solicitor shall submit the proposal in writing to the Complaint Committee for its consideration under section 21(3) (c).

The Committee may:

a) determine that the alleged conduct is not sufficiently serious to constitute professional misconduct or incompetence, and it may issue a “Caution Letter” to the Respondent advising him/her that under different circumstances, the alleged conduct could constitute professional misconduct or incompetence and that a record of the matter will be kept in their file for a period of three years. The Caution Letter is not intended to be disciplinary in nature.

b) in the case of minor alleged offences, the Complaint Committee may direct the solicitor to engage in discussions with the Respondent to determine whether a voluntary resolution to the written complaint or Board resolution may be reached. In the event the solicitor and the Respondent are able to come to an agreement on a proposed resolution, the solicitor shall submit the proposal in writing to the Complaint Committee for its consideration under ss. 21(3)(c). The Committee may:
i. approve the proposal, in which case a written Consent Order shall be entered into between the Complaint Committee and the Respondent, which shall contain:

ii. a description of the nature of the written complaint or Board resolution;

iii. confirmation of the Respondent’s admission of guilt with respect to the allegations;

iv. a description of the resolution reached and the reasons therefore; and

v. the signature of each member of the Complaint Committee and the Respondent;

c) reject the proposal, in which case the Complaint Committee shall continue to deal with the matter in accordance with section 21(3); or

d) make recommended changes to the proposal and present the same to the Respondent and the solicitor for his/her acceptance or rejection. In the event the Respondent accepts the recommended changes to the proposal, a Consent Order shall be entered into in accordance with paragraph i) above. In the event the Respondent rejects the recommended changes, the Complaint Committee shall continue to deal with the matter in accordance with section 21(3).

21(3) (c) should not be used to allow the respondent to escape the consequences of the conduct involved if there is a clear indication of professional misconduct or incompetence. The Complaints Committee should avoid referring any allegation to the Discipline Committee that is frivolous or vexatious, or which could not possibly be supported by the evidence, or which can be resolved under 21(3) (c).

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<td>The Committee, in accordance with the information it receives, may</td>
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<td>a) Direct that the matter be referred, in whole or in part, to the Discipline Committee,</td>
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<tr>
<td>b) Direct that the matter not be referred to the Discipline Committee, or</td>
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Under 21(3)(a), it is not necessary for the Complaints Committee to make any finding in which the evidence could possibly support a finding of professional misconduct or incompetence, or even be completely satisfied that the evidence is sufficient for the Discipline Committee to find against the respondent. The Complaints Committee doesn’t determine innocence or guilt. All the Committee does determine, if in their opinion, the complaint should be forwarded to Discipline. The burden of proof is determined by the Discipline Committee at the hearing.

If the Complaint Committee is satisfied that (a) a member has breached one or more of his/her professional statutes; and (b) that such breach may be serious, the matter must be referred, either in whole or in part, to the Discipline Committee for hearing and determination.

The Committee has the right to refer only part of the complaint to the Discipline Committee. This can be done in circumstances where there are several different allegations contained in the complaint, but
some of them cannot be remotely supported by the evidence or do not constitute any possible violation of the Code, Standards, Act and/or By-Laws.

In giving reasons for its decision under section 21(3)(a) of the Act, the Complaint Committee should state what parts of the complaint are being referred to the Discipline Committee and what parts are not.

**STEP 12:** The Complaints Committee decides upon the disposition of the complaint.

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<td><em>For the purposes of subsection (5), the Committee shall give its decision in writing to the Registrar, including the reasons for its decision.</em></td>
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The decision (Form 3/4) in writing does not have to be extensive, but only sufficient to give an understanding of what was considered by the Committee. There should be no detail regarding specific information or what specific sections might have been breached.

The decision should be signed by all members of the Committee or at least by the Chairperson on behalf of the Committee. The Registrar should prepare a letter acknowledging to the Complaints Committee that the decision was delivered to the Discipline Committee.

The Chair of the Complaints Committee can be asked to testify at the hearing before the Disciplinary Committee.

**STEP 13:** Delivery of Decision by the Committee (Form 5 / 6)

*The details of the decision of the Complaints Committee itself should not be given to the Discipline Committee in order to avoid any possible influence it might have on the decision of that Committee.*

The Registrar should inform the Chairperson of the Discipline Committee of the Decision so that a hearing before the Discipline Committee can be organized. *(Form 5)*

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<td><em>The Registrar shall deliver or send to the complainant, the member complained against and the Board, a copy of the written decision and reasons of the Committee.</em></td>
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**STEP 14:** The Complaints Committee has closed the file and this would only change if there was a request to re-open the matter because of new information that would justify doing so.
REQUEST FOR REVIEW OF DECISION

21(6)
A complainant who is not satisfied with the disposition of the complaint by the Committee may apply to the Board for a review of the treatment of the complaint, which the Board may refer to the Discipline Committee under subsection 22(6)

The complainant would only do this because the complaint wasn’t being forward to Discipline. An application for a review of the treatment of the complaint shall be filed with the Board within 60 days from the date of the dismissal.

