

DEPARTMENT OF REGULATORY AGENCIES

Division of Real Estate

SUBDIVISIONS AND TIMESHARES

4 CCR 725-6

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Chapter 1: Registration, Certification and Application

- 1.1 The Registration and Certification of a Subdivision Developer (Developer) under Title 12, Article 61, Part 4, C.R.S., does not exempt the developer from the requirements for the licensing of real estate brokers under Title 12, Article 61, Part 1, C.R.S. Exemptions from the licensing of real estate brokers are made pursuant to §12-61-101(2)(b), C.R.S.
- 1.2 The person, firm, partnership, joint venture, limited liability company, association, corporation or other legal entity, or combination thereof, who will sign as seller or lessor in any contract of sale, lease, deed or any other instrument purporting to convey any site, tract, lot, divided or undivided interest from a subdivision, must secure a registration under §12-61-403, C.R.S., (Developer Certificate) before negotiating or agreeing to sell, lease or transfer and before any sale, lease or transfer is made. If such person is acting only as a trustee, the beneficial owner of the subdivision must secure a Developer Certificate.
- 1.3 If an Applicant is:
 - a. A corporation, a director or an authorized officer must apply on behalf of said corporation.
 - b. A partnership or limited partnership, one of the general partners must apply on behalf of the partnership or limited partnership.
 - c. A joint owner of the subdivision, such owner may apply on behalf of all joint owners of such subdivision.
 - d. A limited liability company, one of the managers or member-managers must apply on behalf of the company.
 - e. With respect to any other type of developer that is other than a natural person, a person authorized to act on behalf of such entity, as demonstrated by such documents in a form satisfactory to the Commission, will apply on behalf of that entity.
- 1.4 The Real Estate Commission (Commission) will issue a Developer Certificate, deny registration or demand further information within sixty (60) calendar days from the date of receipt of the application by the Commission.
- 1.5 If the Commission requires additional information, the Commission will give written notice in detail of the information so required and will allow an additional sixty (60) calendar days to present such material before denial of the application, which period may be extended only upon showing of good cause.

- 1.6 Notification in writing must be made to the Commission within ten (10) calendar days of any change in the principal office address of the developer or the natural person, or any other change in the information submitted pursuant to §12-61-403, C.R.S.
- 1.7 Pursuant to §12-61-405, C.R.S., any developer who has received written notification from the Commission that a complaint has been filed against the developer, must submit a written answer to the Commission within a reasonable time as set by the Commission.
- 1.8 Failure to submit any written response required by Rule 1.7 will be grounds for disciplinary action unless the Commission has granted an extension of time, or unless such answer would subject such person to a criminal penalty.

Chapter 2: Records, Required Information

- 2.1 Records as required by Title 12, Article 61, C.R.S., and rules promulgated by the Commission, may be maintained in electronic format as permitted by Title 24, Article 71.3, C.R.S. such electronic records must be in a format that has the continued capability to be retrieved and legibly printed. The developer must produce printed records upon request of the Commission, or by any principal party to a transaction.
- 2.2 In addition to §12-61-403, C.R.S., the applicant for a developer certificate must provide the Commission with the following information concerning the subdivision(s) to be registered:
 - a. The address or actual physical location of each subdivision from which sales are intended to be made.
 - b. Copies of a recorded deed or other documents evidencing the developer's title or other interest in the subdivision(s) and a title commitment, policy or report, abstract and opinion, or other evidence acceptable to the Commission documenting the condition of such title or interest.
 - c. Sample copies of contracts of sale, notes, deeds, leases and other legal documents prepared by the developer or an attorney representing the developer which are to be used to effectuate the sale or lease of the subdivision or any part thereof. The Commission may disapprove the form of the documents submitted and may deny an application for registration until such time as the applicant submits such documents in forms that are satisfactory to the Commission.
 - d. In compliance with §12-61-403(3)(e), C.R.S., a developer registering a subdivision that incorporates time share use and is subject to one or more blanket encumbrances must submit to the Commission a "Nondisturbance Agreement" by which the holder of each blanket encumbrance against the subdivision agrees that its rights in the subdivision will be subordinate to the rights of the time share use purchasers. From and after the recording of a nondisturbance agreement, the holder of the blanket encumbrance executing the same, such holder's successors and assigns, and any person who acquires all or part of the subdivision through the subject blanket encumbrance, will take the property subject to the rights of the time share use purchasers. Every nondisturbance agreement must contain the covenant of the holder of the blanket encumbrance that such person or any other person acquiring all or part of the subdivision through such blanket encumbrance will not use or cause the subdivision to be used in a manner which would prevent the time share use purchasers from using and occupying the subdivision in a manner contemplated by the time share use plan. any other "trust" or "escrow" arrangement which fully protects the time share use purchasers' interest in the subdivision as contemplated by §12-61-403(3)(e), C.R.S., may be approved by the Commission.

