# **02 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION**

**031 BUREAU OF INSURANCE**

**Chapter 355: RULES OF PRACTICE AND PROCEDURE GOVERNING ADJUDICATORY PROCEEDINGS HELD UNDER THE MAINE PROPERTY AND AUTOMOBILE INSURANCE CANCELLATION CONTROL ACTS**

**Section 1. Authority and Purpose**

The Superintendent has adopted these rules pursuant to 24-A M.R.S.A. §§ 212, 2920, and 3054, to establish procedural rules for the conduct of adjudicatory proceedings under the Maine Property Insurance Cancellation Control Act, 24-A M.R.S.A. §§ 3048-3056, and the Automobile Insurance Cancellation Control Act, 24-A M.R.S.A. §§ 2911-2924.

**Section 2. Scope**

These rules shall govern all adjudicatory proceedings held under the Maine Property Insurance Cancellation Control Act, 24-A M.R.S.A. §§ 3048-3056, and the Automobile Insurance Cancellation Control Act, 24-A M.R.S.A. §§ 2911-2924.

**Section 3. Definitions**

A. **Superintendent.** “Superintendent” means the Superintendent of Insurance.

B. **Bureau.** “Bureau” means the Bureau of Insurance.

C. **Party.** “Party” means:

(1) The policyholder who has requested relief;

(2) The insurer against whom relief has been requested;

(3) Any person participating in the adjudicatory proceeding as an intervenor pursuant to 5 M.R.S.A. §9054; and

(4) Any other person joined by order of the Hearing Officer because the person’s participation is necessary to the fair adjudication of the dispute between the policyholder and insurer.

D. **Hearing Officer.** “Hearing Officer” means:

(1) The Superintendent;

(2) Any Bureau employee, Assistant Attorney General or other person whom the Superintendent designates pursuant to 24-A M.R.S.A. §210; or

(3) Any person designated by the Superintendent as a presiding officer pursuant to 5 M.R.S.A. §9062(1) to issue a recommended decision.

**Section 4. Construction and Deviation from Rules**

A. **Liberal Construction.** These rules shall be liberally construed to secure just, speedy and economic determination of all matters pending pursuant to 24-A M.R.S.A. §§ 2920 or 3054.

B. **Variation from this Chapter.** In special cases, where good cause appears, the Hearing Officer may permit deviation from these rules or may deviate from them on his or her own motion, upon finding compliance therewith to be impracticable, inexpedient, or unnecessary.

C. **Limitation.** Nothing in this section shall permit the Hearing Officer to modify or deviate from any procedural requirement or deadline that is expressly set forth in a statute without provision for waiver or modification.

D. **Requests.** Except under extraordinary circumstances, all requests for deviation from procedural rules shall be in writing. The Hearing Officer may summarily reject oral requests made under this section.

**Section 5. Time**

A. **Time Calculations.** In computing any period of time prescribed or allowed by these rules or by order of the Superintendent, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, a legal holiday, or a day on which the offices of the Bureau are closed, in which event the period runs until the end of the next business day. Unless some other time is clearly specified in writing, all time periods governed by this Subsection shall end at 5:00 p.m. on the last day. Where the time period within which an action must be taken is specified by statute, the terms of the statute control and the provisions of this paragraph shall not apply.

B. **Enlargement of Time.** When by these rules or by a notice or order issued by the Superintendent, an act is required or allowed to be done at, before, or within a specified time, the Hearing Officer for cause shown may at any time, in his or her discretion, with or without request, motion or notice, order the period enlarged before the expiration of the period originally prescribed or extended by a previous order, provided that time limits or periods that apply to other persons affected by the resulting change or delay are also adjusted appropriately. Requests for enlargement of time that are filed after expiration of the period originally prescribed or as extended by previous order will be granted only in exceptional circumstances.

**Section 6. Hearings**

A. **When Held.** Hearings will be held when requested in accordance with 24-A M.R.S.A. §§ 2920 or 3054. Hearings shall be requested by submitting a written request to the Bureau or by orally conveying the request to Bureau staff. A hearing request is deemed to have been filed only when the request is received at the Bureau during the hours which the Bureau is open. Hearing requests shall be filed only by a named insured, an attorney representing a named insured, or if the named insured is deceased, the representative of the estate of the named insured.