This is not an appeal (appeal denotes a mistake) from the decision of the Complaints Committee. All the Board can do is review how the Complaints Committee processed the complaint – did the complaint get treated in a manner consistent with the Act, the principles of natural justice and procedural fairness. This meeting is held “in camera” and the Chair of Complaints must leave the room. If the Board feels the matter should go to the Discipline Committee, then it may direct such under subsection 22(6) and the Registrar writes the referral.

There is nothing in the Act to prevent the Board from referring the complaint back to the Complaints Committee for further consideration. This could be where the Board feels the Committee has not done an adequate job of investigation, or where new information has come to light that should be considered.

Any written resolutions or minutes of the Board under 21(6) of the Act shall not name the Complainant or the Respondent.
DISCIPLINE COMMITTEE & PROCEDURES
DISCIPLINE COMMITTEE

23(1)  
The Discipline Committee shall,  
a) When so directed by the Board, or the Complaints Committee, hear and determine allegation of professional misconduct or incompetence against a member of the Association; and  
b) Perform such other duties as are assigned to it by the Board.

22(1)  
There shall be a Discipline Committee of five persons, four to be appointed by the Board and one, not a member of the Association, to be appointed by the Lieutenant-Governor in Council from a list of three names submitted by the Board.

22(2)  
Members of the Board who are not appointed to the Discipline Committee, with the exception of the secretary, shall be alternate members of the Committee and may be called upon by the chairperson of the Committee to act as necessary.

22(3)  
Subject to subsection (4), five members of the Committee constitute a quorum, and all disciplinary decisions require the vote of a majority of the members of the Committee present at the hearing, and shall be in writing with reasons.

22(4)  
Where the Committee commences a hearing and not more than two members become unable to act, the remaining members may complete the hearing and shall have the same authority as the full committee.

22(5)  
The Board shall name one member of the Committee to be chairperson.

23(10)  
Where a proceeding is commenced before the Discipline Committee and the term of office of a member expires or is terminated, whether as a member of the Board or the Committee, other than for cause, before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Committee for the purpose of completing the disposition of the proceedings in the same manner as if the term of office of the member had not expired or been terminated.

24(10)  
No member of the Discipline Committee shall participate in a decision of the Committee unless the member was present throughout the hearing and heard the evidence and argument of the parties.

Because the Committee must maintain a high level of objectivity and impartiality, it is prohibited from involving itself in any way in the investigative stages with respect to the complaint. All investigation is done at the Complaint Committee level.

The Solicitor should be available to assist throughout the discipline procedure especially if the solicitor is required to prosecute the complaint. If the solicitor is required to prosecute complaints before the
Discipline Committee, the solicitor cannot, at the same time, to advise the Discipline Committee on issues of procedure and law and is there in a purely advisory capacity. The Discipline Committee is free to retain another solicitor for that purpose. The need to engage the services of another solicitor for a different firm would usually be evident well in advance of a hearing. Notice need not be given to the parties of the committee’s intention to have counsel present.

The responsibilities of the Discipline Committee are:

1. To conduct hearings for the purpose of determining allegations of professional misconduct or incompetence referred to it by Complaints 21(3)(a) or the Board (22(6)(b)
2. Under 23(2) (b), the Committee determines, in its opinion, what constitutes professional misconduct.
3. The determination of whether or not a member is incompetent as set out under 23(3) (a). The test to be applied with respect to incompetence is indicated by the underlined words and a serious degree of incompetence is required.

22(6) (b)
_The Board, by resolution, may_

b) _Direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence against a member_

This by-passes the Complaints Committee.

23(2)
_A member may be found guilty of professional misconduct by the Discipline Committee if_

a) _The member has been convicted in a court of competent jurisdiction of an offence in which, in the opinion of the Committee, is relevant to the member’s suitability to practise real estate appraisal, or_

b) _The member has been guilty, in the opinion of the Committee, of professional misconduct._

23(3)
_The Discipline Committee may find a member to be incompetent if in its opinion_

a) _The member has displayed in carrying out the members’ professional responsibilities a lack of knowledge, skill, or judgment, or disregard for the welfare of the public of such nature or extent to demonstrate the member is unfit to carry out the responsibilities of a person engaged in the practice of real estate appraisal,_

b) _The member is suffering from a physical or mental condition or disorder of such a nature or extent as to render the member unfit to engage in the practice of real estate appraisal._

**NOTE:** The solicitor advised 23(3) (b) is rarely prosecuted and the Committee needs to be very careful in this determination.
In proceedings before the Discipline Committee, the Association and the member whose conduct is being investigated are parties to the proceedings.

