

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
REAL ESTATE COMMISSION
4 CCR 725-1

RULES GOVERNING REAL ESTATE BROKERS OF THE REAL ESTATE COMMISSION

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
October 5, 2021 at 9:00 AM MST

Division of Real Estate Office
1560 Broadway
Conference Room 110C
Denver, CO 80202

VIRTUAL MEETING REGISTRATION LINK:

<https://attendee.gotowebinar.com/register/7828654042581103115>

Pursuant to and in compliance with Title 12, Article 10 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 (“Commission”) to promulgate rules, or to amend, repeal, or repeal and re-enact the present rules of the Commission.

The hearing more than likely will only be conducted in a virtual setting. All interested parties are urged to attend this public hearing by registering for the webinar on the Division’s website at dre.colorado.gov and to submit written comments concerning the proposed amended rules in advance if possible for consideration.

In order to facilitate the review of comments by the Commission, all interested parties are strongly encouraged to submit their written comments to Eric Turner via email at eric.turner@state.co.us on or before 5:00 p.m. on September 24, 2021. Any written comments not received by September 24, 2021 may be submitted via public testimony at the hearing on October 5, 2021.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules Governing Real Estate Brokers is Part 2 of Title 12, Article 10, Colorado Revised Statutes, as amended. The specific authority under which the Commission shall establish these rules is set forth in sections 12-10-219(4) and 12-10-220, C.R.S.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate 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 modifying, adding, or repealing existing rules with respect to defined terms, broker advertising requirements, complaints initiated on the Commission’s own motion, and filing timelines for initial decisions and exceptions. Please be advised that the proposed

amended rules being considered are subject to further changes and modifications after public comment and the formal hearing.

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 dre.colorado.gov.

Chapter 1: Definitions

1.32. Listing Contract: An agreement between a Brokerage Firm and a Consumer in which a Broker licensed with the Brokerage Firm is designated to provide Real Estate Brokerage Services to the Consumer. Listing Agreements include: Exclusive Tenant Contract, Exclusive Right to Sell, Exclusive Right to Lease, ~~and~~ Exclusive Right to Buy, and Management Agreements.

Chapter 6: Practice Standards

6.10. Advertising

A. Names

1. Pursuant to section 12-10-203(9), C.R.S., no Broker will be licensed to conduct Real Estate Brokerage Services under more than one (1) Brokerage Firm.
2. Pursuant to section 12-10-203(9), C.R.S., no Broker or Brokerage Firm will conduct or promote Real Estate Brokerage Services except in the name under which that Broker or Brokerage Firm appears in the records of the Commission. A Brokerage Firm may also include the locations of its offices, to include branch offices in the Advertising.
3. Brokers will not Advertise so as to mislead the public concerning the identity of the Broker or the Broker's Brokerage Firm.
4. All Advertising must be done clearly and conspicuously in the name of the Broker's Brokerage Firm. However, a Broker who Advertises real property owned by the Broker which is not listed for sale or lease with the Broker's Brokerage Firm is exempt from Advertising the Broker's own property in the Broker's Brokerage Firm's name.
5. A Brokerage Firm may use a Trade Name in addition to or instead of the Brokerage Firm's legal name. The Trade Name must be filed with the Commission.
6. A Brokerage Firm may use a Trademark in conjunction with the Brokerage Firm's legal name or Trade Name with permission of the owner of such Trademark.
 - a. A Brokerage Firm that uses a Trade Name or Trademark owned by a third party is required to use one (1) of the following statements, which must appear in a clear and conspicuous manner so as to attract the attention of the public:
 - i. "Each (insert general Trade Name) brokerage business is independently owned and operated." or

ii. "Each office independently owned and operated."

b. Upon written request, the above statements may be modified with consent of the Commission.

7. No Brokerage Firm will use more than one (1) Trade Name; however, upon written request and with the consent of a representative of the Commission, a Brokerage Firm may use more than one (1) Trademark. Use of the Trademark(s) is only acceptable if the Brokerage Firm has obtained permission of the registrant of such Trademark.

8. No Broker may use a professional designation in Advertising unless the Broker is in good standing and the designation is easily verifiable by the public and the Commission. A Broker that Advertises an award, membership, or achievement must be able to provide verification of the validity of such claims upon request from any member of the public or Commission.

B. Teams

1. Brokers who form a Team must not Advertise in a manner that misleads the public as to the identity of the Team's Brokerage Firm. Teams are prohibited from using the following terms in the Team's name:

a. Realty,

b. Real estate,

c. Realtors,

d. Company,

e. Corporation,

f. Corp.,

g. Inc.,

h. LLC,

i. LP or LLP, or

j. Any other term that would imply a separate entity from the Brokerage Firm with which the Team Brokers are licensed.

2. All Team Advertising must clearly and conspicuously include and be in conjunction with the legal name or Trade Name of the Brokerage Firm.

3. If requested by a Consumer, the Commission, another Brokerage Firm or Broker, the Brokerage Firm will provide the names of the Brokers that belong to any Team licensed with the Brokerage Firm.

4. Brokers may not allow the use of the Team's name by other Brokers outside the Team's Brokerage Firm.

C. Brokerage Firms and Brokers are responsible for ensuring that all Advertising is accurate and complies with copyright laws and other applicable laws and regulations.

