

**PROPOSED REGULATION OF THE CONSUMER AFFAIRS**  
**DIVISION OF THE DEPARTMENT OF BUSINESS AND**  
**INDUSTRY**

**LCB File No. R001-97**

August 11, 1997

EXPLANATION – Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AUTHORITY: §§ 2-27, NRS 233B.050; §§ 28-38, NRS 233B.040 and Section 5 of Senate Bill No. 167.

**Section 1.** Chapter 598 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 38, inclusive, of this regulation.

**Sec. 2.** *Sections 2 to 27, inclusive, of this regulation provide procedures for all hearings authorized by statute to be conducted by the division.*

**Sec. 3.** *As used in sections 2 to 27, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 4 to 7, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 4.** *“Commissioner” means the commissioner of the consumer affairs division of the department of business and industry.*

**Sec. 5.** *“Director” means the director of the department of business and industry.*

**Sec. 6.** *“Division” means the consumer affairs division of the department of business and industry.*

**Sec. 7.** *“Hearing officer” means the commissioner or a person designated by the commissioner to conduct a hearing.*

**Sec. 8.** *1. In any hearing held by the division:*

*(a) A party may appear in person or be represented by an attorney.*

*(b) If a party will be represented by an attorney, the party must send written notification to the division of the name, address and telephone number of the attorney not less than 5 days before the hearing.*

*2. An attorney appearing as counsel at a hearing must be an attorney at law admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the supreme court of Nevada, the attorney must be associated with an attorney licensed in Nevada in a manner consistent with the procedure established for such attorneys to appear as counsel in the courts of this state.*

**Sec. 9.** *1. An order to show cause and notice of hearing must be served on a party at least 10 days before the date set for the hearing, unless the time is waived by the party in writing.*

*2. Every order to show cause and notice of hearing must bear an identifying number, assigned by the division, which is the number assigned to all hearings, orders and communications between the parties relating to the subject matter of the order to show cause.*

3. *An order to show cause must include, without limitation, the following information:*

*(a) A statement of the allegations that consists of a short and plain statement of the matters asserted.*

*(b) A reference to each particular statutory provision that is a ground for the allegations.*

*(c) A notice of hearing that consists of a statement of the date, time and place of the hearing.*

*(d) A reference to the statutory provision pursuant to which the hearing is being held.*

4. *The notice of hearing must be substantially in the following form, but may include other information:*

*YOU ARE HEREBY NOTIFIED that a hearing will be held before the Consumer Affairs Division of the Department of Business and Industry at (insert place of hearing) on the ..... day of ....., 19....., at the hour of ....., upon the allegations made in the Order to Show Cause served upon you. You may be present at the hearing and may be, but need not be, represented by an attorney. Pursuant to chapter 233B of NRS, you may present any relevant evidence and you will be given full opportunity to cross-examine all witnesses testifying against you. At the discretion of the Commissioner of Consumer Affairs, you may request the issuance of subpoenas to compel the attendance of witnesses and the production of books,*

*documents or other things by applying to the Consumer Affairs Division of the Department of Business and Industry.*

**Sec. 10.** *1. A party who wishes to contest an order to show cause may file an answer with the division.*

*2. An answer to an order to show cause must:*

*(a) Be in writing; and*

*(b) Specifically admit or deny each material allegation and state any new matter constituting a defense.*

*3. All affirmative defenses must be specifically stated, and unless objection is stated in the answer, all objections to the form of the order to show cause and notice of hearing are waived.*

**Sec. 11.** *1. Before the commencement of a hearing, and during a hearing upon reasonable cause shown, a party may request in writing that the division issue a subpoena to require the attendance of witnesses or the production of documents. The division will deny the request if it is untimely or if the evidence to be offered is not material or relevant to the determination of the issues before the hearing officer. If the request is denied, the division will notify the requesting party in writing as soon as practicable of the reasons for the denial.*

*2. All witnesses, other than a party or an officer or employee of the State of Nevada or any political subdivision thereof, who appear at a hearing pursuant to a subpoena issued*

*at the request of a party, are entitled to fees and mileage in the same amounts and under the same circumstances as provided by law for witnesses in civil actions in the district courts. A witness who is entitled to fees or mileage and who attends a hearing at a location so far removed from his residence as to make impracticable his return thereto from day to day is entitled, in addition to witness fees and in lieu of mileage, to the per diem compensation for subsistence and transportation authorized for state officers and employees generally for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing. Fees, subsistence and transportation expenses must be paid in advance by the party at whose request the witness is subpoenaed. The division may, in its discretion, award as costs the amount of all such expenses to the prevailing party.*

*3. The testimony of any material witness residing within or without the State of Nevada may be taken by deposition, at the discretion of the hearing officer, in the manner provided by the Nevada Rules of Civil Procedure.*