PROCEDURE:

STEP 1: The Registrar writes a letter to the Respondent, advising the Respondent that the Registrar has received a decision (with reasons) from the Complaints Committee and that the Complaints Committee has referred the decision to the Discipline Committee for a hearing.

STEP 2: Registrar notifies the Chair of Discipline and the solicitor that the Complaints Committee have made a decision to have Discipline proceed with a hearing.

STEP 3: Send the file to the solicitor for review.

STEP 4: MEMBERS CHOSEN FOR HEARING
1. The hearing may be conducted in either official language and therefore the Discipline Committee must be capable of understanding the evidence at the hearing themselves. The individual witness may give evidence through a translator, this is not acceptable for members of the Committee.
2. The Chairperson of the Discipline Committee must inquire of each member whether there is the possibility of a conflict of interest.
3. Bias – This relates to a panel member having prior knowledge of the subject matter of the complaint that could adversely affect the member’s judgment.

STEP 5: Solicitor, Chair of Complaints and Registrar discuss the file and develop a charge.

STEP 6: Registrar should contact the person who will be prosecuting the complaint to obtain a date, time and place for the Hearing.
STEP 7: Registrar finds out when all parties are available for a Hearing.

STEP 8: Prior to the hearing, the Registrar shall notify the parties of the members selected to serve on the Panel. A party who wishes to object to an appointed panel member must do so in writing detailing their reasons to the Registrar within 3 days of receiving the names.

STEP 9: The Chairperson of the Committee in conjunction with the solicitor will review the objection and make a decision.

STEP 10: Registrar books room, engages court reporter and has room set up in a typical court room layout. The physical layout of the room should be adequate to accommodate the Committee at a head table and with separate tables for the parties and witnesses. There should also be some space for other persons who may be entitled to attend, including witnesses who may be waiting to give evidence.

NOTICE OF HEARING

STEP 11: Solicitor usually prepares and sends Notice of Hearing setting out the date, time and place for the hearing and the allegations to be heard. Respondent is notified they have the right for two hearings, asked if they wish one or two hearings, and if he/she wishes to admit to any of the allegations prior to the hearing. The Registrar may facilitate such admissions between the solicitor and the Respondent. Under s. 23(k), given the cost consequences which may be fixed against the Respondent, he/she can voluntarily admit the substance of the Complaint and proceed directly to a penalty hearing. These admissions may result in reduced costs.

If the Respondent decides to have a single hearing then the parties will address the substance of the allegations contained in the written complaint and the potential penalty, before the Discipline Committee makes a decision on the matter.

If the Respondent objects to a single hearing, then the Discipline Committee will proceed with a dual hearing. This means that the parties will address the substance of the allegations, and the Discipline Committee will make its decision before hearing any arguments concerning penalty, if required. This means that there will be two hearings, one to address the disciplinary matter and the second to address the issue of penalty, if required.

It is important to note, that when two hearings are required, there is an increase in costs for the Association to prosecute the matter. In the event that the Respondent is found
guilty of professional misconduct or incompetence, there is no set limit to the amount of costs which can be imposed on the Respondent by the Discipline Committee.

**STEP 12:** The Notice of Hearing is served on the Complainant and Respondent. This should be personal service and can be done by anyone. All complainants have to appear at their expense. The Association only covers cost should it be done by satellite and then the Association has to arrange for the room and equipment. An Affidavit of Service is required.

It is fairly common for a Respondent to request an adjournment after the Notice of Hearing has been served. Requests for postponement must be made in writing to the Registrar, but sometimes direct to the Chairperson of the Committee, prior to the hearing. It is up to the Committee to decide whether it should be granted. The proper test to be applied is whether the party requesting the adjournment would be prejudiced by being forced to proceed on the given date; for example unavailability of counsel or witnesses, illness or death and/or it is not prejudicial to the public interest to grant the request.

Before agreeing to an adjournment, the Chairperson of the Committee should consult with the parties involved and establish an alternative date to which the parties commit themselves.

**STEP 13:** The Respondent is given an opportunity to examine any written or documentary evidence that will be presented at the hearing (section 24(2) of the Act).

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**24(2)**

*A member whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine a reasonable time before the hearing, any written or documentary evidence that will be produced, or any report the contents of which will be given in evidence at the hearing.*

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**STEP 14:** Each party has the right to call witnesses – any person who may have knowledge of the matters in question. The party calling the witness is responsible for notifying the witness. This is generally only done at the request of either the Association or the Respondent to have a witness summoned to give evidence or produce documents at the hearing. The request for a summons to witness should be made in writing to the Registrar, who has been designated by the Discipline Committee pursuant to section 24(5) of the Act to act on its behalf. The request shall state the name and address of the witness and where they may be served and should be provided to the Registrar as soon as possible prior to the schedule hearing date.
With the exception of the Complainant, the Committee shall exclude witnesses from the hearing room until they are required to give testimony.

