

CHAPTER 14A:

HOME BUILDING AND HOME IMPROVEMENT INDUSTRIES.

§ 34-14A-1. Legislative intent.

In the interest of the public health, safety, welfare, and consumer protection and to regulate the home building and private dwelling construction industry, the purpose of this chapter, and the intent of the legislature in passing it, is to provide for the licensure of those persons who engage in home building and private dwelling construction, including remodeling, and to provide home building standards in the State of Alabama. The legislature recognizes that the home building and home improvement construction industries are significant industries. Home builders may pose significant harm to the public when unqualified, incompetent, or dishonest home building contractors and remodelers provide inadequate, unsafe or inferior building services. The legislature finds it necessary to regulate the residential home building and remodeling construction industries. (Acts 1992, No. 92-608, p. 1282, § 1.)

§ 34-14A-2. Definitions.

As used in this chapter, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise:

- (1) BOARD. The Home Builders Licensure Board.
- (2) CONTRACTING. Except as exempted herein, engaging in residential and private residence construction business as a contractor.
- (3) HOME BUILDERS LICENSURE BOARD. The board created herein to regulate the home building and residential construction industry.
- (4) HOMEOWNER. One who owns and resides or intends to reside in a structure constructed or remodeled by a licensee of the board, or who contracts with a licensee for the purchase, construction, repair, improvement, or reimprovement of a structure to be used as a residence.
- (5) INACTIVE LICENSE. A license issued at the request of a licensee, or a building official or a building inspector, which is renewable, but which is not currently valid.
- (6) LICENSE. A new license or a renewal license issued by the board pursuant to this chapter.
- (7) LICENSEE. A holder of a certificate issued pursuant to this chapter.
- (8) PERSON. Any natural person, limited or general partnership, corporation, association, limited liability company, or other legal entity, or any combination thereof.

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(9) RESIDENCE. A single unit providing complete independent residential living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

(10) RESIDENTIAL HOME BUILDER. One who constructs a residence or structure for sale or who, for a fixed price, commission, fee, or wage, undertakes or offers to undertake the construction or superintending of the construction, or who manages, supervises, assists, or provides consultation to a homeowner regarding the construction or superintending of the construction, of any residence or structure which is not over three floors in height and which does not have more than four units in an apartment complex, or the repair, improvement, or reimprovement thereof, to be used by another as a residence when the cost of the undertaking exceeds ten thousand dollars (\$10,000). Nothing herein shall prevent any person from performing these acts on his or her own residence or on his or her other real estate holdings. Anyone who engages or offers to engage in such undertaking in this state shall be deemed to have engaged in the business of residential home building.

(11) STRUCTURE. A residence, including a site-built home, a condominium, a duplex or multi-unit residential building consisting of not more than four residential units.

(12) TRANSACTION. The act of entering into a contract with a licensee for the purchase, construction, repair, improvement, or reimprovement of a structure to be used as a residence. (Acts 1992, No. 92-608, p. 1282, § 2; Acts 1997, No. 97-250, § 3; Acts 2002, No. 02-72; Acts 2006, No. 06-105, § 2.)

§ 34-14A-3. Home Builders Licensure Board.

There is established the Home Builders Licensure Board. The board shall have nine members, at least one from each United States Congressional District in this state, who shall be appointed as follows: three by the Governor, three by the Lieutenant Governor, and three by the Speaker of the House of Representatives, from a list of three qualified individuals for each position, provided by the governing body of the Home Builders Association of Alabama. Seven of the members shall be residential home builders, as defined in this chapter, with at least five years' experience as a residential home builder and each shall be a bona fide resident of the State of Alabama. One member shall be a building official or inspector currently employed by a city, county, or state governmental entity and actively engaged in inspecting or regulating residential construction in this state. One shall be a consumer member of the general public not employed by or affiliated with a licensee hereunder, and who has no spouse or immediate family member employed by or affiliated with a licensee hereunder. Each member of the board shall be a citizen of this state and the membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Of the initial members of this board, the appointing authorities shall designate that each appointee shall serve for an initial term of one, two, or three years, their terms of office expiring on December 31, of the years. Subsequent terms shall be for a period of three years. This appointing authority shall make an appointment to fill a vacancy for the remainder of any unexpired term from a list of three qualified persons supplied by the governing body of the Home Builders Association of Alabama. Each board member shall hold

