

**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
CONSERVATION EASEMENTS
4CCR 725-4**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
OCTOBER 24, 2011**

C-1 SUBMISSION OF A CLAIM FOR A TAX CREDIT CERTIFICATE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

- Section 1. Authority
- Section 2. Scope and Purpose
- Section 3. Applicability
- Section 4. C-1 Submission of a Claim for a Tax Credit Certificate

Section 1. Authority

The Division adopts the following permanent rule entitled, **C-1 Submission of a Claim for a Tax Credit Certificate**, according to the authority found in section 12-61-722, C.R.S.

Section 2. Scope and Purpose

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the Colorado Revised Statute concerning the state income tax credit that may be claimed for a conservation easement donation.

The specific purpose of this rule is to define the requirements and procedures to submit a claim to the Division of Real Estate in order to receive a tax credit certificate pursuant to section 39-22-522 (2.5), C.R.S. and section 12-61-722, C.R.S.

Section 3. Applicability

This permanent rule is applicable to a taxpayer conveying a conservation easement donation in 2011, 2012, and 2013 and claiming a tax credit pursuant to section 39-22-522, C.R.S.

Section 4. C-1 Submission of a Claim for a Tax Credit Certificate

1. A valid Deed of Conservation Easement must be recorded before a claim can be submitted and a tax credit certificate issued.

2. A claim for a tax credit certificate must include the following:
 - a. a signed and completed form entitled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division of Real Estate;
 - b. a signed and completed form entitled: "Affidavit for Conservation Easement Appraisals," approved by the Colorado Board of Real Estate Appraisers; and
 - c. a copy of the Recorded Deed of Conservation Easement.
3. A taxpayer who submits a claim for a tax credit certificate to the Division of Real Estate shall pay the Division a fee as prescribed by the Division.
4. An alternative document may be substituted for the copy of the recorded Deed of Conservation Easement as evidence a conservation easement was conveyed. The alternative document must originate from the county or counties in which the conservation easement was recorded and disclose the following:
 - a. the reception number;
 - b. a description of the property;
 - c. the date and time which the easement was recorded; and
 - d. the name of the grantor and grantee.
5. A claim for a tax credit certificate is deemed received by the Division of Real Estate for purposes of section 39-22-522 (2.5), C.R.S. when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division of Real Estate upon receipt. The Division of Real Estate is not responsible for any claims not received. Only after the claim is deemed to be received will the claim be applied towards the ~~twenty-six million dollar~~ limit for the applicable year.
6. The taxpayer must sign, understand, and adhere to all disclosures listed in part three of the form entitled: "Application for a Conservation Easement Tax Credit Certificate," in the form approved by the Division of Real Estate at the time the claim is made.
7. After the tax credit certificate has been issued, the Department of Revenue has the authority to determine if the conservation easement tax credit does not comply with statutory and regulatory requirements. The Division of Real Estate is not responsible should the Department of Revenue determine a conservation easement tax credit does not comply with statutory and regulatory requirements.
8. A claim for a tax credit certificate is ineligible to receive a tax credit certificate and shall not be applied towards the ~~twenty-six million dollar~~ limit for the applicable year if it is based on a conservation easement donation where:
 - a. The appraiser associated with the claim does not hold a valid license as a certified general appraiser or fails to meet all of the education and experience requirements established in accordance with section 12-61-719 (7), C.R.S.; or
 - b. The conservation easement holder is not certified by the Division of Real Estate at the time of the donation or fails to comply with section 24-33-112, C.R.S.
9. A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division of Real Estate.
10. If more than one claim is submitted to the Division of Real Estate on the same day, the tax credit certificates with respect to those claims will be issued in the order that conservation easement donations were first recorded with the appropriate county or counties.

11. In the event a portion of a claim does not qualify under the aggregate limit ~~of twenty-six million dollars~~ for 2011 or 2012, a second certificate will be issued for the remaining tax credit amount for the subsequent year.
12. In the event a tax credit certificate has been issued for a conservation easement donation and the donation value increases pursuant to a revised appraisal, the taxpayer may submit a second claim to the Division of Real Estate for the increased amount. A second claim must be submitted to the Division of Real Estate in accordance with this rule and will be assigned a tax credit certificate in the order received among all other claims submitted to the Division of Real Estate. A second tax credit certificate for a second claim may be issued for a different year.
13. The Division of Real Estate may consult with the taxpayer, a taxpayer's authorized representative, the conservation easement holder, appraiser, the Conservation Easement Oversight Commission and the Department of Revenue regarding a claim for a tax credit certificate.

A hearing on the above subject matter will be held on Monday, October 24, 2011, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 10:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.