

# Mississippi State Board of Contractors

## RESIDENTIAL BUILDERS LAW

### MISSISSIPPI CODE

#### TITLE 73. PROFESSIONS AND VOCATIONS CHAPTER 59. RESIDENTIAL BUILDERS AND REMODELORS

##### **SECTION 1.73-59-1.** Definitions

For the purposes of this chapter, the following words shall have the meanings ascribed herein:

(a) "Board" means the State Board of Contractors created in Section 31-3-3, Mississippi Code of 1972.

(b) "Residential builder" means any corporation, partnership or individual who constructs a building or structure for sale or for use by another as a residence or who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of any building or structure which is not more than three (3) floors in height, to be used by another as a residence, when the cost of the undertaking exceeds Fifty Thousand Dollars (\$50,000).

(c) "Remodeler" means any corporation, partnership or individual who, for a fixed price, commission, fee, wage or other compensation, undertakes or offers to undertake the construction, or superintending of the construction, of improvements to an existing residence when the cost of the improvements exceeds Ten Thousand Dollars (\$10,000).

(d) "Residential construction" means any undertaking described in paragraph (b) of this section performed by a residential builder.

(e) "Residential improvement" means any undertaking described in paragraph (c) of this section performed by a remodeler.

**SECTION 2.73-59-3.** Licensing requirement; prerequisites; fee; expiration of a license. [Repealed effective July 1, 2009].

(1) Except as otherwise provided in Section 73-59-15, persons who perform residential construction or residential improvement shall be licensed by the Board annually, and, as a prerequisite to obtaining a license or renewal thereof, each shall submit to the Board:

(a) Proof of workers' compensation insurance, if applicable;

(b) A federal employment identification number or social security

(2) The Board shall not require liability insurance to be licensed under this chapter but if the licensee has liability insurance it shall be reflected on the certificate of licensure.

(3) The Board shall issue or renew a license to a residential builder or remodeler upon payment to the hoard of the license fee. The initial license fee shall be Fifty Dollars (\$50.00). The license fee may thereafter be increased or decreased by the Board and cannot exceed One Hundred Dollars (\$100.00); however, the receipts from fees collected by the Board shall be no greater than the amount required to pay all costs and expenses incurred by the Board in enforcing the provisions of this chapter. Twentyfive dollars (\$25.00) of the fee required by this section which is assessed to residential builders licensed under the provisions of Section 73-59-1 et seq. shall be deposited to the Construction Education Fund created pursuant to Section 31-3-14 and shall he distributed to the Mississippi Housing Institute. The remaining fees collected under this chapter shall be deposited into the special fund in the State Treasury known as the "State Board of Contractor's Fund" created pursuant to Section 31-3-17 and shall be used for the administration and enforcement of this chapter and as provided in Section 31-3-14. Amounts in such fund shall not lapse into the State General Fund at the end of a fiscal year. Interest accrued to such fund shall remain in the fund. All expenditures from the special fund shall be by requisition to the Department of Finance and Administration, signed by the executive secretary of the Board and countersigned by the chairman or vice-chairman of the Board.

(4) The license shall expire on the last day of the twelfth month following

its issuance or renewal and shall become invalid unless renewed. The Board shall notify by mail every licensee under this chapter of the date of the expiration of his license and the amount of the fee required for renewal of the license for one (1) year. Such notice shall be mailed within thirty (30) days prior to the expiration date of the license. The failure on the part of any licensee to renew his license annually in such twelfth month shall not deprive such licensee of the right of renewal, provided that renewal if effected within one hundred twenty (120) days after the expiration date of the license by payment of the license fee plus a penalty of ten percent (10%) of the license fee. A new license required to replace a revoked, lost, mutilated or destroyed license may be issued, subject to the rules of the Board, for a charge of not more than Twenty-five Dollars (\$25.00).

(5) Any person who is not a resident of the State of Mississippi who desires to perform residential construction or residential improvement shall be licensed to perform such construction or improvement as provided by this chapter.

**SECTION 3.73-59-5.** Application for examination and license; fee; examination and other factors considered in licensing; record of examination; reexamination; applicant to disclose other states in which licensed. [Repealed effective July 1, 2009].

