

DEPARTMENT OF STATE
HUMAN RELATIONS COMMISSION

Statutory Authority: 6 Delaware Code, Section 4506 (6 Del.C. 4506)
1 **DE Admin. Code** 1501 and 1502

FINAL

ORDER

1502 Fair Housing Regulations

A public hearing was held on September 11, 2008 to receive comments related to proposed amendments to the Fair Housing Regulations of the State Human Relations Commission ("Commission").

In accordance with 29 *Del.C.* Chapter 101 and 6 *Del.C.* §4616, the Commission proposed amendments to the Fair Housing Regulations. The changes are required to clarify hearing procedures and to comply with changes to "The Delaware Fair Housing Act" 6 *Del.C.* Chapter 46, and 31 *Del.C.* Chapter 30, and other items. These amendments if approved will become part of the Commission's Regulations.

Pursuant to the Administrative Procedures Act, 29 *Del.C.* § 10115, notice of the proposed amendments to the Regulations was published on August 1, 2008 in the Delaware Register of Regulations, Volume 12, Issue 2 as well as in the News Journal and Delaware State News on August 7, 2008.

Commission Chair Calvin Christopher conducted the public hearing on Thursday, September 11, 2008 at 7:00 p.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904.

Summary of the Evidence and Information Submitted

1.2: Addition of definition of "Minor"

"**Minor**" means a person under the age of eighteen years who has not been court emancipated.

7.7: Typographical corrections - "that" in the second line changed to "than" and "proceeding are" in the last sentence should be "proceedings are" such that 7.7 will read:

7.7 Any party may elect in writing to proceed for judicial determination rather than the administrative hearing before the Commission by notifying the Division within twenty (20) days of receiving the charge. If an election for judicial determination is made, the Respondent is not required to file an answer to the charge with the Division. The subsequent proceedings are subject to the rules of the Court.

11.5: Change "ten days" to "20 business days" such that 11.5 will read:

11.5 As provided in 6 *Del.C.* § 4510, a subpoena shall be issued upon written request by any Party, Staff or Panel member. Such requests shall be submitted no later than twenty (20) business days in advance of the hearing. Witnesses and documents requested in the subpoena must be clearly described in writing. The consequence of failure to request a subpoena in a timely fashion shall be subject to the discretion of the Panel.

11.6.2.1: A new provision was added such that 11.6.2.1 will read:

11.6.2.1 Testimony shall be under oath or affirmation administered by the court reporter. If a court reporter is not present, witnesses shall be sworn in by the Panel Chair.

Comments Concerning Fair Housing Regulations

Written Comment:

Public comments were received from three sources. All of the comments were made in writing, were timely received by the Commission, and were exactly the same. Comments were received from: Jamie Wolfe, Chair of

the Delaware Developmental Disabilities Council dated April 16, 2008; Robert D. Overmiller, Chairperson of the Governor's Advisory Council for Exceptional Citizens dated April 22, 2008; and, Daniese McMullin-Powell, Chairperson of the State Council for Persons with Disabilities dated May 1, 2008. Jamie Wolfe, Chair of the Delaware Developmental Disabilities Council provided additional written comments in a letter dated August 18, 2008.

17. In §1.0, move "Special Administration Fund" to appear after "Respondent" to match Title 6 Del.C. §4602.

18. Although the concept of "direct threat" usually appears in the context of tenancy [Title 6 Del.C. §4603(c)], it could arise in some other housing contexts as well. Consider substituting "occupancy" for "tenancy" at the end of §1.0, definition is not limited to "tenancy".

19. §10.3 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business days prior to hearing. The no-exceptions approach creates a conflict with §14.1.2.

20. §11.5 requires a request for subpoena to be submitted at least 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days.

21. The period is missing at the end of §14.1.2.

22. §15.0 appears to address only 2 of the 3 means of qualifying as "housing for older persons" in Title 6 Del.C. §4202(16). The HRC may wish to consider whether §15.0 should be amended to address Title 6 Del.C. §4602(16)a.

Verbal Comment:

None.

Recommended Findings of Fact based on the Evidence and Information Submitted

The following are findings based on the specific comments received.

