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**General Consumer Conditions**

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“Vereniging VBO Makelaar” Association

GENERAL CONSUMER CONDITIONS - PRIVACY REGULATIONS - CODE OF CONDUCT  
REGULATIONS GOVERNING DISCIPLINARY PROCEDURES - 1 July 2013

**The “Vereniging VBO Makelaar” Association entertains affiliations with the following organisations**

- C.E.I. Confédération Européenne de l’Immobilier = European Confederation of Real Estate Agents
- “De Geschillencommissie” = Netherlands Foundation for Consumer Complaints Boards
- “Tuchtcollege Makelaardij Nederland” = Netherlands Estate Agency Disciplinary Tribunal
- TEGoVA = The European Group of Valuers’ Associations



# GENERAL CONSUMER CONDITIONS

VBO MAKELAAR > [VBO.NL](http://VBO.NL)

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## PART 1 GENERAL CONSUMER CONDITIONS

The “Vereniging VBO Makelaar” Association has prepared the present General Consumer Conditions - effective 01 July 2011 - in consultation with “Consumentenbond” and “Vereniging Eigen Huis”, in the context of the Netherlands Social and Economic Council’s “CZ Group”.

### 1.1 GENERAL

#### Article 1 - Scope

The present General Consumer Conditions govern the conclusion and performance of any agreement entered into between a consumer of the one part and a VBO-affiliated estate agent of the other involving the former engaging the latter as his or her service provider in connection with Dutch-based real estate.

#### Article 2 - Definitions

The following definitions shall apply throughout the present General Consumer Conditions:

- A. *Assignment* • The contractual agreement for the provision of services, the latter being defined as mediation in connection with the purchase and/or sale and/or rental and/or letting of Real Estate (as per article 11 et seq. hereinafter), the valuation of Real Estate (as per article 18 hereinafter), the provision for of property management services (as per article 19 hereinafter), and the performance of sundry Estate Agency services.
- B. *Brokerage* • The fee due and payable for mediation in connection with the purchase and/or sale and/or rental and/or letting of Real Estate.
- C. *Complaints Board* • The Estate Agency Complaints Board as operated by the “Stichting Geschillencommissies voor Consumentenzaken”
- D. *Consumer* • Any Principal-cum-natural person who is not officiating in a professional practitioner’s or entrepreneurial capacity.
- E. *Dwelling* • Any property intended for residential use.
- F. *Estate Agent* • (The business carried on by) any VBO-affiliated Estate Agent/Property Valuer
- G. *Fee* • The price - including Brokerage - to be paid for the Estate Agent’s services.
- H. *(Immoveable) Property/Properties or Real Estate* • restrictive rights in respect of immoveable properties - e.g. long-term land lease, right of superficies - shall be deemed to come under this definition.
- I. *Trade Organisation* • the “Vereniging VBO Makelaar” Association of 5A Gildeweg in (NL2632 BD) Nootdorp.

### **Article 3 - General and Personalised Offer**

1. The Estate Agent's general offer to the Consumer provides inter alia for an unambiguous enumeration of the services the relevant Consumer may count on being provided with, as well as making mention of the fee to be paid for the services and of the sundry terms and conditions subject to which the services are to be performed.
2. The Estate Agent is to invite the Consumer, as soon as the latter has taken cognisance of the General Offer, to enter into negotiations concerning said (General) Offer with the aim of arriving at a Personalised Offer.
3. The Estate Agent is to ensure that the ensuing Personalised Offer should be documented using an Order Form. Said Form is to include a reference to the applicability of the present General Consumer Conditions.
4. The Personalised or General Offer, as the case may be, shall be accompanied by a copy of the present General Consumer Conditions.
5. Unless the Estate Agent successfully produces proof in corroboration of the existence of the Assignment where the latter is being disputed, he or she shall lack entitlement in the absence of a written Assignment bearing the Consumer's signature or electronic Assignment having originated with the Consumer to being paid a Fee and/or to being reimbursed for expenses incurred.

### **Article 4 - Sign Off on Assignment**

The Consumer's acceptance of the Personalised Offer prompts the Assignment being signed off on.

### **Article 5 - Term of Assignment**

The Assignment is entered into indefinitely unless the Parties agree to the contrary.

### **Article 6 - Termination of Assignment**

1. The Assignment is to terminate in any one of the following scenarios:
  - A. That of the Estate Agent having duly acquitted him or herself of his or her duties as per the Assignment, unless the contract in question is ongoing by nature (as per article 19 hereinafter);
  - B. That of the Consumer retracting the Assignment;
  - C. That of the Estate Agent's discontinuation of the Assignment;
  - D. That of either Party dissolving the contract;
  - E. That of the Consumer's decease.
2. The Estate Agent shall be deemed to have acquitted him or herself of his or her duties as per the Assignment as soon as he or she has delivered the agreed performance or, where the Estate Agent had been engaged in an intermediary capacity, as soon as his or her performance of services has resulted in the envisaged agreement between the relevant parties having come about, which in any scenario involving a Consumer acquiring a Dwelling shall not be the case until such time as the purchase (cum sale) has been documented in a contract of sale bearing both parties' signatures. The delivery of performance shall not detract from the Estate Agent's obligation under the relevant Assignment to help out the Consumer while the transaction is being finalised. The performance of the Assignment shall likewise be contingent upon condition precedent or condition subsequent, as the case may be, where it concerns any Agreement featuring a particular clause rendering the final sign-off or performance obligation contingent upon such condition precedent or condition subsequent.
3. Assignments shall be subject to discretionary retraction at any time without term of notice having to be observed and without the Consumer in question being liable for damages in connection with any such termination, albeit that the Estate Agent shall be entitled to being reimbursed for expenses incurred as defined in article 17 hereinafter, and to a percentage of his or her pay where such had been agreed at the time he or she was given the Assignment. Retraction of Assignment should preferably be effected either in writing or electronically.
4. The Estate Agent for compelling reasons may opt for discontinuation of the Assignment, any such "compelling reasons" in any event including the scenario as per paragraph 12(1) hereinafter and that of severe disruption of the relationship between the Estate Agent and the Consumer. The Estate Agent's discontinuation of the Assignment is to be effected in writing or electronically.
5. Dissolution of Assignment is an option where the party of the other part has fallen down on his or her obligations, the relevant notice of dissolution preferably being effected either in writing or electronically.
6. The date of receipt by the Estate Agent or Consumer, as appropriate, of the (written or electronically conveyed) notice of retraction, discontinuation, dissolution or decease, or such later date as stipulated in the relevant notice, shall be regarded as the date of termination of the Assignment.

