

ITSO PROFESSIONAL STANDARDS COMPLAINTS POLICY

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I. General Sections

1. Application of Policy

- a) This Policy applies to all users of the ITSO MLS® System including REALTORS® belonging to member associations and REALTORS® belonging to non-member associations who have agreed to the ITSO End User License Agreement (EULA).
- b) This Policy will set out the process followed in response to complaints about:
 - i. Breaches of the ITSO MLS® Rules; and
 - ii. Unethical conduct that may breach the REALTOR® Code or the TRESA Code.
- c) All Member Associations must forward Complainants to ITSO if they are contacted regarding an alleged breach of the REALTOR® Code, the TRESA Code, or the ITSO MLS® Rules other than the Basic MLS® Rules;

2. Definitions

- a) “Appellant” means the Respondent once an Appeal Application has been filed.
- b) “Basic MLS® Rules” means of the Rules defined as Basic MLS® Rules in the ITSO MLS® Rules and MLS® Policies.
- c) “Charge” means a written statement containing the specific allegations of misconduct of the Respondent.
- d) “Member Association” means all Associations participating in ITSO who have entered into the MLS® Services Agreement.
- e) “Complainant” means the person that files an incident report with ITSO.
- f) “in writing” means on paper or by email.
- g) “days” means business days, which excludes Saturdays, Sundays, and days which are statutory holidays in the Province of Ontario.
- h) “ITSO MLS® Rules” means the MLS® rules that Member Associations must follow pursuant to the MLS® Services Agreement.
- i) “Parties” means the Respondent and the Chair of the Professional Standards Committee, or another member of the Professional Standards Committee appointed by the Chair to represent the committee at a hearing.
- j) “Professional Standards Manager” means the person designated by ITSO to oversee execution of this Professional Standards Complaint Policy.
- k) “TRESA Code” means the code of ethics in regulation 567/05 under the Trust in Real Estate Services Act 2002, S.O. 2002, c. 30, Sched. C (TRESA 2002) as amended from time to time and any successor legislation.

- l) “RECO” means the Real Estate Council of Ontario.
- m) “Reply” means the written statement of the Respondent filed in response to a Charge.
- n) “Respondent” means the person who is the subject of an incident report.
- o) “User” means a REALTOR® that belongs to a Member Association or a REALTOR® that belongs to a non-Member Association but is bound by this Policy as a result of using the ITSO MLS® System and agreeing to the ITSO EULA.

II. Incidents

1. Filing an Incident Report

- a) An incident report may come from:
 - i. Any User;
 - ii. A member of the public;
 - iii. The ITSO PSC Committee;
 - iv. RECO; or
 - v. A Member Association.
- b) Incident reports must be in writing and cannot be filed anonymously.
- c) All incident reports must include:
 - i. Sufficient detail about the nature of the incident and the timeline; and
 - ii. The Complainant’s name; and the Complainant’s brokerage’s name, if the incident report is being filed by a registrant.
- d) Incident reports must be submitted to the Professional Standards Manager no more than 180 days following the date upon which the circumstances giving rise to the incident arose.

2. Determining Jurisdiction of Incidents

- a) The Professional Standards Manager will review the incident report and all relevant facts to determine, in their sole discretion, whether the incident falls under the ITSO MLS® Rules or one of the Articles or Interpretations of the REALTOR® Code set out in Schedule A not including the Basic MLS® Rules, the REALTOR® Code, or the TRESA Code.
- b) If the Professional Standards Manager determines that the incident does not fall under the ITSO MLS® Rules, not including the Basic MLS® Rules, or one of the Articles or Interpretations of the REALTOR® Code set out in Schedule A then they will:
 - i. Refer the Complainant to RECO if the incident involves an alleged breach of the TRESA Code;
 - ii. Refer the Complainant to the appropriate Member Association if the incident involves an alleged breach of the Basic MLS® Rules or a Member Association’s bylaws; or
 - iii. Take no further action and close the file if there is no jurisdiction at all.

- c) If the Professional Standards Manager determines that the incident falls under the ITSO MLS® Rules and/or one of the Articles or Interpretations of the REALTOR® Code set out in Schedule A then the Professional Standards Manager will either:
 - i. Take jurisdiction over the incident; or
 - ii. Refer the Complainant to RECO to address part of the complaint as well as take jurisdiction over the incident.
- d) The Professional Standards Manager will notify the Complainant, the Respondent, and RECO, if applicable, of any decision made regarding jurisdiction within 5 days of making the decision. If the incident is being referred to the Professional Standards Committee then a copy of the incident report will be provided to the Respondent and to the Respondent's managing broker and/or broker of record. The Complainant's identity will not be disclosed to the Respondent for advertising incidents.
- e) The decision of the Professional Standards Manager regarding how to proceed with an incident will be final and shall not be subject to review or appeal.

3. Researching and Reporting of the Incident

- a) Fast track incidents set out in Schedule D of this Policy will follow the process set out in Schedule D.
- b) For all incidents that ITSO takes jurisdiction over, other than fast track incidents set out in Schedule D, the Professional Standards Manager will work with a committee member to research the incident.
- c) In the process of carrying out this research, the Professional Standards Manager and Professional Standards Committee shall have the power to require any Member Association or User to produce, subject to any legal objection, all records, documents and writings or other things within the possession of the Member Association or User that may be required as part of the Research.
- d) If a User fails or refuses to produce the information requested when an incident is being researched (i.e., after the Professional Standards Manager has confirmed jurisdiction but before the incident is presented to the PSC Committee to determine whether or not to lay Charges), such failure or refusal shall be deemed to be a breach of this Policy as well as a breach of Articles 17 and 23 of the REALTOR® Code and will be dealt with by the Professional Standards Committee.
- e) Upon completion of the research, the Professional Standards Manager shall file a written report with the Professional Standards Committee, which will include copies of all records, documents, or writings obtained in the course of the research including information regarding any past ITSO MLS® Rule breaches and penalties issued, if any, within the year preceding the date of the incident report.

