

Real Estate Council of Alberta
Suite 350, 4954 Richard Rd SW
Calgary, Alberta T3E 6L1

E info@reca.ca
T (403) 228-2954
TF (888) 425-2754
F (403) 228-3065

How to Represent Yourself at a Real Estate Council of Alberta Hearing or Appeal

PURPOSE

This guide is intended to help a self-represented individual involved in a RECA hearing or appeal, understand the process. There are challenges when someone is not represented by legal counsel. This guide provides general information only. This guide does not provide legal advice. Anyone involved in a RECA Hearing or Appeal is strongly encouraged to speak to a lawyer for legal advice.

FOREWORD

The Real Estate Council of Alberta ("RECA") is an independent, non-government agency. Under Alberta's *Real Estate Act* ("the Act"), RECA is responsible for governing licensees in the real estate brokerage, mortgage brokerage, and property management industries. As a self-regulating body, RECA's responsibilities include conducting reviews of licensees' conduct and taking disciplinary action when necessary. In some cases, this leads to a disciplinary Hearing before a Panel. Individuals involved in this process may choose to appear at a Hearing without a lawyer.

This guide was created to provide self-represented individuals with general information to help them understand the process of a Hearing or Appeal. It was created to help them understand what will be required of them during the proceedings. The information in this document applies to

- licensees who are involved in a disciplinary or other proceeding, and
- complainants who decide to appeal the registrar's decision to dismiss a complaint.

RECA strongly encourages all individuals involved in proceedings to have a lawyer. Due to the formal and legal nature of the Hearing, most individuals who do not have legal representation find the process very difficult. Representing yourself is a demanding task requiring a significant investment of your time. You should be aware that an experienced lawyer will present the case for RECA's Registrar.

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PART 1: OVERVIEW OF THE HEARING PROCESS

A. NATURAL JUSTICE AND PROCEDURAL FAIRNESS

Natural justice is a legal term that describes the right to a fair, unbiased hearing. RECA is committed to upholding the principles of natural justice throughout the Hearing process.

There are three fundamental principles of natural justice.

1. The right to notice

The person whose interests may be affected by a decision should be given notice of the allegations or case to be made against them.

2. The right to be heard

The person whose interests may be affected by a decision should be allowed to present their case and answer the case against them. This includes:

- knowing the other party's case
- presenting evidence and arguments to the decision maker at an oral hearing or in writing
- having the option to be represented by a lawyer
- cross-examining the other party's witnesses
- being given reasons for a decision

3. The right to an unbiased decision maker

The decision maker should be neutral, impartial and have no direct interest in the case. The decision maker must not have prejudged the matter. The decision maker must hear the evidence and argument in order to be to make a decision.

B. WHAT ARE THE DIFFERENT TYPES OF RECA PROCEEDINGS?

This guide provides information on preparing for the following types of proceedings:

- contested Hearing
- Appeal of an administrative penalty
- Appeal of a letter of reprimand
- agreed Hearing (*Real Estate Act, s.46*)
- Appeal of a suspension for failure to cooperate
- Appeal of a licence decision
- Appeal of a contested Hearing decision
- complainant Appeal

C. HOW SHOULD I BEHAVE DURING THE PROCEEDINGS?

RECA's disciplinary proceedings are formal, professional, and court-like. When you appear at the proceedings be respectful, polite, and calm toward the Panel, the other party, the witnesses, and staff.

Consider the following tips in order to appear professional and prepared in front of the Hearing Panel:

- arrive at the Hearing on time
- dress professionally in business attire
- listen carefully when others are speaking and do not interrupt
- turn off all electronic devices, such as smartphones and tablets, before entering the hearing room
- do not use cameras or recording devices
- do not bring any food or beverages into the hearing room
- do not chew gum
- speak directly to the Hearing Panel Chair, not to the other party
- do not argue with the other party or the Hearing Panel

D. WHO IS INVOLVED IN RECA PROCEEDINGS?

There are many individuals and groups who may participate in RECA's Hearings or Appeals. Some or all of these individuals or groups may be present at the proceeding that you are involved with.

1. The Hearings Administrator

The Hearings Administrator is an employee of RECA. The Hearings Administrator is the person who will organize the Hearing and provide administrative support to all parties. If you will be self-represented, the Hearings Administrator may be able to assist you in some ways. However, the Hearings Administrator is not a lawyer and does not represent any party in any proceeding.

The Hearings Administrator may, for example:

- ask you to complete a contact form for purposes of making contact with you during the process
- tell you about the types of forms you may need, provide general guidance on how to fill out the forms, and tell you about any related costs
- provide a consent form for you to consent to the Panel member shadowing program (your choice)
- answer basic questions about the process and direct you to RECA's written resources
- provide general information on the progress of your case and the steps in the process
- contact you about general details of your case, such as whether you will be calling witnesses and how many witnesses you may be calling
- suggest you consult with the Case Presenter
- recommend that you consult with a lawyer, even though you have decided to appear self-represented

The Hearings Administrator cannot:

- recommend a lawyer to you
- give you advice regarding the evidence you should present or the witnesses you should call to testify
- give you advice regarding your chances of success
- give you advice about your rights following a decision rendered by the tribunal

- provide an opinion on what the outcome of the Hearing will be

2. The Licensee

A licensee is an individual who RECA licenses. A licensee may be involved in the following types of proceedings:

- contested Hearing
- Appeal of a contested Hearing decision
- administrative penalty Appeal
- Appeal of a registrar suspension
- Appeal of a letter of reprimand
- Appeal of a licence refusal

Typically, when a licensee will be affected by the decision that the Panel will make, they will be provided with the opportunity to make written or oral submissions for the Panel members to consider when making their decision.

3. The Complainant

Usually the licensee alleged misconduct comes to RECA's attention because a member of the public complains to RECA.

If RECA investigates the complaint and finds that the licensee has not engaged in misconduct, the complainant may appeal this decision to a Hearing Panel.

4. Licensing Appellant

A licensing appellant is a member of the public who has applied to RECA for a license and has been refused. This person may appeal the licensing refusal to an Appeal Panel.

5. The Lawyer

A lawyer is a professional who is trained in appearing before a panel. Lawyers understand the rules and procedures of panels and act as an advocate for their clients. Acting as an advocate means that the lawyer considers the client's interests and takes reasonable steps to achieve the client's desired outcome.

Lawyers must always do what is best for their clients. Therefore, if you decide to represent yourself, you should be aware that the lawyers for the other parties will not be able to give you assistance or advice.

i. Your Lawyer

If you choose to retain the services of a lawyer, your lawyer may, for example:

- evaluate the law applicable to your situation and determine the strength of your case
- help you assess the chance of successfully representing yourself and the risks involved with proceeding
- fill out forms and legal documents
- talk and negotiate with the other party
- represent you at the Hearing
- submit your evidence to the Panel
- attempt to disprove the other party's case
- examine you and your witnesses and cross-examine the other party's witnesses
- make the Hearing process easier and less stressful for you
- provide advice to you throughout the process and answer your questions

- advise you about what steps should be taken after the Panel makes a decision

ii. The Lawyer for the Other Party (The Case Presenter)

RECA's Registrar is represented throughout the proceedings by a Case Presenter. A Case Presenter is a lawyer who works for RECA. The Case Presenter's job is to present a case to a Panel. Case Presenters are very experienced with presenting cases to Panels.

iii. The Hearing Panel's Independent Legal Counsel

Typically, an independent lawyer will be present during the proceedings to provide the Panel with procedural and legal guidance and advice. This lawyer does not make Panel decisions or decide the case. This lawyer cannot provide legal assistance to you or to any other party.

