

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

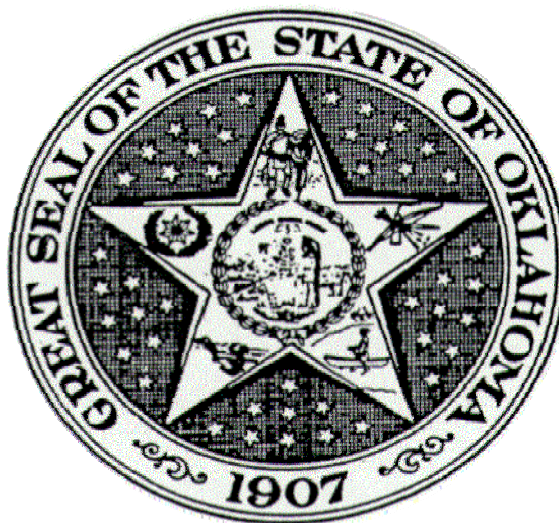
# **Oklahoma Department of Consumer Credit**

## **Oklahoma Administrative Code**

### **Title 160**

### **Chapters 1-3-5-35**

### **Rent To Own 2007 Administrative Rules**



*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

**Title 160**  
**2007 Rent To Own Administrative Rules**  
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## **TITLE 160. DEPARTMENT OF CONSUMER CREDIT**

### **CHAPTER 1. ORGANIZATION**

#### **160:1-1-1. Purpose**

The rules in this chapter provide the organizational framework for the Department of Consumer Credit.

#### **160:1-1-1.1. Department of Consumer Credit**

- (a) The Department is composed of the Administrator, the Deputy Administrator and such employees as are required and provided for by law [14A:6-506, 6-507 and 6-510].
- (b) The policy-making and governing authority of the Department is the Commission on Consumer Credit [14A:6-501]. The Commission schedules regular meetings monthly in Oklahoma City [14A:6-504]. The meetings are open to the public [25:303].

#### **160:1-1-1.2. Duties of Administrator**

- (a) The Administrator, as the head of the Department, is charged with the duty of administering and enforcing all provisions of:
- (1) the Uniform Consumer Credit Code beginning at §1-101 of Title 14A of the Oklahoma Statutes;
  - (2) the Oklahoma Rental-Purchase Act beginning at §1950 of Title 59 of the Oklahoma Statutes;
  - (3) the Oklahoma Pawnshop Act beginning at §1501 of Title 59 of the Oklahoma Statutes;
  - (4) the Precious Metal and Gem Dealer Licensing Act beginning at §1521 of Title 59 of the Oklahoma Statutes;
  - (5) the Credit Services Organization Act beginning at §131 of Title 24 of the Oklahoma Statutes;
  - (6) the Oklahoma Health Spa Act beginning at §2000 of Title 59 of the Oklahoma Statutes; ~~and~~;
  - (7) the Mortgage Broker Licensure Act beginning at §2081 of Title 59 of the Oklahoma Statutes; and,
  - (8) the Deferred Deposit Lending Act beginning at §3101 of Title 59 of the Oklahoma Statutes.
- (b) When the Administrator is absent or unable to act for any reason, then the Deputy Administrator shall perform the duties of Administrator [14A:6-507].

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

## CHAPTER 3. PROCEDURE

### 160:3-1-1. Purpose

The rules in this chapter provide the procedural framework for the Department of Consumer Credit and provide the necessary channels through which the public can gain information about the Department and its functions.

#### 160:3-1-1.1. Requests for information

(a) Requests for information may be made electronically, by telephone, by facsimile, by mail, or by personal appearance.

- (1) The Department's web page address is [www.okdocc.state.ok.us](http://www.okdocc.state.ok.us).
- (2) The Department's telephone numbers are (405) 521-3653 and (800) 448-4904.
- (3) The Department's facsimile number is (405) 521-6740.
- (4) The Department's address is 4545 N. Lincoln Boulevard, Suite 104, Oklahoma City, OK 73105.
- (5) The Department's regular business hours are 8:00 a.m. to 4:30 p.m.

