

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 465 Department or Agency Home Builders Licensure Board  
Rule No. 465-X-1.01  
Rule Title: Definition of Terms  
         New     X     Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?         No        

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?         Yes        

Is there another, less restrictive method of regulation available that could adequately protect the public?         No        

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?         No        

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?         No        

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?         Yes        

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule?         No        

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Does the proposed rule have an economic impact?         No        

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer   
Date June 20, 2018

(DATE FILED)  
(STAMP)

HOME BUILDERS LICENSURE BOARD

CHAPTER 465-X-1  
DEFINITIONS

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Definition of Terms

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Definition Of Terms.

(1) Code of Ala. 1975, § 34-14A-2, provides for definitions of the following terms: Board, Cost of the Undertaking, Homeowner, Improvement, Residential Home Builder, Home Builders Licensure Board, Homeowner, Contracting, Licensee, License, Inactive License, License, Licensee, Person, Qualifying Representative, Residence, Residential Home Builder, Residential Roofer, Structure, and Transaction. Residential remodelers are included within the definition of "Residential Home Builder."

(2) Act. The term "Act" as used in these rules shall mean Title 34, Chapter 14A of the Code of Ala. 1975 regulating the home building and home improvement industries.

(3) Agricultural Buildings. A building, not meeting the definition of residence or structure within the Act, and used for raising, harvesting, and selling crops or for the feeding, breeding, management, raising, sale of, or the production of livestock, including beef cattle, sheep, swine, horses, ponies, mules, poultry, fur-bearing animals, honeybees, and fish, or for dairying and the sale of dairy products, or for the growing and sale of timber and forest products, or any other agricultural or horticultural use or animal husbandry and any combination thereof pursuant to Ala. Code § 40-8-1(b)(1).

(43) Alabama Administrative Procedure Act. The term "Alabama Administrative Procedure Act" refers to the act codified at Title 41, Chapter 22 of the Code of Ala. 1975.

(5) Gross Negligence. 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.

(46) Homeowners' Recovery Fund. The term "Homeowners' Recovery Fund" as used in these rules shall mean that special fund deposited into the State Treasury and held by the Board in trust for the purpose of carrying out the provisions of Section 15 of the Act.

(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) Incompetence. 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.

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(8) Misconduct. 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.

(109) Repair, improvement, or reimprovement. The term "repair, improvement, or reimprovement" as used in Code of Ala. 1975, § 34-14A-2(110) 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. The term "improvement" is defined by Ala. Code § 34-14A-2(4).

(10) Residential Roofing. The term "residential roofing" as used in these rules shall mean installing products or repairing surfaces on the external upper covering of a residence or structure that seals, waterproofs, or weatherproofs the residence or the structure, when the cost of the undertaking exceeds \$2,500.

(11) Single Lot. The term "single lot" as used in Ala. Code § 34-14A-2(13) and as used in these rules shall mean:

(a) A single lot as prescribed by local zoning ordinances or building codes.

(b) Builders who construct or offer to construct more than four (4) residences on a single lot, including site-built homes, condominiums, duplexes, or multi-unit residential buildings consisting of more than four (4) residential units are subject to the jurisdiction of the Alabama Licensing Board for General Contractors.

(~~§1244~~) Violation of the Act. The term "violation of the Act" as used in these rules shall mean any of the following:

(a) That a licensee:

1. has committed fraud or deceit in obtaining a license,
2. is guilty of gross negligence, incompetence, or misconduct in the practice of residential home building,
3. has failed to maintain a valid license,
4. has performed residential construction activity outside or beyond the scope of the license issued,
5. has violated any applicable building law or code adopted by a county or municipality

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pursuant to Section 12 of the Act, or

6. has failed to repay any amount paid out of the Homeowners' Recovery Fund on behalf of the licensee; or

7. has failed to disclose to a homeowner the status of its insurance in compliance with Act 18-398,

8. has failed to disclose compliance with a program designed to enhance the resiliency of the structure beyond the requirements of the applicable building codes in writing prior to the commencement of construction pursuant to the requirements of Ala. Code § 34-14A-7(g),

9. has failed to notify the board within 10 days after notice of the institution of a felony criminal prosecution against the licensee or the designated qualifying representative of the licensee pursuant to the requirements of Ala. Code § 34-14A-7(e)(1),

10. has failed to notify the board within 10 days after notice of any criminal verdict rendered against the licensee or the designated qualifying representative of the licensee, or that a pending criminal action has been dismissed pursuant to the requirements of Ala. Code § 34-14A-7(e)(2),

11. has failed to use a valid written contract including offer and acceptance indicated by the signing of all parties,

12. has used the Home Builders Licensure Board logo for commercial purposes as set forth in Ala. Code § 13A-10-13; or

(b) That a residential home builder has failed to procure a valid 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.~~

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**Statutory Authority:** Code of Ala. 1975, §§ 13A-10-13; 34-14A-1, 34-14A-2, 34-14A-7, 34-14A-8, 34-14A-11, 34-14A-14, 34-14A-15. Act 2018-398.

**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. **Amended:** Filed \_\_\_\_\_; effective \_\_\_\_\_.