6. The Panel

The Panel is a group of decision makers who will hear the evidence of all parties during the proceedings and decide the outcome of the case. It is the Panel's responsibility to ensure that the proceedings are conducted properly. RECA's Panels are impartial and unbiased. This means that they treat all parties fairly and consider the evidence submitted by all parties equally. To maintain impartiality, Panels are unable to advise or guide any party. A proceeding may take place in front of a Hearing Panel or an Appeal Panel.

i. The Hearing Panel

The Hearing Panel usually consists of three people. These people may be licensees or members of the public. One of the members of the Hearing Panel will be designated as the Chair. The Chair will be responsible for leading the Hearing, ensuring that the proper procedures are followed, and maintaining order.

The following proceedings occur before a Hearing Panel:

- contested Hearing
- Appeal of an administrative penalty
- Appeal of a letter of reprimand
- complainant Appeal
- Appeal of a registrar suspension

ii. The Appeal Panel

The Appeal Panel usually consists of four people. These people may be licensees or members of the public.

If a proceeding that was heard by a Hearing Panel is being appealed to an Appeal Panel, the Appeal Panel will not have any of the same members as the Hearing Panel had.

The following proceedings occur before an Appeal Panel:

- Appeal of a contested Hearing decision
- Appeal of a licence decision

E. THE PANEL'S JURISDICTION

Jurisdiction refers to the Panel's official authority to make legal decisions and orders.

The *Real Estate Act* RSA 2000 c. R-5 ("the Act") authorizes the Industry Councils of RECA ("the Council") to establish standards of conduct for the industry and the business of

licensees. The Council is required to enforce industry standards and any additional requirements outlined in the Act. The Act, Rules, and Bylaws are intended to enhance, improve, and promote the integrity of the industry and to protect the public interest.

Hearing and Appeal Panels play an important role in carrying out the Council's responsibilities. To understand a Panel's jurisdiction as it pertains to the case that you are involved with, you should read the applicable legislation.

F. SHOULD I HIRE A LAWYER?

If you find yourself involved in a RECA Hearing or Appeal, your first step is to decide who will represent you.

You may choose to be represented by:

- a lawyer
- yourself
- any other person

1. Representation by a lawyer

You have a right to be represented by a lawyer. RECA recommends that you hire a lawyer to represent you.

It may be a good idea to hire a lawyer if, for example:

- you don't understand the allegations or issues in the case
- you don't know how to present your evidence
- you don't understand RECA's disciplinary process and procedures
- the allegations made against you are serious and may result in serious penalties
- you have to call witnesses
- you need an expert witness to demonstrate important facts of your case
- you don't feel comfortable speaking in public
- the case has become a personal and emotional matter for you
- you don't feel comfortable with the idea that the other side will be represented by a lawyer

People may decide to not hire a lawyer because:

- they believe that they are able to adequately represent themselves
- they do not recognize the seriousness of the case or think that the issues of the case are minor
- they think that the value of a lawyer's representation is not worth the financial cost

If you decide to not hire a lawyer to represent you, you may consider hiring a lawyer to help you understand the process and prepare. A lawyer can help you fill out forms, prepare documents, gather evidence, and perform other tasks.

2. Representing yourself

You have a right to represent yourself.

If you decide to represent yourself, the Panel will expect you to understand RECA's disciplinary process and the relevant administrative law principles. The Panel will not give

you special treatment because you do not have a lawyer. You will be expected to ensure that you are adequately prepared for the Hearing and that any legal research you do is legitimate, correct, and relevant to your particular situation.

If you are thinking about representing yourself, consider whether:

- you understand the issues of the case well enough to explain yourself verbally and in writing
- your evidence consists of minimal witnesses and documents
- you can draft the necessary documents relating to your hearing
- you understand the laws and regulations concerning your hearing
- you understand everything contained in the investigation file, including the Case Presenter's evidence
- you can organize your documents clearly and logically
- you will dedicate adequate time to preparing yourself
- you are prepared to interact with the other side's lawyer
- you know how to examine and cross-examine witnesses
- you will remain calm throughout the process, regardless of how it unfolds
- you are prepared to deal with the panel's decision, which may significantly affect you, both professionally and financially

3. Representation by any other person

If you know someone who is not a lawyer but may be able to represent you better than you can represent yourself, you may consider asking that person to assist you in preparing for the Hearing or appearing as your agent at the Hearing.

Someone might be a good agent if, for example:

- he or she has experience with professional disciplinary cases and understands the processes and procedures of professional regulatory bodies
- he or she understands the allegations at issue in the case better than you do

PART 2: APPEARING AS A SELF-REPRESENTED INDIVIDUAL

If you have decided to represent yourself at the Hearing, the rest of this guide will provide important guidance to help you prepare. The following sections contain general information about relevant legal principles and specific information about how to prepare for and what to expect at different types of hearings.

A. WHAT SHOULD I KNOW BEFORE THE HEARING?

1. Settlement

A settlement means that you and the Case Presenter reach an agreement about the facts and outcome of the case. This usually involves you

- taking responsibility for some or all of the allegations of misconduct made about you
- agreeing that your actions breached the legislation, and
- agreeing on an appropriate sanction and costs for your misconduct.

When negotiating a settlement agreement, the Case Presenter will take into account mitigating factors. These could include your willingness to recognize and take responsibility for your actions and the benefits a settlement entails, such as a reduction in the time, stress, and costs typically associated with the Hearing process.

If you are prepared to admit to the allegations that have been made about you, you should contact the Case Presenter to discuss settling. These discussions are confidential and are "without prejudice", meaning they can't be used in the proceeding, until an agreement is signed. The agreement can be disclosed. Keep in mind that you may discuss settling at any point during the proceedings. Even if you initially decide to go through with a Hearing, you can change your mind at any time and discuss settlement, even after the Hearing has already started.

Once you and the Case Presenter have reached agreements about the facts and resulting breaches, you will both present these agreements to the Hearing Panel. You will also both typically present an agreement about appropriate sanctions and costs for the breaches. The Hearing Panel will make a decision based on these submissions. You should be aware that the Hearing Panel can decide on a sanction that is different from what you and the Case Presenter have recommended. If the Hearing Panel considers giving a different sanction, they should ask for your submissions first. They should provide reasons in their written decision why they did not accept the agreement.

2. Adjournment

Postponing or changing the date of a Hearing is called an adjournment. If you are unable to attend your Hearing on the date set out in the Notice of Hearing, you must submit an adjournment request to the Hearings Administrator as soon as possible.

To request a first adjournment:

1. Contact RECA's Hearings Administrator and ask for an adjournment request form.
2. Complete the adjournment request form and return it to RECA's Hearings Administrator.
3. The Hearings Administrator will submit your request to the Case Presenter.
4. The Case Presenter will review your request and write a response, explaining whether they support the request or have any objections to it.
5. The Case Presenter will submit their response to the Hearings Administrator.
6. The Hearings Administrator will send your request and the Case Presenter's response to the Hearing Panel to review.
7. The Hearing Panel will make a decision on whether the adjournment request is granted.

