

Repeal Rea 201 through Rea 203, effective 9-17-08 (Document #9269-A), as follows:

~~PART Rea 201 ADOPTION OF RULES AND DECLARATORY RULINGS~~

~~— Rea 201.01 Petition and Adoption of Rules.~~

~~— (a) Any person may submit a petition to adopt, amend or repeal a rule to the executive director of the commission. The petition shall be limited to a single subject.~~

~~— (b) The executive director shall present the petition to the commission at the next scheduled meeting and the commission shall act on the petition, or if necessary, request further information.~~

~~— (c) The person submitting the petition shall be notified of the commission's decision within 30 days after submission of the petition.~~

~~— (d) The petition shall be granted if the petitioner can demonstrate the following:~~

~~(1) The proposed rule, amendment or repeal protects the public interest; and~~

~~(2) The proposed rule, amendment or repeal does not conflict with RSA 331-A.~~

~~— Rea 201.02 Public Hearings. A non-adjudicative public hearing shall be held:~~

~~— (a) When the commission proposes to adopt rules; or~~

~~— (b) At any other time when a hearing is not required by law where the commission determines that a public hearing will benefit the public, the commission, or both.~~

~~— Rea 201.03 Notice. Notice of the date, time and place for hearings shall be given as follows:~~

~~— (a) For rulemaking hearings held pursuant to RSA 541-A, by publication in the rulemaking register and by mail, commission newsletter or newspaper advertisement as required by RSA 541-A; and~~

~~— (b) For all other public hearings, by a method consistent with the requirements of RSA 91-A.~~

~~— Rea 201.04 Record. A record of the hearing shall be made by tape recording or some other method that will provide a verbatim record.~~

~~— Rea 201.05 Opening the Hearing. The presiding officer shall open the hearing by describing the purpose of the hearing and the procedures for providing testimony.~~

~~Rea 201.06 Testimony.~~

~~— (a) Any person who desires to submit written testimony at a non-adjudicative hearing shall do so to the presiding officer provided such testimony is signed and dated.~~

~~— (b) Any person who desires to testify orally at a non-adjudicative hearing shall submit her or his name, address, and person or entity that she or he is representing, if any, to the presiding officer.~~

~~— (c) The presiding officer shall terminate any comments, questions, or discussion from the public that are not relevant to the subject matter of the hearing.~~

~~Rea 201.07 Concluding the Hearing. When the presiding officer determines that no other persons wish to speak, she or he shall close the hearing.~~

~~Rea 201.08 Petition for Declaratory Rulings.~~

~~— (a) Any person may petition the commission for a declaratory ruling as to the applicability of any provision of RSA 331-A or of any rule or order of the commission by filing a written petition with the executive director of the commission.~~

~~— (b) The petition shall be considered at the next scheduled meeting of the commission, and the commission shall in every case issue its ruling in writing, with a copy to the petitioner.~~

~~PART Rea 202 FILING, FORMAT AND DELIVERY OF DOCUMENTS~~

~~— Rea 202.01 Date of Issuance or Filing. All written documents governed by these rules shall be rebuttably presumed to have been issued on the date noted on the document and to have been filed with the commission on the actual date of receipt by the commission, as evidenced by a date stamp placed on the document by the commission in the normal course of business.~~

~~— Rea 202.02 Format of Documents.~~

~~— (a) All correspondence, pleadings, motions or other documents filed under these rules shall:~~

~~(1) Include the title and docket number of the proceeding, if known;~~

~~(2) Be typewritten or clearly printed on durable paper 8 ½ by 11 inches in size;~~

~~(3) Be signed by the party or proponent of the document, or, if the party appears by a representative, by the representative; and~~

~~(4) Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding in compliance with Rea 202.03.~~

~~— (b) A party or representative's signature on a document filed with the commission shall constitute certification that:~~

~~(1) The signer has read the document;~~

~~(2) The signer is authorized to file it;~~

~~(3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and~~

~~(4) The document has not been filed for purposes of delay.~~

~~Rea 202.03 Delivery of Documents.~~

~~— (a) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by these rules shall be delivered by that party to all other parties to the proceeding.~~