17. In §1.0, move "Special Administration Fund" to appear after "Respondent" to match Title 6 Del.C. §4602.

The Committee made this change.

18. Although the concept of "direct threat" usually appears in the context of tenancy [Title 6 Del.C. §4603(c)], it could arise in some other housing contexts as well. Consider substituting "occupancy" for "tenancy" at the end of §1.0, definition is not limited to "tenancy".

The Commission rejected this comment as substituting "occupancy" for "tenancy" would expand the meaning beyond that contained in the Fair Housing statute.

19. §10.3 categorically precludes consideration of any motion not delivered 10 business days prior to hearing. This is too rigid. Literally, a party could not even file a motion for a continuance based on good cause 9 business days prior to hearing. The no-exceptions approach creates a conflict with §14.1.2.

The Commission accepted a middle ground so that Motions must be delivered at least 10 days before the hearing. In addition, the Commission agreed that whether or not motions untimely filed will be heard should be left to the discretion of the Hearing Panel. The second sentence was changed to, "Motions filed beyond this time limit may be considered at the discretion of the Panel."

20. §11.5 requires a request for subpoena to be submitted at least 20 business days prior to hearing. This is a long time. It would be less objectionable if there were a regulation establishing a long notice of hearing timeframe (e.g. minimum of 60 days). Otherwise, if a party were provided 30 calendar days notice of hearing, there would be no time to request a subpoena. A compromise would be 15 business days.

The Commission accepted this comment and changed the time to 20 days which will include Saturdays, Sundays and Holidays such that the time will be closer to the 15 business days suggested by the public commentators. The will have more time rather than less time to request subpoenas.

Because Section 14.1.1 does not contain the same provision concerning business days, the Commission added the following sentence to Regulation 14.1.1: "When the period of time prescribed or allowed is less than

eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation.” In addition, the proposed definition of “Business Days” has been removed.

21. The period is missing at the end of §14.1.2.

The Commission made this change.

22. §15.0 appears to address only 2 of the 3 means of qualifying as “housing for older persons” in Title 6 Del.C. §4202(16). The HRC may wish to consider whether §15.0 should be amended to address Title 6 Del.C. §4602(16)a.

The Committee did not accept this unnecessary change as 6 *Del.C.* §4602(16)a simply states that “housing for older persons means housing provided under any state or federal program that the Commission determines is specifically designed and operated to assist elderly persons.”

WHEREAS the State Human Relations Commission have voted to approve the proposed amendments to the Fair Housing Regulations;

IT IS THEREFORE ORDERED this 13th day of November, 2008, that the Amendments to the Fair Housing Regulations as attached as Exhibit A are approved and will become effective on December 10, 2008.

1502 Fair Housing Regulations

ADOPTED: APRIL 8th, 1993

EFFECTIVE: MAY 10th, 1993

Introduction

Pursuant to the authority granted to the Human Relations Commission under 6 **Del.C.** §4616 of the Delaware Fair Housing Act, and in accordance with the applicable requirements of The Administrative Procedures Act, the Human Relations Commission has adopted these rules and regulations to carry out the Delaware Fair Housing Act (The Act).

These regulations shall govern individual cases over which the Human Relations Commission and the Division of Human Relations have jurisdiction pursuant to 6 **Del.C.**, Ch. 46.

These procedural regulations are intended to carry out the Delaware Fair Housing Act prohibiting unlawful discrimination in housing, and to enable the Commission to achieve equal or greater protection, thereby allowing eligibility for certain Federal funding necessary to carry out this function as a substantially equivalent agency.

These rules and regulations are specific to the processing of complaints of unlawful housing discrimination under the Delaware Fair Housing Act. The Commission believes these rules and regulations are necessary to ensure the appropriate administration of the Fair Housing Act and in order that the commission will be regarded as a substantially equivalent agency.