Any corporation, partnership or individual seeking to be licensed and examined under this act shall file with the Board at least thirty (30) days prior to the next meeting of the board a written application on such form as may be prescribed by the Board. Such application shall be accompanied by the payment of the license fee. If the application sufficiently contains the information required pursuant to this chapter, the applicant shall be examined by the Board at its next meeting using a uniform written examination prescribed by the Board. The Board shall administer an oral examination to applicants who are unable to take the written examination. In addition, the Board, in examining such applicant, shall consider the following:

- (a) Experience;
- (b) Complaints; and
- (c) Other pertinent information the Board may require.

If, as a result of the examination, the Board finds that the applicant is

qualified to engage in residential construction or residential improvement in Mississippi, the applicant shall be issued a license. Any applicant rejected by the Board shall be given the opportunity to be reexamined at the next regularly scheduled examination date after a new application has been filed and the license fee has again been paid.

The Board shall make and preserve a record of each examination of an applicant and the findings of the Board pertaining to such examination. A certified copy of such record, omitting confidential test questions, shall be furnished to the applicant so requesting such record upon the payment of a fee to the Board that reasonably reflects the cost of furnishing such record to the applicant.

Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

Each application for a license under this chapter shall reveal any other states in which the applicant or any partner or business associate of the applicant is licensed and whether the applicant, partner or business associate has had a license revoked or suspended in any other state. If the applicant fails to provide this information, the Board may deny or revoke the application for license. If the applicant has had a license revoked in another state, the Board may deny the application for a license in this state.

**SECTION 4.73-59-7.** Emergency licenses; fee. [Repealed effective July 1, 2009].

In the event of a catastrophe or emergency which arises out of a disaster, act of God, riot, civil commotion, conflagration or other similar occurrence, the Board, upon application, may issue an emergency license to persons who are residents or nonresidents of this state and who may or may not be otherwise licensed residential builders or remodelers. Such emergency license shall remain in force for a period not to exceed ninety (90) days, unless extended for an additional period of ninety (90) days by the Board or until a contract to build or remodel entered into during the period of the emergency license has been completed.

Within five (5) days of any applicant beginning work as a residential builder or remodeler under this section, the employer or person contracting with such person shall certify to the Board such application without being deemed in violation of this chapter, provided that the Board, after

notice and hearing, may take disciplinary action or revoke the emergency license upon grounds as otherwise contained in this chapter providing for such disciplinary action or revocation of a residential builder's or remodeler's license.

The fee for an emergency license shall be in an amount not to exceed Fifty Dollars (\$50.00) as determined by the Board and shall be due and payable at the time of the issuance of such emergency license.

**SECTION 5.73-59-9.** Violations in connection with licensing; penalties; builder or remodeler without license may not bring certain actions. [Repealed July 1, 2009].

(1) Any residential builder who undertakes or attempts to undertake the business of residential construction without having a valid license as required by this chapter, or who knowingly presents to the Board, or files with the Board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(2) Any remodeler who undertakes or attempts to undertake the business of residential improvement without having a valid license as required by this chapter, or who knowingly presents to the Board, or files with the Board, false information for the purpose of obtaining such license, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than One Hundred Dollars (\$100.00) and not more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not less than thirty (30) nor more than sixty (60) days in the county jail, or both.

(3) A residential builder or remodeler who does not have the license provided by this act may not bring any action, either at law or in equity, to enforce any contract for residential building or remodeling or to enforce a sales contract.

**SECTION 6.73-59-11.** Additional duties of Board. [Repealed effective July 1, 2009].

The Board shall have the following additional duties for the purposes of this chapter:

(a) To conduct thorough investigations of all applicants seeking a license

or licensees seeking' renewal of their licenses and of all complaints filed with the Board concerning the performance of a residential builder.

(b) To obtain information concerning the responsibility of any applicant for a license or of a licensee. Such information may be obtained by investigation, by hearings, or by any other reasonable and lawful means. The hoard shall keep such information appropriately filed.

(c) To maintain a list of residential builders and remodelers to whom licenses are issued, refused, revoked or suspended, which list shall be available to any interested person.

(d) To prepare annually a complete roster that shows all the names and places of business of the residential builders and remodelers licensed by the Board during the preceding year and to forward a copy of the roster to each municipality and county in the state and to file the roster with the Secretary of State.

(e) To take disciplinary actions pursuant to the provisions of Section 73-59-13.

(f) To adopt rules and regulations governing disciplinary actions and the conduct of its hearings and to adopt such other rules and regulations as the board finds necessary for the proper administration of this chapter.

