

As at 26 July 2021

FREQUENTLY-ASKED QUESTIONS ON THE LETTER OF CENSURE (LOC) DISCIPLINARY REGIME

1. Following the amendments to the Estate Agents Act, what are the actions that can be taken against errant real estate salespersons (RESs) and estate agents (EAs) for disciplinary breaches and criminal offences?

Please refer to the table for actions that can be taken against RESs and EAs for disciplinary breaches and criminal offences. Changes that are brought about by the Estate Agents (Amendment) Act 2020 (or Amendment Act in short) are also highlighted in the table.

Nature of breach	Party taking the actions	Actions that can be taken
Criminal offence	CEA	<ul style="list-style-type: none">• Court Prosecution.• Offer of Composition.• Letter of Warning (LOW). <p><i>* No change due to Amendment Act.</i></p>
Serious disciplinary breaches	CEA Disciplinary Committee (DC)	<p>The DC can impose one or a combination of the penalties listed (as may be appropriate):</p> <ul style="list-style-type: none">• Revocation of RES registration or EA licence.• Suspension of RES registration or EA licence.• Financial penalty of up to \$100,000 per case for RESs and \$200,000 per case for EAs.*• Impose or vary conditions for RES registration or EA licence.• Reprimand. (<i>Note: Where the DC decides that there is no cause for disciplinary action such as an order for revocation, suspension or financial penalty to be imposed, the Chairperson of the DC may issue a reprimand against the RES or EA in writing. A reprimand can be published on the CEA Public Register.</i>) <p><i>* The new maximum financial penalties will apply to cases referred to the DC on or after 30 July 2021.</i></p>

Minor disciplinary breaches	CEA	<ul style="list-style-type: none"> • Letter of Warning (LOW). • Letter of Censure (LOC), with or without a financial penalty of up to \$5,000 per case. • Penalties under the LOC disciplinary regime will be imposed in a calibrated manner, for example: <ul style="list-style-type: none"> ○ For a RES or EA without a previous record¹, CEA will generally issue a LOW. ○ If a RES or EA with a previous record commits a minor disciplinary breach, CEA may issue a LOC with or without a financial penalty. ○ Penalties under the LOC disciplinary regime will generally be enhanced for a RES or EA who repeatedly commits minor disciplinary breaches or with a longer track record of disciplinary breaches or criminal offences under the Estate Agents Act and its subsidiary legislation. <p><i>The LOC disciplinary regime is new and part of the Amendment Act. It will apply only to complaints or information received by CEA on or after 30 July 2021.</i></p>
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¹ Records include LOW, LOC with or without a financial penalty; past disciplinary actions taken by the DC; and/or records of criminal offences committed under the Estate Agents Act and its subsidiary legislation. LOWs will not be published in the CEA Public Register. To give the industry a “fresh start”, CEA will only take into account records resulting from complaints or information received by CEA on or after 30 July 2021.

2. How will CEA decide between issuing a Letter of Censure (LOC) with or without a financial penalty, and referring the matter to the CEA Disciplinary Committee (DC)?

A key consideration is the severity of the disciplinary breach. CEA will use the LOC disciplinary regime for minor disciplinary breaches, while the DC will be convened to decide on the serious disciplinary breaches.

Some key considerations in assessing that a breach is minor are:

- The breach results in no or low financial loss or consequence to the parties involved in the transaction.
- The errant RES or EA had no or low wrongful gain.
- The errant RES or EA was not dishonest, fraudulent or had an intention to mislead.

If the RES or EA is a repeat offender with a track record of past disciplinary breaches and/or criminal offences under the Estate Agents Act and its subsidiary legislation, the RES or EA may be referred to the DC even if his current case involves a minor disciplinary breach. CEA takes a strong view against repeat offenders and will not hesitate to impose a heavier penalty if needed.

Examples of disciplinary breaches that may be referred to the DC include:

- Failing to declare in writing to the client an interest which was in conflict or potential conflict with those of the client.
- Doing anything that may be fraudulent, dishonest, deceitful or misleading (e.g. inducing a consumer to enter into a property transaction with false information).
- Acting against the interest of the client (e.g. closing a transaction for the seller with a lower offer due to personal interests).

3. How will CEA decide whether to issue a Letter of Warning (LOW) or a Letter of Censure (LOC) with or without a financial penalty under the LOC disciplinary regime?

CEA will take a calibrated approach taking into consideration the severity of the breach and/or whether the RES or EA has records of previous disciplinary breaches or criminal offences. For example, where the RES or EA commits a minor breach and has no previous records, CEA will generally issue a LOW, unless the circumstances of the case warrant a more severe penalty under the LOC disciplinary regime.