1.0 Definitions

1.1 The following terms used in these regulations shall have the same definition as defined in the Delaware Fair Housing Act, Section 4602:

- Age
- Aggrieved persons
- Chairperson
- Commission
- Complainant
- Conciliation
- Conciliation Agreement
- Court
- Covered Multifamily Dwellings
- Discriminatory Housing Practice

Division
Dwelling
Familial Status
Family
~~Handicap or Disability~~
Housing For Older Persons
Marital Status
Panel
Panel Chair
Person
Residential Real Estate - Related Transaction
Respondent
To Rent
To Sell or sale
Special Administration Fund

1.2 As used in these Rules and Regulations, the following terms are defined:

“**Act**” means The Delaware Fair Housing Act as amended from time to time, 6 **Del.C.**, Ch. 46.

“**Charging Party**” means the same as "Complainant" (including in some instances the Commission).

“**Commissioner**” means a person duly serving as a member of the Commission.

“**Creed**” means any system of beliefs guiding or directing a person's behavior and actions including, but not limited to, an organized religion, sect, or philosophical society.

“**Direct Threat**” means an individualized assessment that is based on reliable objective evidence (e.g., current conduct, or a recent history of overt acts). The assessment must consider: (1) the nature, duration, and severity of the risk of injury; (2) the probability that injury will actually occur; and (3) whether there are any reasonable accommodations that will eliminate the direct threat. In evaluating a recent history of overt acts, a provider must take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat (i.e., a significant risk of substantial harm). In such a situation, the provider may request that the individual document how the circumstances have changed so that he no longer poses a direct threat. A provider may also obtain satisfactory assurances that the individual will not pose a direct threat during the tenancy.

“**Director**” means the administrator and head of the ~~Office~~ Division of Human Relations or person duly authorized to act as such.

“**Major Life Activity**” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, and speaking. This list of major life activities is not exhaustive.

“**Minor**” means a person under the age of eighteen years who has not been court emancipated.

“**National Origin**” means the native country of an individual or his ancestor(s).

“**Office**” means any one of the places of business of the Division of Human Relations.

“**Party**” means the Complainant(s) or Respondent(s).

“**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.

“**Reasonable Accommodation**” means a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny them an equal opportunity to

use and enjoy a dwelling. The Act makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling. To show that a requested accommodation may be necessary, there must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

“Religion” means a particular system of faith and worship recognized and practiced by a particular church, sect or denomination or other group of people.

“Request for Reasonable Accommodation” means whenever a resident or applicant for housing makes clear to the housing provider that a request is being made for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability. The request should include the type of accommodation that is being requested and, the need for the accommodation if the need for the accommodation is not readily apparent or not known to the provider, and an explanation of the relationship between the requested accommodation and the disability. The request need not be made in a particular manner or at a particular time or use any special words including but not limited to "reasonable accommodation." The request must be made in a manner that a reasonable person would understand to be a request for an exception, change, or adjustment to a rule, policy, practice, or service because of a disability. Housing providers must give appropriate consideration to reasonable accommodation requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

“Sex” means the basis of being male or female.

“Substantially Limits” means that the limitation is "significant" or "to a large degree."

“Verified” means that the person signing the complaint or answer has sworn or affirmed that the statements of facts in the document are true.

2.0 Filing a Complaint

- 2.1 Any aggrieved person or the Commission itself may file a written complaint. Minors may be represented by a parent or guardian for the purpose of bringing an action.
- 2.2 The Commission may initiate an investigation regarding compliance with applicable law whether or not a complaint is filed. Such investigations may be initiated by written statement showing justification signed by the ~~Commission Chair~~ Chairperson or such person as may be authorized by the Commission in accordance with applicable provisions of law. To the extent practicable, procedures in these Regulations shall apply to Commission-initiated investigations.
- 2.3 A complaint shall be filed at any one of the places of business of the Division of Human Relations.
- 2.4 Complaints filed with the Commission through the Division of Human Relations shall be in writing and deemed to be filed when received at the office in substantially completed form as required. A complaint referred to the Commission or the Division of Human Relations by a federal agency shall be deemed to be filed on the date it was taken or filed with such agency.
- 2.5 Form of Complaint
 - 2.5.1 All complaints should be filed on a Complaint Form provided by the ~~Office~~ Division.
 - 2.5.2 All complaints shall include the following data:
 - 2.5.2.1 Full name and address of Complainant(s).
 - 2.5.2.2 Full name and address of Respondent (s), if known, identifying whether each Respondent is an individual, partnership, corporation, etc.
 - 2.5.2.3 The alleged discriminatory housing practice(s). A concise statement of the facts thereof.
 - 2.5.2.4 The date (s) of the alleged discriminatory practice (s) and whether the practice(s) is/are of a continuing nature together with the duration of such continuing practice(s).
 - 2.5.2.5 The signature of Complainant or his/her attorney or, in the case of a minor, a parent, or guardian. Such signature shall be notarized as a verified complaint. The Division of Human Relations shall provide such notarial service without charge for persons coming into the office.