**SECTION 7.73-59-13.** Charges of misconduct; disciplinary action; investigation; notice and hearing; subpoena; procedure; decision and powers of Board; penalties; appeals. [Repealed July 1, 2009].

(1) The Board, upon satisfactory proof and in accordance with the provisions of this chapter and the regulations of the Board pertaining thereto, is authorized to the disciplinary actions provided for in this section against any person for any of the following reasons:

(a) violating any of the provisions of this act or the rules or regulations of the Board pertaining to the work to residential building or residential improvement;

(b) Fraud, deceit, or misrepresentation in obtaining a license;

(c) Gross negligence or misconduct;

(d) Engaging in work of residential building or residential improvement

on an expired license or while under suspension or revocation of license unless the suspension or revocation be abated in accordance with this chapter;

(e) Loaning a license to an unlicensed person;

(f) Failing to maintain workers' compensation insurance, if applicable; or

(g) Failing to pay for goods or services for which the builder is contractually bound.

(2) Any person, including members of the Board, may prefer charges against any other person for committing any of the acts set forth in subsection (l) of this section. Such charges shall be sworn to, either upon actual knowledge or upon information and belief, shall be filed with the Board.

The Board shall investigate all charges filed with it and, upon finding reasonable cause to believe that the charges are not frivolous, unfounded or filed in bad faith, may, in its discretion, cause a hearing to be held, at a time and place fixed by the Board, regarding the charges and may compel the accused by subpoena to appear before the Board to respond to such charges.

The Board shall send a certified inspector to inspect the building or structure which is the subject of a complaint or the Board may use a county certified inspector from the county where the building or structure is located to inspect the building or structure which is the subject of a complaint. The report of the inspector shall be used in the investigation and the determination of the Board. The provisions above shall only apply to hearings.

No disciplinary action may be taken until the accused has been furnished both a statement of the charges against him and notice of the time and place of the hearing thereon, which shall be personally served on such accused or mailed by certified mail, return receipt requested, to the last known business or residence address of the accused not less than thirty (30) days prior to the date fixed for the hearing. The complaining party shall be notified of the place and time of the hearing by mail to the last known business or residence address of the complaining party not less than thirty (30) days prior to the date fixed for the hearing.

(3) At any hearing held hereunder, the Board shall have the power to subpoena witnesses and compel their attendance and may also require the production of books, papers, documents or other materials which may be pertinent to the proceedings. The Board may designate or secure a hearing officer to conduct the hearing. All evidence shall be presented under oath, which may be administered by any member of the Board, and thereafter the proceedings may, if necessary, be transcribed in full by a court reporter and filed as part of the record in the case. Copies of such transactions may be provided to any party to the proceedings at a price reflecting actual cost, to be fixed by the Board.

All witnesses who are subpoenaed and appear in any proceedings before the Board shall receive the same fees and mileage as allowed by law to witnesses in county, circuit and chancery court pursuant to Section 25-747, Mississippi Code of 1972, and all such fees shall be taxed as part of the costs in the case.

When, in any proceeding before the Board, any witness shall fail or refuse to attend upon subpoena issued by the Board, shall refuse to testify, or shall refuse to produce any books and papers the production of which is called for by the subpoena, the attendance of such witness and the giving of his testimony and the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

The accused and the complaining party shall have the right to be present at the hearing in person, by counsel or other representative, or both. The Board is authorized for proper cause to continue or recess the hearings as may be necessary.

(4) At the conclusion of the hearing, the Board may either decide the issue at that time or take the case under advisement for further deliberation. The Board shall render its decision not more than ninety (90) days after the close of the hearing and shall forward to the last known business or residence address of the accused, by certified mail, return receipt requested, a written statement of the decision of the Board.

