

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 3. CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER
JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014**

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 As a result, the existing rules need to be repealed to be in compliance with the legislative directives in House Bills 18-1290 and 1291.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 the requirements and procedures to submit an application for a tax credit certificate for conservation easements donated on or after January 1, 2011, but prior to January 1, 2014.

PROPOSED NEW, AMENDED AND REPEALED RULES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.

~~CHAPTER 3: CONSERVATION EASEMENT DONATIONS MADE ON OR AFTER JANUARY 1, 2011, BUT PRIOR TO JANUARY 1, 2014~~

- ~~3.1.— A valid deed of conservation easement must be recorded before a claim can be submitted and a tax credit certificate issued.~~
- ~~3.2.— A claim for a tax credit certificate must include the following:~~
- ~~A.— A signed and completed form titled: "Application for a Conservation Easement Tax Credit Certificate," approved by the Division;~~
 - ~~B.— A signed and completed form titled: "Affidavit for Conservation Easement Appraisals," approved by the Colorado Board of Real Estate Appraisers; and~~
 - ~~C.— A copy of the recorded deed of conservation easement.~~
- ~~3.3.— A taxpayer who submits a claim for a tax credit certificate to the Division must pay a nonrefundable fee as prescribed by the Division.~~
- ~~3.4.— An alternative document may be substituted for the copy of the recorded deed of conservation easement as evidence a conservation easement was conveyed. The alternative document must originate from the county or counties in which the conservation easement was recorded and disclose the following:~~
- ~~A.— The reception number;~~
 - ~~B.— A description of the property;~~
 - ~~C.— The date and time which the easement was recorded; and~~
 - ~~D.— The name of the grantor and grantee.~~
- ~~3.5.— A claim for a tax credit certificate is deemed received by the Division for purposes of section 39-22-522 (2.5), C.R.S., when the application and all other required documents are signed and initialed, properly filled out, and date-stamped by the Division upon receipt. The Division is not responsible for any claims not received. Only after the claim is deemed to be received will the claim be applied towards the limit for the applicable year.~~
- ~~3.6.— The taxpayer must sign, understand, and adhere to all disclosures listed in part three of the form titled: "Application for a Conservation Easement Tax Credit Certificate," in the form approved by the Division at the time the claim is made.~~

- ~~3.7. After the tax credit certificate has been issued, the Department of Revenue has the authority to determine if the conservation easement tax credit does not comply with statutory and regulatory requirements under its jurisdiction. The Division is not responsible should the Department of Revenue determine a conservation easement tax credit does not comply with statutory and regulatory requirements under its jurisdiction.~~
- ~~3.8. A claim for a tax credit certificate is ineligible to receive a tax credit certificate and will not be applied towards the limit for the applicable year if it is based on a conservation easement donation where:~~
- ~~A. The appraiser who conducted the appraisal submitted with the application does not hold a valid active license as a certified general appraiser or fails to meet all of the education and experience requirements established in accordance with section 12-61-704(1)(k), C.R.S. as of the effective date of value in the appraisal report or the certified general appraiser has a practice restriction prohibiting that appraiser from conducting an appraisal for a conservation easement; or~~
- ~~B. The conservation easement holder is not certified by the Division at the time of the donation.~~
- ~~3.9. A tax credit certificate may not be used to claim an income tax credit with the Department of Revenue prior to the year for which the tax credit certificate is issued by the Division.~~
- ~~3.10. If more than one claim is submitted to the Division on the same day, the tax credit certificates with respect to those claims will be issued in the order that the conservation easement deeds were first recorded with the appropriate county or counties.~~
- ~~3.11. In the event a portion of a claim does not qualify under the aggregate limit for 2011 or 2012, a second certificate will be issued for the remaining tax credit amount for the subsequent year.~~
- ~~3.12. In the event a tax credit certificate has been issued for a conservation easement donation and the donation value increases pursuant to a revised appraisal, the taxpayer may submit a second claim to the Division for the increased amount. A second claim must be submitted to the Division in accordance with this rule and will be assigned a tax credit certificate in the order received among all other claims submitted to the Division. A second tax credit certificate for a second claim may be issued for a different year.~~
- ~~3.13. The Division may consult with the taxpayer, the taxpayer's authorized representative, the conservation easement holder, appraiser, the~~

~~Commission and the Department of Revenue regarding a claim for a tax credit certificate.~~

~~3.14. In the event the aggregate limit for a given calendar year is not exceeded and the Division receives and approves a complete application for a tax credit certificate for a conservation easement donated on or after January 1, 2011, the Division may issue a tax credit certificate from the remaining limit. Issuance of the tax credit certificate in this circumstance can only occur if the conservation easement donation was recorded prior to or during the year in which the aggregate limit was not reached.~~

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.