

**ADOPTED REGULATION OF THE  
COMMISSIONER OF THE CONSUMER AFFAIRS DIVISION OF  
THE DEPARTMENT OF BUSINESS AND INDUSTRY**

**LCB File No. R123-98**

Effective February 23, 1999

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

AUTHORITY: §§2-32, NRS 599B.025.

**Section 1.** Chapter 599B of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 33, inclusive, of this regulation.

**Sec. 2.** *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 10, inclusive of this regulation have the meanings ascribed to them in those sections.*

**Sec. 3.** *“Claim” means a written demand by a person, made under penalty of perjury, against the security posted by a person registered as a seller or salesman pursuant to NRS 599B.080 to 599B.145, inclusive.*

**Sec. 4.** *“Claimant” means a person who has filed a claim with the division.*

**Sec. 5.** *“Commissioner” means the commissioner of the consumer affairs division of the department of business and industry.*

**Sec. 6.** *“Director” means the director of the department of business and industry.*

**Sec. 7.** *“Division” means the consumer affairs division of the department of business and industry.*

**Sec. 8.** *“Hearing officer” means the commissioner or a person designated by the commissioner or the director to conduct a hearing.*

**Sec. 9.** *“Respondent” means any natural person or business entity required to respond to a proceeding before the division.*

**Sec. 10.** *“Security” means a bond, irrevocable letter of credit or certificate of deposit deposited with the division pursuant to NRS 599B.100.*

**Sec. 11.** *The provisions of sections 2 to 32, inclusive, of this regulation:*

*1. Apply to any hearing authorized to be conducted by the division pursuant to chapter 599B of NRS, including, without limitation, a hearing to determine the distribution of security to claimants held pursuant to NRS 599B.105; and*

*2. Do not preclude the commencement or pursuit of any additional civil or criminal remedies by the division.*

**Sec. 12.** *The provisions of sections 2 to 32, inclusive, of this regulation must be liberally construed to secure a just, speedy and economical determination of all issues regarding the disbursement of security before the division and to carry out the purposes of chapter 599B of NRS.*

**Sec. 13.** *1. A party is entitled to appear in person. If the party is not able to appear in person, he may:*

*(a) Be represented by an attorney; or*

*(b) Present a written claim that sets forth the facts which the party claims entitles him to a portion of the security.*

2. *If a party is represented by an attorney at any proceeding, the attorney must be admitted to practice in this state and be in good standing before the highest court of this state.*

3. *If the attorney is not admitted to practice in this state, he must be associated with an attorney admitted to practice in this state.*

4. *The holder of the security instrument may attend the hearing but may not testify or present evidence regarding the disbursement of the security to the claimant.*

**Sec. 14.** 1. *Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders thereafter served must be served upon the attorney.*

2. *Service performed pursuant to subsection 1 is considered valid service for all purposes upon the party represented.*

**Sec. 15.** *An attorney of record withdrawing from the representation of a party appearing in a proceeding before the division shall immediately give written notice of his withdrawal to:*

1. *The hearing officer;*
2. *The party whom he represented; and*
3. *Any other parties to the proceeding.*

**Sec. 16.** *A claim, request for a hearing or other correspondence regarding a hearing must be addressed to the Department of Business and Industry, Consumer Affairs Division, 1850 East Sahara Avenue, Suite 101, Las Vegas, Nevada 89104.*

**Sec. 17.** 1. *A person appearing in or attending a proceeding before the division shall conduct himself in a respectful manner.*

2. *If the behavior of a person interferes with the orderly conduct of the hearing, the hearing officer may order the person to cease the improper behavior. Such an order must be made part of the record.*

3. *If the improper behavior continues or resumes, the hearing officer may exclude the person from the hearing.*

**Sec. 18.** 1. *A person other than one of the original parties to the proceeding, who believes that he may be directly and substantially affected by the proceeding, may seek an order for leave to intervene in the proceeding by filing a motion to intervene with the hearing officer.*

2. *The granting of leave to intervene or otherwise appear in a matter or proceeding shall not be construed to be a finding or determination that the person will or may be a party aggrieved by a ruling, order or decision of the division for the purposes of judicial review.*

**Sec. 19.** 1. *Before a hearing, or during a hearing if good cause is shown, the division or the attorney general, or both, may issue subpoenas and subpoenas duces tecum.*

2. *The division may issue subpoenas and subpoenas duces tecum at the written request of a party.*

3. *Subpoenas may only be issued to require the attendance of a witness at a place in this state that has been designated as a place to give oral testimony before the hearing officer.*

4. *A subpoena must not be issued in blank.*

5. *A request for the issuance of a subpoena must contain:*

(a) *The title and identifying number of the case;*

(b) *The name of the person to whom it will be directed;*

*(c) The date, time and place of the hearing; and*

*(d) The name and signature of the requesting party or his attorney.*

*6. In addition to the requirements listed in subsection 5, a subpoena duces tecum must also contain a complete description of specific documents or other tangible objects that the witness will be required to produce at the hearing.*

*7. A subpoena must not be issued if the request is untimely, or the evidence to be offered is not material or relevant to the determination of the issues before the hearing officer.*

