



# GENERAL CONSUMER CONDITIONS AND REGULATIONS



**VBO** Vereniging van  
makelaars en taxateurs

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## **SAFETY FIRST!**

Dear Reader,

Allow me to congratulate you on your decision to engage an estate agent or property appraiser who is a member of the “VBO Makelaar” Association.

Any estate agent or property appraiser who is a member of the “VBO Makelaar” Association works with prescribed sample contracts, business terms and regulations. This ensures that you as the client and your agent or appraiser as your consultant always know exactly where you stand. This booklet contains the integral texts of the business terms and the regulations.

### **General Brokerage Terms and Conditions for consumers (page 4)**

The General Brokerage Consumer Conditions for the estate agency sector form part of, and are deemed to be included by reference in, the arrangements between yourself and your property appraiser or estate agent.

### **VBO Code of Conduct (page 14)**

The Code of Conduct spells out what you may reasonably expect from a professional estate agent or property appraiser.

### **Disciplinary Regulations (page 17)**

This chapter goes into detail on how to file a complaint.

### **Privacy Regulations (page 29)**

This chapter elaborates on your “VBO Makelaar” estate agent’s or property appraiser’s compliance with prevailing privacy legislation.

Please do not hesitate to put any questions this documentation may have left you with to your estate agent or property appraiser, or go to [www.vbomakelaar.nl](http://www.vbomakelaar.nl) for more detailed information on the “VBO Makelaar” organisation.

Best regards,

**Harry Bruijniks**

President VBO Makelaar

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## GENERAL BROKERAGE TERMS AND CONDITIONS FOR CONSUMERS

These are the general terms and conditions of VBO Makelaar. It sets out the rights and obligations of your broker and yourself. These conditions were drawn up in consultation with NVM, VastgoedPRO, Dutch Homeowners' Association and the Dutch Consumers' Association within the framework of the Self-Regulation Coordination Group of the Social and Economic Council. They have taken effect on the first of September 2018.

### Article 1 - When do these terms and conditions apply?

These general terms and conditions apply to each contract for services granted by a private customer to a broker.

### Article 2 - What do certain terms mean?

In these general terms and conditions, the following terms have the meanings given:

- a. *Private customer*: a client, natural person, not acting in the course of a profession or business (*consumer*).
- b. *Broker*: a broker or valuer who is a member of (trade association) or the company of a broker or valuer who is a member of (trade association). A valuer does not do the same work as a broker. A broker represents the interests of his client. A valuer is impartial. His work is estimating the value of real estate and reporting this in writing. Because valuers must also comply with these terms and conditions, the term 'broker' also refers to 'valuer' insofar the nature of the provisions does not preclude this.
- c. *Remuneration*: the fee paid by the consumer to the broker for his services, excluding additional costs. In practice, 'remuneration' is often referred to as 'commission' or 'fee'.
- d. *In writing*: including by e-mail.

### Article 3 - How do you and the broker arrange the contract?

1. The broker sets out the contract in writing. He indicates in this contract that these general terms and conditions apply.
2. The contract contains at least a clear description of the services, the remuneration and the costs. What if you later instruct the broker to carry out other or additional services? The broker will then confirm this in writing, including the price agreements for these services. The broker can use a price list with an overview of his remunerations and third-party costs.
3. The remuneration and the costs in the contract include VAT.
4. If you accept the offer of the broker, a contract will have been concluded. The broker must demonstrate that you have accepted the offer in case of a conflict of opinions. If he is unable to do so, you do not need to pay the broker anything.
5. You will receive these general terms and conditions with the offer of the broker.

### Article 4 - Do you have a reflection period?

1. You may have a statutory reflection period of fourteen days during which you may cancel the contract. The contract will indicate whether you have a reflection period.
2. Are you legally entitled to a reflection period and has the broker not informed you of this? The reflection period will then be extended to a maximum of one year after you have awarded the contract. What if you receive the information at a later date? You will have a reflection period of fourteen days from that date.
3. Do you want to dissolve the contract within the reflection period? You must inform the broker of this in writing within the reflection period. You can use the form provided by the broker for this purpose.

### Article 5 What obligations does the broker have?

1. The broker will carry out the contract with due care and expertise. He represents your interests in this respect.
2. The broker will regularly keep you informed of the progress.
3. The broker is required to adequately insure his liability for damage and loss and to maintain this insurance.
4. The broker will comply with the statutory provisions on the processing of personal data.
5. The broker may not represent both the seller and the buyer of the same object. Nor may the broker represent both the tenant and the landlord of the same object. If this is the case, the broker must consult his clients as soon as possible and suspend or terminate one of the contracts (refer to Article 15).
6. The broker may not conclude an agreement on your behalf if you have not given a written mandate for this.

### Article 6 - What are your obligations?

1. You will give the broker all information he needs to carry out the contract.
2. Unless you agree otherwise in writing, you may not carry out any activities that may interfere with the implementation of the contract by the broker. For example, you may not make use of another broker.
3. You must enable the broker to carry out his obligations under the Dutch Money Laundering and Terrorist Financing (Prevention) Act and any other statutory obligations.
4. If your property or plot has been sold and the buyer invokes a resolutive or suspensive condition in the purchase agreement or dissolves it within the statutory reflection period, you must immediately inform the broker in writing.

