

## THE APPEALS PROCESS

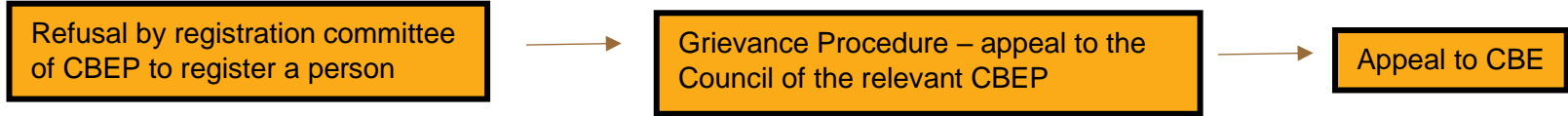
### Acronyms

CBE	Council for the Built Environment
CBEP	Councils for the Built Environment Professions
CBE Act	Council for the Built Environment Act 43 of 2000
PAJA	Promotion of Administrative Justice Act 3 of 2000
Regulations	Council for the Built Environment Appeal Regulations, 2011

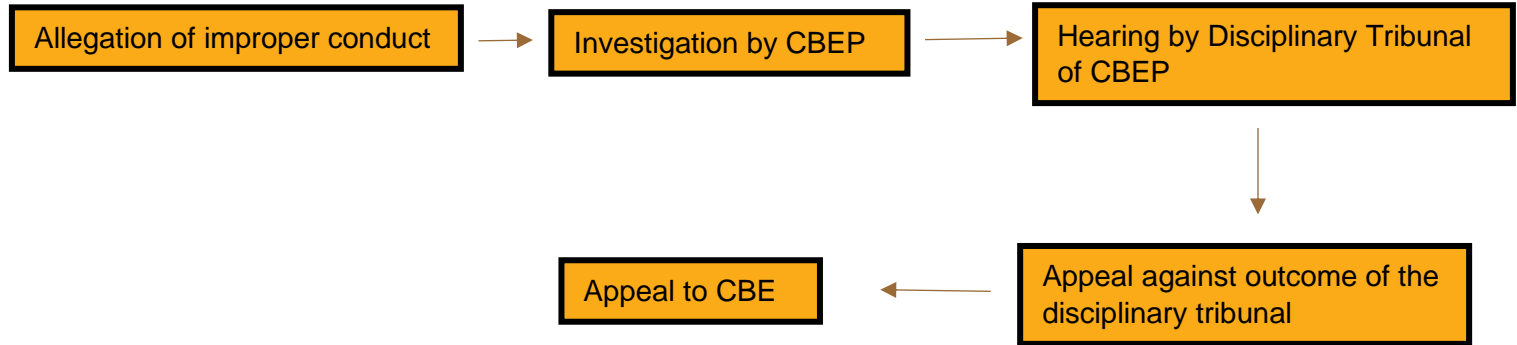
### The Mandate in the CBE Act

In terms of section 21 read with section 4(m) of the Council for the Built Environment Act, 43 of 2000 (“the CBE Act”); the Council for the Built Environment (“the CBE”) is empowered and obliged to hear an appeal lodged by a person aggrieved by a decision of any of the Councils for the Built Environment Professions (CBEP) and in terms of the professions Acts. The typical processes that give rise to appeals to the CBE are depicted in the illustration:

Example 1



Example 2



Example 3



## THE COMPLAINTS PROCESS

### **The Appeal Committee**

The CBE Council appoints the members of the Appeal Committee. The Act requires the Appeal Committee to consist of:

- (1) a professional who has appropriate experience
- (2) a person qualified in law and who has appropriate experience
- (3) a person who specialises in the professional field concerning the appeal. The purpose is to provide for a fair hearing. It would be unfair to the Appellant to have the appeal heard by persons who have little or no knowledge of the area to which the appeal relates. The policy also determines that the legally qualified person must be appointed as the chairperson of the Appeal Committee, as that person will have experience and understanding of administrative justice.

The Appeal Committee must conduct the appeal in a manner which is lawful, reasonable and procedurally fair in accordance with the provisions of section 33 of the Constitution, Act 108 of 1996 ("the Constitution"). The Promotion of Administrative Justice Act, 3 of 2000 (PAJA) gives effect to section 33 of the Constitution in terms of administrative hearings and should be adhered to.

The procedure followed at the Appeal hearing is not court procedure, an appeal in accordance with the CBE Act is an administrative appeal. The purpose is to keep the procedures uncomplicated, yet effective. Written submissions are required, but strict compliance with legal standards are not required.

### **The Appellant**

1. Appeals lodged with the CBE can have their source in any of the scenarios below:

- a) Any person aggrieved by a decision of any CBEP. If a member of the public is not satisfied with the service rendered by a registered professional/company, he/she must lodge his/her complaint with the relevant CBEP. If he/she is not satisfied with the decision of the CBEP regarding his/her complaint, he/she may elevate to lodging an appeal with the CBE.
- b) An appeal by a registered person found guilty of improper conduct in terms of the Code of Conduct of the relevant CBEP.

c) An appeal by a person whose registration has been refused, cancelled or not renewed by the CBEP.

1.2 The approved form for the notice of appeal must include the following:

- a) Full names and current address of the Appellant
- b) The decision forming the subject of the appeal
- c) The name of the CBEP whose decision is the subject of the appeal and the date of such decision
- d) The name of the registered person involved if applicable
- e) Grounds of the appeal, specifying whether the whole or part of the decision is appealed against. If it is part of the decision, specify what part
- f) The signature of the Appellant or his/her legal representative

The notice of appeal form is available on the CBE website: [www.cbe.org.za](http://www.cbe.org.za)

1.3 The Appellant submits the appeal to the CBE and the respondent CBEP. If the appeal is against a finding of improper conduct, the Appellant is required to submit a copy of the finding. The Appellant must submit proof of the submission of the notice of appeal to the relevant CBEP together with his/her application form.

### **Condonation for Late Notices**

There are various reasons why an appeal may be lodged late. A condonation application may be required if an appeal is not lodged within the statutory deadlines.

### **Pre-hearing Procedure**

1. A party on whom a Notice of Appeal is served may deliver a response to the said notice by delivering a Notice to Oppose. The Respondent CBEP has five days to indicate whether it is opposing the appeal.
2. The Notice to Oppose must be delivered to the CBE and Appellant simultaneously, within ten days of receiving the Notice of Appeal.

3. The CBE will set the appeal down for hearing to allow for a decision to be made by the Appeal Committee within 60 days of lodgement.

### **The Hearing**

1. The parties to the appeal have a right to legal representation by an admitted advocate or attorney.
2. The parties are encouraged to submit written heads of argument prior to the appeal hearing to clarify the points of dispute.
3. The appeal is conducted by the parties presenting their respective cases to the Appeal Committee.
4. The decision of the Appeal Committee will be submitted to the CBE in writing, and the CBE will furnish the parties with the written ruling.

### **Decisions of the Appeal Committee**

The Appeal Committee may, after considering, evaluating and assessing the submissions by the parties:

- a) Dismiss the appeal
- b) Uphold the appeal partially or wholly amending wholly or in part the decision of the CBEP, or set aside or vary the finding or sentence or both
- c) Set aside the decision of the CBEP concerned and refer the matter back to that CBEP to consider the matter afresh
- d) Make such decision as it deems appropriate