

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 A. LICENSE QUALIFICATIONS, APPLICATIONS AND EXAMINATIONS

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 qualifications, applications, and examinations for real estate brokers. 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and cost-effectiveness of its rules to determine if they should be continued in their current form, modified, or repealed.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 As a result, the current rules are being repealed and re-established in a chapter format.

PROPOSED NEW, AMENDED AND REPEALED RULES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.

~~A. License Qualifications, Applications and Examinations~~

~~A-1. Repealed (1-6-00)~~

~~A-2. Requirements must precede exam and application.~~

~~Educational requirements for an initial license imposed by 12-61-103(4) and (6)(c)(II), C.R.S., must be completed and proof of completion filed in a method or manner as prescribed by the Commission prior to taking the examination and applying for a license.~~

~~A-3. Examinations will be given only to duly qualified applicants for a real estate broker license, licensees upgrading a license, or licensees meeting the continuing education requirement;~~

however, one instructor from each real estate school offering real estate courses required of applicants under section 12-61-103(4) C.R.S. may write the examination one time during any 12-month period.

~~A-4.—Repealed.~~

~~A-5.—Real estate license examination, exam expiration and application requirements.~~

~~The real estate license examination is made up of two parts, a general portion and a state portion. If an applicant fails one or both parts of the exam, the applicant may retake the failed portion(s) at a subsequent time. A passing score for either part of the exam is valid for one year only. An application received by the Division must be accompanied by the statutory fee, proof of completion of the required education and experience requirements, and proof of successful completion of the appropriate portion(s) of the exam within the year prior to the application being received by the Division. No exam score for either portion of the exam will be considered valid after one year.~~

~~A-6.—Repealed~~

~~A-7.—The Real Estate Commission will not certify to any person, state or agency any information concerning the results of any examination as it pertains to any person who has written the examination unless such person is or has been licensed as a Colorado real estate broker or pursuant to such examination; except, that the Commission may authorize a special examination for existing licensees for certification purposes.~~

~~A-8.—Repealed.~~

~~A-9.—Provided the applicant has submitted a complete and satisfactory application in compliance with 12-61-102 C.R.S., the Commission will issue a license within 10 business days after receipt by the Commission of satisfactory results from the fingerprint-based criminal history record check. If the application or record check is not complete or satisfactory, the applicant will be mailed a notice of deferred status. The license of a broker whose application has been approved by the Commission subject to the receipt of certain compliance items shall be issued on an inactive status if such compliance items are not submitted within 20 days after written notification by the Commission.~~

~~A-10.—The Commission may deny or defer an original license application pursuant to 12-61-103(3). Under no circumstances will an examination be recognized by the Commission as complying with 12-61-103(6) after 18 months from the date an applicant took the examination which resulted in a passing score.~~

~~A-11.—Certificate of license history required.~~

~~An applicant for a Colorado real estate license, who has held a real estate license in any other state must file with the application for a Colorado license a “certification of licensing history” issued by each state where the applicant is currently or was previously licensed as a real estate broker or salesperson. Such certificate must bear a date of not more than 90 days prior to the submission date of the application. If no longer licensed, such certificate must bear a date subsequent to the expiration date.~~

~~A-12.~~

~~(a) —Pursuant to 12-61-103 C.R.S., an applicant who has been convicted or pleaded nolo contendere to a misdemeanor or a felony, or any like municipal code violation, or has such charges pending or has agreed to a deferred prosecution, a deferred~~

judgment, or a deferred sentence (violations) (excluding misdemeanor traffic violations) within the last ten years must file prior to or with his or her application for licensing the following information and documentation:

1. ~~—A written and signed personal explanation and detailed account of the facts and circumstances surrounding each violation, which shall include the statement, “I have been charged with no other criminal violations either past or pending, other than those I have stated on the application.”~~
2. ~~—The completed Commission form number REC-BAA, including results of court hearing(s), in the form of copies of charges, disposition, pre-sentencing report and most recent probation or parole report.~~
3. ~~—If the applicant is to be employed by another licensee, the employing broker must submit a letter stating that he/she is aware of the specific charge(s) or convictions(s).~~

(b)

- (1) ~~—At any time prior to submission of a formal application for licensure a person may request that the Commission issue a preliminary advisory opinion regarding the potential effect that previous conduct, criminal conviction(s) or violation(s) of the real estate license law may have on a future formal application for licensure. Such opinion may be issued by the Commission, in its discretion, in order to provide preliminary advisory guidance. Any such opinion shall not be binding on the Commission or limit the Commission's authority to investigate a future formal application for licensure. However, if the Commission issues a favorable advisory opinion, the Commission may elect to adopt such advisory opinion as the final decision of the Commission without further investigation or hearing.~~
- (2) ~~—An individual seeking a preliminary advisory opinion under this rule is not an applicant for licensure and the issuance of an unfavorable opinion shall not prevent such individual from making application for licensure pursuant to the real estate licensing law and the rules and regulations of the Commission.~~

A-13. ~~—Repealed August 2, 2005 (effective 10-2-05)~~

A-14. ~~—Repealed [effective October 30, 2008]~~

A-15. ~~—Any broker who has not submitted fingerprints to the Colorado Bureau of Investigation to be used to complete a one-time only criminal history record check, must do so prior to renewal of an active license. Renewed licenses will remain on inactive status until the Commission has received the results of a criminal record check. Fingerprints may be submitted for processing prior to renewal either electronically or on Card No. FD-258 in a manner acceptable to the Colorado Bureau of Investigation. The Commission may acquire a name-based criminal history record check for a renewing licensee who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.~~

A-16. ~~—Criminal history check required prior to application.~~

Applicants for an initial license must submit a set of fingerprints to the Colorado Bureau of Investigation and Federal Bureau of Investigation for the purpose of conducting a state and national criminal history record check prior to submitting an application for a license.

