



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Labor TITLE-SERIES: 42-18

RULE TYPE: Procedural Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: Board Organization and Meeting Procedures,
Hearing Procedures

CITE STATUTORY AUTHORITY: W. Va. Code §21-9-4 and §29A-5-1 et seq.

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

June 5, 2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Mitchell E Woodrum -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

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TITLE 42
PROCEDURAL RULE
DIVISION OF LABOR

SERIES 18
BOARD ORGANIZATION AND MEETING PROCEDURES; HEARING PROCEDURES

§42-18-1. General.

1.1. Scope. -- This procedural rule governs the West Virginia Board of Manufactured Housing Construction and Safety's regular meetings, special meetings, and emergency meetings, establishes procedures for disciplinary hearings conducted by the Board, and establishes procedures for an appeal by any person adversely affected by a decision of the Board.

1.2. Authority. -- W. Va. Code §21-9-4 and §29A-5-1 *et seq.*

1.3. Filing Date. -- May 2, 2023.

1.4. Effective Date. -- June 5, 2023.

§42-18-2. Application and Enforcement.

2.1. Application. -- This procedural rule applies to the Board, to the Board's licensees, to any person desiring to attend a Board meeting or to address the Board, and to any person adversely affected by a decision of the Board.

2.2. Enforcement. -- The enforcement of this rule is vested in the Board and the Division of Labor as authorized by the Board.

§42-18-3. Definitions.

3.1. "Act" means the West Virginia Manufactured Housing Construction and Safety Standards Act, W. Va. Code §21-9-1 *et seq.*

3.2. "Board" means the West Virginia Board of Manufactured Housing Construction and Safety and its authorized representatives.

3.3. "Cease and desist order" means an order issued by the Board or the Division of Labor pursuant to the provisions of the Act and 42 CSR 19 to an unlicensed person or entity who performs work for which a license is required or to a licensee who performs work outside of the licensee's classifications.

3.4. "Chair" means the Commissioner of the West Virginia Division of Labor who presides over Board meetings pursuant to W. Va. Code §21-9-3(a). If the Commissioner is unable to attend a Board meeting or must recuse himself or herself from presiding over a Board meeting, or any part of a Board meeting, the Deputy Commissioner of the Division shall serve as the Chair in the Commissioner's absence or recusal.

3.5. "Commissioner" means the Commissioner of the West Virginia Division of Labor and his or her authorized representatives.

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3.6. "Conflict of interest" means a circumstance or matter in which a Board member's personal or business interests may influence, or give the appearance of influencing, his or her responsibilities as a Board member to act with impartiality.

3.7. "Contested case hearing" means an administrative evidentiary hearing before the Board in which a specific party's rights, interests, privileges, or obligations are determined in accordance with W. Va. Code §29A-5-1 *et seq.*

3.8. "Days" means business days unless otherwise stated.

3.9. "Disciplinary hearing" or "hearing" means a proceeding in which the Board considers a person's alleged conduct, as set forth in W. Va. Code §21-9-12, §21-9-12a, or W. Va. Code St. R. §42-19-14.1, and based upon findings of fact and conclusions of law, for which the Board may impose a penalty permitted by W. Va. Code §21-9-12 or §21-9-12a or disciplinary action permitted by W. Va. Code St. R. §42-19-14.2.

3.10. "Division" means the West Virginia Division of Labor and its authorized representatives.

3.11. "Emergency meeting" means a meeting convened by the Board for the limited purpose of addressing an unexpected event, circumstance, or situation that requires immediate attention because it poses an imminent threat to public health or safety, an imminent threat of damage to public or private property, or an imminent threat of material financial loss or other imminent substantial harm to a public agency, its employees, or the members of the public which it serves.

3.12. "Entity" means a corporation, general partnership, limited liability company, limited liability partnership, limited partnership, sole proprietorship, or any other form of business organization permitted by law.

3.13. "Executive session" means a Board meeting, or part of a Board meeting, that is closed to the public and is held in accordance with the provisions of the Open Governmental Proceedings Act, W. Va. Code §6-9A-4.

3.14. "Hearing examiner" means an individual or attorney at law appointed by the Board to conduct a disciplinary or contested case hearing.

3.15. "Immediate family" means a person's parents, spouse, sibling, child or guardian, or their spouses.

3.16. "Licensee" means an individual or entity that has been issued a valid license to engage in manufactured housing activities in this state as a manufacturer, dealer, distributor, or contractor pursuant to the provisions of the Act and 42 CSR 19.

3.17. "Meeting" means the convening of the Board for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official Board action.

3.18. "Official action" means an action taken by the Board pursuant to its authority in the Act, this rule, or 42 CSR 19.

