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NEBRASKA ADMINISTRATIVE CODE

TITLE 140 - NEBRASKA EQUAL OPPORTUNITY COMMISSION

CHAPTER 2 - Handling of Complaints under the Fair Housing Act

Issue Date:

NEBRASKA ADMINISTRATIVE CODE

TITLE 140 NAC 2

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NEBRASKA ADMINISTRATIVE CODE

TITLE 140: **NEBRASKA EQUAL OPPORTUNITY COMMISSION**

CHAPTER 2: **Handling of Complaints under the Fair Housing Act**

001 Who May File A Complaint

Any person who claims to have been aggrieved personally by an unlawful act may file a complaint with the Commission. Said complaint may be filed by the aggrieved party, or a complaint may be filed by a legal guardian or an individual with a power of attorney on behalf of another person who claims to be personally aggrieved by an unlawful act. The Commission may investigate housing practices to determine whether a complaint should be filed and may file a complaint on its own initiative.

Source: *Neb. Rev. Stat*. § 20-326, 20-314

002 Form and Information

002.01 Form. A complaint is filed when it is received by the Commission, is in writing or reduced to writing, and reasonably contains the information set forth in 002.02. The complaint must also be signed and notarized. Notary service will be provided without charge by the Commission.

002.02 Contents. Information to be included in the form shall include, but not be limited to:

002.02A The full name and address of the person making the complaint;

002.02B The full name and address, if known, of the respondent.

002.02C A plain and concise statement of the facts alleged to constitute an unlawful act or acts.

002.02D The date and place in the State of Nebraska where the alleged unlawful act was committed.

002.02E The names of any other persons aggrieved by the alleged unlawful act who may be additional complainants, such as a spouse or family members.

002.03 Other Information. In addition to the complaint, a complainant shall also provide information to the Commission about any other action instituted by or on behalf of the complainant in any other forum, or under a grievance or arbitration provision, based on or originating from the same set of facts as alleged in the complaint, together with a statement as to the status or disposition of such other action.

Source: *Neb. Rev. Stat*. *§§* 20-325(5), 20-139

002.04 Incomplete complaint. If the Commission determines a complaint is incomplete, the complainant will be advised of the information required and, that unless the required information is received, the matter will be closed administratively. A complaint may be re-filed if filing is made within the one-year limitation period.

Sources: Neb. Rev. Stat. *§§* 20-139 (1), (6) and (8); 20-325(5), 20-326(1)(a)(ii)

003 When and Where to File Complaints and Other Documents

003.01 Time Limitation for Filing Complaints. The original complaint shall be filed within one (1) year of the alleged discriminatory housing practice has occurred or terminated.

003.02 Filings, Where Made. Complaints and other documents are "filed" when received by the Commission. Complaints shall be filed at any office of the Commission as set forth below. Thereafter, whenever filings are required, they shall be made with the Commission addressed or delivered to the Nebraska Equal Opportunity Commission at the office prescribed by the Commission. Filing shall be made by personal delivery, by mail, or by facsimile or other electronic methods authorized by the Commission, and will be received during regular business hours of the Commission. Regular business hours for the Commission are from 8:00 a.m. to 5:00 p.m., in the relevant time zone, Monday through Friday, exclusive of state or federal holidays. The Commission offices are located at:

P. O. Box 94934
301 Centennial Mall South, 5th Floor
Lincoln, NE 68509-4934

Panhandle State Office Complex
4500 Avenue I
Scottsbluff, NE 69363-1500

1313 Farnam on-the-Mall
Omaha, NE 68102-1836

Each complaint shall be docketed and given a case number.

003.03 Computation of Time for Filings or Submissions. In computing time required or allowed by Title 140, by the Act, or by other applicable statutes in which the time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If a filing or submission date falls on a weekend or legal holiday, the date for such filing or submission shall be the next business day.

003.04 Service on Respondent. The Commission shall, not later than ten (10) days after the filing of a complaint or the identification of an additional respondent, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the

procedural rights and obligations of respondents under the act, together with a copy of the original complaint.

Source: *Neb. Rev. Stat*. *§* 20-326

003.05 Referral of Complaint to Local Agency. Whenever a complaint alleges a discriminatory practice within the jurisdiction of a local agency that has been certified by the Commission to handle claims under the Act, the Commission shall refer the complaint to that agency before taking any action on the complaint.