It is also possible for the Case Presenter to request an adjournment. If the Case Presenter requests an adjournment, you will have the opportunity to submit a response to their request to the Hearing Panel.

An adjournment will only be granted in exceptional circumstances. Potential reasons why you may request an adjournment include:

- personal reasons, such as the illness of a party, family member or witness, or a previous commitment that cannot be rescheduled
- unavailability of a key witness
- decision to obtain legal counsel

- unavailability of legal counsel on the date the Hearing is scheduled

3. Reviewing the RECA Investigation File

The first step in preparing for your disciplinary hearing is reading the entire investigation file. This is your opportunity to understand the case you must meet. The file must contain everything that is necessary and relevant to understand the case and the documents in support of it.

When reading the investigation file, you should:

- review the Notice of Hearing and confirm what the allegations against you are
- determine what evidence the registrar has to support those allegations and whether the allegations can be proven
- determine how you will respond to those allegations
 - consider what information must be presented to the Hearing Panel in order to explain your side
- check the facts contained in the file
 - if there are any points that you disagree with, gather evidence to explain your side
 - if you believe that the Professional Conduct Review Officer has misinterpreted or misapplied any evidence, prepare your explanation

If you are a complainant appealing the registrar's decision to not pursue a complaint you have made, you will not be provided with a copy of the investigation file or any other materials relating to the investigation. You will need to base your Appeal on the letter dismissing your complaint.

B. HOW DO I PREPARE EVIDENCE?

Evidence refers to the information that you will present to the Panel during the proceedings. If the Panel decides that the information you have presented is reliable and relevant, they will consider it when making their decision. Any evidence you submit to the Panel should be presented to support your position.

The majority of the evidence you will present should already be included in the investigation file provided to you by RECA. You may use evidence not included in the investigation file, however you should be aware that the *Real Estate Act* requires you to cooperate with the investigation. This includes producing any books, documents, records, or other things required for the investigation. Therefore, any document that you will use as an exhibit at the Hearing should already be included in the investigation file.

If you come across a document that you wish to present as evidence that is not included in the investigation file, you should notify the Case Presenter immediately and explain why you will be using it. This is because you do not want to be perceived as not cooperating during the investigation stage by keeping documents from the investigators.

Remember that the Panel will not be provided with a copy of the investigation file, so any documents in it that you wish to use as evidence must be brought to the proceedings and copies must be provided to Panel members, the Panel Independent Legal Counsel and the Case Presenter.

1. General Principles of Evidence

In order for the Panel to accept your information as evidence, they must find it to be admissible. There are two general requirements for evidence to be deemed admissible: it must be *relevant* and *reliable*.

- To determine whether evidence is relevant, ask: "Is this information logically capable of proving part or all of what is at issue?"
- To determine whether evidence is reliable, ask: "Does the information truly and accurately depict or describe the events?"

If the Panel determines that your evidence is irrelevant or unreliable, they may either deem it inadmissible or they will give the evidence less weight.

- **Inadmissible:** Due to issues with the evidence's relevance and reliability, the Panel will not consider the evidence when making their decision.
- **Weight:** Due to issues with the evidence's relevance or reliability, the Panel may consider the evidence less than they consider other more reliable and relevant evidence provided by you or another party.

2. Types of Evidence

Evidence may be made up of documents, testimony, and expert reports:

- oral testimony
 - statements from people (known as witnesses) who have direct knowledge about a particular issue or event that is relevant to the case
- documents (known as exhibits)
 - contracts, letters, receipts, financial statements, invoices, cheques, photographs, etc.
- expert reports
 - a doctor speaking about your health, a real estate appraiser speaking about the value of land, etc.

3. Oral Testimony – Selecting and Preparing Your Witnesses

Witnesses give evidence through oral testimony. This means that an individual, including you, with knowledge about something that is at issue in your case speaks about it during the proceedings.

Before deciding if you will need to call any witnesses other than yourself, first determine if your testimony alone can provide the panel with all the information that you think they will need. If you give testimony, the Hearings Administrator will ask you to take an oath or affirmation that what you will say is true.

After you have determined how much information you have to offer by being your own witness, consider the following to determine who else to call as a witness:

- What are the facts you need to prove?
- Who has a personal knowledge of these facts?
- If you will be using documents as evidence, who signed or drafted the documents?
- Who do you think the Case Presenter will be calling as witnesses?
- Who can you call as a witness to contradict or clarify the evidence that the Case Presenter's witnesses will provide?

- If more than one person would have the same information to offer, whose knowledge or involvement would offer the best evidence?
- Is there an expert whose professional opinion may help to explain something that is at issue in the Hearing?

4. Oral Testimony – Contacting Your Witnesses

It is your responsibility to ensure that your witnesses attend the proceedings. There are two ways to have a witness attend the Hearing:

1. voluntarily
 - contact the witness
 - explain the issues of the case and why it would help you if they attend the proceedings and provide testimony
 - inform the witness of the date, time, and location of the Hearing
2. compelled via a summons
 - a subpoena is an order that requires a person to attend the Hearing
 - if a witness tells you that they are not willing to testify or if you are concerned that a witness may not show up on the day of the proceedings, you should summon them to the Hearing by using a subpoena
 - if you want to summon a witness, contact the Hearings Administrator for assistance
 - if you summon a witness, you are responsible for paying the witness an allowance in accordance with the *Alberta Rules of Court*, Schedule B, Division 3: http://www.qp.alberta.ca/documents/rules2010/Rules_vol_1.pdf

5. Oral Testimony – Preparing for the Examination-in-Chief

The examination-in-chief refers to a person questioning their own witnesses or when the person themselves give testimony under oath or affirmation. The examination-in-chief of your witnesses will occur when you question your witnesses during the proceedings.

The purpose of asking your witness questions is to prompt them to speak about the information that you believe is helpful to your case.

Being prepared for the examination-in-chief will help you feel more confident at the Hearing and ensure that all important information will be presented to the Panel.

To prepare yourself and your witnesses, you should:

1. Explain the process to your witness, including what they should expect on the day of the proceedings.
2. Prepare a list of all questions you intend on asking your witness.
 - You should ask your questions chronologically. The witness' testimony should form a story. You want the story to start at the beginning and progress in order.
3. Ensure that all questions are open-ended.
 - You cannot ask leading questions. If you ask a leading question, it is likely that the Case Presenter will object to your question and the Panel will not permit the witness to answer.
 - A leading question is a question that suggests an answer in the question or prompts the person to answer in a specific manner.

- For example, “It was raining that day, wasn’t it?” is a leading question. Instead, ask “What was the weather like on that day?”
 - Questions that start with who, what, where, when, why, or how will usually result in open-ended questions.
4. Meet with your witnesses to go through the questions with them.
 - You are allowed to ask your witness the questions you have prepared.
 - You are not allowed to instruct or coach your witness on how to answer the questions.
 - You are not allowed to ask your witness to alter answers to be more favourable to your defence.
 - Prior to giving testimony at the Hearing, all witnesses will be required to affirm that they will tell the truth. Make sure that witnesses are answering questions truthfully when you rehearse.
 5. Record how your witnesses answer the questions.
 - Are the witness’ answers helpful in telling your story? If not, reconsider whether you want that person to appear as a witness.
 - Your witnesses’ testimonies should be clear, reliable, and consistent.
 - If multiple witnesses provide the same information in their testimonies, choose the best witness to testify instead of having multiple witnesses provide the same information to the panel.
 6. Think about the story you are trying to tell the Panel. How do your witnesses’ testimonies fit into that story? If there are any gaps left in the story, consider calling additional witnesses to fill in those gaps.

