

DEPARTMENT OF ENERGY, LABOR, AND ECONOMIC GROWTH

DIRECTOR'S OFFICE

RESIDENTIAL BUILDERS AND MAINTENANCE AND ALTERATION CONTRACTORS

(By authority conferred on the department of energy, labor, and economic growth by section 308 and 2404b of 1980 PA 299, MCL 339.308 and 339.2404b, and Executive Reorganization Order No. 1996-2, MCL 445.2001 and 2003-1, MCL 445.2011 and ERO 2008-04, MCL 445.2025)

PART 1. GENERAL

R 338.1511 Definitions.

Rule 11. As used in these rules:

- (1) "Act" means 1980 PA 299, MCL 339.101, known as the occupational code.
- (b) "Board" means the state residential builders and maintenance and alteration contractors board.
- (c) "Builder" means a residential builder as defined by the act.
- (d) "Contractor" means a residential maintenance and alteration contractor as defined by the act.
- (e) "Department" means the department of labor and economic growth.
- (f) "Director" means the director of labor and economic growth.

History: 1979 AC; 2006 AACS.

R 338.1512 Rescinded.

History: 1979 AC; 1998-2000 AACS.

R 338.1519 Rescission.

Rule 19. R 451.501 to R 451.538 of the Michigan Administrative Code, appearing on pages 4594 to 4597 of the 1979 Michigan Administrative Code, are rescinded.

History: 1990 AACS.

PART 2. LICENSES AND BONDS

R 338.1521 Applications for licenses

Rule 21. (1) An application for a license shall include the residence address of all individuals, partners, officers and/or members, as requested by the department, and the address of the principal place of business in Michigan. A nonresident applicant for licensure shall maintain a place of business in Michigan, and the application shall include the address of the Michigan place of business and the address of the applicant's principal place of business outside of Michigan. A nonresident applicant shall file a consent to service with the application. A foreign corporation or a foreign limited liability company shall submit evidence of qualification to do business in Michigan.

(2) Applicants shall furnish documentation as determined acceptable by the department to verify the applicant's current business structure. Documents include, but are not limited to, the following:

- (a) For an application for an individual license using an assumed name, a copy of the current filed assumed name certificate issued by the county clerk.
- (b) For an application for a partnership license, a copy of the current filed certificate of co-partnership issued by the county clerk.
- (c) For an application for a limited liability company, a filed copy of the filed articles of organization, certificate of assumed name, if applicable, and current certificate of good standing.

(d) For an application for a corporation license a filed copy of the articles of incorporation, certificate of assumed name, if applicable, and current certificate of good standing.

(e) Any other documentation requested by the department to determine the applicant's business structure and current authorization to do business in Michigan.

(3) A foreign company shall submit evidence of current authority to do business in Michigan.

(4) If an applicant is a Michigan corporation, but is a wholly owned subsidiary of a foreign corporation not admitted to do business in Michigan, then the parent company shall file an affidavit of assumption of liability and a consent to jurisdiction. The director shall be the proper party to receive service of process and shall immediately forward a copy of the process to the corporation's last known address.

(5) At the request of the department, an applicant shall submit a credit report furnished by a credit reporting service which is acceptable to the department. The applicant may be required to direct the credit reporting service to send the credit report directly to the department, which shall determine the adequacy or sufficiency of the report.

(6) At the request of the department or board, an applicant shall submit within 60 days of a written request, either of the following:

(a) A cash or surety bond acceptable to the department.

(b) A financial statement showing the current financial condition of the applicant, for a builder's or contractor's license, in accordance with established accounting practices which shall be completed in detail, properly signed, and submitted.

(7) If an applicant fails to complete all application requirements, including information requested by the department, and any required examination, within 1 year from date of first making application to the department, then the application shall be void and the application processing fee shall be forfeited.

(8) A contractor who desires to add additional trade or trades to those indicated on the contractor's license shall do all of the following:

(a) Pass an examination for the additional trade or trades.

(b) Submit an application form to add the trade or trades to the existing license.

(c) Furnish a current credit report upon request by the department.

(d) Upon receipt of the new license, the licensee shall return the old identification card and wall license.

