

BOARDS AND COMMISSIONS
Kentucky Real Estate Authority
Kentucky Real Estate Appraisers Board
(Amendment)

201 KAR 30:070. Grievances.

RELATES TO: KRS 324A.020, 324A.050, 324A.052

STATUTORY AUTHORITY: KRS 324A.020, 324A.035, 324A.052

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing under KRS Chapter 324A. KRS 324A.050 authorizes the board to take disciplinary action against the certificate holder or licensee, and KRS 324A.162 authorizes the board to take disciplinary action against a registrant of an appraiser or appraisal management company, ~~or license of an appraiser~~ for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

~~Section 1. [Definitions. (1) "Formal complaint" means a formal administrative pleading authorized by the board that states a charge against a credential holder or applicant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.~~

~~(2) "Grievance" means information that a person has allegedly violated the requirements of KRS Chapter 324A or 201 KAR Chapter 30.~~

~~Section 2. [Grievance and Answers. (1) Grievances[(a) The board shall process any grievance] submitted against a certificate holder, licensee, or registrant~~[certificant.~~~~

~~(b) A grievance against a licensee or a certificant] shall:~~

~~(a) Be submitted in writing;~~

~~(b) Identify[-~~

~~(c)] the person or organization submitting~~[who submits a grievance shall be identified within the document, unless] the grievance, unless~~[is being] submitted anonymously;~~~~~~

~~(c)[-~~

~~(d) A grievance shall] Contain a concise statement of the facts, transaction, or occurrence upon which it is based;~~

~~(d) Include[-~~

~~(e)] exhibits or other documents, if applicable;~~

~~(e) Be served on the certificate holder, [, shall be attached to the grievance.~~

~~(f) A copy of the grievance and attachments shall be served on the] licensee, or registrant~~[certificant] by the board:~~~~

1. At the last known address of the certificate holder, licensee, or registrant~~[certificant]; and~~

2. By certified mail, return receipt requested; and

(f) Be filed by the grievant within five (5) years from the date the grievant knew or should have known of the alleged violation.

~~(2)[(a)] If the board receives an anonymous grievance, it shall conduct an initial investigation ~~[shall be conducted]~~ to determine whether~~[if] a formal investigation is warranted.~~~~

(3)(a) Unless an extension is requested and granted, the certificate holder, ~~(b) If the board receives an anonymous grievance, the board shall not be required to conduct a formal investigation.~~

~~(3)(a) The~~ licensee, or registrant~~[certificant]~~ shall file ~~[with the board]~~ an answer to the grievance~~[-~~

~~(b) The answer shall be filed~~ with the board no later than~~[within]~~ twenty (20) days after service of the grievance.

~~(b)[(e)]~~ A copy of the answer shall be served on the grievant, unless the grievant is anonymous, by the certificate holder, licensee, or registrant~~[certificant]~~, by certified mail, return receipt requested, to the address shown on the grievance.

Section 2~~[3]~~. Formal Investigations. ~~[(4)]~~The board shall conduct an investigation of the facts alleged in a grievance:

~~(1)[(a)]~~ Upon receipt of a grievance and answer; or

~~(2)[(b)]~~ If an answer is not filed with the board, upon expiration of the period established in Section 1(3)(a) of~~[2(3)(b)]~~ of this administrative regulation.

~~(2) A party shall be granted access to information resulting from an investigation that:~~

~~(a) Was conducted by the board or board personnel;~~

~~(b) Was authorized by the board or board personnel; and~~

~~(c) Is related to the subject matter of the grievance.~~

~~(3) A party may rebut or comment upon the information or investigation established in subsection (1) of this section. (4) An investigation, or information resulting from an investigation, shall be disclosed to a party if it:~~

~~(a) Was the basis for action appealed by an applicant or appraiser; or~~

~~(b) Relates to the subject matter of a complaint.~~

~~(5) The requirements of the Uniform Standards of Professional Appraisal Practice (USPAP), incorporated by reference in 201 KAR 30:040, shall not apply to the board, its agents, and employees with regard to preparing an investigation for enforcement and disciplinary cases pursuant to] this administrative regulation.~~

Section 3~~[4]~~. Dismissal of Grievance. The board shall dismiss a grievance if the facts stated in the grievance, or facts known to the board upon investigation, fail to establish a violation of KRS 324A.050. The board shall notify the grievant and the certificate holder, licensee, or registrant~~[certificant]~~ in writing if it dismisses the grievance.

Section 4. ~~Administrative~~~~[5-Formal]~~ Complaints. (1) If the facts alleged constitute a prima facie violation of KRS Chapter 324A, 201 KAR Chapter 30, or the USPAP, the board shall issue an administrative~~[a formal]~~ complaint, in accordance with KRS Chapter 13B, against the certificate holder, licensee, or registrant~~[credential holder or applicant]~~ and proceed pursuant to KRS 324A.052.

