

HOME BUILDERS LICENSURE BOARD

ADMINISTRATIVE CODE

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(6) The term "gross negligence" as used in Code of Ala. 1975, § 34-14A-8, shall mean engaging in the business of residential home building by a licensee (including by its duly authorized agent), characterized by that licensee's reckless disregard for the rights, safety, or welfare of homeowners, which could result in injury or damage to life or property or financial loss.

(7) The term "incompetence" as used in Code of Ala. 1975, § 34-14A-8, shall mean engaging in the business of residential home building by a licensee (including by its duly authorized agent) who fails to perform in a reasonable manner under the standard used in that community for residential home building, including but not limited to the proper supervision of subcontractors.

(8) The term "misconduct" as used in Code of Ala. 1975, § 34-14A-8, shall mean engaging in the business of residential home building by a licensee who intentionally makes any assertions or representations which are fraudulent, deceitful, or misleading to a homeowner or otherwise knowingly or intentionally engages in conduct which is fraudulent, deceitful or misleading to a homeowner. Misconduct of a licensee also includes but is not limited to knowingly or intentionally falsely representing itself as the residential home builder in charge of residential construction, including but not limited to, purchasing building permits for unlicensed builders, or otherwise assisting unlicensed builders in the business of residential home building through the use of its license.

(9) The term "cost of the undertaking" as used in Code of Ala. 1975, § 34-14A-2(10) shall mean the total cost of the materials, labor, supervision, overhead and profit.

(10) The term "repair, improvement, or reimprovement" as used in Code of Ala. 1975, § 34-14A-2(10) shall mean engaging in the business of residential homebuilding by contracting directly with a homeowner to perform construction on a residence or structure, when the cost of the undertaking exceeds \$10,000, and when the construction does not affect the structural integrity of a residence or structure, or does not involve more than one trade. Repair, improvement, or reimprovement does not include construction activities performed by persons who are otherwise licensed and regulated by the State of Alabama and who are operating within the scope of their respective licenses on behalf of clients.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-1, 34-14A-2, 34-14A-8, 34-14A-11, 34-14A-14, 34-14A-15.

History: New Rule: Filed May 12, 1993, effective June 16, 1993. **Amended:** Filed April 2, 1997; effective May 7, 1997. Amendment and Emergency Amendment filed October 1, 1997; Emergency Amendment effective October 1, 1997. **Amended:** Filed January 28, 1998; effective March 4, 1998. **Amended:** Filed May 6, 2002; effective June 10, 2002. Emergency Amendment: Filed May 31, 2011. **Amended:** Filed August 25, 2011; effective September 29, 2011.

CHAPTER 465-X-2
ORGANIZATION, ADMINISTRATION & PROCEDURE

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465-X-2-.01 Purpose. The Alabama Home Builders Licensure Board was created to regulate the home building, residential construction, and remodeling industries and to provide home building standards in the state of Alabama.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975 §§ 34-14A-1, *et seq.*

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

465-X-2-.02 Officers. The Board annually shall elect from its members a Chairman, Vice Chairman and Secretary/Treasurer. The Chairman shall exercise general supervision of the Board's affairs, shall preside at all meetings when present, shall appoint all committees, sign all vouchers or, on approval of the Board, may delegate this duty to the Executive Director, and shall perform all other duties pertaining to this office. The Vice Chairman, in the absence of the Chairman, shall perform all the duties of the Chairman.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993. **Amended:** Filed September 4, 1998; effective October 9, 1998.

465-X-2-.03 Executive Director; Board Members.

(1) The Board shall select and employ an Executive Director who shall be responsible for the administration of Board policies. The Executive Director shall fulfill the duties assigned to the executive secretary, secretary/treasurer, or secretary in the Act and Alabama Administrative Procedure Act. The Executive Director shall be designated as the agent for the Board for service of legal process upon the Board and act as its recording and corresponding secretary. The Executive Director, or his designee, shall serve as custodian of records for the Board. The Executive Director shall have custody of and shall safeguard and keep in good order all property and records of the Board; cause written minutes of every meeting of the Board to be kept in the book of minutes of this Board; sign all

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instruments and matters that require approval of the Board; act as Treasurer and receive and deposit all funds to the credit of either the "Home Builders Licensure Board Fund," the "Property Acquisition Fund," or the "Homeowners' Recovery Fund" in the state treasury; sign all bills before requesting the state comptroller to make payment of any accounts; and perform such other duties as the Board, the Chairman, the Vice Chairman, or the Secretary/Treasurer may assign. The records kept shall include, without limitation, all license applications and supporting documentation and information; all other evidence of the important business transactions of the Board; a complete and permanent record of all applications rejected, licenses issued, and the findings of the Board regarding all examinations; all enforcement and disciplinary actions taken by the Board; all jurisdictions covered by the Act; and a correct permanent record and account of the monies and funds of the Board kept in accordance with sound accounting principles. Upon the Board's instruction, the Executive Director may issue licenses in accordance with the standards established by the Board. All correspondence to the Board, including requests for information and all submissions of the requests should be made to the Executive Director at the Board's office in Montgomery, Alabama.

(2) The Board may employ other full or part-time administrative staff, including an administrative assistant and secretaries or others, who shall work under the direction and supervision of the Executive Director.

(3) All Board administrative staff, including the Executive Director and the administrative assistant, shall be entitled to reimbursement for travel the same as other employees of the state of Alabama, including actual expenses for authorized out-of-state travel, and per diem and transportation costs for in-state travel. Members of the Board may also receive \$300.00 per day, not to exceed fifteen days per year, for attending meetings of the Board or its committees.

(4) The titles "Executive Secretary" and "Executive Director" may be used interchangeably.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14A-3, 34-14-A-4, 34-14A-8, 34-14A-11, 41-22-1 *et seq.*

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993; Amendment and Emergency Amendment filed June 20, 1994; Emergency Amendment effective June 20, 1994; Amendment effective October 28, 1994.

Amended: Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 4, 2006; effective September 8, 2006. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-2-.04 Meetings.

(1) Within 30 days after the annual appointment of new members, the Board shall meet for the purpose of organizing and transacting such business as may properly come before it.

(2) The Board also shall meet at such other times as the Chairman may designate. A majority of the members of the Board also may call a special meeting of the Board.

(3) Each member of the Board shall be given at least ten days' notice of the time, place, and purpose of any regular or special meeting, unless such notice is waived by the individual member or unless such member is present at the called meeting. The Executive Director shall cause such

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reasonable notice of the meetings of the Board to be given to the media as shall be appropriate under the circumstances.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-4, 34-14A-11.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993; Amendment and Emergency Amendment filed June 20, 1994; Emergency Amendment effective June 20, 1994; Amendment effective October 28, 1994.

Amended: Filed March 7, 2008; effective April 11, 2008.

465-X-2-.05 Voting. All Board members, including the Chairman, are entitled to make or second motions. A majority of those members of the Board present and voting on any matter shall decide that matter before the Board, except that the Chairman of the Board or other Board member presiding as Chairman shall rule upon all questions of procedure and, in the event evidence is taken, on the admissibility of that evidence, consistent with the requirements of Section 13 of the Alabama Administrative Procedures Act. The Chairman shall not regularly vote as a member of the Board, except that in the event of a tie vote, the Chairman shall vote to break the tie.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, § 34-14A-11.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

465-X-2-.06 Roster of Licensees. Beginning in 1994, the Board shall publish by March 31 of each year a complete roster of all licenses issued and renewed for that calendar year and of all counties and municipalities covered by the Act as of the date of the roster. Copies of the roster shall be made available from the Executive Director at cost, which cost shall be estimated and set from time to time by resolution of the Board; provided, however, the Executive Director shall send a free copy of the roster to the chief building official of each county and municipality covered by the Act.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, § 34-14A-9.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

465-X-2-.07 Applicability of the Act. The Act shall apply in all counties of the state and all residential home builders within the state shall be required to be licensed by the board annually.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-6(7), 34-14A-11, 34-14A-16.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993. **Amended:** Filed August 4, 2006; effective September 8, 2006. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-2-.08 Declaratory Rulings.

- (1) The Board may issue declaratory rulings to any person substantially affected by a rule

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with respect to the validity of any rule, or with respect to the applicability to any person, property, or state of facts of any rule or statute enforceable by the Board, or with respect to the meaning and scope of any order of the Board. Such ruling shall be issued provided:

- (a) The Petitioner shows that the petitioner is substantially affected by the rule in question,
- (b) Sufficient facts are supplied in the request to permit the Board to make a valid determination, and
- (c) The request arises from an actual question or controversy.

(2) A request for declaratory ruling must be in writing and must be filed on the form prescribed by the Board.

(3) Such rulings will be made in accordance with the Alabama Administrative Procedure Act, Section 11.

Authors: David R. Boyd, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 41-22-11.

History: Original Rule and Emergency Rule filed June 20, 1994; Emergency Rule effective June 20, 1994; Permanent Rule effective October 28, 1994.

465-X-2-.09 Advisory Opinion.

(1) The Board may, in its discretion, issue an advisory opinion to any licensee, governmental official, or entity substantially affected by a rule or statute enforceable by the Board. Board advisory opinions may address, but not necessarily be limited to, the applicability of such rule or statute to the licensee, official, or entity or to a set of facts hypothetically involving a licensee, official, or entity, or may address the meaning and scope of any order of the Board.

(2) A request for any advisory opinion must be in writing and must specifically state that it is a "request for an advisory opinion."

Authors: David R. Boyd, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 41-22-11.

History: Original Rule and Emergency Rule filed June 20, 1994; Emergency Rule effective June 20, 1994; Permanent Rule effective October 28, 1994.

**CHAPTER 465-X-3
LICENSING**

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465-X-3-.01 Requirement for Licensing. All residential home builders shall have and maintain a current license issued by the Board. A license is current only during the calendar year in which it is issued. Unless renewed, a license automatically shall expire at the end of the calendar year for which it was issued. Any person acting as a residential home builder as of October 15, 1993 shall have applied for a license on or before that date.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-11.

History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.

465-X-3-.02 Filing. License applications, annual license renewal applications, and all other applications required by these rules shall be deemed filed as of the date it is postmarked. All other submissions or documents required by these rules shall be deemed filed when received by the Executive Director. Completed applications filed at least 30 days before the next regularly scheduled Board meeting shall be considered before or at the time of that meeting; consideration of completed applications filed less than 30 days before such meeting may be delayed until the time of the next subsequent meeting of the Board. The Executive Director may reject an application that is inaccurate, incomplete, not notarized, or for which all fees due have not been paid at the time the application is filed.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-7, 34-14A-11.