### Article 7 - What work will the broker carry out?

1. The broker will carry out the work needed to implement the contract for the agreed remuneration. The contract concerns brokerage activities, valuation or the provision of other services.
2. All work agreed for the remuneration will be captured in writing as clear, comprehensible and specific as reasonably possible.
3. A brokerage contract will always include the following activities:
  - assessing the value of the immovable property;
  - giving advice on the (conduct of) negotiations;
  - conducting negotiations.
4. Unless expressly agreed otherwise in writing, the brokerage contract also at least includes the following activities:
  - carrying out the necessary promotional activities and providing the necessary promotional materials;
  - collecting and requesting information on legal, tax, structural and other relevant aspects concerning the immovable property and giving advice on this if necessary;
  - helping to obtain an energy label or energy performance certificate;
  - arranging and supervising visits;
  - giving advice on and drawing up the purchase or rental agreement;
  - supervising the completion of sale/purchase and rental transactions.

### Article 8 - What special rules apply to a valuation?

1. A valuation of immovable property concerns estimating the market value and capturing this value in a standard model report. You may need a valuation to apply for a mortgage, for example.
2. A valuation will be carried out in person by a registered valuer. In social and economic life, one must be able to rely on a valuation report. A valuation is therefore significantly different from a value estimate provided by a broker as referred to in Article 7.
3. The valuation report will contain the purpose for which the contract is awarded. The valuation report is not intended to be used for other purposes.
4. If multiple valuers are involved in a contract, they will draw up a valuation report together. If they cannot agree on the contents of the valuation report, they will discuss this with you. Depending on the agreements, they may hire an additional valuer to draw up a valuation report or issue a valuation report which sets out their own findings.
5. If multiple valuers have carried out the contract, you will receive an invoice for their remuneration and costs from each of them, unless you have agreed otherwise.

### Article 9 - When has the broker completed the contract?

1. Unless you have agreed otherwise, the following applies:
  - The broker has completed the contract once the agreed performance has been delivered.
  - A brokerage contract will have been completed once the purchase or rental agreement has been signed by both parties. The broker must still assist you with the completion of the agreement.
  - A brokerage contract will also have been completed if during the term of the contract a purchase or rental agreement has been concluded which is not the result of the services provided by the broker. The contract will not have been completed if you, as a buyer or tenant, buy or rent something outside of the scope of the contract.
2. Contracts concerning purchase or rental agreements that contain suspensive or resolutive conditions (including the statutory reflection period) will only be completed once the suspensive conditions have been met and the parties can no longer invoke a resolutive condition.

### Article 10 - How is the remuneration calculated?

1. You discuss the way to calculate the remuneration with the broker in advance. Is it a percentage of the purchase price, a fixed total amount, or an hourly rate? You capture this in the contract.
2. Unless agreed otherwise, the purchase price is the amount the buyer must pay to the seller. This amount does not include the costs of the transfer, such as transfer taxes, notarial fees and cadastral duties.
3. Additional agreements are often needed in special cases. Unless otherwise agreed, the purchase price will consist of:
  - If VAT is due on the purchase price: the amount including VAT.
  - In case of new construction: the purchase and contract price jointly, including VAT.
  - In case of a long-term ground lease and/or building and planting rights: the amount agreed on by the buyer and the seller, plus an amount equal to ten times the periodic annual payment.
4. If the remuneration is based on the rent, the rent means: the monthly rent paid by the tenant (including any movable properties included in the rent). You will then pay the remuneration based on an amount of 12 times the monthly rent. Any discounts on the rent are not included in the rent calculation. This applies unless you have agreed otherwise.
5. The remuneration for a valuation may not depend on the amount of the determined (market) value.

### **Article 11 - What costs will the broker charge?**

Besides the remuneration, the broker may also charge costs, for example, for advertisements. He will only charge these costs if you have accepted this in advance. Any agreements made will be captured in writing.

### **Article 12 - When will the broker be entitled to the remuneration and the costs incurred?**

1. Unless agreed otherwise:
  - a. the broker will only be entitled to the remuneration once the contract has been completed. You will pay the costs after they have been incurred by the broker.
  - b. you will only pay the remuneration for a brokerage contract concerning purchase or sale upon transfer of title before the civil-law notary.
  - c. you need not pay any interest over the period between the completion of the contract and the transfer of title.
2. The broker will send you a specified invoice with a reasonable payment period before you are required to make the payment.
3. Has the contract been awarded by more than one person? Each of you will be jointly and severally liable to pay the remuneration and the costs.

### **Article 13 - What will the broker do if you do not pay in time?**

1. If you do not pay in time, the broker will send you a payment reminder. You will be given the opportunity to pay the amount within two weeks after receipt of the reminder.
2. What if you fail to pay within these two weeks? You will be in default and the broker may charge statutory interest.
3. After these two weeks, the broker may collect the outstanding amount, or outsource this collection. The related costs (e.g. collection costs) will be at your expense, unless the court or disputes committee decides otherwise. These costs are, however, subject to statutory limits.

### **Article 14 - Are you allowed to cancel the contract?**

1. You may always cancel the contract, preferably in writing. No notice period applies in this respect.
2. Has the contract been awarded by two or more persons? The contract can then only be cancelled jointly by these clients.
3. If the contract is cancelled, the broker is entitled to reimbursement of the agreed costs insofar as they have been incurred. The broker is not entitled to part of the remuneration, unless it has been agreed otherwise in the contract or if it is set out otherwise in Article 19.
4. You will not be required to compensate for any loss suffered by the broker due to the cancellation.

