

What is the Real Estate Commission?

The Real Estate Commission was created by KRS (Kentucky Revised Statute) 324.281. The Commission's duties include regulating real estate licensees. A real estate licensee is someone who has a license issued by the Commission. One must have a real estate license to engage in the practice of real estate brokerage. Licensees are often called "agents" or "Realtors" by the consumer public. An agent is a specific legal position which, by law, carries certain duties and obligations. A licensee may be, but is not always, an agent in a real estate transaction. Realtor is a designation that a licensee receives when he or she belongs to the National Association of Realtors. All licensees are not Realtors.

The Real Estate Commission grants two separate licenses: broker and associate. A broker must meet certain educational and experience requirements beyond that of an associate. Each licensee must affiliate (or associate) their license with a principal broker. The principal broker must adequately supervise the associates affiliated with him or her.

What the Commission can do

If you are considering filing a formal Complaint, there are a number of things you should know:

The Commission can only receive Complaints against people who have licenses issued by the Kentucky Real Estate Commission. The Commission operates under a series of Kentucky laws known as KRS Chapter 324. KRS Chapter 324 contains the laws passed by the Legislature (called Kentucky Revised Statutes, or KRS) that apply to real estate licensees.

A second group of legal rules which apply to real estate licensees are called regulations. These regulations are proposed by the Real Estate Commission and approved by a committee of legislators and can be found in 201 KAR Chapter 11.

Unless a real estate licensee has violated a statute or regulation, the Real Estate Commission may take no action against the licensee. The Commission may not take disciplinary action against buyers or sellers of property unless the buyer or seller also holds a real estate license. If you have a problem with a buyer or seller of property, you may consider contacting an attorney to bring an action in court against the buyer or seller. Buyers and sellers also have legal obligations regarding property transactions, but the Real Estate Commission, by law, cannot order buyers or sellers to do anything.

The Commission provides a Recovery Fund for consumers who have been defrauded by a licensee. The Recovery Fund may pay a consumer up to twenty thousand dollars. Fraud must be proven at a licensee hearing and the Commission must order money to be paid from the Recovery Fund.

What if I have a Problem with a Real Estate Licensee?

If you have concern with the actions of a real estate licensee, the Real Estate Commission may be able to help. The Commission provides consumers with an avenue to file Complaints against real estate licensees. A Complaint must allege a violation of either a statute (KRS or law) or regulation (KAR) in order to be investigated. You may call the Commission (502-429-7250 or toll free 1-888-373-3300) to receive a copy of the Licensing Law booklet. This booklet lists the statutes (KRS) and regulations (KAR) to which real estate licensees must adhere. The Licensing Law booklet is also available on the Commission's website at www.krec.ky.gov.

If you desire to file a Complaint against a licensee, you must do so by filling out the Commission's Complaint form. You can receive a copy of the form either through the mail (please call or write our office to receive a copy through the mail) or you can access it under the Commission's Catalog of Documents and Forms - Document #701 on the Commission's website at www.krec.ky.gov.

What do I have to do to File a Complaint?

1. List the real estate licensee against whom you have a Complaint. Put that person's name where the form says "Respondent." If your Complaint is against more than one licensee, list the other licensee in the second "Respondent" space.
2. You must list the real estate company and principal broker where the licensee holds his or her license. In order to also file a Complaint against the principal broker you must name the principal broker and specify the alleged violations in the text of your Complaint. Please understand that under the licensing law a principal broker is liable for an associate's actions only if:
 - a. the broker fails to adequately supervise the associate's activity or,
 - b. the broker has actual knowledge of an associate's violation of the law.

You must make an allegation under (a) or (b) above to bring a Complaint against a principal broker for actions of an associate.

3. List the violations in the text of the Complaint and the statute (KRS) or regulation (KAR) which was violated. We understand you probably are not a lawyer and do not expect you to use "lawyer language". Please state your Complaint fully and concisely in plain language.

4. After completing the Complaint Form, have your signature notarized and mail the Complaint to the Commission. We will have to return your Complaint to you if it is not notarized.

What Happens After My Complaint is Filed?

The Commission receives hundreds of consumer Complaints each year. Licensees and the consumer public should be aware of the process by which Complaints are reviewed and processed by the Commission.

1. The Commission receives a consumer Complaint. The Complaint must state facts which, if true, amount to an allegation of illegal activity by the licensee. The legal term for this is “prima facie case”. The legal authority for this standard is KRS 324.151 (1).
2. The Commission sends the consumer Complaint to the licensee. The licensee must respond to the Complaint within twenty (20) days. The licensee must also send a copy of his Answer to the consumer.
3. The Commission reviews the Answer and the Complaint. If sufficient allegations are made by the consumer, the Commission orders the case investigated.

The Commission investigator interviews all parties and relevant witnesses. Licensees are required to cooperate with Commission investigations. (See KRS 324.160 (4) (s)). The time required to complete an investigation varies with each case. The complexity of the case, number of witnesses and the necessity of evidence retrieval all contribute to the length of an investigation. Investigations generally take between two and four months. However, some investigations take longer.

The Commission may also dismiss the case at this point if the consumer has made insufficient allegations of illegal activity by the licensee.

