

**Effective 5/13/2014**

**Superseded 5/10/2016**

**61-2g-501 Enforcement -- Investigation -- Orders -- Hearings.**

- (1)
  - (a) The division may investigate the actions of:
    - (i) a person registered, licensed, or certified under this chapter;
    - (ii) an applicant for registration, licensure, or certification;
    - (iii) an applicant for renewal of registration, licensure, or certification; or
    - (iv) a person required to be registered, licensed, or certified under this chapter.
  - (b) The division may initiate an agency action against a person described in Subsection (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
    - (i) impose disciplinary action;
    - (ii) deny issuance to an applicant of:
      - (A) an original registration, license, or certification; or
      - (B) a renewal of a registration, license, or certification; or
    - (iii) issue a cease and desist order as provided in Subsection (3).
- (2)
  - (a) The division may:
    - (i) administer an oath or affirmation;
    - (ii) subpoena a witness or evidence;
    - (iii) take evidence; and
    - (iv) require the production of a book, paper, contract, record, document, information, or evidence relevant to the investigation described in Subsection (1).
  - (b) The division may serve a subpoena by certified mail.
  - (c) A failure to respond to a request by the division in an investigation authorized under this chapter is considered to be a separate violation of this chapter, including:
    - (i) failing to respond to a subpoena as a witness;
    - (ii) withholding evidence; or
    - (iii) failing to produce a book, paper, contract, document, information, or record.
  - (d)
    - (i) If a person is found to have violated this chapter or a rule made under this chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract, document, information, or record required under this chapter, including the costs incurred to copy an electronic book, paper, contract, document, information, or record in a universally readable format.
    - (ii) If a person fails to pay the costs described in Subsection (2)(d)(i) when due, the person's license, certification, or registration is automatically suspended:
      - (A) beginning the day on which the payment of costs is due; and
      - (B) ending the day on which the costs are paid.
- (3)
  - (a) The director shall issue and serve upon a person an order directing that person to cease and desist from an act if:
    - (i) the director has reason to believe that the person has been engaging, is about to engage, or is engaging in the act constituting a violation of this chapter; and
    - (ii) it appears to the director that it would be in the public interest to stop the act.
  - (b) Within 10 days after receiving the order, the person upon whom the order is served may request a hearing.

- (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall remain in effect.
  - (d) If a request for hearing is made, the division shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
- (4)
- (a) After a hearing requested under Subsection (3), if the board and division concur that an act of the person violates this chapter, the board, with the concurrence of the division:
    - (i) shall issue an order making the cease and desist order permanent; and
    - (ii) may impose another disciplinary action under Section 61-2g-502.
  - (b) The director shall commence an action in the name of the Department of Commerce and Division of Real Estate, in the district court in the county in which an act described in Subsection (3) occurs or where the person resides or carries on business, to enjoin and restrain the person from violating this chapter if:
    - (i)
      - (A) a hearing is not requested under Subsection (3); and
      - (B) the person fails to cease the act described in Subsection (3); or
    - (ii) after discontinuing the act described in Subsection (3), the person again commences the act.
- (5) A remedy or action provided in this section does not limit, interfere with, or prevent the prosecution of another remedy or action, including a criminal proceeding.
- (6)
- (a) Except as provided in Subsection (6)(b), the division shall commence a disciplinary action under this chapter no later than the earlier of the following:
    - (i) four years after the day on which the violation is reported to the division; or
    - (ii) 10 years after the day on which the violation occurred.
  - (b) The division may commence a disciplinary action under this chapter after the time period described in Subsection (6)(a) expires if:
    - (i)
      - (A) the disciplinary action is in response to a civil or criminal judgment or settlement; and
      - (B) the division initiates the disciplinary action no later than one year after the day on which the judgment is issued or the settlement is final; or
    - (ii) the division and the person subject to a disciplinary action enter into a written stipulation to extend the time period described in Subsection (6)(a).