

COMPLAINT
and
DISCIPLINE PROCEDURES
of the
NORTH DAKOTA
REAL ESTATE COMMISSION

INTRODUCTION

The purpose of this booklet is to outline the disciplinary procedures set out in Section 70-01-02-01 of the North Dakota Administrative Code and followed by the North Dakota Real Estate Commission. This booklet is intended to assist complainants and licensees and ensure that discipline matters are handled in a uniform and fair manner.

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WHAT IS THE NORTH DAKOTA REAL ESTATE COMMISSION

The law establishing the North Dakota Real Estate Commission became effective on July 1, 1957. The Commission was established for the protection of the public by regulating the standards of practice for continuation of licensing.

The Commission consists of five members, three of whom shall be active real estate brokers. They are appointed by the governor for a term of five years, staggered so the term of one member expires each year.

As part of its responsibility, the Commission ensures that the interests of the public who use the services of real estate licensees are adequately protected against wrongful actions by the licensees ... whether deliberate or the result of inadequate exercise of reasonable judgment in carrying out their duties and responsibilities as an agent for one of the parties involved in a transaction.

The Commission is also responsible for the issuance of licenses to brokers and salespersons who are required to pass a licensing examination in addition to meeting certain education requirements before a license is finally issued to sell real estate.

The Commission is responsible for determining what is appropriate education in real estate by prescribing curricula and standards for entry level real estate educational programs in addition to administering licensing examinations. The Commission also prescribes curricula and standards for the continuing education of real estate licensees.

Another important Commission responsibility is to investigate complaints alleging misconduct which are brought to its attention involving real estate licensees. Many complaints can be resolved more informally and more quickly by first working through the broker in charge of the firm.

Supporting the work of the members of the Commission is an experienced staff. Apart from administrative matters, their function includes investigations required in connection with disciplinary or complaint matters as well as periodic checks on such aspects of real estate practice as the proper maintenance of the trust accounts which all agents are required to maintain as part of the system of protection for the public.

INITIATION OF DISCIPLINE PROCEDURES

There are a couple of ways in which the discipline procedures provided in the Real Estate License Law may be initiated:

- a. A complaint in writing may be directed by a member of the public to the Commission.
- b. The Commission upon its own motion may initiate an inquiry even where there is no complaint from the public. This could happen, for example, when the Commission becomes aware of a court decision or media attention which could indicate wrong-doing on the part of a licensee. Another example might be the mishandling of monies entrusted to a broker for safekeeping in the broker's trust account.

COMPLAINTS

1. Reasons for Complaints

Disciplinary procedures, in most cases, are initiated as a result of a complaint received from a member of the public. It must be understood that the Real Estate License Law does not provide for redress of a civil wrong which may occur where a licensee has not satisfied a contractual obligation to a member of the public.

2. Informal Resolution of Complaints

If a problem develops for a consumer in a real estate transaction, the following steps can be taken:

- a. The misunderstanding might be cleared by discussion between the licensee and the consumer.
- b. If the matter is still not resolved, the complaint might be discussed with the manager or broker in charge of the real estate office. The vast majority of “complaints” are usually settled by these two means.

IF SATISFACTION IS STILL NOT FORTHCOMING:

- c. The local Real Estate Board might be approached. It will attempt to resolve the problem without the necessity of legal expense. (If there is a possibility that the Real Estate License Law has been violated, the Board will refer the complaint to the North Dakota Real Estate Commission.)
- d. The problem may be directed to the North Dakota Real Estate Commission.

3. Formal Complaints

North Dakota Administrative Code, Section 70-02-01-16, requires that all complaints to be investigated by the Commission must be in writing and filed in triplicate on forms furnished by the Commission. The complaint shall be verified and shall include: the full name and address of the person making the complaint, the full name and address of the person against whom the complaint is made, referred to as a respondent; an allegation that respondent is either a licensed broker or salesperson; and a clear and concise statement of the facts constituting the alleged complaint, including the time and place of occurrence of particular acts and the name of persons involved.

4. Complaints Are Sent to the Licensees Involved

A copy of the complaint is forwarded to the licensee or licensees involved who must, within 20 days from receipt of a copy of the complaint, file an answer on forms furnished by the Commission. This answer must be in written affidavit form, properly certified and contain a factual response to the allegations set out in the complaint.

THE INQUIRY

1. Complaint Procedure

Once the licensee's response is filed with the Commission's office, the matter is then turned over to an Attorney-Investigator who is charged with the responsibility of investigating the complaint. Priority of investigation is normally based on the date of receipt of the complaint.

2. Purpose of the Inquiry

The basic purpose of the inquiry is to determine whether a licensee may have:

- a. misappropriated or wrongfully converted money or other property entrusted to or received by him/her in his/her capacity as a licensee;
- b. committed a breach of the Real Estate License Law or regulations or failed to comply with an order of the Commission; or
- c. misconducted himself/herself as a licensee.

If the investigation reveals that the complaint does not involve a violation of the laws, or rules and regulations regulating licensees, the complaints shall be dismissed without a formal hearing, and the complainant so informed in writing.