(b) The Oklahoma Open Records Act beginning at §24A.1 of Title 51 of the Oklahoma Statutes sets forth the records that shall be open to any person for inspection, copying or mechanical reproduction.

(c) Where the request is for materials of which copies are not available and photocopying or reproduction by other means is required, such service shall be provided upon payment of the appropriate fee.

#### 160:3-1-1.2. Official actions

(a) **Official acts in writing and open to the public.** All official acts of the Administrator shall be evidenced by written record. All final orders, decisions, opinions, rules and other written statements of policy or interpretations formulated, adopted or used in the discharge of the functions of the Administrator shall be available for public inspection. Official action of the Administrator shall not be bound or prejudiced by any informal statement or opinion made by the Administrator or employees of the Administrator.

(b) **Official action to be taken only in real cases, controversies or issues.** Official actions shall only be taken on matters formally pending before the Administrator for determination, and then only if such matter be an actual case, controversy or issue.

(c) **Declaratory rulings.**

- (1) An interested person may file a petition for a declaratory ruling as to the applicability of any rule or order. The petition shall:
  - (A) be in writing;
  - (B) refer to the rule or order involved;
  - (C) state the nature and purpose of the declaratory ruling sought;
  - (D) state the fact situation with respect to which the declaratory ruling is sought; and,
  - (E) list the name and address of the person requesting the ruling.
- (2) The Administrator may require any petitioner to provide additional information. A petition is not considered final until all requested information has been submitted. The failure to provide additional information shall be deemed to be a withdrawal of the petition.
- (3) Official rulings may be made by and at the discretion of the Administrator as to the applicability of any rule or order. Generally, an official ruling will only be given if it is shown that an actual case, controversy or issue is in contemplation on the hypotheses presented and that unreasonable hardship, loss or delay would result if the matter were not determined in advance.
- (4) The declaratory ruling requested or refusal to issue such ruling shall be issued within thirty (30) workdays from receipt of the final petition, and shall be subject to review in accordance with the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes [75:307].

(d) **Rights not limited.** This section shall not be interpreted as limiting the right of the Administrator to cause matters to become formally pending and to perform any function or duty prescribed by law or rule.

#### 160:3-1-1.3. Petitions for rulemaking

(a) An interested person may file a petition requesting the promulgation, amendment or repeal of a rule [75:305]. The petition shall:

- (1) be in writing;
- (2) refer to the statutory section that authorizes the rulemaking action requested;
- (3) refer to the statutory section and the rule involved;
- (4) state the exact language requested;
- (5) state the purpose of the rule sought;
- (6) state a fact situation to which the rule sought will apply; and,
- (7) list the name and address of the person requesting the rule.

(b) The Administrator may require any petitioner to provide additional information. A petition is not considered final until all requested information has been submitted. The failure to provide additional information shall be deemed to be a withdrawal of the petition.

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(c) The petition shall be deemed to have been denied if rulemaking proceedings have not been initiated within thirty (30) calendar days from receipt of a final petition [75:305].

**160:3-1-1.4. Complaint form**

The complaint form is used by the Department to gather information regarding grievances. This information is used to contact licensees to seek resolutions. The information obtained in the course of any complaint shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state.

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

## CHAPTER 5. FEES

### 160:5-1-1. Purpose

The rules in this chapter set forth the fees charged by the Department of Consumer Credit relating to the various entities that are regulated by the Department and to open records.

### 160:5-1-2. Fees

Fees charged by the Department are as follows:

#### (1) Supervised Lenders

- (A) \$150.00 application fee for license, except that for any license granted after June 30, the fee shall be \$75.00 [14A:3-503(1)]
- (B) \$225.00 investigation fee for license [14A:3-503(1)]
- (C) \$150.00 annual renewal fee [14A:3-504(5)] and a \$50.00 late fee for a late application for renewal of a license received after December 1 [14A:3-504(5)]
- (D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, \$300.00. For any examination in excess of eight (8) hours, \$300.00 plus \$50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A \$50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. No licensee shall be assessed a total fee in excess of Six Hundred Fifty Dollars (\$650.00) for each licensed office in any calendar year. [14A:3-506(1)]
- (E) \$25.00 fee for a duplicate or amended license [14A:3-504(5)]
- (F) \$25.00 fee for a returned check [14A:3-506(10)]
- (G) \$25.00 late fee for any annual report received after May 1 [14A:3-506(5)]
- (H) All fees are non-refundable unless the Code or these rules require otherwise.