The summons will be signed by the Chairperson of the Committee or Registrar who have been designated pursuant to section 24(5) of the Act. (Form 7 – Summons to Witness)

If a person who has been served with a summons in accordance with section 24(5) of the Act fails to appear before the Discipline Committee, the Committee may by application to a Judge of the Court of Queen’s Bench cause the person to be cited for contempt under the New Brunswick Rules of Court.

**STEP 15:** The Registrar compiles the documents for the Discipline Committee to be sent to the Committee just prior to the hearing. Therefore, in order to make certain that the objectivity and impartiality of the Committee is not jeopardized, the only documents it should have in advance of the hearing are as follows:
1. Notice of Hearing
2. The Complaint
3. The Reply from the Respondent
4. Decision of Complaints Committee

**STEP 16:** The Hearing is held. Although section 24(4) states that hearings are held in private, similar legislation has been struck down by courts across the country. The hearing will be open to the public.

**24(5)**

The Discipline Committee, or someone designated by it to act on its behalf, may by summons in a form prescribed by by-law, require the attendance before it of any person whose evidence may be material to the subject matter of the hearing and may order any person to produce such records, reports or other documents as appear necessary for the purpose of the hearing.

**24(4)**

Hearings of the Discipline Committee shall be held in private unless the party whose conduct is being investigated requests otherwise by notice delivered to the Registrar at least five days before the day fixed for the hearing, in which case the Committee shall conduct the hearing in public except where

a) Matters involving public security may be disclosed, or
b) The possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.
The Respondent is entitled to attend with legal counsel to present a defence to the complaint by presenting both evidence and argument. There are no requirements for the Respondent to advise if they will be represented.

If the Respondent admits some or all of the allegations in the complaint, there is generally no need to call evidence on those points. Otherwise, allegations or positions have to be proven through credible evidence at the hearing.

All other documentation and evidence must be introduced during the course of the hearing unless the parties, being the Complainant and Respondent, enter into an agreed statement of facts, including documents. An Agreed Statement of Facts is put in writing and signed by the parties before the hearing; however in simpler cases, the agreed facts may simply be recited at the hearing. It is preferable that Agreed Statements of Fact and Document be done in advance of the hearing to enable circulation to the Committee for review. This expedites and shortens the hearing. Solicitor advised this is rarely done.

**FAILURE OF A PARTY TO ATTEND**

24(6)  
A person served with a summons shall attend and answer all questions concerning matters being inquired into at the hearing and shall produce to the Discipline Committee all records, reports or other documents that are under the custody of control of that person.

24(8)  
If a person on whom a summons has been served, either personally or by leaving a copy of the summons with some adult person at his last or most usual place of residence or business, fails to appear before the Discipline Committee or upon appearing refuses to be sworn or refuses without sufficient cause to answer any question relevant to the hearing, the Committee may by application to a Judge of The Court of Queen’s Bench of New Brunswick, cause the person to be cited for contempt under the provisions of the Rules of Court in the same manner and to the same extent as if the alleged contempt took place in proceedings before the Court of Queen’s Bench.

The Association must file proof that the Respondent was served with the Notice of Hearing which is usually an Affidavit of Service or some other proof that the Respondent has been served.

The Hearing should be adjourned long enough to enable someone to try and contact the Respondent to ascertain whether the Respondent intends to attend as there could be a delay due to weather conditions or other intervening causes.
Once the Committee is satisfied that the Respondent has been served and there is no sign of not attending, the hearing can proceed.

**RECORD OF PROCEEDINGS**

This is generally done by a certified court stenographer and can be arranged by the Registrar.

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<th>24(9)</th>
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<td>The oral evidence taken before the Discipline Committee shall be recorded, and if a party requests a copy of the transcript it shall be furnished at the party’s expense.</td>
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**NATURE OF EVIDENCE**

**Direct Evidence:** is firsthand knowledge and experience of the witness and not based on what the witness has learned from other sources. This applies to documentation introduced as evidence through the witness.

**Hearsay Evidence:** comes from or is learned from other sources. It is best not to rely on hearsay evidence.

Any admission made by the Respondent to a third party is an exception to the hearsay rule. If the Respondent has admitted to being engaged in unethical conduct, then the person hearing the admission may be called to testify to this fact.

The Committee can allow it to be used as long as there is reason to believe its accuracy and if it has significant bearing on issues relevant to the case.

**Documentary Evidence:** must be relevant to the issues being heard. Originals are preferred but copies can be used if identified by the witness and are relevant.

**Expert Witness:** The expertise of the witness must be established so that the Committee is satisfied that any opinion given is from a well-qualified and knowledgeable person whose judgment on the particular issue can be taken seriously. Although the Committee doesn’t have to accept the opinion, the fact is that in the absence of any contradictory evidence, it should be accepted or certainly given a great deal of weight.
**Privileged Communications**: Most communications between a person and that person’s solicitor are subject to solicitor-client privilege and cannot be disclosed unless the person waives the privilege.

