

NEBRASKA REAL ESTATE COMMISSION
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Title 305 - NEBRASKA REAL ESTATE COMMISSION

Chapter 1 - Rules of Practice and Procedure for Negotiated Rulemaking

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 1.

002 Negotiated rulemaking generally. The purpose of these regulations is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act and the Negotiated Rulemaking Act. The negotiated rulemaking process can be used by the Commission, whenever appropriate, to resolve controversial issues prior to the commencement of formal rulemaking. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act, but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. The negotiated rulemaking process also does not preclude other Commission efforts or processes designed to reach consensus with affected or interested persons concerning the content of rules or regulations. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by the Commission as a result of a subsequent formal rulemaking process.

003 Definitions. For purposes of this Chapter:

003.01 APA shall mean the Administrative Procedure Act, NEB. REV. STAT. sections 84-901 et seq., Revised Statutes of Nebraska, 1943, as amended.

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

003.03 Commission shall mean the State Real Estate Commission of the State of Nebraska.

003.04 Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition.

003.05 Convener shall mean a person who impartially assists the Commission in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

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

003.07 Facilitator shall mean a person who impartially aids in the discussion and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decision-making authority.

003.08 Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

003.09 Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee.

003.10 Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

003.11 Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character.

003.12 Rule or regulation shall mean any rule, regulation, or standard issued by the Commission, including the amendment or repeal thereof, whether with or without prior hearing, and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure, but not including rules and regulations concerning the internal management of the Commission not affecting private rights, private interests, or procedures available to the public, and any rules of interpretation thereof, and for the purpose of the APA, every rule and regulation which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests.

004 Establishment of a Negotiated Rulemaking Committee; Criteria. The Commission may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the Commission determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the Commission shall consider whether:

004.01 There is a need for the rule.

004.02 There are a limited number of identifiable interests that will be significantly affected by the rule.

004.03 There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

004.03A Can adequately represent the interests identified; and

004.03B Are willing to negotiate in good faith to reach a consensus on the proposed rule.

004.04 There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.

004.05 The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the APA.

004.06 The Commission has adequate resources and is willing to commit those resources, including technical assistance, to the committee.

004.07 The Commission, to the maximum extent possible consistent with the legal obligations of the Commission, will use the consensus of the committee as the basis of the rule proposed by the Commission in the formal rulemaking process of the APA.

005 Conveners; selection; duties. The Commission, at its discretion, may use the services of the convener.

005.01 The Commission may employ or contract for an organization or an individual to serve as a convener, or may use the services of a state employee to act as a convener. A convener shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Commission shall determine whether a person under consideration as a convener has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

005.02 The convener may assist the Commission in making the determination of need for a negotiated rulemaking process discussed in section 004 above. The convener may also assist the Commission in:

005.02A Identifying persons who will be significantly affected by a proposed rule.

005.02B Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

005.03 The convener shall report findings and make recommendations to the Commission. Upon request of the Commission, the convener shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. That report by the convener and any recommendations of the convener shall be public records and made available to the public for review upon request.

006 Petitions for the use of a negotiated rulemaking committee. Any person may petition the Commission to request the use of a negotiated rulemaking committee in the development or revision of a rule, as provided below.

006.01 A negotiated rulemaking process may be requested on any topic appropriate for a rule or regulation by the Commission.

006.01A A negotiated rulemaking process may be requested only to develop or revise rules which carry out statutes that are within the authority of the Commission to implement.

006.01B A negotiated rulemaking process may not be requested to develop a rule or regulation to vary or change the specific terms of a statute.

006.01C A negotiated rulemaking process may not be requested to negotiate a rule on a matter which is not within the definition of a rule or regulation as set forth in subsection 003.12 above.

006.02 A request for the use of a negotiated rulemaking procedure shall be made by a petition that meets the requirements of form set out in this subsection. In the event that it does not, the Commission may refuse to accept it.

006.02A A petition may be in the form of a pleading that contains a caption, heading, and name as set forth on "Attachment 1," which is attached to these model rules and made a part of them by reference.

006.02B A petition may also be made in the form of a letter so long as the letter contains all of the information required by these regulations and is clearly delineated as a petition for negotiated rulemaking.

006.02C All petitions must be on white, letter sized paper (8 1/2 by 11) of standard weight.

006.02D Petitions must be legible, and may be typewritten, photostatically reproduced, printed, or handwritten. If handwritten, petitions must be in ink. Only one side of a page of a petition shall contain any writing.