~~— (b) All notices, orders, decisions or other documents issued by the presiding officer or commission shall be delivered to all parties to the proceeding.~~

Text added to Existing Rules shown in ***bold italics***
Text deleted from existing rules shown ~~struck through~~

Initial Proposal - 10-15-24 - 3

~~(c) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by certified mail, postage prepaid, in the United States mail, addressed to the last address given to the commission by the party.~~

~~(d) When a party appears by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.~~

~~PART Rea 203 TIME PERIODS~~

~~Rea 203.01 Computation of Time.~~

~~(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.~~

~~(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.~~

~~(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday or legal holiday.~~

Repeal Rea 204.01 through Rea 204.05, effective 8-16-17 (Document #12362), as follows:

~~PART Rea 204 COMPLAINT PROCEDURE~~

~~Rea 204.01 Complaint Form. All complaints shall be made by completing a commission provided "Complaint Form", effective June 2017, which shall be signed and sworn to in the presence of a notary public or justice of the peace.~~

~~Rea 204.02 Filing of Complaint. The complete complaint form described in Rea 204.01 shall be mailed or delivered to the commission office.~~

~~Rea 204.03 Notice of Complaint. The commission shall send a copy of the formal complaint filed pursuant to Rea 204.01 and Rea 204.02 to the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity against whom the complaint is made together with a blank original "Complaint Form Response", effective March 2017.~~

~~Rea 204.04 Response.~~

~~(a) Each licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity against whom a complaint is made shall respond to the complaint by completing an original "Complaint Form Response" form, effective June 2017. Said form shall be signed and sworn to in the presence of a notary public or justice of the peace.~~

~~(b) The response shall be filed with the commission within 30 days of receipt of the Complaint Form Response.~~

~~Rea 204.05 Investigation. All formal complaints shall be investigated pursuant to RSA 331-A:29.~~

Repeal Rea 204.06, effective 8-16-17 (Document #12362) and amended 1-23-20 (Document #12977-A), as follows:

~~Rea 204.06 Adjustment by Conciliation.~~

~~— (a) For purposes of this section “informal disposition” means resolution of the complaint without a hearing on the merits and with the consent of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, and approval of the commission, pursuant to RSA 331 A:29 and RSA 541 A:31, V (a) and (b).~~

~~— (b) The evaluating commission member and the commission administrator shall attempt to resolve the complaint informally pursuant to RSA 331 A:29, I and RSA 541 A:31, V.~~

~~— (c) When resolving a complaint informally, the commission shall:~~

~~(1) Inform the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, that any proposed settlement agreement is voluntary; and~~

~~(2) Inform the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity that the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, may be represented by counsel at an informal disposition at the expense of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity.~~

~~— (d) A proposed informal disposition of a complaint shall be presented to the commission for its consideration. The proposed settlement agreement shall be in writing, signed at a minimum by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, and the commission administrator, and be notarized.~~

~~— (e) A proposed settlement agreement shall at a minimum set forth the allegations made in the complaint, the conditions agreed upon, and the consequences of noncompliance.~~

~~— (f) The commission shall accept the proposed settlement agreement in whole or in part, reject the proposed settlement agreement or indicate that it would accept the proposed settlement agreement with specified conditions or amendments.~~

Repeal Rea 205.01 through Rea 205.06, effective 9-17-08 (Document #9269-A), as follows:

~~PART Rea 205 CONDUCT OF ADJUDICATIVE HEARING~~

~~— Rea 205.01 Notice.~~

~~— (a) Whenever the commission determines that a hearing is warranted, based on a preliminary showing of evidence giving rise to sufficient concern that a violation(s) may have occurred as presented by the evaluating commission member, a disciplinary hearing shall be conducted. A hearing shall then be scheduled and notice of the hearing shall be given to both parties at least 14 days prior to the scheduled hearing by certified mail, return receipt requested.~~

