
**FLORIDA ADMINISTRATIVE CODES
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FLORIDA ADMINISTRATIVE CODES | ORGANIZATION

CODES: 28-101.001

28-101.001 | STATEMENT OF AGENCY ORGANIZATION AND OPERATION

(1) The agency head shall maintain a current Statement of Agency Organization and Operation. The statement shall describe the organization of the agency and outline the general course of the agency's operations. The purpose of the statement is:

(a) To inform the public, in a complete and concise manner, of the nature of the agency's business, operations, delegation of authority, internal organization and other related matters;

(b) To provide assistance to the public when dealing with the agency; and

(c) To expedite the processing of agency matters on behalf of the public.

(2) The Statement of Agency Organization and Operation shall:

(a) Describe the agency head and his or her duties, as well as state the method of selection or appointment of the agency head, and the length of his or her term.

(b) Describe the organizational units and sub-units within the agency, including their assigned functions, duties, responsibilities, statutory authority, and statutes and rules they are charged with implementing. The designation of units and sub-units shall be consistent with Section 20.04, F.S., or as otherwise provided by law.

(c) Describe the manner by which publications, documents, forms, applications for licenses, permits and other similar certifications or rights granted by the agency, or other information, may be obtained.

(d) Identify the agency clerk by name, position, address, e-mail address, and telephone number; and set out his or her duties and responsibilities.

(e) State whether documents can be filed by electronic mail or facsimile transmission, including applicable telephone numbers and electronic mail addresses where filings may be submitted, and set forth the acceptable nature and scope of such filings, including the following:

That the filing date for a document transmitted by electronic mail or by facsimile shall be the date the agency receives the complete document. Any document received by the office of the agency clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

(f) Identify the name, address, and e-mail address of the appropriate contact person for obtaining information about variances from or waivers of agency rules, and indicate how to file a petition for variance or waiver.

(g) Set forth the agency's hours of operation during which filings will be accepted.

(h) Set forth where and how agency index of final orders can be accessed.

(3) The agency clerk shall provide a copy of its Statement of Agency Organization and Operation to any person upon request.

(4) An agency shall publish a statement of organization and operation on the agency's website.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13, 6-26-13.

FLORIDA ADMINISTRATIVE CODES | MEETINGS, HEARINGS, WORKSHOPS

CODES: 28-102.001 through 28-102.003

28-102.001 | NOTICE TO PUBLIC MEETING, HEARING, OR WORKSHOP

(1) Except where otherwise provided, the agency shall give at least seven days notice of any public meeting, hearing, or workshop by publication in the Florida Administrative Register and on agency's website. Provisions regarding notices of hearings in proceedings for determining substantial interests are found in Rules 28-106.208 and 28-106.302, F.A.C.

(2) An agency shall utilize the following form, or a substantially similar form, in providing notice of any public meeting, hearing, or workshop.

NOTICE OF PUBLIC MEETING, HEARING, OR WORKSHOP

The (name of the agency) announces a public meeting, hearing, or workshop to which all persons are invited.

DATE AND TIME:

PLACE:

PURPOSE:

A copy of the agenda may be obtained by writing to (name of the agency) at (address) or by calling (name) at (telephone number).

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/hearing/meeting is asked to advise the agency at least 5 days before the workshop/hearing/meeting by contacting (name) at (telephone number). If you are hearing or speech impaired, please contact the agency by calling (telephone number of TDD).

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)1. FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-102.002 | AGENDA FOR MEETING, HEARINGS, OR WORKSHOPS

(1) (a) The agenda shall state with specificity the items that will be considered at a meeting, hearing, or workshop. All matters involving the exercise of agency discretion and policy-making shall be listed and summarized on the agenda. Matters which are solely ministerial, or internal administrative matters that do not affect the interests of the public generally, may be included on the agenda.

(b) An agency shall utilize the following form, or substantially similar form in preparing its agenda:

NAME OF AGENCY TIME, DATE & PLACE OF MEETING THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order.
2. Review of Minutes.
3. Old Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.
4. New Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.
5. Other Business: Specific listing of all matters involving agency discretion or policy-making with brief summary of each.

(2) The person designated to preside may make specific changes in the agenda after it has been made available for distribution, only for "good cause" shown.

(3) The agenda and any meeting materials available in electronic form shall be published on the agency's website. Confidential and exempt information need not be published.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.525 FS. History—New 4-1-97, Amended 2-5-13.

28-102.003 | EMERGENCY MEETINGS

(1) An agency may hold an emergency meeting notwithstanding the provisions of Rules 28-102.001 and 28-102.002, F.A.C., for the purpose of acting upon emergency matters posing an immediate danger to the public health, safety or welfare.

(2) Whenever an emergency meeting must be held, the agency shall give notice of the meeting on its website, if it has one, and by any procedure that is fair under the circumstances, such as notifying at least one major newspaper of general circulation in the area where the meeting will take place, and the agency may also notify all major wire services of the time, date, place, and purpose of the meeting.

(3) Following an emergency meeting, the agency shall publish in the appropriate publication prescribed by Section 120.54(3), F.S., and on its website, if it has one, notice of the time, date and place of the meeting, a statement setting forth the reasons why an emergency meeting was necessary and a statement setting forth the action taken at the meeting. This notice is in addition to the notice requirements of Section 120.525(3)(c), F.S.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.525, 120.54(5)(b)1. FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

FLORIDA ADMINISTRATIVE CODES | RULEMAKING

CODES: 28-103.001 through 28-103.006

28-103.001 | ADVANCE NOTICE OF AGENCY RULEMAKING PROCEEDINGS

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(2)(a), (3)(a) FS. History–New 4-1-97, Repealed 12-4-12.

REPEALED

28-103.002 | RULE DEVELOPMENT WORKSHOPS

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(2)(c), (5) FS. History—New 4-1-97, Amended 1-15-07, Repealed 12-4-12.

REPEALED

28-103.003 | NEGOTIATED RULEMAKING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(2)(d) FS. History—New 4-1-97, Repealed 12-4-12.

REPEALED

28-103.004 | PUBLIC HEARING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.525, 120.54(3)(c) FS. History—New 4-1-97, Repealed 12-4-12.

REPEALED

28-103.005 | EVIDENTIARY PROCEEDING DURING RULEMAKING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(3)(c)2. FS. History–New 4-1-97, Amended 3-18-98, Repealed 12-4-12.

REPEALED

28-103.006 | PETITIONS TO INITIATE RULEMAKING

Rulemaking Authority 120.54(5) FS. Law Implemented 120.54(7) FS. History–New 4-1-97, Repealed 12-4-12.

REPEALED

FLORIDA ADMINISTRATIVE CODES | VARIANCE/WAIVER

CODES: 28-104.001 through 28-104.006

28-104.001 | PURPOSE; CONSTRUCTION

This chapter implements Section 120.542, F.S., by establishing the procedures for granting or denying petitions for variances and waivers of agency rules, and, should be read in conjunction with the provisions of Sections 120.52(18), 120.52(19) and 120.542, F.S.

Rulemaking Authority 14.202, 120.542 FS. Law Implemented 120.542(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07.

28-104.002 | PETITION FOR VARIANCE OR WAIVER

(1) A petition for a variance from or waiver of an agency rule shall be filed with the clerk of the agency that adopted the rule, with a copy to the Joint Administrative Procedures Committee, Room 680, Pepper Building, 111 W. Madison Street, Tallahassee, Florida 32399-1400.

(2) The petition must include the following information:

(a) The caption shall read:

Petition for (Variance from) or (Waiver of) Rule (Citation)

(b) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner, if the party is not represented by an attorney or a qualified representative;

(c) The name, address, e-mail address, telephone number, and any facsimile number of the attorney or qualified representative of the petitioner, if any;

(d) The applicable rule or portion of the rule;

(e) The citation to the statute the rule is implementing;

(f) The type of action requested;

(g) The specific facts that demonstrate a substantial hardship or a violation of principles of fairness that would justify a waiver or variance for the petitioner;

(h) The reason why the variance or the waiver requested would serve the purposes of the underlying statute; and

(i) A statement whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.

(3) The petition for a variance or waiver may be withdrawn by the applicant at any time before final agency action.

(4) Upon receipt of a petition for variance or waiver, the agency shall furnish a copy of the petition to any other agency responsible for implementing the rule.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 3-18-98, 2-5-13.

28-104.003 | COMMENTS ON PETITION

(1) Any interested person or other agency may submit written comments on the petition for a variance or waiver within 14 days after the notice required by Section 120.542(6), F.S. The agency shall state in any order disposing of the petition whether comments were received by the agency.

(2) The agency shall maintain the comments as part of the record.

(3) The right to comment pursuant to this section does not alone confer party status in any proceeding arising from a petition for variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 2-5-13.

28-104.004 | PETITION FOR EMERGENCY VARIANCE OR WAIVER

(1) A person requesting an emergency variance from or waiver of an agency rule shall so state in the caption to the petition.

(2) In addition to the other requirements of Section 120.542(5), F.S., and this chapter, the petition shall specify:

(a) The specific facts that make the situation an emergency; and

(b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97.

28-104.005 | TIME FOR CONSIDERATION OF EMERGENCY PETITION

(1) Within 5 days after filing a petition for emergency variance or waiver with the agency clerk, the agency shall give notice of receipt of the petition on its website, if it has one. The agency shall also give notice by any procedure that is fair under the circumstances or provide notice of the petition to the Department of State for publication in the first available issue of the Florida Administrative Register. Any notice under this subsection shall inform interested persons of the right to submit comments. Interested persons or other agencies may submit written comments on the petition for emergency variance or waiver within 5 days after publication of the notice required herein. The notice and comment requirements in this subsection shall not apply if the agency head finds that an immediate danger to the public health, safety, or welfare requires an immediate final order, which final order shall recite with particularity the facts underlying such finding.

(2) The agency shall grant or deny a petition for emergency variance or waiver or determine that the request is not an emergency within 30 days of its receipt by the agency. If such petition is not granted or denied within this time limit, the petition shall be deemed approved unless the time limit is waived by the petitioner.

(3) If the agency decides that the situation is not an emergency, the agency shall so notify the petitioner in writing, and the petition shall then be reviewed by the agency on a non-emergency basis as set forth in Section 120.542(7), F.S.

(4) The duration of an emergency variance or waiver shall be determined by the agency.

(5) The agency shall issue a written order granting or denying the petition. The order shall state the facts and reasons supporting the agency's action.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 4-1-97, Amended 1-15-07, 12-24-07, 2-5-13.

28-104.0051 | REVOCATION OF EMERGENCY OR TEMPORARY VARIANCE OR WAIVER

(1) Upon receipt of evidence sufficient to show that the recipient of an order granting an emergency or temporary variance or waiver is not in compliance with the requirements of that order, the agency shall issue an order to show cause why the emergency variance or waiver should not be revoked.

(2) The recipient of an emergency or temporary variance or waiver shall respond to the order to show cause why the emergency variance or waiver should not be revoked within 15 days of the mailing date of the order to show cause. Failure to timely respond shall result in a final order revoking the emergency or temporary variance or waiver.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.54(5)(b)8. FS. History—New 3-18-98.

28-104.006 | REQUEST FOR INFORMATION

(1) When a person inquires of the agency about the possibility of relief from any rule requirements or the remedies available pursuant to Section 120.542, F.S., the agency shall provide the information required by Section 120.542(4), F.S., within 15 days of the inquiry.

(2) In its response to a request for information, the agency shall indicate the name, address and e-mail address of the appropriate contact person for additional information and shall indicate how a petition for variance or waiver is filed with the agency.

Rulemaking Authority 14.202, 120.54(5)(b)8. FS. Law Implemented 120.542(4) FS. History—New 4-1-97, Amended 2-5-13.

FLORIDA ADMINISTRATIVE CODES | DECLARATORY STATEMENTS

CODES: 28-105.001 through 28-105.0027

28-105.001 | PURPOSE AND USE OF DECLARATORY STATEMENT

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 4-1-97, Amended 1-15-07.

28-105.002 | THE PETITION

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information:

- (1) The caption shall read: Petition for Declaratory Statement Before (Name of Agency).
- (2) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner.
- (3) The name, address, any e-mail address, telephone number, and any facsimile number of the petitioner's attorney or qualified representative if any.
- (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought.
- (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances.
- (6) The signature of the petitioner or of the petitioner's attorney or qualified representative.
- (7) The date.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.565 FS. History–New 4-1-97, Amended 3-18-98, 1-15-07, 2-5-13.

28-105.0024 | NOTICE OF FILING

The agency shall file a notice of the Petition for Declaratory Statement in the next available Florida Administrative Register including the following information:

- (1) The name of the agency with which the Petition for Declaratory Statement is filed.
- (2) The name of the Petitioner.
- (3) The date the Petition for Declaratory Statement was received.
- (4) The statutory provision(s), rule(s) or order(s) on which the declaratory statement is sought.
- (5) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.
- (6) The applicable time limit for filing motions to intervene or petitions for administrative hearing by persons whose substantial interests may be affected.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History–New 1-15-07, Amended 2-5-13.

28-105.0027 | INTERVENTION

(1) Persons other than the original parties to a pending proceeding whose substantial interests will be affected by the disposition of the declaratory statement and who desire to become parties may move the presiding officer for leave to intervene. The presiding officer shall allow for intervention of persons meeting the requirements for intervention of this rule. Except for good cause shown, motions for leave to intervene must be filed within 21 days after publication of (or such later time as is specified in) the notice in the Florida Administrative Register. The presiding officer may impose terms and conditions on the intervener to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, the e-mail address, and facsimile number, if any, of the intervener; if the intervener is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervener's attorney or qualified representative, if any; and

(c) Allegations sufficient to demonstrate that the intervener is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervener are subject to determination or will be affected by the declaratory statement; and

(d) The signature of the intervener or intervener's attorney or qualified representative; and

(e) The date.

(3) Any party may, within seven days of service of the motion, file a response in opposition.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—New 1-15-07, Amended 2-5-13.

28-105.003 | AGENCY DISPOSITION

The agency may hold a hearing to consider a petition for declaratory statement. If the agency is headed by a collegial body, it shall take action on a petition for declaratory statement only at a duly noticed public meeting. The agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within 90 days of the filing of the petition, the agency shall render a final order denying the petition or issuing a declaratory statement.

Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History–New 4-1-97, Amended 1-15-07.

28-105.004 | NOTICE OF DISPOSITION

The agency shall file a Notice of Disposition for the Declaratory Statement or denial of the petition in the next available issue of the Florida Administrative Register including the following information:

- (1) The name of the agency.
- (2) A summary statement of the agency's decision.
- (3) The agency, contact person, address, and e-mail address where a copy of the petition and final order may be obtained.
- (4) The date the final order is filed.

