



## Ohio Revised Code Section 4763.11 Disciplinary actions.

Effective: December 14, 2018

Legislation: House Bill 213 - 132nd General Assembly

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(A) Within ten business days after a person files a written complaint against a person certified, registered, or licensed under this chapter with the division of real estate, the superintendent of real estate shall acknowledge receipt of the complaint by sending notice to the certificate holder, registrant, or licensee that includes a copy of the complaint. The acknowledgement to the complainant and the notice to the certificate holder, registrant, or licensee may state that an informal mediation meeting will be held with the complainant, the certificate holder, registrant, or licensee, and an investigator from the investigation and audit section of the division, if the complainant and certificate holder, registrant, or licensee both file a request for such a meeting within twenty calendar days after the acknowledgment and notice are mailed.

(B) If the complainant and certificate holder, registrant, or licensee both file with the division requests for an informal mediation meeting, the superintendent shall notify the complainant and certificate holder, registrant, or licensee of the date of the meeting, by regular mail. If the complainant and certificate holder, registrant, or licensee reach an accommodation at an informal mediation meeting, the investigator shall report the accommodation to the superintendent, the complainant, and the certificate holder, registrant, or licensee and the complaint file shall be closed upon the superintendent receiving satisfactory notice that the accommodation has been fulfilled.

(C) If the complainant and certificate holder, registrant, or licensee fail to agree to an informal mediation meeting or fail to reach an accommodation agreement, or fail to fulfill an accommodation agreement, the superintendent shall assign the complaint to an investigator for an investigation into the conduct of the certificate holder, registrant, or licensee against whom the complaint is filed.

(D) Upon the conclusion of the investigation, the investigator shall file a written report of the results of the investigation with the superintendent. The superintendent shall review the report and determine whether there exists reasonable and substantial evidence of a violation of division (G) of this section by the certificate holder, registrant, or licensee.



(1) If the superintendent finds evidence exists showing a violation of division (G) of this section by a certificate holder, registrant, or licensee, the superintendent shall notify the complainant and certificate holder, registrant, or licensee of the determination. The certificate holder, registrant, or licensee may enter into a settlement agreement with the superintendent. The settlement agreement is subject to board approval, and the board shall prescribe requirements by rule for such settlement agreements. The certificate holder, registrant, or licensee may request a hearing pursuant to Chapter 119. of the Revised Code. If a formal hearing is conducted, the hearing examiner shall file a report that contains findings of fact and conclusions of law with the division hearing administrator. The division hearing administrator shall serve the hearing examiner report on the superintendent, the assistant attorney general representing the superintendent in the matter, the board, the complainant and the certificate holder, licensee, or registrant, and if applicable, counsel representing the complainant, certificate holder, licensee, or registrant. Service of the hearing examiner report on the complainant and on the certificate holder, licensee, or registrant shall comply with division (K) of this section. Service of the hearing examiner's report on the superintendent, the assistant attorney general representing the superintendent in the matter, and the board shall be by either regular mail or electronic means. Service of the hearing examiner report on counsel representing the complainant, certificate holder, licensee, or registrant shall be by regular mail.

Within ten calendar days of receipt by the assistant attorney general representing the superintendent of the copy of the hearing examiner's report served by the division hearing administrator, the assistant attorney general may file with the board written objections to the hearing examiner's report, which shall be considered by the board before approving, modifying, or rejecting the hearing examiner's report. Within ten calendar days of receipt by the certificate holder, licensee, or registrant of the copy of the hearing examiner's report served by the division hearing administrator, the certificate holder, licensee, or registrant may file with the board written objections to the hearing examiner's report, which shall be considered by the board before approving, modifying, or rejecting the hearing examiner's report. Within ten calendar days of receipt by the superintendent of the copy of the hearing examiner's report served by the division hearing administrator, the superintendent may grant an extension of time to file written objections to the hearing examiner's report for good cause shown.

