

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237D,
Hawaii Administrative Rules

_____, 2017

SUMMARY

1. §§18-237D-4-01 and 18-237#-4-02 are amended.
3. §§18-237D-4-03, 18-237D-4-04, 18-237D-4-05, 18-237D-4-06, and 18-237D-4-07 are repealed.
4. §§18-237D-4-08, 18-237D-4-09, 18-237D-4-10, 18-237D-4-11, 18-237D-4-12, 18-237D-4-13, 18-237D-4-14, 18-237D-4-15, 18-237D-4-16, 18-237D-4-17, 18-237D-4-18, 18-237D-4-19, 18-237D-4-20, 18-237D-4-21, 18-237D-4-22, 18-237D-4-23, 18-237D-4-24, 18-237D-4-25, 18-237D-4-26, 18-237D-4-27, 18-237D-4-28, 18-237D-4-29, 18-237D-4-30, 18-237D-4-31, 18-237D-4-32, 18-237D-4-33, 18-237D-4-34, and 18-237D-4-35 are added.

§18-237D-4-01 Certificate of registration. (a)

Each operator or plan manager shall indicate, on its application for registration, the type of entity it is. If the transient accommodation is operated by a married couple or civil union partners, the married couple or civil union partners may jointly file one individual registration.

The registration shall include the name and address of the operator or plan manager and of each place of business subject to this chapter. An operator who acquires an additional transient accommodation or sells, transfers, assigns, or gives away a transient accommodation during the taxable year shall file an amended application for registration containing an updated list of each place of business subject to this chapter before the end of the taxable year or within thirty days of the acquisition or giveaway, whichever is later.

(b) There shall be no additional registration fees due if the operator or plan manager subsequent to its initial registration adds more units to its registration, nor shall there be a refund if the number of units is reduced. Upon receipt of the required payment, the director shall issue a certificate of registration.

(c) Any cancellation of a registration shall be without any refund of the registration fee paid.

Example 1:

Hotel Corporation, engaged in furnishing transient accommodations in Hawaii, owns and operates a hotel. The hotel has six rooms that are rented to transients. Hotel Corporation shall register its name and address and the business name (if any) and address of the hotel with the department and shall pay a one-time fee of \$15 for the registration.

Example 2:

Mr. Peters owns a single apartment unit he furnishes as a transient accommodation. Mr. Peters shall register with the department by providing his name and address, and the business name (if any) and address of the apartment. Mr. Peters shall pay a one-time fee of \$5 for the registration.

Example 3:

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. Although some of the apartments are occasionally rented on a long-term basis, Property Corporation obtains the consent of all the investors, files, and pays the sum of \$250 for fifty certificates of registration on behalf of the investors. Property Corporation has determined that this procedure greatly facilitates its activity. Within two months of operation, the climate of the rental market suddenly changes to a point that all of the investors request Property Corporation to change the mode of renting the apartments from a short-term rental to a long-term lease basis. Property Corporation in turn requests the department in writing to cancel all the certificates of registration in force. Neither Property Corporation nor any of the investors is entitled to a refund of any part of the \$250 in registration fees paid. Furthermore, Property Corporation shall prepare and submit an annual tax return summarizing the two months of transient accommodations activity for each of the fifty condominium apartments. Although Property Corporation must file fifty annual tax returns, payment of taxes on the fifty units may be made with a single check enclosed in the same envelope with the fifty returns.

Example 4:

The individual owners of Tropical Condominium Apartments (consisting of one hundred units) and Renter Corporation enter into a contract. According to the contract, Renter Corporation leases the entire building from the owners of Tropical Condominium Apartments to operate the apartments as transient accommodations. In this situation, Renter Corporation is deemed the operator. Renter Corporation shall register its name and address and its business name (if any) and address of the condominium apartments with the department. Renter Corporation shall pay a \$15 one-time fee for a single registration covering the one hundred-unit apartment.

As operator of the transient accommodations, Renter Corporation shall be liable for the tax imposed under this chapter and the general excise tax imposed under chapter 237, HRS, on the gross rental and gross income, respectively, derived from the transient accommodations and apartment rental activities, respectively.

The owners of the individual units in Tropical Condominium Apartments are separately liable for the general excise tax imposed under chapter 237, HRS, on the gross income or gross receipts derived from the activity of leasing the apartment units to Renter Corporation.

Example 5:

ABC, Inc. operates several facilities. On Oahu, ABC operates two hotels in Waikiki; a condominium apartment that is operated as a hotel; and a fifty-unit apartment facility in Punaluu, of which some of the units are rented for less than one hundred eighty consecutive days and other units for periods of over one hundred eighty consecutive days. ABC also operates a

hotel on the island of Hawaii, a condominium operated as a hotel on the island of Maui, and three hotels on the island of Kauai. ABC, Inc. shall register with the department and shall list the names and addresses of each of the hotels or condominium apartments and identify all of the specific rooms or apartments that are transient accommodations. Regarding the fifty-unit apartment located in Punaluu, ABC must give the name and address of the apartment building and identify the units that are customarily occupied by and regularly furnished to transients for consideration. If ABC owns apartment numbers 1 to 25 and 35 to 50, ABC will indicate the numbers 1 to 25 and 35 to 50 on the registration form. ABC does not have to enumerate each apartment number such as 1, 2, 3, etc.