III. Professional Standards Committee

1. Composition of the Professional Standards Committee

- a) The Professional Standards Committee shall consist of 15 to 25 Users.
- b) All committee members must have belonged to a Canadian real estate association for at least 3 years.
- c) Committee members must not have plead guilty to charges and entered into a Consent Agreement or been found guilty of breaching the MLS® Rules and/or REALTOR® Code during a discipline hearing in the three years prior to them serving on the committee. A committee member will be temporarily removed from the committee while an incident report filed against them is being researched. Any committee members found in breach of the MLS® Rules and/or REALTOR® Code while serving on the committee will be removed from the committee.
- d) All committee members must complete the training sessions required by ITSO.

2. Review and Disposition of Research

- a) The Professional Standards Committee shall review the report and documentation from the Professional Standards Manager and shall determine whether the information contained in the report shows sufficient evidence to support a Charge.
- b) If the Professional Standards Committee determines that there is not sufficient evidence to support a Charge it shall take no further action in respect of the incident and close the file.
- c) All decisions of the Professional Standards Committee whether or not to proceed to Charges shall be made in the sole and absolute discretion of the committee and shall not be subject to review or appeal.
- d) The Professional Standards Committee may decide, in its sole and absolute discretion, not to proceed with an incident at any time after receiving a report, even if the incident has already proceeded to a Charge, and such decision shall not be subject to review or appeal.
- e) Where the Professional Standards Committee feels an incident report was frivolous and completely without merit they may conclude the filing of that incident report was conduct unbecoming of a REALTOR®, which is then grounds for an incident report against the Complainant under Article 21 of the REALTOR® Code.

3. The Charge

- a) If the Professional Standards Committee determines there is sufficient evidence in the report to support a Charge, the Charge will be prepared by the Professional Standards Manager.
- b) The Charge will set out:
 - i. The specific misconduct or omission which the Respondent is alleged to have done or omitted to do; and
 - ii. The relevant Articles and/or Interpretations of the REALTOR® Code and/or ITSO MLS® Rules.

- c) The Professional Standards Manager will deliver the Charge to the Respondent within 10 days of the Professional Standard Committee's decision to proceed.

4. The Reply

- a) Upon receiving the Charge, the Respondent may choose to either:
 - i. Admit to the facts set out in the Charge and enter into a Consent Agreement; or
 - ii. File a Reply.
- b) The Respondent must respond to the Professional Standards Manager within 10 days of receiving the Charge.
- c) A Reply must be in writing, signed by the Respondent, and include:
 - i. A statement of those allegations in the Charge which are admitted, those which are denied, and those of which the Respondent has no knowledge; and
 - ii. An explanation of the facts relied on by the Respondent to support the Reply.
- d) If the Respondent files a Reply, the Professional Standards Committee will review the Reply and decide to either:
 - i. Take no further action and close the file; or
 - ii. Refer the matter to the Discipline Committee for a hearing.
- e) If the matter is referred to the Discipline Committee by the Professional Standards Committee, the Respondent will receive another opportunity to enter into a Consent Agreement or proceed to a hearing. The Respondent must notify ITSO of their choice within 5 days of being notified of the Professional Standards Committee's decision.
- f) Failure of the Respondent to respond to the Charge within the 10-day period shall not prevent the Professional Standards Committee from continuing with the process and deciding whether or not to refer the matter to the Discipline Committee. If the matter proceeds to a hearing, such failure of the Respondent to submit a Reply shall not prevent the Hearing Panel from proceeding with the matter and shall also not prevent the Respondent from attending and presenting their case at the hearing.
- g) Decisions of the Professional Standards Committee shall not be subject to review or appeal.

IV. Discipline Committee

1. Composition of the Discipline Committee

- a) The Discipline Committee shall consist of 15 to 25 Users.
- b) All committee members must have:
 - i. Belonged to a Canadian real estate association for at least 5 years;
 - ii. Served on a professional standards committee for at least 2 years at a real estate association in Ontario; and
 - iii. Are not currently a member of the ITSO Professional Standards Committee.
- c) All committee members must complete the training sessions required by ITSO.

2. Consent Agreement

- a) If the Respondent has admitted to the facts in the Charge and agreed to enter into a Consent Agreement, the Professional Standards Manager will prepare the agreement.
- b) For breaches of the ITSO MLS® Rules, the Consent Agreement will set out a fine determined as follows:
 - i. \$250 per Rule for first offense;
 - ii. \$500 per Rule for a second breach of the same Rule within a 12 month period;
 - iii. \$750 per Rule for a third breach of the same Rule within a 12 month period, etc.
- c) For breaches of the REALTOR® Code, a subset of the Discipline Committee will determine the appropriate penalty to be set out in the Consent Agreement, which can be one or more of the following:
 - i. A reprimand;
 - ii. A fine of no more than \$40,000;
 - iii. A suspension of the services provided by ITSO;
 - iv. A permanent ban from services provided by ITSO;
 - v. An order to complete educational courses; or
 - vi. Any other penalty that the Discipline Committee deems reasonable.
- d) The Consent Agreement will be provided to the Respondent for execution within 10 days of the penalty being determined by the Discipline Committee.
- e) If the Respondent does not sign the Consent Agreement within 5 days of receipt of the proposed Consent Agreement the matter will be referred to the Discipline Committee for a hearing.

