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Maylie & Grayson is a full service law firm providing representation to real estate brokerages, licensees, local Realtor® organizations, developers, builders, lenders and investors, providing services in all aspects of real estate including transaction review, land use planning, licensing, mediation, arbitration and court matters.

Complaints to the Oregon Real Estate Agency

The Oregon Real Estate Agency is responsible for investigating complaints in which brokers are alleged to have breached their lawful duties. This article will outline the process utilized by the Oregon Real Estate Agency in transactions where a violation is alleged. Familiarity with the process is important when faced with such situations.

The process generally consists of the following stages:

1. Notification

Brokers often become aware of an investigation by receiving a letter from the Agency outlining the nature of the complaint and requesting additional information. In other cases, a Broker may receive a phone call from an investigator requesting information relating to a complaint.

2. Response

Brokers are obligated to respond to Agency investigations. It is advisable for the Broker to discuss the matter with their Principal Broker and review the transaction file before engaging in a discussion with Agency representatives. It is not uncommon for the Agency to request consent to record conversations with Brokers. A Broker or Principal Broker may wish to consult legal counsel prior to responding to the Agency.

3. Agency Determination and Settlement Conference

After the Broker's response to the request for information, the Agency will make a determination about how it intends to proceed. An investigation may be terminated at this stage due to a finding that no violation has occurred or the Agency may elect to pursue allegations and proposed sanctioning. In either event, this information is typically presented to the Broker in written form.

If a violation is alleged, the Broker is invited to participate in an informal settlement conference. This provides an opportunity to resolve the issues raised in an investigation report without the expense and formality of an Administrative Hearing. The settlement conference takes place at the Real Estate Agency and is considered “off-the-record.” The Agency is represented by the Regulations Manager and Investigator at the conference. Brokers may bring an attorney, spouse, Principal Broker, or other advisor.

The settlement conference has three purposes. First is the opportunity for the Broker to review the investigation file prior to the meeting. Second is the chance to provide additional information to the investigator which may be relevant to the case. If it is determined that other information should be obtained in the investigation, further discussion will be postponed until the information is obtained. Third is the opportunity to discuss the proposed settlement or sanction that has been offered.

If agreement is reached at the settlement conference, a stipulated order will be issued that contains a statement of the facts, charged violations, and sanction or penalty to be imposed. After both parties review the proposed order, it is sent to the Real Estate Commissioner for approval.

4. Administrative Hearing

Either party may elect to proceed to an administrative hearing in the event that resolution is not reached at the settlement conference. Hearings typically occur when there is a disagreement as to the evidence or proposed sanction. In many respects, hearings are similar to a trial in that sworn testimony and cross-examination are used to evaluate conflicting evidence.

Any sanction imposed by stipulated order or resulting from an administrative hearing will be published in the Agency’s newsletter to licensees, the *Oregon Real Estate News-Journal*.

Conclusion

Licensed Real Estate activity has become highly technical and is governed by a variety of rules and regulations. It is not uncommon in the course of a career to be involved in a complaint made to the Agency. Familiarity with the process and proper preparation are essential when faced with an investigation.

This column contains general information only and must not be construed as legal advice. Questions may be submitted directly to Maylie & Grayson by fax at (503) 775-1765, by email at joelgrayson@mayliegrayson.com or by mail at 7959 SE Foster Road, Portland, Oregon 97206.