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over after the expiration of his term until his or her successor shall be duly appointed and qualified. (Acts 1992, No. 92-608, p. 1282, § 3; Acts 1997, No. 97-250, § 3; Acts 2009, No. 2009-35, § 3.)

§ 34-14A-4. Meetings of board; quorum; records.

The board shall meet at such other times as the chair may designate; provided, however, that the board shall meet within thirty days after appointment for the purpose of organizing and transacting such business as may properly come before it. Four members shall constitute a quorum at all meetings. The secretary of the board shall keep such records of each meeting as shall be required by the board. Members of the board may be compensated in an amount not to exceed three hundred fifty (\$350) per day, not to exceed 15 days per year, for attending meetings of the board or its committees and, in addition, may be reimbursed for such necessary travel expenses as are paid to state employees. (Acts 1992, No. 92-608, p. 1282, § 4; Acts 2006, No. 06-105, § 4.)

§ 34-14A-5. Licenses required; exceptions; fees.

(a) All residential home builders shall be required to be licensed by the Home Builders Licensure Board annually.

(b) Any person engaged in residential home building in Washington County shall be duly licensed by the board, without a written examination testing his or her experience and ability, by meeting the licensing requirements of Section 34-14A-7, by paying the required annual license fee, and by meeting any one of the following requirements by March 1, 2007:

(1) The person submits to the board an affidavit showing that the residential home builder has constructed a minimum of one residence within the year prior to March 1, 2007, or five residences within the previous five years.

(2) The person satisfies the board of his or her building qualifications and experience.

(3) The person is currently licensed as a residential home builder by a jurisdiction in this state which requires an examination for licensure.

(4) The person is a currently licensed residential remodeler by a jurisdiction in this state, who by his or her personal affidavit can establish that his or her business did a gross remodeling dollar volume in the previous calendar year of two hundred fifty thousand dollars (\$250,000) or more.

(c) Except as provided in this chapter, all licenses shall be issued or renewed upon the payment to the board of the annual license fee. The annual license fee shall be set by the board after it considers its cost of operation. The annual fee may be increased or decreased by the board but in no event shall the board set the annual fee at an amount which would not provide sufficient revenues to pay all the salaries, costs, and expenses incurred by the board in enforcing this chapter. The board may also charge application processing fees, inactive license fees, late fees, and fees for education requirements. The inactive fees may be waived for building officials. The board may, upon request in writing, refund fees, except the application processing fee, paid by an applicant

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who is denied a license or who fails to complete the application process. No fees shall be refunded to a licensee as a result of a license revocation. The annual license fee shall be for a period of twelve months beginning January first of each year. All license fees collected by the board shall be paid into the State Treasury to the credit of the Home Builders Licensure Board Fund and its funds shall be subject to withdrawal only upon warrant of the state Comptroller to be issued upon certification of the secretary/treasurer of the board.

(d) Any funds remaining in the State Treasury to the credit of the Home Builders Licensure Board Fund at the end of each year shall be paid into the General Fund of the state on or before January 15, and in each succeeding year, except that should the board exercise its authority to establish the Homeowners' Recovery Fund or the Home Builders Property Acquisition Fund, or both, as provided in this chapter, any funds remaining in the State Treasury to the credit of the Home Builders Licensure Board Fund shall be paid into the Homeowners' Recovery Fund or the Home Builders Property Acquisition Fund, or both, of the board. The board is authorized to maintain sufficient funds to carry out the purposes of the Homeowners' Recovery Fund and the Home Builders Property Acquisition Fund, as set forth in Sections 34-14A-15 and 34-14A-18, including, but not limited to, the transfer of funds between the Homeowners' Recovery Fund and the Home Builders Property Acquisition Fund. The board is authorized, at all times, to retain a sum not in excess of two hundred fifty thousand dollars (\$250,000) to meet any emergency that may arise which may affect its efficient operation.