### **Article 15 - Is the broker allowed to cancel the contract?**

1. The broker may only cancel the contract if he has important reasons for doing so. An important reason will at least be:
  - If the broker would otherwise work for both the buyer and the seller (or both the tenant and the landlord) (refer to Article 5(5)); or
  - A serious disruption of the relationship between the broker and yourself.
2. You will not need to pay any remuneration to the broker if he cancels the contract. This may not be the case if Article 19 applies. You must, however, pay any costs incurred (if agreed), unless this is unreasonable.

### **Article 16 - What will happen if a concluded purchase or rental agreement is not executed?**

The brokerage contract may have been completed, the purchase or rental agreement may have been signed, and the resolutive and suspensive conditions (including the statutory reflection period) may have expired. But if one of the parties does not cooperate with the execution, the purchase or rental agreement will not result in an actual transfer or, in case of rental, occupancy of the rented property. In this case, the broker is entitled to the agreed remuneration, unless you can demonstrate that the broker has failed in his performance and the purchase or rental agreement has not been executed as a result.

### **Article 17 - What will happen if the immovable property is assigned to one of the owners, the partner or a third party?**

In some cases, a property (or other object) will be assigned to one of the owners, the spouse or partner while the brokerage contract concerning a sale is still in force. The contract will end as a result. If it has been agreed that the remuneration of the broker depends on the sale of the property, the remuneration will be calculated based on the value of the allocation. For example, if in case of a divorce (both partners own 50% of the house) one of the partners assigns his or her share to the other party, the fee will be calculated on 50% of the value of the house. This principle also applies if the owner donates part of the house to a third party. The broker and yourself can make other agreements about how the remuneration will be calculated in case of allocation.

### **Article 18 - What happens if you pass away?**

1. If you are the only client, the contract will end once you pass away, unless your heirs want to maintain the contract.
2. If there are multiple clients, the contract will end once one of you passes away, unless the other clients wish to maintain the contract.
3. If the contract ends due to the death of the client or one of the clients, Articles 14(3-4) will apply.

### **Article 19 - Do you still need to pay the remuneration to the broker after the termination of the contract?**

If a purchase or rental agreement is concluded after the termination of the brokerage contract, the following applies. You must pay the broker his remuneration if he demonstrates that this agreement has been concluded because of his services or that an agreement was not concluded because you have acted in violation of Article 6(2). The broker will then be entitled to the agreed remuneration or a reasonable part thereof, unless you have made other agreements.

### **Article 20 - What will happen if you have a dispute with your broker?**

1. If you have a complaint about the conclusion or implementation of the contract, you must immediately report this complaint in writing to the broker.
2. Does the complaint not lead to a solution? In that case, you can submit the dispute to the Dutch Disputes Committee for Brokers (see [www.degeschillencommissie.nl](http://www.degeschillencommissie.nl)). You will have 12 months to do so (from the moment on which you have submitted your complaint to the broker). Does it concern a dispute on liability for damage or loss? In that case, the disputes committee will only be competent for damage or loss up to 10,000 euros.
3. A dispute will only be handled by the Disputes Committee if the consumer has first submitted his complaint to the broker with a complete and clear description.
4. The broker will be bound by the decision of the Disputes Committee.
5. You can also submit the dispute to the court instead of to the Disputes Committee. But you will not be able to rely on the industry guarantee in that case (refer to Article 21).
6. If the broker wishes to submit a dispute, he will let you choose between the Disputes Committee and the court. Are you unable to make a choice within five weeks? The broker may then submit the dispute to the court.
7. The Disputes Committee for Brokers Regulations apply to any handling by the Disputes Committee.
8. A fee will be charged for the handling of a dispute.

### **Article 21 - What does the industry guarantee entail?**

1. (The trade association) guarantees compliance with the binding advice of the Disputes Committee up to a maximum of 10,000 euros. Does it concern a higher amount? (The trade association) will then have a best effort obligation for the excess amount to ensure the broker complies with this advice. This does not apply if this binding advice is submitted to the court for a review within two months after having been issued, the court declares this advice to be non-binding and it is no longer possible to appeal against this court order.
2. Suspension of payment and bankruptcy are excluded from the compliance guarantee as long as the dispute has not yet been handled at the hearing. Termination of business operations is excluded from the compliance guarantee unless the dispute has already been submitted at that time.
3. You can invoke the industry guarantee in writing once it has become clear that the broker does not comply with the binding advice of the Disputes Committee and this advice has not been submitted to the court for a review within two months after it was issued.
4. (The trade association) will pay you the amount within one calendar month after receiving notice of the fact that you invoke the industry guarantee. In that case, however, you must have transferred your claim against the broker to (the trade association).

### **Article 22 - How are deviating agreements laid down?**

The broker must capture any deviating agreements between you and the broker in writing.



## VBO CODE OF CONDUCT

The “VBO Makelaar” organisation is a branch organisation of and for estate agents, property appraisers, property stewards and letting agents. Our affiliates are professional practitioners who combine an upfront approach with straightforward communication. They use the “VBO Makelaar” logo in their various communications (letterhead, e-mail sign-off) and in their office displays, in recognition of their being keenly aware of the significance of what they do professionally as part of the greater community. It is the specific actions that are anchored in this awareness – by which the VBO affiliate’s support staff are likewise bound – that are reflected in the VBO Code of Conduct now before you. The VBO affiliate is under the obligation to monitor the conduct of his or her support staff and is responsible for any transgressions of the Byelaws, Code of Conduct, General Consumer Conditions and/or “VBO Makelaar” Regulations.

