

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
REAL ESTATE COMMISSION
4 CCR 725-1

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
August 5, 2019

CHAPTER 1. DEFINITIONS

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 Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal, or repeal and re-enact the present rules of the Commission.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Parts 1-2 and 8 of Title 12, Article 61, Colorado Revised Statutes, as amended by House Bill 19-1172 which becomes effective October 1, 2019.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive pursuant to section 24-4-103.3., C.R.S. (Senate Bill 14-063) and House Bill 19-1172 along with promulgating the necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

SPECIFIC PURPOSE OF RULEMAKING

The specific purpose of this rulemaking is to add key terms with respect to licensing and enforcement of real estate brokers as a result of the mandatory rule review required by section 24-4-103.3., C.R.S. The Division of Real Estate conducted a review of all of its rules relating to the real estate practice act to assess the continuing need for and the appropriateness and cost-effectiveness of its rules. The review also determined whether the rules should be continued in their current form, modified, or repealed. After consultation with stakeholders, the proposed rules have been re-organized, re-indexed, and correctly categorized. As a result, Chapter 1 sets forth key defined terms relating to the real estate practice act. This rulemaking also revises the statutory citations as a result of the passage of House Bill 19-1172.

PROPOSED NEW, AMENDED AND REPEALED RULES

Deleted material shown ~~struck through~~; new material is indicated by underline. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Commission at www.dora.colorado.gov/dre.

Chapter 1: Definitions

Active: A current, valid License that allows a person, firm, partnership, limited liability company, association, or corporation to engage in Real Estate Brokerage Services.

Advertise or Advertising: The promotion, solicitation, or representation of Real Estate Brokerage Services requiring a License. Advertising may include, but is not limited to, business cards, brochures, websites, signage, property flyers, mailings (paper or electronic), social media, letterhead, email signatures, and contract documents. A uniform resource locator (URL) and an email address are not

considered Advertising for purposes of Rule 6.10 so long as they are not directly used to promote or solicit Real Estate Brokerage Services.

Affiliated Business Arrangement: Has the same meaning pursuant to section 12-10-218(1), C.R.S.

Anniversary Year Cycle: The three-year licensing period commencing on a Broker's initial date of licensure (anniversary date) and expiring three (3) years later on the same date. The anniversary date may be any day of the calendar year.

Applicant: A person or entity seeking a License from the Commission to perform the duties pursuant to section 12-10-201(6)(a), C.R.S.

Associate Broker: A Broker who holds an Associate Broker level license and works under the supervision of an Employing Broker. Associate Brokers may have an Independent Broker or Employing Broker level license even if they are still acting as an Associate Broker under the supervision of an Employing Broker.

Broker: Any person licensed by the Commission to perform Real Estate Brokerage Services regardless if the Broker is licensed as an Associate Broker, Independent Broker, or Employing Broker.

Brokerage Firm: Any sole proprietor, partnership, limited liability company, corporation, or any other authorized entity licensed by the Commission to employ or engage Brokers to perform Real Estate Brokerage Services. All Brokerage Firms that employ or engage Associate Brokers must have an Active Employing Broker.

Brokerage Relationship: Has the same meaning pursuant to section 12-10-304(2)(b)(I), C.R.S.

Calendar Year Cycle: This is the three-year licensing period commencing on January 1 of year one and expiring on December 31 of year three. All Brokers will eventually be on a Calendar Year Cycle for their License renewal.

Commercial Real Estate: Any real property other than real property containing one to four residential units, single-family or multi-family residential units including condominiums, townhouses, or homes in a subdivision when such real estate is sold, leased, or otherwise conveyed on a unit-by-unit basis even though the units may be part of a larger building or parcel of real property containing more than four residential units as defined pursuant to section 38-22.5-102(2), C.R.S.

Commission: The Colorado Real Estate Commission as defined pursuant to section 12-10-201(1), C.R.S.

Consumer: A member of the public that has sought or is seeking to engage Real Estate Brokerage Services provided by a Broker. A Consumer is a buyer, seller, tenant, or landlord, as applicable.

Customer: Has the same meaning pursuant to section 12-10-402(2), C.R.S.

Deemed Complete: An Applicant has submitted a complete and satisfactory application in compliance with sections 12-10-202 and 12-10-203, C.R.S. that includes the Fee and the accompanying required documentation as set forth in Chapters 2 and 3 of these Rules.

