

NOTICE OF FINAL RULEMAKING

EFFECTIVE JANUARY 1, 2023

TITLE 4. PROFESSIONS AND OCCUPATIONS

**CHAPTER 46. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS –
FINANCIAL INSTITUTIONS DIVISION, REAL ESTATE APPRAISAL**

ARTICLE 3.1. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR

THIS ARTICLE AND THE FOLLOWING RULES HAVE BEEN REPEALED.

REAL ESTATE APPRAISAL HEARINGS ARE NOW GOVERNED BY TITLE 20,
CHAPTER 4, ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE
DIRECTOR (reproduced below).

R4-46-301.01. Scope of Article (Repealed)

R4-46-302.01. Commencement of Proceedings; Notice of Hearing (Repealed)

R4-46-303.01. Answer to Notice of Hearing (Repealed)

R4-46-304.01. Filing; Service (Repealed)

R4-46-305.01. Stays (Repealed)

R4-46-306.01. Rehearing (Repealed)

R4-46-307.01. Settlement (Repealed)

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

**CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS –
FINANCIAL INSTITUTIONS DIVISION**

ARTICLE 12. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR

R20-4-1201. Scope of Article; Definitions

- A.** Scope. This Article, Title 6, Title 32, chapters 9 and 36, and Title 44, Chapter 2.1 of the Arizona Revised Statutes govern administrative hearings before the Department. The Department shall use the authority of A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' procedural rules and this Article to govern the initiation and conduct of administrative hearings. In an administrative hearing, special procedural requirements in state statute or another Section in this Article shall also govern the proceedings unless the requirements are inconsistent with either A.R.S. Title 41, Chapter 6, Article 10, the Office of Administrative Hearings' rules, or this Article. Except as otherwise provided in Section R20-4-1220 for rulemaking petitions, this Article does not apply to rulemaking or to investigative proceedings before the Director. Unless expressly applicable by rule or statute, the Arizona Rules of Civil Procedure do not apply to administrative hearings.
- B.** In addition to the definitions provided in A.R.S. §§ 41-1001 and 41-1092, the following terms apply to this Article:

“Administrative Hearing” means an appealable agency action as defined by A.R.S. § 41-1092(3) or a contested case as defined by A.R.S. § 41-1001(5) subject to A.R.S. Title 41, Chapter 6, Article 10.

“Attorney General” means the Attorney General of Arizona, and the Attorney General’s assistants and special agents.

“Department” means the Arizona Department of Insurance and Financial Institutions – Financial Institutions Division.

“Director” has the meaning stated at A.R.S. § 20-102.

“Party” has the meaning prescribed at A.R.S. § 41-1001(16) and includes any person or entity subject to the jurisdiction of the Department under A.R.S. Title 6, Title 32 - Chapter 9, Title 32 - Chapter 36, and Title 44 - Chapter 2.1.

R20-4-1202. Appearance and Practice before the Director for Administrative Hearings

- A. A party may appear on their own behalf or through counsel.
- B. When an attorney other than the Attorney General appears or intends to appear before the Director or the Department, they shall promptly disclose their name and contact information and the name and contact information of the party on whose behalf they intend to appear.

R20-4-1204. Filing; Service

- A. A document filed by a party with the Department is filed on the date it is received by the Department as established by the Department’s earliest stamped date on the face of the document or by some other method of affixing a received date by the Department.
- B. If a party is represented by an attorney, service is effectuated by service upon the attorney unless additional service upon the represented party is required by an administrative law judge or the Department.
- C. A document is served upon a party as provided for under A.R.S. § 41-1092.04 and Section R2-19-108. A party effectuating service is responsible for producing proof of service if requested by the Department.

R20-4-1209. Answer to Notice of an Administrative Hearing

- A. The Department may, in a notice of hearing, direct one or more parties to file a written answer to the allegations contained in the notice of hearing. Even if not directed to do so, any party to the proceeding may file an answer.
- B. A party directed to file an answer shall do so within 20 days after issuance of a notice of hearing, unless the notice of hearing states a different period for the answer. The Department may require any party to answer, in a reasonable time, amendments to the assertions in the notice made after service of the original notice.

- C. An answer filed under this Section shall briefly state the party's position or defense to the proceeding and shall specifically admit or deny each of the allegations in the notice of hearing. An answering party who does not have, or cannot easily obtain, knowledge or information sufficient to admit or deny an allegation shall state that inability which shall have the effect of a denial. Any allegation not denied is admitted. A party who intends to deny only a part of an allegation, shall expressly admit as much of that allegation as is true and shall deny the remainder.
- D. A party who fails to file an answer required by this Section within the time allowed is in default. The Director may resolve the proceeding against a defaulting party. In doing so, the Director may regard any allegations in the notice of hearing as admitted by the defaulting party.
- E. Defenses not raised in the answer are waived.

R20-4-1210. Stay Pending a Hearing

A person aggrieved by the Department's action or order who files a timely written request for a hearing may ask, in the request for a hearing, that the Director stay an action or any part of an order that will become effective before a hearing. The Director may, in the Director's discretion, stay the legal effectiveness of any action or order until the matter can be heard and finally decided if the aggrieved person's request demonstrates that:

1. The person has a reasonable defense that might prevail on the merits at the hearing,
2. The person will suffer irreparable injury unless the Director grants the stay,
3. The stay would not substantially or irreparably harm other interested persons, and
4. The stay would not jeopardize the public interest or contravene public policy.

