

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

§9.1. Application, Construction, and Definitions [~~Definitions and Interpretation; Severability~~]

§9.12. Default

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 9, concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings. Specifically, the amendments are adopted in §9.1, concerning Application, Construction, and Definitions (former title: Definitions and Interpretation; Severability); and in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7518).

The commission received no written comments on the proposal.

In general, the purpose of the amendments is to update and clarify certain contested case procedural rules applicable to the finance agencies (Texas Department of Banking, Texas Department of Savings and Mortgage Lending, and Office of Consumer Credit Commissioner).

Regarding §9.1, the purpose of the amendments is to clarify the rules applicable to different forums in which contested cases may be heard for individuals and entities regulated by the finance agencies.

Regarding §9.12, the purpose of the amendments is to clarify that the finance agencies may informally dispose of contested cases by default, as authorized by

Section 2001.056 of the Texas Government Code.

The following background information relates to the adopted amendments in §9.1, regarding contested case forums.

Some of the finance agencies have contracted with a licensed attorney to serve as an administrative law judge and conduct contested case hearings. This administrative law judge used by the Texas Department of Savings and Mortgage Lending (SML) and by the Office of Consumer Credit Commissioner (OCCC) elected to not renew the contract for the 2016 fiscal year. In order to provide an appropriate, timely, and transparent forum to persons subject to SML and OCCC regulation, these two finance agencies entered into contracts with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings.

In contrast, the Texas Department of Banking has contracted with another administrative law judge for this fiscal year. At present, contested cases for the Texas Department of Banking will continue to be governed by the rules contained in 7 TAC, Chapter 9.

With regard to the SML and the OCCC, the law requires that SOAH's rules of procedure control a contested case conducted by SOAH. In order to clarify the application of procedural rules in various forums, the adopted amendments have been made for persons regulated by the SML and

the OCCC whose cases may be heard by SOAH.

Additionally, should any of the finance agencies have the need to utilize a different contested case forum in the future, the amendments will provide the flexibility for contested cases to be heard by either a contracted administrative law judge or by SOAH.

The adopted amendments to §9.1 add new subsection (a), which states that the rules provided in Chapter 9 govern contested case hearings conducted by an administrative law judge employed or contracted by one of the finance agencies. The amendments to §9.1 further explain that contested case hearings conducted by SOAH are governed by SOAH's procedural rules.

The amendments also revise the title of the rule to provide a more appropriate description of the amended content of the rule. The new title of "Application, Construction, and Definitions" has replaced the former title of §9.1, "Definitions and Interpretation; Severability." In addition, the existing subsections have been relettered accordingly.

The following background information relates to the adopted amendments in §9.12, concerning Default in a contested case subject to the rules under Chapter 9, Subchapter B.

A contested case is a formal proceeding to determine the legal rights, duties, or privileges of licensees and applicants after an opportunity for an adjudicative hearing. The proceeding is governed by formal rules of procedure, which allow an agency to dispose of a case by default.

The finance agencies expend considerable resources preparing for and conducting contested case hearings where the respondent fails to appear at the hearing, or withdraws its request shortly before the hearing date. These costs are ultimately passed on to licensees and applicants in the form of higher license and renewal fees.

During the last session, the Texas Legislature expressed further support for disposing of cases by default according to the individual agency's rules. Therefore, the amendments to §9.12 further the Legislature's directive to conserve state resources where a party does not intend to proceed with a hearing.

The adopted amendments to §9.12 clarify the finance agencies' authority to informally dispose of a contested case by default. The amendments add a single sentence to the end of the existing rule. The additional sentence states that a finance agency may, as an alternative to conducting a hearing when a party fails to appear, informally dispose of the matter as permitted by Section 2001.056 of the Texas Government Code, without the necessity of a hearing. This amendment is consistent with Section 2001.056(4) of the Texas Government Code, as well as the Finance Commission's existing default procedures found within the current language of §9.12 (deeming the defaulting party to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense), and the default procedures of the State Office of Administrative Hearings found at 1 Texas Administrative Code §155.501.

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to

adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The amendments are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies. Texas Finance Code, §11.301 and §31.003(a)(5) authorize the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission. Texas Finance Code, §151.102(a)(1) authorizes the finance commission to adopt rules necessary to implement and clarify Chapter 151. Texas Finance Code, §154.051(b) authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Chapter 154.

Texas Finance Code, §11.302 authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Finance Code, §96.002(a)(2) authorize the savings and mortgage lending commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and mortgage lending commissioner or the department of savings and mortgage lending.