- e. If the developer is other than a natural person, proof of formation and registration in accordance with state and local requirements must accompany the application.
 - f. Copies of the recorded declaration, covenants, filed articles of incorporation/organization and bylaws/operating agreement of any homeowners' association.
- 2.3 Pursuant to §12-61-402(2), C.R.S., where a developer receives cash or receivables from a purchaser for an uncompleted subdivision, the Commission will register such developer only after:
 - a. The developer deposits in an escrow account, with an independent escrow agent, all funds and receivables received from purchasers, or
 - b. The developer obtains a letter of credit or bond payable to an independent escrow agent or establishes any other financial arrangement acceptable to the Commission, the purpose of which is to ensure completion of subdivision accommodations and facilities and to protect the purchaser's interest in the subdivision accommodations and facilities.
- 2.4 A developer must furnish to the Commission such additional information as the Commission deems necessary both during the application process and during the active registration period of the subdivision for the enforcement of §12-61-401, *et seq.*, C.R.S.
- 2.5 Developer must maintain all business records related to the subdivision development in a safe and secure manner for a period of at least seven (7) years from the effective date of each such business record.
- 2.6 Renewal of the registration and certification as a developer can be executed only on the renewal application provided by the Commission, and must be delivered to the Commission, accompanied by the proper fees, on or before December 31st of each year.
- 2.7 Pursuant to §12-61-406(2.5) (a), C.R.S., and §12-61-406(3), C.R.S., developer must supply the following information to the Commission in addition to the requirements of §12-61-403, C.R.S., and §12-61-404(4), C.R.S., and prior to contracting with the public must disclose to prospective purchasers in the sales contract or in a separate written disclosure document, the following:
 - a. The name and address of the developer and of the subdivision lots or units.
 - b. An explanation of the type of ownership or occupancy rights being offered.
 - c. A general description of all facilities, amenities and accommodations, together with provisions for and the availability of legal access, roads, sewage disposal, public utilities (including water, electricity, gas, internet and telephone) and other promised facilities in the subdivision. The disclosure must identify and describe the specific amenities promised, the ownership of such amenities, the projected completion date of any amenities not completed, a statement setting forth the type of financial arrangements established in compliance with Rule 2.3, and the allocation of the amenity expense among the developer, the purchaser and any third party.
 - d. In compliance with §12-61-405(1)(i), C.R.S., a statement in bold print immediately prior to the purchaser's signature line on the sales contract disclosing the rescission right available to purchasers and that the rescission right cannot be waived; the minimum allowable rescission period in Colorado is five (5) calendar days after execution of the sales contract.

