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# Virtual Proceedings Procedures

BCFSA 

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# Introduction

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During the COVID-19 pandemic, to facilitate the just, effective, and efficient determination of proceedings, BCFSA has directed that all proceedings under the *Real Estate Services Act* and the *Mortgage Brokers Act* currently scheduled and to be scheduled will be heard by audio or video conference or conducted in writing (“**Virtual Proceedings**”).

It has been determined that, even upon re-opening of the BCFSA office, oral (in-person) proceedings will not be necessary or appropriate for all proceedings, and it will be desirable to provide alternative proceedings formats, addressing convenience, costs, and efficiencies, in the form of Virtual Proceedings.

The Hearing is before a Hearing Officer, designated by the Superintendent Of Real Estate and the Registrar of Mortgage Brokers.

## Types of Virtual Proceedings

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1. There are three forms of Virtual Proceedings:

- a. Written proceedings;
- b. Electronic proceedings by audio conference; and
- c. Electronic proceedings by video conference.

((b) and (c) are separately or collectively referred to as “**Electronic Proceedings**”).

### WRITTEN PROCEEDINGS

2. Penalty hearings (i.e., to determine discipline, enforcement sanctions and special compensation hearings) will be conducted by written proceeding, unless otherwise ordered by the Hearing Officer.
3. BCFSA’s Hearing Coordinator (the “**Hearing Coordinator**”) will set and provide dates to the parties to proceedings (the “**Parties**”) for delivery of written submissions.

### ELECTRONIC PROCEEDINGS BY AUDIO CONFERENCE

4. All interim discipline proceedings (e.g., prehearing conferences and motions) will be heard via audio (and often video) conference, unless otherwise ordered by the Hearing Officer.
5. Audio conferences will be facilitated by BCFSA or a third-party platform provider.
6. The Hearing Coordinator will set and provide Parties with the dates of the audio conference and dates and instructions for the delivery of materials.

### ELECTRONIC PROCEEDINGS BY VIDEO CONFERENCE

7. All discipline (liability) hearings, qualification hearings and settlement conferences will be heard via video conference, unless otherwise ordered by the Hearing Officer.
8. Video conference will be facilitated by BCFSA or a third-party platform provider.

9. The Hearing Coordinator will set and provide to the Parties the dates of the video conference and dates and instructions for the delivery of materials.

### CHANGE IN FORM OF PROCEEDING

10. A Party or their legal counsel or agent may bring an application for a change in the form of a proceeding by filing a request with the Hearing Coordinator within 30 days after receipt of the related notice of hearing, or at least 60 days before the scheduled date of the proceeding, whichever is later. The request must be accompanied by submissions and supporting documentation that speak to the need for the requested form of proceeding.

### FUNCTIONALITY OF ELECTRONIC PROCEEDINGS PLATFORM

11. An Electronic Proceedings platform (audio / video conference) will include:
- a. participant identification verification and access qualification,
  - b. participant restriction / exclusion capability,
  - c. recording capability,
  - d. participant waiting room, and
  - e. documents / item display coordination.

### PREPARING FOR ELECTRONIC PROCEEDINGS

12. The Parties are responsible for their own electronic hardware and software, venue, and technical support and those of persons attending in their support, including witnesses. The Parties must confirm their capability, and the capability of their support persons, to participate in the Electronic Proceeding. Alternatively, a Party's participation in the Electronic Proceeding may be accommodated by requiring them to attend in-person at the BCFSA offices or a third-party virtual platform provider venue.
13. Parties to an Electronic Proceeding must provide a list of participants (including witnesses) to the Hearing Coordinator at least 14 days before the date set for the Electronic Proceeding, by submitting a Witness/Participant List, which can be obtained from the Hearing Coordinator. This form requires the following information :

Full Name:	
Role (e.g., licensee, legal counsel, agent, witness):	
Telephone number:	
Email:	
Username for audio / video conference:	

14. After the Parties have provided a list of participants to BCFSA, in the form outlined above, BCFSA or a third-party virtual platform provider will provide the instructions to access the Electronic Proceedings platform will be provided to the email addresses of each of the participants and those members of the public granted observer status. The access details, including the link, must not be shared with anyone. At this time they will also conduct technological testing with the participants to ensure that they have the technological capabilities to participate in the Electronic Proceeding.