006.02E Any documents that are intended to accompany a petition shall be securely fastened, clearly marked as attachments to the petition, and meet the other requirements of this section as to size, print and legibility.

006.03 A petition for a negotiated rulemaking procedure shall meet the following requirements for content and substance. In the event that it does not, the Commission may refuse to accept it.

006.03A The petition must identify the general subject matter about which the negotiated rulemaking procedure is requested, including the statutes or legislative bill(s) which provide authority for the desired regulation, and, if amendments to existing regulations are sought, identification of the regulations by title, chapter and name.

006.03B The petition must identify the specific issue(s) proposed for inclusion in the negotiated rulemaking process.

006.03C The petition must discuss the facts surrounding each problem or issue proposed for inclusion in the negotiated rulemaking process.

006.03D The petition must discuss why a negotiated rulemaking process is in the public interest, including information on each of the criteria set out in subsections 004.01 through 004.05 above. The petition may also include information on the criteria included in subsections 004.06 and 004.07 above, to the extent such information is available to the petitioner. The petitioner may also submit such other information as may assist the Commission in making a decision.

006.03E The petition must identify persons who will be significantly affected by any rule which might result from the proposed negotiated rulemaking process, to the extent known by the petitioner. The petitioner may also suggest the names of persons who are willing and qualified to represent the interests that will be significantly affected by the negotiated rulemaking process and the proposed rule.

006.04 A petition for a negotiated rulemaking process shall be filed with the Agency. Filing may be made by personal delivery during regular Agency office hours or by mail.

006.05 The Director or Agency employee or convener designated by the Commission may recommend to the Commission whether a negotiated rulemaking process should be initiated after the filing of a petition for a negotiated rulemaking procedure.

006.06 Within sixty (60) days after submission of a petition for a negotiated rulemaking procedure, the Commission shall:

006.06A Deny the petition in writing, stating the reason(s) for denial; or

006.06B Initiate the negotiated rulemaking process as provided in these rules.

006.07 The decision of the Commission with respect to a petition for a negotiated rulemaking procedure may be made in the form of a pleading or a letter clearly designated as the decision on the petition. The petitioner shall be served with a copy of the Commission's final decision by certified mail, return receipt requested.

006.08 A decision by the Commission with respect to a petition for a negotiated rulemaking procedure is not subject to judicial review, although nothing herein shall bar a judicial review if such is otherwise provided by law.

007 Notice of a Negotiated Rulemaking Committee; Comment; Applications for Membership. If the Commission decides to go forward with the establishment of a negotiated rulemaking committee, the Commission shall proceed with the following process.

007.01 The Agency shall give notice to the Secretary of State, publish notice in a newspaper having general circulation in the state, and, as appropriate, publish notice in other newspapers and publications. The notice shall include:

007.01A An announcement that the Commission intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule.

007.01B A description of the subject and scope of the rule to be developed and the issues to be considered.

007.01C A list of interests likely to be significantly affected by the proposed rule.

007.01D A list of the persons proposed to represent the affected interests and the Agency.

007.01E A proposed schedule for completing the work of the committee.

007.01F An explanation of how a person may apply for or nominate another person for membership on the committee.

007.02 Persons interested in making comments upon the formation of a particular proposed negotiated rulemaking committee shall have thirty (30)

days from the date of publication of the notice concerning that committee to do so. Such comments shall be in writing, and shall either be personally delivered or mailed to the Agency at its business office.

007.03 Persons interested in applying for membership on a particular proposed negotiated rulemaking committee or in nominating other persons for such membership shall have thirty (30) days from the date of publication of the notice concerning that committee to do so. Persons making application for membership or nominations for membership shall do so on "Attachment 2" which is attached to these regulations and made a part of these regulations by reference, and which shall be provided by the Agency. Persons making application for membership or nominations for membership may also do so by letter, so long as the letter contains all of the information set out in "Attachment 2" and is clearly delineated as an application or nomination for membership on a specific negotiated rulemaking committee.

008 Establishment of a Negotiated Rulemaking Committee; Procedure. After publication of notice and termination of the comment and membership application period, the Commission will consider the comments and membership applications for a particular negotiated rulemaking committee and determine whether such a committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule, and whether such a committee is feasible and appropriate in the particular rulemaking. In making the final determination as to creation of a negotiated rulemaking committee, the Commission may use the services of a convener as set out in Section 005 above. In making the final determination as to creation of a negotiated rulemaking committee, the Commission and its Director will apply the criteria set out in 004 above.