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History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.
Emergency Amendment: Filed May 31, 2011. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-3-03 Exemptions. The licensing requirements of the Act shall not apply to:

(1) Any employee of a licensee who engages in the residential home building business solely as the employee of that licensee and personally does not hold himself or herself out for hire or engage in contracting;

(2) An authorized employee of the United States, the state of Alabama, or any municipality, county, or other political subdivision if the employee personally 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 who, on January 1, 1992, held a valid general contractors license issued under Title 34, Chapter 8 of the Code of Ala. 1975, and who continue to maintain that license in good standing;

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

(5) Owners of property acting as their own contractors and providing all material supervision themselves in the building or improvement of one-family or two-family residences on their own property for their own occupancy or use, which residences are not offered for sale to the public. For the purpose of the Act and these rules:

(a) Owners shall be deemed to have acted as their own contractors if they do not hire or compensate anyone to supervise the building or improvement of their residences or any part thereof; and

(b) Proof of the sale or offering for sale of such structure by the owner-builder within one year after completion of same is presumptive evidence that the construction was undertaken for the purpose of sale;

(6) Mobile homes, or 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 Code of Ala. 1975 §§ 24-4A-1, 24-6-4;

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14A-6, 34-14A-11.

History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.

Amended: Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 4, 2006; effective September 8, 2006.

465-X-3-04 Licensing.

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(1) **Form of License.** Licenses shall be issued only to individuals, partnerships, corporations, limited liability companies, and not-for-profit organizations:

(a) An individual applying for a license personally must satisfy all the licensure requirements.

(b) A partnership, corporation, limited liability company, and not-for-profit organization applying for a license must satisfy all licensure requirements.

1. A general partnership, limited partnership, corporation, limited liability company, or not-for-profit organization applying for a license must designate as its qualifying representative an individual who is either a general partner (in the case of any partnership) or an officer (in the case of a corporation) or a member (in the case of a member-managed limited liability company) or a manager (in the case of a manager-managed limited liability company) and who either holds a license individually or meets the experience and ability requirements for licensure. The entity seeking the license may rely upon the designated qualifying representative's experience, ability, and successful completion of any examination (testing experience and ability, conducted either by the Board or a third party under contract with the Board), but must present evidence to the Board that it satisfies all other licensing requirements. The name of the partnership, corporation, or limited liability company, along with that of its designated qualifying representative, shall appear on the face of that entity's license.

2. If the designated qualifying representative of a partnership, corporation, or limited liability company ceases to be a partner or officer or member (in the case of a member-managed limited liability company) or manager (in the case of a manager-managed limited liability company) of that entity, the designated qualifying representative and the partnership, corporation, or limited liability company immediately shall so notify the Board. Unless another partner, officer, or member (in the case of a member-managed limited liability company) or manager (in the case of a manager-managed limited liability company) as the case may be, who either individually maintains a current and valid license or meets the experience and ability requirements for licensure is designated as that entity's new qualifying representative within 45 days after the previous designated qualifying representative ceases to hold that position, the license for that partnership, corporation, or limited liability company automatically shall be revoked.

(c) The extent to which a residential home builder may engage in the residential home building business depends upon the form of license held:

1. A residential home builder who is not licensed individually may engage in the residential home building business only through a licensed partnership, corporation, or limited liability company, of which the builder is an employee, partner, officer, or member.

2. A residential home builder who is the designated qualifying representative of an entity may engage in the residential home building business only through that entity; if such builder wishes to engage in the residential home building business either individually or through another entity that is not otherwise licensed, that builder must obtain a license, either individually or on behalf of the other entity, of which the builder may be the designated qualifying representative. A residential home builder who is the qualifying representative of an entity shall be deemed to have satisfied the experience and ability requirements for licensure, but must satisfy all other licensing requirements, including without

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limitation, the financial responsibility requirements, before qualifying for a license either individually or on behalf of another entity.

3. A residential home builder licensed individually may engage in the residential home building business either individually or through a licensed entity of which the individual licensee is an employee, partner, officer, or member.

EXAMPLES:

(i) ABC Builders, Inc. has three officers, each of whom meets the experience and ability requirements for licensure. Adams is the qualifying representative of the corporation. Brown individually meets all the licensing requirements, including without limitation the financial responsibility requirement, and obtains an individual license. Carter is not licensed, either individually or as the qualifying representative of the corporation. Adams and Carter may engage in the residential home building only through ABC Builders, Inc., but Brown may do so either individually or through ABC Builders, Inc.

(ii) Five years after ABC Builders, Inc. was issued a license, Adams decides to engage in the residential home building business through a newly formed partnership, Adams Builders, of which he is a partner. Adams Builders applies for a license, naming Adams as its qualifying representative. Because he is the qualifying representative of ABC Builders, Inc., Adams is deemed to have satisfied the experience and ability requirements for licensure, but Adams Builders will have to satisfy all other requirements for licensure, including without limitation the financial responsibility requirement.

(iii) Five years after ABC Builders, Inc., was issued a license, Carter decides to engage individually in the residential home building business. Because Carter is neither the qualifying representative of ABC Builders, Inc. nor licensed individually, Carter will have to satisfy all of the requirements for licensure, including the experience and ability requirements, which means successful completion of any examination testing experience and ability, conducted either by the Board or a third party under contract with the Board.

(2) Type of License.

(a) Licenses may be issued with or without limitation.

(b) The extent to which a residential home builder may engage in the residential homebuilding business depends upon the type of license held:

1. A residential home builder who holds a current and valid residential home builders license **without limitation** may engage in the business of residential home building, as referred to in Ala. Code § 34-14A-2(10) (1975), regardless of the scope of the construction.

2. A residential home builder who holds a current and valid residential home builders license **with limitation** may only engage in the business of residential home building, as referred to in Ala. Code § 34-14A-2(10) (1975), when the scope of the construction is limited to the repair, improvement, or reimprovement, as such term is defined herein, of a residence or structure.

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EXAMPLES:

- (i) Builder holds a current and valid residential home builder's license **without limitation**. Builder may contract directly with Homeowner to perform any residential construction activity including new residential construction, and repair, improvement or reimprovement to an existing residence.
- (ii) Builder holds a current and valid residential home builder's license **without limitation**. Builder contracts directly with Homeowner to construct a new residence. The cost of the undertaking is \$250,000. Builder hires Frammer to frame the new construction and pays him \$30,000. Frammer is **not required to hold a license** issued by the Board because he did not contract directly with the homeowner to perform the construction activity, but instead is working directly for a residential home builder who holds a license without limitation and who contracted directly with the homeowner.
- (iii) Frammer enters into a contract directly with Homeowner to frame an addition to an existing residence. The cost of the undertaking is \$30,000. Though only one trade is being performed (framing), Frammer must hold a current and valid residential home builder's license **without limitation** because the cost of the undertaking exceeds \$10,000 and the construction activity affects the structural integrity of the residence.
- (iv) Foundation contractor enters into a contract directly with Homeowner to construct a foundation for a residence. The cost of the undertaking is \$15,000. Though only one trade is being performed (foundation construction), Foundation contractor must hold a current and valid residential home builder's license **without limitation** because the cost of the undertaking exceeds \$10,000 and the construction activity affects the structural integrity of the residence.
- (v) Best Siding, LLC, enters into a contract directly with Homeowner to install vinyl siding on Homeowner's residence. The cost of the undertaking is \$20,000. Best Siding, LLC, must hold a residential home builder's license because the cost of the undertaking exceeds \$10,000; however, because the construction activity involves only one trade (siding installation) and it does not affect the structural integrity of the existing residence, Best Siding, LLC, may hold a residential home builders license **with limitation**.
- (vi) Roofer enters into a contract directly with Homeowner to replace roofing shingles and to install siding. The cost of the undertaking is \$20,000. Roofer must hold a residential home builder's license **without limitation** because the cost of the undertaking exceeds \$10,000 and the construction activity involves more than one trade (roofing and siding installation).
- (vii) Roofer enters into a contract directly with Homeowner to install a new roof, including replacing only existing damaged decking and damaged fascia. The cost of the undertaking is \$20,000. Roofer must hold a residential home builder's license because the cost of the undertaking exceeds \$10,000; however, because the construction activity involves only one trade (roof installation, including replacing damaged decking and fascia) and it does not affect the structural integrity of the residence, Roofer may hold a residential home builders license **with limitation**.
- (viii) Builder enters into a contract directly with Homeowner to make repairs to a residence, including painting and replacement of sheetrock. The cost of the undertaking is \$8,500. Though the

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construction activity involves more than one trade (painting, and sheetrock replacement), Builder is **not required to hold a license** issued by the Board because the cost of the undertaking does not exceed \$10,000. If the cost of the undertaking had exceeded \$10,000, Builder would be required to hold a residential home builder's license **without limitation** because more than one trade is involved.

(3) **Requirements for License Without Limitation.** In order to receive a license **without limitation (unlimited license)**, a residential home builder must successfully complete the following actions:

- (a) File an accurate, complete, timely, and notarized application for license with the Board;
- (b) Pay the application fee, the Homeowners' Recovery Fund fee and any other fee required by these rules;
- (c) Demonstrate proof of financial responsibility by submitting to the Board, at the applicant's expense:

1. A credit report with business-related credit and financial information in a form satisfactory to the Board (provided directly from a credit reporting agency).

(i) The credit report shall include the business-related credit accounts information of the individual or entity to be licensed and a public records search of the individual or entity to be licensed.

(ii) In addition, a partnership's credit report shall include a public records search on the partnership and also on each partner. A partnership over a year old has the option of submitting the business-related credit accounts information on the partnership or on each partner individually.

(iii) In addition, a partnership, corporation, limited liability company, or other legal entity less than one year old may be required to provide business-related credit accounts information on the partners, corporate officers, or members individually where the partnership, corporation, or limited liability company does not have a credit history sufficient to reasonably satisfy the Board of the applicant's financial responsibility.

(iv) An applicant whose application is pending for more than 90 days (owing to a defect in the application for which the applicant is responsible) may be required to file an updated credit report (provided directly from a credit reporting agency).