*Rulemaking Authority 14.202, 120.54(5)(b)6. FS. Law Implemented 120.54(5)(b)6. FS. History—
New 1-15-07, Amended 2-5-13.*

FLORIDA ADMINISTRATIVE CODES | DOAH | GENERAL

CODES: 28-106.101 through 28-106.111

28-106.101 | SCOPE OF THIS CHAPTER

This chapter shall apply in all proceedings in which the substantial interests of a party are determined by the agency and shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. This chapter applies to all proceedings under Chapter 120 except as follows:

- (1) Where the agency has adopted rules covering the subject matter pursuant to Section 120.54(5)(a)2., F.S.;
- (2) Agency investigations or determinations of probable cause preliminary to agency action; and
- (3) Mediation conducted pursuant to Section 120.573, F.S. The notice provisions in Rule 28-106.111 and Part IV, F.A.C., of this subchapter apply to such mediation.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.102 | PRESIDING OFFICER

“Presiding officer” means an agency head, or member thereof, who conducts a hearing or proceeding on behalf of the agency, an administrative law judge assigned by the Division of Administrative Hearings, or any other person authorized by law to conduct administrative hearings or proceedings who is qualified to resolve the legal issues and procedural questions which may arise.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.103 | COMPUTATION OF TIME

In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in these rules, legal holiday means those days designated in Section 110.117, F.S. Except as provided in Rule 28-106.217, F.A.C., five days shall be added to the time limits when service has been made by regular U.S. mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by hand, facsimile transmission, or electronic mail or when the period of time begins pursuant to a type of notice described in Rule 28-106.111, F.A.C.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07.

28-106.104 | FILING

(1) In construing these rules or any order of a presiding officer, filing shall mean received by the office of the agency clerk during normal business hours or by the presiding officer during the course of a hearing.

(2) All pleadings filed with the agency shall contain the following:

- (a) The style of the proceeding involved;
- (b) The docket, case or file number, if any;
- (c) The name of the party on whose behalf the pleading is filed;
- (d) The name, address, any e-mail address, and telephone number of the person filing the pleading;
- (e) The signature of the person filing the pleading; and
- (f) A certificate of service that copies have been furnished to all other parties as required by subsection (4) of this rule.

(3) Any document received by the office of the agency clerk before 5:00 p.m. shall be filed as of that day but any document received after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day.

(4) Whenever a party files a pleading or other document with the agency, that party shall serve copies of the pleading or other document upon all other parties to the proceeding. A certificate of service shall accompany each pleading or other document filed with the agency.

(5) All parties, if they are not represented, or their attorneys or qualified representatives shall promptly notify all other parties and the presiding officer of any changes to their contact information by filing a notice of the change.

(6) All papers filed shall be titled to indicate clearly the subject matter of the paper and the party requesting relief.

(7) All original pleadings shall be on white paper measuring 8 1/2 by 11 inches, with margins of no less than one inch. Originals shall be printed or typewritten.

(8) A document shall be filed by only one method (e-filing, facsimile, courier, hand-delivery, or U.S. mail) and shall not be filed multiple times. A duplicate filing will not be docketed and will be destroyed.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.105 | APPEARANCE

(1) Counsel or qualified representatives who file a request for a hearing involving disputed issues of material fact with the agency have entered an appearance in the proceeding and shall be deemed counsel or qualified representative of record. All others who seek to appear shall file a notice of appearance as soon as possible.

(2) Service on counsel of record or on a qualified representative shall be the equivalent of service on the party represented.

(3) On written motion served on the party represented and all other parties of record, the presiding officer shall grant counsel of record and qualified representatives leave to withdraw for good cause shown. The motion shall contain the address, any e-mail address, and telephone number of the party represented.

(4) A qualified representative who has filed an initial pleading or notice of appearance for a party shall be deemed the qualified representative of record until the presiding officer makes the determination required by Rule 28-106.106, F.A.C.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 2-5-13.

28-106.106 | WHO MAY APPEAR; CRITERIA FOR QUALIFIED REPRESENTATIVES

(1) Any party who appears in any agency proceeding has the right, at his or her own expense, to be represented by counsel or by a qualified representative. Counsel means a member of The Florida Bar or a law student certified pursuant to Chapter 11 of the Rules Regulating The Florida Bar. An attorney disbarred in any state shall not be authorized to serve as a qualified representative.

(2)

(a) A party seeking representation by a qualified representative shall file a written request with the presiding officer as soon as practicable, but no later than any pleading filed by the person seeking to appear on behalf of the party. The request shall identify the name, address, e-mail address, and telephone number of the representative and shall state that the party is aware of the services which the representative can provide, and is aware that the party can be represented by counsel at the party's own expense and has chosen otherwise.

(b) The presiding officer shall consider whether the representative is qualified to appear in the administrative proceeding and capable of representing the rights and interests of the party. The presiding officer may consider a representative's sworn affidavit setting forth the representative's qualifications.

(c) The presiding officer shall determine the qualifications of the representative within a reasonable time after the request required by paragraph (a) is filed.

(3) The presiding officer shall authorize the representative to appear if the presiding officer is satisfied that the representative has the necessary qualifications to responsibly represent the party's interests in a manner which will not impair the fairness of the proceeding or the correctness of the action to be taken.

(4) The presiding officer shall make a determination of the qualifications of the representative in light of the nature of the proceedings and the applicable law. The presiding officer shall consider:

(a) The representative's knowledge of jurisdiction;

(b) The representative's knowledge of the Florida Rules of Civil Procedure relating to discovery in an administrative proceeding;

(c) The representative's knowledge regarding the rules of evidence, including the concept of hearsay in an administrative proceeding;

(d) The representative's knowledge regarding the factual and legal issues involved in the proceedings; and

(e) The representative's knowledge of and compliance with the Standards of Conduct for Qualified Representatives, Rule 28-106.107, F.A.C.

(5) If the presiding officer determines a representative is not qualified, the reasons for the decision shall be in writing and included in the record.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.107 | STANDARDS OF CONDUCT FOR QUALIFIED REPRESENTATIVES

The following standards of conduct are mandatory for all qualified representatives.

(1) A representative shall exercise due diligence to insure that any motion or pleading is filed and argued in good faith.

(2) A representative shall advise the client to obey the law.

(3) A representative shall not:

(a) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(b) Engage in conduct that is prejudicial to the administration of justice;

(c) Handle a matter which the representative knows or should know that he or she is not competent to handle;

(d) Handle a legal or factual matter without adequate preparation;

(e) Communicate, or cause another to communicate, as to the merits of the proceeding with the presiding officer except on the record or in writing with a copy promptly delivered to the opposing party; or

(f) Communicate with an adverse party regarding matters at issue in the administrative proceeding where the representative knows that the adverse party is represented by an attorney or other qualified representative.

(4) Failure to comply with these provisions shall authorize the presiding officer to disqualify the representative appearing in the administrative proceeding.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.108 | CONSOLIDATION

If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.109 | NOTICE TO INTERESTED PARTIES

If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that the absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.110 | SERVICE OF PAPERS

Unless the presiding officer otherwise orders, every pleading and every other paper filed in a proceeding, except applications for witness subpoenas, shall be served on each party or the party's representative at the last address of record.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.111 | POINT OF ENTRY INTO PROCEEDINGS AND MEDIATION

(1) The notice of agency decision shall contain the information required by Section 120.569(1), F.S. The notice shall also advise whether mediation under Section 120.573, F.S., is available, and if available, that pursuit of mediation will not adversely affect the right to administrative proceedings in the event mediation does not result in a settlement.

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

(3) An agency may, for good cause shown, grant a request for an extension of time for filing an initial pleading. Requests for extension of time must be filed with the agency prior to the applicable deadline. Such requests for extensions of time shall contain a certificate that the moving party has consulted with all other parties, if any, concerning the extension and that the agency and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters. This provision does not eliminate the availability of equitable tolling as a defense.

(5) The agency may publish, and any person who has timely requested mediation may, at the person's own expense, cause the agency to publish, a notice of the existence of the mediation proceeding in the *Florida Administrative Register* or in a newspaper of general circulation in the affected area. The mediation notice can be included in the notice of intended agency action.

(a) The notice of the mediation proceeding shall include:

1. A statement that the mediation could result in a settlement adopted by final agency action;
2. A statement that the final action arising from mediation may be different from the intended action set forth in the notice which resulted in a timely request for mediation;
3. A statement that any person whose substantial interests may be affected by the outcome of the mediation shall within 21 days of the notice of mediation proceeding file a request with the agency to participate in the mediation; and
4. An explanation of the procedures for filing such a request.

(b) The notice shall also advise that in the absence of a timely request to participate in the mediation, any person whose substantial interests are or may be affected by the result of the mediation waives any right to participate in the mediation.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 3-18-98, 1-15-07.

FLORIDA ADMINISTRATIVE CODES | DOAH | HEARINGS

CODES: 28-106.201 through 28-106.217

28-106.201 | INITIATION OF PROCEEDINGS

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8 1/2 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

Rulemaking Authority 14.202, 120.54(3), (5) FS. Law Implemented 120.54(3) FS. History–New 4-1-97, Amended 9-17-98, 1-15-07, 2-5-13.

28-106.2015 | AGENCY ENFORCEMENT AND DISCIPLINARY ACTIONS

(1) Prior to entry of a final order to suspend, revoke, or withdraw a license, to impose administrative fines, or to take other enforcement or disciplinary action against a licensee or person or entity subject to the agency's jurisdiction, the agency shall serve upon the licensee an administrative complaint. For purposes of this rule, an agency pleading or communication that seeks to exercise an agency's enforcement authority and to take any kind of disciplinary action against a licensee or other person shall be deemed an administrative complaint.

(2) An agency issuing an administrative complaint shall be the petitioner, and the licensee against whom the agency seeks to take disciplinary action shall be the respondent.

(3) The agency's administrative complaint shall be considered the petition, and service of the administrative complaint on the respondent shall be deemed the initiation of proceedings.

(4) The agency's administrative complaint shall contain:

(a) The name of the agency, the respondent or respondents against whom disciplinary action is sought and a file number.

(b) The statutory section(s), rule(s) of the Florida Administrative Code, or the agency order alleged to have been violated.

(c) The facts or conduct relied on to establish the violation.

(d) A statement that the respondent has the right to request a hearing to be conducted in accordance with Sections 120.569 and 120.57, F.S., and to be represented by counsel or other qualified representative.

(5) Requests for hearing filed by the respondent in accordance with this rule shall include:

(a) The name, address, any e-mail address, telephone number, and facsimile number, if any, of the respondent, if the respondent is not represented by an attorney or qualified representative.

(b) The name, address, e-mail address, telephone number, and facsimile number of the attorney or qualified representative of the respondent, if any, upon whom service of pleadings and other papers shall be made.

(c) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

(d) A statement of when the respondent received notice of the administrative complaint.

(e) A statement including the file number to the administrative complaint.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 1-15-07, Amended 2-5-13.

28-106.202 | AMENDMENT OF PETITIONS OR REQUESTS FOR HEARING

A petition or request for hearing may be amended prior to the designation of the presiding officer by filing and serving an amended petition or amended request for hearing in the manner prescribed for filing and serving an original petition or request for hearing. Thereafter the petitioner may amend the petition or request for hearing only upon order of the presiding officer.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07.

28-106.203 | ANSWER

A respondent may file an answer to the petition.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.204 | MOTIONS

(1) All requests for relief shall be by motion. All motions shall be in writing unless made on the record during a hearing, and shall fully state the action requested and the grounds relied upon. The original written motion shall be filed with the presiding officer. When time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition. No reply to the response shall be permitted unless leave is sought from and given by the presiding officer. Written motions will normally be disposed of after the response period has expired, based on the motion, together with any supporting or opposing memoranda. The presiding officer shall conduct such proceedings and enter such orders as are deemed necessary to dispose of issues raised by the motion.

(2) Unless otherwise provided by law, motions to dismiss the petition or request for hearing shall be filed no later than 20 days after assignment of the presiding officer, unless the motion is based upon a lack of jurisdiction or incurable errors in the petition.

(3) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion. Any statement that the movant was unable to contact the other party or parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted.

(4) Motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.205 | INTERVENTION

(1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor, if the intervenor is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative; and

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding; and

(d) A statement as to whether the intervenor supports or opposes the preliminary agency action; and

(e) The statement required by subsection 28-106.204(3); and

(f) The signature of the intervenor or intervenor's attorney or qualified representative; and

(g) The date.

(3) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.206 | DISCOVERY

After commencement of a proceeding, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure. The presiding officer may issue appropriate orders to effectuate the purposes of discovery and to prevent delay, including the imposition of sanctions in accordance with the Florida Rules of Civil Procedure, except contempt.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.207 | VENUE

(1) Whenever practicable and permitted by statute or rule, hearings shall be held in the area of residence of the non-governmental parties affected by agency action, or at the place most convenient to all parties as determined by the presiding officer.

(2) Failure to respond timely to any order requiring or allowing the parties to suggest an appropriate locality for final hearing may constitute a waiver of venue.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.208 | NOTICE OF HEARING

The presiding officer shall set the time and place for all hearings and shall serve written notice on all parties at their address of record. No less than 14 days notice shall be given for the hearing on the merits of the petition unless otherwise agreed by the parties or unless otherwise provided by law.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.209 | PRE-HEARING CONFERENCES

At any time after a matter has been filed with the agency, the presiding officer may direct the parties to confer for the purpose of clarifying and simplifying issues, discussing the possibilities of settlement, examining documents and other exhibits, exchanging names and addresses of witnesses, resolving other procedural matters, and entering into a pre-hearing stipulation.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.210 | CONTINUANCES

The presiding officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.211 | CONDUCT OF PROCEEDINGS

The presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case, including bifurcating the proceeding.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.212 | SUBPOENAS

(1) Upon the request of any party, a presiding officer shall issue subpoenas for the attendance of witnesses for deposition or at the hearing. The requesting party shall specify whether the witness is also requested to bring documents.

(2) A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is 18 years of age or older. Service shall be made by delivering a copy to the person named in the subpoena. Proof of service shall be made by affidavit of the person making service if not served by a person specified by law to serve process.

(3) Any motion to quash or limit the subpoena shall be filed with the presiding officer and shall state the grounds relied upon.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.213 | EVIDENCE

(1) Oral evidence shall be taken only on oath or affirmation.

(2) Each party shall have the right to impeach any witness regardless of which party called the witness to testify.

(3) Hearsay evidence, whether received in evidence over objection or not, may be used to supplement or explain other evidence, but shall not be sufficient in itself to support a finding unless the evidence falls within an exception to the hearsay rule as found in Sections 90.801-.805, F.S.

(4) The rules of privilege apply to the same extent as in civil actions under Florida law.

(5) If requested and if the necessary equipment is reasonably available, testimony may be taken by means of video teleconference or by telephone.

(a) If a party cross-examining the witness desires to have the witness review documents or other items not reasonably available for the witness to review at that time, then the party shall be given a reasonable opportunity to complete the cross-examination at a later time or date for the purpose of making those documents or other items available to the witness.

