

BOARDS AND COMMISSIONS

Board of Landscape Architects

(Amended at ARRS Committee)

201 KAR 10:090. Investigation and discipline process.

RELATES TO: KRS Chapter 13B, Chapter 323A

STATUTORY AUTHORITY: KRS 323A.110, 323A.120, 323A.210(2)

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of 2025 RS HB 6, Section 8, because the regulation will not have a major economic impact.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 323A.110 establishes disciplinary standards for landscape architects, and KRS 323A.120 establishes the due process mechanism for disciplinary proceedings. KRS 323A.210(2)(a) authorizes the board to promulgate administrative regulations to carry into effect the disciplinary process for the public protection purpose stated in KRS 323A.020. This administrative regulation establishes the agency investigative and discipline process.

Section 1. Reception of Complaints; Investigations.

(1) A complaint may be submitted by any individual, organization, or entity.

(2) A complaint shall be in writing, and shall allege acts that may be in violation of the provisions of KRS Chapter 323A or 201 KAR Chapter 10 by the named licensee, applicant, or unlicensed individual against whom the complaint was made.

(3) Excluding agency-initiated complaints and anonymous complaints, the complaint shall be signed by the person offering the complaint, and the board shall notify a complainant in writing of the receipt of the complaint.

(4) If the board receives an anonymous complaint, an investigation shall be conducted if the complaint is accompanied by sufficient corroborating evidence, or if such evidence is readily available, as would allow the board to believe, based upon a totality of the circumstances, that a reasonable probability exists that the complaint is meritorious.

(5) The chairperson of the board, the executive director, or designee shall file an agency-initiated complaint based upon information received by oral, telephone, or written communications if the facts of the complaint are found to be accurate and indicate acts that may be in violation of the provisions of KRS Chapter 323A or 201 KAR Chapter 10.

(6) The executive director shall have the authority to direct any investigation and shall possess any and all powers possessed by the board in regard to investigations.

(7) The executive director shall further be empowered to order the attendance of any licensee or applicant at an investigative meeting regarding any complaint or consideration of any disciplinary matter.

(8) The failure, without good cause, of any licensee or applicant to attend an investigative meeting when requested shall be considered a violation of KRS 323A.110(9).

(9) The executive director shall have the authority to delegate investigative functions to other agency staff.

(10) Excluding a self-report complaint or an application that discloses a violation of KRS Chapter 323A or 201 KAR Chapter 10, if the complaint establishes a potential violation, the board shall send a copy of the complaint to the licensee or applicant to the address of record by United States Postal Service regular mail. If the board is aware of the person's email address, it may send a copy by email as well.

(11) A written, legible, verified response shall be filed with the board within thirty (30) days of issuance of the complaint to the licensee or applicant.

(12) The failure, without good cause, of any licensee or applicant to file a written, legible, verified response when due shall be considered a violation of KRS 323A.110(9) and an

admission of the allegations stated in the complaint.

(13) All preliminary information shall be treated as confidential during the investigation and shall not be disclosed to board members or to the public, except during board review of case information in closed session when making a finding of probable cause or no probable cause.

(14) If a board member has participated in the investigation or has substantial knowledge of facts prior to a hearing on the complaint that may influence an impartial decision by the member, that member shall not participate in the probable cause finding or the deliberations or decision-making conducted pursuant to KRS 13B.120.

(15) Each complaint shall be investigated as necessary and as promptly as possible, and presented to the board for review and a finding of probable cause or no probable cause to believe a violation of KRS Chapter 323A or 201 KAR Chapter 10 has occurred, which shall be determined on a majority vote of a quorum of the board and recorded in the minutes.

(16) If the board determines that there is no probable cause to believe a violation of KRS Chapter 323A or 201 KAR Chapter 10 has occurred, there shall not be further action unless warranted by further evidence, and the board shall notify the complaining party and the individual of the no probable cause finding.

(17) Upon a board determination that there is probable cause to believe a violation of KRS Chapter 323A or 201 KAR Chapter 10 has occurred, the board may proceed with either or both of the following options:

(a) A notice of hearing and statement of charges may be issued pursuant to KRS 13B.050, and an administrative hearing may be scheduled pursuant to KRS Chapter 13B; or

(b) An agreed order may be offered pursuant to Section 3 of this administrative regulation.

Section 2. Noncompliance with Final Order or Agreed Order Terms.

(1) The chairperson of the board, the executive director, or designee may investigate as needed, using any of the methods available in Section 1 of this administrative regulation, to monitor an individual's compliance with the terms of an agreed order or a final order entered by the board pursuant to KRS Chapter 13B.