(e) No funds shall be withdrawn or expended except as budgeted and allocated according to Sections 41-4-80 to 41-4-96, inclusive, and 41-19-1 to 41-19-12, inclusive, and only in amounts as stipulated in the general appropriations bill or other appropriations bills. (Acts 1992, No. 92-608, p. 1282, § 5; Acts 1997, No. 97-250, § 3; Acts 2002, No. 02-72; Acts 2006, No. 06-105; § 5; Acts 2006, No. 06-105, § 5.)

§ 34-14A-6. Exemptions.

This chapter does not apply to:

(1) Any employee of a licensee who does not hold himself or herself out for hire or engage in contracting, except as such employee of a licensee.

(2) An authorized employee of the United States, the State of Alabama, or any municipality, county, or other political subdivision, if the employee does not hold himself or herself out for hire or otherwise engage in contracting except in accordance with his or her employment.

(3) General contractors holding a current and valid license, issued prior to January 1, 1992, under Sections 34-8-1 through 34-8-27.

(4) Licensed real estate agents, licensed engineers, and licensed architects operating within the scope of their respective licenses on behalf of clients.

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(5) Owners of property when acting as their own contractor and providing all material supervision themselves, when building or improving one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale.

In any action brought under this chapter, proof of the sale or offering for sale of such structure by the owners of property, as provided in this subdivision, within one year after completion of same is presumptive evidence that the construction was undertaken for the purpose of sale.

(6) This chapter does not apply to mobile homes or to any structure that is installed, inspected, or regulated by the Alabama Manufactured Housing Commission or the repair, improvement, or reimprovement of any such structure, and shall not in any way change or interfere with the duties, responsibilities and operations of the Alabama Manufactured Housing Commission as defined in Sections 24-4A-1 through 24-6-4. (Acts 1992, No. 92-608, p. 1282, § 6; Acts 2002, No. 02-72; Acts 2006, No. 06-105, § 6.)

§ 34-14A-7. Applications for the issuance of license; records.

(a) Any residential home builder who desires to receive a new or renewal license under this chapter shall make and file with the board 30 days prior to the next meeting of the board a written application on a form prescribed by the board. Each applicant shall be a citizen of the United States or, if not a citizen of the United States, a person who is legally present in the United States with appropriate documentation from the federal government. Such application shall be accompanied by the payment of the annual license fee required by the board. After the board accepts the application the applicant may be examined by the board at its next meeting. The board in examining the applicant shall consider the following qualifications of the applicant:

- (1) Experience.
- (2) Ability.
- (3) Character.
- (4) Business-related financial condition.

a. The board may require a financial statement on a form prescribed by the board and a public records search directly from a credit reporting agency.

b. The board may require a positive net worth or other evidence of business-related financial condition sufficient to reasonably satisfy the board of the applicant's financial responsibility.

c. The board may require that business-related judgments, judgment liens, and other perfected liens, must be satisfied and released.

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d. Any information obtained by the board pursuant to this subsection relating to the financial condition of an applicant shall not be public information.

(5) Ability and willingness to serve the public and conserve the public health and safety.

(6) Any other pertinent information the board may require.

If the board finds the applicant qualified to engage in residential home building in Alabama, the applicant shall be issued a license. An applicant rejected by the board shall be given an opportunity to be reexamined after a new application has been filed and an additional application fee paid.

A record shall be made and preserved by the board of each examination and the findings of the board pertaining to the examination. A copy of the record shall be made available to any applicant requesting it upon the payment of a reasonable fee for same to the board.

(b) The board is authorized to establish or adopt, or both, education requirements and may approve or administer, or both, the program or programs providing education to fulfill the requirements.