(b) For any testimony taken by telephone, a notary public must be physically present with the witness to administer the oath. The notary public shall provide a written certification to be filed with the presiding officer confirming the identity of the witness, and confirming the affirmation or oath by the witness. It shall be the responsibility of the party calling the witness to secure the services of a notary public.

(6) When official recognition is requested, the parties shall be notified and given an opportunity to examine and contest the material. Requests for official recognition shall be by motion and shall be considered in accordance with the provisions governing judicial notice in Sections 90.201-.203, F.S.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

28-106.214 | RECORDATION

(1) Responsibility for preserving the testimony at final hearings shall be that of the agency transmitting the petition to the Division of Administrative Hearings pursuant to Sections 120.569 and 120.57, F.S., the agency whose rule is being challenged, or the agency whose action initiated the proceeding. Proceedings shall be recorded by a certified court reporter or by recording instruments.

(2) No later than 10 days prior to the final hearing, the agency shall notify the parties of the method by which the agency will record the testimony at the final hearing. Any party to a hearing may, at its own expense, provide a certified court reporter if the agency does not. The presiding officer may provide a certified court reporter. At hearings reported by a court reporter, any party who wishes a transcript of the testimony shall order the same at its own expense. If a court reporter records the proceedings, the recordation shall become the official transcript.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 3-18-98.

28-106.215 | POST-HEARING SUBMITTALS

All parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer. Unless authorized by the presiding officer, proposed orders shall be limited to 40 pages.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-106.216 | ENTRY OF RECOMMENDED ORDER

(1) If a hearing is conducted by other than the agency head, or member thereof, the presiding officer shall, within 30 days after the hearing or receipt of the hearing transcript, whichever is later, file a recommended order which shall include a caption, time and place of hearing, appearances entered at the hearing, statement of the issues, findings of fact and conclusions of law, separately stated, and recommendation for final agency action.

(2) By agreeing to a deadline for filing post-hearing submissions that is more than 10 days after the conclusion of the hearing or the filing of the hearing transcript, whichever is later, a party waives the provisions of subsection (1) above.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-106.217 | EXCEPTIONS AND RESPONSES

(1) Parties may file exceptions to findings of fact and conclusions of law contained in recommended orders with the agency responsible for rendering final agency action within 15 days of entry of the recommended order except in proceedings conducted pursuant to Section 120.57(3), F.S. Exceptions shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record.

(2) Exceptions shall be provided to all parties by facsimile or electronic mail, if a facsimile number or e-mail address has been provided number or address provided, the day they are filed with the agency.

(3) Any party may file responses to another party's exceptions within 10 days from the date the exceptions were filed with the agency.

(4) No additional time shall be added to the time limits for filing exceptions or responses to exceptions when service has been made by mail.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 2-5-13.

FLORIDA ADMINISTRATIVE CODES | EXCEPTION TO UNIFORM RULES

CODES: 28-108.001 through 28-108.002

28-108.001 | PETITION FOR EXCEPTION TO UNIFORM RULES OF PROCEDURE

(1) The agency head shall file a petition with the Administration Commission for an exception to the Uniform Rules of Procedure as provided in Section 120.54(5)(a)2., F.S., for procedural rules within the scope of any Uniform Rule of Procedure that includes the following:

- (a) Grounds for the request for the exception.
- (b) Citation to the particular Uniform Rule of Procedure for which each exception is sought.
- (c) Specific citation to the provisions of existing agency rule for which an exception is sought, if any.
- (d) Attachment of the proposed rule language as an exhibit to the petition.

(2) The agency shall publish notice of the petition in the next available edition of the Florida Administrative Register, after consultation with the agency clerk of the Administration Commission. The notice shall include:

- (a) The name of the agency seeking an exception;
- (b) The uniform rule of procedure from which the exception is sought;
- (c) The date the matter is expected to be heard by the Administration Commission;
- (d) The contact name, address, e-mail address, and phone number where a copy of the petition may be obtained.

(3) The Administration Commission shall provide interested persons with the opportunity to file written statements or make oral presentations in support of or in opposition to the exception.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 9-9-98, 1-15-07, 2-5-13.

28-108.002 | FINAL DISPOSITION ON PETITION FOR EXCEPTION

The Administration Commission shall publish, at the agency's expense, notice in the next available edition of the Florida Administrative Register of the disposition of the petition, and shall transmit a copy of the notice to the Joint Administrative Procedures Committee, the Department of State, and any person who requests a copy.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

FLORIDA ADMINISTRATIVE CODES | COMMUNICATIONS MEDIA TECHNOLOGY

CODES: 28-109.001 through 28-109.005

28-109.001 | GENERAL

This chapter implements the provisions of Section 120.54(5)(b)2., F.S., by providing general procedures to be followed when the agency desires to conduct a proceeding by means of communications media technology or to provide public access to a proceeding by the use of communications media technology.

Specific Authority 120.54(5) FS. Law Implemented 120.54(5)(b)2. FS. History–New 4-1-97.

28-109.002 | DEFINITIONS AS USED IN THIS RULE CHAPTER

(1) “Access point” means a designated place where a person interested in attending a communications media technology proceeding may go for the purpose of attending the proceeding.

(2) “Attend” means having access to the communications media technology network being used to conduct a proceeding, or being used to take evidence, testimony, or argument relative to issues being considered at a proceeding.

(3) “Communications media technology” (CMT) means the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97.

28-109.003 | APPLICATION AND CONSTRUCTION

(1) The agency may conduct a proceeding by using CMT and may provide CMT access to a proceeding for purposes of taking evidence, testimony, or argument.

(2) A proceeding is not a CMT proceeding merely because it is broadcast over a communications network.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97.

28-109.004 | GOVERNMENT IN THE SUNSHINE

(1) Nothing in this chapter shall be construed to permit the agency to conduct any proceeding otherwise subject to the provisions of Section 286.011, F.S., exclusively by means of CMT without making provision for the attendance of any member of the public who desires to attend.

(2) No proceeding otherwise subject to Section 286.011, F.S., shall be conducted exclusively by means of CMT if the available technology is insufficient to permit all interested persons to attend. If during the course of a CMT proceeding technical problems develop with the communications network that prevent interested persons from attending, the agency shall terminate the proceeding until the problems have been corrected.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07.

28-109.005 | NOTICE

When the agency chooses to conduct a CMT proceeding, it shall provide notice in the same manner as required for a non-CMT proceeding, and shall plainly state that such proceeding is to be conducted utilizing CMT and identify the specific type of CMT to be used. The notice shall describe how interested persons may attend and shall include:

- (1) The address or addresses of all access points, specifically designating those which are in locations normally open to the public.
- (2) The address of each access point where an interested person may go for the purpose of attending the proceeding.
- (3) An address, e-mail address, and telephone number where an interested person may write or call for additional information.
- (4) An address, e-mail address, and designated person to whom a person may submit written or other physical evidence which he or she intends to offer into evidence during the CMT proceedings.

Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History—New 4-1-97, Amended 1-15-07, 6-26-13.

FLORIDA ADMINISTRATIVE CODES | FCHR | GENERAL

CODES: 60Y-1.002 through 60Y-4.031

AS OF: 6/22/2017

60Y-1.002 | CONDUCTING PROCEEDINGS BY COMMUNICATIONS MEDIA TECHNOLOGY

The Commission shall follow and conform to Chapter 28-109, F.A.C., with respect to conducting proceedings by communications media technology.

Rulemaking Authority 760.06(12) FS. Law Implemented 120.54(5) FS. History—New 2-5-04, Repealed 3-26-17.

REPEALED

60Y-2.001 | GENERAL

The Florida Commission on Human Relations is established pursuant to the Human Rights Act of 1977, as amended by the Florida Civil Rights Act of 1992, Chapter 760, F.S., to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, disability, or marital status and thereby to protect their interests in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state.

Specific Authority 760.06(12) FS. Law Implemented 760.01(2), 760.03, 760.05 FS. History–New 11-2-78, Amended 8-12-85, Formerly 22T-6.01, 22T-6.001, Amended 12-31-03.

60Y-2.002 | THE AGENCY

The Agency is composed of the Commission and staff. The Agency Head is the Commission.

Specific Authority 760.06(12) FS. Law Implemented 760.03 FS. History—New 11-2-78, Formerly 22T-6.02, 22T-6.002.

60Y-2.003 | GENERAL DESCRIPTION OF THE COMMISSION

(1) The Commission is comprised of 12 members appointed by the Governor, subject to confirmation by the Senate.

(2) Commissioners are appointed to staggered terms of 4 years, except for appointments described in subsection (3).

(3) A Commissioner appointed to fill a vacancy other than by expiration of a term is appointed for the unexpired term of the member whom such appointee is to succeed.

(4) A Commissioner is eligible for reappointment.

(5) In every odd-numbered year, the Commission shall hold an organizational meeting to elect from its membership a Chairperson and a Vice-chairperson. The biennial organizational meeting shall be held as soon as practical after the new Commissioners for that year have been appointed.

(6) The Chairperson of the Commission serves for a term of 2 years and has the following duties:

(a) Call Commission meetings and set the agenda for same;

(b) Preside at Commission meetings;

(c) Appoint one or more Panels of not less than 3 Commissioners to exercise, as provided in Chapters 60Y-4 and 60Y-5, F.A.C., Commission powers under Section 760.06, F.S.;

(d) Appoint and define the role of such committees as are necessary or expedient to advise the Commission or its Executive Director;

(e) Perform such other functions as the Commission may assign by rule or order.

(7) In the event the office of the Chairperson becomes vacant, the Vice-chairperson shall temporarily assume all responsibilities and perform all duties of the Chairperson until such time as an election for filling the office of Chairperson can be held. Such election shall be held within ninety (90) days from the date that the Chairperson's vacancy occurs. In the event that there is no Vice-chairperson serving at the time of the Chairperson's vacancy, the Commissioner whose current term has been in effect for the longest period of time shall temporarily serve as Chairperson until elections for filling both the office of Chairperson and Vice-chairperson can be held, as long as such elections are held within ninety (90) days from the date the Chairperson's vacancy occurs.

(8) The Vice-chairperson serves for a term of 2 years, the term to run concurrently with that of the Chairperson. The Vice-chairperson performs the duties of the Chairperson in the Chairperson's absence and performs such other duties as the Chairperson may assign.

(9) If a vacancy occurs in the office of the Chairperson, the Vice-chairperson shall temporarily assume all responsibilities and perform all duties of the Chairperson until such time as an election can be held, as detailed in subsection 60Y-2.003(7), F.A.C. If a vacancy occurs in the office of the Vice-chairperson, the Commission will select another member to fill the unexpired term of the Vice-chairperson.

(10) A special meeting of the Commission shall be called by the Chairperson, or by the Executive Director upon the written request of not fewer than 5 Commissioners.

(11) Seven members shall constitute a quorum for the conduct of Commission business.

(12) A majority of the members of a Panel shall constitute a quorum for the conduct of business assigned to a Panel.

(13) In the presence of a quorum, Commission or Panel business shall be conducted by majority vote.

Rulemaking Authority 760.06(12) FS. Law Implemented 760.03 FS. History—New 11-2-78, Formerly 22T-6.03, 22T-6.003, Amended 12-31-03, 1-8-15.

60Y-2.004 | GENERAL DESCRIPTION OF ORGANIZATION AND FUNCTIONS OF COMMISSION STAFF

(1) The staff units of the Commission consist of:

- (a) Office of Executive Director;
- (b) Office of General Counsel;
- (c) Office of Employment Investigations;
- (d) Office of Community Relations;
- (e) Office of Housing Investigations;
- (f) Office of Customer Service; and
- (g) Office of Management and Information Processing.

(2) The Executive Director is the chief administrative officer of the Commission and is responsible for implementing policy of the Commission. The Executive Director is appointed by the Commission and may be removed by the Commission for cause. The Executive Director has the following duties:

- (a) Employ staff;
- (b) Prepare, defend and manage agency budget;
- (c) Negotiate and execute contracts and agreements on behalf of the Commission, except as limited by Rule 60Y-5.002, F.A.C.;
- (d) Issue subpoenas necessary for investigations pursuant to subsection 760.06(6), F.S.;
- (e) Make determinations as provided by Rule 60Y-5.004, F.A.C.;
- (f) Dismiss complaints, as provided by Rule 60Y-5.006, F.A.C.;
- (g) Promote favorable public and community relations;
- (h) Administer the day-to-day business of the Commission;
- (i) Perform such other functions as the Commission may assign by rule or order.

(3) The Office of General Counsel represents the agency in all legal proceedings before state and federal courts and agencies. The Office of General Counsel has the following additional duties:

- (a) Advise the Commission and Executive Director on legal matters;
- (b) Make such legal reports and recommendations, written and oral, as are requested by the Commission, a Commissioner or the Executive Director;

(c) Make recommendations concerning determinations, as provided by Rule 60Y-5.004, F.A.C.;

(d) Prosecute Commission complaints;

(e) Provide voluntary mediation services;

(f) Within the Office of General Counsel shall be the Clerk to the Commission who shall:

1. Maintain all complaints, petitions, pleadings and other legal documents filed with the Commission;

2. Maintain all forms and instructions used by the Commission;

3. Maintain all petitions for variances and waivers of agency rules pursuant to Chapter 28-104, F.A.C.;

4. Assemble, certify and transmit records on appeal to appellate courts for review;

5. Respond to requests for information or copies of documents relevant to Commission cases;

6. Bill and collect monies for records on appeal and reproduced documents;

7. Certify and issue orders by the Commission or a Panel of Commissioners; and

8. Prepare and maintain a topical index of Commission or Panel decisions.

(g) Perform such other functions as the Commission or Executive Director may direct.

(4) The Office of Employment Investigations investigates and seeks to conciliate complaints of discriminatory practices in employment, public accommodations and whistleblower retaliation. The Office of Employment Investigations has the following additional duties:

(a) Seek to encourage settlement between parties;

(b) Make reports and recommendations as provided by Rule 60Y-5.004, F.A.C.;

(c) Provide fact-finding at the direction of the Executive Director; and

(d) Perform such other functions as the Executive Director may direct.

(5) The Office of Community Relations provides technical assistance to local commissions on human relations, local governments and to other persons to facilitate progress in human relations and the amelioration of intergroup tensions.

(6) The Office of Housing Investigations investigates and seeks to conciliate complaints of discriminatory practices in housing.

(7) The Office of Customer Service receives and docket complaints, provides counseling for potential complainants, frames and perfects complaint allegations, provides Commission record-keeping and responds to requests for information.

(8) The Office of Management and Information Processing provides electronic word and data processing services to the Commission, including strategic planning, budget reports, complaint tracking, performance analysis, statistical reports and complaint investigation correspondence.

Specific Authority 760.06(12), 760.11(14), 760.31(5) FS. Law Implemented 120.54, 760.03(7), 760.05, 760.06, 760.11, 760.30 FS. History–New 11-2-78, Amended 6-16-83, 8-12-85, Formerly 22T-6.04, Amended 4-20-87, Formerly 22T-6.004, Amended 4-20-00, 12-31-03.

