

PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)

201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings~~[Rules of practice and procedure before the Kentucky Real Estate Commission].~~

RELATES TO: KRS 324.045, 324.046, 324.150, 324.151, 324.160, 324.170, 324.200, 324.281(5)

STATUTORY AUTHORITY: KRS 324.151(1), (3), 324.160, 324.170, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require ~~[requires]~~ the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. ~~[KRS 324.270(1) requires the commission to order a KRS Chapter 13B hearing before ordering any disciplinary action.]~~ KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license, before ordering any disciplinary action or before suspending or revoking a license. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission and the required forms for a complaint or answer and the standards when filing a sworn statement to the real estate commission. This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders. This administrative regulation also incorporates supplemental provisions relating to consumer access to the commission's Research, Education, and Recovery Fund.

Section 1. Filing a Complaint. (1) A complaint shall:

(a) Be filed on the Sworn Statement of Complaint, KREC Form 300.

(b) Allege a prima facie case of specific violation of KRS 324.160 by a licensee or a case of unlicensed brokerage against an unlicensed individual;

(c) State the basis of the complaint fully, including the name of the principal broker, if known.

(d) Be notarized by a notary public;

(e) Include a copy of all the following documents relevant to the complaint or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency Consent Agreement and the Guide to Agency Relationships forms;

5. Settlement statement; and

6. Any other documentation to support a claim or alleged violation; and

(2) The complaint shall be filed no more than one (1) year from:

(a) Actual knowledge of the cause of action; or

(b) The time circumstances would reasonably have put the complainant on notice of the cause of action.

Section 2. Complaint Review, Answers, and Replies. (1) Upon receipt of a complaint, commission staff shall review the complaint to determine whether the complaint states a prima facie violation of KRS Chapter 324.

(2) If a supplement to the complaint is required because the original complaint was deficient, the supplement shall be filed on Sworn Supplement to Complaint, KREC Form 302 and notarized.

(3)(a) If the commission staff determine the complaint alleges a prima facie case of a specific violation of KRS 324.160, the complaint shall be served for an answer on the licensee as established in KRS 324.151(2).

(b) A responding licensee shall file a Sworn Answer to Complaint, KREC Form 301 in accordance with KRS 324.151(3).

(4) The answer shall:

(a) State an answer to the complaint;

(b) Be notarized by a notary public; and

(c) Include a copy of the following documents or a written explanation of why the documents are unavailable:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency Consent Agreement and the Guide to Agency Relationships forms;

5. Settlement statement; and

6. Any other documentation to rebut a claim or alleged violation.

(5)(a) The complainant may file one reply to the respondent's Sworn Answer to Complaint within ten (10) days of receiving the respondent's Sworn Answer to Complaint;

(b) The respondent may file one reply to complainant's reply within ten (10) days of receiving the complainant's reply; and

(c) All replies shall be notarized and include any documents necessary to support or rebut an allegation or a violation.

(6)(a) For purposes of calculating filing deadlines prescribed by this administrative regulation, the commission shall follow the Kentucky Rules of Civil Procedure.

(b) A request for an extension of any filing deadline prescribed by this administrative regulation shall be made directly to the office of general counsel and granted or denied. If the request is denied, the requester shall have the opportunity to appeal the decision to the commission at its next scheduled meeting.

(7) The commission shall not entertain motions with regard to pending complaints.

Section 3. Complaint Screening Committee. (1)(a) The commission chair may create at least one complaint screening committee.

(b) Each complaint screening committee shall consist of no more than three (3) commissioners.

(2) The complaint screening committee shall:

(a) Review complaints, supplements, answers, and replies consistent with the Complaint Review Process Chart;

(b) Order investigation or further investigation;

(c) Review investigative reports;

(d) Determine whether the commission's Research, Education, and Recovery fund shall be at issue; and

(e) Make recommendations as to the disposition of pending complaint to the full commission.

(3) The committee may be assisted by the commission staff and counsel.

(4)(a) Prior to the complaint screening committee's review of an investigative report, the commission's investigator shall notify the respondent that he or she may request a copy of the commission's investigation report to review and address factual matters contained in the investigation report.

(b) In the investigator's sole discretion, the report and exhibits shall be redacted to protect personal and sensitive information relating to witnesses.