- 2.6 Complainants and Respondents must keep the Division of Human Relations informed of their current addresses and telephone numbers.

3.0 Answer to Complaint

Any written answer of Respondent shall be verified and filed with the Commission within twenty (20) days of receiving the complaint with proof of service showing a copy has been served on the Complainant.

4.0 Investigation of the Complaint

- 4.1 Investigation of complaints shall be conducted by the Division and commenced within thirty (30) days after filing the complaint, and may include: interviews, questionnaires, fact finding conferences, search of records, tests, identification of witnesses, development of statistics, other studies of alleged practices and patterns, or other work to gather relevant evidence.
- 4.1.1 Evidence sought by a subpoena issued in connection with an investigation must be relevant to the investigation, be adequately specified, and only cover a reasonable period of time.
- 4.2 Within thirty (30) days after a complaint is filed, the Division shall prepare questionnaires to be answered by the parties. Questions may be suggested by the parties for inclusion in such questionnaires. The answer to such questionnaires shall be submitted in writing to the Division within ten (10) business days after service of the questionnaire. Each party shall receive a copy of every other party's response to questionnaires.
- 4.3 The Division may schedule an informal fact-finding conference to be held with the Complainant and Respondent within thirty (30) days of the date the complaint is filed, unless it is impractical to do so.
- 4.4 Investigation of a complaint shall proceed according to the time limits set forth in the Act, to aid conciliation, to determine if reasonable cause exists to issue a charge and to prepare the case for hearing or Court.
- 4.5 At the end of each investigation, the Division shall prepare a final investigative report containing that information set forth in Section 4610 (b)(5) of The Act.

5.0 Conciliation and Agreement

- 5.1 The opportunity to conciliate or settle a case is available at any stage of the complaint process and may include a no-fault settlement opportunity prior to the onset of the investigation; the Complainant shall be advised of the opportunity when a complaint is filed and the Respondent when a complaint is served.
- 5.2 Conciliation shall be initiated upon request of Complainant or Respondent or recommendation of the Division or the Panel assigned to the case. Statements made in the course of conciliation can be disclosed only as provided under the Act.
- 5.3 An employee of the Division may serve as conciliator. A Commissioner, who is not assigned to the hearing Panel may be appointed by the Chairperson to serve as conciliator.
- 5.4 Any agreement achieved by conciliation shall be set forth in writing and shall specify the appropriate relief agreed upon by the parties. The following may be included:
- 5.4.1 binding arbitration to resolve the dispute; payment of damages;
 - 5.4.2 compensation or other monetary relief;
 - 5.4.3 payments made to the Special Administration Fund of the Human Relations Commission under 31
 - 5.4.4 monitoring of future activities;
 - 5.4.5 affirmative action measures;
 - 5.4.6 closing or terminating the case; and
 - 5.4.7 other relief agreed upon by the parties that will further the purposes of the Act.

Del.C., Ch. 30;

- 5.5 A conciliation agreement shall become effective when signed by all parties and the ~~Commission Chair~~ Chairperson or his or her designee.

- 5.6 Written and executed copies of such agreements shall be given to all parties. Conciliation agreements shall be publicly available unless the complainant and respondent otherwise agree and the Commission determines that disclosure is not required to further the purpose of the Act.
- 5.7 Conciliation Agreements shall be enforced according to the Act.