*8. If the request for a subpoena is granted, the subpoena must be issued not more than 5 business days after the date on which it was requested. If a request for the issuance of a subpoena is denied, the division will notify the requesting party in writing, as soon as practicable, of the reasons for the denial.*

*9. A witness, other than a party or an officer or employee of the State of Nevada testifying during his regular hours for work, appearing or testifying on behalf of the division is entitled to receive the same fees and expenses as are provided for witnesses pursuant to NRS 50.225 regardless of whether he is appearing or testifying pursuant to a subpoena.*

*10. A party requesting the issuance of a subpoena shall pay for the service of the subpoena and the fees and expenses of the witness.*

**Sec. 20.** *1. A party that wishes to have an affidavit introduced in evidence at any hearing of the division must, at least 20 days before the date set for hearing, serve upon the opposing party, either personally or by registered or certified mail, return receipt requested, a copy of the affidavit that is proposed to be introduced in evidence.*

2. *A notice, in substantially the following form, must be served upon the opposing party at the same time as the affidavit:*

*The accompanying affidavit of (Name of Affiant) will be introduced in evidence at the hearing set for the \_\_ day of \_\_\_\_, 19 \_\_. (Name of Affiant) will not be called to testify orally, and you will not be entitled to cross-examine (Name of Affiant) unless you place in the mail or personally deliver to the undersigned your request to cross-examine (Name of Affiant) not later than 7 days after the date on which this notice and the enclosed affidavit were served upon you.*

\_\_\_\_\_

*(Signature of Party or Counsel)*

*(Name of Party or Counsel)*

*(Address)*

*(Telephone Number)*

3. *Unless the opposing party, not more than 7 days after service of a copy of the affidavit and notice, places in the mail or personally delivers to the party proposing to introduce the affidavit a request to cross-examine the affiant, the opposing party shall be deemed to have waived his right to cross-examine the affiant, and the affidavit, if introduced in evidence, must be given the same weight as if the affiant had testified orally.*

4. *If an opportunity to cross-examine an affiant is not afforded to the opposing party after the opposing party so requests pursuant to this section, the affidavit may be introduced in evidence, but the affidavit must be given the same weight as other hearsay evidence.*

**Sec. 21.** *The division shall, at least 5 working days before a hearing, provide each party to the hearing with notice that the party may:*

1. *Inspect, before the hearing, all documents that may be considered by the hearing officer as part of the case presented by the division; and*

2. *With the prior approval of the hearing officer, have a copy made of any such document upon payment of a fee in the amount of 25 cents per page to reimburse the division for the cost of providing the copy.*

**Sec. 22.** 1. *With the approval of the hearing officer, the parties may stipulate to any fact at issue. Such a stipulation is binding upon all parties to the stipulation and may be regarded as evidence at the hearing.*

2. *Notwithstanding the existence of a stipulation, the hearing officer may require proof of the existence of the facts that are the subject of the stipulation.*

**Sec. 23.** *After a hearing has commenced, the hearing may be continued by the hearing officer upon his own motion or, if good cause is shown, upon the request of a party.*

**Sec. 24.** 1. *The commissioner may designate a person to act as hearing officer.*

2. *The decision of the hearing officer is subject to review and approval by the commissioner.*

3. *If the commissioner designates a person to act as hearing officer, the commissioner retains the right, at any time, to assume responsibility for presiding over the hearing, and any*

*authority granted to a hearing officer in sections 2 to 32, inclusive, of this regulation is also granted to the commissioner.*

*4. If the commissioner is unable to preside over the hearing and does not designate a hearing officer, the director shall appoint a hearing officer to preside over the hearing. The decision of such a hearing officer is subject to review and approval by the director.*

**Sec. 25.** *The hearing officer shall:*

- 1. Call the hearing to order and note the appearances of the parties who are present;*
- 2. Ascertain whether the persons commanded to appear under subpoena are present and whether the documents, books, records and other evidence requested by subpoena are present in the hearing room;*
- 3. Ascertain whether a copy of the notice of intended action or order to show cause, whichever is applicable, has been served on the appropriate parties;*
- 4. Hold appropriate conferences before or during the hearing;*
- 5. Rule on any procedural matter;*
- 6. Rule on the admissibility of evidence and receive evidence;*
- 7. Rule on the admissibility of any amendments to the order to show cause;*
- 8. Act upon any pending motions, petitions or applications that do not involve a final determination of the proceeding;*
- 9. Issue appropriate interim orders;*
- 10. Recess or continue the hearing as necessary;*
- 11. Set reasonable limitations on the time for presentation of oral testimony;*

12. *Administer, or direct the court reporter to administer, the oath to all persons whose testimony will be taken;*

13. *Ascertain whether a party desires to have a witness excluded from the hearing room until the witness is called to testify; and*

14. *Make proposed findings of fact, opinions and conclusions of law.*

**Sec. 26.** *The hearing must be recorded using equipment for recording sound or must be reported by a court reporter who is certified pursuant to chapter 656 of NRS.*

