

MetroList Services, Inc.

MLS Tribunal Procedures

MetroList[®]

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PROCEDURES FOR METROLIST MLS RULES VIOLATION HEARINGS

1. Definitions.

a. "Administrative Contractor" means a person or entity (other than a MetroList employee) who or which, pursuant to an agreement with MetroList, has agreed to perform administrative services for MetroList at a particular location or locations.

b. "Appeal Hearing" means a hearing conducted by an Appellate Committee to consider a Party's appeal from a decision of a Tribunal pursuant to these Procedures.

c. "Appellate Committee" means a committee of the Board of Directors of MetroList consisting of three (3) Directors, appointed from time to time by the Board of Directors to hear appeals from decisions of Tribunals, whose decision shall be the decision of the Board of Directors.

d. "Appropriate Fine" means a monetary fine not to exceed Fifteen Thousand Dollars (\$15,000.00) recommended, imposed or to be imposed against a Participant or Subscriber that is determined to be commensurate with the nature and gravity of a violation of an MLS Rule.

e. "Board of Directors" means the Board of Directors of MetroList.

f. "Clerical Users" are individuals (whether licensed or unlicensed) employed by an MLS Participant or Subscriber and registered with the MLS who perform only clerical tasks that do not require a real estate license or an appraiser's certificate or license.

g. "Commencement of a Disciplinary Hearing" or "commencement of a hearing" or "commencement of the Disciplinary Hearing" or "commencement of the hearing" means the point in time when the presiding officer of a Tribunal assigned to conduct a Disciplinary Hearing calls the Disciplinary Hearing to order or otherwise states on the record that the Disciplinary Hearing has commenced.

h. "Complainant" means a Participant, Subscriber, Administrative Contractor or MetroList who or which files a Complaint against a Participant or Subscriber.

i. "Complaint" means the written complaint submitted by a Complainant against a Participant or Subscriber alleging a violation or violations of the MLS Rules on the form provided by MetroList.

j. "Director(s)" means a current member(s) of MetroList's Board of Directors.

k. "Disciplinary Hearing" means a hearing conducted by a Tribunal to determine whether a Participant or Subscriber has violated the MLS Rules, and, if it is determined that a violation has occurred, the Appropriate Discipline for such violation.

l. "Disciplinary Proceeding" means the process by which an alleged violation of the MLS Rules is to be determined, and if so, the Discipline to be imposed, commencing with the filing of a Complaint.

m. "Discipline" means the type or types of discipline described in Section 4 of these Procedures, including but not limited to an Appropriate Fine, recommended, imposed or to be imposed against a Participant or Subscriber that is determined to be commensurate with the nature and gravity of a violation of an MLS Rule.

n. "Education Requirement" means a requirement by a Tribunal that a Participant or Subscriber who is determined to have violated an MLS Rule must attend an MLS orientation, class or seminar, or another form of real estate educational session or program.

o. "Expulsion from MLS" means termination of all of the Participant's or Subscriber's MLS membership and privileges for a period of not less than one (1) year. An expelled person who was a Participant or Subscriber may apply for reinstatement to the MLS after three (3) years from the effective date of expulsion or such shorter time as the Tribunal or Appellate Committee determines. A proper application for reinstatement by an expelled Participant or Subscriber shall be considered by MetroList without regard to the MLS Rules violation that resulted in the Expulsion from MLS.

p. "Hearing Administrator" means the individual or entity designated by the President or Chief Executive Officer of MetroList to provide administrative services for MLS Rules Violation Hearings. The Hearing Administrator may be designated by the Board if the President or Chief Executive Officer is unavailable or fails to designate a Hearing Administrator in accordance with these Procedures. The Hearing Administrator may be an employee or independent contractor of MetroList or an employee or officer of an Administrative Contractor. The Hearing Administrator shall not be a Party or affiliated with a Party to any Disciplinary Proceeding for which such person has been designated. Once designated as Hearing Administrator, the person so designated shall exercise good faith efforts to maintain impartiality in performing the duties required as Hearing Administrator.

q. "Letter of Reprimand" means a letter from MetroList to a Participant or Subscriber, advising the Participant or Subscriber of a finding of a violation of the MLS Rules determined after a hearing by a Tribunal, and that the letter is to be construed as an official reprimand.

r. "MetroList" means MetroList Services, Inc.

