

What happens when a licensee gets into trouble?

There are two disciplinary situations that a licensee could be involved in that may jeopardize their license.

The first involves a licensee and **civil matters**.

The second involves a licensee **and Alabama real estate license law violations**.

In this chapter we will take a closer look at both.

**Notification of Civil Disciplinary Actions
(Non-Commission Disciplinary Actions)**

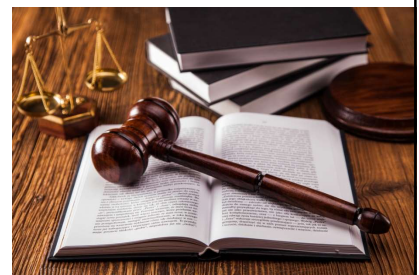
If a licensee is involved in certain types of civil legal action, he must inform the Commission.

The licensee is responsible for informing the Commission of the following:

- When a legal action begins;
- When a legal action concludes; and
- The result of the legal action.

What types of legal action require notification?

- Criminal prosecution, or
- A civil complaint involving a real estate transaction



When the action BEGINS:

When a legal action begins, the licensee must:

- Notify the Commission **within 10 days** after the licensee is notified; and
- Notify the Commission in writing by certified mail.

When an action is RESOLVED:

When a legal action is resolved, the licensee must:

- Notify the Commission **within 10 days** after the resolution is reached;
- Notify the Commission in writing by certified mail; and
- Inform the Commission if a verdict or judgment was rendered or if it was dismissed.



**This is the end of the current unit.
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Commission-Based Disciplinary Process and Actions

If a licensee violates Alabama real estate license law or is suspected of committing a violation, he may be investigated and brought to trial.

Specific steps are involved in the disciplinary process.



Probable Cause Determination

After receiving a **written complaint** or on its own, the Commission may investigate actions and records of a licensee.

- When this happens, the Commission will notify the licensee and his qualifying broker in writing regarding the complaint.
- This written complaint will be assigned to an investigator at the Commission who acts much like a detective on the police force.
- The role of the investigator in conjunction with the Attorney General is to determine if a legitimate reason for the complaint (called **probable cause**) exists to file a formal complaint.



Probable Cause Determination

- Next, the investigator will begin to gather evidence to either support or refute the complaint.
- During an initial investigation, the Commission may issue subpoenas, compel the testimony of witnesses and compel the production of related records or documents.
- If probable cause is found based on the evidence, a **formal complaint** is filed, and a hearing will be required by the Commission.



Formal Complaint

An action against an accused licensee begins by serving the accused licensee with a copy of the formal complaint either in person or by certified mail.

The accused is given at least **15 days' notice** of the time, date and place of the hearing.



Disciplinary Hearings

A licensee cannot incur disciplinary actions at the hands of the Commission without a hearing.

Where are hearings held?

- In Montgomery County, Alabama at the Alabama Real Estate Commission; OR
- In the county in Alabama in which the applicant or accused resides, or maintains his or her principal place of business; OR
- In any other county in which the Commission has scheduled a meeting.



What happens at the hearing?

At the hearing, the accused and the Commission present their findings:

- The accused has an opportunity to be heard in person or by counsel, may offer testimony in his behalf and has the opportunity to examine witnesses.
- The Commission may issue subpoenas for the attendance of witnesses and the production of records and documents for either side of the complaint.



What happens at the hearing?

- Any subpoenaed witness who appears in a proceeding before the Commission receives fees, mileage, and expense allowances.
- If a subpoenaed witness fails cooperate with the Commission, he may be forced to comply in the same manner exercised in civil cases in the circuit courts of Alabama.
- Even if both parties agree to settle or withdraw the complaint, the Commission can elect to proceed with a hearing at its discretion.



When does the Commission render a decision?

The Commission will render its decision in writing **within 30 days** from the final date of hearing.

The Commission may refrain from rendering or implementing its decision if the accused is the subject of an action pending in any court.

In other words, the Commission may wait and see what the court says if the licensee is involved in another case before handing down their decision.



Can a party file an appeal?

After hearing the decision, if any party involved (the accused, the applicant, or other party) is not satisfied with the Commission's decision, they may file an application for rehearing.

- File an application for rehearing **within 30 days** of receiving notice of the decision.
- Provide a **\$200 appeal bond** with the clerk of the circuit court.



Appeal Options

Within 30 days from filing of application for rehearing, the Commission will either:

- Set a hearing date for the appeal;
- Enter an order about the appeal without a hearing;
- Grant or deny the application for an appeal;



Rehearings

If applicant is granted a rehearing:

- The Commission will schedule a rehearing as soon as practicable.
- The appeal is conducted by the court without a jury.
- The court can agree to or disagree with parts of the decision or the whole decision, modify the Commission's decision or return the case to the Commission for further proceedings.
- Whichever side that doesn't win is responsible for paying the court costs.
- If the Commission does not respond within 30 days, the application is considered denied.



