

**CERTIFICATION OF ADMINISTRATIVE RULES
FILED WITH THE LEGISLATIVE SERVICES AGENCY
OTHNI LATHRAM, DIRECTOR**

(Pursuant to Code of Alabama 1975, §41-22-6, as amended).

I certify that the attached is/are correct copy/copies of rule/s as promulgated and adopted on Thursday, January 16, 2025, and filed with the agency secretary on Thursday, January 16, 2025.

AGENCY NAME: Home Builders Licensure Board

INTENDED ACTION: Amend

RULE NO.: 465-X-5-.03
(If amended rule, give specific paragraph, subparagraphs, etc., being amended) **465-X-5-.03(1)(a)2, (3)(a), (b), (c), and (d), (4), and (5)(a), (b) and (c)**

RULE TITLE: Complaint Procedure

ACTION TAKEN: State whether the rule was adopted with or without changes from the proposal due to written or oral comments:

Adopted without changes

NOTICE OF INTENDED ACTION PUBLISHED IN VOLUME XLIII, ISSUE NO. 2, AAM,
DATED WEDNESDAY, NOVEMBER 27, 2024.

STATUTORY RULEMAKING AUTHORITY: 34-14A-11, Code of Alabama (1975)

(Date Filed)
(For LRS Use Only)

REC'D & FILED
JAN 16, 2025
LEGISLATIVE SVC AGENCY

J.R. Carden, Jr.

James R Carden

Certifying Officer or his or her
Deputy

(NOTE: In accordance with §41-22-6(b), as amended, a proposed rule is required to be certified within 90 days after completion of the notice.)

465-X-5-.03 Complaint Procedure.

(1) In the event a consumer complaint is filed against a licensee, residential home builder, residential roofer, or any other person within the Board's jurisdiction, or the Board determines from other information that an investigation is necessary, the procedure for investigation or complaint shall be as follows:

(a) Upon undertaking an investigation of a licensee, the Board shall notify the licensee of the investigation and the specific charges being investigated. The notice shall include the applicable residential building code for investigation purposes.

1. An investigation initiated against a licensee, residential home builder, residential roofer, or any other person within the Board's jurisdiction, where the residential construction has occurred in a local jurisdiction (county, municipality, or otherwise) with an adopted building law or code, the Board shall apply the adopted building law or code for determining probable cause if the licensee, residential home builder, residential roofer, or any other person within the Board's jurisdiction has violated the Act.

2. An investigation initiated against a licensee, residential home builder, residential roofer, or any other person within the Board's jurisdiction, where the residential construction has occurred in a local jurisdiction (county, municipality, or otherwise) that has not adopted a local building law or code, the Board shall apply the Alabama Residential Building Code, to include but not limited to the Alabama Energy Code requirements as recommended by the Alabama Residential Building Code Advisory Council and adopted by the Board, for determining probable cause if the licensee, residential home builder, residential roofer, or any other person within the Board's jurisdiction has violated the Act.

(b) If the residential home builder is engaging in the business of residential home building or residential roofing, the Board shall provide written notice, in the form of a stop work order, as prescribed at Code of Ala. 1975, §34-14A-14. If the residential home builder or residential roofer has engaged in the business of residential home building or residential roofing, the Board may notify the residential home builder or residential roofer of the requirements for licensure and the administrative, civil and criminal liability for a violation of the Act.

(c) Each year the Board shall designate a member and two alternate members to serve on an investigative committee. The Board members designated to serve on the investigative

committee must be builder members of the Board. This investigative committee shall consist of the designated Board member, or a designated alternate member, the Executive Director, and the Board's attorney and shall investigate the information or complaint to determine whether there is probable cause for disciplinary or enforcement proceedings, and shall, on behalf of the Board, direct the Board's counsel to initiate proceedings consistent with its finding(s). The Board member or the alternate member who participates on the investigative committee shall not participate in any disciplinary proceedings arising from the investigation.

(d) The investigative committee may enter into informal settlements with the licensee or residential home builder or residential roofer it is investigating, provided each informal settlement is ratified by the Board.

(e) At the end of the investigation, the investigative committee shall make a recommendation to the Board as to whether probable cause exists that a violation of the Act has occurred, and for the Board to initiate disciplinary proceedings and/or to forward any necessary information to the appropriate governmental authorities. If the investigative committee determines following its investigation that no probable cause exists, the proceedings will terminate.

