

R162-2c-401 Administrative Proceedings

- (1) Request for agency action.
 - (a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:
 - (i) an original or renewal application for a license;
 - (ii) an original or renewal application for a school certification;
 - (iii) an original or renewal application for a course certification; and
 - (iv) an original or renewal application for an instructor certification.
 - (b) Any other request for agency action shall:
 - (i) be in writing;
 - (ii) be signed by the requestor; and
 - (iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).
 - (c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):
 - (i) a complaint against a licensee; and
 - (ii) a request that the division commence an investigation or a disciplinary action against a licensee.
- (2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.
- (3) Informal adjudicative proceedings.
 - (a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:
 - (i) a proceeding on an original or renewal application for a license;
 - (ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and
 - (iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.
 - (b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.
- (4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:
 - (a) the issuance of an original or renewed license when the application has been approved by the division;

- (b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;
 - (c) 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;
 - (d) the denial of an application for an original or renewed license on the ground that it is incomplete;
 - (e) 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; or
 - (f) a proceeding on an application for an exemption from a continuing education requirement.
- (5) Hearings required. A hearing before the commission shall be held in the following circumstances:
- (a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);
 - (b) an appeal of a division order denying or restricting a license; and
 - (c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.
- (6) Procedures for hearings in informal adjudicative proceedings.
- (a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.
 - (b) All informal adjudicative proceedings shall adhere to procedures as outlined in:
 - (i) Utah Administrative Procedures Act Title 63G, Chapter 4;
 - (ii) Utah Administrative Code Section R151-46b; and
 - (iii) the rules promulgated by the division.
 - (c) Except as provided in Subsection 7(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.
 - (d) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.
 - (e) 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 pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 written notice of the date, time, and place scheduled for the hearing.
 - (f) Formal discovery is prohibited.

- (g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:
 - (i) on its own behalf; or
 - (ii) on behalf of a party where:
 - (A) the party 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 the witness.
 - (h) 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.
 - (i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.
 - (j) The division may decline to provide a party with information that it has previously provided to that party.
 - (k) Intervention is prohibited.
 - (l) 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.
 - (m) Upon filing a proper entry of appearance with the division pursuant to R151-46b-6, an attorney may represent a respondent.
- (7) 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 within thirty days after the mailing date of the notice of agency action and petition.
 - (c) Witness and exhibit lists.
 - (i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.
 - (ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.
 - (iii) Any witness list shall contain:
 - (A) the name, address, and telephone number of each witness; and

- (B) a summary of the testimony expected from each witness.
- (iv) 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.
- (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.