008.01 If, after such a determination, the Commission decides that a negotiated rulemaking procedure is feasible, it shall establish a negotiated rulemaking committee as provided in these regulations. The committee will negotiate issues and develop proposed rules for use by the Commission in formal rulemaking.

008.02 If, after such a determination, the Commission decides not to establish a negotiated rulemaking committee, the Agency shall:

008.02A Notify the persons who commented on, applied for membership on or nominated persons for membership on the particular negotiated rulemaking committee of the reasons for the decision not to establish such a committee.

008.02B Publish notice of the decision not to establish the particular negotiated rulemaking committee in a newspaper having general circulation in the state, and, as appropriate, in other newspapers and publications.

009 Negotiated Rulemaking Committee; membership. All members of a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members.

009.01 Members of a negotiated rulemaking committee may include:

009.01A A Commissioner or employee of the Agency designated by the Commission to represent the Agency. This person shall be authorized

to fully represent the Agency in the discussions and negotiations of the committee.

009.01B Persons selected by the Commission as willing and qualified to represent the interests that will be significantly affected by the proposed rule.

009.01C Persons contacted and recruited by the negotiated rulemaking committee itself by consensus as essential to the success of the negotiated rulemaking process.

009.01D Persons selected by the negotiated rulemaking committee by consensus upon committee review of a petition for membership or nomination as set out in subsection 009.02 below.

009.02 Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee.

009.02A Each petition or nomination for committee membership shall be in writing and be submitted to the negotiated rulemaking committee by delivering or mailing the same to the Agency. All such petitions or nominations shall include:

009.02A1 Identification of the applicable negotiated rulemaking proceeding.

009.02A2 The name of the petitioner or nominee, and a description of the interests the person represents.

009.02A3 Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent.

009.02A4 A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration.

009.02A5 An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

009.02B Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may use the form attached hereto as "Attachment 3." "Attachment 3" is made a part of these regulations by reference. Persons wishing to file such a petition for membership or nomination to a negotiated rulemaking committee may also do so by letter, provided that the letter contains the information set forth above.

009.02C Upon receiving a petition for membership or nomination to a particular negotiated rulemaking committee, the committee in question shall decide, by consensus at its next meeting, whether or not to expand its membership.

010 Negotiated rulemaking committee; operation. A negotiated rulemaking committee established under these rules shall consider the matter proposed by the Commission for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

010.01 A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee consistent with these rules and the pertinent Nebraska statutes.

010.02 The Agency shall provide appropriate administrative support to a negotiated rulemaking committee including technical assistance and support.

010.03 The person representing the Agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members of the committee and shall be authorized to fully represent the Agency in the discussions and negotiations of the committee.

010.04 If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the Commission a report containing the proposed rule.

010.05 If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the Commission a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations or materials.

011 Facilitators; selection; duties. A facilitator shall be selected to assist a negotiated rulemaking committee with its duties.

011.01 The Agency may nominate a person to serve as a facilitator for the negotiations of a negotiated rulemaking committee, subject to the approval of the committee by consensus. If the committee does not approve the Agency's nomination for facilitator, the Agency shall submit a substitute nomination. If the committee does not approve the substitute nomination of the Agency for facilitator, the committee shall select, by consensus, a person to serve as facilitator.

011.02 The Agency may employ or contract for an organization or an individual to serve as a facilitator for a negotiated rulemaking committee or the Agency may use the services of a state employee to act as a facilitator. A person designated by the Agency to represent it on a negotiated rulemaking committee with respect to substantive issues may not serve as the facilitator. A facilitator shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Agency shall determine whether a person under consideration for facilitator has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

011.03 A facilitator approved or selected by a committee shall:

011.03A Preside at the meetings of the committee in an impartial manner.

011.03B Impartially assist members in conducting discussions and negotiations and achieving consensus.

011.03C Manage the keeping of minutes and records.

012 Negotiated rulemaking committee; expenses. Members of a negotiated rulemaking committee shall be responsible for their own expenses of participation. However, the Agency may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in NEB. REV. STAT. sections 81-1174 through 81-1177 and a reasonable per diem rate of compensation if:

012.01 The committee member certifies a lack of adequate financial resources to participate on the committee using the form at "Attachment 4" which is attached to these regulations and made a part of them by reference; and,

012.02 The Commission determines that the committee member's participation is necessary to assure an adequate representation of the interests of the members.

013 Grants or gifts. The Agency may accept grants or gifts from any source to fund a negotiated rulemaking process if:

013.01 Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public.