- e. A general description of all judgments and administrative orders issued against the seller, developer, homeowners' association or managing entity which are material to the subdivision development and operational plan.
- f. Any taxes or assessments, existing or proposed, to which the purchaser may be subject or which are unpaid at the time of contracting, including obligations to special taxing authorities or districts.
- G. A statement that sales must be made by brokers licensed by the State of Colorado unless specifically exempted pursuant to §12-61-101(2)(b), C.R.S.; the sales contract must disclose the name of the real estate brokerage firm and the name of the broker establishing a brokerage relationship with the developer.
- h. When a separate document is used to make any of the disclosures required in Rule 2.7 herein, this statement must appear in bold print on the first page of the document and preceding the disclosure: **"the State of Colorado has not prepared or issued this document nor has it passed on the merits of the subdivision described herein."**
- i. A statement that all funds paid by the purchaser prior to delivery of the lease, deed or other instrument purporting to convey any interest in the site, tract, lot, divided or undivided interest from a subdivision will be held in trust by the licensed real estate broker named in the contract or a clear statement specifically setting forth who such funds will be delivered to, when such delivery will occur, the use of said funds, and whether or not there is any restriction on the use of such funds. (This must be disclosed in the contract.)
- j. Where a deed is issued, a statement that, immediately following the date of closing, the purchaser's deed will be delivered to the appropriate county Clerk and Recorder's office for recording, or a clear statement specifically setting forth when such delivery and recording of the deed will occur; for the purposes of this rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance of the purchase price. (See Rule 4.7) (This must be disclosed in the contract.)
- k. A statement that a title insurance policy will be delivered at no expense to the purchaser within sixty (60) calendar days following recording of the deed or the closing, whichever is earlier, unless specifically agreed to the contrary by the parties in the contracting instrument. (See Rule 4.8) (This must be disclosed in the contract.)
- l. A contract which requires the execution of a promissory note or other evidence of indebtedness that accrues interest or requires payments prior to the recording of a deed, will be deemed to be an installment contract pursuant to §12-61-403(3)(g), C.R.S. where an installment contract is used:
 - 1. Whether or not the purchaser's deed is escrowed with an independent escrow agent and if so, the name and address of the escrow agent. (This must be disclosed in the contract.);
 - 2. The amount of any existing encumbrance(s), the name and address of the encumbrancer, and the conditions, if any, under which a purchaser may cure a default caused by non-payment;
 - 3. A clear statement that a default on any underlying encumbrance(s) could result in the loss of the purchaser's entire interest in the property;

4. A clear statement advising the purchaser to record the installment contract; and
 5. Pursuant to §12-61-403(3)(e), C.R.S., an agreement by which the holder of any blanket encumbrance against the subdivision agrees that its rights and the rights of its successors or assigns in the subdivision will be subordinate to the rights of purchasers, or any other "trust", "escrow" or release arrangement which fully protects the purchasers' interest in the subdivision.
- m. If the subdivision has a homeowners' or similar association:
1. Whether membership in such association is mandatory;
 2. An estimate of association dues and fees which are the responsibility of the purchaser and the developer, respectively;
 3. A description of the services and amenities provided by the association;
 4. Whether the developer has voting control of the association and the manner in which such control can or will be transferred; and
 5. Whether the developer has any financial interest in or will potentially derive any income or profit from such association, including the developer's right to borrow or authorize borrowing from the association.
- n. In addition to the disclosures in (a) through (m) above, if time share sales are to be made from a subdivision:
1. A description of the time share units including the number of time share units, the length, type and number of time share interests in each unit, and the time share periods constituting the time share plan;
 2. The name and business address of the managing entity appointed by the developer or homeowners' association, a description of the services that the managing entity will provide, a statement as to whether the developer has any financial interest in or will potentially derive any income or profit from such managing entity, and the manner, if any, by which the purchaser or developer may change the managing entity or transfer the control of the managing entity;
 3. An estimate of the dues, maintenance fees, real property taxes and similar periodic expenses which are the responsibility of the purchaser and the developer, respectively, and a general statement of the conditions under which future charges, changes or additions may be imposed. Such estimate must include a statement as to whether a maintenance reserve fund has been or will be established; the manner in which such reserve fund is financed; an accounting of any outstanding obligations either in favor of or against the fund; the developer's right to borrow or authorize borrowing from the fund; and the method of periodic accounting which will be provided to the purchaser;
 4. A description of any insurance coverage(s) provided for the benefit of purchasers; and
 5. That mechanic's liens law may authorize enforcement of the lien by selling the entire time share unit.

