

§ 1720.145

- (1) To administer oaths and affirmations.
- (2) To issue subpoenas and orders requiring access.
- (3) To take or to cause depositions to be taken.
- (4) To rule upon offers of proof and receive evidence.
- (5) To regulate the course of the hearings and the conduct of the parties and their counsel.
- (6) To hold conferences for simplification and clarification of the issues or any other purpose.
- (7) To consider and rule upon as justice may require, all procedural and other motions appropriate in an adjudicative proceeding, including motions to open defaults.
- (8) To make and file decisions.
- (9) To certify question to a Departmental appeals officer.
- (10) To take any action authorized by the rules in this part or other appropriate action.

§ 1720.145 Disqualification of administrative law judge.

(a) When an administrative law judge feels disqualified from presiding in a particular proceeding, the administrative law judge shall withdraw therefrom by notice on the record and shall notify the Secretary of such withdrawal.

(b) Whenever any party believes that the administrative law judge should be disqualified from presiding, or continuing to preside in a particular proceeding, such party may file with the administrative law judge a motion that the administrative law judge be disqualified and removed. Such motion shall be supported by affidavits setting forth the alleged grounds for disqualification. If the administrative law judge does not agree to disqualification, the hearing shall proceed, and the question of fair hearing and due process may be raised on appeal.

§ 1720.150 Failure to comply with administrative law judge's directions.

Any party who refuses or fails to comply with a lawfully issued order or direction of an administrative law judge may be considered to be in contempt of the Secretary. The circumstances of any such neglect, refusal

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or failure, together with a recommendation for appropriate action, shall be promptly certified by the administrative law judge to the Secretary who may make such orders in regard thereto as the circumstances may warrant.

§ 1720.155 Ex parte communications.

(a) No person shall communicate with an administrative law judge or an appeals officer either directly or indirectly concerning any pending proceeding unless prior to or simultaneously with such communication its contents are disclosed in detail to all persons interested in the proceeding; nor shall an administrative law judge or appeals officer request or consider any such unauthorized ex parte communication. This prohibition shall not apply to a simple request for information respecting the status of the proceeding, nor to any ex parte communication expressly authorized by these rules.

(b) Any administrative law judge or appeals officer, who receives an ex parte communication which the judge knows or has reason to believe is unauthorized, shall promptly place the communication, or its substance, in the public file and shall inform all persons interested in the proceeding of its existence and general contents. Facts or arguments so communicated shall not be taken into account in deciding any matter in issue unless such facts or arguments shall be brought properly before the administrative law judge.

(c) Opportunity to answer allegations or contentions contained in an unauthorized ex parte communication may be afforded any interested person upon motion for leave to do so, wherever such leave will operate to assure a fair hearing or decision.

§ 1720.160 Form and filing requirements.

(a) *Filing.* Except as otherwise permitted, an original and three copies of all documents shall be filed with the Docket Clerk for Administrative Proceedings, Room 10278, Department of Housing and Urban Development, Washington, DC 20410, on official work days between the hours of 8:45 a.m. and 5:15 p.m.

(b) *Title.* Documents shall show clearly the title of the action, the docket number, and OILSR file number in connection with which they are filed.

(c) *Form.* Except as otherwise permitted, all documents shall be printed, typewritten, or otherwise processed in clear legible form and on good unglazed paper.

§ 1720.165 Time computation.

Computation of any period of time prescribed or allowed by the rules and regulations in this part, or by order of the Secretary or of an administrative law judge, shall begin with the first business day following that on which the act, event, development or default initiating such period of time shall have occurred. When the last day of the period so computed is a Saturday, Sunday, or national holiday, or other day on which the Department of Housing and Urban Development is closed, the period shall run until the end of the next following business day. Except when any prescribed or allowed period of time is 7 days or less, each of the Saturdays, Sundays, and national holidays shall be included in the computation of the prescribed or allowed period.

§ 1720.170 Service.

Notices, orders, processes, determinations and other documents required or permitted under these rules may be served as follows:

(a) *Upon the Secretary.* By personal delivery at the office, or by registered or certified mail addressed to the office of any of the following officials in the Office of Interstate Land Sales Registration: Administrator; Associate Administrator; Director, Office of Interstate Land Sales Registration: *Provided, however,* That during the pendency of a proceeding before the Secretary all pleadings, motions, notices or other documents shall be served in accordance with the terms of § 1720.160.

(b) *Upon any other person.* By delivery of a copy of the documents to the person to be served wherever the person may be found, or by leaving such copy at the person's office or place of business with a person apparently in charge thereof, or, if there is no one in charge or if the office is closed or if the

person has no office, by leaving a copy at the person's residence with some person of suitable age and discretion then residing therein, or sending a copy by registered or certified mail, return receipt requested, addressed to the person at the person's last known residence, or at the person's last known principal office or place of business. If the address of the residence, principal office, or place of business is unknown and cannot with due diligence be ascertained, service may be made by mail to any office at which the person to be served is known to be employed or by publication in the FEDERAL REGISTER.

(c) *Service on corporations, partnerships, associations, other entities.* Service may be made upon any corporation, partnership, business association or other entity by serving any officer, director, partner, trustee, agent for service or managing agent thereof. A managing agent, within the meaning of this subsection, is an agent having the principal managerial responsibility in connection with the regular operation of a distinct office or activity of the enterprise.

(d) *Service through attorney.* When a person other than the Secretary and the Secretary's staff shall have appeared of record in a proceeding, generally or specially, by attorney, all subsequent services of notices, orders, processes, and other documents in connection with such proceeding may be made upon such person by serving the attorney, except that subpoenas and other orders by which such person may be brought in contempt shall be served upon the person by one of the methods described in paragraphs (b) and (c) of this section. In any case, a copy of any document served on a client shall be sent to any attorney who has entered an appearance for that client. In such situations, it shall be sufficient proof of service to show that either the client or the attorney has received a copy of the document.

(e) *Proof of service.* Proof of service shall not be required unless the fact of service is reasonably put in issue by appropriate motion or objection on the part of the person allegedly served or other party. In such cases, service may be established by written admission