NEBRASKA ADMINISTRATIVE CODE

TITLE 442, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2

TAX EQUALIZATION AND REVIEW COMMISSION

DEFINITIONS

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NEBRASKA ADMINISTRATIVE CODE

TITLE 442 — TAX EQUALIZATION AND REVIEW COMMISSION

CHAPTER 2 — DEFINITIONS

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NEBRASKA ADMINISTRATIVE CODE

Title 442 — Tax Equalization and Review Commission Chapter 2

CHAPTER 2 DEFINITIONS

001 Definitions. The following ~~terms are defined and the~~ definitions ~~stated shall~~ apply whenever the defined terms are used in the Rules and Regulations of the Commission unless the context of a term's use requires a different definition.

001.01 Agency. Agency means the Tax Equalization and Review Commission, or when authorized, the chairperson of the Commission, acting on behalf of the Commission.

001.02 Answer. An "Answer" is the document filed as a response to an appeal/petition by the appellee/respondent~~, which is served both on the Commission and on the appellant/petitioner, which gives notice of the intended action of the appellee/respondent regarding the filing of the appeal/petition~~.

001.03 Appeal. An appeal is a request, submitted on the Commission's Appeal Form, that the Commission reverse or modify, in whole or in part, a decision, order, determination, or action the Commission is authorized to review.

001.04 Appeal Form. An "Appeal Form" is the form which must be used to file an appeal with the Commission.

001.05 Arbitrary A decision is "arbitrary" when it is made in disregard of the facts and circumstances and without some basis which could lead a reasonable person to the same conclusion. *Phelps Cty. Bd. of Equal. v. Graf*, 258 Neb 810, 606 N.W.2d 736, (2000).

001.0~~5~~6 Attorney. See "Legal Counsel."

001.0~~6~~7 Cancellation Mark. See "Postmark."

001.0~~7~~8 Case File. The "Case File" is a file folder bearing the names of the parties and a unique identifying number which contains the documents maintained by the Commission regarding an appeal/petition/proceeding. ~~The case file is a matter of public record pursuant to Neb. Rev. Stat. §84-712, *et seq.* and may be examined during regular business hours of the Commission.~~

001.0~~8~~9 Certificate of Service. "Certificate of Service" means a written statement, appended to the end of any motion, request, answer or other pleading, which certifies that the party filing the pleading has served a copy of the pleading on all other parties to the action. A sample "Certificate of Service" is set forth below:

CERTIFICATE OF SERVICE

The foregoing (Insert name of document) was served upon

(Insert Name of Party) , a party herein/attorney for a party

herein, by mailing a copy to him/her at ~~(address, city,~~

~~state, zip code)~~ _____ by personal delivery

on_____ _____

by fax on _____ followed by mailing to him/her at

_____ _____on _____ .

_____/s/_____
Name or,
Attorney's Name and Bar Association Number

001.~~09~~10 Chairperson. ~~Chairperson means a Commissioner who is a lawyer admitted to practice before the Nebraska Supreme Court designated~~A Commissioner designated Chairperson as set forth in Chapter 3 of

these Rules.

001.1~~0~~1 Commission. Commission means the Tax Equalization and Review Commission, or when authorized, the chairperson of the Commission, acting on behalf of the Commission.

001.1~~1~~2 Commissioner. Commissioner means a member of the Commission.

001.1~~2~~3 Conclusions of Law. "Conclusions of Law" means ~~the law or laws, as determined by the Commission to be applicable to its decision.~~an inference on a question of law made as a result of a factual showing, no further evidence being required; a legal inference, *Black's Law Dictionary,* Seventh Addition, West Publishing, pg 284 (1999).

~~001.13~~

001.14 Confession of Judgment. "Confession of Judgment" ~~means~~is a statement, whether written or oral, made by an appellee/respondent, whereby the appellee/respondent agrees that judgment should be entered in favor of appellant/petitioner as to all or part of an action.