- o. In addition to the disclosures in (a) through (n) above, if time share sales are to be made from a subdivision:
 - 1. The specific term of the contract to use and what will happen to a purchaser's interest upon termination of said contract;
 - 2. A statement as to the effect a voluntary sale, by the developer to a third party, will have on the contractual rights of time share owners;
 - 3. A statement that an involuntary transfer by bankruptcy of the developer may have a negative effect on the rights of the time share owners; and
 - 4. A statement that a Federal or State tax lien could be enforced against the developer by compelling the sale of the entire subdivision.
- p. If time shares are to be sold from a subdivision which: (1) contains two or more component sites situated at different geographic locations or governed by separate sets of declarations, by-laws or equivalent documents; and (2) does not include a guaranteed, recurring right of use or occupancy at a single component site:
 - 1. For each component site, the information and disclosures required by Rule 2.7 (a) through (o);
 - 2. A general description of the subdivision;
 - 3. For each term of usage or interest offered for sale, the total annual number of available daily use periods within the entire subdivision and within each component site for that term, regardless of whether such use periods are offered to a purchaser by days, weeks, points or otherwise, and a calculation represented on a chart or grid showing each component site's annual daily use periods as a percentage of the entire subdivision's annual daily use periods;
 - 4. A clear description in the sales contract of the interest and term of usage being purchased and a definite date of termination of the purchaser's interest in the subdivision, which date will be not later than the termination date of the subdivision's interest in a specifically identified component site;
 - 5. A clear disclosure and description of any component site which is not legally guaranteed to be available for the purchaser's use for the full term of the purchaser's usage interest;
 - 6. The system and method in place to assure maintenance of no more than a one-to-one ratio of purchasers' use rights to the number of total use rights in the subdivision for each term of usage being offered for sale, including provisions for compensation to purchasers resulting from destruction of a component site or loss of use rights to any component site;
 - 7. Whether the developer maintains any type of casualty insurance for the component sites in addition to that maintained by the site's homeowners' association or other interested parties, including the manner of disposition of any proceeds of such insurance resulting from the destruction or loss of use rights to any component site;

8. A description of the system or program by which a purchaser obtains a recurring right to use and occupy accommodations and facilities in any component site through use of a reservation system or otherwise, including any restrictions on such rights or any method by which a purchaser is denied an equal right with all other users to obtain the use of any accommodation in the subdivision;
9. A description of the management and ownership of such reservation system or program, whether through the developer, a homeowners' association, a club or otherwise, including the purchaser's direct or indirect ownership interest or rights of control in such reservation system;
10. Whether the developer, club or association which controls the reservation system or any other person has or is granted any interest in unsold, non-reserved or unused use rights and whether the developer, club, association or other person may employ such rights to compete with purchasers for use of accommodations in the subdivision or any component site and, if so, the nature and specifics of those rights, including the circumstances under which they may be employed;
11. The method and frequency of accounting for any income derived from unsold, non-reserved or unused use rights in which the purchaser, either directly or indirectly, has an interest;
12. The system and method in place, including business interruption insurance or bonding, to provide secure back-up or replacement of the reservation system in the event of interruption, discontinuance or failure;
13. The amount and details of any component site, reservation system or other periodic expense required to be paid by a purchaser, the name of the person or entity to which such payments will be made, and the method by which the purchaser will receive a regular periodic accounting for such payments;
14. If component site expenses are included in those periodic payments made by a purchaser, a statement for each component site from the homeowners' association or other responsible entity acknowledging that payment of such expenses as taxes, insurance, dues and assessments are current and are being made in the name of the subdivision;
15. Evidence that an escrow system with an independent escrow agent is in place for receipt and disbursement of all moneys collected from purchasers that are necessary to pay such expenses as taxes, insurance and common expenses and assessments owing to component site homeowners' associations or others, or a clear description of the method by which such funds will be paid, collected, held, disbursed and accounted for;
16. A clear statement in the sales contract as to whether a purchaser's rights, interests or terms of usage for any component site within the subdivision can subsequently be modified from those terms originally represented and a description of the method by which such modification may occur;
17. If the subdivision documents allow additions or substitutions of accommodations or component sites, a clear description of the purchaser's rights and obligations concerning such additions or substitutions and the method by which such additions or substitutions will comply with the provisions of this rule; and