s. "MLS" means the multiple listing service owned and operated by MetroList.

t. "MLS Rules" means the rules adopted by MetroList governing the participation in and use of the MLS by Participants, Subscribers, and Clerical Users, as such rules may be amended from time to time by MetroList.

u. "Participant" has the meaning set forth in the MLS Rules.

v. "Party" or "Parties" means the Complainant(s) and/or Respondent(s) in a Disciplinary Proceeding.

w. "Probation" means that the Discipline recommended by the Tribunal will be held in abeyance on the terms and conditions specified for a designated period of time not to exceed one (1) year, after which time the Discipline recommended shall be of no further effect. The violation of the same or another MLS Rule during the probationary period may, at the discretion of the Tribunal, result in the imposition or re-imposition of the suspended Discipline.

x. "Procedures" means these Procedures for MetroList MLS Rules Violations Hearings, as amended by MetroList from time to time.

y. "Respondent" means a Participant or Subscriber against whom a Complaint has been filed. If a Subscriber is named as a Respondent, the Participant by whom the Subscriber is employed or with whom the Subscriber is affiliated, at the time the act or omission giving rise to the Complaint occurs, shall also be named as a Respondent.

z. "Response" means a written response to a Complaint submitted by a Respondent on the form provided by MetroList.

aa. "Subscriber" has the meaning set forth in the MLS Rules.

bb. "Suspension of MLS" means suspension of all of the Participant's or Subscriber's MLS privileges and services on terms and conditions expressly stated for a period of time not less than thirty (30) days and not more than one (1) year. Reinstatement of a suspended Party as a Participant or Subscriber shall be automatic at the end of the specified period of suspension, provided the Participant or Subscriber is current as to all amounts owed MetroList and has kept all MLS fees paid current during the period of suspension.

cc. "Tribunal" means a panel of three (3) members of the Tribunal Committee appointed by the President of MetroList to determine if a violation of the MLS Rules has occurred, and if so, the Discipline to be imposed.

dd. "Tribunal Members" mean Participants or Subscribers designated by MetroList to serve on Tribunals, each of whom has completed the MetroList Tribunal Training Program relating to Disciplinary Hearings.

2. Duties of Participants and Subscribers. Each Participant and Subscriber is required to abide by all MLS Rules, including these Procedures.

3. Power to Take Disciplinary Action Against a Participant or Subscriber. After a Disciplinary Hearing, the Directors may impose Discipline against any Participant or Subscriber for any of the following reasons:

a. For the violation of any MLS Rule.

b. On the Participant's or Subscriber's being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of (i) a felony, or (ii) a crime involving moral turpitude, or (iii) on a determination by any court of competent jurisdiction, or official of the State of California authorized to make the determination, that the Participant or Subscriber violated a provision of the California real estate law or a regulation of the Real Estate Commissioner, or the California Real Estate Appraiser's Licensing and Certification Law or a regulation of the California Office of Real Estate Appraisers.

c. For the violation of any MLS Rule by a Subscriber, the Participant with whom the Subscriber is affiliated, or by whom the Subscriber is employed, as reflected in the records of MetroList. Lack of knowledge by a Participant of such Subscriber's conduct shall not preclude a determination that the Participant has committed or is responsible for a violation of the MLS Rules, but may be considered in mitigation of the Discipline imposed.

d. For the violation of any MLS Rule by a Clerical User who is employed by a Participant or Subscriber. Lack of knowledge by a Participant or Subscriber of such Clerical

User's conduct shall not preclude a determination that the Participant or Subscriber has committed or is responsible for a violation of the MLS Rules, but may be considered in mitigation of the Discipline imposed.

4. Nature of Discipline Against a Participant or Subscriber.

a. Discipline that may be imposed for violation of an MLS Rule may consist of one or more of the following actions:

i. Issuance of a Letter of Reprimand, together with placement of such Letter of Reprimand in MetroList's file for that Participant or Subscriber for a specified period of time;

ii. An Education Requirement;

iii. An Appropriate Fine;

iv. Probation;

v. Suspension of MLS; or

vi. Expulsion from MLS.

b. Nothing contained in these Procedures shall preclude the Tribunal from recommending, nor the Directors from imposing, one or more of the types of Discipline specified in subsection (a) above based upon the nature and gravity of the violation.

c. In the case of the imposition of any Discipline where the disciplined Participant or Subscriber must take specific action, such as pursuant to subsections (a)(ii) or (a)(iii) above, the Tribunal must recommend and the Directors must impose, alternative Discipline to become effective if the Participant or Subscriber does not comply with the initially ordered Discipline.