60Y-2.005 | GENERAL INFORMATION

(1) The location of the principal office of the Commission is: 4075 Esplanade Way, Room 110, Tallahassee, Florida 32399-7020.

(2) The office is open from 8:00 a.m. to 5:00 p.m. (Eastern Time) of each working day.

(3) All requests for specific forms, information, or answers to any questions may be directed to the Office of Customer Service at the above address. Telephonic inquires may be made at (850)488-7082, and requests may also be e-mailed to fchrinfo@fchr.myflorida.com.

(4) Applications for employment may be completed and submitted online at <https://peoplefirst.myflorida.com>.

(5) All complaints, petitions for relief, and appeals from final Commission action may be mailed, sent by facsimile to (850)488-5291, or e-mailed to fchrinfo@fchr.myflorida.com. The party who elects to file a document by electronic transmission shall be responsible for any delay, disruption, or interruption of the electronic signals and must accept full risk that the document may not be properly filed with the Commission as a result. The filing date for an electronically transmitted document shall be the date the Commission receives the complete document. Any document received by the Clerk or other agent of the Commission after 5:00 p.m. (Eastern Time) shall be filed as of 8:00 a.m. on the next regular business day.

Rulemaking Authority 760.06(12) FS. Law Implemented 120.54, 760.06 FS. History—New 11-2-78, Formerly 22T-6.05, 22T-6.005, Amended 12-31-03, 3-7-13, 7-12-15.

60Y-2.006 | STATUTORY CHAPTER AND RULES

The mission and duties of the Commission are carried out pursuant to statutory authority delineated in Chapter 760, F.S. The following additional statutory chapters and rule chapters directly affect and govern the operations of the Commission:

- (1) Chapter 120, F.S.
- (2) Sections 112.3187-112.31895, inclusive, F.S.
- (3) Section 509.092, F.S.
- (4) Chapters 60Y-2 through 60Y-11, and 60Y-25, F.A.C.
- (5) Chapters 28-101 through 28-106, 28-108, 28-109, F.A.C.

Rulemaking Authority 760.06(12), 760.11(14), 760.31(5) FS. Law Implemented 120, 509.092, 760 FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-6.06, 22T-6.006, Amended 7-26-00, 12-31-03, 6-22-17.

60Y-2.007 | PUBLIC INFORMATION AND INSPECTION AND COPYING OF DOCUMENTS

(1) All public records within the meaning of Chapter 119, F.S., and not otherwise restricted by law, are available for personal inspection and copying by any person. Requests for information may be directed to the Commission's Records Management Liaison Officer (RMLO).

(2) All complaints filed pursuant to Rule 60Y-5.001, F.A.C., and all related records and documents in the custody of the Commission which relate to and identify a person shall be confidential, unless the record or document is made part of the record of any hearing or court proceeding. Access to confidential records and documents, by the parties to a complaint or proceeding, is provided in subsections 60Y-5.003(9) and 60Y-5.004(6), F.A.C.

(3) Copies of public records maintained by the Commission are available on the following basis:

(a) Actual postage costs are charged for mailing copies other than original records on appeal; provided that no charge will be made for mailing one ounce by first class mail;

(b) Transcripts of Commission proceedings may be obtained by independent contract of a court reporter at the ordering party's expense;

(c) Payment must be made in advance by check or money order made payable to the Florida Commission on Human Relations; state agencies may pay by Journal Transfer; and,

(d) The Commission's final orders are available for viewing on the Commission's website, <http://fchr.state.fl.us>, and the website of the Division of Administrative Hearings, www.doah.state.fl.us.

Rulemaking Authority 760.06(12) FS. Law Implemented 119.07, 120.54, 760.06, 760.11(12) FS.

History—New 11-2-78, Amended 2-10-80, 8-12-85, Formerly 22T-6.07, Amended 4-20-87, Formerly 22T-6.007, Amended 12-31-03, 11-12-15.

60Y-2.008 | PUBLIC ACCESS TO COMMISSION PROCEEDINGS

All meetings and hearings conducted by the Commission are open to the public.

Rulemaking Authority 13.251(13) FS. Law Implemented 760.06 FS. History—New 11-2-78, Formerly 22T-6.08, 22T-6.008.

60Y-2.009 | LIST OF FORMS AND INSTRUCTIONS

The following listed forms and instructions are hereby incorporated by reference, are used by the Commission and are furnished without charge. Copies may be obtained from the Commission’s website <http://fchr.state.fl.us> or by writing or calling the Clerk to the Commission or the Office of Customer Service at the address listed in Rule 60Y-2.005, F.A.C., making reference to the desired form by form number or title.

FORM NUMBER	TITLE OR DESCRIPTION
FCHR Form 1	Technical Assistance Questionnaire for discrimination complaints
FCHR Form 2	Complaint of Employment Discrimination
FCHR Form 3	Complaint of Public Accommodation Discrimination
FCHR Form 4	Complaint of Housing Discrimination
FCHR Form 5	Complaint of Whistle-blower’s Act Retaliation Discrimination
FCHR Form 6	Petition for Relief from an Unlawful Employment Practice, a Housing Discriminatory Practice or a Public Accommodations Discriminatory Practice
FCHR Form 7A	Election of Rights for Employment and Public Accommodations Discrimination Complaints
FCHR Form 7B	Election of Rights for Housing Discrimination Complaints
FCHR Form 8	Registration of Housing for Older Persons

Use of the FCHR forms described in this section is not obligatory, and any complaint or Petition for Relief from an Unlawful Employment Practice, a Housing Discriminatory Practice, a Public Accommodations Discriminatory Practice or a Whistle-blower’s Act Retaliatory Discriminatory Practice which meets the requirements of the rules of the Commission will be accepted. The requirements for a complaint are set forth in subsections 60Y-3.001(4), 60Y-6.001(17), Rules 60Y-10.003 and 60Y-5.001, F.A.C. The requirements for a Petition for Relief are set forth in Rules 28-106.201, 28-106.301, 60Y-5.008, subsection 60Y-6.001(48) and Rule 60Y-8.001, F.A.C.

Specific Authority 120.52, 760.06(13) FS. Law Implemented 23.167, 120.52, 120.54, 760.06 FS. History–New 11-2-78, Formerly 22T-6.09, 22T-6.009, Amended 12-31-03.

60Y-2.010 | NOTICES; CONTENTS; POSTING

The Commission may, from time to time, provide a notice stating the general provisions of the Act concerning unlawful employment practices and stating how and where complaints may be filed. When so provided by the Commission, employers, employment agencies and labor organizations must keep the notice posted in conspicuous places upon their premises.

Rulemaking Authority 760.06(13) FS. Law Implemented 760.06, 23.167 FS. History—New 11-2-78, Formerly 22T-6.10, 22T-6.010.

60Y-2.011 | PETITIONS FOR VARIANCES OR WAIVERS FROM RULES

The Commission shall follow and conform to Chapter 28-104, F.A.C., with respect to variances and waivers from its Rules. Petitions conforming to Rule 28-104.102, F.A.C., shall be filed with the Clerk to the Commission.

Specific Authority 120.54, 760.06(13) FS. Law Implemented 120.542 FS. History–New 12-31-03.

60Y-2.012 | COMMISSION ORDERS; NUMBERING; INDEXING; AND MAINTENANCE

(1) All orders issued by the Commission shall be numbered and indexed.

(2) The orders shall be sequentially numbered and rendered using a two-part number separated by a dash with the first part before the dash indicating the year and the second part indicating the numerical sequence of the order issued for that year beginning with the number 001 each new calendar year. The assigned agency designation prefix, FCHR, shall precede the two-part number.

(3) The agency clerk shall index orders which shall be cumulative, updated and made accessible to the public at least each calendar year.

(4) Orders that comprise official agency action and that must be indexed pursuant to this rule shall be permanently maintained by the agency pursuant to the retention schedule approved by the Department of State.

(5) These rules regarding the indexing, management and availability of orders are issued pursuant to Section 120.533, F.S., and Chapter 1S-6, F.A.C., and have been approved by the Department of State pursuant to Section 120.53(3)(c), F.S. The purpose of this Rule is to provide public access to, and availability of, Commission Orders. The agency clerk shall assist the public in obtaining information pertaining to Commission Orders. The agency maintains and stores such orders and subject matter index in the main offices of the agency located in Tallahassee, Florida at the address set forth in Rule 60Y-2.005, F.A.C.

*Rulemaking Authority 760.06(12) FS. Law Implemented 120.533, 760.06, 760.10(14) FS. History—
New 12-31-03.*

60Y-3.001 | DEFINITIONS

As used in the rules of the Commission:

(1) "Act" means the Florida Civil Rights Act of 1992, as amended; Chapter 760, F.S.

(2) "Chairperson" or "Chair" means the Chairperson of the Commission or Chairperson of a Panel, as the context may indicate.

(3) "Clerk" means the person designated by the Executive Director as heading the Office of the Clerk.

(4) "Complaint" means a written statement which alleges the occurrence of an unlawful employment practice, and includes an amended complaint.

(5) "Complainant" means a person filing a complaint.

(6) "Commission" means Florida Commission on Human Relations.

(7) "Commissioner" or "member" means a member of the Commission.

(8) "Division of Administrative Hearings" means the Division of Administrative Hearings of the Department of Management Services.

(9) "Document" means data compilations from which information can be obtained and be included, for example: writings, e-mail, drawings, charts, photographs, and phone records.

(10) "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

(11) "Employment Agency" means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunity to work for an employer, and includes an agent of such a person.

(12) "Executive Director" means the Executive Director of the Commission.

(13) "Disability" means a condition that is an impairment that substantially limits one or more of the major life activities as interpreted by 42 U.S.C. § 12102(2) in the Americans with Disabilities Act of 1990.

(14) "General Counsel" means the General Counsel of the Commission.

(15) "Hearing Officer" or "Administrative Law Judge" means the person assigned to conduct a hearing upon a petition filed with the Commission.

(16) "Intervenor" means any person permitted by the Commission, a Panel, or a hearing officer to intervene in a proceeding upon a petition.

(17) "Marital Status" does not include the identity of the spouse and the relationship to the aggrieved person, but rather the fact that the aggrieved person is married, single, divorced, separated, widowed, etc.

(18) "Labor Organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or other mutual aid or protection in connection with employment.

(19) "Panel" means a panel of three or more Commissioners appointed pursuant to subsection 760.03(5), F.S., and paragraph 60Y-2.003(6)(c), F.A.C.

(20) "Party" means any person designated as a party to a proceeding before the Commission, pursuant to rule of the Commission.

(21) "Person" includes an individual, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, any other legal or commercial entity, the state or any governmental entity or agency.

(22) "Petition" means a writing, other than a written motion, filed with the Commission pursuant to rule of the Commission asking that specified action be taken by the Commission or a Panel.

(23) "Petitioner" means the person filing a petition with the Commission pursuant to rule of the Commission.

(24) "Respondent" means:

(a) In the case of a complaint, the employer, employment agency, labor organization, joint labor-management committee, or person designated in the complaint as responsible for the alleged unlawful employment practice; or

(b) In the case of a petition, the person against whom relief is requested.

(25) "Registered Mail" includes certified mail with return receipt requested.

(26) "Unlawful Employment Practice" means any practice so designated by Section 760.10, F.S.

(27) "Verified" means under oath or affirmation or by the signing of the written declaration prescribed by Section 92.525(2), F.S.

(28) "Date of determination" means the date the Determination was signed by the Executive Director or his or her designee.

(29) "Date of filing" means a completed complaint is received by the Commission prior to 5:00 p.m. (Eastern time) as provided by Rule 28-106.104, F.A.C.

(30) “Electronic filing” pursuant to subsection 60Y-2.005(5), F.A.C., means filing by facsimile or at the Commission’s website found at <http://fchr.state.fl.us>.

(31) “Familial status” means whether or not children under the age of 18 are living with the Complainant, whether the Complainant is pregnant, or whether the Complainant has a pending adoption.

Specific Authority 760.06(12) FS. Law Implemented 92.525, 760.02, 760.03, 760.04, 760.05, 760.06, 760.10, 760.11 FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-7.01, 22T-7.001, Amended 9-1-93, 4-17-01, 12-31-03.

60Y-3.002 | SINGULAR TO INCLUDE PLURAL

All singular terms used in a rule of the Commission shall include the plural.

Specific Authority 760.06(12), 760.11(14) FS. Law Implemented 760.01, 760.02, 760.03, 760.04, 760.05, 760.06, 760.07, 760.10, 760.11 FS. History—New 11-2-78, Formerly 22T-7.02, 22T-7.002.

60Y-3.003 | CONSTRUCTION OF RULES

The rules of the Commission are intended to promote the purposes of the Act, the efficient operation of the Commission and the orderly administration of the Act. They are to be liberally construed to insure the accomplishment of these purposes. The rules set forth in Chapters 60Y-1, 60Y-2, 60Y-3, 60Y-4 and 60Y-5, F.A.C., may in specific instances be waived, by the Commission, in its discretion, for good cause shown.

Specific Authority 760.06(12), 760.11(14) FS. Law Implemented 760.01, 760.02, 760.03, 760.04, 760.05, 760.06, 760.07, 760.10, 760.11 FS. History–New 11-2-78, Amended 5-3-79, Formerly 22T-7.03, 22T-7.003.

60Y-4.001 | APPLICABILITY

(1) The rules set forth in this chapter shall apply to all proceedings, except as provided in subsection (2), described in the rules of the Commission, unless specifically provided in the context of an individual rule.

(2) This chapter shall not apply to Complaints (Rule 60Y-5.001, F.A.C.); Agreements for Referral of Complaints (Rule 60Y-5.002, F.A.C.); Investigation of Complaints (Rule 60Y-5.003, F.A.C.); Conciliation (Rule 60Y-5.005, F.A.C.); Administrative Dismissal (Rule 60Y-5.006, F.A.C.).

(3) When a proceeding pursuant to Chapter 60Y-5, F.A.C., of the rules of the Commission is before a Panel, the term "Commission," when it appears in this chapter, shall include that Panel, if the context so requires.

Rulemaking Authority 760.06(12), 760.11(14) FS. Law Implemented 760.02, 760.03, 760.05, 760.06, 760.07, 760.10, 760.11 FS. History—New 11-2-78, Formerly 9D-8.01, Amended 6-16-83, Formerly 22T-8.01, 22T-8.001, Amended 8-22-00, 5-7-17.

60Y-4.002 | EX PARTE COMMUNICATIONS

No ex parte communication relative to any pending case before the Commission shall be made to any Commissioner, or hearing officer, at any stage of a proceeding after the filing of a petition, by any party to the proceeding, by any person who has a direct or indirect interest in the proceeding, by any authorized representative or counsel. Any violation of this section shall be reported, in writing, by the Commissioner or hearing officer affected, and the report, which shall include a description of the substance of the communication, any response, and a copy of any written communication, shall be part of the record.