**ROLE OF CHAIRPERSON AT HEARING**

The Chairperson is responsible for presiding over the hearing. This means being the primary spokesperson for the Committee and taking charge to make certain the hearing proceeds in an orderly and expeditious manner.

All parties appearing before the hearing should address the Chairperson.

At the commencement of the hearing, the Chairperson should do the following:

a) Ask the parties to identify themselves by name and state who they represent. If the parties are represented by lawyers, this will be done by them.

b) The parties should be asked whether they question the jurisdiction of the Committee to conduct the hearing. If the answer is “no” from both parties, then the hearing should proceed.

If the answer is “yes” from any party, then that party should be asked to state their objection. It is then up to the opposite party to respond.

After hearing both parties, the Committee will have to make a decision whether to proceed or not.

If the jurisdictional objection is sufficiently serious it may be necessary for the Committee to adjourn in order to allow the party raising the objection to make application to the court to determine the issue.

c) Assuming the hearing is to proceed, the parties should then be asked whether there are any other concerns or matters to be addressed at the outset. This may be as simple as addressing the order in which the evidence is to be called, the number of witnesses, or to clarify any procedural concerns that relate to how the hearing is to proceed.

If there is agreement with respect to some of the facts or documents, these should be identified at the commencement of the hearing and marked as exhibits by giving each document individual numbers or letters.
d) When the preliminaries are completed, the Association should be requested to proceed first as it has the onus of proving the merits of the complaint.

e) The Notice of Hearing, which outlines the charges, is read into the record or is marked as an exhibit, or both.

f) Documents that are identified and introduced through witnesses should be similarly marked as exhibits.

| 24(7) | The testimony of any witness may be taken under oath or affirmation which may be administered by the chairperson of the Discipline Committee or any person designed to do so on behalf of the chairperson. |

As witnesses are called, it is the responsibility of the Chairperson to administer the oath or affirmation, or to request that someone else do so. It is preferable this be done by the Chairperson, but solicitor can perform.

Committee members are entitled to ask questions of witnesses or of counsel for the parties in order to get a better understanding of the evidence and arguments that may be presented; however, they should not engage in debate and arguments with the parties. Do not interrupt unless something has been missed or not heard and clarification is important.

The Chairperson of the Committee may rule on the admissibility of evidence, but may require a recess to confer with the other committee members or with counsel.

**OBJECTIONS**

When objections which could be: relevance of the evidence; the authenticity of a document, or the ability of the witness to testify about a certain thing are made, the Chairperson should ask the person making the objection to explain why. The opposite party should then be asked to respond. If needed, the Committee could adjourn to enable discussion or the Committee can reserve its decision on the objection and make a ruling after the Hearing has concluded. The Committee may have to seek legal advice. The Committee then makes a decision one way or the other on the validity of the objection.

**CROSS EXAMINATION**

Once a witness has completed giving evidence, the Respondent may conduct a cross-examination which must be restricted to issues that are relevant and not on the witnesses’ credibility. If cross examination becomes inappropriate, the opposite party will object and the Committee will have to make a ruling. Do not interrupt unless something has been missed or not heard and clarification is important.
ARGUMENT
Once both parties have completed introducing evidence, they are entitled to argue their positions. The Association proceeds first. After the Respondent concludes argument, the Association may be allowed to reply by making further argument on matters not already addressed.

Most arguments are presented orally; however, in complicated matters, one or more of the parties may request the opportunity to submit written arguments to the Committee. If the Committee agrees, a time should be fixed in which to do so and also time fixed for the other party to respond.

Written arguments are submitted to the Committee for consideration before reaching a decision.

DECISION
One of the most difficult things the Committee has to decide is the appropriateness of the penalty to be imposed on the respondent – see subsection 23(4) and 23(5). The Committee can impose either one or a combination of the various items, depending on the circumstances.

If the Committee is unanimous, the Chairperson puts it in writing summarizing the facts and reasons on which the Committee reached its decision including penalty, fines and/or costs imposed which may include time frames for each of these items.

The written decision should clearly set out the consequences of failing to complete the various aspects of the decision. If a suspension of membership is imposed, the start and end dates of such suspension should be specified. Further, if the Respondent is ordered to take an educational course, the committee should first determine when the course is available and specify how long the member has to successfully complete the course. This would also apply to review of work product etc.

The written decision should be signed by each member of the Committee or at least by those members who are in the majority. The decision is then provided to the Association, Respondent, Registrar and Complainant.

The effective date of the committee’s decision is the date of the decision.

Under section 23(8) of the Act, the decision takes effect immediately, notwithstanding that an appeal may be initiated, unless the court orders otherwise.

A member who fails to fulfill the requirements of the decision within the period of time ordered by the Committee shall lose his/her status as a “member in good standing” with the Association. Such suspension and removal from the registry remains in effect until such time as the member has satisfied
all outstanding amounts owing. The Association may file a civil action against the Respondent to enforce payment of any fines and/or costs imposed by the decision of the Committee.

