



**Jim Pillen**  
Governor

# EXHIBIT

# 17

## STATE OF NEBRASKA

**NEBRASKA REAL ESTATE COMMISSION**  
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TO: Nebraska Real Estate Commission

FROM: Greg Lemon, Director

RE: Draft Rule Changes, Implementation of LB151, Notice and Service of Process (Corrected)

DATE: 5/09/2024

That attached draft changes to N.A.C. Title 299, Ch. 8, and Title 305, Chapters 3 & 4 are intended to implement LB151 changes to allowable methods of service of process consistent in the Commission's rules and regulations. The expanded service options will be especially helpful in serving notice in disciplinary actions and in our required notices for lapse of errors and omissions insurance coverage at the beginning of each calendar year.

If these draft regulations are acceptable to the Commission we will hold a formal adoption hearing in June.

### REAL ESTATE COMMISSION MEMBERS

**Joe Gehrki**

*Broker Member, Omaha*

**Robert B. Evenen**

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**A MEMBER OF THE ASSOCIATION OF REAL ESTATE LICENSE LAW OFFICIALS**

*An Equal Opportunity Employer*

**Title 305 - NEBRASKA REAL ESTATE COMMISSION**

**Chapter 3 - Rules of Practice and Procedure for Petitioning for Declaratory Orders**

**001 General Information.**

**001.01 Application of Rules.** These rules are promulgated pursuant to Neb. Laws 1994, LB 446, and 53 Nebraska Administrative Code, Chapter 3.

**001.02 Scope of this Chapter.** This Chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by the Commission.

**001.03 Related Regulations.** In addition to this Chapter, related regulations pertaining to administrative procedures before the Commission are: 305 NAC Chapter 1 Procedures for Negotiated Rulemaking; 305 NAC Chapter 2, Petitioning for Rulemaking; 305 NAC Chapter 4, Rules of Practice and Procedure for Hearings for Contested Cases.

**002 Definitions.** As used in this Chapter:

**002.01 Agency** shall mean the Commission and its employees, including the Director, any Deputy Directors and staff.

**002.02 Argument** shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

**002.03 Commission** shall mean the State Real Estate Commission of the State of Nebraska.

**002.04 Contested case** shall mean a proceeding before the Commission in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Commission.

**002.05 Declaratory order proceeding** shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the Commission as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the Commission.

**002.06 Director** shall mean the person appointed as Director of the Commission pursuant to section 81-885.07(4), Revised Statutes of Nebraska 1943, as amended.

**002.07 Hearing officer** shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

**002.08 Intervenor(s)** shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the Commission's issuance of a binding declaratory order.

**002.09** Necessary party shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

**002.10** Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the Commission who are involved in a declaratory order proceeding according to the procedures set forth in this Chapter.

**002.11** Petition shall mean the document filed in accordance with section 003 of this Chapter to initiate a declaratory order proceeding.

**002.12** Petitioner(s) shall mean a party or parties who have filed a petition with the Commission seeking issuance of a declaratory order.

**002.13** Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the Commission as set forth in this Chapter.

### **003 Petition for Declaratory Order.**

**003.01 Generally.** A request for a declaratory order must be made by a petition that meets the requirements of section 003.

**003.02 Who May File.** Any person may petition the Commission for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the Commission.

**003.03 When Order Appropriate.** A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the Commission. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

**003.03A** A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

**003.03B** A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

**003.03C** A declaratory order is not a mechanism for review or appeal of a decision made by the Commission in a contested case.

**003.03D** A declaratory order may not be requested to obtain a declaration by the Commission that a statute or regulation is unconstitutional or that a regulation of the Commission is invalid.

**003.03E** A declaratory order may not be issued by the Commission that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

**003.04 Form of Petition.** A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

**003.04A** A caption, which shall include:

**003.04A1** The venue: BEFORE THE STATE REAL ESTATE COMMISSION, STATE OF NEBRASKA;

**003.04A2** A heading specifying the subject matter and the name of the petitioner; and

**003.04A3** The name of the pleading: PETITION FOR DECLARATORY ORDER.

**003.04B** The statements required in subsection 003.05 of this Chapter.

**003.04C** The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

**003.04D** The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

**003.04E Size and Paper.** The petition shall be made on white, letter-sized (82" x 11") paper.

**003.04F Print.** The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

**003.04G Attachments.** Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 82" x 11" paper or placed in an 82" x 11" envelope and clearly marked as an attachment to the petition.

**003.05 Contents of Petition.** To be considered, the petition shall include the following:

**003.05A** The name and address of the petitioner;

**003.05B** The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

**003.05C** The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

**003.05D** A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

**003.05E** All propositions of law or contentions asserted by the

petitioner;

**003.05F** A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the Commission should rule and why the Commission should rule in the manner requested; and

**003.05G** Any documents pertinent to the petition that the petitioner wishes to be considered by the Commission.

**003.06** The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

**003.07 Sample Petition.** The petitioner may use the sample form of a petition which is attached as "Appendix A" and incorporated within this Chapter. The petitioner may also prepare a reasonable facsimile of "Appendix A" so long as the requirements of subsections 003.04, 003.05, and 003.06 of this Chapter are satisfied.

**003.08 Written Consents.** The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

#### **004 Submission and Service of Declaratory Order Petition.**

**004.01** The original petition for declaratory order shall be filed with the Agency by mail or in person during the Agency's normal business hours.