*Specific Authority 760.06(12), 760.11(14) FS. Law Implemented 120.66, 760.03, 760.06 760.11 FS.
History–New 11-2-78, Formerly 22T-8.02, 22T-8.002.*

60Y-4.015 | FRIEND OF THE COMMISSION

A person who does not have party status but who wishes to participate in a proceeding may, by motion, request permission to participate as a friend of the Commission. An order granting such a motion shall specify the degree of participation permitted.

Rulemaking Authority 760.06(13) FS. Law Implemented 760.06 FS. History—New 11-2-78, Formerly 22T-8.15, 22T-8.015.

60Y-4.016 | ASSIGNMENT OF HEARINGS

(1) A hearing upon a Petition for Relief from an Unlawful Employment Practice, a Housing Discriminatory Practice or a Public Accommodation Practice, pursuant to Rules 60Y-5.008, 60Y-8.001 and 60Y-10.005, F.A.C., respectively shall be conducted by an Administrative Law Judge designated by the Division of Administrative Hearings unless, prior to service of the Notice of Hearing pursuant to Rule 60Y-4.021, F.A.C., the Chairperson or Chair of the Panel designates a Commissioner as the hearing officer or directs that the hearing be conducted by the Commission or Panel.

(2) A hearing upon a petition not described in subsection (1), shall be conducted by a hearing officer designated by the Chairperson or Chair of the Panel unless the Chairperson or Chair of the Panel directs that the hearing be conducted by the Commission or Panel.

(3) A hearing upon a petition not described in subsection (1) or (2), shall be conducted by a hearing officer designated by the Chairperson or Chair of the Panel unless the Chairperson or Chair of the Panel directs that the hearing be conducted by the Commission or Panel.

Rulemaking Authority 760.06(13) FS. Law Implemented 760.03(5), 760.06 FS. History—New 11-2-78, Formerly 9D-8.16, Amended 2-4-82, 6-16-83, Formerly 22T-8.16, 22T-8.016, Amended 2-5-04.

60Y-4.023 | WITNESS FEES

(1) Witness fees necessary and incident to a hearing shall be paid by the party at whose instance the witness is summoned. If the Commission or the Executive Director directs that a witness be summoned as a Commission witness, that witness' fees shall be paid by the Commission. Witness fees shall be tendered, or a voucher submitted at the time of attendance. The fees allowed shall be the same as those allowed by the circuit courts of this state.

(2) Witness fees for Commission employees shall be paid in accordance with Section 92.142(2), F.S.

*Rulemaking Authority 760.06 FS. Law Implemented 92.142, 120.57, 760.06, 760.10 FS. History—
New 11-2-78, Amended 2-10-80, Formerly 22T-8.23, 22T-8.023, Amended 2-5-04.*

60Y-4.028 | ORAL ARGUMENT

(1) When a recommended order is before the Commission, a party filing an exception or brief may also request oral argument.

(2) A request for oral argument shall be by motion, filed simultaneously with the moving party's exception or brief.

(3) If oral argument is permitted, each party will be allowed 15 minutes. The Commission may require, limit, expand or dispense with oral argument.

Rulemaking Authority 760.06(12) FS. Law Implemented 120.57, 760.06 FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-8.28, 22T-8.028, Amended 5-7-17.

60Y-4.029 | DETERMINATION BY COMMISSION

After the issuance of the hearing officer's recommended order, if any, and following the filing of exceptions, briefs and presentation of oral argument, if any, the Commission or Panel shall consider the record and issue a written decision resolving the issues before it.

Rulemaking Authority 760.06(13) FS. Law Implemented 120.59, 760.06, 760.10 FS. History—New 11-2-78, Formerly 9D-8.29, Amended 2-4-82, Formerly 22T-8.29, 22T-8.029.

60Y-4.030 | APPEALS

Appeals from final Commission action shall be in accordance with Section 120.68, F.S., and the Florida Rules of Appellate Procedure.

Rulemaking Authority 760.06(13) FS. Law Implemented 120.68 FS. History–New 11-2-78, Formerly 22T-8.30, 22T-8.030.

60Y-4.031 | NOTICE OF APPEALS

When an appeal is filed in a District Court of Appeal from final Commission action or from the administrative dismissal of a complaint pursuant to Rule 60Y-4.006, F.A.C., all persons named in the original complaint, who are not named in the appeal, shall be notified of the appeal by the Clerk.

Rulemaking Authority 760.06(13) FS. Law Implemented 760.06, 760.10 FS. History—New 11-2-78, Formerly 22T-8.31, 22T-8.031.

FLORIDA ADMINISTRATIVE CODES | FCHR | EMPLOYMENT DISCRIMINATION

CODES: 60Y-5.001 through 60Y-5.009

AS OF: 1/31/2018

60Y-5.001 | COMPLAINTS

(1) Who May File. A complaint may be filed by any person aggrieved by an unlawful employment practice. A complaint may also be filed by the Attorney General, a Commissioner, or the Commission. When a complaint is filed by a Commissioner, that Commissioner is the complainant, and shall not participate as a Commissioner in any subsequent proceeding upon that complaint.

(2) Time for Filing. A complaint may be filed at any time within 365 days of the occurrence of the alleged unlawful employment practice. If the alleged unlawful employment practice is of a continuing nature, the date of the occurrence may be any date subsequent to the commencement of the unlawful employment practice up to and including the date on which it shall have ceased.

(3) Place and Date of Filing. A complaint may be filed at the office of the Commission. The date of filing shall be the date of actual receipt of the complaint by the Clerk or other agent of the Commission. Any document received by the Clerk or other agent of the Commission after 5:00 p.m. (Eastern Time) shall be filed as of 8:00 a.m. on the next regular business day.

(4) Relation Back of Certain Complaints. A complaint which would not otherwise be timely may be filed if it:

(a) States that another complaint naming the same respondent is properly before the Commission and identifies that other complaint, and

(b) Alleges the same or additional facts which describe an unlawful employment practice related to or growing out of the subject matter of the other, identified complaint, and

(c) Would have been timely if filed at the time of, or other time subsequent to, the filing of the other, identified complaint. A complaint under this subsection may be filed by a new complainant and shall relate back to the date the other, identified complaint was first received.

(5) Form. The complaint must be in writing and shall be signed by the complainant. The complaint shall be verified.

(6) Contents.

(a) The complaint should contain the following information:

1. The name, address and telephone number of the person filing the complaint;

2. The name, address and telephone number of the respondent;

3. A clear and concise statement of the facts, including pertinent dates, constituting the unlawful employment practice;

4. If known, the approximate number of employees of a respondent employer;

5. If known, a statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a Federal, State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provision of paragraph (a) of this subsection, a complaint is sufficient if it is in writing, signed by the Complainant, verified, and is sufficiently precise to identify the parties and to describe generally the action or practice complained of.

(7) Amendments.

(a) A complaint may be reasonably and fairly amended within 60 days after filing and, thereafter, for good cause with the consent of the Executive Director.

(b) A complaint may be amended to cure technical defects, or omissions, including verification, or to clarify and amplify allegations made therein. Such amendments and amendments which describe an additional unlawful employment practice related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(c) An amendment adding or changing a respondent will relate back to the date the complaint was first received if, within the period provided by subsection (2), the new respondent (i) has received such notice of the filing of the complaint as is sufficient to avoid prejudice in a defense on the merits, and (ii) knew or should have known that, but for a mistake concerning identity of the proper respondent, the complaint would have been filed against the new respondent.

(8) Withdrawal. A complaint may be withdrawn by a complainant at any time; however, following the issuance of a Notice of Determination, withdrawal may be made only with the consent of the Executive Director.

(9) Notice to Respondent. When it is determined that a complaint is complete and has been timely filed. The Executive Director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice shall be served within 5 days of the date of filing. An amendment likewise shall be served upon the respondent.

(10) Maintenance of Records. Once a complaint has been served on a respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.

Specific Authority 760.06(12), 760.11(14) FS. Law Implemented 760.06, 760.10, 760.11(1) FS. History—New 11-2-78, Amended 10-4-82, Formerly 22T-9.01, 22T-9.001, Amended 1-28-99, 2-23-00, 2-5-04.

60Y-5.0011 | ANSWER

(1) Respondent may file an answer to the complaint within 25 days of the date the complaint was filed with the commission. The answer shall be verified. The person filing the answer shall mail a copy to the complaining party.

(2) The answer may be reasonably and fairly amended at any time prior to the issuance of a determination pursuant to Rule 60Y-5.004, F.A.C.

Rulemaking Authority 760.06(12) FS. Law Implemented 760.11(1) FS. History—New 2-5-04, Amended 1-31-18.

60Y-5.002 | AGREEMENTS OF REFERRAL OF COMPLAINTS

(1) The Executive Director is authorized to negotiate agreements of referral with other public agencies having authority and resources to investigate allegations of unlawful employment practices.

(2) The Executive Director shall consider the following factors in negotiating agreements of referral:

(a) The agency's legal authority to investigate;

(b) The agency's staff resources;

(c) The agency's performance record;

(d) The agency's ability to conduct an independent investigation, considering the potential respondents;

(e) The agency's willingness to adhere to Commission standards of investigation.

(3) An agreement of referral shall specify:

(a) The categories of complaints to be referred;

(b) The number of complaints to be referred, which may be all complaints within the referral agency's jurisdiction;

(c) The standards and procedures governing referrals;

(d) The period of time covered by the agreement, which shall not be greater than one year.

(4) Upon fulfillment of the criteria set forth in subsections 60Y-5.002(2) and (3), F.A.C., the Commission shall approve the negotiated agreement of referral. When an agreement has been approved by the Commission, all complaints filed with the Commission which are subject to the agreement shall be referred to the referral agency. The referral agency shall report its action on the complaint to the Executive Director. Substantial weight shall be accorded to any final findings and orders of the referral agency.

(5) If the referral of the complaint does not result in settlement or withdrawal of the complaint, the Executive Director shall assign the complaint, with the report of the referral agency for investigation, determination of reasonable cause or conciliation, as may be appropriate.

Specific Authority 760.06(13), 760.11(14) FS. Law Implemented 760.03(7), 760.06, 760.10(11), 760.11(2), (12) FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-9.02, 22T-9.002.

60Y-5.003 | INVESTIGATION OF COMPLAINTS

(1) By Whom. The investigation of the complaint shall be made by the Office of Employment Investigations or by any other person designated by the Executive Director. The Executive Director may utilize services of other public agencies, state, local or federal, which are charged with the administration of fair employment practice laws, and may utilize the information gathered by such.

(2) Statement of Complainant. During the course of an investigation, the complainant may be required to provide a statement which includes:

(a) A statement of each particular harm which the aggrieved person has suffered and the date on which each harm occurred;

(b) For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful;

(c) For each act, policy, or practice alleged to have harmed the aggrieved person, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory.

(3) Requests for Information. During the course of an investigation, the Office of Employment Investigations may request of any person information concerning the facts and circumstances of the complaint. Requests for information may be made in the following manner:

(a) Oral interviews;

(b) Written interrogatories;

(c) Requests for production of documents;

(d) Requests for entry upon land for inspection and other purposes;

(e) Requests for a written statement or affidavit.

(4) Failure to Provide Information - Respondent. In the event a respondent fails to provide information within that person's control, which is requested pursuant to subsection (3), and reasonable notice and opportunity to cure have been given, an inference may be drawn, in a determination of reasonable cause pursuant to Rule 60Y-5.004, F.A.C., that such information is adverse to the respondent's interest.

(5) Failure to Cooperate - Complainant.

(a) Where the complainant fails to provide a necessary statement, fails or refuses to appear or be available for interview or meetings, fails or refuses to provide necessary information requested by the Office of Employment Investigations pursuant to this section or otherwise refuses to cooperate to the extent that the Office of Employment Investigations is unable to resolve the complaint, and after notice the complainant has failed to duly respond to the Office of Employment Investigations within 30 days, the Executive Director may dismiss the complaint, which shall constitute final Agency action.

(b) In the event a complainant fails to appear at or fails or refuses to participate in a fact-finding conference scheduled in the complainant's area of residence or at the place most convenient to all parties as determined by the Office of Employment Investigations, and after being provided at least fourteen days notice of such conference, which notice shall advise complainant of the provisions of this rule, the Executive Director may dismiss the complaint; provided, however, that no complaint may be dismissed pursuant to this rule where within fourteen days of the scheduled conference the complainant has filed with the Commission information establishing good cause for complainant's nonappearance or nonparticipation. Such information should include sworn statements of those individuals having direct knowledge of pertinent events causing the nonappearance or nonparticipation, as well as any other relevant evidence.

(6) Subpoena. In the event any person fails to provide requested information, the Executive Director may issue and sign a subpoena on behalf of the Commission. The subpoena shall state the name and address of the issuer, identify the person subpoenaed, the person to whom and the place, date, and time at which it is returnable. A subpoena may be returnable to a representative of the Commission.

(7) Enforcement of Subpoena. In the event the person to whom the subpoena is directed fails to obey the subpoena, the Executive Director may direct the General Counsel to apply to a circuit court for an order of compliance.

(8) Suspension of Investigation. Upon the request of the complainant or respondent, the Executive Director or his designee may suspend an investigation during the pendency of a grievance proceeding, on the same subject, to which the complainant and respondent are parties. This suspension shall normally be granted for not more than 45 days and only if there is reason to believe that the pending proceeding will fully resolve the matters raised by the complaint.

(9) Access to Files During Investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, respondent or their authorized representative, or to a witness, only when disclosure is deemed necessary for the investigation or for securing appropriate disposition of the complaint.

(10) Negotiated Settlement. During the mediation and/or investigation processes, the Commission shall endeavor to encourage the complainant and the respondent to settle the complaint on mutually agreeable terms. If the settlement is achieved by a Negotiated Settlement Agreement, its terms shall be reduced to writing and signed and dated by the complainant and respondent. If a settlement is achieved as a Withdrawal with Settlement, only the complainant need sign and date. A copy of the agreement shall be filed with the Clerk. A complaint which has been settled may be dismissed by the Executive Director upon such terms and at such time as may be provided in the written agreement subject to compliance.

Specific Authority 760.06(13), 760.11(14) FS. Law Implemented 760.03(7), 760.06, 760.10, 760.11(2), (12) FS. History—New 11-2-78, Amended 8-12-85, Formerly 22T-9.03, Amended 8-11-86, Formerly 22T-9.003, Amended 2-5-04.

60Y-5.004 | EXECUTIVE DIRECTOR'S INVESTIGATORY DETERMINATION; NOTICE

(1) Upon completion of an investigation, if a complaint has not been settled or withdrawn, the Office of Employment Investigations shall report the investigation, with recommendation, to the Office of General Counsel. The Office of General Counsel shall review the report and shall make a recommendation to the Executive Director as to whether there is reasonable cause to believe that an unlawful employment practice has occurred.

(2) If the recommendation is based upon lack of jurisdiction over the respondent or subject matter of the complaint or upon untimely filing of the complaint, the Executive Director may dismiss the complaint pursuant to subsection 60Y-5.006(3) or (11), F.A.C., provided that the investigation does not reveal any disputed issues of material fact. The Executive Director shall issue a determination on the foregoing bases of lack of jurisdiction or untimeliness where disputed issues of material fact appear to exist.

