

## **NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL**

### **CHAPTER 6 – LEGAL**

#### **6.05 – RETAILER DISPUTE RESOLUTION**

##### **A. SCOPE**

These Lottery Game Retailer Dispute Resolution Procedures apply to and shall constitute the exclusive procedure for binding resolution of:

- A. All claims, disputes and complaints of Aggrieved Retailers, whether in an administrative proceeding or litigation, at law or equity;
- B. Any Dispute Resolution Requests of any kind filed by an Aggrieved Retailer relating in any way to its relationship with the NCEL or any agreement entered into with the NCEL; and
- C. Any action taken with respect to any Aggrieved Retailer in connection with being or applying to be, a Lottery Game Retailer; including, but not limited to, any questions or issues arising out of or relating to:
  1. any aspect of approving, contracting with, suspending, terminating or taking any action in connection with a Contract with a Lottery Game Retailer;
  2. the interpretation of any contractual provisions with a Lottery Game Retailer;
  3. the applicability or interpretation of any law, rule, or regulation with respect to a Lottery Game Retailer or Applicant;
  4. any decision to award, deny, suspend, cancel, terminate, or not renew any contract or agreement with any Lottery Game Retailer or Applicant;
  5. the payment, or non-payment of any sums to or from a Lottery Game Retailer or Applicant;
  6. a Denial of an Applicant to become a Lottery Game Retailer; and/or
  7. any other business or other relationship between NCEL and a Lottery Game Retailer or Applicant.

##### **B. DEFINITIONS**

Capitalized terms used herein shall have the meanings set forth in Chapter 8.00 unless otherwise defined in context.

##### **C. FILING A DISPUTE RESOLUTION REQUEST**

1. Any Aggrieved Retailer who is current on any and all sums owed to the NCEL may file a Dispute Resolution Request seeking a determination with respect to any matter which is included within the scope of these Lottery Game Retailer Dispute Resolution Procedures. An

Approved by: North Carolina State Lottery Commission	Approved on: 1/6/06 Revised on: 9/27/06, 11/28/07, 6/15/22 Procedural change: 6/13/17, 1/8/20, 6/17/24	Page 2 of 7
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## NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

### CHAPTER 6 – LEGAL

#### 6.05 – RETAILER DISPUTE RESOLUTION

Aggrieved Retailer who files a Dispute Resolution Request is hereinafter referred to as a "Petitioner." Other than as expressly set forth in these Retailer Dispute Resolution Procedures, nothing contained herein shall confer any rights or remedies upon any Aggrieved Retailer or Petitioner, or impose any duties or obligations upon the NCEL, which are not otherwise so conferred or imposed by the Act.

2. Any Dispute Resolution Request shall be in writing and shall be filed by hand or courier delivery to the Executive Director with a copy to the Chief Legal Officer of the NCEL at the address listed below, or at such other address at which the Headquarters of the NCEL may be located from time to time:

Executive Director  
North Carolina Education Lottery  
2728 Capital Boulevard  
Suite 144  
Raleigh, NC 27604

Chief Legal Officer  
North Carolina Education Lottery  
2728 Capital Boulevard  
Suite 144  
Raleigh, NC 27604

3. The Dispute Resolution Request shall include the following information:
  - a. The name, address and telephone number of the Petitioner;
  - b. The signature of the Petitioner;
  - c. Identification of the specific retail location that the Petitioner operates that is the subject of the Dispute Resolution Request;
  - d. A detailed statement of the legal, policy, and factual grounds supporting the position of the Petitioner, including copies of relevant documents;
  - e. Any other documentation the Petitioner wishes to submit in support of Petitioner's position; and
  - f. Statement of the relief requested whether legal, equitable or otherwise. If a monetary award is requested, the amount shall be stated and the method of calculation shall be described in detail.
4. For a Dispute Resolution Request to be timely filed, the original Dispute Resolution Request manually signed by the Petitioner must be physically received by the NCEL within the time period prescribed below. Facsimile or any other electronically transmitted copies of the Dispute Resolution Request will not be accepted.
5. A Petitioner shall be required to have fully paid any and all sums owed to the NCEL up through and including the date it files any Dispute Resolution Request, otherwise such Dispute Resolution Request shall not be accepted or be deemed proper. Failure to be current with the NCEL as of the time of the filing of any Dispute Resolution Request will result in the dismissal of such Dispute Resolution Request.