(c) Each licensee shall notify the board within 10 days after notice of the institution of any criminal prosecution against him or her, or of a civil complaint against him or her, if the subject matter of the civil complaint involves a residential home building transaction or involves the goodwill of an existing home building business or licensee. The notification shall be in writing, by certified mail, and shall include a copy of the complaint or, if a criminal charge, the specific charge made together with a copy of any indictment or information making the charges.

(d) Each licensee shall notify the board in writing by certified mail within 10 days after he or she receives the notice that any criminal verdict has been rendered against him or her, or that a criminal action pending against him or her has been dismissed, or that a civil action in which he or she was a defendant and which involved a home building transaction or the goodwill of a home building business has resulted in a judgment or has been dismissed. The notification shall be in writing and shall include a copy of the court order or other document giving the licensee such notice.

(e) Each licensee shall utilize a valid written contract when engaging in the business of residential home building.

(f)(1)a. Any licensee who desires to receive an inactive license shall make and file with the board a written application for an inactive license on a form prescribed by the board prior to the expiration of his or her current license. The application shall be accompanied by the payment of the annual inactive license fee required by the board. No act for which a license is required may be performed under an inactive license. In the event a person holding a current inactive license applies for a license, he or she may rely upon his or her inactive license as evidence of the experience and ability requirements for licensure under subdivisions (1) and (2) of subsection (a).

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b. A person holding an expired license who seeks to reactivate his or her license within three years of the date of expiration shall be deemed to have satisfied the experience and ability requirements for licensure if application is made within the three-year time period and all other licensing requirements pursuant to subsection (a) have been met.

(2) Any building official or building inspector who desires to receive an inactive license shall make and file with the board 30 days prior to the next meeting of the board a written application for an inactive license on a form prescribed by the board. After the board accepts the application, the applicant may be examined by the board at its next board meeting. The board, in examining the applicant, shall consider the following qualifications of the applicant as satisfying the experience and ability requirements for licensure:

a. That the building inspector is an employee of the United States, the State of Alabama, or any municipality, county, or other political subdivision and, by virtue of that employment, is exempted or prohibited by law from holding a license; and

b. That the building inspector does any of the following:

1. Maintains current certification from the Southern Building Code Congress International as one of the following:

- (i) Chief building official.
- (ii) Deputy building official.
- (iii) Building inspector.
- (iv) Housing inspector.
- (v) Design professional.
- (vi) Plan reviewer.

2. Maintains current certification from the International Code Council as one of the following:

- (i) Certified building official.
- (ii) Building inspector.
- (iii) Residential building inspector.
- (iv) Property maintenance and housing inspector.
- (v) Building plans examiner.

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(vi) Design professional.

3. Possesses sufficient building qualifications and experience to receive a license, as demonstrated by satisfactory evidence presented to the board.

4. In the event a building official or building inspector holding a current inactive license applies for a license, he or she may rely upon his or her inactive license as evidence of the experience and ability requirements for licensure under subdivisions (1) and (2) of subsection (a). (Acts 1992, No. 92-608, p. 1282, § 7; Acts 1997, No. 97-250, § 3; Acts 2002, No. 02-72; Acts 2006, No. 06-105, §7; Acts 2009, No. 2009-35, § 7.)

§ 34-14A-8. Revocation of licenses; reissuance.

(a) The board may revoke or suspend the license of any licensee who, in the opinion of the board, has committed fraud or deceit in obtaining a license required by this chapter or who has been guilty of gross negligence, incompetence, or misconduct in the practice of residential home building. Should the board establish or adopt, or both, standards of practice for residential home builders within the state, as provided in Section 34-14A-12, the board may suspend the license of any licensee who, in the opinion of the board, has committed a violation of the standards of practice and may impose any other disciplinary sanctions authorized pursuant to this chapter.

(b) An original homeowner may file a consumer complaint alleging a violation of this section against any licensee hereunder. Consumer complaints shall be made in writing and sworn to by the person making the consumer complaint and shall be submitted to the executive director of the board within six years of the date of substantial completion of construction or within six years of the date the original homeowner took possession of the residence.