(3) After a determination has been made by the Executive Director, the Clerk shall serve a Notice of Determination, with copies of the determination, upon the complainant and the respondent.

(4) A Notice of Determination of Reasonable Cause shall include an invitation to participate in conciliation and shall advise the complainant of the elective right to file either a Petition for Relief, pursuant to Rule 60Y-5.008, F.A.C., within 35 days of the date of determination or a civil action within one year of the date of determination. A Petition for Relief form, in blank, shall be provided to the complainant at the time of service of the notice.

(5) A Notice of Determination of No Reasonable Cause, No Jurisdiction or Untimeliness shall advise the complainant of the right to file a Petition for Relief, pursuant to Rule 60Y-5.008, F.A.C., within 35 days of the date of determination. A Petition for Relief form, in blank, shall be provided to the complainant at the time of service of the notice.

(6) After service of a Notice of Determination, the parties named in the determination may inspect the records and documents, in the custody of the Commission, which pertain to the determination. The Executive Director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret.

*Specific Authority 760.06(13) FS. Law Implemented 760.03(7), 760.06, 760.10, 760.11 FS. History—
New 11-2-78, Amended 6-16-83, 8-12-85, Formerly 22T-9.04, 22T-9.004, Amended 2-5-04.*

60Y-5.005 | CONCILIATION

(1) After service of a Notice of Determination of Reasonable Cause pursuant to Rule 60Y-5.004, F.A.C., the Commission shall endeavor to eliminate any unlawful employment practice by informal methods of conference, conciliation and persuasion.

(2) The Commission shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the unlawful practice and provide appropriate affirmative relief. Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and signed by the complainant, the respondent and the Executive Director or the person designated by the Executive Director. The original of the signed agreement shall be filed with the Clerk, and copies shall be served upon the respondent and the complainant.

(3) A duly executed conciliation agreement shall operate as a dismissal of the complaint; however, prior to the filing of the conciliation agreement, the parties may stipulate therein to bringing the agreement before a Panel of Commissioners. The Panel in its sole discretion may adopt the conciliation agreement as a consent order.

(4) If conciliation has not been signed and the complaint has not been withdrawn or dismissed within the time period established for filing a Petition for Relief, the Executive Director shall dismiss the complaint.

Specific Authority 760.06(13) FS. Law Implemented 760.06, 760.10 FS. History—New 11-2-78, Amended 6-16-83, 8-29-84, 8-12-85, Formerly 22T-9.05, 22T-9.005, Amended 2-5-04.

60Y-5.006 | ADMINISTRATIVE DISMISSAL OF A COMPLAINT

The Executive Director, on behalf of the Commission, shall dismiss a complaint upon one or more of the following grounds:

(1) The complainant has failed or refused to cooperate or has failed to appear at or fails or refuses to participate in a duly noticed fact-finding conference and after notice pursuant to subsection 60Y-5.003(5), F.A.C., has failed to duly respond or show good cause for such nonappearance or nonparticipation;

(2) The complaint has been resolved by negotiated settlement pursuant to subsection 60Y-5.003(10), F.A.C.;

(3) The complaint has not been timely filed with the Commission;

(4) After service of Notice of Determination of Reasonable Cause, No Reasonable Cause, or No Jurisdiction, the complainant has failed to file a Petition for Relief pursuant to Rule 60Y-5.008, F.A.C.;

(5) Anytime after the expiration of 180 days from the date of filing the complaint when a Determination of Reasonable Cause or No Reasonable Cause has not been issued by the Commission and after the Complainant files notice of a planned, or files a, civil action in a court of competent jurisdiction;

(6) The complainant cannot be located after reasonable efforts to locate have been made and there is no response from the complainant within 30 days after notice was sent by certified mail to the complainant's last known address;

(7) An agreement to submit to arbitration has been filed pursuant to Rule 60Y-5.009, F.A.C.;

(8) The complainant has voluntarily dismissed the petition for relief pursuant to subsection 60Y-5.008(7), F.A.C.;

(9) The complainant has voluntarily withdrawn the complaint; or

(10) There is no jurisdiction over the respondent or subject matter of the complaint.

Specific Authority 760.06(13) FS. Law Implemented 20.05, 760.06, 760.11 FS. History–New 11-2-78, Amended 6-16-83, 8-29-84, 8-12-85, Formerly 22T-9.06, Amended 8-11-86, Formerly 22T-9.006, Amended 2-5-04.

60Y-5.008 | PETITION FOR RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

(1) Petition. A complainant may file a Petition for Relief from an Unlawful Employment Practice within 35 days of the Date of Determination of Reasonable Cause, No Reasonable Cause, No Jurisdiction or Untimeliness. A complainant who is not represented by an attorney may file a Petition for Relief without copies or proof of service, and the Clerk shall prepare copies and serve them upon all other parties.

(2) For good cause shown, the Chairperson may grant an extension of time to file the Petition for Relief from an Unlawful Employment Practice, provided the motion for extension of time is filed within the 35-day period prescribed by subsection 60Y-5.008(1), F.A.C.

(3) Procedures. Petitions for Relief, and proceedings thereupon, are governed by the provisions of Chapters 28-106 and 60Y-4, F.A.C., except as otherwise provided by this section.

(4) Class Allegations.

(a) The petition may include an allegation that the respondent has acted or refused to act on grounds generally applicable to a class, in which case the petition shall also include a description of the class of persons allegedly affected.

(b) If the petition contains class allegations, the administrative law judge, on motion of a party, may include in the recommended order a proposed certification of the class if:

1. The class is so numerous that joinder of all members is impractical,
2. There are questions of law or fact common to the class,
3. The claims of the petitioner are typical of the claims of the class, and
4. The petitioner will fairly and adequately protect the interests of the class.

If the administrative law judge proposes that a class be certified, the administrative law judge may also include in the recommended order proposed findings and conclusions concerning the respondent's liability to the class. However, the administrative law judge shall not initially consider other class issues unless it is determined that such consideration will not cause undue delay to the completion of the hearing.

(5) Final Orders; Relief; Remand. Upon consideration of a recommended order, the Commission or Panel may order that the petition and complaint be dismissed or may determine that an unlawful employment practice has occurred. In the event the Commission or Panel determines that an unlawful employment practice has occurred, it shall issue an order prohibiting the practice and providing relief from the effects of the practice. If the Commission or Panel finds that the proceeding is properly maintained as a class proceeding, the order of the Commission or Panel may direct a remand to the administrative law judge of any class issue which the Commission or Panel has not determined. The order of the Commission or Panel shall constitute final agency action as to all matters except those which are remanded to the administrative law judge.

(6) Proceedings After Remand. An order of remand, pursuant to subsection (5), or a subsequent order of the administrative law judge, may direct that notice of pendency of the proceeding be served upon members of the class. Such an order shall specify the manner of service of the notice and the person responsible for service. Any member of the class who does not, within 15 days of service of the notice of pendency or within such other time as the order may provide, file with the Commission an election of non-participation in the class shall be bound by an order of the Commission or Panel made subsequent to the giving of such notice.

(7) Voluntary Dismissal. A Petition for Relief may be dismissed by the Petitioner without order of the administrative law judge, Panel of Commissioners or Commission (i) by serving, or during hearing by stating on the record, a notice of dismissal at any time before the issuance of a recommended order or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. The dismissal operates with prejudice with respect to Petitioner's Chapter 760, F.S., administrative remedies and constitutes final agency action.

Specific Authority 760.06(13) FS. Law Implemented 760.06, 760.10 FS. History—New 11-2-78, Amended 2-4-82, 6-16-83, 8-29-84, 8-12-85, Formerly 22T-9.08, 22T-9.008, Amended 2-5-04.

60Y-5.009 | ARBITRATION

(1) After the filing of a complaint, the complainant and respondent may agree to submit the issues raised by the complaint or by a determination of reasonable cause to binding arbitration. The agreement to submit to arbitration shall be in writing and shall specify the procedure and law which will govern the arbitration proceeding. An executed copy of the agreement shall be filed with the Clerk.

(2) Unless otherwise provided in the agreement to submit to arbitration, the Executive Director may dismiss the complaint which is the subject of the agreement upon the filing of the agreement as provided in subsection (1).

Rulemaking Authority 760.06(13) FS. Law Implemented 760.06, 760.10 FS. History—New 11-2-78, Formerly 22T-9.09, 22T-9.009.

FLORIDA ADMINISTRATIVE CODES | FCHR | HOUSING DISCRIMINATION

CODES: 60Y-6.001 through 60Y-25.007

AS OF: 2/4/2016

60Y-6.001 | DEFINITIONS

As used in the rules of the Commission:

(1) "Accessible," when used with respect to the public and common use areas of a building containing covered multifamily dwellings, means that the public or common use areas of the building can be approached, entered and used by individuals with physical handicaps. The phrase "readily accessible to and usable by" is synonymous with accessible. A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is "accessible" within the meaning of this subsection.

(2) "Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986 or a comparable standard is an "accessible route."

(3) "Act" means the Fair Housing Act, as amended, Section 760.20-760.37, F.S.

(4) "Aggrieved person" includes any person who claims to have been injured by a discriminatory housing practice or who believes that such person will be injured by a discriminatory housing practice.

(5) "ANSI A117.1-1986" means the 1986 edition of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people. Copies may be obtained from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(6) "Attorney General" means the Attorney General of the State of Florida.

(7) "Broker or agent" includes any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions.

(8) "Building" means a structure, facility or portion thereof that contains or serves one or more dwelling units.

(9) "Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1-1986 or a comparable standard complies with the requirements of this subsection.

(10) "Chairperson" or "Chair" means the Chairperson of the Commission or Chairperson of a Panel, as the context may indicate.

(11) "Charge" means the statement of facts upon which the Commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur.

(12) "Clerk" means the person designated by the Executive Director as heading the Office of the Clerk.

(13) "Commission" means the Florida Commission on Human Relations.

(14) "Commissioner" means a member of the Commission.

(15) "Common use areas" means rooms, spaces or elements inside or outside of a building that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mail rooms, recreational areas and passageways among and between buildings.

(16) "Complainant" means a person who filed a complaint.

(17) "Complaint" means a written, verified statement which alleges the occurrence of an unlawful housing practice and also includes an amended complaint.

(18) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of a complaint, through informal negotiations involving the aggrieved person, the respondent and the Commission.

(19) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation.

(20) "Controlled substance" means any drug or other substance, or their immediate precursor, defined in Chapter 893, F.S.

(21) "Covered multifamily dwellings" means a building which consists of four or more dwelling units and has an elevator, or the ground floor units of a building which consists of four or more dwelling units and does not have an elevator.

(22) "Discriminatory housing practice" means an act which is unlawful under the terms of the Fair Housing Act, Sections 760.20-.37, F.S.

(23) "Division of Administrative Hearings" means the Division of Administrative Hearings of the Department of Administration.

(24) "Document" includes, but is not limited to, writings, drawings, graphs, charts, photographs, phono-records and other data compilations from which information can be obtained.

(25) "Dwelling" means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.

(26) "Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

(27) "Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

(28) "Executive Director" means the Executive Director of the Commission.

(29) "Exterior" means all areas of the premises outside of an individual dwelling unit.

(30) "Fair Housing Act" means the act which is set forth in Chapter 760, F.S., Sections 760.20-.37, F.S.

(31) "Familial Status" is established when an individual who has not attained the age of 18 years is domiciled with a parent or other person having legal custody of such individual, or a designee of a parent or other person having legal custody, with written permission of such parent or other person.

(32) "Family" includes a single individual.

(33) "First occupancy" means a building that has never before been used for any purpose.

(34) "General Counsel" means the General Counsel of the Commission.

(35) "Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

(36) "Handicap" means a person who has a physical or mental impairment which substantially limits one or more major life activities, or has a record of having or is regarded as having such physical or mental impairment, or a person who has a developmental disability as defined in Section 393.063(6), F.S.

(37) "Has a record of having such impairment" means has a history of, or has been misclassified as having a mental or physical impairment.

(38) "Hearing" means an administrative hearing conducted pursuant to Chapter 120, F.S.

(39) "Hearing Officer" means the person assigned to conduct a hearing upon a petition filed with the Commission.

(40) "Is regarded as having an impairment" means having a physical or mental impairment that does not substantially limit one or more major life activities but is treated as if it does; having a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or having no physical or mental impairments but being treated as having such an impairment.

(41) "Interior" means the spaces, parts, components or elements of an individual dwelling unit.

(42) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(43) "Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

(44) "Panel" means a panel of three or more Commissioners convened for the purpose of holding hearings on petitions for relief from discriminatory housing practices.

(45) "Party" means any person designated as a party to a proceeding before the Commission, pursuant to rule of the Commission.

(46) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers and fiduciaries.

(47) "Person in the business of selling or renting dwellings" means any person who within the preceding twelve months has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; or within the preceding twelve months has participated as agent, other than in the sale of his personal residence, in providing sales of rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

(48) "Petition" means a writing, other than a written motion, filed with the Commission pursuant to rule of the Commission requesting that specified action be taken by the Commission.

(49) "Petitioner" means a person who files a petition with the Commission.

(50) "Physical or mental impairment" includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current illegal use of a controlled substance) and alcoholism.

(51) "Premises" means the interior or exterior spaces, parts, components or elements of a building, including individual dwelling units and the public and common use areas of a building.

(52) "Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(53) "Residential real estate transactions" means any of the following: the making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing, or maintaining a dwelling; or the making or purchasing of loans or providing other financial assistance secured by residential real estate; or the selling, brokering or appraising of residential real estate property.

(54) "Respondent" means the person designated in the complaint as responsible for the alleged discriminatory housing practice or in the case of a petition, the person against whom relief is sought.

(55) "Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

(56) "Substantially equivalent" means an administrative subdivision of the State of Florida meeting the requirements of 24 C. F. R. Part 115, Section 115.6, F.S.

(57) "To rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.22-760.37 FS. History—New 1-25-90, Formerly 22T-20.001.

60Y-6.002 | CONSTRUCTION OF RULES

The rules of the Commission are intended to promote the purposes of the Act, the efficient operation of the Commission and the orderly administration of the Act. They are to be liberally construed to ensure the accomplishment of these purposes.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.21 FS. History—New 1-25-90, Formerly 22T-20.002.

60Y-7.001 | COMPLAINTS

(1) Who may file. A complaint may be filed by any person who claims to have been injured by a discriminatory housing practice or any person who believes that he will be injured by a discriminatory housing practice that is about to occur.

(2) Time for Filing. A complaint may be filed at any time within one year of the occurrence of the alleged discriminatory housing practice. If the alleged discriminatory housing practice is of a continuing nature, the date of the occurrence may be any date subsequent to the commencement of the discriminatory housing practice up to and including the date on which it shall have ceased.