Important Disciplinary Deadlines



Penalties That Can Be Imposed on a Licensee

If a licensee is found liable, the Commission can do any of the following:

- Revoke the license;
- Suspend the license;
- Reprimand the licensee;
- Impose a fine of a **minimum of \$100** to a **maximum of \$2,500**;
- Require the licensee to take Continuing Education; and/or
- Require restitution by the licensee to the harmed party.

These penalties can be applied in any combination at the Commission's discretion.



If a licensee is found liable, what type of violation has been committed?

The violation is considered a **Class A Misdemeanor**.

This applies to individuals, corporations and non-licensees who:

- Violates any provision of Alabama real estate license law, or
- Files false information with the Commission.





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The Recovery Fund Fee

The **Recovery Fund** is a reserve created by the state of Alabama to pay actual or compensatory damages (not including interest and court costs) to aggrieved members of the public who were harmed as a result of actions of real estate licensees that violated Alabama real estate license law.

If a licensee is ordered to pay restitution to a harmed party and cannot afford to pay, the harmed party may be able to collect the amount owed from the Recovery Fund on behalf of the licensee.



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How is the Recovery Fund funded?

The Recovery Fund is funded by a **one-time \$30 fee** paid when individuals apply for an ACTIVE temporary or original salespersons or broker license.

The \$30 Recovery Fund fee is not part of the biennial renewal fees paid by licensees.



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When could licensees pay another \$30 Recovery Fund fee?

If the balance in the Recovery Fund were to ever **drop below \$500,000**, **every ACTIVE salesperson or broker licensee** would be charged another \$30 fee in order to replenish the balance of the fund.

INACTIVE licensees would not be charged because they aren't active thus shouldn't be practicing real estate thus should never be in a position to make a mistake and need the Recovery Fund.

**Can the money in the Recovery Fund be invested?**

The money in the Recovery Fund may be invested by the State Treasurer in any investments which are legal for **domestic life insurance companies** under the laws of this state.



Can the Commission transfer funds from the Recovery Fund?

Yes, the Commission can make a one-time transfer to the **University of Alabama Real Estate Research and Education Center (ACRE)**...

BUT... the amount of the transfer cannot reduce the balance of the Recovery Fund **below \$600,000**.

**Use of the Recovery Fund**

So, what happens if a licensee is found liable in a civil case and cannot afford to pay for damages?

The licensee will need to make use of the Recovery Fund.

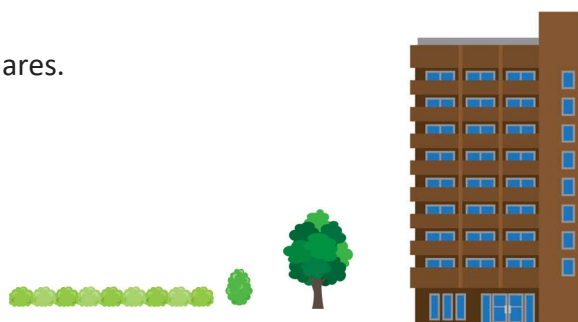
As we learned earlier, the Recovery Fund was established to cover actual or compensatory damages suffered by members of the public as a result of actions of real estate licensees.

However, the Recovery Fund is not a “blank check” that covers every offense. There are stipulations and limitations to its use.



What does the Recovery Fund NOT cover?

- Licensee acting on his/her on behalf or on behalf of their child, spouse or parent;
- Licensee who is on inactive status;
- Brokerage firms or their branch offices except through its individual licensees;
- Licensees marketing or developing time shares.



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What are the Recovery Fund maximum payouts?

The Recovery Fund maximum payouts are:

- **\$25,000 per transaction**
- **\$50,000 per licensee**

The maximum payout is \$50,000 per licensee, but \$25,000 per transaction.

In other words, there is a cap on the amount that the Recovery Fund will pay on behalf of one licensee, which is \$50,000.

The amount that an individual consumer can collect from the Recovery Fund is \$25,000.



**Licensee =
\$50,000**

**Consumer =
\$25,000**



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What happens to a licensee if a payment is made on their behalf?

If a payment is made from Recovery Fund on the behalf of a licensee:

- The Commission can **terminate all licenses** held by the licensee.
- The licensee may be required to repay the amount paid plus interest at **an annual rate of 12%** in order to reinstate the license.
- **Bankruptcy does not provide relief from repayment of the Recovery Fund.** If a licensee files for bankruptcy, he will still have to pay back the amount owed to the Recovery Fund.

**What if the Recovery Fund is insufficient to pay a claim?**

If the Recovery Fund is insufficient to pay a claim, the aggrieved person will have to wait until the funds are available.

An **additional \$30 fee** will be collected from each licensee in the state and when sufficient money has been placed in the Recovery Fund, the claimant will receive his payment, plus **12% interest**.





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