**004.02** The petition shall be deemed as filed when it is actually received by the Agency. The Agency shall date stamp all petitions upon receipt.

**004.03** At the same time the petition is filed with the Agency, the petitioner shall serve a copy of the petition, by registered mail, certified mail, return receipt requested, first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the Commission.

#### **005 Disposition of the Petition.**

**005.01 Generally.** Upon the filing of a petition, acting on behalf of the Commission, the Director or, by the Director's delegation, another Agency employee or a hearing officer may review the petition and recommend a decision to the Commission. In reviewing the petition, the Director or his or her designee, may in his or her discretion, do one or more of the following:

**005.01A** Require that additional information be submitted before the petition will be further considered;

**005.01B** Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a

request for a declaratory order has been filed with the Commission;

**005.01C** On behalf of the Commission, schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition as set forth in subsection 005.02C of this Chapter;

**005.01D** Consider the petition and any attachments without oral presentation.

**005.02** Within thirty (30) days after the petition is filed, the Commission shall, in writing:

**005.02A** Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

**005.02B** Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

**005.02C** Set the matter for specified proceedings as set forth in subsection 005.01 of this Chapter; or

**005.02D** Decline to issue a declaratory ruling, stating the reasons for the Commission's decision.

**005.03** Notwithstanding section 005.02 of this rule, the Commission may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 009 of this Chapter. The Commission shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the Commission determines not to issue a declaratory order.

#### **006 Intervention in Declaratory Order Proceeding.**

**006.01** Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

**006.01A** A petition for intervention must be filed with the Agency. Copies must be mailed by the petitioner for intervention to all parties to the proceeding.

**006.01B** The contents of the petition must be as specified in 006.02.

**006.01C** The Commission must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

**006.01D** The petition in intervention must be filed with the Agency and copies mailed to all parties named in any notice of hearing at least five days before the hearing.

**006.02 Contents of Petition.** The petition for intervention shall be submitted to the Commission, in writing, on 82" x 11" white paper, and shall include each of the following:

**006.02A** The statute, regulation, rule, or order that may apply to or affect the person, property, entity, or facts at issue in the matter;

**006.02B** A statement of facts sufficient to show the intervenor's interest;

**006.02C** A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

**006.02D** All propositions of law or contentions asserted by the intervenor; and

**006.02E** A statement of the specific relief requested by the intervenor.

**006.03** The Agency may, at its discretion, invite any person or entity to file a petition for intervention.

**006.04** The Commission shall grant a petition for intervention if the requirements of subsections 006.01 and 006.02 are satisfied.

**006.05** The Commission shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

**006.06** The Commission's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

### **007 Declaratory Order Proceedings.**

**007.01 Oral Argument, When.** Oral argument shall be had only on specific order of the Commission, the Director, an Agency employee designated by the Director, or the designated hearing officer. A petitioner, intervenor, necessary party, or the staff of the Commission may submit a motion for oral argument to the Commission or the designated hearing officer. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the Agency with a notice of the date, time, and location for oral argument. The Agency shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by registered mail, certified mail, return receipt requested first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01.

**007.02 Oral Argument, Procedure.** Oral argument will be made before a hearing officer or Commission. The hearing officer or Commission shall be in control of the proceeding and shall:

**007.02A** Identify the proceeding and introduce himself or herself

and identify each party for the record;

**007.02B** Hear the oral argument of the petitioner, intervenor, or necessary parties;

**007.02C** Close the proceedings.

**007.03** At the declaratory order proceeding, the Agency, including legal counsel, shall have the right to present oral argument.

**007.04** The hearing officer or Commission may impose reasonable time limits on the amount of time allocated to each party for oral argument.

**007.05** The parties and the Agency, including legal counsel, may file briefs in support of their respective positions. The hearing officer or Commission may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

**007.06** The oral argument may be conducted either in person or by telephone conference call.

#### **008 Issuance of Declaratory Order.**

**008.01** The Commission shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.

**008.02** The declaratory order shall be in writing and shall include the following:

**008.02A** The names of all parties to the proceeding upon which the order is based;

**008.02B** The facts upon which the order is based;

**008.02C** The statute, regulation, rule, or order at issue in the matter;

**008.02D** The Commission's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

**008.02E** The Commission's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

**008.02F** The reasons relied upon by the Commission to support its conclusions.

**008.03** A copy of the declaratory order shall be served upon each party by registered mail, certified mail, return receipt requested, first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01.

**008.04 Effect of Declaratory Order.** A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

**008.05 No Response within sixty (60) Days.** If the Commission has not



issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the Commission.

**009 Circumstances Under Which Commission will not Issue Declaratory Orders.**

**009.01** Grounds upon which the Commission shall refuse to issue a declaratory order include, but are not limited to, the following:

**009.01A** The petition requests a declaratory order on a matter that is outside the scope of authority of the Commission;

**009.01B** The petition requests review or appeal of a decision made by the Commission in a contested case;

**009.01C** The petition requests a declaratory order on the effect of past conduct;

**009.01D** An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the Commission involving the petitioner on substantially the same or similar facts or issues raised in the petition;

**009.01E** The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

**009.01F** The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

**009.01G** An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

**009.01H** An order would not resolve the controversy or uncertainty;  
or

**009.01I** The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

**009.02** Grounds upon which the Commission may determine to refuse to issue a declaratory order include, but are not limited to, the following:

**009.02A** Refusal is necessary to assure adequate allocation of Commission resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

**009.02B** The question presented is of such complexity that the Commission has had insufficient opportunity or resources to develop a fully matured ruling;

**009.02C** The petitioner fails to submit any additional information requested by the Commission, hearing officer, or Agency employee or submits such information after the date established in the request.

