TITLE 297, CHAPTER 3
NEBRASKA REAL PROPERTY APPRAISER BOARD

STATE OF NEBRASKA

Regulations and Procedures Governing Agency Declaratory Orders

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NEBRASKA REAL ~~ESTATE~~ PROPERTY APPRAISER BOARD

TITLE 297 CHAPTER 3

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NEBRASKA REAL ~~ESTATE~~ PROPERTY APPRAISER BOARD
TITLE 297 NAC CHAPTER 3

001 **General Information**

001.01 Application of these Model Rules. These rules are promulgated pursuant to Neb. Laws 1994, LB 446, and 53 Nebraska Administrative Code Chapter 3. They shall apply to all contested cases within the jurisdiction of the Appraiser Board.

001.02 Scope of this Chapter. This chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by the Appraiser Board.

001.03 Related Regulations. In addition to this Chapter, related regulations pertaining to administrative procedures before agencies are: 53 NAC Chapter 1, Model Procedures for Negotiated Rulemaking, 53 NAC Chapter 2, Petitioning for Rulemaking, and 53 NAC Chapter 4, Rules of Practice and Procedure for Hearings in Contested Cases Before an Agency.

002 **Definitions.** As used in this chapter:

002.01 Agency shall mean the Appraiser Board, and its employees, including the Director and staff.

002.02 Agency director shall mean the person appointed as Director of the Real ~~Estate~~ Property Appraiser Board pursuant to §76-2224, Revised Statutes of Nebraska 1991, as amended.

002.03 Argument shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

002.04 Board shall mean the Real ~~Estate~~ Property Appraiser Board of Nebraska.

002.05 Contested case shall mean a proceeding before the Board in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Board.

002.06 Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the Board as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the Board.

002.07 Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

002.08 Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the Board's issuance of a binding declaratory order.

002.09 Necessary Party shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

002.10 Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the Board who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.

002.11 Petition shall mean the document filed in accordance with section 003 of this chapter to initiate a declaratory order proceeding.

002.12 Petitioner(s) shall mean a party or parties who have filed a petition with the Board seeking issuance of a declaratory order.

002.13 Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the Board as set forth in this chapter.

003 Petition for Declaratory Order.

003.01 Generally. A request for a declaratory order must be made by a petition that meets the requirements of section 003.

003.02 Who May File. Any person may petition the agency for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the Board.

003.03 When Orders Appropriate. A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the Board. "Applicability" refers to the appropriate-ness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

003.03A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

003.03B A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

003.03C A declaratory order is not a mechanism for review or appeal of a decision made by the Board in a contested case.

003.03D A declaratory order may not be requested to obtain a declaration by the Board that a statute or regulation is unconstitutional or that a regulation of the agency is invalid.

003.03E A declaratory order may not be issued by the Board that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

003.04 Form of Petition. A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

003.04A A caption, which shall include:

003.04A1 The venue: BEFORE THE REAL ~~ESTATE~~ PROPERTY APPRAISER BOARD, STATE OF NEBRASKA;

003.04A2 A heading specifying the subject matter and the name of the petitioner; and

003.04A3 The name of the pleading: PETITION FOR DECLARATORY ORDER.

003.04B The statements required in subsection 003.05 of this chapter.

003.04C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

003.04D The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

003.04E Size and Paper. The petition shall be made on white, letter-sized (8-1/2" x 11") paper.

003.04F Print. The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

003.04G Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8-1/2" x 11" paper or placed in an 8-1/2" x 11" envelope and clearly marked as an attachment to the petition.

003.05 Contents of Petition. To be considered, the petition shall include the following:

003.05A The name and address of the petitioner;

003.05B The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

003.05C The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

003.05D A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

003.05E All propositions of law or contentions asserted by the petitioner;

003.05F A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the Board should rule and why the Board should rule in the manner requested; and

003.05G Any documents pertinent to the petition that the petitioner wishes to be considered by the Board.

003.06 The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

003.07 Sample Petition. The petitioner may use the sample form of a petition which is attached as "Appendix A" and incorporated within this chapter. The petitioner may also prepare a reasonable facsimile of "Appendix A" so long as the requirements of subsections 003.04, 003.05, and 003.06 of this chapter are satisfied.

003.08 Written Consents. The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

004 Submission and Service of Declaratory Order Petition.

004.01 The original petition for declaratory order shall be filed with the agency director by mail or in person during the agency's normal business hours.

004.02 The petition shall be deemed as filed when it is actually received by the agency. The agency shall date stamp all petitions upon receipt.

004.03 At the same time the petition is filed with the agency, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the Board.

005 **Disposition of the Petition.**

005.01 **Generally.** Upon the filing of a petition, the agency director, acting on behalf of the Board, may consider the petition, refer the petition to the agency attorney, and recommend a decision to the Board. In reviewing the petition, the Board may, in its discretion, do one or more of the following:

005.01A Require that additional information be submitted before the petition will be further considered;

005.01B Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the agency;

005.01C On behalf of the Board schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition as set forth in subsection 005.01 of this Chapter;

005.01D Consider the petition and any attachments without oral presentation.

05.02 Within thirty (30) days after the petition is filed, the Board shall, in writing:

005.02A Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

005.02B Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

005.02C Set the matter for specified proceedings as set forth in subsection 005.01 of this Chapter; or

005.02D Decline to issue a declaratory ruling, stating the reasons for the Board's decision.