~~— (b) Such notice shall include the following:~~

~~(1) A factual summary of the complaint or charges as well as a statement of the legal authority under which the hearing shall be held;~~

~~(2) Those provisions of RSA 331 A and/or administrative rules on which the complaint is based;~~

~~(3) The time, date, place and nature of hearing;~~

~~(4) The fact that either party may be represented by counsel at the hearing before the commission;~~

~~(5) The fact that either party may have witnesses present;~~

~~(6) The fact that either party may provide evidence pursuant to RSA 541-A;~~

~~(7) A statement that each party has the right to have the commission provide a certified shorthand court reporter at the party's expense and that any such request shall be submitted in writing at least 10 days prior to the hearing; and~~

~~(8) A statement indicating the extent to which the Jus 800 will apply to that proceeding.~~

~~— Rea 205.02 Request for Continuance.~~

~~(a) Requests for granting continuances based on good cause shall be submitted, in writing, to the executive director at least 10 days prior to the hearing date. Good cause shall include the unavailability of parties, witnesses or representatives necessary to conduct the hearing, or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly, unless such unavailability is due to action or inaction on the part of the party.~~

~~(b) Any such requests submitted less than 10 days in advance of a hearing shall be accompanied by an affidavit demonstrating good cause for the late filing.~~

~~(c) Good cause for late filing shall include but not be limited to:~~

~~(1) Serious illness;~~

~~(2) Death of a family member; and~~

~~(3) Conflicting court schedules.~~

~~— Rea 205.03 RESERVED~~

~~— Rea 205.04 Presiding Officer; Appointment; Authority.~~

~~(a) All hearings shall be conducted for the commission by a natural person appointed or authorized to serve as a presiding officer.~~

~~(b) A presiding officer shall as necessary:~~

~~(1) Regulate and control the course of a hearing;~~

~~(2) Facilitate an informal resolution of an appeal;~~

~~(3) Administer oaths and affirmations;~~

~~(4) Receive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence;~~

~~(5) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer's own motion;~~

~~(6) Question any person who testifies;~~

- ~~(7) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI;~~
- ~~(8) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner; and~~
- ~~(c) Upon his or her own initiative or upon the motion of any party, suspend or waive any requirement or limitation imposed by this chapter upon notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the commission than would adherence to a particular rule or procedure.~~

~~Rea 205.05 Withdrawal of Commissioner.~~

- ~~(a) Upon his or her own initiative or upon the motion of any party, a commissioner shall, for good cause withdraw from any hearing.~~
- ~~(b) Good cause shall exist if a commissioner:~~
- ~~(1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship, within the third degree of relationship, with any party; or~~
 - ~~(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case; or~~
 - ~~(3) Personally believes that he or she cannot fairly judge the facts of a case.~~
- ~~(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.~~

~~Rea 205.06 Appearances and Representation.~~

- ~~(a) A party or the party's representative shall file an appearance that includes the following information:~~
- ~~(1) A brief identification of the matter;~~
 - ~~(2) A statement as to whether or not the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire; and~~
 - ~~(3) The party or representative's daytime address and telephone number.~~

Repeal Rea 205.07, effective 6-28-01 (Document #7519), as follows:

- ~~Rea 205.07 Prehearing Conference. Upon request by any party, or upon the initiative of the presiding officer or commission officials a prehearing conference shall be scheduled in accordance with RSA 541-A:31, V, to consider:~~
- ~~(a) Offers of settlement;~~
 - ~~(b) Simplification of the issues;~~
 - ~~(c) Stipulations or admissions as to issues of fact or proof by consent of the parties;~~
 - ~~(d) Limitations on the number of witnesses;~~

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Initial Proposal - 10-15-24 - 7

- ~~— (e) Changes to standard procedures desired during the hearing by consent of the parties;~~
- ~~— (f) Consolidation of examination of witnesses; or~~
- ~~— (g) Any other matters which aid in the disposition of the proceeding.~~

