

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 780 Department or Agency Alabama Real Estate Appraiser Board

Rule No. 780-X-17

Rule Title: Appraisal Management Company

New Amend Repeal Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

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? N/A

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 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.

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 Reference Service.

Signature of certifying officer *J. Lisa Brooks*

Date 6-30-11

Alabama Real Estate Appraisers Board

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Real Estate Appraisers Board

RULE NO. & TITLE: 780-X-17
Appraisal Management Company.


INTENDED ACTION: New Chapter

SUBSTANCE OF PROPOSED ACTION: To adopt regulations for the registration and regulation of Appraisal Management Companies who do business in Alabama.

TIME, PLACE, MANNER OF PRESENTING VIEWS: Interested persons may submit their views regarding the proposed amended rule in writing to the Alabama Real Estate Appraisers Board, P.O. Box 304355, Montgomery, Alabama 36130-4355 no later than September 15, 2011 at 11:00 A.M..

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: Written comments concerning this change must be received by the Alabama Real Estate Appraisers Board no later than September 15, 2011 at 11:00 A.M.. 100 North Union Street, 3rd Floor Conference Room, Montgomery, Alabama.

CONTACT PERSON AT AGENCY: Neva C. Conway
Assistant Attorney General



Lisa Brooks, Executive Director

**ALABAMA REAL ESTATE APPRAISERS BOARD
ADMINISTRATIVE CODE**

**CHAPTER 780-X-17
APPRAISAL MANAGEMENT COMPANY**

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780-X-17-.01 Form. An appraisal management company that wishes to file an application for an appraisal management company certificate of registration may obtain the required form upon request to the Board. The form calls for information such as:

- (1) the legal name of the applicant;
- (2) the business, physical, and email address of the applicant;
- (3) a telephone number and other contact information for the applicant;

- (4) the name, address, and contact information of a principal contact for the applicant;
- (5) any past criminal conviction of and any pending criminal charge against any person or entity that owns ten percent or more of the appraisal management company;
- (6) any past revocation, suspension or denial of an appraisal license of any person or entity that owns ten percent or more of the appraisal management company;
- (7) if a general partnership, a description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (8) if a business entity other than a corporation, limited liability company or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents;
- (9) if a foreign business entity, a certificate of authority to transact business in Alabama and an executive consent to service of process and pleadings;
- (10) certification that the applicant verifies that any person added to an appraiser panel of the applicant, for the purpose of appraising property within Alabama, holds a license in good standing in Alabama;
- (11) certification that the applicant requires that all appraisers shall have geographic competency to perform an appraisal assignment;
- (12) certification that the applicant reviews the work of all appraisers that are performing real estate appraisal services for the applicant on a periodic basis to verify that the real estate appraisal services are being conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP);
- (13) certification that the applicant maintains records of each service request that it receives and

identification of the appraiser that performs the real estate appraisal services for the applicant;

- (14) certification that the applicant has a system in place to require that appraisals are conducted independently and free from inappropriate influence and coercion as required by the appraisal independence standards established under Section 129E of the Truth and Lending Act, including the requirement that fee appraisers be compensated at a customary and reasonable rate when the appraisal management company is providing services for a consumer credit transaction secured by the principal dwelling of the consumer;
- (15) any other information required by the board and reasonably necessary to complete registration; and
- (16) incomplete applications shall not be acted upon by the Board.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-51, 34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.02 Filing and Fees.

(a) Each application for registration shall be TYPED and accompanied by the required application fee. The Board shall reject and return to the applicant any application, which is incomplete or not accompanied by the required fee or fees. Application fees accompanying complete applications are not refundable.

(b) The Board shall set and regulate fees necessary for it's operation as self-sustaining Board. The application fee shall be thirty-five hundred dollars (\$3500).

(c) Payment of application fees shall be made by certified check, bank check or money order payable to the Alabama Real Estate Appraisers and Appraisal Management Company Registration and Regulation Board.