**010 Appeal.** A declaratory order is subject to review in the manner provided for

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review of contested cases by the Administrative Procedure Act, NEB. REV. STAT. sections 84-901 through 84-920. Specific procedures for appeal are set forth in NEB. REV. STAT. section 84-917.

Laws 1973, LB68, §18, RS 1943 §81-885.18, Effective Date September 2, 1973

Laws 2024, LB151, §2, RS 1943 §81-885.18, Effective Date July 19, 2024



**Title 305 - NEBRASKA REAL ESTATE COMMISSION**

**Chapter 4 - Rules of Practice and Procedure for Contested Cases**

**001 General Information.**

**001.01 Application of Rules.** These rules are promulgated pursuant to Neb. Laws 1994, LB 446 and LB 414 and 53 Nebraska Administrative Code Chapter 4. They shall apply to all contested cases within the jurisdiction of the Commission.

**001.02 Definitions.** The following definitions shall apply as used throughout Chapter 4 of these rules and regulations.

**001.02A** Agency shall mean the Commission and its employees, including the Director, any Deputy Directors, and staff.

**001.02B** Chairperson shall mean the Secretary of State. In the event of the absence or inability of the Secretary of State to serve as Chairperson, it shall also mean the acting Chairperson appointed by the Secretary of State or, in the event no appointment is made by the Secretary of State, by the Commission.

**001.02C** Commission shall mean the State Real Estate Commission of the State of Nebraska, and shall include only duly appointed and acting members of the Commission, and not employees or agents of the Agency.

**001.02D** Contested Case shall mean a proceeding before the Commission in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Commission hearing.

**001.02E** Director shall mean the individual appointed as the Director of the Commission pursuant to Section 81-885.07(4) of the Real Estate License Act.

**001.02F** Ex Parte Communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

**001.02F1** Communications which do not pertain to the merits of a contested case;

**001.02F2** Communications required for the disposition of ex parte matters as authorized by law;

**001.02F3** Communications in a rulemaking proceeding; and

**001.02F4** Communications to which all parties have given consent.

**001.02G** Hearing Officer shall mean the Chairperson or, for the purposes of conducting a prehearing conference and hearings on non-dispositive motions and other matters preliminary to a evidentiary hearing before the Commission, any individual appointed by the Chairperson pursuant to these rules. The individual appointed to handle prehearing conferences, hearings on non-dispositive motions,

and other matters preliminary to the evidentiary hearing may, but need not be, a member the Commission or an employee of the Agency. **001.02H** Membership Campground Act shall mean Sections 76-2101 et seq., Revised Statutes of Nebraska, 1943, as amended.

**001.02I** Non-Dispositive Hearing shall mean a hearing conducted by a hearing officer on motions regarding continuances, discovery matters, protective orders, and other procedural matters.

**001.02J** Party means the person by or against whom a contested case is brought, or a person allowed to intervene in a contested case.

**001.02K** Person or Persons shall include individuals, corporations, partnerships, associations, limited liability companies, or any other entities.

**001.02L** Prehearing Conference shall mean a conference before a hearing officer held for the purpose of identifying issues, witnesses, evidence, and other matters deemed relevant to the evidentiary hearing before the Commission, including discussion of potential settlement of a contested case.

**001.02M** Real Estate License Act shall mean the Nebraska Real Estate License Act, Sections 81-885.01 et seq., Revised Statutes Nebraska, 1943, as amended.

**001.02N** Retirement Communities and Subdivision Act shall mean Sections 76-1301 et seq., Revised Statutes of Nebraska, 1943, as amended.

**001.02O** State shall mean the State of Nebraska.

**001.02P** Subdivision Certification Law shall mean Sections 81-885.33 through 81-885.48, Revised Statutes of Nebraska, 1943, as amended.

**001.02Q** Time-Share Act shall mean Sections 76-1701 et seq., Revised Statutes of Nebraska, 1943, as amended.

## **002 Prohibitions Against Ex Parte Communications.**

**002.01 Prohibitions; when Applicable.** The prohibitions found in this section concerning ex parte communications, as defined in subsection 001.02F, shall apply beginning with the commencement of a contested case as further defined at subsections 008.04B, 009.03A7, and 009.03B6.

### **002.02 Prohibitions; to whom Applicable.**

**002.02A Parties and Public.** No party in a contested case or other person outside the Agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer, to any member of the Commission, or to any agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

**002.02B Persons in decision making roles.** No hearing officer, member of the Commission or employee who is or may reasonably be expected to be involved in the decision making process of the contested case shall make or knowingly cause to be made an ex parte

communication to any party in a contested case or other person outside the Agency having an interest in the contested case.

**002.02C Investigators.** No Agency employee or agent engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer, to a member of the Commission, or to an Agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

**002.03 Disclosure of contacts.** The hearing officer, member of the Commission, or Agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 002.02A through 002.02C shall file in the record of the contested case:

**002.03A** All such written communications;

**002.03B** Memoranda stating the substance of all such oral communications; and

**002.03C** All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

**002.03D** The filing shall be made with the Agency within two (2) working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

**002.03E** Filing and notice of filing provided under subsection 002.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

### **003 Intervention in a Contested Case.**

**003.01** Intervention in a contested case shall be allowed when the following requirements are met:

**003.01A** A petition for intervention must be filed with the Agency at least five (5) days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

**003.01B** The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

**003.01C** The hearing officer must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

**003.02** The hearing officer may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of

justice and will not impair the orderly and prompt conduct of the proceedings.