013.02 The grant or gift is given to and accepted by the Agency without placing any condition on the membership of a committee or the outcome of the negotiated rulemaking process.

013.03 There is a consensus among the members of the negotiated rulemaking committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

014 Negotiated rulemaking committee; termination. A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the Commission pursuant to the APA, unless the Commission, after consulting the committee, or the committee itself specifies an earlier termination date.

015 Negotiated rulemaking procedure; judicial review. Any action of the Commission relating to establishing, assisting or terminating a negotiated rulemaking committee under the Negotiated Rulemaking Act shall not be subject to judicial review, except that nothing in this section shall bar judicial review if such judicial review is otherwise provided by law.

305 NAC 1 - ATTACHMENT 1
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the Matter of [insert statute)
numbers or name] by [insert name) Petition for Negotiated
of Petitioner]) Rulemaking

COMES NOW the petitioner, [insert name of Petitioner], according to the Nebraska Negotiated Rulemaking Act and according to the State Real Estate Commission rules and regulations for Petitions for Negotiated Rulemaking, and requests that the State Real Estate Commission establish a negotiated rulemaking committee as set forth in this Petition.

In support of this request, the Petitioner states as follows:

1. The State Real Estate Commission administers the provisions of [insert sections of the statutes or legislative bill numbers for which negotiated rulemaking is sought], and is responsible for development of rules and regulations to implement these statutes.

2. Petitioner seeks a negotiated rulemaking procedure to [check one]:

() develop new rules

() amend existing rules, specifically ____ NAC ____, entitled

() repeal certain existing rules, specifically ____, NAC ____,
entitled _____.

3. A negotiated rulemaking committee should be established to negotiate and develop rules on each of the following issues concerning the statute(s), legislative bill(s) or regulation(s) identified above [identify each issue as to each statute, legislative bill or regulation and the general scope of the rulemaking proposed]:

4. The facts surrounding each of the issues listed in paragraph 3 above are as follows:

5. Establishment of a negotiated rulemaking committee would be in the public interest under each of the following criteria based upon the information the Petitioner hereby submits.

A. There is a need for rulemaking on the issue(s) identified above because:

B. There are a limited number of identifiable interests that will be significantly affected by the rule, including the following interests:

C. There is a reasonable likelihood that a negotiated rulemaking committee can be convened with a balanced representation of people (1) who can adequately represent the interests identified above and (2) are willing to negotiate in good faith to reach a consensus on the proposed rule, as shown by the following:

D. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time because:

E. The use of this procedure will not unreasonably delay formal rulemaking and issuance of a final rule because:

F. [Optional for response by Petitioner] The State Real Estate Commission should commit its resources, including technical assistance, to such a committee because:

G. [Optional for response by Petitioner] The State Real Estate Commission should, to the maximum extent possible consistent with its legal obligations, use a consensus of such a committee as the basis for a rule to be adopted under the Administrative Procedure Act because:

6. The following persons will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

7. The following persons may be willing and qualified to represent the interests that will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

8. Petitioner offers the following additional information for use by the Commission in consideration of this request [if any]:

9. Petitioner has attached the following documents in support of this request [list all documents attached]:

Dated this _____ day of _____, _____.

Signature of Petitioner

List Petitioner's name [typed or printed]

List Petitioner's full mailing address

List Petitioner's telephone number [including area code]

305 NAC 1 - ATTACHMENT 2
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the Matter of the Negotiated)
Rulemaking Committee for) Application/Nomination
[Insert name of the proposed) for membership
Negotiated Rulemaking Committee],) on the committee.
NAC)

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced negotiated rulemaking committee proposed by the Commission.

Name of applicant (typed or printed)

Full address of applicant

Applicant's telephone number
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiated rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. In support of his or her application, the applicant has attached the following documents to this petition (list all attachments):

6. By signing this application, the applicant hereby certifies that he or she will represent the interest identified above to the best of his or her ability in the negotiation process, and that he or she is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee.

Signature of Applicant

Date _____

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced negotiated rulemaking committee proposed by the State Real Estate Commission.

Name of nominee (typed or printed)

Full address of nominee

Nominee's telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiated rulemaking committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest and parties listed above because:

5. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list attachments):

6. The nominating party believes that the nominee will represent the interest identified above to the best of his or her ability and that the nominee is willing to negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee because:

Signature of Nominating Party

Date _____

Name of nominating party
(printed or typed)

Full address of nominating party

Telephone number of nominating party
(including area code)

305 NAC 1 - ATTACHMENT 3
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the Matter of the Negotiated	)	Application/Nomination
Rulemaking Committee for	)	for membership
[Insert name of the proposed	)	on the Committee
Negotiated Rulemaking Committee],	)	(interest inadequately
_____ NAC _____	)	represented)

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced negotiated rulemaking committee.