6.0 Administrative Closure

- 6.1 A case can be voluntarily terminated upon withdrawal of complaint by Complainant in writing prior to a response by the Respondent. However, after a response is filed by Respondent, a complaint may be withdrawn only with the consent of the Respondent or with approval by the Chairperson or his or her designee.
- 6.2 A case may be closed by the Division for lack of activity in the case for more than ninety (90) days, failure of the Complainant to cooperate, or loss of contact with the Complainant. Application shall be made in writing to the Director or Chairperson, stating the reason for the proposed closing.
- 6.3 All notices of case closing shall be served on all parties at the last addresses they provided to the Division and shall include a statement of the option to re-file the complaint as provided under that Act within the applicable statute of limitations.

7.0 Charge and Answer

- 7.1 Except in the case of complaints initiated by the Commission, the Director or his or her designee shall make a determination as to whether or not reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur and issue a charge on behalf of the aggrieved person or dismiss the complaint pursuant to Section 4610(f).
- 7.2 The time for conciliation specified by Section 4610(b)(1) of the Act ends with the filing of a charge or a dismissal under Section 4610(f)(1)(2). Any subsequent settlement negotiations are conducted between the Respondent, or his or her attorney, and the Deputy Attorney general assigned to represent the Division.
- 7.3 The charge shall consist of a short and plain statement of the facts that support a finding of reasonable cause by the Division and shall be served on the Respondent and the aggrieved person. The charge shall be based on the final investigative report and need not be limited to the facts alleged in the complaint.
- 7.4 An aggrieved person may intervene as a party in the proceeding with written notice to the Division and the Respondent.
- 7.5 Within twenty (20) days after service of the charge, a Respondent shall file an answer with the Division.
- 7.6 Failure to file an answer to the charge shall be deemed an admission by the Respondent of all matters of fact recited therein and may result in the entry of a default decision by the Commission.
- 7.7 Any party may elect in writing to proceed for judicial determination rather ~~that~~ than the administrative hearing before the Commission by notifying the Division within twenty (20) days of receiving the charge. If an election for judicial determination is made, the Respondent is not required to file an answer to the charge with the Division. The subsequent proceeding are subject to the rules of the Court.

8.0 Appointment of Panel

- 8.1 In the absence of an election to proceed with judicial determination pursuant to Section 4612 of the Act, the ~~Commission Chair~~ Chairperson or designee shall promptly appoint a panel of three (3) Commissioners, one of whom shall be designated as the Panel Chair.
- 8.2 The Panel shall have all the powers of the Commission with respect to matters before it.

9.0 Expedited Discovery after a Charge is Filed

- 9.1 After a charge is filed by the Division, parties may obtain discovery by depositions, written interrogatories, production of documents or things, and requests for admission. The expense of such discovery shall be borne by the party requesting the discovery.
- 9.2 Pursuant to the Fair Housing Act, Sections 4612(d) and (e), discovery in administrative proceedings shall be conducted as expeditiously as possible consistent with the need of all parties to obtain relevant evidence and the statutory requirement that a hearing be scheduled within one hundred twenty (120) days following the issuance of the charge unless impracticable.
- 9.3 The parties shall try to agree on procedures for discovery. Where the parties cannot agree, disputes shall be presented in writing, and the dispute shall be resolved by written decision of a Commissioner, appointed by the Chairperson, who will not be assigned to the hearing Panel.
- 9.4 Discovery need not be formal. For example, the parties need not have a professional stenographer for transcription of depositions, so long as a record is made in some fashion such as an audio or video tape. Parties shall be entitled to a copy of the record, in whatever form, at their own expense.