#### **Article 7 - Turnover Tax and Exigibility**

1. Unless it has expressly been agreed to the contrary, the agreed Fee and additional charges shall be inclusive of statutorily payable turnover tax (value-added tax).
2. The signing off on the contract of sale or lease, as appropriate, or the performance of the Assignment or termination otherwise of the Assignment, as the case may be, shall render any and all claims for outstanding Fee, Brokerage and/or charges instantly exigible unless it was originally agreed to the contrary, all of this without prejudice to the provisions as per paragraph 14(2) hereinafter.

#### **Article 8 - General Obligations on the Part of the Estate Agent**

1. The Estate Agent is to acquit him or herself, to the best of his or her ability and knowledge and with due observance of the Consumer's best interests, of his or her duties under the Assignment he or she has accepted. Unless it was originally agreed to the contrary, the Estate Agent shall be at liberty to arrange for such work as the performance of the Assignment calls for being carried out by others operating under his or her responsibility.
2. The Estate Agent shall keep the Consumer abreast of developments at regular intervals
3. The Estate Agent shall be under the obligation to take out and maintain adequate insurance for his or her liability for damages arising out of attributable breach or unlawful act.

#### **Article 9 - General Obligations on the Part of the Consumer**

1. The Consumer to the best of his or her ability and knowledge shall provide the Estate Agent with any such information as the latter has a need for in order properly to acquit him or herself of his or her duties under the Assignment.
2. It shall not be permissible for the Consumer without the Estate Agent being duly notified to engage in any activities that might scotch the Agent's performance of the Assignment or frustrate the Agent's operations.

#### **Article 10 - Payment**

1. The Consumer shall pay the Estate Agent for the latter's services as per the parties' agreement.
2. The Estate Agent is to present the Consumer with a properly itemised invoice in which mention is made of a reasonable term of payment.
3. The Consumer's failure to pay within the term as per the Estate Agent's invoice will prompt the latter to raise a reminder inviting the Consumer to see to payment being - belatedly - made within a two (2) week term of the date of receipt.
4. The Consumer's continued non-payment notwithstanding the reminder referred to in paragraph 10(3) hereinbefore shall cause him or her to be in non-performance, with the Estate Agent being authorised additionally to charge (default) interest at the statutory rate.
5. The Estate Agent on expiry of the term referred to in paragraph 10(3) hereinbefore shall be authorised, without any further notice of default being required to be served, to collect the outstanding amount, with any such judicial and/or extrajudicial costs and charges as such debt collection may reasonably involve being charged on to the Consumer unless it is ruled to the contrary, be it by the Court or by the Complaints Board.
6. Joint and several liability for payment of any and all amounts having become due and payable on any account whatsoever shall apply in the event of the Assignment having been tendered by multiple individuals.

## 1.2 INTERMEDIARY SERVICES

### Article 11 - Assignment for Provision of Intermediary Services and Partial Services

The provision of advice on and the conducting of negotiations are what an Assignment for the provision of intermediary services is essentially about. Such Assignment for the provision of intermediary services may be expanded to include one or more of the following services, inter alia:

- discussion of and advice concerning the scope for achieving sign-off on the envisaged agreement;
- arranging for and attending viewings;
- appraising the value of the relevant property;
- devoting attention to relevant aspects of a legal, fiscal, structural or other nature;
- provision of assistance at the finalisation stage.

The Assignment for provision of intermediary services involves the Estate Agent him or herself having viewed the property in question at least once, either while the Assignment was already under way or in immediate anticipation thereof.

The additional option exists of tendering a separate Assignment rather than an Assignment for the provision of intermediary services. Examples of such partial services to be provided to the Consumer include:

- preparation of a contract of sale without the Estate Agent being involved as an intermediary;
- preparation of a lease without the Estate Agent being involved as an intermediary;
- entry of details concerning an immovable property in electronic systems including via the Internet;
- preparation and placement of advertisements;
- performance of title searches;
- carrying out a property search upon request;
- seeing to applications being made for (municipal) residential permits, National Mortgage Guarantee, (transfers of) grants, et cetera.

The present General Consumer Conditions apply to such partial services where the relevant stipulations do not dictate to the contrary.

