

# Chapter 4:

## Subdivision Laws

An \* in the left margin indicates a change in the statute, rule, or text since the last publication of the manual.

### I. Jurisdiction of Commission

#### A. Introduction

The Subdivision Developer's Act ("Act") affects the types of subdivisions that must be registered with the Real Estate Commission. The following types of subdivisions within the State of Colorado, and subdivisions located outside the state being offered for sale in Colorado, must be registered before offering, negotiating, or agreeing to sell, lease, or transfer any portion of the subdivision:

1. Any division of real property into twenty (20) or more interests intended solely for residential use, with each interest comprising thirty-five (35) or more acres of land offered for sale, lease or transfer;
2. Subdivisions consisting of twenty (20) or more timeshare interests (a timeshare interest includes a deeded or non-deeded interest, including but not limited to a fee simple interest, a leasehold, a contract to use, a membership or club agreement, or an interest in common);
3. Subdivisions consisting of twenty (20) or more residential units created by converting an existing structure (e.g., condominium conversions); and
4. Subdivisions created by cooperative housing corporations with twenty (20) or more shareholders with proprietary leases, whether the project is completed or not.

#### B. Exemption from Registration under the Act

1. The selling of memberships in campgrounds;
2. Bulk sales and transfers between developers;
3. Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid by the purchaser for such property includes the cost of such buildings (this does not apply to conversions of an existing structure, timeshare, or cooperative housing projects);
4. Lots that, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and the street or road system is improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision

that has been or is required to be approved after September 1, 1972 by a regional, county, or municipal planning authority pursuant to Article 28 of Title 30 or Article 23 of Title 31, C.R.S.; and

5. Sales by public officials in the official conduct of their duties.

## C. Additional Provisions of the Act

1. A “Developer” means any person, firm, partnership, joint venture, association, or corporation participating as owner, promoter, developer, or sales agent in the planning, platting, development, promotion, sale, or lease of a subdivision.
2. A registration expires on December 31st of each year unless it is renewed. A registration that has expired may be reinstated within two (2) years after such expiration upon submission of a renewal application and payment of the appropriate renewal fee, as well as meeting all other requirements of the Act. A Developer is not authorized to transact business during the period of time between expiration of the subdivision registration and reinstatement.
3. The Act requires a five (5) day cancellation period after the execution of a contract, which right cannot be waived, and applies to any subdivision regulated pursuant to the Act. This cancellation period runs until midnight on the fifth (5th) day following the execution of the contract.
4. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the Developer unless such Developer was duly registered under the provisions of the Act when such agreement or contract was made.

## II. Subdivision Statutes<sup>1</sup>

### *§ 12-10-501, C.R.S. Definitions.*

*Editor's note: This section is similar to former §12-61-401 as it existed prior to 2019.*

As used in this part 5, unless the context otherwise requires:

- (1) “Accredited investor” has the same meaning as defined in the securities and exchange commission’s rule 501 of regulation D, 17 CFR 230.501 (a).
- (1.5) “Commission” means the real estate commission established under section 12-10-206.
- (2) “Developer” means any person, as defined in section 2-4-401 (8), that participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision or any part thereof.
- (3) (a) “Subdivision” means any real property divided into twenty or more interests intended solely for residential use and offered for sale, lease, or transfer.  
(b) (I) The term “subdivision” also includes:
  - (A) The conversion of an existing structure into a common interest community, as defined in article 33.3 of title 38, of twenty or more residential units;
  - (B) A group of twenty or more time shares intended for residential use; and
  - (C) A group of twenty or more proprietary leases in a cooperative housing corporation, as described in article 33.5 of title 38.

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<sup>1</sup> Colorado Revised Statutes are subject to change through the legislative process. Check the Division website for updates.

- (II) The term “subdivision” does not include:
  - (A) The selling of memberships in campgrounds;
  - (B) Bulk sales and transfers between developers;
  - (C) Property upon which there has been or upon which there will be erected residential buildings that have not been previously occupied and where the consideration paid for the property includes the cost of the buildings;
  - (D) Lots that, at the time of closing of a sale or occupancy under a lease, are situated on a street or road and street or road system improved to standards at least equal to streets and roads maintained by the county, city, or town in which the lots are located; have a feasible plan to provide potable water and sewage disposal; and have telephone and electricity facilities and systems adequate to serve the lots, which facilities and systems are installed and in place on the lots or in a street, road, or easement adjacent to the lots and which facilities and systems comply with applicable state, county, municipal, or other local laws, rules, and regulations; or any subdivision that has been or is required to be approved after September 1, 1972, by a regional, county, or municipal planning authority pursuant to article 28 of title 30 or article 23 of title 31;
  - (E) Sales by public officials in the official conduct of their duties.
- (4) “Time share” means a time share estate, as defined in section 38-33-110 (5), or a time share use, but the term does not include group reservations made for convention purposes as a single transaction with a hotel, motel, or condominium owner or association. For the purposes of this subsection (4), “time share use” means a contractual or membership right of occupancy, that cannot be terminated at the will of the owner, for life or for a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or specific or nonspecific segment of real property, annually or on some other periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the property has been divided.

**§ 12-10-502, C.R.S. Registration required.**

***Editor's note:*** This section is similar to former §12-61-402 as it existed prior to 2019.

- (1) Unless exempt under the provisions of section 12-10-501 (3), a developer, before selling, leasing, or transferring or agreeing or negotiating to sell, lease, or transfer, directly or indirectly, any subdivision or any part thereof, shall register pursuant to this part 5.
- (2) Upon approval by the commission, a developer who has applied for registration pursuant to section 12-10-503 may offer reservations in a subdivision during the pendency of the application and until the application is granted or denied if the fees for the reservations are held in trust by an independent third party and are fully refundable.
- \* (3) (a) Upon the commission's approval of a developer's subdivision registration pursuant to section 12-10-503, the developer may enter into binding purchase contracts with prospective buyers and accept earnest money deposits. Except as provided in subsection (3)(b) of this section, an earnest money deposit must be held in trust by an independent third party.
  - (b) (I) Notwithstanding subsection (3)(a) of this section or any other provision in this part 5, upon subdivision registration approval, a developer may receive earnest money deposits from an accredited investor and use some or all of the funds toward development of a subdivision, but only if the purchase contract or other written disclosure contains a clear statement setting forth:
    - (A) To whom the funds will be delivered;
    - (B) When the delivery of the funds will occur;

- (C) How the funds will be used; and
- (D) Any restriction on the use of the funds.

- (II) A developer may receive earnest money deposits from an accredited investor pursuant to the requirements in subsection (3)(b)(I) of this section without first having to post a bond or other security.

- (c) This subsection (3) applies only if the subdivision is a time share estate, as defined in section 38-33-110 (5).

**§ 12-10-503, C.R.S. Application for registration.**

*Editor's note: This section is similar to former §12-61-403 as it existed prior to 2019.*

- (1) Every person who is required to register as a developer under this part 5 shall submit to the commission an application that contains the information described in subsections (2) and (3) of this section. If the information is not submitted, the commission may deny the Application for registration.

If a developer is currently regulated in another state that has registration requirements substantially equivalent to the requirements of this part 5 or that provide substantially comparable protection to a purchaser, the commission may accept proof of the registration along with the developer's disclosure or equivalent statement from the other state in full or partial satisfaction of the information required by this section. In addition, the applicant shall be under a continuing obligation to notify the commission within ten days of any change in the information so submitted, and a failure to do so shall be a cause for disciplinary action.