10.0 Pre-hearing ~~Production~~ Requirements

- 10.1 Copies or photographs of all exhibits, except exhibits intended solely for impeachment, must be delivered to the Commission at the office of the Division where the complaint was filed and to all parties at least ten (10) ~~business~~ days prior to the hearing. The hearing panel shall consider such exhibits without formal proof unless the parties and the Commission have been notified at least five (5) ~~business~~ days prior to the hearing that an adverse party intends to raise an issue concerning the authenticity of the exhibit.
 - 10.1.1 The Panel may refuse to receive into evidence any exhibit, a copy or photographs of which has not been delivered to the Commission and to an adverse party as provided herein. After commencement of the hearing, the Panel, in its discretion, may view or inspect exhibits or the location involved in a case.
 - 10.1.2 Exhibits submitted at Panel Hearings are to be kept by the Commission during the passage of time for judicial review under Section 4612(i) or until all relevant proceedings have been concluded, whichever is later. When such time has passed, the exhibits shall be returned to their proper owner or destroyed.
- 10.2 A written list of witnesses a party intends to call during a Panel Hearing, must be delivered to the Commission and all parties at least ten (10) ~~business~~ days prior to the hearing.
 - 10.2.1 The Commission Panel, may refuse to receive into evidence any testimony of a witness which has not been named on the witness list.
 - 10.2.2 A party requesting that a witness be subpoenaed to appear shall provide the address where service can be made as required under Rule 11.5. A witness is required to appear only if a subpoena has been issued.
- 10.3 All motions shall be delivered to the office of the Division of Human Relations where the complaint was filed and to all other Parties at least ten (10) days prior to the hearing. Motions filed beyond this time limit may be considered at the discretion of the Panel. Opposing Parties may file a response to the motion or may present opposition at the hearing. Replies to responses to motions are not permitted.

11.0 Hearings

- 11.1 The purpose of a hearing is to receive evidence, determine facts, and, after deliberation, render an adjudication in accordance with applicable law.
- 11.2 Notice of the hearing shall be sent to the parties pursuant to the Administrative Procedures Act (29 Del.C. Ch. 101).
- 11.3 No fewer than three (3) Commissioners shall constitute a quorum for all Commission Panel hearings. In the absence of any duly appointed Panel member the ~~Commission Chair~~ Chairperson or his or her designee shall be empowered to make a substitution without notice to the parties, provided the hearing has not yet begun.

- 11.4 The hearing shall be held in the county in which the discriminatory housing practice is alleged to have occurred or is about to occur.
- 11.5 ~~As provided in 6 Del.C. §4510 Aa~~ subpoena shall be issued upon written request by any party ~~to a proceeding of the Panel Staff or Panel member. Such requests shall be submitted no later than twenty (20) days in advance of the hearing. Such request shall be submitted by a party within a reasonable time in advance of the hearing or deposition.~~ Witnesses and documents requested must be clearly described in writing and include addresses for service. The consequence of failure to request a subpoena in timely fashion shall be at the discretion of the Panel.
- 11.5.1 Any individual or entity served with a subpoena may apply to the Panel to quash or modify the subpoena on any legal basis including but not limited to the following: that the subpoena does not adequately describe the evidence requested; is not relevant to the complaint; covers an unreasonable period of time; requires disclosure of a trade secret, confidential research, development or commercial information, privileged or other protected matter and no exception or waiver applies; subjects a person to undue burden or hardship; or requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute.
- 11.5.42 ~~Any~~ subpoenas may be served by the Division or a person 18 years of age or older who is not a Respondent or aggrieved person in the proceeding. A ~~The~~ return of service of each subpoena shall be promptly filed at the appropriate ~~Division~~ ~~Office~~.
- 11.5.23 Where a person fails or neglects to attend and testify or to produce records or other evidence in obedience to a subpoena or other lawful order, the Commission may petition the Superior Court for an order requiring the person to appear to produce evidence or give testimony. Failure to obey such order is punishable by the Court as contempt.
- 11.6 The hearing shall be conducted by the Panel Chair ~~in a setting designed to put the parties at ease~~. Individuals may be represented by counsel. A corporate entity must be represented by an attorney admitted to practice in Delaware. Every hearing shall be recorded by electronic instrument or court reporter.
- 11.6.1 All parties or their counsel shall be given the opportunity to make a brief opening statement prior to the introduction of any evidence in the case. The purpose of opening statements shall be to clarify the positions of the parties and the issues being presented for determination.
- 11.6.2 All evidence shall be presented by sworn testimony and exhibits at the hearing. The Panel Chair shall have full authority to control the procedure of a hearing, including, but not limited to the authority to call and examine witnesses, admit or exclude evidence, and rule upon all motions and objections subject to the following:
- 11.6.2.1 All witnesses shall be sworn by the court reporter. If a court reporter is not present, witnesses shall be sworn by the Panel Chair.
- 11.6.2.42 Formal rules of evidence ~~need~~ will not be strictly followed.
- 11.6.2.23 Examination shall be preserved and may be conducted by a party who represents himself or herself, an attorney admitted to practice in Delaware who represents a party, or the Commission Panel.
- 11.6.2.34 Witnesses may be sequestered at the discretion of the Commission Panel.
- 11.6.2.45 Evidence on behalf of the Complainant should ordinarily be introduced first, to be followed by the Respondent, then allowing rebuttal, if any.
- 11.6.2.56 The Panel may continue a hearing from day to day or adjourn it to a later date or to a different place by so announcing at the Hearing or by appropriate notice to all parties.
- 11.6.2.67 Following presentation of the evidence an opportunity shall be given to each party to make a closing statement.
- 11.6.2.78 The Panel may re-call the parties for further testimony if it is unable to reach a decision.
- 11.7 A written transcript shall be prepared, if and as required, on the written request of any party to the matter, provided that such party pays for the cost of preparing the transcript. The Division shall coordinate this process under State contract.