001.1~~4~~5 Conflict of Interest. "Conflict of Interest" means a material difference between public interest and the private pecuniary interest of a hearing officer. A conflict of interest arises whenever:

001.1~~4~~5A A Commissioner, Special Master, or Referee individually or as a fiduciary, or the Commissioner's, Special Master's, or Referee's spouse, parent or child, wherever residing, or any other member of the Commissioner's, Special Master's, or Referee's family residing in the Commissioner's, Special Master's or Referee's household has an economic interest in the subject matter in controversy or is a party to the proceeding or has any other interest that could be affected substantially by the proceeding; or,

001.1~~4~~5B A Commissioner's, Special Master's or Referee's spouse, or person within the fourth degree of relationship to either of

them, or the spouse of such person:

001.1~~4~~5B1 is a party to the proceeding, or an officer, director, manager, partner, employee, or trustee of a party;

001.1~~4~~5B2 is acting as legal counsel in the proceeding.

EXPLANATORY STATEMENT

The Rules of Professional Conduct as promulgated by the Nebraska Supreme Court establish ethical standards which require legal counsel to disqualify himself or herself under certain circumstances.

001.1~~5~~6 Contested Case. Contested case means an appeal or petition.

001.1~~6~~7 Costs. The term "Costs" as used in these Rules and Regulations includes the amount of the filing fee, costs of a court reporter (if required), costs of service and witness fees. Witness fees may be allowed at the amount set forth in Nebraska Revised Statutes §33-139. Employees of the State of Nebraska or its political subdivisions are prohibited from receiving witness fees in "any action or proceeding in any court in this state" when the employee is called as a witness "in connection with his or her officially assigned duties." Attorney's fees are not a part of "costs" which may be allowed by the Commission. Costs which may be allowed include travel expenses if the hearing site is more than fifty (50) miles from the county seat of the county in which the action arose, including, but not limited to, reasonable meal expense, hotel expense and mileage as provided under Neb. Rev. Stat. §81-1176. In the event of an appeal from a Commission decision the Court of Appeals filing fee and costs of the bill of exceptions and the official record of the proceedings may be allocated by the Court of Appeals.

001.167A Witness. For the purpose of assessing costs, a "Witness" is a person who is not a party, or a full or part-time employee of a

party calling the person to appear, who appears either voluntarily or under subpoena in order to give testimony to the Commission regarding a disputed issue, unless otherwise provided in these rules.

001.1~~7~~8 Default Judgment, Order of. An "Order of Default Judgment" is an order issued by the Commission, after a party fails to: answer or proceed with opposition to an appeal or petition; appear; prosecute the appeal/petition; or comply with a Commission order.

001.1~~8~~9 Discovery: Discovery is the process for obtaining information as provided in an order for hearing or in Chapter Twelve of these Rules.

001.~~19~~20 Ex Parte Communications. "Ex Parte Communication" means an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. The following are not ex parte communications:

001.~~19A~~20A Communications which do not pertain to the merits of a contested case;

001.~~19B~~20B Communications required for the disposition of ex parte matters as authorized by law;

001.~~19C~~20C Communications in a rule-making proceeding;

001.~~19D~~20D Communications to which all parties have given consent.–See, Neb. Rev. Stat. §84-901 (Reissue 1999).

001.2~~0~~1 Final Decision. Unless otherwise indicated a "final decision" shall mean a decision, action, order, or determination which cannot be modified by the maker of the decision, action, order, or determination and from which an appeal may be taken. A Decision of the Commission becomes final on the thirty-first day following the entry of the order in the records of the Commission, if no appeal or other legal

challenge to the decision is filed in the interim. See, Neb. Rev. Stat. §77-5019(2)(a).

001.2~~1~~2 Final Order. A "Final Order" is any order which (1) affects a substantial right of a party and which determines the action or prevents a judgment, (2) affects a substantial right of a party made during a special proceeding, or (3) affects a substantial right of a party made on summary application in an action after a judgment is rendered. *Rohde v. Farmers Alliance Mut. Ins. Co.*, 244 Neb. 863, 509 N.W.2d 618 (1994); *Jarrett v. Eichler*, 244 Neb. 310, 506 N.W.2d 682 (1993); *State v. Schlund*, 542 N.W.2d 421, 423, 249 Neb. 173, 175 (1996).