005.03 Notwithstanding section 005.02 of this rule, the Board may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 009 of this Chapter. The Board shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the Board determines not to issue a declaratory order.

006 **Intervention in Declaratory Order Proceeding.**

006.01 Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

006.01A. A petition for intervention must be submitted in writing to the agency. Copies must be mailed by the petitioner for intervention to all parties to the proceeding.

006.01B. The contents of the petition must be as specified in 006.02.

006.01C. The Board must determine that the interests of justice and the orderly and

prompt conduct of the proceedings will not be impaired by allowing the intervention.

006.01D. The petition in intervention must be filed with the Agency and copies mailed to all parties named in any notice of hearing at least five days before the hearing.

006.02 Contents of Petition. The petition for intervention shall be submitted to the agency, in writing, on 8 ½" x 11" white paper, and shall include each of the following:

006.02A The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

006.02B A statement of facts sufficient to show the intervenor's interest;

006.02C A statement of facts which demonstrates that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

006.02D All propositions of law or contentions asserted by the intervenor; and

006.02E A statement of the specific relief requested by the intervenor.

006.03 The agency may, at its discretion, invite any person or entity to file a petition for intervention.

006.04 The Board shall grant a petition for intervention if the requirements of § 006.01 and § 006.02 are satisfied.

006.05 The Board shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

006.06 The Board's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

007 Declaratory Order Proceedings.

007.01 Oral Argument, When. Oral argument shall be had only on specific order of the Board, the Director, or the designated hearing officer. A petitioner, intervenor, necessary party, or the Board may submit a motion for oral argument to the agency director. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the agency with a notice of the date, time, and location for oral argument. The agency shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

007.02 Oral Argument, Procedure. Oral argument will be made before a hearing officer or the Board or any representative of the agency who is authorized to render or to recommend a decision to the Board. The hearing officer, the Board, or agency representative shall be in control of the proceeding and shall:

007.02A Identify the proceeding and introduce himself or herself and identify each party for the record;

007.02B Hear the oral argument of the petitioner, intervenor, or necessary parties;

007.02C Close the proceedings.

007.03 At the declaratory order proceeding, agency staff, including legal counsel, shall have the right

to present oral argument.

007.04 The hearing officer or representative may impose reasonable time limits on the amount of time allocated to each party for oral argument.

007.05 The parties and agency staff, including legal counsel, may file briefs in support of their respective positions. The hearing officer or Board may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

007.06 The oral argument may be conducted either in person or by telephone conference call.

008 Issuance of Declaratory Order.

008.01 The Board shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.

008.02 The declaratory order shall be in writing and shall include the following:

008.02A The names of all parties to the proceeding upon which the order is based;

008.02B The facts upon which the order is based;

008.02C The statute, regulation, rule, or order at issue in the matter;

008.02D The Board's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

008.02E The Board's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

008.02F The reasons relied upon by the Board to support its conclusions.

008.03 A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

008.04 Effect of Declaratory Order. A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

008.05 No Response within 60 Days. If the Board has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the agency.

009 Circumstances Under Which Board will not Issue Declaratory Orders.

009.01 Grounds upon which the Board shall refuse to issue a declaratory order include, but are not limited to, the following:

009.01A The petition requests a declaratory order on a matter that is outside the scope of authority of the Board;

009.01B The petition requests review or appeal of a decision made by the Board in a contested case;

009.01C The petition requests a declaratory order on the effect of past conduct;

009.01D An investigation for purposes of a formal adjudication, a contested case, or a

petition to issue, amend, or repeal regulations is pending before the Board involving the petitioner on substantially the same or similar facts or issues raised in the petition;

009.01E The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

009.01F The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

009.01G An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

009.01H An order would not resolve the controversy or uncertainty; or

009.01I The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

009.02 Grounds upon which the Board may determine to refuse to issue a declaratory order include, but are not limited to, the following:

009.02A Refusal is necessary to assure adequate allocation of Board resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

009.02B The question presented is of such complexity that the Board has had insufficient opportunity or resources to develop a fully matured ruling;

009.02C The petitioner fails to submit any additional information requested by the Board, hearing officer, or agency director or submits such information after the date established in the request;

010 **Appeal**. A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 - § 84-920. Specific procedures for appeal are set forth in Neb. Rev. Stat. § 84-917.

BEFORE THE REAL ~~ESTATE~~ PROPERTY APPRAISER BOARD, STATE OF NEBRASKA

In the matter of	)	
the application of [name]	)	PETITION FOR
	)	DECLARATORY ORDER
	)	

1. Petitioner's name and address;

2. The name and address of all persons who or entities which may have a specific interest in the applicability of the statute, rule, regulation, or order, or who may be adversely affected by the issue sought to be resolved;

3. All material facts and specific circumstances;

4. All rules of law which apply;

5. Petitioner's demand for relief;

DATED on this _____ day of _____, _____.

VERIFICATION

STATE OF	_____	)
		) ss.
COUNTY OF	_____	)

_____[name]_____, being first duly sworn, states that he/she is the petitioner/petitioner's agent in the above entitled matter; that he/she has read the foregoing **Petition For Declaratory Order**; and that the allegations of fact therein are true.

_____
[Petitioner's signature]

SUBSCRIBED and sworn to before me on this _____ day of _____, ____.

NOTARY SEAL _____
[Notary signature]