5. Citations. MetroList may implement a schedule of fines for certain MLS Rules violations, and implement a procedure whereby the Participant or Subscriber receiving the citation may either pay the amount specified on the citation or request a Disciplinary Hearing in accordance with these Procedures. Written request for a Disciplinary Hearing shall be made not later than ten (10) days after the date of the citation. If the fine is not paid or a Disciplinary Hearing is not requested within said time, MetroList may immediately terminate the Participant's or Subscriber's MLS privileges and services.

6. Processing of Complaints. MetroList shall, through its designated Hearing Administrator, receive and process all Complaints. All Disciplinary Hearings shall be held at MetroList's principal business office or at such other location as designated by the Hearing Administrator.

7. Tribunal Committee. The President or Chief Executive Officer of MetroList shall recommend up to forty (40) Participants and twenty (20) Subscribers for appointment to the MetroList Tribunal Committee to act as Tribunal Members. Tribunal Members shall be selected by the Hearing Administrator to serve on particular Tribunals, as required, to hear matters of alleged violations of the MLS Rules by Participants and Subscribers. Tribunal Members shall each attend a MetroList Tribunal Training Program at the time of their appointment, and every three (3) years thereafter, if reappointed.

8. Interpretation of MLS Rules. If any provision of the MLS Rules or the Procedure relating to the Tribunal's handling of a matter is involved, the interpretation by that Tribunal, including any interpretation of the Disciplinary Hearing procedure, shall be set forth as a separate finding and shall be conclusive and final, except that the Directors on appeal from that Tribunal's decision shall not be bound by that Tribunal's interpretation of the MLS Rule(s) or Disciplinary Hearing procedure. If any issue relating to procedure arises which is not expressly addressed in these Procedures, the Tribunal shall determine and/or resolve such issues, and such determination and/or resolution shall be set forth in a separate finding and shall be conclusive and final, except that the Directors on appeal from that Tribunal's decision shall not be bound by that Tribunal's determination and/or resolution.

9. Notices.

a. Any notice required to be given may be given or served by personal delivery, electronic mail, or by first class mail, postage prepaid, addressed to the Party at his/her address as shown in the records of MetroList.

b. Notice of any Disciplinary Hearing or Appeal Hearing, except for an adjourned or continued hearing, shall be given not less than twenty-one (21) calendar days in advance, unless otherwise agreed in writing by all Parties.

10. Waiver. Each Participant or Subscriber, by virtue of and in consideration of participation in the MLS, waives any right and/or claim for damages or any other legal or equitable remedy against MetroList, each Administrative Contractor, and their respective directors, shareholders, officers, agents and employees, Tribunal Members or Member of an Appellate Committee, the Hearing Administrator, and any witnesses for anything done or not done in connection with any Disciplinary Proceeding or under these Procedures.

11. Communication and Clerical. Communications shall be directed to the Hearing Administrator, who shall render all necessary assistance to the Parties, shall on request furnish required forms, shall receive, review and file all Complaints, Responses, documents or other papers, shall provide appropriate notices, shall receive all fees and disburse all monies to the appropriate person(s), shall appoint members of Tribunals, shall schedule Disciplinary Hearings and Appeal Hearings, and shall maintain records of all Disciplinary Proceedings.

12. Attempts to Influence Tribunal. No individual shall attempt, directly or indirectly, to influence a member of a Tribunal in any matter before it, other than by giving evidence and argument during a Disciplinary Hearing or by writing(s) submitted to the Tribunal.

13. Confidentiality of Proceedings. The allegations, evidence, findings, recommendations and decisions in Disciplinary Proceedings are confidential and should not be reported or published by MetroList, any Administrative Contractor, the Hearing Administrator, any member of a Tribunal or any Party under any circumstances, except as authorized below.

a. MetroList may publish the results of any decision at the direction of the Directors, where the Directors have imposed Suspension of MLS or Expulsion from MLS as a Discipline, or for educational purposes.

b. If, in the course of a Disciplinary Proceeding, a Tribunal discovers that there is reason to believe that one or more of the Parties to a Disciplinary Proceeding has committed a violation or violations of the MLS Rules in addition to the violation(s) set forth in the Complaint, the Tribunal may refer such matter to MetroList for consideration under Section 6 of these Procedures.

c. A breach of this confidentiality provision by a Party shall constitute the violation of an MLS Rule, but shall not invalidate or impair any decision made by a Tribunal.