(2) In the case of complaints against licensees holding a license without limitation and with limitation:

(a) In the event the investigative committee recommends that probable cause exists that a violation of the Act has occurred, the investigative committee shall instruct Board counsel to prepare a summons and complaint or notice and opportunity for hearing, or to forward information to the appropriate governmental authorities. The Board shall schedule a hearing to be held within three months from the filing of an administrative summons and complaint or notice and opportunity for hearing by the Board's Executive Director.

(b) The summons and complaint or notice and opportunity for hearing shall be mailed certified mail, return receipt requested, to the most recent address of the licensee on file with the Board at least 15 days prior to the scheduled date of the hearing. In the event the summons and complaint or notice and opportunity for hearing is refused or the return receipt has not been received by the Board or its attorney at least ten days before the scheduled hearing, the licensee may be served by mailing a copy of same first-class mail at least seven days before the hearing date.

(c) The summons and complaint or notice and opportunity for hearing shall give notice in substantial compliance with the Alabama Administrative Procedure Act, Section 12(b).

(d) In the event the investigative committee instructs Board counsel to forward information to the appropriate governmental authorities, information concerning the essential facts constituting a violation and an allegation that a violation of the Act has been committed should be provided to a magistrate or official authorized by law to issue warrants of arrest.

(e) If the person complained of is a member of the Board, that member shall be notified and thereafter shall not participate in any matter related to the complaint.

(3) In the case of complaints against licensees holding a license with limitation, limited to roofing:

(a) In the event the investigative committee recommends that probable cause exists that a violation of the Act has occurred, the investigative committee shall instruct Board counsel to prepare a summons and complaint for notice and opportunity of hearing.

(b) The investigative committee may also find probable cause to invoke Board authority as obligee for a claim made against the licensee's bond and shall instruct Board counsel to notify the licensee of the probable cause finding and reasons thereof.

(c) Upon the calling of and payment from the licensee's bond, the Board shall also issue a complaint against the licensee, allowing the licensee 90 days in which to make the bond whole. If the bond is not made whole at the end of 90 days, the complaint procedure set forth in reg. 465-X-5-.03(2) will proceed as follows:

1. The Board shall schedule a hearing to be held within three months from the filing of the complaint initiated by the Board.

2. The complaint initiated by the Board shall give notice in substantial compliance with the Alabama Administrative Procedure Act, Section 12(b).

3. In the event the investigative committee instructs the Board counsel to forward information to the appropriate governmental authorities, information concerning the essential facts constituting a violation and an allegation that a violation of the Act has been committed should be provided to a magistrate or official authorized by law to issue warrants of arrest.

(d) If the person complained of is a member of the Board, that member shall be notified and thereafter shall not participate in any matter related to the complaint.

(4) The Board, in its discretion, may invoke the complaint procedures set forth in this chapter of these rules against any unlicensed residential home builder or residential roofer.

(5) In the event an unlicensed residential home builder or residential roofer has been identified to have engaged in advertising as defined in Ala Code § 34-14A-2(1) to be a Residential Home Builder as defined in Ala Code § 34-14A-2(16), the Board may direct staff to:

(a) Send a warning letter to the identified unlicensed residential home builder or residential roofer of the unlicensed advertising violation, documented proof thereof, information on how the unlicensed residential home builder or residential roofer may become licensed, and that further violations of the law may result in administrative, civil or criminal action.

(b) Upon documentation of an unlicensed residential home builder or residential roofer being identified as having continued to engage in advertising as defined in Ala Code § 34-14A-2(1) to be a Residential Home Builder as defined in Ala Code § 34-14A-2(16), Board staff shall submit any and all evidence of the violation to the Board investigative committee for review.

(c) Upon a finding of probable cause of a second or subsequent unlicensed residential home builder or residential roofer engaging in in advertising as defined in Ala Code § 34-14A-2(1) to be a Residential Home Builder as defined in Ala Code § 34-14A-2(16), the investigative committee may direct the Board counsel to refer the matter to the office of the Attorney General to pursue appropriate injunctive relief enjoining the violation.

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Statutory Authority: Code of Ala. 1975, §§34-14A-2, 34-14A-5, 34-14A-8, 34-14A-11, 41-22-1, et seq.

History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993. **Amended:** Filed January 28, 1998; effective March 4, 1998. **Amended:** Filed November 2, 2001; effective December 7, 2001. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed November 4, 2005; effective December 9, 2005. **Amended:** Filed August 4, 2006; effective September 8, 2006. **Amended:** Filed October 6, 2008; effective November 10, 2008. **Amended:** Filed August 25, 2011; effective September 29, 2011. **Amended:** Filed August 27, 2018; effective October 11, 2018. **Amended:** Published December 30, 2021; effective February 13, 2022. **Amended:** Published January 31, 2025; effective March 17, 2025.