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Administrative Penalty Guidelines

Introduction

When the Guidelines Apply

These Administrative Penalty Guidelines (the Guidelines) are effective February 1, 2021.

The Real Estate Council of British Columbia (RECBC) may amend the Guidelines from time to time by posting amended versions of the Guidelines on its website (www.recbc.ca). Readers should check the website to ensure they have the most recent version.

Purpose of the Guidelines

RECBC administers the *Real Estate Services Act (RESA)*, and its regulations, administers Rules and bylaws, and upholds and protects the public interest in relation to the conduct and integrity of its licensees.

The Guidelines are to be used by RECBC staff and will help to ensure that administrative penalties are applied in the public interest and in a manner that is transparent, fair and proportionate to the severity of specific contraventions.

The Guidelines set out the general process RECBC employs when considering whether to impose administrative penalties on a licensee for non-compliance with designated contraventions of the Real Estate Rules (Rules).

Administrative penalty provisions are set out in sections 56 and 57 of RESA and in sections 2-23 and 2-24 of the Rules. Under section 56 of RESA, the Superintendent of Real Estate has the authority to designate sections of the Rules as being subject to administrative penalties and establish the amount of the

penalties. The Rule contraventions that may be eligible for administrative penalties are reproduced in Appendix A.

The Guidelines were developed to establish the criteria to be considered and processes to be used by RECBC in determining whether a contravention is eligible for an administrative penalty.

The eligibility of each alleged contravention of the Rules for an administrative penalty will be considered on its own merits. The Guidelines do not fetter the discretion of decision-makers in how they may apply powers or fulfill duties in the context of specific facts.

Terminology

Where words used in the Guidelines are defined in RESA, they have the same definition as in RESA.

For additional clarity, the Guidelines define the following terms that may be relevant to imposing or calculating administrative penalties:

- “day” means calendar day unless otherwise specified.
- “extenuating circumstances” are circumstances that are exceptional or unforeseen and are both compelling and outside the control of a licensee (brokerage, representative, managing broker or associate broker). See additional description and examples below.
- “promptly” means within two (2) business days (e.g. promptly respond to inquiries from RECBC or a managing broker). However, RECBC can consider extenuating circumstances and/or the licensee’s due diligence efforts, provided this information is brought to RECBC’s attention.
- “subsequent contravention” refers to the contravention of a specific Rule for which an administrative penalty or discipline penalty has previously been levied in the past five years for the purposes of imposing an escalated administrative penalty amount under Categories A, B and C as well as the base amount under Category D.

Sample Calculation 1: A Subsequent Contravention

Licensee Johnny A. Seed has the following administrative penalty history:

- In July 2016, contravention of s. 2-22 [brokerage notice of business changes]*
- In September 2016, contravention of s. 2-17 [mailing address for delivery]*

RECBC is satisfied that Mr. Seed contravened s. 2-22 again in December 2020 and that the circumstances of the matter met the administrative penalty eligibility criteria.

If this was his first contravention of that section of the Rules within five years, Mr. Seed would receive a \$1,000 penalty. However, because this is his second contravention within five years, RECBC imposes a \$2,000 penalty. The 2016 contravention of section 2-17 does not affect the 2020 penalty because they are different contraventions.

Sample Calculation 2: Not A Subsequent Contravention

Licensee Nancy Etticoat has the following administrative penalty and discipline history:

- In January 2016, contravention of s. 3-4 [acting with reasonable care and skill] resolved by way of a consent order*
- In June 2018, contravention of s. 2-17 [mailing address for delivery] resolved by the imposition of an administrative penalty*

RECBC is satisfied that Ms. Etticoat contravened s. 2-22 [brokerage notice of business changes] in December 2020 and that the circumstances of the matter met the administrative penalty eligibility criteria.

This was her first contravention of section 2-22 of the Rules within five years and RECBC imposes a \$1,000 penalty.