(d) Registration granted by the Board shall be valid for one year from the date on which it is issued.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-51, 34-27A-54, 34-27A-55.

History: New Rule: Filed June 30, 2011.

780-X-17-.03 Registration.

(a) An appraisal management company applying for registration in Alabama may not be owned, in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any state unless the license or registration has been restored or reissued.

(b) An appraisal management company applying for registration in Alabama may not employ for the purposes of appraisal review, analysis, or performance evaluation any person who has ever had a registration, license, or certificate to act as an appraiser in Alabama or any other state refused, denied, canceled, or revoked unless a registration, license, or certificate has subsequently been issued or reinstated by the state in which the appraisal registration, license, or certificate had been refused, denied, canceled, or revoked.

(c) An employee of an appraisal management company, or any contractor working in any capacity on behalf of an appraisal management company, that has any involvement in the actual performance of appraisal services, or the review and analysis or completed appraisals in Alabama shall be an appraiser certified in Alabama. The license classification shall qualify the employee to perform all applicable job functions.

(d) An appraisal management company applying for registration in Alabama shall designate one principal contact for all communication between the Board and the appraisal management company.

(e) The Board shall obtain a criminal background check on all applicants. Applicants shall pay all required fees required to perform this check.

(f) In addition to the application fee an applicant for registration shall post with the Board a surety bond in the amount of twenty-five thousand dollars (\$25,000). The bond shall be annually maintained on renewal. The bond shall be in a form as provided in the appendix of these regulations and shall accrue to the state for the benefit of a claimant against the registrant to secure the faithful performance of obligations under this article. The aggregate liability of the surety may not exceed the principal sum of the bond.

(g) An appropriate deposit of cash or security may be accepted by the Board in lieu of the required bond. The face amount of the bond shall annually be restored upon renewal of registration. Annual renewal of registration shall occur before the expiration date of the registration. Failure to timely renew registration shall result in loss of authority to operate an appraisal management company in Alabama. Request for reinstatement after expiration shall be accompanied by the annual registration fee and any late filing fee established by Board regulation.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.04 Registration Renewal.

(a) All registrations expire one year from the date of issuance and annually thereafter.

(b) A holder of an appraisal management company registration desiring the renewal of such registration shall apply in writing upon the form provided by the Board and shall forward the renewal fee. The renewal fee shall be two thousand dollars (\$2000). Forms are available upon request to the Board. The renewal fee is not refundable under any circumstances.

(c) The Board shall establish a late renewal fee deemed necessary by the Board.

(d) Any company who acts or holds itself out as a registered appraisal management company while its appraisal management company registration is expired is subject to disciplinary action and penalties as prescribed 780-X-17-.19(a).

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.05 Expired Registration.

(a) Expired registrations may be reinstated within six (6) months after expiration upon proper application and payment to the Board of the renewal fee of two thousand dollars (\$2000) and the late filing fee of one thousand dollars (\$1000) for each

month or part thereof that the registration is lapsed, not to exceed five thousand dollars (\$5000).

(b) Reinstatement is not retroactive.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.06 Payment of Fees to the Board.

(a) Checks given the Board in payment of fees that are returned unpaid are cause for registration denial, suspension or revocation.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.07 Use of Registration Number.

(a) The Board shall issue a unique registration number to each appraisal management company and shall annually publish a list of registered appraisal management companies and their corresponding registration numbers.

(b) Each appraisal management company shall include its registration number on all engagement letters for appraisals in Alabama.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-56.

History: New Rule: Filed June 30, 2011.

780-X-17-.08 Change of Name or Contact Information.

(a) Appraisal management companies shall notify the Board in writing of each change of trade name, business address, telephone number, or email address within ten (10) days of said change. The Board may levy a fine of two hundred (\$200) to any appraisal management company who does not give written notification within ten (10) days.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.09 Appraiser Qualifications.