2. An applicant must not have any outstanding business-related collection account(s), or foreclosure account(s), except that

(i) An applicant may have a business-related collection account(s), or foreclosure account(s) if the amount(s) of the business-related collection account(s), or foreclosure account(s) does not exceed \$500 in the aggregate. (Example: (A) one \$500 business-related collection account, or foreclosure account and no other business-related collection account, or foreclosure account, or (B) one \$250 business-related collection account, one \$150 business-related collection account, and one \$100 foreclosure account.)

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(ii) An applicant with a business-related collection account(s), or foreclosure account(s), which exceeds \$500 in the aggregate must provide documentation to show that the collection account(s), or foreclosure account(s) has been paid, or must show to the Board's reasonable satisfaction that arrangements have been made to pay the account(s), including but not limited to evidence of a payment plan and history of payment, or provide the Board with a written explanation of the circumstances surrounding the business-related collection account(s), or foreclosure account(s) sufficient to reasonably satisfy the Board of the applicant's financial responsibility.

3. An applicant must not have any outstanding judgments, judgment liens, or any perfected liens, except that

(i) An applicant may have an outstanding judgment(s), judgment lien(s), or any perfected lien(s) under dispute in court, with the taxing authority, or on appeal, if the amount(s) of judgment(s), judgment lien(s), or any perfected lien(s) (under dispute in court, with the taxing authority, or on appeal) does not exceed the amount of \$1,000 in the aggregate. (Example: (A) one \$1,000 outstanding judgment, judgment lien, or any perfected lien under dispute in court, with the taxing authority, or on appeal and no other outstanding judgment(s), judgment lien(s), or any perfected lien(s) under dispute in court, with the taxing authority, or on appeal or (B) one \$650 outstanding judgment, judgment lien, or any perfected lien under dispute in court, with the taxing authority, or on appeal and one \$350 outstanding judgment, judgment lien, or any perfected lien under dispute in court, with the taxing authority, or on appeal.)

(ii) An applicant may have an outstanding judgment(s), judgment lien(s), or any perfected lien(s) if the amount(s) of the judgment(s), judgment lien(s), or any perfected lien(s) does not exceed \$500.00 in the aggregate. (Example: (A) one \$500 outstanding judgment, judgment lien, or any perfected lien and no other outstanding judgment(s), judgment lien(s), or any perfected lien(s) or (B) one \$350 outstanding judgment, judgment lien or any perfected lien and one \$150 outstanding judgment, judgment lien, or any perfected lien.)

(iii) Business-related judgments, judgment liens, and any perfected liens include any judgment, judgment lien or any perfected lien that may attach to real estate that an applicant takes in his/her/its name and sells, deeds, or otherwise transfers to a consumer and adversely affects the consumer's title. A certified copy of the satisfaction and release from the appropriate court(s) is sufficient evidence of satisfaction and release.

4. Disclosure of Social Security Number. All licensure applications, including new and renewal licensure applications, have a space for the disclosure of an individual's social security number.

(i) The disclosure of an individual's social security number under the Alabama Child Support Act of 1997, Act 97-447, § 30-3-194 (1997 Cum. Supp.) is **MANDATORY**. The Board requires the disclosure of the social security number to be used for the purposes under said act described therein.

(ii) The disclosure of an individual's social security number for the purpose of obtaining business-related financial and credit information and public records search is **VOLUNTARY**. The Board requests the disclosure of the social security number, pursuant to Code of Ala. 1975, § 34-14A-7(a)(4), to obtain business-related financial and credit information and a public records search in

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order to examine an applicant's business-related financial condition. The Board may provide, or the individual may provide, the social security numbers to the credit reporting agency for the purpose of obtaining this information. An individual who does not wish to disclose his or her social security number may provide the business-related financial and credit information and public records search in an alternate format. The alternate format shall be: provide five (5) notarized business-related credit letters from financial institutions, building suppliers, or other creditors outlining specific payment history, and a certified public records search.

5. An applicant must provide a written explanation of any pending lawsuits sufficient to reasonably satisfy the Board of the applicant's financial responsibility.

(d) Satisfy the Board that the applicant possesses such experience and ability as to be entitled to a license as a residential home builder by successfully completing the examination (testing experience and ability, conducted either by the Board or a third party under contract with the Board) required by the Board;

(e) Satisfy the Board that the applicant possesses such good character and willingness to serve the public and conserve the public health and safety as to be entitled to a license as a residential home builder; and

(f) File any additional pertinent information required by the Board on a case-by-case basis to determine whether the applicant is qualified to receive a license.

(g) If the applicant is a corporation, satisfy the Board that the applicant is in good standing with the Alabama Department of Revenue and is either duly organized in the State of Alabama or qualified as a foreign corporation to do business in Alabama.

(h) If the applicant is a limited partnership or limited liability company, satisfy the Board that the applicant is either duly organized in the State of Alabama or qualified as a foreign limited partnership or limited liability company to do business in Alabama.

(4) **Requirements for License With Limitation.** In order to receive a license **with limitation (limited license)**, a residential home builder must successfully complete the requirements for licensure as required under Rule § 465-X-3-.04(3) with the exception of subsection (d), and must satisfy the experience and ability requirements as set forth herein.

(a) Any person acting as a residential home builder within the State of Alabama applying for a license **with limitation (limited license)** shall be deemed to have satisfied the experience and ability requirements for licensure if such person submits an application to the Board establishing any one (1) of the following:

1. That the applicant has performed a single trade, non-structural construction activity on at least one (1) residence in this state within the year prior to May 31, 2011, and that the contract price for the work exceeded \$10,000, **or**

2. That the applicant has performed a single trade, non-structural construction activity on at least five (5) residences in this state within the (5) years prior to May 31, 2011, each for a contract price

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exceeding \$10,000; **or**

3. That the applicant currently is licensed as a residential home builder by a jurisdiction in this state which requires an examination (testing experience and ability) for such licensure; **or**

4. That the applicant currently is licensed as a residential contractor by a jurisdiction in this state and the applicant's residential contracting business generated gross revenues of \$50,000 or more in the previous calendar year; **or**

5. That the applicant possesses sufficient building qualifications and experience to receive a license, as demonstrated by satisfactory evidence presented to the Board. Proof that an applicant currently holds or held on or before one (1) year prior to the date the application is received by the Board, a business or occupational license, issued by a governmental instrumentality of this state, as a contractor, shall provide sufficient evidence of the applicant's building qualifications and experience.

(b) For purposes of determining whether an applicant satisfies the experience and ability requirements for a license under § 465-X-3-.04(4) of these rules, an applicant will be deemed to have performed a single trade, non-structural construction activity on a residence in this state only if:

1. The name or the trade name of the applicant (if the applicant is an individual), or the name of the applicant's qualifying representative (if the applicant is a corporation, partnership, limited liability company, or not-for-profit organization), appears on the building permit issued in conjunction with the single trade, non-structural construction activity referenced in § 465-X-3-.04(4)(a)1 of these rules; and

2. The applicant's qualifying representative (if the applicant is a corporation, partnership, limited liability company, or not-for-profit organization) is, or at all relevant times was, an officer of the corporation, a partner of the partnership, or a member or manager of the limited liability company, that performed the single trade, non-structural construction activity; **or**

3. The applicant submits to the Board a sworn statement signed by the owner of the residence attesting to the fact that the applicant was in fact responsible for the single trade, non-structural construction activity performed on the residence and that the cost of the construction exceeded \$10,000.

(5) **Grandfathering Provisions.** Applicants who were initially grandfathered from examination (testing experience and ability, conducted either by the Board or a third party under contract with the Board) on or before June 16, 1994, and who met the requirements under previous Code of Ala. 1975, § 34-14A-5, and who apply for a new license in a different legal capacity less than three (3) years from the date of expiration of the former license, the Board shall rely on the building qualifications met under § 34-14A-5 as sufficient evidence of applicant's experience and ability requirements for licensure; provided there are no pending disciplinary problems with the applicant.

(6) **Applicants in counties having a population of fewer than 30,000 residents.**

(a) The county commission of any county having a population of fewer than 30,000 according to the most recent decennial census may irrevocably elect to make the Act applicable to the

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county (hereinafter "Electing County"). Upon such election, the Electing County shall notify the Executive Director of the Board, in writing, of the election by providing a copy of the minutes of the county commission meeting which reflects the action of the county commission making applicable the Act.

(b) Any person residing in or acting as a residential home builder in an Electing County must successfully complete the requirements for licensure as required under Rule §§ 465-X-3-.04(3)(a), (b), (c), (e), (f), (g) and (h) and satisfy the experience and ability requirements required herein.

(c) Any person residing within an Electing County shall be deemed to have satisfied the experience and ability requirements for licensure if such person submits an application to the Board, within one (1) year from the date the county commission of the Electing County notifies the Board of the action of the county commission making applicable the Act, that establishes any one (1) of the following:

1. That the applicant has constructed at least one (1) residence within the year prior to the date the county commission notifies the Board that it has irrevocably elected to make the Act applicable to the Electing County or at least five (5) residences within the previous five (5) years; **or**

2. That the applicant has remodeled at least one (1) residence within the year prior to the date the county commission notifies the Board that it has irrevocably elected to make the Act applicable to the Electing County, or at least five (5) residences within the previous five (5) years, each for a contract price of at least \$10,000; **or**

3. That the applicant currently is licensed as a residential home builder by a jurisdiction in this state which requires an examination (testing experience and ability) for such licensure; **or**

4. That the applicant is currently licensed as a residential remodeler by a jurisdiction in this state and that the applicant's remodeling business generated gross revenues of \$250,000 or more in the previous calendar year; **or**

5. That the applicant possesses sufficient building qualifications and experience to receive a license, as demonstrated by satisfactory evidence presented to the Board. Proof that an applicant currently holds or held on or before one (1) year from the date the county commission notifies the Board that it has irrevocably elected to make the Act applicable to the Electing County, a business or occupational license as a residential home builder in the Electing County shall provide sufficient evidence of the applicant's building qualifications and experience.

(d) Any person residing within an Electing County shall provide proof of residency in said Electing County by submitting to the Board at the time application is made:

1. documentation from the Board of Registrars of the Electing County which reflects that the applicant is a registered voter of the Electing County; **or**

2. a valid Alabama Drivers License, which reflects that the applicant is a resident of the Electing County; **or**

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3. documentation which reflects that the applicant owns property in the Electing County which has been assessed for ad valorem tax in the Electing County; **or**

4. documentation which reflects that the applicant receives U.S. mail at a street, county road, or highway address within the Electing County; **or**

5. such other evidence of residency as may be accepted by the Board.

