

TITLE 5: Banking and Consumer Finance

PART 5: STATE BOARD OF BANKING REVIEW; OFFICIAL PROCEDURES (Miss. CODE ANN. §81-3-12(5))

PUBLIC HEARINGS: APPLICATION FOR NEW BANK CHARTERS (MISS. CODE ANN. §81-3-13(1)); APPLICATION FOR BANK CONVERSION (MISS. CODE ANN. § 81-5-85); PROTESTED BRANCH BANK APPLICATIONS (MISS. CODE ANN. § 81-7-1(4)).

BOARD APPROVAL OF CERTAIN ACTIONS WITHOUT PUBLIC HEARING (e.g. MISS. CODE ANN. § 81-1-63)

(Revised and Adopted: October 14, 2014.)

A. Public Hearing; Nature of Proceeding

The purpose of a public hearing before the Mississippi State Board of Banking Review (the “Board”) is to obtain clarification of the factual issues concerning an application made to the Mississippi Department of Banking and Consumer Finance (the “Department”). A hearing is neither an adversarial proceeding, nor a forum for legal arguments. A public hearing is intended to allow the Board to gather information concerning an application in order to acquire sufficient information and assist the Board in rendering a decision. These procedures are intended to afford any and all interested parties a full and adequate opportunity to present testimony or additional materials in support of their positions.

B. Quorum; Tie-breaking

The Board shall take roll and be deemed to have a quorum and therefore authority to act as the Board should at least half or a majority of the sitting members be present at the hearing. In the event of a tie among the voting members of the Board as to any issue, the Chairperson (or member appointed to act in the Chairperson’s stead) shall break the tie.

C. Notice of Public Hearing

As required by statute, notice of a public hearing shall be given to each Board Member at least ten (10) days prior to the date of the scheduled hearing. Any and all other persons that have expressly stated to the Department an intention to attend or appear at the public hearing shall likewise be given written notice equal to that afforded the Board Members. Any and all other interested persons, and the public at-large, shall be afforded equal notice of the public hearing by publication of a notice of hearing in a newspaper of general circulation within the State. Notice by publication may also be made in a local newspaper that has general circulation within a particular county or geographical area that could be affected by the application at issue.

D. Notification of Attendance

Within ten (10) days of the date of the Notice of Hearing, but no fewer than five (5) days prior to the public hearing, any bank, organization, or person that intends to either attend, or appear before the Board to be heard at the hearing, shall provide the Department and the Chairperson of the Board with notice of their intent to appear and an estimate of the total number of individuals that shall attend the hearing on their behalf. Seating-capacity is limited in the hearing room and anyone not previously approved to attend may be denied access. The Board reserves the right to control the attendance of the hearing and to limit the number of individuals appearing at any one time on behalf of the same entity, regardless of prior notice. Anyone that wishes to appear before the Board may either speak on their own behalf or may be represented by their authorized agent, representative or attorney of choice. Should any attendee require special accommodations in order to appear or participate at the hearing, notice should be provided in advance.

E. Notification of Proposed Testimony and Evidence to be Received

1. Witnesses to Provide Testimony

Each interested party must submit to the Department, the Chairperson of the Board, and each other party to the hearing, a list of all witnesses who will testify on behalf of the party. The list must be received by the recipients at least five (5) days before the public hearing. Evidentiary standards for offering testimony are relaxed during a hearing. Generally, so long as a witness' testimony is relevant to the application, the Chairperson shall allow the testimony, regardless of the witness' qualifications or biases.

2. Exhibits

All exhibits presented or referenced at the hearing must be filed, in duplicate, with the Department, and copies furnished to the Chairperson and to each other party to the hearing. The exhibits must be received by the recipients at least five (5) days before the hearing. The term "exhibits" includes all illustrative and demonstrative documentary evidence used in connection with a party's presentation to the Board, including maps, photographs, charts, and any other visual aids. Large size exhibits may be used at the hearing, but all exhibit submissions for filing with the Department should, where possible, be on standard letter-size paper. Exhibits that do not meet the above requirements for quantity, size or timely submission may not be accepted during the hearing and reference to them may be prohibited by the Board.

F. Public File; Availability

The public file maintained by the Department with regard to each issue to be heard at a hearing shall consist of the application with supporting data and supplementary information, with the exception of material deemed to be confidential, such as trade secrets, proprietary

information or any other information or materials normally not available to the general public through commercial disclosures or publications. In addition, the public file shall contain all data and information submitted by the interested parties in favor of, or in opposition to the application, excluding any confidential information.

As to any application submitted to the Department, the public file shall be available to the public for inspection at the offices of the Department upon written request. The public file availability is limited as follows:

1. A public file will be available for inspection *only* by prior appointment;
2. The public file shall only be available for inspection between the hours of 9:30 a.m. and 3:30 p.m. during any day the Department is open for business;
3. A request for inspection of a public file must be in writing and be received by the Department either prior to, or at the time of prearranged inspection;
4. The public file of an application to be considered at a hearing *will not* be made available for inspection on the day of the scheduled hearing, except that the file shall be available for inspection during the Board's hearing;
5. No information contained in a public file shall be provided or disseminated by telephone.