Source: *Neb. Rev. Stat*. *§* 20-332(1)

004 Amendment of Complaint and Answer

004.01 Amendment. A complaint may be reasonably and fairly amended at any time. Reasons for which a complaint may be "reasonably and fairly amended" may include but are not limited to: to cure technical defects or omissions, to clarify allegations made, or to join a newly discovered respondent. An amendment may also allege an additional claim or claims which constitute an unlawful and/or discriminatory housing practice or practices if such claim or claims arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original complaint. Except for purposes of notifying any additional or substitute respondents, all such amendments will relate back to the original filing date. The Commission shall serve a copy of the amended complaint upon the respondent by certified mail or through personal service within ten (10) days of the filing of the amended complaint.

Source: *Neb. Rev. Stat*. *§§* 20-139*,* 20-326(1)(d), 20-325(5). *See Neb. Rev. Stat*. *§* 25-201.02

004.02 Answer to Complaint or Amended Complaint. The respondent may file with the Commission a written response to the complaint or any amended complaint within ten (10) days after its receipt. Any response shall fairly address each specific allegation contained in the complaint and be signed and sworn to or affirmed. An answer may be reasonably and fairly amended at any time thereafter.

Source: *Neb. Rev. Stat*. *§§* 20-326(1) (d), 20-325(5), 20-139

004.03 Failure to Respond. The Commission may begin an investigation regardless of whether a respondent files a response, or a proper or timely response, to a complaint or an amended complaint.

Source: *Neb. Rev. Stat*. *§§* 20-325(5), 20-326(1)(b)(iii)

004.04 Withdrawal of Complaint. A complainant may request that a filed complaint be withdrawn by completing a withdrawal form furnished by the Commission. The Commission shall serve a copy of the request for withdrawal on all parties previously notified of the complaint. If withdrawal is made due to a settlement made between the parties without Commission involvement, both parties will be notified that a complainant may re-file a complaint if the terms of the settlement are not satisfied, provided that the statute of limitations has not elapsed.

Source: *Neb. Rev. Stat*. *§§* 20-325(5), 20-325(6), 20-139*,* 20-326

005 Service Generally

005.01 Manner of Service. Service may be made by first-class mail, postage prepaid unless another form of service is required by the Act or rules and regulations adopted under the Act.

005.02 Proof of Service. When service is made personally or by certified mail, proof of service shall consist of either the verified return of the individual who made service. When service is made by certified mail, proof of service shall consist of the date of receipt as indicated by the United States Postal Service.

005.03 Parties' Attorneys. An attorney representing any party in any investigation shall file her or his appearance with the Commission, and thereafter all documents served by the Commission may be served upon said attorney instead of upon the party she or he represents, until said attorney or said party notifies the Commission in writing that said attorney no longer represents, or is authorized to represent, said party.

006 Conciliation Process

006.01 Conciliation Process, Agreement and Breach. During the period beginning with the filing of a complaint and ending with the filing of a charge or dismissal of the complaint, Commission staff shall, to the extent feasible, engage in conciliation with respect to the complaint. If it appears that a conciliation conference would be beneficial and the parties agree to participate, a conference will be scheduled. If a representative appears on behalf of a party, that representative shall have full authority to settle the matter. After the filing of a charge, settlement negotiations may be conducted subject to section 006.01A and the Rules of Practice, 144 NAC 1--006.07.

Source: *Neb. Rev. Stat. §* 20-327

006.01A If the terms of settlement and adjustment agreed to by the parties are approved by the Commission, or if said terms are modified by the Commission are agreed to by the parties, the Commission shall have the written terms of settlement and adjustment prepared as a conciliation agreement and signed by the parties; and the Commission shall thereupon enter upon the parties an Order in Accord with the executed conciliation agreement.

006.01B After the Commission has entered an Order of Accord, it shall dismiss the complaint, but subject to the Commission's right to refer the matter for further action to the Attorney General and to the right of the complainant to bring an action under 20-342(1) should the terms of the conciliation agreement be violated by the respondent.

006.01C If a complainant withdraws a complaint based upon settlement between the parties, made without Commission involvement, the Commission will not enter an Order in Accord with said terms of settlement and may close the case as having been settled on terms not approved by the Commission. When a private settlement agreement is made, an alleged breach thereafter is not subject to referral to the Attorney General for enforcement.

Sources: Neb. Rev. Stat. §§ 84-909, 20-139, 20-325(5), 20-327, 20-329

006.02 Requirements for Conciliation Agreement. Any conciliation agreement:

006.02A must be approved by the Commission;

006.02B may provide for binding arbitration;

006.02C when approved by the Commission, shall not be deemed an adjudication that the Respondent has engaged in a discriminatory practice nor shall it be subject to an order for relief under section 20-337, unless entered after an adjudication pursuant to an administrative proceeding or a civil action pursuant to state or federal law in which the Respondent was found to have committed a discriminatory practice.