B. **How Held.** All hearings shall be held before a Hearing Officer. All hearings shall be conducted in an impartial manner and in accordance with Chapter 375, Subchapter IV of the Administrative Procedure Act codified at 5 M.R.S.A. §§ 9051-9064. The Superintendent may designate a new Hearing Officer to replace the Hearing Officer originally designated to hear a matter. The Superintendent may also designate a temporary Hearing Officer to act upon a specific motion, should the designated Hearing Officer be unavailable.

C. **Purpose of Hearing.** The purpose of the hearing is limited to establishing the existence of the proof or evidence used by the insurer in its reason for cancellation or intent not to renew.

D. **Rights of Parties.** Unless limited by stipulation or order or unless limited by the Hearing Officer to prevent repetition or unreasonable delay in the proceeding, every party shall have the right to present evidence and argument at the hearing on all relevant issues. Each party shall have the right to call and examine witnesses and make oral cross-examination of any person testifying.

**Section 7. Burden of Proof**

A. **Burden of Proof Generally.** The insurer bears the burden of proving by a preponderance of the evidence the existence of and statutory grounds for the reason that was included in the notice received by the insured of cancellation or intent not to renew a homeowner or automobile policy.

B. **Nonrenewal of Homeowner Policies.** In proceedings for the proposed nonrenewal of homeowner policies, the insurer must prove that the reason given in the notice of intent to nonrenew is either:

(1) Based upon a ground for cancellation permitted by 24-A M.R.S.A. §3049; or

(2) Both (a) a good faith reason; and (b) related to the insurability of the property that is the subject of the policy.

A statement by the insurer that the risk does not meet the insurer’s underwriting guidelines alone is not sufficient proof or evidence to meet the insurer’s burden of proof. Furthermore, the failure of a risk to meet the insurer’s underwriting guidelines for the subject property insurance policy does not by itself make that risk “uninsurable” within the meaning of 24-A M.R.S.A. §3049(5) or otherwise.

C. **Cancellation of Homeowner or Automobile Policies.** In proceedings for the proposed cancellation of homeowner or automobile policies, the insurer must prove that the reason given in the notice of cancellation is both:

(1) For homeowner policies, a permitted cancellation ground under 24-A M.R.S.A. §3049 or, for automobile policies, a permitted cancellation ground under 24-A M.R.S.A. §2914; and

(2) Included as a basis for cancellation under the terms of the subject policy.

The failure of a risk to meet the insurer’s underwriting guidelines for the subject property insurance policy does not by itself make that risk “uninsurable” within the meaning of 24-A M.R.S.A. §3049(5) or otherwise.

**Section 8. Evidence**

A. **General Requirements.** The evidence presented shall be limited to matters related to the insurer’s reason for cancellation or nonrenewal.

B. **Statements and Testimony.** All witnesses shall swear that their testimony is wholly truthful or shall make a solemn affirmation to that effect. Any person submitting a statement in lieu of appearance at the hearing shall attest to the truthfulness of the contents.

C. **Written evidence; exception.** No sworn written evidence shall be admitted unless the author is available for cross-examination or subject to subpoena, except for good cause shown. No unsworn statement or accompanying evidence will be admitted.

D. **Witness Testimony by Telephone.** The Hearing Officer, in his or her discretion, for good cause shown, may allow witnesses to present direct testimony over the telephone, provided that any request to provide direct testimony over the telephone is made pursuant to the requirements of Section 10(A) of this rule at least five (5) business days in advance of the date of the scheduled hearing, except for good cause shown.

E. **Evidence in Lieu of Party Appearance.** Any evidence submitted in lieu of a party’s appearance at the hearing must be received by the Bureau by 5:00 p.m. on the business day before the day of the scheduled hearing, except for good cause shown. Submissions received after 5:00 p.m. on the business day before the day of the scheduled hearing will not be admitted into evidence except for good cause shown. Any such evidence must be accompanied by a properly notarized statement that the evidence is wholly truthful.

F. **Late-filed Exhibits.** The Hearing Officer may, in his or her discretion, allow documentary evidence that is unavailable at the time of the hearing to be filed subsequent to the close of the hearing if the evidence proposed to be submitted is described at the hearing with sufficient particularity to apprise all parties of its content and purpose.