#### (2) Notifications

- (A) \$20.00 annual filing fee [14A:6-203(1)]
- (B) sellers, lessors, lenders and assignees shall pay the \$20.00 annual filing fee plus \$10.00 per \$100,000.00 of business conducted in Oklahoma [14A:6-203(2) and (3)]
- (C) All fees are non-refundable unless the Code or these rules require otherwise.

#### (3) Pawnbrokers

- (A) \$100.00 application fee for license, except that for any application filed after June 30, the fee shall be \$50.00 [59:1505(A)]
- (B) \$125.00 investigation fee for license [59:1505(A)]
- (C) \$100.00 annual renewal fee [59:1506(C)]
- (D) \$200.00 annual examination fee [59:1508(A)]
- (E) All fees are non-refundable unless the Act or these rules require otherwise.

#### (4) Rent-to-Own Businesses

- (A) \$100.00 application fee for license, except that for any application filed after June 30, the fee shall be \$50.00 [59:1953]
- (B) \$100.00 annual renewal fee [59:1953]
- (C) \$200.00 annual examination fee [59:1955(B)]
- (D) All fees are non-refundable unless the Act or these rules require otherwise.

#### (5) Health Spas

- (A) \$200.00 initial registration fee [59:2002(A)(4)]; this fee shall be applied without regard to the date of filing.
- (B) \$200.00 annual renewal fee [59:2002(A)(4)]
- (C) All fees are non-refundable unless the Act or these rules require otherwise.

#### (6) Credit Services Organizations

- (A) \$100.00 application fee for license [24:143(A)]; this fee shall be applied without regard to the date of filing.
- (B) \$100.00 investigation fee for license [24:143(A)]
- (C) \$100.00 annual renewal fee [24:143(A)]
- (D) \$200.00 annual examination fee [24:146(A)]
- (E) All fees are non-refundable unless the Act or these rules require otherwise.

#### (7) Precious Metals and Gem Dealers

- (A) \$50.00 application fee for license for dealers, \$25.00 application fee for license for each employee [59:1525(A) and (B)]; these fees shall be applied without regard to the date of filing.
- (B) \$50.00 investigation fee for license [59:1525(A)]
- (C) \$50.00 annual renewal fee for dealers, \$25.00 annual renewal fee for each employee [59:1526(A) and (B)]
- (D) All fees are non-refundable unless the Act or these rules require otherwise.

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

(8) Mortgage Brokers

- (A) \$750.00 application fee for a mortgage broker license; this fee shall be applied without regard to the date of filing [59:2085(A)(2)]
- (B) \$100.00 initial license fee for a mortgage broker license [59:2085(I)(1)]; this fee shall be applied without regard to the date of filing.
- (C) \$100.00 annual renewal fee for a mortgage broker license [59:2085(I)(1)]
- (D) \$25.00 late fee per day for a late application for renewal of a mortgage broker license received after December 31 and on or before January 31 [59:2085(D)]
- (E) \$50.00 annual license fee for a branch office license [59:2085(I)(2)]; this fee shall be applied without regard to the number of licenses sought or the date of filing.
- (F) \$50.00 inactive status fee for a mortgage broker license [59:2085(I)(3)]; this fee shall be paid for each year of inactive status [59:2085(E)]
- (G) Reactivation fees for a mortgage broker license [59:2085(F)]
  - (i) If a mortgage broker license has been inactive for a licensing year, then the reactivation fee is \$100.00.
  - (ii) If a mortgage broker license reactivation application is filed on or before June 30 of an inactive license year, then the reactivation fee is \$100.00.
  - (iii) If a mortgage broker license reactivation application is filed after June 30 of an inactive license year, then the reactivation fee is \$50.00.
- (H) \$10.00 change of address fee [59:2085(H) and (I)(4)]
- (I) \$50.00 initial license fee for a mortgage loan originator license [59:2085(I)(5)]; this fee shall be applied without regard to the date of filing.
- (J) \$50.00 annual renewal fee for a mortgage loan originator license [59:2085(I)(5)]
- (K) \$10.00 change of sponsor fee [59:2085(I)(6)]
- (L) \$150.00 license test fee; this fee is required for each test taken without regard to test results or the number of times that a person takes the test [59:2092(C)]
- (M) Test handbook fee equal to the actual cost of producing and distributing the handbook [59:2092(E)]
- (N) All fees are non-refundable unless the Act or these rules require otherwise.