(c) An investigation may be initiated upon receipt of a consumer complaint or may be initiated by the board. The board may resolve violations by agreement between the board and the licensee with or without the filing of a formal administrative summons and complaint.

(d) With the consent of the licensee, the board may conduct an informal hearing without meeting the requirements of the Administrative Procedure Act if no action is taken other than a reprimand, public or private.

(e) The charges, unless dismissed without hearing by the board as unfounded or trivial, shall be heard within three months after the filing of an administrative summons and complaint by the board's executive director.

(f) A copy of the charges, with notice of the time and place of the hearing, shall be served on the licensee charged at least fifteen days before the hearing date.

(g) The licensee charged may appear personally and may be represented by counsel. He or she may cross-examine witnesses against him or her and may produce evidence and witnesses in his or her defense.

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(h) If, after hearing, the board votes to revoke or suspend the license of, or impose a fine upon, the licensee charged on the basis of fraud or deceit in obtaining his or her license or gross negligence, incompetence, or misconduct in the practice of residential home building, or a violation of the standards of practice, it shall so order.

(i) The licensee may, within 30 days from the date of receipt or service of the order, file with the board written notice of his or her intention to appeal from the order of the board. Appeals from orders of the board shall be to the circuit court with jurisdiction of licensee's residence, or if the licensee is out of state, then to the Circuit Court of Montgomery County, for a determination by the court whether the decision of the board is supported by substantial evidence. If the court so finds it shall affirm the action of the board.

(j) The board may issue a license to a licensee whose license has been revoked, and may reinstate a suspended license prior to the end of the suspension period, if four or more members of the board vote in favor of the issuance or reinstatement.

(k) In addition to any other disciplinary action authorized pursuant to this chapter, the board may require a licensee to successfully complete education requirements to be determined by the board and may levy and collect administrative fines for violations of this chapter or the rules or regulations of the board in an amount not to exceed two thousand dollars (\$2,000) for each violation. (Acts 1992, No. 92-608, p. 1282, § 8; Acts 1997, No. 97-250, § 3; Acts 2002, No. 02-72; Acts 2006, No. 06-105, § 8.)

34-14A-8.1. Confidentiality of records; Hearings closed.

(a) All administrative complaints, orders to show cause, notices of hearings, and statements of charges, and all amendments thereto, and all orders of the board which are dispositive of the issues raised thereby, shall be public record.

(b) All records, reports, documents, photographs, and information contained in complaint and investigation files, shall be confidential, shall not be public record, and shall not be available for court subpoena or for discovery in civil proceedings. Disciplinary action proceedings shall be closed. The record in such proceedings, including witness testimony, exhibits, and pleadings, shall be confidential, shall not be public record, and shall not be available for court subpoena or for discovery in civil proceedings.

(c) Nothing contained herein shall apply to records made in the regular course of business of an individual; documents or records otherwise available from original sources are not to be construed as immune from discovery or use in any civil proceedings merely because they were presented or considered during the proceedings of the board. (Acts 2006, No. 06-105, § 8.1.)

§ 34-14A-9. Roster of licensees.

A complete roster of licensees shall be prepared and published annually by the board. (Acts 1992, No. 92-608, p. 1282, § 9.)

§ 34-14A-10. Annual report of board.

The board shall annually submit to the Governor a report of its transactions for the preceding year. The board shall file with the Secretary of State a copy of the report submitted to the Governor. (Acts 1992, No. 92-608, p. 1282, § 10.)

§ 34-14A-11. Promulgation of rules and regulations.

(a) The Board is authorized to promulgate rules and regulations necessary to effectuate the provisions of this chapter and accomplish its work. The rule-making powers of the board are subject to the Alabama Administrative Procedure Act as codified in Chapter 22 of Title 41.