(9) A passing score on an examination, or on a portion of an examination if the examination is given in separate parts, shall be valid for 1 year from the date the examination or portion of the examination was passed.

History: 1954 ACS 49, Eff. Feb. 14, 1967; 1979 AC; 2006 AACS.

R 338.1521a Requirements for examination.

Rule 21a. As a condition for approval to take the residential builder or maintenance and alteration contractor examination, applicants for licensure shall meet all other licensing requirements, including successful completion of the prelicensure education requirements.

History: 2008 AACS.

R 338.1522 Rescinded.

History: 1979 AC; 1990 AACS.

R 338.1523 Rescinded.

History: 1979 AC; 1990 AACS.

R 338.1523a Rescinded.

History: 1979 AC; 1998-2000 AACS.

R 338.1524 Licenses; issuance or denial.

Rule 24. (1) The department shall issue a license including an identification card after an applicant has successfully completed all requirements

(2) The physical office location shall be printed on the license.

(3) The department may deny an application for a license for good and sufficient cause. The notice of denial shall advise the applicant of reasons for denial and of his or her right to submit a petition for review of the denial.

History: 1979 AC; 2006 AACS.

R 338.1525 Salesperson's license; identification card; discharge; termination or transfer of salesperson; temporary license for salesperson or salesperson license applicant.

Rule 25. (1) A salesperson shall be licensed under a person holding a license as a builder or contractor, but shall not be licensed under more than 1 builder or contractor during the same period of time.

(2) An application for a salesperson license shall be submitted by the employing builder or contractor. An applicant for a salesperson license who is currently licensed as a residential builder or maintenance and alteration contractor, or has been licensed as a residential builder or maintenance and alteration contractor within the past 3 years, shall not be required to take the salesperson examination.

(3) Upon approval, the department shall issue a license and an identification card containing the name and business address of the salesperson. The card shall be carried by the salesperson and shall be shown as identification to every prospective customer. A salesperson shall not commence work until the builder or contractor under whom the salesperson is licensed receives the salesperson's license and identification card from the department.

(4) When a salesperson licensed under this act is discharged or otherwise terminates employment with the builder or contractor under whom he or she is licensed, the builder or contractor shall return the salesperson's license, and the salesperson shall return the identification card to the department within 5 days from the date of discharge or termination.

(5) When a licensed salesperson transfers employment from the builder or contractor under which he or she is presently licensed to a new employer, the new employer shall submit to the department an application for transfer of the salesperson's license to the new employer.

History: 1979 AC; 2006 AACS.

R 338.1526 Termination of licenses.

Rule 26. (1) If a bond is cancelled, a license predicated upon such a bond shall be suspended effective upon the date of cancellation, if the licensee has not replaced the surety or cash bond.

(2) Upon final order of license suspension or revocation, the licensee shall surrender the license to the department within 10 days of the date of suspension or revocation. If the license of a builder or contractor is suspended or revoked, the licenses of salespersons issued under the license of that builder or contractor shall lapse, and licenses shall be surrendered at the same time. Any salesperson may have his or her license transferred to another licensed builder or contractor before the expiration date of the salesperson's license.

(3) If the qualifying officer of a corporation, association, partnership, limited liability company or organization consisting of more than 1 person is a party to events that led to suspension or revocation, any license issued to any other organization where the individual is the qualifying officer shall be suspended or revoked and any license issued to the qualifying officer in an individual capacity shall be suspended or revoked.

(4) A qualifying officer of a company shall notify the department in writing within 10 days of ceasing to be the qualifying officer, and shall return the wall license and pocket card of the company.

(5) When a qualifying officer ceases to act as the qualifying officer, and the company intends to continue to operate, the remaining officer, owner, member or partner of the company shall submit a written request to the department to allow the company time to obtain a new qualifying officer.

History: 1979 AC; 2006 AACS.

### PART 3. OPERATIONS OF LICENSEES

#### R 338.1531 Place of business.

Rule 31. (1) A builder or contractor shall maintain a place of business in this state, which is an actual, established physical location from which the builder or contractor conducts business and where applicable books and records are maintained. A post office box, secretarial service, mailbox rental, receiving service, resident agent address, or telephone answering service alone is not sufficient.