### Proficiency and Service Orientation

As the dedicated service providers they are, the members of our organisation continually work on keeping their know-how up to date. Their mandatory registration brings with it the obligation to attend annual permanent education courses. In the event that a particular engagement involves duties for which the attending member has not quite achieved the requisite level of expertise, an expert colleague will be brought in to supervise. Property appraisers who are members of the “VBO Makelaar” Association are bound by the European Valuation Standard (VS) and the accompanying Code of Conduct governing property appraisals. All our affiliates are required to use the most recent versions of the sample contracts our organisation makes available to its members. The estate agent is under a duty of care to ensure that relevant information pertaining to the listing in question should be publicised and vetted for accuracy, making use of prevailing industrial standards such as the “Meetinstructie Woningen” and “Fotowijzer Woningen” (which two publications list the residential measurement standards and residential photographic standards to be adhered to). No VBO Makelaar affiliate will ever seek out or collect gifts, discounts or other rewards from a second principal.

### Upfront Approach

The VBO Makelaar affiliate can be relied upon to confine him or herself to fostering the interests of his or her principal. Under no circumstance will he or she be tempted to “serve two masters” (or mistresses, for that matter) or charge a fee to both parties to a particular transaction or service. The VBO Makelaar affiliate will provide for (a) transparent and properly broken down invoice(s) for the service(s) rendered. Although VBO Makelaar affiliates are not banned from having a direct or indirect interest in transactions involving registered properties, it is essential that they should give full disclosure whenever such a scenario occurs, by notifying their party of the other part in writing of their relevant direct or indirect interest before negotiations get under way, in addition to which they will not be allowed

to charge a fee. It is not permissible for VBO Makelaar affiliates to engage in activities or allow themselves to be caught up in (trans) actions that could result in their autonomy being compromised.

In the inadvertent event of a VBO Makelaar affiliate becoming the object of a complaint, he or she will make every effort – as may be expected from a professional practitioner – to resolve the matter. If this comes to nothing, he or she will alert the complainant to the prevailing complaints and disciplinary schemes. The term for submitting a complaint is capped at one (1) year of the date as at which the complainant first became aware of the allegedly complaint-worthy action or omission on the part of the estate agent or property appraiser. The fatal deadline occurs on expiry of a five (5) year term of the date as at which the allegedly complaint-worthy action or omission took place.

### Straightforward Communication

VBO Makelaar affiliates are under the obligation to inform anyone who wishes to put in a bid for a particular property whether the listing in question is open to bids or under negotiation. Such communications will be exclusively routed through the opposite number’s experts where any have been engaged.

The members of our organisation observe confidentiality regarding any knowledge they may acquire in the course of their carrying out their professional duties as well as complying with prevailing privacy regulations where it concerns any (personal) details they may record in the process. VBO Makelaar affiliates acquit themselves of their professional duties with honesty and integrity. They abide by the customary standards of decency and values that characterise their profession. They steer clear of unfair competition and will take each other to task where they find that this principle has been flouted, with the suspected offender being called upon promptly and candidly to account for his or her actions. Collegiality and loyalty are hallmarks of how VBO Makelaar affiliates operate. On no condition will a VBO Makelaar affiliate indulge in “badmouthing” a fellow professional when talking to third parties: rather, he or she will resort to the customary complaints and disciplinary schemes as per the present Code of Conduct.

VBO’s Code of Conduct also governs the professional activities of VBO Makelaar affiliates outside the Netherlands where locally prevailing legislation and legal conceptions permit.



## REGULATIONS GOVERNING DISCIPLINARY PROCEDURES

### 1. Definitions

1.1. The following definitions shall apply throughout the present Disciplinary Regulations:

#### Affiliated Institution

any such Foundation-affiliated institution as has charged the Foundation by means of an Affiliate Agreement with the provision for disciplinary proceedings vis-à-vis its Parties Involved;

#### Binding Advice

any such binding advice (to be) handed down by the Disciplinary Tribunal as has the status of “settlement” as defined in Section 900 of Book 7 of the Netherlands Civil Code;

#### Board

the Foundation’s Board;

#### Code of Conduct

any such byelaws, rules and regulations, codes of conduct and other regulatory clauses imposing obligations upon the relevant Affiliated Institution’s Party Involved as apply to the Affiliated Institution in question;

#### Complaint

any communication of discontent concerning the treatment meted out by and/or the modus operandi and/or comportment on the part of any (operatives in the employ of any) Respondent as Party Involved other than an act or action performed by the Respondent as Board Member of an Affiliated Institution

#### Claimant

anyone having availed him or herself of the services of the Party Involved who has come to harbour a Complaint concerning the relevant service provision and anyone whose opinion it is that a particular Party Involved has acted in breach of the Code of Conduct of the Affiliated Institution with which the Party Involved is involved;

#### Complaints Bureau

the Foundation’s administrative department in charge of collecting Complaints, referring said Complaints to the Disciplinary Tribunal and coordinating and facilitating said Tribunal’s adjudication of Complaints;

#### Complaints Fee

the fee – for annual determination by the Board – to be paid by the Claimant for having

his or her Complaint adjudicated by the Disciplinary Tribunal;

#### Delegate Member

any Party Involved who on behalf of the relevant Affiliated Institution is an incumbent of the Disciplinary Tribunal;