001.2~~2~~3 Findings of Fact. "Findings of Fact" are a concise statement of the determinations made as to each contested issue of fact. Neb. Rev. Stat. §77-5018.

001.2~~3~~4 Formal Hearing. A formal hearing is a type of hearing which may be requested by a party. If the request is granted by the Commission the Rules of Evidence found in Neb. Rev. Stat. §27-101, *et seq.* will be applied during the hearing.

001.25 Good Faith. "An honest belief, the absence of malice, and the absence of design to seek an unconscionable advantage."*Cass Const. Co., Inc. v. Brennan*, 222 Neb. 69, 81, 382 N.W.2d 313, 321 (1986). A faithfulness to one's duty or obligation. *Black's Law Dictionary*, Sixth Edition, West Publishing, (1990)

001.2~~4~~6 Hearing Officer. A "Hearing Officer" is a Commissioner or a Special Master (as defined in these Rules) who is authorized to hear and receive evidence in a proceeding before the Commission. (See also "Presiding Hearing Officer").

001.2~~5~~7 Informal Disposition. "Informal Disposition" means the resolution of an appeal/petition by stipulation, agreed settlement, default judgment or consent order. Neb. Rev. Stat. §77-5015.

001.26~~8~~ Informal Hearing. An "Informal Hearing" is a hearing during which the formal rules of evidence will not be applied.

001.2~~7~~9 Intervenor. An "Intervenor" is a person with a direct and legal interest of such character that the intervenor will lose or gain by the direct operation and legal effect of a decision and order the Commission might enter. *Change of Name of Davenport*, 263 Neb. 614, 641 N.W.2d 379 (2002).

001.~~28~~30 Legal Counsel. "Legal Counsel" shall mean a lawyer in good standing licensed to practice law in the State of Nebraska, or a non-resident lawyer who has fully complied with the requirement of Chapter 4, Section ~~^011~~010 of these rules.

001.~~29~~31 Mailbox Rule. A statutory presumption providing that any report, claim, tax return, tax valuation, equalization, or exemption protest, tax form, petition, appeal, statement, or any payment required or authorized to be filed or made to the Commission, which is: (1) transmitted through the United States Mail; (2) mailed but not received by the Commission; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, tax valuation, equalization, or exemption protest, or tax form, petition, appeal, or statement, or payment was deposited in the United States mail on or before the date for filing or paying. See, Neb. Rev. Stat. §§49-1201.

001.3~~0~~2 Notice of Hearing. Notice issued by the Chairperson of the Commission served on all parties stating the day, time and place of a hearing and other information at the discretion of the chairperson

001.3~~1~~3 Order for Hearing. An order of the Chairperson setting a date, time and place for hearing, directing an exchange of evidence with delivery to the Commission and other direction or information as may be required by these rules or entered at the discretion of the chairperson.

001.3~~2~~4 Order to Show Cause. An order issued by the Chairperson of the Commission, on a motion or otherwise, compelling a party to show why after a hearing that a proposed order should not be entered.

001.3~~3~~5 Panel of Commissioners. A "Panel of Commissioners" means any three Commissioners designated by the Chairperson to hear a case.

001.3~~4~~6 Parcel. A "Parcel" means a contiguous tract of land determined by its boundaries, under the same ownership, and in the same tax district and section. Parcel also means an improvement on leased land. If all or several lots are in the same block are owned by the same person and are contained in the same tax district, they may be included in one parcel. Neb. Rev. Stat. §77-132.

001.3~~5~~7 Party. "Party" means the person by or against whom a petition or appeal is brought; a person the valuation of whose property was challenged by another; a person allowed to intervene in a proceeding; a person whose participation has been determined to be necessary to a complete resolution of issues presented in the appeal or petition; a person directly affected by the outcome of an appeal or petition, or a person authorized by statute to appeal. Only a person who will be directly affected by the outcome of an appeal is one who has a real interest in the appeal or has a legal or equitable right, title, or interest in the subject of the appeal.