Background and Overview of Administrative Penalties

The administrative penalty framework was established in 2005 with the introduction of RESA as a replacement to the *Real Estate Act*. The purpose of the administrative penalty framework at that time was to provide for an efficient, non-punitive mechanism for RECBC to use to encourage compliance in cases where a designated contravention was unlikely to result in material harm to consumers. The introduction of administrative penalties did not create new or different compliance requirements. Instead, it expanded the enforcement options available to the RECBC in the regulation of real estate licensees in BC.

Administrative penalties are intended to promote compliance with legislative requirements. The administrative penalty framework supports RECBC's mandate by providing measured and proportionate response to particular instances of non-compliance and adds to a progressive discipline system. Administrative penalties function as an intermediate step between a letter of advisement (warning) and disciplinary action initiated by a Notice of Discipline Hearing (generally resolved through consent orders or hearings, and can involve licence suspension and/or cancellation).

As of February 1st, 2021, the Superintendent of Real Estate significantly expanded the Rules captured in the administrative penalty framework and created different administrative penalty categories based on the relative severity and risk of harm to consumers a contravention would pose.

It is expected that the expanded administrative penalty framework will help encourage licensees of all licence levels (brokerage, managing broker, associate broker and representative) and all licence categories (rental property management, strata management, and trading) to adopt good risk management and business practices.

Section 2-23 of the Rules sets out four categories of contraventions that may be subject to administrative penalties. For a contravention to be eligible for an administrative penalty disposition, the circumstances must satisfy the Administrative Penalty Eligibility Test (described below). The four categories of administrative penalty contraventions are as follows:

- Category A** – Contraventions in this category are mostly characterized as business management infractions with low risk of harm to consumers. Most of the requirements in Category A are the responsibility of the brokerage. A contravention of Category A is generally easily substantiated;

- Category B** – The infractions involved in Category B are generally characterized as minor matters with no or immaterial harm to consumers, and where imposing an administrative penalty, rather than dismissing the file or disciplinary action initiated by a Notice of Discipline Hearing, is in the public interest. Most of the matters in Category B are licensee responsibilities to keep RECBC informed or are individual licensee responsibilities to keep their managing broker informed;
- Category C** – Contraventions in this category contain substantial duties licensees owe to clients and are subject to the highest administrative penalty amounts. Contraventions in Category C may be easily substantiated, rely on the licensee acknowledging the committal of a contravention, or RECBC being otherwise satisfied that the contravention has occurred (e.g. whether the licensee was acting in the best interests of the client; whether the licensee took reasonable steps to avoid any conflict of interest). This category also includes a failure to act with reasonable care and skill under section 3-5 of the Rules, which can apply in a broad range of circumstances, including licensee interactions with non-clients; and
- Category D** – Contraventions in this category are mostly characterized as minor matters that present a low risk of harm to consumers. The contraventions in this category contain a mix of brokerage and individual licensee requirements. The potential amount of the penalty will increase on a daily basis until compliance is achieved or RECBC has before then declared the compliance period over. The purpose of increasing the penalty amount on a daily basis is to encourage timely compliance and the provision of accurate information.

See Appendix A for a list of Rules in each category and their corresponding penalty amounts. The consolidated Rules are published on RECBC's [website](#).

Pursuant to section 82 of RESA, RECBC may delegate to RECBC staff the authority to decide whether to impose an administrative penalty and the authority to reconsider the imposition of administrative penalties.

The amount of an administrative penalty imposed under section 57 of RESA is a debt owing to RECBC and may be recovered as such (s. 57(5) of RESA). Funds collected from administrative penalties may only be expended by RECBC for an education purpose referred to in section 44(3) of RESA. Those purposes include educating licensees about the operation and regulation of the industry and issues related to real estate and real estate services.

A licensee's administrative penalty history may be relevant to future discipline sanctions.

Expectations and Compliance

RECBC and the Office of the Superintendent of Real Estate (OSRE) expect all licensees (individuals and brokerages) to be aware of their obligations to consumers and to the regulators, and to have appropriate processes in place to ensure compliance with their obligations under the regulatory framework, including the Act, Regulations, the Rules, and RECBC bylaws. Imposing administrative penalties is one way for RECBC to promote compliance with specific licensee obligations.