(a) An appraisal management company shall annually certify to the Board, on a form prescribed by the Board, that any appraiser being added to its appraiser panel to appraise properties in Alabama holds a license in good standing in Alabama. The appraisal management company shall verify the status of the appraiser by contacting the Alabama Board or by utilizing the National Registry of the Appraisal Subcommittee.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-57.

History: New Rule: Filed June 30, 2011.

780-X-17-.10 Appraisal Review.

(a) An appraisal management company shall annually certify to the Board, on a form prescribed by the Board, that the appraisal management company periodically reviews the work of all appraisers performing appraisals and appraisal reviews for the appraisal management company to verify that the appraisals are being conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). An appraisal management company is not required to review all appraisals performed by each appraiser, but may choose a representative sample of each appraiser's reports. Record of the samples selected for compliance review shall be kept for a period of five (5) years from the date of the compliance review.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-57.

History: New Rule: Filed June 30, 2011.

780-X-17-.11 Appraiser Competency.

(a) Before an appraiser is added to a panel, an appraisal management company shall require the appraiser to declare in writing or via electronic means that the appraiser receiving the assignment is a competent appraiser for the performance of the appraisal being assigned.

(b) An appraisal management company shall annually certify to the Board, on a form prescribed by the Board, that the appraisal management company requires appraisers to update this declaration at least annually.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-58.

History: New Rule: Filed June 30, 2011.

780-X-17-.12 **Records.**

(a) An appraisal management company shall maintain a record of each request it receives for its services for appraisals of Alabama properties. If an appraisal is ordered, the record shall include the name of the appraiser who performs the appraisal, the physical address or legal identification of the subject property, the name of the appraisal management company's client for the appraisal, and the amount paid to the appraiser.

(b) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, phone and email contact information, and whether the registration was granted or refused.

(c) A registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company. Such records may be maintained in electronic form. All records shall be preserved for five (5) years.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall file a correcting amendment to the information contained in the document to the Board within ten (10) days of the change.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-57.

History: New Rule: Filed June 30, 2011.

780-X-17-.13 **Production of Records.**

(a) If an appraisal management company is requested to produce books and records to the Board, the appraisal management company shall produce those records so that they may be viewed in the Board's office in Montgomery, Alabama. Books and records shall be produced in writing, by computer disc or by electronic delivery. If the appraisal management company is unable to

comply, the company shall pay all costs associated with viewing the records in another location.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.14 Complaints Against Appraisers.

(a) If an appraisal management company has a good faith belief that a real estate appraiser licensed in Alabama has violated applicable law or the Uniform Standards of Professional Appraisal Practice (USPAP), engaged in unethical conduct, and the violation has had a material impact on the valuation, the company shall file a complaint with the Board. The complaint shall be filed within ninety (90) days of the date the appraisal is submitted to the appraisal management company.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §34-27A-54.

History: New Rule: Filed June 30, 2011.

780-X-17-.15 Payment of Fees to Appraiser.

(a) An appraisal management company operating in Alabama, except in cases of a mutually agreed upon payment date, breach of contract, or performance of services that violates Uniform Standards of Professional Appraisal Practice (USPAP) or any published standards of best practices, shall make payment to an appraiser for the completion of an appraisal or valuation assignment within forty-five (45) days after the date the appraisal management company, or an assignee, receives a completed appraisal or valuation study.

(b) If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for nonpayment. Such notice shall be sent to the appraiser within thirty (30) days after the date the appraiser transmits the appraisal to the appraisal management company. The notice shall be sent by registered mail, return receipt requested, to the appraiser's business address contained in the records of the Board. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid. The notice shall also notify the appraiser of any

dispute resolution process that the appraisal management company may have in place.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-58.

History: New Rule: Filed June 30, 2011.