**Sec. 12.** *1. Affidavits may be received in evidence at a hearing in accordance with the following:*

*(a) A party who wishes to introduce an affidavit in evidence must, not less than 5 days before the day set for hearing, serve upon the opposing party or his attorney, either personally or by registered or certified mail, a copy of the affidavit together with the notice set forth in subsection 2.*

*(b) Unless the opposing party, within 3 days after such service, mails or delivers to the party who wishes to introduce the affidavit a request to cross-examine the affiant, the right of the opposing party to cross-examine the affiant is waived and the affidavit, if introduced in evidence, must be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not provided after a request therefor is made in accordance with this subsection, the affidavit may be introduced in evidence, but must be given only the same effect as other hearsay evidence.*

*2. The notice required by paragraph (a) of subsection 1 must be substantially in the following form:*

*At the hearing set for the..... day of ....., 19...., the accompanying affidavit of (insert name of affiant) will be introduced in evidence. The affiant will not be called to testify orally and you will not be entitled to question the affiant unless you notify the undersigned that you wish to cross-examine the affiant. To be effective, your request must be mailed or delivered to the undersigned not more than 3 days after the date on which this notice and the enclosed affidavit are served upon you.*

---

*(Party or Counsel)*

---

*(Address)*

---

*(Telephone)*

**Sec. 13.** *1. Any clerical error or omission in an order to show cause does not invalidate a hearing.*

*2. An order to show cause or notice of hearing may be amended by the commissioner at any time before the conclusion of a hearing.*

**Sec. 14.** *1. The commissioner shall preside over a hearing held pursuant to an order to show cause unless prohibited by NRS 233B.122. The commissioner may designate a person, whose decision is subject to review by the commissioner, to conduct a hearing. If the commissioner designates a person to conduct a hearing, the commissioner may resume the primary duties of conducting the hearing at any time and may exercise all authority granted to a hearing officer in sections 2 to 27, inclusive, of this regulation.*

*2. If the commissioner cannot preside over a hearing, the director shall designate a hearing officer, whose decision is subject to review by the director, to preside over the hearing.*

**Sec. 15.** *1. The hearing officer shall:*

*(a) Call the hearing to order and note the appearances of the parties who are present.*

*(b) Hold appropriate conferences before or during the hearing.*

*(c) Receive and rule on the admissibility of evidence.*

*(d) Rule on the admissibility of amendments to an order to show cause.*

*(e) Act upon any pending motions or petitions or applications which do not involve a final determination of the proceeding.*

*(f) Issue proposed findings, opinions and conclusions of law.*

*(g) Issue appropriate interim orders.*

*(h) Recess the hearing as necessary.*

*(i) Rule on all procedural matters.*

*(j) Set reasonable limits of time for the presentation of oral testimony.*

*2. At the discretion of the hearing officer, the parties may make opening statements and closing arguments.*

**Sec. 16.** *A party may:*

*1. Before the hearing, inspect all documents which may be considered by the hearing officer as part of the case presented by the division.*

*2. Have a copy made of a document upon payment to the division of 25 cents per page to reimburse the division for the cost of providing the copy.*

**Sec. 17.** *With the approval of the hearing officer, the parties may stipulate as to any fact at issue. Any such stipulation is binding on all parties so stipulating and may be regarded by the division as evidence at the hearing. The division may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.*

**Sec. 18.** *A hearing may be continued:*

*1. Upon the written stipulation of all parties; or*

*2. By the hearing officer:*

*(a) Upon his own motion; or*

*(b) For good cause shown, upon the motion of any party. Any motion filed pursuant to this paragraph must be accompanied by a certificate of the moving party or his attorney stating that the motion is made in good faith and not for purposes of delay.*

**Sec. 19.** *Hearings before the division are subject to the following:*

*1. The proceedings at the hearing must be either recorded by the hearing officer upon equipment for recording sound or reported by a court reporter certified pursuant to chapter 656 of NRS.*

*2. Oral evidence may be taken only upon oath or affirmation administered by the hearing officer as follows:*

*“Do you affirm to tell the truth and nothing but the truth in these proceedings?”*

*3. If a party fails to appear at the hearing and the division presents evidence that the party has been served with a notice of the hearing, the hearing officer may order the division to present its case in the absence of the party and may render a decision and order based on the evidence presented by the division.*

*4. Except as otherwise provided in subsection 5, in all hearings, unless otherwise ordered by the hearing officer, evidence will be received in the following order:*

*(a) The evidence of the division.*

*(b) The evidence of the party that is the subject of the order to show cause.*

*(c) The rebuttal evidence of the division.*

*5. In a proceeding concerning the release of security deposited with the division pursuant to section 4 of Senate Bill No. 167 (chapter 642, Statutes of Nevada 1997), evidence will be received in the following order:*

