NEBRASKA ADMINISTRATIVE CODE

TITLE 442, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 10

TAX EQUALIZATION AND REVIEW COMMISSION

INVALIDATION OR SUSPENSION OF ASSESSOR'S CERTIFICATE

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CHAPTER 10 INVALIDATION OR SUSPENSION OF ASSESSORS CERTIFICATE

001 Authority.

~~001.01~~ The Commission has the power to invalidate or suspend the certificate issued pursuant to section 77-422 of any county assessor or deputy assessor who willfully fails or refuses to comply with any order of the Commission. Neb. Rev. Stat. §77-5020.

002 Definitions. The following definitions apply whenever the defined term is used in this chapter unless the context of a term's use requires use of a different definition.

002.01 Assessor. Assessor includes an elected or appointed county assessor or a county clerk who is an ex officio county assessor. In counties in which the state has assumed the assessment function the Property Tax Administrator or his or her designee performs the duties of the county assessor. Neb. Rev. Stat. §77-115.

002.02 Commission. ~~"Commission" means t~~The Nebraska Tax Equalization and Review Commission.

002.03 Comply. To ~~"Comply" means to~~ complete, accomplish, perform what is due, or to obey. *Webster's Third New International Dictionary*, Merriam-Webster, Inc., (2002).

002.04 Fail. "To 'fail' means to leave unperformed; to omit; to neglect, Bouv. Law Dict.; *Widemann Co. v. Digges*, 21 Cal. App. 342, 131 P. 882. To fail in the performance of some duty, which failure shall impose a penalty or liability, necessarily implies a prior act or condition by which the one failing shall have become aware of the duty." *Buffalo County v. Phelps County,* 129 Neb 268, 261 N.W. 360 (1935).

002.07 Order. ~~"Order" means a~~A command, direction, or instruction. *Black's Law Dictionary*, Sixth Edition, West Publishing, (1990).

002.11 Refuse. ~~"To "refuse" is defined as "to~~"To show or express a positive unwillingness to do or comply with (as something asked, demanded,

expected)–used with a following infinitive (refused to answer the question)." Webster's Third New International Dictionary, Unabridged 1910 (1981). "To refuse," by definition, requires that a person understand what is being asked of him and then in some way manifest nonacceptance, nonconsent, or unwillingness." *State v. Medina*, 227 Neb 736, 419 N.W.2d 864 (1988).

002.13 Willfully. ~~"Willfully" means i~~ Intentionally, with knowledge that the act was a violation of the Commission's order. *Douglas Cty v. Kowal* 270 Neb. 982, 708 N.W.2d 668, (2006).

003 Notice of Action.

003.01 When the Commission determines that the license of an assessor might be invalidated, or suspended pursuant to Neb. Rev. Stat. §77-5020, the Commission shall file an action to determine whether it should invalidate or suspend the license and notify the assessor in writing of the pending action. Notice of filing the action shall be sent by certified mail, postage prepaid, a return receipt may be requested. The notice shall advise the assessor that his or her license may be invalidated or suspended; and shall advise the assessor of the action or failure to act which forms the basis for the possible removal from office.

003.02 The assessor shall be given ten (10) days from the date of the letter to provide the Commission with a written response. If the Commission determines that the written response demonstrates by a preponderance of the evidence that the assessor did not willfully fail or refuse to comply with an order of the Commission, then the Commission shall notify the assessor of that decision, and dismiss the action.

003.03 If the Commission determines that the written response fails to demonstrate by a preponderance of the evidence that the assessor did not willfully fail or refuse to comply with an order of the Commission, then the Commission shall issue an Order for Hearing and a Notice of Hearing. The Order for Hearing and the Notice of Hearing shall be served upon the assessor by certified mail, postage prepaid, a return receipt may be requested. The hearing on the matter shall be held in the City of Lincoln, Lancaster County, Nebraska. The hearing shall be held not less than thirty (30) days

from the date of the Notice of Hearing.

~~003.04 The hearing shall be a formal hearing.~~

004 Disposition.

~~004.01~~ If the Commission finds by a preponderance of evidence that the assessor has willfully failed or refused to comply with any order of the Commission, the Commission may revoke, suspend, and/or invalidate the certificate of the assessor.

005 Appeals. Any appeal of the decision of the Commission shall be in accordance with Neb. Rev. Stat. §77-5019.