

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 3. LICENSURE, RENEWAL, LICENSE STATUS, AND INSURANCE

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 relating to licensure, renewal, license status and insurance for real estate brokers 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 The review also determined whether the rules should be continued in their current form, modified, or repealed.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 3 sets forth the requirements relating to licensure, renewal, license status and insurance for real estate brokers. 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PROPOSED NEW, AMENDED AND REPEALED RULES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 3: Licensure, Renewal, License Status, and Insurance

- 3.1. Application Requirements
 - A. Applying for an Initial License

1. An Applicant must successfully complete the requisite educational requirements as set forth in Chapter 2 of these Rules;
2. An Applicant must take and successfully pass the appropriate part(s) of the Real Estate Licensing Examination as set forth in Chapter 2 of these Rules;
3. An Applicant must submit a set of fingerprints to the Colorado Bureau of Investigation as set forth in Rule 2.3.;
4. An Applicant must acquire errors and omissions insurance as set forth in Rule 3.9. prior to obtaining an Active License;
5. An Applicant must complete the appropriate Commission created application and submit the required documentation, such as course completion certificates or college transcripts, certified license history, and proof of errors and omissions insurance; and
6. An Applicant must pay the Fee.

B. Upgrading a License Level

1. An Applicant must successfully complete the educational and experience requirements as set forth in Chapter 2 of these Rules;
2. An Applicant must complete the appropriate Commission created application and submit any relevant required documentation, such as course completion certificates and experience requirements, as set forth in Chapter 2 of these Rules; and
3. An Applicant must pay the Fee.

3.2. Invalid Payment

If the Fees accompanying any application made to the Commission 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 not be deemed complete and will be canceled. The application, renewal, or transfer may be reinstated only at the discretion of the Commission and upon full payment of any Fees together with payment of the fee required by state fiscal rules for the clerical services necessary for reinstatement within thirty (30) days of the Division's notification of an incomplete application.

3.3. Review of Application Completeness

All applications will be reviewed by the Division for completeness of all required documentation and Fee. If the application is deemed incomplete by the Division, the Applicant will be notified in writing of the deficiencies identified within the application and

will have thirty (30) days to provide the documentation; otherwise, the application will be canceled and the Fee will be forfeited.

3.4. Applicants with Prior or Pending Criminal Record

Pursuant to sections 12-10-203, and 24-5-101, C.R.S., Applicants who have at any time in the past been convicted of, entered a plea of guilty to, entered a plea of nolo contendere, received a deferred judgment and sentence to a misdemeanor (excluding misdemeanor traffic violations) or a felony or any like municipal code violation, or has such charges pending must submit with their application the required documentation as listed below. If the required documentation is no longer available, the Applicant must provide written confirmation by the appropriate authority that such documentation is no longer available. For any charges or convictions which have been dismissed, expunged, or sealed, the Applicant must include court document(s) evidencing the dismissal, expungement, or sealing of the criminal case(s). Failure to provide the required documentation within the time frame as set forth in Rule 3.3. will result in the cancellation of the application and forfeiture of the Fee. In addition to the required documentation, Applicants may submit supplemental documentation as listed below to demonstrate their rehabilitation, truthfulness, honesty, and good moral character for consideration by the Commission.

A. Required Documentation includes:

1. Court case disposition, registry of action, or a case action summary, which must include the following information:

- a. Offense(s) convicted of;
- b. Statute(s) or municipal code(s) violated;
- c. Classification(s) of offense(s) (i.e. felony or misdemeanor);
- d. Date of conviction;
- e. Date of sentencing;
- f. Sentencing terms; and
- g. Status of case.
 - i. If the sentencing terms have been completed, the status of case should show as closed or dismissed.
 - ii. If the sentencing terms have not been completed, documentation must be submitted that shows current compliance with the sentencing terms. Proof of current compliance should include a letter from the parole or probation

officer and, if applicable, a payment history from the court showing a current account balance of payment.

2. Police Officer's report(s), arrest report(s), or incident report(s);
3. A signed written explanation of the circumstances surrounding each violation and, including the statement attesting that "I have no other criminal violations either past or pending, other than those I have stated on the application";
4. If applying for an Active License, a signed written statement from the Employing Broker that indicates their understanding of the nature of the Applicant's violation(s) and willingness to supervise the Applicant if the License is granted by the Commission. The statement must also include the level of supervision, either a Reasonable or a High-Level of Supervision, that the Employing Broker feels is appropriate based upon the Applicant's violation(s). The Employing Broker may include additional comments relating to the Applicant's rehabilitation, truthfulness, honesty, and good moral character for the Commission's consideration; and
5. Any other information or documentation that the Commission deems necessary.

B. Supplemental Documentation includes:

1. Employment history for the preceding five (5) years;
2. Letter(s) of recommendation; and
3. A personal written statement that demonstrates and evidences the Applicant's rehabilitation, truthfulness, honesty, and good moral character.

