

R162-2f-407. Administrative Proceedings.

- (1) 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.
- (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 Licensing and Practices Act or by these rules.
- (3) Hearings required. A hearing before the commission shall be held in a proceeding:
 - (a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and
 - (b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.
- (4) 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 a member 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 Rule R151-46b; and
 - (iii) the rules promulgated by the division.
 - (c) Except as provided in this Subsection (5)(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 407, 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 ten business 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:
 - (i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and
 - (ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.
 - (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 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.
 - (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 Utah Administrative Code Section R151-46b-6, an attorney may represent a party.
- (5) 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) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.
 - (ii) The respondent shall provide its witness and exhibit lists 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 the 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.