



THE COMMONWEALTH OF MASSACHUSETTS AUTO DAMAGE APPRAISER LICENSING BOARD

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Guidelines for ADALB Complaint Procedures Amended as Adopted by Unanimous Vote of the Auto Damage Appraiser Licensing Board at the Board Meeting Held on October 11, 2018.

1. Notice to Licensed Appraiser. When a complaint (Complaint) is received by the executive secretary (Executive Secretary) to the Auto Damage Appraiser Licensing Board (ADALB or Board) alleging a licensed motor vehicle damage appraiser (appraiser) has violated the ADALB's enabling act M.G. L. c. 26, § 8G and/or regulation 212 CMR 2.00 et seq. as provided for in the ADALB's "Application for Complaint", and/or violates 211 CMR 123.00, 211 CMR 133.00 it is assigned a serial number in the order received prefixed by the year of the date of the complaint. At least 21 days before the following scheduled Board meeting, the appraiser, named in the Complaint, is sent a copy of the Complaint, and a letter notifying him/her of the date of the Board meeting and the rights provided under M.G. L. c. 31, § 21 (a)(1) that he/she has a right: whether to have the discussion of the matter heard during the public session of the Board meeting, or during the executive session of the Board meeting to which the public is not allowed to attend; to speak on his/her own behalf; to have an attorney or representative of his/her choosing attend the Board meeting to advise him/her at own expense but the attorney or representative will not be allowed to participate at the Board meeting; and to create an independent record by audio-recording or transcription of the executive session of the meeting at his/her expense. Aside from an individual's right to participate in a discussion about that individual, participation of other people during an executive session is within the Board's discretion. See the Office of Attorney General's Decisions on the Open Meeting Law OML2013-141, OML 2016-06, and M.G.L. c. 30A, § 20(g). Thereafter, a copy of the letter and Complaint is forwarded to the members of the Board and placed on the agenda for the next Board meeting. A copy of the letter is also sent to the complainant.

2. Effect of Appraiser's Failure to Appear. In the event the appraiser fails to appear at the Board meeting, the Board may notify the appraiser that he/she will be considered in default and that at the next regularly scheduled Board meeting the Board will vote on issuing an Order to Show Cause pursuant to M.G.L. c. 30A against the appraiser, unless the appraiser establishes good reason for his/her failure to appear at the initial scheduled meeting on the Complaint.

3. Preliminary Review of the Complaint. The Board conducts a preliminary review of the Complaint at the Board meeting, either in the executive or public session of the Board meeting as requested by the appraiser, to determine whether to dismiss the matter or pursue further action.

4. Dismissal of the Complaint. At any time the Board may determine to dismiss a Complaint with or without prejudice due to lack of jurisdiction, based on frivolous allegations, lack of sufficient evidence, lack of legal merit or factual basis, finding of no violation, withdrawal of a Complaint, subsequent compliance with statutes and/or regulations, or other basis.

5. Mediation. To facilitate the disposition of a Complaint, at any time prior to the commencement of a formal adjudicatory hearing, the Board can offer the appraiser the opportunity to resolve the Complaint by mediation. See Office of the Attorney General's Open Meeting Law Decision of October 20, 2011. When an appraiser accepts an offer to resolve the complaint by mediation, the Board will appoint one of the members of the Board to conduct a mediation and attempt to mediate the Complaint with: the Board member, the appraiser and his representative, if any, the person filing the complaint (complainant), and any other parties related to the complaint necessary to resolve the matter. If the appraiser declines the offer to mediate he/she will not be penalized in any manner for his/her refusal to participate in the informal mediation process and retains his/her right to a formal adjudicatory hearing. If the appraiser assents to have the matter mediated by the Board member, thereafter, the Board member will contact the complainant and offer to mediate the Complaint. If the complainant assents to have the Complaint mediated then the Board member, appointed to conduct the mediation, will inform the appraiser and begin the mediation process. To obtain a final resolution of the matter through the mediation process, all parties must mutually agree on the resolution to the complaint. See "Manual for Conducting Administrative Adjudicatory Proceedings" Chapter 1 "F. Informal Proceedings." (2012 Edition) (Published by the Administrative Law Division of the Government Bureau of the Office of the Attorney General). The Board member shall use his/her discretion in choosing the manner of conducting the mediation which could include but is not limited to: communicating with each party separately, with the approval of all parties, to discuss each party's position and potential settlement offers; a simultaneous telephonic or Skype conference with all the parties; or a meeting with all the parties at a convenient location. If the parties agree to resolve the Complaint, then the complainant withdraws the Complaint by executing a form approved by the Board and the complainant will be precluded from filing any future Complaint with the Board based on the same facts. Any and all disputes raised in the Complaint alleging the violation of the Board's enabling act M.G.L. c. 26, § 8G and regulation 212 CMR 2.00 et seq. or 211 CMR 123.00 or 211 CMR 133.00 will be considered fully and finally resolved. At the following Board meeting the Board members will be notified of the resolution of the Complaint and the Board member will report: whether the mediation occurred or was terminated and whether a settlement was reached, but the Board member may not make a report, assessment, evaluation, recommendation, finding, or other communication to the Board and any discussions conducted during the mediation will be held as confidential by the Board member conducting the mediation and will not be disclosed to the other Board members. If the parties to the complaint do not resolve the dispute at mediation, then the Board member who participated during the mediation process will be recused from participating at any further proceedings on the Complaint taken at future Board meetings unless an informal hearing conference is authorized by the Board.