Source: *Neb. Rev. Stat. § 20-327*

007 Investigation

007.01 Generally. After the complaint is filed and served on the respondent, the Commission investigates the alleged discriminatory housing practice. The Commission may issue subpoenas and order discovery in aid of its investigation and undertake conciliation efforts with the aggrieved person and respondent. A Commission investigation is not discovery between a respondent and aggrieved person or of the Commission investigation. Discovery between parties is available in the course of an administrative hearing proceeding on a charge issued by the Commission after a determination of reasonable cause, if any such charge is issued. However, the Commission may disclose materials in its investigative file to the aggrieved person and respondent to the extent reasonably necessary to further the investigation or conciliation discussions and, at the completion of the investigation, it shall make information derived from the investigation and any final investigation report relating to that investigation available to the aggrieved person and the respondent upon request. This release of information, however, is subject to the Federal Privacy Act of 1974, Public Law 93-579 and any other state or federal law limiting the release of confidential information obtained in the course of an investigation under the Act. Nothing in this section precludes the parties from conducting their own internal investigation or an aggrieved person or respondent from participating in proceedings of a lawful recognized tribunal including, but not limited to, Workers' Compensation Court proceedings, unemployment compensation proceedings, and labor grievances.

Sources: *Neb. Rev. Stat*. *§§* 20-325(5), 20-139, 20-326, 20-327, 20-334, 20-330

007.02 Process. The Commission, through its staff, investigates to ascertain the facts relating to the alleged unlawful housing practice or practices set forth in the complaint. During an investigation of a complaint, Commission staff may use subpoenas, requests for production of documents, interrogatories, depositions, and any other discovery means available in civil actions in district court. Any Commission staff member who is a notary public may administer an oath or affirmation during the investigation of a complaint. At its discretion, the Commission may conduct individual interviews, a conference, or both, to assist in its investigation and its attempts at conciliation.

Any member of the Commission staff may contact present employees of a respondent without notice to respondent or respondent's attorney unless they are officers or management employees or employees with authority to bind the respondent in a legal sense. Staff may also contact former employees without consent if the former employees are not

individually represented. Any employee alleged to have committed a discriminatory act that is the subject of the complaint shall be deemed an employee with authority to bind the respondent. If a question exists about the level of employees sought to be interviewed or their representation, staff will notify respondent or respondent's attorney of the proposed interview. A respondent is entitled to have a representative present during the interview of officers, managers, employees with authority to bind the respondent, or other employees represented by respondent.

Any evidence obtained at an investigative interview without the presence of respondent which may adversely affect the respondent shall be disclosed to respondent before the completion of the investigation, and respondent shall have ten (10) days to provide the investigator with any additional evidence.

Nothing in this section should be construed to deny the respondent any right to discovery or to cross-examine or question any witness in any contested case proceeding on a charge issued by the Commission, if any, or in any judicial proceedings.

All interviews will be taped or digitally recorded by the investigator unless a written or verbal objection is made by the person to be interviewed or by one of the parties. Tapes or digital files will be disposed of after the case is dismissed in accordance with state records retention requirements.

Source: *Neb. Rev. Stat*. *§§* 20-325(5), 20-139*,* 20-334

007.03 Subpoenas. The Commission may issue a subpoena whenever necessary to compel the attendance of a witness or to require the production for examination of any books, payrolls, records, correspondence, documents, papers or other evidence in aid of its investigation of an unlawful housing practice charge. The Commission may withdraw any subpoena it determines to be no longer necessary, or may modify a subpoena by agreement with the person subpoenaed. In the event that any person fails or refuses to comply with an investigatory subpoena issued by the Commission, the Attorney General may enforce the subpoena in appropriate proceedings in the district court for the county in which the person to whom the subpoena was addressed resides, was served, or transacts business.

Source: Neb. Rev. Stat. *§§* 20-334, 20-343(3)

007.03A Witness and Mileage Fees. When a subpoena is issued at the request of the Commission, a member thereof, or a Hearing Officer in pursuance of an investigation, then the cost of such service and witness and mileage fees shall be borne by the Commission.

Such witness and mileage fees shall be the same as are paid witnesses in the District Courts of the State of Nebraska.

Source: *Neb. Rev. Stat*. *§* 20-334(2)

007.03B Special Circumstances. The testimony or deposition of any witness who resides outside the State of Nebraska, or who, because of illness or any other reason, is unable to testify in an investigation may be taken within or without the State of Nebraska in the same manner as provided for in civil cases under the laws of the State of Nebraska. The transcript of any such testimony or deposition, when duly authenticated and filed with the Commission in any investigation, shall constitute a part of the official record of the complaint.