## CONDUCT OF ELECTRONIC PROCEEDINGS

15. Participants must enter their full name when accessing the Electronic Proceedings platform. Failure to do so may result in them not being granted full access to the Electronic Proceeding.
16. Each participant should login to the Electronic Proceeding individually with the exception of co-legal counsel, in which case just one legal counsel may login. Any exceptions to need to be communicated to the Hearing Coordinator at the time the Witness/Participant List is submitted as there may be technical issues that could arise.
17. All participants must keep their electronic communication device on mute, except when speaking as part of the Electronic Proceeding.
18. No person except a court reporter may record any component of the Electronic Proceeding. Any audio or video recording of the Electronic Proceeding including screen shots or other photographs is prohibited.

## ATTENDANCE BY WITNESSES (INCLUDING PARTIES WHO WILL BE TESTIFYING) AT ELECTRONIC PROCEEDINGS

19. A witness who has not testified may not see or hear the testimony of other witnesses, with the exceptions of a witness who is a Party to the Electronic Proceeding, representative(s) of BCFSA, and expert witnesses, who may observe all or part of the entire proceeding.
20. When giving evidence, a witness must be alone in a secure room, unless the Hearing Officer permits otherwise. A witness must make all reasonable efforts to prevent interruptions or distractions during their appearance at the Electronic Proceeding.
21. A witness must sit at a desk or table that is clear and visible on camera except for documents relating to the Electronic Proceeding.
22. A witness must not use a virtual background.
23. When giving evidence, the witness must always keep their camera and microphone on unless the Hearing Officer instructs otherwise. The witness should position the camera so that the Hearing Officer and the Parties will see the witness clearly, including the witness's face, and the witness's hands (if possible).
24. A witness must not communicate about their testimony or the proceedings with anyone outside of the Electronic Proceeding room and during any breaks in their testimony as a witness at the proceedings.
25. When giving evidence, a witness must only have and refer to copies of documents or document briefs circulated to all Parties and to the court reporter (if any), unless the Hearing Officer permits otherwise.
26. If requested by the Hearing Officer, a witness must show the Hearing Officer any document the witness is viewing.
27. Once a witness is excused, the witness must leave the Electronic Proceeding room, unless the witness is a Party to the proceeding or a representative of BCFSA, or unless the Hearing Officer permits otherwise.
28. After giving evidence, a witness who is not a Party to the proceeding or a representative of BCFSA may view the Electronic Proceeding, if and while it is open to the public, through any access available to the public.

## PUBLIC ATTENDANCE AT ELECTRONIC HEARINGS

29. Members of the public who want to attend as observers at an electronic discipline hearing, or qualification hearing (an “**Electronic Hearing**”) must notify the Hearing Coordinator at least seven days before the date set for the Electronic Hearing.
30. Dependent on the number of required participants and the Electronic Proceedings platform capacity, there may be a limit on the number of members of the public who can attend an Electronic Hearing. In such instances, a wait list will be maintained, and new public attendees admitted as permissible.
31. Public access to the Electronic Hearing may be limited in a variety of manners to address privacy concerns, including by
  - a. permitting only audio observation,
  - b. withholding witness names and user identification in an Electronic Hearing, and
  - c. removing access to the Electronic Hearing during highly sensitive or confidential portions of the Electronic Hearing.

When calling in (audio participation), the attendees’ phone number will be visible to other attendees.

32. If at any point bandwidth or technological issues arise with the number of public attendees, the Hearing Officer may direct that one or more public attendees be removed from the Electronic Hearing.
33. Refer to the [Observer Guidelines](#) for more information on public attendance at hearings.

## HEARING OFFICER AUTHORITY AND DISCRETION

The Hearing Officer always retains control of its processes at all hearings including a Virtual Hearing, and may make such directions and orders as it deems fit, including an order that a proceeding be adjourned, or that it continue despite the absence of participation of a Party or witness.



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