

# **MREC Disciplinary Action Matrix**

**July, 2021**

This Matrix provides guidance to assist the MREC Commissioners, the Investigative Staff and the MREC Legal Counsel in enforcement cases.

## **PURPOSE AND NATURE OF SANCTIONS**

The purpose of discipline is to protect the public from licensees who have not or will not competently perform their fiduciary obligations to their clients and/or treat their customers honestly and fairly. The ultimate disposition of any disciplinary action should be made public in cases of licensee reprimand, suspension or revocation.

## **POSSIBLE SANCTIONS**

**\*Letter of Caution**

**\*Formal Letter of Reprimand**

**\*Formal Letter of Reprimand with Continuing Education**

**\*License Suspension held in Abeyance**

**\*Full License Suspension**

**\*Short Suspension - up to 3 months**

**\*Medium Suspension - 3 to 6 months**

**\*Significant Suspension - more than 6 months**

**\*Continuing Education**

**\*Probation**

**\*Short Probation - up to 3 months**

**\*Medium Probation - 3 to 6 months**

**\*Significant Probation - more than 6 months**

**\*License Revocation**

This chart is provided to be used in conjunction with the **Aggravating and Mitigating Circumstances** listed below.

The potential sanctions outlined in this chart is an average sanction where aggravating and mitigating circumstances balance each other. Where aggravating circumstances outweigh mitigating circumstances, the level of sanction would increase, and vice versa.

### **Levels of Sanctions**

LEVEL	VIOLATION	SANCTION
I	Minor violations that do not involve clients or the outcome of the transaction.	Letter of caution; corrective education (CE); or both.
II	Technical errors or carelessness where licensee would benefit from education.	Reprimand or equivalent; corrective education (CE that cannot be used for renewal); short probation; monitoring; or any combination of above.
III	Minor violations of the MREC Rules and/or State Statutes that rise to the level of affecting the outcome of the transaction.	License suspension; corrective education that cannot be used for CE for renewal; short suspension; medium probation; or any combination of above.
IV	Significant violations of the Rules and/or state statutes.	Significant suspension; significant amount of corrective education (that cannot be used for CE for renewal); significant probation; or any combination of above.
V	Significant willful violations of MREC Rules or State Statutes.	Revocation or Voluntary Surrender in lieu of disciplinary action.

## **AGGRAVATING CIRCUMSTANCES**

An aggravating circumstance consists of factual information or evidence regarding the licensee(s) or the violation that might result in an increased sanction. Aggravating circumstances include:

- Prior disciplinary history
- Number of transactions involved in the case
- Number of total violations involved in the case
- Pattern of similar violations
- Significant financial harm to a lending institution, a consumer or others
- Evidence that the violation was willful or intentional
- Evidence that the violation was grossly negligent
- Failure to exercise due diligence in the supervision of others
- Refusal to acknowledge violation
- Lack of cooperation with investigation
- Submission of false statements or evidence, or other deceptive practices (e.g., creating or adding to work file after complaint filed)
- Intimidation of or threats to witnesses or others involved with the investigation

## **MITIGATING CIRCUMSTANCES**

A mitigating circumstance consists of any information or evidence regarding the licensee or the violation that might result in a decreased sanction. Mitigating circumstances include:

- Length of time since the date of violation
- No prior disciplinary history
- No other complaints currently pending against licensee
- No pattern of similar offenses
- No evidence that the violation was willful or intentional
- No evidence that the violation was grossly negligent
- License level at the time of violation
- Licensee was under the supervision of another licensee at the time (e.g., agents)
- Additional education taken and/or experience gained after violation occurred
- Cooperation with investigation
- Little or no financial harm to consumer or others
- Timely mitigation of financial loss
- Understanding and acknowledgement of violation
- Personal problems such as physical, mental or emotional problems at the time of the violation that have since been addressed

## EXAMPLE OF THE APPLICATION OF LEVELS AND AGGRAVATING AND MITIGATING CIRCUMSTANCES

The following are generic examples of how to apply sanction levels and aggravating and mitigating circumstances:

When determining an appropriate sanction, the highest level of sanction should be considered unless substantial mitigating circumstances exist. Example 1:

A licensee conducts a transaction in an area where he is not competent, failed to notify the broker that he was not competent and failed to take the necessary steps to become competent. As a result, he produced a transaction that failed or experienced unnecessary difficulty.