(b) For the purposes of this chapter, any notice, application, or other document required herein which is mailed certified mail return receipt requested, shall be deemed to have been filed as of the date it is postmarked. The provisions of this subsection shall be retroactively effective to all mailings relating to board business occurring on or after May 21, 1992. (Acts 1992, No. 92-608, p. 1282, § 11; Acts 1997, No. 97-250, § 3.)

§ 34-14A-12. Building laws and codes.

(a) The board is authorized to establish or adopt, or both, standards of practice for residential home builders within the state.

(b) The county commissions of the several counties are authorized and empowered to adopt building laws and codes by ordinance which shall apply in the unincorporated areas of the county. The building laws and codes of the county commission shall not apply within any municipal police jurisdiction, in which that municipality is exercising its building laws or codes, without the express consent of the governing body of that municipality. The building laws and codes of the county commission may apply within the corporate limits of any municipality with the express consent of the governing body of the municipality. The county commission may employ building inspectors to see that its laws or codes are not violated and that the plans and specifications for buildings are not in conflict with the ordinances of the county and may exact fees to be paid by the owners of the property inspected.

(c) Utilizing the same authority and procedures as municipalities pursuant to Sections 11-53A-20 to 11-53A-26, inclusive, the county commission may condemn buildings, parts of buildings, or structures dangerous to the public and prohibit the use thereof and abate the same as a nuisance.

(d) The county commissions, municipalities, and other public entities are hereby authorized to enter into mutual agreements, compacts, and contracts for the administration and enforcement of their respective building laws and codes. (Acts 1992, No. 92-608, p. 1282, § 12; Acts 2002, No. 02-72; Acts 2006, No. 06-105, § 12.)

§ 34-14A-13. Issuance of permits.

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It is the duty of the building official, or other authority charged with the duty, of issuing building or similar permits, of any incorporated municipality or subdivision of the municipality or county, to refuse to issue a permit for any undertaking which would require a license hereunder unless the applicant has furnished evidence that he or she is either licensed as required by this chapter or is exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, shall report to the board the name and address of any person who, in his or her opinion, has violated this chapter. Nothing contained herein shall require a builder to pay license fees for subcontractors who will be or were involved in the construction for which the permit is being obtained as a condition of issuance of a building permit or the issuance of a certificate of occupancy. The builder shall submit to the issuing municipality, if requested, a list of the subcontractors with correct physical addresses and phone numbers involved in the construction project within 15 days of the issuance of the building permit. Should the builder add any subcontractor to the project, the builder will submit the subcontractor's name, address and phone number to the municipality within three working days of hiring. An updated list of subcontractors shall be furnished by the builder before the issuance of a certificate of occupancy by the municipality. (Acts 1992, No. 92-608, p. 1282, § 13; Acts 1997, No. 97-250, § 3; Act 2000, No. 2000-99, § 1.)

§ 34-14A-14. Penalties; injunctions.

Any person who undertakes or attempts to undertake the business of residential home building without holding a current and valid residential home builders license issued by the Home Builders Licensure Board, as required by the provisions of this chapter or who knowingly presents to, or files false information with the board for the purpose of obtaining the license or who violates any law or code adopted by a county commission under this chapter shall be deemed guilty of a Class A misdemeanor.

Upon notice from the board, any person who undertakes or attempts to undertake the business of residential home building without holding a current and valid residential home builders license, as required by the provisions of this chapter, shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the residential home builder, or to the person doing the work, and shall state the conditions under which work may be resumed.

The board, in its discretion, may invoke a complaint procedure against any person who violates the provisions of this chapter by undertaking or attempting to undertake the business of home building without holding a current and valid residential home builders license issued by the board. Whenever it appears to the board that any residential home builder has violated or is about to violate this chapter, the board may resolve the violation by agreement with the residential home builder, may initiate a complaint against the residential home builder, and may levy and collect administrative fines for violations of this chapter or the rules of the board in an amount not to exceed two thousand dollars (\$2,000) for each violation.

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A residential home builder, who does not have the license required, shall not bring or maintain any action to enforce the provisions of any contract for residential home building which he or she entered into in violation of this chapter.

