

# REDLINE

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

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING  
August 5, 2019

## RULE I. DECLARATORY ORDERS

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 Part 1 of Title 12, Article 61, Colorado Revised Statutes, as amended.

### STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive pursuant to section 24-4-103.3., C.R.S. (SB14-063) and to promulgate 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 repeal existing rules with respect to the requirements and procedures regarding the submission, review and determination of declaratory orders filed with the Real Estate Commission. 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and cost-effectiveness of its rules to determine if they should be continued in their current form, modified, or repealed.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 As a result, the current rules are being repealed and re-established in a chapter format.

### PROPOSED NEW, AMENDED AND REPEALED RULES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](http://www.dora.colorado.gov/dre).

#### ~~I. Declaratory Orders.~~

- ~~1. Any person<sup>\*1</sup> 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 provision or of any rule or order of the Commission.~~

~~\*1 refers to existing definition of "person" in APA, rule or statute, if any.~~

- ~~2. The Commission will determine, in its discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Commission determines it will not rule upon such a petition, the Commission shall issue its written order disposing of the same, stating therein its reasons for such action. A copy of such order shall forthwith be transmitted to the petitioner.~~
- ~~3. In determining whether to rule upon a petition filed pursuant to this rule, the Commission will 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 one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission;~~
- ~~(c) — whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Commission or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Commission, which matter or investigation shall be specified by the Commission and in which petitioner may intervene;~~
- ~~(d) — whether the petition seeks a ruling on a moot or hypothetical question and will result in merely 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.~~

~~4. — Any petition filed pursuant to this rule shall set forth the following:~~

- ~~(a) — the name and address of the petitioner and whether the petitioner is licensed pursuant to C.R.S. 1973, 12-61-101, et seq.~~
- ~~(b) — the statute, rule or order to which the petition relates;~~
- ~~(c) — a concise statement of all 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.~~

~~5. — If the Commission determines that it will rule on the petition, the following procedures shall apply:~~

- ~~(a) — the Commission may rule upon the petition based solely upon the facts presented in the petition. In such a case:
  - ~~(1) — any ruling of the Commission will apply only to the extent of the facts presented in the petition and any amendment to the petition;~~
  - ~~(2) — the Commission may order the petitioner to file a written brief, memorandum or statement of position;~~
  - ~~(3) — the Commission may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;~~
  - ~~(4) — the Commission may dispose of the petition on the sole basis of the matters set forth in the petition;~~
  - ~~(5) — 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;~~
  - ~~(6) — the Commission may take administrative notice of facts pursuant to the~~~~

~~Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and utilize its experience, technical competence and specialized knowledge in the disposition of the petition;~~

~~(7) — if the Commission rules upon the petition without a hearing, it shall issue its written order, stating therein its basis for the order. A copy of such order shall forthwith be transmitted to the petitioner.~~

~~(b) — The Commission may, in its discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall 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 petitioner and any other facts the petitioner desires the Commission to consider.~~

~~6. — The parties to any proceeding pursuant to this rule shall 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 shall set forth the same matters as required by section 4 of this rule. Any reference to a “petitioner” in this rule also refers to any person who has been granted leave to intervene by the Commission.~~

~~7. — Any declaratory order or other order disposing of a petition pursuant to this rule shall constitute agency action subject to judicial review pursuant to C.R.S. 1973, 21-4-106.~~

~~\*1 refers to existing definition of “person” in APA, rule or statute, if any.~~

[\(Repealed and re-established in 4 CCR 725-1, Chapters 1-9 effective January 01, 2020\)](#)

**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.