

831 KAR 2:030. Standards of conduct, complaints, and discipline.

RELATES TO: KRS 198B.706, 198B.712, 198B.722, 198B.728, 198B.730, 411.270-411.282

STATUTORY AUTHORITY: KRS 198B.706

NECESSITY, FUNCTION AND CONFORMITY: KRS 198B.706(15) requires the Kentucky Board of Home Inspectors, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out the effective administration and requirements of KRS 198B.700 to 198B.738. KRS 198B.706(13) authorizes the board to establish standards of practice for home inspectors. KRS 198B.706(1) requires the board to determine the requirements for and prescribe the form of documents required by KRS 198B.700 to 198B.738. KRS 198B.706(4) requires the board to investigate, and take action if appropriate, complaints concerning licensees, or persons the board has reason to believe should be licensees, including complaints concerning failure to comply with KRS Chapter 198B or 831 KAR Chapter 2. KRS 198B.728 requires the board to take disciplinary actions against or impose sanctions on a licensee for failing to comply with any provision of KRS 198B.700 to 198B.738 or administrative regulations promulgated thereunder. KRS 198B.730(1) requires the board to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B. KRS 411.272(2) requires KRS 411.270 to 411.282 to prevail over any conflicting law otherwise applicable to any action, claim or cause of action against a home inspector, with specified exceptions. This administrative regulation establishes standards of conduct for home inspectors, standards for advertising by home inspectors, and the process for filing and investigating complaints. This administrative regulation also establishes supplemental administrative hearing procedures for matters before the board and the required forms for a complaint or answer.

Section 1. Standards of Conduct. A licensed home inspector or an entity under which the inspector conducts business shall:

- (1) Act as an unbiased third party to the real estate transaction;
- (2) Discharge the duties of a home inspector with integrity and fidelity to the client;
- (3) Only express an opinion on any aspect of the inspected property if that opinion is based upon the experience, training, education, and professional opinion of the inspector;
- (4) Provide a written disclosure to the client of any interest the inspector maintains in the transaction and advise the client to obtain competitive bids before products or additional services are offered by the licensee including:
 - (a) Products or additional services to be purchased from or provided by the inspector, his or her agents, or employees;
 - (b) Products or additional services to be purchased from or provided by any entity, organization, or venture in which the inspector has an interest; or
 - (c) Products or additional services to be purchased that will result in any additional compensation or benefit to the inspector, financial or otherwise;
- (5) Provide the license number, following the licensee's signature, on any document signed by the home inspector pertaining to the home inspection; and
- (6) Report a conviction, plea of guilty, or an "Alford" plea to any felony or a misdemeanor involving sexual misconduct, theft, attempted sexual misconduct, or attempted theft to the board within thirty (30) days.

Section 2. Prohibited Conduct. In addition to the affirmative duties imposed by Section 1 of this administrative regulation, a licensed home inspector or an entity under which the licensee

conducts business shall not:

(1) Engage in or knowingly cooperate in the commission of fraud or material deception to obtain a license to engage in the practice of home inspection, including cheating on the licensing examination;

(2) Perform repairs or modifications for compensation, or for other direct or indirect financial benefit, to a residential dwelling within twelve (12) months after performing a home inspection on the same residential dwelling, if the repairs or modifications are based upon the findings in the home inspection report. This subsection shall not apply if the home inspector purchases the residence after performing the inspection;

(3) Perform a home inspection to the client that does not conform to the Standards of Practice selected on the initial or renewal application for licensure submitted pursuant to 831 KAR 2:020;

(4) Provide services that constitute the unauthorized practice of any profession that requires a special license if the home inspector does not hold that license;

(5) Provide any compensation, inducement, or reward, either directly or indirectly, to any person or entity other than the client for the referral of business to the inspector. The purchase or use of advertising, marketing services, or products shall not be considered compensation, inducement, or reward;

(6) Conduct a home inspection or prepare a home inspection report for which the inspector's fee is contingent upon the conclusions contained in the report;

(7) Misrepresent the financial interests, either personally or through his or her employment, of any of the parties to the transfer or sale of a residential dwelling upon which the licensee has performed a home inspection;

(8) Disclose any information concerning the results or content of the home inspection report without the prior, written approval of the client for whom the home inspection was performed. The home inspector may disclose information if:

(a) There is an imminent danger to life, health, or safety; or

(b) The home inspector is compelled to disclose information by court order or a lawfully issued subpoena;

(9) Accept compensation, financial or otherwise, from more than one (1) interested party for the same home inspection on the same property without the written consent of all interested parties;

(10) Make a false or misleading representation regarding the:

(a) Condition of a residential dwelling for which the licensee has performed or contracted to perform a home inspection;

