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 definitions 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 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.

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

001.04 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).

001.05 Attorney. See "Legal Counsel."

001.06 Cancellation Mark. See "Postmark."

001.07 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.

001.08 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 _____

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

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

001.10 Commission. ~~Commission means~~ The Tax Equalization and Review Commission, a quorum of the Commission, a quorum of a panel of the Commission, or when authorized, the chairperson of the Commission, acting on behalf of the Commission.

001.11 Commissioner. ~~Commissioner means a~~ A member of the Commission.

001.12 Conclusions of Law. ~~"Conclusions of Law" means an~~ 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 Confession of Judgment. ~~"Confession of Judgment" 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.

001.14 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:

001.14A 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,

001.14B 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:

001.14B1 is a party to the proceeding, or an officer, director, manager, partner, employee, or trustee of a party;

001.14B2 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.

001.15 Contested Case. ~~Contested case means~~ An appeal or petition filed with the Commission, an action brought by the Commission pursuant to Neb. Rev. Stat. §77-5020, a proceeding on a notice given pursuant to Neb. Rev. Stat. §77-5026 or any other matter before the Commission in which a final order may be issued.

001.16 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.

001.16A 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.

001.17 Default Judgment, Order of. ~~An "Order of Default Judgment" is~~ An order issued by the Commission, after a party fails to: proceed with

opposition to an appeal or petition; appear; prosecute the appeal/petition; or comply with a Commission order.

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

001.19 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 Communications which do not pertain to the merits of a contested case;

001.19B Communications required for the disposition of ex parte matters as authorized by law;

001.19C Communications in a rule-making proceeding;

001.19D Communications to which all parties have given consent. See, Neb. Rev. Stat. §84-901 (Reissue 1999).

001.20 Final Decision. ~~Unless otherwise indicated a "final decision" shall mean a~~ 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).

001.21 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).

001.22 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.

001.23 Formal Hearing. ~~A formal hearing is~~ A hearing during which the Rules of Evidence applicable in District Court will be applied in the hearing.

001.24 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).

001.25 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").

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

001.27 Informal Hearing. ~~An "Informal Hearing" is a~~A hearing during which most of the Rules of Evidence applicable in the District Court will not be applied in the hearing. Rules of privilege and rules prohibiting hearsay are applicable in the hearings. Rules of process and procedure are also applicable. See, ch 4 § 009 attendance at hearing ch 5 §18 conduct of a hearing and ch 5 §20 evidence of these rules and others.

001.28 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). A person whose legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding. Neb. Rev. Stat. §84-912.02(1)(b).

001.29 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 009.01A or 009.01B of these rules.

001.30 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.

001.31 Notice of Hearing. Notice issued by the Chairperson served on all parties stating the ~~day~~date, time and place of a hearing and other information at the discretion of the Chairperson.

001.32 Order for Hearing. An order of the Chairperson setting a date, time and place for hearing and other direction or information as may be required by these rules or entered at the discretion of the Chairperson.

001.33 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.

001.34 Panel of Commissioners. ~~A "Panel of Commissioners" means~~ Any three Commissioners designated by the Chairperson to hear ~~a case~~ an appeal or petition or the three Commissioners ~~the~~ present at the commencement of a proceeding.

Appeal or petition added excused deleted

001.35 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.

001.36 Party. ~~"Party" means~~ The person 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. 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).

001.37 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).

001.38 Person. ~~The term "Person" includes~~ 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.

001.39 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.

001.40 Pleading. ~~A Pleading is~~ A petition, appeal form, reply, notice, motion, stipulation, objection or other formal or informal written document filed by or with the Commission which concerns a proceeding or contested case. The technical requirements for a pleading are set forth in these Rules.

001.41 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.

001.42 Presiding Hearing Officer. ~~"Presiding Hearing Officer" means~~ A ~~person~~ commissioner, special master, or referee conducting a proceeding.

001.43 Procedural Order. ~~"Procedural Order" means~~ An order establishing a ~~day~~date and time of hearing, requiring a pre-hearing 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.

001.44 Proceeding. Any hearing or meeting held by the Commission.

001.45 Professionally or Generally Accepted Mass Appraisal Methods and Techniques. ~~Professionally or generally accepted mass appraisal methods and techniques include standards~~ 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,~~ and other standards and 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.

This revision is new more concise language

001.46 Properly Perfected. ~~Properly perfected is A term applied to an~~ An appeal if there is timely filing of:

001.46A The Appeal is filed on the form provided by the Commission; and

001.46B 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

001.46C A copy of the decision, action, order, determination or other information which documents the decision, order, determination, or action complained of is.

001.46D Timely Filed. See chapter 5 section 001.07 of these rules.

001.47 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.

001.48 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.

001.49 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.

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

001.51 Rehearing, Order For. ~~An "Order For Rehearing" in a proceeding before the Commission means~~ An order authorizing another hearing for a matter which has already been heard.

001.52 Rule. A "Rule" 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 rule may be of present or future effect and is designed to implement, interpret, or prescribe policy. A rule may describe the Commission, its organization, procedures, or practice requirements.

001.53 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.

001.54 Single Family Residential. ~~means~~ All parcels of real property predominantly used or intended to be used as a dwelling place or abode whether occupied by the owner, tenant or lessee, and where occupancy is for a period of time usually year-a-round as opposed to a transitory occupancy by a single family or two families.

001.55 Special Master. ~~A "Special Master" is~~ A person appointed by the Commission pursuant to Neb. Rev. Stat. §77-5009 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.

001.56 Stipulation. ~~A "Stipulation" is~~ A voluntary agreement between opposing parties concerning some relevant but disputed fact or issue.

001.57 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.

001.58 Tax Commissioner. The official appointed and acting pursuant to Art V, ~~see~~§ 28 of the Constitution ~~for~~of 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.