12.0 Decision and Orders

- 12.1 Deliberations of the Panel are non-public. The case decision may be rendered immediately following the Hearing or the Panel may reserve its decision to a later date and so advise the parties. Decisions shall be by majority vote of the Panel.
- 12.2 A copy of the Final Order shall be delivered by hand or mailed by Certified Mail, Return Receipt Requested, or by regular first class mail to the parties' last known address. In addition each party shall be notified of the right to seek reconsideration by the Panel.
- 12.3 Any party within ten (10) ~~business~~ days after mailing of the Final order may apply to the Panel for reconsideration briefly and distinctly stating the grounds therefor. Such application for reconsideration must show service on the opposing party.
- Within ten (10) ~~business~~ days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Panel shall promptly convene to consider such motion for reconsideration. The filing of such application shall not extend the time for judicial review under Section 4612(i).

13.0 Recovery of Attorney's Fees, Costs, and Expenses

- 13.1 Any party seeking to recover attorney's fees, costs, and expenses shall file a motion and affidavit detailing the time spent and fees incurred no later than the close of any hearing held before the Panel.
- 13.2 A motion filed by a Respondent shall state with particularity the improper purpose that would permit recovery of attorney's fees, costs, and expenses as provided pursuant to 6 **Del.C.** §4615.

14.0 Miscellaneous Provision

- 14.1 Time.
- 14.1.1 In computing any period of time prescribed or allowed by these Rules, by order of court, or by statute, the day of the act, event or default after 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 Saturday or Sunday, or other legal holiday, or other day on which the Division of Human Relations is closed, in which event the period shall run until the end of the next day on which the Division is open. As used in this rule, "legal holidays" shall be those days provided by statute or appointed by the Governor or the Chief Justice of the State of Delaware. **[When the period of time prescribed or allowed is less than eleven (11) days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation.]**
- 14.1.2 When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Commission for cause shown may at any time in its discretion.
- 14.1.2.1 with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or
- 14.1.2.2 upon motion made after the expiration of specified period permit the act to be done where the failure to act was the result of excusable neglect.
- 14.1.3 Whenever a party has the right to or is required to do some act or take some proceeding within a prescribed period after being served and service is by mail, 3 days shall be added to the prescribed period.
- 14.2 Service. Unless otherwise specifically required by the Acts or these regulations, service of complaints, answers, other pleadings, charges, motions, requests or notices shall be made according to this Rule.
- 14.2.1 For the initial complaint and any pleading which brings in a new party, service shall be sufficient if made according to Superior Court Civil Rule 4(f), Rule 4(h) for service under 10 **Del.C.**, §3104, or by certified mail, return receipt requested with the return receipt card signed by (1) the person to be served, (2) a person living with or working in the office of the person to be served, or (3) an agent authorized by appointment or by law to receive service of process.