6. Documents

Documents are another form of evidence. When you present a document as evidence it is called an exhibit. Documents you might consider using as evidence include contracts, letters, receipts, financial statements, invoices, cancelled cheques, or photographs.

It is best if you can have a witness testify about the document. This could be you or one of your other witnesses. Choose a witness who either:

- drafted the document
- signed the document
- otherwise has a personal knowledge of the document

It is always best to bring the original document to the proceedings. If the original is unavailable, bring a copy.

In addition to the original, if available, you should bring seven copies of the document to the proceedings so that everyone can have a copy.

7. Expert Reports

An expert witness is someone who does not necessarily have direct, personal knowledge about the facts in issue at your hearing, but because of their education, profession, skills, or training is able to offer an opinion based on special knowledge about an issue in your case. You might decide to call an expert if an opinion can only prove or demonstrate an important fact.

Unlike a normal witness, an expert is permitted to give their opinion on the issues in your case.

In order to have an expert witness testify at your Hearing, the Panel will need to qualify the expert witness. This means that you will have to present information about the expert to the Panel to demonstrate why the proposed witness should be regarded as an expert.

8. Law and RECA Cases

Part of developing a well-founded position involves looking at past cases that are similar to yours and comparing the decisions. Although the Panel is not required to decide your case in the same way as previous RECA cases that are similar to yours were decided, referencing a similar case in your arguments can show the Panel what a typical decision in a case similar to yours looks like. They can be influential.

It is your responsibility to research the laws that apply to your situation and any relevant previous decisions or similar cases.

For RECA decisions released in the past two years, go to www.reca.ca > Licensees > Discipline > Decisions and Appeals.

For a full history of RECA decisions, contact the Case Presenter.

To access legislation and the decisions of other professional regulatory bodies, visit www.canlii.org.

PART 3: PREPARING FOR A CONTESTED HEARING, AN APPEAL OF AN ADMINISTRATIVE PENALTY, AN APPEAL OF A LETTER OF REPRIMAND, & AN APPEAL OF A S.38(4.2) SUSPENSION

Contested Hearings, Appeals of administrative penalties, Appeals of letters of reprimand, and Appeals of suspensions for failure to cooperate with an investigation follow a similar process and format. If you are involved in a contested Hearing, an Appeal of an administrative penalty, an Appeal of a letter of reprimand, or an Appeal of a suspension for failure to cooperate, the following information will help you prepare for the proceedings.

A. WHAT IS A CONTESTED HEARING?

A contested hearing occurs when:

1. RECA receives a complaint about a licensee's conduct,
2. RECA investigates and determines that there is sufficient evidence that the licensee engaged in conduct deserving of sanction, and
3. The licensee disputes either:
 - a. That they engaged in the alleged conduct, or
 - b. That the conduct breaches the legislation.

There are two phases in a contested Hearing.

Phase 1: The Licensee and the Case Presenter will present their evidence to the Hearing Panel.

Phase 2: If the Hearing Panel finds that the licensee engaged in conduct deserving of sanction, the second phase of the Hearing will be held to determine the appropriate sanction and costs.

RECA notifies the licensee about the decision to hold a hearing by sending a Notice of Hearing. The Notice of Hearing will contain the date, time, and location of the Hearing. At this time, the Case Presenter also provides the licensee with a copy of the investigation file. The investigation file will include the information that the registrar has gathered through its investigation of the complaints made about the licensee, including any evidence that the Case Presenter may present at the Hearing.

B. WHAT IS AN APPEAL OF AN ADMINISTRATIVE PENALTY?

An administrative penalty is issued when RECA investigates a complaint and finds sufficient evidence that the licensee engaged in conduct deserving of sanction with respect to usually one or two straight-forward issues.

The licensee receives a notice of administrative penalty outlining the facts that led to the breach of the legislation and the amount of the administrative penalty. The licensee has the right to appeal the administrative penalty to a Hearing Panel within 30 days after the date on which he was served the administrative penalty.

If the licensee decides to appeal the administrative penalty, a Hearing will be held before a Hearing Panel. The Hearing will have two phases, similar to a contested hearing.

Phase 1: The Licensee and the Case Presenter will present their evidence to the Hearing Panel.

Phase 2: If the Hearing Panel finds that the licensee engaged in conduct deserving of sanction, the second phase of the Hearing will be held to determine the appropriate outcome including upholding the administrative penalty, changing it or setting it aside and costs.

The licensee notifies the case presenter or other person outlined in the administrative penalty that they wish to appeal the administrative penalty and sets out the reasons for the Appeal. RECA sends a Notice of Appeal of administrative penalty to the licensee containing the date, time, and location of the Hearing. The Case Presenter also provides the licensee with a copy of the investigation file. The investigation file will include the information that RECA has gathered through its investigation of the complaints made about the licensee, including any evidence that the Case Presenter may present at the Hearing.

For more information on the Appeal process for administrative penalties, see section 83.1 of the *Real Estate Act*.

C. WHAT IS AN APPEAL OF A LETTER OF REPRIMAND?

A letter of reprimand is issued when RECA investigates a complaint and finds sufficient evidence that the licensee engaged in conduct deserving of sanction, but the breaches are technical or minor in nature. Letters of reprimand do not impose sanctions on the licensee.

The licensee receives a letter of reprimand outlining the facts that led to the breach of the legislation. The licensee has the right to appeal the letter of reprimand to a Hearing Panel within 30 days of receiving the letter of reprimand.

If the licensee decides to appeal the letter of reprimand, a Hearing will be held before a Hearing Panel. At the end of the Hearing, the Hearing Panel will make a decision to either uphold the letter of reprimand, dismiss it or change it. The Panel can order costs as well.

D. WHAT IS AN APPEAL OF A SUSPENSION FOR FAILURE TO COOPERATE WITH AN INVESTIGATION?

RECA can suspend the authorization of a licensee who refuses to cooperate with a person conducting an investigation under the Act until the registrar is satisfied that the licensee has cooperated. The licensee will receive notice in writing of the suspension. The affected individual may appeal the suspension to a Hearing Panel by providing notice in writing within 30 days of receiving notice of the suspension.

E. WHO IS INVOLVED IN THE HEARING OR APPEAL?

The following people or groups may be present at the Hearing:

- the Hearings Administrator
- the Hearing Panel
- the Hearing Panel's Independent Legal Counsel
- the Licensee
- the Licensee's Lawyer, if desired
- the Case Presenter who is a lawyer

F. WHAT HAPPENS AT THE HEARING OR APPEAL?

All Hearings and Appeals take place in person at the RECA's offices in Calgary, by video conference or by teleconference.