(9) Deferred Deposit Lenders

- (A) \$250.00 application fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]
- (B) \$500.00 investigation fee for license; this fee is required of each applicant without regard to the number of licenses sought or the date of filing [59:3113(D)]
- (C) \$250.00 annual renewal fee; this fee is required of each applicant without regard to the number of licenses sought [59:3113(E)]
- (D) For any examination under one-half hour, no fee. For any examination over one-half hour up to eight (8) hours, \$300.00. For any examination in excess of eight (8) hours, \$300.00 plus \$50.00 per examiner per hour for each full hour, or pro rata for each partial hour, over eight (8) hours. A \$50.00 late fee shall be imposed when the examination fee is not received within thirty (30) days of the invoice date. [59:3114(A)]
- (E) \$25.00 late fee for any annual report received after May 1 [59:3114(F)]
- (F) All fees are non-refundable and non-abatable unless the Act or these rules require otherwise. [59:3113(D)]

(10) Other

- (A) \$0.25 fee per page for copies [51:24A.5(3)]
- (B) \$1.00 fee per copied page for a certified copy [51:24A.5(3)]
- (C) Reasonable search fee of the hourly rate of lowest paid employee capable of performing search when records are requested solely for commercial purpose or the request would clearly cause excessive disruption of the Department's essential functions [51:24A.5(3)]

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

## CHAPTER 35. OKLAHOMA RENTAL-PURCHASE ACT

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 160:35-1-1. Purpose

The rules in this chapter provide regulations relating to the licensure of rental-purchase lessors.

#### 160:35-1-1.1. Severability

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

#### 160:35-1-2. Definitions

The following words or terms, when used in this chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Rental-Purchase Act beginning at §1950 of Title 59 of the Oklahoma Statutes.

"Administrator" means the Administrator of the Department.

"APA" means the Administrative Procedures Act beginning at §250 of Title 75 of the Oklahoma Statutes.

"Days" mean calendar days. In computing any period of time for communications between a licensee and the Department or a court, the day of the event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day that the lessor, the Department or the office of the court clerk is closed.

"Department" means the Oklahoma State Department of Consumer Credit.

"Lessor" means a person who regularly provides the use of property through consumer rental-purchase agreements.

"Licensee" means a lessor that has been given authority by the Administrator to engage in the rental-purchase business within Oklahoma.

### SUBCHAPTER 3. LICENSING

#### 160:35-3-1.1. Licensure forms

##### (a) Application.

(1) The lessor license application shall be completed by the entity seeking a rent-to-own license and shall include all fees, forms and exhibits requested.

(2) The Administrator may require any applicant to provide additional information. An application is not considered final until all requested information has been submitted.

(3) If the applicant fails to comply with the application process, the application fee for license shall be returned to the applicant. An application that is not reviewed for any failure on the part of the applicant shall be deemed to be a withdrawal of the application.

(b) **License.** The license, executed under the hand of the Administrator and delivered, is evidence of a lessor's authority to engage in the rental-purchase business within Oklahoma

(c) **Renewal application.** The lessor license renewal application shall be completed by entities previously issued a license and shall be submitted with all fees and postmarked on or before the first day of December of each year [59:1952(B)]. As a courtesy, the Department may mail a notice of renewal to each licensee, but the failure to do so shall not relieve any licensee of the duty to renew timely or impair the authority of the Administrator against any licensee.

