



INFORMATION FOR UNREPRESENTED INDUSTRY MEMBERS BEFORE RECA HEARING PANELS

This information is intended to assist industry members who are involved in RECA's hearing proceedings but who are not represented by legal counsel or other representation. It details how a RECA hearing works and the steps an industry member might take to prepare for a hearing.

RECA conducts hearings in accordance with the principles of natural justice and fairness. The hearing process is transparent and is open for public viewing.

A hearing may have a serious effect on an industry member. In advance of a hearing, industry members should be well-informed about hearing stages and processes, and properly prepare themselves.

HEARING PANELS

Function of a Hearing Panel

Hearing Panels of the Real Estate Council of Alberta (the panel) hear individual cases of industry members whose conduct is alleged to be conduct deserving of sanction.

The panel hears evidence and submissions presented by both parties, the case presenter on behalf of the executive director and the industry member. The panel then considers the evidence and submissions before them, and issues a decision on its findings, including whether the industry member's conduct is deserving of sanction and if so, the appropriate sanction and possibly costs.

Composition of a Hearing Panel

Panels are made up of three members, which could consist of industry members and public members of the Real Estate Council of Alberta. The panel will consider the matter in full and make a decision as to whether the executive director has proven the misconduct case (that the industry member's conduct is conduct deserving of sanction).

SETTLEMENT OPTION

Consent Agreement

Before hearing processes commence, an industry member may be given an opportunity to participate in the consent agreement process. In such a case, the case presenter for the executive director will have reviewed the investigation file and will contact the industry member by telephone to discuss hearing processes and the case, disclosure of the investigation file, the facts leading to the executive director's belief that there is conduct deserving of sanction, and a proposed sanction and costs. The proposed sanction will be based on RECA case precedents and other authorities. Because the

consent agreement process is voluntary and consensual, at this stage there is no formal referral of the matter to a Hearing Panel for a formal hearing.

Upon an industry member's request, the case presenter for the executive director will draft a consent agreement for the industry member's review and consideration. It will include a statement of facts, conclusion of breach, sanction and costs. The consent agreement is entered into on a consensual basis by the executive director and the industry member in question. If the industry member and the executive director are prepared to agree to the consent agreement, the industry member will sign it and swear an affidavit of execution. The executive director then signs the consent agreement. Following that, the consent agreement will be provided to a ratification Hearing Panel for its consideration. It is the Hearing Panel that must decide whether to ratify (approve) or reject the consent agreement.

If ratifying the consent agreement, the Hearing Panel Chair will approve and sign it. Once approved and signed, the consent agreement is an Order of the Hearing Panel and enforceable. The industry member is served with a copy of the decision. If the Hearing Panel rejects the consent agreement, the panel may wish to identify areas of concern and suggestions for resolution. If those suggestions are not acceptable to the executive director and the industry member, and the parties are unable to come to terms that would satisfy the wishes of the ratification Hearing Panel, the formal hearing process will commence.

THE NOTICE OF HEARING

The formal hearing process begins with a referral of the matter to a Hearing Panel, and a document called the notice of hearing is issued. The notice of hearing sets out the allegations of misconduct against the industry member, including particulars (the alleged facts of the case), allegations of contraventions of legislation and conduct deserving of sanction. It also sets the date, time and place of the hearing.

DISCLOSURE OF THE INVESTIGATION FILE

Disclosure of the investigation file, which contains all of the evidence gathered during the investigation, is provided to the industry member along with the notice of hearing. The case presenter for the executive director will attempt to establish the industry member's misconduct using the contents of the investigation file. The industry member may also use the investigation file to defend against the allegations of misconduct.

The investigation file is not provided to the panel. In most cases, in advance of the hearing, the panel members will have only received a copy of the notice of hearing. The panel members are independent and impartial. At the hearing, it will be up to the case presenter for the executive director and the industry member to introduce as evidence any contents of the investigation file they believe are relevant and important. This is usually done through a sworn witness who has direct knowledge of the evidence and can provide the panel members with information.

ADJOURNMENTS

If the industry member is unable to attend on the date set out in the notice of hearing, he or she may apply to have the hearing moved to a later date (an adjournment). If an adjournment is needed, the industry member should make an application as far in advance of the hearing date as possible.

Adjournment Application Process

If it is a first application for an adjournment, the industry member must write a letter addressed to the RECA hearings coordinator to apply for an adjournment. The letter should set out the reason for the adjournment request, the length of the adjournment requested and it should include alternate dates of availability.

The case presenter for the executive director will be asked to respond to the industry member's adjournment application. If the case presenter does not dispute the adjournment, they will provide this in writing to the hearings coordinator.

The hearings coordinator will provide the industry member's application and the case presenter's response to the panel. The panel will consider the application and issue a written decision and, if the application is approved, set a new date, time and location for the hearing.

The process for subsequent adjournment applications is the same as set out above. However, once the written application is received from the industry member, the hearings coordinator will schedule a teleconference for the panel to hear the application, all parties will attend the teleconference and the Hearing Panel will issue a written decision as above.

BEFORE THE HEARING

Industry members should begin preparing their case before the scheduled hearing date. Some of the things industry members may wish to consider in preparation include witnesses they may wish to call and any documentary evidence they wish to present. It is very important that the industry member comes to the hearing fully prepared to present their case.

THE HEARING

It is important that the industry member attend the hearing on the date and time scheduled in the notice of hearing, and be prepared to present their case to the Hearing Panel. The industry member should arrive with the notice of hearing, witnesses, documentary evidence, other evidence and submissions, and be ready to proceed on the hearing day.