Among other things, RECBC and OSRE expect licensees to:

- be aware of and uphold their duties to their clients and to act with reasonable care and skill with

all consumers;

- promptly inform RECBC of changes in their circumstances (including the existence of charges, convictions, legal proceedings or judgments, as required, and contact information);
- have processes and systems in place for the maintenance of records and to promptly respond to inquiries from RECBC;
- appropriately report improper conduct;
- follow the requirements related to home and personal offices, advertising and displaying of licences; and
- ensure that any financial statements, accountant's reports and brokerage activity reports are submitted in the form and manner prescribed and by the required due date.

The administrative penalty framework under RESA is grounded in the following principles:

- (1) (a) A focus on the public interest – RECBC uses administrative penalties and other measures, including continuing professional education, to promote compliance and reduce the risks to the public; RECBC considers the public interest in assessing whether matters are appropriate for administrative penalty resolution or another disposition.**
- (b) Transparency – RECBC is transparent in the processes used to assess potential matters of non-compliance and the dispositions or outcomes, including decisions to impose administrative penalties. Administrative penalty decisions are published on RECBC's website pursuant to RECBC's Publication Policy.**
- (c) Proportionate – RECBC's regulatory response is proportionate to the risks identified with due regard to the probability and impact of risk, and the unique circumstances of each matter.**
- (d) Consistency – RECBC's approach to alleged contraventions is applied consistently and in a way that minimizes uncertainty about its likely response.**
- (e) Evidence based – RECBC's assessment of risk and regulatory response will be informed by evidence gathered from appropriate sources. RECBC's assessment will include information requested from the subject licensee about an alleged contravention.**

Application of Administrative Penalty Guidelines

To levy an administrative penalty, three conditions must be met:

- (1) RECBC is satisfied that one or more contraventions have occurred.**
- (2) The contravention(s) is (are) designated in the Rules as being subject to administrative penalties.**
- (3) RECBC is satisfied that the circumstances of the contravention meets the eligibility criteria in the Administrative Penalty Eligibility Test (described below).**

If all three conditions are met, RECBC may impose an administrative penalty. In applying discretion,

RECBC will consider a variety of factors such as the public interest, the nature and gravity of the contravention, the licensee's intent and motivation, any attempts by the licensee to correct or remedy the contravention, and the principle of deterrence. To be satisfied that a contravention occurred and that the eligibility criteria are met, RECBC will require information from the licensee about the alleged contravention.

RECBC may forego or delay assessing penalties where there are extenuating circumstances. A licensee should provide notice of and information about extenuating circumstances to RECBC as soon as possible and in advance of any deadline or, to the extent possible, in advance of receiving a Notice of Administrative Penalty. Notification should be in writing and be accompanied by the reasons for the extenuating circumstances. See additional description and examples of extenuating circumstances below.

Assuming the result is to impose an administrative penalty, the amount of the penalty to be imposed is set out in the Rules. The amount of the penalty may be impacted by previously imposed penalties. In the case of a contravention of a Category D administrative penalty, the method of calculation for daily administrative penalties is also set out in the Rules.

Criteria to Establish Eligibility

To establish whether a contravention is eligible for an administrative penalty, RECBC will use an *Administrative Penalty Eligibility Test (APET)*. The APET sets out the assessment criteria RECBC will consider in making a decision to levy an administrative penalty.

The APET criteria are as follows:

- the contravention did not involve a material degree of harm to a client, consumer, or other member of the public,
- the contravention did not involve harm to the reputation of the real estate industry,
- the contravention was, or the collection of contraventions were, an isolated incident,
- the contravention is unintentional or inadvertent (no evidence to suggest otherwise) and an ordinary standard of care would have prevented its occurrence,
- when the contravention was brought to the licensee's attention, the licensee promptly took available and reasonable steps to correct or remedy the contravention,
- there is no evidence that the licensee was acting other than in good faith,
- the contravention is easily substantiated or the licensee has acknowledged committing the contravention,
- the licensee did not benefit materially from putting a client or consumer at risk,
- the licensee did not derive or would not reasonably have expected to derive, directly or indirectly, any economic benefit from the contravention,
- the imposition of an administrative penalty in the circumstances would serve the public interest and is likely to satisfy the aims of specific and general deterrence,
- imposing an administrative penalty rather than recommending the issuance of a Notice of Discipline Hearing is not likely to diminish public confidence in the regulatory framework, and

- where there are multiple administrative penalty eligible contraventions committed concurrently or in close proximity to one another, the cumulative effect of the collection of contraventions does not preclude the contraventions from satisfying any of the above criteria.