(2) A written notice shall be sent by the board to any individual who has violated the terms of an agreed order or a final order entered by the board pursuant to KRS Chapter 13B by mailing a copy to the individual's address of record by United States Postal Service regular mail. If the board is aware of the person's email address, it may send a copy by email as well.

(3) The written notice issued in accordance with this section shall specify the sanctions and any other remedial action sought by the board as a consequence of the individual's noncompliance.

(4) The individual to whom the notice specified in subsection (3) of this section is sent shall file with the board, within thirty (30) days of issuance of the notice, a written, legible, verified response.

(5) The failure, without good cause, to file a written, legible, verified response when due shall be considered a violation of KRS 323A.110(9), an admission of noncompliance, and an acceptance of the sanctions and remedial actions stated in the notice specified in subsection (3) of this section. The board shall give notice of the imposition of such sanctions and remedial actions by transmitting a written notice of final disposition to the individual or the individual's attorney of record in the same manner as provided in KRS 13B.050.

(6) Upon the receipt of a written, legible, verified response to a notice of noncompliance, the executive director shall be authorized to sign a notice of hearing and statement of

charges, and shall have the option proceeding in accordance with either or both Sections 3 or 4 of this administrative regulation.

Section 3. Informal Proceedings.

(1) At any time subsequent to the issuance of a complaint to a licensee or applicant, or a notice of noncompliance pursuant to Section 2 of this administrative regulation, the executive director or designee shall have the authority and the complete discretion to negotiate with the licensee or applicant concerning proposed stipulations of fact, conclusions of law, and proposed discipline. The executive director shall also have discretion to reject any or all offers of informal dispensation and may commence informal proceedings on his or her own initiative.

(2) If the executive director or designee believes that an appropriate proposed informal dispensation has been negotiated, he or she shall cause to be presented to the board the responding licensee or applicant's proposed stipulations of fact, conclusions of law, and a proposed order of informal dispensation signed by the licensee or applicant. The proposed order shall include a line for the signature of an officer of the board and shall become effective upon being accepted by the board, signed by an officer, and filed of record.

(3) If the board rejects an offer of informal dispensation, the parties shall not be bound by the proposed stipulations, they shall be inadmissible as evidence pursuant to KRE 408, and the matter shall continue to proceed provided that further informal negotiations may be conducted and subsequent offers of informal dispensation may be presented to the board. Rejection shall not be taken as a finding or determination of any kind on behalf of the board and no orders or other pleadings shall be filed of record in regard to any rejected proposal.

(4) Oral or Written Presentation. The board may allow oral or written presentation before the board in regard to any offer of informal dispensation. Oral presentations shall not be recorded and written presentations shall not be filed of record or included in the board's minutes. All oral and written presentations shall be heard and considered in closed session.

Section 4. Disciplinary Proceedings.

(1) A disciplinary proceeding shall be heard by a hearing officer, who shall be an assistant attorney general or an attorney appointed by the board in accordance with KRS 13B.030 and 13B.040.

(2) The licensee or applicant shall file with the board a written answer to the specific allegations contained in the notice of charges within twenty (20) days of receipt of the charges. An allegation not properly answered shall be deemed admitted. Failure to file an answer shall be considered a violation of KRS 323A.110(9) and may result in the issuance of a default order pursuant to KRS 13B.080(6). The hearing officer shall, for good cause, permit the late filing of an answer.

(3) The board prosecuting attorney shall be empowered to request the attendance of any licensee or applicant at an administrative hearing conducted pursuant to KRS 13B.080.

(4) The failure, without good cause, of any licensee or applicant to attend an administrative hearing when requested shall be considered a violation of KRS 323A.110(9).

(5) The hearing shall be transcribed by a court stenographer or video recorded.

(6) If a final order is issued by the board in accordance with KRS 13B.120, or if an agreed order is issued subsequent to the filing of a notice of hearing and statement of charges pursuant to KRS 13B.050, the board may impose the following actual costs as a component of the administrative fine authorized by KRS 323A.110, provided the total fine does not exceed \$10,000 per violation:

(a) The cost of stenographic services;

- (b) The cost of the hearing officer;
 - (c) Expert witness costs, including travel;
 - (d) Travel for other witnesses, at the rates established in 200 KAR 2:006 Sections 5-7;
 - (e) Document reproduction costs; and
 - (f) The cost of a certified copy of laboratory testing records.
- (7) The foregoing actual costs shall be demonstrated through the provision of actual receipts or invoices.

Section 5. The executive director or designee shall notify the complainant and the person against whom the complaint was made of the final disposition of the case.

(201 KAR 010:090. 52 Ky.R. 511, 953; eff. 3-3-2026.)

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