18. A clear description of any existing incidental benefits or amenities which are available to the purchaser at the time of sale but to which the purchaser has no guaranteed right of recurring use or enjoyment during the purchaser's full term of interest in the subdivision.

Chapter 3: Timeshare – Additional Information and Disclosures

- 3.1 A developer of time share must disclose to the public whether or not a time share plan involves an exchange program and, if so, will disclose and deliver to prospective purchasers, a separate written document, which may be provided by an exchange company if the document discloses the following information:
 - a. The name and the business address of the exchange company;
 - b. Whether the purchaser's contract with the exchange program is separate and distinct from the purchaser's contract with the developer;
 - c. Whether the purchaser's participation in the exchange program is dependent upon the developer's continued affiliation with the exchange program;
 - d. Whether or not the purchaser's participation in the exchange program is voluntary;
 - e. The specific terms and conditions of the purchaser's contractual relationship with the exchange program and the procedure by which changes, if any, may be made in the terms and conditions of such contractual relationship;
 - f. The procedure of applying for and effecting any changes;
 - g. A complete description of all limitations, restrictions, accrual rights, or priorities employed in the operation of the exchange program, including but not limited to limitations on exchanges based on seasonality, unit size, or levels of occupancy; and if the limitations, restrictions or priorities are not applied uniformly by the exchange program, a complete description of the manner of their application;
 - h. Whether exchanges are arranged on a space-available basis or whether guarantees of fulfillment of specific requests for exchanges are made by the exchange company;
 - i. Whether and under what conditions a purchaser may, in dealing with the exchange program, lose the use and occupancy of the time share period in any properly applied for exchange without being offered substitute accommodations by the exchange program;
 - j. The fees for participation in the exchange program, and whether the fees may be altered and the method of any altering; and
 - k. The name and location of each accommodation or facility, including the time sharing plans participating in the exchange program.

Chapter 4: Miscellaneous Provisions, Additional Information

- 4.1 All approvals for the use of reservation agreements issued pursuant to §12-61-402(2), C.R.S., will expire on December 31st following the date of issuance. Approval will be renewed, except as provided in section §12-61-405, C.R.S., by payment of a renewal fee established pursuant to section §12-61-111.5, C.R.S., and upon submission and acceptance of a renewal application.

