

Chapter 308-127 WAC

TIMESHARE

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

308-127-010	Promulgation—Authority. [Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-010, filed 12/6/83.] Repealed by 90-07-023, filed 3/14/90, effective 4/14/90. Statutory Authority: RCW 43.24.086.
308-127-020	Organization. [Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-020, filed 12/6/83.] Repealed by 90-07-023, filed 3/14/90, effective 4/14/90. Statutory Authority: RCW 43.24.086.
308-127-030	Definitions. [Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-030, filed 12/6/83.] Repealed by 90-07-023, filed 3/14/90, effective 4/14/90. Statutory Authority: RCW 43.24.086.
308-127-100	Exemptions from registration. [Statutory Authority: 1983 1st ex.s. c 22 §§ 2 and 26. 83-24-057 (Order 733 DOL), § 308-127-100, filed 12/6/83.] Repealed by 90-07-023, filed 3/14/90, effective 4/14/90. Statutory Authority: RCW 43.24.086.
308-127-150	Application of four dollars per interval fee. [Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-150, filed 12/6/83.] Repealed by 88-15-017 (Order PM 749), filed 7/11/88. Statutory Authority: RCW 64.36.081.
308-127-155	Fees. [Statutory Authority: RCW 64.36.081. 88-15-017 (Order PM 749), § 308-127-155, filed 7/11/88.] Repealed by 90-07-023, filed 3/14/90, effective 4/14/90. Statutory Authority: RCW 43.24.086.
308-127-220	Original application, renewal, termination, and fees for a timeshare salesperson registration. [Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-220, filed 12/6/83.] Repealed by 90-07-023, filed 3/14/90, effective 4/14/90. Statutory Authority: RCW 43.24.086.

WAC 308-127-035 Definitions. (1) Words and terms used in these rules shall have the same meaning as each has in the Timeshare Act, chapter 64.36 RCW, unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Agency" means the department of licensing in the state of Washington.

(3) "Timeshare project" means all the properties located at a specific resort location whether or not subject to resort or condominium regimes documents, which properties are subject to a particular set of timeshare instruments.

(4) "Timeshare property" means all the properties subject to a particular timeshare program established by a particular set of timeshare instruments.

(5) "Timeshare program" means the rights and obligations of the timeshare owners, methods, procedures and rules for occupying, using and managing the timeshared property, as established by a particular set of timeshare instruments.

(6) "Resale timeshare interval" means a timeshare interval offered or sold which is not the original offer, transfer, or sale of such interval to the general public and not a forfeited timeshare sale being reoffered by a promoter, lender, or affiliate.

(7) "Start up timeshare interval" means a timeshare interval that is being offered or sold to the general public for the first time or a forfeited timeshare purchase being resold by a promoter, lender, or affiliate.

(8) "Advance fee" means consideration of any description, collected for any purpose from buyers or sellers of resale timeshare intervals prior to the time of transacting a purchase or sale of a timeshare resale.

(9) "Prospective purchaser" means any person attending a sales presentation of any description or touring a timeshare property in response to an advertisement placed by any person, including lenders to whom a start up timeshare purchaser contract is pledged, hypothecated, or conveyed for security purposes.

(10) "Consolidation" means any adding of intervals, real estate, or units of timeshared personal property to a program. Consolidations shall not be construed as amendments to the registration for purposes of determining fees under these rules.

(11) "Amendment" means an amendment of a registration or a public offering statement pursuant to WAC 308-127-040.

(12) "Limited timeshare offering" means a timeshare interval or timeshare intervals offered or sold in which:

(a) None of the owners of interests are owners for the purpose of making a profit from renting, exchanging, or selling the timeshare interests; and none do in fact make a profit from such activities during a three-year term subsequent to establishment of the program; and

(b) The establishment of the timeshare program is not for the purpose of making a profit on behalf of any person; and

(c) All co-owners had personal knowledge of each other prior to the establishment of the program and there is no solicitation of co-owners by means of advertising in public media.

(13) "Public offering statement" means the disclosure document referred to in the Timeshare Act.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-035, filed 3/14/90, effective 4/14/90.]

WAC 308-127-040 Materially adverse change. (1) A materially adverse change means any change in the condition of a promoter or its affiliates which causes or might cause loss or risk of loss to the interests of the timeshare purchasers or prospective purchasers.