(2) A builder or contractor shall display the license and the licenses of all salespersons in a conspicuous position in the builder's or contractor's place of business.

History: 1979 AC; 2006 AACS.

#### R 338.1532 Advertising.

Rule 32. (1) Advertising shall not misrepresent material facts.

(2) A licensee shall include the name, license number, and actual business address, as shown on the license, in all advertising. The use of a telephone or post office box number alone is prohibited. When sales of new homes are being made by a licensed builder, through a licensed real estate broker, advertisements may indicate the broker's name or both the names of the builder and broker.

(3) A licensee shall not solicit any contract for home improvements by a promise to the purchaser or the prospective purchaser of a bonus, whether of merchandise or cash, which is contingent upon the purchaser's or prospective purchaser's using or displaying a dwelling to a third person or upon the licensee's obtaining an order or orders for merchandise or service from a third person.

(4) A licensee making or attempting to make sales through the use of displays, models or model installations, shall accurately portray the goods and services being offered so as to not mislead or deceive the public.

History: 1979 AC; 2006 AACS.

#### R 338.1533 Purchase and sales agreements.

Rule 33. (1) All agreements and changes to the agreements between a builder, or contractor, and the customer shall be in writing and signed by the parties. Copies of all agreements and changes to agreements shall be in writing, and provided to the customer.

(2) The builder or contractor shall make certain that the written agreements clearly state the terms of the transaction, including specifications, and when construction is involved, both plans and specifications, including cost, the type and amount of work to be done, and the type and quality of materials to be used.

(3) If a purchase or sales agreement is for a new structure which is either substantially completed or in substantial conformance with a model, plans and specifications need not be furnished if the structure is specifically identified or related to the model and any changes, additions to or subtractions from the model are specifically agreed to and noted in writing.

History: 1979 AC; 2006 AACS.

#### R 338.1534 Books and records.

Rule 34. A builder or contractor shall keep and maintain a complete, accurate set of books and records which disclose the licensee's current financial condition. The books and records shall be open to inspection by the department or any person duly authorized by it for good and sufficient cause during regular business hours after reasonable notice and for stated reasons.

History: 1979 AC; 2006 AACS.

R 338.1535 Financial statements.

Rule 35. Upon notice by the department, a licensee shall submit within 30 days sworn financial statement showing the licensee's current financial status. The notice for a financial statement may be based upon an unsatisfied judgment, a lien filed against the licensee or the department's reasonable belief that the licensee does not have the financial resources to meet contractual obligations. The department's notice shall be in writing and may be served personally on the licensee or by certified mail sent to the licensee's last known business address on file with the department. A request for an extension of time shall be in writing and may be granted for good and sufficient cause.

History: 1979 AC; 2006 AACS.

R 338.1536 Brokerage.

Rule 36. Acceptance or performance of a contract procured by a salesperson not licensed under a builder or contractor, or acceptance or performance of a contract, other than the sale of real property, procured by anyone not licensed under the act, is prohibited.

History: 1979 AC; 2006 AACS.

## PART 5. COMPLAINTS AND HEARINGS

R 338.1551 Complaints; filing.

Rule 51. (1) A complaint shall be submitted in a form specified by the department.

(2) Upon receipt of a valid and written complaint, the department shall assign a complaint number, acknowledge the complaint and forward a copy of the complaint to the licensee. The licensee shall reply to the department within 15 days from receipt of the complaint and shall confirm or deny the justification of the complaint. A complaint acknowledged as justified shall be corrected within a reasonable time. If a complaint or a portion of the complaint is not acknowledged by the licensee as being justified, then the department shall notify the complainant of the area of disagreement.

(3) If the complaint or the information submitted by the complaining party is incomplete or disputed by the licensee, the department may require the complaining party to furnish additional information. The report shall indicate what steps, if any, have been taken by the complaining party before any other governmental agency or any other pertinent information regarding the subject matter of the complaint. Before the department takes any further action it shall obtain a report from local building officials or proper local authorities, and if the department cannot obtain a report from the local building official or proper local authorities, then a person authorized by the department shall make an inspection to determine if the complaint is justified.