1. The Day of the Hearing or Appeal

On the day of the Hearing or Appeal, you should:

- arrive early and check in with the Hearings Administrator in the hearing room
- bring eight copies of any documents, cases, or legal research that you will be presenting to the panel so everyone in the room has a copy; or the Case Presenter will help you copy the material if you let them know in advance
- communicate with your witnesses to ensure that they have arrived

2. Order of Phase 1 of the Hearing or Appeal

Typically, Phase 1 of the Hearing or Appeal proceeds as follows:

1. The chair of the Hearing Panel will give his opening remarks, including:
 - a. asking the Hearing Panel members to introduce themselves
 - b. asking the Case Presenter to introduce him or herself
 - c. asking the you (the licensee) to introduce yourself
 - d. asking the independent counsel to introduce him or herself
 - e. instructing everyone present in the hearing room to turn off all electronic devices
 - f. asking if the Hearing Panel members, the Case Presenter, or the Licensee have any objections
 - g. outlining the order of proceedings
 - h. asking if the parties have any questions or concerns about the proceedings
 - i. asking if the parties have any preliminary issues or objections that need to be addressed before beginning the Hearing
2. The Case Presenter will give his or her opening statement.
3. You will give your opening statement.
4. All witnesses will be affirmed by the Hearings Administrator prior to giving their testimony.
5. The Case Presenter will present his or her evidence, including calling witnesses and producing documents.
6. You will have the opportunity to cross-examine the Case Presenter's witnesses.
7. The Case Presenter will have the opportunity for redirect examination on any witnesses that the Licensee has cross-examined.
8. The Hearing Panel will have the opportunity to ask the Case Presenter's witnesses clarifying questions.
9. You will present your evidence.
10. The Case Presenter will have the opportunity to cross-examine your witnesses.
11. You will have the opportunity for redirect examination on any witnesses that the Case Presenter has cross-examined.
12. The Hearing Panel will have the opportunity to ask your witnesses clarifying questions.
13. The Case Presenter will give his or her closing arguments.
14. You will give your closing arguments.
15. The Case Presenter will be given the opportunity for rebuttal.
16. The Hearing Panel will be given the opportunity to ask questions.
17. The chair of the Hearing Panel will give his or her closing remarks.
18. The Hearing will conclude and the Hearing Panel will issue a written decision.

3. Preliminary Applications

A preliminary application is a request made in writing to the Hearing Panel before the Hearing begins or at the beginning of the Hearing.

If there has been a last minute issue, such as a key witness not showing up, or you have decided to get a lawyer to represent you, you may make an application to adjourn.

4. Opening Statement

Each party will make an opening statement to the Hearing Panel at the beginning of the Hearing. The purpose of the opening statement is to outline what the issues of the case are and what evidence you will be presenting.

Your opening statement should outline what you intend to show, how you will show it, and what decision you are seeking. Keep your opening statement short and to the point.

The Case Presenter will make his or her opening statement first. You will make your opening statement second.

Keep the following in mind when preparing and delivering your opening statement:

- outline the issues of the case
 - think about what complaints have been made about you
- tell the Hearing Panel what decision you are hoping they will make based on the evidence that you will be presenting
- address what evidence you will be using to support your claims, including:
 - the witnesses who you will be calling
 - the documents that you will be presenting to the court
 - any other means of giving evidence that you will be using
- explain how that evidence will demonstrate the conclusion you would like the Hearing Panel to make
- if you have decided to drop one of your objections or concede an issue, the opening statement is a good time to let the Hearing Panel and the other party know
- your opening statement should be as short and brief as possible
- remain calm and professional when giving your opening statement and avoid becoming argumentative, dramatic, or emotional

Note that the opening statement is not the time to give your evidence. It is to prepare the Panel for what they are going to hear. Anything you mention in your opening statement about what happened should also be repeated when you give evidence later in the Hearing. What you say in the opening statement is not evidence. If you want the Panel to understand your thinking, intent or motive you will need to give this information as evidence when you testify.

5. Presentation of the Evidence

You and the Case Presenter will each take a turn presenting your evidence. The Case Presenter will present his or her evidence first. It is up to the Case Presenter to prove that the complaints about you are true and deserving of sanction.

The Hearing Panel may intervene during the presentation of evidence to make sure that parties don't abuse their right to speak.

6. Presentation of the Evidence – The Examination-in-Chief

Before the Hearing, you should determine the order in which your witnesses will be heard. They will stay in the waiting area until you will call them in one at a time to explain their version of the facts.

Remember to follow the guidelines for questioning your witnesses in the "*Oral Testimony – Preparing for the Examination-in-Chief*" section of this guide. If you improperly question your

witnesses, the Case Presenter may object to your questions. Take care to not ask questions that suggest an answer (leading questions). Also be careful that you do not let your witnesses include their opinions in their testimonies.

When it is time for the examination-in-chief of your witnesses:

1. the witness will be brought into the hearing room
2. the witness will be asked to state his or her name for the record
3. the Hearings Administrator will affirm the witness
 - this means that the witness will affirm that he or she will tell the truth when giving testimony
4. you will begin your questioning as you have planned
5. once you are finished questioning your witness, the Case Presenter will have the opportunity to cross-examine the witness

7. Cross-Examination

Cross-examination refers to one party's questioning of another party's witness. You will have the opportunity to cross-examine the Case Presenter's witnesses and the Case Presenter will have the opportunity to cross-examine your witnesses. The cross-examination is your opportunity to contradict or poke holes in the witness' testimony. You can also have the witness make admissions favorable to your case and enter other evidence to help your case.

It is difficult to plan for the cross-examination in advance. While the other party is examining its witnesses, you should be taking notes and thinking of strategic cross-examination questions that will expose inconsistencies in their case.

Leading questions are permitted during the cross-examination. This means that the questions you ask the witness in cross-examination can suggest an answer.

For example, in the examination-in-chief, the witness may have been asked:

- Where were you on the night of July 15?

Suppose you think the witness may have left out a key detail when answering that question. In your cross-examination of that witness, you may ask:

- You were at the Roadhouse Bar on July 15, weren't you?

Asking a leading question will prompt the witness to include details that you think are important.

8. Redirect Examination

After the Case Presenter cross-examines your witnesses, you will have the opportunity to re-examine your witnesses on any matter that came up during cross-examination. This is called the redirect examination.

Questions you ask during the redirect examination must directly relate to information that came up during the cross-examination.

The main point of the redirect examination is to give your witness a chance to explain any answers they gave during their cross-examination that may be damaging to your case.

9. Hearing Panel's Questions

After a witness has been questioned by the calling party, cross-examined by the opposing party, and redirected by the calling party, the Hearing Panel may ask clarifying questions.

Clarifying questions should only be asked for the purpose of clarifying information that came out during the examination-in-chief, cross-examination, and redirect examination.

10. Closing Argument

The closing argument is your opportunity to summarize the facts that you have presented to the Hearing Panel and explain why the Hearing Panel should make a finding in your favour.

You do not need to repeat everything that has been said during the Hearing. You should choose the most important facts and highlight them for the Hearing Panel. You can also mention any contradictions in the other party's evidence that are in your favour.

You should make connections between the evidence you have presented and the issues of the Hearing. You can also mention any cases or legal principles that you had researched before the Hearing that support your arguments.

It is difficult to write a closing argument before the Hearing begins. The evidence that comes out during the Hearing will form a substantial part of your closing argument. Therefore, it is important to take detailed notes during the Hearing that can be incorporated into your closing argument.