(e) Any person who does not reside within an Electing County, but who is acting as a residential homebuilder within an Electing County shall be deemed to have satisfied the experience and ability requirements for licensure if such person submits an application to the Board, within one (1) year from the date the county commission of the Electing County notifies the Board of the action of the county commission making applicable the Act, that establishes any ONE (1) of the following:

1. That the applicant has constructed at least one (1) residence within the Electing County, within the year prior to the date the county commission notifies the Board that it has irrevocably elected to make the Act applicable to the Electing County, or at least five (5) residences within the Electing County within the previous five (5) years; **or**

2. That the applicant has remodeled at least one (1) residence within the Electing County, within the year prior to the date the county commission notifies the Board that it has irrevocably elected to make the Act applicable to the Electing County, or at least five (5) residences within the Electing County within the previous five (5) years, each for a contract price of at least \$10,000; **or**

3. That the applicant currently is licensed as a residential home builder by a jurisdiction in this state which requires an examination (testing experience and ability) for such licensure; **or**

4. That the applicant is currently licensed as a residential remodeler by a jurisdiction in this state and that the applicant's remodeling business generated gross revenues of \$250,000 or more in the previous calendar year; **or**

5. That the applicant possesses sufficient building qualifications and experience to receive a license, as demonstrated by satisfactory evidence presented to the Board. Proof that an applicant currently holds or held, on or before one (1) year from the date the county commission notifies the Board that it has irrevocably elected to make the Act applicable to the Electing County, a business or occupational license as a residential home builder in the Electing County shall provide sufficient evidence of the applicant's building qualifications and experience.

(f) For purposes of determining whether an applicant satisfies the experience and ability requirements for a license under this Section 465-X-3-.04(6) of these Rules, an applicant will be deemed to have constructed or remodeled a residence only if:

1. The name or the trade name of the applicant or its qualifying representative appears on the building permit issued in conjunction with the construction or remodeling; **or**

2. The applicant or its qualifying representative is or, at all relevant times, was an officer of the corporation or a general partner of the partnership that constructed or remodeled a residence; **or**

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3. The applicant submits to the Board a sworn statement signed by the owner of the residence attesting to the fact that the applicant was in fact responsible for the construction or remodeling of the residence.

(g) Any building inspector within an Electing County shall be deemed to have satisfied the building qualifications and experience requirements under Section 5(b) of the Act by submitting an application to the Board within one (1) year from the date the county commission of the Electing County notifies the Board of the action of the county commission making applicable the Act that establishes the following:

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

2. That the building inspector either:

(i) maintains current certification from the Southern Building Code Congress International as ONE of the following:

(I) chief building official; **or**

(II) deputy building official; **or**

(III) chief building inspector; **or**

(IV) building inspector; **or**

(V) housing inspector; **or**

(VI) design professional; **or**

(VII) plan reviewer.

or

(ii) maintains current certification from the International Code Council as ONE of the following:

(I) certified building official; **or**

(II) building inspector; **or**

(III) residential building inspector; **or**

(IV) property maintenance and housing inspector; **or**

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(V) building plans examiner; **or**

(VI) design professional.

or

(iii) possesses sufficient building qualifications and experience to receive a license, as demonstrated by satisfactory evidence presented to the Board.

(7) **Applicants in Washington County.** Any person residing in or acting as a residential home builder in Washington County on or before May 1, 2006, shall be deemed to have satisfied the experience and ability requirements for licensure if such person submits an application to the Board by March 1, 2007, and successfully completes the requirements for licensure and satisfies the experience and ability requirements as required for applicants residing in counties having a population of fewer than 30,000 residents as set forth in Rule § 465-X-3-.04(6)(b), (c), (d), (e), (f), and (g).

(8) **Out of State License Holders.** Any applicant holding a valid license as a residential home builder issued by a jurisdiction outside the state of Alabama shall be deemed to have satisfied the experience and ability requirements for licensure only upon a determination by the Board that:

(a) the licensing requirements of the other jurisdiction are substantially similar to those of Alabama; and

(b) the other jurisdiction exempts Alabama licensees from any examination (testing experience and ability) requirements imposed on residential home builders in that jurisdiction.

(9) **Inactive Licenses.**

(a) Any licensee who desires to receive an inactive license shall make and file with the Board an accurate, complete, notarized, written application for an inactive license on a form prescribed by the Board prior to the expiration of the current license. The application shall be accompanied by the payment of the annual inactive license fee required by the Board and any other fees required by these rules. After the Board accepts the application, the application may be reviewed by the Board at the next scheduled Board meeting.

(b) 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 an accurate, complete, notarized, 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 as set out in Code of Ala. 1975, § 34-14A-7(d)(2). Maintaining ICC certification as a certified building official, building inspector, residential building inspector, property maintenance and housing inspector, or building plans examiner, or maintaining a license/certification as a design professional, shall be considered to be sufficient proof of building qualifications, experience and ability to receive an inactive license.

(c) 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

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her inactive license as evidence of the experience and ability requirements for licensure under subdivisions (1) and (2) of subsection (a) of Code of Ala. 1975, § 34-14A-7 and subparagraph (d) of paragraph (2) of this regulation.

(10) **Applicants Holding Expired Licenses Less Than Three Years Old.**

(a) Any licensee who desires to reactivate an expired license less than three years old shall make and file with the Board 30 days prior to the next meeting of the Board an accurate and complete written application on a form prescribed by the Board to reactivate the expired license. The application shall be accompanied by the application fee, the Homeowners' Recovery Fund fee, and any other fees required by these rules. After the Board accepts the application, the applicant may be reviewed by the Board at the next scheduled Board meeting. An applicant holding an expired license who files such an application within three years from the date of expiration of the license shall be deemed to have satisfied the experience and ability requirements for licensure provided there are no pending disciplinary problems with the applicant and all other licensing requirements have been met.

(b) For an individual applicant to be considered an applicant holding an expired license, the applicant must hold an expired license in his individual capacity. For a partnership, corporation, or limited liability company applicant to be considered an applicant holding an expired license, the applicant must hold an expired partnership, corporation, or limited liability license with the same designated qualifying representative as the applicant applying for reactivation.

(c) In addition, applicants who have been denied a license, or whose license has been revoked or suspended, or who have pending disciplinary problems, are not considered applicants holding an expired license.

(11) **Applicants Holding a Denied License Less Than Three Years Old.** Any applicant whose license has been denied and who desires to receive a new license shall make and file with the Board 30 days prior to the next meeting of the Board an accurate, complete, notarized written application on a form prescribed by the Board with the Executive Director and satisfy the criteria set forth in § 465-X-3-.04(3)(b), (c), (e), (f), (g) and (h) as applicable, or § 465-X-3-.04(4) as applicable. The application shall be accompanied by the application fee, the recovery fund fee, and any other fees required by these rules. After the Board accepts the application, the applicant may be reviewed by the Board at the next scheduled Board meeting. An applicant whose license has been denied and who files such an application and is issued a new license within three years from the year of denial of the previous license shall be deemed to have satisfied the experience and ability requirements for licensure.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Anna C. Northington, Beth Acker, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-6, 34-14A-7, 34-14A-11.

History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.

Amended: Filed February 11 1994; effective March 18, 1994. **Emergency Amendment:** Filed June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994. **Amended:** Filed April 2, 1997; effective May 7, 1997. Amendment and Emergency Amendment filed October 1, 1997; Emergency Amendment effective October 1, 1997. Amendment and Emergency Amendment filed October 27, 1997; Emergency Amendment effective October 27, 1997. Amendment and Emergency Amendment filed October 27, 1997; Emergency Amendment effective October 27, 1997. Amendment

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filed November 12, 1997. **Amended:** Filed January 30, 1998; effective March 4, 1998. **Amended:** Filed September 4, 1998; effective October 9, 1998. **Amended:** Filed June 4, 1999; effective July 9, 1999. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed April 2, 2004; effective May 7, 2004. **Amended:** Filed June 4, 2004; effective July 10, 2004. **Amended:** Filed November 4, 2004; effective December 9, 2004. **Amended:** Filed December 9, 2004; effective January 13, 2005. **Amended:** Filed February 7, 2005; effective March 14, 2005. **Amended:** Filed August 4, 2006; effective September 8, 2006. **Amended:** Filed October 6, 2008; effective November 10, 2008. **Amended:** Filed August 11, 2010; effective September 15, 2010. **Emergency Amendment Filed:** May 31, 2011. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-3-.05 [Repealed effective June 20, 1994]

465-X-3-.06 **Annual License Renewal, Consequence Of Failure To Renew.**

(1) A license is valid only during the calendar year indicated on the license. At the end of that calendar year, the license expires unless it is timely renewed by the licensee.

(2) To renew a license **without limitation**, the licensee must timely file a complete and accurate annual license renewal application with the Executive Director, and satisfy the criteria set forth in § 465-X-3-.04(3)(b), (c), (e), (f), (g), and (h), as applicable. To renew a license **with limitation**, the licensee must timely file a complete and accurate annual license renewal application with the Executive Director, and satisfy the criteria set forth in § 465-X-3-.04(4) as applicable. If a licensee changes its address or telephone number during the license year, the licensee promptly must notify the Board of the new address and new telephone number. Annual license renewal applications must be filed by November 30 of the year preceding the year for which the license is to be renewed. Any renewal applications postmarked on December 1 or thereafter will be considered late.

(3) To renew an inactive license, the inactive licensee must timely file a complete and accurate annual inactive license renewal application with the Executive Director, and satisfy the criteria set forth in § 465-X-3-.04(9)(a), (b), and (c), as applicable. If an inactive licensee changes its address or telephone number during the license year the inactive licensee promptly must notify the Board of the new address and new telephone number. Annual inactive license renewal applications must be filed by November 30 of the year preceding the year for which the inactive license is to be renewed. Any inactive renewal applications postmarked on December 1 or thereafter will be considered late.

(4) A license holder who fails to file the annual license renewal application, or the annual inactive license renewal application, by December 31 of the calendar year for which the license was issued shall no longer be licensed as a residential home builder, after December 31 of the calendar year for which the license was issued.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Anna C. Northington, Beth Acker, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-7.

