

TITLE 2: NATURAL RESOURCES
DIVISION 4: LAND RESOURCES

§ 40110. Enforcement by Corporate Director.

(a) *Election of judicial determination.* When a charge is filed under 2 CMC § 40108, a complainant, a respondent, or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The election must be made not later than 20 days after the receipt by the electing person of service under 2 CMC § 40108(h) or, in the case of the Corporate Director, not later than 20 days after such service. The person making such election shall give notice of doing so to the Corporate Director and to all other complainants and respondents to whom the charge relates.

(b) *Hearing before a hearing officer in absence of election.* If an election is not made under subsection (a) of this section with respect to a charge filed under 2 CMC § 40108, the Corporate Director shall provide an opportunity for a hearing on the record with respect to a charge issued under 2 CMC § 40108. The Corporate Director shall delegate the conduct of a hearing under this section to a hearing officer to be selected by the parties, or if the parties cannot so agree, a hearing officer to be appointed by the Presiding Judge of the Commonwealth Superior Court. The hearing officer shall conduct the hearing on the island where the discriminatory housing practice is alleged to have occurred or to be about to occur.

(c) *Rights of parties.* At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses, and obtain the issuance of subpoenas under 2 CMC § 40109. Any aggrieved person may intervene as a party in the proceeding. The Commonwealth Rules of Evidence apply to the presentation of evidence in such hearing as they would in a civil action in the Commonwealth Superior Court.

(d) *Expedited discovery and hearing.*

(1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The Corporate Director shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

(e) *Resolution of charge.* Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) *Effect of trial of civil action on administrative proceedings.* A hearing officer may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress, this chapter, or another Commonwealth law, seeking relief with respect to that discriminatory housing practice.

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(g) *Hearings, findings and conclusions, and order.*

(1) The hearing officer shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the hearing officer is unable to commence the hearing within 120 days after the issuance of the charge, the hearing officer shall notify the Corporate Director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(2) The hearing officer shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the hearing officer is unable to make findings of fact and conclusions of law within such period, or any succeeding 60 day period thereafter, the hearing officer shall notify the Corporate Director, the aggrieved person on whose behalf the charge was filed, and the respondent, in writing of the reasons for not doing so.

(3) If the hearing officer finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such hearing officer shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent:

(A) In an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice;

(B) In an amount not exceeding \$25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice during the five year period ending on the date of the filing of this charge; and

(C) In an amount not exceeding \$50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subsections (g)(3)(ii) and (g)(3)(iii) of this section may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance, or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the charge filed under this chapter.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to a licensing or regulation by a governmental agency, the Corporate Director shall, not later than 30 days after the date of the issuance of such order (or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review):

(A) Send copies of the findings of fact, conclusions of law, and the order, to that governmental agency; and

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(B) Recommend to that governmental agency appropriate disciplinary action (including, where appropriate, the suspension or revocation of the license of the respondent).

(6) In the case of an order against a respondent against whom another order was issued within the preceding five years under this section, the Corporate Director shall send a copy of each such order to the Attorney General.

(7) If the hearing officer finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such hearing officer shall enter an order dismissing the charge. The Corporate Director shall make public disclosure of each such dismissal.

(h) *Review by Corporate Director; service of final order.*

(1) The Corporate Director may review any finding, conclusion, or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion, or order is so issued; otherwise the hearing officer's finding, conclusion, or order becomes final. The decision of the Corporate Director, upon review of the binding, conclusion, or order of the hearing officer shall be a final order of NMHC for the purpose of judicial review.

(2) The Corporate Director shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) *Judicial review.*

(1) Any party aggrieved by a final order for relief under this section granting or denying in whole or in part the relief sought may obtain a review of such order under 1 CMC § 9112.

(2) Notwithstanding such chapter, venue of the proceeding shall be on the island where the discriminatory housing practice is alleged to have occurred, and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) *Court enforcement of administrative order upon petition by Corporate Director.*

(1) The Corporate Director may petition the Commonwealth Superior Court for the enforcement of the order of the hearing officer and for appropriate temporary relief or restraining order, by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or restraining order.

(2) The Corporate Director shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the hearing officer.

(k) *Relief which may be granted.*

(1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may:

(A) Grant to the petitioner, or any other party, such temporary relief, restraining order, or other order as the court deems just and proper,

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(B) Affirm, modify, or set aside, in whole or in part, the order, or remand the order for further proceedings; and

(C) Enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the hearing officer may intervene in the Commonwealth Superior Court.

(3) No objection not made before the hearing officer shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(1) *Enforcement decree in absence of petition for review.* If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement --

(1) Which is filed by the Corporate Director under subsection (j) of this section after the end of such day; or

(2) Under subsection (m) of this section.

(m) *Court enforcement of administrative order upon petition of any person entitled to relief.* If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the Corporate Director has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the United States court of appeals for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) *Entry of decree.* The clerk of the Commonwealth Superior Court in which a petition for enforcement is filed under subsection (1) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Corporate Director, the respondent named in the petition, and to any other parties to the proceeding before the hearing officer.

(o) *Civil action for enforcement when election is made for such civil action.*

(1) If an election is made under subsection (a) of this section, the Corporate Director shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in the Commonwealth Superior Court seeking relief under this subsection.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under 2 CMC § 40111. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under 2 CMC § 40111 shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the

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civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) *Attorney's fees.* In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under 2 CMC § 40110, the hearing officer or the court, as the case may be, in its discretion, may allow the prevailing party a reasonable attorney's fee and costs.

Source: PL 11-38, § 13, modified.

Commission Comment: Subsection designations using capital letters changed to lower case roman numerals to comply with standard code formatting.