Whenever it shall appear to the board that any residential home builder has violated or is about to violate this chapter, the board may in its own name petition the circuit court of the county where the violation occurred or is about to occur to issue a temporary restraining order or other appropriate injunctive relief enjoining the violation. (Acts 1992, No. 92-608, p. 1282, § 14; Acts 1997, No. 97-250, § 3; Acts 2002, No. 02-72; Acts 2006, No. 06-105, § 14.)

§ 34-14A-15. Recovery fund.

The board is authorized to establish a homeowners' recovery fund from which an aggrieved homeowner may recover actual economic damages, not including interest and court costs, sustained within the State of Alabama as the direct result of conduct of a licensee in violation of this chapter or the rules and regulations of the board.

Any payments from the homeowners' recovery fund shall be subject to the following limitations and conditions:

(1) Payments for claims based on judgments or settlements against any one licensee shall not exceed fifty thousand dollars (\$50,000) in the aggregate.

(2) Payments for claims arising out of the same transaction shall not exceed twenty thousand dollars (\$20,000) in the aggregate.

(3) The homeowners' recovery fund shall make payments only to homeowners who file a complaint with the board pursuant to the requirements of Section 34-14A-8(b).

(4) The homeowners' recovery fund shall not make payments based on consent judgments.

(5) Failure of the homeowner to follow any provisions of this chapter shall preclude payment from the homeowners' recovery fund.

Each licensee shall, on order of the board, pay a fee not to exceed sixty dollars (\$60), no more than once a year, per licensee for deposit in the homeowners' recovery fund. A licensee on inactive status shall not be required to contribute to the homeowners' recovery fund. The annual homeowners' recovery fund fee shall be set by the board after considering all expenses incurred by the board in defending, satisfying, or settling any claims paid from the homeowners' recovery fund.

When a complaint is filed which may result in liability for the homeowners' recovery fund, the complainant shall notify the board in writing, by certified mail, when the action is commenced.

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When the notice is received, the board may enter an appearance, file pleadings and appear at court hearings, defend or take action it deems appropriate either on the behalf and in the name of the defendant or in its own name. The board may seek any appropriate method of judicial review. The board may settle or compromise the claim. Any expenses incurred by the board in defending, satisfying, or settling any claim shall be paid from the homeowners' recovery fund.

When a complainant obtains a valid judgment, excluding consent judgments, in a court of competent jurisdiction against a licensee on the grounds set out above, the aggrieved homeowner may, when judgment is final, file a verified claim in the court in which the judgment was entered and, on 30 days' written notice to the board, may apply to the court for an order directing payment out of the homeowners' recovery fund of the amount remaining unpaid on the judgment.

The court shall proceed on such application forthwith and, on hearing, the complainant shall be required to show that:

(1) He or she is not the spouse, child, or parent of the debtor, or the personal representative of the spouse, child, or parent or a shareholder officer or director of the debtor;

(2) He or she has obtained a judgment, as described in this section, stating the amount of the judgment and the amount owing on the judgment at the date of the application, and, that in such action, he or she had joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties.

(3) The following items, if recovered by him or her have been applied to the actual compensatory damages awarded by the court:

- (a) Any amount recovered from the judgment debtor.
- (b) Any amount recovered from bonding companies.
- (c) Any amount recovered in out-of-court settlements.

The court shall order the homeowners' recovery fund to pay the sum it finds due, subject to the provisions and limitations of this section.

Should the board pay from the homeowners' recovery fund any amount in settlement of a claim or toward satisfaction of a judgment against a licensee, all licenses of the licensee may be terminated by the board. The board may refuse to issue a new license to the former licensee until he or she has repaid in full, plus interest at the rate of 12 percent per annum, the amount paid from the homeowners' recovery fund. A discharge in bankruptcy shall not relieve a person from the penalties and disabilities provided in this section.