A materially adverse change occurs under circumstances which include, but are not limited to, the following:

(a) Any bulk sale of all or a significant portion of the timeshare properties;

(b) Any actual or threatened bankruptcy, receivership, or similar proceeding involving the promoter or its affiliates;

(c) Any lien, encumbrance, or similar circumstance which threatens to affect, or does affect, any of the timeshare properties;

(d) Any sale, lease, substitution of, or addition to the inventory of the timeshare properties by the promoter or its affiliates;

(e) Any amendment or change in the timeshare instruments or the timeshare program;

(f) Any change in the affiliation of the promoter or the association with a timeshare exchange company;

(g) Any change in the promoter's or an affiliate's plan of promotion;

(h) Any change in the status of an escrow, trust, bond, letter of credit, impound or other protective device, being utilized in the timeshare program for purposes of purchaser protection;

(i) Any criminal prosecution, civil lawsuit, or administrative proceeding in which the promoter or its affiliates are parties;

(j) Sell-out of the number of intervals registered to be sold to persons residing in the state of Washington;

(k) Any change in the financial status of the promoter or its affiliates that might adversely affect their ability to pay the timeshare expenses, including reserve accounts, during marketing of the timeshares.

(2) Materially adverse changes shall be reported to the agency for purposes of amending or renewing the registration and the public offering statement at the time they are known or proposed by the promoter or its affiliates. Failure to report such changes within 20 days shall result in the assessing of a \$500.00 penalty fee and shall be cause for suspension, revocation, or denial of a registration.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-040, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-040, filed 12/6/83.]

WAC 308-127-105 Exemptions from registration. (1) Provided that the conditions stated are met, the director may exempt from registration limited timeshare offerings:

(a) The offering contains fewer than four owners or timeshare intervals for at least three years after its establishment; and

(b) There is no soliciting of purchasers in the timeshare program from among the general public; and

(c) There appears to be neither hazard to the public or owners nor violation of the nonregistration provisions of the statute; and

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(d) The co-owners of the timeshare program provide the agency with advance notice of their intent to establish a limited timeshare offering. Such notice may be given on a form for this purpose provided by the agency, or otherwise, which shall include the names and addresses of all co-owners of the timeshare program and properties, the identity and location of the timeshare properties, and a description of the timeshare program, including a copy of all agreements and forms that financially commit the owners to the program.

(2) Resales, by an owner, on the owner's own account, shall be exempt from registration provided that any such offering or selling is noncommercial in nature. "Noncommercial" shall mean that the owner of the resale intervals is not in the business of offering or selling timeshare intervals and such offering or selling is only incidental to any profession, occupation, or business of the owner.

(3) Offering resale timeshares for another person's account, by a licensed broker or salesperson under chapter 18.85 RCW, shall be exempt from registration under the Timeshare Act, provided that:

(a) The broker shall act solely in a brokerage capacity; and

(b) The broker shall provide prospective purchasers with information about the timeshares, as required in the Timeshare Act; and

(c) The broker shall ensure the transfer of the timeshares; and

(d) The broker shall not be in a business of marketing as a clearing house for the primary purpose offering or selling timeshares.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-105, filed 3/14/90, effective 4/14/90.]

WAC 308-127-110 Disclosure documents—Projects already registered in foreign jurisdictions. (1) Whenever a timeshare project is sited in a foreign jurisdiction and there has been a prior registration in that jurisdiction under an enactment specifically addressing the regulation of timeshares, the director may accept in whole or in part the disclosure statement of such foreign jurisdiction for purposes of satisfying the disclosure requirements of the Timeshare Act.

(2) Promoters who wish to utilize a disclosure document accepted by a foreign jurisdiction shall forward a copy of the disclosure document to the agency along with the state of Washington registration forms, documents and filing fee ordinarily required of promoters.

(3) If a foreign jurisdiction's disclosure document is incorporated by reference into the state of Washington public offering statement, the state of Washington registration is deficient and void at the moment the registration in the foreign jurisdiction expires, or, if for any reason, the disclosure statement in that jurisdiction is or becomes deficient.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-110, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 §§ 7 and 26. 83-24-057 (Order 733 DOL), § 308-127-110, filed 12/6/83.]

