

ALABAMA REAL ESTATE APPRAISERS BOARD
ADMINISTRATIVE CODECHAPTER 780-X-14
DISCIPLINARY ACTION

TABLE OF CONTENTS

780-X-14-.01	Complaints
780-X-14-.02	Informal Disciplinary Procedure
780-X-14-.03	Probable Cause
780-X-14-.04	Summons And Complaint
780-X-14-.05	Prehearing Discovery
780-X-14-.06	Disciplinary Hearings
780-X-14-.07	Discipline
780-X-14-.08	Reinstatement Of License Or Certification After Revocation
780-X-14-.09	Conflict And Bias
780-X-14-.10	Penalty For Practicing Without A License

780-X-14-.01 Complaints.

Proceedings to revoke, refuse to renew or suspend a certificate or license, or to censure, place on probation and/or fine any licensed real property appraiser may be initiated by the Board or by any person upon the filing with the Board executive director a letter of complaint which shall contain:

(a) Name and address of the complaining party as well as the name and address of any licensed real property appraiser against whom the complaint has been filed.

(b) A plain and concise statement of the facts which together indicate that the individual licensed real property appraiser complained against has violated Chapter 27A, Title 34, Code of Ala. 1975, or rules promulgated by the Board or Rules of Professional Conduct (Code of Ethics).

(c) Any documentation of the alleged violations, including a copy of the appraisal in question if available.

(d) The signature of the complainant.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §34-27A-5.

History: Emergency adoption filed February 15, 1991; Effective February 18, 1991. Permanent adoption filed April 8, 1991; Effective May 15, 1991. **Repealed and Replaced:** Filed February 27, 1996; Effective April 3, 1996. **Amended:** Filed February 23, 1998; Effective March 30, 1998. **Amended:** Filed August 21, 2001;

effective September 25, 2001. **Amended:** Published September 30, 2020; effective November 14, 2020.

780-X-14-.02 Informal Disciplinary Procedure.

(1) In the event a letter of complaint is filed against a licensee, or the Board determines from other information that an investigation is necessary, the procedure for investigation shall be as follows:

(a) The Letter of Complaint or other information will be reviewed by both the Board's attorney and the Board's investigative staff. The Licensee may request and receive a copy of the complaint along with the name of the individual who filed the complaint. No information in the complaint will be redacted or removed from the complaint prior to providing it to the Licensee.

(b) Following the initial review of the letter of complaint, the Board's attorney, with the input and involvement of the Board's investigative staff, will make a recommendation to the Board, as to whether probable cause exists showing that there have been probable violations of the Board rules and regulations. A majority of the Board members present will vote whether to accept the staff's recommendation. In making this determination, the Board will not have access to the name of the licensee in question or the property address of the appraisal/appraisals that is the subject of the complaint.

(c) Following the Board's decision as to whether probable cause exists, the case will either be dismissed, or further investigation will be recommended, or the case may be set for a hearing. Where the investigation determines that the complaint or other information may constitute a violation of the Board's rules and/or statutes, the Board's attorney and/or the Board's investigative staff, without prejudice to its authority to initiate formal action, may take such action as necessary to contact the licensee, complainant, or any other parties, in an effort to resolve and informally settle any dispute which may violate or potentially violate the Board's rules and/or statutes. The Board may direct counsel to apply the Voluntary Discipline Matrix published by the Appraisal Subcommittee in forming an offer to resolve and informally settle a case. Such action may include, but is not limited to, issuing a request to the licensee that he or she do, or refrain from doing, such activities as the Board may prescribe, and the entering of tentative settlement agreement(s) and/or releases between the licensee, the Board and/or other parties setting out the terms of any resolution and settlement of violation(s) or potential violation(s).

(d) Should the Board's attorney enter into a tentative settlement agreement with the licensee a summary of this settlement agreement will be presented to the Board. The summary will exclude the licensee's name or other identifying information. The Board, by the vote of a majority of those present may accept the settlement agreement, reject the settlement agreement or change the terms of the agreement. Should the terms of the agreement be changed, the Board's attorney will have the authority to settle the case in the manner instructed by the Board. All settlement agreements are subjected to Board approval.

(2) In the event a disciplinary case cannot be settled, the Board and/or the licensee may request that the case be set for a hearing. Thereafter, a Summons and Complaint may be issued.

(3) A respondent appraiser who requests and receives a copy of the complaint received by the Board shall not contact the individual who made the complaint unless the appraiser is responding to a request for corrections or reconsiderations in a report. A respondent appraiser shall not retaliate against the person who filed a complaint in any way. Violation of this section by a respondent will result in a 30-day suspension of the appraiser license if, after noticed and hearing provided for in this chapter, the Board finds that the respondent has violated this section.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §34-27A-5.

