

## Enforcement of Rules, Section 5: MLS Disciplinary Guidelines

Associations of REALTORS® and their multiple listing services have the responsibility of fostering awareness, understanding, and appreciation for the duties and responsibilities of MLS participants and subscribers, and of receiving and resolving complaints alleging violations of the rules and regulations. The REALTOR® organization is firmly committed to vigorous, fair, and uniform enforcement. Enforcement achieves a number of goals. Where participants or subscribers are wrongly or mistakenly charged with violations, the hearing process provides personal and professional vindication. Where violations are determined, enforcement process educates participants and subscribers about their duties and obligations and serves as a meaningful deterrent of future violations.

Allegations of conduct inconsistent with the rules are often viewed by respondents as threats to their professional and personal reputations. This can result not only in their mounting vigorous defenses but also, at times, to threats of legal challenge should a violation be determined, and discipline imposed. Given that MLS participation can have significant economic value, associations and their MLSs need to strictly adhere to their established procedures when considering potential violations. This caution ensures that the rights of the parties will be observed, and legal exposure of associations and their MLSs will be minimized.

At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. Rules become aspirations at best, and potentially meaningless, if not enforced with vigor and determination.

Fundamental to fair and consistent enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. Associations and their MLSs have a wide variety of sanctions available to them that may be imposed for violations. These range from simple letters of warning to termination of MLS rights and privileges. Between these extremes are mandatory attendance at remedial education sessions, financial penalties, probation, and suspension.

The National Association does not recommend specific penalties for certain offenses or for violations of particular rules. This is in deference to the wisdom and autonomy of the hearing panel privy to the details of complaints coming before them; in recognition of the fact that no two complaints are identical; and in view of the facts that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to imposition of discipline.

- Discipline that can be imposed is strictly limited to those forms authorized in the National Association of REALTORS® *Code of Ethics and Arbitration Manual* and to any additional form authorized by the National Association's board of directors.

- Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents about the conduct expected of them. Only authorized forms of discipline may be utilized.
- Discipline should be progressive. The disciplinary emphasis on violations by new members or by long-standing members with no history of prior violations should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline, including substantial fines, suspension, and termination of MLS rights and privileges.
- A gray area can exist with respect to “first time violations” that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the rules. While the educational aspect of enforcement cannot be disregarded, the fact that the rules exist to protect clients and customers, the public, and to ensure effective, efficient functioning of the MLS, must also be considered in determining commensurate discipline.
- Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognizes or acknowledges inappropriate conduct or took steps to remediate or minimize harm or injury, should be considered in determining appropriate discipline.
- Respondent’s records of earlier violations or, conversely, the fact that they have not violated the rules in the past, can be considered in determining appropriate discipline. Hearing panels cannot consider past violations in deciding whether the conduct currently complained of violates the rules.

Crafting appropriate, meaningful discipline can challenge panels that have concluded the rules have been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their responsibility in ensuring the rules’ viability and vitality through vigorous and evenhanded enforcement.

### **Progressive Discipline**

Discipline imposed for violation of the rules should be progressive. The severity of discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of MLS rights and privileges. At the same time, a gray area can exist where a first-time violation is not attributable to ignorance or oversight, but rather to blatant disregard for the rules. While the educational emphasis of enforcement cannot be disregarded, the fact the rules exist to protect clients and customers, the public, and to ensure the effective, efficient functioning of the MLS must be carefully considered in determining appropriate discipline.

Factors hearing panels should consider in determining appropriate discipline include, but are not necessarily limited to:

- The nature of the violation
- Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another participant harmed?

- Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the obligations of MLS participants and subscribers?
- How much real estate experience did the violator have? Did he, or should he, have known better?
- Has the violator been found in violation of the rules previously? How often? How recently? Is the current violation related or similar to earlier violations?
- Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?
- Did the violator acknowledge the violation? Did the violator express remorse or contrition?
- Are there other factors that ought to be considered?

### **Administrative Sanctions**

The following is guidance for issuing administrative sanctions for MLS rule violations:

- **Category 1** violation means a rule violation relating to listing information provided by a participant or subscriber.
- **Category 2** violation means a rule violation relating to IDX and VOW displays.
- **Category 3** violation means a rule violation relating to cooperation with a fellow participant or subscriber, and mandatory submission of listings to the service.

#### **First Category 1 violation** (or first violation within three [3] years):

Possible discipline:

- Letter of warning
- Attendance at relevant education session(s) or course

#### **Repeat Category 1 violation** (within three [3] years):

Possible discipline:

- Attendance at relevant education session(s) or course
- Fine as scheduled for Category 1 Violation (*see MLS Schedule of Fines for Administrative Sanctions*)

#### **First Category 2 violation** (or first violation within three [3] years):

Possible discipline:

- Letter of reprimand
- Attendance at relevant education session(s)

**Repeat Category 2 violation** (within three [3] years):

Possible discipline:

- Attendance at relevant education session(s) or course
- *Fine as scheduled for Category 2 Violation (see MLS Schedule of Fines for Administrative Sanctions)*
- Suspension from the MLS or from the MLS' lockbox key access for three (3) months or less

**First Category 3 violation** (or first violation within three [3] years):

Possible discipline:

- Letter of reprimand
- *Fine as scheduled for Category 3 Violation (see MLS Schedule of Fines for Administrative Sanctions)*
- Attendance at relevant education session(s)
- Suspension from the MLS or from the MLS' lockbox key access for three (3) months or less

**Repeat Category 3 violation** (within three [3] years):

Possible discipline:

- Attendance at relevant education session(s) or course
- *Fine as scheduled for Category 3 Violation (see MLS Schedule of Fines for Administrative Sanctions)*
- Suspension from MLS or from use of the MLS' lockbox key access for six (6) months or less
- Termination from MLS or from use of the MLS' lockbox key access for 1 to 3 years

**Scope of MLS Handbook for Addressing MLS Rule Violations**

Potential violations of the MLS rules will be processed in accordance with MLS Policy Statement 7.21, and under the process provided for in Section 9 of the NAR model MLS Rules and Regulations. Potential violations of a data license agreement are not governed by NAR policy and will thus follow the terms for resolution in the agreement itself. *(Amended 11/20)* |