

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 9. COMMISSION REVIEW OF INITIAL DECISIONS AND EXCEPTIONS

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 requirements for the Real Estate Commission's review of initial decisions and filing exceptions 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 The review also determined whether the rules should be continued in their current form, modified, or repealed.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 9 sets forth the requirements for the review of initial decisions by the Real Estate Commission and filing exceptions. 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PROPOSED NEW, AMENDED AND REPEALED RULES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 9: Commission Review of Initial Decisions and Exceptions

- 9.1. Written Form, Filing Requirements, and Service
 - A. All pleadings must be in written form, mailed with a certificate of service to the Commission.

- B. All pleadings must be filed with the Commission on the date the filing is due. A pleading is considered filed upon receipt by the Commission. Chapter 9 of these Rules does not provide for any additional time for service by mail.
- C. All pleadings must be filed with the Commission and not with the Office of Administrative Courts. Any 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
- D. All pleadings must be served on the opposing party on the date which the pleading is filed with the Commission. Electronic service between the parties is encouraged. The date and manner must be noted on the certificate of service.

9.2. Initial Decision

Upon receipt of the initial decision prepared and filed by the Administrative Law Judge from the Office of Administrative Courts, the Division will timely mail a copy of the initial decision to the parties at their respective addresses of record with the Commission pursuant to section 24-4-105(16)(a), C.R.S.

9.3. Commission's Authority to Review the Initial Decision

Pursuant to section 24-4-105(14)(a)(II), the Commission may initiate a review of an initial decision on its own motion within thirty (30) days of the date on which the Division mails the initial decision to the parties.

9.4. Appeal of the Initial Decision by the Parties

- A. Any party wishing to reverse or modify an initial decision of an Administrative Law Judge must file written exceptions with the Commission in accordance with the procedures and time frames as set forth in Rule 9.5.
- B. If neither party appeals the initial decision by filing exceptions, the initial decision will become the final order of the Commission after thirty (30) days from the date on which the Division mails the initial decision pursuant to section 24-4-105(14)(b)(III), C.R.S. Failure to file exceptions will result in a waiver of the right to judicial review of the final order of the Commission pursuant to section 24-4-105(14)(c), C.R.S.

9.5. Filing of Exceptions

- A. Pursuant to section 24-4-105(15)(a), C.R.S., any party seeking to file exceptions must initially file with the Commission a designation of the relevant parts of the record and of parts of the transcript of the hearing within twenty (20) days of the date on which the Division mails the initial decision to the parties.

B. Transcripts:

Any 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. However, no transcript is required if the Commission's review is limited to pure questions of law. The deadline for filing exceptions depends on whether either of the parties designates a portion of the transcript.

1. If the parties do not designate parts of the transcript, exceptions are due within thirty (30) days from the date on which the Division mails the initial decision to the parties. Both parties' exceptions are due on the same day.
2. Any party wishing to designate all, or any part, of the transcript must adhere to the following procedures:
 - a. Transcripts will not be deemed part of a designation unless specifically identified and ordered.
 - b. If one party designates a portion of the transcript, the other party may file a supplemental designation in which that party may designate additional portions of the transcript. The supplemental designation must be filed with the Commission and served on the other party within ten (10) days after the date on which the original designation was filed.
 - c. Any party who designates a transcript must order the transcript by the date on which they file their designation with the Commission whether they are filing an original or supplemental designation.
 - d. The party ordering a transcript must direct the court reporter or transcribing service to complete and file with the Commission the original transcript and one (1) copy within thirty (30) days of their order.
 - e. The party that designates a transcript must pay for such transcripts.
 - f. Transcripts that are ordered and not filed with the Commission in a timely manner due to non-payment, insufficient payment, or failure to direct as set forth above may not be considered by the Commission.
 - g. Upon receipt of transcripts identified in all designations and supplemental designations, the Commission will mail a notification to the parties stating that the transcripts have been received by the Commission.
 - h. 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.

- C. A party's exceptions must include specific objections to the initial decision.
 - D. Either party may file a response to the other party's exceptions. All responses must be filed within ten (10) days of the date on which the exceptions were filed with the Commission. Subsequent replies will not be considered except for good cause shown.
 - E. The Commission may in its sole discretion grant an extension of time to file exceptions or responses, or may delegate the discretion to grant such an extension of time to the Commission's designee.
- 9.6. Request for Oral Arguments
- A. All requests for oral argument must be in writing and included with a party's exceptions or response.
 - B. It is within the sole discretion of the Commission to grant or deny a request for oral argument. The Commission generally does not grant requests for oral argument. If an oral argument is granted, each party will have ten (10) minutes to present their argument. Questioning by members of the Commission will not count against the allocated ten (10) minutes.
 - C. The Commission or its designee may extend the time for oral arguments upon good cause shown.
- 9.7. Final Orders
- A. The Commission may deliberate and vote on exceptions immediately following oral arguments or the Commission may take the matter under advisement.
 - B. When the Commission votes on exceptions, whether after oral arguments or at a subsequent Commission meeting, the ruling of the Commission will not be considered final until a written order is issued.
 - C. The date of the Commission's final order is the date on which the written order is signed, irrespective of any motions for reconsideration that are filed.

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.