



## Penalty Policy

The **Arizona Regional Multiple Listing Service, Inc.** is responsible for the enforcement of ARMLS Rules and Regulations. All written complaints involving violations of the ARMLS Rules and Regulations will be considered by the ARMLS staff in accordance with this policy. All complaints of unethical conduct or requests for arbitration may be referred to the Association with which the Participant holds primary membership or to the Association within which Participant maintains its principal place of business.

Integrity of data is the most precious commodity that any MLS has. Protection of the integrity of the data is a challenging task, but paramount to providing our Subscribers with the best and most accurate data in order to serve the day to day needs of the consumers that are your clients.

In order to better serve our membership and safeguard the information contained in the MLS database, the Arizona Regional Multiple Listing Service has enacted the following Penalty Policy in accordance with Section 14 of the ARMLS Rules and Regulations.

This policy does not cover violations of the Code of Ethics which fall under the jurisdiction of the Arizona Association of REALTORS® or those local Associations which comprise the ARMLS Shareholders. Therefore, professional standards enforcement is administered through your local Association of REALTORS®.

Fines and other penalties will be administered according to this policy and are subject to change by the ARMLS Board of Directors.

### Summary of Penalty Process

Potential violations of the ARMLS Rules and Regulations are reported to or by ARMLS staff in a variety of ways. A Subscriber may report a potential violation using the “Report an Error” link located on each listing, or through other means of communication. ARMLS may require that verbal or phone reports be reduced to writing before action is taken. Our automatic listing review software may identify one or more potential violations within a listing. Additionally, ARMLS staff may find potential violations by randomly checking listings or by researching listings due to another violation that has been reported. Not all violations will incur a penalty, as described herein.

## SECTION 1 - Initiators of Alleged Violations:

Alleged violations of the ARMLS Rules and Regulations must be made in writing and may be initiated by:

- a. ARMLS Participants (as defined in the ARMLS Rules and Regulations);
- b. ARMLS Subscribers (as defined in the ARMLS Rules and Regulations);
- c. Staff of ARMLS or the staff of the Shareholder Associations

Violations may also be reported through the on-line MLS system using the tools available there for reporting violations.

Categories of Alleged Violations:

If a violation occurs, it will fall into one of the following categories:

- a. Non-Penalty Violations
- b. Penalty Violations
- c. Participation Violations
- d. Lockbox and Electronic Key Violations

## SECTION 2 – Non-Penalty Violations

Non-Penalty Violations are primarily factual errors that lead to inaccurate listing data and often affect other fields or calculations within the listing. These violations do not incur a penalty. Some examples of Non-Penalty violations include, but are not limited to, the following:

Rule Section	Infraction
8.1 – Types of Property	Failure to Enter Listing
8.1 – Types of Property	Late Entry of a New Listing
8.5 – Accuracy	Incorrect School Code ( <u>not if code changes during listing</u> )
8.5 – Accuracy	Incorrect Square Footage (assessor attributed)
8.5 – Accuracy	Incorrect Grid
8.5 – Accuracy	Incorrect Dwelling Type
8.5 – Accuracy	Incorrect or Missing Assessor Number
8.5 – Accuracy	Incorrect Lot Size Range
All other Section 8	Data errors
12.3 & 12.4 – Disclosures	Failure to disclose Owner-Agent Status

When one of the Non-Penalty Violations listed above is alleged, the ARMLS staff will make the correction immediately where applicable. ARMLS staff will send a notice of the correction made, by email only, to the Subscriber with copy to the Participant.

### SECTION 3 – Penalty Violations

Penalty Violations are those that cannot be corrected, or even if they are corrected may have already caused some degree of irreversible damage. Except for the first Penalty Violation against a Subscriber each year (reset on the first day of January), these violations will incur an immediate fine as outlined in the table below. Examples of such violations include, but are not limited to, the following:

