

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237,
Hawaii Administrative Rules

Effective: _____

SUMMARY

1. §§18-237-200-01 through 18-237-200-25 are repealed.
2. New §18-237-30.5-01 is added.
3. New §18-237-30.5-02 is added.
4. New §18-237-30.5-03 is added.
5. New §18-237-30.5-04 is added.
6. New §18-237-30.5-05 is added.
7. New §18-237-30.5-06 is added.
8. New §18-237-30.5-07 is added.
9. New §18-237-30.5-08 is added.
10. New §18-237-30.5-09 is added.
11. New §18-237-30.5-10 is added.
12. New §18-237-30.5-11 is added.
13. New §18-237-30.5-12 is added.
14. New §18-237-30.5-13 is added.
15. New §18-237-30.5-14 is added.
16. New §18-237-30.5-15 is added.

17. New §18-237-30.5-16 is added.
18. New §18-237-30.5-17 is added.
19. New §18-237-30.5-18 is added.
20. New §18-237-30.5-19 is added.
21. New §18-237-30.5-20 is added.
22. New §18-237-30.5-21 is added.
23. New §18-237-30.5-22 is added.
24. New §18-237-30.5-23 is added.
25. New §18-237-30.5-24 is added.
26. New §18-237-30.5-25 is added.

§18-237-30.5-01 Definitions. As used in sections 18-237-30.5-01 to 18-237-30.5-25:

"Rent collection agreement" means any agreement authorizing a third party to collect rent on behalf of the owner of real property located within the State, including online and oral agreements.

"Respondent" means the person to whom the citation for violation of section 237-30.5, HRS, is addressed.

"Third party rent collector" means any person authorized under an agreement by the owner of real property located within the State to collect rent on behalf of the owner. [Eff _____] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-30.5)

§18-237-30.5-02 Third Party Rent Collectors. (a) Third party rent collectors shall file all documents and statements required under section 237-30.5(c), HRS, with the first taxation district office.

(b) All documents and statements required to be filed by third party rent collectors under section 237-30.5(c), HRS, shall be submitted with forms and in the manner prescribed by the department.

(c) Third party rent collectors who do not file a copy of the first page of a rent collection agreement within thirty days after entering the agreement shall file a copy of federal Internal Revenue form 1099 with any other documents and statements required under section 237-30.5(c), HRS, at the same time form 1099 is required to be filed with the Internal Revenue Service. [Eff _____] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-30.5)

§18-237-30.5-03 Citation for failure to file third party rent collector information; requirements.

(a) A citation for failure to file third party rent collector information shall be issued on the forms prescribed by the department.

(b) A citation for failure to file third party rent collector information 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 file third party rent collector information;
- (3) If the citation is issued pursuant to section 237-30.5(e), HRS, the citation shall describe to the best of the department's ability the real property for which the third party rent collector is authorized to collect rent, 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 file third party rent collector information, the issuer certifies that the statements contained in the citation are true and correct, to the best of their knowledge. A citation that has not been signed by a duly authorized employee of the department shall be void ab initio;
- (5) 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 mail", "service by publication", or other language explaining the lack of signature by the respondent or the respondent's agent or representative.

case hearing in accordance with these rules and chapter 91, HRS, including but not limited to section 18-237-30.5-08. 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 file third party rent collector information 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 18-237-30.5-25.

(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), 237-8) (Imp: HRS §237-30.5)

§18-237-30.5-06 Venue. Venue of the hearing of an agency appeal is proper in the taxation district where the real property 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), 237-8) (Imp: HRS §237-30.5)

§18-237-30.5-07 Docket. The director or the director's designee shall maintain a docket of all agency appeals of citations for failure to file third party rent collector information 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 §§231-3(9), 237-8) (Imp: HRS §237-30.5)

§18-237-30.5-08 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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-09 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 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 §§231-3(9), 237-8)
(Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-10 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 §§231-3(9), 237-8)
(Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-11 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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 91-13, 237-30.5)

§18-237-30.5-12 Computation of time.

In computing any time period under sections 18-237-30.5-01 through 18-237-30.5-25, 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, or state holiday. Intermediate Saturdays, Sundays, or state holidays shall be included. Intermediate Saturdays, Sundays, or state holidays 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. Any reference in sections 18-237-30.5-01 through 18-237-30.5-25 to the United States mail shall be treated as including a reference to a designated delivery service and any reference to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked by the designated delivery service. As used in this section, "designated delivery service" means any delivery service designated for purposes of section 7502 of the federal Internal Revenue Code. [Eff] (Auth: HRS §§231-10.7; 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-13 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. The papers may be sent electronically, 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 the 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, 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 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 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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-14 Filed documents available for public inspection. (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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-15 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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-16 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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-17 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 §§231- 10.7; 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-18 Substitution of parties.

Applications to intervene in a proceeding shall comply with section 18-237-30.5-13 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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-19 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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-20 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 18-237-30.5-13(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 18-237-30.5-13(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 §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-21 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 file third party rent collector information, 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 18-237-30.5-13, 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 §§231-3(9), 237-8) (Imp: HRS §§91-10, 237-30.5)

§18-237-30.5-22 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 §§231-3(9), 237-8) (Imp: HRS §§91-2, 237-30.5)

§18-237-30.5-23 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 §§231-3(9), 237-8) (Imp: HRS §§91-12, 237-30.5)

§18-237-30.5-24 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 18-237-30.5-09(e), whichever

is earlier. The motion shall be acted upon by the presiding officer. [Eff] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §§91-9, 237-30.5)

§18-237-30.5-25 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, the 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 the 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 §§231-3(9), 237-8)
(Imp: HRS §§91-14, 237-30.5)

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§§18-237-200-01 to 18-237-200-25 Repealed.

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