Example 6:

Assume the same facts as Example 5, except that after complying with all requirements for registration, ABC, Inc. begins operating units 30-34 in the Punaluu apartment building as transient accommodations. ABC, Inc. also purchases a hotel on Kauai and begins operating it as a transient accommodation. ABC, Inc. must update its registration with the department to indicate that it is operating apartment numbers 1 to 25 and 30 to 50 of the Punaluu apartment building and also to indicate that it is operating the new hotel on Kauai before the end of the taxable year or within thirty days of the acquisition, whichever is later. [Eff 11/25/88; am 7/18/94; am 6/3/05; am] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-02 Display of the registration certificate. (a) Each operator or plan manager shall at all times conspicuously display the certificate of registration or a notice stating where the registration may be inspected at each place for which it is issued. The registration or notice must be conspicuously displayed:

- (1) Inside each unit of which the transient accommodation consists; or
- (2) At the front desk.

(b) For purposes of this section, "front desk" means a desk, kiosk, or the like at the same property as the transient accommodation unit that handles checking in or out and handles other requests from guests.

Example 1:

Mr. Peters owns a single condominium unit he furnishes as a transient accommodation. The unit is one of fifty units in its condominium building. Mr. Peters conspicuously displays inside the unit a notice stating that the registration may be inspected at the condominium building's front desk. Mr. Peters is in compliance with section 18-237D-4-02.

Example 2:

ABC, Inc. owns all one hundred units of a condominium building in Waikiki and furnishes them as transient accommodations. ABC, Inc. conspicuously posts its registration at the front desk of the building, but does not post anything inside each unit. ABC, Inc. is in compliance with section 18-237D-4-02 because it has posted the registration or a notice of where it may be inspected at the front desk.

Example 3:

Assume the same facts as Example 2, except that ABC, Inc. conspicuously posts its registration at its headquarters located in an office building in downtown Honolulu, rather than at the front desk of the building in Waikiki. In addition, ABC, Inc. conspicuously posts at the front desk of its Waikiki condominium building a notice stating that the registration may be inspected at its headquarters downtown, including the headquarters' address. ABC, Inc. is in compliance with section 18-237D-4-02 because it has conspicuously posted at the front desk a notice stating where the registration may be inspected.

Example 4:

Property Corporation, a firm engaged in the property management business, manages a condominium apartment building in Kaanapali consisting of fifty apartments. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration for each of the fifty different apartments may be inspected at Property Corporation's Kahului office, including the office's address. All fifty of the building's apartment owners are in compliance with section 18-237D-4-02 because notice of where each of their registrations may be inspected is conspicuously posted at the building's front desk. [Eff 11/25/88; am 7/18/94; am 6/3/05; am] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-03 Repealed. [R]

§18-237D-4-04 Repealed. [R]

§18-237D-4-05 Repealed. [R]

§18-237D-4-06 Repealed. [R]

§18-237D-4-07 Repealed. [R]

§18-237D-4-08 Display of local contact information. Each operator or plan manager shall at all times conspicuously display the name, phone number, and electronic mail address of the local contact at the same place as the registration or notice stating where the registration may be inspected; provided that the local contact information shall be displayed at the same property as the transient accommodation.

Example 1:

Ms. Flora owns a single condominium unit she furnishes as a transient accommodation. The unit is one of twenty units in its condominium building. Ms. Flora conspicuously displays in the unit a notice stating that the registration may be inspected at the office of the property manager, which is located in a commercial building down the street. The registration and local contact information are available for inspection at the property manager's office. Ms. Flora is not in compliance with section 18-237D-4-08 because the local contact information is not displayed at the same property as the transient accommodation unit.

Example 2:

Building Managers Inc., a firm engaged in the property management business, manages a condominium apartment building consisting of one hundred apartment units. Each of the apartments in the building is owned by a different investor who rents the premises on a short-term basis. The condominium building has a front desk where a notice is conspicuously displayed stating that the registration and local contact information for each of the one hundred different apartments may be inspected upon request at the front desk. The owners of the apartment units are not in compliance with section 18-237D-4-08 because

information for the local contacts are not
conspicuously displayed. [Eff 11/25/88; am
7/18/94; am 6/3/05; am] (Auth: HRS
§§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-09 Procedures; scope and purpose.

(a) Sections 18-237D-4-09 to 18-237D-4-35 implement section 237D-4, HRS, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the general enforcement of taxes.