24(11)

*Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the party who produced them, be returned by the Committee within a reasonable time after the matter in issue has been finally determined.*

Copies of all documents are kept at the Association office.

**PENALTIES TO BE CONSIDERED**

23(4)

*Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may do one or more of the following:*

a) Revoke the member’s right to practise real estate appraisal;

b) Suspend the member’s right to practise real estate appraisal for a stated period, not exceeding twenty-four months;

c) Accept the undertaking of the member to limit the professional work of the member in the practice of real estate appraisal to the extent specified in the undertaking;

d) Impose terms, conditions and limitations on the right to practise real estate appraisal including, but not limited to, the successful completion of a particular course or courses of study, as are specified by the Committee;

e) Impose specific restrictions on the right to practise real estate appraisal including, but not limited to, requiring the member to

i. Engage in the practice of real estate appraisal only under the personal supervision and direction of another member,

ii. Not alone engage in the practice of real estate appraisal,

iii. Accept periodic inspections by the Committee, or its delegate, of the books, accounts records and work of the member in connection with the member’s practice,

iv. Report to the Registrar, or to such committee of the Board as the Committee may specify, on such matters with respect to the member’s practice for such period and times, and in such form, as the Committee may specify;

f) Require that the member be reprimanded or counselled and, if considered warranted, direct that the fact of the reprimand or counselling be recorded on the register;

g) Revoke or suspend for a stated period of time the designation of the member by the Association as a specialist in any branch of the practice of real estate appraisal;

h) Impose such fine as the Committee considers appropriate, to a maximum of five thousand dollars, to be paid by the member to the Treasurer;

i) Require the member to repay, waive or reduce the fee charged by the member in respect of the practice of real estate appraisal related to the finding of professional misconduct or incompetence;
Subject subsection (5) direct that a finding or order of the committee be published in an official publication of the Association in detail or in summary and either with or without the name of the member;

Fix the costs of any investigation or procedures by the Complaints Committee and the Discipline Committee to be paid by the member;

Direct that the imposition of a penalty be suspended or postponed for such a period and upon such term or for such purpose as maybe specified by the Committee, but not limited to,

i. The successful completion by the member of a particular course or courses of study,

ii. The production to the Committee of evidence satisfactory to it that any physical or mental condition or disorder in respect of which the penalty was imposed has been overcome.

23(5)
The Discipline Committee shall cause an order of the Committee revoking or suspending the right to practise real estate appraisal to be published, with or without the reasons therefor.

23(9)
Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct of the member.

23(6)
The Discipline Committee shall cause a determination by the Committee that an allegation of professional Misconduct or incompetence was unfounded to be published upon the request of the member against whom the allegation was made.

23(7)
Where the Discipline Committee revokes, suspends or restricts the right to practise real estate appraisal on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision unless the court to which the appeal is take otherwise orders.

23(8)
Where the Discipline Committee revokes, suspends or restricts the right to practise real estate appraisal on a ground other than incompetence, the decision does not take effect until the time for appeal from the decision has expired, or until an appeal has been disposed of or abandoned, except that when the Committee considers it is necessary for the protection of the public it may otherwise order.

APPEAL
The Complainant can’t appeal as they are not a party to the proceeding.

25(1)
A party to the proceedings before the Discipline Committee may appeal within thirty days from the date of the decision or order the Committee to the Court of Queen’s Bench of New Brunswick by way of Notice of Application in accordance with the Rules of Court with such changes as the circumstances require.

25(2)
Upon the request of a party desiring to appeal, and upon payment of the fee therefor, the Registrar shall furnish the party with a certified copy of the record of the proceedings, including the documents received in evidence and the decision or order appealed from.

25(3)
An appeal under this section may be on questions of law or fact, or both. The Court may,

a) Affirm, vary or rescind the decision of the Committee;
b) Exercise all powers of the Committee;
c) Direct the Committee to take any action which it has the power to take;
d) Substitute its opinion for that of the Committee; or

e) Refer the matter back to the Committee for rehearing in whole or in part, in accordance with such directions as the Court considers proper.

OFFENCES

26 Upon summary conviction for the first offence is a fine of not less than five hundred dollars and costs, and for any subsequent offence to a fine of not less than one thousand dollars and not more than five thousand dollars and costs, or to imprisonment for not more than six months, or both, and upon failure to pay a fine to imprisonment for not more than six months.

27 Any person who procures or attempts to procure admission to the Association for him or herself or for another person by making, or causing to be made, any fraudulent representation or declaration, either oral or written or who makes any false statement in any application, declaration or other document under this Act or the by-laws, commits an offence punishable on summary conviction.

28(1) Upon conviction of any person for an offence under section 26, the judge convicting the person may in addition to any other punishment imposed, immediately prohibit that person from engaging in the practice of real estate appraisal or from doing anything for which the person was convicted.

