[PERMANENT RULE ADOPTED July 10, 2014]

DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
BOARD OF REAL ESTATE APPRAISERS
4 CCR 725-2

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
July 10, 2014

CHAPTER 6: APPLICATION FOR LICENSURE

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Board of Real Estate Appraisers (the "Board") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Board.

STATEMENT OF BASIS

The statutory basis for the rules titled Rules of the Board of Real Estate Appraisers is Chapter 7 of Title 12, Article 61, Colorado Revised Statutes, as amended.

STATEMENT OF PURPOSE

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the statute and the provisions of the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of this rule is to amend or repeal existing rules with respect to requirements for individuals who apply for an appraiser's license or credential.

Proposed New, Amended and Repealed Rules

[Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.state.co.us/real-estate/rulemaking/BOREA/index.htm]

CHAPTER 6: APPLICATION FOR LICENSURE

6.6 Submission of an application does not guarantee issuance of a license, or issuance of a license within a specific period of time. Applicants shall observe the provisions of Section 12-61-719, C.R.S. and Board Rules Chapter 12. Applicants shall not represent themselves as being licensees of the Board until receipt of the Board issued license document.

6.7 Pursuant to Section 12-61-712(1), C.R.S., an applicant who has been convicted of, entered a plea of guilty to, or entered a plea of nolo contendere to a crime, shall file with his or her application an addendum to the application in a form prescribed by the Board. Such addendum shall be supported and documented by, without limitation, the following:

A. Court documents, including original charges, disposition, pre-sentencing report and certification of completion of terms of sentence;

B. Police officer's report(s);

C. Probation or parole officer's report(s);

D. A written personal statement explaining the circumstances surrounding each violation, and including the statement "I have no other violations either past or pending";

E. Letters of recommendation; and

F. Employment history for the preceding five years.

6.8 Prior to application for licensure, an individual may request that the Board issue a preliminary advisory opinion regarding the possible effect of convictions, pleas of guilt or nolo contendere for criminal offenses. A person requesting such an opinion is not applicant for licensure. The Board may, at its sole discretion, issue such an opinion, which shall not be binding on the Board or limit the authority of the Board to investigate a later application for licensure. The issuance of such an opinion shall not prohibit a person from submitting an application for licensure. A person requesting such an opinion shall do so in a request form prescribed by the Board. Such request form shall be supported and documented by, without limitation, the following:

A. Court documents, including original charges, disposition, pre-sentencing report and certification of completion of terms of sentence;

B. Police officer's report(s);

C. Probation or parole officer's report(s);

D. A written personal statement explaining the circumstances surrounding each violation, and including the statement "I have no other violations either past or pending";

E. Letters of recommendation; and

F. Employment history for the preceding five years.

6.10 Every active appraiser, or applicant for an active appraiser's credential, must have in effect a policy of errors and omissions insurance to cover all acts requiring a license.

A. The Division will enter into a contract with a qualified insurance carrier to make available to all licensees and license applicants a group policy of insurance under the following terms and conditions:

1. The insurance carrier is licensed and authorized by the Colorado Division of Insurance to write policies of errors and omissions insurance in this state.
2. The insurance carrier maintains an A.M. best rating of "A-" or better.
3. The insurance carrier will collect premiums, maintain records and report names of those insured and a record of claims to the Board on a timely basis and at no expense to the Board.
4. The insurance carrier has been selected through a competitive bidding process.
5. The contract and policy are in conformance with this rule and all relevant Colorado statutory requirements.

B. The group policy shall provide, at a minimum, the following terms of coverage:

1. Coverage for all acts for which a real estate appraiser's license is required to the extent of the professional appraisal work the appraiser is permitted by his or her license level to perform, except those illegal, fraudulent, or other acts which are normally excluded from such coverage.