The closing argument should:

1. restate the issues of the Hearing
 - What were the allegations that were made about your conduct?
2. summarize the evidence that has been presented during the Hearing
 - What evidence have you presented that helps your defence or helps to explain your alleged conduct?
 - What evidence has the other party presented that is damaging to their case?
 - Did a witness testify about something that is not supported by evidence?
 - Can you disprove something a witness said with your own evidence?
 - Did you weaken the other party's evidence with your cross-examination?
 - Highlight any other inconsistencies in the other party's case
3. outline whether the Case Presenter has failed to prove an allegation in the Notice of Hearing
4. explain to the Hearing Panel how your evidence defends you from the allegations that have been made against you
5. remind the Hearing Panel that it is the registrar's responsibility to prove the case

11. Hearing Panel's Closing Remarks

After the closing arguments from both parties, the Hearing Panel will end the Hearing by giving brief closing remarks. Phase 1 of the Hearing process will be complete (a determination of whether there has been conduct deserving of sanction) and the Hearing Panel will advise the parties on when they should expect a written decision.

G. WHAT HAPPENS AFTER THE HEARING?

If the Hearing Panel finds that you have engaged in conduct deserving of sanction, Phase 2 of the Hearing will begin. Typically, the Hearing Panel's written decision will invite you and

the Case Presenter to make submissions on appropriate sanctions and costs. However, you may have an oral hearing as well. This may happen if you have witnesses to call. This is not common.

A sanction is the penalty you are given for your conduct. Examples of sanctions include:

- a suspension or cancellation of the licensee's licence
- an order reprimanding the licensee
- conditions or restrictions on the licensee and his carrying on the business of a licensee
- a monetary fine of up to \$25,000 for each finding of conduct deserving of sanction

Costs refer to an amount of money you may be required to pay to cover the expenses associated with the Hearing. If the licensee is unsuccessful at the Hearing, he may be ordered to cover the costs of the Hearing.

When making your submission on sanctions and costs, consider such things as:

- nature and gravity of the breaches
- your age and experience
- your character
- your age and mental condition
- the number of times the breaches occurred
- your role in the breaches
- whether you have already suffered financial or other penalties as a result of the breaches
- the impact of the breaches on the complainant or others
- mitigating circumstances
- promotion of specific and general deterrence and protection of the public
- need to maintain the public's confidence in the integrity of the profession
- degree to which the breaches are regarded as being outside the range of acceptable conduct
- the range of sanction in other similar cases

PART 4: AGREED HEARING (S.46 REA)

If you are involved in an agreed Hearing resulting from settlement discussions, the following information will help you prepare for the proceedings. This process is called an Admission of Conduct Deserving of Sanction.

A. WHAT IS AN AGREED HEARING?

An agreed Hearing is similar to a contested Hearing, however the licensee admits that he engaged in the alleged conduct and that the conduct breaches the legislation. You and the Case Presenter sign a document called an Admission of Conduct Deserving of Sanction. The document is presented at the Hearing. The purpose of the Hearing is for the panel to accept the Admission of Conduct Deserving of Sanction and to determine the appropriate sanction and costs for the breach.

As the conduct and breaches are not in dispute, no evidence will need to be presented regarding your conduct and no witnesses will need to be called. You may present evidence that relates to appropriate sanctions for the agreed breaches but this is fairly uncommon. Usually you and the Case Presenter agree to a Joint Submission on Sanction and Costs. It is important you and the Case Presenter make similar submissions for the process to be successful. The Hearing Panel can reject agreements and not accept joint submissions if statements are made or documents are supplied to the Hearing Panel during the Hearing that are inconsistent with the submissions and documents submitted as part of the agreed Hearing.

B. WHO IS INVOLVED IN THE HEARING?

The following people or groups may be present at the Hearing:

- the Hearings Administrator
- the Hearing Panel
- the Hearing Panel's Independent Legal Counsel
- the Licensee
- the Licensee's Lawyer, if desired
- the Case Presenter

C. WHAT HAPPENS AT THE HEARING?

All hearings take place in person at the RECA's offices in Calgary, by video conference or by teleconference.

1. The Day of the Hearing

On the day of the Hearing, you should:

- arrive early and check in with the Hearings Administrator in the hearing room

2. Order of the Hearing

Typically, the Hearing proceeds as follows:

1. The chair of the Hearing Panel will give his or her opening remarks, including:
 - a. asking the Hearing Panel members to introduce themselves
 - b. asking the Case Presenter to introduce him or herself
 - c. asking you (the Licensee) to introduce yourself
 - d. asking the Panel Independent Counsel to introduce themselves
 - e. instructing everyone present in the hearing room to turn off all electronic devices
 - f. asking if the Hearing Panel members, the Case Presenter, or the Licensee if they have any objections
 - g. outlining the order of proceedings
 - h. asking if the parties have any questions or concerns about the proceedings
 - i. asking if the parties have any preliminary issues or objections that need to be addressed before beginning the Hearing

2. The Case Presenter will give his or her opening statement.
3. You will give your opening statement.
4. The Case Presenter will present the Admission of Conduct Deserving of Sanction.
5. You will acknowledge that you agree with the facts presented by the Case Presenter and add anything they may have missed.
6. The Case Presenter will provide oral submissions on sanctions and costs.
7. You will provide oral submissions on sanctions and costs (or the Case Presenter may present these for you both).
8. The Hearing Panel will have the opportunity to ask questions to you and the Case Presenter.
9. The Case Presenter will give his or her closing arguments.
10. You will give your closing arguments.
11. The chair of the Hearing Panel will give his or her closing remarks.
12. The Hearing will conclude and the Hearing Panel will issue a written decision.

3. Preliminary Applications

A preliminary application is a request made in writing to the Hearing Panel before the Hearing begins or at the beginning of the Hearing.

If there has been a last minute issue or if you have decided to get a lawyer to represent you, you may make an application to adjourn the Hearing.

4. Opening Statement

Each party will make an opening statement to the Hearing Panel at the beginning of the Hearing. Your opening statement should acknowledge that you have engaged in conduct deserving of sanction and briefly outline what your oral submissions will consist of. Keep your opening statement short and to the point.

The Case Presenter will make his or her opening statement first. You will make your opening statement second.

Note that the opening statement is not the time to give evidence. Anything that you mention in your opening statement should also be repeated when it is your turn to make oral submissions later in the Hearing.

5. Oral Submissions on Sanctions and Costs

During your oral submissions, you will tell the Hearing Panel what you think the appropriate sanctions and costs are.

A sanction is the penalty you are given for your conduct. Examples of sanctions include:

- the suspension or cancellation of the licensee's licence
- an order reprimanding the licensee
- conditions or restrictions on the licensee and his carrying on of business
- a monetary fine of up to \$25,000 for each finding of conduct deserving of sanction

Costs refer to an amount of money you may be required to pay to cover the expenses associated with the Hearing. If the licensee is unsuccessful at the Hearing, he or she may be ordered to cover the costs of the Hearing.

When making your submission on sanctions and costs, consider such things as:

- nature and gravity of the breaches

- age and experience of the licensee
- previous character of the licensee
- age and mental condition of the licensee
- the number of times the breaches occurred
- the role of the licensee
- whether the licensee had already suffered financial or other penalties as a result of the breaches
- the impact of the breaches on the complainant or others
- mitigating circumstances
- promotion of specific and general deterrence and protection of the public
- need to maintain the public's confidence in the integrity of the profession
- degree to which the breaches are regarded, by consensus, as being outside the range of acceptable conduct
- the range of sanction in other similar cases

The Hearing Panel may intervene during your oral submissions to ask questions and make sure that you don't abuse your right to speak.