(c) If the respondent believes a factual discrepancy exists in the investigation report, he or she shall notify the investigator in writing within five (5) days of receiving the report for review and provide the investigator with supporting documentation to rebut the factual discrepancy, if available.

(d) The investigator shall make any changes necessary based on his or her review of the respondent's notification.

(5) The committee shall report its findings and recommendations for disposition of complaints to the full commission in the form of a motion, and the commission shall:

(a) Dismiss the complaint without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

(b) Find a violation of a provision of KRS Chapter 324 or 201 KAR Chapter 11 and issue notice of proposed action against the licensee consistent with KRS Chapter 13B.

(6) The commission, through the complaint screening committee, may engage in informal settlement negotiations, consistent with Section 5 of this administrative regulation.

(7) A commissioner shall recuse himself or herself from any matter relating to an administrative hearing or final order that resolves a case if he or she:

(a) Performed or directed some or all of the investigation;

(b) Has a personal or business relationship with either the complainant or the respondent(s);

(c) Is the complainant, a respondent, or a witness;

(d) Believes that his or her impartiality may fairly be called into question; or

(e) Is advised to recuse by the office of general counsel or the executive director of the Kentucky Real Estate Authority.

(8) The commission shall notify the complainant and respondent in writing of its decision regarding the disposition of a complaint. ~~[Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:~~

~~(a) Allege a prima facie case of specific violation of KRS 324.160 in accordance with KRS 324.151;~~

~~(b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;~~

~~(c) Be notarized by a notary public;~~

~~(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages attached to the report; and~~

~~(e) Be filed within two (2) years from:~~

~~1. Actual knowledge of the cause of action; or~~

~~2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.~~

~~(2) If the commission staff review determines the Sworn Statement of Complaint does not allege a prima facie case of a specific violation of KRS 324.160, the aggrieved party shall file a Sworn Supplement to Complaint in accordance with KRS 324.151.~~

~~(3) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:~~

- ~~(a) Identify the respondent;~~
- ~~(b) State his responses to the complaint;~~
- ~~(c) Be notarized by a notary public; and~~
- ~~(d) Include a copy of the following documents:~~
 - ~~1. Listing contract;~~
 - ~~2. Purchase contract;~~
 - ~~3. Seller's disclosure form;~~
 - ~~4. Agency disclosure form; and~~
 - ~~5. Settlement statement.~~

~~(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:~~

- ~~(a)1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or~~
- ~~2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and~~
- ~~(b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief statement explaining the commission's reasons for the decision.~~

~~Section 2. Motions. (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.~~

~~(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.~~

~~(3) A party shall be given an opportunity to respond to a motion.]~~

Section 4[3]. Withdrawal of a Complaint. A complainant may withdraw a complaint if:

- (1)(a) An answer has not been filed; and
- (b) The withdrawal is made within twenty (20) days of the date the complaint was received by the respondent [filed]; or
- (2)(a) There is good cause for the withdrawal; and
- (b) The commission approves the withdrawal.
- (3) Nothing in this subsection shall prevent the commission from filing its own complaint against a licensee.

Section 5[4]. Settlement by Informal Proceedings. (1) At any time following the filing of a complaint and answer, the commission, through its legal counsel, may enter into informal settlement proceedings with a licensee for the purpose of expeditiously resolving any disciplinary matter.

(2)(a) The commission shall approve or reject all settlement proposals.

(b) Any matter to which a licensee and the commission's legal counsel have stipulated that is rejected by the commission shall not thereafter bind the parties or the commission.

(3) The commission may employ mediation as a method of resolving the matter informally.

(4) All proposed agreed orders shall be signed by the licensee and shall advise the licensee that by entering into an agreed order, the licensee expressly acknowledges that the licensee is fully and completely informed of the due process rights afforded to the licensee and that the licensee knowingly, willingly, and voluntarily agrees to waive those rights and enter into an agreed order.

Section 6. Standards for filing a sworn statement. (1) Any licensee found to have misrepresented facts in any sworn statement shall be subject to disciplinary proceedings by the commission and the commission may seek a criminal indictment for perjury.