4. The investigator submits his report to the Commission. The Commission reviews cases at its monthly meetings. If sufficient allegations of a prima facie case are indicated, the Commission orders a hearing in the matter.

The time required for Commission review of cases varies. The Commission meets monthly but meets on a different day each month. The Commission may meet on October 1 and again on November 20. Therefore, a case may be submitted by an investigator on October 2 and not be reviewed by the Commission until November 20 (seven weeks later). Two months is a general maximum time period for Commission review.

5. The Commission may dismiss a case after reviewing the investigation. The matter is then finished if the consumer does not appeal the dismissal. Consumer appeals of dismissals rarely occur.

If the Commission orders a hearing after reviewing the investigation report, a Notice of Hearing and Charges is drafted by a Commission attorney. A hearing date is then

scheduled. Hearings are generally scheduled two to three months in advance due to the Commission's existing hearing schedule.

A number of factors may contribute to a longer delay. Many cases before the Commission are also the subject of Circuit Court actions. Commission cases are often held in abeyance pending the conclusion of the Circuit Court matter. Attorneys for licensees often are unable to schedule a hearing immediately. This may also delay the hearing date.

6. Hearing Officers preside over hearings. The Commission uses Hearing Officers from the Kentucky Attorney General's Office. The Hearing Officer makes rulings on evidence (much like a judge) and makes a recommendation regarding the facts and legal issues of the case to the Commission (much like a jury).

Licensees and consumers may file exceptions to the Hearing Officer's recommendations. Exceptions state where and why a party disagrees with the Hearing Officer recommendations. The Commission reviews the recommendations, exceptions and pleadings in the case and then issues a Final Order. The Final Order will either find the licensee in violation of KRS 324, dismisses the charges, or sends the case back to the Hearing Officer for a partial hearing.

The hearing process can take a number of months. A transcript of the hearing must first be prepared. Then the Hearing Officer has ninety days to prepare his recommendations. Each party has another fifteen days to file exceptions. The Commission then must review the case at its monthly meeting.

Following the Final Order, either party may appeal the Commission's decision. KRS 324.160 (1) lists the possible disciplinary actions the Commission may order against a licensee. The possible discipline includes suspension or revocation of a license, fines not to exceed \$1,000, probation up to 12 months, require attendance at real estate educational courses, and formal or informal reprimand.

The Commission may also order a Recovery Fund award to a consumer. The consumer must prove fraud by the licensee to receive Recovery Fund money. The Commission first allows the licensee an opportunity to pay the consumer. If the licensee fails to pay the consumer, the Commission pays the consumer and suspends the license until the ordered amount (and interest) is repaid to the Commission's Recovery Fund by the licensee.

What does an Investigation Include?

The Commission's investigator will attempt to talk to all complainants, respondents and witnesses. The investigator will provide a written investigation to the General Counsel. The matter is then placed before the full Commission for review. The Commission then votes to have a hearing on the matter or dismiss the case. If your case is dismissed, you will receive an Order from the Commission. You may appeal a

dismissal within thirty (30) days from the date of the Order dismissing with the Circuit Court in the county where you reside.

If the Commission votes to have a hearing, you will receive a proposed hearing date notice. If a hearing is ordered, you will have to come to the Commission's offices in Louisville for the hearing. This hearing is very similar to a trial.

You will have to decide if you want an attorney to represent you at the hearing. If you hire an attorney, he or she may take "discovery" regarding your case. Discovery is the process in law by which parties are required to give each other information about their case if proper requests are made. Discovery includes depositions, interrogatories, and other methods. Your attorney will also owe you a number of legal duties which an attorney always owes a client.

The Commission's legal counsel will represent the Real Estate Commission at the hearing. Their ethical duty is to vigorously pursue the interests of the Real Estate Commission. The Commission's legal counsel may present your evidence at the hearing if you desire. However, they will not perform the duties one associates with an attorney and a client. In fact, if your interest and the interests of the Commission are in conflict, by law they must represent the Commission's interest. The Commission's legal counsel will not take discovery for you nor will he be available for phone consultation. If you choose to have the Commission's legal counsel present your evidence at the hearing, they will usually talk to you before the hearing about your case. You will be responsible for bringing any documents you want introduced at the hearing and subpoenaing any witnesses you want at the hearing. Please be aware of the limited role the Commission's legal counsel will play in your case if you request he present your evidence at the hearing. The Commission has approximately two hundred cases active at any time.

Real Estate Commission hearings are very similar to trials. The real estate licensees are usually represented by attorneys. Witnesses testify and an Assistant Attorney General (or "Hearing Officer") presides over the hearing. Rules of evidence and civil procedure apply.

The Hearing Officer must make recommended findings of fact and conclusions of law to the Real Estate Commission after the hearing. You have fifteen (15) days after the mailing of the Recommendations to file exceptions to the Recommendations. Exceptions are areas where you disagree with the Recommendations of the hearing officer. The Commission will then consider the entire record (including exceptions) before entering a Final Order.

A party may appeal the Final Order to the Circuit Court in the county where you live within thirty (30) days of the Order date.