- 4.2 Upon request of the Commission pursuant to an investigation, a developer will file with the Commission an audited financial statement in conformity with accepted accounting principles, and sworn to by the developer as an accurate reflection of the financial condition of the developer and/or the homeowners' association controlled by the developer.
- 4.3 Any adverse order, judgment, or decree entered in connection with the subdivided lands by any regulatory authority or by any court of appropriate jurisdiction must be filed with the Commission by the developer within thirty (30) calendar days of such order, judgment or decree being final.
- 4.4 A developer is not required to file amendments to its registration filed with the Commission when revisions are made to documents previously submitted to the Commission, so long as the revised documents continue to: (a) comply with Title 12, Article 61, Part 4, C.R.S., and the rules and regulations promulgated thereunder; and (b) accurately reflect the subdivision offering.
- 4.5 Notice of Events:
- a. Notwithstanding Rules 4.3 and 4.4 above, and in addition to the notice requirements under Rule 1.6, developer must provide the Commission with notice of the following events within ten (10) calendar days after such event, unless otherwise provided below:
 - 1. Any change in the information provided in the registration pursuant to Sections §12-61 403(2)(a)(iv), (vi), (vii) or (viii), C.R.S.;
 - 2. Any change in the terms of any non-disturbance agreement(s) or partial release provisions in connection with any documents previously submitted to the Commission pursuant to section §12-61-403(3)(e), C.R.S., and Rule 2.2(d);
 - 3. Any new lien encumbering the subdivision or any part thereof other than encumbrances created or permitted by purchasers;
 - 4. The termination or transfer of any escrow account, letter of credit, bond, or other financial assurance approved by the Commission pursuant to Rule 2.3; notice of which must be filed with the Commission prior to the effective date of such termination or transfer;
 - 5. Cancellation, revocation, suspension, or termination of the developer's activity or authority to do business in the State of Colorado; and
 - 6. Any lis pendens, lawsuit or other proceeding filed against the subdivision or developer affecting the developer's ability: (a) to convey marketable title of the registered subdivision or any interest therein, or (b) to perform the developer's obligations in connection with the registered subdivision.
 - b. Notification under this rule must be provided on a form approved by the Commission. The developer will have a period of ten (10) calendar days after receipt of notice to take such action as may be required by the Commission in connection with any filings made under this rule.
 - c. Within ten (10) calendar days after receipt of a written request from the Commission, a developer will have the duty to provide to the Commission copies of all documents then in use with regard to the subdivision.
- 4.6 No developer will make misrepresentations regarding the future availability or costs of services, utilities, character, or use of real property for sale or lease of the surrounding area of the subdivision.

- 4.7 Delivery of Deed:
- a. Unless a sale is by means of an installment contract, the delivery of a deed must be made within sixty (60) calendar days after closing. For the purposes of this rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance of the purchase price. (This must be disclosed in the contract.)
 - b. If a sale is by means of an installment contract, the delivery of a deed must be made within sixty (60) calendar days after the completion of payments.
- 4.8 Where the sales contract contemplates the delivery of a deed, an abstract of title or title insurance policy must be delivered within a reasonable time after the completion of payments by a purchaser. Any period of time exceeding sixty (60) calendar days will be deemed unreasonable for the purposes of this rule. The parties may contract to eliminate this requirement, but any such mutually acceptable waiver must be in writing and in a conspicuous manner or print. The presence of waiver on the back of a contract will not be deemed conspicuous for the purposes of this rule.
- 4.9 Developer must provide a title insurance commitment or other evidence of title approved by the Commission within a reasonable time after execution of any lease, sales contract or other instrument purporting to convey any interest in the site, tract, lot, divided or undivided interest from a subdivision. Any period of time in excess of sixty (60) calendar days will be deemed unreasonable for the purposes of this rule. The parties may contract to eliminate this requirement, but any such mutually acceptable waiver must be in writing and in a conspicuous manner or print. The presence of waiver on the back of a contract will not be deemed conspicuous for the purposes of this rule.
- 4.10 Failure to disclose to the purchaser the availability of legal access, sewage disposal, public utilities, including water, electricity, gas and telephone facilities, in the subdivision offered for sale or lease, including whether such are to be a developer or purchaser expense, when proven, is a violation of §12-61-405(1)(b), C.R.S.
- 4.11 Pursuant to §12-61-405(1)(e), C.R.S., §12-61-406(2.5)(b), C.R.S., and §12-61-406(4), C.R.S., a developer must maintain in a Colorado place of business, and produce for inspection upon reasonable request by an authorized representative of the Commission copies of the following documents and business records:
- a. The sales contract, transfer or lease agreement, installment sale agreement, financing agreement, buyer and seller settlement statement, title policy or commitment, trust deed, escrow agreement, and any other documents executed by the parties or on behalf of the developer in the sale, lease or transfer of any interest in a subdivision.
 - b. Records showing the receipt and disbursement of any money or assets received or paid on behalf of any homeowners' or similar association managed or controlled by a developer.