3.5. Applicants with Past or Pending Professional Disciplinary Action(s)

Pursuant to sections 12-10-202 and 12-61-203(3), C.R.S., an Applicant who has any past or pending disciplinary actions of a real estate license or any other professional license from Colorado or any other Jurisdiction must submit with their application any of the following information and documentation as listed below that is relevant and available to the Applicant. If the required documentation is no longer available or accessible, the Applicant must provide written confirmation by the appropriate authority that such documentation is no longer available or the reasons why the document is not accessible. Failure to provide the required documentation within the time frame as set forth in Rule 3.3. will result in the cancellation of the application and forfeiture of the Fee.

- A. Any final agency order(s);
- B. Any consent order(s);
- C. Any stipulation(s);

- D. Any investigative report(s); and
- E. A signed written explanation of the circumstances surrounding each disciplinary action.

3.6. Issuance of a License

- A. Submission of an application does not guarantee issuance of a License. Applicants must not represent themselves as a Broker until a License has been issued by the Commission.
- B. Once an application is deemed complete and not subject to further review as set forth in Rules 3.4. and 3.5., the Commission will issue a License within ten (10) business days after review of satisfactory results from the fingerprint-based criminal history record check, if applicable.
- C. Each Applicant who has successfully satisfied the licensure requirements as set forth in Chapter 2 of these Rules will be issued an Initial License expiring December 31 of the year of issuance.
- D. A License may be issued on an Inactive status.
- E. The License of a Broker whose application has been approved by the Commission subject to the receipt of errors and omission insurance and/or the identification of an Employing Broker for supervision will be issued on an Inactive status if such proof is not submitted within thirty (30) days after written notification by the Commission.
- F. The Commission may refuse to issue a License to a partnership, limited liability company, or corporation if the name of said corporation, partnership, or limited liability company is the same as that of any person or entity whose License has been suspended or revoked or is so similar as to be easily confused with that of the suspended or revoked person or entity by members of the general public.
- G. An Independent Broker or Employing Broker may adopt a Trade Name according to Colorado law and such Trade Name will respectively appear in the records of the Commission relating to the Independent Broker or Employing Broker. If an Employing Broker adopts a Trade Name, both the legal name and Trade Name will appear in the records of the Commission for the Associate Brokers.
- H. No License will be issued to an Independent or Employing Broker under a Trade Name, corporate name, partnership name, or limited liability company name which is identical to another licensed Independent Broker's or Employing Broker's Trade Name, corporate, partnership, or limited liability company name.

3.7. Denial of a License

- A. The Commission may deny an application for licensure pursuant to section 12-10-203(3), C.R.S.

- B. If an Applicant for licensure is denied by the Commission for any reason, the Applicant will be informed of the denial and the reasons for the denial in writing.

3.8. Preliminary Advisory Opinions

Prior to an application for licensure, a person may request that the Commission issue a preliminary advisory opinion regarding the potential effect that previous professional conduct, criminal conviction(s), plea(s) of guilt or nolo contendere, deferred judgment(s) and sentence for criminal offense(s), or violation(s) of the real estate license law may have on a future formal application for licensure. A person requesting such an opinion is not an Applicant for licensure. The Commission may, at its sole discretion, issue an opinion which will not be binding on the Commission; is not appealable; and will not limit the authority of the Commission to investigate a future application for licensure. However, if the Commission issues a favorable advisory opinion, the Commission may elect to adopt such advisory opinion as the final decision of the Commission without further investigation or hearing. The issuance of a negative or unfavorable opinion will not prohibit a person from submitting an application for licensure. A person requesting an opinion must do so in a form prescribed by the Commission. Such form must be supported and documented by, without limitation, the following:

A. Pending or Past Criminal Record

The required and supplemental documentation as set forth in Rule 3.4. for any pending or past criminal record.

B. Pending or Past Professional Disciplinary Action(s)

The documentation as set forth in Rule 3.5. for any pending or past professional conduct.

3.9. Errors and Omissions Insurance

Pursuant to section 12-10-204, C.R.S., every Active Broker, including Brokerage Firms with more than one (1) Broker, must have in effect a policy of errors and omissions insurance to cover all acts requiring a License.

A. The Division must enter into a contract with a qualified insurance carrier to make available a group policy of insurance (“Commission Insurance Policy”) under the following terms and conditions:

1. The insurance carrier is licensed or authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this State.
2. The insurance carrier maintains an A.M. Best rating of “A-” or better.
3. The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Commission on a timely basis and at no expense to the Division.