(1) Unless another date or dates are specified by the Hearing Officer, late-filed exhibits shall be offered no later than ten (10) days after the last day upon which a hearing is held. A copy of each late-filed exhibit must be provided to each party at the same time that it is offered.

(2) The order of the Hearing Officer to allow the offering of such an exhibit shall not constitute admission of that document into evidence. Any party may, within five (5) days after an offer of any late-filed exhibit, object to its admission and/or request the opportunity to present cross-examination or to present rebuttal evidence in connection with the exhibit, unless that party has plainly and specifically waived its rights to do so on the record of the hearing at which leave to offer the exhibit was granted.

(3) If a timely objection or request for opportunity to cross-examine or to offer rebuttal has been made, the Hearing Officer may in his or her discretion, either (a) exclude the exhibit, or (b) schedule a supplementary hearing to receive further evidence and rule on the admissibility of the exhibit.

**Section 9. Communications**

A. **Filings.** Papers required or permitted by applicable statute, rule or order of the Superintendent to be filed with the Hearing Officer shall be deemed to be officially filed only when received at the Bureau during the hours that it is open.

B. **Service.** Unless otherwise ordered, whenever a document is filed pursuant to this rule, it shall at the same time be served on all parties and proposed intervenors in the matter at or before the date and time when it is required to be filed with the Bureau. If documents are served by mail, they are deemed to be served at 5:00 p.m. on the date the mail is delivered.

C. **Electronic Communications.** Documents may be filed or served by fax, electronic mail, or other electronic means only as agreed by the recipient.

D. ***Ex Parte* Communications.** No party shall communicate with the Hearing Officer other than at the hearing except in writing with copies sent contemporaneously to all other parties of record.

**Section 10. Motions and Requests**

A. **General Requirements.** Every motion or request for an order or ruling of any kind by the Hearing Officer shall be in writing, unless made on the record during a hearing to which the request or motion is related. Every motion or request should include or be accompanied by a clear and detailed statement of the grounds that support the action sought.

B. **Statements in Opposition.** Any party opposing a motion or request shall file a statement in opposition to the motion or request within five (5) days after service of the motion, unless some other period is established by the Hearing Officer.

C. **Continuances.** A request for a change in the date or time of a hearing may be made in writing, reasonably in advance of the date scheduled. Any such request shall be treated as a motion or request for an order or ruling. The Hearing Officer in his or her discretion may grant or deny the request. Motions for continuances shall be made no less than four (4) business days before the date set for the hearing unless good cause is shown.

**Section 11. Coverage Order**

The Superintendent may order a policy that is the subject of a proceeding governed by this Chapter to remain in force for up to fourteen (14) days after a proceeding is concluded by written decision and order of the Superintendent or by dismissal without decision on the merits. The coverage order may be superseded by a subsequent valid notice of cancellation or nonrenewal, or in the case of a nonrenewal, if any premium required for renewal is not paid when due.

**Section 12. Motions for Rehearing or Reopening**

Motions for rehearing or reopening to change, modify, rescind or vacate a decision or order of the Superintendent, including a motion or request to set aside a default, must be filed with the Bureau within fourteen (14) days after service of the determination or order to which the request relates. Such motion or request shall comply with Section 9 of this Chapter.

A. **Effect of Rehearing or Reopening.** Unless otherwise specified, a decision to grant a motion to rehear or reopen a case does not act to stay the effect of the Superintendent’s order to which the rehearing or reopening applies. A timely motion under this subsection terminates the running of time for an appeal, which then begins to run after the motion is acted on or deemed denied under Paragraph B.

B. Any motion for rehearing or reopening that is not granted within fourteen (14) days from the date of filing shall be deemed to be denied.

C. The Superintendent or anyone designated by the Superintendent may, on his or her own motion and after notice to all parties, rehear or reopen any matter at any time, to the extent permitted by law.

**Section 13. Effective Date**

 This Rule is effective August 5, 2006 (filing 2006-344).

APAO WORD VERSION CONVERSION (IF NEEDED) AND ACCESSIBILITY CHECK: July 18, 2025