14. Right to Counsel. A Party may have legal counsel in attendance at a tribunal hearing or appeal, provided the Party gives at least ten (10) days advance written notice of that Party's intent to have legal counsel attend the hearing or appeal to the Hearing Administrator and all other Parties. The written notice must include the name, address, and telephone number of the legal counsel the Party intends to have present at the hearing or appeal. If a Party fails to provide adequate notice of the intent to have legal counsel present at the hearing or appeal, that Party will be deemed to have waived the right to have legal counsel present at the hearing or appeal. Notwithstanding the foregoing, the Tribunal or Appellate Committee may, in its discretion, take such action as it deems appropriate to insure a fair hearing, including but not limited to continuing the hearing or appeal for a reasonable time to permit all Parties to have legal counsel attend the hearing or appeal. Legal counsel in attendance at a tribunal hearing or appeal may consult with and/or advise his or her client, but shall not otherwise be entitled to participate in the hearing or appeal unless expressly permitted to do so by the Tribunal or Appellate in its sole and complete discretion. A Tribunal or Appellate Committee may have legal counsel present at any time to advise it during a Disciplinary Proceeding.

15. Filing a Complaint. MetroList, an Administrative Contractor, or any Participant or Subscriber having reason to believe that a Participant or Subscriber has violated the MLS Rules, may file a Complaint in writing with the Hearing Administrator dated and signed by the Complainant. A Complaint must be filed within one (1) year after the facts constituting the matter complained of became known to the Complainant or could have been known in the exercise of reasonable diligence.

16. Joinder of Multiple Parties or Complaints. Upon request of a Party or at the discretion of the Hearing Administrator, Complaints of MLS Rules violations arising out of the same set of circumstances or multiple Parties involved in the same transaction may be joined and heard at the same time by the same Tribunal.

17. Action of the Hearing Administrator.

a. The Hearing Administrator shall promptly review any Complaint and initially determine whether to dismiss the Complaint as without substantial merit on its face or to schedule a Disciplinary Hearing ("Initial Review.") The Hearing Administrator may delegate the Initial Review to any officer of MetroList. The Initial Review shall assume that the facts alleged in the Complaint are true, and the Initial Review shall be solely to determine whether such facts, if proved, would constitute a violation of the MLS Rules.

b. The Hearing Administrator or officer conducting the Initial Review may contact the Complainant and/or Respondent in order to acquire further information before making a determination upon such Initial Review.

c. If the Complaint asserts multiple allegations of MLS Rules violations, and the Hearing Administrator or officer conducting the Initial Review determines that one or more of the allegations is/are without substantial merit on its/their face, that portion of the Complaint may be dismissed while the balance of the Complaint is scheduled for a Disciplinary Hearing. After the matter has been heard by the Tribunal, the Complainant may appeal to the Appellate Committee with respect to the dismissed portion(s) of the Complaint.

d. Any determination following Initial Review shall not be disclosed to any person except the Hearing Administrator, the Tribunal, the Parties, legal counsel for MetroList, and MetroList staff, as necessary.

18. Withdrawal of Complaint.

a. If after the Hearing Administrator has determined that a hearing be scheduled, but before the Tribunal is convened, a Complainant requests withdrawal of the Complaint, the Hearing Administrator may, at the Hearing Administrator's discretion, dismiss the Complaint or proceed with the Disciplinary Hearing.

b. After a Tribunal has been convened, a Complaint may be withdrawn at the Tribunal's discretion, or the Tribunal may refuse to allow the Complaint to be withdrawn and proceed with the Disciplinary Hearing. Withdrawal of a Complaint shall not constitute a decision on the merits.

19. Amendment of Complaint.

a. At any time prior to the convening of a Disciplinary Hearing, the Complainant may file an amended Complaint with the Hearing Administrator.

b. At any time during a Disciplinary Hearing, a Complaint may be amended either by the Complainant or by the Tribunal. The Tribunal may, in its discretion, disallow the requested amendment and proceed to hear the original Complaint. If amendment of a Complaint is allowed, the amended Complaint shall be filed in writing, signed by the Complainant or by the presiding officer of the Tribunal, a copy given to the Respondent, and a reasonable continuance granted if requested by a Party.