### Article 12 - Obligations on the Part of the Estate Agent

1. It shall not be permissible for the Estate Agent to accept more than one Assignment at a time for the provision of intermediary services with respect to the same property. The Estate Agent's acceptance of a previous Assignment for the provision of intermediary services with respect to a particular property shall force him or her to suspend his or her acceptance of any such fresh Assignment until he or she has demonstrably completed the original Assignment. In the event that the Estate Agent is under the obligation by virtue of two or more current Assignments for the provision of intermediary services to provide serviced with respect to the same property and the service provision to one of the Principals involved is incompatible with the interests of the other Principal involved, the Agent shall have no choice but to advise his or her Principal, be it in writing or electronically, of the predicament in question, as well as being under the obligation no later than by the time the negotiation stage between the two Principals is reached to confer with his or her Principal in order that one of the Assignments should be suspended or terminated. It follows that the Estate Agent may not provide services in respect of the same property to more than one Principal where the service provision to one of the Principals is incompatible with the other Principal's best interests, irrespective of what the wishes of those involved may be.
2. No consideration whatsoever shall be due and payable to the Estate Agent by the Consumer whose Assignment for the provision of intermediary services it (to be) terminated by virtue of the provisions as per paragraph 12(1) hereinbefore, with the exception of any such expenses as per article 17 hereinafter as the Consumer may already have ordered to Estate Agent to incur.
3. The Estate Agent shall not be authorised to conclude agreements on the Consumer's behalf unless the latter has authorised the former accordingly, be it in writing or electronically.
4. The Estate Agent in his or her performance of the Assignment shall abide by the Personal Data Protection Act and the Money Laundering and Terrorist Financing (Prevention) Act of the Netherlands.

### Article 13 - Obligations on the Part of the Consumer

1. Unless arrangements to the contrary were first entered into, it shall not be permissible for the Consumer without the Estate Agent being duly notified to conclude agreements, conduct negotiations, make use of similar services provided by others and/or engage in any activities that might scotch the Agent's performance of the Assignment for the provision of intermediary services or frustrate the Agent's operations.
2. The Consumer shall make every effort to help ensure the Estate Agent's compliance with obligations (such as that of verifying the Principal's identity) as per the Money Laundering and Terrorist Financing (Prevention) Act of the Netherlands.

#### Article 14 - Fee

1. A Fee shall be due and payable to the Estate Agent by the Consumer in so far as an agreement pertaining to a property is concluded while the Assignment for the provision of intermediary services is under way including where the agreement has not resulted from services having been provided by the Estate Agent unless it concerns an Assignment tendered by a Principal-cum-purchaser or Principal-cum-tenant who goes on to purchase or rent outside the area to which the Assignment related. The conclusion of an agreement shall be deemed to include the Principal's collaboration in any act or action owing to which the property is (wholly or partially) sold, let or allocated to the Principal and/or to a third party causing the performance of the Assignment not being taken any further.
2. Unless it was originally agreed to the contrary, the Fee for mediation in the context of the purchase or sale of a property shall not be rendered exigible until such time as the notarial instrument providing for transfer of legal title to the property is executed, without the Consumer owing the Estate Agent any interest for the period in between the date as at which the Fee first became due and payable and that of said Fee's exigibility. Any such Fee as the Estate Agent may be entitled to shall be exigible as soon as it has been established that the underlying agreement having been concluded is not to culminate in legal title to the property in question transferring by notarial instrument.
3. No Fee shall be due and payable by the Consumer in the wake of termination of the Assignment for the provision of intermediary services as defined in paragraph 6(1) sub (b) to (e) inclusive in so far as an agreement pertaining to a property is concluded, unless:
  - \* the Consumer has acted in breach of the provisions as per article 13 hereinbefore;
  - \* the Estate Agent succeeds in presenting adequate proof bearing out that the conclusion of the agreement pertaining to the property in question has resulted from his or her provision of services to the Consumer while the Assignment was still under way.
4. Agreements featuring a particular clause rendering the final sign-off or performance obligation contingent upon a particular condition precedent or condition subsequent shall likewise entail the entitlement to a Fee being contingent accordingly unless one of the Parties has, or both Parties have, failed to apply the relevant condition in accordance with the purport of same.
5. In the event of a contract of sale lapsing as a result of the purchaser availing him or herself of his or her right to reconsider within the statutory grace period as per the buyer's remorse regime (Section 2 of Book 7 of the Netherlands Civil Code), this shall likewise cause the Estate Agent's Fee entitlement in connection with said contract to lapse.
6. In the event of a Fee obligation coming about in accordance with the provisions as per paragraph 14(3) hereinbefore the Estate Agent shall be entitled to such portion of the Fee as is reasonably decided upon, with due allowances being made for any such work as the Estate Agent had already performed and for the corresponding benefit for the Consumer, and for the reason underlying the termination of the agreement.
7. In the event of an agreement having been concluded remaining unperformed the Estate Agent shall nevertheless continue to be entitled to his or her full Fee unless the Consumer succeeds in rendering it plausible that the agreement's non-performance has been caused by attributable breach (failure to perform) on the Estate Agent's part.

#### Article 15 - Fee Calculation for Purchase and Sale Services

1. The Fee is to be calculated on the basis of the relevant arrangements as agreed between the Parties, with paragraphs 15(2) to 15(10) hereinafter being used as the basis for Fee calculation where the Parties between them never came to any specific arrangements on the subject.
2. The Fee is to be calculated on the basis of the purchase price to be paid for the property in question.
3. Said "purchase price" is to be defined as the amount due and payable by the purchaser to the vendor inclusive of fees, duties and charges such as stamp duty land tax, notarial fees and land registry charges.
4. The Fee shall also be calculated on the amount inclusive of value-added tax where the purchase price is liable for value-added tax or value-added tax forms part of the purchase price, except where value-added tax credit accrues to the purchaser.
5. The Fee for properties under construction or awaiting construction is to be calculated on the basis of the purchase and contract prices jointly or on that of the expected (overall) construction costs as evidenced by the agreement, all of this inclusive of value-added tax except where value-added tax credit accrues to the purchaser.
6. The Fee is for a leasehold right or a leasehold property is to be calculated on the basis of such amount as the purchaser and the vendor are to agree between them augmented by an amount in tenfold measure of the annual periodic reimbursement.
7. The Fee for an apartment right is to be calculated on the basis of the purchase price to be paid for the unit in question.
8. The Fee for a membership of a cooperative flat exploitation society or for a share in an integral property is calculated on the basis of the purchase price to be paid for the membership or share in question, without any (downward) adjustment being made because of the share in a mortgage loan if any.
9. The following (trans) actions shall be considered as being on a par with contracts of purchase and sale where the Fee calculation is concerned:
  - mutual exchange ("barter");
  - hire-purchase;
  - purchase and sale subject to payment in instalments;
  - purchase and sale not necessarily involving a transfer obligation ("transfer of beneficial title");
  - the vesting of leasehold right or right of superficies.
10. In the event of moveable items of property (in a substantive sense) and/or proprietary rights (e.g. goodwill) being purchased or sold and/or damages, applications, contributions and similar claims being agreed by the parties mutually, the Fee calculation shall be charged inclusive of the purchase price(s) to be paid for the relevant items of property and rights.