#### Disciplinary Tribunal

such Tribunal as the Board has launched, in accordance with the provisions as per article 3 of the present Rules and Regulations, for the purpose – with due observance of the provisions regarding Complaints as set out in the present Rules and Regulations – of achieving adjudication by handing down a Binding Advice in the matter in question

#### Expedited Hearing

any emergency procedure which the Disciplinary Tribunal’s President may decide to launch, upon the request of the Claimant and/or the Respondent and/or the Affiliated Institution, where such grounds as have been presented or the gravity of the situation and the interests at stake so warrant;

#### Foundation

The “Stichting Tuchtrechtspraak Makelaardij Nederland” Foundation;

#### Independent Member

any Disciplinary Tribunal incumbent-cum-natural person who lacks the status of Party Involved in an Affiliated Institution or that of Board member;

#### Involved

being a member of, being affiliated with, being registered with and/or having any other sort of involvement in or with and/or any other sort of association with any Affiliated Institution;

#### Party Involved

any (prospective) member, affiliate, registered and/or party having any other sort of involvement in or with and/or any other sort of association with any Affiliated Institution;

#### (Rules and) Regulations

the present Disciplinary Regulations;

#### Respondent

such Respondent as the Complaint is aimed against.

## 2. Object and Proceedings

- 2.1. The Foundation's object consists in the collection and referral of Complaints and the preservation of an independent tribunal for handling Complaints aimed against Parties Involved of various interest groups, validating institutions and/or registering institutions in the area of the valuation of, mediation in connection with and provision of advice concerning (the purchase and sale of) Real Estate.
- 2.2. The Affiliated Institutions within a Foundational context seek to achieve the following objectives:
  - (a) doing justice to the individual Claimant and the individual Respondent;
  - (b) creating openings for repairing the relationship between the Claimant and the Respondent on a basis of mutual trust anchored in equivalence;
  - (c) adjudicating disputes between the Claimant and the Respondent where said disputes concern the signing off on or performance of agreements pertaining to the Respondent's future or past services and where said disputes relate to the Respondent having acted in breach of the applicable Code of Conduct;
  - (d) contributing to safeguarding and improving the quality and integrity of the services (to be) provided by the Parties Involved and the Affiliated Institutions.

## 3. Composition, Appointment and Dismissal of Disciplinary Tribunal Members and Disciplinary Tribunal's Remit

### *Disciplinary Tribunal*

- 3.1. It is the Board which has launched the Disciplinary Tribunal and which is in charge of appointing said Tribunal's members, its Deputy President and its Secretary and Deputy Secretary. Disciplinary Tribunal membership shall be available only to natural persons.
- 3.2. The composition of the Disciplinary Tribunal shall be as follows:
  - (a) President and at least one (1) deputy;
  - (b) at least two (2) Independent Members, and
  - (c) at least one (1) Delegate Member per Affiliated Institution.
- 3.3. The Disciplinary Tribunal in the performance of its duties shall be assisted by a Secretary, for whom at least one (1) deputy shall moreover be on hand.
- 3.4. The de facto discussion of the Complaint shall be seen to by three (3) Disciplinary Tribunal members, to wit the Tribunal's President, an Independent Member and a Delegate Member of the Affiliated Institution with which the Respondent is associated. The President shall select the Delegate Member whom he or she considers to be the more or most suitable choice in the event that the Respondent is associated with more than one Affiliated Institution.

- 3.5. The President and his or her deputy (deputies), the Independent Members, the Delegate Members and the Secretary and his or her deputy (deputies) shall be appointed for terms of office of five (5) years each followed by (potential) reappointment without reservation.

### *Quality Standards*

- 3.6. The President and (each of) the latter's deputy (deputies) (i) are required to have obtained a master's degree in law, (ii) may not entertain Board membership, (iii) may not have the status of Party Involved in or with any Affiliated Institution, and (iv) shall be of irreproachable conduct.
- 3.7. The Secretary and (each of) the latter's deputy (deputies) (i) are likewise required to have obtained a master's degree in law, (ii) may likewise not entertain Board membership, (iii) may not have the status of Party Involved in or with an Affiliated Institution not including the scenario of employment by any one Affiliated Institution in particular, and (iv) shall likewise be of irreproachable conduct.
- 3.8. It shall not be permissible for any one Independent Member (i) to entertain Board membership, (ii) have the status of Party Involved in or with any Affiliated Institution, and (iii) be of anything other than irreproachable conduct.
- 3.9. It shall be compulsory for any one Delegate Member (i) to have the status of Party Involved in or with one or more Affiliated Institutions, albeit that (ii) no such Delegate Member may have a seat on the relevant Affiliated Institution's Executive Committee or the relevant Affiliated Institutions' Executive Committees, as the case may be, and (iii) no such Delegate Member may have a seat on the Board, whereas (iv) no such Delegate Member may be of anything other than irreproachable conduct.
- 3.10. Any Independent Member who fulfils the quality standards as per paragraph 3(6) hereinbefore shall also be eligible for the position of (Deputy) President.
- 3.11. Any Delegate Member who fulfils the quality standards as per paragraph 3(9) hereinbefore having involvement in or with multiple Affiliated Institutions shall be in a position to officiate as Delegate Member on behalf of any one of the relevant Affiliated Institutions.