(b) Extent of services the licensee has performed or will perform; or

(c) Type of license held by the licensee;

(11) Be convicted of a crime in the course of the practice of home inspection or commit any act constituting a violation of state law during the course of a home inspection;

(12) Fail to continuously maintain the liability insurance required by KRS 198B.712(3)(d) and 831 KAR 2:020;

(13) Engage in any course of lewd or immoral conduct in connection with the delivery of services to clients;

(14) Use the term "certified" in advertising, unless the certification is current and the full name of the certifying body is clearly identified;

(15) Use the term "fully insured," unless the person or entity has business liability and worker's compensation insurance coverage in effect at the time of the advertisement;

(16) Continue to practice, if the licensed home inspector has become unfit to practice due to:

- (a) Professional incompetence;
 - (b) Failure to keep abreast of current professional theory or practice;
 - (c) Physical or mental disability; or
 - (d) Addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a licensed home inspector's ability to practice safely;
- (17) Omit information in a home inspection report required to be disclosed to a client by the Standards of Practice selected on the initial application for licensure or the application for renewal submitted pursuant to 831 KAR 2:020; or
- (18) Fail to comply with an order of the board.

Section 3. Content of Report. (1) A home inspection report shall state the Standards of Practice being followed by the licensee.

(2) A home inspection report shall include a statement that the report does not address environmental hazards and shall list all other exclusions with specificity. The presence or evidence of the following environmental hazards shall not be addressed in the report:

- (a) Air-borne hazards;
- (b) The air quality or the sickness of any building, including the presence or absence of all manner of biological activity, such as hazardous plants, insects, birds, pets, mammals, and other flora and fauna, and their consequent physical damage, toxicity, noxiousness, odors, waste products, and wood destroying animals and fungi;
- (c) Animals, insects, or rodents;
- (d) Asbestos;
- (e) Carcinogens, including radon;
- (f) Contaminants in soil, water, and air;
- (g) Electro-magnetic fields;
- (h) Hazardous materials including the presence of lead in paint;
- (i) Hazardous waste conditions;
- (j) Mold, mildew, or fungus;
- (k) Hazardous plants or animals including wood destroying organisms, wood destroying insects, or diseases harmful to humans including molds or mold-like substances;
- (l) Noise;
- (m) Potability of any water;
- (n) Toxins;
- (o) Urea formaldehyde;
- (p) The effectiveness of any system installed or method utilized to control or remove suspected environmental hazards; and
- (q) Compliance with regulatory requirements (for example, codes, regulations, laws, and ordinances), any manufacturer's recalls, conformance with manufacturer installation or instructions, or any information for consumer protection purposes.

Section 4. Maintenance of Records. (1) A licensed home inspector shall retain for at least three (3) years from the date of the inspection:

- (a) The written reports; and
 - (b) The contract.
- (2) Records may be retained in retrievable, electronic format.
- (3) A licensee shall provide all records requested by the board within ten (10) days of receipt of the request.

Section 5. Advertising Standards. (1) Every person licensed as a home inspector or claiming

to be a home inspector shall identify and display his or her license number in all advertising disseminated, either directly or indirectly, to the general public, unless the advertisement is a promotional item.

(2) Any vehicle used in advertising a home inspector business shall bear the license number of the home inspector in a conspicuous location. The letters and numbers shall be at least two (2) inches in height and shall be visible and legible while the vehicle is being operated.

(3) If the home inspector is operating under the name of a business entity, the requirements of this administrative regulation shall be satisfied by displaying the license number of the owner or an employee of the business who is a licensed home inspector.

Section 6. Complaints. (1) A complaint may be initiated by the board, an individual, an entity, or a governmental agency. The complaint shall be submitted on a Complaint Form, KBHI-7.

(2) If the complaint is initiated by the public, it shall be notarized by a notary public.

(3) If the complaint screening committee recommends that a response is needed from the licensee pursuant to Section 7 of this administrative regulation, a copy of the initiating complaint shall be mailed to the licensee. The licensee shall file a written response to the initiating complaint with the board within twenty-one (21) days. The written response shall:

(a) Identify the respondent;

(b) State his or her response to the complaint;

(c) Include any documentation in dispute of the complaint;

(d) If applicable, state if he or she proposes to inspect the residence that is the subject of the claim and state the date by which the inspection will be complete. Any proposal shall include the statement that the home inspector shall, based on the inspection:

1. Offer to remedy the defect, compromise by payment, or dispute the claim;

2. Offer to compromise and settle the claim by monetary payment without inspection; or

3. State that the home inspector disputes the claim; and

(e) Be notarized by a notary public.

(4) A complaint shall be filed within one (1) year of the date the complainant knew or should have known of a violation by the licensee.