(4) If a complaint is justified by the local building inspector or by a person authorized by the department to make inspections, the builder or contractor shall correct the complaint within a reasonable time. Failure or refusal by the licensee to correct a structural matter that is materially deficient, dangerous, or hazardous to the owners shall be presumed to be dishonest or unfair dealing.

(5) Standards of construction shall be in accordance with the local building code, or in the absence of a code in accordance with the building code of the nearest political subdivision having a building code.

History: 1979 AC; 2006 AACS.

R 338.1552 Investigative conferences.

Rule 52. The department, after investigation, may request a licensee to appear at such investigative conference as is necessary to determine whether there is cause for complaint which would require a hearing on, or dismissal of, the complaint. Notice of a request for a conference shall be in writing and

mailed to the address appearing on the license not less than 10 days before the conference and shall set the time and place of the conference. The notice shall be recorded in the file at the time of mailing. Persons interested shall have the right to appear and be represented by counsel. Failure by an individual licensee or qualifying officer of a licensee to appear for the conference may be a basis for suspension, revocation or denial of a license. The department may grant an adjournment if requested by any party to the complaint if the request is made at least 5 days prior to the date assigned for the conference.

History: 1979 AC.

R 338.1553 Disposition of complaints; resolution or settlement.

Rule 53. (1) A complaint may be resolved or settled prior to a conference and the complaint may be closed by the department. If a complaint is resolved or settled by agreement, the licensee shall notify the department in writing thereof. The department shall then notify the complainant that it has received information that the complaint has been resolved or settled. If the complainant takes issue with the licensee's contention the department may investigate further. Resolution or settlement of a complaint shall not be construed as a waiver by the department of its statutory right to take disciplinary action.

(2) The department may dismiss a complaint on its own motion if it determines that the complaint has been resolved, settled, is without merit, or that there is insufficient evidence of a violation of the act.

(3) If the department, after investigation of a complaint, has reason to believe that a licensee is in violation of the statute or the rules, it may recommend to the director that a hearing be held to show cause why the license should not be suspended or revoked.

History: 1979 AC.

R 338.1554 Rescinded.

History: 1979 AC; 1990 AACS.

R 338.1555 Preservation of contract rights.

Rule 55. The affirmative defense for failure to utilize a contractually provided alternative dispute resolution procedure authorized in 2001 PA 113, MCL 339.2412(2) shall only be available in actions brought under a contract entered into and executed after July 31, 2001.

History: 2002 AACS.

## PART 6. EDUCATION

R 338.1560 Instructor qualifications.

Rule 60. An instructor of prelicensure or continuing competency courses shall possess either of the following qualifications:

(a) Be qualified under the requirements of MCL 339.2404b(4).

(b) Be qualified by experience, education, or both, to supervise and instruct a prelicensure or continuing competency course required under MCL 339.2404b, including at least 1 of the following:

(i) Properly licensed, certified or approved instructor at a high school, intermediate school district, community college, university, the bureau of construction codes, the Michigan occupational safety and health administration, other government agency, or a proprietary school licensed by the department.

(ii) Currently licensed as a residential builder or maintenance and alteration contractor with at least 3 years of experience in the subject matter being taught.

(iii) Possess equivalent qualifications or relevant expertise in the subject matter being taught.

History: 2008 AACCS; 2011 AACCS.

R 338.1562 Prelicensure; school, institution, sponsor, or instructor responsibilities.

Rule 62. (1) The school, institution, sponsor, or instructor, as determined appropriate by the department, shall do all of the following:

(a) Submit to the department the qualifications of each instructor to be used in an approved prelicensure course not fewer than 60 days before the instructor is scheduled to begin instruction. The department may waive this deadline at its discretion.

(b) Issue a certificate of completion to an applicant who successfully completes an approved residential builder or residential maintenance and alteration course. The certificate shall include all of the following information:

(i) Sponsor name.

(ii) Name of the participant.

(iii) Date course was completed.