Section 7. Emergency orders and hearings. (1) Consistent with KRS 324.150(1)(b) and KRS 13B.125, the commission may conduct an emergency hearing when an alleged escrow account violation warrants emergency action.

(2) An escrow account violation shall warrant emergency action if:

(a) A licensee is alleged to have committed two (2) or more escrow account violations;

(b) A licensee is alleged to have committed one (1) escrow account violation in excess of five hundred dollars (\$500); or

(c) A substantiated threat to the public's health, safety, or welfare exists.

Section 8. Recovery fund proceedings. (1) When the Commission determines that the recovery fund shall be at issue in an administrative hearing, the complainant shall become a party.

(2) The Commission shall not represent the complainant in the administrative hearing.

(3) The complainant shall carry the burden of proof on the issue of damages.

~~Section 9. [Consolidation and Severance. (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:~~

~~(a) There are:~~

~~1. Common questions of law or fact; or~~

~~2. Identical issues or witnesses; and~~

~~(b) Consolidation is appropriate.~~

~~(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.] Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Sworn Statement of Complaint", KREC Form 300, 7/19 [3/01 edition, Kentucky Real Estate Commission];~~

~~(b) "Sworn Answer to Complaint", KREC Form 301, 7/19 [7/98 edition, Kentucky Real Estate Commission];~~

~~(c) "Sworn Supplement to Complaint", KREC Form 302, 7/19 [10/00, Kentucky Real Estate Commission]; and~~

~~(d) "Complaint Review Process Chart", 7/19.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Real Estate Commission, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601 [10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223], Monday through Friday, 8 a.m. to 4:30 p.m.~~

LOIS ANN DISPONETT, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: July 15, 2019

FILED WITH LRC: July 15, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals in-

interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Alex D. Gaddis, Deputy General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Alex.Gaddis@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Alex D. Gaddis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes administrative hearing procedures for matters before the commission and the required forms for a complaint or answer and the standards when filing a sworn statement to the Real Estate Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide a settlement option after a hearing is ordered to allow opportunity for more economical and expeditious resolution of the pending matter. This administrative regulation establishes the informal settlement process for entry of agreed orders.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or ordering discipline such as suspending or revoking a license. This administrative regulation sets forth the rules of practice before the commission, including the filing, investigation, and disposition of complaints as well as the procedure for resolving an administrative complaint initiated by the commission.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the commission's purview because it provides the mechanism for filing, reviewing, and disposing of complaints against licensees and unlicensed persons accused of unlicensed brokerage.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the current administrative regulation in that it adopts a more efficient process for reviewing complaints. The revised process also ensures that licensees are afforded due process by requiring recusal of a commission who has previously reviewed a complaint from the remainder of the process. The proposed administrative regulation also reduces the period of time in which a complaint may be filed against a licensee to be in line with profes-

sional liability standards for other real property boards within the Kentucky Real Estate Authority.

(b) The necessity of the amendment to this administrative regulation: Amendment to this administrative regulation is necessary to incorporate the current procedural practice of the commission with regarding to handling complaints and investigations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324.281(5) and KRS 324.282 authorize the commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.151(1) and (3) requires the commission to establish the required forms for a complaint and answer. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or ordering discipline such as suspending or revoking a license. This administrative regulation sets forth the rules of practice before the commission, including the filing, investigation, and disposition of complaints as well as the procedure for resolving an administrative complaint initiated by the commission.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes within the commission's purview because it provides the mechanism for filing, reviewing, and disposing of complaints against licensees and unlicensed persons accused of unlicensed brokerage.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees may have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new procedures incorporated into this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): (b) There are no costs associated for any of the regulated entities or the general public to comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this administrative regulations, licensees will be on notice of the commission's complaint disposition practices. Members of the public will benefit from an easier to understand process for filing complaints.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no initial costs associated with implementing this administrative regulation.

(b) On a continuing basis: There will be no continuing costs associated with implementing this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary to implement and enforce this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No increased fees or funding are necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, and it does not directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? No, tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted by this administrative regulation. Also, local real estate boards may be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5), KRS 324.282, KRS 324.151, and KRS 324.170 require the Real Estate Commission to promulgate administrative regulations regarding the complaint review and administrative hearing process.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost associated with administering this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost associated with administering this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation:

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.