(5) If a majority of the Board finds the accused guilty of the charges filed,



the Board may:

- (a) Issue a public or private reprimand;
  - (b) Suspend or revoke the license of the accused; or
  - (c) In lieu of or in addition to any reprimand, suspension or revocation, assess and levy upon the guilty party a monetary penalty of not less than One Hundred Dollars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00) for each violation.
- (6) A monetary penalty assessed and levied under this section shall be paid to the Board upon the expiration of the period allowed for appeal of such penalties under this section or may be paid sooner if the guilty party elects. Money collected by the Board under this section shall be deposited to the credit of the State Board of Contractors' Fund.
- When payment of the monetary penalty assessed and levied by the Board in accordance with this section is not paid when due, the Board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county of residence of the delinquent party; however, if the delinquent party is a nonresident of the State of Mississippi, such proceedings shall be in the Chancery Court of the First Judicial District of Hinds County, Mississippi.
- (7) When the Board has taken a disciplinary action under this section, the Board may, in its discretion, stay such action and place the guilty party on probation for a period not to exceed one (1) year upon the condition that such party shall not further violate either the laws of the State of Mississippi pertaining to the practice of residential construction or residential remodeling or the bylaws, rules or regulations promulgated by the Board.
- (8) The Board shall not assess any of the costs of disciplinary proceedings conducted pursuant to this section against the prevailing party.
- (9) The power and authority of the Board to assess and levy the monetary penalties provided for in this section shall not be affected or diminished by any other proceedings, civil or criminal, concerning the same violation or violations except as provided in this section.
- (10) The Board, for sufficient cause, may reissue a revoked license whenever a majority of the Board members vote to do so.

(11) Any person aggrieved by any order or decision of the Board may appeal within ten (10) days from the date of adjournment of the session at which the Board rendered such order or decision, and may embody the facts, order and decision in a bill of exceptions which shall be signed by the person acting as chairman of the Board. The Board shall transmit the bill of exceptions to either the chancery court of the county of residence of the appellant, or the Chancery Court of the First Judicial District of Hinds County, at the election of the appellant, and the court or chancellor shall hear and determine the same either in term time or in vacation, on the case as presented by the bill of exceptions, as an appellant court, and shall affirm or reverse the judgment. If the judgment be reversed, the chancery court or chancellor shall render such order or judgment as the Board ought to have rendered, and certify, the same to the Board; and costs shall be awarded as in other cases. The Board may employ counsel to defend such appeals, to be paid out of the funds in the State Board of Contractors' Fund.

The remedies provided under this chapter for any aggrieved applicant shall not be exclusive, but shall be cumulative of and supplemental to any other remedies which he may otherwise have in law or in equity, whether by injunction or otherwise.

(12) Any political subdivision or agency of this state which receives a complaint against a residential builder or remodeler shall, in addition to exercising whatever authority such political subdivision or agency has been given over such complaint, forward the complaint to the Board.

(13) In addition to the reasons specified in subsection (1) of this section, the Board shall be authorized to suspend the license of any licensee for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. Actions taken by the Board in suspending a license when required by Section 93-11-157 or 93-11-163 are not actions

from which an appeal may be taken under this section. Any appeal of a license suspension that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

**SECTION 8.73-59-15.** Persons and matters exempt.

(1) This chapter shall not apply to:

(a) Agricultural buildings, buildings for agricultural purposes, buildings constructed as community effort, or tenant houses;

(b) Any person who undertakes construction or improvement on his own residence, or who acts as his own general contractor in the performance of construction or improvement on his own residence, or who acts under the supervision of the owner-occupant who is the general contractor;

(c) Any person who undertakes residential construction or improvement, or who acts as a general contractor in the performance of residential construction or improvement, or who acts under supervision of the owner occupant with respect to residential construction or improvement, when the owner of such construction or improvement is related to such person by consanguinity or direct affinity;

(d) The owners of property who supervise, superintend, oversee, direct or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down, or maintenance of any building, railroad, excavation, project, development, improvement, plant facility or any other construction undertaking on such property for use by such owner and which will not be for sale, rent, public use or public assembly;

(e) An employee of a licensed residential builder;

(f) A contractor holding a valid license or certificate of responsibility for general construction from the Board;

(g) Any nonresident contractor holding a valid license of certificate of responsibility for general construction.

(h) Any person who constructs two (2) single residences or less within a period of one (1) year in any county or municipality which does not require a building permit or any local certification for such construction.

(2) A person specified in subsection (1)(b) shall not make more than two (2) applications for a permit to construct a single residence or shall not construct more than two (2) single residences within a period of one (1) year. There shall be a rebuttable presumption that such person intends to construct for the purpose of resale, lease, rent or any similar purpose if more than two (2) applications are made for a permit to construct a single residence or if more than two (2) single residences are constructed within a period of one (1) year.