(2) If the superintendent finds, following the conclusion of the investigation, that evidence does not exist showing a violation of division (G) of this section by the certificate holder, registrant, or



licensee, the superintendent shall notify the complainant and certificate holder, registrant, or licensee of that determination and the basis for the determination. Within fifteen business days after the superintendent notifies the complainant and certificate holder, registrant, or licensee that such evidence does not exist, the complainant may file with the division a request that the real estate appraiser board review the determination. If the complainant files such request, the board shall review the determination at the next regularly scheduled meeting held at least fifteen business days after the request is filed but no longer than six months after the request is filed. The board may hear the testimony of the complainant, certificate holder, registrant, or licensee at the meeting upon the request of that party. If the board affirms the determination of the superintendent, the superintendent shall notify the complainant and the certificate holder, registrant, or licensee within five business days thereafter. If the board reverses the determination of the superintendent, the matter shall be returned to the superintendent for additional investigation or review.

(E) The board shall review the hearing examiner's report and the evidence at the next regularly scheduled board meeting held at least fifteen business days after receipt of the examiner's report. The board may hear the testimony of the complainant, certificate holder, registrant, or licensee upon request. If the complainant is the Ohio civil rights commission, the board shall review the complaint.

(F) If the board determines that a licensee, registrant, or certificate holder has violated this chapter for which disciplinary action may be taken under division (G) of this section, after review of the hearing examiner's report and the evidence as provided in division (E) of this section, or after review of a settlement agreement entered into pursuant to division (D)(1) of this section, the board shall order the disciplinary action the board considers appropriate, which may include, but is not limited to, any of the following:

- (1) Reprimand of the certificate holder, registrant, or licensee;
- (2) Imposition of a fine, not exceeding, two thousand five hundred dollars per violation;
- (3) Requirement of the completion of additional education courses. Any course work imposed pursuant to this section shall not count toward continuing education requirements or prelicense or precertification requirements set forth in section 4763.05 of the Revised Code.



- (4) Suspension of the certificate, registration, or license for a specific period of time;
- (5) Revocation or surrender of the certificate, registration, or license.

The decision and order of the board is final, except that following the review of the hearing examiner report and the evidence as provided in division (E) of this section, the decision and order of the board is subject to review in the manner provided for in Chapter 119. of the Revised Code and appeal to any court of common pleas. If the board orders a disciplinary action as provided in division (F)(2) or (3) of this section, the superintendent may grant an extension of time to satisfy the board-ordered disciplinary action for good cause shown.

(G) The board shall take any disciplinary action authorized by this section against a certificate holder, registrant, or licensee or an applicant who obtains a certificate, registration, or license pursuant to this chapter who is found to have committed any of the following acts, omissions, or violations:

- (1) As an applicant, procuring or attempting to procure a certificate, registration, or license pursuant to section 4763.05, 4763.06, or 4763.07 of the Revised Code by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, registration, or licensure, or by any means of fraud or misrepresentation;
- (2) Paying, or attempting to pay, anything of value, other than the fees or assessments required by this chapter, to any member or employee of the board for the purpose of procuring a certificate, registration, or license;
- (3) In a criminal proceeding, being convicted of or pleading guilty or no contest to a felony; a crime involving moral turpitude; or a crime involving theft, receiving stolen property, embezzlement, forgery, fraud, passing bad checks, money laundering, drug trafficking, or any criminal offense involving money or securities, including a violation of an existing or former law of this state, any other state, or the United States that is substantially equivalent to such an offense;
- (4) Dishonesty, fraud, or misrepresentation, with the intent to either benefit the certificate holder,



registrant, or licensee or another person or injure another person;

(5) Violation of any of the standards for the development, preparation, communication, or reporting of an appraisal report set forth in this chapter and rules of the board;

(6) Failure or refusal to exercise reasonable diligence in developing, preparing, or communicating an appraisal report;

(7) Negligence or incompetence in developing, preparing, communicating, or reporting an appraisal report;

(8) Violating this chapter or the rules adopted thereunder;

(9) Accepting an appraisal assignment where the employment is contingent upon the appraiser preparing or reporting a predetermined estimate, analysis, or opinion, or where the fee to be paid for the appraisal is contingent upon the opinion, conclusion, or valuation attained or upon the consequences resulting from the appraisal assignment;

(10) Violating the confidential nature of governmental records to which the certificate holder, registrant, or licensee gained access through employment or engagement as an appraiser by a governmental agency;