- (2) (a) Registration information concerning the developer shall include:
  - (I) The principal office of the applicant wherever situate;
  - (II) The location of the principal office and the branch offices of the applicant in this state;
  - (III) The names and residence and business addresses of all natural persons who have a twenty-four percent or greater financial or ultimate beneficial interest in the business of the developer, either directly or indirectly, as principal, manager, member, partner, officer, director, or stockholder, specifying each such person's capacity, title, and percentage of ownership. If no natural person has a twenty-four percent or greater financial or beneficial interest in the business of the developer, the information required in this subsection (2)(a)(III) shall be submitted regarding the natural person having the largest single financial or beneficial interest.
  - (IV) The length of time and the locations where the applicant has been engaged in the business of real estate sales or development;
  - (V) Any felony of which the applicant has been convicted within the preceding ten years. In determining whether a certificate of registration shall be issued to an applicant who has been convicted of a felony within such period of time, the commission shall be governed by the provisions of section 24-5-101.
  - (VI) The states in which the applicant has had a license or registration similar to the developer's registration in this state granted, refused, suspended, or revoked or is currently the subject of an investigation or charges that could result in refusal, suspension, or revocation;
  - (VII) Whether the developer or any other person financially interested in the business of the developer as principal, partner, officer, director, or stockholder has engaged in any activity that would constitute a violation of this part 5.

- (b) If the applicant is a corporate developer, a copy of the certificate of authority to do business in this state or a certificate of incorporation issued by the secretary of state shall accompany the application.
- (3) Registration information concerning the subdivision shall include:
  - (a) The location of each subdivision from which sales are intended to be made;
  - (b) The name of each subdivision and the trade, corporate, or partnership name used by the developer;
  - (c) Evidence or certification that each subdivision offered for sale or lease is registered or will be registered in accordance with state or local requirements of the state in which each subdivision is located;
  - (d) Copies of documents evidencing the title or other interest in the subdivision;
  - (e) If there is a blanket encumbrance upon the title of the subdivision or any other ownership, leasehold, or contractual interest that could defeat all possessory or ownership rights of a purchaser, a copy of the instruments creating the liens, encumbrances, or interests, with dates as to the recording, along with documentary evidence that any beneficiary, mortgagee, or trustee of a deed of trust or any other holder of the ownership, leasehold, or contractual interest will release any lot or time share from the blanket encumbrance or has subordinated its interest in the subdivision to the interest of any purchaser or has established any other arrangement acceptable to the commission that protects the rights of the purchaser;
  - (f) A statement that standard commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents used to effectuate the sale or lease of the subdivision or any part thereof, unless the forms to be used were prepared by an attorney representing the developer;
  - (g) A true statement by the developer that, in any conveyance by means of an installment contract, the purchaser shall be advised to record the contract with the proper authorities in the jurisdiction in which the subdivision is located. In no event shall any developer specifically prohibit the recording of the installment contract.
  - (h) A true statement by the developer of the provisions for and availability of legal access, sewage disposal, and public utilities, including water, electricity, gas, and telephone facilities, in the subdivision offered for sale or lease, including whether such are to be a developer or purchaser expense;
  - (i) A true statement as to whether or not a survey of each lot, site, or tract offered for sale or lease from the subdivision has been made and whether survey monuments are in place;
  - (j) A true statement by the developer as to whether or not a common interest community is to be or has been created within the subdivision and whether or not the common interest community is or will be a small cooperative or small and limited expense planned community created pursuant to section 38-33.3-116;
  - (k) A true statement by the developer concerning the existence of any common interest community association, including whether the developer controls funds in the association.
- (4) The commission may disapprove the form of the documents submitted pursuant to subsection (3)(f) of this section and may deny an application for registration until such time as the applicant submits the documents in a form that is satisfactory to the commission.
- (5) Each registration shall be accompanied by fees established pursuant to section 12-10-215.

**§ 12-10-504, C.R.S. Registration of developers.**

*Editor's note: This section is similar to former §12-61-404 as it existed prior to 2019.*

- (1) The commission shall register all applicants who meet the requirements of this part 5 and provide each applicant so registered with a certificate indicating that the developer named therein is registered in the state of Colorado as a subdivision developer. The developer that will sign as seller or lessor in any contract of sale, lease, or deed purporting to convey any site, tract, lot, or divided or undivided interest from a subdivision shall secure a certificate before offering, negotiating, or agreeing to sell, lease, or transfer before the sale, lease, or transfer is made. If such person or entity is acting only as a trustee, the beneficial owner of the subdivision shall secure a certificate. A certificate issued to a developer shall entitle all sales agents and employees of the developer to act in the capacity of a developer as agent for the developer. The developer shall be responsible for all actions of the sales agents and employees.
- (2) All certificates issued under this section shall expire on December 31 following the date of issuance. In the absence of any reason or condition under this part 5 that might warrant the denial or revocation of a registration, a certificate shall be renewed by payment of a renewal fee established pursuant to section 12-10-215. A registration that has expired may be reinstated within two years after the expiration upon payment of the appropriate renewal fee if the applicant meets all other requirements of this part 5.
- (3) All fees collected under this part 5 shall be deposited in accordance with section 12-10-214.
- (4) With regard to any subdivision for which the information required by section 12-10-503 (3) has not been previously submitted to the commission, each registered developer shall register the subdivision by providing the commission with the information before sale, lease, or transfer, or negotiating or agreeing to sell, lease, or transfer, any such subdivision or any part thereof.

**§ 12-10-505, C.R.S. Refusal, revocation, or suspension of registration – letter of admonition – probation.**

*Editor's note: This section is similar to former §12-61-405 as it existed prior to 2019.*

- (1) The commission may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense; may issue a letter of admonition; may place a registrant on probation under its close supervision on such terms and for such time as it deems appropriate; and may refuse, revoke, or suspend the registration of any developer or registrant if, after an investigation and after notice and a hearing pursuant to the provisions of section 24-4-104, the commission determines that the developer or any director, officer, or stockholder with controlling interest in the corporation:
  - (a) Has used false or misleading advertising or has made a false or misleading statement or a concealment in his or her application for registration;
  - (b) Has misrepresented or concealed any material fact from a purchaser of any interest in a subdivision;
  - (c) Has employed any device, scheme, or artifice with intent to defraud a purchaser of any interest in a subdivision;
  - (d) Has been convicted of or pled guilty or nolo contendere to a crime involving fraud, deception, false pretense, theft, misrepresentation, false advertising, or dishonest dealing in any court;
  - (e) Has disposed of, concealed, diverted, converted, or otherwise failed to account for any funds or assets of any purchaser of any interest in a subdivision or any homeowners' association under the control of the developer or director, officer, or stockholder;
  - (f) Has failed to comply with any stipulation or agreement made with the commission;

- (g) Has failed to comply with or has violated any provision of this article 10, including any failure to comply with the registration requirements of section 12-10-503, or any lawful rule promulgated by the commission under this article 10;
- (h) Has refused to honor a buyer's request to cancel a contract for the purchase of a time share or subdivision or part thereof if the request was made within five calendar days after execution of the contract and was made either by telegram, mail, or hand delivery. A request is considered made if by electronic mail when sent, if by mail when postmarked, or if by hand delivery when delivered to the seller's place of business. No developer shall employ a contract that contains any provision waiving a buyer's right to such a cancellation period.
- (i) Has committed any act that constitutes a violation of the "Colorado Consumer Protection Act", article 1 of title 6;
- (j) Has employed any sales agent or employee who violates the provisions of this part 5;
- (k) Has used documents for sales or lease transactions other than those described in section 12-10-503 (3)(f);
- (l) Has failed to disclose encumbrances to prospective purchasers or has failed to transfer clear title at the time of sale, if the parties agreed that the transfer would be made at that time.