(3) The provisions of this section shall not apply to builders and remodelers who are not domiciled in the State of Mississippi. Builders and remodelers who are not domiciled in the State of Mississippi are not required to be licensed under the provisions of this chapter if the state in which they are domiciled requires licensing and the licensing state's requirements are at least the equivalent of those requirements provided in this chapter.

**SECTION 9.73-59-17.** Denial of permit to persons not duly licensed; reporting of violations. [Repealed effective July 1, 2009].

The building official, or other authority charged with the duty of issuing building or similar permits, of any municipality or county, shall refuse to issue a permit for any undertaking which would classify the applicant as a residential builder or remodeler under this chapter unless the applicant has furnished evidence that he is either licensed as required by this chapter or exempt from the requirements of this chapter. The building official, or other authority charged with the duty of issuing building or similar permits, shall also report to the Board the name and address of any person who, in his opinion, has violated this chapter by accepting, or contracting to accomplish, work which would classify the person as a residential builder or remodeler under this chapter without a license or acknowledgment.

**SECTION 10.73-59-19.** Licensee may work on certain commercial structures without additional license. [Repealed effective July 1, 2009]

Any residential builder or remodeler licensed pursuant to the provisions of this chapter may, without being required to obtain an additional license under any other law of this state, construct, improve, repair, remodel or renovate any commercial structure, provided the prescribed contract job does not exceed seven thousand five hundred (7,500) square feet.

**SECTION 73-59-21.** Standing Committee on Residential Builders and Remodelers; appointment; quorum; powers.

(1) There is hereby created the Standing Committee on Residential Builders and Remodelers which shall be subordinate to the State Board of Contractors as set forth in Section 31-3-3. The standing committee shall be composed of the two (2) residential builders who serve as members of the State Board of Contractors and three (3) additional residential builders as defined in Section 73-59-1 to be appointed by the Governor. The terms of the ex officio members shall be concurrent with their terms as members of the State Board of Contractors. The initial terms of the three (3) additional residential builders on the Standing Committee on Residential Builders and Remodelers shall be one (1), three (3) and five (5) years, respectively, beginning July 1, 2000. Upon the expiration of the initial term of any member not serving ex officio, his or her successor shall be appointed for a term of five (5) years.

(2) The Governor shall appoint one (1) of the two (2) ex officio members as Chairman of the Standing Committee on Residential Builders and Remodelers. The Executive Secretary of the State Board of Contractors as set forth in Section 31-3-11 shall serve as secretary of the standing committee. The standing committee shall meet not less than once per quarter of each year at a date and time to be set by its chairman upon at least five (5) business days notice by regular mail. The members of the standing committee shall be entitled to receive a per diem as provided in Section 31-3-9.

(3) Three (3) members of the Standing Committee on Residential Builders and Remodelers shall constitute a quorum and a majority vote of those present and voting at any meeting shall be necessary to transact business.

(4) The Standing Committee on Residential Builders and Remodelers shall have the power to make recommendations to the State Board of Contractors pertaining to all duties set forth in Sections 73-59-11 and

73-59-13. The standing committee shall have only the power to make recommendations to the State Board of Contractors and the State Board of Contractors shall have the power and authority to accept or reject any recommendation made by the standing committee. Hearings regarding residential builders and remodelers shall be exclusively under the jurisdiction of the Standing Committee on Residential Builders and Remodelers.

## RULES AND REGULATIONS OF THE STATE BOARD OF CONTRACTORS AS APPLIED TO RESIDENTIAL BUILDERS AND REMODELORS

APPROVED JULY 13, 1994

Pursuant to the powers and responsibilities of the Mississippi State Board of Contractors conferred by Sections 73-59-3 (2), 73-5911(e) and 73-59-13, Mississippi Code of 1972, as amended, and in accordance with Sections 25-43-1 through 95-43-1 9, Mississippi Code of 1972, as amended, known as the Mississippi Administrative Procedures Law, the Board hereby adopts, establishes and promulgates the following rules and regulations and directs that same be entered upon its minutes and made available to all applicants for initial or renewed Licenses issued by the Board and all other persons.