(b) The administrative rules contained herein govern the practice and procedure in all citations for failure to display issued by the department, including the imposition of any monetary fines, and any subsequent rights of review.

(c) An agency appeal of a citation for failure to display under section 237D-4, HRS, shall be conducted as a contested case under chapter 91, HRS. The procedures for contested cases in chapter 91, HRS (including sections 91-8.5 through 91-15, HRS), shall apply to agency appeals.

(d) The administrative rules contained in sections 18-237D-4-09 through 18-237D-4-35 shall be construed to secure the just and speedy determination of every citation for failure to display issued.

(e) Should any paragraph, sentence, clause, phrase, or application of any portion of sections 18-237D-4-09 through 18-237D-4-35 be declared unconstitutional or invalid for any reason, the remainder of any other application of this chapter shall not be affected thereby. [Eff]
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-10 Definitions. As used in sections 18-237D-4-09 through 18-237D-4-35:

"Agency appeal" means an appeal of a citation for failure to display to the director or the director's designee pursuant to section 237D-4(h), HRS.

"Citation for failure to display" means a citation issued for a failure to display the information required under either section 237D-4(b), HRS, or 237D-4(d), HRS.

"Department" means the department of taxation.

"Director" means the director of taxation.

"Hearing" means a contested case hearing in accordance with chapter 91, HRS, to determine an agency appeal.

"Person" means one or more individuals, a company, a corporation, a partnership, an association, or any other type of legal entity and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member or principal is under a duty to perform and is principally responsible for performing the act in respect of which the violation occurs.

"Presiding officer" means the director or presiding officer who will be conducting the hearing.

"Respondent" means the person to whom the citation for failure to display is addressed.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS. [Eff
] (Auth: HRS §§231-3(9), 237D-16(b))
(Imp: HRS §237D-4)

§18-237D-4-11 Fine for failure to display. (a)

A person required under section 237D-4(b), HRS, to conspicuously display a certificate of registration issued under section 237D-4, HRS, as well as the name, phone number, and electronic mail address of a local contact but who fails to display one or more of those required items shall be in violation of section 237D-4(b), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day per transient accommodation in violation;
- (2) For a second violation, a fine of \$1,000 per day per transient accommodation in violation, excluding days for which a fine was issued for a first violation;
- (3) For third and subsequent violations, a fine of \$5,000 per day per transient accommodation in violation, excluding days for which a fine was issued for first or second violations; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(b) Only one citation under subsection (a) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (a) during the thirty day period for any failure to display in other transient accommodations the person operates. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation if it continues to be in violation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for the first and second violations for the same transient accommodation.

Example 1:

ABC, Inc. owns all one hundred units of a condominium building which it furnishes as a transient accommodation. ABC, Inc. conspicuously displays at the building's front desk its certificate of registration as a transient accommodations operator as well as the required local contact information. ABC, Inc. is in compliance with section 18-237D-4-11 because it has conspicuously displayed the local contact information in the same place as the registration or notice stating where the registration may be inspected.

(c) A person required under section 237D-4(c), HRS, to conspicuously provide in any advertisement a registration identification number issued under section 237D-4, HRS, as well as conspicuously provide the name, phone number, and electronic mail address of a local contact, or provide such local contact information upon the furnishing of the transient accommodation, but who fails to provide one or more of these required items shall be in violation of section 237D-4(d), HRS, and shall be fined as follows:

- (1) For a first violation, a fine of \$500 per day in violation, including the fifteen days for which the person received a written warning under section 18-237D-4-12 for the same transient accommodation if the person is cited for the first violation upon the person's failure to cure the violation during the fifteen-day period;
- (2) For a second violation, a fine of \$1,000 per day in violation, excluding days for which a fine was issued for a first violation for the same transient accommodation; and
- (3) For third and subsequent violations, a fine of \$5,000 per day in violation, excluding days for which a fine was issued for first and second violations for the same transient

accommodation; provided that the department may issue a fine of greater than \$5,000 per day, but must provide a written explanation of why the fine amount is greater on the citation.

(d) Only one citation under subsection (c) may be issued to the person in any thirty day period for any failure to display per transient accommodation. The same person may be issued additional citations under subsection (c) during the thirty day period for any failure to display related to other transient accommodations. Following the expiration of the thirty day period, a citation may be issued for failure to display in connection with the same transient accommodation or for any other transient accommodation. Citations issued for second violations shall not include fines for days of violation for which a fine was issued in the citation for first violation for the same transient accommodation. Citations issued for third violations shall not include fines for days of violation for which fines were issued in the citations for first and second violations for the same transient accommodation. Similarly, all citations issued for subsequent violations shall not include fines for days of violation for which fines were issued in prior citations for the same transient accommodation. [Eff
] (Auth: HRS §§231-3(9), 237D-16(b))
(Imp: HRS §237D-4)

§18-237D-4-12 Written warning for first violation under section 237D-4(d), HRS. (a) In lieu of issuing a person a first citation and fine for failure to display under section 18-237D-4-11(c)(1), the department shall issue the violator a written warning if the person has never before received a written warning for any violation for any transient accommodation under section 18-237D-4-11(c)(1).