#### **Article 16 - Fee Calculation for Rental and Letting Services**

1. The Fee is to be calculated on the basis of the relevant arrangements as agreed between the Parties, with paragraphs 16(2) to 16(8) hereinafter being used as the basis for Fee calculation where the Parties between them never came to any specific arrangements on the subject.
2. The Fee charged in connection with Real Estate rental and letting agreements is to be calculated on the basis of the rental price to be paid for the property in question, with due observance of such other provisions as follow.
3. Said "rental price" is to be defined as the amount to be agreed between the tenant and the landlord as compensation for the mere use of the properties throughout the inaugural rental year.
4. The Fee is to be calculated on the basis of the rental price augmented by value-added tax where applicable, except where value-added tax credit accrues to the tenant.
5. In the event that a different rental price than that for the inaugural rental year is to be due and payable under the agreement where any subsequent year is concerned and the relevant amount was already known at the time the agreement was concluded, with the purport evidently turning out different from that of the rental price keeping pace with the appreciation (depreciation) in the euro's value, allowances are to be made in the calculation of the Fee for the aggregate of the relevant amounts divided by the number of years to which they relate.
6. A partial rental year shall be taken into consideration in the calculations as if it were an entire rental year.
7. The following types of agreement shall be considered as being on a par with tenancy and letting agreements where the Fee calculation is concerned:
  - lease agreements;
  - rental exchange ("barter") agreements;
  - agreements for use;
  - agreements providing for right in rem of use and occupation;
  - other, similar agreements such as finance or operating leases.
8. In the event of moveable items of property (in a substantive sense) and/or proprietary rights (e.g. goodwill) being rented or let, the rental price shall be inclusive of such rental price(s) as have been agreed to be paid for the relevant items of property. In the event of the items of property additionally being purchased or sold and/or in that of damages, applications, contributions and similar claims being agreed by the parties mutually, the Fee calculation shall be charged inclusive of the purchase price(s) to be paid for the relevant items of property and rights.

#### **Article 17 - Expenses**

1. The Consumer in the context of an Assignment for the provision of intermediary services shall reimburse the Estate Agent for the latter's expenses, unless it was originally agreed to the contrary between the parties, with the Estate Agent being under the obligation before the relevant expenses are incurred, including where it concerns the level thereof, to confer with the Consumer and document the mutual arrangements on the subject in writing or electronically. This shall also apply in the event of the Assignment being suspended, or in that if it terminating as a result of retraction or otherwise.
2. The Consumer shall on no account be liable for damages in a retraction scenario, albeit that the Estate Agent shall be entitled in such scenario to be reimbursed for expenses he or she had already incurred as per the paragraph 17(1) hereinbefore, as well - if and in so far as this had been agreed at the time the Assignment was tendered - as to a percentage of his or her pay.

## 1.3 VALUATION

### Article 18 - Valuation

1. The valuation (appraisal) of a property entails a Property Valuer on the basis of his or her examination of the property's characteristics, location, standing and condition preparing a basic valuation report in which the property's appraised value is disclosed, among other things. Unless it is agreed to the contrary, a property valuation will be performed in accordance with the then current version of the valuation report for housing finance as adopted by the representative trade organisations. Property valuations have to be carried out by accredited Estate Agents personally.
2. The valuation report must in any event contain the following information: Consumer's name, reason for valuation, succinct description of property under valuation, property's land registry designation and further particulars, class of appraised value, special circumstances (if any) having been taken into account, and Valuer's name and further (business) particulars. A valuation report is not the same thing as a structural survey report.
3. The valuation report is presented to the Consumer (unless arrangements to the contrary are made). The Estate Agent will refrain from disclosing the valuation report to third parties unless the Consumer has granted him or her permission.
4. It is strictly vis-à-vis the Consumer in question (i.e. not vis-à-vis third parties) that the Estate Agent will only be responsible for the substance of the valuation report.
5. In the event of a Consumer having ordered a valuation to be performed, he or she shall be under the obligation - unless it has been agreed to the contrary - to settle up the agreed valuation Fee as soon as he or she has been presented with the valuation report.
6. In the event of the Consumer withdrawing the valuation Assignment before actual valuation has taken place, he or she shall be under the obligation to pay a Fee for such duties as the Valuer had already performed, which Fee - barring prior agreement - is to be fixed at a reasonable level.
7. The Consumer is to reimburse the Estate Agent for any such travel and accommodation expenses, administrative charges and charges relating to land registry searches as the latter may have incurred by necessity in connection with the valuation Assignment.
8. In the event of multiple Estate Agents having been engaged for the purpose of performing a valuation, the (valuation) Fee is to be charged by each Estate Agent individually.
9. In the event of multiple Estate Agents having been engaged for the purpose of performing a valuation, said Agents are jointly to issue a valuation report reflecting their collective findings. The Estate Agents' failure to arrive at collective findings shall prompt their liaising with the Consumer to discuss the issue of a (valuation) report setting out their disparate findings.
10. The Fee is to be calculated on the basis of the relevant arrangements having previously been agreed by the Parties, with "appraised value" being defined as follows where it had been agreed that the level of the Fee should be dictated by the appraised value:
  - A. in the event of the appraisal concerning a share in an Immoveable Property: the appraised value of the entire Immoveable Property;
  - B. in the event of the appraisal concerning an apartment right or membership of a cooperative flat exploitation society: the appraised value of the relevant apartment right or membership, as the case may be;
  - C. in the event of the appraisal concerning structures having been erected in leasehold plots or leasehold right (with or without the leaseholder's rights where it concerns the structures: the appraised value augmented by an amount in tenfold measure of the then annual ground rent;
  - D. in the event of the valuation Assignment comprising multiple classes of appraised value or where the valuation in question by necessity involves other classes of appraised value being assessed, with the relevant assessments being reflected in the valuation report: the higher or highest value as per the associated rate calculation method having been agreed upon;
  - E. in the event of the valuation being performed in connection with a mortgage loan application: the property's market value (or "private sale value", as it used to be called) as long as it does not turn out below the property's value under foreclosure.