**Sec. 27.** *If a party who has been served with a proper notice of a hearing fails to appear at the hearing, and a continuance of the hearing has not been requested and granted:*

1. *The failure to appear by the party may be entered in the record;*

2. *Evidence may be heard; and*

3. *The matter may be considered and disposed of on the basis of the evidence before the hearing officer in the manner required pursuant to section 28 of this regulation.*

**Sec. 28.** 1. *The respondent may cross-examine witnesses in the order in which the division presents them.*

2. *When the division has completed its presentation, the hearing officer shall request the respondent to proceed with the introduction of evidence and the calling of witnesses on his behalf. The division may cross-examine witnesses in the order in which the respondent presents them.*

3. *When the respondent has completed his presentation, the division may call rebuttal witnesses.*

4. *The hearing officer may question counsel for the parties or witnesses at any time during the proceeding.*

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

6. *The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Evidence must be introduced and considered in accordance with the provisions of NRS 233B.123. Any relevant evidence, including, but not limited to, a claim in lieu of or in addition to the testimony, 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 a common law or statutory rule that might make improper the admission of such evidence over objection in a civil action.*

7. *Depositions of witnesses and parties may not be taken. No formal discovery of evidence will be allowed.*

8. *Briefs must be filed upon the order of the hearing officer. The time for filing briefs will be set by the hearing officer conducting the hearing.*

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

10. *Objections to evidentiary offers may be made and must be noted in the record. If an objection is made to the admission of evidence, such 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.*

11. *Oral argument is not allowed unless requested by the hearing officer. The hearing officer may request that the parties summarize their presentations.*

12. *The hearing officer may adjourn the hearing:*

(a) *For the submittal of further evidence or to hear further testimony when justice would not be served otherwise; or*

(b) *At the request of a party for good cause shown, but for not more than 30 days after the date scheduled for the first hearing,*

13. *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.*

14. *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 pursuant to NRS 233B.123.*

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

**Sec. 29.** 1. *The commissioner will review the decision of a hearing officer and enter a final order affirming, modifying or setting aside the decision.*

2. *If the hearing officer is a designee of the commissioner or director, the director will review the order and enter the final order affirming, modifying or setting aside the decision.*

3. *If a decision is rendered orally, the time to file a petition for judicial review does not begin to run until:*

(a) *The decision and order are reduced to writing and signed by the commissioner or director; and*

*(b) Written notice of the decision and order is mailed, postage prepaid, to the parties.*

**Sec. 30.** *1. If a hearing is recorded by audio tape or other means, the record will be retained for 90 days after the date of the decision and order, at which time it will be destroyed or reused, unless a petition for judicial review has been filed pursuant to chapter 233B of NRS.*

*2. A certified copy of the audio tape or other record will be made available to a party upon written request to the division and payment of \$20.*

**Sec. 31.** *1. A party may obtain a copy of the transcript of a hearing from the official reporter upon payment of the fees fixed therefor.*

*2. A party who files a petition for judicial review pursuant to chapter 233B of NRS shall pay for the costs of the transcript as follows:*

*(a) If made by the division from a tape recording, \$2 per page; or*

*(b) If prepared by the official reporter, the costs or fees charged by the official reporter for preparing the transcript.*

**Sec. 32.** *Payment of any costs, fees, fines, penalties, charges or restitution by a party to the division pursuant to statute or regulation, or ordered by the commissioner or director pursuant to paragraph (b) of subsection 10 of NRS 599B.105 or pursuant to regulation must be made by cashier's check, money order or other certified instruments made payable to the division.*

**Sec. 33.** *1. If a petition for judicial review of the decision has not been filed, upon written application by a party not more than 15 days after service of a copy of the decision and order, a rehearing may be ordered upon such terms and conditions as the hearing officer considers just and proper.*

2. *An application for rehearing must 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, necessary and reasonably calculated to change the decision of the hearing officer and that good cause existed for the failure to present that evidence at the hearing;*
  - (c) *A material fact or point of law was overlooked or misconstrued as set forth in the decision; or*
  - (d) *There has been a change in the laws affecting the decision.*
3. *The application for rehearing must:*
  - (a) *Be supported by an affidavit of the party or his counsel showing cause for failing to appear or failing to present the evidence at the hearing;*
  - (b) *State with particularity:*
    - (1) *The reason why the additional evidence is necessary and material and why the additional evidence was not introduced at the hearing; or*
    - (2) *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 desires to present;*
  - (d) *Not exceed 10 pages in length; and*
  - (e) *Be served upon the opposing party at least 10 days before the date of the rehearing.*
4. *Matters already presented in briefs or oral arguments may not be reargued in the application for rehearing. No point may be raised for the first time in an application for rehearing.*

5. *A party may file and serve an answer to the application for rehearing. The answer must be filed not more than 5 days after the party receives the application for rehearing.*

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

7. *An application for rehearing does not toll the time for filing a petition for judicial review.*

8. *Oral argument on an application for rehearing must not be allowed.*

9. *If an application is granted, upon rehearing, rebuttal evidence to the additional evidence must be allowed. After rehearing, the commissioner or director may modify his decision and order as the additional evidence may warrant.*