

Title 32, Chapter 20 REAL ESTATE

Article 11. Administrative Hearings

32-2199 Administrative Hearings

Pursuant to title 41, chapter 6, article 10, an administrative law judge shall adjudicate complaints regarding and ensure

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compliance with:

1. Title 33, chapter 9 and condominium documents.
2. Title 33, chapter 16 and planned community documents.

32-2199.01. Hearing; rights procedures

A. For a dispute between an owner and a condominium association or planned community association that is regulated pursuant to title 33, chapter 9 or 16, the owner or association may petition the department for a hearing concerning violations of condominium documents or planned community documents or violations of the statutes that regulate condominiums or planned communities. The petitioner shall file a petition with the department and pay a filing fee in an amount to be established by the commissioner. The filing fee shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05. On dismissal of a petition at the request of the petitioner before a hearing is scheduled or by stipulation of the parties before a hearing is scheduled, the filing fee shall be refunded to the petitioner. The department does not have jurisdiction to hear:

1. Any dispute among or between owners to which the association is not a party.
2. Any dispute between an owner and any person, firm, partnership, corporation, association or other organization that is engaged in the business of designing, constructing or selling a condominium as defined in section 33-1202 or any property or improvements within a planned community as defined in section 33-1802, including any person, firm, partnership, corporation, association or other organization licensed pursuant to this chapter, arising out of or related to the design, construction, condition or sale of the condominium or any property or improvements within a planned community.

B. The petition shall be in writing on a form approved by the department, shall list the complaints and shall be signed by or on behalf of the persons filing and include their addresses, stating that a hearing is desired, and shall be filed with the department.

C. On receipt of the petition and the filing fee the department shall mail by certified mail a copy of the petition along with notice to the named respondent that a response is required within twenty days after mailing of the petition showing cause, if any, why the petition should be dismissed.

D. After receiving the response, the commissioner or the commissioner's designee shall promptly review the petition for hearing and, if justified, refer the petition to the office of administrative hearings. The commissioner may dismiss a petition for hearing if it appears to the commissioner's satisfaction that the disputed issue or issues have been resolved by the parties.

E. Failure of the respondent to answer is deemed an admission of the allegations made in the petition, and the commissioner shall issue a default decision.

F. Informal disposition may be made of any contested case.

G. Either party or the party's authorized agent may inspect any file of the department that pertains to the hearing, if the authorization is filed in writing with the department.

H. At a hearing conducted pursuant to this section, a corporation may be represented by a corporate officer, employee or contractor of the corporation who is not a member of the state bar if:

1. The corporation has specifically authorized the officer, employee or contractor of the corporation to represent it.
2. The representation is not the officer's, employee's or contractor of the corporation's primary duty to the corporation but is secondary or incidental to the officer's, employee's or contractor of the corporation's, limited liability company's, limited liability partnership's, sole proprietor's or other lawfully formed and operating entity's duties relating to the management or operation of the corporation.

32-2199.02. Orders; penalties; disposition

A. The administrative law judge may order any party to abide by the statute, condominium documents, community documents or contract provision at issue and may levy a civil penalty on the basis of each violation. All monies collected pursuant to this article shall be deposited in the condominium and planned community hearing office fund established by section 32-2199.05 to be used to offset the cost of administering the administrative law judge function. If the petitioner prevails, the administrative law judge shall order the respondent to pay to the petitioner the filing fee required by section 32-2199.01.

B. The order issued by the administrative law judge is binding on the parties unless a rehearing is granted pursuant to section 32-2199.04 based on a petition setting forth the reasons for the request for rehearing, in which case the order issued at the conclusion of the rehearing is binding on the parties. The order issued by the administrative law judge is enforceable through contempt of court proceedings and is subject to judicial review as prescribed by section 41-1092.08.

32-2199.04. Rehearing; appeal

A. A person aggrieved by a decision of the administrative law judge may apply for a rehearing by filing with the commissioner a petition in writing pursuant to section 41-1092.09. Within ten days after filing such petition, the commissioner shall serve notice of the request on the other party by mailing a copy of the petition in the manner prescribed in section 32-2199.01 for notice of hearing.

B. The filing of a petition for rehearing temporarily suspends the operation of the administrative law judge's action. If the petition is granted, the administrative law judge's action is suspended pending the decision on the rehearing.

C. In the order granting or denying a rehearing, the commissioner shall include a statement of the particular grounds and reasons for the commissioner's action on the petition and shall promptly mail a copy of the order to the parties who have appeared in support of or in opposition to the petition for rehearing.

D. In a rehearing conducted pursuant to this section, a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized such officer or employee to represent it.
2. Such representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to such officer's or employee's duties relating to the management or operation of the corporation.

32.2199.05. Condominium and planned community hearing office fund

A. The condominium and planned community hearing office fund is established in the department to be administered by the commissioner. Monies in the fund are continuously appropriated. On notice from the commissioner, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

B. Monies in the condominium and planned community hearing office fund shall be used to reimburse the actual costs of the office of administrative hearings in conducting hearings pursuant to section 32-2199.01. Monies remaining in the fund may be used by the department to offset the costs of administering cases filed pursuant to section 32-2199.01.