(See, "Person" in this chapter and "Persons with Authority to File Appeals" in Chapter 5, §001, of these rules).

EXPLANATORY STATEMENT

Standing, a legal concept, is fundamental to the right to appeal. If the person bringing an appeal does not have standing, the appeal must be dismissed. The stated rule is intended to describe the test for standing. There are numerous court decisions discussing standing. Many of those decisions are listed as annotations to Neb. Rev. Stat. §25-301. The Commission is required to

follow the rules as defined by the Courts. The Nebraska Supreme Court has determined for example that a taxpayer may appeal a decision of the taxpayer's county board of equalization if the decision of the board is to lower the actual or fair market value of the property of another taxpayer. See, *Ryan v. Douglas County Bd. of Equalization*, 199 Neb. 291, 258 N.W.2d 626 (1977).

001.36~~8~~ Perjury. A false statement made knowingly and intentionally while under oath in any deposition, action or proceeding before the Commission or its designee. Neb. Rev. Stat. §77-5016(6).

001.3~~7~~9 Person. The term "Person" includes an individual acting on their own behalf or as an officer, director, employee or other representative capacity; a trustee; a firm, organization, company, association, partnership, joint stock association, body politic, entity, enterprise, corporation, governmental subdivision or other organization or society; or a legal representative, including a receiver, assignee, guardian, executor, administrator, conservator, or personal representative of an estate.

001.~~38~~40 Petition. "Petition" means the initial document filed with the Commission which requests that the Commission take action other than reversal or modification of a decision, action. order, or determination by another person.

001.~~39~~41 Pleading. A Pleading is a petition, appeal form, answer, reply, notice, motion, stipulation, objection or other formal or informal written document filed by or with the Commission which concerns a matter which the Commission has heard or may hear. The technical requirements for a pleading are set forth in these Rules.

001.4~~0~~2 Postmark. "Postmark" means the cancellation mark of the United States Postal Service. The mark of any private delivery or courier service (such as FedEx, Airborne, UPS, etc.) is not a postmark.

001.4~~1~~3 Presiding Hearing Officer. "Presiding Hearing Officer" means a person designated by the Chairperson to conduct a proceeding~~. The presiding hearing officer shall rule on the admissibility of evidence and any motions or objections made during a hearing before the Commission.~~

001.4~~2~~4 Procedural Order. "Procedural Order" means an order establishing a day and time of hearing, requiring a prehearing conference, designating a panel of Commissioners, any notice, a subpoena of witnesses or documents or any other matter which does not affect a substantive right of the parties including an order allowing intervention of a party, as well as any order noticing in additional parties.

001.4~~3~~5 Proceeding. Any hearing or meeting held by the Commission.

001.4~~4~~6 Professionally or Generally Accepted Mass Appraisal Methods and Techniques. Professionally or generally accepted mass appraisal methods and techniques include standards and techniques for mass appraisal recognized by the International Association of Assessing Officers and the Appraisal Institute. Methods or techniques may be professionally or generally accepted mass appraisal techniques, even if not contained within a IAAO or Appraisal institute publication or the Uniform Standards of Professional Appraisal Practice if evidence is presented regarding the use of a method or technique that is reliable, can be tested, is consistent with or utilizes existing professionally or generally accepted mass appraisal methods or techniques and does not conflict with statutory or regulatory provisions.

001.4~~5~~7 Properly Perfected. Properly perfected is a term applied to an appeal if there is timely filing of:

001.4~~5~~7A The Appeal is filed on the form provided by the Commission; and

001.4~~5~~7B The filing fee of twenty-five dollars ($25) is paid, except that no filing fee shall be required for a county assessor filing in his or her official capacity or a county board of equalization acting in its official capacity; and

001.4~~5~~7C A copy of the decision, action, order, determination or other information which documents the decision, order, determination, or action complained of is ~~timely filed.~~

~~001.45D If an appeal concerns a real property valuation and/or equalization decision, an appeal form, filing fee, and copy of the county board of equalization's decision must be filed for each separate parcel of real property even if the final decision complained of affects more than one parcel.~~

~~001.45E~~

001.47D Timely Filed. ~~In order for an appeal or petition to be properly perfected, the required elements must be filed with the Commission on or before the final day for filing such an appeal or petition.~~See chapter 5 section 001.07 of these rules.

