

DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF REAL ESTATE  
CONSERVATION EASEMENTS  
4 CCR 725-4

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING  
May 3, 2018

**RULE CHAPTER 1. DEFINITIONS**

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 Department of Regulatory Agencies and the Division of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to conservation easements.

**STATEMENT OF BASIS**

The statutory basis for the rules titled Conservation Easements is Part 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

**STATEMENT OF PURPOSE**

House Bills 18-1290 and 18-1291 repeal the authority of the Division of Real Estate ("Division") and the Division Director in the oversight and administration of the Conservation Easement Tax Credit Program. As a result, the existing rules need to be repealed to be in compliance with the legislative directives in House Bills 18-1290 and 1291.

**SPECIFIC PURPOSE OF THIS RULEMAKING**

The specific purpose is to repeal key terms pertaining to the Conservation Easement Tax Credit Program.

**PROPOSED NEW, AMENDED AND REPEALED RULES**

Deleted material is showed by ~~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 Board at [www.dora.colorado.gov/dre](http://www.dora.colorado.gov/dre).

## **CHAPTER 1: DEFINITIONS**

- ~~1.1 Assignment of a Tax Credit Certificate: Occurs when the tax credit certificate application pursuant to section 12-61-727, C.R.S. is deemed complete and the requested dollar amount from the application is encumbered and credited from the tax credit cap.~~
- ~~1.2 Repealed (Effective 01/01/2016).~~
- ~~1.3 Co-Hold: Two or more nonprofit or government entities are named grantees of the conservation easement and both entities hold the easement for the purposes of implementing rule 2.6.~~
- ~~1.4 Commission: The Conservation Easement Oversight Commission created by section 12-61-725, C.R.S.~~
- ~~1.5 Conservation Easements: Conservation easements that have a charitable donation component. This includes full donations and bargain sale conservation easements.~~
- ~~1.6 Days: Calendar days for the purposes of implementing section 12-61-727, C.R.S.~~
- ~~1.7 Deemed Complete: The application for certification, a tax credit certificate or a preliminary advisory opinion is date stamped by the Division and includes the prescribed nonrefundable fee and the accompanying required documentation as further described in Chapters 2, 3 and 4 of these rules.~~
- ~~1.8 Director: Has the same meaning as set forth in section 12-61-727(1)(E), C.R.S.~~
- ~~1.9 Division: The Division of Real Estate within the Department of Regulatory Agencies.~~
- ~~1.10 Examination: The review conducted by the Division and preparation of a report to be presented to the Director and Commission for the purposes of implementing section 12-61-727, C.R.S.~~
- ~~1.11 Final Determination: The final decision by the Director and/or the Commission to approve or deny a tax credit certificate application pursuant to section 12-61-727, C.R.S.~~
- ~~1.12 Issuance of a Tax Credit Certificate: Occurs after the Director and the Commission have made the final determination to approve the application pursuant to section 12-61-727, C.R.S. The tax credit certificate for the assigned amount is mailed to the landowner.~~
- ~~1.13 Petitioner: Any person who has been granted leave to intervene by either the Director or Commission for the purposes of implementing the provisions of Chapter 5 of these rules.~~
- ~~1.14 Safe and Secure Manner: Reasonable measures are taken to minimize the risk of loss, damage, or theft.~~

- ~~1.15 Settlement: For the purposes of implementing section 12-61-727, C.R.S., an official agreement intended to compromise on any deficiencies identified in the application and any supporting documentation, including the dollar amount of the tax credit certificate to be issued by the Division.~~
- ~~1.16 Tax Credit Cap: The total dollar amount of tax credits available for a given year as defined in section 39-22-522, C.R.S.~~
- ~~1.17 Conservation Easement Holder: An organization that is certified by the Division under section 12-61-724, C.R.S.~~
- ~~1.18 Phased Conservation Easement: A conservation easement that is or will be part of a series of transactions by the same landowner.~~
- ~~1.19 Contiguous: For purposes of section 12-61-727, C.R.S., contiguous means physically touching, sharing an edge, boundary, or corner. Contiguity will not be broken by a natural or artificial waterway. Lands separated by a right-of-way dedicated in fee simple will not be considered contiguous.~~
- ~~1.20 Invalid Payment: Occurs if the fees accompanying the application for certification, a tax credit certificate or a preliminary advisory opinion to the Division are paid for by check and the check is not immediately paid upon presentment to the bank upon which the check was drawn, or if payment is submitted in any other manner, and payment is denied, rescinded or returned as invalid, the application will be deemed incomplete and canceled. The application will only be deemed complete as prescribed in rule 1.7 if the Division has received payment of all application fees together with any fees incurred by the division including the fee required by state fiscal rules for the clerical services necessary for the Division mailing notification of an incomplete application.~~

A hearing on the above subject matter will be held on Thursday, May 03, 2018, at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250-C, Denver, Colorado 80202 beginning at 1:00 p.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.