Texas Finance Code, §11.304 authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Texas Finance Code, Chapter 14 and Title 4. Texas Finance Code, §371.006 authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Texas Finance Code, Chapter 371. Texas Finance Code, §11.306 authorizes the commission to adopt

residential mortgage loan origination rules as provided by Chapter 156. Texas Finance Code, §180.004 authorizes the commission to adopt rules to enforce Chapter 180. Texas Finance Code, §393.622 authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 154, 156, 157, 180, 339, 393, 394, and Title 4, and Texas Occupations Code, Chapter 1956.

§9.1. Application, Construction, and Definitions [~~Definitions and Interpretation; Severability~~].

(a) This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code.

(b) [(a)] The same rules of construction that apply to interpretation of Texas statutes and codes, the definitions in Government Code, §2001.003, and the definitions in subsection (c) [~~(b)~~] of this section govern the interpretation of this chapter. If any section of this chapter is found to conflict with an applicable and controlling provision of other state or federal law, the section involved shall be void to the extent of the conflict without affecting the validity of the rest of this chapter.

(c) [(b)] The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Administrative law judge--The hearings officer employed by or contracted by an agency to conduct administrative hearings for the finance commission, the department of banking, the department of savings and mortgage lending, and the office of consumer credit commissioner.

(2) Agency--The finance commission, the department of banking, the department of savings and mortgage lending, or the office of consumer credit commissioner.

(3) Agency head(s)--Finance commission members, the banking commissioner, the savings and mortgage lending commissioner, or the consumer credit commissioner, or a designee if authorized by law.

(4) Applicant--A party seeking a license, registration, charter, or permit, or to amend its authority under an existing license, registration, charter or permit, or other action from an agency.

(5) Protestant--A party opposing an application for a license, registration, charter, permit, or other action filed with an agency who has paid any filing fees required by an applicable law.

(6) Respondent--A permittee, licensee, registrant, charter holder, or other party against whom a disciplinary proceeding is directed by an agency.

§9.12. Default.

If, after served with notice in compliance with §9.11 of this title (relating to Notice and Initiation of Proceedings), a party fails to attend a hearing, the administrative law judge may proceed in that party's absence

and, where appropriate, may issue a proposal for decision against that party. The proposal for decision shall be served upon the defaulting party and the party will be afforded the opportunity to contest the law as stated in the proposal for decision, but shall be deemed to have waived the right to contest the evidence, cross-examine the witnesses, and present an affirmative case or defense. In the alternative, an agency may informally dispose of the matter as permitted by §2001.056 of the Texas Government Code, without the necessity of a hearing.

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Part 1. Finance Commission of Texas

Chapter 4. Credit Card Surcharge Appeal Procedures

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Chapter 84. Motor Vehicle Installment Sales

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Chapter 88. Consumer Debt Management Services

Chapter 89. Property Tax Lenders

The Finance Commission of Texas (commission) adopts amendments to the following sections of Title 7 of the Texas Administrative Code: §4.105, concerning the rules applicable to a contested case hearing on a credit card surcharge violation occurring on or before August 31, 2013; §83.307, concerning the rules applicable to a regulated lender license application denial hearing; §83.3007, concerning the rules applicable to a credit access business license application denial hearing; §84.608, concerning the rules applicable to a motor vehicle installment sales license application denial hearing; §85.206, concerning the rules applicable to a pawnshop employee license application denial hearing; §85.304, concerning the rules applicable to a pawnshop license application denial hearing; §85.607, concerning the rules applicable to a pawnshop license revocation, suspension, and surrender hearing; §88.103, concerning the rules applicable to a consumer debt management services registration application denial hearing; and §89.307, concerning the rules applicable to a property tax lender license application denial hearing.

The commission adopts the amendments without changes to the proposed text as published in the October 30, 2015, issue of

the *Texas Register* (40 TexReg 7517, 7523, and 7535).

The commission received no written comments on the proposal.

In general, the purpose of these amendments is to clarify which rules of procedure are applicable to a contested case hearing for persons regulated by the Office of Consumer Credit Commissioner.

The commission has previously adopted rules of procedure applicable to a contested case hearing conducted by an administrative law judge employed by or contracted by a finance agency. *See*, 7 Tex. Admin. Code §9.1. The Office of Consumer Credit Commissioner (OCCC) has recently contracted with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings. SOAH applies its own procedural rules to all matters referred to SOAH, unless otherwise required by statute or rule. 1 Tex. Admin. Code §155.1(a).

