



THE NEW HOME BUYER PROTECTION BOARD APPEAL PROCESS

Summer, 2014

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INTRODUCTION

The New Home Buyer Protection Board (“NHBPB”) is an independent quasi-judicial appeal board. It hears appeals from decisions made by the Registrar of the *New Home Buyer Protection Act* (“Registrar”).¹

FILING AN APPEAL

The NHBPB hears appeals of the Registrar’s decisions respecting:²

- Owner builder authorizations
- Hardship exemptions
- Status determinations
- Compliance orders
- Administrative penalties

To file an appeal, a person wishing to appeal (the “appellant”) must prepare a completed copy of the [Notice of Appeal Form](#).³ Forms may be sent by email to

nhbpbmail@gov.ab.ca

Or by mail to

New Home Buyer Protection Board
15th Floor, Commerce Place
10155 - 102 Street NW
Edmonton Alberta
T5J 4L4

A Notice of Appeal and an appeal fee of \$250 must be received by the Board within 30 days of the appellant’s receipt of the Registrar’s decision.

Where a Notice of Appeal is received at the end of the 30 days, an appellant may have up to an additional 7 days from the filing of the Notice of Appeal form to pay the

* The New Home Buyer Protection Board and the Municipal Government Board (MGB) are jointly administered, and this bulletin was prepared by the MGB-NHBPB administration.

¹ [New Home Buyer Protection Act, SA 2012, c N-3.2](#) (the “Act”).

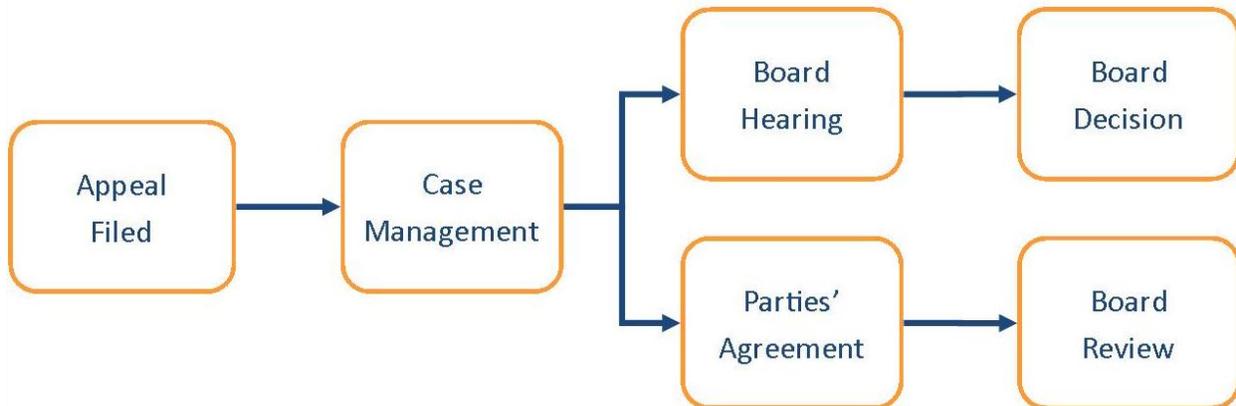
² Section 17(1) of the Act and [New Home Buyer Protection \(Ministerial\) Regulation, Alta Reg 220/2013](#), s. 11 (the “Ministerial Regulation”).

³ Section 17(1) of the Act.

appeal fee.⁴ Fees may be paid by cheque or money order made out to the *Government of Alberta*.

THE APPEAL PROCESS

The appeal process has four basic phases:



Each phase is discussed below. The time it takes for an appeal to move through these four phases depends on:

- the availability of the parties
- the cooperativeness of the parties
- the number of issues that the Board must decide
- the complexity of the issues under appeal

Appeal Filed

When a Notice of Appeal form is received, it is reviewed by a case manager for completeness and to ensure that the fee is received. Appeals are not accepted by the Board until both the Notice of Appeal form and the appeal fee are received.

If the Notice of Appeal appears to be in order, the case manager will issue a letter of acknowledgement of the appeal and notify the Registrar that the appeal has been filed.

If there is a deficiency in the appeal filing, such as an unpaid fee, the case manager will identify it in a letter to the appellant. The case manager may require the deficiency to be remedied before processing the appeal.⁵ Alternatively, the case manager may allow the appeal process to continue with notice to the appellant that the deficiency must be remedied. If the deficiency is not remedied, the appeal will be dismissed.

⁴ Section 8(3) of the Ministerial Regulation and Ministerial Order P:005/14.

⁵ Section 16(1)(f) of the Ministerial Regulation allows a case manager to refuse to accept an appeal in certain circumstances.

*Case Management*⁶

Case management allows for a fair process that is as timely as possible in the circumstances of the appeal. Case management is conducted by Board staff or a Board member through phone calls, emails, and meetings with the appellant, the Registrar, and any interested parties.

Case management meetings are a common first step in an appeal. In a teleconference, the parties have an opportunity to discuss the dispute to identify the real issues underlying the appeal. Sometimes this discussion leads to parties agreeing on how the appeal should be resolved, without having to hold a hearing. If no agreement is reached, the case manager leads a discussion on preparing for a hearing. The case manager's role is to manage the appeal process: the case manager does not make the Board's decision, nor give advice to the Board on what decision to make.

A case manager may

- correspond with parties on behalf of the NHBPB
- make case management instructions, which include
 - directing parties to focus the issues in dispute, identify agreed facts, or identify witnesses
 - directing disclosure of information
 - directing that evidence be submitted as sworn statements; and
 - setting dates for hearings and exchanges of information
- provide parties with information relevant to an appeal
- hold discussions with parties to facilitate any of the above actions
- refer any matter to a hearing

Additional information on preparing for case management meetings and teleconferences is provided below.