3.19. "Open Governmental Proceedings Act" means and includes the provisions of W. Va. Code §6-9A-1 *et seq.*

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3.20. "Regular meeting" means a meeting held by the Board at least once, or more frequently as needed, during each calendar quarter to consider all matters that may properly come before the Board, to conduct its business, and to attend to its responsibilities as set forth in the Act.

3.21. "Special meeting" means a meeting convened by the Board for the consideration of only those matters designated by a Board member or members requesting the meeting, unless the agenda is otherwise changed by a majority vote of the Board.

3.22. "Unlicensed person" means an individual or entity engaging in manufactured housing activities for which a license is required without a valid license.

3.23. "Valid license" means a current license issued by the Board to an individual or entity to engage in specified manufactured housing activities in this state as a manufacturer, dealer, distributor, or contractor pursuant to the provisions of the Act and 42 CSR 19.

§42-18-4. Board Organization; How Meetings are Conducted; Conflict of Interest.

4.1. Board members shall be appointed by the Governor and serve as provided by W. Va. Code §21-9-3.

4.2. The Commissioner shall serve as the Board's permanent Chair.

4.3. The Chair shall have the same rights and privileges as other Board members.

4.4. The Chair shall preserve order and conduct all proceedings according to accepted parliamentary procedure.

4.5. Board members may participate in regular, special, or emergency meetings by telephone or other electronic means that permit voice or video identification of the member.

4.6. The Chair may appoint ad hoc subcommittees as needed from the Board's members.

4.7. The Chair shall sign his or her name to the Board's official papers and actions.

4.8. A Board member may not participate in any matter pending before the Board in which he or she, or a member of his or her immediate family, is or was, either a director, officer, owner, partner, employee, member, or stockholder at any time in the preceding 12 months in any activity regulated by the Board.

4.8.1. When a Board member has a conflict of interest, he or she shall disqualify or recuse himself or herself from any participation in the matter, including all discussion and votes.

4.8.2. A record of the Board member's disqualification or recusal shall be noted in the meeting minutes.

§42-18-5. Regular Meetings.

5.1. The Board shall commence all regular meetings at 10:00 a.m. unless the time is otherwise changed by a majority vote of the Board.

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5.2. All regular meetings shall be conducted in the Division's offices unless changed by a majority vote of the Board.

5.3. The Commissioner shall notify Board members of meeting dates and agenda items at least five days prior to regular meetings.

§42-18-6. Special Meetings; Emergency Meetings.

The Board may convene special meetings or emergency meetings when called by the Chair or upon the written request of three Board members.

§42-18-7. Open Meetings; Notice of the Meeting; Agenda.

7.1. All Board meetings shall be open to the public, except for executive sessions as permitted by W. Va. Code §6-9A-4 of the Open Governmental Proceedings Act.

7.2. Any person who desires to address the Board during a meeting may do so provided that the person registers his or her intent to address the Board at least 15 minutes prior to the time the meeting is scheduled to commence.

7.3. The Chair, in his or her sole discretion, may cause a person to be removed from a meeting who is disruptive or otherwise interferes with the orderly conduct of the meeting.

7.4. Except in the event of an emergency meeting requiring immediate official action, the Board shall electronically file a notice of every regular or special meeting with the Secretary of State for publication at least five days prior to the date of the meeting as required by W. Va. Code §6-9A-3(e). Each notice shall state the time, place, and purpose of the meeting.

7.5. The Division shall post the agenda of a regular or special meeting on the Division's website at least five days before the meeting.

7.6. In the event of an emergency meeting requiring immediate official action, as required by W. Va. Code §6-9A-3(h), the Board shall electronically file a notice with the Secretary of State as soon as practicable prior to the meeting, provided that all Board members have been notified of the meeting by email or by telephone at least 24 hours in advance of the time scheduled for the commencement of the meeting. The notice filed with the Secretary of State shall state the time, place, and purpose of the meeting, and the facts and circumstances of the emergency.

§42-18-8. Quorum; Board Actions by Majority Vote Required; Vote By Proxy Prohibited.

8.1. A majority of the Board members constitutes a quorum.

8.2. A majority vote of Board members present at a meeting constitutes an official Board action, provided a quorum is present.

8.3. Absent Board members may not be permitted to vote by proxy.

§42-18-9. Minutes.

9.1. The Board shall provide for the preparation of written minutes of all its meeting.

9.2. The minutes shall include the following information:

9.2.1. The date, time, and place of the meeting;

9.2.2. The name of each Board member present and absent;

9.2.3. All motions, proposals, resolutions, and orders, the name of the Board member proposing and seconding the same, and their disposition;

9.2.4. The name of any Board member who disqualifies or recuses himself or herself from participation in a matter before the Board due to a conflict of interest; and

9.2.5. The results of all votes, and, upon the request of a Board member, the vote of each member, by name.

9.3. The minutes of each meeting shall be available to the public and posted on the Division's website after they have been approved by the Board.