Concurrent with these adopted rule amendments, the commission is adopting amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation;

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Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by SOAH. Amended subsection (a) in §9.1 as adopted will read: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Title 7, Part 1 (relating to the Finance Commission of Texas), contains one reference to the Chapter 9 rules of procedure concerning credit card surcharge violations regulated by the OCCC under Chapter 4. Section 4.105(b) identifies the rules of procedure applicable to a contested case hearing regarding a credit card surcharge violation occurring on or before August 31, 2013. The adopted amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Title 7, Part 5 (relating to the OCCC), contains eight references to the Chapter 9 rules of procedure. The adopted amendments replace these references with references to the rules of procedure made applicable by the amendment to §9.1(a) of Title 7, described earlier. Accordingly, the amendments will clarify that Chapter 9 rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and SOAH rules of procedure apply to a hearing conducted by SOAH.

Section 83.307(d) identifies the rules of procedure applicable to a regulated lender license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 83.3007(d) identifies the rules of procedure applicable to a credit access business license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 84.608(d) identifies the rules of procedure applicable to a motor vehicle installment sales license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.206(g) identifies the rules of procedure applicable to a pawnshop employee license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.304(e) identifies the rules of procedure applicable to a pawnshop license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 85.607 identifies the rules of procedure applicable to a pawnshop license revocation, suspension, and surrender

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hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 88.103(d) identifies the rules of procedure applicable to a consumer debt management services registration application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section 89.307(d) identifies the rules of procedure applicable to a property tax lender license application denial hearing. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Regarding the adopted changes for Chapter 85, Subchapter A, Rules of Operation for Pawnshops, §371.006 of the Texas Finance Code contains a provision requiring notice to licensees concerning rulemaking for the pawnshop industry. In order to comply with this statutory notice requirement, the delayed effective date for the amendments to §§85.206, 85.304, and 85.607 will be March 1, 2016.

The amendments are adopted under Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are further adopted under the authority of Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance

Code; Texas Finance Code, §11.306, which authorizes the commission to adopt residential mortgage loan origination rules as provided by Chapter 156; Texas Finance Code, §180.004, which authorizes the commission to adopt rules to enforce Chapter 180; and Texas Finance Code, §393.622, which authorizes the commission to adopt rules to enforce Chapter 393.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 14, 156, 180, 339, 393, and Title 4.

Title 7, Texas Administrative Code
Part 1. Finance Commission of Texas

Chapter 4. Credit Card Surcharge Appeal Procedures

§4.105. Contested Case on Credit Card Surcharge.

(a) (No change.)

(b) A contested case under this chapter is subject to Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~]. To the extent of any conflict between this chapter and Chapter 9, this chapter prevails.

(c) (No change.)

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Chapter 83. Regulated Lenders and Credit
Access Businesses

Subchapter A. Rules for Regulated Lenders

§83.307. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Subchapter B. Rules for Credit Access
Businesses

§83.3007. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application

was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Chapter 84. Motor Vehicle Installment Sales

§84.608. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

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Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

Division 2. Pawnshop License

§85.206. Processing of Application.

(a) - (f) (No change.)

(g) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. Also, upon a proper and timely protest pursuant to subsection (e) of this section, a hearing will be set. This hearing will be conducted within 60 days of the date of the appeal or protest unless the parties agree to an extension of time or the administrative law judge grants an extension of time pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision either approving or denying the license.

(h) (No change.)

Division 3. Pawnshop Employee License

§85.304. Processing of Application.

(a) - (d) (No change.)

(e) Hearing. When an application is denied, the applicant has 30 days from the date of the denial to request a hearing in writing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001 and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title~~]. When a hearing is requested following an initial license application denial, the hearing will be held within 60 days after a request for a hearing is made unless the parties agree to an extension of time. The commissioner will make a final decision approving or denying the license application after receipt of the proposal for decision from the administrative law judge.

(f) (No change.)

Division 6. License Revocation, Suspension, and Surrender

§85.607. Hearings.

Hearings held under this subchapter will be held in accordance with the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Administrative Hearing Process and Rules of Procedure in the Finance Commission Agencies, Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings (Chapter 9 of this title)~~], the Administrative Procedure Act, the Texas Rules of Civil Procedure, and the Texas Rules of Evidence.

Chapter 88. Consumer Debt Management Services

§88.103. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the applicant has 30 days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Chapter 89. Property Tax Lenders

§89.307. Processing of Application.

(a) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the rules of procedure applicable under §9.1(a) of this title (relating to Application, Construction, and Definitions) [~~Chapter 9 of this title (relating~~

~~to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings)~~], before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) - (f) (No change.)

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on December 18, 2015.

Michael Rigby
General Counsel
Office of Consumer Credit Commissioner