

Reprint
as at 1 January 2014



Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000 (SR 2000/212)

Regulations name: amended, on 1 July 2006, by section 5(2)(d) of the Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34).

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 16th day of October 2000

Present:

His Excellency the Governor-General in Council

Pursuant to section 63(1) of the Housing Restructuring and Tenancy Matters Act 1992, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

Enacting statement: amended, on 1 July 2006, by section 5(2)(d) of the Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

These regulations are administered by the Ministry of Social Development.

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Regulations

1 Title

These regulations are the Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000.

Regulation 1: amended, on 1 July 2006, by section 5(2)(d) of the Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34).

2 Commencement

These regulations come into force on 17 November 2000.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Housing Restructuring and Tenancy Matters Act 1992

Authority means the State Housing Appeal Authority established by regulation 16

chairperson, in relation to a panel, means the chairperson of that panel

decision means a decision, determination, or assessment by the company that may be subject to an appeal under section 62(2) of the Act

lawyer means a barrister or solicitor, as those terms are defined in section 2 of the Law Practitioners Act 1982

member means a member of the Authority; and includes the principal member and any deputy principal member

Minister means the responsible Minister, as that term is defined in section 2 of the Act

Ministry means the Ministry of Housing

panel, in relation to an appeal, means the panel of members assigned to hear the appeal

party means either of the 2 parties to the appeal, who are the appellant and the company

principal member means the principal member of the Authority appointed under regulation 17

Registrar means the Registrar of the Authority, appointed under regulation 22

review means a review under a process established by the company for reviewing decisions to which section 62(1) of the Act applies

working day means any day except—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

- (b) a day in the period beginning on 25 December in any year and ending with 15 January in the following year.

Regulation 3 **Act**: amended, on 1 July 2006, by section 5(2)(d) of the Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34).

Regulation 3 **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Appeals under section 62 of Act

4 Starting an appeal

- (1) A person starts an appeal under section 62 of the Act by lodging a notice of appeal with the Registrar at the address of the Authority.
- (2) A notice of appeal may be sent by post, fax, or e-mail.
- (3) The notice of appeal must—
 - (a) state the address to which the appellant wishes documents and correspondence relating to appeal to be sent; and
 - (b) describe the decision appealed against (and may include a copy of the decision); and
 - (c) state the grounds for the appeal and the outcome the appellant seeks; and
 - (d) if the company has reviewed the matter, say what the result of the review is (and may include a copy of the result of the review).

5 When appeal must be lodged

- (1) If the company has a review process established,—
 - (a) a person may not lodge an appeal without first applying to the company for a review of the decision; and
 - (b) the person must lodge any appeal within the times specified in this regulation.
- (2) If a person receives the result of a review within 1 month of applying for it and wishes to appeal against the decision, he or she must lodge the appeal within 10 working days after receiving the result of the review.
- (3) A person who has applied for a review, but who has not received the result of the review within 1 month of applying for it, must, if he or she wishes to appeal against the original decision, lodge the appeal within—
 - (a) 10 working days of the end of that 1-month period; or
 - (b) 10 days of receiving the result of the review, if it is received after the end of the 1-month period.
- (4) If the company does not have a review process established, a person who wishes to appeal against a decision must lodge an appeal within 10 working days of receipt of the decision appealed against.

- (5) In relation to a decision made before 17 November 2000, a person may, despite subclauses (2) and (3), lodge an appeal at any time on or before 1 December 2000 if—
 - (a) the person has received the result of the review and wishes to appeal against the original decision; or
 - (b) the person has applied for a review and has not received a result within 1 month.
- (6) Despite subclauses (2) to (5), the principal member may extend the period in which an appeal may be lodged if—
 - (a) the person who wishes to appeal against a decision applies for an extension (whether before or after the time when the appeal should have been lodged); and
 - (b) the principal member is satisfied that there is good reason for the delay in lodging the appeal.

6 What Registrar does when appeal lodged

- (1) On receiving a notice of appeal, the Registrar must send a copy of it to the company.
- (2) The Registrar must, as soon as practicable after receiving from the company the material referred to in regulation 7(1)—
 - (a) assign a panel of 3 members to conduct the hearing of the appeal; and
 - (b) assign 1 member (who must be the principal member, or a person authorised by the principal member under regulation 17(1)(d) to chair the hearing) as the chairperson; and
 - (c) fix a time and place for the hearing of the appeal.
- (3) The Registrar must give at least 10 working days' notice to both parties of the time and place of the hearing.
- (4) A notice to the appellant of the time and place of a hearing must include information about how the hearing will be conducted and, in particular, who may attend the hearing.