3. Hearing Panel

- a) If the Professional Standards Committee refers a matter to the Discipline Committee for a hearing then the Chair of the Discipline Committee shall appoint a Hearing Panel.
- b) The Hearing Panel will consist of 3 members of the Discipline Committee, one of which will be appointed the Hearing Panel Chair.
- c) The committee members on the Hearing Panel must not:
 - i. Have participated in any discussions regarding the incident prior to the hearing;
 - ii. Be related to the Respondent or any officer, director, shareholder, partner, or employee of the Respondent through blood, marriage, common law partnership, or adoption;
 - iii. Belong to the same brokerage as the Respondent; or
 - iv. Be involved in any other circumstance that could give rise to a reasonable apprehension of bias.

4. Notice of Hearing and Hearing Package

- a) The Professional Standards Manager will coordinate with the Hearing Panel Chair to determine a date for the hearing.

- b) The Professional Standards Manager will prepare the Notice of Hearing and provide it to the Parties at least 30 days prior to the date of the hearing.
- c) The Notice of Hearing will include:
 - i. The date and time of the hearing;
 - ii. The location of the hearing;
 - iii. The names of the people sitting on the Hearing Panel;
 - iv. The Charge;
 - v. The Reply if there is one; and
 - vi. Copies of relevant policies and procedures or links to where they may be found.
- d) The Respondent may object to the composition of the Hearing Panel within 5 days of receiving the Notice of Hearing. The objection must be provided to the Professional Standards Manager in writing and provide reasons for the objection. The Professional Standards Manager will coordinate with the Discipline Committee Chair, who will have the right to:
 - i. Accept the objection;
 - ii. Reject the objection; or
 - iii. Appoint another committee member to the Hearing Panel.
- e) The Respondent may request a postponement of hearing due to:
 - i. Illness, incapacity, or inability of the Respondent to attend on the date set for some reasonable cause beyond the control of the Respondent;
 - ii. Inability of an essential witness to attend on the date set;
 - iii. Some other reasonable factor which would prevent the Respondent from presenting its case fully and completely.
- f) If the Respondent wishes to seek a postponement they must notify the Professional Standards Manager as soon as possible, who will take the request to the Hearing Panel Chair. The Hearing Panel Chair will decide whether or not to set a new date.
- g) The Parties will have 10 days after receiving the Notice of Hearing to provide documentary evidence and the names of any witnesses they plan to call to the Professional Standards Manager to include in the Hearing Package. All documentary evidence the Parties plan to introduce at the hearing must be provided during this 10-day period.
- h) The Hearing Package will include the Notice of Hearing, the names of witnesses, and all evidence provided by the Parties.
- i) The Professional Standards Manager will provide the Hearing Package to the Parties and to the Discipline Hearing Panel at least 7 days prior to the hearing.

5. Hearing Procedures

- a) ITSO staff will attend all hearings.
- b) The Parties may be represented at the hearing. If either Party will be represented by a lawyer they must notify the Professional Standards Manager at least 5 days prior to the hearing, which will be communicated to the other Party and to the Hearing Panel.

- c) The Hearing Panel may also have a lawyer at the hearing to advise them on legal matters or procedure only. The Hearing Panel lawyer will not be permitted to participate in the deliberations or decision making process.
- d) Hearings will be held electronically. All participants are expected to adhere to the ITSO Zoom Hearing Rules.
- e) The Parties and their witnesses may testify to provide oral evidence in addition to relying on the evidence in the Hearing Package.
- f) The Parties will be permitted to cross examine the other Party and any witnesses that provide testimony. There will not be cross examination of statements made by lawyers representing the Professional Standards Committee or the Respondent's representative.
- g) The Hearing Panel will follow the procedures set out in Schedule B of this Policy.
- h) Failure of the Respondent to attend the hearing shall not prevent the Hearing Panel from holding the hearing and making a determination on the matter.

6. Hearing Decision

- a) At the conclusion of the hearing the Hearing Panel will deliberate to arrive at a decision. If there is not a majority decision from the Hearing Panel the decision of the Chair of the Hearing Panel shall govern.
- b) The Hearing Panel may decide:
 - i. The evidence does not support a breach of the REALTOR® Code or the ITSO MLS® Rules and therefore the file should be closed;
 - ii. Additional information is required and the matter should be remitted back to the Professional Standards Committee for reconsideration;
 - iii. The evidence supports a breach of the REALTOR® Code and/or the ITSO MLS® Rules.
- c) If the Hearing Panel decides there is a breach of the REALTOR® Code and/or the ITSO MLS® Rules they can choose from the following penalties:
 - i. A reprimand;
 - ii. A fine of no more than \$40,000;
 - iii. A suspension of the services provided by ITSO;
 - iv. A permanent ban from services provided by ITSO;
 - v. An order to successfully complete educational courses;
 - vi. An order to pay the costs of the hearing, including any costs associated with preparing for the hearing;
 - vii. Any other penalty that the Hearing Panel deems reasonable.
- d) The Professional Standards Manager will provide the Hearing Panel decision to the Respondent as soon as reasonably possible after the hearing, which will:
 - i. Be in writing;
 - ii. Signed by the Hearing Panel Chair;
 - iii. Contain the reasons for the decision; and
 - iv. Specify the penalties and fees imposed if any.