- (2) A disciplinary action relating to the business of subdivision development taken by any other state or local jurisdiction or the federal government shall be deemed to be *prima facie* evidence of grounds for disciplinary action, including denial of registration, under this part 5. This subsection (2) shall apply only to such disciplinary actions as are substantially similar to those set out as grounds for disciplinary action or denial of registration under this part 5.
- (3) Any hearing held under this section shall be in accordance with the procedures established in sections 24-4-105 and 24-4-106.
- (4) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the commission, does not initially warrant formal action by the commission but that should not be dismissed as being without merit, the commission may send a letter of admonition by certified mail, return receipt requested, to the registrant who is the subject of the complaint or investigation and a copy thereof to any person making the complaint. The letter shall advise the registrant that he or she has the right to request in writing, within twenty days after proven receipt, that formal disciplinary proceedings be initiated against him or her to adjudicate the propriety of the conduct upon which the letter of admonition is based. If the request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.
- (5) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the division of real estate cash fund.

***§ 12-10-506, C.R.S. Powers of commission – injunction – rules.***

***Editor's note:*** This section is similar to former §12-61-406 as it existed prior to 2019.

- (1) The commission may apply to a court of competent jurisdiction for an order enjoining any act or practice that constitutes a violation of this part 5, and, upon a showing that a person is engaging or intends to engage in any such act or practice, an injunction, restraining order, or other appropriate order shall be granted by the court, regardless of the existence of another remedy therefor. Any notice, hearing, or duration of any injunction or restraining order shall be made in accordance with the provisions of the Colorado rules of civil procedure.
- (2) The commission may apply to a court of competent jurisdiction for the appointment of a receiver if it determines that the appointment is necessary to protect the property or interests of purchasers of a subdivision or part thereof.

- (3) The commission shall issue or deny a certificate or additional registration within sixty days from the date of receipt of the application by the commission. The commission may make necessary investigations and inspections to determine whether any developer has violated this part 5 or any lawful rule promulgated by the commission. If, after an application by a developer has been submitted pursuant to section 12-10-503 or information has been submitted pursuant to section 12-10-504, the commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within sixty days from the date of filing of the application or information, or the right of inspection is waived and the lack thereof shall not be grounds for denial of a registration.
- (4) The commission, the director, or the administrative law judge appointed for a hearing may issue a subpoena compelling the attendance and testimony of witnesses and the production of books, papers, or records pursuant to an investigation or hearing of the commission. Any such subpoena shall be served in the same manner as for subpoenas issued by district courts.
- (5) The commission has the power to make any rules necessary for the enforcement or administration of this part 5.
- (6) The commission shall adopt, promulgate, amend, or repeal such rules as are necessary to:
  - (a) Require written disclosures to any purchasers as provided in subsection (7) of this section and to prescribe and require that standardized forms be used by subdivision developers in connection with the sale or lease of a subdivision or any part thereof, except as otherwise provided in section 12-10-503 (3)(f); and
  - (b) Require that developers maintain certain business records for a period of at least seven years.
- (7) The commission may require any developer to make written disclosures to purchasers in their contracts of sale or by separate written documents if the commission finds that the disclosures are necessary for the protection of the purchasers.
- (8) The commission or its designated representative may audit the accounts of any homeowners' association, the funds of which are controlled by a developer.

**§ 12-10-507, C.R.S. Violation – penalty.**

*Editor's note: This section is similar to former §12-61-407 as it existed prior to 2019.*

Any person who fails to register as a developer in violation of this part 5 commits a class 6 felony and shall be punished as provided in section 18-1.3-401. Any agreement or contract for the sale or lease of a subdivision or part thereof shall be voidable by the purchaser and unenforceable by the developer unless the developer was duly registered under the provisions of this part 5 when the agreement or contract was made.

**§ 12-10-508, C.R.S. Repeal of part – subject to review.**

*Editor's note: This section is similar to former §12-61-408 as it existed prior to 2019.*

This part 5 is repealed, effective September 1, 2026. Before the repeal, this part 5 is scheduled for review in accordance with section 24-34-104.

### **III. Rules and Regulations for Subdivision Developers<sup>2</sup>**

**Adopted, and Published by the**

**COLORADO REAL ESTATE COMMISSION**

**Approved by the Attorney General and the Executive Director of the Department of Regulatory Agencies.**

In pursuance of and in compliance with Title 12, Article 10, C.R.S. 1973, as amended, and in pursuance of and in compliance with Title 24, Article 4, C.R.S. 1973, as amended. With respect to certain statutory definitions used herein, see § 12-10-201, C.R.S., and § 12-10-501, C.R.S.

#### **CHAPTER 1: DEFINITIONS**

- 1.1. **Applicant:** A person or entity seeking registration from the Commission to act in the capacity of a Developer pursuant to section 12-10-504(1), C.R.S.
- 1.2. **Business Record:** The Consumer Agreement, financing agreement, buyer and seller settlement statement, title policy, trust deed, escrow agreement, and any other documents executed by or on behalf of the Developer in the sale, lease or transfer of any interest in a Subdivision, including records showing the receipt and disbursement of any money or assets received or paid on behalf of any homeowners' or similar association managed or controlled by a Developer.
- 1.3. **Commission:** The Colorado Real Estate Commission as defined pursuant to section 12-10-501(1), C.R.S.
- 1.4. **Consumer:** A natural person, corporation, company, limited liability company, partnership, firm, association, or other legal entity.
- 1.5. **Consumer Agreement:** A written agreement between a Consumer and a Developer in the sale, lease or transfer of any interest in a Subdivision, which includes but is not limited to, sales contract, purchase agreement, lease agreement, right-to-use contract, points-based contract, and installment contract.
- 1.6. **Deemed Complete:** An Applicant has submitted a complete and satisfactory application in compliance with sections 12-10-502 and 12-10-503, C.R.S. that includes the Fee and the accompanying required documentation as set forth in Chapter 2 of these Rules.
- 1.7. **Day:** any calendar day and includes Saturday, Sunday, and legal holidays.
- 1.8. **Developer:** Has the same meaning pursuant to section 12-10-501(2), C.R.S.
- 1.9. **Developer Certificate:** Certificate issued by the Commission or Division upon meeting the registration requirements pursuant to sections 12-10-503 and 504, C.R.S.
- 1.10. **Division:** The Colorado Division of Real Estate as defined pursuant to section 12-10-101(2), C.R.S.
- 1.11. **Electronic Record:** Has the same meaning set forth in the Uniform Electronic Transaction Act in sections 24-71.3-101, et. seq., C.R.S.
- 1.12. **Electronic Signature:** Has the same meaning set forth in the Uniform Electronic Transaction Act in sections 24-71.3-101, et. seq., C.R.S.
- 1.13. **Equivalency Filing:** An application for a Developer Certificate, a supplemental application to add a Subdivision to an existing Developer Certificate, or a supplemental application to otherwise amend an existing Developer Certificate, wherein the Developer is currently

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<sup>2</sup> The Rules of the Colorado Real Estate Commission are subject to change throughout the year. For the latest version of the Rules of the Colorado Real Estate Commission, please visit: <https://dre.colorado.gov/division-of-real-estate/about-the-division/rules-notices-of-rule-making-hearings>

regulated in another state and submits evidence in form and substance acceptable to the Commission that the registration requirements are substantially equivalent to the Practice Act or that provide substantially comparable protection to a purchaser.

- 1.14. Exchange Program: Any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy accommodations and facilities among owners. The term does not include the assignment of the right to use and occupy accommodations and facilities to owners pursuant to a particular Time Shares plan's reservation system.
- 1.15. Fee: The prescribed non-refundable license fee as set by the Division.
- 1.16. Nondisturbance Agreement: Agreement by which the holder of a blanket encumbrance against a project agrees that its rights in the project will be subordinate to the rights of the purchasers.
- 1.17. Petitioner: For the purposes of implementing the provisions of Chapter 5 of these Rules, any person who has filed with the Commission a petition or has been granted leave to intervene by the Commission for a declaratory order pursuant to section 24-4-105(11), C.R.S. and as set forth in Chapter 5 of these Rules.
- 1.18. Practice Act: The Subdivision Developer's Act found at sections 12-10-501, et. seq., C.R.S.
- 1.19. Reservation Agreement: A revocable right to purchase an interest in a Subdivision project for which a Developer Certificate from the Commission or Division has not yet been obtained.
- 1.20. Safe and Secure Manner: Reasonable measures are taken to minimize the risk of loss, damage, or theft.
- 1.21. Subdivision: Has the same meaning pursuant to sections 12-10-501(3)(a) and (3)(b)(I), C.R.S.
- 1.22. Time Share: Has the same meaning pursuant to section 12-10-501(4), C.R.S.