Rule Section	Infraction	Fines
7.2 – Access Credentials	Allowing MLS access by unauthorized person(s) (also, refer to *ARMLS Subscriber Agreement)	\$500 – up to \$15,000*
7.2 – Access Credentials	Unauthorized use of Subscriber’s User ID and password (also, refer to *ARMLS Subscriber Agreement)	\$500 – up to \$15,000*
7.5 – Standards of Conduct	All – subject to Data Integrity Department review	\$50
8.0 – Clear Cooperation	Failure to Enter Listing in MLS after marketing the property to the public	\$500
8.1 – Types of Property	Entry of Property not eligible to be placed in MLS	\$200
8.2 – Listing Agreement	Active Listing without Valid Listing Agreement	\$200
8.5 – Accuracy	Manipulation of Days on Market	\$500
8.5 – Accuracy	Incorrect Sales Price Data, or Cooperating Subscriber	\$500
8.5 – Accuracy	Misuse of Data that Misleads	\$500
8.6 – Duplicate Listings	Duplicate Listing by same Agent/Broker	\$50
8.11 – Listing Price Specified	Incorrect List Price	\$50
8.23 – Media Violation	All prohibited items or misuse of any media	\$200
8.23 – Media Violation	Unauthorized copied media	\$200
8.24 – Photo Submission	Failure to submit photo within allowed period	\$50
10.7 & 10.12 – Listing Status	All Incorrect Listing Statuses	\$100
10.11 – Advertising	Advertising the Listing of Another Broker without permission	\$200
11 – Prohibitions	Unauthorized Distribution of data (also 7.2, 18, and 20.1)	\$200
11.5 – Commission & Bonus	Commission and/or Agent Bonus information in a public field, attachment and/or media	\$50
11.5 – Title Company Language	Language requiring the use of a specific Title Company	\$100
11.5 – Third-Party Promotional Language	Language requiring or promoting the use of a specific third-party entity	\$100

Rule Section	Infraction	Fines
11.5 & 11.6 – Language and Remarks	Inappropriate Language and/or inappropriate use of remarks fields (e.g. violations of fair housing, safety issues, security, contact information, and compensation disclosures or discussions)	\$200
11.5 & 11.8 – Access Code	Access Code displayed in any part of the listing, attachment and/or media other than the specific designated fields	\$100
12.1 – Commission	Publishing a Conditional Offer of Compensation	\$200
16.2 – Email Address	Failure to maintain current, accurate, email address	\$50
20.3 – Reproduction	Unauthorized duplication or reproduction of compilation	\$500

For the first Penalty Violation found against a Subscriber each calendar year the ARMLS staff will send a warning notice, by email only, to the Subscriber and copy the Participant. If any subsequent Penalty Violation is found, ARMLS staff will immediately assess the Subscriber the appropriate fine, as noted in the table above. A notice of the violation and fine amount will be sent by email only, to the Subscriber and copy to the Participant.

ARMLS staff will make the correction immediately where applicable. If the violation found is not correctable by ARMLS staff, the notice of violation will require the Subscriber to make the correction by the due date stated in the notice (3 days). If the violation remains after the due date, a subsequent violation will be deemed to have occurred and the process will repeat.

If multiple violations are found in the same listing, they shall be treated as one violation and the most severe penalty available for any of the individual violations shall apply.

The 3<sup>rd</sup> Penalty Violation with a \$200 fine or above issued within the same calendar year may be subject to a higher penalty than the appropriate fine amount outlined in the table above (for details, refer to Section 6 – Notice Process).

#### **SECTION 4 – Participation Violations**

Participation Violations occur when a Participant fails to comply with section 7.3 Full Participation of the ARMLS Rules and Regulations. Penalties for violations of section 7.3 are imposed to the Participant. Examples of these violations, include, but are not limited to, the following:

Rule Section	Infraction	Fine
7.3 – Full Participation	Non-subscribing Licensee found	\$250
7.3.2 – Waiver	Failure to report changes of Waiver Applicants	\$100

When a Participation Violation listed above is found, ARMLS staff will send a notice of the violation by email only, to the firm's Participant. The violation notice will grant the Participant a grace period of 10 calendar days to correct the violation. If the violation is corrected on or before the stated due date (10 days), a fine will not be imposed.

If the violation is not corrected by the due date on the violation notice, the appropriate fine as outlined in the table above will be imposed on the Participant. If the violation remains unresolved, in addition to the original fine assessed, a new violation shall be deemed to have occurred and the process will repeat.

The fine assessed to the Participant is per non-subscribing licensee or waiver applicant.