9.4. The minutes of an executive session shall be limited to the disclosure of material that is not inconsistent with W. Va. Code §6-9A-4.

§42-18-10. Notices of Hearing; Service of Notices of Hearing; Cease and Desist Order Hearings; Disciplinary Hearings; Contested Case Hearings; Appeals.

10.1. The Board shall hold a hearing during its regularly scheduled meeting, or during a special or an emergency meeting, on all cease and desist orders issued, shall vote on whether to affirm or rescind the cease and desist order, and shall vote on the amount of the penalty to be imposed, if any.

10.1.1. The Board shall issue a written notice of hearing to each person who has been issued a cease and desist order at least 10 days prior to the date of the hearing.

10.1.2. The Board shall cause the notice of hearing to be served by email, by certified mail, return receipt requested, or by personal service.

10.1.3. A person who has been issued a cease and desist order has a right to attend the hearing in person, to be represented by an attorney at law licensed to practice in West Virginia, or to submit a written response to the Board for its consideration, and may offer testimony and submit relevant factual information.

10.1.4. Provided that the person to whom a cease and desist order has been issued receives proper notice of the hearing, the person's failure to attend the hearing shall not preclude the Board from taking action on the cease and desist order.

10.1.5. After a hearing on a cease and desist order, the Board may issue a reprimand or assess a monetary penalty.

10.1.6. In considering whether to assess a monetary penalty and the amount of the penalty, the Board may consider whether a person has been previously issued a cease and desist order, whether the

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cease and desist order was issued based on a complaint from a consumer, or any other facts and circumstances that the Board considers relevant.

10.1.7. The Board shall issue a written order setting forth its decision on the cease and desist order.

10.1.8. Within 30 days of receipt of the Board's order, any person adversely affected by the Board's order may appeal the order to the Intermediate Court of Appeals as provided in W. Va. Code §51-11-1 *et seq.*

10.2. When a licensee is alleged to have engaged in conduct that is a ground for discipline as set forth in W. Va. Code §21-9-12, §21-9-12a, or W. Va. Code St. R. §42-19-14.1, the Board shall hold a disciplinary hearing during its regularly scheduled meeting, or during a special or an emergency meeting.

10.2.1. The Board shall issue a written notice of hearing to a licensee who is alleged to have engaged in one or more of the Act's grounds for discipline at least 10 days prior to the date of the hearing.

10.2.2. The Board shall cause the notice of hearing to be served on the licensee by email, by certified mail, return receipt requested, or by personal service.

10.2.3. A licensee has a right to attend the hearing in person, to be represented by an attorney at law licensed to practice in West Virginia, or to submit a written response to the Board for its consideration, and may offer testimony and submit relevant factual information.

10.2.4. Provided that the licensee receives proper notice of the hearing, the licensee's failure to attend the hearing shall not preclude the Board from taking action against the licensee.

10.2.5. The Board shall consider the facts and circumstances of the licensee's conduct and any other information that the Board considers relevant, including the licensee's previous disciplinary history, if any, with the Board.

10.2.6. If the Board finds that the licensee has engaged in the prohibited conduct, the Board shall vote on the disciplinary action to be imposed on the licensee.

10.2.7. The Board shall issue a written order to the licensee, setting forth its decision on the disciplinary action to be imposed.

10.3. Within 60 days of receipt of the Board's disciplinary order, a licensee may submit a written appeal to the Board, stating the reasons or grounds for contesting the Board's order.

10.3.1. The Board may conduct the appeal hearing or may appoint a hearing examiner to conduct the appeal hearing.

10.3.2. The Board or hearing examiner shall conduct the hearing pursuant to W. Va. Code §29A-5-1 *et seq.*

10.3.3. The Board or hearing examiner shall provide written notice of hearing to the licensee, setting forth the date, time, and place of the hearing.

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10.3.4. The Board shall cause the notice of hearing to be served on the licensee by email, by certified mail, return receipt requested, or by personal service.

10.3.5. The hearing shall take place within 30 days of receipt of the licensee's appeal, unless the time frame is waived by agreement of the parties.

10.3.6. The Board shall be responsible for the preparation of an official record of the hearing, which shall include all testimony and exhibits.

10.3.6.a. The Board may engage a court reporter to make a record of the hearing.

10.3.6.b. Upon request to the Board by any party involved in the hearing, a copy of the transcript and exhibits shall be furnished to the requesting party at the requesting party's expense.

10.3.7. The Board and the licensee may be represented by an attorney at law licensed to practice in West Virginia, and may offer testimony and exhibits.

10.3.8. The Board shall issue a final order to the licensee concerning the appeal.

10.3.9. Within 30 days of receipt of the Board's order, a person adversely affected may file an appeal to the Intermediate Court of Appeals as provided in W. Va. Code §51-11-1 *et seq.*