- e) The decision of the Hearing Panel shall be binding upon the Respondent and shall be considered effective as of the date of the decision unless otherwise set out in the decision.

7. Appeal Application

- a) The Respondent may choose to appeal the Hearing Panel decision, after which they will be referred to as the Appellant.
- b) The only acceptable grounds for appeal are:
 - i. That the ITSO MLS® Rules or REALTOR® Code were interpreted and applied incorrectly;
 - ii. That the penalties imposed by the Hearing Panel were inappropriate; or
 - iii. That there was a lack of procedural fairness.
- c) The Appellant must file the Appeal Application with the Professional Standards Manager within 10 days of receiving the Hearing Panel's decision.
- d) The Appeal Application must be in writing and include:
 - i. The grounds on which they are appealing the Hearing Panel decision;
 - ii. A brief explanation of why they are appealing; and
 - iii. A \$500 filing fee.
- e) The decision of the Hearing Panel will be stayed pending the appeal.

8. Appeal Panel

- a) The Chair of the Discipline Committee shall appoint an Appeal Panel consisting of 3 members of the Discipline Committee, one of which should be a director of ITSO. If there are no ITSO directors that are impartial and meet the requirements set out below, then the Chair of the Discipline Committee may appoint another committee member instead of an ITSO director.
- b) The committee members on the Appeal Panel must not:
 - i. Have sat on the Hearing Panel of the original hearing or have any knowledge of the proceedings up to this point;
 - ii. Be related to the Respondent or any officer, director, shareholder, partner, or employee of the Respondent through blood, marriage, common law partnership, or adoption;
 - iii. Belong to the same brokerage as the Appellant; or
 - iv. Be involved in any other circumstance that could give rise to a reasonable apprehension of bias.
- c) The Discipline Committee Chair will appoint an Appeal Panel Chair.

9. Notice of Appeal and Appeal Package

- a) The Professional Standards Manager will coordinate with the Appeal Panel Chair to determine a date for the appeal hearing.
- b) The Professional Standards Manager will prepare the Notice of Appeal and provide it to the Appellant at least 30 days prior to the date of the appeal hearing.

- c) The Notice of Appeal will include:
 - i. The date and time of the appeal hearing;
 - ii. The location of the appeal hearing;
 - iii. The names of the people on the Appeal Panel; and
 - iv. Copies of relevant policies and procedures or links to where they may be found.
- d) The Appellant may object to the composition of the Appeal Panel within 5 days of receiving the Notice of Appeal. The objection must be provided to the Professional Standards Manager in writing and provide reasons for the objection. The Professional Standards Manager will coordinate with the Discipline Committee Chair, who will have the right to:
 - i. Accept the objection;
 - ii. Reject the objection;
 - iii. Appoint another committee member to the Appeal Panel.
- e) The Appellant may request a postponement of appeal hearing due to:
 - i. Illness, incapacity or inability of the Appellant to attend on the date set for some reasonable cause beyond the control of the Appellant;
 - ii. Some other reasonable factor which would prevent the Appellant from presenting its case fully and completely.
- f) If the Appellant wishes to seek a postponement they must notify the Professional Standards Manager as soon as possible, who will take the request to the Appeal Panel Chair. The Appeal Panel Chair will decide whether or not to set a new date.
- g) The Professional Standards Manager will prepare an Appeal Package, which will include:
 - i. The Notice of Appeal;
 - ii. The Hearing Panel decision;
 - iii. The Appeal Application;
 - iv. The Hearing Package;
 - v. A transcript from the hearing.
- h) The Professional Standards Manager will provide the Appeal Package to the Respondent and to the Appeal Panel at least 7 days prior to the Appeal Hearing.

10. Appeal Procedures

- a) ITSO staff will attend all appeal hearings.
- b) The Appellant may be represented at the Appeal. If the Appellant will be represented by a lawyer they must notify the Professional Standards Manager at least 5 days prior to the appeal hearing, which will be communicated to the Appeal Panel.
- c) The Appeal Panel may also have a lawyer at the appeal hearing to advise them on legal matters or procedure only. The Appeal Panel lawyer will not be permitted to participate in the deliberations or decision making process.
- d) The appeal hearing will be held electronically. All participants are expected to adhere to the ITSO Zoom Hearing Rules.
- e) The Appeal Panel will follow the procedures set out in Schedule C of this Policy.

- f) No new evidence may be introduced at the appeal hearing.
- g) If the Appellant does not attend the appeal hearing, the appeal will be dismissed and there will be no further right to appeal.

