

STAFF'S PRESENTATION TO LICENSEE OF OFFER TO STIPULATE OR OTHERWISE RESOLVE DISCIPLINARY ACTIONS

The Commissioners hereby authorize and approve the following procedure for the Staff regarding pursuit of disciplinary action:

Except as stated below, That whenever the Staff of the Real Estate Commission conducts an investigation, the results of which lead the Executive Director to conclude that disciplinary action is warranted, the Executive Director shall present a written report and obtain Commissioner authorization to file an Administrative Complaint prior to initiating negotiations of a settlement of the matter with the licensee/respondent. In the event the Commissioners authorize the Staff to pursue an administrative action, the Staff shall notify the licensee/respondent in writing of the results of the investigation, the Staff's position on the matter, and the licensee/respondent's options to resolve the matter. The form of the letter sent by Staff to the licensee/respondent shall be substantially the same as the attached letter.

Except that Staff *may* attempt to negotiate with the licensee/respondent a settlement of an alleged violation of the license law, without first obtaining Commissioner approval, where (1) the violation did not come to light as the result of a complaint from a member of the public; and (2) the acts resulting in the violation do not appear to have caused injury to any member of the public.

November 21, 2008

Personal & Confidential

Respondents Name

Company

1234 My Way Ave

Good Luck, NY 00099

RE: Notice of Proposed Disciplinary Action

Dear Respondent:

As you are aware, on , filed a complaint against you, alleging that you were responsible for certain misconduct in violation of the Idaho Real Estate License Law and Rules. The purpose of this letter is to inform you of the results of the investigation and the options available to you in resolving the matter.

Investigative Results

The Staff of the Idaho Real Estate Commission has conducted a thorough investigation of this matter. The investigation revealed the following:

Insert results of investigation here

The Staff further concludes that this conduct is a violation of Idaho Code, section(s):

Insert alleged violation(s) here

As required by [Idaho Code 54-2058\(1\)](#), the Staff has presented these investigation results and the alleged violation(s) to the Commissioners. Following their review, the Commissioners have authorized us to file a formal administrative complaint against you for the alleged violation(s).

Proposed Discipline and Options

Based upon the alleged violation(s) outlined above, the Staff would propose that you be disciplined as follows:

Insert proposed discipline here

You have the option of resolving this matter informally prior to the filing of an administrative complaint by admitting violation(s) and entering a written agreement, or “Stipulation,” with Staff. You also have the right to require Staff to pursue a formal action and to have Staff prove the violation(s) at a formal hearing.

You have the following options:

1. **Stipulation and Ex Parte Hearing.** You may enter into a written Stipulation with the Staff, wherein you admit to misconduct and violation(s) of law, and also agree to a specific discipline. The Staff, at an ex parte hearing, would then present the Stipulation to the Commission without requiring your presence or the presence of attorneys. Unless the Commission rejects the Stipulation, it will enter a Final Order adopting the terms and discipline as agreed to by you and the Staff.

By resolving the matter in this way without attorneys present, you would be limiting the amount of costs and attorney fees incurred by Staff and that you could be ordered to pay under the terms of the Stipulation.

2. **Stipulation to Violation(s) Only, with Discipline Determined after Mitigation Hearing.** You may enter into a written Stipulation with the Staff, wherein you admit to misconduct and violation(s) of law only, and request a “mitigation hearing” before the Commission to determine the discipline to be imposed. At the mitigation hearing, Staff would propose the discipline described above and would offer evidence and argument supporting its proposal. At that hearing, you would be able to propose any discipline you feel appropriate, and also present evidence and argument in support of your proposal. Unless it rejects the Stipulation, the Commissioners will enter a Final Order based upon the violations to which you and the Staff agreed, and imposing any discipline they determine appropriate from the evidence and argument presented at the hearing.

In a mitigation hearing, the Staff is represented by counsel. Consequently, requesting a mitigation hearing will increase the Staff's costs and attorney fees, which the Commission could order you to pay as part of your discipline.

- 3. Formal Action/Hearing on the Merits.** You may require the Staff to pursue a formal action and the alleged violation(s) at an administrative hearing. A formal action is initiated by the Staff's filing of an Administrative Complaint. The filing of an Administrative Complaint triggers certain procedures and rights, including the right of discovery and to an administrative hearing before an impartial hearing officer, who is an attorney. At such administrative hearing, the Staff through its attorney would present evidence and argument to support its allegations and the discipline being sought. Likewise, you would have the opportunity to present evidence and argument on any issue involved in the matter. At the conclusion of the hearing, the hearing officer would issue a "Recommended Order" containing findings of facts and conclusions of law. The Commissioners would then review the Recommended Order, along with the transcript of the proceedings held before the hearing officer and any objections or other briefing filed by the parties. Following that review, the Commissioners would issue a "Final Order" determining whether the violations had been proved, and if so, imposing any discipline they deem appropriate.

In the event you are found to have violated the license laws, the Commission could order you, as part of your discipline, to pay all of the costs and attorney fees incurred by the Staff in the proceedings.

If you desire more information regarding the nature of a formal administrative proceeding, please see the Commission's Rules of Practice and Procedure. These Rules may be downloaded from the Commission website at www.irec.idaho.gov, or a copy will be provided to you upon request.

You are encouraged to discuss this matter with your attorney. If you intend to enter a Stipulation without having a formal action initiated against you, please contact Craig Boyack, Chief Investigator, at 334-3285 ext. 114, by , in order to finalize an agreement. You may also provide any evidence or facts not previously provided that you wish Staff to consider in addressing the alleged violation(s). If

you do not contact Mr. Boyack by that date, Staff will conclude that you wish to proceed with a formal action and will forward this matter to the Staff's attorney to file a formal Administrative Complaint and prepare the case for hearing. Once the case is forwarded to the attorney, all correspondence concerning the case should be directed to the attorney.

The fact that a case is forwarded to the attorney, or that an Administrative Complaint has been filed or that discovery is conducted, does not preclude you from entering into a Stipulation. However, you might wish to consider that extending proceedings will increase the costs and attorney fees incurred by the Staff, which you could ultimately be ordered to pay.

Sincerely,

Jeanne Jackson-Heim
Executive Director

Copy to , broker.

Certified Mail No. _____