

Federal Housing Finance Board

§ 908.45

by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the notice or answer, and no formal amendments shall be required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the presiding officer may admit the evidence when admission is likely to assist in adjudicating the merits of the action. The presiding officer will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

§ 908.43 Failure to appear.

Failure of a respondent to appear in person or by a duly authorized representative at the hearing constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the presiding officer shall file with the Board of Directors a recommended decision containing the findings and the relief sought in the notice.

§ 908.44 Consolidation and severance of actions.

(a) *Consolidation.* On the motion of any party, or on the Finance Board's or the presiding officer's own motion, the presiding officer may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice. In the event of consolidation under this section, appropriate adjustment to the pre-hearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The presiding officer may, upon the motion of the Finance

Board or any party, sever the proceeding for separate resolution of the matter as to any respondent only if the presiding officer finds that undue prejudice or injustice to the moving party would result from not severing the proceeding and such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 908.45 Motions.

(a) *Written motions.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions shall state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the presiding officer. Written memoranda, briefs, affidavits, or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally and on the record at a hearing, unless the presiding officer directs that such motion be reduced to writing and filed with the presiding officer. Oral motions must be made a part of the record of the hearing, and accompanied by a proposed order.

(c) *Filing of motions.* Motions shall be filed with the presiding officer, except that following the filing of a recommended decision with the Board of Directors, motions must be filed with the Board of Directors in accordance with § 908.64.

(d) *Responses.* (1) Except as otherwise provided herein, any party may file a written response to a motion within ten days after service of any written motion, or within such other period of time as may be established by the presiding officer or the Board of Directors. The presiding officer shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed to be consent by that party to the entry of an order