(b) Only one written warning in lieu of a first violation and fine under subsection (a) may be issued per person. For any subsequent first violations the person may commit under section 18-237D-4-11(c)(1), the department shall issue a citation with a fine.

(c) For purposes of this section, a written warning shall contain:

- (1) The name and address of the violator;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder;
- (3) The address of the transient accommodation, if possible;
- (4) A description of the advertisement where the transient accommodation is advertised. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement; and
- (5) A statement that the violator may be cited under section 18-237D-4-13 beginning fifteen days after the written warning's date of issuance for any violation related to this or any other transient accommodation, including any violations related to other transient accommodations operated by the violator the department subsequently discovers during the fifteen-day period.

(d) The department shall keep a record of all written warnings issued.

(e) A written warning shall be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served its written warning by the publication and has fifteen days from the date of service to cure its violation. No return information or other personal or confidential information shall be disclosed in the publication.

If the written warning is served by certified mail under subsection (e)(2), the date of service of the written warning is the date the written warning was delivered. If the written warning is served by publication under subsection (e)(3), the date of service of the written warning is the last date of publication in the second successive week.

(f) If, during the fifteen-day period described under subsection (c)(5), the department discovers another transient accommodation operated by the violator for which a citation for a first violation may be issued, the department shall not issue such citation until the fifteen-day period has elapsed; provided that if the violator does not cure all of its violations during the fifteen-day period provided by

the written warning, the department shall issue citations for all transient accommodations in violation after the expiration for all days during which they were in violation pursuant to section 18-237D-4-11.

Example 1:

Operator LLC owns one condominium unit which it operates as a transient accommodation. Operator LLC submits its unit to TAbroker.com, a website which displays a searchable database of units for rent. The department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department reviews its records and sees that it has never issued a warning or a citation to Operator LLC. The department shall issue a written warning to Operator LLC under section 18-237D-4-12. [Eff
] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-13 Citation for failure to display; requirements. (a) A citation for failure to display must be issued on the forms prescribed by the department.

(b) A citation for failure to display shall include the following in its contents:

- (1) The name and address of the respondent;
- (2) The specific alleged violation or violations of title 14, HRS, or the administrative rules adopted thereunder which constitute cause for the issuance of the citation for failure to display;
- (3) The location of where the violation occurred or is occurring. If the citation is issued pursuant to section 237D-4(b), HRS, the location shall include the address of the transient accommodation. If the citation is issued under section 237D-4(d), HRS, the location shall include a description of the advertisement and a description of the transient accommodation. The advertisement shall be described to the best of the department's ability and may include such information as the name and date of the publication, the website address or any other description sufficient for a reasonable person to locate the advertisement. The transient accommodation shall also be described to the best of the department's ability, including the address if possible;
- (4) A signature of the special enforcement section employee or other department employee authorized to issue the citation. By signing the citation for failure to display, the issuer certifies that the statements contained in the citation are true and correct, to the best of his or her knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void *ab initio*;

- (5) If applicable, the amount of the monetary fine imposed against the respondent;
- (6) A space for the respondent, or the respondent's agent or representative, to acknowledge receipt of the citation by signature. If the respondent or respondent's agent or representative refuses to sign or if for some other reason the department employee is unable to acquire a signature to acknowledge receipt, the citation may indicate "refused to sign," "unavailable," "no signature for safety reasons," "service by certified mail," "service by publication," or other language explaining the lack of signature by the respondent or the respondent's agent or representative. The lack of the signature of the respondent or the respondent's agent or representative shall not affect the validity of the citation; and
- (7) Information regarding the respondent's appeal rights, including the requirement that the citation must be returned to the department within thirty days from the date the citation was served, respondent's right to a hearing before the director or the director's designee, and contact information for where the respondent may obtain further information.

Example 1:

Operator LLC owns one condominium unit on the island of Kauai which it operates as a transient accommodation. On January 15, Operator LLC's unit is advertised on TAbroker.com, a website which displays a searchable database of units for rent. On January 15, the department discovers that the listing for Operator LLC's unit does not display Operator LLC's registration identification number, nor is there an electronic link leading to the number. The department

reviews its records and sees that it has never issued a warning or a citation to Operator LLC for any transient accommodation. The department issues a written warning to Operator LLC under section 18-237D-4-12, explaining that Operator LLC has fifteen days to cure its violation by ensuring that its registration identification number is displayed in the advertisement. On January 31, the department checks on the advertisement again and sees that Operator LLC's unit has been continuously advertised since January 15 and has never had the registration identification number displayed or linked to. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine for a first violation of \$500 multiplied by the seventeen days during which this transient accommodation has been in violation for a total fine of \$8,500.