#### **D. TIMELINE FOR FILING A DISPUTE RESOLUTION REQUEST**

Approved by: North Carolina State Lottery Commission	Approved on: 1/6/06 Revised on: 9/27/06, 11/28/07, 6/15/22 Procedural change: 6/13/17, 1/8/20, 6/17/24	Page 3 of 7
--	--	-------------

## NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

### CHAPTER 6 – LEGAL

#### 6.05 – RETAILER DISPUTE RESOLUTION

1. A Dispute Resolution Request in regard to a Denial/Cancellation shall be filed within five (5) business days after the date such Denial/Cancellation is communicated to the Applicant.
2. Dispute Resolution Requests based upon an impending suspension of any Lottery Game Retailer's Contract shall be filed within five (5) business days after the date notice of such suspension is communicated to the Lottery Game Retailer. Enforcement of all suspensions will be delayed to allow Lottery Game Retailer to submit a Dispute Resolution Request within such five (5) business days and, if applicable, until final resolution in accordance with this policy.
3. Dispute Resolution Requests based upon any termination of any Lottery Game Retailer's Contract as a Lottery Game Retailer with the NCEL shall be filed within five (5) business days after the effective date of any such termination.
4. Dispute Resolution Requests based upon any other actions or omissions of the NCEL with respect to an Aggrieved Retailer shall be filed within five (5) business days after the effective date of any such action or omission of the NCEL.
5. In all other cases pertaining to a dispute with an Aggrieved Retailer, other than those covered in Sections (D)(1) – (D)(3) above, a Dispute Resolution Request must be filed within five (5) business days after: (i) the occurrence of the event that gives rise to the dispute; or (ii) after the Aggrieved Retailer knows or should have known of the facts giving rise to the action complained of; whichever is earlier.
6. Failure to file a written Dispute Resolution Request within the applicable time limit shall bar any further administrative, legal, or equitable action of any kind or nature in any body, court or agency. Time is of the essence in the various Lottery Game Retailer matters with respect to the NCEL.
7. Failure to timely and fully pay all sums due to the NCEL within the applicable time frame shall result in an untimely filing and bar any further administrative, legal, or equitable action of any kind or nature and in any body, court or agency.
8. Notwithstanding anything herein to the contrary: (i) regardless if a Dispute Resolution Request is timely filed in accordance with these Lottery Game Retailer Dispute Resolution Procedures before any action has been taken by the NCEL, the NCEL may still take any action it deems appropriate (and all parties subject to a contract with the NCEL may also perform in accordance with such contract) even before a decision is rendered on the Dispute Resolution Request; and (ii) if a timely and properly filed Dispute Resolution Request seeks any equitable relief, the NCEL may nonetheless continue to take such actions, or not take such actions, as it deems appropriate with respect to the matter subject to the Dispute Resolution Request until such Dispute Resolution Request shall have been resolved in accordance with these Retailer Dispute Resolution Procedures.

## NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

### CHAPTER 6 – LEGAL

#### 6.05 – RETAILER DISPUTE RESOLUTION

##### **E. CONFIDENTIAL INFORMATION**

1. Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.
2. If the Petitioner believes the Dispute Resolution Request contains confidential information or trade secrets, it must comply with all relevant provisions of the North Carolina Public Records Act to attempt to secure confidential treatment thereof; provided, however, all Petitioners acknowledge that the NCEL is subject to the Public Records Act and Open Meetings Laws of the State of North Carolina, and thus NCEL is not liable for any disclosure of any material submitted by any Petitioner regardless of the circumstances.