11. Appeal Decision

- a) At the conclusion of the appeal hearing the Appeal Panel will deliberate to arrive at a decision. If there is not a majority decision from the Appeal Panel the decision of the Chair of the Appeal Panel shall govern.
- b) The Appeal Panel may decide to:
 - i. Dismiss the appeal and uphold the Hearing Panel decision;
 - ii. Grant the appeal and close the file;
 - iii. Amend the decision of the Hearing Panel as the Appeal Panel deems appropriate;
 - iv. Remit the matter back to the Discipline Committee for a new hearing in whole or in part, and at their discretion by a differently constituted Hearing Panel;
 - v. Impose any penalties that were available to the Hearing Panel;
 - vi. Order the Appellant to pay the costs of the appeal, including any costs associated with preparing for the hearing;
 - vii. Order that the appeal fee be returned to the Appellant.
- c) The Professional Standards Manager will provide the Appeal Panel decision to the Appellant as soon as reasonably possible after the appeal hearing, which will:
 - i. Be in writing;
 - ii. Signed by the Appeal Panel Chair;
 - iii. Contain the reasons for the decision; and
 - iv. Specify the penalties and fees imposed if any.
- d) The decision of the Appeal Panel shall be final and binding upon the Appellant and shall be considered effective as of the date of the decision unless otherwise set out in the decision.

V. Miscellaneous

1. Cooperation with RECO

- a) The Professional Standards Committee and Discipline Committee will cooperate with any requests from RECO, which may involve:
 - i. Deferring the investigation and/or discipline process until after RECO has dealt with the incident; and
 - ii. Providing RECO with copies of any materials collected by the Professional Standards Manager, the Professional Standards Committee, and the Discipline Committee.
- b) All communication with RECO regarding such requests will go through the Professional Standards Manager.

- c) The Professional Standards Manager will notify the Complainant and the Respondent if the matter is deferred at the request of RECO within 5 days of receiving the request from RECO. The file will remain in abeyance until RECO has rendered a decision on the matter.

2. Communication of Decisions

- a) The Professional Standards Manager will send the Respondent's managing broker and/or broker of record a copy of the decision from a Hearing Panel and Appeal Panel if there is an appeal.
- b) The Professional Standards Manager will notify a Member Association if a Hearing Panel or Appeal Panel issues a decision involving a User that belongs to their Association.
- c) The decisions of Hearing Panels and Appeal Panels may be communicated to all Users. Such communication will not take place until the Appeal is finished, if there is one, or until the window for filing an appeal application has closed.

3. Failure to Comply with Decision

- a) Failure to comply with the decision of a Hearing Panel or Appeal Panel is a breach of this Policy.
- b) If a User fails to comply with the decision of a Hearing Panel or an Appeal Panel by the date specified in the decision, ITSO may, without any further proceedings, suspend the User's access to the ITSO MLS® System.
- c) In addition to suspending a User's access to the MLS® System for failing to comply with the decision of a Hearing Panel or Appeal Panel, the ITSO board of directors may, without any further proceedings, impose additional penalties including, but not limited to, suspending the User's access to all ITSO services or permanently banning the User from accessing ITSO services.
- d) All Member Associations must cooperate with ITSO and take any steps that are necessary to uphold decisions of Hearing Panels and Appeal Panels that affect Users belonging to their Association.

4. Discontinuing Proceedings

- a) If a Respondent either resigns or is terminated from their Association at any time during professional standards proceedings, and consequently does not belong to any Member Association, the Professional Standards Committee may:
 - i. Hold the incident and process in abeyance until the User re-joins a Member Association, at which time the process can resume; or
 - ii. Close the file.
- b) If a Respondent resigns or is terminated from their Association but belongs to another Member Association, or joins another Member Association immediately after leaving the other Association, then the proceedings will continue. All files in abeyance for more than a 2-year period will be moved into a closed status.
- c) If a Respondent resigns their membership or has their membership terminated from all Member Associations after a hearing decision but before an Appeal Application is filed, or at any time during the appeal process, the Respondent shall be deemed to have waived all rights of appeal.

5. Documents and Correspondence

- a) All letters, notices, or other documents required to be sent to a User will be sent via email unless the User indicates they would rather receive correspondence by personal delivery, courier, or registered mail.
- b) All files, documents, correspondence, reports and records pertaining to an incident and/or investigation shall be in the custody, care and control of the Professional Standards Manager on behalf of the Professional Standards Committee and Discipline Committee and shall be considered confidential, not subject to access by any persons except as necessary to carry out proceedings set out in this Policy or if requested by RECO.

6. Indemnity

No action or proceeding, either at law or in equity, may be brought by any Member Association or User against ITSO, any ITSO director, or any Professional Standards Committee or Discipline Committee member for any act or omission in relation to the administration or enforcement of this Policy. This section may be pleaded as, and shall constitute, an absolute defence to any such claim or action.

Schedule A: Articles and Interpretations of the REALTOR® Code Enforced by ITSO

Article 13. Advertising - Content/Accuracy

All Advertising and promotion of properties shall accurately reflect property and other details and prominently display the name of the brokerage and any additional information required by provincial regulation.

Interpretation

13.1 REALTORS® shall not advertise or permit any person employed by them or otherwise affiliated with them to advertise real estate services or property without disclosing the name of the REALTOR®'s brokerage in a readily apparent fashion. If disclosing the name of the REALTOR®'s brokerage is impractical because of the nature of the display (e.g. text message, tweet, etc...) then no such disclosure is required, provided there is a link to a display that includes all of the required disclosures.

13.2 The Internet website of a REALTOR® is an Advertising vehicle. In the event of a multiple page website, every page is an Advertising vehicle. All properties displayed and all representations made on a website must comply with the REALTOR® Code as well as applicable provincial, federal and any other requirements regarding Advertising.