Chapter 5: Declaratory Orders Pursuant to §24-4-105(11), C.R.S.

- 5.1 Any person may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or of any rule or order of the Commission.

- 5.2 The Commission will determine, in its discretion and without prior notice to petitioner, whether to entertain any such petition. If the Commission decides that it will not entertain such a petition, the Commission will promptly notify the petitioner in writing of its decision and the reasons for that decision. A copy of the order will be provided to the petitioner.
- 5.3 In determining whether to entertain a petition filed pursuant to this rule, the Commission may consider the following matters, among others:
- a. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Commission.
 - b. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving any petitioner.
 - c. Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court but not involving any petitioner.
 - d. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 - e. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colo. R. Civ. P., which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.
- 5.4 Any petition filed pursuant to this rule must set forth the following:
- a. The name and address of the petitioner and whether the petitioner holds a license or registration issued pursuant to section §12-61-401, *et seq.*, C.R.S. (as amended).
 - b. The statute, rule or order to which the petition relates.
 - c. A concise statement of all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
 - d. A concise statement of the legal authorities if any, and such other reasons upon which the petitioner relies.
 - e. A concise statement of the declaratory order sought by the petitioner.
- 5.5 If the Commission determines that it will rule on the petition, the following procedures will apply:
- a. The Commission may rule upon the petition without a hearing. In such case:
 - 1. The Commission may dispose of the petition on the sole basis of the matters set forth in the petition.
 - 2. The Commission may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition.

3. Any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 4. The Commission may order the petitioner to file a written brief, memorandum or statement of position based on the facts set forth in the petition and any amendment to the petition.
 5. The Commission may take administrative notice of facts pursuant to the Administrative Procedures Act, (§24-4-105(8), C.R.S., (as amended)), and may utilize its experience, technical competence and specialized knowledge in the disposition of the petition.
 6. If the Commission rules upon the petition without hearing, it will promptly notify the petitioner in writing of its decision.
- b. The Commission may, in its discretion, set the petition for hearing, upon due notice to petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any facts set forth in the petition or to hear oral argument on the petition. The notice to the petitioner setting such hearing will set forth, to the extent known, the factual or other matters into which the Commission intends to inquire and whether the hearing will be evidentiary or non-evidentiary in nature. For the purpose of such a hearing, to the extent necessary, the petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner and any other facts the petitioner desires the Commission to consider.
- 5.6 The parties to any proceeding pursuant to this rule will be the Commission and the petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Commission. A petition to intervene must set forth the same matters as required by Rule 5.4. Any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Commission.
- 5.7 Any declaratory order or other order disposing of a petition pursuant to this rule will constitute agency action subject to judicial review pursuant to §24-4-106, C.R.S., (as amended).

Chapter 6: Exceptions and Commission Review of Initial Decisions

- 6.1 Written Form, Service, and Filing Requirements:
- a. All Designations of Record, Requests, Exceptions and Responsive Pleadings ("Pleadings") must be in written form, mailed with a certificate of mailing to the Commission.
 - b. All Pleadings must be received by the Commission by 5:00 p.m. (MST), on the date the filing is due. Pleadings are considered filed upon receipt by the Commission. These rules do not provide for any additional time for service by mail.
 - c. All Pleadings must be served on the opposing party by mail or by hand delivery on the date which the Pleadings are filed with the Commission.

- d. All Pleadings must be filed with the Commission and not with the Office of Administrative Courts. Any Designations of Record, Requests, Exceptions or Responsive Pleadings filed in error with the Office of Administrative Courts will not be considered. The Commission's address is:

Colorado Real Estate Commission
1560 Broadway, Suite 925
Denver, Colorado 80202

6.2 Authority to Review:

- a. The Commission hereby preserves the Commission's option to initiate a review of an initial decision on its own motion pursuant to §24-4-105(14)(a)(II) and (b)(III), C.R.S, outside of the thirty (30) day period after service of the initial decision upon the parties without requiring a vote for each case.
- b. This option to review will apply regardless of whether a party files exceptions to the initial decision.