### SECTION 5 – Lockbox and Electronic Key Violations and Fines

Violations involving Electronic Keys and Lockboxes are more serious in nature, and fall into a separate category. Examples of such violations are as follows:

Auto Y/N	Rule Section	Infraction
No	13.1 – Lockbox	Authorization to use a Lockbox
Yes	13.2 – Lockbox	Removal of Key from Property/Failure to return key
Yes	13.3 – Lockbox	Carrying PIN with Lockbox Key or inside case
Yes	13.3 – Lockbox	Carrying PIN on Lockbox Key
	<b>13.3</b>	<b>Repeat violations of section 13.3 will incur higher fines and suspension of privileges, according to actions by the Board. Following examples pertain to first offenses only.</b>
Yes	13.3 – Lockbox	Unauthorized use of Lockbox Key ( <u>allowing key to be used by another key-subscriber</u> ) (First offense is \$500)
Yes	13.3 – Lockbox	Unauthorized use of Lockbox Key ( <u>allowing key to be used by licensee who is not a key-subscriber</u> ) (First offense is \$1000 and 30 days suspension)
Yes	13.3 – Lockbox	Unauthorized use of Lockbox Key ( <u>allowing key to be used by non- licensee</u> ) (First offense is \$2000 and 30 days suspension)
Yes	13.4 – Lockbox	Use of Lockbox Access without permission of listing Subscriber
Yes	13.4 – Lockbox	Disclosure of lockbox code(s) to a non-ARMLS Subscriber without written permission of the Listing Subscriber
No	13.5 – Lockbox	Failure to Remove Lockbox in timely manner
Yes	13.7 – Lockbox	Special consideration of failure to comply with section 13

Lockbox and Electronic Key Violations are all considered Automatic except as noted above which will be considered Minor Violations. However, the number of violations and the severity of the penalties for each incremental violation are governed by a separate schedule. Unless otherwise indicated in the table of violations above, the fines for Lockbox/Key violations are as follows:

**First Violation - \$500**

**Second and subsequent Violations – Minimum of \$1000 up to a maximum of \$15,000 and/or suspension from MLS and/or Lockbox system for a minimum of 30 days and up to a maximum of one year**

### **Section 6 – Notice Process**

For **Participation Violations**, notice will be sent to the firm's Participant, by email only, to the Participant's email address on file with ARMLS. If the violation is not corrected within the 10 day period a fine is imposed on the 11th day and an invoice for the fine amount is sent. If the violation remains unresolved, in addition to the fine assessed, a subsequent violation shall be deemed to have occurred and the process will repeat.

For all other violations, a notice will be sent to the listing Subscriber and the MLS Participant of the Subscriber.

For **Non-Penalty** and **Penalty Violations**, notice will be sent only by email to the email address on file with ARMLS. However, if the email is returned undeliverable or when a Subscriber does not have a valid, working (including if the returned message states the Subscriber's email account is full), or current email address on file with ARMLS, the written notice will be sent via the US Postal Service to the office addresses on file with ARMLS. Additionally, the Subscriber will be subject to a separate Penalty Violation for failure to have a current email address per Rule 16.2.

For **Lockbox and Electronic Key Violations** a written notice will be sent by both email and US Postal Service to the office addresses on file with ARMLS.

For **Minor** lockbox violations, if the violation is corrected by the Subscriber before the due date stated in the Violation Notice (5 days), a fine will not be imposed. If the violation is not corrected within the five day period on the sixth day, a fine is imposed and an invoice for the fine amount is sent. Furthermore after the fine amount is sent and the violation remains a subsequent violation shall be deemed to have occurred and the process will repeat.

Failure to maintain a current and accurate email address, home postal mailing address, or office postal address on file with your Association and with ARMLS will not exempt

any Subscriber from having been sent notice, nor may the absence of a current and accurate mailing address of any kind be used as the grounds for appeal.

All invoices sent to Subscribers for violations of the Rules shall be due to be paid in full 10 days from the date of the invoice. The actual due date shall be included on the invoice.

A Subscriber found to have received 2 Penalty Violations, each with a fine of \$200 or above, within one calendar year, will be contacted by an ARMLS staff member. They will inform the Subscriber that for the remainder of that same calendar year, each subsequent Penalty Violation with a fine of \$200 or above found against them is subject to review by a hearing panel and may result in the issuance of a higher penalty than the fine amount outlined in the infraction table in Section 3 above, including suspension from MLS and Lockbox system.