20. Filing a Response.

a. After a Complaint has been filed with the Hearing Administrator, the Hearing Administrator shall send a copy of the Complaint to each Respondent and notify him/her that he/she may file a Response with the Hearing Administrator within fifteen (15) calendar days. Each Respondent may submit a Response, but regardless of whether he/she does or does not, the hearing may be scheduled and conducted.

b. Not later than twenty-one (21) calendar days from the date of mailing the Complaint to the Respondent(s), the Hearing Administrator shall deliver copies of the Response, if any, to the Complainant or notify him/her that no Response has been filed.

21. Appointment of Tribunal.

a. A Tribunal shall consist of three (3) Tribunal Members. A majority of each Tribunal shall be Broker Participants. If the Complainant or Respondent is a Subscriber, one (1) member of the hearing Tribunal shall also be a Subscriber. If the Complainant or Respondent is an appraiser, one (1) member of the hearing Tribunal shall also be an appraiser.

b. Only one person affiliated with any firm, business, partnership or corporation may serve on the same Tribunal.

c. No individual may participate in the deliberation of more than one Tribunal concerning the same Complaint.

d. A person shall automatically be disqualified to be a member of a Tribunal in any case in which he or she is a Party; related by blood or marriage (to the fourth degree) to a Party; or an employer, employee; partner or other businesses associate of a Party.

e. The Hearing Administrator shall designate one of the Tribunal members as presiding officer, shall designate the time and place of hearing, and shall notify the Parties of all matters for which notice is given in the Disciplinary Proceeding. Appearance at a Disciplinary Hearing without an objection by any Party will constitute a waiver of any defective notice of the hearing.

f. At the time the Hearing Administrator gives notice of the time and place of the Disciplinary Hearing, he or she shall set forth the names of the members of the Tribunal.

g. Any Party may file with the Hearing Administrator a written request for disqualification of a member of a Tribunal stating the asserted grounds for disqualification. A Party shall be deemed to have waived any ground of disqualification of which he or she then has knowledge unless a request for disqualification of a member of a Tribunal unless the request is filed within ten (10) calendar days after the prospective names are mailed to the Parties. However, any member of a Tribunal may be disqualified at any time if a majority of the members of a Tribunal find any automatic ground of disqualification to be present under this section, or find any other facts which, in their judgment, are likely to prevent the member from rendering an impartial decision or appearing to do so.

h. A Party will be deemed to have waived any and all objections to any proposed member of the Tribunal if the Party fails to file a written request for disqualification within ten (10) days after the date of mailing of the notice of prospective members of the Tribunal. If an objection to a proposed member of the hearing Tribunal is sustained by the Hearing Administrator, the Hearing Administrator shall appoint another Tribunal Member to serve on the Tribunal, and so notify the Parties.

i. Before sitting on any case, each member of a Tribunal shall sign a statement that he or she is not disqualified for any of the reasons set forth herein, and that he or she knows of no other reason that might prevent him/her from rendering an impartial decision.

j. Every member of a Tribunal shall avoid, so far as possible, discussing the case with any person prior to the Disciplinary Hearing, including but not limited to the Hearing Administrator except to the extent necessary for scheduling and other administrative purposes. If he or she does engage in any such discussion prior to the Disciplinary Hearing, he or she must disclose the fact to the Parties and to the other members of the Tribunal as soon as practicable but no later than at the beginning of the hearing. Upon such disclosure, any Party may challenge the participation of that member of the Tribunal, and, if the Tribunal agrees, at the option of the Tribunal, that member of the Tribunal shall be dismissed and a new Tribunal Member shall be selected. A Party waives any objection under this section by failure to object prior to the commencement of the Disciplinary Hearing.

k. If a member of the Tribunal fails or is unable to participate in a Disciplinary Hearing, the remaining members of the Tribunal may, at their option, but only with the express consent of the Parties, proceed with the hearing. In such event, only the remaining members of the Tribunal may participate in the hearing and the determination thereof. Should any member of the Tribunal absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations or determinations thereof. If all the Parties do not agree to proceeding without the full number of the Tribunal originally designated,

the chairman of the Tribunal will recess the hearing to a date on which all members of the Tribunal can be present if the chairman cannot at that time designate a new date, notice of a subsequent date shall be served on all Parties as herein provided.