Designated Broker: Has the same meaning pursuant to section 12-10-402(3), C.R.S.

Director: The Director of the Division as defined pursuant to section 12-10-101(1), C.R.S.

Distance Learning: Education courses offered outside the traditional classroom setting in which the instructor and learner are separated by distance and/or time.

Division: The Division of Real Estate as defined pursuant to section 12-10-101(2), C.R.S.

Duplicate: A legible photocopy, carbon copy, facsimile, or electronic copies which contain a digital or electronic signature as defined pursuant to section 24-71-101(1), C.R.S.

Electronic Media: The method of communicating information that are in an electronic format rather than a paper format. Electronic Media may include, but is not limited to, websites, electronic mailings, social Media such as Twitter and Facebook, banner advertisements, and YouTube.

Electronic Record: A record generated, communicated, received, or stored by electronic means as defined to pursuant to section 24-71.3-102(7), C.R.S.

Employing Broker: A Broker holding an Employing Broker level license that provides supervision to all Associate Brokers licensed under the Employing Broker or the Employing Broker's Brokerage Firm.

Expired: A License that was not renewed prior to the last day of the license cycle and is no longer valid for a person or entity to perform any Real Estate Brokerage Services. Such persons cannot hold themselves out to the public as Brokers and such entities cannot Advertise as Brokerage Firms.

Fee: The prescribed non-refundable fee as set by the Division.

Initial License or Initial Licensure: The first license granted by the Commission to an Applicant pursuant to sections 12-10-202 and 12-10-203, C.R.S.

Inactive: A Broker who holds a valid License shown in the Commission's records as being Inactive is not permitted to engage in Real Estate Brokerage Services. To maintain licensure on Inactive status, a Broker must still continue to renew their License as set forth in Chapter 3 of these Rules.

Independent Broker: A Broker either holding an Independent Broker level license or Employing Broker level license acting as their own Brokerage Firm or sole proprietor and not employing or supervising any Associate Brokers.

Invalid Payment: If the Fees accompanying any application including Fees for the recovery fund, renewals and transfers made to the Division are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, or if payment is submitted in any other manner, and payment is denied, rescinded or returned as invalid, the application will be immediately canceled. The application will only be reinstated if the Division has received valid payment of all application Fees together with any fees incurred by the Division including the fee required by state fiscal rules for clerical services necessary for reinstatement.

Jurisdiction: For purposes of these Rules, all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands.

License: A Broker's or Brokerage Firm's license issued by the Commission pursuant to section 12-10-203, C.R.S.

Listing Contract: An agreement between a Brokerage Firm and a Consumer in which a Broker licensed with the Brokerage Firm is designated to provide Real Estate Brokerage Services to the Consumer. Listing Agreements include: Exclusive Tenant Contract, Exclusive Right to Sell, Exclusive Right to Lease, and Exclusive Right to Buy.

Management Agreement: An agreement between a Brokerage Firm and an owner of a property in which a Broker licensed with the Brokerage Firm is designated to provide Property Management Services on behalf of the owner.

Money Belonging to Others: Money Belonging to Others which is received by the Broker or Brokerage Firm that includes, but is not limited to, money received in connection with Management Agreements, partnerships, limited liability companies, syndications, lease agreements, advance fee contracts, guest deposits for short term rentals, earnest money deposits, or Money Belonging to Others received for any other purpose.

New Associate Broker: An Associate Broker with less than two (2) years of accumulative Active experience.

Office Policy Manual: The Manual required for all Employing Brokers or the Employing Broker's Brokerage Firm, which contains certain policies and procedures.

Petitioner: For the purposes of implementing the provisions of Chapter 8 of these Rules, any person who has filed with the Commission a petition or has been granted leave to intervene by the Commission for a declaratory order pursuant to section 24-4-105(11), C.R.S. and as set forth in Chapter 8 of these Rules.

Property Management: An on-going relationship between a Brokerage Firm and an owner of a property in which the Brokerage Firm is designated to provide Property Management Services.

Property Management Services: The activities performed in leasing and subsequent management of a property on behalf of an owner that are pursuant to section 12-10-201(6), C.R.S. and further described in the Management Agreement.

Real Estate Brokerage Services: Any of the activities pursuant to section 12-10-201(6)(a), C.R.S. when performed on behalf of a Consumer.

Real Estate Licensing Examination: An examination that consists of two (2) parts; a national part and a Colorado part as set forth in Rule 2.2.