Example 2:

Assume the same facts as Example 1, except that the department checks on the advertisement on January 27 and sees that the registration identification number is now displayed. The department shall not issue a citation because Operator LLC cured its violation within the fifteen-day period granted by the written warning.

Example 3:

Assume the same facts as Example 1, except that in February, Operator LLC purchases a second condominium unit on Oahu and begins operating it as a transient accommodation. On March 1, Operator LLC begins advertising the Oahu unit in "AinaBNB," a monthly print magazine that advertises vacation rentals. On March 5, the department sees the March issue of AinaBNB and discovers that the advertisement does not display

Operator LLC's registration identification number. The department reviews its records and sees that it has already issued Operator LLC a written warning and a citation for a first violation, albeit one for a different transient accommodation. The department shall issue Operator LLC a citation for failure to display and the citation shall include a fine of \$500 multiplied by the one day during which the transient accommodation has been in violation for a total fine of \$500.

Example 4:

Assume the same facts as Example 3, except that AinaBNB is a daily publication and runs Operator LLC's unit advertisement every day from March 1 to March 5. The citation shall include a fine of \$500 multiplied by the five days of violation for a total fine of \$2,500.

Example 5:

On July 1, while inspecting a transient accommodation unit operated by Surf Wax Rentals LLC, the department discovers Surf Wax Rentals LLC has failed to conspicuously display its registration identification number inside the unit or at the front desk. Surf Wax Rentals LLC's agent admits that the unit has been rented out for thirty days and during that time Surf Wax Rentals LLC never conspicuously displayed its registration identification number. The department reviews its records and sees that it has never issued Surf Wax Rentals LLC a citation. The department shall issue Surf Wax Rentals LLC a citation for failure to display and the citation shall contain a fine for a first violation of \$500 multiplied by the thirty days during which the transient accommodation has been in violation for a total fine of \$15,000. Written warnings are not issued for failures to conspicuously

display the information required by section 237D-4(b), HRS.

Example 6:

Assume the same facts as Example 5, except that on July 15, the department goes to TAbroker.com and sees Surfswax Rentals LLC's unit listed in an advertisement that fails to display the registration identification number. The department reviews its records and sees that it previously issued a fine for failure to display under section 237D-4(b), HRS, on July 1, but that it has never issued a warning or citation with a fine for failure to display under section 237D-4(d), HRS. The department shall issue Surfswax Rentals LLC a written warning under section 18-237D-4-12. The department shall not issue a citation with a fine for a second violation because violations under sections 237D-4(b) and (d), HRS, are considered separate violations. Additionally, the fact that the department issued the citation under section 237D-4(b), HRS, fewer than thirty days earlier and for a violation in this same transient accommodation shall not preclude the department from issuing a written warning or a citation under section 237D-4(d), HRS, to the same person and for a violation related to the same transient accommodation. A fine issued under section 237D-4(b), HRS, and a fine issued under section 237D-4(d), HRS, may be issued to the same person during the same thirty-day period because they are considered separate violations.

Example 7:

FacePlus is an online social networking website which allows its users to create a user profile and post status updates for other users to see. Sally Social, an individual user of FacePlus, posts a status update which says she is

offering to rent out the cottage on her property for \$200 per night. The department may issue a warning or citation to Sally Social because she is an operator of a transient accommodations and her status update is an advertisement for a transient accommodation. [Eff]
(Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-14 Issuance of a citation for failure to display. (a) A citation for failure to display is both a notice of violation and an offer to settle an administrative case involving any violation related to the citation, and may include a monetary fine where permitted under the applicable law and rules.

(b) Any employee of the department who is assigned to the special enforcement section or otherwise duly authorized by the department may issue a citation for failure to display to a person if there is reason to believe the person has violated or is violating section 237D-4, HRS, or any administrative rules adopted thereunder.

(c) A citation for failure to display may be served by:

- (1) Personal service on the respondent, respondent's officer or director, or respondent's registered agent for service of process as shown in the records of the department of commerce and consumer affairs;
- (2) Certified mail, restricted delivery, sent to the respondent's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs; or
- (3) Publication at least once in each of two successive weeks in a newspaper of general circulation if service by certified mail is not made because of refusal to accept service or because the department has been unable to ascertain the address necessary for service under paragraph (2) after reasonable and diligent inquiry. Publication shall consist solely of the respondent's name and a statement that the respondent is being served a citation for failure to display under section 237D-4, HRS, by the publication and has thirty days from the date of service to respond. No return information or other personal or

§18-237D-4-15 Response to citation for failure to display.

(a) A respondent must respond to a citation for failure to display within thirty days from the date of service by:

- (1) Paying to the department the stated amount of the monetary fine, which shall constitute acknowledgment of the violation and a waiver of further rights of review; provided that if the tendered payment is dishonored for any reason not the fault of the department, the respondent will be deemed not to have answered the citation; or
- (2) Appealing the citation by making a written request to the department for a contested case hearing in accordance with these rules and chapter 91, HRS, including but not limited to section 18-237D-4-18. Written requests for contested case hearings may be indicated on the citation itself.