It is the responsibility of the case presenter on behalf of the executive director (possibly a lawyer or case officer) to prove the alleged misconduct. If the industry member intends to dispute the misconduct allegations, it is important that he or she attend the hearing prepared to refute and defend against the allegations set out in the notice of hearing. It is not enough for the industry member to simply disagree with the allegations; the industry member must be prepared to call their case.

Be Prepared to Call Evidence

There are various options an industry member may wish to consider when preparing for a hearing. Industry members may wish to or could be called to give evidence, and they should be prepared to testify. In such a case, they will be required to take an oath or make an affirmation before speaking to the Hearing Panel.

Submissions are not evidence and relate more to a summary of the case that the industry member may be asked to make at the beginning or the end of the hearing. Therefore an industry member should have any documents with them that the industry member wishes the panel to consider as evidence. If the industry member presents evidence to the Hearing Panel, they will be marked as exhibits. An industry member may consider calling witnesses to testify at the hearing. Witnesses may include any person(s) who has direct first-hand knowledge of the issue(s) at the hearing. The industry member should be prepared to answer questions from the case presenter and the Hearing Panel.

Day of the Hearing

Upon arriving at the Real Estate Council of Alberta office, the industry member should proceed to the RECA receptionist. The hearings coordinator will show the industry member to the hearing room and any accompanying witnesses to the witness waiting area. The hearing will begin promptly at the scheduled time.

Witnesses

Witnesses are not permitted in the Hearing Room until after they have fully provided their testimony. Witnesses will wait in an assigned waiting area. After a witness has been called and has entered the hearing room, they will be instructed where to sit and the Hearings Coordinator will have them swear to the truth of their testimony after which questions may be asked.

Standard Steps In a Hearing

Phase 1

Conduct deserving of sanction

1. Hearing begins:
 - a. The chair will start the hearing, introduce Hearing Panel members and explain the hearing procedure to the parties.
2. Preliminary objections:
 - a. The Chair will ask if there are any preliminary objections to either the composition of the panel or the panel's jurisdiction.
3. Burden of proof, opening statements and case presentation:
 - a. The case presenter on behalf of the executive director will:
 - i. present their case first. The burden is on the case presenter to prove the misconduct allegations;
 - ii. give the first opening statements (the industry member may choose to give an opening statement immediately following or may wait until they open their case);
 - iii. call witnesses (the industry member may cross-examine these witnesses) and the case presenter may re-direct after cross-examination;
 - iv. present any other evidence to the panel.

- b. The Industry Member will:
 - i. give an opening statement, either following the case presenter (see 3 (a)(i) above) or at the outset of presenting their own case;
 - ii. call witnesses (the case presenter may cross-examine these witnesses) and the industry member may re-direct after cross-examination;
 - iii. present any other evidence to the panel.
 4. Closing statements:
 - a. The case presenter will make a closing statement first;
 - b. The industry member will make a closing statement after the case presenter; and,
 - c. Rebuttals will follow, if any.
 5. Phase 1 hearing complete:
 - a. The chair will formally close the hearing.

Note to industry member

The closing statement is the final submission and may assist in summarizing the industry member's case. No new evidence can be introduced during closing statements. If the industry member wishes to give evidence, it must occur at the designated time and in accordance with hearing processes.

Once the Phase 1 portion of the hearing, regarding conduct, is complete, the industry member is usually free to leave. The decision of the panel on conduct deserving of sanction may take some time to prepare. The panel will attempt to issue its written decision within 30 days of hearing completion though this is not always possible. The industry member will be notified by the hearings coordinator when the decision is complete, at which point a copy of the decision will be provided to the industry member.

If the Hearing Panel determines that there was no conduct deserving of sanction, the matter is finished.

If the Hearing Panel determines there was conduct deserving of sanction, Phase 2 of the hearing process will begin. The Hearing Panel Chair may request submissions on sanction and costs in writing or the Chair may reconvene the hearing in person on a date agreed to by all parties for the presentation of evidence, and submissions on sanction and costs.

Phase 2

Sanction and costs:

1. The case presenter will:
 - a. present evidence and precedent cases to support an appropriate sanction and costs in light of the Phase 1 decision on conduct deserving of sanction.
2. The industry member will:
 - a. present evidence and precedent cases to support an appropriate sanction and costs in light of the Phase 1 decision on conduct deserving of sanction.

Sanctions may include suspension/cancellation of the industry member's authorization, fines, costs of the investigation, and terms and conditions such as education requirements.

Once the Phase 2 hearing on sanction and costs is complete, the Hearing Panel's decision may take some time to prepare. The panel will attempt to issue its written decision within 30 days of hearing completion though this is not always possible. The industry member will be notified by the hearings coordinator when the decision is complete, at which point a copy will be provided to the industry member.

Agreements

Opportunities exist for the case presenter for the executive director and the industry member to agree on the facts of the case, conduct deserving of sanction, and appropriate sanction and costs throughout RECA's hearing processes.

RIGHT OF APPEAL

If the industry member is not satisfied with the Hearing Panel's decision, he or she has the right of appeal. To do so, the industry member must file a notice of appeal in accordance with the *Real Estate Act* and the Practice and Procedures Guidelines for Hearing and Appeal Panels. The appeal must be filed within 30 of the date of service (notification) of the Hearing Panel's decision on the industry member.

FOR MORE INFORMATION, PLEASE CONTACT THE
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