### *Lapsing of Disciplinary Tribunal Membership*

- 3.12. Disciplinary Tribunal membership shall lapse:
  - (a) as a result of the relevant member resigning;
  - (b) with effect from the relevant member's seventieth (70th) birthday;

- (c) in the event of the relevant member being bankrupted, being granted moratorium on payments, having the debt rescheduling regime for natural persons imposed upon him or herself or being placed under guardianship;
- (d) with effect from the relevant member's decease;
- (e) where it concerns the President, the Secretary and his or her deputies, with effect from the moment of non-compliance with the (quality) standard as per paragraphs 3(6) or 3(7) hereinbefore as appropriate;
- (f) where it concerns any one of the Independent Members, with effect from the moment of non-compliance with the (quality) standard as per paragraph 3(8) hereinbefore;
- (g) where it concerns any one of the Delegate Members, with effect from the moment of non-compliance with the (quality) standard as per paragraph 3(9) hereinbefore;
- (h) on expiry of the relevant term of office;
- (i) owing to the Board upon the request of the other Disciplinary Tribunal members discharging the member in question for reason of:
  - said member having neglected his or her duties;
  - urgent cause otherwise resulting in it being inappropriate for the member in question to be allowed to stay on;
  - the Board having dismissed the relevant member.

#### *Disciplinary Tribunal's Remit*

- 3.13. The Disciplinary Tribunal's remit shall consist in adjudicating – by means of a Binding Advice – the Claimant's Complaint vis-à-vis the Respondent in question.
- 3.14. The Disciplinary Tribunal's Secretary shall officiate in an advisory capacity.

#### **4. Submission of Complaint, Admissibility of Complaint and Complaints Procedure**

- 4.1. The option shall be available to any and all Patrons to take their Complaints to the Foundation.
- 4.2. The Claimant shall submit his or her – written – Complaint to the Complaints Bureau, address for correspondence: P.O. Box 135, NL2630 AC Nootdorp. The following elements shall form part of the written and signed Complaint:
- (a) Claimant's name, address particulars and telephone number;
  - (b) Respondent's name, address particulars and telephone number;
  - (c) description of acts/incidents underlying the Complaint in question;
  - (d) objections to the way the Respondent has comported him or herself;
  - (e) name(s) of the Affiliated Institution(s) with which the Respondent is associated.

The option is additionally available of submitting Complaints to the Complaints Bureau by electronic means by e-mailing same to info@tcmnl.nl, with the original Complaint (in hard copy) bearing the Claimant's signature being subsequently dispatched for receipt by the Complaints Bureau within no more than seven (7) days.

- 4.3. The Claimant's submission of the Claim signifies his or her acceptance of the Regulations and the binding force of the Disciplinary Tribunal's ruling as a binding advice.
- 4.4. The submission of Complaints shall be contingent upon a maximum one (1) year term being observed of the date as at which the Claimant in question first became aware of the Respondent's actions or omissions having prompted said Claimant's submission of the Complaint in question, with the further proviso of submission of the Claim within no more than five (5) years of the date of the Respondent's actions or omissions in question.
- 4.5. The Complaints Bureau is to send confirmation of receipt to the Claimant provided the Complaint complies with the conditions as per paragraphs 4(2) and 4(4) hereinbefore, as well as seeing to the post-haste dispatch to the Respondent and to (each of) the Affiliated Institution(s) in or with which said Respondent is associated of a transcript each of the Complaint. The Complaints Bureau is to dismiss the Complaint as inadmissible in any one of the following scenarios:
- (a) in so far as the conditions as per paragraphs 4(2) and 4(4) hereinbefore have not been complied with;
  - (b) where the Complaint is aimed against someone who has no involvement in or with an Affiliated Institution;
  - (c) where the Complaint has been submitted on a basis of anonymity.
- 4.6. In the event that a Claimant proceeds with the direct submission of a Complaint to the Disciplinary Tribunal, the Complaints Bureau when providing the Affiliated Institution(s) in question with (a) transcript(s) of the Complaint will request from the more or most diligent of the Affiliated Institutions, at the earliest opportunity but in any event within a three (3) month term, by means of mediation to ensure that amicable settlement should be achieved between the Claimant and the Respondent. The relevant request for mediation is not to be made where the Claimant in his or her Complaint has expressly stated that it is his or her wish that the Disciplinary Tribunal should without delay embark upon its adjudication of the Complaint and the Claimant has opted against a (preliminary) mediation effort being made, or where the nature of the Complaint in the opinion of the Disciplinary Tribunal's President – the latter having duly been consulted by the Complaints Bureau – has been of such gravity as to make it imperative that the Tribunal should proceed with adjudication.