## CHAPTER 2: APPLICATION FOR REGISTRATION

### 2.1. Registration Requirements for an Initial Developer's Certificate

- A. If an Applicant is:
  1. A corporation, a director or an authorized officer must apply on behalf of said corporation.
  2. A partnership or limited partnership, one of the general partners must apply on behalf of the partnership or limited partnership.
  3. A joint owner of the Subdivision, such owner may apply on behalf of all joint owners of such Subdivision.
  4. A limited liability company, one of the managers or member-managers must apply on behalf of the company.
  5. With respect to any other type of Developer that is other than a natural person, a person authorized to act on behalf of such entity, as demonstrated by such documents in a form satisfactory to the Commission, will apply on behalf of that entity.
- B. In addition to section 12-10-503, C.R.S., the Applicant for a Developer Certificate must provide the Commission with the following information concerning each Subdivision to be registered:
  1. The address or actual physical location of each Subdivision from which sales are intended to be made;
  2. Copies of a recorded deed or other documents evidencing the Developer's title or other interest in the Subdivision and a title commitment, policy or report, abstract and opinion, or other evidence acceptable to the Commission documenting the condition of such title or interest;
  3. Sample copies of the Consumer Agreement, notes, deeds, and other legal documents prepared by the Developer or an attorney representing the Developer which are to be used to effectuate the sale or lease of the Subdivision or any part thereof. The

Commission may disapprove the form of the documents submitted and may deny an application for registration until such time as the Applicant submits such documents in forms that are satisfactory to the Commission;

4. In compliance with section 12-10-503(3)(e), C.R.S., a Developer registering a Subdivision that incorporates Time Share use and is subject to one or more blanket encumbrances must submit to the Commission a Nondisturbance Agreement by which the holder of each blanket encumbrance against the Subdivision agrees that its rights in the Subdivision will be subordinate to the rights of the time share use purchasers. From and after the recording of a Nondisturbance Agreement, the holder of the blanket encumbrance executing the same, such holder's successors and assigns, and any person who acquires all or part of the Subdivision through the subject blanket encumbrance, will take the property subject to the rights of the Time Share use purchasers. Every Nondisturbance Agreement must contain the covenant of the holder of the blanket encumbrance that such person or any other person acquiring all or part of the Subdivision through such blanket encumbrance will not use or cause the Subdivision to be used in a manner which would prevent the Time Share use purchasers from using and occupying the Subdivision in a manner contemplated by the Time Share use plan. Any other trust or escrow arrangement which fully protects the Time Share use purchasers' interest in the Subdivision as contemplated by section 12-10-503(3)(e), C.R.S., may be approved by the Commission;
5. If the Developer is other than a natural person, proof of formation and registration in accordance with state and local requirements must accompany the Application; and
6. Copies of the recorded declaration of the Subdivision.

C. Copies of required information and disclosures as set forth in Rules 2.3., 2.4., 2.5., and 2.6. as applicable.

D. Registration of Developers Regulated in Another State

Pursuant to section 12-10-503(1), C.R.S., the Commission in its sole discretion may accept an Equivalency Filing from a Developer as an application for a Developer Certificate. The Developer may be deemed to have fully or partially satisfied, and be in compliance with, sections 12-10-503(2) and 12-10-503(3), C.R.S., and Rules 2.1(B), 2.3., 2.4., 2.5., 2.6., 4.2., and 4.3. as determined by the Commission.

2.2. Addition of a Subdivision to an Existing Developer Certificate

A Developer may add an additional Subdivision to an existing Developer Certificate by completing the Division created supplemental application and submitting the following information:

- A. The Developer must provide the information pursuant to section 12-10-503(3), C.R.S., and Rules 2.1(B), 2.3., 2.4., 2.5., and 2.6. as applicable; or
- B. In connection with an Equivalency Filing, the Developer must provide the information that was required at time of initial registration as set forth in Rule 2.1(D). as applicable.

2.3. Copies of Written Disclosures

Pursuant to sections 12-10-506(6)(a), C.R.S., and 12-10-506(7), C.R.S., the Developer must supply the following information to the Commission in addition to the required information set forth in Rule 2.1 and prior to contracting with the public must disclose this information to prospective purchasers in the Consumer Agreement or in a separate written disclosure document:

- A. The name and address of the Developer and of the Subdivision lots or units.
- B. An explanation of the type of ownership or occupancy rights being offered.

- C. A general description of all facilities, amenities and accommodations. As applicable for any uncompleted Subdivision, the Developer must also supply the provisions for and the availability of legal access, roads, sewage disposal, public utilities (including water, electricity, gas, internet and telephone) and other promised facilities in the Subdivision. The disclosure must identify and describe the specific amenities promised, the ownership of such amenities, the projected completion date of any amenities not completed, a statement setting forth the type of financial arrangements as set forth in Rule 2.10.A., and the allocation of the amenity expense among the Developer, the purchaser and any third party.
- D. In compliance with section 12-10-505(1)(h), C.R.S., a statement in bold print immediately prior to the purchaser's signature line on the Consumer Agreement disclosing the rescission right available to purchasers and that the rescission right cannot be waived; the minimum allowable rescission period in Colorado is five (5) Days after execution of the Consumer Agreement.
- E. A general description of all judgments and administrative orders issued against the seller, Developer, homeowners' association or managing entity which are material to the Subdivision development and operational plan.
- F. Any taxes or assessments, existing or proposed, to which the purchaser may be subject, or which are unpaid at the time of contracting, including obligations to special taxing authorities or districts.
- G. A statement that sales must be made by brokers licensed by the State of Colorado unless specifically exempted pursuant to section 12-10-201(6)(b), C.R.S.; the Consumer Agreement must disclose the name of the real estate brokerage firm and the name of the broker establishing a brokerage relationship with the Developer.
- H. When a separate document is used to make any of the disclosures as set forth in this Rule and Rules 2.4., 2.5., and 2.6., this statement must appear in bold print on the first page of the document and preceding the disclosure: "The Colorado Real Estate Commission has not prepared or issued this document nor has it passed on the merits of the subdivision described herein."
- I. A statement that all funds paid by the purchaser prior to delivery of the lease, deed or other instrument purporting to convey any interest in the site, tract, lot, divided or undivided interest from a Subdivision will be held in trust by the licensed real estate broker named in the Consumer Agreement, or a clear statement specifically setting forth who such funds will be delivered to, when such delivery will occur, the use of said funds, and whether or not there is any restriction on the use of such funds.
- J. Where a deed is issued, a statement that, immediately following the date of closing, the purchaser's deed will be delivered to the appropriate county Clerk and Recorder's office for recording, or a clear statement specifically setting forth when such delivery and recording of the deed will occur; for the purposes of this Rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance of the purchase price. A statement that a title insurance policy will be delivered at no expense to the purchaser within sixty (60) Days following recording of the deed or the closing, whichever is earlier, unless specifically agreed to the contrary by the parties in the contracting instrument.
- K. A Consumer Agreement which requires the execution of a promissory note or other evidence of indebtedness that accrues interest or requires payments prior to the recording of a deed, will be deemed to be an installment contract pursuant to section 12-10-503(3)(g), C.R.S. where an installment contract is used:

1. A statement whether or not the purchaser's deed is escrowed with an independent escrow agent and if so, the name and address of the escrow agent;
2. The amount of any existing encumbrance(s), the name and address of the encumbrancer, and the conditions, if any, under which a purchaser may cure a default caused by non-payment;
3. A clear statement that a default on any underlying encumbrance(s) could result in the loss of the purchaser's entire interest in the property;
4. A clear statement advising the purchaser to record the installment contract; and
5. Pursuant to section 12-10-503(3)(e), C.R.S., an agreement by which the holder of any blanket encumbrance against the Subdivision agrees that its rights and the rights of its successors or assigns in the Subdivision will be subordinate to the rights of purchasers, or any other trust, escrow or release arrangement which fully protects the purchasers' interest in the Subdivision.