Repeal Rea 205.08 through Rea 205.15, effective 9-17-08 (Document #9269-A), as follows:

~~— Rea 205.08 Role of Agency Staff in Enforcement or Disciplinary Hearings. Unless called as witnesses, agency staff shall have no role in any enforcement or disciplinary hearing.~~

~~— Rea 205.09 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as a witness or granted party or intervenor status, a person who initiates an adjudicative proceeding by complaining to the commission about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.~~

~~— Rea 205.10 Postponements.~~

~~— (a) Any party to a hearing may make an oral or written motion that a hearing be postponed to a later date or time.~~

~~— (b) If a postponement is requested by a party to the hearing, it shall be granted if the presiding officer determines that good cause has been demonstrated. Good cause shall include the unavailability of parties, witnesses or attorneys necessary to conduct the hearing, the likelihood that a hearing will not be necessary because the parties have reached a settlement or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.~~

~~— (c) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the time of the hearing that is being postponed, the presiding officer shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as practicable.~~

~~— Rea 205.11 Failure to Attend Hearing. If any party to whom notice has been given in accordance with Rea 205.01 fails to attend a hearing, the presiding officer shall:~~

~~— (a) Declare that party to be in default; and~~

~~— (b) Either:~~

~~(1) Dismiss the case, if the party with the burden of proof fails to appear; or~~

~~(2) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case.~~

~~— Rea 205.12 Witnesses. All witnesses appearing before the commission shall testify under oath or affirmation. Oaths shall be administered by the presiding officer.~~

~~— Rea 205.13 Evidence. The introduction of evidence and testimony in adjudicative proceedings held before the commission shall comply with RSA 541-A:33.~~

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Initial Proposal - 10-15-24 - 8

~~— Rea 205.14 Standard and Burden of Proof. The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.~~

~~— Rea 205.15 Reopening the Record. At any time prior to the issuance of the decision on the merits, the presiding officer, on the presiding officer's own initiative or on the motion of any party, shall reopen the record to receive relevant material and non-duplicative testimony, evidence or arguments not previously received, if the presiding officer determines that such testimony, evidence or arguments are necessary to a full and fair consideration of the issues to be decided.~~

Repeal Rea 205.16, effective 8-16-17 (Document #12362), as follows:

~~— Rea 205.16 Hearing Procedures.~~

~~— (a) Disciplinary hearings shall be heard by a hearing panel consisting of at least 3 commission members. The hearing panel shall not include the commission member responsible for evaluating the complaint. The commission chairperson or acting chairperson shall act as the presiding officer.~~

~~— (b) The complainant, whether a member of the public or the commission's investigator or complainant's representative, shall open the proceedings through production of witnesses and exhibits, to be followed by those produced by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity complained against, or counsel of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity. Opportunity shall be afforded to either party to cross-examine each witness of the other party at the conclusion of the witness's direct testimony. Commission members shall, if necessary, ask questions of the witness during examination or subsequent to cross-examination, and shall request additional evidence as the hearing panel deems necessary to an understanding and determination of the issues.~~

~~— (c) After all evidence is submitted, the complainant, or complainant's representative, shall summarize first, followed by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity complained against. The hearing panel shall then retire with the facts to deliberate on the case and make its decision. Written memoranda and statements may also be filed with the hearing panel before the close of evidence.~~

Repeal Rea 205.17, effective 9-17-08 (Document #9269-A), as follows:

~~Rea 205.17 Record of the Hearing.~~

~~— (a) A verbatim record of all disciplinary hearings held by the commission shall be kept and made a part of the case file pursuant to RSA 541-A:31, VII.~~

~~— (b) If any person requests a transcript of the taped record, the commission shall cause a transcript to be prepared and, upon receipt of payment for the cost of the transcription, shall provide copies of the transcript to the requesting party.~~