To further incentivize compliance, escalating penalties will be imposed in circumstances of subsequent contraventions. After five years of continuous compliance, the administrative penalty structure will reset to the initial contravention amounts. For further details about subsequent contraventions, please see Appendix A for the subsequent contravention penalty structure and the Terminology section of the Guidelines for what is considered a “subsequent contravention”.

Conduct that is Not Eligible for Administrative Penalties

Administrative penalties are not available where RECBC is of the opinion that there is evidence to support contraventions involving unethical conduct or indifference as to regulatory compliance. Examples of unethical conduct include dishonesty, threats of retaliation against a person for providing complaint information to RECBC, fraud, deceptive dealing and intentional non-compliance with the regulatory framework. Such matters are generally more appropriate for disciplinary action initiated by a Notice of Discipline Hearing and are not eligible for administrative penalties primarily because of their seriousness, the high likelihood of harm to consumers and the potential for harm to the reputation of the real estate industry.

Applying the APET to Part 3 of the Rules

The responsibilities in Part 3 of the Rules include meaningful obligations of licensees with respect to licensee ethics and professionalism. In applying its discretion, RECBC will give an alleged contravention of any designated section under Part 3 of the Rules [sections 3-3, *Duties to Clients*, and 3-5, *Duty to Act with Reasonable Care and Skill*], greater scrutiny because of their fundamental importance to the regulatory scheme and as part of RECBC’s fulfillment of its mandate to ensure that the interests of consumers are adequately protected.

Applying the APET to Unique Matters

RECBC may consult with the Office of the Superintendent of Real Estate (OSRE) on unique matters where there are questions about the eligibility for an administrative penalty disposition. The primary purpose of such consultations is to ensure continued common understanding and interpretation of the Rules and these Guidelines. Such consultations may also be helpful to alert RECBC and OSRE to an emerging trend or other consumer protection matters. Such consultations may result in a departure from the APET or revisions to the Guidelines, including to the APET. The rationale for any departure will be noted in RECBC’s files.

Multiple Administrative Penalty Eligible Contraventions

In circumstances where RECBC is satisfied that a licensee has two or more contraventions of a rule or rules designated as being subject to administrative penalties, RECBC may impose an administrative penalty for each separate eligible contravention. Prior to doing so, RECBC will consider:

- whether the contraventions, when taken together, are sufficiently serious that they should be addressed through disciplinary action initiated by Notice of Discipline Hearing;
- whether the contraventions, considered together, indicate a level of carelessness on the part of the licensee that may pose a risk to members of the public; and
- whether the contraventions, considered together, otherwise results in one or more of the APET criteria not being met.

The maximum amount of administrative penalties imposed in respect of a contravention of a designated Rule is \$50,000.

Notice of Administrative Penalty (AP Notice)

When RECBC is satisfied that a licensee has contravened a section of the Rules that has been designated as subject to administrative penalties and the contravention is eligible for an administrative penalty under the APET, RECBC will provide licensees with a notice of the penalty pursuant to section 57 of RESA (AP Notice).

The AP Notice will include:

- the Rule that had been contravened;
- the amount of the penalty that is imposed;
- brief reasons explaining the basis of the contravention and penalty; and
- information about the licensee's right to be heard respecting the matter.

RECBC may provide notice of more than one administrative penalty rule contravention in the same AP Notice.