Each subsequent Penalty Violation with a fine of \$200 or above that exceeds above the 2<sup>nd</sup> infraction issued within the same calendar year, may be subject to review by a hearing panel comprised of Appeal Committee members. The hearing panel shall be informed of the infractions, the violation history of the Subscriber (only to the extent of the Penalty Violation assessed within the same calendar year), and any other pertinent factual information related to their infractions and shall make the final determination of the discipline which may include at **a minimum the fine amount for the violation as outlined in the infraction table of section 3 above, up to a maximum of \$15,000 and/or suspension from MLS and/or Lockbox system for a minimum of 30 days and up to a maximum of one year.** Subscriber's attendance to the hearing is mandatory and must be accompanied by their Participant.

For suspensions due to repeat violations of Rule Section 13 (Lockbox and/or Access System) violations, for reasons other than failure to pay a fine, the Appeals Committee shall be informed of the infraction, the violation history of the Subscriber (only to the extent that supports the calculation of the current penalty level), and any other pertinent factual information regarding the incident, and shall determine the duration of suspension that is warranted. The Appeals Committee will make recommendation to the Board of Directors for an appropriate discipline and the Board of Directors shall make the final determination of the discipline as outlined in this Penalty Policy.

Notices required under this Policy shall be delivered according to Section 16 of the ARMLS Rules and Regulations, which reads in part as follows:

- 16.1 Any notices required or permitted by these Rules to be sent by ARMLS may be sent by either of the following two methods.

16.1.1 By e-mail to either the e-mail address on file in the ARMLS Roster Database or via internal e-mail delivery through the MLS system. Electronic messages are instantaneous. Therefore, Notice shall be deemed to have been constructively delivered at the time the e-mail message is sent to the recipient.

16.1.2 By U.S. Postal Service (“USPS”) mail to a postal address on file for a Subscriber or Participant at the postal address shown for the Participant’s office in the ARMLS Roster Database. Notice shall be deemed to have been constructively delivered two (2) USPS Service Days after being deposited in the USPS system for delivery.

In the event the Subscriber named in any complaint alleging a violation of the ARMLS Rules and Regulations is involved in civil litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency in a matter arising out of the same facts and circumstances giving rise to the complaint, the complaint may, at the discretion of the Appeals Committee, or on appeal, at the discretion of the Appeals Committee or the Board of Directors, proceed to a hearing before a Hearing Panel. ARMLS legal counsel should be consulted and the following factors shall be taken into consideration in determining whether the matter should proceed to a hearing or should be held in abeyance pending the conclusion of civil litigation or a proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency:

1. the degree of similarity of factors giving rise to the pending litigation or regulatory or administrative proceeding and the complaint
2. the degree to which resolution of the civil litigation or regulatory or administrative proceeding may make consideration of the complaint unnecessary
3. the degree to which pending civil litigation or regulatory or administrative proceeding would delay prompt disposition of the rules violation
4. the nature of the alleged violation and the extent to which it impacts cooperation with other ARMLS Subscribers
5. the assurance of ARMLS legal counsel that consideration of the rules violation will not deprive Subscriber of essential due process

## **SECTION 7 – Appeals Process**

Appeals may be filed on any category fine/violation. The appeal will require an appeal fee of \$50. The fee will be invoiced to the Subscriber upon the grounds for the appeal being accepted as valid. This fee must be paid by the due date on the fee invoice, which shall be ten (10) days from the date the invoice is sent to the Subscriber. The fee



will be returned if the appeal results in no penalty. The fee will be forfeited if the discipline/penalty is upheld on appeal. The fee is in addition to any penalty that was imposed. Only one fee will be charged for each appeal request.

Subscribers shall not be required to pay the assessed penalty while an appeal is pending. After an appeal decision, subsequent Penalty Violations shall incur the appropriate fine and/or penalty as outlined in this policy. For Lockbox and/or Electronic Key Violations calculations of the level to which any subsequent penalties would be assessed shall be suspended pending the outcome of the appeal. After the appeal decision, subsequent Lockbox and/or Electronic Key Violations shall be assigned to the appropriate level based on the appeal outcome.

**All** appeals must be filed in writing. The appeal request must be made using the **ARMLS Violation and Penalty Appeal form** and must provide a detailed explanation (including any supporting documentation) on why the Subscriber feels that the penalty should not be assessed.