13.3 The advertised or offered price shall not be other than that which was agreed upon in writing with the Seller.

14. Advertising Listings of Other REALTORS®

REALTORS® may only advertise a property if such Advertising has not been restricted at the request of the Seller and is in accordance with provincial and federal regulations.

14.1 Listing brokerages may permit the Advertising of their properties by other brokerages when authorized in writing by the Seller to do so.

14.2 Virtual Office Websites (VOWs), Internet Data Exchange Websites (IDXs) and any other similar sites or technologies which display properties of other REALTORS® shall be subject to all applicable laws, and be operated in accordance with the rules established by the appropriate real estate board(s) for such sites.

14.3 Interpretation 13.1 also applies to Article 14, unless otherwise agreed upon in writing.

15. Advertising Claims

Claims or offerings in Advertising must be accurate, clear and understandable.

15.1 Advertising of Compensation shall include the details of services provided and whether any additional charges may apply. If the services to be provided for the advertised Compensation do not include listing on a Board's MLS® System, a statement to that effect must be included.

15.2 Representations of performance (e.g. “#1,” “top-selling,” etc.) must include the geographical area referred to, the relevant time-frame (e.g. January-June 2004) and the source or basis on which the claim is based (e.g. based on the number of sales on the MLS® system of the relevant Board for the specified time period).

15.3 Advertising of programs, initiatives or guarantees (e.g. “Buy a house with 0% down, “If I don’t sell your house, I will buy it from you,”) must clearly set out all significant details of how the program works, including, but not limited to, exceptions and time frames.

15.4 Significant conditions, restrictions, limitations and additional charges shall be fully and prominently displayed in the body of the advertisement near the claim or offering in easily readable form and shall comply with all applicable laws.

15.5 A condition, restriction, limitation or additional charge shall be considered “significant” if it would likely affect a consumer’s decision to retain the REALTOR®/brokerage.

15.6 Any claims or offerings in advertising must also comply with all applicable laws, including the Competition Act.

15.7 Interpretation 13.2 Applies to Article 15.

16. Discrimination

The REALTOR® shall not deny professional services to or be a party to any plan to discriminate against any Person for reasons of race, national or ethnic origin, religion, colour, sex, family status, age, gender identity, or sexual orientation, marital status or disability.

16.1 REALTORS® must comply with applicable human rights legislation.

17. Compliance with Board/ Association Bylaws

The REALTOR® shall abide by the By-Laws, Rules, Regulations and policies established by the REALTOR®’s Real Estate Board, Provincial/Territorial Association, and The Canadian Real Estate Association (CREA).

18. Compliance with Statutory Requirements

The business of a REALTOR® shall be conducted in strict accordance with all statutory and regulatory requirements.

18.1 A board may only charge a REALTOR® under this Article once he or she has been found to have violated a statute or regulation by the body duly authorized to make such a determination.

18.2 A certificate of conviction or other proof of non-compliance issued by a duly authorized body may be relied on by a board as evidence of non-compliance with this Article.

18.3 Nothing in this Article prevents a board from initiating discipline proceedings where the conduct which is the subject of charges under other statutes or regulations may also constitute a violation of the REALTOR® Code.

19. Discrediting another Registrant

The REALTOR® shall never publicly discredit any other Registrant. If the REALTOR®'s opinion is sought, it should be rendered with strict professional integrity and courtesy.

19.1 The REALTOR® shall not comment in a derogatory manner in any communication or medium, including social media, as to the capacity, integrity, or competence of any other Registrant.

19.2 Where any REALTOR® is asked to comment on a specific transaction or the business practices of another Registrant, such comments should be given with strict professional integrity, objectivity and courtesy.

19.3 This Article does not apply to truthful Advertising by REALTORS®. Any Advertising by a REALTOR® which contains seemingly derogatory statements about other Registrants or competitors, their businesses or their business practices may form the basis of an ethics charge only if such statements are false or misleading within the meaning of the Competition Act, or are otherwise prohibited by law.

21. Conduct Unbecoming

A REALTOR® shall not engage in conduct that is disgraceful, unprofessional or unbecoming of a REALTOR®.

21.1 This Article is intended to deal with conduct that, having regard to all of the circumstances, is egregious in nature and goes beyond simple error.

21.2 "Conduct" in this Article is not restricted to conduct in the course of providing real estate services.

22. Principal (Broker) Responsibility

NOTE: ITSO's jurisdiction over this Article is limited to situations where a broker of record or managing broker of a brokerage has allegedly breached the Article with respect to a Respondent that has gone through, or is going through, the ITSO PSC process.

The principal of a brokerage is required to supervise and control the activities of the REALTOR® and other personnel for whom he/she is responsible.

22.1 "Principal" means the individual designated as the representative of the firm, either for the purposes of the provincial real estate licensing legislation or with regard to the relationship between the brokerage and the local real estate Board/Association.

22.2 In determining the adequacy of supervision, all relevant factors may be considered, including, but not limited to:

- (a) whether the brokerage had established written policies and procedures which were provided to all REALTORS® and other personnel;
- (b) whether office activities were regularly reviewed and updated to ensure that the policies and procedures were current and were being properly implemented;
- (c) whether the principal had undertaken all reasonable steps to ensure compliance by all REALTORS® and other personnel;
- (d) whether each transaction was reviewed by the principal, including trust deposits, sales record sheets, Listing and sales contracts;
- (e) whether the principal took remedial action when a violation by a REALTOR® or other personnel was discovered; and
- (f) whether the brokerage regularly informed or updated the firm REALTORS® and other personnel on changes in legislation, rules and regulations or other relevant issues.