2.4. Copies of Written Disclosures If the Subdivision Has a Homeowners' or Similar Association

- A. Whether membership in such association is mandatory;
- B. An estimate of association dues and fees which are the responsibility of the purchaser and the Developer, respectively;
- C. A description of the services and amenities provided by the association;
- D. Whether the Developer has voting control of the association and the manner in which such control can or will be transferred; and
- E. Whether the Developer has any financial interest in or will potentially derive any income or profit from such association, including the Developer's right to borrow or authorize borrowing from the association.

2.5. Copies of Written Disclosure If Time Share Sales are to be Made from a Subdivision:

- A. Information and disclosures as set forth in Rules 2.3. and 2.4.;
- B. A description of the Time Share units including the number of Time Share units, the length, type and number of Time Share interests in each unit, and the Time Share periods constituting the Time Share plan;
- C. The name and business address of the managing entity appointed by the Developer or homeowners' association, a description of the services that the managing entity will provide, a statement as to whether the Developer has any financial interest in or will potentially derive any income or profit from such managing entity, and the manner, if any, by which the purchaser or Developer may change the managing entity or transfer the control of the managing entity;
- D. An estimate of the dues, maintenance fees, real property taxes and similar periodic expenses which are the responsibility of the purchaser and the Developer, respectively, and a general statement of the conditions under which future charges, changes or additions may be imposed. Such estimate must include a statement as to whether a maintenance reserve fund has been or will be established; the manner in which such reserve fund is financed; an accounting of any outstanding obligations either in favor of or against the fund; the Developer's right to borrow or authorize borrowing from the fund; and the method of periodic accounting which will be provided to the purchaser;
- E. A description of any insurance coverage(s) provided for the benefit of Time Share owners;
- F. A statement that mechanic's liens law may authorize enforcement of the lien by selling the entire Time Share unit;
- G. A statement on whether the Time Share interest is perpetual or for a term of years and, if for a term of years, the length and expected termination date of the term;

- H. A statement as to the effect a voluntary sale, by the Developer to a third party, will have on the contractual rights of Time Share owners;
- I. A statement that an involuntary transfer by bankruptcy of the Developer may have a negative effect on the rights of the Time Share owners; and
- J. A statement that a Federal or State tax lien could be enforced against the developer by compelling the sale of the entire Subdivision.

2.6. Copies of Written Disclosures If Time Shares are to be Sold from a Subdivision Which: Contains Two (2) or More Component Sites Situated at Different Geographic Locations or Governed by Separate Sets of Declarations, By-Laws or Equivalent Documents; and Does Not Include a Guaranteed, Recurring Right of Use or Occupancy at a Single Component Site:

- A. For each component site, the information and disclosures as set forth in Rules 2.3., 2.4., and 2.5.;
- B. A general description of the Subdivision;
- C. A clear description in the Consumer Agreement of the interest and term of usage being purchased and a definite date of termination of the purchaser's interest in the Subdivision, which date will be not later than the termination date of the Subdivision's interest in a specifically identified component site;
- D. A clear disclosure and description of any component site which is not legally guaranteed to be available for the purchaser's use for the full term of the purchaser's usage interest;
- E. The system and method in place to assure maintenance of no more than a one- to-one ratio of purchasers' use rights to the number of total use rights in the Subdivision for each term of usage being offered for sale, including provisions for compensation to purchasers resulting from destruction of a component site or loss of use rights to any component site;
- F. A description of the system or program by which a purchaser obtains a recurring right to use and occupy accommodations and facilities in any component site through use of a reservation system or otherwise, including any restrictions on such rights or any method by which a purchaser is denied an equal right with all other users to obtain the use of any accommodation in the Subdivision;
- G. A description of the management and ownership of such reservation system or program, whether through the Developer, a homeowners' association, a club or otherwise, including the purchaser's direct or indirect ownership interest or rights of control in such reservation system;
- H. Whether the Developer, club or association which controls the reservation system or any other person has or is granted any interest in unsold, non-reserved or unused use rights and whether the Developer, club, association or other person may employ such rights to compete with purchasers for use of accommodations in the Subdivision or any component site and, if so, the nature and specifics of those rights, including the circumstances under which they may be employed;
- I. The method and frequency of accounting for any income derived from unsold, non-reserved or unused use rights in which the purchaser, either directly or indirectly, has an interest;
- J. The system and method in place, including business interruption insurance or bonding, to provide secure back-up or replacement of the reservation system in the event of interruption, discontinuance or failure;
- K. The amount and details of any component site, reservation system or other periodic expense required to be paid by a purchaser, the name of the person or entity to which such payments will be made, and the method by which the purchaser will receive a regular periodic accounting for such payments;

- L. If component site expenses are included in those periodic payments made by a purchaser, a statement for each component site from the homeowners' association or other responsible entity acknowledging that payment of such expenses as taxes, insurance, dues and assessments are current and are being made in the name of the Subdivision;
- M. Evidence that an escrow system with an independent escrow agent is in place for receipt and disbursement of all moneys collected from purchasers that are necessary to pay such expenses as taxes, insurance and common expenses and assessments owing to component site homeowners' associations or others, or a clear description of the method by which such funds will be paid, collected, held, disbursed and accounted for;
- N. A clear statement as to whether a purchaser's rights, interests or terms of usage for any component site within the Subdivision can subsequently be modified from those terms originally represented and a description of the method by which such modification may occur;
- O. If the Subdivision documents allow additions or substitutions of accommodations or component sites, a clear description of the purchaser's rights and obligations concerning such additions or substitutions and the method by which such additions or substitutions will comply with the provisions of this rule; and
- P. A clear description of any existing incidental benefits or amenities which are available to the purchaser at the time of sale but to which the purchaser has no guaranteed right of recurring use or enjoyment during the purchaser's full term of interest in the Subdivision.

2.7. 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 be deemed incomplete and canceled. The application 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.

2.8. Review of Application for Completeness

If the Commission requires additional information, the Commission will give written notice of the information so required and will allow an additional sixty (60) Days to present such material before denial of the application, which period may be extended only upon a showing of good cause.

2.9. Issuance of a Developer Certificate or the Addition of a Subdivision

The Commission will issue or deny registration of a Developer Certificate or approve or deny the addition of a Subdivision within sixty (60) Days from the date of receipt of the Deemed Complete application by the Commission.

2.10. Offering Reservations during the Pendency of the Application

- A. Pursuant to section 12-10-502(2), C.R.S., where a Developer receives cash or receivables from a purchaser for an uncompleted Subdivision, the Commission will register such Developer only after:
  1. The Developer deposits in an escrow account, with an independent escrow agent, all funds and receivables received from purchasers, or
  2. The Developer obtains a letter of credit or bond payable to an independent escrow agent, payment or performance bond, or establishes any other financial arrangement acceptable to the Commission, the purpose of which is to ensure completion of Subdivision accommodations and facilities and to protect the purchaser's interest in the Subdivision accommodations and facilities.

B. All approvals for the use of Reservation Agreements issued as set forth in this rule will expire on December 31 following the date of issuance.