Grounds for Appeal:

Valid grounds for appeal include:

1. Material facts that come to light after violation is found but before the appeal deadline that would have, if known at the time, affected the imposition of a penalty. The determination as to whether a material fact is sufficient grounds for an appeal shall be made by the chair of the hearing panel.
2. Request for reconsideration of penalty.
3. Due process challenge – Subscriber contends that the proper notice periods were not followed, proper notice means were not followed, or other failure to follow the due process established in this policy.

The following shall not be considered grounds for appeal and appeals filed on these grounds alone will not be considered:

1. Lack of knowledge of the Rules or Policies – ignorance of the Rules is not a defense.
2. Disagreement with validity of a rule. Unlike a court of law, the Hearing Panel does not have the authority to repeal a Rule or declare it invalid. If Subscriber disagrees with a Rule or Policy, the appropriate venue to hear that proposal would be the Rules Committee.

3. Failure to respond based on absence. MLS Participants are notified at the same time as Subscribers. An absent Subscriber should have backup coverage of his/her business if not able to monitor email during the absence.
4. Agent's past record of performance and consistent adherence to rules.

The appeal request must be received by ARMLS no later than the date that the fine is due, otherwise the Subscriber shall forfeit their right of appeal. The appeal request must state whether Subscriber wishes to appear before the Hearing Panel when it considers the appeal.

Upon receipt of the appeal request, ARMLS staff shall determine if the appeal was filed within the appropriate time period. If not, the appeal request shall be denied and the Subscriber shall be notified within five (5) business days of such determination. ARMLS staff shall also determine if the grounds for appeal qualify for a hearing under the guidelines provided herein. If not, the appeal request shall be denied and the Subscriber shall be notified within five (5) business days of such.

All accepted appeal requests received by ARMLS within the allotted time shall be submitted to the ARMLS Appeals Committee at its next scheduled meeting, following the notice periods required below, for consideration. A subset of the Appeals Committee is responsible for deciding, based on the appeal, whether to waive or uphold the discipline and penalty as levied against the Subscriber by acting as an Appeals Hearing Panel.

The Subscriber shall have the right to attend the Hearing at which the appeal is being considered. Subscriber is not required to attend the appeal hearing, but may instead submit a written statement in support of the appeal. If the Subscriber wishes to appear, and so states, the appeal shall be considered at an appeal hearing and shall be conducted according to the following procedures.

Staff will send Subscriber a letter with a copy to the Subscriber's Participant (if different than Subscriber) outlining the appeal process.

1. The date of the appeal hearing shall be no less than twenty-one (21) days following constructive delivery of the notice in order to give Subscriber sufficient time to review and possibly challenge potential panel members. The twenty-one (21) days notice provision is not required for postponed hearings (scheduled but extension granted before hearing commences) or for hearings that have commenced and been adjourned (recessed). Notice of a rehearing shall be given not less than twenty-one (21) days before the rehearing.

2. The letter will include a list of potential panel members that could hear a presentation or appeal at any stage of the process, stating their name and firm with which they are affiliated.
3. The letter will include a challenge form to allow Subscriber to remove certain individuals from participation on any panel for cause.
4. The letter shall state the date by which the challenge form shall be returned by Subscriber in order to be considered.
5. Subscriber must return the challenge form by the date indicated. Otherwise any available person in the current pool of hearing panelists may be chosen by the Chair to hear the matter.

### **Composition of the appeals panel**

1. All appeals panels shall be composed of an odd number of members but at least five people, including the Chair. If necessary, and with the permission of the appealing Subscriber, the hearing panel may proceed with a minimum of three people, including the Chair, serving as members on the panel.
2. No individual can serve on more than one hearing panel in the same matter.
3. The ARMLS staff, in consultation with the Appeals Committee Chair shall determine the members of the appeals panel. The Chair or Vice Chair of the Appeals Committee will Chair the hearing unless that person has been challenged by the Subscriber or has removed him/herself for any reason. Thereafter, the Chair responsibilities would fall to the most senior member of the committee in tenure order that is qualified to serve as Chair.