22. Appearance at Hearing; Failure to Appear.

a. A Participant who is a Complainant or Respondent may appear at a Disciplinary Hearing through a Subscriber affiliated with such Participant so long as such Subscriber has been given written authority in the form required by MetroList to act on behalf of the Participant with respect to the Disciplinary Hearing.

b. If a Respondent fails to appear at a duly noticed Disciplinary Hearing without obtaining a continuance thereof, the Tribunal may proceed with the hearing in the Respondent's absence, and shall reach its decision based on the Complaint, the Response if any, and the evidence made available at the hearing.

c. If the Complainant fails to appear at a duly noticed Disciplinary Hearing without obtaining a continuance thereof, the Complaint may be dismissed at the Tribunal's discretion.

23. Duty to Give Evidence. If a Party makes a written request to a Participant, Subscriber or Clerical User to appear at a hearing, giving at least ten (10) days written notice with a copy to the Hearing Administrator, or when summoned by any Tribunal to do so, MLS Participants, Subscribers and Clerical Users shall appear at the hearing, produce any records or data pertinent to the case designated by the Party or the Tribunal, and testify truthfully. It shall be a duty of MLS membership (and access to MLS by Clerical Users) to comply with such requests. Failure or refusal of a Party to appear at a disciplinary proceeding following proper service of a written request pursuant to this Section 23, to submit himself/herself or his/her records to examination or to comply with a request of the Tribunal for relevant information may be deemed an admission of the truth of a claim against him/her and constitute a violation of the MLS Rules.

24. Witnesses. Every Party must make all arrangements to have that Party's own witnesses present at the Disciplinary Hearing, and the Tribunal may summon its own witnesses. After being sworn to tell the truth, all witnesses, except the Parties to the hearing, will be excused from the hearing room except while testifying.

25. Continuances and Continuance Fees. Each Party shall be entitled to one continuance of a Disciplinary Hearing for a period not to exceed thirty (30) days, upon reasonable request and for good cause in the discretion of the Hearing Administrator without assessment of a continuance fee. However, if a continuance is requested because of failure to adequately notify the Hearing Administrator and opposing Party of representation by counsel, the Party giving the inadequate notice may be assessed a continuance fee as established from time to time by MetroList, rather than the Party requesting the continuance. If any Party requests a second continuance, it shall be in writing and accompanied by the continuance fee established by MetroList. Whether to grant or deny a second continuance request shall be in the discretion of the Hearing Administrator. If the continuance is not granted, the continuance fee will be returned to the Party requesting the continuance.

26. The Hearing.

a. At the beginning of the hearing, each Party shall sign a statement to the effect that he/she has received and read the Outline of Procedure and either (I) understands the

procedure and has no objection or questions concerning the procedure; or (ii) specifies what objections or questions he/she has and what changes he/she desires. The Tribunal shall act upon any such objection or request as it deems proper, but an objection or request shall not automatically entitle the objecting or requesting Party to a continuance or other relief.

b. The Parties to the proceeding shall have the right to present to the Tribunal such evidence as they desire and to cross-examine witnesses called by other Parties. Parties and witnesses giving oral testimony shall be sworn by the presiding officer. Evidence may be submitted in the form of written statements or by documents or other papers, but the Tribunal may require that statements be made under penalty of perjury or oath, and that the accuracy or authenticity of any documents or other papers submitted be authenticated. The Tribunal shall regulate the holding of hearings, and may receive and consider any evidence it deems relevant and material. Technical or formal rules of evidence shall not be applicable in a Disciplinary Hearing. The Tribunal may, in its discretion, establish reasonable limits on the time and manner of presentation of evidence in a particular Disciplinary Hearing.

c. The Tribunal may hear and determine the controversy upon the evidence produced at the hearing notwithstanding the failure of the Respondent, who has been duly notified, to appear. If only the Complainant appears at the hearing, he/she may rest upon the evidence submitted with his/her Complaint. The hearing Tribunal may not find against a Respondent solely by reason of his/her failure to appear.

d. The Tribunal may recess the Disciplinary Hearing from time to time as necessary and, upon the reasonable request of a Party or upon the Tribunal's own motion, may, in the Tribunal's discretion, postpone the hearing for not less than fifteen (15) calendar days nor more than thirty (30) calendar days, unless otherwise agreed to by the Parties.