## CHAPTER 3: REGISTRATION AND CERTIFICATION

### 3.1. Renewal of the Registration and Certification

Renewal of the registration and certification as a Developer can be executed only on the renewal application provided by the Commission, and must be delivered to the Commission, accompanied by the proper Fees, on or before December 31 of each year.

### 3.2. Licensed Real Estate Brokers

The registration and certification of a Developer under Title 12, Article 10, Part 5, C.R.S., does not exempt the Developer from the requirements for the licensing of real estate brokers under Title 12, Article 10, Part 1, C.R.S. Exemptions from the licensing of real estate brokers are made pursuant to section 12-10-201(6)(b), C.R.S.

### 3.3. Change in Principal Office

Notification in writing must be made to the Commission within ten (10) Days of any change in the principal office address of the Developer or the natural person, or any other change in the information submitted pursuant to section 12-10-503, C.R.S.

### 3.4. Records

- A. Records as required by Title 12, Article 10, C.R.S., and these rules, may be maintained as an Electronic Record so long as the Electronic Records are in a format that has the continued capability to be retrieved and legibly printed. The Developer must produce printed records upon request of the Commission, or by any principal party to a transaction.
- B. Developer must maintain all Business Records related to the Subdivision development in a Safe and Secure Manner for a period of seven (7) years from the effective date of each such Business Record.

### 3.5. Revisions to Documents

A Developer is not required to file amendments to its registration filed with the Commission when revisions are made to documents previously submitted to the Commission, so long as the revised documents continue to:

- A. Comply with Title 12, Article 10, Part 5, C.R.S., and these rules; and
- B. Accurately reflect the Subdivision offering.

### 3.6. Duty to Disclose the Following Events:

- A. Notwithstanding Rule 3.5., a Developer must provide the Commission with notice of the following events within ten (10) Days after such event, unless otherwise provided below:
  1. Any change in the information provided in the registration pursuant to sections 12-10-503(2)(a)(III), (V), (VI) or (VII), C.R.S.;
  2. Any change in the terms of any Nondisturbance Agreement(s) or partial release provisions in connection with any documents previously submitted to the Commission pursuant to section 12-10-503(3)(e), C.R.S., and Rule 2.1.B.4.;
  3. Any new lien encumbering the Subdivision or any part thereof other than encumbrances created or permitted by purchasers;
  4. The termination or transfer of any escrow account, letter of credit, bond, or other financial assurance approved by the Commission as set forth in Rule 2.10.; notice of which must be filed with the Commission prior to the effective date of such termination or transfer;
  5. Cancellation, revocation, suspension, or termination of the Developer's activity or authority to do business in the State of Colorado; and

6. Any material pending legal proceeding filed against the Developer in connection with the Subdivision affecting the Developer's ability:
  - a. To convey marketable title of the registered Subdivision or any interest therein, or
  - b. To perform the Developer's obligations in connection with the registered Subdivision.
- B. Notification under this Rule must be provided on a form approved by the Commission. The Developer will have a period of ten (10) Days after receipt of notice to take such action as may be required by the Commission in connection with any filings made under this Rule.
- C. Within ten (10) Days after receipt of a written request from the Commission, a Developer will have the duty to provide to the Commission copies of all documents then in use with regard to the Subdivision.

#### CHAPTER 4: PROFESSIONAL STANDARDS

##### 4.1. Developer Must Register Prior to Conducting Business

The person, firm, partnership, joint venture, limited liability company, association, corporation or other legal entity, or combination thereof, who will sign as seller or lessor in any Consumer Agreement, deed or any other instrument purporting to convey any site, tract, lot, divided or undivided interest from a Subdivision, must secure a Developer Certificate before negotiating or agreeing to sell, lease or transfer and before any sale, lease or transfer is made. If such person is acting only as a trustee, the beneficial owner of the Subdivision must secure a Developer Certificate.

##### 4.2. Developer Must Maintain Business Records and Produce Upon Request

Pursuant to sections 12-10-505(1)(e), C.R.S., 12-10-506(6)(b), C.R.S., and 12-10-506(8), C.R.S., a Developer must maintain Business Records as set forth in Rule 3.4., and produce for inspection upon reasonable request by an authorized representative of the Commission.

##### 4.3. Disclosures to Prospective Purchasers Prior to Contracting

Pursuant to sections 12-10-506(6)(a), C.R.S., and 12-10-506(7), C.R.S., Developer must supply to prospective purchasers the written disclosures as set forth in Rules 2.3., 2.4., 2.5., and 2.6. prior to contracting with the public and must be disclosed in the Consumer Agreement, or in a separate written disclosure document.

##### 4.4. Developers Must Not Make Misrepresentations or Conceal Material Facts

- A. Failure to disclose to the purchaser the availability of legal access, sewage disposal, public utilities, including water, electricity, gas and telephone facilities , in the applicable uncompleted Subdivision offered for sale or lease, including whether such are to be a Developer or purchaser expense, when proven, is a violation of section 12-10-505(1)(b), C.R.S.
- B. No Developer will make misrepresentations regarding the future availability or costs of services, utilities, character, or use of real property for sale or lease of the surrounding area of the Subdivision.

##### 4.5. Disclosure of an Exchange Company

A Developer of a Time Share must disclose to the public whether or not a Time Share plan involves an Exchange Program and, if so, will disclose and deliver to prospective purchasers, a separate written document, which may be provided by an exchange company if the document discloses the following information:

- A. The name and the business address of the exchange company;

- B. Whether the purchaser's contract with the Exchange Program is separate and distinct from the purchaser's contract with the Developer;
- C. Whether the purchaser's participation in the Exchange Program is dependent upon the Developer's continued affiliation with the Exchange Program;
- D. Whether or not the purchaser's participation in the Exchange Program is voluntary;
- E. The specific terms and conditions of the purchaser's contractual relationship with the Exchange Program and the procedure by which changes, if any, may be made in the terms and conditions of such contractual relationship;
- F. The procedure of applying for and effecting any changes;
- G. A complete description of all limitations, restrictions, accrual rights, or priorities employed in the operation of the Exchange Program, including but not limited to limitations on exchanges based on seasonality, unit size, or levels of occupancy; and if the limitations, restrictions or priorities are not applied uniformly by the Exchange Program, a complete description of the manner of their application;
- H. Whether exchanges are arranged on a space-available basis or whether guarantees of fulfillment of specific requests for exchanges are made by the exchange company;
- I. Whether and under what conditions a purchaser may, in dealing with the Exchange Program, lose the use and occupancy of the Time Share period in any properly applied for exchange without being offered substitute accommodations by the Exchange Program;
- J. The fees for participation in the Exchange Program, and whether the fees may be altered and the method of any altering; and
- K. The name and location of each accommodation or facility, including the time sharing plans participating in the Exchange Program.

4.6. Disclosure of Judgment, Decree or Order

Any material adverse order, judgment, or decree entered against Developer in connection with the Subdivision by any regulatory authority or by any court of appropriate jurisdiction, specifically including any order, judgment or decree related to a proceeding under which Developer has a duty to disclose as set forth in Rule 3.6.A.6. but other than ordinary routine litigation incidental to the Developer's business, must be filed with the Commission by the Developer within thirty (30) Days of such order, judgment or decree being final.

4.7. Delivery of an Abstract of Title or Title Insurance

- A. Developer must provide a title insurance commitment or other evidence of title approved by the Commission within a reasonable time after execution of any Consumer Agreement, or other instrument purporting to convey any interest in the site, tract, lot, divided or undivided interest from a Subdivision.
- B. Where the Consumer Agreement contemplates the delivery of a deed, an abstract of title or title insurance policy must be delivered within a reasonable time after the completion of payments by a purchaser.
- C. Any period of time in excess of sixty (60) Days will be deemed unreasonable for the purposes of this Rule. The parties may contract to eliminate this requirement, but any such mutually acceptable waiver must be in writing and in a conspicuous manner or print.