### **Petition for New Hearing**

1. Within the time period ten (10) days after the Subscriber is notified of the hearing results the Subscriber may petition the Hearing Panel for a new hearing only on the basis of new evidence that could not have been discovered with reasonable diligence prior to the time of the original hearing. The petition must be in writing and include (1) a summary of the new evidence, (2) a statement of what the new evidence is intended to show and how it might affect the Hearing Panel's decision, and (3) an explanation of why the Subscriber could not have discovered and/or produced the evidence at the time of the original hearing.
2. The Hearing Panel will consider and can grant or deny a petition for new hearing. The parties will be informed of the decision of the Hearing Panel. If the

Hearing Panel does not grant the petition for a new hearing within two (2) weeks the petition is deemed denied. One petition for a new hearing is permitted to any Subscriber.

### **Right of further Appeal**

1. The Subscriber shall be notified by letter, with copy to the Subscriber's Participant (if not the same person) of the decision of the Appeals Committee, sent no more than five (5) days after the decision is rendered. If the penalty is upheld, in whole or in part, it shall be due and payable within ten (10) days of the date that ARMLS notifies the appellant of this decision. If the penalty is overturned in its entirety, the deposit posted by the Subscriber shall be returned with the notice letter.
2. Any request for rehearing must be received by ARMLS no later than the date upon which the fine is due, otherwise, the Subscriber shall forfeit their right for a rehearing or procedural review. The Subscriber shall have the right to attend hearing or procedural review hearing. ARMLS will notify Subscriber of the date and time of that meeting.
3. The Subscriber shall be notified of the final decision of the Board of Directors. If the discipline and penalty is ratified, it shall be due and payable within ten days of the date that ARMLS notifies the Subscriber of this decision.
4. The decision of the ARMLS Board of Directors is final. All final decisions shall be forwarded to the Subscriber's local association for permanent inclusion in their membership file.
5. Failure to pay a fine amount within thirty (30) Days of the due date shall result in immediate suspension from the MLS until the fine amount is paid in full. The due date shall be calculated from the date the notice of the result of the appeal is deemed delivered. Such a suspension includes, but is not limited to, access to the MLS system and use of a lockbox key.

### **Qualification for Hearing panel**

No more than one person licensed with any firm, partnership, or corporation may serve on the same hearing panel.

A person shall automatically be disqualified as a member of a hearing panel in any case in which the person is (1) related by blood or marriage to the Subscriber or a person

acting as REALTOR® counsel for the Subscriber; (2) an employer, partner, employee, or in any way associated in business with the Subscriber, or a person acting as counsel for the Subscriber; (3) challenged for cause by the Subscriber as provided in challenge form.

Before sitting in any case, at every hearing, each member of a hearing panel shall sign a Certificate of Qualification (1) that the member is not disqualified for any of the foregoing reasons, and (2) that the member knows of no other reason that might prevent him/her from rendering an impartial decision.

Any Subscriber may file with ARMLS a written request for disqualification of a member of a Hearing Panel, stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a hearing member from rendering an impartial, unbiased, and knowledgeable decision). A Subscriber shall be deemed to have waived any grounds of disqualification of which Subscriber then has knowledge unless Subscriber files the request within ten (10) days from the date a list of names of members of the Appeals Committee or Board of Directors has been mailed or emailed to the Subscriber. However, any member of the hearing panel may be disqualified at any time if a majority of the members of the panel are made aware of any grounds of automatic disqualification of a member.

If a member of a hearing panel fails or is unable to participate in a hearing, the remaining members of the hearing panel may, at their option, but only with the express consent of the Subscriber, proceed with the hearing. Only the remaining members of the hearing panel may participate in the hearing and the determination thereof. Should any member of the hearing panel absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If the appellant does not agree to proceeding without the full number of the hearing panel originally designated, the Chairperson of the hearing panel will recess the hearing to a date on which all members of the hearing panel can be present. If the Chairperson cannot at that time designate a new date, notice of a subsequent date shall be served on the appellant as herein provided.

### **Conduct of Appeal Hearings**

A Subscriber is always allowed to be represented by REALTOR® or legal counsel or to have his/her MLS Participant present at an appeal. Likewise, ARMLS and/or the local Association of REALTORS® to which the Subscriber belongs may choose to be represented by REALTOR® or legal counsel. If Subscriber wishes to be accompanied by counsel, Subscriber must so inform ARMLS in writing at least 15 days before the hearing. If Subscriber appears at the hearing with counsel without proper prior

notification, the Hearing Panel chairperson may, at the chair's sole discretion and upon request by Complainant, postpone the proceedings until ARMLS can also arrange its counsel to attend.