## 1.4 PROPERTY MANAGEMENT

### Article 19 - (Administrative) Property Management

1. Property management is defined as the provision to Consumers of services associated with one or more Immoveable Properties, which services are aimed at furthering the preservation and exploitation of, and at contributing to the best possible return on such financial resources as have been invested in, the relevant Properties. A property management Assignment originates with the party that either owns or has control otherwise of the Property (Properties) in question.
2. The type of services to be rendered may be commercial or technical/administrative. The following are examples of the remit with which a property manager may be charged:
  - rent collection;
  - involvement in auxiliary supplies and services (e.g. administrative processing, set-off with tenants, monitoring of the quality of supplies and services);
  - seeing to the payment of costs and charges;
  - performance of duties in connection with periodic rental revision;
  - seeing to maintenance being carried out (e.g. complaints processing, assessment and resolution, periodic inspection, long-term maintenance planning, double checking invoices and seeing to the payment thereof);
  - seeing to the re-letting of premises having been vacated and performing further duties pertaining to changes of tenants;
  - lending advisory assistance.
3. Retraction of property management Assignments should preferably be effected either in writing or electronically and with due observance of a minimum term of notice of three (3) months each.
4. The Assignment may additionally include the performance of Board duties on behalf of a Commonhold Association (in an apartment right set-up) or Secretary-cum-Treasurer duties on behalf of a cooperative flat exploitation society (in a membership set-up).

## 1.5 DISPUTE RESOLUTION REGIME AND TRADE GUARANTEE

### Article 20 - Dispute Resolution Regime

1. The option is available to Consumers and Estate Agents alike to submit any dispute between a Consumer and an Estate Agent concerning the signing off on or performance of (an) agreement(s) pertaining to the Estate Agent's past or future services for the scrutiny of the Estate Agency Complaints Board of 46 Bordewijklaan in (NL2591 XR) The Hague ([www.degeschillencommissie.nl](http://www.degeschillencommissie.nl)).
2. A maximum of ten thousand euros (€ 10,000.00) each applies to the Complaints Board's authorisation to adjudicate disputes concerning liability for loss.
3. The Complaints Board's entertainment of disputes is contingent upon the Consumer in question having first submitted his or her unambiguously and comprehensively phrased complaint to the Estate Agent.
4. A maximum three (3) month term of the date of the Consumer's submission of the complaint to the Estate Agent applies to the complaint being brought before the Complaints Board.
5. The Consumer's submission to the Complaints Board of a dispute shall be binding upon the Estate Agent involved. The Estate Agent's submission of the dispute for the scrutiny of the Complaints Board, by contrast, shall involve the Consumer having to communicate within the next five (5) weeks whether or not he or she is agreeable to the Estate Agent's choice of forum, with the Estate Agent additionally being under the obligation to advise the Consumer that he or she will consider him or herself to be at liberty on expiry of said five (5) week term to take the Consumer to court in order to have the dispute resolved.
6. The Complaints Board is to rule with due observance of the provisions as per the rules and regulations by which it is bound. Copies of said rules and regulations will be forwarded upon request. Complaints Board's decisions shall have the status of binding advice. The Board's entertainment of a dispute shall involve a fee being charged.
7. Exclusive competence for taking cognisance of disputes shall accrue to the (District) Court or the aforementioned Complaints Board, as the case may be.

#### **Article 21 - Trade Guarantee as to Compliance with Binding Advice**

1. The “Vereniging VBO Makelaar” Association vouches vis-à-vis the Consumer for compliance with the binding advice having been handed down by the Complaints Board for a maximum of ten thousand euros (€ 10,000.00) each, and shall be under a best-effort obligation for the excess if any to ensure that the Estate Agent should comply with the binding advice, unless said advice within a two (2) month term of the date of its dispatch is submitted for assessment by the (District) Court and the Court’s ruling rendering the binding advice non-binding has acquired definitive status.
2. Scenarios involving moratorium on payments and bankruptcy shall be excluded from the compliance guarantee for such period of time as the dispute’s discussion in the context of a hearing is still being anticipated. Scenarios involving the easing of trading shall be excluded from the compliance guarantee for such period of time as the dispute has not yet been brought before the Complaints Board.
3. Consumers may invoke the compliance guarantee as soon as it has demonstrably been established that the Estate Agent him or herself is failing to comply with the binding advice while having refrained for a two (2) month term of the date of dispatch of the binding advice from submitting said advice for the scrutiny of the (District) Court. Payment of the amount in question shall be effected within one (1) calendar month of the date of receipt of the underlying petition, on condition that the Consumer should have assigned his or her claim on the Estate Agent to the “Vereniging VBO Makelaar” Association.

## **1.6 NON CONFORMITY AND AMENDMENT**

#### **Article 22 - Departure**

Individual departures shall be documented in writing or electronically between the Estate Agent and the Consumer.