If the balance in the homeowners' recovery fund is insufficient to satisfy a duly authorized claim or portion of a claim, the board shall, when sufficient money has been deposited in the homeowners' recovery fund, satisfy the unpaid claims in the order that the claims were filed.

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The sums received by the board, pursuant to the provisions of this section, shall be deposited into the State Treasury and held in a special fund to be known as the Homeowners' Recovery Fund, and shall be held by the board in trust for carrying out the purposes of the homeowners' recovery fund. These sums may be invested by the State Treasurer in any investments which are legal under the laws of this state. Any interest or other income from investments of the homeowners' recovery fund shall be deposited into the homeowners' recovery fund.

When, on order of the court, the board has paid from the homeowners' recovery fund any sum, the board shall be subrogated to all the rights of the judgment creditor, and all his or her rights, title, and interest in the judgment, to the extent of the amount paid from the homeowners' recovery fund, shall thereby be assigned to the board. Any amount and interest recovered by the board on the judgment shall be deposited to the homeowners' recovery fund.

The limitations and conditions of payment from the homeowners' recovery fund as established by this amendatory act shall not apply in any case where, prior to the effective date of this amendment, a complainant has obtained a valid judgment in a court of competent jurisdiction against a licensee on the grounds set out in this chapter. (Acts 1992, No. 92-608, p. 1282, § 15; Acts 1997, No. 97-250, § 3; Acts 2002, No. 02-72; Acts 2006, No. 06-105, § 15.)

§ 34-14A-16. Chapter not applicable to county with population of 30,000 or less.

Repealed. (Acts 1992, No. 92-608, p. 1282, § 16; Acts 2002, No. 02-72; Acts 2006, No. 06-105; § 16.)

§ 34-14A-17. Sunset provision.

The Home Builders Licensure Board shall be an enumerated board pursuant to Sections 41-20-1 through 41-20-16, and shall be reviewed at the same time as the State Board of Medical Examiners. (Acts 1992, No. 92-608, p. 1282, § 17.)

§ 34-14A-18. Property acquisition fund.

(a) The board may acquire and hold, in its own name, real property by purchase, gift, lease, lease with the option to purchase, or other lawful means, except eminent domain, which real property is used by the board to carry out its responsibilities. The board may also transfer, sell, convey, or cause to be conveyed real property and any improvements thereon, subject to the requirements of this section. In purchasing any real property, maintaining it, or making improvements thereto, the board may expend any funds contained in the property acquisition fund established by subsection (b), and any obligations created in connection with the purchase or improvement of the real property shall not create debts, obligations, or liabilities of the State of Alabama. As used in this section, real property shall include land, lots, and all things and interests, including lease hold interests, pertaining thereto, and all other things annexed or attached to the land which would pass to a vendee by conveyance of the land or lot, including mineral and gas and oil interests. All sales or leases made by the board of any real property owned or held by the board shall be subject to the requirements of Article 3, Chapter 15, Title 9. Notwithstanding the

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foregoing, the proceeds from the sale of real property owned by the board which are distributed pursuant to Section 9-15-83, shall be paid to the board and deposited into the property acquisition fund.

(b) The board may establish a property acquisition fund, the proceeds from which may be used by the board for the acquisition of real property. Each licensee shall, on order of the board, pay a fee not to exceed sixty dollars (\$60), no more than once a year, per license for deposit in the property acquisition fund. A licensee on inactive status shall not be required to contribute to the property acquisition fund.

(c) The funds received by the board pursuant to this section shall be deposited into the State Treasury and held in a special fund to be known as the Home Builders Property Acquisition Fund and shall be held by the board in trust for carrying out the purposes of the property acquisition fund. The funds so received may be invested by the State Treasurer in any investments which are legal under the laws of this state. Any interest or other income from investments of the property acquisition fund shall be deposited into the fund. At the end of each fiscal year, any unencumbered and unexpended balance of the amount appropriated for that fiscal year shall not revert to the State General Fund of the State Treasury under Section 41-4-93, but shall carry over to the next fiscal year. (Acts 2006, No. 06-105, § 18.)