

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 8. 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 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, modify and amend the declaratory order requirements 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 The review also determined whether the rules should be continued in their current form, modified, or repealed.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 8 sets forth the requirements for declaratory orders. 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PROPOSED NEW, AMENDED AND REPEALED RULES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 8: Declaratory Orders

8.1. Petition for a Declaratory Order

Pursuant to section 24-4-105(11), C.R.S., a Petitioner may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability of any statutory provision, rule, or order of the Commission as it would apply to the Petitioner.

8.2. Parties to the Proceedings

The parties to any proceeding as set forth in Chapter 8 of these Rules will be the Commission and the Petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding. Permission to intervene will be granted at the sole discretion of the Commission. A petition to intervene will set forth the same matters as set forth in Rule 8.3.

8.3. Petition Contents

Any petition filed as set forth in Chapter 8 of these Rules will state the following:

- A. The name and address of the Petitioner and whether the Petitioner is a Broker or Brokerage Firm;
- B. The statute, rule, order, or other authority to which the petition relates;
- C. A concise statement of all the facts and law necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, order, or other authority in question applies or potentially applies to the Petitioner; and
- D. A concise statement of the declaratory order sought by the Petitioner.

8.4. Commission's Considerations Whether or Not to Rule

The Commission may determine, in its sole discretion and without prior notice to the Petitioner, whether or not to rule upon a petition. In determining whether or not to rule upon a petition filed as set forth in Chapter 8 of these Rules, 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 the Petitioner of any statutory provision, 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.
- 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 not involving the Petitioner.
- D. Whether the petition seeks a ruling on a hypothetical question.
- E. Whether the Petitioner has some other adequate legal remedy, other than an action for declaratory order which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule, or order in question.

8.5. Commission Determines Not to Rule

If the Commission determines it will not rule on a petition, the Commission will issue its written order disposing of the petition, stating the reasons for its action not to rule upon the petition. A copy of the order will be provided to the Petitioner.

8.6. Commission Determines to Rule

If the Commission determines that it will rule on the petition:

- A. The Commission may order the Petitioner to file an additional written brief, memorandum, statement of position, or request the Petitioner to submit additional facts or arguments in writing.
- B. The Commission may take administrative notice of facts pursuant to the Administrative Procedure Act, section 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge when ruling on the petition.
- C. The Commission may set the petition, upon due notice to the Petitioner, for a non-evidentiary hearing.
- D. The Commission may, upon due notice to the Petitioner, set the petition for hearing 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 arguments on the petition. Notice to the Petitioner setting such formal hearing will set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. 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.
- E. Any ruling by the Commission may be based solely on the matters set forth in the petition or may be based on any amendments to the petition, any information gathered by the Commission through a non-evidentiary hearing, formal hearing or otherwise, or any facts the Commission may take administrative notice of. Upon ruling on a petition, the Commission will issue its written order stating its basis for the order. A copy of the order will be provided to the Petitioner.

8.7. Declaratory Orders Subject to Judicial Review

Any declaratory order or other order disposing of a petition as set forth in Chapter 8 of these Rules will constitute agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

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.