(d) **Delinquency notice.** If the license is not renewed, a delinquency notice shall be mailed to the licensee. The license shall expire on December 31 of the year in which the annual fee has been paid or fifteen (15) days after written notice of delinquency, whichever is later.

#### 160:35-3-1.2. Change of ownership

(a) Thirty (30) days before any change of ownership of any licensed lessor, the licensed owner shall notify the Administrator of the intent to change ownership, and the proposed new owner shall apply for a license. The Administrator shall notify the licensed owner and the proposed new owner when the new owner's license application has been granted. After the licensed owner surrenders its license and transfers the ownership interest, a license shall be issued to the new owner.

(b) If the change of ownership results in the closing of the existing location, then the licensed owner shall post an announcement on the front door listing the name, business telephone number and mailing and business addresses of the new owner. The announcement

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

shall be posted before the ownership interest is transferred and shall remain posted until the existing location closes. The licensed owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement.

(c) For purposes of this section, "change of ownership" means a change of an individual owner; a change of partners; a change of the service agent or a change of the principal parties in interest in a corporation.

#### **160:35-3-1.3. Ownership of more than one rental-purchase offices**

Each person who owns two (2) or more rental-purchase offices must separately license each such office [59:1952(A)].

#### **160:35-3-1.4. Moving or closing a location**

(a) At least thirty (30) days before the address of the location to which the license applies is changed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the address of the new location. The announcement shall remain on the front door until the location changes. In the change notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement and any license that needs to be amended.

(b) At least thirty (30) days before a location to which the license applies is closed, the owner shall notify the Administrator in writing. The owner shall post an announcement on the front door listing the business telephone number and mailing and business address of another location, if any. The announcement shall remain posted until the existing location closes. In the closing notice, the owner shall certify to the Administrator the date the announcement was posted and shall attach a copy of the announcement along with the license for the closing location.

### **SUBCHAPTER 5. RECORDS**

#### **160:35-5-1. Records and changes**

(a) Each licensee shall preserve and make available such books and records related to the rental-purchase business for four (4) years from the date of the initial transaction between the lessor and each lessee, or for two (2) years from the date of the final entry into such records is made thereon, whichever is later. The records shall be maintained for such time periods whether the lessor is currently licensed or previously licensed. Upon licensing, the licensee shall either designate a location or locations in Oklahoma where records shall be maintained or agree in writing to provide copies of records kept at an out-of-state location to the Department upon demand, and the records shall not be moved from the designated location unless the Administrator has given written approval for another location.

(b) Each licensee's records shall be maintained in compliance with the Act and these rules. Each licensee shall keep current the information required for licensing by reporting any changes or additions to the information previously submitted to the Department within thirty (30) days of such change or addition unless the Act or these rules require otherwise [59:1952(C)].

#### **160:35-5-2. Examinations**

(a) **Initiation.** The Administrator, or duly appointed representatives, shall conduct an examination of each licensee at least annually, and at such other times as deemed necessary.

(b) **Procedure.** Each licensee shall ensure that all records are promptly and reasonably available to be examined and copied.

(c) **Confidentiality.** The information obtained in the course of any examination shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state.

(d) **Noncompliance.** In case of failure to comply with the Administrator's examination processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator.

(e) **Violations.** If the examination finds any violations of the Act or these rules, the Administrator may initiate any authorized action.

(f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

### **SUBCHAPTER 7. ENFORCEMENT**

#### **160:35-7-1. Investigative proceedings**

(a) **Initiation.** Investigations and inquiries are originated upon request or complaint of the public or by the Administrator upon the Administrator's motion. Any person may apply to the Administrator to institute a proceeding in respect to any violation of law over which the Administrator has jurisdiction. The request or complaint shall be in writing, signed by the initiator and shall contain a statement setting forth the alleged violations of law and the name and address of the party or parties at issue in the complaint. No

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

forms or formal procedures are required in making requests or complaints. The initiator is not regarded as a party since the Administrator acts only in the public interest. The Administrator shall not take action when the alleged violation of law is merely a matter of private controversy and does not tend to adversely affect the public.