D. Electronic Media

1. When a Broker owns or controls Electronic Media, each Viewable Page must include: ~~the Broker's name or Broker's Team name and~~ the Broker's Brokerage Firm's name. Any expired listings must be removed from the Broker's Electronic Media within three (3) days of a Listing Contract expiring.
2. If a Broker authorizes a third party for the Broker's Electronic Media Advertising, the Broker is responsible for ensuring that the information provided to such third party is accurate. The Broker must submit a written request to any third party syndicators to have all expired listings removed from Electronic Media within three (3) days of a Listing Contract expiring.
3. A Broker who communicates through email, chat, instant messages, newsgroups, discussion lists, bulletin boards, blogs, or other similar means for purposes of Advertising the Broker's Real Estate Brokerage Services must use the Broker's ~~name or Team's name and the name of the Broker's~~ Brokerage Firm's name. However, once a Broker has disclosed the ~~Broker's name or Team's name and the~~ Broker's Brokerage Firm to a specific Consumer, the Broker is not required to continue to make the same disclosure to the specific Consumer.
4. When it is not reasonable for a Broker to disclose the Broker's ~~name or Team's name and the~~ Brokerage Firm's name in an Electronic Media because space is limited, the Broker will disclose the Broker's ~~name or Team's name and the~~ Brokerage Firm's name clearly and conspicuously within the first click of the mouse.

E. Past Sales Data Advertising

General sales data Advertising, regardless of the medium, which recaps sales activity over a period of time in a given subdivision or geographical area must include all of the following:

1. Cite the source of the data; and
2. Include a disclaimer, if accurate, that all reported sales:
 - a. Were not necessarily listed or sold by the Broker; and
 - b. Are intended only to show trends in the area or will separately identify the Broker's own sales activity.

F. Authority to Advertise Available and Under Contract Properties

Brokers ~~who do not have a Brokerage Relationship with the owner~~ may ~~not~~ Advertise the availability or price of a property whether for sale or lease as set forth in subsections F.1. and F.2. of this Rule. ~~without authority from the owner or the owner's Broker and disclosure of the owner's Brokerage Firm.~~

1. A Broker may disseminate another Broker's Advertising in the following manner:

- a. The Broker discloses, in a conspicuous manner, the owner's Brokerage Firm;
 - b. The Advertising is accurate and not misleading to Consumers; and
 - c. The Advertising is in compliance with subsection C. of this Rule.
2. A Broker may disseminate an owner's Advertising who is not represented by a Brokerage Firm (For Sale by Owner) in the following manner:
- a. The Broker must have the owner's written permission to disseminate the Advertising;
 - b. The Broker discloses, in a conspicuous manner, that the owner is not represented by a Broker;
 - c. The Advertising is accurate and not misleading to Consumers; and
 - d. The dissemination of an owner's Advertising does not include submitting the information into a property exchange or multiple listing service.

G. Price Set by Owner

The price quoted in any Advertising will not be anything other than the price agreed upon between the Broker and the owner.

6.25. Investigations or Audits by Commission

A. Notification of a Complaint that has been Assigned for Investigations or an Audit

- 1. A Broker or Brokerage Firm will receive written notification from the Commission regarding the following:
 - a. A complaint has been filed and an investigation has been initiated. A copy of the complaint that has been filed against the Broker or Brokerage Firm will be provided;~~or~~
 - b. A complaint has been initiated on the Commission's own motion. A summary of the complaint against the Broker or Brokerage Firm will be provided; or
 - ~~b~~c. The Broker or Brokerage Firm has been selected for an audit.
- 2. Upon receipt of the Commission's notification, a Broker or Brokerage Firm must submit a written response to the Commission. Failure to submit a written response within the time set by the Commission in its notification will be grounds for disciplinary action regardless of the question of whether the underlying complaint or audit warrants further investigation or subsequent action by the Commission. The written response must contain the following:
 - a. A complete and specific answer to the factual recitations, allegations, or averments made in the complaint filed against the Broker or Brokerage Firm, whether made by a member of the public, on the Commission's own motion, or by an authorized representative of the Commission.

- b. A complete and specific response to any additional questions, allegations, or averments presented in the notification letter.
 - c. A complete transaction file and any documents or records requested in the notification letter.
 - d. Any further information relative to the complaint or audit that the Broker or Brokerage Firm believes to be relevant or material to the matters addressed in the notification letter.
- B. Extension to Respond

Upon request, the Commission will grant extensions of time for Brokers or Brokerage Firms to respond to any complaint or audit provided such request is reasonable.

C. Produce Records for Investigation or Audit

Brokers and Brokerage Firms must retain and produce for inspection by the Commission any document or record as may be reasonably necessary for investigation or audit in the enforcement of Commission statutes and these Rules. Failure to submit such documents or records within the time set by the Commission in its notification will be grounds for disciplinary action unless the Commission has granted an extension of time for such production.

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. Computation of time for the filing timelines for Chapter 9 of these Rules is pursuant to section 2-4-108, C.R.S. 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.

A hearing on the above subject matter will be held on Tuesday, October 5, 2021 at the Colorado Division of Real Estate, 1560 Broadway, Suite 110-C, Denver, Colorado 80202 beginning at 9:00 a.m. Also, the virtual webinar of the meeting may be accessed at the following link:

<https://attendee.gotowebinar.com/register/7828654042581103115>

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.