7 What company does when it gets notice of appeal

- (1) On receiving a copy of a notice of appeal from the Registrar, the company must, within 3 working days of receiving the copy, send to the Registrar and to the appellant—
 - (a) a written report setting out the considerations the company had regard to—
 - (i) in coming to its decision; and
 - (ii) if applicable, when reviewing it; and

- (b) a copy of the documents and information held by the company that are relevant to the decision and any review of it.
- (2) If the company wishes the panel to consider any further evidence at the hearing, the company must send a copy of it to the Registrar and to the appellant before the hearing.

8 What appellant does before hearing

- (1) If an appellant wishes the panel to consider any evidence that was not included with the notice of appeal or provided by the company under regulation 7, he or she must send a copy of that material to the Registrar before the hearing.
- (2) On receiving any evidence provided by an appellant under subclause (1), the Registrar must send a copy of it to the company.

9 Principal member may dismiss appeal

- (1) The principal member may dismiss an appeal at any time before a hearing, without holding a hearing, if he or she considers that the appeal is frivolous or vexatious.
- (2) If an appeal is dismissed under this regulation, the Registrar must immediately advise the parties of that fact.

Hearing and determining appeals

10 How hearings are to be conducted

- (1) Hearings must be conducted with as little formality as is consistent with a fair and efficient process and a just and quick determination of the appeal.
- (2) The panel may receive and take into consideration any evidence, in any form, whether or not that evidence would be admissible in a court.
- (3) If the panel considers that the evidence before it at a hearing is significantly different to the material that was before the company when the company made its decision, the panel must refer the matter back to the company for reconsideration.

11 Role of the chairperson

- (1) The chairperson is responsible for the conduct of the hearing and for determining (subject to these regulations and any directions by the principal member) the procedure at it.
- (2) The chairperson may at any time, either on his or her own initiative or on application by a party, do any 1 or more of the following:
 - (a) permit either party to produce new or additional evidence;
 - (b) extend or waive any time limit;
 - (c) allow an appellant to have more than 1 support person present at the hearing;

- (d) adjourn the hearing to any time or place.
- (3) The chairperson must, as far as possible, ensure that the identity of an appellant in any appeal is not disclosed to anyone other than a person involved in the appeal.

12 Who may attend hearing

- (1) Hearings must be conducted in private.
- (2) At a hearing, the people who may attend are all or any of the following:
 - (a) the parties:
 - (b) representatives of the parties:
 - (c) a support person for the appellant:
 - (d) witnesses:
 - (e) an interpreter, if the chairperson considers that the hearing will be assisted by having an interpreter present.
- (3) A person who attends as a support person at a hearing must not be a lawyer, and may not address the panel.
- (4) If the chairperson considers that the presence of an appellant is necessary at the hearing of his or her appeal, the chairperson may request the appellant to attend the hearing; and, if the appellant attends, the Registrar must arrange for him or her to be paid any actual or reasonable travel costs incurred in attending.

13 Representatives not normally to be lawyers

- (1) No lawyer may represent an appellant or the company unless the chairperson considers that legal representation is necessary because of—
 - (a) the nature and complexity of the issues to be determined; or
 - (b) a significant disparity between the parties affecting their ability to present their respective cases.
- (2) If the chairperson permits one party to be represented by a lawyer, the other party may also be represented by a lawyer.

14 What happens at hearing

- (1) At a hearing, the parties will not be required or expected to call witnesses unless the panel considers that it cannot properly determine the appeal on the basis of the evidence available to it at the start of the hearing.
- (2) Subject to the control of the chairperson,—
 - (a) the parties may question each other and be questioned by the panel; and
 - (b) the parties may question their own and the other party's witnesses.
- (3) A witness may attend the hearing in person, or may give evidence by telephone during the hearing, but only if the panel, and any parties, representatives, and interpreters present can hear what is being said.

15 Determination of appeal

- (1) A determination by 2 members of a panel is the determination of the Authority.
- (2) A panel may hold a hearing and determine an appeal—
 - (a) whether or not any party to the appeal appears at the hearing; and
 - (b) even if, after the hearing has started, one of the members who is not the chairperson ceases to participate in the hearing.
- (3) When a panel makes a determination, it must give written reasons for that determination.
- (4) The Registrar must send a copy of the determination and reasons to the appellant and the company as soon as practicable.

*State Housing Appeal Authority***16 State Housing Appeal Authority established**

- (1) The State Housing Appeal Authority is established.
- (2) The function of the Authority is to sit as a judicial body to determine appeals under section 62 of the Act.
- (3) The members of the Authority are—
 - (a) the principal member; and
 - (b) the deputy principal member, if appointed; and
 - (c) as many other members appointed under regulation 19 as the Minister considers are required to carry out the functions of the Authority promptly, efficiently, and effectively.
- (4) The Authority must have a seal, in a form determined by the chief executive of the Ministry, and the seal must be judicially noticed in all courts and for all purposes.