If the RES or EA who had received a previous LOW commits another minor breach, CEA may consider imposing a LOC with or without a financial penalty.

If the RES or EA continues to commit minor breaches repeatedly, we may impose a higher financial penalty together with a LOC, or refer the case to the CEA Disciplinary Committee (DC), depending on the number of repeated breaches committed and the facts and circumstances of the case.

4. CEA is empowered to impose financial penalties of up to \$5,000 per case under the Letter of Censure (LOC) disciplinary regime. Will the maximum financial penalty be imposed for all cases which are minor?

No. CEA will take a calibrated approach in determining the quantum of financial penalties to be imposed. We will take into consideration record(s) of previous breaches or offences committed by the RES or EA and the severity of the current breach being assessed. CEA will impose a higher financial penalty if the RES or EA had already received a LOC and a financial penalty for a previous breach and yet committed another minor breach as a repeat offender. Nonetheless, if a case warrants the maximum financial penalty of \$5,000, CEA will impose it against the errant RES or EA. Ultimately, the quantum of financial penalties to be imposed will be assessed based on the facts and circumstances of each case.

5. In deciding whether a minor disciplinary breach should result in a Letter of Censure (LOC) with or without a financial penalty, will CEA consider past records that involved an offence under the Estate Agents Act or a different type of disciplinary breach from the current disciplinary breach under assessment?

Yes. The objective of the LOC disciplinary regime is to enhance the overall professionalism of the industry and instill greater consumer confidence by deterring RESs and EAs from misconduct. Appropriate disciplinary action has to be taken against a RES or EA who continues to commit disciplinary breaches despite having records of past disciplinary breaches and/or offences, so that these RESs and EAs will make conscious and rehabilitative efforts to improve.

CEA will consider all facts and circumstances, including the types of breaches or offences that resulted in the past records, the actions taken for the breaches or offences and the dates of the past records when considering the current case.

6. Is there a period prior to which past records of a RES or EA will not be considered in determining the penalty of the current breach?

As the Letter of Censure (LOC) disciplinary regime is new, CEA has decided to adopt a fair and reasonable approach to only start considering records arising from information or complaints received on or after 30 July 2021, i.e. the operationalisation date of the Estate Agents (Amendment) Act 2020. This gives the RESs and EAs a “fresh start” as our intention is for the industry to take the necessary steps not to commit disciplinary breaches, moving forward.

CEA will take into consideration factors such as the length of time that has passed between the past record(s) and the current breach in its assessment of the appropriate penalty for the current breach.

7. What are some examples of the types of minor disciplinary breaches that may result in penalties under the Letter of Censure (LOC) disciplinary regime?

Examples of types of minor breaches that may result in a LOC with or without a financial penalty include:

- Advertisement-related breaches:
 - Advertising a property without the consent of the property owner(s).
 - Failure to remove an advertisement after the property is no longer available for sale or after termination of the estate agency agreement for the property transaction.

- Agreement-related breaches:
 - Failure to give a copy of a form or document that the client signed immediately or as soon as possible after signing.

- Failure to give a copy of an agreement concerning financial obligations and commitments to every person who signed the agreement, immediately or as soon as possible after signing.
- Failure to adhere to the required steps, conduct due diligence checks, or act with due care:
 - Failure to conduct ownership checks to verify that the client is the owner of the property.
 - Failure to verify basic information about the property such as tenure, floor area, service and conservancy charge, etc.
- Failure to act reasonably towards other RESs or EAs:
 - Failure to co-broke with other RESs or EAs in a timely and co-operative manner.
 - Soliciting an appointment from a client who has already appointed another RES and EA under an exclusive estate agency agreement.
- Breaches in relation to management of the EA:
 - Inadequate system (e.g. lack of suitable documented processes) for the receipt and investigation of claims and complaints.
 - Failure to retain relevant documents and records for at least 5 years.

If the case involves a serious disciplinary breach (e.g. resulted in some financial loss or consequence or was committed with an intent to defraud), CEA may refer the matter to the CEA Disciplinary Committee (DC) instead.

Please see the following 5 case examples which may fall within the LOC disciplinary regime:

Example 1:

RES had a previous Letter of Warning (LOW) issued by CEA for posting an advertisement which did not describe his client's property accurately.