The Complainant is defined as the Appeals Committee as an entity. A spokesperson representing the Complainant shall be appointed from a volunteer pool of members of the Appeals Committee or Board of Directors.

In any proceeding where the MLS Participant is not the appealing party, the MLS Participant nonetheless retains the right to be present during the proceeding or may be required by the MLS Rules and Penalty Policy to attend the hearing. At the request of the Subscriber, the MLS Participant may consult with or testify on behalf of the Subscriber. In all instances, the MLS Participant shall receive copies of the notice of violation and will be provided with notice of the hearing, may be called by the appellant or the Hearing Panel as a witness, and shall receive copies of the Hearing Panel's decision and recommendation for sanction, if any. If a rehearing or a subsequent appeal is required, the MLS Participant shall receive copies of the request(s), be provided with notice of the hearing, have the opportunity to be present, and receive a copy of the final action by the Directors. Such rights shall accrue to both the former MLS Participant and the current MLS Participant if the Subscriber changes firm affiliations either before or after a violation is noted and a penalty imposed but before the Hearing Panel reaches its decision.

In all cases where the MLS Participant is not the Designated Broker or the Designated REALTOR®, the rights and privileges afforded the MLS Participant shall likewise accrue to the Designated Broker and/or Designated REALTOR® except that ARMLS shall have no obligation to notify those parties beyond the notices required to be sent to the MLS Participant, and any requirement of the Rules or Policies that the MLS Participant attend a hearing shall not pertain to the Designated Broker or Designated REALTOR®.

NOTE: Any requirement that the MLS Participant accompany the Subscriber in an appearance before the Appeals Committee or the Board of Directors does not automatically join the MLS Participant as a respondent in the matter and any penalty imposed on the Subscriber does not automatically apply to the MLS Participant accompanying the Subscriber.

Subscriber may request a postponement of the appeal hearing. One postponement, and only one postponement, at the request of the Subscriber shall be allowed for each appeal request. Request to postpone the hearing must be received by the ARMLS staff at least 5 days prior to the scheduled hearing; otherwise the Subscriber shall forfeit their

right to postpone the hearing. If postponed, the hearing shall be rescheduled to the next available hearing date.

Every member of any hearing panel shall also avoid, as much as possible, discussing the case with any person other than another member of the panel prior to commencement of the hearing. If the member does engage in any such discussion before the hearing, the member must disclose the fact to the subscriber and to the other members of the hearing panel no later than at the beginning of the hearing.

All members of a hearing panel shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the panel before, during, and after its determinations and recommendations. The hearing member shall not discuss the proceedings and deliberations with any person(s) except as required by the Board of Directors, the rule provisions of ARMLS or by law as may be required.

Unauthorized disclosure relates to hearing members and to the Subscriber, their MLS Participant and REALTOR® Counsel (if any) and includes any report or publication under any circumstances not established in this Policy. The following are circumstances where disclosure by a party is authorized:

(1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.

(2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the matter before ARMLS.

### **“Remote” testimony**

Note: The policies and procedures established in the National Association's *Code of Ethics and Arbitration Manual* contemplate that parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of hearing panels and the respective parties. Parties and their witnesses may request permission to participate in such proceedings via teleconference or videoconference. Those same expectations apply to ARMLS appeals hearings.

Parties and witnesses may be permitted to participate in an appeal hearing by teleconference or videoconference at the discretion of the Hearing Panel chair. Only those parties eligible to attend the entire hearing in person would be entitled to participate “remotely: for the entirety of the hearing. Witnesses may only participate remotely for their own testimony.

The costs of “remote” testimony shall be the responsibility of the party requesting the opportunity to participate or offer testimony by teleconference or videoconference.

### **Personal safety in appeals hearing proceedings**

ARMLS shall take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in hearings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, ARMLS elected leadership, or ARMLS counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, ARMLS counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Chairperson concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Hearing Panel (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Hearing Panel, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors shall be informed by report of the Secretary of the Board as to the indefinite postponement of the matter and the reasons for such postponement. The Board of Directors may, at their discretion and if they deem appropriate, share any or all information including the complete history and print out of the property involved, or other documentation or information in their possession with appropriate law enforcement or other government agencies.

### **Transmitting devices**

Cellular phones, two-way radios, personal digital assistants including email and SMS messaging devices, and other transmitting devices may not be operated during any appeal hearings absent specific, advance authorization from the panel Chair.