With no aggravating or mitigating circumstances, the sanction would be Level III.

Example 1A:

Assume in the above scenario that there are no aggravating circumstances and that the following mitigating circumstances exist:

- a. The transaction was done 3 years ago and the licensee now has achieved competency in the market.
- b. The licensee has no prior disciplinary history.
- c. The licensee cooperated with the investigation.
- d. Since the transaction was completed, the licensee has taken additional education that will help avoid this issue in the future.

Based on these circumstances, the sanction would be Level I or Level II.

Example 1B:

Assume in the above scenario that there are no mitigating circumstances and that the following aggravating circumstances exist:

- a. The licensee has been disciplined for similar conduct in the past.
- b. The licensee had already taken education designed to address this issue before the transaction in question.
- c. As a result of the violation, there was significant financial harm to the consumer.

Based on these circumstances, the sanction would be Level IV or Level V.

Example 2: A licensee conducts a transaction in an area where he is not competent, failed to notify the broker that he was not competent and failed to take the necessary steps to become competent. As a result, he produced a transaction that failed or experienced unnecessary difficulty.

With no aggravating or mitigating circumstances, the sanction would be Level IV.

Example 2A:

Assume in the above scenario that there are no aggravating circumstances and that the following mitigating circumstances exist:

- a. The licensee was under severe emotional stress at the time the transactions were performed due to the illness of a child.
- b. The licensee had been licensed for less than a year.

Based on these circumstances, the sanction would be Level II or Level III.

Example 2B:

Assume in the above scenario that there are no mitigating circumstances and that the following aggravating circumstances exist:

- a. There are 10 transactions involved in this case.
- b. The licensee altered documents in the work files before sending them to MREC.
- c. The licensee did not cooperate with the investigation, refusing to meet with the investigator or to provide more information when requested.

Based on these circumstances, the sanction would be Level V.

Example 3: states in his response on a transaction that he inspected the interior and exterior of the subject property, when in fact he only drove by the property. As a result, he stated that the subject property was in average condition when it was actually in poor condition and essentially uninhabitable. He did not use any extraordinary assumptions or hypothetical conditions. He knew that the lender required an interior inspection.

With no aggravating or mitigating circumstances, the sanction would be Level IV.

### Example 3A:

Assume in the above scenario that there are no aggravating circumstances and that the following mitigating circumstances exist:

- a. The licensee took CE courses after the transaction was done but before the complaint was received.
- b. The licensee cooperated with investigation and acknowledged his error.
- c. The sale never went through, so there was little or no financial harm to the consumer or others.

Based on these circumstances, the sanction would be Level 1II.

### Example 3B:

Assume in the above scenario that there are no mitigating circumstances and that the following aggravating circumstances exist:

- a. The violation was intentional.
- b. The licensee has been licensed for over 20 years.
- c. When confronted with the issue by the client, the licensee refused to review or correct the issue.

Based on these circumstances, the sanction would be Level V.

### Example 3C:

Assume in the above scenario that there are both the mitigating circumstances in Example 3A and the aggravating circumstances in Example 3B. The sanction, therefore, would be anywhere from Level 1II to Level V.

Based on these circumstances, the aggravating circumstances are more serious and outweigh the mitigating circumstances, thus the sanction would be Level IV or Level V.

In determining an appropriate sanction, one would start at the lowest level violation (Level 1I for record keeping) and consider the highest level violation (Level V for preparing a fraudulent transaction or communicating results in a misleading or fraudulent manner).



Example 4A:

Assume in the above scenario that there are no aggravating circumstances and that the following mitigating circumstances exist:

- a. There are no other complaints pending or previous disciplinary actions against the licensee and there is no indication that there has been a pattern of similar offenses.
- b. It appears that the agent altered the report after the client signed it. It also appears that the agent deleted the transaction and supporting documentation from the work file.
- c. The licensee acknowledged that he failed to supervise his agent.

Based on these circumstances, the sanction would be Level IV or possibly even Level III.

4B: Assume in the above scenario that there are no mitigating circumstances and that the following aggravating circumstances exist:

- a. There were several violations in the case.
- b. The loan was made and went into foreclosure. The lender subsequently sold the property for \$65,000.
- c. Failure to supervise his agent was grossly negligent as he knew his agent had altered his reports in the past.

Based on these circumstances, the sanction would be Level V.