

Guidelines for Administrative Penalties Related to First Violations of Filing, Payment, and Response Requirements

A. These guidelines will be used by staff to determine the amount of administrative penalty to recommend to the commission for a person's first violation of a filing, payment, or response requirement under the Texas Residential Construction Commission Act, title 16, Texas Property Code (the Act) or the rules of the Texas Residential Construction Commission, title 10, Texas Administrative Code (the commission rules). These guidelines serve only as a guide and the Executive Director may authorize staff to increase or decrease a penalty recommendation as circumstances may require in an individual case in order to further the objectives and policies of the Act and commission rules.

B. The filing requirements covered by these guidelines are the following:

- (1) application to renew builder registration under chapter 416 of the Act and chapter 303, subchapter A, of the commission's rules;
- (2) home registration under §426.003 of the Act and chapter 303, subchapter B, of the commission's rules;
- (3) post-SIRP correspondence under §313.27 of the commission's rules;
- (4) change of designated address under §303.13 of the commission's rules;
- (5) change of registered name under §303.15 of the commission's rules;
- (6) change in the form of business organization of the builder under §303.15 of the commission's rules;
- (7) material change in information under §303.17 of the commission's rules; and
- (8) inspection reports under §§313.13, 313.16, and 313.17 of the commission's rules

C. The payment requirements covered by these guidelines are the following:

- (1) builder registration fee or registration renewal fee under §416.004 of the Act;
- (2) late builder registration fee or late builder renewal fee under §303.1 of the commission's rules;
- (3) home registration fee under §426.003 of the Act and §303.150 of the commission's rules;
- (4) late home registration penalty under §426.003 of the Act and §303.150 of the

commission's rules;

(5) SIRP inspection fee or reimbursement of SIRP inspection fee under §§426.004, 428.001, and 428.004 of the Act and §313.8 and §313.18 of the commission's rules;

(6) reporting fee for change of designated address under §416.010 of the Act and §303.13 of the commission's rules;

(7) reporting fee for change of registered name under §303.15 of the commission's rules;

(8) reporting fee for change in the form of business organization of the builder under §303.15 of the commission's rules;

(9) reporting fee for material change in information under §303.17 of the commission's rules;

(10) failure to honor a check or other instrument of payment issued to the commission, as described in §418.001(6) of the Act; and

(11) processing fee for a returned check or payment as described in §418.001(6) of the Act.

D. The response requirements covered by these guidelines are the following:

(1) response to a commission request for information regarding an incomplete application under §303.1 of the commission's rules; and

(2) response to a commission request for information regarding a complaint under §306.1 of the commission's rules.

E. No previous violation. These guidelines apply to a violation listed in these guidelines only if the person has committed no previous violation or previously has not entered into an agreed order to resolve an issue for purposes of avoiding an administrative hearing on an alleged violation of the Act or commission rules.

F. Corrective action. These guidelines apply only if the person voluntarily takes corrective action to resolve the violation by contacting the commission in response to receipt of the commission's notice(s) of violation issued to the registrant for an alleged violation and initiating a corrective action.

G. Amount of penalty.

(1) No penalty shall be assessed for a violation subject to these guidelines if no corrective action is required by the commission or if the person takes the corrective

action that is specified in the notice of violation within 30 days after the date of delivery the notice of violation to the person at the person's official address of record or, if no official address of record exists, to the last address known by the commission for the person;

(2) If the matter is not resolved under subsection (1) of this section, the amount of the penalty for a violation that is subject to these guidelines shall be:

(a) \$1,000 for each violation if the corrective action as specified in the notice of violation is taken between 31 and 60 calendar days after the notice of violation is delivered to the person at the person's official address of record on file with the commission or, if no official address of record exists, to the last address known to the commission for the person;

(b) \$5,000 for each violation if the corrective action as specified in the notice of violation is taken between 76 and 150 days after the notice of violation is delivered to the person at the person's official address of record on file with the commission or, if no official address of record exists, to the last address known to the commission for the person; or

(c) a different amount agreed upon by the commission and the person.

H. Registration to remain in good standing. If these guidelines apply and the registrant takes the corrective action as specified in the commission's notice(s) of violation issued to the registrant, then the builder registration and the designated agent registration of the registrant shall remain in good standing and not be subject to revocation, suspension, or reprimand by the commission as a result of the violation.

I. Multiple violations. These guidelines shall not apply if the person has committed two or more violations, whether of the same, similar, or different types.