##### **F. DIRECTOR OR DESIGNEE DECISION**

1. The Executive Director (or their Designee) shall have the exclusive authority to decide all Dispute Resolution Requests.
2. The Executive Director shall issue a written “**Decision**” within thirty (30) calendar days after a Dispute Resolution Request has been filed. The Decision shall include:
  - a. A brief description of the claim;
  - b. A reference to the pertinent contract provision;
  - c. A brief statement of the factual, policy, or legal issues raised or implicated; and
  - d. A statement of the Executive Director’s Decision, findings of facts, and conclusions of law, with supporting rationale and the remedial action and award, if any.
3. The Executive Director shall furnish a copy of the Decision to the Petitioner by certified mail, return receipt requested or by any other method that provides written evidence of delivery, such as hand delivery by courier, express mail or overnight express courier (any such method being defined as a “**Documented Delivery Method**”).
4. The time limit for Decisions may be extended by the Executive Director (or their Designee), in their discretion, for good cause and for a reasonable time not to exceed thirty (30) additional calendar days. The Executive Director (or their Designee) shall notify the Petitioner in writing that the time for the issuance of a Decision has been extended and the date by which a Decision will be issued.
5. If the Executive Director determines that they want a Designee to make a determination in any Dispute Resolution Request, such Designee shall make a written ruling recommendation in the form of a “**Proposed Decision**” to the Executive Director within fifteen (15) calendar days after such Dispute Resolution Request has been filed. If the Executive Director receives a Proposed Decision, they must render their final and binding Decision in writing and deliver the Decision to the Petitioner within fifteen (15) calendar days after receiving the Proposed Decision from the Designee. With respect to any Proposed Decision made by any Designee, the Executive Director may:

## **NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL**

### **CHAPTER 6 – LEGAL**

#### **6.05 – RETAILER DISPUTE RESOLUTION**

- a. accept, modify or reject the Designee's Proposed Decision in whole or in part;
  - b. return the matter to that Designee with instructions;
  - c. make any other appropriate disposition; or
  - d. issue a no action response.
6. If the Executive Director issues a no action response, then the determination in the Proposed Decision of the Designee will be deemed to be accepted by the Executive Director and will become the Decision.
7. The Executive Director's final and binding Decision shall be sent to the Petitioner by a Documented Delivery Method.
8. If the Executive Director fails to issue a Decision within the time limits set forth herein, the Petitioner may proceed as if the Executive Director had issued an adverse Decision to the Petitioner.

#### **G. ADDITIONAL INFORMATION**

The Executive Director (or their Designee), in their sole discretion, may seek additional information or documents from the Petitioner or such other person or entity who might have relevant information, and if requested, the Petitioner shall comply with such requests for additional information or documents.

#### **H. FILING AN APPEAL TO THE COMMISSION**

1. A Petitioner (an "**Appellant**") may appeal (an "**Appeal**") a Decision of the Executive Director solely to the Commission. Any Appeal from a Decision of the Executive Director must be filed with the Commission within five (5) business days after receipt of such Decision.
2. Any Appeal shall be filed by hand or courier delivery, to the Executive Director with a copy to the Chief Legal Officer of the NCEL at the address listed in the "Filing a Dispute Resolution Request" Section or at such other address at which the Headquarters of the NCEL may be located from time to time. An Appeal so delivered will be timely filed only if received by the NCEL at the above-stated address during its normal business hours on or before the fifth (5th) business day prescribed above.
3. Every Appeal must be in writing and shall contain the following:
  - a. a copy of the Decision of the Executive Director;
  - b. the original written dispute filed and all materials submitted to or otherwise considered by the Executive Director in making the Decision; and
  - c. the detailed basis for the precise factual, policy, or legal error in the Decision of the Executive Director from which the Appeal is taken.