6. Informal Hearing Conference. The Board may convene an informal hearing conference at which the complainant and the licensee can appear before one Board member, assigned by the Board, to discuss the Complaint and determine whether the matter can be resolved informally. If an attempt to mediate the Complaint was made, the Board member assigned as mediator may

also be assigned to preside at the informal hearing. If all parties agree on a resolution, then the informal hearing can conclude the matter, but if all parties do not agree and the matter proceeds forward, then the appraiser retains his right to a formal adjudicatory hearing, unless the right to a formal hearing is expressly waived by the appraiser and approved by the Board. The informal hearing does not require the presentation of evidence, the testimony of witnesses, or the keeping of a record, but it will comply with fundamental due process notions of fairness. The informal hearing will provide notice to all parties, and any statements made at such a hearing will not be relied upon by the Board at any future formal administrative adjudicatory proceeding. Furthermore, since informal hearings are designed to determine whether a mutually agreeable resolution can be reached, attendance at such informal hearings is voluntary, and a refusal by the appraiser to attend is not a basis for any sanction or adverse inference against the appraiser.

At the informal hearing conference the Board member can accept an informal disposition of the matter by stipulation, agreed settlement, consent order or the issuance of an advisory letter to the appraiser detailing the Board's concerns and any recommendations to the appraiser. An advisory letter does not constitute disciplinary action.

7. Final Informal Hearing Conference. The Board member who conducted the informal hearing conference will report back to the Board at the next Board meeting following the informal hearing conference. During this portion of the Board meeting, the Board shall act as a quasi-judicial board for the sole purpose of determining whether the complaint against the appraiser warrants further proceedings before the Board. The final informal hearing conference shall be considered a meeting of the Board covered under subsection (d) of Section 18, of General Laws Chapter 30A as "a meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it." At the Board meeting all of the Board members will be notified of the resolution of the Complaint and the Board member will report: whether the informal hearing conference occurred or was terminated and whether a settlement was reached, but the Board member may not make a report, assessment, evaluation, recommendation, finding, or other communication to the Board and any discussions conducted during the informal hearing conference will be held as confidential by the Board member conducting the conference and will not be disclosed to the other Board members. If the parties to the complaint do not resolve the dispute at the informal hearing conference, then the Board member who participated during the informal hearing conference will be recused from participating at any further proceedings on the Complaint taken at future Board meetings. If an informal disposition of the matter was reached at the informal hearing conference, then the Board will adopt the disposition and the complaint shall be dismissed.

8. Board's Decision to Proceed. If the decision is to proceed, the Board will notify all parties that there will be a formal hearing, and the format of the matter will be an Order to Show Cause why the action should not be taken against the appraiser in the form of: Auto Damage Appraiser Licensing Board v. Named Appraiser. After the Board approves an Order to Show Cause the Board will forward it to the Office of the General Counsel for the Division of Insurance for assignment of an enforcement counsel who will prosecute the matter. The Board shall conduct the hearing in accordance with the State Administrative Procedures Act and the Standard Adjudicatory Rules of Practice and Procedure set forth in M.G.L. c. 30A and 801 CMR 1.00 et seq. The Board may hear the matter as a full body or appoint one member of the Board as

Presiding Officer in accordance with the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00. If the full Board chooses to hear the case, the Chair of the Board, or in his/her absence the Board member with most seniority based on length of service as a member of the Board, will oversee the conduct of the hearing, administer oaths or affirmations to witnesses, declare final decisions about objections to evidence, resolve issues about procedure, and maintain the decorum of the hearing. Legal Counsel to the Board shall act as clerk of the administrative hearing, maintain exhibits and other documents filed during the hearing, and provide counsel to the Board on any legal issues that arise during the course of the hearing, draft legal rulings and the final decision for the Board's approval.

9. Decisions of the Board. After a formal hearing, the Board by a majority vote determines if a violation has occurred and the appropriate action which could include the following:

(a) Formal Reprimand. A formal reprimand is an official written rebuke expressing strong disapproval of actions of the appraiser which is retained in the appraiser's Board files and constitutes formal disciplinary action.

(b) Administrative Penalties. The Board may impose penalties including administrative costs, revocation or suspension of license or both. All administrative costs assessed are subject to the discretion of the Board but may not be excessive. The administrative costs may be assessed against the appraiser, the appraiser's employer, the insurer, or the repair shop as provided for under M.G.L. c. 26, § 8G and 212 CMR 2.00 et seq.

(c) Suspension. A Suspension of a license deprives an appraiser of all rights and privileges of licensure for a specified period of time or until certain conditions are met which have been imposed by consent agreement or by formal decision following an adjudicatory hearing.

(d) Revocation. Revocation of a license permanently deprives an appraiser of all rights and privileges of licensure and eliminates his/her license status.

10. Appeal of the Board's Final Decision. A final decision rendered by the Board at the conclusion of an adjudicatory hearing may be appealed in accordance with M.G.L. c. 30A, § 14.

11. Severability. If any section or provision of these Guidelines for Complaint Procedures or application of these sections or provisions, are found to be contrary to law, the remaining sections, provisions, and the remaining applications of these sections and provisions will, nonetheless, continue in full force and effect as provided for by law.