(11) Entry of final judgment against the certificate holder, registrant, or licensee on the grounds of fraud, deceit, misrepresentation, or gross negligence in performing any appraisal of real estate;

(12) Violating any federal or state civil rights law;

(13) Having published advertising, whether printed, radio, display, or of any other nature, which was misleading or inaccurate in any material particular, or in any way having misrepresented any appraisal or specialized service;

(14) Failing to provide copies of records to the superintendent or failing to maintain records as required by section 4763.14 of the Revised Code. Failure of a certificate holder, licensee, or



registrant to comply with a subpoena issued under division (C)(1) of section 4763.03 of the Revised Code is prima-facie evidence of a violation of division (G)(14) of section 4763.11 of the Revised Code.

(15) Failing to provide notice to the board as required in division (I) of this section;

(16) In the case of a certificate holder acting as a supervisory appraiser, refusing to sign an appraiser experience log required by rule for a person making application for an initial state-certified general real estate appraiser certificate, state-certified residential real estate appraiser certificate, or state-licensed residential real estate appraiser license, unless there is reasonable and substantial evidence that there is false information contained within the log;

(17) Being sanctioned or disciplined in another jurisdiction as a real estate appraiser;

(18) Failing to provide assistance, whenever possible, to the members and staff of the board or to the division of real estate in the enforcement of this chapter and the rules adopted under it.

(H) The board immediately shall notify the superintendent of real estate of any disciplinary action taken under this section against a certificate holder, registrant, or licensee who also is licensed under Chapter 4735. of the Revised Code, and also shall notify any other federal, state, or local agency and any other public or private association that the board determines is responsible for licensing or otherwise regulating the professional or business activity of the appraiser. Additionally, the board shall notify the complainant and any other party who may have suffered financial loss because of the certificate holder's, registrant's, or licensee's violations, that the complainant or other party may sue for recovery under section 4763.16 of the Revised Code. The notice provided under this division shall specify the conduct for which the certificate holder, registrant, or licensee was disciplined and the disciplinary action taken by the board and the result of that conduct.

(I) A certificate holder, registrant, or licensee shall notify the board within fifteen days of the agency's issuance of an order revoking or permanently surrendering any professional license, certificate, or registration by any public entity other than the division of real estate. A certificate holder, registrant, or licensee who is convicted of or pleads guilty or no contest to a crime as described in division (G)(3) of this section shall notify the board of the conviction or plea within



fifteen days of the conviction or plea.

(J) If the board determines that a certificate holder, registrant, or licensee has violated this chapter for which disciplinary action may be taken under division (G) of this section as a result of an investigation conducted by the superintendent upon the superintendent's own motion or upon the request of the board, the superintendent shall notify the certificate holder, registrant, or licensee of the certificate holder's, registrant's, or licensee's right to a hearing pursuant to Chapter 119. of the Revised Code and, if applicable, to an appeal of a final determination of such administrative proceedings to any court of common pleas.

(K) Notwithstanding section 119.07 of the Revised Code, acknowledgment of complaint notices issued under division (A) of this section and continuance notices associated with hearings conducted under this section may be sent by regular mail and a certificate of mailing shall be obtained for the notices. All other notices issued to a complainant and to a certificate holder, registrant, licensee, or other party pursuant to this section shall be mailed via certified mail, return receipt requested. When any notice is sent by certified mail, return receipt requested, and is returned because the notice was unclaimed, then that notice is deemed served if the superintendent subsequently sends the notice by regular mail and a certificate of mailing is obtained for the notice. If a notice, whether sent by certified mail, return receipt requested, or by regular mail with a certificate of mailing, is returned for failure of delivery, then the superintendent shall make personal delivery of the notice by an employee or agent of the department of commerce or shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known address of the party is located. When notice is given by publication, a proof of publication affidavit, with the first publication of the notice set forth in the affidavit, shall be mailed by regular mail to the party at the party's last known address. The notice shall be deemed received as of the date of the last publication of the summary. An employee or agent of the department of commerce may make personal delivery of the notice upon the party at any time. Refusal of delivery by personal service or by mail is not failure of delivery and service is deemed to be complete. Failure of delivery occurs only when a mailed notice is returned by the postal authorities marked undeliverable, address or addressee unknown, or forwarding address unknown or expired.