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MEMORANDUM

FROM: John Hardesty, General Counsel, Kentucky Real Estate Authority
Tatum Herrington, Board Administrator, Kentucky Board of Home Inspectors
TO: Kentucky Board of Home Inspectors Pre-Licensing Providers
DATE: February 24, 2021
RE: Kentucky Board of Home Inspectors' Permits Providers to Offer Portions of Pre-Licensing Courses Online Through Duration of State of Emergency

I. Executive Order 2020-243 and Senate Bill 150

On March 6, 2020, the Governor declared a State of Emergency in the Commonwealth in response to the COVID-19 pandemic. Following that declaration, the Governor issued a series of Executive Orders, including Executive Order ("EO") 2020-243. Pursuant to EO 2020-243, the Governor declared statutes and regulations requiring in-person meetings or appearances conflict with the need to practice social distancing, creating a threat to public health and safety. EO 2020-243 declares that under KRS Chapter 39A, the Governor is authorized to suspend existing Kentucky laws and administrative regulations, and to command individuals to disperse from the location of an emergency. Through EO 2020-243, the Governor ordered all boards and commissions to take all reasonable and necessary steps to ensure appropriate social distancing, while ensuring the continued provision of services to the public. Those steps may include:

- a. providing services and conducting operations by mail, internet, telephone, and video teleconference, to the extent practicable;
- b. extending licenses, credentials, or certificates that require in-person appearances or education for renewal;
- c. permitting education and continuing education requirements to be satisfied through online courses, to the extent practicable;
- d. extending deadlines for statutory or regulatory reporting requirements; and
- e. extending deadlines for payment of fees, taxes, and assessments, and waiving late payment penalties incurred because of the emergency.

Pursuant to KRS 39A.180, the EO provides any state statute or regulation that conflicts with the provisions of the EO is suspended. It specifically states, “[t]his suspension includes, but is not limited to, Kentucky statutes or regulations mandating in-person meetings or interactions[.]” The EO further states, “[a]ll state agencies, including . . . boards [and] commissions . . . shall issue any order or memoranda necessary to clarify the suspension of any statutory or regulatory provision that is suspended pursuant to this Order, subject to the approval by the Office of the Governor or the Cabinet Secretary, to which the state agency is administratively attached under KRS 12.020.”

Through Senate Bill (“SB”) 150, the Kentucky General Assembly codified similar steps. SB 150(1)(b) permits administrative bodies, such as the Kentucky Board of Home Inspectors (“KBHI”), to waive or suspend administrative obligations required to engage in the business regulated by that administrative body. Such suspensions may last through the course of the State of Emergency. It further provides licensees shall be granted at least thirty (30) days after the expiration of the State of Emergency to pay any owed fee or complete any administrative obligation before an action may be taken against their license.

II. KBHI’s Pre-Licensing Education Regulations

831 KAR 2:040 Section 3(1)(a) requires KBHI pre-licensing courses to consist of sixty-four (64) hours, with sixteen (16) of those hours to consist of field training, as stated in 831 KAR 2:040 Section 3(1)(a)(7). 831 KAR 2:040 Section 3(2) states an online prelicensing training course shall not be accepted by the board unless the applicant (a) was enrolled in a pre-licensing course on or before September 4, 2015; (b) maintained continuous enrollment; and (c) completed the course no later than six (6) months from September 4, 2015.

III. KBHI Permitted Approved Prelicensing Providers to Offer Certain Portions of the Prelicensing Course Online Through the Duration of the State of Emergency

EO 2020-243 and SB 150 authorize KBHI to suspend the requirements under 831 KAR 2:040 Section 3(2), and allow prelicensing providers to provide prelicensing courses online during the State of Emergency.

Therefore, at its February 23, 2021 meeting, KBHI voted to take the following action:

- (1) Effective February 23, 2021 and lasting through the duration of the State of Emergency, KBHI suspended application of 831 KAR 2:040 Section 3(2), which prohibits KBHI prelicensing providers from offering a prelicensing course online. KBHI authorized pre-licensing providers to provide prelicensing courses through virtual and/or online means, with the following exception. Applicants must continue to complete the sixteen (16) field training hours required by 831 KAR 2:040 Section 3(1)(a)(7) in person.**
- (2) Effective February 23, 2021 and lasting through the duration of the State of Emergency, prelicensing course providers with current approvals from KBHI are not required to apply for separate approval in order to offer the permitted portions of the prelicensing curriculum online.**