(b) **Procedure.** The Administrator encourages voluntary cooperation in investigations. The Administrator may invoke any or all of the compulsory processes authorized by law, including subpoenas and depositions. The Administrator may issue a notice to grant access to, for examination and copying, records of any party being investigated, and may require a party to file a report or to submit answers in writing to specific questions relating to any matter under investigation. Inquiries and investigations are conducted by representatives designated and duly authorized to exercise and perform the duties of their office in accordance with the laws of Oklahoma and the regulations of the Administrator, including the administration of oaths and affirmations, in any matter under investigation by the Administrator. Any party under investigation, compelled to furnish information or documentary evidence, shall be advised of the purpose and scope of the investigation.

(c) **Confidentiality.** The information obtained in the course of any investigation shall be confidential, except in civil or administrative proceedings conducted by the Administrator, or criminal proceedings instituted by the state.

(d) **Noncompliance.** In case of failure to comply with the Administrator's investigative processes, the Administrator may initiate any authorized action, including acts for enforcement by the Administrator.

(e) **Violations.** If the investigation finds any violations of the Act or these rules, the Administrator may initiate any authorized action.

(f) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford parties who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

### **160:35-7-2. Individual proceedings**

(a) **Allegations notice.** The Administrator shall notify the licensee of facts or conduct that warrant the intended action, and give the licensee an opportunity to show compliance with all lawful requirements for the retention of the license [75:314(C)(1)].

(b) **Violations.** Where the facts indicate that the licensee has not complied with all lawful requirements for the retention of the license, the Administrator may initiate any authorized action.

(c) **Informal disposition.** In order to avoid the expense and time involved in formal legal proceedings, it is the policy of the Administrator to afford licensees who have engaged in unlawful acts and practices an opportunity to enter into stipulations, agreed settlements, consent orders or defaults when it appears to the Administrator that such procedure fully safeguards the public interest. The Administrator reserves the right in all matters to withhold the privilege of an informal disposition. All stipulations, agreed settlements, consent orders or defaults shall be public records.

(d) **Hearing notice.**

(1) If the matter is to be set for hearing, the licensee shall be given twenty (20) days notice in writing.

(2) The notice shall:

- (A) state the time, place and nature of the hearing;
- (B) state the legal authority and jurisdiction for the hearing;
- (C) refer to the statutory sections and rules involved; and
- (D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(e) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(f) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

(g) **Order.**

(1) The Administrator shall issue an order within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the licensee and the Administrator.

(2) The order shall:

- (A) be in writing;
- (B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;
- (C) state conclusions of law;
- (D) state the effective date; and
- (E) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

(h) **Impair.** A suspension or revocation shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any lessee.

### **160:35-7-3. License surrender**

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

Any licensee may surrender any license by delivering it to the Administrator with written notice of its surrender. Such surrender shall not affect the liability of the licensee for acts committed before the surrender of the license. A surrender shall not impair or affect the obligation of any preexisting lawful contract between the licensee and any lessee.

#### **160:35-7-4. License reinstatement**

The Administrator may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked if the Administrator finds that the owner meets the licensing requirements then in effect and if the Administrator finds the circumstances for which the license was suspended or revoked no longer exists.

#### **160:35-7-5. Hearing procedure - emergency actions**

##### **(a) Hearing notice.**

(1) If the public health, safety, or welfare imperatively requires emergency action, such action, including the suspension of a license instant or a cease and desist instant, may be ordered pending the final outcome of proceedings instituted by the Administrator [75:314(C)(2) and 314.1]. In such cases, the Administrator shall notify the party of such action by certified mail with return receipt requested or personal delivery, and shall include in such notice an order of hearing. The hearing shall be held within ten (10) days of the notice unless postponed by written agreement between the party and the Administrator.

(2) The notice shall:

- (A) state the time, place and nature of the hearing;
- (B) state the legal authority and jurisdiction for the hearing;
- (C) refer to the statutory sections and rules involved; and
- (D) state the matters asserted briefly and plainly [75:309(B)(1) - (4)].

(b) **Hearing.** All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

(c) **Standard of proof.** The standard of proof is clear-and-convincing evidence. Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established.