Deadline to Comply with Section 2-19 of the Rules

If applicable, where RECBC is imposing an administrative penalty regarding information that was to be provided to RECBC by a licensee (e.g. s. 2-21 notice of proceedings, s. 2-22 brokerage notice of business changes) RECBC may also specify a date by which the licensee must provide additional information related to the circumstances that led to the contravention or to provide proof of compliance (e.g. s. 4-2 brokerage signs). The AP Notice may warn a licensee that a failure to provide the requested information, or proof of compliance, by the date specified may in addition lead to the imposition of daily administrative penalties for a contravention of Rules s. 2-19.

How and When an AP Notice Delivered

RECBC will formally deliver an AP Notice to a licensee by one of the three below methods and, whenever possible, RECBC will also send a copy of the AP Notice to the email address provided to RECBC by the licensee. Licensees are required to provide an email address to RECBC pursuant to section 4-4 [applications for new licence] of the bylaws, 4-6 [applications for licence renewal] of the bylaws, and section 2-18.1 [email address for licensees] of the Rules.

The date an AP Notice delivered is the earliest date on which:

- RECBC personally served the licensee with the AP Notice (RESA s. 57(3)(a) or (b));
- RECBC provided substituted service by a method provided for in a court order (RESA s. 125); or
- RECBC provided the AP Notice to Canada Post for delivery to the licensee's mailing address (Rule 2-17 and 2-18).

Effect of an AP Notice

Upon an AP Notice being delivered, the licensee receiving the notice has **14 days**, or a longer period allowed by RECBC, to either pay the penalty or deliver a written notice to RECBC stating that they are disputing the imposition of the penalty. For additional information on disputing the imposition of an administrative penalty see the Reconsideration Process section of these Guidelines.

If a licensee does not make a request for reconsideration within **14 days**, or a longer period allowed by RECBC, of delivery of the AP Notice, then the licensee will be deemed to have acknowledged contravening the Rule, and the penalty is then due and payable to RECBC.

Once an administrative penalty has been imposed, neither RECBC nor the Superintendent of Real Estate can start proceedings under Part 4 of RESA [*Discipline Proceedings and Other Regulatory Enforcement*] in respect of the matter. However, an additional administrative penalty could be imposed or a disciplinary action initiated by a Notice of Discipline Hearing, in cases where RECBC is satisfied another contravention has occurred, including where there is repeat non-compliance with respect to the same provision under the Rules.

Imposition of Daily Penalties (Category D)

Administrative penalties for a contravention of a Rule in Category D will be the base penalty amount and may also include a daily penalty amount. Prior to imposing an administrative penalty for a contravention of a Rule in Category D, RECBC will engage in the standard process of being satisfied that there has been a contravention, and it is eligible for administrative penalty.

In addition to the base penalty amount, RECBC may impose a daily penalty of \$250 for each day or part of a day of non-compliance beyond the Compliance Warning Period, as defined below, up to the maximum penalty amount set by s. 56 of RESA (\$50,000 in respect of each contravention of a designated Rule). The daily penalty ceases to accrue on the first day full compliance exists or the date specified by RECBC in declaring the Compliance Period over.

The base amount of the penalty is established in the Rules. This amount is intended to encourage compliance without the need for RECBC to expend resources to issue a non-compliance warning. Using a daily penalty amount is intended to encourage swift rectification of non-compliance. A primary purpose of daily administrative penalties for specific contraventions is to encourage timely compliance and provision of accurate information to RECBC.

Non-Compliance Warning Letter for Category D

Prior to imposing an administrative penalty on an eligible category D contravention, RECBC will deliver to a licensee a letter (Non-Compliance Warning Letter) that contains:

- The Rule(s) suspected of contravention (identified non-compliance).**
- Details of the administrative penalty calculation (base penalty amount plus daily amount).**
- The period to come into compliance, generally 7 days after delivery of a Non-Compliance Warning Letter (Compliance Warning Period).**
- Notification that, while RECBC has issued a Non-Compliance Warning Letter, RECBC may still take disciplinary action initiated by Notice of Discipline Hearing (e.g. if the licensee has not come into compliance within the Compliance Warning Period or RECBC has become aware of other factors that may remove the conduct from being administrative penalty eligible).**

The Non-Compliance Warning Letter is deemed to be delivered and the Compliance Warning Period begins the earliest date on which

- RECBC personally served the licensee with the Non-Compliance Warning Letter, or**
- RECBC provided the Non-Compliance Warning Letter to Canada Post for delivery to the licensee's mailing address. RECBC will concurrently send a copy of the Non-Compliance Warning Letter to the email address provided to RECBC by the licensee.**

The Non-Compliance Warning Letter is not an AP Notice.