780-X-17-.16 **Removal of an Appraiser from an Appraisal Panel.**

An appraisal management company may not remove an appraiser from an appraiser panel without:

- (1) providing written notice to the appraiser of the reasons for removal;
- (2) providing written notice of the nature of any alleged illegal conduct or violations of Uniform Standards of Professional Appraisal Practice (USPAP) or state licensing standards if such is the reason for removal; and
- (3) providing an opportunity for the appraiser to respond to the written notice.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-59.

History: New Rule: Filed June 30, 2011.

780-X-17-.17 **Requesting Additional Information from an Appraiser.**

(a) An appraisal management company may request that a real estate appraiser who performs an appraisal for the appraisal management company consider additional appropriate property information, provide further detail, substantiation, or explanation for the appraiser's value conclusion, or to correct errors in an appraisal report. If the appraisal management company requests that an appraiser consider additional information, such request shall be sent to the appraiser in writing or by electronic means within thirty (30) days of the date the appraisal is transmitted by the appraiser to the appraisal management company.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-59.

History: New Rule: Filed June 30, 2011.

780-X-17-.18 Business Practices.

- (a) An appraisal management company may not:
- (1) prohibit an appraiser from stating on an appraisal the fee the appraiser was paid by the company for the appraisal;
 - (2) prohibit an appraiser from stating on an appraisal the appraiser's primary business address; and
 - (3) prohibit an appraiser from informing a property owner, lender, or any other person or entity the appraiser's primary business address.
- (b) It is unlawful for any employee, director, officer, or agent of an appraisal management company to influence or attempt to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or in any other manner including, but not limited to, any of the following:
- (1) withholding or threatening to withhold timely payment for an appraisal, unless the appraisal is found to be of substandard quality or noncompliant with the scope of the assignment as defined in the engagement letter;
 - (2) withholding or threatening to withhold payment for an appraisal if the loan transaction is not completed;
 - (3) withholding or threatening to withhold future business of, or demoting or terminating the services of, or threatening to demote or terminate the services of an appraiser;
 - (4) promising future business, promotions, or increased compensation to an appraiser;
 - (5) conditioning the request for an appraisal, or the payment of an appraisal fee or salary or bonus, on the opinion, conclusion, or valuation to be reached by an appraiser, or on a preliminary estimate or opinion requested from an appraiser;
 - (6) requesting that an appraiser provide an estimated, predetermined, or desired valuation in an appraisal report, or provide estimated values or

comparable sales at any time prior to the completion of an appraisal;

- (7) providing to an appraiser an anticipated, estimated, encouraged, or desired value for a subject property, or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;
- (8) providing to an appraiser, or any entity or person related to the appraiser, stock or other financial or non-financial benefits; and
- (9) Any other act or practice that impairs or attempts to impair the independence, objectivity, or impartiality of an appraiser.

(c) Nothing in subsection (a) shall be construed as prohibiting an appraisal management company from requesting that the appraiser to any of the following:

- (1) provide additional information regarding the basis for a valuation;
- (2) correct objective factual errors in an appraisal report; and
- (3) consider additional verifiable information not previously known or considered by the appraiser in completing an assignment.

(d) An appraisal management company may not alter, modify, or otherwise change an appraisal report submitted by an appraiser unless required by federal or state guidelines.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-60.

History: New Rule: Filed June 30, 2011.

780-X-17-.19 Disciplinary Action.

(a) The Board may censure, conditionally or unconditionally suspend registration, revoke registration, levy fines, or impose civil penalties not exceeding twenty-five thousand dollars (\$25,000) against any appraisal management company that the Board determines is attempting to or has performed any of the following:

- (1) an act in violation of this article;
- (2) a violation of any regulation adopted by the board in the interest of the public and consistent with this article; and
- (3) the procurement of registration through fraud, misrepresentation, or deceit.

