

Subchapter J. SUMMARY PROCEEDINGS.

§22.183. Failure to Attend Hearing and Disposition by Default.

- (a) **Disposition by default.** If a party who does not have the burden of proof fails to appear for hearing, the presiding officer may proceed in that party's absence on a default basis. In the proposal for decision or final order, the factual allegations listed in the notice of hearing will be deemed admitted.
- (b) **Notice of default proceeding.** Any default proceeding under this section requires adequate proof of the following:
 - (1) Proof that proper notice of hearing was provided to the defaulting party pursuant to Tex. Gov't Code, Chapter 2001. Such notice must have included a disclosure in at least twelve-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default if the defaulting party fails to appear at the hearing; or
 - (2) If it is not possible to prove actual receipt of notice, a hearing may proceed on a default basis if there is credible evidence that:
 - (A) the notice of hearing was sent by certified mail, return receipt requested to the last known address in the commission's records, if the party has a license, certificate, or registration approved by the commission; and
 - (B) the notice of hearing was sent by certified mail, return receipt requested to the registered agent for process for the party on file with the Secretary of State, if the party is registered with the Secretary of State.
- (c) **Admission of evidence.** The party with the burden of proof shall submit evidence to the presiding officer in accordance with the requirements of this section.
- (d) **Motion to set aside a default.** Not later than 10 days after the hearing has concluded, if a dismissal, proposal for decision, or a proposed final order has not been issued, a party may file a motion to set aside a default and reopen the record. The presiding officer may grant the motion, set aside the default and reopen the record for good cause shown.
- (e) **Default proposal for decision or order.** Upon the failure of the defaulting party to appear at the hearing, the presiding officer may issue a default proposal for decision or final order, as applicable. Parties may file exceptions and replies to exceptions to a default proposal for decision pursuant to § 22.261 of this title (relating to Proposals for Decision) and may file a motion for rehearing to a default final order pursuant to § 22.264 of this title (relating to Rehearing).