23. Cooperation with Board/Association

Should a REALTOR® be asked to co-operate in any way in connection with a disciplinary investigation or proceeding, the REALTOR® shall place all pertinent facts before the proper Committee of whichever real estate board or association is conducting the investigation or proceeding.

23.1 A REALTOR® who is being investigated for alleged unethical conduct should provide the appropriate Committee, upon request, with all materials and information in the REALTOR®'s possession in connection with the matter being investigated.

23.2 Where a REALTOR® is asked to assist the appropriate Committee in connection with a disciplinary investigation or proceeding involving another REALTOR®, the REALTOR® should provide all relevant materials and information in that REALTOR®'s possession, and be prepared to testify at any hearing of the matter. Such assistance should not be deemed a "controversy" within the meaning and intent of Article 26.

23.3 Where a REALTOR® has reasonable and probable grounds to believe:

- (a) that another REALTOR® has apparently breached the REALTOR® Code, and
- (b) that a person will likely suffer serious damage as a consequence of the apparent breach, the REALTOR® should immediately report the apparent breach to the appropriate Board in writing with the reporting REALTOR®'s name, address and telephone number. The report should be made bona fide without malice or ulterior motive.

24. Arbitration

In the event of a dispute between REALTORS® associated with different brokerages of the same local Board/Association regarding the Compensation earned or to be earned in connection with a real estate transaction, the dispute shall be submitted for arbitration in accordance with the By-Laws, Rules and Regulations of their local Board/Association.

24.1 A dispute between REALTORS® which is properly submitted for arbitration pursuant to this Article should not be deemed a "controversy" within the meaning and intent of Article 26.

24.2 Where a REALTOR® fails to submit a dispute to arbitration in accordance with the applicable By-Laws and Rules and Regulations, this Article may be pleaded as a defence in any other action or proceeding.

24.3 This Article does not require REALTORS® to arbitrate when all parties to the dispute advise their Board/Association in writing that they choose not to arbitrate before the Board/Association.

25. Inter-Board and Inter-provincial Arbitration

In the event of a dispute between REALTORS® associated with different brokerages and belonging to different local Boards/Associations, regarding the Compensation earned or to be earned in connection with a real estate transaction, the dispute shall be submitted to arbitration in accordance with the By-Laws and Rules and Regulations of the appropriate Provincial/Territorial Association. Should the REALTORS® belong to different Provincial/Territorial Associations, the dispute shall be arbitrated in accordance with the By-Laws and Rules and Regulations of The Canadian Real Estate Association.

25.1 Interpretations 24.1, 24.2 and 24.3 also apply to Article 25.

26. Avoid Controversies

The business of a REALTOR® shall be conducted so as to avoid controversies with other REALTORS®.

26.1 Any REALTOR® who is aware of or involved in a controversy with another REALTOR®, resulting from the alleged misconduct or impropriety of that other REALTOR®, should place such matters before the appropriate Committee for resolution in order that the matter may be resolved in accordance with the Rules and Regulations of the Board, Association, Society or Council to which the REALTOR® belongs.

26.2 “Controversies,” as used in this Article, does not include aggressive or innovative business practices, which are otherwise ethical and disputes over Compensation or the division of commissions/fees.

26.3 A REALTOR® should not disrupt or obstruct a disciplinary investigation or proceeding relating to the alleged misconduct of another REALTOR®.

26.4 A REALTOR® should not make any unauthorized disclosure or dissemination of allegations, findings or a decision in connection with a disciplinary investigation, hearing or appeal.

26.5 A REALTOR® should not intentionally impede a disciplinary investigation or proceeding by filing multiple complaints based on the same event or transaction.

27. CREA Trademarks

A REALTOR® shall only use the trademarks of The Canadian Real Estate Association in accordance with CREA’s rules, regulations and policies.

27.1 A REALTOR® shall not challenge the validity of CREA’s Trademarks.

27.2 A REALTOR® shall not use any of CREA's Trademarks in domain names or e-mail addresses unless specifically authorized to do so by CREA policies.

27.3 A REALTOR® shall not use, display, or attempt to register as trademarks any word, phrase, term, initials or design marks that incorporate, or are confusingly similar to, any trademark of CREA.

27.4 REALTORS® are responsible for ensuring that buyers and sellers, for whom they are providing any service, as well as any other third parties in any way involved in transactions, do not use CREA's Trademarks in any unauthorized manner. This obligation includes the requirement to contractually protect CREA's Trademarks as set out in CREA's Policies.

28. Intellectual Property Rights of Boards/ Associations

REALTORS® shall respect the intellectual property and other ownership rights of other REALTORS®, Boards, Provincial/Territorial Associations and CREA.

28.1 REALTORS® shall only access and use the websites and other databases of Boards, Associations, CREA and other REALTORS® in accordance with the policies for use established by the owner of the site.

28.2 REALTORS® should not infringe the copyright or other ownership interest of another REALTOR® in his/her Listing.

28.3 A REALTOR® shall not use the trade names or trademarks or confusingly similar trade names or trademarks of any firm, franchise, or other organization other than those with which the REALTOR® is affiliated or otherwise authorized in writing to use. This restriction includes but is not limited to, unauthorized Internet uses such as domain names, e-mail addresses and metatags.