4.8. Delivery of Deed Must be Made within Sixty (60) Days

- A. Unless a sale is by means of an installment contract, the delivery of a deed must be made within sixty (60) Days after closing. For the purposes of this Rule, the date of closing is defined as the date the purchaser has either paid the full cash purchase price or has made partial cash payment and executed a promissory note or other evidence of indebtedness for the balance of the purchase price.

- B. If a sale is by means of an installment contract, the delivery of a deed must be made within sixty (60) Days after the completion of payments.
- 4.9. Duty to Respond to a Complaint or Audit
  - A. Pursuant to section 12-10-505, C.R.S., any Developer who has received written notification from the Commission that a complaint has been filed against the Developer, must submit a written answer to the Commission within a reasonable time as set by the Commission.
  - B. Upon request of the Commission pursuant to an investigation or audit notice, a Developer will file with the Commission an audited financial statement in conformity with accepted accounting principles, and sworn to by the Developer as an accurate reflection of the financial condition of the Developer and/or the homeowners' association controlled by the Developer.
  - C. Failure to submit a written response required by this Rule will be grounds for disciplinary action.

## CHAPTER 5: DECLARATORY ORDERS

### 5.1. Petition for a Declaratory Order

Pursuant to section 24-4-105(11), C.R.S., a Petitioner may petition the Commission for a declaratory order to terminate controversies or to remove uncertainties as to the applicability of any statutory provision, rule, or order of the Commission as it would apply to the Petitioner.

### 5.2. Parties to the Proceedings

The parties to any proceeding as set forth in Chapter 5 of these Rules will be the Commission and the Petitioner. Any other person may seek leave of the Commission to intervene in such a proceeding. Permission to intervene will be granted at the sole discretion of the Commission. A petition to intervene will set forth the same matters as set forth in Rule 5.3.

### 5.3. Petition Contents

Any petition filed as set forth in Chapter 5 of these Rules will state the following:

- A. The name and address of the Petitioner;
- B. The statute, rule, or order to which the petition relates;
- C. A concise statement of all the facts and law necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the Petitioner; and
- D. The Petitioner may submit a concise statement of the declaratory order sought.

### 5.4. Commission's Considerations Whether or Not to Rule

The Commission may determine, in its sole discretion and without prior notice to the Petitioner, whether or not to rule upon a petition. In determining whether or not to rule upon a petition filed as set forth in Chapter 5 of these Rules, the Commission may consider the following matters, among others:

- A. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to the Petitioner of any statutory provision, rule, or order of the Commission.
- B. Whether the petition involves any subject, question, or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court involving one or more of the Petitioners.
- C. Whether the petition involves any subject, question, or issue which is the subject of a formal or informal matter or investigation currently pending before the Commission or a court not involving the Petitioner.
- D. Whether the petition seeks a ruling on a hypothetical question.

- E. Whether the Petitioner has some other adequate legal remedy, other than an action for declaratory order which will terminate the controversy or remove any uncertainty as to the applicability to the Petitioner of the statute, rule, or order in question.

**5.5. Commission Determines Not to Rule**

If the Commission determines it will not rule on a petition, the Commission will issue its written decision disposing of the petition, stating the reasons for declining to rule upon the petition. A copy of the decision will be provided to the Petitioner. A decision not to rule on a petition for a declaratory order is not final agency action subject to judicial review.

**5.6. Commission Determines to Rule**

If the Commission determines that it will rule on the petition:

- A. The Commission may order the Petitioner to file an additional written brief, memorandum, statement of position, or request the Petitioner to submit additional facts or arguments in writing.
- B. The Commission may take administrative notice of facts pursuant to the Administrative Procedure Act, section 24-4-105(8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge when ruling on the petition.
- C. The Commission may set the petition, upon due notice to the Petitioner, for a non-evidentiary hearing.
- D. The Commission may, upon due notice to the Petitioner, set the petition for hearing for the purpose of obtaining additional facts or information, or to determine the truth of any facts set forth in the petition, or to hear oral arguments on the petition. Notice to the Petitioner setting such formal hearing will set forth, to the extent known, the factual or other matters into which the Commission intends to inquire. The Petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule, or order in question applies or potentially applies to the Petitioner and any other facts the Petitioner desires the Commission to consider.
- E. Any ruling by the Commission may be based solely on the matters set forth in the petition or may be based on any amendments to the petition, any information gathered by the Commission through a non-evidentiary hearing, formal hearing or otherwise, or any facts the Commission may take administrative notice of. Upon ruling on a petition, the Commission will issue its written order stating its basis for the order. A copy of the order will be provided to the Petitioner.

**5.7. Declaratory Orders Subject to Judicial Review**

Any declaratory order of a petition as set forth in Chapter 5 of these Rules will constitute agency action subject to judicial review pursuant to section 24-4-106, C.R.S.

**CHAPTER 6: COMMISSION REVIEW OF INITIAL DECISIONS AND EXCEPTIONS**

**6.1. 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 6 of these Rules is pursuant to section 2-4-108, C.R.S. A pleading is considered filed upon receipt by the Commission. Chapter 6 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.

6.2. 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.

6.3. Commission's Authority to Review the Initial Decision

Pursuant to section 24-4-105(14)(a)(II), C.R.S., 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. A letter from the Division initiating the review of the initial decision constitutes a motion within the meaning of section 24-4-105(14)(a)(II), C.R.S.

6.4. 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 6.5.

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 unless the portion of the final order subject to review differs from the contents of the initial decision pursuant to section 24-4-105(14)(c), C.R.S.

6.5. 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.

6.6. 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.

6.7. 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.

## **IV. Licensee's Responsibilities**

A real estate licensee cannot be expected to be completely familiar with all county and municipal planning laws, regulations, ordinances, and zoning requirements. However, the

licensee in negotiations should be very much aware of the existence of these laws, ordinances, zoning requirements, etc. It is very easy to misrepresent property through ignorance. If uninformed, the licensee should seek the information from the proper source before making a representation, or refer prospective clients to the proper source of the information.

Some facts should be known to the licensee through reading or logic, such as:

1. The sale of a portion of a seller's land divides the land into two parcels and a subdivision is created that must be approved by the proper authorities.
2. If a structure is suitable for conversion into a duplex and/or a four-plex, it does not in and of itself mean that such a conversion does not violate the law.
3. If an area is zoned for keeping horses, it does not necessarily follow that the acreage of the property is great enough for this purpose.
4. Even if an area is zoned for a home business, there may be a prohibition against having employees. Other complexities may also arise through various branches of local government involving utilities existent and future utilities. Representations concerning future services, zoning variances, etc. may endanger both the public and the licensee.

The following may also be subdivisions under county planning laws: the conversion of an existing building into a common interest community complex or the division of a single condominium unit into "time shares" or "interval estates." These are subdivisions as defined in § 12-10-501(3), C.R.S., and are subject to the registration requirements of §§ 12-10-501, *et seq.*, C.R.S.

A stock cooperative or cooperative housing corporation is defined in this chapter, and in Colorado is considered a subdivision of real estate. The sale of these "apartments" is accomplished by transfer of a stock certificate, together with a proprietary lease. In most states, the sale of the stock, together with the lease, would be considered the sale of a security and would fall under the jurisdiction of the division of securities. In Colorado, such sales are exempt from the Securities Act and are declared real estate (*see* §§ 38-33.5-101, *et seq.*, C.R.S., printed in this chapter). Therefore, such cooperatives must be registered as subdivisions, and the sale of the stock and proprietary leases must be performed by licensed real estate brokers. The act also provides that commercial banks and savings and loan associations may make a first mortgage loan on the stock and proprietary lease of each "apartment" owner.

