

ARIZONA REALTORS®

ROLE OF THE EXECUTIVE COMMITTEE IN THE ASSOCIATION'S PROFESSIONAL STANDARDS ENFORCEMENT

Revised December 2018

I. Review of Professional Standards Decisions

The Arizona REALTORS® Executive Committee or a tribunal of the Executive Committee consisting of at least five (5) committee members shall be responsible for review of professional standards decisions not appealed.¹ Such decisions and recommendations for sanction, if any, shall be implemented only upon such review and adoption by the Executive Committee. To accomplish this task, the Executive Committee will be provided with a copy of the decision, which includes the case number, the names of the parties, along with the hearing panel's Findings of Fact and recommendations for disciplinary action. This information is strictly confidential and will be collected by staff immediately after review.

In reviewing professional standards decisions, the Executive Committee is not to rehear the case. Rather, the Executive Committee must adopt the hearing panel's recommendation for disciplinary action EXCEPT:

1. The Executive Committee, if concerned with a possible procedural deficiency, may refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different hearing panel; or
2. If the Executive Committee is concerned with the appropriateness of the recommendation of sanction, it may impose alternative discipline that does not exceed that recommended by the hearing panel, or refer the decision back to the original hearing panel for further consideration and recommendation accompanied by the Executive Committee's concerns regarding the proposed discipline; or
3. If the Executive Committee concludes that the findings of fact do not support a violation of the Code of Ethics, the complaint will be dismissed.

In such matters, advice of Board legal counsel should be requested and considered.

II. Reasonable and Judicious Use of Discipline

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, both as an educational device and as punishment. As set forth in Appendix VII to Part Four of the Code of Ethics and Arbitration Manual, there are key points to be considered with respect to discipline and it must be remembered that discipline to be imposed is strictly limited to those forms authorized in the Manual.

First, discipline should be commensurate with the offense, recognizing that unintentional or inadvertent violations should result in penalties designed to educate respondents. Second, discipline should be progressive, meaning that repeated or subsequent violations should be addressed with more serious forms of discipline. Third, mitigating or extenuating circumstances should be considered. Finally, respondents' records of earlier violations (or, conversely, the fact that they have not previously violated the Code) can be considered. Past violations cannot be considered in deciding whether the conduct currently complained of violated the Code.

¹ Within 20 days after the Hearing Panel's final decision has been transmitted, the complainant or the respondent may file an appeal. If the appeal is determined to be insufficient, it shall be returned to the appellant accompanied by an explanation and a request for additional detail to be provided within ten days of notice.

Factors hearing panels should consider in determining appropriate discipline include: (1) the nature of the violation; (2) the harm caused; (3) whether the violation was inadvertent/unintentional or the result of a knowing disregard for the Code's obligations; (4) the respondent's real estate experience and whether they "should have known better;" (5) the respondent's records of earlier violations, if any; (6) mitigating or extenuating circumstances; (7) the respondent's remorse or contrition; and (8) other relevant factors.

III. Available Discipline

Disciplinary action may consist only of one or more of the following. (Refer to Appendix VII to Part Four of this Manual for sanctioning guidelines and note that these are not sentencing rules or requirements.)

1. Letter of Warning with a copy to be placed in the member's file;
2. Letter of Reprimand with a copy to be placed in the member's file;
3. Requirement that the member attend a relevant education session or course as specified by the hearing panel which the respondent can reasonably attend taking into consideration cost, location, and duration;
4. Appropriate and reasonable fine not to exceed \$15,000²;
5. Suspension of membership for a stated period not less than thirty (30) days nor more than one (1) year with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements). Suspension may be ordered unconditionally, or the disciplined member can be given the option of paying to the Board an assessment in a fixed amount, which may not exceed \$15,000. This option can be utilized only once in any three (3) year period in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration the disciplined member cannot avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated;
6. Expulsion from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion, based on the merits of the application at the time received; and
7. Suspension or termination of MLS rights and privileges³ for no less than thirty (30) days nor more than one (1) year. Termination of MLS services shall be for a stated period of one (1) to three (3) years.

In addition to any discipline imposed, Boards and Associations may, at their discretion, impose administrative processing fees not to exceed \$500 against respondents found in violation of the Code or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed.

² \$15,000 is the maximum fine that may be assessed regardless of the number of Articles of the Code of Ethics that a member is determined to have violated in any given hearing.

³ REALTORS® who participate in MLS or otherwise access MLS information through any Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or Association on the same terms and conditions as Board members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS.