

Review Online Public Comments

440-RICR-10-00-1

General Rules and Regulations for Registration, Licensing and Filing of Claims

Supplemental Handout

440-RICR-10-00-1 Adoption

- Deletion of the rules and procedures for board meetings is very concerning, at best.
- The Board should have published procedures for its meetings and conform to the open meetings law. Sections 1.5 to 1.6 should not be removed and make the Board more transparent and more effective in its operation especially in light of the fact that legislation was passed this year to make some charges a felony. The agenda is essential for posting purposes to keep the public informed and should be part of the regulations promulgated. Conduct as well as ethics of the board is also important. All these details will assure due process and assure standardization on how meetings are conducted. These sections deleted in Title 440-Part: 8061 Contractors Registration & Licensing Board (REPEAL) need to be reinstated.
- Additionally, the records retention schedule and destruction of records should also be part of these regulations.

Procedures for Board meetings should not be included as part of the Rules and Regulations, since any mistake or deviation from the established procedures, regardless of its magnitude would constitute a violation of procedures. Utilizing a recognized set of rules of order for meeting procedures is a well-established alternative.

Record retention schedules and processes are established and regulated by the Rhode Island Secretary of State. The Board has no jurisdiction over these processes, therefore should not be publishing [them] within any of our documents.

1.1 Title 5 missing also APA-RIGL'S of 1956 as amended which allowed for the adoption. Not sure if this was a legal requirement but has been referenced in past as necessary.

The proposed revisions relate strictly to the Board's Rules and Regulations - Title 5 is statute and not within the Board's jurisdiction to modify.

1.2 Purpose: never mentions to become registered or licensed as a contractor.

This section authorizes the Board to establish the *provisions, qualifications and procedures for registering and licensing those disciplines governed by the Board*. This includes "contractors".

1.3 Definitions: need to add new definitions from recently enacted legislation in 5-65-27; consumer, elderly person, services, etc. Also, may want to define the new agency governing the Board, in section, pursuant to GL 5-84-3.

This information is included in statute – there is no need to reiterate in Rules and Regulations.

The use of the lettering in the definitions is somewhat confusing and should have a numbering system or use parenthesis with numbers to make it easier to reference and read.

The formatting of the revised Rules and Regulations is dictated by the Office of Regulatory Reform (ORR) and needs to be adhered to for all Rules and Regulations.

H, J & K: Claimant could be the board if it was presenting a violation against the contractor and should be reflected in these definitions. Board would not have a contractual relationship as defined only the owner.

A valid point, that the Board (staff members) need to be included as authorized representatives to provide testimony at hearings which relate to violations. This needs to be added to the proposed revisions.

N: Contract does not have to be in writing pursuant to state contract law and can be oral up to \$1,000.00.

The provision for *oral* contracts (under \$1,000) needs to be added in the proposed revisions.

O: Contractor definition in the law references 'who arranges' and is much clearer than the regulation. This should be in the definition.

This information is included in statute – there is no need to reiterate in Rules and Regulations.

X : Good standing should be clearly emphasizing the contractor otherwise opens door for other type of licenses nurses, real estate, etc.

As the Rules and Regulations clearly state which businesses and individuals the Board regulates, there is no reason to further indicate who those are.

KK: Residence should also include its appurtenance such as garages, decks etc., even though appurtenances is defined in another section.

This comment may be worthy of consideration, simply to add clarification to the Claims section of the Rules and Regulations.

Speculative is missing from this (definitions) section and should be included because it is in the general law and needs clarification in the regulations to make it clear.

Although it is defined in the RIGL, it may be worthwhile to add into the Rules and Regulations for clarification purposes.

C1A9: Information request should include educational course and status if required.

This is a viable comment that the Board may wish to consider adding.

1.5.4-A-4: third party testing agency if respondent is at fault must be paid by contractor.

This comment cites the wrong section – a provision is included in the section relating to the \$25 statement of claim fee.

1.5.5-A-5: except to enforce mechanics lien.

The same issues involved in ANY claim, includes mechanic lien claims. The existing provision is correct as stated.

1/5/5-A-6: One year on repair from date of completion.

Information relative to an implied additional one-year warranty on repairs should be added for clarification.

1.5.6.C1: Notice in emergency situations due to inclement weather, accident or death.

The Executive Director maintains discretion on what constitutes an emergency. It should not be necessary to include specifics.

1.5.6-F: Recordings of hearings is imperative and provides accuracy and transparency, both Board meetings as well as all hearings before hearing officers.

This comment may be worthy of consideration, simply to add clarification to the Administrative Hearings section of the Rules and Regulations.

1-6.1 B: Liens being placed by board has to be better documented here so proper action can take place making the collection of restitution and fines easier. Has to be elaborated to make sure a clear approach is in place to file liens against contractors or corporations.

Mechanics' Lines are also governed by other statutory provisions and the Board's authorization is limited. Additional language is not necessary; however, comments will be considered on what language should be added.

1.6.4 A: Tickets / Violations: This section needs clarity; violations do not have to be issued with tickets but could be result of other findings by the board such as insurance lapse or advertising.

As the majority of violations are issued through the office (not by tickets), language clarifying this should be added to this section.

- Removal of the violation penalty fee structure and replacing it with discretionary language can result in favoritism and discretionary assessment of fines and potential political influence. The fee schedule with the scale was established to remove those factors. Utilizing an internal policy rather than a regulation will make the penalty fee assessment much more political. It is strongly urged not to change this section, but to modify it to reflect the same standards for residential and commercial in order to have consistency. These changes were a result of a study commission comprised of members from the public, industry, board and legislators who spent a considerable amount of time discussing why they wanted a tiered structure and that assessing penalty fees should not be a judgment call.

The proposed revised fee schedule provides a more complete listing of violation than the previous version included within the existing Rules and Regulations.

Additionally, it removes the prospect of *favoritism and discretionary assessment* as the fees are set at incremental values, based upon the frequency of an individual's engagement in illicit behavior. The Board has previously voted to remove the distinction between fine assessments for commercial contractors vs. residential contractors.