(b) If the respondent fails to respond to the citation for failure to display within thirty days from the date the citation was served:

- (1) The failure is an acknowledgment that the allegations contained in the citation are true and that the relief sought in the citation, including any monetary fines, is appropriate; and
- (2) The department may collect any overdue monetary fines and enforce any overdue non-monetary sanctions as set forth in section 18-237D-4-35(b).

(c) The hearing of an agency appeal shall be limited solely to the allegations contained in the citation. No other matter may be considered, including, but not limited to, any disputes relating to any tax liability. [Eff _____] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

§18-237D-4-16 Venue. Venue of the hearing of an agency appeal is proper in the taxation district where the transient accommodation that is the subject of the violation is located, or such other location as the parties to the hearing may mutually agree. Any party may participate in the hearing by telephone; provided that the presiding officer receives written notice of intent to appear by telephone at least five days before the hearing. [Eff _____] (Auth: HRS §§231-3(9), 237D-16(b)) (Imp: HRS §237D-4)

18-237D-4-17 Docket. The director or the director's representative shall maintain a docket of all agency appeals of citations for failure to display and each such agency appeal shall be assigned a number. The docket shall be a list of appeals containing the names of those appealing, the number assigned to their appeals, and a list of records or documents filed for each appeal, including but not limited to all pleadings, motions, intermediate rulings, evidence received or considered, persons who provided oral testimony , exhibits, statements of matters officially noticed, offers of proof and rulings thereon, proposed findings and exceptions, reports of the presiding officer, and staff memoranda. [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

18-237D-4-18 Hearing; request for and scheduling. (a) Upon the respondent's filing of a completed form prescribed by the department as set forth in subsection (b), the director or the director's designee shall schedule a hearing.

(b) The department shall prepare a form for a written agency appeal request that allows the respondent to provide a concise statement of the basic facts, the issues contested, and the relief sought. The department may prepare such a form in the citation itself. The form written agency appeal request prepared by the department must be used to request an agency appeal, and written requests in any other form shall not constitute a request for agency appeal under this section.

(c) No hearing shall be held until due notice is given to all parties as provided in sections 91-9 and 91-9.5, HRS, or their successor laws. [Eff
] (Auth: HRS §§91-2, 231-3(9), 237D-
16(b)) (Imp: HRS §§91-9, 91-9.5, 237D-4)

18-237D-4-19 Presiding officer of hearings; duties and powers; substitute presiding officers. (a)

The director shall conduct the hearings on an appeal, shall render the decision, and shall issue such orders and take such actions as may be required; provided that the director may designate a representative, who shall be the presiding officer, to conduct the hearings, and make recommendations in writing to the director, which shall include recommendations as to findings of fact and conclusions of law. If the presiding officer's recommendation is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation. The person contesting the citation shall thereafter have ten days from the date the recommendation is mailed to file exceptions to the recommendation and to present arguments to the director in writing. The director shall then personally consider the whole record or such portion thereof as may be cited by the parties, shall render the decisions as to findings of fact and conclusions of law in writing, and shall issue such orders and take such actions as may be further required.

(b) In all hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify to official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearings.

(c) The presiding officer may subpoena witnesses and books, papers, documents, other designated objects, or any other record, however maintained, pursuant to section 231-7, HRS.

(d) Any of these rules of practice and procedure may be suspended or waived by stipulation of all the parties.

(e) The presiding officer may engage the services of a stenographer, or someone similarly

skilled, to take a verbatim record of and transcribe the evidence presented at any hearing if requested for purposes of rehearing or court review. The party making the request shall be responsible for:

- (1) The fees and costs for the transcript;
- (2) Making the necessary arrangements to have the stenographer, or someone similarly skilled, to notify all the parties in writing when the transcript is available; and
- (3) Filing a certified copy of the transcript as part of the record.

If a verbatim record is taken and transcribed, any other party may request a copy of the transcript at that party's cost

(f) If a presiding officer is absent from a scheduled hearing or is incapacitated from performance of duty, the director may designate another representative to serve as a substitute presiding officer without abatement of the proceedings. [Eff

] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-11, 231-7, 237D-4)

§18-237D-4-20 Disqualification of presiding officers. (a) A presiding officer shall be disqualified from deciding an agency appeal if the presiding officer:

- (1) Has a financial interest, as defined by section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the agency appeal;
- (2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;
- (3) Has participated in the investigation preceding the institution of the agency appeal proceedings or has participated in the development of the evidence to be introduced at the hearing; or
- (4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