*(a) The evidence of the petitioner.*

*(b) The evidence of the division.*

*(c) The rebuttal evidence of the petitioner.*

*6. Witnesses may be cross-examined by the opposing party or his attorney, staff of the division, and administrative assistants or legal counsel for the division.*

*7. Witnesses or counsel may be questioned by the hearing officer at any time during the proceeding.*

*8. If a party does not testify in his own behalf, he may be called and examined as if under cross-examination.*

*9. The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Evidence may be introduced and considered in accordance with NRS 233B.123. All relevant evidence may be admitted and is sufficient in itself to support a finding if it is the sort of evidence commonly relied upon by reasonable and prudent persons in the conduct of their affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in a civil action, including the admission of claim forms that have been filed with the division*

*pursuant to sections 28 to 38, inclusive, of this regulation in lieu of or in addition to oral testimony.*

*10. Rules of privilege recognized by law must be given effect.*

*11. Objections to evidentiary offers may be made and must be noted in the record.*

*12. If an objection is made to the admission of evidence, the evidence may be received subject to a later ruling by the hearing officer. If an objection to the admission of evidence is sustained, the offering party may make an offer of proof for the record.*

*13. Oral argument is not permitted unless ordered by the commissioner or the hearing officer. The hearing officer may request that the parties summarize their presentations.*

*14. The hearing officer may adjourn the hearing for the submittal of further evidence or to hear further testimony when justice would not be served otherwise, and may adjourn the hearing at the request of any party for good cause shown, but for not more than 30 days.*

*15. Any documentary or real evidence introduced at the hearing must be marked for identification by the court reporter or hearing officer. If such evidence is admitted by the hearing officer, it must be marked as the exhibit of the offering party.*

*16. Upon the termination of a hearing, the hearing officer will indicate for the record that the hearing is terminated and that he will issue a written decision after considering all of the evidence admitted.*

*17. The commissioner will review the decision of the hearing officer and enter a final written order affirming, modifying or setting aside the decision. If the hearing officer is a*

*designee of the director, the director will review the order and enter a final written order affirming, modifying or setting aside the decision.*

*18. Notice of the order of the commissioner or director must be served in accordance with NRS 233B.125. The order of the commissioner or director becomes effective after proper service of the notice.*

*19. For the purpose of judicial review, only the final written order of the commissioner or director constitutes a final decision of the division.*

**Sec. 20.** *The commissioner may consolidate two or more proceedings in one hearing when it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by the consolidation.*

**Sec. 21.** *At any time after the conclusion of a hearing and before the issuance of a final order, the hearing officer, on his own motion, may reopen the proceedings for the taking of additional evidence.*

**Sec. 22.** *1. If a petition for the judicial review of a decision has not been filed and a party makes written application for a rehearing within 15 days after service of a copy of the decision and order, the hearing officer may order a rehearing upon such terms and conditions as he considers just and proper. An application for rehearing will not be granted except upon a showing that:*

*(a) A party was not properly served with a notice to appear;*

*(b) There is additional evidence which is material and necessary and reasonably calculated to change the decision of the hearing officer, and good cause existed for the failure to present that evidence at the hearing;*

*(c) A material fact or point of law has been overlooked or misconstrued as set forth in the decision; or*

*(d) There has been a change in the laws affecting the decision.*

*2. An application for rehearing must:*

*(a) Be supported by the affidavit of the party or his attorney showing good cause for failing to appear or failing to present the evidence at the hearing.*

*(b) State with particularity the materiality and necessity of the additional evidence and the reason why it was not introduced at the hearing, or state with particularity the material fact or point of law which, in the opinion of the party, has been overlooked or misconstrued.*

*(c) Contain every argument in support of the position of the party that he wishes to present.*

*(d) Not exceed 10 pages in length.*

*3. Matters already presented in briefs or oral arguments may not be reargued and no point may be raised for the first time in an application for rehearing.*

*4. A party may file and serve an answer to an application for rehearing. The answer must be filed within 5 days after the party is served with the application for rehearing.*

5. *An application for rehearing does not stay, excuse compliance with or suspend the effectiveness of the challenged order, except as otherwise ordered by the commissioner.*

6. *An application for rehearing does not toll the statutory period for filing a petition for judicial review.*

7. *Oral argument on an application for rehearing will not be permitted.*

8. *Upon rehearing, rebuttal evidence to the additional evidence will be permitted.*

*After rehearing, the commissioner or director, as appropriate, may modify his decision and order as the additional evidence may warrant.*