(b) The Board shall conduct ad judicatory proceedings for any violation in accordance with the Administrative Procedure Act. Ad judicatory proceedings shall include, but not be limited to, all of the following due process protections:

- (1) before censuring, suspending, or revoking registration under this article, the Board shall notify the registrant in writing of any charges at least twenty (20) days before the date set for hearing and shall afford the registrant an opportunity to be heard in person or by counsel;
- (2) the written notice shall be served by certified mail, return receipt requested, to the principal contact at the address of the registrant on file with the Board;
- (3) service shall be complete on mailing the written notice;
- (4) the hearing on the charges shall be at a time and place prescribed by the Board, in accordance with the Administrative Procedure Act;
- (5) the hearing may be conducted before a hearing officer designated by the Board who shall make findings of fact, conclusions of law, and enter an ad judicatory disposition; and
- (6) the Board shall deliver or mail any findings of fact, conclusions of law, and ad judicatory dispositions to the registrant.

(c) Nothing in this section shall prevent the resolution of a pending matter through an alternative dispute resolution process or informal settlement process adopted by the Board.

Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-61, 34-27A-62.

History: New Rule: Filed June 30, 2011.

780-X-17-.20 Due Process for Appraisal Management Companies.

(a) **Complaints.** Proceedings to censure, conditionally or unconditionally suspend registration, revoke registration, levy fines, or impose civil penalties not exceeding twenty-five thousand dollars (\$25,000) against an appraisal management company may be initiated by the Board or by any person upon the filing with the Board Executive Director of an original letter of complaint which shall contain:

(1) name and address of the complaining party as well as the name and address of any appraisal management company against whom the complaint has been filed;

(2) a plain and concise statement of the facts which together indicate that the appraisal management company complained against has violated Chapter 27A, Title 34, Code of Ala. 1975, or regulations promulgated by the Board or Rules of Professional Conduct (Code of Ethics);

(3) any documentation of the alleged violations; and

(4) the signature of the complainant.

(b) **Informal Disciplinary Procedure.**

(a) In the event a letter of complaint is filed against an appraisal management company, or the Board determines from other information that an investigation is necessary, the procedure for investigation shall be as follows:

(1) The letter of complaint or other information will be reviewed by both the Board's Executive Director and attorney.

(2) Following the initial review of the letter of complaint, the Board's attorney, with the input and involvement of the Board's Executive Director, will make a recommendation to the Board, as to whether probable cause exists showing that there have been probable violations of the Board's regulations or statutes. A majority of those Board members present will vote whether to accept the staff recommendation.

(3) If the Board finds that probable cause exists further investigation will be recommended, or the case may be set for a hearing. Where the investigation determines that the complaint or other information may constitute a violation of the

Board's regulations or statutes, the Board's Executive Director or the attorney, without prejudice to its authority to initiate formal action, may take such action as necessary to contact the appraisal management company, complainant, or any other parties, in an effort to resolve and informally settle any dispute which may violate the Board's regulations or statutes. Such action may include, but is not limited to, issuing a request to the appraisal management company to do, or refrain from doing, such activities as the Board may prescribe, and entering a tentative settlement agreement or releases between the appraisal management company, the Board or other parties setting out the terms of any resolution and settlement of violation(s) or potential violation(s).

(4) Should the Board's attorney enter into a tentative settlement agreement with the appraisal management company, the Board, by the vote of a majority of those present may accept the settlement agreement, reject the settlement agreement or change the terms of the agreement. Should the terms of the agreement be changed, the Board's attorney will have the authority to settle the case in the manner instructed by the Board. All settlement agreements are subjected to Board approval.

(b) In the event a disciplinary case cannot be settled, the Board or the appraisal management company may request that the case be set for a hearing. Thereafter, a Summons and Complaint may be issued.

(c) **Probable Cause.** Upon the lodging of a letter of complaint the Board's Executive Director and attorney shall prepare a recommendation to the Board as to whether probable cause exists. The Board will vote to dismiss the case, order further investigation, or direct that the case be set for hearing. The Board's vote to set a case for a hearing is a determination that probable cause exists.