~~— (c) At the request of a party to any proceeding involving disciplinary action before the commission, the record of the proceeding shall be made by a certified shorthand court reporter provided by the commission at the requesting party's expense. A request for a certified shorthand court reporter shall be filed at least 10 days prior to the hearing.~~

Repeal Rea 206 and Rea 207, effective 8-16-17 (Document #12362), as follows:

~~PART Rea 206 ADJUDICATIVE HEARING DECISIONS~~

~~— Rea 206.01 Orders.~~

~~— (a) Any decision by the hearing panel on matters considered at a disciplinary hearing shall be by majority vote. The decision shall be issued by the commission, in writing, in the form of an order.~~

~~— (b) Members of the commission shall not participate in a decision unless they have been present at the hearing.~~

~~— (c) An order shall include findings of fact and conclusions of law, and shall be based upon the preponderance of evidence presented at the disciplinary hearing or contained in the record.~~

~~— (d) After the close of the record, the commission shall dismiss the case if the allegations have not been proved by a preponderance of evidence.~~

~~— (e) After the close of the record, if the allegations have been proven by a preponderance of the evidence, the commission shall take disciplinary action pursuant to RSA 331 A:28, I a and II. In imposing a sanction, the commission shall take into account the presence of aggravating or mitigating circumstances.~~

~~— (f) The following shall be considered aggravating circumstances:~~

~~(1) Any prior disciplinary record of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity, including number, type, and timing of prior instances of misconduct;~~

~~(2) The state of mind of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity at the time of the offense;~~

~~(3) The unwillingness of the licensee accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity to cooperate with the commission;~~

~~(4) The purpose of the rule or statute violated;~~

~~(5) The potential harm to the public; and~~

~~(6) Multiple offenses in the same incident.~~

~~— (g) The following shall be considered mitigating circumstances:~~

~~(1) The absence of a prior disciplinary record;~~

~~(2) The state of mind of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity at the time of the offense;~~

~~(3) The willingness of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity to cooperate with the commission;~~

~~(4) Acknowledgement of wrongdoing by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity;~~

~~(5) The purpose of the rule or statute violated;~~

~~(6) The lack of potential harm to the public; and~~

~~(7) The lack of multiple offenses in the same incident.~~

~~(h) A copy of the commission's order shall be mailed within 2 days after issuance to:~~

~~(1) The place of business of the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity.; and~~

~~(2) The complainant, if any, and to each party in a transaction in which the commission determined the person was practicing unlawful brokerage activity.~~

~~Rea 206.02 Appeals. The action of the commission stated in an order may be appealed to the superior court by the licensee, accredited individual, institution, or organization, or person charged with practicing unlawful brokerage activity within 30 days after its issuance pursuant to RSA 331-A:28, III.~~

~~PART Rea 207 EXPLANATION OF RULES~~

~~Rea 207.01 Explanation of Rules.~~

~~(a) The commission shall provide, if requested by any person up to 30 days of the final adoption of any rule, an explanation of the rule to include:~~

~~(1) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and~~

~~(2) An explanation of why the commission overruled the arguments and consideration against the rule.~~

~~(b) The request shall be considered at the next scheduled commission meeting and the commission shall issue a response within 45 days after consideration.~~

Adopt Rea 201 to read as follows:

PART Rea 201 PRACTICE AND PROCEDURES

Rea 201.01 Rules of Practice and Procedure. The Plc 200 rules shall govern with regards to all procedures for:

- (a) The receipt and investigation of misconduct complaints;
- (b) The conduct of adjudicative and non-adjudicative proceedings;
- (c) Rulemaking submissions, considerations, and dispositions of rulemaking petitions;
- (d) Public comment hearings;
- (e) Declaratory rulings;
- (f) Explanation of adopted rules;
- (g) Voluntary surrender of licenses; and
- (h) Waivers.

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Initial Proposal - 10-15-24 - 11

APPENDIX I

Rule	Specific State Statute the Rule Implements
Rea 201 through Rea 207(repeal)	2023, 79:336
Rea 201	RSA 541-A:16, I(b)-(d)