- 14.2.2 Once jurisdiction over a party has been established, service may be by certified mail, return receipt requested, or by hand delivery or mail pursuant to Superior Court Civil Rule 5(b), or by some other means of notice generally recognized in the community with some confirmation of the notice having been sent such as by regular first class mail to the parties' last known address as evidenced by a certificate of mailing, by an express mail service with a receipt showing the notice was delivered to the express mail company, or by telecopier or fax with confirmation of transmission from the sender's machine.
- 14.3 These regulations shall be liberally construed to accomplish the purpose of the applicable laws.
- 14.4 These regulations shall be reviewed periodically by the Commission or its designee and the Director of the Division of Human Relations. Any recommendations for change shall be submitted in writing to the Commission for consideration at a regularly scheduled meeting.
- 14.5 The Administrative Procedures Act (29 Del.C., Ch. 101) shall provide the method by which these regulations may be amended.
- 14.6 Copies of these regulations shall be available during regular office hours at the Division of Human Relations or, upon request, by mail. A copy of the rules and regulations are also available on the Delaware Administrative Code website.

15.0 Regulations related to Housing for Older Persons.

- 15.1 Housing for persons age 62 or older.
 - 15.1.1 Housing that is designated for persons age 62 or older must be solely occupied by persons age 62 or older.
 - 15.1.2 No person under age 62 may move into a unit designated for persons age 62 or older even if it is also occupied by a person who is qualified by age. For example, if a person age 65 who lives in a unit designated for persons age 62 or older marries a person age 60, the person age 60 does not qualify to live in the unit.
 - 15.1.3 Units occupied by persons under age 62 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 62 or older.
 - 15.1.4 Units occupied by persons under age 62 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 62 or older.
- 15.2 Housing for persons age 55 or older.
 - 15.2.1 Housing qualifies under this section as long as at least 80% of the units are occupied by at least one person age 55 or older.
 - 15.2.1.1 In computing whether the 80% occupancy test is met, unoccupied units are not included in the calculation.
 - 15.2.1.2 Units occupied by persons under age 55 who are employees of the housing facility are not considered in determining whether housing qualifies as housing for persons age 55 or older.
 - 15.2.1.3 Units occupied by persons under age 55 who are necessary to provide a reasonable accommodation to residents with disabilities are not considered in determining whether housing qualifies as housing for persons age 55 or older.
 - 15.2.1.4 A unit that is temporarily vacant is deemed to be occupied by a person 55 or older if, within the preceding 12 months, the unit was occupied by a person 55 or older who intends to periodically return.
 - 15.2.1.5 Owners or managers must maintain records demonstrating that at least 80% of the units are occupied by at least one person age 55 or older. These records shall include biennial surveys made to confirm the ages of occupants by reliable documentation, such as drivers' licenses, passports, etc. Surveys shall be made available to the Division for inspection if a complaint of discrimination is filed.
 - 15.2.2 To qualify under this section, a facility or community must publish and adhere to policies and procedures that demonstrate the intent of the owner to maintain housing for persons age 55 or

older. The publication must be available for inspection at the management office during regular business hours.

~~15.2.3 To qualify under this section, a facility or community must have significant facilities and services designed to meet the physical or social needs of older persons. These can include periodic seminars, clubs, social activities, field trips, transportation, a local bus stop, homemaker or health services, maintenance, clubhouse, exercise equipment, recreation area, newsletters, etc. The Division will maintain a list of suggestions available for the convenience of providers of housing for persons 55 or older. The list is not all-inclusive.~~

15.3 Provisions under the Act regarding familial status and age are not applicable to qualified housing for older persons.

15.4 A child under eighteen (18) years of age may be a temporary resident in a unit of housing for older persons if the child's parent, guardian, or person acting as a parent, with whom the child just resided, is unable to care for the child by reason of death, serious injury or serious illness.

8 DE Reg. 591 (10/01/04)

12 DE Reg. 814 (12/01/08) (Final)