Subsequently, the RES failed to conduct the requisite diligence checks to combat vice activities when he facilitated a lease to a tenant, on behalf of his client, who was the landlord. Although no loss or consequence resulted from his breach as the property was not used improperly during the period of tenancy, the checks had to be completed for every lease transaction. As the RES had already received a LOW and this was his second breach, CEA may issue a LOC with or without financial penalty against the RES.

Example 2:

Following an inspection by CEA, it was found that the EA failed to document its systems and processes for the receipt and investigation of claims and complaints in writing.

In a previous CEA inspection, the EA had received a LOW for failing to retain possession of certain relevant property transaction documents for at least 5 years. Considering the earlier LOW issued, CEA may issue a LOC with or without financial penalty against the EA for the latest breach.

Example 3:

RES had a previous DC case for facilitating a rental transaction without conducting the requisite diligence checks to ascertain if the tenants and occupants were not immigration offenders. The tenants and occupiers were later found to be immigration offenders when checks were conducted by the authorities.

Subsequently, the RES facilitated another lease transaction without checking the immigration status of the occupants. There was no loss caused as the occupants turned out to be legal immigrants. Nonetheless, the checks have to be conducted for every lease transaction involving foreigners. Considering the RES' past DC case, CEA may issue a LOC with a financial penalty or refer the case to the DC for this breach, since the RES had a previous case that involved a similar breach, but still failed to conduct the necessary due diligence checks in the later transaction.

Example 4:

RES had a LOW issued by CEA for failing to provide a copy of a signed tenancy agreement to his client.

Subsequently, the RES had an offence of handling transaction monies compounded.

The RES then represented a new client in the sale of an HDB flat. In his marketing of the flat, he posted an advertisement of the flat with an error in the floor area. Fortunately, the buyer learned of the correct floor area prior to paying an option fee for the flat.

Considering the RES' track record and his negligent conduct that resulted in the latest breach, CEA may issue a LOC with a financial penalty or refer the case to the DC. Even though his earlier record involved a criminal offence of handling transaction monies and the latest breach was a breach of the Code of Ethics and Professional Client Care, it demonstrated a lack of compliance with CEA's rules and regulations on 3 separate occasions.

Example 5:

RES had committed minor disciplinary breaches in 3 previous instances. In the first instance, he received a LOW. In the second and third instances, he received a LOC and another LOC with a financial penalty respectively.

The RES went on to commit another minor disciplinary breach by failing to obtain the consent of the vendor of a property before advertising the property for sale. As the RES had already received a LOC with a financial penalty for his third breach but still committed this breach, CEA may issue a LOC and a financial penalty higher than that ordered for the third breach, or refer the case to the DC, depending on the facts and circumstances of the current case and his past disciplinary breaches.

8. What are the actions taken against an errant RES or EA that are publishable in the CEA Public Register?

Records or information of the following actions are publishable in the CEA Public Register:

- Court prosecution for offences under the Estate Agents Act and its subsidiary legislation.
- Disciplinary action taken by the CEA Disciplinary Committee (DC).
- Disciplinary action taken by CEA under the Letter of Censure (LOC) disciplinary regime.

Letters of warning (LOW) issued by CEA will not be published in the CEA Public Register.

9. Will the errant RES or EA have an opportunity to explain his conduct to CEA?

Yes. CEA will first conduct investigations into a complaint or information of potential breach by the RES or EA. The RES or EA will be given an opportunity to provide a statement to CEA in the course of investigations.

If the investigation findings and circumstances of the case support the issuance of a Letter of Censure (LOC) with or without a financial penalty under the LOC disciplinary regime, CEA will serve a “notice of intent” to the RES or EA to impose such penalties. The RES or EA will then have 14 days to submit a written explanation to CEA to explain why the penalties should not be imposed.

CEA will only serve a “notice of decision” to issue a LOC with or without a financial penalty after considering any written explanation submitted by the RES or EA.

10. Can the RES or EA offender appeal against CEA’s decision?

Yes. Within 14 days of being notified of CEA’s decision, the RES or EA may request for CEA to reconsider its decision or file an appeal to the Ministry of National Development (MND) Appeals Board. If the RES or EA has provided further information and/or reasons to request CEA to reconsider its decision, CEA will take those information into consideration when deciding whether to take action. The RES or EA can still file an appeal to the MND Appeals Board 14 days after he is notified of CEA’s decision following reconsideration, if he does not accept CEA’s decision.

The cost of filing an appeal to MND Appeals Board is \$1,000. Please refer to <https://www.cea.gov.sg/professionals/complaint-disciplinary-management/appeal-process> for details on the appeal process.