2. That the coverage cannot be canceled by the insurance carrier except for nonpayment of the premium or in the event a licensee becomes inactive, is revoked or an applicant is denied a license.
3. The coverage afforded by the policy shall not contain exclusions for coverage of claims for damages reasonably expected in connection with professional appraisal services, including but not limited to, claims for damages made by or on behalf of the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Agency (FHFA), or any other state or federal agency having regulatory authority over a lender or financial institution, and claims arising from failure of a financial institution.
4. Pro-ration of premiums for coverage which is purchased during the course of a calendar year but with no provision for refunds of unused premiums.
5. Not less than $ 100,000 coverage per claim with an aggregate limit of not less than $ 300,000 per individual.
6. A deductible amount for each occurrence of not more than $ 1,000 for claims and no deductible for legal expenses and defense.
7. The obligation of the carrier to defend all covered claims and the ability of the insured licensee to select counsel of choice subject to the written permission of the carrier, which shall not be unreasonably withheld.
8. The ability of a licensee, upon payment of an additional premium, to obtain higher or excess coverage or to purchase additional coverage from the group carrier as may be determined by the carrier.
9. The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.
10. A conformity endorsement allowing a Colorado resident licensee to meet the errors and omissions insurance requirement for an active license in another group mandated state without the need to purchase separate coverage in that state.
11. Policy must not be issued or underwritten using a “self-rated” application form. A “self-rated” application is defined as being an application where a policy is issued based on the answers listed on the application with no subsequent underwriter review.
12. Prior acts coverage shall be offered to licensees with continuous past coverage.

C. Licensees or applicants may obtain errors and omissions coverage independent of the group plan from any insurance carrier subject to the following terms and conditions:

1. Individual policies must, at a minimum, comply with the following conditions and the insurance carrier must certify compliance in an affidavit issued to the insured licensee or applicant in a form specified by the Board. The insurance carrier agrees to immediately notify the Board of any cancellation or lapse in coverage. Independent individual coverage must provide, at a minimum, the following:

   A. The insurance carrier is in compliance with all applicable rules and statutes set forth by the Colorado Division of Insurance, and, if required, are licensed to write policies of Errors and Omissions Insurance in this state.

   B. The insurance carrier maintains an A.M. best rating of “A-” or better.

   C. The contract and policy are in conformance with all relevant Colorado statutory requirements.

   D. Coverage includes all acts for which an appraiser’s credential is required, except those illegal, fraudulent or other acts which are normally excluded from such coverage.

E. Coverage cannot be canceled by the insurance provider, except for nonpayment of the premium. Cancellation notice must be provided in manner that complies with 10-4-109.7 C.R.S.

F. Coverage is for not less than $100,000 per claim, with an annual aggregate limit of not less than $ 300,000 per individual, not including costs of investigation and defense.

G. A deductible amount for each occurrence of not more than $1,000 for claims, and no deductible for legal expenses and defense.

H. The ability of a licensee, upon payment of an additional premium to obtain an extended reporting period of not less than 365 days.

I. The coverage afforded by the policy shall not contain exclusions for coverage of claims for damages reasonably expected in connection with professional appraisal services, including but not limited to, claims for damages made by or on behalf of the Federal Deposit Insurance Corporation (FDIC), the Federal Housing Finance Authority (FHFA), or any other state or federal agency having regulatory authority over a lender or financial institution, and claims arising from the failure of a financial institution.

J. The policy may not be issued or underwritten using a “self-rated” application. A “self-rated” application is defined as being an application where a policy is issued based on the answers listed on the application with no subsequent underwriter review.

K. Prior acts coverage shall be offered to liensees with continuous past coverage.

2. For firms that carry policies that cover one or more licensees associated with that firm, all requirements listed in Section 1 shall apply, except Section 1.F. and 1.G. shall be replaced with the following:

A. The per claim limit shall be not less than $1,000,000.

B. The aggregate limit shall be not less than $1,000,000.

C. The maximum deductible amount for each occurrence shall not exceed $10,000 and the provider shall look to the insured for payment of any deductible.

D. Applicants for licensure, activation, renewal, and reinstatement shall certify compliance with this rule and 12-61-708 C.R.S. on forms or in a manner prescribed by the Board. Any active licensee who so certifies and fails to obtain errors and omissions coverage or to provide proof of continuous coverage, either through the group carrier or directly to the Board, shall be placed on inactive status:

1. Immediately, if certification of current insurance coverage is not provided to the Board; or

2. Immediately upon the expiration of any current insurance when certification of continued coverage is not provided.

E. Appraisers employed by a local, state or federal government entity are exempt from the errors and omissions insurance requirements.

A hearing on the above subject matter will be held on Thursday, July 10, 2014, at the Colorado Division of Real Estate, 1560 Broadway, Suite 110D, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to

or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.