##### **(d) Order.**

(1) The Administrator shall issue an order within thirty (30) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(2) The order shall:

- (A) be in writing;
- (B) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;
- (C) state conclusions of law;
- (D) state the effective date; and
- (E) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

#### **160:35-7-6. Circumvention prohibited**

Whenever a licensee has an administrative action taken against a license, the Administrator may deny the licensee's request to inactivate such license, to sell or transfer the accounts under such license or to take any other action to circumvent or negate the administrative action during the time of the action or during the pendency of the action if on appeal.

#### **160:35-7-7. Review of an order**

##### **(a) Rehearing, reopening or reconsideration.**

###### **(1) Application.**

(A) Any party aggrieved by a final order may apply for a rehearing, reopening or reconsideration within ten (10) days from the date of the order [75:317(A)].

(B) The application shall be in writing and assert a statutory ground for a rehearing, reopening or reconsideration.

(C) The statutory grounds are:

- (i) newly discovered or newly available evidence, relevant to the issues;
- (ii) need for additional evidence adequately to develop the facts essential to proper decision;
- (iii) probable error committed by the Department in the proceeding or in the decision such as would be ground for reversal on judicial review of the order;
- (iv) need for further consideration of the issues and the evidence in the public interest; or
- (v) a showing that issues not previously considered ought to be examined in order properly to dispose of the matter [75:317(A)(1) - (5)].

###### **(2) Application order.**

*Effective date of printing: 7-12-2006. There were no Rule changes in 2007*

(A) The Administrator shall issue an order granting or denying the rehearing, reopening or reconsideration within thirty (30) days from receipt of the application unless the period is extended by written agreement between the party and the Administrator.

(B) If the application is granted, the order shall set forth the grounds that justify it [75:317(B)].

**(3) Hearing.**

(A) If the rehearing, reopening or reconsideration is granted, the hearing shall be limited to the ground or grounds upon which it was ordered [75:317(D)].

(B) All parties shall be afforded the opportunity to respond and present evidence and argument on all points at issue [75:309(C)], and shall have the right to counsel [75:310(5)].

**(4) Rehearing order.**

(A) The Administrator shall issue an order from the rehearing, reopening or reconsideration within sixty (60) days from the last day of the hearing unless the period is extended by written agreement between the party and the Administrator.

(B) The order shall:

(i) be in writing;

(ii) state findings of fact that shall be limited to the evidence from the hearing unless the parties agree otherwise on the record;

(iii) state conclusions of law;

(iv) state the effective date; and

(v) be delivered in person or by certified mail with return receipt requested [75:309(H) and 312].

(5) **Tolling.** The period for judicial review shall run from the day the party is notified of the final disposition of the application if the application was filed timely [75:317(E)].

(6) **Prerequisite.** An application shall not be a prerequisite to secure judicial review [75:318(A)(3)].

**(b) District Court.**

**(1) Petition.**

(A) Any party aggrieved by a final order may file a petition in the district court of the party's resident county or the situs county of the property interest within thirty (30) days from the day the party is notified of the order [75:318(B)(2)].

(B) The petition shall be served upon the Department and all other parties of record, and proof of service shall be filed in the court within ten (10) days after the petition is filed [75:318(C)].

(2) **Stay.** The filing of a proceeding for review shall not automatically stay the final order, but the Department may stay the order or the court may or shall impose a stay in accordance with the APA [75:319(1)].

(3) **Record.** The Department shall transmit the record of its proceeding to the court within thirty (30) days after the service of the petition unless the court has granted an extension [75:320].

(4) **Review scope.** The review shall be confined to the record and done by the court without a jury [75:321].

(5) **Court order.** The court may affirm, set aside, modify, reverse or remand the agency order in accordance with the APA [75:322].

(c) **Supreme Court.** Any party aggrieved by a final judgment of a district court may appeal to the Supreme Court in the manner and time provided in civil actions [75:323].

**160:35-7-8. Civil and criminal actions**

This chapter shall not be interpreted as limiting the right of the Administrator to seek civil remedies or make criminal referrals for any violation of the provisions of the Code or these rules.