#### **Article 23 - Amendment**

The “Vereniging VBO Makelaar” Association’s amendment of the present General Consumer Conditions shall be strictly contingent upon said Association having first liaised with the “Consumentenbond” and “Vereniging Eigen Huis” organisations on the subject.

## PART 2 PRIVACY REGULATIONS

It is standard practice for VBO-affiliated Estate Agents to handle privacy sensitive information with the utmost care. The present Privacy Regulations contain a detailed description of how VBO-affiliated Estate Agents and the “Vereniging VBO Makelaar” Association deal with the information they have on you.

### WHAT SORT OF DETAILS DO VBO-AFFILIATED ESTATE AGENTS DOCUMENT?

**Any VBO-affiliated Estate Agent will document the following details on you where you have engaged him or her for the purpose of selling or letting a Dwelling:**

- your name and address (street and house number (with suffix where appropriate), city or town) and sundry contact details (e.g. telephone number, e-mail address);
- the reason why you are selling or letting;
- the date as at which the Dwelling was first listed for sale or rent and the length of time it has been listed as such;
- description, photographs, videos/other media and characteristics of the Dwelling (and of Dwelling-related facilities if any) such as asking price (trend) or rental price (trend), as appropriate, year of construction, floor area or plot size, as appropriate, lay-out, volume, land registry details and appraised value for municipal tax purposes;
- photographs/videos of the Dwelling and the garden/grounds or (roof) terrace(s) and/or deck(s), as appropriate;
- reason for termination of the Assignment for the provision of intermediary services;
- transaction-related details such as sales or rental price achieved, as well as the date where the Dwelling has successfully been sold or let, as the case may be;
- any other information you may entrust to your VBO-affiliated Estate Agent.

**Any VBO-affiliated Estate Agent will document the following details on you where you have engaged him or her for the purpose of buying or renting a Dwelling:**

- your name and address (street and house number (with suffix where appropriate), city or town) and sundry contact details (e.g. telephone number, e-mail address);
- your search profile (i.e. the search criteria to be applied and any particular preferences you may have);
- the reason for your search for a (rental) Dwelling;
- the age and income categories under which you come and the family composition that matches your situation;
- transaction-related details such as purchase or rental price achieved, as well as the date where the Dwelling has successfully been purchased or rented, as the case may be;
- any other information you may entrust to your VBO-affiliated Estate Agent.

**Any VBO-affiliated Estate Agent will document the following details on you where you are buying or renting a Dwelling from someone who has engaged a VBO-affiliated Agent:**

- your name and address (street and house number (with suffix where appropriate), city or town) and sundry contact details (e.g. telephone number, e-mail address);
- details of the Dwelling you have bought or rented, such as the Dwelling’s address and characteristics, the purchase price or rental price as appropriate and the transaction date;
- details concerning your previous Dwelling such as address and house number (with suffix where appropriate);
- any other information you may entrust to your VBO-affiliated Estate Agent.

**What sort of use do VBO-affiliated Estate Agents make of the information they have on you?**

The Estate Agent will use the information he or she has on you in order to carry out the Assignment for the provision of intermediary services you have extended to him or her where you are selling or letting your Dwelling through a VBO-affiliated Estate Agent.

(Some of) Your details may additionally be used in aid of:

- advertising your Dwelling to the general public by means of postings to Internet sites such as [www.vbo.nl](http://www.vbo.nl), the estate agency’s own web site and/or other web sites and/or making use of sales brochures or other marketing communication channels VBO-affiliated Estate Agents have at their disposal;
- carrying out appraisals and other valuations involving your Dwelling as a reference property;
- preparation of analyses and reports for the purpose of enabling the VBO-affiliated Estate Agent to take his or her service provision to an even higher level;
- forwarding information concerning the products and services your VBO-affiliated Estate Agent and the “Vereniging VBO Makelaar” Association have on offer (simply notify your VBO-affiliated Estate Agent if you wish to unsubscribe).

**The Estate Agent will use the information he or she has on you in order to keep in contact with you for the purpose e.g. of forwarding the contract of sale to you where you have engaged him or her for the purpose of buying or renting a Dwelling. Your details may additionally be used in aid of:**

- the Estate Agent finding a suitable Dwelling;
- advisory purposes where you had requested these;
- any such other correspondence as may be necessary in order to help ensure the proper transfer to you of the Dwelling;
- preparation of analyses and reports for the purpose of enabling the VBO-affiliated Estate Agent to take his or her service provision to an even higher level;
- forwarding information concerning the products and services your VBO-affiliated Estate Agent and the “Vereniging VBO Makelaar” Association have on offer (simply notify your VBO-affiliated Estate Agent if you wish to unsubscribe).

**The Estate Agent will use the information he or she has on you in order to keep in contact with you for the purpose e.g. of forwarding the contract of sale to you where you are buying or renting a Dwelling from someone who has engaged a VBO-affiliated Agent.**

**Your details may additionally be used in aid of:**

- advisory purposes where you had requested these;
- any such other correspondence as may be necessary in order to help ensure the proper transfer to you of the Dwelling;
- preparation of analyses and reports for the purpose of enabling the VBO-affiliated Estate Agent to take his or her service provision to an even higher level;
- forwarding information concerning the products and services your VBO-affiliated Estate Agent and the “Vereniging VBO Makelaar” Association have on offer (simply notify your VBO-affiliated Estate Agent if you wish to unsubscribe).

#### **“VERENIGING VBO MAKELAAR” ASSOCIATION DATA BASE**

The VBO-affiliated Estate Agent’s systems are hooked up to the “Vereniging VBO Makelaar” Association’s nationwide data base, which contains current and historical information on Dwellings and other Real Estate in connection with the sale or purchase, or the letting or rental, of which use has been made at one time or another of the services of a VBO-affiliated Estate Agent. All VBO-affiliated Estate Agents have permanent access to this data base. An explanation of the deployment of the system by the “Vereniging VBO Makelaar” Association follows.