6. Closing Statement

Your closing statement is your opportunity to summarize your oral submissions and explain why the Hearing Panel should make a finding in your favour. You should choose the most important points from your oral submissions and highlight them for the Hearing Panel.

7. Hearing Panel's Closing Remarks

After both parties have given their closing statements, the Hearing Panel will end the Hearing by giving brief closing remarks. The Hearing Panel will advise the parties on when they should expect a written decision.

PART 5: APPEAL OF A LICENCE DECISION

The registrar may refuse to issue a licence to an individual or may impose terms, conditions and restrictions on a licence. The registrar may also suspend or cancel a licence in certain circumstances. You can request of review of the registrar's decision on these matters. The following information will help you prepare for the proceedings.

WHAT ARE LICENCE REFUSALS?

A licence refusal occurs when an individual's application to become licensed by or registered with RECA is refused. For a list of reasons why the registrar may refuse to issue a license, see s. 34(1) of the *Real Estate Act* Rules.

If an application is refused, RECA will provide the applicant with a letter outlining the reasons for the refusal and the process for appealing the decision.

WHAT TERMS, CONDITIONS AND RESTRICTIONS CAN BE IMPOSED ON A LICENCE?

At the time or after a licence is issued, the registrar may make the licence subject to any terms, conditions or restrictions that the registrar considers appropriate.

WHAT IS A LICENCE SUSPENSION OR CANCELLATION?

The registrar may suspend or cancel a brokerage or licensee's license. For a list of reasons why the registrar may suspend a licence, see s.35 and s. 38.1 of the *Real Estate Act Rules*.

HOW ARE LICENCE DECISIONS APPEALED?

An individual who has had licence terms, conditions or restrictions imposed, whose licence been refused, or whose licence has been suspended or cancelled will be notified of the decision. The affected individual may appeal the decision by requesting a review of the decision. The request must be submitted within 30 days of receiving written notice of the licence decision.

Licence decisions are reviewed by an Appeal Panel. Sometimes the review can take the form of an original application. The license file is disclosed before the Appeal. The Appeal Panel will invite both the registrar and the appellant to make written submissions. In addition to accepting written submissions, the Appeal Panel will provide the appellant with the opportunity to make oral submissions. Typically no new evidence is entered. The Appeal Panel will review the registrar's decision and determine whether it was appropriate to make that decision, given the information the registrar had. The Appeal Panel will review the decision on a certain standard, either reasonableness or correctness.

For more information about the review process, see s. 39 of the *Real Estate Act Rules*.

WHO IS INVOLVED IN THE ORAL HEARING?

The following people or groups may be present at the review:

- the Hearings Administrator
- the Appeal Panel
- the Licensee/individual requesting the review
- the Lawyer for the Licensee/individual requesting the review, if desired
- the Case Presenter
- the Appeal Panel's Independent Legal Counsel

WHAT HAPPENS AT THE ORAL HEARING?

The Appeal Panel will review the registrar's decision and determine whether it was appropriate to make that decision, given the information the registrar had. You and the Case Presenter will have the opportunity to give oral submissions on that issue, but will not be providing any new evidence or witnesses. Instead, the Appeal Panel relies on the record of

the information the registrar used to make the decision. The purpose of an Appeal is to have a new Panel consider the information that is already part of the record because you believe that the registrar misapplied the information to the issues and came to the wrong decision.

In an Appeal, the appellant presents his or her submissions first. Since you are the party requesting the review of the decision, you are the appellant.

1. The Day of the Appeal

On the day of the Appeal, you should:

- arrive early and check in with the Hearings Administrator in the hearing room

2. Order of the Appeal

Typically, the Appeal proceeds as follows:

1. The chair of the Appeal Panel will give his or her opening remarks, including:
 - a. asking the Appeal Panel members to introduce themselves
 - b. asking the Case Presenter to introduce him or herself
 - c. asking the you to introduce yourself
 - d. asking the Independent Counsel to introduce him or herself
 - e. instructing everyone present in the hearing room to turn off all electronic devices
 - f. asking if the Appeal Panel members, the Case Presenter, or the Licensee have any objections
 - g. outlining the order of proceedings
 - h. asking if the parties have any questions or concerns about the proceedings
 - i. asking if the parties have any preliminary issues or objections that need to be addressed before beginning the Appeal
2. You will present your submissions.
3. The Appeal Panel will have the opportunity to ask you clarifying questions.
4. The Case Presenter will present his or her submissions.
5. The Appeal Panel will have the opportunity to ask the Case Presenter clarifying questions.
6. You will give your closing statements.
7. The Case Presenter will give his or her closing statements.
8. The chair of the Appeal Panel will give his or her closing remarks.
9. The Appeal will be adjourned and the Hearing Panel will issue a written decision.

3. Preliminary Applications

A preliminary application is a request made in writing to the Appeal Panel before the Appeal begins or at the beginning of the Appeal.

If there has been a last minute issue or if you have decided to get a lawyer to represent you, you may make an application to adjourn the Appeal.

4. Presentation of Submissions

You and the Case Presenter will each take a turn presenting your submissions. You will present your submission first.

The Appeal Panel may intervene during the presentation of submissions to make sure that parties don't abuse their right to speak.

5. Appeal Panel's Questions

After presentation of submissions, the Appeal Panel may ask clarifying questions.

6. Closing Statements

The closing statement is your opportunity to summarize the submissions that you have presented to the Appeal Panel and explain why the Appeal Panel should make a finding in your favour.

You do not need to repeat everything that has been said during the Hearing. You should choose the most important facts and highlight them for the Hearing Panel. You can also mention any contradictions in the other party's submissions that are in your favour.

You can also mention any cases or legal principles that you had researched before the Hearing that support your arguments.

The closing statement should:

1. restate the issues of the Hearing
 - What was the decision you are appealing?
2. summarize the evidence that was relied on to make that decision
 - What have you presented that helps to explain your position?
 - Why do you believe the registrar came to the wrong decision?

7. Appeal Panel's Closing Remarks

After the closing arguments from both parties, the Appeal Panel will end the Hearing by giving brief closing remarks. The Appeal Panel will advise the parties on when they should expect a written decision.

PART 6: APPEAL OF A HEARING PANEL DECISION

Either party may appeal a Hearing Panel's decision to an Appeal Panel. The following information pertains to decisions appealed by the licensee. Appeals are not available in all cases. An Appeal Panel has different members than the Hearing Panel and the power to make a different decision about your case.

To appeal the Hearing Panel's decision:

1. Draft a Notice of Appeal that:
 - a. Describes the finding or order appealed, and
 - b. States the reasons for the Appeal
2. Serve the Notice of Appeal on the registrar within 30 days of being served the Hearing Panel's decision

In an Appeal of a hearing decision, new evidence is not permitted without the permission of the Appeal Panel. Instead, the Appeal Panel relies on the record of the Hearing before the Hearing Panel. This means that you typically cannot appeal a Hearing Panel decision because you want to present additional evidence. The purpose of an Appeal is to have a new Panel consider the evidence that is already part of the record because you believe that the Hearing Panel misapplied the evidence to the issues and came to the wrong decision.

