

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 K. EXCEPTIONS AND COMMISSION REVIEW OF INITIAL DECISIONS

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 exceptions and the review of initial decisions by 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and cost-effectiveness of its rules to determine if they should be continued in their current form, modified, or repealed.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 As a result, the current rules are being repealed and re-established in a chapter format.

PROPOSED NEW, AMENDED AND REPEALED RULES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.

~~K. Exceptions and Commission Review of Initial Decisions~~

~~K-1.~~

- ~~1. All Designations of Record, Requests, Exceptions and Responsive Pleadings ("Pleadings") must be in written form, mailed with a certificate of mailing to the Commission.~~
- ~~2. All Pleadings must be filed with the Commission by 5:00 p.m. on the date the filing is due. These rules do not provide for any additional time for service by mail. Filing is in receipt of a pleading by the Commission.~~
- ~~3. Any Pleadings must be served on the opposing party by mail or by hand delivery on the date which the Pleading is filed with the Commission.~~
- ~~4. 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, CO 80202~~

~~K-2.~~

- ~~1. 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 day period after service of the initial decision upon the parties without requiring a vote for each case.~~
- ~~2. This option to review shall apply regardless of whether a party files exceptions to the initial decision.~~

~~K-3.~~

- ~~1. Any party seeking to reverse or modify the initial decision of the administrative law judge shall 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 days of the date on which the Commission mails the initial decision to the parties' address of record with the Commission.~~
- ~~2. Even if no party files a Designation of Record, the record shall include the following:~~
 - ~~a. All pleadings;~~
 - ~~b. All applications presented or considered during the hearing;~~
 - ~~c. All documentary or other exhibits admitted into evidence;~~
 - ~~d. All documentary or other exhibits presented or considered during the hearing;~~
 - ~~e. All matters officially noticed;~~
 - ~~f. Any findings of fact and conclusions of law proposed by any party; and~~
 - ~~g. Any written brief filed.~~
- ~~3. Transcripts: 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:~~
 - ~~a. 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 witness(es) 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.~~
 - ~~b. 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 days of the date on which the Commission mails the initial decision to the parties).~~
 - ~~c. When ordering the transcript, the party shall request a court reporter or transcribing service to prepare the transcript within thirty days. The party shall timely pay the necessary fees to obtain and file with the Commission an~~

~~original transcription and one copy within thirty days.~~

- ~~d. The party ordering the transcript shall direct the court report or transcribing service to complete and file with the Commission the transcript and one copy of the transcript within thirty days.~~
- ~~e. 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. This Supplemental Designation of Record must be filed with the Commission and served on the other party within ten days after the date on which the original Designation of Record was due.~~
- ~~f. An opposing party filing a Supplemental Designation of Record 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 days.~~
- ~~g. 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.~~

~~K-4.~~

- ~~1. Any party wishing to file exceptions shall adhere to the following timelines:
 - ~~a. If no transcripts are ordered, exceptions are due within thirty days from the date on which the Commission mails the initial decision to the parties. Both parties' exceptions are due on the same date.~~
 - ~~b. If transcripts are ordered by either party, the following procedure shall apply. Upon receipt of transcripts identified in all Designations of Record, the Commission shall mail notification to the parties stating that the transcripts have been received by the Commission. Exceptions are due within thirty days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.~~~~
- ~~2. Either party may file a responsive pleading to the other party's exceptions. All responsive pleadings shall be filed within ten days of the date on which the exceptions were filed with the Commission. No other pleadings will be considered except for good cause shown.~~
- ~~3. 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.~~

~~K-5.~~

- ~~1. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings.~~
- ~~2. 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 shall have the opportunity to participate.~~
- ~~3. Each side shall be permitted ten minutes of oral argument unless such time is extended by the Commission or its designee.~~

(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.