(b) A presiding officer shall withdraw from further participation in the proceedings upon discovery of a disqualifying conflict of interest or bias if the factual circumstances are undisputed. If the allegation of a disqualifying conflict of interest or bias is not clearly substantiated, the presiding officer need not voluntarily withdraw and the party seeking the disqualification may file a motion to disqualify the presiding officer. The motion shall be filed and decided before the evidentiary portion of the hearing on the agency appeal. If a presiding officer is disqualified, the director shall designate another representative to serve as the presiding officer. If the disqualified presiding officer is the director, the director shall designate a representative to serve as the presiding officer whose findings of fact, conclusions of law, and decision and order shall be final and binding. [Eff]
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-21 Communications with the director or presiding officers. (a) No person shall communicate with the director or presiding officer regarding matters to be decided by the director or presiding officer in any agency appeal with the intent, or the appearance of the intent, to influence the decision of the director or presiding officer, unless all of the parties to the proceedings are given notice of communication and an opportunity to also communicate with the director or presiding officer.

(b) If a communication is made privately with the presiding officer in violation of subsection (a), the presiding officer shall disclose the communication to all parties on the record of the proceedings and afford all parties an opportunity to respond to, refute, or otherwise comment on the ex parte communication. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 91-13, 237D-4)

§18-237D-4-22 Computation of time. In computing any time period under sections 18-237D-4-01 through 18-237D-4-35, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, state holiday, or state government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Intermediate Saturdays, Sundays, state holidays, or state government furlough days shall be excluded in the computation when the period of time prescribed or allowed is less than seven days. Except as otherwise provided, whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date the items are postmarked. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-23 Filing of documents; amendment; dismissal; retention. (a) All pleadings, submittals, petitions, applications, charges, reports, maps, exceptions, briefs, memorandums, and other papers required to be filed in any agency appeal shall be filed with the director or as instructed by the director or presiding officer. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. The date on which the papers are actually received by the department shall be deemed the date of filing.

(b) Filing electronically means emailing the filing in pdf format or other format as instructed by the director or presiding officer to an email address designated by the director or presiding officer. The email shall include a subject line identifying the appeal number, the respondent, and the hearing date and a description of the papers being filed.

(c) All papers filed with the department, other than papers filed electronically or by facsimile, shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached. Papers filed electronically or by facsimile must be transmitted in a form that can be legibly and understandably printed to 8-1/2 by 11 inch paper or 8-1/2 by 17 inch paper.

(d) All papers must be signed in ink by the party or a duly authorized agent or attorney. The presentation to the director (whether by signing, filing, submitting, or later advocating) of any paper shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

(e) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Papers sent electronically or by facsimile transmission shall not require any copies. However, the original must be presented to the department upon request.

(f) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(g) All papers filed in an agency appeal shall be served on all other parties to the hearing by the filing party in accordance with any deadlines imposed by the director or presiding officer. Service may be accomplished by:

- (1) Personal service on the party, party's officer or director, or party's registered agent for service of process as shown in the records of the department of commerce and consumer affairs; or
- (2) Mail to the party's last known business or residence address or the address of respondent's registered agent for service as shown in the records of the department of commerce and consumer affairs.

(h) If any document initiating or filed in an agency appeal is not in substantial conformity with the applicable rules of the department as to the document's contents, or is otherwise insufficient, the presiding officer, on his or her own motion, or on motion of any party, may strike the document, or require its amendment. The document initiating the agency appeal may not be stricken, but may be subject to required amendments. If amendments are required, the document with amendments shall be effective as of the date of the original filing.

(i) All documents filed in an agency appeal shall be retained in the files of the presiding officer, except that the presiding officer may permit the withdrawal of original documents upon submission

of properly authenticated copies to replace the original documents. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-24 Filed documents available for public inspection; exceptions. (a) Unless otherwise provided by statute, rule, or order of the presiding officer, all information contained in any document filed in any agency appeal shall be available for inspection by the public after final decision.

(b) Confidential treatment may be requested where authorized by statute. For good cause shown, the presiding officer shall grant such a request.

(c) When permitted or authorized, matters of public record may be inspected in the appropriate offices of the department during regular office hours.

[Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-25 Appearances in agency appeal. (a)

An individual may appear on the individual's own behalf; a member of a partnership may represent a partnership; an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association; and an officer or authorized employee of a corporation or trust or association may represent the corporation, trust, or association in the agency appeal.

(b) A person may be represented by an attorney qualified to practice before the supreme court of Hawaii in the agency appeal under these rules.

(c) A person shall not be represented in the agency appeal except as stated in subsections (a) and (b).

(d) Any person appearing on behalf of a respondent shall file a notice of appearance and a power of attorney immediately but no later than seven days prior to the date of the first appearance. A person may not appear on behalf of a respondent without properly filing a notice of appearance and a power of attorney. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-26 Substitution of parties. Upon motion and for good cause shown, the presiding officer may order substitution of parties, except that in the case of a death of a party, substitution may be ordered without the filing of a motion. [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-27 Consolidation; separate hearings.