28(2) Any person who fails to comply with an order under subsection (1) commits an offence and is liable to a fine of not less than one thousand dollars and not more than five thousand dollars or to imprisonment for a term of not more than six months, or both, and on failure to pay the fine to imprisonment for not more than six months.
FORMS
FORM 1 – LETTER FORWARDING COMPLAINT TO RESPONDENT

(Respondent’s Address)

Re: Complaint from XX dated

On __________, the Association received a written complaint against you. A copy of the Complaint is enclosed, pursuant to paragraph 21(1)(a) of An Act to Incorporate the New Brunswick Association of Real Estate Appraisers, (the “Act”) which is available on our website.

The complaint has been referred to the Complaints Committee for its consideration and investigation.

Please note that you are entitled to submit a written Reply to the complaint for the consideration of the Complaints Committee and you must do so not later than (insert date).

Your written Reply can be forwarded to the Complaints Committee in either French or English. We further advise that all future communications regarding this matter will be based on the language which you use in your Reply and will not change unless you advise otherwise.

With respect to the content of your Reply, you should make any explanations or representations you wish to make in reference to the complaint, including any relevant documents.

The Complaints Committee will make every reasonable effort to examine all relevant documents, including your Reply, and may in its sole discretion request that you appear before it in person or by telephone, pursuant to s. 21(2) of the Act.

Upon conclusion of its deliberations, the Complaints Committee will issue a decision:

1. Directing that the Complaint, in whole or in part, be directed to the Discipline Committee;
2. Directing that the Complaint be rejected; or
3. Directing action that it considers appropriate in the circumstances to resolve the complaint.

Should you wish to discuss the complaints and discipline process, the potential resolution of this matter or any other issue please contact the undersigned.

Yours truly,

(Registrar)
(Nom et adresse du de défendeur)

**Objet :**

Cher (Nom du défendeur)

Le ___(date)___, l'Association a reçu une plainte écrite contre vous. Une copie est jointe à la présente, conformément à l’alinéa 21(1)(a) de la *Loi constituant la Association des évaluateurs immobiliers du Nouveau-Brunswick*, disponible sur notre site web.

La plainte a été renvoyée au Comité de Plaintes pour fins d'examen et d'enquête.

Veuillez noter que vous pouvez soumettre une réponse écrite à la plainte à l’intention du Comité des plaintes et devez le faire au plus tard (insérer la date).

Soyez avisé que votre réponse écrite peut être en français ou en anglais et toute communication qui suivra à ce sujet sera dans la langue choisie dans votre réponse à moins que vous nous en indiquiez le contraire.

Votre réponse peut contenir toute explication ou observation que vous désirez faire en rapport avec la plainte, y inclus tout document pertinent.

Le Comité des plaintes fera tous les efforts pour étudier tous les documents pertinents, y compris votre réponse, et peut, à sa discrétion, demander que vous comparaissiez devant le Comité en personne ou par téléphone, conformément à l’alinéa 21(2) de la *Loi*. À la suite de ses discussions, le Comité des plaintes rendra une décision :

1. Ordonner que la plainte, en partie ou en entier, soit renvoyée au Comité de discipline
2. Ordonner le rejet de la plainte; ou
3. Ordonner toute action qu’il jugera appropriée dans les circonstances pour résoudre la plainte.

N'hésitez pas à communiquer avec le soussigné si vous voulez discuter des procédures de plaintes et de discipline ou de la résolution possible de cette situation.

Veuillez agréer, **Monsieur-Madame**, l’expression de mes salutations les plus distinguées.

(Registraire)
FORM 2 – LETTER CONFIRMING RECEIPT OF COMPLAINT

(Date)
(Complainant’s Address)
Dear (Complainant’s Name)

Re: ______________

The Association acknowledges receipt of your complaint dated ______________.

Pursuant to An Act to Incorporate the New Brunswick Association of Real Estate Appraisers, (the “Act”), your complaint has been forwarded to our Complaints Committee. For your reference, a copy of the Act is available on our website.

If the Complaints Committee determines that it has jurisdiction in this matter, then it will proceed to consider and investigate your complaint and you will be notified of the results of the investigation in due course.

Please note, if this complaint is the subject matter of civil litigation, the Complaints Committee will proceed with the Complaint until the completion of the civil litigation involving the respondent.

Upon conclusion of its deliberations, the Complaints Committee will issue a decision:

1. Directing that the Complaint, in whole or in part, be directed to the Discipline Committee;
2. Directing that the Complaint be rejected; or
3. Directing action that it considers appropriate in the circumstances to resolve the complaint.

With respect to the above noted item (3) and the potential resolution of this complaint, you are advised that the Registrar can discuss various options available to the Complaints Committee with you at any time.

Should the Complaints Committee refer this Complaint to the Discipline Committee, you may be summoned to appear as a witness. All costs associated with your appearance at the Discipline Committee Hearing are your responsibility.