Parties' Agreement and Board Review

Where the parties agree on a solution for an appeal, they may make a recommendation to the Board to resolve the dispute. Alternatively, the appellant may withdraw the appeal. Depending on the complexity of the recommendation, the case manager may indicate that the parties should either prepare and sign a joint recommendation document explaining the solution for the board and a consent order, or just sign a consent order. A consent order is similar to a board order, except the parties sign it to indicate their consent to the terms of the order.

Once the parties' materials are prepared, a board member reviews the file. If the Board member has any concerns with the parties' solution, a case manager will contact the parties. Otherwise, the parties should receive a copy of the Board's order shortly after it is signed.

Hearing

When an appeal proceeds to a hearing, the appellant and the Registrar or a representative will each have an opportunity to present their cases to the Board. Hearings may be held to determine procedural issues in "preliminary hearings" or to

⁶ Refer to section 16 of the Ministerial Regulation.

determine the substance of the case in “merit hearings”. Hearings can be held in person or electronically by phone call.

Appeals are a “new trial of the issues” and at a merit hearing, the Board will take a fresh look at the decision made by the Registrar.⁷ Both parties will have an opportunity to present their case. Parties also may ask one another questions in front of the Board. What to expect at a hearing is described in more detail below.

A merit hearing may not be necessary if the parties come to an agreement on how the appeal should be resolved. Depending on the parties’ proposed resolution, the Board may require a written explanation, or the parties’ consent to an order resolving the appeal. A case manager is available to provide guidance if an agreement is reached.

Decision

The Board may make a decision on the appeal at the hearing, and give oral reasons or written reasons at a later date. The Board may also reserve its decision and provide it in writing at a later time. The time it takes to for the Board to decide an appeal depends on the complexity of the issues involved.

PREPARING FOR A CASE MANAGEMENT MEETING

A case management meeting is more productive when the parties are prepared for the appeal and have reviewed the governing legislation.⁸ The parties will be asked to speak to

- The reasons that the decision, order or penalty was issued
- The reasons for the appeal
- Any facts that appear to be in dispute
- What is needed to prepare for a hearing, including the evidence that the parties are likely to rely on
- The amount of time needed to prepare for a hearing
- Availability for a possible hearing date
- Any questions they may have about the appeal process

Accordingly, where the parties have prepared to speak to these topics, the process is most effective.

WHAT TO EXPECT AT A CASE MANAGEMENT MEETING

Where a case management meeting is held in person, parties should arrive at the meeting place a few minutes in advance, and wait until the case manager invites the parties into the meeting room.

Where a case management meeting is held by teleconference, parties should dial in a few minutes in advance, and wait on hold until the case manager commences the

⁷ Refer to section 17(7) of the Act.

⁸ Refer to “Further Information” at nhbpb.ca for links to the statute and regulations.

conversation. The case manager will wait to ensure everyone who is expected to attend has arrived.

Introduction

1. The parties introduce themselves
2. The case manager makes an opening statement and explains the meeting agenda

Discussion of the Merits of the Appeal

3. The Registrar has an opportunity to explain the decision, order or penalty under appeal
4. The Appellant has an opportunity to explain any reasons for the appeal
5. The parties have the opportunity to discuss the issues in the appeal that are and are not in dispute⁹

Preparing for a hearing

6. The parties describe the evidence they intend to rely on in presenting their cases.
7. The parties discuss how and when that evidence will be disclosed to the other parties and the Board.
8. The parties explain whether they will bring witnesses, agents, or both.
9. The parties discuss scheduling disclosure of evidence and possible hearing dates
10. The parties have an opportunity to discuss any other preliminary matters

Any decisions made at a case management meeting will be confirmed by letter or email.

ARRIVING AT A NHBPB HEARING

The hearing room is typically closed until just before the hearing begins. The NHBPB will invite parties to come into the hearing room when the panel is ready. There will be enough time to set up and get comfortable before the hearing begins.

All persons attending a hearing will be asked to sign in.¹⁰ Board staff will be there to answer questions.

Things to remember:

- Arrive fifteen minutes before the hearing is scheduled to begin.
- Please do not enter the hearing room until invited to do so by the NHBPB.
- Hearings may last 1 – 2 hours before a recess. Please prepare accordingly.
- The NHBPB does not have electronic or other audio-visual equipment available for presentations. Talk to a case manager if you are considering bringing your own such equipment.

⁹ It is useful to discuss what things are not in dispute because if everyone agrees about some element of an appeal, then no one has to spend further time preparing, discussing or deciding it.

¹⁰ This information is used by the NHBPB panel to know who is present at the hearing. NHBPB administration also sometimes asks people who have attended hearings to respond to a survey about hearings.

WHAT TO EXPECT IN THE HEARING ROOM

Tables will be set up for you and the other parties to sit at while making presentations. There will be enough space for you to arrange any material you want to refer to and to take notes while others are speaking during the hearing.

The [Board members](#) assigned to the appeal sit at the head of the room to hear the presentations. One member of the Board is the Presiding Officer. There may be additional side panel members. The Presiding Officer will give any instructions necessary to keep the hearing moving fairly and efficiently and let participants know when to speak.

In addition to the panel, a case manager is often in attendance. The case manager will sit to one side of the panel to keep track of evidence and support the panel as needed.

Things to remember:

- Please let a case manager know beforehand if you need to make any special arrangements.
- If you need to communicate with the NHBPB either before or after the hearing, please do so through a case manager.
- Address the Presiding Officer as “Mister Chair” or “Madam Chair” as the case may be.
- Other panel members, if there is more than one person on a NHBPB panel, may be addressed as “Sir” or “Mr.” and “Madam” or “Ms.”
- Hearings are open to the public.

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