Costs for preparation of the record of the Hearing are required before an Appeal can take place. Costs include such things as transcription of the Hearing, photocopying, and binder preparation. Costs for preparation of the record vary and may exceed \$2000 depending on the length and complexity of the original Hearing. It is the appellant's responsibility to pay these costs.

A. WHAT IS THE APPEAL PROCESS?

The Appeal process is as follows:

1. The appellant provides written notice of the Appeal to the Hearings Administrator.
2. The appellant pays the costs for the preparation of the Hearing record to the Hearings Administrator before the Appeal.
3. The Appeal Panel is selected and appointed and the Appeal date is scheduled.
4. The Hearings Administrator provides the Appeal Panel with a copy of the notice of appeal within 5 days of their appointment.
5. The record of the Hearing is provided to the Licensee, the Case Presenter, and the Appeal Panel.
6. The appellant prepares a written summary of argument and submits it to the Appeal Panel within 3 weeks of receiving the record of hearing.
7. The Hearings Administrator distributes the appellant's written summary of argument to the Appeal Panel and the Case Presenter.
8. The respondent prepares a response within 3 weeks of receiving the appellant's summary of argument.
9. The Hearings Administrator distributes the respondent's written summary of argument to the appellant and the Appeal Panel.
10. The appellant and respondent give oral arguments at the Appeal.
11. The Appeal Panel issues a written decision with reasons.

1. Written Summary of Argument

Once you receive the Record of Hearing, you have 3 weeks to prepare a written summary of argument and submit it to the Appeal Panel.

The written summary of argument:

- should not exceed 10 pages in length
- should address the grounds of appeal
- should address the substance of the argument as it relates to those grounds of appeal
- should identify the evidence being relied upon
- should identify case law being relied upon
- should discuss how any case law being relied upon is relevant

If you require more information about appealing a decision, contact the Case Presenter or the Hearings Administrator.

B. JUDICIAL REVIEW

Judicial Review occurs when the Court of Queen's Bench reviews the Appeal Panel's decision. An application for Judicial Review can only be made in exceptional circumstances. This is a very complex proceeding. If you are considering an application for Judicial Review, RECA strongly recommends that you retain the services of a lawyer.

PART 7: COMPLAINANT APPEAL

If you are a complainant who is appealing the registrar's decision regarding your complaint, the following information will help you prepare for the proceedings.

A. WHAT IS A COMPLAINANT APPEAL?

A complainant Appeal occurs when:

1. An individual (the complainant) files a complaint with RECA about a licensee's conduct,
2. RECA conducts an investigation and determines that there is insufficient evidence that the licensee engaged in conduct deserving of sanction, and
3. The complainant appeals the finding that the complaint is unfounded.

B. WHO IS INVOLVED IN THE HEARING?

The following people or groups may be present at the Hearing:

- the Hearings Administrator
- the Hearing Panel
- the complainant
- the complainant's lawyer, if desired
- the Case Presenter
- the Hearing Panel's Independent Legal Counsel

C. WHAT HAPPENS AT THE HEARING?

All Hearings take place in person at the RECA's offices in Calgary, by video conference or by teleconference.

Complainant Appeals are reviews of the registrar's decision to dismiss a complaint based on information collected during the investigation. The Hearing Panel does not have the authority to determine whether the licensee's conduct is deserving of sanction. You or the Case Presenter will not be providing any new witnesses or any new evidence. This is a review on the record of the investigation

1. The Day of the Hearing

On the day of the Hearing, you should:

- arrive early and check in with the Hearings Administrator in the hearing room
- bring seven copies of any documents, cases, or legal research that you will be presenting to the panel
- communicate with your witnesses to ensure that they have arrived

2. Order of the Hearing

Typically, the Hearing proceeds as follows:

1. The chair of the Hearing Panel will give his opening remarks, including:

- a. stating that the Hearing Panel will determine whether the complaint is frivolous or vexatious, there is insufficient evidence of conduct deserving of sanction or there is sufficient evidence to warrant a hearing by a different panel
 - b. stating that the Appeal is a review of the registrar's decision to dismiss the complaint based on information collected during the investigation
 - c. asking the Hearing Panel members to introduce themselves
 - d. asking the Case Presenter to introduce himself
 - e. asking the you (the complainant) to introduce yourself
 - f. asking the Independent Counsel to introduce himself
 - g. instructing everyone present in the hearing room to turn off all electronic devices
 - h. asking if the Hearing Panel members, the Case Presenter, or the Licensee have any objections
 - i. outlining the order of proceedings
 - j. asking if the parties have any questions or concerns about the proceedings
 - k. asking if the parties have any preliminary issues or objections that need to be addressed before beginning the Hearing
2. You will present your submissions (your case)
 3. The Hearing Panel will have the opportunity to ask you clarifying questions.
 4. The Case Presenter will present his or her submissions (their case)
 5. The Hearing Panel will have the opportunity to ask the Case Presenter clarifying questions.
 6. You will be given the opportunity for rebuttal (may respond to the Case Presenter's presentation), if you choose.
 7. The Hearing Panel will be given the opportunity to ask questions.
 8. The chair of the Hearing Panel will give his closing remarks.
 9. The Hearing will be adjourned and the Hearing Panel will issue a written decision.

3. Preliminary Applications

A preliminary application is a request made in writing to the Hearing Panel before the Hearing begins or at the beginning of the Hearing.

If there has been a last minute issue or you have decided to get a lawyer to represent you, you may make an application to adjourn.

4. Presentation of the Submissions

You and the Case Presenter will each take a turn presenting your submissions. You will present your submissions first. You have the burden of demonstrating that the registrar's decision is wrong. You may describe documents and confirm the Hearing Panel has them. If they don't, you may enter the documents as evidence, if relevant.

The Hearing Panel may intervene during the presentation of submissions to make sure that parties don't abuse their right to speak.

5. Hearing Panel's Questions

After you and the Case Presenter give your submissions, the Hearing Panel may ask clarifying questions.

6. Hearing Panel's Closing Remarks

After the submissions from both parties, the Hearing Panel will end the Hearing by giving brief closing remarks and will advise the parties on when they should expect a written decision.

D. WHAT HAPPENS AFTER THE HEARING?

If the Hearing Panel finds that there is sufficient evidence to warrant a hearing on the conduct, the complaint will be sent back to the Professional Conduct Review Officers for investigation.

If the Hearing Panel holds the registrar's decision that the complaint was unfounded and you are unsatisfied with this decision, you may seek judicial review by the court.

Judicial review occurs when the Court of Queen's Bench reviews the Hearing Panel's decision. An application for judicial review can only be made in exceptional circumstances. This is a very complex proceeding. If you are considering an application for Judicial Review, RECA strongly recommends that you retain the services of a lawyer.

Questions

This document sets out many processes. They are set out in a step by step manner to give you a good sense of how to prepare and what you can expect on the day of the Hearing or Appeal.

These materials were prepared for licensees and other parties who choose to attend a Hearing or Appeal without a lawyer. You always have the right to a lawyer. RECA strongly urges you to obtain independent legal counsel.

If you have questions about anything in this guide, you are encouraged to contact the RECA Hearings Administrator at hearingsadmin@reca.ca.