27. Transcript/Use on Appeal. The Hearing Administrator shall tape record the Disciplinary Hearing on behalf of MetroList or cause the hearing to be transcribed by a court reporter. Any court reporter's transcript or transcript prepared from a tape recording of the Disciplinary Hearing shall be used only by the Hearing Tribunal in reaching its decision or for the purpose of appeal, or by the Tribunal to support an additional Complaint. If either Party appeals, the hearing shall be transcribed, and the cost of preparing the transcript shall be paid by the Party seeking the appeal within five (5) calendar days after notice of the cost of the transcript. The appellant shall provide and pay for five (5) copies of the transcript, including three (3) copies for the Appellate Committee, one (1) for the Hearing Administrator, and one (1) for the other Party. Any unauthorized use of a transcript may be construed as a violation of these Procedures.

28. Decision of Tribunal.

a. The decision of the Tribunal shall be by a simple majority vote (with all Tribunal members including the presiding officer having an equal vote) and in writing containing findings of fact and a statement of the Discipline recommended, if any. Such decision shall not be disclosed to any persons except the MetroList staff, as necessary, Hearing Administrator staff, the Complainant, the Respondent, and legal counsel for MetroList, to the Appellate Committee in the event of an appeal, and to the Board of Directors. However, the disclosure of the decision contrary to the foregoing shall not invalidate or impair the decision.

b. In the event a Participant or Subscriber is found in violation of an MLS Rule, the Tribunal may, at its discretion, consider in determining the recommended Discipline, all past records of previous determinations by the Directors of MLS Rules violations and

Discipline imposed, if any, in the Participant's or Subscriber's file maintained by MetroList. Access to the Participant's and Subscriber's records is permitted only after deliberations and findings of a violation.

c. Discipline recommended by the Tribunal may include one or more of the types of Discipline described in Section 4 of these Procedures.

d. The decision of the Tribunal shall be filed with the Hearing Administrator. The Hearing Administrator shall give notice of and a copy of the decision to the Complainant and Respondent within five (5) business days after the Hearing Administrator has received the Tribunal's decision in writing, except that reasonable delay shall not invalidate or impair the Procedures nor the decision.

e. If, upon written request for relief from a Respondent or Complainant filed with the Hearing Administrator within ten (10) calendar days after notice of a Tribunal decision has been given by the Hearing Administrator, the Tribunal finds that its decision was made as a result of the excusable neglect or inadvertence of a Respondent or Complainant, such as due to a party's excusable failure to appear at the Tribunal hearing and/or failure to present evidence at the hearing, a Tribunal may, in its discretion, set aside its decision and schedule the matter for rehearing upon written notice to all Respondents and Complainants.

29. Appeal.

a. Within twenty (20) calendar days after service of the Tribunal's decision, any Respondent or Complainant may file with the Hearing Administrator a request in writing for an appeal to the Appellate Committee. For good cause shown in a written request for an extension of time filed by a Respondent or Complainant with the Hearing Administrator within ten (10) calendar days after the last day on which to file a timely appeal, the Appellate Committee may, in its discretion, grant a Respondent or Complainant additional time up to a maximum of ten (10) calendar days after the initial appeal deadline in which to file an appeal of a Tribunal's decision.

b. The allowed grounds for appeal of a Tribunal's decision are: (i) misapplication or misinterpretation of a provision of the MLS Rules; (ii) procedural deficiency or any lack of procedural due process; (iii) the Discipline recommended by the Tribunal is excessive. The Appellate Committee may not consider any grounds or issues unless they are within the foregoing categories and set forth in the written request for appeal.

c. A request for appeal must be accompanied by an appeal fee paid to MetroList in the amount provided in MetroList's current schedule of fees. The request for appeal shall be on a MetroList form provided by the Hearing Administrator and must clearly indicate the grounds for the appeal, and the facts and supporting evidence in reasonable detail to support the appeal. The Party requesting an appeal shall also pay the cost of the transcript as set forth in Section 27.

d. The place of the Appellate Hearing shall, to the extent practicable, be in the same location as where the Disciplinary Hearing before the Tribunal was held.