(a) The presiding officer, upon his or her own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings involving the same parties if the presiding officer finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of the business of the department and to the ends of justice and will not unduly delay the proceedings.

(b) The presiding officer, upon his or her own initiative or upon motion, may separate any issue, appeal, or other matter for hearing or for other purposes if the director or presiding officer finds that the separation will be conducive to the proper dispatch of the business of the department and to the ends of justice. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-28 Intervention. Applications to intervene in a proceeding shall comply with section 18-237D-4-23 and shall be served on all parties. Applications for intervention will be granted or denied at the discretion of the presiding officer. As a general policy, such applications shall be denied unless the petitioner shows that it has an interest in a question of law or fact involved in the contested matter and the petitioner's intervention will not result in the potential unauthorized disclosure of a return or return information. [Eff _____]
(Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-29 Prehearing conferences; exchange of exhibits; briefs. (a) The presiding officer may hold or cause to be held prehearing conferences with the parties for the purpose of formulating or simplifying the issues, arranging for the exchange of proposed exhibits or proposed written testimony, setting of schedules, exchanging of names of witnesses, limitation of number of witnesses, and such other matters as may expedite orderly conduct and disposition of the proceeding as permitted by law.

(b) The presiding officer may request briefs setting forth the issues, facts, and legal arguments upon which the parties intend to rely and the presiding officer may fix the conditions and time for the filing of briefs and the number of pages. Exhibits may be reproduced in an appendix to the brief. A brief of more than twenty pages shall contain a subject index and table of authorities. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-30 Motions. (a) All motions other than those made during a hearing shall be made in writing to the presiding officer, shall state the relief sought, and shall be accompanied by an affidavit, memorandum, or both setting forth the grounds upon which they are based. The presiding officer shall set the time for all motions and opposing affidavits and memorandums, if any.

(b) The moving party shall serve a copy of the motions and all supporting documents on all other parties at least fourteen days prior to the hearing on the motion. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(c) A memorandum in opposition or a counter affidavit shall be served on all parties not later than seven days prior to the hearing. Service shall be in accordance with the rules of service of papers under section 18-237D-4-23(g).

(d) Failure to serve or file a memorandum in opposition to a motion or counter affidavit or failure to appear at the hearing shall be deemed a waiver of objection to the granting or denial of the motion.
[Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-31 Evidence. (a) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence with a view to doing substantial justice.

(b) Evidence shall generally consist of the citation for failure to display, any applicable reports, and other written statements submitted by either party, if any.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record on direct examination. Before any prepared testimony is read, unless excused by the presiding officer, the witness shall deliver copies thereof to the presiding officer and all parties. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If relevant and material matter is offered in evidence in a document containing other matters, the party offering it shall designate specifically the matter so offered. If the other matter in the document would burden the record, at the discretion of the presiding officer, the relevant and material matter may be read into the record or copies of it received as an exhibit. Other parties shall be afforded opportunity at the time to examine the document, and to offer in evidence other portions believed material and relevant.

(f) If any matter contained in a document on file as a public record with the department is offered in evidence, unless otherwise directed by the presiding officer, the document need not be produced and may be received in evidence by reference.

(g) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii.

(h) Exhibits shall be prepared in the same format as that required for the filing of documents under section 18-237D-4-23, unless otherwise directed or permitted by the presiding officer.

(i) At the hearing, the presiding officer may require the production of further evidence upon any issue and further hearings necessary for the consideration of such evidence. The presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

[Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-10, 237D-4)

§18-237D-4-32 Continuances or extensions of time. Whenever a person or agency has a right or is required to take action within the period prescribed or allowed by this chapter for an agency appeal, the presiding officer may:

- (1) Before or after the expiration of the prescribed period, on his own without advance notice, extend such period;
- (2) Upon motion before the expiration of the prescribed period, extend such period by granting a continuance; or
- (3) Upon motion after the expiration of the prescribed period, permit the act to be done after the expiration of a specified period where the failure to act is reasonably shown to be excusable. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-2, 237D-4)

§18-237D-4-33 Service of decisions. All final orders, opinions, or rulings entered in an agency appeal shall be served in accordance with section 91-12, HRS. [Eff] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-12, 237D-4)

§18-237D-4-34 Correction of transcript. Motions to correct the transcript shall be made within five days after the receipt of the transcript by the movant or within fourteen days from the date the stenographer, or someone similarly skilled, gives notice to all the parties that the transcript is available under section 18-237D-4-19(e), whichever is earlier. The motion shall be acted upon by the presiding officer. [Eff _____] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-9, 237D-4)

§18-237D-4-35 Enforcement and stay. (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions may be stayed by the reviewing court under section 91-14, HRS.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed. [Eff
] (Auth: HRS §§91-2, 231-3(9), 237D-16(b)) (Imp: HRS §§91-14, 237D-4)