

201 KAR 11:190. Consumer and administrative complaints; discipline; administrative hearings.

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 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) require the commission to establish the required forms for a complaint and answer. KRS 324.160 authorizes the commission to order sanctions. 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, the informal settlement process for entry of agreed orders, the required forms for a complaint or an answer, the standards for filing a sworn statement to the real estate commission, and the 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; and
- (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 of Property Condition form, incorporated by reference in 201 KAR 11:121;
 4. Agency Consent Agreement and the Guide to Agency Relationships forms, incorporated by reference in 201 KAR 11:121;
 5. Settlement statement; and
 6. Any other documentation to support a claim or alleged violation.

(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 of Property Condition form, incorporated by reference in 201 KAR 11:121;
 - 4. Agency Consent Agreement and the Guide to Agency Relationships forms, incorporated by reference in 201 KAR 11:121;
 - 5. Settlement statement; and
 - 6. Any other documentation to rebut a claim or alleged violation.
- (5)
 - (a) The complainant may file one (1) 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 (1) 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 shall be 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 (1) 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 the 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 determination, 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 any respondent;
 - (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 4. 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; or
- (2)
 - (a) There is good cause for the withdrawal; and
 - (b) The commission approves the withdrawal.
- (3) Nothing in this section shall prevent the commission from filing its own complaint against a licensee.

Section 5. 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. 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 issue an emergency order prior to conducting a hearing if 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 \$500; or

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

(3) An emergency order authorized pursuant to this section shall be signed by the executive director, the chair of the commission, and one (1) member of the complaint screening committee. The order shall be served upon the licensee who is the subject of the emergency order pursuant to KRS 13B.125.

(4) An emergency order issued pursuant to this section may be served on the appropriate financial institution to order an escrow account be frozen until further orders of the commission or a court of competent jurisdiction.

(5) A licensee who is the subject of an emergency order issued pursuant to this section may request an emergency hearing in accordance with KRS 13B.125.

Section 8. Recovery Fund Proceedings.

(1) If 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. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "Sworn Statement of Complaint", KREC Form 300, 7/19;

(b) "Sworn Answer to Complaint", KREC Form 301, 7/19;

(c) "Sworn Supplement to Complaint", KREC Form 302, 7/19; and

(d) "Complaint Review Process Chart", 6/19.

(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, Monday through Friday, 8 a.m. to 4:30 p.m.

(12 Ky.R. 630; eff. 12-10-1985; 1603; eff. 5-6-1983; 24 Ky.R. 2733; 25 Ky.R. 294; eff. 8-17-1998; 27 Ky.R. 1513; 2710; eff. 4-9-2001; 46 Ky.R. 596; 1453; 1822; eff. 12-16-2019.)