

AR14**Declaratory Orders** [Section 11-102-104(9), C.R.S.]

- A. Any person¹ may petition the Banking Board for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any Rule or order of the Banking Board.
- B. The Banking Board will determine, in its discretion and without notice to petitioner, whether to rule upon any such petition. If the Banking Board determines that it will not rule upon such a petition, the Banking Board shall promptly notify the petitioner of its action and state the reasons for such action.
- C. In determining whether to rule upon a petition filed pursuant to this Rule, the Banking Board will consider the following matters among others:
1. Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or Rule or order of the Banking Board.
 2. Whether the petition involves any subject, question or issue that is the subject of a formal or informal matter or investigation currently pending before the Banking Board or a court involving one or more of the petitioners.
 3. Whether the petition involves any subject, question, or issue that is the subject of a formal or informal matter or investigation currently pending before the Banking Board or a court but not involving any petitioner.
 4. Whether the petition seeks a ruling on a moot or hypothetical question or will result in an advisory ruling or opinion.
 5. Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to Rule 57, Colorado Civil Procedures Act, that will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, Rule, or order in question.
- D. Any petition filed pursuant to this Rule shall set forth the following:
1. The name and address of the petitioner and whether the petitioner is licensed pursuant to Section 11-103-101, C.R.S., et seq.
 2. The statute, Rule or order to which the petition relates.
 3. A concise statement of 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.
- E. If the Banking Board determines that it will rule on the petition, the following procedures shall apply:
1. The Banking Board may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a. Any ruling of the Banking Board will apply only to the extent of the facts presented in the petition and any amendment to the petition.
 - b. The Banking Board may order the petitioner to file a written brief, memorandum or statement of position.

- c. The Banking Board may set the petition, upon due notice to petitioner, for a non-evidentiary hearing.
 - d. The Banking Board may dispose of the petition on the sole basis of the matters set forth in the petition.
 - e. The Banking Board may request the petitioner to submit additional facts, in writing. In such event, such additional facts will be considered as an amendment to the petition.
 - f. The Banking Board may take administrative notice of facts pursuant to the Administrative Procedures Act, Section 24-4-105 (8), C.R.S., and may utilize its experience, technical competence, and specialized knowledge in the disposition of the petition.
 - g. If the Banking Board rules upon the petition without a hearing, it shall promptly notify the petitioner of its decision.
2. The Banking Board may, in its discretion, set the petition for hearing, upon due notice to petitioner, 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 argument on the petition. The notice to the petitioner setting such hearing shall set forth, to the extent known, the factual or other matters into which the Banking Board intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner shall 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 Banking Board to consider.
- F. The parties to any proceeding pursuant to this Rule shall be the Banking Board and the petitioner. Any other person may seek leave of the Banking Board to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Banking Board. A petition to intervene shall set forth the same matters as required by Paragraph (D) of this Rule. Any reference to a "petitioner" in this Rule also refers to any person who has been granted leave to intervene by the Banking Board.
- G. Any declaratory order or other order disposing of a petition pursuant to this Rule shall constitute agency action subject to judicial review pursuant to Section 24-4-106, C.R.S.

¹ Refer to existing definition of "person" in APA, rules or statute, if any.

Promulgated Effective August 30, 2005

Promulgated to replace Banking Board Rule CB1.23 that was repealed August 30, 2005.