The purpose of the Non-Compliance Warning Letter is to notify the licensee that RECBC is satisfied that a contravention of a Category D Rule has occurred and to bring the matter to the attention of the licensee so that appropriate remedial action can be taken.

The Non-Compliance Warning Letter provides notice of regulatory action that can be taken by RECBC, including RECBC's discretion to impose an administrative penalty. At any time after the issuance of the Non-Compliance Warning Letter, RECBC can decide whether:

- (1) the conduct remains administrative penalty eligible (e.g. licensee promptly came into compliance) and to issue an AP Notice,**
- (2) to refer the matter to disciplinary action initiative by a Notice of Discipline Hearing, or**
- (3) new information has changed RECBC's assessment and an advisement letter, dismissal, or an extension of the Compliance Warning Period are appropriate in the circumstances (e.g. licensee provided information about due diligence efforts to come into compliance, but due to circumstances beyond the licensee's control the licensee has not yet achieved compliance).**

Timeliness of compliance and providing evidence of compliance to RECBC may be factors in RECBC's consideration of whether to impose an administrative penalty or take other action in respect of the contraventions.

If a decision is made that an administrative penalty is still appropriate, RECBC will issue an AP Notice, described above.

Typically, the decision on whether to impose an administrative penalty for a Category D contravention will be made after the licensee has satisfied RECBC that the licensee has come into compliance with the Rule(s) set out in the Non-Compliance Warning Letter or the maximum administrative penalty amount has been reached. RECBC may provide the licensee with confirmation that it is satisfied that the licensee has come into compliance based on information provided to RECBC by the licensee or from other sources.

Administrative penalties may include an amount based on the number of days, and part days, a licensee has been non-compliant from the expiry of the Compliance Warning Period. RECBC may choose to declare a penalty assessment period, despite non-compliance, and assess administrative penalties based on the number of days and part days, from the expiry of the Compliance Warning Period to the effective date of the declaration.

Licensees should promptly respond to RECBC with evidence of compliance, or information about extenuating circumstances, prior to the expiry Compliance Warning Period.

Request for an Extension of the Compliance Warning Period

RECBC may grant an extension of the Compliance Warning Period or cancel the Non-Compliance Warning Letter if the licensee provides RECBC with sufficient information to satisfy RECBC that there are extenuating circumstances. What constitutes an extenuating circumstance is described in greater detail below.

If compliance is not achievable immediately or within the Compliance Warning Period because of extenuating circumstances, an extension of the Compliance Warning Period request should be made as soon as possible to RECBC. Where granted, administrative penalties will not be imposed during the extension period. The length of an extension of a Compliance Warning Period will be determined on a case-by-case basis depending on the nature of the extenuating circumstances.

However, granting an extension of the Compliance Warning Period or cancelling the Non-Compliance Warning Letter does not prevent RECBC from taking action in the future. RECBC may issue a new Non-Compliance Warning Letter with respect to the matter if RECBC is of the opinion that the contravention has continued beyond a reasonable timeframe since the licensee advised RECBC of the extenuating circumstances, and the contravention remains eligible for an administrative penalty, or RECBC may choose to issue an administrative penalty for the base penalty amount.

Extenuating circumstances

There may be extenuating circumstances which do not permit strict and timely compliance with a licensee's regulatory obligations. RECBC may be willing to forego imposing administrative penalties where there are extenuating circumstances. Licensees should notify RECBC of any extenuating circumstances as soon as possible, and where applicable, in advance of any deadlines. In circumstances involving deadlines, licensees should contact RECBC directly with requests for an extension.

Extenuating circumstances are defined above.