## **V. Municipal Planning and Zoning Laws**

Sections 31-23-101 through -313, C.R.S., address municipal planning and zoning in incorporated areas of the state. A "subdivision" also is defined as a division of a parcel of land into two or more parcels. The definition includes condominiums, apartments, and multiple-dwelling units.

Sections 31-23-201, *et seq.*, C.R.S., authorize the creation of a municipal planning commission, which must make or adopt a master plan that, among other things, includes a zoning plan. This planning commission has all the powers of a zoning commission.

The zoning commission must approve subdivisions. Developers who sell land from an unapproved subdivision are subject to a financial penalty, and the zoning commission may also enjoin any such sale. Note that even though the Subdivision Act, in § 12-10-502(2), C.R.S., allows for the use of a reservation agreement prior to final approval by the Real Estate Commission, the developer should check with the municipality regarding the use of reservation agreements. The governing body of a municipality provides for the appointment of a board of adjustment that hears appeals made from any ordinance or order of any administrative official. This board may grant variances from an ordinance or reverse an order.

## **VI. County Planning Laws**

In addition to the provisions of the Subdivision Act, jurisdiction concerning the use of land within Colorado also falls within the powers of the county commissioners of each county. The county commissioners have the authority to enact zoning law for unincorporated areas, and many counties have done so. Prior to surveying and offering subdivided property, a developer or real estate licensee should contact the county planning and zoning department regarding compliance with the county's requirements.

In regard to a county commissioner's jurisdiction, §§ 30-28-101 through -209, C.R.S., define a subdivision as any parcel of land that is divided into two or more parcels, separate interests, or interests in common. "Interests" means interests in surface land or in the air above the surface of the land, but excludes sub-surface interests. Divisions of land that create parcels of 35 acres or more and of which none is intended for use by multiple owners are exempt.

Condominiums, apartments, and multiple dwellings are included in the definition, unless they had been previously included in a filing with substantially the same density.

Subdivisions must submit the following information to the county authorities before sales within the subdivision may begin:

1. Survey and ownership;
2. Site characteristics, such as topography;
3. A plat showing the plan of development and plan of the completed development;
4. Estimates of the water and sewage requirements, streets, utilities, and related facilities and estimated construction cost;
5. Evidence to ensure an adequate supply of potable water; and
6. Dedication of areas for public facilities.

Upon request of a complete preliminary plan, copies will be distributed to 10 interested public agencies for recommendations. An approved plat must be recorded before any lots are sold.

No plat will be approved until the subdivision has submitted a subdivision improvement contract agreeing to construct the required improvements, accompanied by collateral sufficient to ensure completion of the improvements.

The county commissioners must approve a final plat of the subdivision before it can be filed and recorded. Violations by a subdivider or agent of a subdivider are punishable by a fine of up to \$1,000 for each parcel sold or offered for sale by a subdivider or agent of a subdivider. A sale made before a final plat is approved is considered *prima facie* evidence of a fraudulent sale and is grounds for the purchaser voiding the sale. The county commissioners also have the power to bring an action to enjoin any subdivider from offering to sell undivided land before a final plat has been approved.

## **VII. Special Types of Subdivisions**

### **A. Condominiums as Subdivisions**

“Estates above the surface” may be created in areas above the surface of the ground, and title to such “air rights” may be conveyed separate from title to the surface of the ground.

It follows that a division of air rights is a subdivision under county planning laws. A declaration must be recorded with the county and must be approved by county authorities. The declaration must provide for the recording of a map properly locating the condominium units. It is similar to the filing of a plat of surface land insofar as it describes each unit. The division however, is a division of the air space.

The conversion of an existing building into a condominium complex or the division of a single condominium unit into “time shares” or “interval estates” also may be a subdivision under county planning laws, and are considered a subdivision as defined in § 12-10-501(3), C.R.S., and subject to the registration requirements of §§ 12-10-501, *et seq.*, C.R.S.

## **VIII. Condominium Ownership Act – Referenced in Chapter 5, Condominium Ownership Act, pages 5-5 to 5-12**

## **IX. Colorado Common Interest Ownership Act – Referenced in Chapter 5, Colorado Common Interest Ownership Act, pages 5-12 to 5-86**

## **X. Cooperative Housing Corporations<sup>3</sup>**

*§ 38-33.5-101, C.R.S. Method of formation – purpose.*

Cooperative housing corporations may be formed by any three or more adult residents of this state associating themselves to form a cooperative or nonprofit corporation, pursuant to article 55, 56, or 58 of title 7, C.R.S., or the “Colorado Revised Nonprofit Corporation Act”, articles 121 to 137 of title 7, C.R.S. The specified purpose of the entity must be to provide each stockholder in or member of the entity with the right to occupy, for dwelling purposes, a house or an apartment in a building owned or leased by the entity.

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<sup>3</sup> Colorado Revised Statutes are subject to change through the legislative process. Check the Division website for updates.

***§ 38-33.5-102, C.R.S. Requirements for articles of incorporation of cooperative housing corporations.***

- (1) In addition to any other requirements for articles of incorporation imposed by the “Colorado Revised Nonprofit Corporation Act”, articles 121 to 137 of title 7, C.R.S., such articles of incorporation shall, in the case of cooperative housing corporations, include the following provisions:
  - (a) That the corporation shall have only one class of stock outstanding;
  - (b) That each stockholder is entitled, solely by reason of his ownership of stock in the corporation, to occupy, for dwelling purposes, a house or an apartment in a building owned or leased by the corporation;
  - (c) That the interest of each stockholder in the corporation shall be inseparable from and appurtenant to the right of occupancy, and shall be deemed an estate in real property for all purposes, and shall not be deemed personal property;
  - (d) That no stockholder is entitled to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation.

***§ 38-33.5-103, C.R.S. Provisions relating to taxes, interest, and depreciation on corporate property.***

- (1) The bylaws of a cooperative housing corporation shall provide that no less than eighty percent of the gross income of the corporation in any taxable year shall be derived from payments from tenant-stockholders. For the purposes of this article, “tenant-stockholder” means an individual who is a stockholder in the corporation and whose stock is fully paid when measured by his proportionate share of the value of the corporation’s equity in the property.
- (2) The bylaws shall further provide that each tenant-stockholder shall be credited with his proportionate payment of real estate taxes paid or incurred in any year on the buildings and other improvements owned or leased by the corporation in which the tenant-stockholder’s living quarters are located, together with the land to which such improvements are appurtenant, and likewise with respect to interest paid or incurred by the corporation as well as depreciation on real and personal property which are proper deductions related to the said lands and improvements thereon for purposes of state and federal income taxation.

***§ 38-33.5-104, C.R.S. Financing of cooperative housing – stock certificates held by tenant stockholders.***

Stock certificates or membership certificates issued by cooperative housing corporations to tenant-stockholders shall be valid securities for investment by savings and loan associations, when the conditions imposed by section 11-41-119 (13), C.R.S., are met.

***§ 38-33.5-105, C.R.S. Provisions to be included in proprietary lease or right of tenancy issued by corporation.***

- (1) Every stockholder of a cooperative housing corporation shall be entitled to receive from the corporation a proprietary lease or right of tenancy document which shall include the following provisions:
  - (a) That no sublease in excess of one year, amendment, or modification to such proprietary lease or right of tenancy in the property shall be permitted or created without the lender’s prior written consent; and
  - (b) That the security for a loan against the tenant-stockholder’s interest shall be in the nature of a real property security interest, and any default of such loan shall entitle the lender to treat such default in the same manner as a default of a loan secured by real property.

***§ 38-33.5-106, C.R.S. Exemption from securities laws.***

Any stock certificate or other evidence of membership issued by a cooperative housing corporation as an investment in its stock or capital to tenant-stockholders of such corporation is exempt from securities laws contained in article 51 of title 11, C.R.S.