~~Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation.~~

~~A-17.—The seventy two hours of instruction or equivalent distance learning hours required in 12-61-103(4)(a)(III) C.R.S. must be satisfied by successful completion of courses of study approved by the Commission as follows:~~

~~(a) —A minimum of 24 hours in Real Estate Closings; and~~

~~(b) —A minimum of 8 hours in Trust Accounts and Record Keeping; and~~

~~(c) —A minimum of 8 hours in Current Legal issues; and~~

~~(d) —A minimum of 32 hours in Practical Applications~~

~~A-18.—Repealed (effective 1-1-96)~~

~~A-19.—Repealed (effective 3-4-99)~~

~~A-20.—If the applicant for licensure is denied by the Commission for any reason, the applicant will be informed of the denial and the reason therefore.~~

~~A-21.—Repealed (effective 1-1-97)~~

~~A-22.—Repealed.~~

~~A-23.—Completion of the courses of study approved by the Commission as required in 12-61-103(4)(a)(I), (II), (III), & 6(c) (II) C.R.S., whether through classroom or distance learning, must be based upon educational principles acceptable to the Real Estate Commission.~~

~~A-23.5 Repeal 5/3/05~~

~~A-24.—The Commission may audit courses and may request from each school offering a Commission approved course of study under 12-61-103(4)(a) and (b), C.R.S., all instructional material related thereto and student attendance records as may be necessary for an investigation in the enforcement of Section 103 of the License Law and Commission Rules and Regulations. The purpose of the audit shall be to ensure that schools adhere to the approved course of study, offer course material and instruction consistent with acceptable education standards and instruct in such a manner that the desired learning objectives are met. Failure to comply with the provisions of this rule may result in the withdrawal of Commission course approval.~~

~~A-25.—If the fees accompanying any application or registration made to the Commission (including fees for the recovery fund, renewals, transfers, etc.) are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, the application shall be canceled; the application may be reinstated only at the discretion of the Commission and upon full payment of any fees together with payment of the fee required by state fiscal rules for the clerical services necessary for reinstatement.~~

~~A-26.—Pursuant to 12-61-103(7)(c) C.R.S., a temporary broker's license maybe issued to a corporation, partnership or limited liability company to prevent hardship. No application for a temporary broker's license will be approved unless the designated individual is a Colorado~~

~~real estate broker with two years of active license experience as indicated by the records of the Real Estate Commission. No more than two temporary licenses may be issued to any corporation, partnership or limited liability company, whether consecutive or not, during any 18 month period, except by the Commission.~~

~~A-27. —Employing broker qualifications.~~

~~In addition to the requirements prescribed in sections 12-61-103(6)(c)(I) and (II), C.R.S., and pursuant to section 12-61-103(6)(c)(III), C.R.S., a broker that did not hold a current and valid broker's license on December 31, 1996, must not act as an employing broker without first demonstrating the following experience and knowledge:~~

~~A) —A broker that was issued an employing broker level license prior to January 1, 2018, will have satisfied the employing broker experience and knowledge requirements by fulfilling one of the following:~~

~~1. —The broker must have held an active employing broker level license for at least two (2) years within the five (5) year period immediately preceding January 1, 2019; or~~

~~2. —The broker must successfully complete the employing broker refresher course; or~~

~~3. —The broker meets the experience requirements as prescribed in subsection B of this rule.~~

~~B) —Each applicant for an employing broker level license who applies on or after January 1, 2018, must submit evidence satisfactory to the Commission that the applicant has practiced as an active licensed broker, as appropriate to the broker's area of supervision, for at least two (2) years within the five (5) year period immediately preceding the date of application.~~

~~The evidence must also demonstrate that the applicant's experience as a licensed broker, as appropriate to the broker's area of supervision, qualifies the applicant for a total of at least fifty (50) points having accumulated within the five (5) year period immediately preceding the date of application, based on the following point system:~~

~~1. —Each full year that the applicant has practiced as an employing broker, as defined by Colorado law, is worth ten (10) points.~~

~~2. —Each full year that the applicant was delegated supervisory authority from an employing broker that included responsibility for ensuring compliance with the Commission statutes and rules, and that ensured responsibility for the brokerage (excluding any mentorship) is worth five (5) points. (A copy of the detailed executed delegation of authority must be included.)~~

~~3. —Each hour of a continuing education approved and designated educational course in the broker's area of expertise completed after January 1, 2018, is worth one (1) point. (This educational point category cannot exceed twenty (20) points.)~~

- ~~4. Each completed or closed residential sales transaction is worth three (3) points.~~
 - ~~5. Each completed or closed commercial sales transaction is worth six (6) points.~~
 - ~~6. Each completed or closed vacant land sales transaction is worth six (6) points.~~
 - ~~7. Each administered commercial property management transaction is worth four (4) points.~~
 - ~~8. Each administered residential property management transaction is worth two (2) points.~~
 - ~~9. Each completed or closed commercial lease transaction is worth two (2) points.~~
 - ~~10. Each completed or closed residential lease transaction is worth one (1) point.~~
 - ~~11. Each completed or closed time share sales transaction is worth two (2) points.~~
- ~~C) Each applicant must complete the Commission created employing broker experience and knowledge worksheet and submit the worksheet and supporting documents with the application for an employing broker level license. An application is deemed complete at the time all required supporting documents and fees are received by the Division.~~

(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.