Examples of extenuating circumstances may be:

- significant disruption to a brokerage's computer system due to virus attacks, fire or flood;
- extraordinary work being undertaken by an external auditor;
- business disruption or absence caused by an industrial action, natural disaster, state of emergency;
- significant illness, accident or injury requiring hospitalization;
- absence caused by jury duty.

Situations that will not normally be considered as extenuating circumstances include:

- staff changes or absences;
- minor computer problems, partial system disruption, lack of system back up or contingency plan;
- office closure due to statutory holidays;
- personal or domestic events, such as moving house or attending a wedding;
- holiday or travel arrangements;
- postal delivery delay or strike;
- minor illness.

Disputing an Administrative Penalty: Reconsideration Process (s. 57(4) and opportunity to be heard)

Every licensee subject to an administrative penalty has the right to dispute the penalty as set out in section 57 of RESA. Below summarizes that process.

The focus of the reconsideration under section 57(4) of RESA is on whether the licensee exercised due diligence to prevent contravention of the Rule. Licensees may also provide any other information they believe RECBC should consider.

Request for and Timing of Reconsideration

If a licensee is disputing the imposition of an administrative penalty, a licensee must submit a Reconsideration Request in writing (Reconsideration Request). The AP Notice will provide information on how to deliver a Reconsideration Request to RECBC. A Reconsideration Request can be submitted by email and a licensee may use any Reconsideration Request form RECBC makes available for that purpose.

A Reconsideration Request must be received by RECBC no later than 14 days after the receipt of the Notice of Penalty or a longer period as allowed by RECBC. The Reconsideration Request must clearly articulate the reason for the dispute and the facts that RECBC should take into consideration as part of its review of the decision including any extenuating circumstances that prevented compliance from occurring.

Reconsideration Requests received after the 14 day deadline will normally not be considered unless allowed by the RECBC.

Before the Reconsideration Request is considered, staff may seek clarification from the affected party on any points raised in the Reconsideration Request. Licensees may provide evidence for consideration of RECBC and it may be in the form of a statutory declaration.

Standard of Review

Upon receipt of a Reconsideration Request by the deadline, or a longer period of time allowed by RECBC, RECBC will reconsider the administrative penalty decision. The licensee's Reconsideration Request should address how the licensee exercised due diligence (i.e. took reasonable steps or precautions) to prevent the Rule contravention(s) at issue in the AP Notice, information on any extenuating circumstances that prevented compliance, and any other information the Licensee believes RECBC should consider. Reconsideration decisions are made on the balance of probabilities.

As per s. 57(4) of RESA, RECBC may:

- cancel the penalty – if RECBC is satisfied that the licensee exercised due diligence to prevent contravention of the Rule RECBC may cancel the penalty; or
- confirm the penalty specified in the AP Notice, in which case the administrative penalty imposed in the AP Notice will immediately become due and payable to RECBC.

Decision Maker

Reconsideration Requests may be considered by one of the following:

- Legal Counsel*
- Director, Compliance*
- Director, Legal Services*
- Senior Manager, Accounting and Audit*
- Vice President Legal Services*
- Senior Director, Accounting and Audit*
- Chief Executive Officer*
- Council Member(s)*
- Such other person to whom Council has delegated the appropriate authority*

The person considering the Reconsideration Request must not be the same person who issued the AP Notice.

RECBC will deliver written reasons for the disposition of the Reconsideration Request to the licensee and, where applicable, the complainant (redacted as appropriate).

Effect of the Reconsideration Process – All Administrative Penalties

Following reconsideration, if a decision is made that the licensee did not contravene the Rule and/or exercised due diligence to prevent contravention of the Rule, the administrative penalty in respect of that contravention is cancelled. For administrative penalties imposed under Category D (Daily), a decision to cancel the penalty includes the cancellation of the base penalty amount plus any daily amount.

If a decision to impose an administrative penalty is confirmed, the amount of the penalty is immediately due and payable.