(5) The complainant may withdraw a complaint, which shall render the complaint null, void, and without effect, if:

(a) An answer has not been filed in accordance with this section;

(b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or

(c) The withdrawal would not result in harm to the public.

(6) A withdrawn complaint shall not be refiled or reheard.

(7) A request for the board to take or refrain from taking an action shall be made by an oral or written motion and shall state the basis for the relief sought.

(8) After review by the complaint screening committee pursuant to Section 7 of this administrative regulation, the board shall investigate any complaint that alleges a violation of KRS 198B.700 to 198B.738 and 831 KAR Chapter 2.

(9) The board may appoint any of its members or any agent or representative of the board to conduct an investigation of the complaint.

(10) Upon the completion of the investigation, the investigator shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.

(11) Based on consideration of the complaint and the investigative report, if any, the board shall determine if there has been a prima facie violation of KRS 198B.700 to 198B.738 or 831 KAR Chapter 2.

(12) If the investigator is a member of the board, he or she shall not vote.

(13) If the board finds that the facts alleged in the initiating complaint or investigative report:

- (a) Do not constitute a prima facie violation of KRS 198B.700 to 198B.738 or 831 KAR Chapter 2, the board shall dismiss the complaint and notify the person making the complaint and the licensee that no further action will be taken at the present time; or
- (b) Do constitute a prima facie violation of KRS 198B.700 to 198B.738 or 831 KAR Chapter 2, the board shall follow the procedures established in Section 9 of this administrative.

Section 7. Complaint Screening Committee. (1) The board chair shall create a complaint screening committee consisting of at least one (1) board member who is also a licensed home inspector.

- (2) The complaint screening committee shall:
 - (a) Review new complaints and responses;
 - (b) Order investigation or further investigation;
 - (c) Review investigative reports; and
 - (d) Make recommendations for disposition of complaints to the full board, including:
 - 1. Dismissal of the complaint;
 - 2. A response to the complaint is needed; or
 - 3. An investigation of the complaint is warranted.
- (3) The committee may be assisted by the board staff and counsel.
- (4) The committee shall report the committee's findings and recommendations to the board.

Section 8. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during the complaint process established in this administrative regulation, enter into informal proceedings with the licensee who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

- (2) An agreed order or settlement reached through this process shall be approved or denied by the board and signed by the individual who is the subject of the complaint.
- (3) The board may employ mediation as a method of resolving the matter informally.

Section 9. Disciplinary Action. (1)(a) If the board finds that there is a prima facie violation of a provision of KRS 198B.700 to 198B.738 or 831 KAR Chapter 2 in accordance with Section 6 of this administrative regulation, the board shall issue:

- 1. Written notice of disciplinary action to the licensee; or
 - 2. Initiate any remedy permitted by KRS 198B.700 to 198B.738 against an unlicensed individual.
- (b) If a licensee, the board may propose any combination of discipline permitted by KRS 198B.700 to 198B.738.
- (2) The written notice of disciplinary action shall be sent to the licensee's address on file with the board and inform the licensee:
 - (a) Of the specific reason for the board's action, including:
 - 1. The statutory or regulatory violation; and
 - 2. The factual basis on which the disciplinary action is based;
 - (b) Of the proposed penalty; and
 - (c) That the licensee may request an administrative hearing of the penalty to the board within twenty (20) calendar days of the date of the board's notice.
 - (3) A written request for an administrative hearing shall be postmarked no later than twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.
 - (4) If the request for an administrative hearing is not timely filed, the notice of disciplinary ac-

tion shall be effective upon the expiration of the time for the licensee to request an administrative hearing.

Section 10. Revocation of Probation. (1) If the board moves to revoke probation previously granted, the board shall issue written notice of the revocation and inform the probationee:

(a) Of the factual basis on which the revocation is based;

(b) Of each probation term violated; and

(c) That the probationee may request an administrative hearing of the revocation to the board within twenty (20) calendar days of the date of notification of revocation. The notification shall be sent to the last known address on file with the board for the probationee.

(2) A written request for an administrative hearing shall be postmarked no later than twenty (20) calendar days of the date of the board's notice. The request shall identify the specific issues in dispute and the legal basis on which the board's decision on each issue is believed to be erroneous.

(3) If the request for an administrative hearing is not timely filed, the notice of revocation shall be effective upon the expiration of the time for the probationee to request an administrative hearing.

Section 11. Incorporation by Reference. (1) "Complaint Form", Form KBHI-7, 9/2018, is incorporated by reference. (32 Ky.R. 2403; 33 Ky.R. 780; eff. 10-6-2006; 41 Ky.R. 626; 1374; 1554; eff. 2-6-2015; 45 Ky.R. 1096; 2678; eff. 4-5-2019; Recodified from 815 KAR 6:030, 4-18-2019.)