R20-4-1219. Request for Rehearing or Review

- A. Any party aggrieved by an administrative decision may file with the Director within time limits and other procedural guidelines contained in A.R.S. § 41-1092.09, a written motion for rehearing or review of the decision specifying the particular reason for the request.
- B. A party filing a motion under this Section may amend the motion at any time before a response to the motion is filed. An amended motion tolls the time for filing a response and the time for rendering a decision on the motion.
- C. A request for rehearing or review which is not timely filed is deemed waived for the purpose of judicial review.
- D. A motion for rehearing or review shall specify which of the grounds listed in subsection (G) it is based upon and shall set forth the specific facts and laws in support of the motion. A motion may cite relevant portions of testimony from the hearing if a transcript is provided with the motion and may cite hearing exhibits by reference to the exhibit number. The motion shall specify the relief sought by the request, such as a different finding of fact, conclusion of law or order and may seek multiple forms of relief in the alternative. When a motion for rehearing or review is based on an affidavit, the moving party shall attach the affidavit to the motion.
- E. A party may file a separate request for a stay of the Director's decision. Filing a stay request or a motion for rehearing or review does not stay an order filed by the Director. The Director may stay an order pending the resolution of a motion for rehearing or review.

- F.** Each party served with a motion for rehearing or review shall be permitted to file a written response within 15 days after the motion has been filed. Affidavits may be attached to and filed with a response. A response may cite relevant portions of testimony from the hearing if a transcript is provided with the response and may cite hearing exhibits by reference to the exhibit number. The Director has the discretion to hear oral argument to consider a request for rehearing or review.
- G.** The Director may grant a motion for rehearing or review for any of the following causes:
 1. Irregularity in the proceedings before the Department, in any order, or any abuse of discretion that deprives the moving party of a fair hearing;
 2. Misconduct by the Department, the administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary care;
 4. Newly discovered material evidence that could not reasonably have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in admitting or rejecting evidence or other legal errors occurring at the hearing; and
 7. The decision is not justified by the evidence or is contrary to law.
- H.** The Director may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any reason listed in subsection (G). An order granting a rehearing shall specify the reason for granting the rehearing, and the rehearing shall cover only those matters specified.
- I.** The Director, within the time for filing a motion for rehearing, may without a motion for rehearing, order a rehearing for any reason that would allow the granting of a motion for rehearing by a party. The order for rehearing, granted without a motion, shall specify the reason for granting the rehearing.
- J.** The Director may grant a motion for rehearing, timely served, for a reason not stated in the motion. The order for rehearing, granted for a reason not stated in the motion, shall specify the reason for granting the rehearing.

R20-4-1220. Petition for Rulemaking Action

- A.** The following definitions apply in this Section.
 1. “Petitioner” means a person who petitions the Department for Rulemaking action as authorized under A.R.S. § 41-1033(A).
 2. “Rule” has the meaning stated at A.R.S. § 41-1001 and is enforceable by the Department.
 3. “Rulemaking action” means the process for formulation and finalization of a new rule, or amendment or repeal of an existing rule.
 4. “Substantive Policy Statement” has the meaning stated at A.R.S. § 41-1001, is advisory only, and is not enforceable by the Department.
- B.** Any person may petition the Department under A.R.S. § 41-1033(A) to either:
 1. Make, amend, or repeal a final Rule; or
 2. Review an existing agency practice or Substantive Policy Statement that the Petitioner alleges to constitute a Rule.
- C.** A person who files a petition pursuant to A.R.S. § 41-1033(A), shall include the following information in the petition:
 1. The Petitioner’s name and contact information;
 2. The name and address of any organization the Petitioner represents;

3. Whether the Petitioner is petitioning the Department to:
 - a. Make, amend, or repeal a final Rule; or
 - b. Review an existing agency practice or Substantive Policy Statement that the Petitioner alleges to constitute a Rule;
 4. A detailed explanation of Petitioner's basis for submitting the petition;
 5. If the Petitioner is petitioning the Department to make a Rule, the language of the proposed new Section and the specific authority for the requested Rulemaking action;
 6. If the Petitioner is petitioning the Department to amend an existing Rule, a citation to the existing Section to be amended, the language of the proposed Rule amendment, and the specific authority for the requested Rulemaking action;
 7. If the Petitioner is petitioning the Department to repeal an existing Rule, a citation to the existing Section or subsection to be repealed, and an explanation of why the Rule should be repealed including, if applicable, how the Rule does not meet the requirements of A.R.S. § 41-1030;
 8. If the Petitioner is petitioning the Department to review an existing agency practice that the Petitioner alleges to constitute a Rule, a description of the Department's practice, an explanation of how the Department's practice constitutes a Rule being enforced by the Department, the language of the proposed new Rule, and the specific authority for the requested Rulemaking action;
 9. If the petitioner is petitioning the Department to review a Substantive Policy Statement that the Petitioner alleges to constitute a Rule, a citation to the Substantive Policy Statement, an explanation of how the Substantive Policy Statement is being enforced by the Department as a Rule, the language of the proposed new Rule, and the specific authority for the requested Rulemaking action; and
 10. The Petitioner's dated signature.
- D.** The petitioner may submit additional supporting information, including:
1. Statistical data; and
 2. A list of other persons and entities likely to be affected by the proposed Rulemaking action, with an explanation of the likely effects.
- E.** Within 60 days of the date the Department receives the petition, the Director shall send the petitioner a written decision indicating whether the Department is denying the petition or will initiate the requested Rulemaking action, with the reasons for the decision.