(d) **Summons And Complaint.**

(a) In the event the Board determines that probable cause exists for the filing of a Summons and Complaint, the Board shall instruct its counsel to prepare such.

(b) The Summons and Complaint shall be mailed certified mail return receipt requested to the address of the respondent on file with the Board and shall be mailed at least twenty-one (21) days prior to the scheduled date of the hearing. A copy shall also be sent first class mail. Service is complete upon mailing.

(c) The Summons and Complaint shall give notice in substantial compliance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §§41-22-12(b) and 34-27A-21.

(e) **Pre-hearing Discovery.**

(1) Pre-hearing discovery may be permitted in accordance with this regulation and §41-22-12(c), Alabama Administrative Procedures Act, Code of Ala. 1975 to the extent necessary to prevent fraud, conserve the Board's time, prevent undue surprise at hearing and facilitate the miscarriage of justice.

(2) The attorney for the Board or the respondent may, upon application to the presiding officer conducting the hearing, obtain discovery regarding any matter not privileged which 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) The discovery must be had in accordance with any terms and conditions ordered by the presiding officer conducting the hearing. The presiding officer may impose such terms and conditions as are just upon discovery in order to protect a person from annoyance, embarrassment, oppression or undue burden or expense.

(f) **Disciplinary Hearings.**

(1) Conduct of Hearing.

(a) All disciplinary hearings on contested cases before the Alabama Real Estate Appraisers Board shall be conducted by a presiding hearing officer.

(b) The presiding hearing officer shall have the authority to do all things necessary to ensure that hearings are conducted in accordance with Alabama law and the Rules and Regulations of the Alabama Real Estate Appraisers Board.

(c) The presiding hearing officer shall rule on all evidentiary disputes during the hearing.

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

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

(f) The state shall present its evidence, followed by the respondent, followed by rebuttal by the state. Each witness called may be examined in the following manner:

1. Direct examination;
2. Cross examination;
3. Examination by the Board;
4. Re-direct examination;
5. Re-cross examination;
6. Re-examination;
7. Rebuttal

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

(h) The Board may request from the hearing officer a proposed order(s) including findings of fact, official notice and conclusions of law. Underlying facts of record which support the findings should be cited.

(i) The Board shall issue an order within thirty (30) days of the date of the final hearing, or within thirty (30) days of the hearing officer's recommendations, which shall include findings of fact, official notice taken, and conclusions of law, stated separately. Respondent shall be delivered a copy of the order by certified mail return receipt requested, and a copy shall be mailed first class to each attorney of record.

(j) Evidence shall be admitted in accordance with the Alabama Administrative Procedure Act, Code of Ala. 1975, §41-22-13.

(g) **Discipline.**

(1) Upon a finding that respondent has violated any enumerated provision of §34-27A, or any regulation established by the Board, the Board shall impose any or all of the disciplinary penalties set forth in Code of Ala. 1975, §§34-27A, or as otherwise provided by law.

(2) The Board may, in its discretion, permanently or temporarily stay the execution of its order. The stay may be

conditioned on any provision the Board deems appropriate under the circumstances of any particular case.

(3) In determining whether a registration should be conditionally or unconditionally suspended, revoked, fined or civil penalties imposed and whether execution of the order should be stayed, and upon what conditions; the Board shall consider all 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 the offense,
- (d) the length of time since the date of violation,
- (e) the number of complaints filed against the respondent,
- (f) the length of time the respondent has operated,
- (g) the actual damage to the complainant and/or the public,
- (h) the deterrent effect of the penalty imposed,
- (i) any efforts or rehabilitation and
- (j) any other mitigating or aggravating circumstances.

(4) If a public censure is imposed, a notice will be placed in the Alabama Real Estate Appraisers Board's newsletter.
Author: Lisa Brooks, Executive Director, Alabama Real Estate Appraisers Board.

Statutory Authority: Code of Ala. 1975, §§34-27A-54, 34-27A-62.

History: New Rule: Filed June 30, 2011.