History: Filed March 22, 1993. New Rule: Filed May 12, 1993, effective June 16, 1993.

Emergency Amendment: Filed June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994. **Amended:** Filed April 2, 1997; effective May 7, 1997. **Amendment and Emergency Amendment** filed October 1, 1997; **Emergency Amendment** effective October 1, 1997.

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Amended: Filed January 28, 1998; effective March 4, 1998. **Amended:** Filed August 4, 1998; effective September 8, 1998. **Amended:** Filed November 2, 2001; effective December 7, 2001. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed June 4, 2004; effective July 10, 2004. **Amended:** Filed November 4, 2004; effective December 9, 2004. **Emergency Amendment:** Filed May 31, 2011. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-3-07 [Repealed effective October 1, 1997]

465-X-3-08 **Replacement Licenses.** The Board shall issue a replacement license, upon application, to a licensee who shows by notarized statement that:

(1) the licensee's current license has been stolen, taken, lost, destroyed, defaced, or

(2) the licensee's name has been changed by marriage or court order, if the licensee is an individual, or by changing the name of the sole proprietorship, partnership, or corporation, if the license is issued in the name of such an entity. Where such a name change occurs, the license issued under the licensee's former name shall expire 60 days after the name change occurs, unless within that 60-day period the licensee obtains a replacement license bearing the licensee's correct name. When the replacement license is issued to accommodate a name change, the originally issued license must be returned to the Board as a condition of the issuance of the new license.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-1, 34-14A-5, 34-14A-7, 34-14A-11.

History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.

Emergency Amendment: Filed June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994.

465-X-3-09 **Examinations.** In examining an applicant, the Board shall consider the applicant's experience, ability, character, business-related financial condition, ability and willingness to serve the public and to conserve the public's health and safety, and any other pertinent information needed for the Board to determine whether the applicant is qualified to receive a license as a residential home builder. The Board may rely on oral and written examinations (testing experience and ability, conducted either by the Board or a third party under contract with the Board), its review of the application and related materials filed by the applicant, any references or information regarding the applicant or its qualifying representatives, or any combination thereof in determining whether to issue a license. Any written examinations (testing experience and ability, conducted either by the Board or a third party under contract with the Board) required for a license as a residential home builder shall be given at least quarterly at a place or places designated by the Board. An applicant has three (3) years from the year he or she receives a passing score on any written examination (testing experience and ability, conducted either by the Board or a third party under contract with the Board) within which to file a written application for license with the Board. At the expiration of the three (3) year period, if an applicant has not filed an application for and obtained a license, the applicant shall be required to retake and receive a passing score on any written examination (testing experience and ability, conducted either by the Board or a third party under contract with the Board) before a license will be issued.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14-7, 34-14-11.

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History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.

Emergency Amendment: Filed June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994. Amendment and Emergency Amendment filed October 1, 1997; Emergency Amendment effective October 1, 1997. **Amended:** Filed January 28, 1998; effective March 4, 1998. **Amended:** Filed June 4, 1999; effective July 9, 1999.

465-X-3-10 Denial Of License.

(1) Grounds for Denial. The following shall constitute grounds on which the Board may deny an application for a license:

(a) Applicant's failure to meet any requirement or standard established by the Act or the rules adopted by the Board.

(b) False representations of facts on an application for licensure or renewal thereof.

(c) Applicant's having another person appear in the applicant's place for the licensing exam.

(d) Applicant's following a course of conduct that would be grounds for discipline under the Act or the rules adopted by the Board.

(e) The revocation, suspension or probationary status of the applicant's license in another state.

(f) Disciplinary action pending against the applicant in another state.

(g) Any other reasons authorized by law.

(2) Notice of denial. The Board shall give any applicant whose application for licensure or renewal is denied written notice specifying in detail the reason for the denial.

(3) Reexamination and Reconsideration.

(a) An applicant denied a license shall be given an opportunity to be reexamined after filing a new application and paying an additional application fee; provided, however, the Board in its discretion may waive any application requirements regarding the filing of any additional forms or the payment of any additional fees.

(b) An applicant denied a license shall be given an opportunity to be reexamined after filing a new application and paying an additional application fee; provided, however, any applicant denied a license shall not be required to sit for and pass any written examination (testing experience and ability conducted either by the Board or a third party under contract with the Board) if application for a new license is made and a new license is issued within three years from the year the previous license was denied and the applicant has met all other requirements for licensure.

(c) An applicant who claims to have been wrongfully denied a license may request reconsideration of the Board's decision at any time within 45 days after the date of the Board's notice of

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denial. This request for reconsideration must be in writing and must include evidence that the Board relied on inaccurate or incomplete information in denying the applicant a license; evidence of rehabilitation or the elimination or cure of the grounds on which the denial was based; or other explanatory evidence bearing on the applicant's record. In connection with this request for reconsideration, the applicant shall be entitled to appear before the Board, or a committee thereof, in order to present the request. Applicants requesting reconsideration of denial shall be notified of the opportunity to appear before the Board by letter, mailed certified mail, return receipt requested, to the most recent address on file with the Board at least 15 days prior to the scheduled date of the hearing. In the event an applicant receives less than 15 days notice as described herein, the Board may grant a continuance until the next hearing date.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-7, 34-14A-8, 34-14A-11.

History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.

Amended: Filed September 4, 1998; effective October 9, 1998. **Amended:** Filed June 4, 1999; effective July 9, 1999.

465-X-3-.11 [Repealed effective January 13, 2012]

465-X-3-.12 [Repealed effective January 13, 2012]

465-X-3-.13 [Repealed effective January 13, 2012]

465-X-3-.14 [Repealed effective January 13, 2012]

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465-X-4.01 When Required; Failure for Timely Payment. An application for a license or any request for which a fee is required, must be accompanied by payment of the requisite fee in full, or else the application or request shall be denied.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-11.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993; Amendment and Emergency Amendment filed June 20, 1994; Emergency Amendment effective June 20, 1994; Amendment effective October 28, 1994.

465-X-4.02 Method of Payment; Time of Payment. Fees may be paid by a personal check, certified check, cashier's check, or money order. Fees are deemed paid when the funds represented by the check or money order actually are received by or made available to the Board's Executive Director.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-11.

History: Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993; Amendment and Emergency Amendment filed June 20, 1994; Emergency Amendment effective June 20, 1994; Amendment effective October 28, 1994.

465-X-4.03 Fees Not Refundable. No fee or part of a fee paid by an applicant for a license, or any request for which a fee is required, shall be refunded as a result of the revocation or suspension of the applicant's license. In the event an applicant fails to complete the application process successfully or to take or pass the examination (testing experience and ability, conducted either by the Board or a third party under contract with the Board), or the Board refuses to issue a license to an applicant, any license fee or Homeowners' Recovery Fund fee submitted as part of the application process shall be refunded to the applicant upon receipt of a written request for refund from the applicant, except the nonrefundable application processing fee.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-7, 34-14A-11.

History: Filed March 22, 1993. **New Rule:** Filed May 12, 1993, effective June 16, 1993.

Emergency Amendment: Filed June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994. Amendment and Emergency Amendment filed October 1, 1997; Emergency

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Amendment effective October 1, 1997. **Amended:** Filed January 28, 1998; effective March 4, 1998.
Amended: Filed May 6, 2002; effective June 10, 2002.

465-X-4-04 Fees. Fees shall be as follows:

- (1) Annual License Fee. 190.00
This fee must accompany the initial application for a license and each annual license renewal application.
- (2) Annual Homeowners' Recovery Fund Fee. 15.00
This fee must accompany all license applications and license renewal applications.
- (3) Nonrefundable Application Processing Fee For New Applicants. 100.00
Beginning January 1, 2012, this fee, along with the \$205 annual license fee, must accompany all applications submitted by applicants for a new license.
- (4) Nonrefundable Application Processing Fee For Applicants Holding Expired Licenses Less Than Three Years Old. 295.00
This fee, along with the annual license fee of \$205.00, must accompany all applications submitted by applicants holding expired licenses less than three years old, who desire to reactivate the expired license.
- (5) Inactive Fees. 100.00
This fee must accompany an application for an inactive license and each renewal inactive license application. Building officials applying for or renewing an inactive license are exempted from this fee.
- (6) Record Fee. 15.00
This fee must accompany a request for an applicant's examination records.
- (7) Late Fee. 50.00
This fee must accompany all license renewal applications received on December 1, or thereafter, of the year preceding the year for which the license is to be renewed. Building officials filing a late application for an inactive license are exempted from this fee.
- (8) Bad Check Fee. 30.00
Pursuant to Code of Ala. 1975, § 8-8-15, this fee must accompany any check, or other negotiable instrument drawn on a bank or other depository institution and made payable to the Board, if the instrument is not paid or is dishonored by the institution.
- (9) Application Package Fee. 25.00
Pursuant to Code of Ala. 1975, § 41-22-4(3), this fee must accompany a request for an application package for a new license to be mailed. The application package includes a copy of Code of Ala. 1975, § 34-14A-1 *et seq.*, administrative rules and necessary forms for licensure.

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Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-7, 34-14A-11, 34-14A-15.

History: Filed: March 22, 1993. **New Rule:** Filed: May 12, 1993, effective June 16, 1993. **Emergency Amendment:** Filed June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994. Amendment and Emergency Amendment filed October 1, 1997. Emergency Amendment effective October 1, 1997. **Amended:** Filed January 28, 1998; effective March 4, 1998. Amended: Filed September 4, 1998; effective October 9, 1998. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed March 7, 2008; effective April 11, 2008. **Amended:** Filed February 4, 2009; effective March 11, 2009. **Amended:** Filed June 17, 2010; effective July 23, 2010. **Amended:** Filed May 6, 2011; effective June 10, 2011. **Emergency Amendment:** Filed June 10, 2011. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-4.05 Additional Costs. Applicants required to provide to the Board specified information from third parties [including without limitations, credit reports and examination results (testing experience and ability)] shall pay the cost of obtaining such information directly to the provider, provided; however, the cost of obtaining such information shall be payable to the Board and the Board shall reimburse the provider for such cost where the Board and the provider have a contract which provides for payment to be handled in this manner.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-11. **History:** Filed: March 22, 1993.

New Rule: Filed: May 12, 1993, effective June 16, 1993. **Emergency Amendment:** Filed

June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994. Amendment and Emergency Amendment filed October 1, 1997. Emergency Amendment effective October 1, 1997.

