

**R162-2g-504. Administrative Proceedings.**

- (1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order shall be conducted as a formal adjudicative proceeding.
- (2) Informal adjudicative proceedings.
  - (a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.
  - (b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Appraiser Licensing and Certification Act or by these rules.
- (3) (a) A hearing before the board will be held in:
  - (i) a proceeding conducted subsequent to the issuance of a cease and desist order or other emergency order;
  - (ii) a case where the division seeks to deny an application for original or renewed registration, licensure, or certification for failure of the applicant to meet the criteria of good moral character, honesty, integrity or truthfulness;
  - (iii) a case where the division seeks disciplinary action pursuant to Sections 61-2g-501 and 502 against a trainee or an appraiser; and
  - (iv) an appeal from an automatic revocation under Section 61-2g-302(2)(d), if the appellant requests a hearing.
  - (b) If properly requested by the applicant, a hearing will be held before the board to consider an application:
    - (i) that is denied by the division on the grounds that the instructor's attestation to upstanding moral character is false;
    - (ii) for an initial appraiser license or certification that is denied by the board on the recommendation of the experience review committee; and
    - (iii) for a temporary permit that is denied by the division for any reason.
  - (c) A hearing is not required and will not be held in the following informal adjudicative proceedings:
    - (i) the issuance, renewal, or reinstatement of a trainee registration or an appraiser license or certification by the division;
    - (ii) the issuance or renewal of an appraisal course, school, or instructor certification;
    - (iii) the issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division; and
    - (iv) the denial of renewal or reinstatement of a trainee registration or an appraiser license or certification for failure to complete any continuing education required by statute or rule; and
    - (v) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules.
- (4) (a) Request for agency action. The following applications shall be deemed a request for agency action:
  - (i) registration as a trainee;

- (ii) licensure or certification as an appraiser;
    - (iii) certification of a course, school, or instructor; and
    - (iv) issuance of a temporary permit.
  - (b) Any other request for agency action shall be in writing, signed by the requestor, and shall contain the following:
    - (i) the names and addresses of all persons to whom a copy of the request for agency action is being sent;
    - (ii) the agency's file number or other reference number, if known;
    - (iii) the date of mailing of the request for agency action;
    - (iv) a statement of the legal authority and jurisdiction under which the agency action is requested, if known;
    - (v) a statement of the relief or action sought from the division; and
    - (vi) a statement of the facts and reasons forming the basis for relief or agency action.
  - (c) A complaint against a trainee, an appraiser, or the holder of a temporary permit requesting that the division commence an investigation or a disciplinary action is not a request for agency action.
- (5) Procedures for hearings in informal adjudicative proceedings.
- (a) All informal adjudicative proceedings shall adhere to procedures as outlined in:
    - (i) Utah Administrative Procedures Act Title 63G, Chapter 4;
    - (ii) Utah Administrative Code Rule R151-4 et seq.; and
    - (iii) the rules promulgated by the division.
  - (b) Except as provided in this Subsection (6)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.
  - (c) In any proceeding under this Subsection R162-2g-504, the board and division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the board and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.
  - (d)
    - (i) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing, to the respondent at the address last provided to the division pursuant to Subsection R162-2g-306b.
    - (ii) The notice shall set forth the matters to be addressed in the hearing.
  - (e) Formal discovery is prohibited.
  - (f) The division may issue subpoenas or other orders to compel production of necessary evidence:
    - (i) on its own behalf; or
    - (ii) on behalf of a party where the party:
      - (A) makes a written request;
      - (B) assumes responsibility for effecting service of the subpoena; and
      - (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.
  - (g) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.
  - (h) Intervention is prohibited.

- (i) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:
    - (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
    - (ii) Title 52, Chapter 4, the Open and Public Meetings Act.
  - (j) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.
- (6) Additional procedures for disciplinary proceedings.
- (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:
    - (i) a notice of agency action;
    - (ii) a petition setting forth the allegations made by the division;
    - (iii) a witness list, if applicable; and
    - (iv) an exhibit list, if applicable.
  - (b) Answer.
    - (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.
    - (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.
    - (iii) Any answer shall be filed with the division no later than 30 days following the mailing date of the notice of agency action pursuant to this Subsection (6)(a).
  - (c) Witness and exhibit lists.
    - (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of agency action.
    - (ii) Any witness list shall contain:
      - (A) the name, address, and telephone number of each witness; and
      - (B) a summary of the testimony expected from the witness.
    - (iii) Any exhibit list:
      - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
      - (B) shall be accompanied by copies of the exhibits.
    - (iv) (A) The presiding officer, upon a determination of good cause, may require a respondent to file a witness and exhibit list.
      - (B) Failure to comply with a requirement to file a witness and exhibit list may result in the exclusion of any witness or exhibit not disclosed.
  - (d) Pre-hearing motions.
    - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
    - (ii) The division director shall receive and rule upon any pre-hearing motions.