Source: *Neb. Rev. Stat*. §§ 20-325(5), 20-334(1)

007.04 Final Investigative Report. At the end of each complaint investigation, the Commission shall prepare a final report containing: (1) the names and dates of contact with witnesses; (2) a summary of correspondence including dates of said correspondence from both the aggrieved party and the respondent; (3) a summary of all pertinent records reviewed; (4) a summary of witness statements, if applicable; (5) interrogatories and answers to interrogatories or other discovery, if applicable. The final report may be amended by the Commission if additional evidence is later discovered.

Source: *Neb. Rev. Stat*. *§* 20-328

007.05 Administrative Closure or Dismissal. The Commission may administratively close a case with or without the parties' consent when:

006.05A The statutory period for filing a complaint has expired.

006.05B An investigation cannot be completed because the complainant has failed to cooperate fully in the investigation of the complaint.

007.05B1 For purposes of this section, "failed to cooperate fully" means a repeated history of failure to return calls or respond to requests. A repeated history may serve as the basis for closure if the history is documented and the complainant has been given a written warning that such failure may result in the closure of the case. A complaint will not be closed based solely on the failure to claim certified mail or to return a notarized complaint form.

007.05C The complainant cannot be located after reasonable efforts.

007.05D The respondent cannot be located after the Commission has made its best efforts to locate said respondent.

007.05E The complainant has independently and voluntarily withdrawn the complaint.

007.05F The complainant is not an aggrieved person.

007.05G The complainant has commenced an action in any court of competent jurisdiction alleging the same causes of action.

007.05H The matter alleged is not within the jurisdiction of the Commission to enforce.

The Commission shall notify all parties of an administrative closure or dismissal by regular first-class mail, sufficient postage prepaid, specifying the reason or reasons for dismissal.

Sources: *Neb. Rev. Stat*. *§§* 20-325(5) and (6), 20-139, 20-326, 20-304

007.06 Reasonable Cause Findings.

007.06A Reasonable cause determinations are to be made by the Commission within one hundred (100) days after the filing of a complaint or after the commencement of further action under section 20-332, unless it is impracticable to do so or unless the Commission has approved a conciliation agreement with respect to the complaint. If the Commission is unable to make the determination within that time, the Commission shall notify the complainant and respondent of the reasons for not doing so.

Source: *Neb. Rev. Stat*. *§* 20-333(1)(a)

007.06B The Commission shall determine, based upon the facts, whether reasonable cause exists to believe a discriminatory housing practice has occurred or is about to occur. If reasonable cause is found to exist, the Commission shall issue a charge on behalf of the aggrieved person, unless the aggrieved person has filed a civil action under state or federal law seeking relief with respect to that discriminatory practice.

Source: *Neb. Rev. Stat*. *§* 20-333(1)(b)(i) and (d)

007.07 Options upon Reasonable Cause Determination. Upon a reasonable cause determination, a case may proceed to a court action, an administrative hearing process before the Commission, or a settlement, as provided by law.

Source: *Neb. Rev. Stat*. §§ 20-139(4), 20-335 to 20-340

007.07A Election to Pursue Civil Action. Any complainant, aggrieved person, or respondent may elect to pursue civil action through the courts rather than to proceed to an administrative hearing before the Commission. The election must be made not later than twenty (20) days after service has been made under section 20-333 of the Act. Election may be made by delivery, by regular mail, postage prepaid, by facsimile, or electronically by an acceptable method under *Neb. Rev. Stat*. *§* 86-702, and shall include the name of the electing person, the Commission case number, and a statement that the electing person is electing to pursue a civil action in court. The electing person shall serve a copy of the election upon all other parties by regular mail, postage prepaid.

Source: *Neb. Rev. Stat*. *§§* 20-335, 20-325(5), 20-139

007.07B Opportunity for Hearing. If the election is not made under section 20-335 to pursue a civil action, the Commission shall provide an opportunity for a hearing on the record with respect to the charge. Hearings shall be conducted in accordance with the Rules of Practice and Procedure for Contested Cases, 144 NAC 1.

Sources: *Neb. Rev. Stat*. *§§* 20-326(1)(a), 20-335, 20-336(1), 20-333(1)(b)(i)

007.08 No Reasonable Cause. If the Commission determines that no reasonable cause exists to believe that a discriminatory practice has occurred or is about to occur, the Commission shall promptly dismiss the complaint and make public disclosure of each such dismissal.

Source: *Neb. Rev. Stat*. *§* 20-333(1)(c)