Amended: Filed January 28, 1998; effective March 4, 1998.

465-X-4.06 Fee Adjustments. The Board may adjust fees as necessary to cover its operating costs.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-5, 34-14A-11.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

CHAPTER 465-X-5
ENFORCEMENT AND DISCIPLINARY ACTIONS

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465-X-5-.01 Violations of the Act. The municipal or county official charged with the responsibility of issuing building or similar permits shall report to the Executive Director the name and address of any person who, in the official's opinion, has violated the Act.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, § 34-14A-13.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

465-X-5-.02 Initiation of Proceedings.

(1) The Board may initiate such action as it deems appropriate to investigate and determine compliance by residential home builders and licensees with the provisions of the Act and the rules of the Board.

(2) Unless the Board initiates proceedings on its own motion, it shall take action only upon receipt of a written, sworn consumer complaint filed by an original homeowner, stating in detail the activities complained of and that the party is alleged to have engaged in, and presenting the evidence of when, where and how a violation occurred.

(3) An original homeowner submitting a consumer complaint may be required to support it by personal appearance before the Board. If, upon request by the Board, such person refuses to support the consumer complaint by a personal appearance, the Board, in its discretion, may choose to discontinue its investigation of the consumer complaint or dismiss a pending disciplinary action

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proceeding.

(4) An original homeowner submitting a consumer complaint shall submit the consumer complaint within six years of substantial completion of the construction, or within six years of the date the original homeowner took possession of the residence. Consumer complaints not submitted within six years of substantial completion of construction of the residence, or within six years of the date the original homeowner took possession of the residence, shall not be investigated by the Board.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-8, 34-14A-11

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993; Amendment and Emergency Amendment filed June 20, 1994; Emergency Amendment effective June 20, 1994; Amendment effective October 28, 1994.

Amended: Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-5-.03 Complaint Procedure.

(1) In the event a consumer complaint is filed against a licensee, residential home builder, or any other person within the Board's jurisdiction, or the Board determines from other information that an investigation is necessary, the procedure for investigation or complaint shall be as follows:

(a) Upon undertaking an investigation of a licensee, the Board shall notify the licensee of the investigation and the specific charges being investigated.

(b) If the residential home builder is engaging in the business of residential home building, the Board shall provide written notice, in the form of a stop work order, as prescribed at Ala. Code § 34-14A-14 (1975). If the residential home builder has engaged in the business of residential home building, the Board may notify the residential home builder of the requirements for licensure and the administrative, civil and criminal liability for a violation of the Act.

(c) Each year the Board shall designate a member and two alternate members to serve on an investigative committee. This investigative committee shall consist of the designated Board member, or a designated alternate member, the Executive Director, and the Board's attorney and shall investigate the information or complaint to determine whether there is probable cause for disciplinary and/or enforcement proceedings. The Board member or the alternate member who participates on the investigative committee shall not participate in any disciplinary proceedings arising from the investigation.

(d) The investigative committee may enter into informal settlements with the licensee or residential home builder it is investigating, provided each such settlement is ratified by the Board.

(e) At the end of the investigation, the investigative committee shall make a recommendation to the Board as to whether probable cause exists that a violation of the Act has occurred, and for the Board to initiate disciplinary proceedings and/or to forward any necessary information to the appropriate governmental authorities. If the investigative committee determines following its investigation that no probable cause exists, the proceedings will terminate.

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(2) In the event the investigative committee recommends that probable cause exists that a violation of the Act has occurred, the Board shall instruct its counsel to prepare a summons and complaint or notice and opportunity for hearing, or to forward information to the appropriate governmental authorities. The Board shall schedule a hearing to be held within three months from the filing of an administrative summons and complaint or notice and opportunity for hearing by the Board's Executive Director.

(3) The summons and complaint or notice and opportunity for hearing shall be mailed certified mail, return receipt requested, to the most recent address of the licensee on file with the Board at least 15 days prior to the scheduled date of the hearing. In the event the summons and complaint or notice and opportunity for hearing is refused or the return receipt has not been received by the Board or its attorney at least ten days before the scheduled hearing, the licensee may be served by mailing a copy of same first-class mail at least seven days before the hearing date.

(4) The summons and complaint or notice and opportunity for hearing shall give notice in substantial compliance with the Alabama Administrative Procedure Act, Section 12(b).

(5) In the event the Board instructs its counsel to forward information to the appropriate governmental authorities, information concerning the essential facts constituting a violation and an allegation that a violation of the Act has been committed should be provided to a magistrate or official authorized by law to issue warrants of arrest.

(6) If the person complained of is a member of the Board, that member shall be notified and thereafter shall not participate in any matter related to the complaint.

(7) The Board, in its discretion, may invoke the complaint procedures set forth in this chapter of these rules against any unlicensed residential home builder.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker, Kathy Perry Brasfield.

Statutory Authority: *Code of Ala. 1975*, §§ 34-14A-8, 34-14A-11, 41-22-1, *et seq.*

History: Filed: March 22, 1993. **New Rule:** Filed: May 12, 1993, effective June 16, 1993. Amendment and Emergency Amendment filed October 1, 1997. Emergency Amendment effective October 1, 1997.

Amended: Filed January 28, 1998; effective March 4, 1998. **Amended:** Filed November 2, 2001; effective December 7, 2001. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed Nov. 4, 2005; effective December 9, 2005. **Amended:** Filed August 4, 2006; effective September 8, 2006. **Amended:** Filed October 6, 2008; effective November 10, 2008. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-5-.04 Informal Settlement.

(1) No action shall be taken to effect an informal settlement of a controversy, either prior to or during a contested case proceeding, without formal approval by the Board of such action.

(2) Informal settlement negotiations may be initiated by either party to the controversy, provided that neither party is obligated to use informal procedures.

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(3) If the Board approves participation in an informal settlement procedure, it shall negotiate its settlement upon the terms it believes to be in the best interest of the Board and the public, and if the settlement is effectuated the terms of the settlement shall be incorporated, by reference, in the official minutes of the Board.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-8, 34-14A-11, § 41-22-12.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

465-X-5-.05 Prehearing Discovery.

(1) Prehearing discovery shall be permitted, at the discretion of the Chairman or the hearing officer, in order to prevent fraud, conserve the Board's time, prevent undue surprise at the hearing, or otherwise to provide fundamental fairness.

(2) The attorney for the Board or the respondent may, upon application to the Chairman or the hearing officer, obtain discovery regarding any matter not privileged that is relevant to the subject matter involved in the pending action, whether it relates to the charge of the Board or the defense of the respondent.

(3) Methods of discovery.

(a) Upon written application to the Chairman or the hearing officer, the following discovery may be allowed or ordered:

1. Deposition upon oral examination of any expert witnesses.
2. Interrogatories to respondent.
3. Order for production and copying of documents and things against any person.

(b) The discovery must be had in accordance with any terms and conditions imposed by the Chairman or the hearing officer. The Chairman or the hearing officer may impose any such terms and conditions as are just upon discovery in order to protect a person from annoyance, embarrassment, oppression, or undue burden and expense.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, § 34-14A-11.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993. **Amended:** Filed November 2, 2001; effective December 7, 2001. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-5-.06 Disciplinary Hearings.

(1) **Conduct of Hearing.**

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(a) Disciplinary hearings are closed to the public.

(b) The Board may, in its discretion, appoint some person to act on its behalf as hearing officer at disciplinary hearings. In the event a hearing officer is appointed, the officer shall preside at the hearing and shall rule on all questions of evidence and procedure, notwithstanding any other provisions of these Rules to the contrary. The Board, in its discretion and subject to the applicable provisions of the Alabama Administrative Procedure Act, may appoint a hearing officer to hear the evidence and submit a report to the Board, including recommended findings of fact and conclusions of law.

(c) The respondent shall plead either "guilty" or "not guilty" to the charges set forth in the complaint.

(d) Each side shall be permitted to make a short opening statement.

(e) The Executive Director, or a designee thereof, acting on behalf of the investigative committee, shall present its evidence, followed by the respondent, followed by rebuttal by the Executive Director or designee. Each witness called may be examined in the following manner:

1. Direct Examination.
2. Cross Examination.
3. Examination by Board.
4. Redirect Examination.
5. Recross Examination.
6. Re-examination by Board.

(f) Each side shall be permitted to make a short closing statement summarizing the evidence presented and urging the application of relevant law to the evidence presented.

(g) The Board may request one or both sides to prepare for the Board's consideration a proposed order of the Board including findings of fact, official notice, and conclusions of law. Underlying facts of record which support the findings should be cited.

(h) The Board shall issue an order within 30 days after either the hearing is concluded, if conducted by the Board, or the Board's receipt of the hearing officer's report, if the hearing was conducted by a hearing officer. The order shall include findings of fact, official notice taken and conclusions of law, stated separately. Parties shall be notified either personally or by certified mail, return receipt requested, of any order, and a copy of the final order shall be delivered and mailed to each party or to his or her attorney of record.

(2) **Evidence.** Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act, Section 13. The probable cause note, and any attachments thereto, shall be admitted

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into evidence as a portion of the complaint without further authentication.

(3) **Other.** The hearing otherwise shall be conducted in compliance with the provisions of the Alabama Administrative Procedure Act; however, 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 to be taken other than a public or private reprimand.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 41-22-1, *et seq.*

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 4, 2006; effective September 8, 2006.

465-X-5-.07 Discipline.

(1) **Revocation and Suspension of License and Imposition of Administrative Fines.** The Board may revoke or suspend the respondent's license as a residential home builder in Alabama, may require the successful completion of builder education course(s), and may levy and collect administrative fines not to exceed \$2,000 per violation of the Act or these rules:

(a) upon a finding by the Board or a court of competent jurisdiction that respondent has committed fraud or deceit in obtaining a license or has been guilty of gross negligence, incompetence, or misconduct in the practice of residential home building, or has violated the standards of practice;

(b) upon the Board's payment of any amount out of the Homeowners' Recovery Fund on behalf of the respondent; in this instance, the Board shall revoke the respondent's license as a residential home builder in Alabama;

(c) upon a finding by the Board that, in the case of a partnership, corporate, or limited liability company licensee, the licensee's designated qualifying representative has ceased to be a general partner, officer, member (in the case of a member-managed limited liability company) or manager (in the case of a manager-managed limited liability company) of the licensee and no other general partner, officer, member (in the case of a member-managed limited liability company) or manager (in the case of a manager-managed limited liability company) has been designated to the Board as the licensee's successor qualifying representative within 45 days after the original designated qualifying representative ceased to serve in that capacity.

