

THE HEARING GUIDE

THE HEARING PROCESS

The hearing process proceeds differently for appraiser cases than for real estate cases. The process is different because the language in the Ohio Revised provides for this difference.

APPRAISER CASES

In appraiser cases, the process usually begins with the delivery of an Ohio Division of Real Estate & Professional Licensing Notice of Opportunity for Hearing upon a respondent (one charged with violation of licensing law). The Notice of Opportunity for Hearing includes a document entitled, "Schedule A" that gives notice of the specific charges against the licensee.

If the respondent makes a request for hearing prior to the time set forth in the notice, a hearing examiner, a neutral party, will hear the case, including the evidence presented by the respondent. Afterward, the hearing examiner issues a report about the merits or non-merits of the charges. Following the issuance of the hearing examiner report, the case goes before the Ohio Real Estate Appraiser Board.

If the respondent makes no request for a hearing about the charges, the case goes for a "Goldman hearing¹" before a neutral hearing examiner. In this type of hearing, the State is given an opportunity to prove its case, but the respondent is not permitted to present evidence since the respondent waived the right to do so, by failing to timely deliver a request for hearing. After the Goldman hearing, a report about the merits or non-merits of the charges is prepared by the hearing examiner. The case then goes to the Ohio Real Estate Appraiser Board for its consideration.

¹ Goldman v. State Med. Bd. (1996), 110 Ohio App.3d 124 and Goldman v. State Med. Bd. (1996), 10th District Court of Appeals, Case No. 98AP-238.

REAL ESTATE CASES

In real estate cases, the hearing process usually begins with the delivery of an Ohio Division of Real Estate & Professional Licensing Notice of Hearing (“Notice”). The delivery is made to a respondent. The Notice of Hearing sets forth the date, time, and place of the hearing. The Notice includes a document entitled, “Schedule A” or a Notice of Citation; either of them gives notice of the specific matters to be addressed at hearing. A copy of the notice is provided to the investigator, the complainant(s), a neutral hearing examiner, an assistant attorney general, and any other attorney(s) involved in the case.

In a real estate case, after a hearing on the charges, a hearing examiner makes a recommendation to the Ohio Division of Real Estate & Professional Licensing’s Superintendent about the merits or non-merits of the charges. Once the Superintendent decides to accept or reject the recommendation in whole or in-part, the case then proceeds to the Ohio Real Estate Commission for consideration.

SUBPOENAS

Before the date of the hearing, the parties involved in a case may request that the Ohio Division of Real Estate & Professional Licensing send out subpoenas for witnesses to appear at the hearing, bring documents to the hearing, or both. In real estate cases, subpoenas are usually served via certified mail with return receipt requested, though they can be served by a county sheriff. (R.C. 4735.04.) In appraiser cases, subpoenas are usually served by a county sheriff. (R.C. 4763.04.) In all instances, requests for subpoenas should be made far enough in advance for them to be served, i.e., at least two weeks before hearing. If a witness, complainant, or a respondent receives a subpoena, they are required to appear at the hearing. If they do not appear, the Ohio Division of Real Estate & Professional Licensing may enforce the subpoena in a court of common pleas.

SUBPOENAED WITNESSES

Witnesses who are subpoenaed shall, after their appearance, be paid the fees and a mileage allowance as allowed in civil actions in Ohio courts of common pleas. (R.C. 4735.04 and R.C. 4763.04.) If two or more witnesses travel together in the same vehicle, the mileage allowance is paid to only one of those witnesses, but the witnesses may agree to divide the allowance among themselves in any manner. On the date of hearing, the witnesses who are entitled to fees and allowance will be asked to complete a W-9 and a Request for Payment of Witness Fees.

REQUEST FOR CONTINUANCES

Request for continuances must be made in writing. Usually a party's first request for continuance is granted. Also, continuances are routinely granted for good cause. Requests for continuances should be directed to the hearing examiner with the other parties carbon copied. The requests can be made via email, fax, or regular mail. A party requesting a continuance should seek the consent for the continuance of an opposing party before filing a request for the continuance.

ATTENDANCE AT THE HEARING

Respondents are always encouraged to attend hearings. Attendees, including non-parties to the case, are permitted to enter the hearing room, unless otherwise directed.