#### **“VERENIGING VBO MAKELAAR” ASSOCIATION**

The “Vereniging VBO Makelaar” Association is the Netherlands’ second largest trade organisation of estate agents and property valuers. It offers support to its affiliates, provides a range of services for their use and operates a central property data base enabling all affiliates to exchange information on Dwellings and other Real Estate. Further information on the “Vereniging VBO Makelaar” Association is available at [www.vbomakelaar.nl](http://www.vbomakelaar.nl).

#### **WHAT SORT OF DETAILS DOES THE “VERENIGING VBO MAKELAAR” ASSOCIATION DOCUMENT?**

The “Vereniging VBO Makelaar” Association automatically receives any such details as VBO-affiliated Estate Agents document. It does not, however, keep all these details on file: information that is directly traceable to you personally, for example, is not stored centrally, but filed only in the relevant estate agency’s (computer) systems.

#### **WHAT SORT OF USE DOES THE “VERENIGING VBO MAKELAAR” ASSOCIATION MAKE OF THE INFORMATION?**

The details on file are used only for purposes relating to system management and maintenance, acquisition and preparation of statistical information, scientific research, presentation of figures for the Dutch housing market and potential future presentations featuring your Dwelling.

#### **WHO HAS ACCESS TO THE INFORMATION?**

All affiliates of the “Vereniging VBO Makelaar” Association have access to the central data base (as part of their service provision toolkit), as have the Association’s staff, executive management and committee members. Access is furthermore available to those operatives employed by the ICT company that is responsible for system administration whose daily duties involve the Association’s central data base. The “Vereniging VBO Makelaar” Association will make selected information from the data base available for use by designated third parties, such as:

- universities and research institutions, for research purposes;
- Statistics Netherlands, to enable control of the regulatory burden;
- other non-commercial players, where the relevant exchange of information helps reduce the administrative charges or is conducive to gaining an insight into and/or improving the housing market.

The “Vereniging VBO Makelaar” Association will only provide access to such data as are crucial to the objective in question, with access being provided exclusively at an aggregate level, which is something the Association vouches for both contractually and in a technical sense.

#### **SECURITY ASPECTS AND RETENTION PERIOD**

Both the VBO-affiliated Estate Agent and the “Vereniging VBO Makelaar” Association have undertaken to ensure the secure filing of your details and the adequate protection thereof against unauthorised use, unauthorised access, modification or unlawful erasure. Your details will be kept on file for such period of time as warranted given the aforementioned purposes, for the statutorily requisite term or for the period of time needed in order for disputes - if any - to be resolved.

#### **INSPECTION, RECTIFICATION AND ERASURE**

As the “Vereniging VBO Makelaar” Association does not store any data that are directly traceable to specific individuals, any requests you may have regarding the inspection, rectification or erasure of specific details should be addressed to your own VBO-affiliated Estate Agent, who will in principle respond to your request within no more than four (4) weeks, and who will have your personal details erased as soon as possible unless he or she is statutorily obligated to retain the relevant personal details or (other) compelling reasons dictate that the details in question should be kept on file.

#### **QUESTIONS OR COMMENTS**

The protection of your privacy is of the utmost importance both to your VBO-affiliated Estate Agent and to the “Vereniging VBO Makelaar” Association, and would urge you to liaise with them concerning any questions or comments you may have in regards of this matter.

*The present Privacy Regulations also apply to scenarios involving the sale, letting, purchase or renting by yourself, either through or with the help of a VBO-affiliated Estate Agent, of properties other than Dwellings. In this case all references to “Dwelling” should be construed as references to the type of property in question.*

