

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 465 Department or Agency Home Builders Licensure Board  
Rule No. 465-X-5.07  
Rule Title: Discipline  
         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**  
**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Home Builders Licensure Board

**RULE NO. & TITLE:**

Ala. Admin. Code r. 465-X-5-.03. Complaint Procedure.

Ala. Admin. Code r. 465-X-5-.06. Disciplinary Hearings.

Ala. Admin. Code r. 465-X-5-.07. Discipline.

**INTENDED ACTION:** Amend rules.

**SUBSTANCE OF PROPOSED ACTION:**

The amendment of Ala. Admin. Code r. 465-X-5-.03 adds residential roofers and clarifies complaint procedure.

The amendment of the Ala. Admin. Code r. 465-X-5-.06 sets out procedure for imposing fine for disciplinary hearing.

The amendment of the Ala. Admin. Code r. 465-X-5-.07 removed requirement for licensees to inform Board of civil complaints.

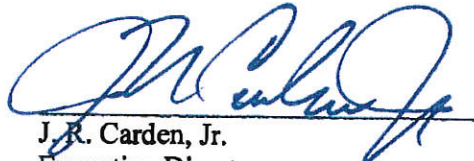
**TIME, PLACE, MANNER OF PRESENTING VIEWS:**

All interested parties may submit data, views or arguments respecting the proposed amendment by mail or in person for the 35-day period beginning June 29, 2018. Persons wishing to submit data, views or arguments orally should contact the Board's executive director between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, excluding State holidays, at 334-242-2230, to set up an appointment for such oral presentations.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:** August 25, 2018

**CONTACT PERSON AT AGENCY:**

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J.R. Carden, Jr.  
Executive Director

**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\_5,000 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 felony 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.~~

3. ~~In any a felony~~ 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.

(h) upon a finding by the Board that the licensee has failed to maintain the required bond.

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

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