**003.03** If a petitioner qualifies for intervention, the hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

**003.03A** Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

**003.03B** Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

**003.03C** Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

**003.04** The hearing officer at least twenty-four (24) hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

**003.04A** The hearing officer may modify the order at any time, stating the reasons for the modification.

**003.04B** The hearing officer shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

#### **004 Form of Pleadings, Filing, Service, and Proof of Service.**

**004.01** A contested case may take the form of a complaint proceeding against a licensee or a petition for review of a decision of the Director. The procedures applicable only to a complaint proceeding are found at section 008. The procedures applicable only to a petition for review are found at section 009.

**004.02** A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

**004.03** Any pleading filed in a contested case shall meet the following requirements:

**004.03A** The pleading shall contain a heading specifying the name of the Commission and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Commission is being requested to take. The pleading shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney. When required by law, the pleading shall also be sworn to by the person filing the pleading.

**004.03A1** Attorneys shall also include their address, telephone number and bar number.

**004.03A2** An initial pleading shall also contain the name and address of the respondent.

**004.03B** All pleadings shall be made on white, letter-sized (8 2 x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

**004.04** All pleadings shall be filed with the Agency at its official office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Agency.

**004.05** The provision for serving a Complaint on the Respondent is found at 008.03. The provisions for serving a Petition for Review are found at 009.03A2 and 009.03B3. The provision for serving a Petition for Intervention is found at 003.01A.

**004.06** All pleadings subsequent to the initial pleading shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail registered mail, certified mail, first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01. Written proof of such service shall be filed with the Agency.

**004.07** Unless state law provides that a hearing is not required, a hearing date shall be set by the Agency in accordance with statutory requirements. A written notice of the time and place of hearing shall be served by the Agency upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the Agency.

**004.08** In computing time prescribed or allowed by Chapter 4 of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

**005 Hearing officer: criteria.**

**005.01** The Chairperson may appoint a hearing officer to whom will be delegated the functions of conducting prehearing conferences and ruling on non-dispositive motions, including but not limited to matters of discovery.

**005.02** A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 005.04. Nothing in this subsection



shall prevent the Director from carrying out any and all ministerial duties on behalf of the Commission.

**005.03** A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 005.04. Nothing in this subsection shall prevent any staff or agent of the Agency from carrying out any and all ministerial duties on behalf of the Commission.

**005.04** If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

**005.05** A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

**005.06** A person may serve as hearing officer at successive stages of the same contested case.

#### **006 Prehearing Procedures.**

**006.01 Prehearing conferences and orders.** A hearing officer designated to conduct a hearing may determine, subject to the Commission's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

**006.01A** Not less than twenty (20) days before the date set for the evidentiary hearing the Director shall issue an order on behalf of the Commission requiring each party, or their respective counsel of record, to exchange with each other: 1) a copy of each exhibit which the party may introduce into evidence, and 2) a list containing the name, address, and telephone number of each witness whom the party may call to testify. It shall not be necessary to disclose a witness or exhibit to be used solely for purpose of impeachment. The exchange shall be completed at least ten (10) days before the date set for hearing and a copy of each witness list and exhibit list shall be filed with the Agency at least ten (10) days before the date set for hearing. Additional witnesses may be called or exhibits introduced only at the discretion of a hearing officer for good cause shown. The Director shall not issue an order pursuant to this subsection when a hearing officer has been designed to conduct prehearing conferences and to rule on non-dispositive motions and when the hearing officer 1) has issued a prehearing conference order, 2) has scheduled a prehearing conference, or 3) has issued a prehearing order based on the pleadings, without holding a prehearing conference, as provided in section 006.01.

**006.01B** If a prehearing conference is conducted:

**006.01B1** The hearing officer shall promptly notify the Agency of the determination that a prehearing conference will be conducted. The Commission Chairperson may assign another hearing officer for the prehearing conference; and **006.01B2** The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

**006.01B3** The notice referred to in subsection 006.01B2 shall include the following:

**006.01B3 (a)** The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

**006.01B3 (b)** The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Agency;

**006.01B3 (c)** The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

**006.01B3 (d)** A statement of the time, place, and nature of the prehearing conference;

**006.01B3 (e)** A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

**006.01B3 (f)** The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

**006.01B3 (g)** A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

**006.01B3 (h)** Any other matters that the hearing officer considers desirable to expedite the proceedings.

**006.01C** The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, and such other matters as will promote the orderly and prompt conduct of the hearing. The prehearing conference may include a hearing on any pending non-dispositive motions. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference. Any proposed settlement or final disposition of the contested case, agreed to by the parties at the prehearing conference, shall be set forth in the prehearing order, together with the hearing officer's recommendation, and forwarded to the Commission.

**006.01D** The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

**006.02 Continuances.** Any motion for a continuance shall be in writing, shall state in detail why a continuance is necessary, shall be served on all other parties, and shall be filed with the Agency. The Director shall have authority to grant a continuance upon the motion of any party unless otherwise directed by action of the Commission. If the Director denies a motion for continuance, the motion shall be directed to a hearing officer for determination under subsection 006.03. The Director also may order a continuance upon reasonable notice to the parties when the continuance is necessary for the orderly conduct of the Commission's agenda, unless otherwise prohibited by law.