(iv) Course name, course approval number, and number of hours approved for each area of competency listed in MCL 339.2404b(1) when applicable.

(v) Signature of course instructor.

(c) Retain all course attendance records for a period of 5 years.

(2) Instructors shall be responsible for all of the following:

(a) Compliance with all laws and rules relating to prelicensure and continuing competency courses under the act.

(b) Providing students with current and accurate information.

(c) Maintaining an environment conducive to learning.

(d) Assuring and certifying attendance of students enrolled in courses.

(e) Providing assistance to students and responding to questions relating to course materials.

History: 2008 AACCS; 2011 AACCS.

R 338.1564. Continuing competency; activities; courses; alternate activities; proof of compliance.

Rule 64. (1) Activities demonstrating continuing competency as required under MCL 339.2404b, such as courses and alternate activities, may include any of the following:

(a) Courses referenced in MCL 339.2404b(4).

(b) Successful completion of a college course.

(c) Successful completion of a comprehensive test being administered by the department or by a third party under contract with the department to offer prelicensure examinations.

(d) Participation in a school-sponsored mentoring program.

(e) Presenting or attending a seminar, in-house course, workshop, or technical presentation made at a meeting, convention, or conference by a trade association, research institute, risk management entity, manufacturer, supplier, governmental agency, consulting agency, or other entity.

(f) Publication of an article in a trade journal or a regional magazine as an expert in the field.

(g) Active participation in an occupational or technical society, state advisory or review committee.

(h) Serving as a member or attending a state residential builders' and maintenance and alteration contractors' board meeting.

(i) Serving as a member or attending a state construction code commission meeting.

(j) Participating in a company sponsored seminar or training to enhance professional development.

(k) Participating in a code hearing conducted by the international code council or bureau of construction codes.

(l) Participating in research conducted in conjunction with a college or university, trade association, or manufacturer.

(2) The subject matter of courses and alternate activities shall meet the minimum requirements of MCL 339.2404b(2), and any additional requirements shall be relevant to the licensed occupation and may include any of the following:

- (a) Prelicensure course areas listed in MCL 339.2404b(1).
  - (b) The residential maintenance and alteration contractor crafts and trades listed in MCL 339.2404(3).
  - (c) Accounting and safekeeping for monies received from a customer, including requirements of 1931 PA 259, MCL 570.151, regarding building contract fund.
  - (d) Accounting, finance, and taxes.
  - (e) Personnel management.
  - (f) Communication and customer service.
  - (g) Environmental or land use analysis.
  - (h) Life safety.
  - (i) "Green" building.
  - (j) Zoning and governance policies and procedures.
  - (k) Mold, lead, asbestos, or other hazardous material mitigation.
- (3) Under MCL 339.2404(6), the licensee shall maintain documentation that is sufficient to verify participation in a course or activity, and time spent in meeting the continuing competency requirements under the act.

History: 2011 AACCS.

R 338.1566 Distance learning; prelicensure; continuing competency.

Rule 66. (1) A distance learning course shall contain all of the following:

- (a) A course where instructor and student may be apart and instruction takes place through on-line or electronic media.
  - (b) A course which includes, but is not limited to, instruction presented through an interactive classroom, job site, computer conferencing, or an interactive computer system and which fulfills the requirements in section 2404b of the act.
  - (c) Individual modules of interactive instruction which provide access to an instructor, offered through on-line or electronic media.
  - (d) A list of at least 1 learning objective for each module of instruction. The learning objective or objectives shall ensure the entire content of the course is understood.
  - (e) A structured learning method that enables the student to attain each learning objective.
  - (f) A method of assessment of the student's performance during each module of instruction.
  - (g) A remediation of any student who is deficient in the assessment to repeat the module until the student understands the course content material.
  - (h) An acceptable method of ensuring that the student achieves the approved hours in the course.
  - (i) An acceptable method of remedying hardware and software failures.
  - (j) Documentation demonstrating successful completion of a course.
- (2) A prelicensure course may be earned through distance learning.
- (3) A continuing competency course or an alternate activity may be earned through distance learning.

History: 2011 MR 3, Eff. Feb. 16, 2011.