History: Permanent adoption filed January 21, 1993; effective February 25, 1993. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996. **Amended:** Filed February 23, 1998; Effective March 30, 1998. **Repealed and New Rule:** Filed May 23, 2000; effective June 27, 2000. **Amended:** Filed December 3, 2015; effective January 7, 2016. **Amended:** Published September 30, 2020; effective November 14, 2020.

780-X-14-.03 Probable Cause.

Upon the lodging of a letter of complaint the Boards Attorney and Investigative staff shall prepare a recommendation to the Board as to whether probable cause exists. The recommendation presented to the Board will not contain the name of the licensee involved, the address of the property involved, or any other identifying information. The Board will vote to dismiss the case, order further investigation, or ask that the case be set for hearing. The Board's vote to set a case for a hearing is a determination that probable cause exists.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §34-27A-5.

History: Emergency adoption filed February 15, 1991; effective February 18, 1991. Permanent adoption filed April 8, 1991;

effective May 15, 1991. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996. **Amended:** Filed February 23, 1998; Effective March 30, 1998. **Repealed and New Rule:** Filed May 23, 2000; effective June 27, 2000.

780-X-14-.04 Summons And Complaint.

(1) In the event the Board determines that probable cause exists for the filing of a summons and complaint, the Board shall instruct its counsel to prepare such.

(2) The summons and complaint shall be mailed certified mail return receipt requested to the most recent address of the respondent on file with the Board and shall be mailed at least twenty-one days prior to the scheduled date of the hearing. A copy shall also be sent first class mail.

(3) The summons and complaint shall give notice in substantial compliance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §§41-22-12(b) and 34-27A-21.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §§34-27A-5, 34-27A-21.

History: Emergency adoption filed February 15, 1991; effective February 18, 1991. Permanent adoption filed April 8, 1991; effective May 15, 1991. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996. **Amended:** Filed February 23, 1998; Effective March 30, 1998. **Amended:** Filed May 23, 2000; effective June 27, 2000.

780-X-14-.05 Prehearing Discovery.

(1) Prehearing discovery may be permitted in accordance with this rule and §41-22-12(c) Alabama Administrative Procedures Act Code of Ala. 1975 to the extent necessary to prevent fraud, conserve the Board's time, prevent undue surprise at hearing and facilitate the carriage of justice.

(2) The attorney for the Board or the respondent may upon application to the presiding officer conducting the hearing, obtain discovery regarding any matter not privileged which is relevant to the subject matter involved in the pending action, whether it relates to the charge of the Board or the defense of the respondent.

(3) The discovery must be had in accordance with any terms and conditions ordered by the presiding officer conducting the hearing. The presiding officer may impose such terms and conditions as are just upon discovery in order to protect a person

from annoyance, embarrassment, oppression or undue burden or expense.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §§34-27A-5, 34-27A-21.

History: Emergency adoption filed February 15, 1991; effective February 18, 1991. Permanent adoption filed April 8, 1991; effective May 15, 1991. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996. **Amended:** Filed February 23, 1998; Effective March 30, 1998.

780-X-14-.06 Disciplinary Hearings.

(1) Conduct of Hearing.

(a) All disciplinary hearings on contested cases before the Alabama Real Estate Appraisers Board shall be conducted by a presiding hearing officer.

(b) The presiding hearing officer shall have the authority to do all things necessary to ensure that hearings are conducted in accordance with Alabama law and the Rules and Regulations of the Alabama Real Estate Appraisers Board.

(c) The presiding hearing officer shall rule on all evidentiary disputes during the hearing.

(d) The respondent shall plead either "guilty" or "not guilty" to the charges set forth in the complaint.

(e) Each side shall be permitted to make a short opening statement.

(f) The state shall present its evidence, followed by the respondent, followed by rebuttal by the state. Each witness called may be examined in the following manner:

1. Direct examination,
2. Cross examination,
3. Examination by the Board,
4. Re-direct examination,
5. Re-cross examination,
6. Re-examination,
7. Rebuttal

(g) Each side shall be permitted to make short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(h) The Board may request from the hearing officer within seven days a proposed order(s) including findings of fact, official notice and conclusions of law. Underlying facts of record which support the findings should be cited.

(i) The Board shall issue an order within thirty days of the date of the final hearing, which shall include findings of fact, official notice taken, and conclusions of law, stated separately. Respondent shall be delivered a copy of the order by certified mail return receipt requested, and a copy shall be mailed first class to each attorney of record.

(j) Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §41-22-13.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §§34-27A-5, 34-27A-22.