29. REALTOR® Acting as Principal

A REALTOR®, when acting as a principal in a real estate transaction, remains obligated by the duties imposed by the REALTOR® Code.

29.1 A REALTOR® is acting as a principal when he or she is buying or selling or attempting to buy or sell an interest in the property either directly, on his or her own behalf or through any entity which the REALTOR® holds any direct or indirect interest.

30. Duty of Cooperation

MLS® Systems are member-to-member cooperative selling systems that benefit REALTORS® and their Buyers and Sellers. A REALTOR® has an obligation to cooperate with other REALTORS® in the provision of professional real estate services.

30.1 REALTORS® commit to participate in member-to-member cooperative selling on behalf of their Buyers and Sellers.

30.2: A REALTOR® who engages in public marketing of a property for sale shall abide by the CREA REALTOR® Cooperation Policy.

Schedule B: Hearing Procedures

The procedure set out below is a general procedure that will be modified to suit the circumstances of each hearing. For example, if there is no witness testimony then there will not be cross examination of witnesses.

1. Hearing Procedure

The hearing will proceed in the following order:

- a) Chair makes opening remarks;
- b) Introduction of all hearing attendees and confirmation of no conflicts;
- c) Swearing in of Parties and witnesses;
- d) Witnesses leave room (if applicable);
- e) Professional Standards Committee presents evidence and calls witnesses if any;
- f) Cross examination from Respondent (if Professional Standards Committee representative testifies);
- g) Professional Standards Committee redirect (if there was cross examination)
- h) Respondent presents evidence and calls witnesses if any;
- i) Cross examination from the Professional Standards Committee representative (if Respondent testifies);
- j) Respondent redirect (if there was cross examination)
- k) Questions from Hearing Panel;
- l) Closing statement from Professional Standards Committee representative;
- m) Closing statement from Respondent.

2. Recording of Hearing

The hearing will be recorded by any means deemed appropriate by ITSO, which may include but is not limited to audio recording or video recording. Recording of the hearing by either Party is not permitted.

3. Witnesses and Evidence

- a) The Parties may call anyone as a witness including people who do not belong to a Member Association.
- b) Hearsay evidence is not permitted.
- c) The Hearing Panel is not bound by the rules of evidence or any other legal rules, but shall consider the best evidence available.

4. Representation

If the Respondent will be represented at the hearing then the Hearing Panel may require all communication to come from the representative other than when the Respondent is testifying to give oral evidence.

5. Adjournments

The Hearing Panel may adjourn any hearing from time to time.

Schedule C: Appeal Process

1. Appeal Procedure

The appeal will proceed in the following order:

- a) Chair makes opening remarks;
- b) Introduction of the Appeal Panel and confirmation of no conflicts;
- c) Swearing in of Appellant;
- d) Swearing in of Respondent;
- e) Appellant's statement;
- e) Respondent's statement;
- f) Questions from Appeal Panel;
- g) Closing statement from Appellant

2. Recording of Appeal

The appeal may be recorded by any means deemed appropriate by ITSO, which may include but is not limited to audio recording or video recording. Recording of the appeal hearing by the Appellant is not permitted.

3. Evidence

New evidence may not be introduced at the appeal.

4. Representation

If the Respondent will be represented at the appeal hearing then the Hearing Panel may require all communication to come from the representative.

5. Adjournments

The Appeal Panel may adjourn any hearing from time to time.

Schedule D: Fast Track Incidents

Listing Data Checker (LDC) Escalations

Users that choose to proceed to professional standards rather than pay a fine for breaching the same MLS® Rule on the fourth, fifth, or sixth occurrence will be issued a Charge for breaching Article 17 of the REALTOR® Code. The regular procedures set out in this Policy will be followed after the Respondent receives the Charge.

Users that have breached the same MLS® Rule more than six times will be Charged with breaching Article 17 and Article 21 of the REALTOR® Code. The regular procedures set out in this Policy will be followed after the Respondent receives the Charge.

Failure to Cancel Showing Appointment

All incidents alleging that the Respondent failed to attend a showing appointment and failed to cancel the showing appointment prior to the commencement time of the appointment will be reviewed by the Professional Standards. Where the Professional Standards Manager determines there is sufficient evidence of the MLS® Rule breach they will issue a Charge for breaching the MLS® Rules. The Professional Standards Manager will provide the Charge along with a Consent Agreement to the Respondent setting out the following penalty:

- A fine of \$750 for salespeople per missed appointment
- A fine of \$1500 for team leaders per missed appointment
- A fine of \$2000 for brokers or record per missed appointment

If the Respondent chooses not to enter into the Consent Agreement the Respondent may file a Reply for review by the Professional Standards Committee. The regular procedures set out in this Policy will be followed once a Reply is submitted.

Coming Soon or REALTOR® Cooperation Policy

All incidents alleging that the Respondent failed to list a property on the MLS® System after publicly advertising the listing for more than three business days will be reviewed by the Professional Standards Manager. Where the Professional Standards Manager determines there is sufficient evidence of the MLS® Rule or REALTOR® Code breach they will issue a Charge. The Professional Standards Manager will provide the Charge along with a Consent Agreement to the Respondent setting out the following penalty:

- A fine of \$250 for salespeople
- A fine of \$500 for team leaders
- A fine of \$1000 for brokers

If the Respondent chooses not to enter into the Consent Agreement the Respondent may file a Reply for review by the Professional Standards Committee. The regular procedures set out in this Policy will be followed once a Reply is submitted.