WAC 308-127-120 Financial information requirements. The agency may require that the financial statements provided for in the Timeshare Act, be prepared and audited by an independent certified public accountant, in a manner which complies with the standards and guidelines established

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by the American Institute of Certified Public Accountants, under circumstances which include but are not limited to the following:

(1) For promoters of projects where accommodations or facilities are not completed at the time of the taking of a binding purchaser commitment and review of such statements will assist the agency in determining the promoter's ability to perform; or

(2) For promoters of right-to-use projects where a review of such statements will assist the agency in determining the ability of the promoter to provide continued future quiet enjoyment of the timeshare; or

(3) For promoters of projects where the promoter's payment of project expenses and servicing of reserve accounts cannot be assured by means other than reliance upon the promoter's own ability to pay such obligations from the promoter's existing assets.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-120, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-120, filed 12/6/83.]

WAC 308-127-130 Disclosure of number of intervals to be sold to persons residing in the state of Washington. The public offering statement shall declare the total number of intervals available to be sold to persons residing within the state of Washington.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-130, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-130, filed 12/6/83.]

WAC 308-127-140 Expiration and renewal of timeshare offering registration. A timeshare offering registration shall expire one year from the date of approval for registration, or at the time the promoter sells the total number of intervals registered as available to be sold to persons residing in the state of Washington, whichever event occurs first. To continue offering the timeshare project in this state, a promoter shall file for renewal of its timeshare offering registration no later than thirty days prior to expiration of the registration. Failure to renew within six months after the renewal date shall result in the termination of the registration and all fees for an original application for registration shall apply.

[Statutory Authority: RCW 64.36.270, 43.24.023. 04-08-003, § 308-127-140, filed 3/24/04, effective 4/24/04. Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-140, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 §§ 6 and 26. 83-24-057 (Order 733 DOL), § 308-127-140, filed 12/6/83.]

WAC 308-127-160 Fees. The following fees shall be charged under the authority of RCW 64.36.081 and 43.24.-086:

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| (1) Registration application fees: | |
| Start up timeshare program including one project. | \$1000.00 |
| Each additional project in program. | 200.00 |
| Each apartment unit in program. | 10.00 |
| The first unit of personal property in the timeshare program. | 500.00 |

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| Each additional unit of personal property in the timeshare program. | 100.00 |
| Businesses of listing or brokering resale intervals. | 500.00 |

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| (2) Interval Fees: | |
| For each interval through one thousand. | 1.00 |
| Intervals beyond one thousand. | 0.00 |
| Each monthly filing of listings of resale intervals (in lieu of interval fees for resale intervals). | 10.00 |

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| (3) Renewal fees: | |
| Timeshare program including one project. | 500.00 |
| Late renewal fee for timeshare program. | 2000.00 |
| Each additional project to a maximum of five projects. | 200.00 |
| Each apartment unit - to maximum of twenty-five apartment units. | 10.00 |

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| (4) Consolidation fees: | |
| Each additional project added. | 200.00 |
| Each additional apartment unit. | 10.00 |
| The first additional unit of personal property being consolidated. | 250.00 |
| Each additional unit of personal property added in one consolidation. | 100.00 |

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| (5) Exemption fees: | |
| Programs consisting of a single apartment unit in a single project with fifty-two or fewer intervals. | 250.00 |
| All other types of programs. | 1000.00 |

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| (6) Impound fees: | |
| Initial establishment of an impound, escrow, trust, or other arrangement requiring a depository. | 500.00 |
| Each required periodic report. | 50.00 |

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| (7) Advertising fees: | |
| Each initial submission of advertisement whether or not submitted in a timely manner, and whether or not in use at the time of payment. | 25.00 |

- Examination of advertisement which are for the purpose of marketing surveys and not involving an examination of project or program instruments. 150.00
- (8) Fees for persons in the business of offering commercial promotional programs:
- Registration of individual. 500.00
- (9) Salespersons fees:
- Registration. 25.00
 - Renewal. 25.00
 - Transfer. 25.00
- (10) Fees for amendment of registration:
- For a timely submission of an amendment filing. 25.00
 - Penalty fee for failure to file an amendment within twenty days of the occurrence of a materially adverse change. 500.00
- (11) Inspection fees:
- Applicants and registrants shall pay the cost of inspections conducted pursuant to chapter 64.36 RCW. The inspection fees shall be paid prior to the granting of a registration or consolidation. The inspection fee shall be the actual cost to the department for conducting of the inspection.

[Statutory Authority: RCW 64.36.081, 43.24.023, 43.24.086. 04-19-040, § 308-127-160, filed 9/13/04, effective 11/1/04. Statutory Authority: RCW 64.36.270, 43.24.023. 04-12-028, § 308-127-160, filed 5/26/04, effective 7/1/04; 04-08-003, § 308-127-160, filed 3/24/04, effective 4/24/04. Statutory Authority: RCW 64.36.081 and 43.24.086. 02-15-169, § 308-127-160, filed 7/23/02, effective 1/1/03. Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-160, filed 3/14/90, effective 4/14/90.]

WAC 308-127-200 Activities requiring registration as a timeshare salesperson. (1) An individual acts as a timeshare salesperson whenever the individual induces, solicits, or attempts to encourage a person to acquire a timeshare; or the individual is responsible for causing an advertiser to publicize a timeshare offer.

(2) Unless exempted under the Timeshare Act, or these rules, a timeshare salesperson shall be registered in the state of Washington whenever one of the following apply:

- (a) The timeshare salesperson offers a timeshare for sale from a timeshare project in which the principal property of the program is located in this state; or
- (b) The timeshare salesperson offers a timeshare for sale from a timeshare project in which the principal property of the program is located outside of this state, and
 - (i) The offer is made in or from this state, or
 - (ii) The person receiving the offer is located in this state at the time the offer is received.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-200, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-200, filed 12/6/83.]

WAC 308-127-210 Relationship of timeshare promoters and salespersons and real estate brokers and salespersons. (1) A timeshare salesperson shall be registered to a specific timeshare promoter who has one or more timeshare offerings registered in this state. The promoter shall have full responsibility for all activities of the promoter's timeshare salesperson which relate to offering timeshares for sale.

(2) An active real estate broker or salesperson may act as the brokerage agent of one or more timeshare promoters without registering as a timeshare salesperson. However, this exemption from registration as a timeshare salesperson applies only when the exempted person is performing real estate brokerage in compliance with chapter 18.85 RCW. Further, this exemption only pertains to the timeshare salesperson registration requirement. All other provisions of the Timeshare Act apply to real estate brokers and salespersons offering timeshares for sale.

(3) A natural person may be registered as a timeshare salesperson while licensed as a real estate broker or salesperson. However, the salesperson shall conduct timeshare activities and maintain associated business records separate and apart from his or her real estate broker or salesperson activities and records. The term "separate and apart" shall not preclude location of timeshare salesperson and real estate brokerage activities at the same office.

(4) Any individual who is registered as a timeshare salesperson and licensed as a real estate broker or salesperson shall disclose in writing to the recipient of a timeshare sales offer whether he or she is acting as the timeshare salesperson of a promoter or a real estate broker or salesperson at the time he or she presents the public offering statement.

[Statutory Authority: RCW 43.24.086. 90-07-023, § 308-127-210, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 § 26. 83-24-057 (Order 733 DOL), § 308-127-210, filed 12/6/83.]

WAC 308-127-225 Original application, renewal, termination, and fees for a timeshare salesperson registration. (1) An individual shall apply for registration as a timeshare salesperson on a form prescribed by the agency. The registration application for a timeshare salesperson shall identify the specific promoter responsible for the business activities of the salesperson and shall be valid for a period of one year.

(2) When a timeshare salesperson ceases to be employed by a timeshare promoter the salesperson's registration shall be terminated. Written notice of this termination shall be given by the promoter to the director. A terminated individual who desires to work for the same or another promoter shall apply for and receive registration as a timeshare salesperson before engaging in further timeshare sales activities.

(3) An individual may renew his timeshare salesperson registration for one year if the agency receives the individual's request and renewal fee on or before the expiration of the individual's existing registration. The effective date of the renewal shall be the anniversary date of the previous registration. If the registration is not renewed before the expiration date reregistration is required before timeshare sales activity may be continued.

(4) An application for registration or a renewal of registration is not complete unless it is accompanied by the proper

fee. Payment of the fee with a check which is subsequently dishonored is a deficient application. Upon notification to the promoter by the agency, the promoter shall cease employment of the applicant as a timeshare salesperson.

[Statutory Authority: RCW 64.36.270, 43.24.023, 04-08-003, § 308-127-225, filed 3/24/04, effective 4/24/04. Statutory Authority: RCW 43.24.086, 90-07-023, § 308-127-225, filed 3/14/90, effective 4/14/90.]