History: Emergency adoption filed February 15, 1991; effective February 18, 1991. Permanent adoption filed April 8, 1991; effective May 15, 1991. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996. **Amended:** Filed February 23, 1998; Effective March 30, 1998. **Amended:** Filed May 18, 2007; effective June 22, 2007.

780-X-14-.07 Discipline.

(1) Upon a finding that respondent has violated any enumerated provision of Section 34-27A-20, or any rule established by the Board, including Code of Ethics, the Board shall impose any or all of the disciplinary penalties set forth in Code of Ala. 1975, §§34-27A-20(a), 34-27A-20(c), and 34-27A-5(b)(10), or as otherwise provided by law.

(2) The Board may, in its discretion, permanently or temporarily stay the execution of its order to reprimand, censure, place on probation, fine, revoke or suspend a license or certification. The stay may be conditioned on any provision the Board deems appropriate under the circumstances of any particular case.

(3) In determining whether a license or certification should be revoked or suspended, and whether execution of the order should be stayed, and upon what conditions; and whether to levy an administrative fine; or impose a public or private censure; the Board shall consider all relevant factors, including, but not limited to the following:

(a) the severity of the offense,

- (b) the danger to the public,
- (c) the number of repetitions of the offense,
- (d) the length of time since the date of violation,
- (e) the number of complaints filed against the respondent,
- (f) the length of time the respondent has practiced,
- (g) the actual damage to the complainant and/or the public,
- (h) the deterrent effect of the penalty imposed,
- (i) the effect of the penalty upon the respondent's livelihood,
- (j) any efforts or rehabilitation and
- (k) any other mitigating or aggravating circumstances.

(4) If a public censure is imposed, a notice will be placed in the Alabama Real Estate Appraisers Board's newsletter.

(5) Notice of Public Reprimands. Suspensions and Revocations imposed in connection with any disciplinary action may be published in a newspaper of general circulation in the county of the principal place of business of the licensee.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §§34-27A-5, 34-27A-20.

History: Emergency adoption filed February 15, 1991; effective February 18, 1991. Permanent adoption filed April 8, 1991; effective May 15, 1991. **Amended:** Filed June 18, 1992; effective July 23, 1992. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996. **Amended:** Filed February 23, 1998; Effective March 30, 1998. **Amended:** Filed May 31, 2001; effective July 5, 2001.

780-X-14-.08

Reinstatement Of License Or Certification After Revocation.

(1) Application for Reinstatement. Any person whose license or certification has been revoked may not apply to the Board for reinstatement of the license or certification until two years have elapsed since the revocation, except a person convicted of a crime of moral turpitude in which case five years shall have elapsed since said conviction and the person's civil rights shall have been restored. In the application for reinstatement, the applicant should state why the license or certification should be reinstated and should specifically set forth any changed circumstances which would justify reinstatement. Applicant must include in the

application evidence that the current requirements for licensure and certification have been met.

(2) Board Action. Upon receipt of such application the Board shall grant applicant a hearing on reinstatement, at which time the applicant may appeal to the Board to reinstate his/her license or certification.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §34-27A-5.

History: Emergency adoption filed February 15, 1991; effective February 18, 1991. Permanent adoption filed April 8, 1991; effective May 15, 1991. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996.

780-X-14-.09 Conflict And Bias.

(1) No Board member shall be entitled to vote in any disciplinary matter if the Board member is personally biased against the respondent or when such voting would violate the provisions of the Alabama Administrative Procedure Act, §41-22-18(a), Code of Ala. 1975.

(2) Any respondent in a disciplinary action who wishes to assert bias or conflict may do so by filing with the executive director at least three days before the scheduled hearing an affidavit asserting the disqualification together with the underlying factual basis for the assertion.

(3) The Board shall consider the assertion of disqualification on the record as a preliminary matter at the hearing before any other question is decided.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §34-27A-5.

History: Emergency adoption filed February 15, 1991; effective February 18, 1991. Permanent adoption filed April 8, 1991; effective May 15, 1991. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996.

780-X-14-.10 Penalty For Practicing Without A License.

(a) Practicing real estate appraisal without a proper license, or violation of the Code of Ala. 1975, §34-27A-3, shall constitute a serious violation of the Alabama Real Estate Appraisers Act, and the Board may impose a penalty upon the person violating the law as set forth in the Code of Ala. 1975, §§34-27A-5 and 34-27A-20, or as otherwise provided by law.

Author: Alabama Real Estate Appraisers Board

Statutory Authority: Code of Ala. 1975, §§34-27A-5, 34-27A-20.

History: Proposed new rule: Filed April 21, 1994. Emergency adoption: Filed May 5, 1994; effective June 1, 1994. **New Rule:** Filed June 22, 1994; effective July 27, 1994. **Repealed and Replaced:** Filed February 27, 1996; effective April 3, 1996.