- 4.7. In so far as no satisfactory solution is achievable by means of a (preliminary) effort or where a Complaint having been submitted to the Affiliated Institution is of sufficient gravity as to render it unfit for the (preliminary) mediation path, the Affiliated Institution is to advise the Complaints Bureau accordingly, after which the Complaint will be referred to the Disciplinary Tribunal.
- 4.8. The Claimant is under the obligation to settle up the Complaints Fee with the Foundation before the Disciplinary Tribunal will embark on the handling of the Complaint. The Claimant will be reimbursed in the amount of the Complaints Fee where the Disciplinary Tribunal ends up finding for him or her.
- 4.9. The Complaints Bureau as soon as it has collected the Complaints Fee is to refer the Complaint to the Disciplinary Tribunal if and as soon as any one of the following scenarios occurs:
- (i) that of the Claimant in his or her Complaint having expressly stated it to be his or her wish that the Disciplinary Tribunal should without delay upon its adjudication of the Complaint and the Claimant has opted against a (preliminary) mediation effort being made;
  - (ii) that of the Claimant or the Respondent communicating his or her not, or no longer, having any need for mediation and/or stating it to be his or her wish that the Complaint should be taken into adjudication;
  - (iii) that of a three (3) month term having expired since the date as at which the Complaint was first submitted, in accordance with paragraph 4(6) hereinbefore, without the Complaints Bureau having been advised by the Claimant and Respondent jointly that amicable settlement has been achieved between them so that there is no further need for the Disciplinary Tribunal's handling of the Complaint;
  - (iv) that of the Complaint in the provisional opinion of the Disciplinary Tribunal's President being of sufficient gravity to warrant it undergoing adjudication by the Disciplinary Tribunal;
  - (v) that of the Affiliated Institutions having qualified the Complaint as being of sufficient gravity to warrant it undergoing adjudication by the Disciplinary Tribunal.

## **5. Complaints Handling by Disciplinary Tribunal**

- 5.1. The Disciplinary Tribunal will take the Complaint into adjudication as soon as the Complaints Bureau has referred said Complaint to said Tribunal.
- 5.2. The Disciplinary Tribunal is authorised in all cases and at any stage of the proceedings to order either the Claimant or the Respondent to elaborate on particular assertions

or submit for inspection particular documents in connection with the matter at hand. The Respondent or Claimant, as appropriate, may refuse where there are compelling reasons to do so, with the Disciplinary Tribunal deciding on the legitimacy of the refusal and being authorised to come to such conclusion as it may consider appropriate under the circumstances where it has found the refusal to have been less than legitimate.

- 5.3. The Disciplinary Tribunal shall allot a four (4) week term to the Respondent for the purpose of preparing his or her written defence, which term the Tribunal may curtail or extend.
- 5.4. The Disciplinary Tribunal may invite the Claimant and the Respondent to produce written records at a subsequent stage.
- 5.5. The Disciplinary Tribunal's Secretary is to notify the Claimant or the Respondent of any such written records as the Claimant or the Respondent has addressed to the Disciplinary Tribunal, with the Secretary by registered post dispatching to the Claimant and the Respondent each the convocation notice regarding the hearing and the ruling.
- 5.6. Once both the Claimant and the Respondent have been given the opportunity – be it or be it not at a subsequent stage – to produce written records, the Disciplinary Tribunal is to decide on the oral proceedings concerning the Complaint as well as setting a date, time and venue for the relevant hearing, unless the Disciplinary Tribunal's President decides in view of the nature and scope of the Complaint and given the written records that the Complaint lends itself for adjudication without a (prior) hearing.
- 5.7. The oral discussion of the Complaint is to be effected in the presence of the Claimant and the Respondent, unless these fail to put in an appearance despite having been invited to attend in person, or where the Claimant and Respondent have decided to have themselves represented as per paragraph 5(11) hereinafter.
- 5.8. The Disciplinary Tribunal shall be authorised at any time to solicit third-party information.
- 5.9. The Disciplinary Tribunal shall be authorised in a hearing context to interrogate the Claimant, the Respondent, witnesses, experts, third-party stakeholders and the Affiliated Institution and all of their staff.
- 5.10. In the event that the Claimant or the Respondent – having duly been ordered to appear – refuses to put in a personal appearance at the hearing the Disciplinary Tribunal has ordered to be held, in that of either the Claimant or the Respondent refusing to

reply to the questions put to him or her, or in that of the Claimant or the Respondent complicating in any way the discussion of the Complaint, the Disciplinary Tribunal is to make due allowances for this as well as being authorised to come to such conclusion as it may consider appropriate under the circumstances.

- 5.11. Both the Claimant and the Respondent may have themselves assisted by legal or other counsel or representative, whom he, she or they should have provided with power(s) of attorney in so far as the scenario were that of representation.
- 5.12. The Disciplinary Tribunal's President shall be at liberty to decide where an Expedited Hearing is to take place that the terms referred to in articles 4 hereinbefore, the present article 5 and article 7 hereinafter should be curtailed to such extent as to do justice to the interests having prompted said Expedited Hearing being held. The Disciplinary Tribunal's President in curtailing any one of the terms shall made allowances for the amount of time the Complainant, the Defendant and /or Affiliated Institution reasonably need to take their share in the treatment of to deliver the complaint. The Claimant, the Respondent and/or the Affiliated Institution are being notified forthwith of the decision to proceed with an Expedited Hearing.
- 5.13 The Disciplinary Tribunal's President shall be authorised in matters of an urgent nature – most particularly where any further delay would cause irreparable loss being suffered by the Claimant or the Respondent – upon the request of either the Claimant or the Respondent to provide for preliminary relief once the petitioner's party of the other part has been interrogated in writing where it concerns said request.