APPENDIX A: Administrative Penalty Categories and Penalty Amounts

Category	Rule Contravention	Administrative Penalty Amounts
A	2-5 [<i>residential brokerage offices</i>]	\$1,000 for a first contravention \$2,000 for a subsequent contravention
	2-8.1 [<i>educational requirements on renewal</i>]	
	3-1(3) (except as it relates to the maintenance of trust accounts) [<i>managing broker responsibilities – accounts and records</i>]	
	5-2 [<i>delivery of written agreement to clients</i>]	
	5-4 [<i>acceptance of offer</i>]	
	7-7 [<i>annual financial statements, accountant's reports and brokerage activity report</i>]	
	8-4 [<i>general records</i>]	
	8-5 [<i>trading records</i>]	
	8-5.1 [<i>records related to referral fees received by a licensee</i>]	
	8-5.2 [<i>records related to referral fees paid</i>]	
	8-6 [<i>rental property management records</i>]	
	8-7.1 [<i>strata management records</i>]	
	8-10 [<i>retention of records</i>]	
	8-11 [<i>brokerage obligations on winding up business</i>]	
	2-20 [<i>brokerage must give immediate notice respecting solvency</i>]	

B	<p>2-21 [licensee must give notice of discipline, bankruptcy or criminal proceedings]</p> <p>2-22 [brokerage must give notice of business changes]</p> <p>2-22.1 [personal real estate corporation must give notice of business changes]</p> <p>3-1(4) [managing broker responsibilities — notice to parties respecting deposits]</p> <p>3-2(2) [associate broker and representative responsibilities — keeping managing broker informed]</p> <p>3-2(4) [associate broker and representative responsibilities — supervision of employees]</p> <p>3-2(5) [associate broker and representative responsibilities — knowledge of improper conduct]</p> <p>3-3.2 [designated agency]</p>	<p>\$2,500 for a first contravention</p> <p>\$5,000 for a subsequent contravention</p>
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C	<p>3-3(a) [act in the best interests of the client]</p> <p>3-3(b) [act in accordance with the lawful instructions of the client]</p> <p>3-3(c) [act only within the scope of the authority given by the client]</p> <p>3-3(d) [advise the client to seek independent professional advice on matters outside of the expertise of the licensee]</p> <p>3-3(e) [maintain the confidentiality of information respecting the client]</p> <p>3-3(f) [disclose to the client all known material information respecting the real estate services, and the real estate and the trade in real estate to which the services relate]</p> <p>3-3(g) [communicate all offers to the client in a timely, objective</p>	<p>\$5,000 for a first contravention</p> <p>\$10,000 for a subsequent contravention</p>
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and unbiased manner]
3-3(h) [use reasonable efforts to discover relevant facts respecting any real estate that the client is considering acquiring]
3-3(i) [take reasonable steps to avoid any conflict of interest]
3-3(j) [if a conflict of interest does exist, promptly and fully disclose the conflict to the client]
3-5 [duty to act with reasonable care and skill]

2-17 [mailing address for delivery]
2-18.1 [email address for licensees]
2-19 [licensee must reply promptly to council]
3-2(1) [associate broker and representative responsibilities — records]
3-2(3) [prompt response to managing broker inquiry]
4-1 [display and keeping of licences]
4-2 [brokerage signs required]
4-3 [restrictions relating to home and personal offices]
4-5 [licensee names must be indicated]
4-6 [restrictions and requirements related to advertising generally]
4-7 [false or misleading advertising prohibited]
4-8 [advertising in relation to specific real estate]
8-1 [financial records]
8-2 [trust account and general account records]
8-3 [pooled trust account records]
8-3.1 [preparation of records after termination]
8-9 [records must be kept up to date]

D (daily)

The administrative penalty will only be imposed once compliance is achieved.
Base penalty amount:
\$1,000 for a first contravention
\$2,000 for a subsequent contravention
AND if compliance is not achieved before the expiry of the Compliance Warning Period \$250/day thereafter (for clarity, the accrual of the daily amount will begin after the expiry of the Compliance Warning Period, and any extensions granted by RECBC).
Base penalty amount plus daily penalties to be applied to a maximum of \$50,000

8-9.1 [electronic records]

LIST GO TO

recbc

We regulate real estate professionals
in the public interest.

Our offices are located on traditional Coast Salish territory of the Musqueam, Squamish, and Tsleil-Waututh Nations.

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