(d) upon a finding by the Board that a licensee has failed to notify the Board in writing, by certified mail, as required by the Act and these rules, of any of the following:

1. The institution of any criminal prosecution against him or her, including a copy of any indictment or information making the charges.

2. The institution of any civil action against him or her involving a residential home building transaction or the goodwill of an existing home building business or licensee, including a copy of the complaint.

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3. In a criminal action, the rendering of any final verdict or the dismissal of any charges against him or her, including a copy of the court order or other document giving the licensee such notice.

4. In a civil action, the entering of a judgment or the dismissal of a complaint against him or her, including a copy of the court order or other document giving the licensee such notice.

(e) upon a finding by the Board that the licensee has failed to use a valid written contract when engaging in the business of residential home building.

(f) upon a finding by the Board that the licensee has engaged in the business of residential home building outside or beyond the scope of the license.

(g) upon a finding by the Board that the licensee has failed to comply with any requirement of the Act or these rules.

(2) **Stay of Execution of Order.** The Board may, in its discretion, permanently or temporarily stay the execution of its order to revoke or suspend the respondent's license; provided, however, the Board shall not stay the execution of its revocation order if the respondent has failed to repay any amount paid on the respondent's behalf out of the Homeowners' Recovery Fund. The stay may be conditioned on any provision the Board deems appropriate under all the circumstances of a particular case.

(3) **Considerations.** In determining whether a license should be revoked or suspended and whether execution of a revocation or suspension order should be stayed, and if so, under what conditions, the Board shall consider all the relevant factors, including, but not limited to, the following:

- (a) The severity of the offense;
- (b) The danger to the public;
- (c) The number of repetitions of offenses;
- (d) The length of time since the date of violation;
- (e) The number of complaints filed against the licensee;
- (f) The licensee's experience;
- (g) The actual damage, physical or otherwise, to the complainant;
- (h) The deterrent effect of the penalty imposed;
- (i) Any efforts at rehabilitation; and
- (j) Any other mitigating or aggravating circumstances.

(4) **Surrender of License.** Upon the Board's revocation or suspension of a license, the

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licensee promptly shall surrender to the Board the license card issued to the licensee.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14A-8, 34-14A-11, 34-14A-15.

History: Filed: March 22, 1993. **New Rule:** Filed: May 12, 1993, effective June 16, 1993. **Emergency Amended:** Filed June 20, 1994. **Amended:** Filed September 23, 1994; effective October 28, 1994. Amendment and Emergency Amendment filed October 1, 1997. Emergency Amendment effective October 1, 1997. **Amended:** Filed January 28, 1998; effective March 4, 1998. **Amended:** Filed November 2, 2001; effective December 7, 2001. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 4, 2006; effective September 8, 2006. **Amended:** Filed October 6, 2008; effective November 10, 2008. **Emergency Amendment:** Filed May 31, 2011. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-5-.08 [Repealed effective June 20, 1994]

465-X-5-.09 Appeal. A licensee whose license has been revoked or who otherwise has been the subject of a final disciplinary action may appeal the Board's order to the circuit court of the county within which the licensee resides or, if the licensee is not an Alabama resident, to the Circuit Court of Montgomery County. The circuit court shall determine whether the Board's order is supported by substantial evidence. Any such licensee must file with the Board written notice of his intention to appeal within 30 days of receipt by the licensee of the Board's final order and must file a petition for judicial review in the appropriate court within 30 days after filing the notice of appeal with the Board.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 34-14A-8, 41-22-20.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993. **Amended:** Filed August 4, 2006; effective September 8, 2006.

465-X-5-.10 Reissuance or Reinstatement Of License After Revocation or Suspension.

(1) **Application for Reissuance or Reinstatement.** Any licensee whose license has been revoked or suspended may apply to the Board for reissuance or reinstatement of the license at any time; provided, however, the Board shall not consider an application for reissuance or reinstatement if the applicant has failed to repay any amount paid on the applicant's behalf out of the Homeowners' Recovery Fund. In the application for reissuance or reinstatement, the applicant shall state why the license should be reissued or reinstated and shall specifically set forth any change in circumstances that would justify the reissuance or reinstatement. The application for reissuance or reinstatement must include evidence that the applicant meets the current licensure requirements for, and unless excused by the Board the applicant must qualify for, licensure through all the procedures as set forth in § 465-X-3-.04(3) of these rules.

(2) **Board Action.** Upon receipt of such application, the Board may grant the applicant a hearing on reissuance or reinstatement, at which time the applicant may appeal to the Board to reissue or reinstate the applicant's license. The Board shall reissue or reinstate the applicant's license if four or more members of the Board vote in favor of the reissuance or reinstatement.

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Authors: David R. Boyd, Dorman Walker, Lois Woodward, Beth Acker, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-8, 34-14A-11.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993; Amendment and Emergency Amendment filed October 1, 1997. Emergency Amendment effective October 1, 1997. **Amended:** Filed January 28, 1998; effective March 4, 1998. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Emergency Amendment:** Filed May 31, 2011. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-5-11 Conflict or Bias.

(1) No Board member shall be entitled to vote or otherwise participate in any hearing or disciplinary matter if the Board member is personally biased for or against the respondent or when such voting or participation would violate the provisions of the Alabama Administrative Procedure Act, Section 18(a).

(2) Any party in a hearing or respondent in a disciplinary action who wishes to assert bias or conflict may do so by filing with the Executive Director at least three days before the scheduled hearing a suggestion of disqualification and a supporting affidavit setting forth the factual basis for the suggestion.

(3) The Board or hearing officer shall consider the suggestion of disqualification on the record as a preliminary matter at the hearing before any other question is decided.

Authors: David R. Boyd, Dorman Walker, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 41-22-18(a).

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993. **Amended:** Filed May 6, 2002; effective June 10, 2002.

465-X-5-12 Temporary Restraining Orders and Other Injunctive Relief. Upon receipt of evidence that a residential home builder has violated or is about to violate the Act or the rules of the Board, the Executive Director, acting on the instructions of the Board, may petition the Circuit Court of the county in which the violation occurred or is about to occur to issue a temporary restraining order or other appropriate injunctive relief enjoining such violation.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 34-14A-14.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

465-X-5-13 Institution of Criminal Proceedings. Upon receipt of evidence that any person has:

(1) Undertaken or attempted to undertake the business of residential home building without first having procured a valid license as required by the act,

(2) Knowingly presented to or filed false information with the Board for the purpose of obtaining a license, or

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(3) Violated any law or code adopted by a county commission under the provisions of the Act, the Executive Director, acting on the instructions of the Board, shall present such evidence to the appropriate governmental authority within the county in which the residential home builder has acted and may file a complaint regarding the violations directly with the sheriff in the appropriate county.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 34-14A-13, 34-14A-14.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

465-X-5-.14 Public Records-Public Information.

(1) The Board must release the following information to the public regarding complaint and investigation files, disciplinary action proceedings:

(a) A settlement agreement adopted and ratified by the Board that closes a complaint file and represents the Board's final decision in the disciplinary action proceedings,

(b) The formal charges against a residential home builder filed by the Board's executive secretary and any amendments thereto, orders to show cause, and

(c) The Board's final decision in disciplinary action proceedings entered after a formal disciplinary action hearing.

(2) Disciplinary action hearings shall not be open to the public.

Authors: Beth Acker; Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 13A-14-2(a), 34-14A-8, 36-12-40, 41-22-12(g).

History: New Rule: New Rule and Emergency Rule filed October 1, 1997; Emergency Rule effective October 1, 1997. New Rule filed January 28, 1998. **Amended:** Filed August 4, 2006; effective September 8, 2006. **Amended: Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-5-.15 Public Records-Confidential Information.

(1) All records, reports, documents, photographs, and information contained in complaint and investigation files maintained by the Board, and the entire record in disciplinary action proceedings shall be confidential, shall not be public record, and shall not be available for court subpoena or for discovery in civil proceedings.

(2) The Board reserves the right to appeal a decision of a court, where the court orders disclosure in violation of applicable Alabama statutes and case law.

Authors: Beth Acker; Kathy Perry Brasfield.

Statutory Authority: Code of Ala. 1975, §§ 13A-14-2(a), 34-14A-8, 36-12-40, 41-22-12(g).

History: New Rule: New Rule and Emergency Rule filed October 1, 1997. Emergency Rule

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effective October 1, 1997. New Rule filed January 28, 1998. **Amended:** Filed August 4, 2006; effective September 8, 2006.

CHAPTER 465-X-6
AMENDMENT OF RULES

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465-X-6.01

Petition for Adoption of Rules

465-X-6.01 Petition for Adoption of Rules.

(1) Any person who wishes to propose that the Board adopt, repeal, or amend any rule may do so on the form prescribed by the Board and available from the Executive Director.

(2) The Board shall meet and consider any petition of adoption, repeal, or amendment within 60 days of its submission.

Authors: David R. Boyd, Dorman Walker, Lois Woodward

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 41-4-16, 41-4-35, 41-15-9, 41-22-8.

History: Original Rule and Emergency Rule filed March 22, 1993; Emergency Rule effective March 22, 1993; Permanent Rule effective June 16, 1993.

**CHAPTER 465-X-7
HOMEOWNERS' RECOVERY FUND**

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465-X-7-.01	Homeowners' Recovery Fund
465-X-7-.02	Procedure for Making a Claim Against the Homeowners' Recovery Fund
465-X-7-.03	Subrogation
465-X-7-.04	Repayments To Homeowners' Recovery Fund

465-X-7-.01 Homeowners' Recovery Fund. An aggrieved homeowner who contracts directly with a licensee of the Board may recover, from the Homeowners' Recovery Fund, actual economic damages sustained within the State of Alabama as the direct result of the licensee's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation by the licensee of the rules and regulations of the Board, provided that the aggrieved homeowner has obtained a valid judgment, excluding a consent judgment, and has exercised reasonable efforts to obtain a satisfaction of the judgment from the licensee prior to making a claim against the Homeowners' Recovery Fund. Actual economic damages is the reasonable cost of repairing the damages, other than minor cosmetic damages, sustained by a homeowner as the direct result of a licensed home builder's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation by a licensed residential home builder of the rules and regulations of the Board. Actual economic damages shall be supported by an itemized list of the actual economic damages incurred by the homeowner, a description of the repairs reasonable and necessary to correct the damages, and an estimate, by a licensee of the Board holding the type license required to perform the scope of the work included in the estimate, of the reasonable cost of making the repairs. Actual economic damages shall not include interest, damages awarded for pain and suffering or mental anguish, damages awarded for loss of consortium, damages which are the result of acts of the homeowner, court costs or attorney fees.