WAC 308-127-300 Impoundment. (1) The agency may require impoundment authorized in the Timeshare Act, under circumstances which include, but are not limited to, the following:

(a) The registration of any cooperative or right-to-use project whenever adequate assurances of continued quiet enjoyment cannot be provided by means of bonds, escrows, trusts, or other devices; or

(b) The registration of any form of timeshare project whenever the timeshare properties and other facilities promised are not yet constructed or otherwise available, and where completion of construction or delivery of accommodations and facilities cannot be assured by bonds, escrows, trusts, or other devices; or

(c) The registration of persons in the business of listing or brokering resale timeshare intervals whenever any advance fees or funds of any description are to be collected from buyers or sellers of resale timeshare intervals prior to the time of transacting a purchase or sale of a timeshare interval; or

(d) The registration of persons in the business of offering commercial promotional programs whenever any advance fees or funds of any description are to be collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or any other item of value.

(2) Funds subject to impoundment shall be placed in a separate and independent trust account with a bank or depository institution acceptable to the director. A written consent of the depository to act in such capacity shall be filed with the director.

(3) The director will authorize the depository to release to the promoter or an affiliate when appropriate, such amounts of the impounded funds applicable to a specified purpose such as, payment of selling costs or timeshare expenses, purchase of property, or the construction of an improvement, upon a showing that the promoter can satisfy its obligations under the purchaser contracts to furnish purchasers the accommodations, facilities and services promised, or if for other reasons the impoundment is no longer required for the protection of purchasers. A request to authorize the release of the impounded funds to the promoter or an affiliate shall contain the following:

(a) A statement of the promoter, or affiliate where appropriate, that all required proceeds from the sale of timeshares have been placed with the depository in accordance with the terms and conditions of the impoundment agreement;

(b) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of funds placed with the depository, and any interest earned by these funds;

(c) The name of each timeshare contract purchaser and the amount impounded for the account of each purchaser; and

(d) Such other information as the director may request in a particular case.

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[Statutory Authority: RCW 43.24.086, 90-07-023, § 308-127-300, filed 3/14/90, effective 4/14/90. Statutory Authority: 1983 1st ex.s. c 22 §§ 13 and 26, 83-24-057 (Order 733 DOL), § 308-127-300, filed 12/6/83.]

WAC 308-127-310 Application of brief adjudicative proceedings. The director adopts RCW 34.05.482 through 34.05.494 for the administration of brief adjudicative proceedings conducted by request, and/or at the discretion of the director pursuant to RCW 34.05.482, for the categories of matters set forth below. Brief adjudicative proceedings will be limited to a determination of one or more of the following issues:

(1) Whether an applicant for a registration meets the minimum criteria for a registration as a timeshare project, timeshare promoter or timeshare salesperson in this state and the department proposes to deny the application;

(2) Whether a person is in compliance with the terms and conditions of a final order or agreement previously issued by the department; and

(3) Whether a registration holder requesting renewal has submitted all required information and whether a registration holder meets minimum criteria for renewal.

[Statutory Authority: RCW 34.05.410 (1)(a) and 34.05.482 (1)(c), 97-10-051, § 308-127-310, filed 5/1/97, effective 6/1/97.]

WAC 308-127-320 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for an original or renewal registration shall consist of:

(a) The application for the registration or renewal and all associated documents;

(b) All documents relied upon by the director in proposing to deny the registration or renewal; and

(c) All correspondence between the applicant for registration or renewal and the director regarding the application.

(2) The preliminary record with respect to determination of compliance with a previously issued final order or agreement shall consist of:

(a) The previously issued final order or agreement;

(b) All reports or other documents submitted by, or at the direction of, the registration holder, in full or partial fulfillment of the terms of the final order or agreement;

(c) All correspondence between the registration holder and the director regarding compliance with the final order or agreement; and

(d) All documents relied upon by the director showing that the registration holder has failed to comply with the previously issued final order or agreement.

[Statutory Authority: RCW 34.05.410 (1)(a) and 34.05.482 (1)(c), 97-10-051, § 308-127-320, filed 5/1/97, effective 6/1/97.]

WAC 308-127-330 Conduct of brief adjudicative proceedings. (1) Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the director. The presiding officer for brief adjudicative proceedings shall not have personally participated in the decision which resulted in the request for a brief adjudicative proceeding.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudica-

tive proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in his or her discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) In addition to the record, the presiding officer for brief adjudicative proceedings may employ department expertise as a basis for the decision.

(6) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ten days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

[Statutory Authority: RCW 34.05.410 (1)(a) and 34.05.482 (1)(c). 97-10-051, § 308-127-330, filed 5/1/97, effective 6/1/97.]