(3) Place and Date of Filing. A complaint shall be filed at the office of the Commission. The date of filing shall be the date of actual receipt of the complaint by the Clerk or other agent of the Commission. Any document received by the Clerk or other agent of the Commission after 5:00 p.m. (Eastern Time) shall be filed as of 8:00 a.m. on the next regular business day.

(4) Form. The complaint must be in writing and shall be signed by the complainant. The complaint shall be verified.

(5) Contents.

(a) The complaint should contain the following information:

1. The name, address and telephone number of the person filing the complaint;
2. The name, address and telephone number of the respondent;
3. A clear and concise statement of the facts, including pertinent dates, constituting the discriminatory housing practice;
4. If known, a statement disclosing whether proceedings involving the alleged discriminatory housing practice have been commenced before a Federal, State or local agency charged with enforcement of fair housing practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provision of paragraph (a) of this subsection, a complaint is sufficient if it is in writing under oath or affirmation and is sufficiently precise to identify the parties and to describe generally the action or practice complained of.

(6) Amendments.

(a) A complaint may be amended within 60 days after filing and, thereafter, with the consent of the Executive Director upon discovery of new facts or upon a finding that information previously provided by the respondent was misrepresented.

(b) A complaint may be amended to cure technical defects, or omissions, including verification, or to clarify and amplify allegations made therein. Such amendments and amendments which describe an additional discriminatory housing practice relating to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(c) An amendment adding or changing a respondent will relate back to the date the complaint was first received if, within the period provided by subsection (2) of this section, the new respondent (i) has received such notice of the filing of the complaint as is sufficient to avoid prejudice in a defense on the merits, and (ii) knew or should have known that, but for a mistake concerning identity of the proper respondent, the complaint would have been filed against the new respondent.

(7) Withdrawal. A complaint may be withdrawn by a complainant at any time; however, following the issuance of a Notice of Determination, withdrawal may be made only with the consent of the Executive Director.

(8)

(a)

1. Notice to Respondent. When it is determined that a complaint is complete and has been timely filed, the Executive Director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice should be served within 10 days of the date of filing. An amendment likewise shall be served upon the respondent.

2. The notice shall advise the respondent of relevant procedural rights and obligations by referencing, for example, Sections 760.20-760.37, F.S., and Chapters 60Y-6, 60Y-7, 60Y-8, and 60Y-9, F.A.C.

3. The notice shall advise the respondent of the complainant's right to commence a civil action under Section 760.35, F.S., in court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. If filed in federal court under federal law, the notice will state that the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge based on the alleged discriminatory housing practice. The notice will also state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under Section 760.36, F.S., is pending.

4. The notice shall advise the respondent that retaliation against any person because he or she made a complaint or testified, assisted or participated in an investigation or conciliation under Florida's Fair Housing Act is a discriminatory housing practice that is prohibited.

(b) Notice to Complainant.

1. The Commission shall serve notice upon the complainant acknowledging the filing of the complaint, advising the complainant of the time limits set forth in Rule 60Y-7.004, F.A.C.

2. The Commission shall serve notice upon the complainant advising the complainant of the statutory remedies and choice of forums by referencing Sections 760.34, 760.35 and 760.37, F.S., and by informing the complainant that Section 760.34, F.S., is neither an obstacle nor a prerequisite to commencement of a separate civil action on his own under Section 760.35, F.S.

3. The notice shall advise the complainant of his right to commence a civil action under Section 760.35, F.S., in a court, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice will state that, if filing in federal court under federal law, the computation of this two-year period excludes any time during which the matter is pending for administrative relief with respect to a complaint or charge, based on the alleged discriminatory housing practice. The notice will also state, however, that the time period includes the time during which an action arising from a breach of a conciliation agreement under Section 760.36, F.S., is pending.

4. The notice shall advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation or conciliation under Florida's Fair Housing Act is a discriminatory housing practice that is prohibited.

5. Upon an investigatory determination of reasonable cause, the Commission shall serve notice upon the complainant advising the complainant that at the election of the complainant, the Attorney General shall bring an action in the name of the state on behalf of the complainant to enforce the provisions of Sections 760.20-.37, F.S.

6. The complainant must make his election within 20 days after receipt of the notice. If an election is made for a civil action by the Attorney General, then a civil action shall be commenced and maintained within a reasonable time from the date of the election.

7. In addition, complainant shall be advised that, as an alternative to the Attorney General bringing an action, the Commission will petition for an administrative hearing and seek relief for complainant under Section 120.57, F.S., and prosecute the matter to a final agency order, which may include defending against an appeal by the respondent.

8. At all times, however, Complainant retains the right to seek administrative or judicial relief without governmental assistance.

(9) Maintenance of Records. Once a complaint has been served on the respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.

Specific Authority 760.31(5) FS. Law Implemented 760.34 FS. History–New 1-25-90, Amended 11-20-91, Formerly 22T-21.001, Amended 9-17-98, 12-31-03.

60Y-7.002 | ANSWER

(1) Respondent may file an answer to the complaint within 20 days of the date of notice of the filing. The answer shall be verified.

(2) The answer may be reasonably and fairly amended at any time prior to the issuance of a Notice of Determination.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.34 FS. History—New 1-25-90, Formerly 22T-21.002, Amended 12-31-03.

60Y-7.003 | REFERRAL OF COMPLAINTS

Wherever a local fair housing law provides rights and remedies for alleged discriminatory housing practices which are substantially equivalent to the rights and remedies provided in the Fair Housing Act, the Commission shall notify the appropriate local agency of any complaint filed under the Act which appears to constitute a violation of the local fair housing law, and the Commission shall take no further action with respect to such complaint if the local law enforcement official has, within 30 days from the date the alleged offense was brought to the official's attention, commenced proceedings in the matter. In no event shall the Commission take further action unless it certifies that in its judgment, under the circumstances of the particular case, the protection of the rights of the parties or the interests of justice require such action.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.34 FS. History—New 1-25-90, Formerly 22T-21.003.

60Y-7.004 | INVESTIGATION OF COMPLAINTS

(1)

(a) By whom. The investigation of the complaints shall be made by the Office of Housing Investigations or by any other person designated by the Executive Director. The Executive Director may utilize services of other public agencies, state, local or federal, which are charged with the administration of fair housing practice laws, and may utilize the information gathered by such.

(b) Investigatory proceedings shall commence before the end of the 30th day after receipt of the complaint.

(2) Statement of Complainant. During the course of an investigation, the complainant may be required to provide a statement which includes:

(a) A statement of each particular harm which the aggrieved person has suffered and the date on which each harm occurred.

(b) For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful.

(c) For each act, policy or practice alleged to have harmed the aggrieved person, a statement of the facts which lead the complainant to believe that the act, policy or practice is discriminatory.

(3) Requests for Information. During the course of an investigation, the Office of Housing Investigations may request of any person information concerning the facts and circumstances of the complaint. Requests for information may be made in the following manner:

(a) Oral interviews;

(b) Written interrogatories;

(c) Requests for production of documents;

(d) Requests for entry upon land for inspection and other purposes;

(e) Requests for a written statement or affidavit.

(4) Failure to Cooperate - Complainant. Where the complainant fails to provide a necessary statement, fails or refuses to appear or be available for interviews or meetings, fails or refuses to provide necessary information requested by the Office of Housing Investigations pursuant to this section or otherwise refuses to cooperate to the extent that the Office of Housing Investigations is unable to resolve the complaint, and where after notice the complainant has failed to duly respond to the Office of Housing Investigations, the Executive Director may dismiss the complaint based upon complainant's failure to cooperate.

(5) Subpoena. The Commission and the respondent may compel access to or the production of documents or the appearance of persons under the following conditions:

(a) The Executive Director may issue subpoenas to compel access to or the production of documents or the appearance of such persons as are reasonably necessary for the investigation.

(b) The respondent shall be entitled to the issuance of a reasonable number of subpoenas by and in the name of the Commission to the same extent and subject to the same limitations as subpoenas issued by the Commission on its own initiative.

(c) Each subpoena shall state the name and address of the issuer, identify the person subpoenaed, and identify the person to whom and the place, date and time at which it is returnable.

(d) Within 5 days after service of a subpoena upon any person, such person may petition the Executive Director to revoke or modify the subpoena. The Executive Director shall grant the petition if he finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, or that compliance would be unduly onerous or for other good reason.

(e) In case of refusal to obey a subpoena, the Executive Director or the person at whose request the subpoena was issued may petition for its enforcement in the circuit court for the county in which the person to whom the subpoena was addressed resides, was served or transacts business.

(6) Access to Files During Investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, respondent or their authorized representative, or to a witness, only when disclosure is deemed necessary for the investigation or for securing appropriate disposition of the complaint.

(7) Negotiated Settlement. During the mediation and investigation processes, the Commission shall endeavor to encourage the complainant and the respondent to settle the complaint on mutually agreeable terms. If the settlement is achieved by a Negotiated Settlement Agreement, its terms shall be reduced to writing and signed and dated by the complainant and the respondent. If a settlement is achieved as a Withdrawal with Settlement, only the complainant need sign and date. A copy of the agreement shall be filed with the Clerk. A complaint which has been settled may be dismissed by the Executive Director upon such terms and at such time as may be provided in the written agreement subject to compliance.

(8)

(a) Within 100 days after receiving a complaint or within 100 days after the expiration of any period of reference under Rule 60Y-7.003, F.A.C., the Commission shall investigate the complaint and give notice in writing to the person aggrieved whether the investigatory determination is "No Cause" or "Cause."

(b) If the Commission is unable to complete its investigation within 100 days, it shall notify the complainant and respondent in writing of the reasons for not doing so.

(9) If the investigatory determination is "No Cause," the Executive Director shall issue a "Notice of Determination (No Cause)" and serve it upon the complainant and the respondent. The "Notice of Determination (No Cause)" shall state that the complainant may request an administrative hearing by filing a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of the notice. A form, Petition for Relief, in blank, shall be provided to the complainant at the time of service of the "Notice of Determination (No Cause)".

(10) If the investigatory determination is "Cause," the Executive Director shall issue a "Notice of Determination (Cause)" and serve it upon the complainant and the respondent. The notice shall inform the complainant of the options and mandated times for action outlined in paragraph 60Y-7.001(8)(b), F.A.C. Concurrently, the Commission may also attempt to conciliate the case pursuant to Rule 60Y-7.005, F.A.C.

(11) The Commission will make final administrative disposition of a complaint within 100 days of the date of receipt of the complaint, unless it is impracticable to do so. If the Commission is unable to do so, it shall notify the complainant and respondent in writing of the reasons for not doing so.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.34 FS. History—New 1-25-90, Amended 11-20-91, Formerly 22T-21.004, Amended 11-18-92, 12-31-03.

60Y-7.005 | CONCILIATION

(1) If the Commission decides to resolve the complaint, it shall endeavor to eliminate any discriminatory housing practice by informal methods of conference, conciliation and persuasion. Insofar as possible, conciliation meetings shall be held in the city or other locality where the discriminatory housing practice allegedly occurred.

(2) The Commission shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the discriminatory housing practice and provide appropriate affirmative relief. Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and signed by the complainant, the respondent and the Executive Director or person designated by the Executive Director. The original of the signed agreement shall be filed with the Clerk, and copies shall be served upon the respondent and the complainant.

(3) A duly executed conciliation agreement shall operate as a dismissal of the complaint; however, prior to the filing of the conciliation agreement, the parties may stipulate therein to bringing the agreement before a Panel of Commissioners. The Panel in its discretion may adopt the conciliation agreement as a consent order.

(4) If a conciliation agreement has not been signed and the complaint has not been withdrawn or dismissed within the time period established for filing a Petition for Relief, the Executive Director shall dismiss the complaint.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.34 FS. History—New 1-25-90, Formerly 22T-21.005, Amended 11-18-92, 12-31-03.

60Y-8.001 | PETITION FOR RELIEF FROM A DISCRIMINATORY HOUSING PRACTICE

(1) Petition. A complainant may file a Petition for Relief from a Discriminatory Housing Practice within 30 days of service of a Notice of Determination (No Cause) or Notice of Determination (Cause). The Executive Director on behalf of the Commission may institute an action by filing a Petition for Relief from a Discriminatory Housing Practice upon determining there is reasonable cause to believe that a discriminatory practice has occurred and has been unable to obtain voluntary compliance with Sections 760.20-.37, F.S. The Clerk shall prepare copies of the petition and serve them upon all other parties named in the petition by certified mail.

(2) For good cause shown, the Chairperson may grant an extension of time to the complainant to file the Petition for Relief, provided the motion for extension of time is filed within the 30-day period.

(3) Procedures. Petitions for Relief, and proceedings thereupon, are governed by the provisions of Chapters 28-106 and 60Y-4, F.A.C., except as otherwise provided by this section.

(4) Final Orders; Relief; Remand. Upon consideration of a recommended order, the Commission or Panel may order that the petition and complaint be dismissed or may determine that a discriminatory housing practice has occurred. In the event the Commission or Panel determines that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The order of the Commission or Panel shall be final as to all matters except those which are remanded to the Administrative Law Judge.

(5) Voluntary Dismissal. A Petition for Relief filed by a complainant may be dismissed by the complainant without order of the Administrative Law Judge, Panel of Commissioners or Commission (i) by serving, or during hearing by stating on the record, a notice of dismissal at any time before the issuance of a recommended order or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. The dismissal operates with prejudice with respect to Petitioner's Chapter 760, F.S., administrative remedies and constitutes final agency action.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.34, 760.35 FS. History—New 1-25-90, Formerly 22T-22.001, Amended 11-18-92, 2-5-04.

60Y-9.001 | PURPOSE

The purpose of the housing for older persons exemption to the general prohibition against discrimination because of familial status is to protect families with children from discrimination in housing without unfairly limited housing choices for older persons. Chapter 60Y-9, F.A.C., clarifies requirements related to housing for older persons pursuant to Section 760.29(4), F.S.

Specific Authority 760.31(5) FS. Law Implemented 760.29(4), 760.31(5) FS. History–New 8-15-90, Formerly 22T-23.001, Amended 2-5-04.

60Y-9.002 | GENERAL PROVISIONS

(1) Nothing in this chapter limits the applicability of any reasonable federal, state, or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(2) The prohibition against discrimination on the basis of familial status makes it unlawful to assign any person to a particular section of a facility, development, community or neighborhood or to a particular floor of a building because of familial status. Accordingly, no approval is given for a "dual purpose housing facility," i.e., a housing facility where specified units or sections are designated for older persons and other units or sections are open to everyone.

(3) Information relative to the age of an individual may be obtained when necessary for determining a facility's eligibility as housing for older persons.

(4) During any period that any health care worker is actually providing live-in, long-term or hospice health care to a qualified, older person resident for compensation, the occupancy of a housing unit by the health care worker shall not be considered in determining a facility's eligibility as housing for older persons.

(5) Temporary occupancy of a housing unit by a person, as a guest of a qualified, older person resident, shall not be considered in determining a facility's eligibility as housing for older persons.

(6) A housing provider may use any nondiscriminatory method of qualifying for the exemption available to housing for older persons, provided that the method used comports with applicable federal, state and local laws.

