

How long does an FST appeal normally take?

An appeal to the FST usually takes 4 to 6 months to complete, but can take longer.

Please note, if you appeal, the FST will require you to file your submissions and other documents within strict time periods. Please see the FST Directives and Practice Guidelines for details as to these time periods.

Do I get a copy of my decision?

Yes. As the person making the appeal, you will receive a copy of the decision. The decisions are also posted on the FST's website at www.fic.gov.bc.ca/fst. Please also see the **Active Appeals, Decisions and Judicial Reviews** section on the FST's website for some examples of FST decisions.

If I win my appeal, can I be awarded costs?

The FST has the power to award costs, but rarely does so. Please see the FST Directives and Practice Guidelines for more information on how and when the FST may award costs. You may view specific cases where the FST awarded costs in the **Decisions** section of the FST website at www.fic.gov.bc.ca/fst/decisions.htm

Can I have my money back if I win or decide to settle or withdraw my appeal?

No. The FST cannot refund the appeal fee in whole or in part, even if you win, settle or withdraw your appeal.

Can I appeal a decision of the FST?

You cannot appeal a decision of the FST. However, the Supreme Court of BC can review a decision on a judicial review application. Please see a lawyer for more information on how to make an application for a judicial review of an FST decision.

For more information:

The Financial Services Tribunal is located at the business offices of the Financial Institutions Commission.

Financial Services Tribunal
Suite 1200 - 13450 102nd Avenue
Surrey, BC V3T 5X3

Telephone: (604) 953-5300
Fax: (604) 953-5301
Email: FinancialServicesTribunal@gov.bc.ca



*A Layperson's Guide to
Real Estate Appeals at*

The Financial Services Tribunal



This pamphlet provides background information for real estate licencees who are considering an appeal of a decision of the Real Estate Council to the Financial Services Tribunal (“FST”). It does not provide legal advice, and only interprets statutes such as the *Real Estate Services Act*, *Financial Institutions Act* and the *Administrative Tribunals Act*, as well as the FST Directives and Practice Guidelines. The Guidelines are available online at www.fic.gov.bc.ca/fst/.

You may also wish to contact a lawyer for legal advice concerning your appeal. If you do not have a lawyer and would like more information on how to get one to help with your appeal, contact the Canadian Bar Association (BC Branch) Lawyer Referral Service.

Should I appeal?

Being unhappy with a decision may not be enough reason to appeal. For your appeal to be successful, you must prove that the Real Estate Council made a **specific** error in reaching its decision. There are three types of errors:

Error of Fact

The Real Estate Council misinterpreted the evidence and reached a wrong factual conclusion. You must be able to demonstrate an “error of fact” by pointing to evidence.

Error of Law

The Real Estate Council misinterpreted the law. You must be able to demonstrate an “error of law” by citing statutes or legal decisions.

Error of Mixed Fact and Law

The Real Estate Council did not apply the law correctly to the facts. You must be able to demonstrate an “error of mixed fact and law” by pointing to evidence and citing statutes or legal decisions.

A general statement such as “they reached the wrong decision” is not enough for an appeal to be successful. If you appeal, you are responsible for showing why the original decision of the Real Estate Council should be overturned. A lawyer may be able to help you to frame your appeal to increase your chances of success.

What are the deadlines for an appeal?

You must file your appeal within **30 days** after the Real Estate Council issues its decision.

How do I file an appeal at the FST?

To appeal a decision of the Real Estate Council, you must:

- File an original and two copies of the completed Notice of Appeal. Please see the FST Directives and Practice Guidelines at www.fic.gov.bc.ca/fst/ for more information and for a suggested template for the Notice of Appeal.
- Pay a fee of \$850 for each party appealing the decision. The FST will not process the appeal until it receives this fee.

If I appeal, does the appeal automatically suspend the decision against me?

Most decisions of the Real Estate Council are automatically suspended when an appeal is filed with the FST. If you appeal, the decision and the related penalty imposed by the Council will not take effect until after the appeal is completed.

However, there are some exceptions to this rule.

First, if the Real Estate Council made its decision in “urgent circumstances” under section 45 of the *Real Estate Services Act*, the decision would not be suspended by filing an FST appeal. As well, if the Real Estate Council made an order freezing property under section 46, an FST appeal would not suspend this order. The decision issued by the Real Estate Council should indicate if either of these sections applies.

Finally, the Real Estate Council may apply to the FST to have the decision take effect immediately if an appeal suspends the decision.

What is the role of the Superintendent of Real Estate in the appeal process?

The Superintendent of Real Estate is an independent authority appointed under the *Real Estate Services Act*. Under section 54 (3) of the *Real Estate Services Act*, the Superintendent has the power to join an appeal of any person appealing a decision of the Real Estate Council’s Discipline Committee.

Can I have a new hearing at the FST?

The FST will not redo the original hearing, or provide a “fresh start”. Appeals to the FST are based on what was on “the record” of the decision at the Real Estate Council. This means the FST will only review the:

- documents filed at the Real Estate Council;
- transcripts of oral evidence given at the Real Estate Council hearing;
- any other objects that were taken as evidence by the Real Estate Council in making their decision; and
- written reasons of the Real Estate Council.

The FST will also review the written submissions filed by you and the other parties to the appeal.

Can I give oral evidence or give the FST some new evidence in an appeal?

In unusual circumstances, the FST may consider new evidence that was not heard by the Real Estate Council, or allow you to speak directly to the member of the FST hearing the appeal.

Please see the FST Directives and Practice Guidelines for more information on when oral submissions or new evidence may be heard as part of the FST appeal process.