**006.03 Non-dispositive motions.** Non-dispositive motions, including motions relating to the conduct of discovery, and other non-dispositive procedural motions may be directed to and allowed by a hearing officer as permitted by law or if stipulated to by the parties.

**006.03A** The hearing officer shall set the time and place of the non-dispositive hearing and shall give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

**006.03B** The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings on the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

**006.03B1** Good cause for an extension of time or continuance may include, but is not limited to, the following:

**006.03B1 (a)** Illness of the party, legal counsel or witness;

**006.03B1 (b)** A change in legal representation; or

**006.03B1 (c)** Settlement negotiations are underway.

**006.04 Discovery in contested cases.**

**006.04A** The Director at the request of any party or the hearing officer shall issue subpoenas for discovery matters in accordance with the rules of civil procedure. The hearing officer, at the request of any party or upon the hearing officer's own motion, may issue discovery orders and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law.

**006.04B** Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

**006.04B1** Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

**006.04B2** State the reasons supporting the motion;

**006.04B3** Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

**006.04B4** Be filed with the Agency. The moving party must serve copies of all such motions on all parties to the contested case.

**006.04C** Other than as provided in subsection 006.04B4 above, discovery materials need not be filed with the Agency.

**006.04D** After a party has obtained an order to compel or other order pursuant to this subsection, the order may be enforced by the district court upon the application of the party obtaining the order.

**006.05 Amendments.**

**006.05A** An initial pleading may be amended at any time before an answer is filed or is due if notice is given to the opposing party or his or her attorney. In all other cases, a party must request permission to amend from the hearing officer.

**006.05B** A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the

case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

**006.06 Informal Disposition.** Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

**007 Conducting a contested case hearing.**

**007.01 Order.** At the discretion of the hearing officer, the hearing may be conducted in the following order:

**007.01A** The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

**007.01B** Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

**007.01C Presentation of Evidence.** The order for presentation of evidence in a complaint proceeding shall be as set forth in section 008.07. The order for presentation of evidence in a petition for review proceeding shall be as set forth in section 009.07.

**007.01C1** With regard to each witness who testifies, the following examination may be conducted:

**007.01C1 (a)** Direct examination conducted by the party who calls the witness;

**007.01C1 (b)** Cross-examination by the opposing party;

**007.01C1 (c)** Examination by Commissioners;

**007.01C1 (d)** Redirect examination by the party who called the witness; and

**007.01C1 (e)** Recross-examination by the opposing party.

**007.01C1 (f)** Additional examination by Commissioners.

**007.01C1 (g)** Any additional redirect examination or recross-examination shall be permitted at the hearing officer's discretion.

**007.01D** After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in addition to or in lieu of closing arguments.

**007.02 Evidence.**

**007.02A** The Chairperson or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

**007.02B** Any party to a formal evidentiary hearing before the Commission, from which a decision may be appealed to the courts of this state, may request that the Commission be bound by the rules of evidence applicable in district court by filing with the Agency and serving on the other parties of record, at least three (3) days prior to the holding of the hearing, a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

**007.02C** Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

**007.02D** All evidence including records and documents in the possession of the Commission of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

**007.02E** The Chairperson may administer oaths and issue orders governing the conduct of the hearing and the persons in attendance.

**007.02F** The Commission shall give effect to the rules of privilege recognized by law.

**007.02G** The Commission may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Commission.

**007.02G1** Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

**007.02G2** Parties shall be afforded an opportunity to contest facts so noticed.

**007.02G3** The record shall contain a written record of everything officially noticed.

**007.02H** The Commission may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

**007.02I** The Director may issue subpoenas in accordance with the rules of Civil Procedure except as may otherwise be prescribed by law. Subpoenas issued under this subsection may be enforced by the

district court upon application of the party requesting the subpoena. Orders issued by the Chairperson or Commission may be enforced by the district court upon application by the Chairperson.

**007.03 Conducting the hearing by electronic means.** The Chairperson may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

**007.04 Official record.**

**007.04A** The Agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of appeal, in which event the transcript and record shall be furnished by the Agency upon request and tender of the cost of preparation.

**007.04B** The Agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four (4) years following the date of the final order.

**007.04C** The Commission record shall consist only of the following:

**007.04C1** Notices of all proceedings;

**007.04C2** Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Commission pertaining to the contested case;

**007.04C3** The record of the hearing before the Commission, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Commission during the proceeding, and all proffers of proof and objections and rulings thereon; and

**007.04C4** The final order.

**007.04D** As provided in 305 NAC 4 Section 002.03 the Chairperson, Commission member, or the hearing officer who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

**007.04E** Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Commission record shall constitute the exclusive basis for Commission action in contested cases under the act and for judicial review thereof.

**007.05 Costs.** All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

**008 Contested Cases Involving Licensure of Individuals.**

**008.01 Application of Rules.** The rules in this section are applicable to filings and investigations of Complaints and Orders to Show Cause, and hearings on Complaints, Orders to Show Cause, and any other contested cases by or against licensees or any other individuals who are subject to the jurisdiction of the State Real Estate Commission pursuant to the Real Estate License Act or any lawful rules, regulations, or orders of the Commission thereunder.