Specific Authority 760.31(5) FS. Law Implemented 760.29(4), 760.31(5) FS. History—New 8-15-90, Formerly 22T-23.002.

60Y-9.003 | HOUSING PROGRAM EXEMPTION

The provisions in Sections 760.20-.37, F.S., relating to familial status shall not apply to housing provided under any federal or state program that the Secretary of Housing and Urban Development and/or the commission determines is specifically designed and operated to assist elderly persons.

Specific Authority 760.31(5) FS. Law Implemented 760.29(4), 760.31(5) FS. History–New 8-15-90, Formerly 22T-23.003.

60Y-9.004 | HOUSING EXEMPTION FOR PERSONS 62 YEARS OF AGE OR OLDER

(1) The provisions in Sections 760.20-.37, F.S., relating to familial status shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older.

(2) Housing satisfies the requirements of this section even though:

(a) There are persons residing in such housing on or after October 1, 1989, who are under 62 years of age, provided that all new occupants are persons 62 years of age or over.

(b) There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over.

(3) Housing satisfies the requirements of this section even though a unit is occupied by employees of the housing provider (and family members residing in the same unit) who are under 62 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.

Specific Authority 760.31(5) FS. Law Implemented 760.29(4), 760.31(5) FS. History—New 8-15-90, Formerly 22T-23.004.

60Y-9.005 | HOUSING EXEMPTION FOR PERSONS 55 YEARS OF AGE OR OLDER

(1) The provisions in Sections 760.20-.37, F.S., relating to familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing complies with 24 C.F.R. part 100 as published in the Federal Register on Friday, April 2, 1999.

(2) Housing intended and operated for occupancy by at least one person 55 years of age or older per unit means:

(a) Housing for which at least 80% of the units in the housing facility are occupied by at least one person 55 years of age or older per unit except that a newly constructed housing facility for first occupancy after October 1, 1989, need not comply with this subsection until 25% of the units in the facility are occupied; and

(b) The owner or manager of the housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this subsection:

1. The manner in which the housing facility is described to prospective residents.
2. The nature of any advertising designed to attract prospective residents.
3. Age verification procedures.
4. Lease provisions.
5. Written rules and regulations.
6. Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(3) Housing satisfies the requirements of this section even though:

(a) Under 80% of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80% of the units that are occupied by new occupants on or after October 1, 1989, are occupied by at least one person 55 years of age or older.

(b) There are unoccupied units, provided that at least 80% of such units are reserved for occupancy by at least one person 55 years of age or over.

(4) Housing satisfies the requirements of this section even though a unit is occupied by employees of the housing provider (and family members residing in the same unit) who are under 55 years of age, provided they perform substantial duties directly related to the management or maintenance of the housing.

Specific Authority 760.31(5) FS. Law Implemented 760.29(4), 760.31(5) FS. History—New 8-15-90, Formerly 22T-23.005, Amended 2-5-04.

60Y-9.006 | PRECERTIFICATION PROCEDURE

(1) With respect to commission certification that a housing facility meets the foregoing requirements relating to housing for older persons, no designated precertification procedure is available.

(2) The commission, however, is authorized to issue a declaratory statement regarding the applicability of these rules under given circumstances in accordance with Section 120.565, F.S., and Chapter 28-4, F.A.C.

Specific Authority 120.565, 760.31(5) FS. Law Implemented 120.565, 760.29(4), 760.31(5) FS.

History—New 8-15-90, Formerly 22T-23.006.

60Y-9.007 | HOUSING FOR OLDER PERSONS REGISTRATION AND DOCUMENTATION

(1) Facilities or communities claiming an exemption under Section 760.29(4), F.S., shall register with the commission and submit the statutorily required documentation to the commission in the manner prescribed by the commission. Information on how to register is located on the commission's website, <http://fchr.state.fl.us>.

(2) The registration and documentation letter shall contain in bold letters on the face of the envelope the words "Registration for Housing for Older Persons," and provide the date of mailing.

(3) The registration and documentation shall be submitted biennially from the date of the original filing.

(4) The information in the commission's registry is a public record. The information shall also be included on the commission's main website, <http://fchr.state.fl.us>.

(5) Failure to comply with the requirements of Section 760.29(4)(e), F.S., shall not disqualify a facility or community that otherwise qualifies for the exemption provided in Section 760.29(4), F.S.

(6) The Commission may impose an administrative fine not to exceed \$500 on a facility or community that knowingly submits false information in the documentation required by this rule. Such fine shall be deposited in the commission's trust fund.

Rulemaking Authority 760.31(5) FS. Law Implemented 760.29(4)(e) FS. History—New 2-11-02, Amended 2-5-04, 2-4-16.

60Y-25.001 | PURPOSE

These rules clarify terms used with regard to handicap accessibility and exceptions from accessibility requirements based on terrain or site characteristics. These rules maintain the substantial equivalency between the relevant federal standards and the state requirements.

Specific Authority 120.543, 760.31(5) FS. Law Implemented 760.23, 760.31(5) FS. History–New 11-2-92.

60Y-25.002 | GENERAL PROHIBITION AGAINST DISCRIMINATION BECAUSE OF HANDICAP

The Commission adopts by reference 24 C.F.R. Section 100.202, F.S., as published in the Federal Register on Monday, January 23, 1989.

Specific Authority 120.543, 760.31(5) FS. Law Implemented 760.23, 760.31(5) FS. History–New 11-2-92.

60Y-25.003 | REASONABLE MODIFICATION OF EXISTING PREMISES

The Commission adopts by reference 24 C.F.R. Section 100.203, F.S., as published in the Federal Register on Monday, January 23, 1989.

Specific Authority 120.543, 760.31(5) FS. Law Implemented 760.23, 760.31(5) FS. History–New 11-2-92.

60Y-25.004 | REASONABLE ACCOMMODATION

The Commission adopts by reference 24 C.F.R. Section 100.204, F.S., as published in the Federal Register on Monday, January 23, 1989.

Specific Authority 120.543, 760.31(5) FS. Law Implemented 760.23, 760.31(5) FS. History–New 11-2-92.

60Y-25.005 | DESIGN AND CONSTRUCTION REQUIREMENTS

The Commission adopts by reference 24 C.F.R. Section 100.205, F.S., as published in the Federal Register on Monday, January 23, 1989.

Specific Authority 120.543, 760.31(5) FS. Law Implemented 760.23, 760.31(5) FS. History–New 11-2-92.

60Y-25.006 | DESIGN GUIDELINES FOR ACCESSIBLE/ADAPTABLE DWELLINGS

The Commission adopts by reference 24 C.F.R. Chapter I, Subchapter A, Appendix II, as published in the Federal Register on March 6, 1991, entitled "Fair Housing Accessibility Guidelines."

Specific Authority 120.543, 760.31(5) FS. Law Implemented 760.23, 760.31(5) FS. History–New 11-2-92.

60Y-25.007 | SITE IMPRACTICALITY; EXEPTIONS TO SITE IMPRACTICALITY

The Commission adopts by reference relevant portions of 24 C.F.R. Chapter I, Subchapter A, Appendix II. (See Section 5 Guidelines, Requirement 1), as published in the Federal Register on March 6, 1991, entitled "Fair Housing Accessibility Guidelines."

Specific Authority 120.543, 760.31(5) FS. Law Implemented 760.23, 760.31(5) FS. History–New 11-2-92.

FLORIDA ADMINISTRATIVE CODES | FCHR | PUBLIC ACCOMMODATIONS

CODES: 60Y-10.001 through 60Y-10.005

AS OF: 3/9/2004

60Y-10.001 | PURPOSE

These rules implement the statutory provisions which make it unlawful discrimination for the operator of a public lodging establishment or a public food service establishment to refuse accommodation or service to any person when the refusal is based upon race, creed, color, sex, physical disability or national origin. The Florida Civil Rights Act of 1992 authorizes the Commission on Human Relations to investigate complaints of discrimination by public lodging establishments and public food service establishments and provides for relief by subsequent administrative proceeding or civil action in court.

Rulemaking Authority 760.06(12), 760.11 FS. Law Implemented 760.11 FS. History–New 12-14-93.

60Y-10.002 | COVERED ENTITITES AND FACILITIES

The public lodging establishments covered by these rules are those defined in Sections 509.013(4) and 760.02(11), F.S. The public food service establishments covered by these rules are those defined in Sections 509.013(5) and 760.02(11), F.S. All other establishments defined in Section 760.02(11), F.S., are also covered by these rules.

Rulemaking Authority 760.06(12), 760.11 FS. Law Implemented 760.11 FS. History—New 12-14-93, Amended 3-9-04.

60Y-10.003 | WHO MAY FILE A COMPLAINT; CONFIDENTIALITY

(1) Any person aggrieved by a violation of Section 509.092, F.S. (1991), may file a complaint with the Commission within 365 days of the alleged violation. The Commission, a commissioner, or the Attorney General may, in like manner, file such a complaint. A commissioner who files a complaint becomes the complainant and shall not participate in the proceedings upon that complaint as a commissioner. All complaints must be reasonably specific as to the time and date of the alleged violation.

(2) All complaints filed with the Commission and all records and documents in the custody of the Commission which relate to and identify a particular person, including but not limited to, a complainant, owner, license, operator or employee of a public lodging establishment or public food service establishment shall be confidential and shall not be disclosed by the Commission, except to the parties or in the course of a hearing or proceeding under Section 760.11, F.S. (1992 Supp.). Disclosure is authorized to any other agency of the state or any other unit of government of the state that has jurisdiction of the subject matter of the complaint or that has legal authority to investigate the complaint.

Rulemaking Authority 760.06(12), 760.11 FS. Law Implemented 760.11 FS. History—New 12-14-93.

60Y-10.004 | INVESTIGATORY PROCESS

(1) Within five (5) days of a complaint being filed, the Commission shall by registered mail send a copy of the complaint to the establishment that allegedly committed the violation. A copy of Section 760.11, F.S. (1992 Supp.), may also be provided in the mail.

(2) The Commission may likewise provide a copy of the complaint to any other agency of the state, or to an agency of any other unit of government of the state, which has jurisdiction of the subject matter of the complaint or which has legal authority to investigate the complaint.

(3) Within 25 days of the date the complaint was filed, an answer may be filed on behalf of the establishment named for the alleged violation. The absence of an answer, however, shall in no manner delay the investigation of the complaint.

(4) The Executive Director is authorized to refer complaints in accordance with the provisions of Section 760.11(2), F.S. (1992 Supp.).

Rulemaking Authority 760.06(12), 760.11 FS. Law Implemented 760.11 FS. History—New 12-14-93.

60Y-10.005 | RELATIONSHIP OF OTHER RULES

Other rules adopted by the Commission, namely Chapters 60Y-3, 60Y-4 and 60Y-5, F.A.C., shall be the rules governing a proceeding under this chapter to the extent that such other rules do not contradict a specific provision herein.

Rulemaking Authority 760.06(12), 760.11 FS. Law Implemented 760.11 FS. History—New 12-14-93.

FLORIDA ADMINISTRATIVE CODES | FCHR | WHISTLEBLOWER'S COMPLAINTS

CODES: 60Y-11.001 through 60Y-11.005

AS OF: 1/1/2004

60Y-11.001 | PURPOSE

These rules implement the statutory provisions which make it unlawful for any agency or independent contractor to take retaliatory action against an employee who reports to an appropriate agency violations of law on the part of a public employer or independent contractor under Sections 112.3187-.31895, F.S., inclusive; also known as the "Whistle-blower's Act." The Florida Whistle-blower's Act authorizes the Commission on Human Relations to investigate complaints of retaliation against state employees who disclosed information pursuant to the "Whistle-blower's Act" and provides for relief by administrative proceeding or civil action in court.

*Specific Authority 120.54, 760.06(12), 760.11 FS. Law Implemented 112.3187-.31895 FS. History–
New 1-1-04.*

60Y-11.002 | COVERED ENTITIES AND EMPLOYEES

State agencies, as defined in Section 216.011, F.S., or an independent contractor under contract to a state agency, and their employees.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New 1-1-04.

60Y-11.003 | WHO MAY FILE A COMPLAINT; CONFIDENTIALITY

(1) Any person aggrieved by a violation of Section 112.3187, F.S., may file a complaint with the Commission within 60 days of the alleged violation.

(2) All complaints filed with the Commission and all records and documents in the custody of the Commission which relate to and identify a particular person shall be confidential and shall not be disclosed by the Commission, except to the parties or in the course of a hearing or proceeding under Section 112.3187, F.S. Disclosure is authorized to any other agency of the state or any other unit of government of the state that has jurisdiction of the subject matter of the complaint or that has legal authority to investigate the complaint.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New 1-1-04.

60Y-11.004 | INVESTIGATORY PROCESS

(1) Within three (3) working days of a complaint being filed, the Commission shall acknowledge receipt of the complaint and send a copy of the complaint and any other preliminary information available concerning the disclosure of information under Section 112.3187, F.S., to the other parties named in Section 112.31895(1)(a), F.S. The other party shall also acknowledge receipt of such copies to the complainant within 15 days.

(2) Within 15 days of the date the complaint was received, the Commission shall review the information and determine whether temporary reinstatement is appropriate under Section 112.3187(9)(f), F.S. If it so determines, the Commission shall apply for an expedited order from the appropriate agency or circuit court for reinstatement pending issuance of the final order on the complaint.

(3) If the Commission determines that reasonable grounds exist to believe that a prohibited action has occurred, is occurring, or is to be taken, it may request the agency or circuit court to order a stay of any personnel action for 45 days which, upon request, may be extended for appropriate periods of time. The Commission shall further report its determination together with any findings or recommendations, including corrective action to be taken, to the agency head and may report such to the Governor and Comptroller. If, after 20 days, the agency does not implement the recommended corrective action, the Commission shall terminate the investigation. If the Commission finds, in consultation with the complainant, that the agency has implemented the corrective action, the Commission shall file such finding with the agency head, together with any written comments that the complainant provides, and terminate the investigation.

(4) Within 90 days of the date the complaint was received, the Commission shall provide the agency head and the Complainant with a fact-finding report that may include recommendations to the parties or proposed resolution of the complaint. The Commission shall then proceed to attempt to conciliate the complaint.

(5) If the Commission is unable to conciliate a complaint within 60 days of the issuance of the fact-finding report and its receipt by the parties, or if the Commission finds there are no reasonable grounds to believe that a prohibited personnel action has occurred, is occurring or is to be taken, the Commission shall terminate the investigation.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New 1-1-04.

60Y-11.005 | RELATIONSHIP OF OTHER RULES

Other rules adopted by the Commission, namely Chapters 60Y-3, 60Y-4 and 60Y-5, F.A.C., shall be the rules governing a proceeding under this chapter to the extent that such other rules do not contradict a specific provision herein.

Specific Authority 120.54, 760.06(12) FS. Law Implemented 112.3187-.31895 FS. History–New 1-1-04.

APPENDIX

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