Real Estate School: Has the same meaning pursuant to section 23-64-103(20), C.R.S.

RESPA - The Real Estate Settlement Procedures Act of 1974, set forth in 12 U.S.C. 2601, et. seq. (Act), effective June 1, 2018, incorporated by reference in compliance with section 24-4-103(12.5), C.R.S. and does not include any later amendments or editions to the Act. A certified copy of the Act is readily available for public inspection at the Office of the Colorado Real Estate Commission at 1560 Broadway, Suite 925, Denver, Colorado. The Act may also be examined at the internet website of the Consumer Bureau of Financial Protection (CFPB) at www.consumerfinance.gov. The CFPB may also be contacted at 1700 G. Street, NW, Washington, D.C. 20552 or by telephone at (202) 435-7000.

Recognized Depository: Any bank, savings and loan association, or credit union that accepts deposits or shares insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) respectively.

Reinstatement or Reinstating or Reinstated: Has the same meaning pursuant to section 12-10-212(4)(a)(III), C.R.S.

Single Agent: Has the same meaning pursuant to section 12-10-402(6), C.R.S.

Standard Form: Has the meaning pursuant to section 12-10-403(4), C.R.S. and also as set forth in Rule 7.1.

Supervisory Broker: A Broker, such as a managing broker, team lead, office manager, etc., who has been delegated in writing by an Employing Broker to assume some of the Employing Broker's duties and responsibilities as set forth in Rule 6.3.

Team: Two (2) or more Brokers within a Brokerage Firm that cooperate on an on-going basis to conduct a substantial portion of their Real Estate Brokerage Services together.

Temporary License: Has the same meaning pursuant to section 12-10-203(6)(c), C.R.S.

Things of Value: Monetary considerations as well as the exchange of tangible, non-monetary assets.

Trademark: Any logo, service mark, or other identifying mark used in conjunction with a Brokerage Firm's legal name or Trade Name. Trademarks may be registered with the Colorado Secretary of State pursuant to section 7-70-102, C.R.S. As an example, the brokerage "A Better Choice Real Estate" uses a logo bearing the initials "ABC". The logo is used to identify the Brokerage Firm and the Real Estate Brokerage Services that it provides to Consumers; therefore, it would be the trademark for the Brokerage Firm.

Trade Name: The name under which a Brokerage Firm does business other than the Brokerage Firm's legal name. Any Trade Name used by a Brokerage Firm must be on file with the Commission and must be filed with the Colorado Secretary of State pursuant to section 7-71-101, C.R.S. For example, a Brokerage Firm is licensed with the Commission under its legal name of "Colorado Real Estate Group LLC". However, the Brokerage is also a franchise of "International Realty" and does business under the Trade Name "International Realty of Colorado".

Transaction-Broker: Has the same meaning pursuant to section 12-10-402(8), C.R.S.

Transition Period: The two-year licensing period plus a partial year commencing on the anniversary date when a Broker's license expires in the years of 2018, 2019, or 2020 and expiring two (2) years plus the remaining days in the third year to reach December 31. The length of the Transition Period is dependent on the anniversary date and could be as long as three (3) years or as short as two (2) years and one day.

Trust or Escrow Account: Any checking, demand, passbook or statement account, which has, at a minimum, the following elements:

The account is separate and contains only Money Belonging to Others;

The account is custodial and fiduciary;

All funds are available on demand; and

The account is held with a Recognized Depository.

Trust or Escrow Accounting Equation: The reconciled trust or escrow bank account cash balance must equal the sum total of the individual ledger balance for each owner at any given point in time.

Unlicensed On-Site Manager: An unlicensed person who fills in blanks, as a scrivener, on lease forms, shows prospective tenants available units, quotes rental prices established by the owner or Broker, arranges for maintenance, and collects monies, including security deposits and rents. A Brokerage Firm which employs an Unlicensed On-Site Manager must do so either as a regularly salaried employee or as an independent contractor, and pay the Unlicensed On-Site Manager through the Brokerage Firm. The salary may include rent value or other non-commission income.

Viewable Page: A page that may or may not scroll beyond the border of the screen and includes the use of frame pages.

A hearing on the above subject matter will be held on Monday, August 5, 2019 at the Colorado Division of Real Estate, 1560 Broadway, Suite 110-D, Denver, Colorado 80202 beginning at 9:00 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.