## 6. Decision and Remedies

- 6.1. The Disciplinary Tribunal shall decide on its competence, the admissibility of the parties and the (partial) validity or invalidity of the Complaint.
- 6.2. The Disciplinary Tribunal may order any one or more of the following remedies against the Respondent where it finds that the Complaint against him or her has been justified:
  - (a) warning;
  - (b) reprimand;
  - (c) penalty payment to the Foundation in an amount of up to five thousand euros (€€ 5,000.00), the precise amount to be determined by the Disciplinary Tribunal;
  - (d) suspension as Party Involved in or with one or more Affiliated Institutions for the duration of up to one (1) year, all of this to be decided at the Disciplinary Tribunal's discretion, in aid of which the Board(s) of the relevant Affiliated Institution(s) is (are) to perform the requisite juristic acts as per paragraph 6(8) hereinafter;
  - (e) discontinuation of the involvement between the Party Involved and one or

more Affiliated Institutions, the relevant decision to be made at the Disciplinary Tribunal's discretion, in aid of which the Board(s) of the relevant Affiliated Institution(s) is (are) to perform the requisite juristic acts as per paragraph 6(6) hereinafter.

- 6.3. Complaints may be upheld without any remedies being ordered.
- 6.4. The Disciplinary Tribunal may resolve where one or more of the aforementioned remedies are ordered that the entire or partial substance of its decision to the relevant effect should be publicised in such manner as outlined in the context of the actual decision.
- 6.5. The Disciplinary Tribunal shall be at liberty where it so prefers to order any one or more of the aforementioned remedies on a provisional basis, with the decision itself addressing the substance of the conditions as well as stipulating the term within which compliance with said conditions is to have been achieved.
- 6.6. The Disciplinary Tribunal may stipulate where it has (partially) ordered one or more of the aforementioned remedies against the Respondent that all or some of the costs associated with the adjudication of the Complaint should be awarded against the Respondent. The level of the outstanding amount and the method and term of payment thereof are to be fixed in the context of the Binding Advice.
- 6.7. The option is available of having the preliminary relief provided for by the Disciplinary Tribunal's President as per paragraph 5(13) hereinbefore cater for the full complement of decisions and remedies outlined in the present chapter and for the deferral of any such remedy as the Affiliated Institution or the Claimant may order against the Respondent until such time as the Disciplinary Tribunal has substantively rounded up the Complaint.
- 6.8. The Affiliated Institution(s) in question shall ensure that the remedies referred to in subparagraphs 6(2)(d) and 6(2)(e) hereinbefore and the preliminary relief as per paragraph 6(7) hereinbefore are carried out.

## 7. Decision

- 7.1. The Disciplinary Tribunal is to make its decision – which shall at all times have the status of Binding Advice as defined in Section 900(2) of Book 7 of the Netherlands Civil Code – within a three (3) week term of the date of the hearing or, where no hearing is to be held, within a three (3) week term of the date of the notification to the relevant effect, all of this unless the proceedings are those as outlined in paragraphs 5(12) and 5(13) hereinbefore.

7.2. The Disciplinary Tribunal shall decide by majority of votes cast, and shall document its decision in a duly substantiated ruling. The names of those having arrived at the Binding Advice and the date thereof shall be disclosed in the context of the Binding Advice, to which the President and the Secretary of the Disciplinary Tribunal shall add their signatures.

7.3. As soon as the Binding Advice has been signed, the Disciplinary Tribunal's Secretary by registered post is to dispatch a certified copy each of said Advice to the Claimant and to the Respondent, as well – within the same term – as dispatching a copy (copies) having duly been certified by him or herself to the Executive Committee(s) of the Affiliated Institution(s) with which the Claimant is associated.

## **8. Transitional Law**

8.1. The handling of Complaints having been submitted to any Affiliated Institution's disciplinary board at a time when the present Regulations were yet to take effect is to be seen to by such body as the Affiliated Institution in question has put in charge of its disciplinary regime.

## **9. Concluding Clauses**

9.1. The Disciplinary Tribunal's members and Secretary and their deputies shall be under the obligation to observe the strictest confidentiality where it concerns their deliberations.

9.2. A term shall be deemed to commence, where the application of the present Regulations is concerned, on the date of receipt of the relevant notice or notification, as the case may be, except where the present Regulations or the Disciplinary Tribunal have (has) expressly dictated to the contrary.

9.3. Any decision aimed at amendment or rescission of the present Regulations shall be preceded by the Disciplinary Tribunal being invited to advise on the proposed amendment or rescission, as the case may be, with the (ultimate) decision to amend or rescind the present Regulations resting with the duly authorised bodies as operated by the Affiliated Institutions.

9.4. The Disciplinary Tribunal in its application of the present Regulations is to align itself with the fundamental principles of due process of law and fairness of proceedings.

9.5. The present Regulations first took effect on the first day of January 2012 and were subsequently amended as at the first day of July 2013.

## **PRIVACY**

The performance of a mediation or valuation assignment inevitably involves personal details being collected and used, or “processed” as it tends to be referred to. Security and accuracy when handling your personal details will always be top priority for your VBO Makelaar affiliate, as set out in VBO Makelaar's Code of Conduct. Reference is also made in this context to the newly implemented General Data Protection Regulation (GDPR; Dutch acronym: AVG), which as the successor of the Personal Data Protection Act (Wet bescherming persoonsgegevens) offers even greater consumer right protection.

### **Some GDPR Particulars**

- The processing of personal details is strictly contingent upon there being proper cause for doing so. Estate agents and property appraisers mostly engage in this kind of processing as part of an agreement being performed or because they are statutorily required to do so.
- It is obligatory for businesses and organisations that process personal details to ensure that adequate security measures should be in place.
- Personal details may only be shared with other parties where this has been pre-agreed. The VBPO Makelaar affiliate is under the obligation by means of a privacy statement (see the relevant VBO Makelaar affiliate's web site) to let you know how exactly your personal details are being processed.



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