17 Principal member

- (1) The principal functions of the principal member are—
 - (a) to ensure, throughout New Zealand, the prompt, efficient, and effective hearing of appeals under section 62 of the Act; and
 - (b) to ensure the quality, impartiality, and consistency of the determinations of the Authority; and
 - (c) to ensure that members receive appropriate training; and
 - (d) to authorise individual members to chair hearings; and an authorisation can relate to a particular hearing, hearings in general, or hearings of a specified type; and
 - (e) to act as chairperson on any panel assigned to hear a particularly difficult or significant appeal.

- (2) The principal member must be appointed by the Governor-General on the joint recommendation of the Minister and the Minister of Justice.
- (3) The principal member must be a lawyer who has held a practising certificate for at least 5 years, and he or she may not hold any other office, or be in any employment, that in the opinion of the Minister is inconsistent with the office of principal member.
- (4) The principal member continues to hold office after his or her term has expired until either he or she is reappointed, or his or her successor takes office.
- (5) The Governor-General may, on the joint recommendation of the Minister and the Minister of Justice, remove the principal member from office for inability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Ministers.

18 Deputy principal member

- (1) If a deputy principal member is appointed, he or she must be appointed by the Governor-General on the joint recommendation of the Minister and the Minister of Justice.
- (2) Subclauses (3) to (5) of regulation 17 (which apply to the principal member) also apply to the deputy principal member.

19 Other members of Authority

- (1) Members of the Authority, other than the principal member and deputy principal member, must be appointed by the Minister.
- (2) Every member appointed under subclause (1) must—
 - (a) be a person who, in the opinion of the Minister, is capable by reason of knowledge, experience, or training, of performing and exercising the duties, functions, and powers of a member; or
 - (b) hold appointment as a Tenancy Mediator under section 76 of the Residential Tenancies Act 1986, (whether or not as an employee of the Ministry of Housing).
- (3) The Minister may, on the recommendation of the principal member, remove a member from office for inability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

20 Provisions applying to all members

- (1) Members must be appointed for a specified term of up to 3 years.
- (2) A member may resign by notice in writing to the Minister.
- (3) A member whose term of office expires may, despite that expiry, remain a member for the purpose of completing the hearing of any appeal that he or she is participating in.

- (4) Despite subclause (1), the appointment of a member who is a Tenancy Mediator expires on the day that the person ceases to be a Tenancy Mediator.
- (5) A person may be reappointed as a member.
- (6) Before taking office, every member must take an oath of office that he or she will honestly and impartially perform the duties of the office.
- (7) If any member finds that he or she has or may have an interest in an appeal (whether because of personal interest in the outcome, knowledge of the appellant, or otherwise), he or she must withdraw from the panel and, unless the hearing has already started, the Registrar must assign another member to the panel to hear that appeal.
- (8) Every member has, in the performance of his or her duties as a member, the same protections as Justices have under sections 4A to 4F of the Justices of the Peace Act 1957.

Regulation 20(8): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

21 Ministry to service Authority

- (1) The chief executive of the Ministry must provide the administrative support necessary to enable the Authority to perform its functions promptly, efficiently, and effectively and, in particular, must—
 - (a) provide the secretarial, clerical and other support necessary to enable the Authority to perform its functions; and
 - (b) ensure the safe custody of the records of the Authority.
- (2) The chief executive of the Ministry must, by notice in the *Gazette*, determine the address of the Authority.

22 Registrar of Authority

- (1) The chief executive of the Ministry must appoint or designate an employee of the Ministry to be the Registrar of the Authority, and may appoint or designate other employees of the Ministry to assist the Registrar or be Deputy Registrars.
- (2) The Registrar must, in accordance with any general or specific direction of the principal member,—
 - (a) assign members to panels to conduct hearings; and
 - (b) assign a chairperson for each panel; and
 - (c) fix the time and place of hearings.
- (3) The Registrar may, subject to the direction of the chief executive of the Ministry, carry out any duties and tasks not specified in these regulations but customarily performed by registrars of a judicial body.
- (4) The Registrar must, as far as possible, ensure that the identity of an appellant in any appeal is not disclosed to anyone other than a person involved in the appeal.

Miscellaneous

23 When things that are sent are presumed to have been received

- (1) Any document that is sent by post is presumed to have been received by the addressee on the day on which the package or envelope containing the document would have been delivered in the ordinary course of post.
- (2) Any document that is sent by fax or e-mail is presumed to have been received by the addressee—
 - (a) if it is sent before 5 pm on any working day, on that day; or
 - (b) if it is sent at any other time, at 9 am on the next working day.
- (3) The presumptions in subclauses (1) and (2) may be displaced by evidence that they do not apply in a particular case.

Martin Bell,
for Clerk of the Executive Council.

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Reprints notes

1 *General*

This is a reprint of the Housing Restructuring and Tenancy Matters (Appeals) Regulations 2000 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Criminal Procedure Act 2011 (2011 No 81): section 413

Housing Restructuring and Tenancy Matters (Information Matching) Amendment Act 2006 (2006 No 34): section 5(2)(d)