

# MINNESOTA ASSOCIATION OF REALTORS®

## Sanctioning Guidelines

*The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATES® may be judged. REALTORS® and REALTOR-ASSOCIATES® in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR-ASSOCIATES® throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, National Association of REALTORS®, 2014 edition).*

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. Discipline that can be imposed is *strictly limited* to those forms authorized in the Manual. The Manual authorizes a wide variety of sanctions one or more of which may be imposed for ethics violations and for violations of other membership duties including:

**Letter of Warning**  
**Letter of Reprimand**  
**Attendance of Education Class**  
**Fine**  
**Suspension**  
**Expulsion**  
**Cease or Refrain from Conduct**  
**Refer Matter to Licensing Authority (MN DOC)**

Code enforcement achieves a number of important goals. Where REALTORS® have been wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process and resulting discipline educates members about their professional obligations and serves as a meaningful deterrent to future violations.

Determining that a violation of one or more Articles has occurred is only a part of a Hearing Panel's job. Equally important is crafting discipline commensurate with the offense.

**COMMENSURATE WITH THE OFFENSE:** Panels will want to consider that many violations are unintentional or inadvertent due to lack of familiarity

with the Code and its obligations, inexperience, oversight, or as unintentional mistakes. In such cases, the primary purpose of discipline should be educational to ensure that similar violations do not occur in the future and the respondent learns what conduct is expected of them. In other cases, violations can occur because of knowing disregard for the Code and its duties. In such cases, greater emphasis will be placed on the punitive nature of discipline and a more severe sanction would be appropriate.

**PROGRESSIVE DISCIPLINE:** Discipline imposed for violations of the Code of Ethics or for violations of other membership duties 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 membership. At the same time, there may be instances where a first time violation is not attributable to ignorance or oversight, but rather blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline.

- 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 Code’s obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.

### DISCIPLINARY GUIDELINES

**FACTORS TO BE CONSIDERED:** Factors that Ethics Hearing Panels should consider when determining appropriate discipline include, but are not 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 REALTOR® harmed?
- Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code’s obligations?

- How much real estate experience does the violator have? Did he, or should he, have known better?
- Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?
  - Respondents' records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.
- Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?
  - The fact that a respondent recognized or acknowledged inappropriate or unethical conduct, or took steps to remediate or minimize harm or injury that may have resulted from the respondent's conduct, 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?

**DISSENTING VOTE:** Any Hearing Panel member not voting with the majority may dissent from all or any portion of the findings or decision.

### **FINES**

- A fine can be levied from a minimum of \$250 to a maximum of \$15,000, payable to the Minnesota Association of REALTORS®.
- Fines are to be determined on the basis of sanction imposed by the Hearing Panel and not on the basis of the number of Articles of the Code violated on a particular occasion.

### **LETTER OF WARNING**

- Letter to be placed in Member's file.

### **LETTER OF REPRIMAND**

- Letter to be placed in Member's file.
- A fine of a minimum of \$250 should be included with the letter.

### **ATTENDANCE AT EDUCATIONAL CLASS**

- Member required to attend a designated continuing education class specified by the

Hearing Panel (i.e. ethics, agency, forms, contracts, risk management, etc.).

- A fine of a minimum of \$500 should be included with the letter.

### **MEMBERSHIP PLACED ON PROBATION**

- For a period of time not less than thirty (30) days nor for more than one (1) year.
- A fine of a minimum of \$750 should be included along with the probation.
- All other discipline recommended by the Hearing Panel will be held in abeyance during the term of probation. Any subsequent finding of a violation of the Code of Ethics during the probationary period, may, at the discretion of the MNAR Leadership Team, result in the imposition of the suspended discipline.

### **MEMBERSHIP SUSPENDED**

- For a stated period of time 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.
- If suspension includes MLS access, such suspension must be noted in discipline.
- A fine of a minimum of \$1000 should be included along with the suspension.

### **EXPULSION**

- A member expelled from REALTOR® organization 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 time and on the merits of the application at the time received and after all outstanding financial obligations have been satisfied.
- A discipline which includes expulsion must first be reviewed by MNAR Legal Counsel before the decision and discipline is sent to the parties.

### **IN LIEU OF SUSPENSION OR EXPULSION**

- A member may be assessed an amount not to exceed \$15,000, in lieu of suspension or termination, which can be utilized only once in any three (3) year period.

### **CEASE OR REFRAIN FROM CONDUCT**

Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined

by the hearing panel. Where discipline is imposed pursuant to this section, the decision should also include additional discipline (e.g. suspension or termination of membership) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. (*Adopted 05/14*)

#### **REFER TO STATE LICENSING AUTHORITY (Optional)**

A Hearing Panel may also elect to refer the matter to the Minnesota Department of Commerce for additional consideration if there are concerns regarding licensing and possible real estate regulatory violations. Such referral shall occur only after the Hearing Panel decision has been finalized either by an Appeal Tribunal or Ratification Panel.

#### **REFER TO STATE LICENSING AUTHORITY (Mandatory)**

Ethics decisions holding REALTORS® in violation of the Code of Ethics must be forwarded to the Minnesota Department of Commerce in the following instances where “public trust” may have been violated:

- Misappropriation of client or customer funds or property.
- Willful discrimination.
- Fraud resulting in substantial economic harm.

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

- violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

*Possible discipline:*

- letter of warning
- fine of \$500 or less
- attendance at relevant education session
- any combination of the above (*Revised 11/13*)

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

- violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code’s obligations

*Possible discipline:*

- letter of reprimand
- fine of \$2,000 or less
- attendance at relevant education session(s)

- any combination of the above (*Revised 11/13*)

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

- violation considered very serious, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard of the Code’s obligations

*Possible discipline:*

- letter of reprimand
- fine of \$10,000 or less
- attendance at relevant education session(s)
- suspension for ninety (90) days or less
- any combination of the above (*Revised 11/14*)

**Repeat violations example #1** (within three [3] years):

- current violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$2,000 or less (*Revised 11/14*)

**Repeat violations example #2** (within three [3] years):

- current violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code’s obligation

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$10,000 or less
- suspension for three (3) months or less
- any combination of the above (*Revised 11/14*)

**Repeat violations example #3** (within three [3] years):

- violation considered very serious, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard for the Code’s obligations

*Possible discipline:*

- attendance at relevant education session(s) or course
- fine of \$15,000 or less
- suspension for six (6) months or less
- any combination of the above (*Revised 11/13*)

**PROBATION:** In addition to imposing discipline, the Hearing Panel can also recommend that the disciplined

member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Ratification Panel, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. *(Revised 5/14)*

More serious forms of discipline (including possible termination of MLS privileges, suspension from membership for up to one [1] year, or termination of membership for up to three [3] years) may be

appropriate in cases of very serious violations or in cases of repeated violations. *(Revised 11/13)*

**Important Notes:** These are not sentencing rules or requirements, but rather simply suggestions to guide Hearing Panels in determining appropriate discipline based both on the current violation and the violator's previous record of ethical conduct.

**Waiver of Hearing:** If Respondent has waived their right to a hearing and agrees to accept the discipline, the discipline will not exceed a fine in excess of \$15,000 or suspension for a period of thirty (30) days should a violation of the Code ultimately be determined. Discipline that may be imposed if a violation is determined, may only include one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant education program, probation, suspension for thirty (30) days, or a fine not in excess of \$15,000. In addition to imposing discipline, the Hearing Panel can also recommend to the Ratification Panel that the disciplined member be put on probation. Probation is not a form of discipline.