If the investigation reveals that the acts of the respondent may be such as to justify disciplinary action against the respondent, a formal hearing will be held on the complaint. Notice of such hearing shall be given at least 20 days in advance by serving upon the respondent a copy of the complaint against the respondent and the date and place of hearing.

THE HEARING PROCESS

The Commission has the authority to hold a formal hearing if it appears that a licensee has violated the statutory provisions or regulations which govern the conduct of real estate salespersons and brokers.

1. Legal Counsel

The licensee, at the licensee's expense, may be represented by legal counsel and the Commission retains counsel to act at the hearing to examine or cross-examine witnesses.

2. Place of Hearing

All hearings shall be held at a location designated by the Commission in its notice of hearing.

3. Public Hearing

All hearings conducted by the Commission or its duly authorized employees, are open to the public, unless otherwise ordered by the presiding officer at the hearing or specifically provided by law.

4. Notice of Hearing

After the Commission, through appropriate investigation, determines that the matters are within its judicial authority, it then serves the licensee a Notice of Hearing at least 20 days prior to the hearing that states the acts or omissions with which the respondent is charged. This will enable the respondent to prepare a defense. The notice identifies the specific statutes or rules involved in the processing.

5. Hearing Officer

The North Dakota Real Estate Commission is required to have its administrative hearings conducted by the Office of Administrative Hearings (OAH). The Commission must submit a request to OAH for the designation of a hearing officer to conduct the hearing. The hearing officer will serve only as a procedural hearing officer, and will not make recommended findings of fact and conclusions of law or prepare a recommended order.

6. Procedure at the Hearing

While hearing procedures are subject to change to deal with particular situations that arise, the following procedures will generally be followed:

- a. A court reporter will be present at all hearings to record all of the evidence and submissions. Anyone may obtain a transcript of a part or all of a hearing at their expense by making arrangements with the court reporter.
- b. The hearing room is set up so that the members of the Commission and the Hearing Officer are seated together. A table is provided in front of the Commission where the licensees and their legal counsel, if any, may sit. A second table will be available for the complainant. The Commission's legal counsel will also sit at a table before the Commission.
- c. After calling the hearing to order, the Hearing Officer will read the charge and then ask everyone to identify themselves for the record.
- d. The Commission's legal counsel will, if appropriate, make opening comments so as to explain the issues to the Commission and outline evidence that he/she will be presenting.
- e. The Commission's counsel will then call the complainant and any other witnesses to give evidence and after their evidence has been presented they may be asked questions by way of cross-examination by the licensees or their legal counsel.
- f. At the end of the cross-examination, any members of the Commission may ask questions of a witness.
- g. The Notice of Hearing will normally require the licensees to produce all documents and accounting records relating to the matters in issue and actual production of that material may be requested at any point in the hearing.
- h. After the Commission's counsel has called all witnesses to give evidence, the licensees may give evidence and the licensees or their counsel may give opening comments prior to giving evidence.

- i. Where licensees are represented by counsel, their counsel may complete their presentation of the evidence after which time the licensee will then be subject to cross-examination by the legal counsel acting for the Commission. If not represented by counsel, the licensee may make any statement he/she wishes and he/she will then be subject to cross-examination.
- j. After the Commission has heard all the testimony in the case, the hearing is concluded. The Commission will normally make a decision at that point, but may take the case under advisement and render a decision later. Findings of Fact, Conclusions of Law and Order, legal conclusions drawn from those facts, and the appropriate disciplinary actions, if any, to be imposed, are detailed in writing by the Commission.
- k. The Commission may take any one of a combination of disciplinary actions which may include the following:
 - (1) Revocation: the license is revoked. The individual is not allowed to sell real estate unless he/she obtains a new license at some future date.
 - (2) Suspension: the Commission may choose to suspend an individual's license for a specific period of time. During this period, the individual is not allowed to work as a real estate licensee. If the individual does not comply with the conditions during suspension, the Commission may, after affording the licensee due process, take further action against the licensee.
 - (3) Reprimand: a letter of reprimand may be issued and a copy placed in his/her file. During this period of time, the individual may continue to work as a real estate licensee.
 - (4) Fines: a broker or salesperson may be fined in an amount not to exceed \$2,500.00. Fines collected are deposited in the Commission's general fund.
 - (5) Education: a broker or salesperson may be required to attend a course (or courses) in addition to the continuing education hours required to maintain his/her license.

APPEAL OF THE COMMISSION'S ORDER

Disciplinary sanctions ordered by the Commission are subject to review by the courts, upon an appeal by the respondent. If an appeal is taken, the court will review the decision and will affirm it unless:

- a. The order is not in accordance with the law.
- b. The order is in violation of the constitutional rights of appellant.
- c. Provisions of the law have not been complied with in the proceedings before the agency.
- d. The rules or procedure of the agency have not afforded the appellant a fair hearing.
- e. The findings of fact made by the agency are not supported by a preponderance of the evidence.

- f. The conclusions of law and order of the agency are not supported by its findings of fact.

PUBLICATION OF DISCIPLINARY ACTION

All real estate licensees are advised of the disciplinary actions taken by the Commission. Disciplinary action under appeal is not published until the outcome of the appeal is determined. Once the appeal process has been completed, then a notice is sent to the news media and publication also appears in the Commission's newsletter.