**Sec. 23.** *1. If a hearing is phonographically or electronically recorded, the division will retain the recording for a period of 90 days after the date of the decision and order, at which time the recording will be destroyed or reused unless a petition for judicial review has been filed.*

*2. The division will provide a certified copy of the recording to a party upon written request and the payment to the division of \$20 to reimburse the division for the cost of providing the copy.*

*3. The division will provide a written transcript of the recording to a party upon written request and the payment to the division of \$2 per page to reimburse the division for the cost of providing the transcript.*

**Sec. 24.** *Payment of any costs, fees, fines, penalties, charges or restitution authorized by statute or regulation to be collected by the division, or ordered by the commissioner to*

*be paid by a party, must be made by cashiers check or money order payable to the division, or by any other means acceptable to the division.*

**Sec. 25.** *All parties at a hearing and their attorneys shall conduct themselves in a respectful manner. If any person behaves in such a manner as to interfere with the orderly conduct of the hearing, the hearing officer shall warn the person to cease the improper behavior. The warning must be made a part of the record of the proceedings. If the improper behavior continues or resumes, the hearing officer may exclude that person from the hearing.*

**Sec. 26.** *A request for a hearing and all other correspondence regarding the hearing must be addressed to the Consumer Affairs Division of the Department of Business and Industry, 1850 East Sahara Avenue, Suite 101, Las Vegas, Nevada 89104.*

**Sec. 27.** *The provisions of sections 2 to 27, inclusive, of this regulation do not preclude the commencement or pursuit of any additional remedies by the division.*

**Sec. 28.** *As used in sections 28 to 38, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 29 to 35, inclusive, of this regulation have the meanings ascribed to them in those sections.*

**Sec. 29.** *“Claim” means a written demand against security posted by a registrant.*

**Sec. 30.** *“Claimant” means a person who has filed a claim with the division.*

**Sec. 31.** *“Complaint” means a charge, challenge, grievance, complaint, objection or allegation lodged by a consumer against a registrant which shows evidence of fraud and loss of money or property.*

**Sec. 32.** *“Division” means the consumer affairs division of the department of business and industry.*

**Sec. 33.** *“Party defendant” means:*

- 1. A registrant that has deposited security with the division; and*
- 2. The entity that issued the security.*

**Sec. 34.** *“Registrant” has the meaning ascribed to it in section 2 of Senate Bill No. 167 (chapter 642, Statutes of Nevada 1997).*

**Sec. 35.** *“Security” means any bond, letter of credit or certificate of deposit required to be deposited with the division pursuant to section 4 of Senate Bill No. 167 (chapter 642, Statutes of Nevada 1997).*

**Sec. 36.** *Upon receiving a complaint from a consumer concerning a registrant, the division will notify the consumer concerning:*

- 1. Whether the security deposited with the division by the registrant is currently effective and, if so, the form and amount of the security;*
- 2. Whether an action to recover against the security has ever been filed or is currently pending in a court of competent jurisdiction and, if so, the name of the court, the title and number of the action and the amount sought by the plaintiff;*
- 3. Whether a claim against the security has ever been filed with or is currently pending before the division and the amount sought by the claimant; and*
- 4. The right of the consumer to file with the division a claim against the security and to request a claim form from the division.*

**Sec. 37.** *1. A consumer who is injured by the bankruptcy of a registrant or the registrant's breach of any agreement entered into in his capacity as a registrant may file a claim with the division to recover against the security deposited with the division by the registrant pursuant to section 4 of Senate Bill No. 167 (chapter 642, Statutes of Nevada 1997).*

*2. A claim against security:*

*(a) Must be in writing and addressed to the Consumer Affairs Division of the Department of Business and Industry, 1850 East Sahara Avenue, Suite 101, Las Vegas, Nevada 89104.*

*(b) Must specify the basis for the claim and the damages suffered by the consumer.*

*(c) Will be denied if the issues raised by the claim do not entitle the consumer to an administrative hearing.*

*3. The division or the attorney general may request additional information if the claim does not present sufficient evidence to determine if a hearing is warranted.*

*4. If the commissioner of consumer affairs determines that a hearing is necessary, the commissioner will determine the date of the hearing. The division will, at least 10 days before the date set for the hearing, serve each party defendant and his attorney, if any, with a notice of hearing and an order to show cause why the division should not allow the claim.*

*5. If a claim against security is denied, each party defendant and his attorney, if any, will be notified in writing, stating the reason for the denial.*

6. *The denial of a claim against security does not preclude a consumer from seeking any private remedy.*

**Sec. 38.** *If claims against security are paid pro rata pursuant to section 5 of Senate Bill No. 167 (chapter 642, Statutes of Nevada 1997), the partial payment of such claims is not full payment and does not preclude a claimant from bringing an action against the registrant for the unpaid balance.*