4. The insurance carrier has been selected through a competitive bidding process.
 5. The contract and policy are in conformance with this Rule and all relevant Colorado statutory requirements.
- B. The Commission Insurance Policy must provide, at a minimum, the following terms of coverage:
1. Coverage for all acts for which a License is required, except those illegal, fraudulent, or other acts which are normally excluded from such coverage.
 2. That the coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a Broker or Brokerage Firm becomes Inactive or is revoked or an Applicant is denied a License.
 3. Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
 4. Not less than one hundred thousand dollars (\$100,000) coverage for each licensed person and entity per covered claim regardless of the number of Brokers or Brokerage Firms to which a settlement or claim may apply, not including costs of investigation and defense.
 5. An annual aggregate limit of not less than three hundred thousand dollars (\$300,000) per licensed Broker or Brokerage Firm, not including costs of investigation and defense.
 6. Coverage for investigation and defense must be provided in addition to policy coverage limits.
 7. A deductible amount for each occurrence of not more than one thousand dollars (\$1,000) for claims and no deductible for legal expenses and defense.
 8. The obligation of the insurance carrier to defend all covered claims and the ability of the insured Broker or Brokerage Firm to select counsel of choice subject to the written permission of the carrier, which must not be unreasonably withheld.
 9. Coverage of a Broker's use of lock boxes, which coverage must not be less than twenty-five thousand dollars (\$25,000) per occurrence.
 10. The ability of a Broker or Brokerage Firm, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the state carrier as may be determined by the carrier.

11. That coverage is individual and license specific and will cover the Broker or Brokerage Firm regardless of changes in Employing Broker.
 12. The ability of a Broker or Brokerage Firm, upon payment of an additional premium to obtain an extended reporting period of not less than three hundred sixty-five (365) days.
 13. A conformity endorsement allowing a Colorado resident Broker to meet the errors and omissions insurance requirement for a real estate license in another group mandated Jurisdiction without the need to purchase separate coverage in that Jurisdiction.
 14. Prior acts coverage will be offered to Brokers or Brokerage Firms with continuous past coverage.
- C. Brokers, Brokerage Firms, or Applicants may obtain errors and omissions coverage independent of the Commission Insurance Policy from any insurance carrier subject to the following terms and conditions:
1. For both individual and entity/group policies, the insurance carrier is in compliance with all applicable rules and statutes set forth by the Colorado Division of Insurance and is licensed or authorized to write policies of errors and omissions insurance in this State.
 2. The insurance provider maintains an A.M. Best rating of "A-" or better.
 3. Individual policies must, at a minimum, comply with the following conditions and the insurance carrier must certify compliance in an affidavit issued to the insured Broker, Brokerage Firm, or Applicant in a form specified by the Commission. Insurance carrier agrees to immediately notify the Commission of any cancellation or lapse in coverage. Independent individual coverage must provide, at a minimum, the following:
 - a. The contract and policy are in conformance with all relevant Colorado statutory requirements.
 - b. Coverage includes all acts for which a License is required, except those illegal, fraudulent, or other acts that are normally excluded from such coverage.
 - c. Coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a Broker or Brokerage Firm becomes Inactive or is revoked or an Applicant is denied a License. Cancellation notice must be provided in a manner that complies with section 10-4-109.7(1), C.R.S.
 - d. Coverage is for not less than one hundred thousand dollars (\$100,000) for each licensed Broker and Brokerage Firm per covered claim, with an

annual aggregate limit of not less than three hundred thousand dollars (\$300,000) per licensed person and entity, not including costs of investigation and defense. Coverage for investigation and defense must be provided in addition to policy coverage limits.

- e. A deductible amount for each occurrence of not more than one thousand dollars (\$1,000) for claims and the insurance carrier must look to the insured for payment of any deductible.
- f. Payment of defense costs by the insurance carrier must be on a first dollar basis. That is, the insured is not required to pay anything towards the cost of defense of any claim or complaint.
- g. The ability of a Broker or Brokerage Firm, upon payment of an additional premium, to obtain an extended reporting period of not less than three hundred sixty-five (365) days within sixty (60) days of the initial coverage ending.
- h. Coverage of a Broker's use of lock boxes, which coverage must not be less than twenty-five thousand dollars (\$25,000) per occurrence.
- i. The obligation of the insurance carrier to defend all covered claims and the ability of the insured Broker or Brokerage Firm to select counsel of choice subject to the written permission of the carrier, which must not be unreasonably withheld.
- j. Prior acts coverage must be offered to Brokers or Brokerage Firms with continuous past coverage.

4. For Brokerage Firms with independently carried firm coverage, all the requirements as set forth in subsection C.3. of this Rule will apply except subsections C.3.d. through e. and j. of this Rule, will be replaced with the following:

- a. The per claim limit must be not less than a million dollars (\$1,000,000).
- b. The aggregate limit must be not less than a million dollars (\$1,000,000).
- c. The maximum deductible amount for each occurrence must not exceed ten thousand dollars (\$10,000) and the insurance carrier must look to the insured for payment of any deductible.