30. Processing of An Appeal.

a. When a request for appeal is filed, the Hearing Administrator shall immediately send a copy to the other Party and notify him/her that he/she may file a written reply within fifteen (15) calendar days. The Hearing Administrator may require the Party

submitting the reply to provide the necessary number of copies of the reply. The Hearing Administrator shall, at this time, mail a list of the names of the members of the Appellate Committee to both Parties.

b. Not later than twenty-one (21) calendar days from the date of mailing the request for appeal to the other Party, the Hearing Administrator shall provide a copy of the reply, if any, to the Party requesting the appeal, or notify him/her that no reply has been filed.

c. When hearing an appeal, the members of the Appellate Committee are subject to automatic disqualification under the grounds set forth in Section 21 of these Procedures. Each member of the Appellate Committee shall sign a statement that he/she is not disqualified for any of the reasons set forth in Section 21, and that he/she knows of no other reason that might prevent him/her from rendering an impartial decision.

d. Not later than twenty-one (21) calendar days after the date of mailing the request for appeal to the other Party, the Hearing Administrator shall notify all Parties of the time and place of the Appeal Hearing. The Hearing Administrator shall provide to the Appellate Committee, in advance of the Appeal Hearing, copies of the Complaint, the Response, if any, the request for appeal and the reply, if any, the Tribunal's findings of fact and recommendations for Discipline, if any, and the transcript of the Disciplinary Hearing before the Tribunal. The Appellate Committee shall keep the information provided in connection with the appeal confidential.

31. The Appeal Hearing.

a. At the Appeal Hearing, the presiding officer of the Tribunal shall be permitted to explain the reasons for the Tribunal's decision. Either Party may present to the Appellate Committee his/her reasons as to whether or not the Tribunal's recommendations should be followed or not, but no new evidence regarding the merits of the underlying case shall be received or considered.

b. The Appellate Committee shall render its decision promptly. Its decision may be to (i) adopt the recommendation of the Tribunal; (ii) modify the recommendation of the Tribunal, including the Discipline proposed; (iii) dismiss the matter if it concludes that the findings of fact do not support the Tribunal's recommendation; or (iv) refer the decision back to the Hearing Administrator for a new Disciplinary Hearing with the same or a different Tribunal as deemed appropriate.

c. If the Appellate Committee adopts the recommendation of the Tribunal, the appeal fee deposited by the Party requesting appeal shall be retained by MetroList. If the Appellate Committee dismisses the matter or refers it back to the Hearing Administrator for a new Disciplinary Hearing, the appeal fee shall be returned to the Party who paid it. If the recommendation is modified, the Appellate Committee, at its discretion, shall determine the disposition of the appeal fee.

d. If the Appellate Committee dismisses the matter or refers it back to the Hearing Administrator for a new Disciplinary Hearing, it may assess the cost of the transcript to the other Party or to MetroList. If the recommendation of the Tribunal is modified, the Appellate Committee may, at its discretion, assess all, part or none of the cost of the transcript to the other Party or to MetroList.

e. If the recommendation of the Tribunal is rejected (thereby dismissing the matter), modified, or referred back for a new hearing, the Appellate Committee shall state the

reasons in writing, but failure to do so shall not invalidate or impair the decision of the Appellate Committee.

f. A decision of the Appellate Committee is the final decision of the Board of Directors.

g. Upon final action by the Appellate Committee, the Hearing Administrator shall notify the Complainant, the Respondent, the MetroList staff, as necessary, and the Tribunal.

32. Action by Directors if No Appeal. If no appeal is filed, the Directors shall adopt the Tribunal's recommendation and issue an order accordingly. If the Directors are concerned with a deficiency on the face of the decision, after reviewing it, however, they may refer the decision back to the Tribunal for appropriate action. If the Tribunal does modify its decision, the Parties shall be notified of this change and given a new opportunity to file a request for appeal.

33. Preliminary Judicial Determination. If the Board of Directors believes that the disciplined Participant or Subscriber may resort to legal action, it may specify that the Discipline shall become effective upon the final judgment of a court of competent jurisdiction in a suit by MetroList for declaratory relief, declaring that the Disciplinary Proceeding and/or Discipline is/are lawful and do(es) not violate(s) the rights of the Participant or Subscriber or such other declaratory relief as the Board of Directors believes, in its discretion, is appropriate under the circumstances.

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