(2) The board may enter into informal settlement with the certificate holder~~[credential holder.~~

~~(a) A settlement conference shall be convened upon agreement of the parties.~~

~~(b) A person with a relationship to the proceedings who is permitted to attend the settlement conference may include the board's investigator, executive director, board representative], licensee, or registrant.~~

~~(3)[certificate holder, and an attorney or attorneys, as applicable.~~

~~(e)]~~ If the parties to a settlement conference agree on a stipulation, proposed term, or condition for an agreed order to resolve the complaint, the agreed order shall be forwarded to the board for consideration.

~~(4)[(d)]~~ If the proposed agreed order is approved by the board, the complaint shall be considered resolved, and a hearing shall not be held.

HAROLD G. KENKEL, JR., Board Chair
H.E. CORDER, Executive Director
K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 2 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on 10:30 a.m. on July 26, 2019 at Kentucky Real Estate Appraisers Board, 321 N. Madison Avenue, Richmond, Kentucky 40475. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays 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 July 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 below.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Avenue, Suite B, Frankfort, Kentucky 40601, phone 502-564-7760, fax 502-564-1538, email heather.becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(b) The necessity of this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board. This administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Consistent with KRS 324A.020, 324A.035, and 324A.050, this administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders

and registrants.

(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 amendment to this administrative regulation introduces consistent terminology for licensees, certificate holders, and registrants. Additionally, this amendment clarifies and formalizes the process for filing a grievance with the Board, responding to a grievance transmitted by the Board, and the process for formalizing an administrative complaint by the Board against a credential holder or registrant.

(b) The necessity of the amendment to this administrative regulation: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 324A.020 and 324A.035 require the Real Estate Appraisers Board, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations necessary to carry out the provisions of KRS 324A.010 to 324A.090. KRS 324A.020 authorizes the board to investigate allegations of wrongdoing. KRS 324A.050 authorizes the board to take disciplinary action against the certificate or license of an appraiser for violations of KRS Chapter 324A. This administrative regulation establishes the procedures for filing grievances with the board. This administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(d) How the amendment will assist in the effective administration of the statutes: Consistent with KRS 324A.020, 324A.035, and 324A.050, this administrative regulation establishes the procedures for filing grievances with the Board and the disciplinary procedures the Board employs in resolving disciplinary matters with credential holders and registrants.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects approximately 1550 licensed real estate appraisers, anyone interested in becoming a real estate appraiser, and all persons seeking to have real estate appraised. This administrative regulation also affects the Kentucky Real Estate Appraisers Board.

(4) Provide an analysis of how the entities identified in the previous question 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 each of the regulated entities have to take to comply with this regulation or amendment: Regulated entities will not have to take any additional action to comply with this administrative regulation. Consumers wishing to file grievances against a credential holder or registrant will have to follow the detailed process for filing a grievance with the Board. The Board is not required to take any action to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: There is no cost associated with comply with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities: Grievants, credential holders, registrants, and the Board will benefit from a clearly defined complaint and disciplinary process.

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

administrative regulation:

(a) Initially: There will be no cost to implement this administrative regulation initially.

(b) On a continuing basis: There will be no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary for the implementation and enforcement of 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 increases in fees or funding will be necessary to implement this amendment.

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

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation treats everyone the same.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate. 12 U.S.C. § 3347.

(2) State compliance standards. 12 U.S.C. § 3347 requires the Appraisal Subcommittee to monitor each state with a licensing or certification process for appraisers and appraisal management companies to determine whether the state processes complaints and completes investigations in a reasonable time period and whether the state reports complaints and disciplinary actions on a timely basis to the national registries for appraisers and appraisal management companies. While this federal provision does not explicitly require the Real Estate Appraisers Board to develop any particular complaint and disciplinary process, the result of non-compliance is removal of credential holders and registrants from their respective national registry, which would prohibit those individuals or entities from performing appraisal services on federally related transactions. While the Kentucky appraiser program currently has an excellent review, non-compliance or poor compliance or supervision could result in suspension or de-recognition of the program.

(3) Minimum or uniform standards contained in the federal mandate. The federal mandate does require the Board to receive and process grievances. However, the federal mandate does not contain minimum or uniform standards; the manner of compliance is entirely within the state licensing agency's discretion. However, as mentioned above, non-compliance or poor compliance could carry a severe penalty.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes. The federal mandate does not contain minimum or uniform standards; the manner of compliance is entirely within the state licensing agency's discretion. However, as mentioned above, non-compliance or poor compliance could carry a severe penalty. The grievance filing and review process established by this administrative regulation clearly informs consumers, credential holders and registrants, and Appraisal Subcommittee of the Board's grievance filing and review process.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate does not contain minimum or uniform standards; the manner of compliance is entirely within the state licensing agency's discretion. However, as mentioned above, non-compliance or poor compliance could carry a severe penalty.

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 Appraisers Board will be affected.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324A.020, 324A.035, and 324A.050.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

(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 additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no additional cost to administer this program 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: None.