### **PART 3 CODE OF CONDUCT AS OPERATED BY “VERENIGING VBO MAKELAAR” ASSOCIATION**

1. The Estate Agent and/or Property Valuer and/or Estate Manager and/or Rental Agent who is an affiliate of the “Vereniging VBO Makelaar” Association (“VBO Affiliate”) appreciates that he or she officiates as a service provider whose duties involve the handling of matters of a classified nature.
2. The VBO Affiliate has a duty to observe confidentiality with respect to that which his or her performance of duties makes him or her gain awareness of, and will observe the strictest confidentiality where it concerns any matters or affairs the classified nature of which he or she may be expected to appreciate, such confidentiality duty lasting until such time as he or she is ordered by the court, by an arbitrator or binding adviser or by another duly authorised institution to publicise the relevant information.
3. The VBO Affiliate in the performance of his or her professional duties and as a private individual alike - where the latter has bearing upon his or her professional actions - is to comport him or herself with honesty and integrity and in compliance with the customary standards of decency and the values by which his or her profession is characterised, and will promptly render transparent account where he or she is held accountable in this respect.
4. The VBO Affiliate is to refrain from sharing negative comments on any of his or her Peers with any third parties. He or she will, however, report any objections to the modus operandi deployed by any of his or her Peers to the Executive Committee of the “Vereniging VBO Makelaar” Association.
5. The VBO Affiliate undertakes vis-à-vis his or her Peers to adhere at all times to the standards of professional courtesy and loyalty. He or she will make every effort to ensure that the image of the “Vereniging VBO Makelaar” Association and the latter’s affiliates should be safeguarded if not enhanced. It shall not be permissible for VBO Affiliates to engage in activities or involve themselves in acts or actions that could potentially discredit or undermine confidence in the Association and/or any of the latter’s Affiliates.
6. The VBO Affiliate is to refrain from entertaining requests for the performance of duties for which he or she is not specifically qualified unless he or she arranges for expert assistance.
7. The VBO Affiliate will protect and further the interests of his or her Principal(s) and will strictly confine him or herself to representing the relevant interests. On no account will the BO Affiliate ever officiate on behalf of both parties to an envisaged transaction. It shall not be permissible for VBO Affiliates to charge a dual Fee within the scope of just the one transaction or service.
8. The VBO Affiliate is to ensure, and has responsibility for ensuring, that the actions of his or her staff should not infringe upon the Charter, Code of Conduct, General Consumer Conditions and/or Rules and Regulations as operated by the “Vereniging VBO Makelaar” Association.
9. The VBO Affiliate shall be under the obligation to deploy the most recent versions of the standard VBO contracts where these have been made available to him or her including where he or she has been engaged for the purpose of documenting an agreement already having been signed off between parties.
10. The invoices for services rendered (to be) raised by the VBO Affiliate shall be straightforward and properly itemised.
11. The VBO Affiliate with a view to alerting his or her Principal(s) to his or her affiliation with the “Vereniging VBO Makelaar” Association shall be under the obligation in all his or her communications - including offers, advertisements, photographs, et cetera - either to incorporate the VBO logo or add the legend “VBO Affiliate”, and is moreover to ensure that the VBO logo - as made available by the Association - should be plainly visible at his or her office location.
12. In the event that a Patron complains to the VBO Affiliate about the latter’s (past) modus operandi and the parties prove unable to resolve the matter between them, the VBO Affiliate shall be under the obligation to advise the complaining Patron of the possibility of reporting the complaint to the “Vereniging VBO Makelaar” Association’s Executive Committee and provide the Patron in question with information concerning the dispute resolution scheme.
13. Complaints are to be reported within a one (1) year term of the date as at which the complaining Patron in question first became aware of the respondent’s actions or omissions having prompted the Patron to consider reporting the complaint, with the further proviso that they must have been reported within no more than five (5) years of the date of the relevant actions or omissions having taken place.
14. The VBO Affiliate shall refrain from liaising with any party whom he or she knows to be operating in tandem with a fellow Estate Agent other than through the relevant fellow Agent - including where the initiative to seek direct contact has been the relevant party’s rather than the Affiliate’s - unless the fellow Estate Agent has okayed the Affiliate’s taking up direct contact.
15. The VBO Affiliate shall be under the obligation at all times to communicate to any person who wishes to put in a bid on a Property whether he or she is still at liberty to accept offers for relaying to the Patron(s) in question or whether the Property in question is currently under negotiated sale.

16. The VBO Affiliate is to make every effort to see to the precise communication of relevant information concerning the Property to which the Assignment relates, and is to assess the accuracy of any information received by him or her where it would be reasonable to expect him or her to do so.
17. The VBO Affiliate is to ensure that the industrially agreed standards, such as the “Fotowijzer Woningen” and “Meetinstructie Woningen” (which two publications list the residential photographic standards and residential measurement standards to be adhered to) are duly observed in all his or her communications - including offers, advertisements, photographs, et cetera - on any Property in relation to which his or her services have been enlisted.
18. Although it is permissible as such for the VBO Affiliate to entertain a direct or indirect interest, for his or her own benefit, in transactions pertaining to Registered Properties, he or she shall be under the obligation to ensure that the following rules should be adhered to:
  - any VBO Affiliate-directed purchase/sale or renting/letting scenario shall involve the party of the other part being expressly advised in writing, in anticipation of negotiations being taken up, of the fact that the VBO Affiliate in question entertains a direct or indirect interest in the transaction in question;
  - it shall not be permissible for the VBO Affiliate concerned to charge a Fee in any such scenario.
19. The VBO Affiliate shall refrain from preparing valuation reports for finance purposes for Properties in which he or she entertains a direct or indirect interest or with which he or she has selling or purchasing involvement.
20. It shall not be permissible for the VBO Affiliate to engage in activities or come to be otherwise involved in acts or actions owing to which Affiliate's independence could be jeopardised.
21. The VBO Affiliate in connection with the Assignment with which he or she has been entrusted is to refrain from demanding or accepting any gifts, discounts or other gains from anyone other than his or her Principal aimed at manipulating the outcome of the transaction or valuation, as the case may be.
22. Any VBO Affiliate who additionally operates abroad so shall continue to abide by the provisions as per the present Code of Conduct, unless prevailing legislation in the relevant foreign country permits a particular act or action or the act or action in question according to local interpretation of the law is regarded as socially acceptable.

Done and adopted, with effect from the eighteenth day of June 2013,  
at the General Members' Meeting held on said eighteenth day of June 2013.

## PART 4 REGULATIONS GOVERNING DISCIPLINARY PROCEDURES

The “Vereniging VBO Makelaar” Association where it concerns its Code of Conduct comes under the rules and regulations as operated by the Netherlands Estate Agency Disciplinary Tribunal.

### Article 1 - Definitions

The following definitions shall apply throughout the present Disciplinary Regulations:

- A. 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
- B. 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
- C. Board - the Foundation's Board
- D. 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
- E. 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
- F. 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
- G. 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
- H. 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
- I. Delegate Member - any Party Involved who on behalf of the relevant Affiliated Institution is an incumbent of the Disciplinary Tribunal
- J. 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
- K. 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

- L. Foundation - The “Stichting Tuchrechtspraak Makelaardij Nederland” Foundation
- M. 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
- N. 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
- O. 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
- P. (Rules and) Regulations - the present Disciplinary Regulations
- Q. Respondent - such Respondent as the Complaint is aimed against.

## Article 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.

## Article 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. 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.

#### **Article 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:
- A. 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;
  - B. 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;
  - C. 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;
  - D. 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;
  - E. that of the Affiliated Institutions having qualified the Complaint as being of sufficient gravity to warrant it undergoing adjudication by the Disciplinary Tribunal.

#### **Article 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 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 Claimant, the Respondent and/or the Affiliated Institution [...] 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.

#### **Article 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.

#### **Article 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.

#### **Article 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.

#### **Article 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.