

Effective 5/10/2016

61-2f-404 Disciplinary action -- Judicial review.

- (1)
 - (a) On the basis of a violation of this chapter, the commission with the concurrence of the director, may issue an order:
 - (i) imposing an educational requirement;
 - (ii) imposing a civil penalty not to exceed the greater of:
 - (A) \$5,000 for each violation; or
 - (B) the amount of any gain or economic benefit derived from each violation;
 - (iii) taking any of the following actions related to a license, registration, or certificate:
 - (A) revoking;
 - (B) suspending;
 - (C) placing on probation;
 - (D) denying the renewal, reinstatement, or application for an original license, registration, or certificate; or
 - (E) in the case of denial or revocation of a license, registration, or certificate, setting a waiting period for an applicant to apply for a license, registration, or certificate under this title;
 - (iv) issuing a cease and desist order;
 - (v) modifying an action described in Subsections (1)(a)(i) through (iv) if the commission finds that the person complies with court ordered restitution; or
 - (vi) doing any combination of Subsections (1)(a)(i) through (v).
 - (b)
 - (i) If the commission with the concurrence of the director issues an order that orders a fine or educational requirements as part of a disciplinary action against a person, including a stipulation and order, the commission shall state in the order the deadline by which the person shall comply with the fine or educational requirements.
 - (ii) If a person fails to comply by the stated deadline:
 - (A) the person's license, registration, or certificate is automatically suspended:
 - (I) beginning the day specified in the order as the deadline for compliance; and
 - (II) ending the day on which the person complies in full with the order; and
 - (B) if the person fails to pay a fine required by an order, the division may begin a collection process:
 - (I) established by the division, with the concurrence of the commission, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (II) subject to Title 63A, Chapter 3, Part 5, Office of State Debt Collection.
 - (c) If a licensee is an active sales agent or active associate broker, the division shall inform the principal broker with whom the licensee is affiliated of the charge and of the time and place of any hearing.
 - (d) A person previously licensed under this chapter remains responsible for, and is subject to disciplinary action for, an act the person committed while the person was licensed in violation of this chapter or an administrative rule in effect at the time the person committed the act, regardless of whether the person is currently licensed.
- (2)
 - (a) An applicant, certificate holder, licensee, registrant, or person aggrieved, including the complainant, may obtain agency review by the executive director and judicial review of any adverse ruling, order, or decision of the division.
 - (b) If an applicant, certificate holder, registrant, or licensee prevails in the appeal and the court finds that the state action was undertaken without substantial justification, the court may

award reasonable litigation expenses to the applicant, certificate holder, registrant, or licensee as provided under Title 78B, Chapter 8, Part 5, Small Business Equal Access to Justice Act.

(c)

- (i) An order, ruling, or decision of the division shall take effect and become operative 30 days after the service of the order, ruling, or decision unless otherwise provided in the order.
 - (ii) If an appeal is taken by a licensee, registrant, or certificate holder, the division may stay enforcement of an order, ruling, or decision in accordance with Section 63G-4-405.
 - (iii) An appeal is governed by the Utah Rules of Appellate Procedure.
- (3) The commission and the director shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in an adjudicative proceeding.

Amended by Chapter 384, 2016 General Session