~~001.46~~

001.48 Property Tax Administrator. The official appointed as the chief administrative officer of the property assessment division of the department of revenue pursuant to Neb. Rev. Stat. 81-102.

001.49 Quorum. A quorum of a four member Commission panel is three commissioners. A quorum of a three member Commission panel is two commissioners. Neb. Rev. Stat. §77-5005.

001.~~47~~50 Referee. A "Referee" is a person appointed by the Commission pursuant to Neb. Rev. Stat. §77-5009 to meet with the representatives of the county and the owners of a subject property in a valuation dispute in order to facilitate agreement on facts and issues prior to hearing. As used in these rules and regulations, the

term "Referee" shall not mean a person appointed by a County Board of Equalization to hear protests and recommend a course of action to the County Board of Equalization.

001.~~48~~51 Regulation. A rule by which the Commission conducts its business. If the word "Regulation" is used, it will mean *rule*. See definition for *Rule*.

001.~~49~~52 Rehearing, Order For. An "Order For Rehearing" in a proceeding before the Commission means an order authorizing another hearing for a matter already heard and decided by a panel of Commissioners. A rehearing is held to determine de novo any questions raised by an appeal/petition. (See, Neb. Rev. Stat. §77-5005(5)).

001.5~~0~~3 Rule. A "Rule" ~~shall mean~~is the whole or part of a Commission governing statement or standard which is of general or particular applicability and has been adopted pursuant to the Administrative Procedures Act. A ~~statement~~rule may be of present or future effect and is designed to implement, interpret, or prescribe policy. A ~~statement~~rule may describe the Commission, its organization, procedures, or practice requirements~~ and may include prescription of future practices bearing on any of the foregoing~~.

001.5~~1~~4 Show Cause Hearing. A "Show Cause Hearing" shall mean a hearing at which a party is afforded an opportunity to show cause why the proposed order should not be entered by the Commission.

001.5~~2~~5 Special Master. A "Special Master" is a person appointed by the Commission pursuant to Neb. Rev. Stat. §77-5009 ~~who shall~~to hold Hearings and act as a presiding hearing officer on behalf of the Commission. Duties of a Special Master shall not include determination of conclusions of law or the final disposition of any proceeding before the Commission.

001.5~~3~~6 Stipulation. A "Stipulation" is a voluntary agreement between opposing parties concerning some relevant but disputed fact or issue.

Parties to any proceeding before the Commission may agree upon any fact or issue involved in the controversy, either by written stipulation entered into the record as an exhibit or by oral agreement stated on the record. The Commission shall not be bound by such a stipulation. See, *Ireland v. Stalbaum*, 162 Neb. 630. 634, 77 N.W.2d 155,157 (1956).

001.5~~4~~7 Substantive Orders. A "Substantive Order" is any order affecting a substantial legal right. An order affecting a substantial legal right includes any order diminishing a claim or defense that was available prior to the order. An order dismissing a party or a contested case is a substantive order. A substantive order shall only be issued after notice and an opportunity for hearing unless otherwise provided in these rules.

001.58 Tax Commissioner. The official appointed and acting pursuant to Art V sec 28 of the Constitution for the State of Nebraska.

001.59 Unreasonable. A decision is unreasonable only if the evidence presented leaves no room for differences of opinion among reasonable minds. *Pittman v. Sarpy Cty. Bd. of Equal.,* 258 Neb 390, 603 N.W.2d 447, (1999).

001.60 Vice Chairperson. A Commissioner designated Vice Chairperson as set forth in Chapter 3 of these Rules.