**008.02 Additional Definitions.** In addition to the definitions used in Section 001.02, the definitions used in Nebraska Real Estate License Act are incorporated by this reference. The following definitions also shall apply to terms used in this section:

**008.02A** Answer shall mean a written statement filed by a Respondent in the form required by the Commission, answering the allegations of a Complaint.

**008.02B** Complainant shall mean the State of Nebraska, filing a Complaint on the relation of any person, including the Director, and the Commission.

**008.02C** Complaint shall mean a written statement filed by any person, by the Director, or by the Commission alleging that any individual subject to Commission jurisdiction has violated one or more provisions of the Real Estate License Act, or the rules and regulations or any lawful order of the Commission entered thereunder.

**008.02D** Licensee shall mean a real estate broker or real estate salesperson licensed by the Commission pursuant to the Real Estate License Act.

**008.02E** Party or parties shall include only the Complainant, the Respondent, and any intervenor. A person filing a Complaint is not a party to a complaint proceeding.

**008.02F** Respondent shall mean an individual against whom a Complaint has been filed.

**008.02G** Violation shall mean a violation of any portion of the Real Estate License Act, or any lawful rules, regulations, or orders of the Commission thereunder.

**008.03 Filing and Serving Complaints and Answers.**

**008.03A** Any person shall have the right to file a Complaint against a licensee or any other person subject to the Real Estate License Act, alleging a violation of that Act. The Complaint shall be sworn to by the person making it, and shall be filed in triplicate, by mail or in person, at the normal business address of the Agency. The Director shall cause the Complaint to be investigated.

**008.03B** The Director may file a Complaint on behalf of the Commission in the following circumstances: 1) when an examiner's report discloses facts which indicate that a licensee may have violated the Real Estate License Act; 2) when it appears in his or



her opinion, after investigation, that a Complaint filed under Section 008.03A does not adequately set forth the facts or issues involved, the Director may amend the complaint or supersede it by filing a new complaint; and 3) under such other circumstances as the Commission may direct. The Complaint need not be sworn to.

**008.03C** The Commission may file a Complaint on its own motion. The Complaint need not be sworn to.

**008.03D** Any Complaint shall be in writing, shall set forth in clear and concise language the alleged violation, and shall include the section or sections of the Real Estate License Act, rule, regulation or order violated.

**008.03E** Any complaint shall be made on behalf of the State of Nebraska, ex rel. the name of the person filing the Complaint, the Director, or the Commission, respectively. The individual against whom the Complaint is being filed shall be designated as the Respondent in the Complaint. The form of the Complaint shall be as follows:

BEFORE THE STATE REAL ESTATE COMMISSION  
OF THE STATE OF NEBRASKA

STATE OF NEBRASKA, ex rel.	)	
Jane Doe,	)	
Complainant,	)	Case No. _____
	)	
VS.	)	Complaint
	)	
Richard Rowe,	)	
Respondent.	)	

Approved forms and information concerning procedures for filing a Complaint may be obtained from the Director at the normal business address of the Agency.

**008.03F** The Director shall serve a copy of the Complaint on the Respondent unless, upon the request of the Director or upon its own motion, the Commission dismisses the Complaint because in the Commission's opinion the Complaint does not involve a violation of the Real Estate License Act.

**008.03G** Within twenty days following the service of the Complaint, the Respondent may file an Answer. The Answer shall be captioned in the manner designated in section 008.03E, except that it shall be denominated Answer; shall contain a concise response to each and every material allegation of the Complaint; shall contain a concise statement of all defenses upon which the Respondent intends to rely; and shall be sworn to by the Respondent. The Answer shall be filed with the Agency at its normal business address.

**008.03H** If the Respondent fails to timely file an Answer conforming to the requirements of section 008.03G, the Commission may accept the allegations of the Complaint as true and may, after notice and hearing, enter an order consistent with the allegations of the Complaint.

**008.03I** Substantive or dispositive pleadings other than the Complaint and Answer shall not be allowed, other than amendments thereto.

**008.04 Notice of Hearing.**

**008.04A** The Commission shall set a Complaint for hearing when, in the Commission's opinion, the pleadings and investigation reveal a sufficient probability that the alleged conduct of the Respondent may be such as to justify disciplinary action against him or her. The Commission may decide to set the Complaint for hearing either before or after an Answer is filed. If the Commission decides not to set a Complaint for hearing, it may dismiss the Complaint or direct the Agency to conduct a further investigation.

**008.04B** A contested case under Section 008 commences when the Commission sets the Complaint for hearing. The rules regarding ex parte communications shall apply beginning at the time the Complaint is set for hearing.

**008.04C** In the event the Commission sets a Complaint for hearing, notice of the hearing shall be sent to the Respondent by registered mail, certified mail, first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01, not later than twenty days prior to the date set for hearing.

**008.05 Consent Orders.** The following shall apply to Consent Orders:

**008.05A** The parties may enter into a written stipulation setting forth the terms and conditions of a Consent Order to be entered against the Respondent in a contested case. Such order shall contain findings of fact, conclusions of law, and the decision of the Commission, including sanctions to be imposed, if any, shall be signed by the Respondent, and shall be approved by the respective legal counsel of the parties, if any, as to form.

**008.05B** A proposed Consent Order shall not be binding unless or until it is signed by the Chairperson following approval by the Commission in an open meeting. The Commission shall have full discretion to reject any Consent Order, or to provide notice to the parties of other terms and conditions which it will approve, which terms and conditions shall be consistent with the facts of the case and the applicable law. Neither representations nor offers of settlement made by a party in the course of negotiations for a proposed Consent Order, nor the refusal of a party to enter into a proposed Consent Order, shall be used against him or her at hearing or to increase sanctions in the event a violation is found after hearing.