### **I. APPLICATION FOR LICENSE**

1. An applicant for a License or Renewal thereof shall observe the following requirements:

a. Any renewal of a license may be issued once an application has been filed with the Board and all legal requirements have been met by the applicant.

b. An application must be filed on a form provided by the Board. No substitute will be accepted

c. The Board's application form must be completed in ink or with a typewriter. Only one copy need be filed

d. All questions must be answered. All schedules must be completed. Write "None" where applicable. No application will be considered unless

it is completed as directed on the Board's form.

e. Additional information including supplementary or explanatory notes considered necessary may be furnished by inserting schedules where needed.

f. All signatures must be affixed where called for and notarized where indicated.

g. An applicant for a residential builder or remodeler's license may seek licensing for a sub classification to be known as a residential roofer. For this sub classification, there shall be administered a separate roofer's examination and the residential remodeler's license shall be clearly marked that it only licenses the holder as a residential roofer.

h. The privilege tax levied under this Chapter is an annual tax. The licensee is under a duty to renew his license annually, and the failure of the Board to notify the license holder as to the date of the expiration shall not excuse the licensee from renewing his certificate and paying the annual tax.

i. An applicant shall provide a certificate of insurance evidencing current workers' compensation insurance, if applicable, and a federal employment identification number or social security number of the person making application.

j. A foreign corporation or a corporation domiciled outside the State of Mississippi must qualify to do business in this State with the office of the Secretary of State and provide the Board with a Certificate attesting to such qualification. (Applicants may contact the office of the Secretary of State by mail to P.O. Box 136, Jackson, Mississippi 39905, or by telephone at 601/359-1 350).

k. An applicant for a license must pass the applicable written examination with a grade of at least 70%.

l. The Board will hold examinations at locations and times to be determined by the Board Applicants will be notified of the time and place of the examination.

m. A licensee of another state who desires to obtain a license duly issued and authorized by this Chapter shall be exempt from taking the written examination provided the Board determines that the requirements

for a license in the foreign state are equivalent to such examination in this state and provided that the foreign state in question extends the same privilege to Mississippi licensees.

n. If a license is revoked, lost, mutilated or destroyed, a new license may be issued through the Board's discretion. Upon receipt of a written request from the licensee stating the reason for the request, the licensee's license number and check in the amount of Twenty-Five Dollars (\$25.00).

o. An emergency license shall be granted in accordance with the applicable statutory provisions upon the Board's receipt of the completed application, a separate written request from the applicant stating the reason for such request, and a check in the amount of Fifty Dollars (\$50.00).

2. Should any information contained in any application or presented at an oral interview for a license be found by the Board to be false, such license so issued or application being considered shall thereupon be terminated and withdrawn. No licensee or applicant submitting such information shall be issued a renewal of or an initial license until a period of five (5) years has expired after the date of such termination or withdrawal.

## **II. CHARGES OF MISCONDUCT AND DISCIPLINARY ACTION**

1. All complaints and/or charges against a licensee shall be submitted to the Board on the proper forms provided by the Board.

2. If the Board determines that there is reasonable cause to believe a complaint is valid and not frivolous, it shall proceed with an appropriate investigation. Subsequent to the investigation and in the Board's discretion, the Board shall cause a hearing to be held concerning the charges against the licensee. If the Board determines that such a hearing is necessary, a copy of the complaint and notice of hearing shall be served upon the licensee in person or by certified mail at the licensee's last known address, not less than thirty (30) days prior to the date for the scheduled hearing. The Board shall render a decision within ninety (90) days of the close of the hearing and a copy of such written decision shall be presented to each party in person or by certified mail at their last known address. In any event, all requirements pertaining to hearings set forth in Miss. Code Ann. § 73-59-13, as amended, shall be followed.

3. All Board members shall refrain from formal interviews and/or comments



in connection with a pending charge or complaint submitted to the Board.

4. Licensee shall within seven (7) days after final judgment, notify the Board of any adverse court decision in which the licensee was included.