Author: Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 34-14A-15

History: Original rule filed: May 5, 1999; effective June 9, 1999. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-7-.02 Procedure for Making a Claim Against the Homeowners' Recovery Fund.

(1) The following procedure shall be followed by a homeowner when making a claim against the Homeowners' Recovery Fund for actual economic damages sustained within the State of Alabama as the direct result of a licensed residential home builder's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation by a licensed residential home builder of the rules and regulations of the Board:

(a) The homeowner shall notify the Board in writing, by certified mail, at the time a civil action is commenced (not later than 10 days from the date on which the complaint is filed with the court), which may result in liability for the Homeowners' Recovery Fund. The homeowner shall include with the notice a copy of the civil complaint which has been filed in the appropriate court.

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(b) The homeowner shall submit to the Board a sworn written complaint, on a form prescribed by the Board, stating in detail the activities complained of and the activities the licensee is alleged to have engaged in.

(c) When the Board receives proper notice that a civil action has been commenced which may result in liability for the Homeowners' Recovery Fund, the Board may, at any time during the course of the proceedings, 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.

(d) Upon receipt of the homeowner's sworn written complaint, on a form prescribed by the Board, stating in detail the activities complained of and that the licensee is alleged to have engaged in, the Board will investigate the matter as prescribed at 465-X-5-.03.

(e) In order for the Homeowners' Recovery Fund to be liable to a homeowner, the homeowner shall first obtain a valid judgment, excluding a consent judgment, from a court of competent jurisdiction against the licensed home builder and said judgment shall be based on the licensed home builder's gross negligence, incompetence, and/or misconduct in the practice of residential home building or a violation of the rules and regulations of the Board. The licensed home builder must have been licensed at the time the acts constituting gross negligence, incompetence, or misconduct in the practice of residential home building were committed or the violation of the rules and regulations of the Board occurred and at the time the parties entered into the construction contract.

(f) After a homeowner obtains a valid judgment, excluding a consent judgment, in a court of competent jurisdiction against a licensed home builder on the grounds of gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation of the rules and regulations of the Board, the homeowner shall, when the judgment is final, make reasonable efforts to collect the judgment from the licensed home builder. Thereafter, if the homeowner desires to seek recovery from the Homeowners' Recovery Fund, the homeowner shall:

1. File a verified claim for actual economic damages in the court in which the judgment was entered; and,

2. Give the Board 30 days written notice that the homeowner intends to apply to the court for an order directing payment out of the Homeowners' Recovery Fund of the amount remaining unpaid on the judgment. Said notice shall include:

(i) The date the judgment was entered by the court, the amount of the judgment, and the amount of the judgment attributable to actual economic damages; and,

(ii) An itemized list of the actual economic damages incurred which forms the basis of the aggrieved homeowner's claim against the Homeowners' Recovery Fund. This list shall include the actual economic damages incurred by the homeowner, a description of the repairs reasonable and necessary to correct the damages, and an estimate, submitted by a licensee of the Board holding the type license required to perform the scope of the work included in the estimate, of the reasonable cost of

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repairing the damages incurred. The homeowner shall also submit copies of the contract(s) entered into by the parties and any building specifications and/or construction drawings used in building the residence; and,

(iii) The amount owing on the judgment. In showing the amount owing on the judgment, the homeowner shall show evidence of reasonable efforts made by the homeowner to collect the judgment from the licensed home builder/judgment debtor. The homeowner shall provide documentation showing: steps taken by the homeowner to locate the licensed home builder/judgment debtor; steps taken by the homeowner to discover if the licensed home builder/judgment debtor has assets from which to collect the judgment, including but not limited to bank accounts, real and/or business property and equipment; steps taken by the homeowner to determine whether the licensed home builder is insured and if insured, that the homeowner has filed a claim with the licensed home builder's/judgment debtor's insurance carrier; steps taken by the homeowner to file a lien against the licensed home builder/judgment debtor; and, steps taken by the homeowner to file a garnishment against the licensed home builder/judgment debtor.

(g) After expiration of the 30 day notice requirement, the homeowner shall make application to the court for an order directing payment out of the Homeowners' Recovery Fund. When the homeowner's application to the court for an order directing payment out of the Homeowners' Recovery Fund is set for hearing, the homeowner shall be required to show:

1. That 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; and,
2. That he or she has obtained a judgment, other than a consent judgment, based on the gross negligence, incompetence and/or misconduct of a licensed home builder in the practice of residential home building or a violation by a licensed home builder of the rules and regulations of the Board; and,
3. That the licensed home builder was licensed at the time the parties entered into the construction contract, and at the time of the occurrence of the acts which form the basis of the complaint and which resulted in a judgment for the homeowner based on the licensed home builder's gross negligence, incompetence, and/or misconduct in the practice of residential home building or a violation by a licensed home builder of the rules and regulations of the Board and,
4. The amount of the judgment awarded by the court and the amount of the judgment attributable to actual economic damages, i.e., the reasonable cost of repairing the damages, other than minor cosmetic damages, sustained by the homeowner as the direct result of the licensed home builder's gross negligence, incompetence and/or misconduct in the practice of residential home building or a violation of the rules and regulations of the Board. Actual economic damages shall not include interest, damages awarded for pain and suffering or mental anguish, damages awarded for loss of consortium, damages which are the result of acts of the homeowner, court costs or attorney fees. The evidence required to show actual economic damages shall include, but not be limited to, an itemized list of the damages incurred, a description of the repairs reasonable and necessary to correct the damages and an estimate, submitted by a licensee of the Board holding the type license required to perform the scope of the work included in the estimate, of the reasonable cost of repairing said damages; and,

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5. That the homeowner has joined any and all bonding companies which issued corporate surety bonds to the judgment debtor as principal and all other necessary parties; and,

6. That the following items, if recovered by the homeowner, have been applied to the actual economic damages:

- (i) Any amount recovered from the judgment debtor.
- (ii) Any amount recovered from bonding companies.
- (iii) Any amount recovered in out-of-court settlements.

(2) The Board may review and challenge the actual economic damages submitted by the homeowner and the Board may submit evidence to dispute said damages. The Board may also challenge, as inadequate, the steps taken by the homeowner to collect the judgment.

(3) Failure of the homeowner to follow the provisions set forth in this chapter of these Rules for making a claim against the Homeowners' Recovery Fund shall preclude payment from the Fund.

Author: Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-8, 34-14A-11, 34-14A-15.

History: Original rule filed: May 5, 1999; effective June 9, 1999. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-7-.03 Subrogation. If the Court orders the Board to pay any sum from the Homeowners' Recovery Fund, the Board shall be subrogated to all the rights of the homeowner/judgment creditor. As the judgment creditor, the homeowner to whom any sum from the Homeowners' Recovery Fund was paid shall execute an Assignment of Rights, assigning to the Board all of his/her/its rights, title, and interest in the judgment, to the extent of the amount paid from the Homeowners' Recovery Fund, to the Board.

Author: Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-11, 34-14A-15.

History: Original rule filed: May 5, 1999; effective June 9, 1999. **Amended:** Filed May 6, 2002; effective June 10, 2002. **Amended:** Filed August 25, 2011; effective September 29, 2011.

465-X-7-.04 Repayments to Recovery Fund.

(1) 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, the Board may terminate the following licenses:

- (a) The license of the licensee,
- (b) Any individual license held by the licensee's qualifying representative,
- (c) The licenses of any entities with the same qualifying representative as the licensee.

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(2) The Board may refuse to issue a new license to any of the licensees or individuals listed in subsection (1)(a)-(c) above until the amount paid out of the Homeowners' Recovery Fund on behalf of the licensee has been repaid in full, plus interest at the rate of twelve percent (12%) per annum.

Authors: David R. Boyd, Lois Woodward, Kathy Perry Brasfield

Statutory Authority: Code of Ala. 1975, §§ 34-14A-8, 34-14A-11, 34-14A-15.

History: Original Rule and Emergency Rule filed June 20, 1994; Emergency Rule effective June 20, 1994; Permanent Rule effective October 28, 1994. **Amended:** Filed May 5, 1999; effective June 9, 1999. **Amended:** Filed May 6, 2002; effective June 10, 2002.

**APPENDIX A
PRESCRIBED FORMS**

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**APPENDIX A-2
PETITION FOR ADOPTION OF RULE**

I. *Petitioner.*

Name: _____

Address: _____

Telephone: _____

II. *Character of Change.*

I propose that the Home Builders Licensure Board

- A. adopt the following rule.
- B. amend rule as follows.
- C. repeal rule in total.

III. *Text of Proposed Rule.*

If you check "A" above, attach a typed copy of the rule you propose.

If you check "B" above, attach a typed copy of the currently effective rule, adding any proposed language. Proposed new language should be underlined and proposed deletions should be stricken through. For example, if a rule currently provided that "Board meetings are held on Mondays and Fridays" and you wish to change meeting days to Tuesdays and Fridays, you should type "Board meetings are held on ~~Mondays~~ Tuesdays and Fridays."

If you check "C" above, skip this and go to Part IV. (Use additional sheets if necessary.)

IV. *Purpose of Change.*

Briefly describe on additional sheets the effect of this change and why you believe the change should be made.

V. *Signature.* _____

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**APPENDIX A-3
PETITION FOR DECLARATORY RULING**
On Rule No. _____

1. ***Petitioner.***

Name: _____

Address: _____

Telephone: _____

2. All rules or statutes that may be involved in the petition, if known: _____

3. Clear and concise statement of the precise factual situation involved: _____

4. The exact question to which an answer is desired: _____

5. The reason for submitting the petition: _____

6. Full disclosure of the petitioner's interest: _____

7. Statement as to whether the petitioner's case is presently under consideration by the Home Builders Licensure Board or in any pending proceeding: _____

8. ***Affidavit Certification:***

Signature of Petitioner _____

Sworn to and subscribed before me this the ____ day of _____, _____.

(Notary Public)