**008.05C** A Consent Order duly approved by the Commission and entered of record shall be served upon the parties and shall be effective in the same manner as an order entered after hearing.

**008.06 Presentation of Evidence.** Evidence in a Complaint proceeding will be presented in the following order:

**008.06A** Evidence is presented by the Complainant.

**008.06B** Evidence is presented by the Respondent.

**008.06C** Rebuttal evidence is presented by the Complainant.

**008.06D** Surrebuttal evidence is presented by the Respondent.

**008.07 Orders to Show Cause.** The following shall apply to Orders to Show Cause:

**008.07A** Upon application by the Director, supported by affidavit, the Chairperson may, in his or her discretion, issue an order requiring a licensee or any other person subject to the jurisdiction of the Commission under the Act to appear before the Commission and show cause why he or she should not be subject to sanctions for failing or refusing to abide by any specified conditions in an order of the Commission. Such person shall be given not less than five (5) days' notice by registered mail, certified mail, first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01 of the date upon which he or she is to appear before the Commission to respond to the Show Cause Order. Willful failure to accept service of the notice or to appear before the Commission and show cause on the date specified shall be grounds for imposing sanctions against for violation of Section 81-885.24(26) and (29) of the Act, as amended, as well as for violation of the conditions set by the Commission in its original order.

**008.07B** After a hearing on the Order to Show Cause, the Commission shall prepare and file a written decision to include findings of fact, conclusions of law, and its ruling on the Order to Show Cause, and specify the sanctions, if any, against the person charged with violation of specified conditions in a Commission order.

#### **009 Contested Cases Involving Registration.**

**009.01 Application.** The rules in this section are applicable to contested cases involving filings, applications, registrations, certifications, public offering statements and related matters under the jurisdiction of the Commission with regard to the Retirement Communities and Subdivisions Act, the Time-Share Act, the Membership Campground Act, or the Subdivision Certification Law, or section 81-885.18 of the Real Estate License Act.

**009.02 Definitions.** The following definitions shall apply to this section, in addition to the statutory definitions of applicable laws and the definitions contained in section 001.02.

**009.02A** Decision of the Director shall mean any written decision by the Director pursuant to law or authorization by the Commission affecting the legal rights, duties or privileges of specific persons, including registration of an individual as a salesperson pursuant to Section 76-2115 of the Membership Campground Act, as amended, or rejection of a license application pursuant to Section 81-885.18 of the Real Estate License Act. Such written decisions shall include but are not necessarily limited to decisions which 1) reject, deny, suspend, or order modification of a public offering statement, certification, application or registration, or any amendment or renewal, 2) determine that a person is operating in violation of any registration law under the Commission's jurisdiction, or 3) order a person to cease and desist from a particular act.

**009.02B** Applicant shall mean a person who files an application for registration or certification pursuant to the Retirement Communities and Subdivisions Act, the Time-Share Act, the

Membership Campground Act, or the Subdivision Certification Law, or licensure pursuant to the Real Estate License Act.

**009.02C** Petitioner shall mean a person who files a Petition for Review of a decision of the Director, unless the Petition is filed by the Director as provided in this section.

**009.02D** Respondent shall mean a person against whom the Director files a Petition for Review as provided in this section.

**009.03 Petition for Review.** Any person whose legal rights, duties or privileges are specifically affected by a decision of the Director may obtain a public hearing before the Commission by filing a Petition for Review as provided in this subsection. In those circumstances where a person is entitled to a hearing before a decision of the Director may be enforced, the Director may file a Petition for Review.

**009.03A Filed by Petitioner.**

**009.03A1** The Petition for Review filed by a petitioner shall be captioned as follows:

**BEFORE THE STATE REAL ESTATE COMMISSION  
OF THE STATE OF NEBRASKA**

In the Matter of                    )     Case No. \_\_\_\_\_  
[Name of Petitioner]            )     Petition for Review

Approved forms and information concerning procedures for filing a Petition for Review may be obtained from the Director at the normal business address of the Agency.

**009.03A2** A Petition filed by a petitioner shall state the name and address of the Petitioner, identify the decision of the Director for which review is sought and attach a copy of the decision, state with particularity the alleged errors of fact and/or law contained in the decision, set forth the Petitioner's contentions with regard to the facts, identify the applicable statutes and regulations, state the relief sought, and shall be sworn to by the Petitioner. Filing the Petition for Review with the Agency shall constitute service on the Director.

**009.03A3** A Petition for Review under the Retirement Communities and Subdivisions Act, the Time-Share Act, or the Subdivision Certification Law, shall be filed within thirty (30) days after the decision of the Director was mailed.

**009.03A4** A Petition for Review under the Membership Campground Act shall be filed within thirty (30) days after the decision of the Director was mailed, unless the decision of the Director is a summary suspension provided for in Section 76-2108, in which case the Petition for Review shall be filed within fifteen (15) days of the service of the decision of the Director.

**009.03A5** Within twenty (20) days of the filing of the Petition for Review, the Director may file an Answer, setting forth any responses to the allegations contained in the Petition for Review. The Answer shall be served on counsel of record for the petitioner or on an unrepresented petitioner. Should the Director not file an Answer, the issues will be determined based upon the decision of the Director and the Petition for Review.