D. Applicants for licensure, activation, renewal, and Reinstatement must certify compliance with this Rule and section 12-10-204, C.R.S. in a manner prescribed by the Commission. Any Active Broker or Brokerage Firm who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either

through the state carrier or directly to the Commission, will be placed on Inactive status:

1. Immediately, if certification of current insurance coverage is not provided to the Commission; or
2. Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

3.10. Office

Every Independent Broker or Employing Broker residing in Colorado must maintain a place of business in this State, except for Associate Brokers or Brokers registered as Inactive.

3.11. Renewal

A. No Renewal Requirement for Brokerage Firms

Brokerage Firms are not required to renew their License; however, the Independent Broker or Employing Broker associated with the Brokerage Firm must renew as set forth in Rule 3.11.B.

B. Renewal Requirements for Brokers

1. Licensing Cycle for Renewal (Renewal Periods)

a. Initial Licenses Issued on or after January 1, 2018

Brokers who were issued an Initial License on or after January 1, 2018 will renew a License on a Calendar Year Cycle commencing on January 1 of year one and expiring on December 31 of year three.

b. Initial Licenses Issued Prior to January 1, 2018

For Brokers who were issued an Initial License prior to January 1, 2018, the Commission will renew a License expiring on the anniversary date in the years of 2018, 2019, or 2020, for a period of time equal to two years plus the remaining days in the third year to reach December 31. Thereafter, Brokers will renew a License on a Calendar Year Cycle commencing on January 1 of year one and expiring on December 31 of year three.

2. Notification of Renewal

Notification that a License will expire, unless renewed, will be sent to the electronic mail address on file with the Commission.

3. Renewal Application

- a. All Brokers, whether on Active or Inactive status, may renew their License beginning forty-five (45) days prior to the expiration date of their License by use of the renewal application form provided by the Commission.
- b. Pay the renewal Fee.
- c. Any Broker who has not submitted fingerprints to the Colorado Bureau of Investigation to be used to complete a one-time only criminal history record check must do so prior to renewal of an Active License. Fingerprints must be submitted to the Colorado Bureau of Investigation for processing in a manner acceptable to the Colorado Bureau of Investigation. Fingerprints must be readable and all personal identification data completed in a manner satisfactory to the Colorado Bureau of Investigation. The Commission may, however, acquire a name-based criminal history record check for an Applicant who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. The renewed License will remain on Inactive status until the Commission has received and reviewed the results of a criminal record check.

3.12. Inactivation of License

- A. A Broker may request that the Commission records show their License as Inactive until proper request for reactivation has been made.
- B. It is the joint duty of both the Employing Broker and the Associate Broker to immediately notify the Commission when the employment of the Associate Broker terminates with the Brokerage Firm. Either party may give notice in a manner acceptable to the Commission. The party giving notice must notify the other party in person or in writing of the termination of employment.
- C. A Broker whose License is on Inactive status must apply for renewal of such Inactive License and pay the renewal Fee.
- D. A Broker whose License is on Inactive status may be compensated directly by a former Employing Broker for commissions earned during the term of employment when the Broker's License was on Active status.

3.13. Change in License Status

No changes in License status, whether Active or Inactive, will be made except in the manner acceptable to the Commission to affect such change and upon payment of the Fee for such change request.

3.14. Transfers

- A. When an Associate Broker transfers to a different Brokerage Firm, the License must be transferred to the subsequent Employing Broker in the manner acceptable to the Commission to affect such transfer and upon payment of the Fee for such transfer request.
- B. When a License has been transferred to a subsequent Employing Broker, an Associate Broker may be compensated directly by the former Employing Broker for commissions earned during that term of employment.

3.15. Transition Period License Reinstatement

For Brokers who failed to renew a License that was initially issued prior to January 1, 2018 may Reinstatement the Expired License as follows:

- A. If a proper application is made within thirty-one (31) days after the date of expiration of a License, by payment of the renewal Fee, the License will be issued as set forth in Rule 3.11.B.3.
- B. If a proper application is made more than thirty-one (31) days but within one (1) year after the date of expiration of a License, by payment of the renewal Fee and payment of a reinstatement Fee equal to one-half (1/2) the renewal Fee, the License will be issued with an expiration date of December 31 of the year of issuance. Thereafter, a Broker will renew a License on a Calendar Year Cycle commencing on January 1 of year one and expiring on December 31 of year three.
- C. If a proper application is made more than one (1) year but within three (3) years after the date of expiration of a License, by payment of the renewal Fee and payment of a reinstatement Fee equal to the renewal Fee, the License will be issued with an expiration date of December 31 of the year of issuance. Thereafter, a Broker will renew a License on a Calendar Year Cycle commencing on January 1 of year one and expiring on December 31 of year three.

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.