Name of applicant (typed or printed) _____

Full address of applicant _____

Applicant's telephone number _____
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced negotiated rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rulemaking committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of his or her application, the applicant has attached the following documents to this petition (list all attachments):

7. By signing this application, the applicant hereby certifies that he or she will represent the interest identified above to the best of his or her ability in the negotiation process, and that he or she is willing to actively negotiate in good faith to reach a consensus on the proposed rule being considered by the above-referenced negotiated rulemaking committee.

Signature of Applicant

Date _____

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced negotiated rulemaking committee.

Name of nominee (typed or printed)

Full address of nominee

Nominee's telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced negotiated rulemaking committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rulemaking committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list attachments):

7. The nominating party believes that the nominee will represent the interest identified above to the best of his or her ability and that the nominee is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rulemaking committee because:

Signature of Nominating Party

Date _____

Name of nominating party
(typed or printed)

Full address of nominating party

Telephone number of nominating party
(including area code)

305 NAC 1 - ATTACHMENT 4
SAMPLE

BEFORE THE STATE REAL ESTATE COMMISSION
STATE OF NEBRASKA

In the matter of the Negotiated) Certification of
Rulemaking Committee for) Financial
[Insert name of the proposed) Need
Negotiated Rulemaking Committee],)
____ NAC ____.

[illegible]

COMES NOW the undersigned, being first duly sworn, and hereby states and certifies as follows:

1. I am a member of the above-referenced negotiated rulemaking committee created by the State Real Estate Commission.
2. In connection with my duties on that committee, I represent [insert the name of the appropriate identified interest].
3. In connection with my duties on that committee, I have incurred or will incur expenses and/or other costs.
4. I certify that I have a lack of adequate financial resources to serve on the above-referenced negotiated rulemaking committee, and that I need financial assistance from the Commission in order to serve.

Signature of Affiant

Subscribed and sworn to before me this _____ day of _____, _____.

Notary Public

TITLE 305 - NEBRASKA REAL ESTATE COMMISSION

Chapter 2 - Rules of Practice and Procedure for Petitioning for Rulemaking

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 2.

002 Rulemaking Petition.

002.01 Petition. Any person may petition the State Real Estate Commission requesting the promulgation, amendment, or repeal of a rule or regulation.

002.02 Form. The petition:

002.02A Shall be clearly designated as a petition for a rule change;

002.02B In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

002.02C In the case of a petition for the repeal of an existing rule, shall state that it is a petition for repeal and shall either set forth the rule to be repealed in full or shall refer to it, by the State Real Estate Commission rule number;

002.02D Shall describe the reason for the rule change;

002.02E Shall include an address and telephone where the petitioner can be reached during regular work hours; and

002.02F Shall be signed by:

002.02F1 The Petitioner or his or her attorney, in which case the attorney shall also state his or her address, telephone number, and bar number;

002.02F2 A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

003 Petition Consideration and Disposition.

003.01 Within sixty (60) days after submission of a petition, the State Real Estate Commission shall:

003.01A Deny the petition in writing, stating its reasons therefor;

003.01B Initiate rulemaking proceedings in accordance with the Administrative Procedure Act;

003.01C If otherwise lawful, adopt a rule or regulation.

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 (8 ½" 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 8 ½" x 11" paper or placed in an 8 ½" 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, 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 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

305 NAC 3 Appendix A

BEFORE THE STATE REAL ESTATE COMMISSION,
STATE OF NEBRASKA

[illegible]

1. Petitioner's name and address;
2. The name and address of all persons who or entities which 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;
3. All material facts and specific circumstances;
4. All rules of law which apply;
5. Petitioner's demand for relief;

DATED on this _____ day of _____, _____.

VERIFICATION

STATE OF _____)
)
COUNTY OF _____) ss.

_____[name]_____, being first duly sworn, states that he/she is the petitioner/petitioner's agent in the above entitled matter; that he/she has read the foregoing Petition For Declaratory Order; and that the allegations of fact therein are true.

[Petitioner's signature]

SUBSCRIBED and sworn to before me on this _____ day of _____, _____.

NOTARY SEAL

[Notary signature]

Title 305
Chapter 4

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 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 AAnswer@; 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