5. The Standing Committee on Residential Builders and Remodelers ("Standing Committee") and the Mississippi State Board of Contractors ("Board") shall act in accordance with the following procedures after receiving a sworn complaint about a residential builder or remodeler:

a. When the Board receives sworn charges as set forth in Miss. Code Ann. § 73-5913(2), the Board shall deliver to the accused a letter, via regular mail, outlining the charges and requesting the accused to respond, in writing, to the charges within ten (10) days after receipt of the letter.

b. If the accused fails to respond timely, the Board shall deliver to the accused a second letter, via certified mail, return receipt requested, outlining the charges and requesting the accused to respond, in writing, to the charges within ten (10) days after receipt of the letter.

c. If the accused responds timely to either letter set forth above, the Board shall investigate the matter and may issue a formal complaint and Notice of Hearing against the accused and cause a hearing to be held as set forth in Miss. Code Ann. § 73-59-13(2) and these rules.

d. If the accused fails to respond timely to the second letter, then the Board shall deliver to the accused a formal Complaint along with a Notice of Hearing requesting the accused to respond to the charges and setting a hearing date no less than thirty (30) days from the date of service. The Notice of Hearing shall include the date and location of the hearing along with a requirement that the accused contact the Board no later than fifteen (15) days prior to the hearing to schedule a specific time for appearance at the hearing. Failure to contact the Board to schedule a specific time for appearance may result in the accused being heard only after all other scheduled matters have been addressed or not being heard on that scheduled date.

e. If the accused fails to respond timely to the formal Complaint, then the Standing Committee and the Board may consider the charges set forth therein and all other available evidence in determining whether the accused is guilty of the charges filed. In the event the Board finds the accused

guilty of the charges filed, it may impose any of the penalties set forth in Miss. Code Ann. § 73-59-13(5).

f. Any request for a continuance must be made in writing and presented to the Chair of the Standing Committee at least fifteen (15) days prior to the scheduled hearing or, upon good cause shown, at any time prior to the hearing. Continuances will not be routinely granted. Instead, a party must show substantial, legitimate grounds for a continuance. Where scheduling conflicts are the basis for requesting a continuance, the party shall provide written proof of such conflicts in a timely manner as set forth herein.

g. The Board shall notify the accused of any decision as set forth herein according to Miss. Code Ann. § 73-59-13(4). The accused shall have the right to appeal this decision as set forth in Miss. Code Ann. § 73-59-13(11).

6. If the Standing Committee on Residential Builders and Remodelers determines that a civil penalty should be assessed for a violation of law, then it shall consider at a minimum the following factors in determining the amount of the civil penalty:

- a. The willfulness of the violation;
- b. Any cost of restoration or abatement;
- c. Any economic benefit to the violator as a result of noncompliance;
- d. The seriousness of the violation, including any harm to the complainant or the public; and
- e. Any prior violation by the violator

### **III. GENERAL RULES**

1. Neither the Executive Secretary, individually, nor the surety of his official bond shall be held financially liable or responsible for any action taken by the Executive Secretary when he is acting under direct instructions from the Board as shown by the minutes of the Board.

2. If a regular or special meeting of the Board has been recessed to reconvene on a day and time fixed and ordered by the Board and entered upon its minutes, the recessed meeting thus held on the subsequent date shall be considered a part of and continuation of the regular meeting or special meeting, as the case may be, the same as if actions and

proceedings then taken had been taken at the initial regular meeting date or special meeting date and any action authorized on such an initial date may be taken or continued and passed upon at the later date or dates.

3. Any corporation or other legal business entity holding a valid license shall immediately notify the Board of any change of name or corporate structure by filing an application with the Executive Secretary of the Board outlining the specific change and the impact on the status of the entity. A fee of \$50.00 shall accompany each application filed pursuant to this rule.

4. Any of the foregoing Rules and Regulations of the Board shall not apply to contracts involving federal funds if in violation of federal requirements.

5. Failure to adhere to the rules and/or regulations of the Board shall constitute grounds for suspension or revocation and, in the Board's discretion, monetary penalties pursuant to statutory authority.

6. Any of the foregoing Rules and Regulations of the Board may be suspended and/or modified by a majority vote of the State Board of Contractors unless such suspension or modification is inconsistent with the general laws governing the Board and its operation. Such change or modification shall be made in accordance with the provisions of the Mississippi Administrative Procedures Law, Sections 2543-1 through 25-43-19, as amended.

7. If any provision of any section of these Rules and Regulations of the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provisions of that section or application of the Rules and Regulations which can be given effect without the invalid provisions or application, and to this end the provisions of these Rules and Regulations are declared to be severable.

8. Anyone may obtain public information from, or make submissions or requests to, in writing or orally, the Executive Secretary of the Board, whose office is located at 215 Woodline Drive, Suites A&B, Jackson, MS 39232, telephone no. 601/354-6161, during regular office hours between 8:00 a.m. and 5:00 p.m., Monday through Friday.