Should you wish to discuss the complaints and discipline process, the potential resolution of this matter or any other issue please contact the undersigned.

Sincerely,

Registrar
FORM 3 – SAMPLE DECISION OF THE COMPLAINTS COMMITTEE (referring decision to Discipline)

RE: DECISION OF COMPLAINTS COMMITTEE WITH RESPECT TO COMPLAINT OF ____________________
DATED THE _______ DAY OF _______ 20______

The Complaints Committee investigated and considered the above noted Complaint and determined the following:

Decision: Having regard to the information which was received by the Complaints Committee, including the Complaint and the Reply, the Complaints Committee has determined that the matter should be referred to the Discipline Committee pursuant to s. 21(3)(a) of the Act.

Reasons: The Complaints Committee has determined that:

1. The substance of the complaint is within the jurisdiction of the New Brunswick Association of Real Estate Appraisers; or
2. The substance of the complaint is with merit that could constitute professional misconduct or incompetence of a Member.

Sincerely,

(Signature of Complaints Committee Chair)
FORM 4 – SAMPLE DECISION OF THE COMPLAINTS COMMITTEE (not referring the decision)

RE: DECISION OF COMPLAINTS COMMITTEE WITH RESPECT TO COMPLAINT OF ______________________
DATED THE ______ DAY OF ______ 20____

The Complaints Committee investigated and considered the above noted Complaint and determined the following:

Decision: Having regard to the information which was received by the Complaints Committee, including the Complaint and the Reply, the Complaints Committee has determined that the matter should not be referred to the Discipline Committee pursuant to s. 21(3)(b) of the Act.

Reasons: The Complaints Committee has determined that:

3. The substance of the complaint is not within the jurisdiction of the New Brunswick Association of Real Estate Appraisers; or
4. The substance of the complaint is without merit in that it would not constitute professional misconduct or incompetence of a Member.

Sincerely,

(Signature of Complaints Committee Chair)
FORM 5 (letter referring complaint to Discipline Committee)

DATE

VIA REGULAR MAIL

ADDRESSS

RE: Complaint filed against ______________

The Complaints Committee, pursuant to subsection 21(3) of the Act has referred the Complaint referenced above to the Discipline Committee for a hearing.

Enclosed is a copy of the decision of the Complaints Committee dated ______________.

The Discipline Committee will arrange for a hearing of this matter for the Association and Respondent. The Association shall be represented by (solicitor) in presenting the complaint to the Discipline Committee.

Therefore, the Respondent should consult with the Registrar in arranging the date, time and place for a hearing. An appropriate Notice of Hearing will provide further details regarding the date of the hearing as well as the procedures and other options which are available to the Respondent. The Complainant may also be summoned to testify at the Discipline Hearing. All costs associated with the Complainant’s appearance are the responsibility of the Complainant.

Should you have any questions please do not hesitate to contact the undersigned.

Yours truly,

(Signature of the Registrar)
FORM 6 (letter not referring complaint to Discipline Committee)

DATE

VIA REGULAR MAIL

ADDRESS

RE: Complaint filed against ______________

The Complaints Committee, pursuant to subsection 21(3) of the Act has decided not to refer the complaint referenced above to the Discipline Committee for a hearing.

Enclosed is a copy of the Complaints Committee’s decision dated the ______________.

If you are not satisfied with the disposition of the Complaint, you are entitled under subsection 21(6) of An Act to Incorporate the New Brunswick Association of Real Estate Appraisers, to apply to the Board of Directors of the Association for a review of the treatment of the Complaint, within 30 days of receipt of the decision.

In conducting a review, the Board’s function is to determine if the Complaints Committee decision was determined in a manner consistent with the Manual and the Act. The Review is not a new proceeding where the Board substitutes its personal judgment for that of the Complaints Committee and the Board has no role in investigating or considering the merits of the complaint.

Should you have any questions please do not hesitate to contact the undersigned.

Yours truly,

(Signature of the Registrar)

In order to maintain confidentiality, the decision can be sent to the Board in the care of the Registrar who will keep the decision on file for the Board. The decision does not actually need to be forwarded to individual Board members.
FORM 7 - SUMMONS TO WITNESS

TO: (NAME AND ADDRESS OF WITNESS)

You are required to attend at the hearing of this matter at specific location on day of week the date day of month, 20 at a.m. (or p.m.) and to attend from day to day thereafter as required, to give evidence relating to this matter and also to bring with you and produce at the hearing the following documents:

If you fail to attend or remain in attendance as required by this Summons, a Warrant may be issued directing that you be apprehended and brought before the Court where you may be detained in custody until your presence is no longer required.

DATED AT THIS DAY OF , 20

(Chair of Discipline Committee or Designated Registrar)

NOTE: The person causing this Summons to Witness to be served on you, and to whom any inquiries are to be directed.

Name Who
ADDRESS
TELEPHONE #