Photocopying and/or electronic imaging (scanning) of the public file documents is available upon written request to the Department. The following provisions govern such requests:

6. Photocopies will be made available for an interested party upon written request to the Department and at a rate of \$30.00/hr for retrieval and duplication, plus 20 cents per page for reproduction. The Department may mail the photocopied documents to an interested party at the party's sole expense;
7. Scanning of the public file and transmission of the electronic document will be made available for an interested party upon written request to the Department and at a rate of \$30.00/hr for retrieval and imaging.
8. Documents of a size up to 8" x 14" will be imaged and copied in their original form. Larger documents may be re-sized if possible. Large maps, photos and the like may be reproduced on multiple pages. Some photos may not lend themselves to copying or scanning and those documents may not be furnished.
9. The Department will process a written request at the time it is received and will attempt to respond within one (1) week. The Department is absolutely under no continuing obligation to provide a requestor with any additional documents that may be added to the public file subsequent to the time of the request. No requests that encompass an ongoing obligation on the part of the Department will be honored. The Department will not supply analysis of any public file documents, or search for a particular item located within the larger public file.

G. The Hearing; Time Limits; Presentation of Testimony

In the case of a contested application, both the applicant and collectively all respondents/opponents shall each be allotted one and one-half hours to present testimony and/or evidence in support of their respective positions. When there is more than one respondent, the respondents must agree among themselves prior to the hearing as to how they will divide the time allotted to them. The time allotted may be utilized in any manner seen fit by each presenter, who may decide how it will allocate the time among an opening statement, affirmative presentation of testimony or evidence, questioning of other parties, and a closing statement. Time may be reserved by request.

The Chairperson or Vice Chairperson of the Board shall have authority to determine: the number of witnesses that may appear; the order of appearance of witnesses; what testimony, evidence, data or other materials offered shall be received; and all other procedural matters that may arise during the course of, or otherwise in connection with the hearing. No witness, other than those designated persons described below, shall be subjected to “cross-examination” without consent, except that the members of the Board reserve the right to question any witness on any matter, at any length.

The Hearing shall proceed generally in the following order of presentation:

1. Statement of Commissioner: The Commissioner of the Department will present to the Board the application at issue, a brief statement regarding the application, and the Commissioner’s recommendation on disposition of the application. Should the Commissioner be unable appear at the hearing for any reason, the Deputy Commissioner, a Department Director or the Department’s Counsel may present the application and the Commissioner’s recommendation to the Board.
2. Opening Statements: Each party may make a brief opening statement describing its general position, an overview of the evidence or testimony it plans to present and the manner in which the presentation shall proceed. The applicant shall make its statement first, followed by the respondent. The Board may limit the number of opening statements in the case of multiple respondents.
3. Applicant’s Presentation: Following opening statements, the applicant shall proceed with its affirmative presentation of testimony and/or evidence. The application, any summary of information or any other data previously submitted to the Department in support of the application shall be deemed part of the applicant’s presentation. The applicant may rely upon and rest its case based solely on its previous submissions. One or more witnesses designated to speak on behalf of the applicant must be available at the hearing to answer any questions regarding the documents presented previously or at the hearing.

4. Cross-Examination of Applicant: The designated witness(es) of the applicant shall, upon the close of the applicant's presentation, be subject to questioning by the respondent(s) regarding any previously submitted materials and any testimony given. Any questioning conducted by a respondent shall be charged against respondent's allotted time limit.
5. Respondent's Presentation: The affirmative presentation of the respondent(s) will follow the cross-examination of the applicant's designated witness(es). All documents submitted prior to the hearing will be deemed to constitute part of the respondent's affirmative presentation and respondent may rely upon and rest on such submissions. A designated witness or witnesses who speak on the behalf of the respondents should be available at the hearing to answer any questions regarding the documents previously filed or the information provided at the hearing by respondents.
6. Cross-examination of Respondent: The designated witness(es) of the respondent shall, upon the close of the respondent's presentation, be subject to questioning by the applicant regarding any previously submitted materials and any testimony given. Any questioning by applicant shall be charged against its allotted time limit.
7. Closing Statements: Each party may make a closing statement in order to summarize its position and/or evidence presented. The Applicant shall proceed first.
8. Post-Hearing Submissions: If any party requests at the hearing that the Public File remain open for supplementation and/or the Board so directs, written statements concerning any materials filed or discussed may be submitted no later than 21 calendar days following the hearing. An extension may be granted upon written request and upon a determination by the Board that additional time is warranted to gather facts prior to making a ruling. No new matters will be accepted or considered for filing under this provision. Materials submitted must be concurrently provided to the other parties who responded to the application or appeared at the hearing.

H. Board Consideration of Certain Actions Without Public Hearing

From time-to-time, the Board may be charged with the approval of certain actions proposed or recommended by the Commissioner of the Department. (*See* e.g. MISS. CODE ANN. § 81-1-63). The Board may in such a circumstance, unless expressly indicated otherwise, consider any such action or recommendation by the Commissioner without the need for a public hearing. The procedure for such consideration shall be as follows:

1. All Board Members shall be contacted in writing (traditional correspondence or electronic mail is permissible) by the Commissioner and presented with the recommendation or action that is proposed;
2. All Board Members shall within seven (7) days respond to the Commissioner, either in writing or by telephone conference with the Commissioner, and voice their approval or disapproval of the proposal; any member that fails to timely respond shall be deemed abstaining and thereafter recused from further proceedings for the purposes of Board approval;
3. Upon receipt of written response from each member or the expiration of the allotted time without response, the Commissioner shall confirm the votes of each Member and the Board's collective decision in writing by additional correspondence to each Member, with copy to the Department;
4. All related correspondence mentioned above shall suffice in lieu of "minutes" from a Board meeting and may be maintained in the files of the Department.