6.3 Designation of Record and Transcripts:

- a. Any party seeking to reverse or modify the initial decision of the administrative law judge must file with the Commission a designation of the relevant parts of the record for review ("Designation of Record"). Designations of record must be filed with the Commission within twenty (20) days of the date on which the Commission mails the initial decision to the parties' address of record with the Commission.
- b. Within ten (10) days after a party's Designation of Record is due, any other party may file a Supplemental Designation of Record requesting inclusion of additional parts of the record.
- c. Even if no party files a Designation of Record, the record will include the following:
 - 1. All pleadings;
 - 2. All applications presented or considered during the hearing;
 - 3. All documentary or other exhibits admitted into evidence;
 - 4. All documentary or other exhibits presented or considered during the hearing;
 - 5. All matters officially noticed;
 - 6. Any findings of fact and conclusions of law proposed by any party; and
 - 7. Any written brief filed.

- d. Transcripts will not be deemed part of a Designation of Record unless specifically identified and ordered. Should a party wish to designate a transcript or portion thereof, the following procedures will apply:
 - 1. The Designation of Record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, or may identify any witness whose testimony is to be transcribed, the legal ruling or argument to be transcribed, or other information necessary to identify a portion of the transcript.
 - 2. Any party who includes a transcript or a portion thereof as part of the Designation of Record must order the transcript or relevant portions by the date on which the Designation of Record must be filed (within twenty (20) days of the date on which the Commission mails the initial decision to the parties).
 - 3. When ordering the transcript, the party must request a court reporter or transcribing service to prepare the transcript within thirty (30) days. The party must timely pay the necessary fees to obtain and file with the Commission an original transcription and one copy within thirty (30) days.
 - 4. The party ordering the transcript will direct the court report or transcribing service to complete and file with the Commission the transcript and one copy of the transcript within thirty (30) days.
 - 5. If a party designates a portion of the transcript, the opposing party may also file a Supplemental Designation of Record, in which the opposing party may designate additional portions of the transcript.
 - 6. An opposing party filing a Supplemental Designation of Record designating additional portions of the transcript must order and pay for such transcripts or portions thereof within the deadlines set forth above. An opposing party must also cause the court reporter to complete and file with the Commission the transcript and one copy of the transcript within thirty (30) days.
 - 7. Transcripts that are ordered and not filed with the Commission in a timely manner by the reporter or the transcription service due to non-payment, insufficient payment or failure to direct as set forth above will not be considered by the Commission.

6.4 Filing of Exceptions and Responsive Pleadings:

- a. Any party wishing to file exceptions must adhere to the following timelines:
 - 1. If no transcripts are ordered, exceptions are due within thirty (30) days from the date on which the Commission mails the initial decision to the parties. Both parties' exceptions are due on the same date.
 - 2. If transcripts are ordered by either party, the following procedure will apply. Upon receipt of all transcripts identified in all Designations of Record and Supplemental Designations of Record, the Commission will mail notification to the parties stating that the transcripts have been received by the Commission. Exceptions are due within thirty (30) days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.

- b. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings must be filed within ten (10) days of the date on which the exceptions were filed with the Commission. No other pleadings will be considered except for good cause shown.
- c. The Commission may in its sole discretion grant an extension of time to file exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Commission's designee.

6.5 Request for Oral Argument:

- a. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.
- b. It is within the sole discretion of the Commission to grant or deny a request for oral argument. If oral argument is granted, both parties will have the opportunity to participate.
- c. If a request for oral argument is granted, each side will be permitted ten (10) minutes of oral argument unless such time is extended by the Commission or its designee.

Editor's Notes

History

Entire rule eff. 01/30/2015.