

MREC COMPLAINT PROCESS

The Complaint Process typically begins when the MREC receives either a formal complaint (signed and notarized) from an individual or legal entity (§73-35-23 <1>) or when the MREC receives reliable information of unlawful real estate activity which might necessitate the MREC Administrator beginning an Investigation. At that point in time the procedure is as follows, to wit:

A letter is mailed to the Complainant (if applicable) informing them that the MREC has received the complaint, an investigation has been initiated and the Complainant is given the name of the MREC Investigator for future reference.

A letter is mailed to the real estate licensee(s) informing them that a formal complaint has been received by the MREC and that an investigation has been initiated with respect to a real estate transaction which involved the licensee(s). The licensee(s) are provided a copy of the complaint and any documents submitted by the Complainant and requested to tender the following information to the MREC, to wit:

- 1) A formal written response to the Complaint by the licensee(s). The licensee is instructed to provide a written statement specifically addressing the allegations of the complaint, with a notarized signature.

The licensee's legal counsel (attorney) may assist in any way the licensee chooses but the response must be from the licensee (in their own words) and it should be signed with a notarized signature.

- 2) An Affidavit which stipulates that complete, accurate and true copies of "all documents" which are germane to the real estate transaction being investigated are being tendered to the MREC. The affidavit should be signed by the licensee(s) and their signatures should be notarized. The submission should include the following:

The "**ENTIRE WORK FILE**" (every piece of paper in the file).

Upon the receipt of all the documentation from the licensee's work file, the MREC will begin the investigative process with the following protocol, to wit:

- 1) The MREC Investigator will immediately send the Complainant the response and all documentation from the licensee's work file to verify the authenticity of each document which has been submitted as part of the transaction that is being

investigated. The Complainant is asked to respond to the documents within a ten (10) day period.

- 2) The MREC Investigator will compare any/all documents which were originally submitted (by the complainant) with those documents which were submitted by the licensee(s) and are certified to be complete, accurate and true copies of the work file.
- 3) After the response/rebuttal is received from the Complainant (if applicable), the response will be sent to the licensee(s) so that each party is fully aware of the allegations and know which documents are considered germane and are being reviewed by the MREC.
- 4) If any major discrepancies are noted by the investigator, they will request a written (signed) response from each of the parties to the transaction so they may clarify how, if at all, the documents were used during the transaction. The investigator may conduct a personal interview with each of the parties to clarify the documents.

Following the review and analysis of the documentation secured from the complainant and the licensee(s), the investigator will issue an Investigative Summary (opinion) indicating whether they discovered licensable activities which might be violations of the Real Estate Brokers Act of 1954, as amended and/or the Administrative Rules of the Real Estate Commission.

The Investigative Summary, including the original Complaint, the response from the licensee(s), the rebuttal from each of the parties (if any), the entire licensee's work file and the data secured by the MREC Investigator (including notes) are then reviewed and discussed (in detail) with the MREC Legal Counsel, the MREC Senior Attorney and the MREC Administrator in attendance. During the meeting the parties will agree on the facts that have been discovered, discuss the merits of the investigation and attempt to reach a consensus for one of the following courses of action:

- 1) Additional Information may be required to clarify some specific details and the Investigator will be given specific instructions concerning what is required to bring the case to fruition.
- 2) No violations of MREC guidelines were evident from the facts of the investigation and the recommendation from the participants is that the case be dismissed.
- 3) Minor violations appear to be present in the documentation and the recommendation from the participants is that the case be "dismissed" but, with either a written Letter of

Caution (not a disciplinary action) or a Formal Letter of Reprimand being presented to the licensee(s) based on the violations (must be approved by the Commissioners).

- 4) Possible Major Violations appear to exist in the documentation and either the MREC Legal Counsel or the MREC Senior Attorney is charged with taking the investigative file and drafting a "Formal Complaint" to be presented to the licensee(s) based on the evidence that has been discovered.

When the "**Formal Complaint**" is drafted and presented to the licensee(s), the MREC will provide a written explanation indicating how the investigation will continue and a statement will be given to the licensee(s) informing them whether the MREC is willing to consider negotiating an "Agreed Order" with the licensee(s) and their legal counsel (attorney), if any, rather than conducting an Administrative Hearing. If the terms of an "Agreed Order" are negotiated to the satisfaction of the licensee(s) and their attorney and the MREC Legal Counsel, the Agreed Order will be drafted, signed by the licensee (with advice from counsel) and presented to the Real Estate Commissioners (typically at the next monthly meeting) for approval prior to the "Order" becoming effective.

If the MREC Investigator, the MREC Legal Counsel, the MREC Senior Attorney and the MREC Administrator believe the violations are so egregious that a "License Revocation" might be a possibility, an Administrative Hearing will be recommended. Similarly, if the licensee(s) are unwilling to negotiate or accept an "Agreed Order", an Administrative Hearing will be set at the convenience of the MREC and the legal counsel for the licensee(s).