REPRESENTATION

At the hearing, the Ohio Division of Real Estate & Professional Licensing, a party, is represented by the Ohio Attorney General's office. Any complainant who brought the respondent's actions to the attention of the State may be represented by private legal counsel. Also, the respondent may be represented by private legal counsel or choose to present a defense without the benefit of legal counsel; however, the prudent course is for the respondent to consult with and be represented by counsel. If the respondent decides to proceed without counsel, the respondent will be asked to waive the right to counsel at hearing. Attorneys should always file notices of appearance as soon as possible with the Ohio Division of Real Estate & Professional Licensing by email, fax, or regular mail.

SETTLEMENT REQUESTS

At all times, settlement requests should be addressed to the Attorney General's office and not to the hearing examiner. That office can be reached at (614) 466-2980. The parties may discuss and settle a case at any time. Please note that the Ohio Division of Real Estate & Professional Licensing can only recommend settlement terms. Only the Ohio Real Estate Commission and the Ohio Real Estate Appraiser Board have the final authority to accept or reject any settlement offer.

RECORD OF THE HEARING

Pursuant to O.A.C. 1301:5-1-17 (in real estate cases) and O.A.C. 1301:11-1-09 (in appraiser cases), the hearing record shall be provided by use of audio electronic recording devices, unless a stenographic record is requested by one of the parties to the hearing. A request for a stenographic record must be made in writing upon the Ohio Division of Real Estate & Professional Licensing at least fifteen days prior to the scheduled hearing date. R.C. 119.09 also discusses the making of a hearing record.

COMMUNICATIONS

Communications about the substance or merits of the cases should only be discussed between counsel, or if a respondent is not represented, between counsel for the Ohio Division of Real Estate & Professional Licensing and the respondent. The hearing examiner will only address such issues in the presence of all parties to avoid ex parte communications.

EVIDENCE AT THE HEARING

Generally, except in a Goldman type hearing, discussed above, each party has an opportunity to present their side of the case, including calling witnesses, presenting exhibits, and cross-examining the other side's witnesses. In order to be well prepared for the hearing, each party who intends to present exhibits should mark them as exhibits and make at least three copies of each marked document to be presented. For the sake of simplicity: A respondent's exhibits could be marked as 1, 2, 3, etc. The Ohio Division of Real Estate and Professional Licensing's exhibits could be marked as A, B, C, etc. Joint

exhibits should be designated as such and with either a letter or number designation. Documents admitted into the record are kept by the hearing examiner until after the hearing examiner completes the hearing examiner report. Then, they are filed with the record of the hearing in the offices of the Ohio Division of Real Estate & Professional Licensing.

HEARING REPORT

At the conclusion of a hearing, the hearing examiner submits a report or copy thereof of findings of fact and conclusion of law to the Superintendent, the Board or the Commission, and the complainant(s), the respondent, and attorney(s) for the parties. Pursuant to R.C. 4735.51(E) (real estate cases), the hearing examiner submits the hearing report within twenty-five business days after the conclusion of the formal hearing. A similar statute specifying the time does not exist for appraiser case, but reports are issued in a timely manner.

OBJECTIONS TO THE HEARING EXAMINER REPORT

Pursuant to R.C. 119.09, a party may, within ten days of receipt of the hearing examiner report, file with the Ohio Division of Real Estate & Professional Licensing written objections to it. The Ohio Division of Real Estate & Professional Licensing may grant extensions of time to the party within which to file such objections.

REVIEW OF THE HEARING REPORT

Pursuant to R.C. 119.09, no recommendation of the hearing examiner shall be approved, modified, or disapproved by the Ohio Division of Real Estate & Professional Licensing until ten days after service of such report and recommendation. The Ohio Division of Real Estate & Professional Licensing may order additional testimony to be taken or permit the introduction of further documentary evidence. The recommendation of the hearing examiner may be approved, modified, or disapproved by the Ohio Division of Real Estate & Professional Licensing, and the order of the Ohio Division of Real Estate & Professional Licensing based on such report, recommendation, transcript of testimony and evidence, or objections of the parties, and additional testimony and evidence shall

have the same effect as if such hearing had been conducted by the agency. No such recommendation shall be final until confirmed and approved by the Ohio Division of Real Estate & Professional Licensing as indicated by the order entered on its record of proceedings. If the Ohio Division of Real Estate & Professional Licensing modifies or disapproves the recommendations of the referee or examiner it shall include in the record of its proceedings the reasons for such modification or disapproval.

Hearing examiner reports are subsequently considered at the next Ohio Real Estate Commission, if a real estate case, or the Ohio Real Estate Appraiser Board, if an appraiser case. Notice of the time and date of the hearing before the Commission or Board is sent-out by the Ohio Division of Real Estate & Professional Licensing.