**009.03A6** A petition for review under Section 81-885.18 must be filed within thirty days of the applicant's receipt of notice of the Commission's refusal to accept the application. Notice of the Commission's refusal to accept the application shall be given by registered mail, certified mail, first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01 to the applicant by the Director within twenty days after the decision by Commission.

**009.03A7** A contested case against a person under section 009.03A will commence when the Petition for Review is filed. The rules regarding ex parte communications will apply when the Petition for Review is filed.

**009.03B Filed by Director.**

**009.03B1** A Petition for Review filed by the Director shall be captioned as follows:

**BEFORE THE STATE REAL ESTATE COMMISSION  
OF THE STATE OF NEBRASKA**

In the Matter of the ) Case No. \_\_\_\_\_  
Decision of the Director )  
of the State Real Estate ) Petition for Review  
Commission Regarding )  
[Name of Respondent] )

**009.03B2** A Petition filed by the Director shall state the name and address of each Respondent, identify the decision of the Director for which review is sought and attach a copy of the decision, state with particularity the facts and/or law on which the decision is based, and state the relief sought.

**009.03B3** The Director shall serve a copy of the Petition on each Respondent by registered mail, certified mail, first-class mail using intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service, or a designated delivery service as provided in section 25-505.01.

**009.03B4** Within twenty (20) days following service of the Petition, the Respondent may file an Answer. The Answer shall be captioned in the manner designated in section 009.03B1, except that it shall be denominated

"Answer"; shall contain a concise response to each and every material allegation of the Petition; shall contain a concise statement of all defenses upon which the Respondent intends to rely; and shall be sworn to by the Respondent. The Answer shall be filed with the Agency at its normal business address.

**009.03B5** If the Respondent fails to timely file an Answer conforming to the requirements of section 009.03B4, the Commission may accept the allegations of the Petition for Review as true and may, after notice and hearing, enter an order consistent with the allegations of the Petition for Review.

**009.03B6** A contested case against a person under subsection 009.03B will commence when the Petition for Review is filed. The rules regarding ex parte communication will apply when the Petition for Review is filed.

**009.04 Other Pleadings.** Substantive or dispositive pleadings other than the Petition for Review and Answer shall not be allowed, other than amendments thereto.**009.05 Notice of Hearing.** The following shall apply to setting hearings and noticing Petitions for Review for hearing:

**009.05A** Notice of a hearing shall be sent to the Petitioner or Respondent not later than twenty (20) days prior to the date set for hearing.

**009.05B** A hearing on a Petition for Review filed pursuant to Section 76-1736(2) of the Time-Share Act shall be held not more than forty-five (45) days after receipt of the Petition, unless the Petitioner consents to a later date.

**009.05C** A hearing on a petition for review filed pursuant to Section 81-885.18 of the Real Estate License Act shall be set down to be conducted within sixty days of receipt of the petitioner=s petition for review.

**009.06** Evidence in a Petition for Review proceeding will be presented in the following order:

**009.06A** Evidence is presented by the Director.

**009.06B** Evidence is presented by the opposing party, whether a petitioner or respondent.

**009.06C** Rebuttal evidence is presented by the Director.

**009.06D** Surrebuttal evidence is presented by the opposing party.

**009.07 Consent Orders.** The following shall apply to Consent Orders:

**009.07A** The parties may enter into a written stipulation setting forth the terms and conditions of a Consent Order to be entered regarding the applicant or other person subject to the registration or certification laws under the jurisdiction of the Commission. Such order shall contain findings of fact, conclusions of law, and

the decision of the Commission, including any acceptance, rejection, or modification of an application for registration or certification. It shall be signed by the person to be bound and shall be approved as to form by the respective legal counsel of the parties, if any.

**009.07B** A proposed Consent Order shall not be binding unless or until it is signed by the Chairperson following approval by the Commission in an open meeting. The Commission shall have full discretion to reject any Consent Order, or to provide notice to the parties of other terms and conditions which it will approve, which terms and conditions shall be consistent with the facts of the case and applicable law. Neither representations nor offers of settlement made by a party in the course of negotiations for a proposed Consent Order, nor the refusal of a party to enter into a proposed Consent Order, shall be used against him, her, or it at any hearing on the Petition for Review.

**009.07C** A Consent Order duly approved by the Commission and entered of record shall be served upon the parties and shall be effective in the same manner as an order entered after hearing.

#### **010 Decision and order in a contested case.**

**010.01** Every decision and order adverse to a party to the proceeding, rendered by the Commission in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

**010.02** The decision and order should include:

**010.02A** The name of the Commission and name of the proceeding;

**010.02B** The time and place of the hearing;

**010.02C** The names of all parties or their attorneys who entered an appearance at the hearing;

**010.02D** The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

**010.02E** The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

**010.02F** The order consisting of the action taken by the Commission as a result of the facts found and the legal conclusions arising therefrom.

**010.03** Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

#### **011 Appeals.**



**011.01** Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

**011.02** Parties desiring to appeal a Commission decision must file a Petition for Review in the district court of the county where the Commission action is taken within thirty (30) days after the service of the final decision by the Commission. The thirty (30) day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

**011.03** Unless otherwise provided by statute, the procedures of NEB. REV. STAT. §84-917 govern the procedure for taking an appeal.

Laws 1973, LB68, §25, RS 1943 §81-885.25, Effective Date  
September 2, 1973

Laws 2024, LB151, §3, RS 1943 §81-885.25, Effective Date  
July 19, 2024