Approved by: North Carolina State Lottery Commission	Approved on: 1/6/06 Revised on: 9/27/06, 11/28/07, 6/15/22 Procedural change: 6/13/17, 1/8/20, 6/17/24	Page 6 of 7
--	--	-------------

## NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

### CHAPTER 6 – LEGAL

#### 6.05 – RETAILER DISPUTE RESOLUTION

4. The Commission may notify any other individuals or entities regarding the Appeal (by Documented Delivery Method) within five (5) calendar days after the Appeal is filed.
5. Any interested party may file a written brief stating its position on the Appeal within five (5) business days after receipt of such notice.

#### **I. COMMISSION'S FINAL DECISION**

1. The Commission, or a committee of the Commission, may review the record without a hearing or oral argument and issue a written "**Final Commission's Decision**" on behalf of the Commission. The Commission, or a committee of the Commission, may, in the manner and under procedures that the Commission or its committee shall deem appropriate under the circumstances in its sole discretion: (1) conduct its own review or investigation; (2) conduct a de novo review in whole or in part; and/or (3) allow oral argument.
2. The Commission, or a committee of the Commission, shall set forth in its Final Commission's Decision the extent to which it conducted its own review or investigation, to what extent it conducted a de novo review in whole or in part, and the extent to which it allowed oral argument and/or received additional information for consideration during that argument. The Commission, or a Committee of the Commission, shall also set forth in its Final Commission's Decision the extent to which there was a dissent from the Decision and the basis for that dissent.
3. No later than fourteen (14) business days after the next Commission meeting following the timely filing of an Appeal of a Decision of the Executive Director, a copy of the Final Commission's Decision will be sent to the Appellant by Documented Delivery Method. If the Commission fails to deliver the Final Commission's Decision within the time period set forth in the immediately preceding sentence, then the Decision of Executive Director will be deemed to be accepted and adopted by the Commission in all respects and it shall become the Final Commission's Decision. The Final Commission's Decision will be final and binding, and no further appeal will be allowed.

#### **J. JUDICIAL REVIEW**

By submitting an application or attempting to become a Lottery Game Retailer, all Retailers and Retailer Applicants irrevocably waive, to the fullest extent permitted by law, any right which they have to appeal any Final Commission's Decisions made pursuant to these Lottery Game Retailer Dispute Resolution Procedures. Only after exhaustion of all remedies and procedures in these Lottery Game Retailer Dispute Resolution Procedures of NCEL, if applicable law permits any further appeals, any such appeal must be brought solely in the Superior Court of Wake County, North Carolina, and all Retailers and Retailer Applicants irrevocably waive any objection which they may have to the venue of any appeal being solely in the Superior Court of Wake County, North Carolina.

#### **K. EXCLUSIVE REMEDY**

Approved by: North Carolina State Lottery Commission	Approved on: 1/6/06 Revised on: 9/27/06, 11/28/07, 6/15/22 Procedural change: 6/13/17, 1/8/20, 6/17/24	Page 7 of 7
---	---	-------------

## NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

### CHAPTER 6 – LEGAL

#### 6.05 – RETAILER DISPUTE RESOLUTION

These Lottery Game Retailer Dispute Resolution Procedures provide the exclusive procedure for asserting a claim against the NCEL arising out of or relating to any matter which is within the scope of these Lottery Game Retailer Dispute Resolution Procedures. Neither an Aggrieved Retailer, Petitioner nor any other interested party has a right to any remedy against the NCEL with respect to a matter within the scope hereof, except in accordance with the procedures set forth in these Lottery Game Retailer Dispute Resolution Procedures.

#### **L.     AMENDMENT**

These Lottery Game Retailer Dispute Resolution Procedures may be amended from time to time by the Commission. Any Retailer, Retailer Applicant, or other individual or entity may, and should, obtain the latest version of these Retailer Dispute Resolution Procedures before proceeding in connection with any Dispute Resolution Request or dispute governed hereby.