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HOUSE BILL 15-1343

BY REPRESENTATIVE(S) Williams and Thurlow, Nordberg, Hamner, Kagan, Kraft-Tharp, Lee, Lontine, Melton, Ryden, Singer, Brown, Carver; also SENATOR(S) Todd and Balmer, Neville T.

CONCERNING A STREAMLINED PROCESS TO SIMPLIFY THE LICENSURE OF PERSONS WHO MANAGE THE AFFAIRS OF COMMON INTEREST COMMUNITIES UNDER THE "COLORADO COMMON INTEREST OWNERSHIP ACT", AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **amend** 12-61-1001 as follows:

12-61-1001. Definitions. As used in this part 10, unless the context otherwise requires:

(1) "APPRENTICE" MEANS A PERSON WHO:

(a) HAS NOT COMPLETED THE EDUCATION AND EXAMINATION REQUIREMENTS FOR OBTAINING A COMMUNITY ASSOCIATION MANAGER LICENSE;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) IS UNDER THE CONTROL AND DIRECT SUPERVISION OF A LICENSED COMMUNITY ASSOCIATION MANAGER; AND

(c) IS LICENSED WITH THE DIRECTOR FOR PURPOSES OF LEARNING AND PERFORMING ANY PRACTICES THAT REQUIRE A COMMUNITY ASSOCIATION MANAGER LICENSE.

(+) (2) "CCIOA" means the "Colorado Common Interest Ownership Act", article 33.3 of title 38, C.R.S.

(-) (3) "Common interest community" has the meaning set forth in section 38-33.3-103 (8), C.R.S.

(-) (4) (a) "Community association management" means any of the following practices relating to the management of a common interest community, at the direction OR ON BEHALF of its executive board:

(I) ~~Receiving, depositing, controlling, or disbursing funds of the common interest community, preparing budgets, or preparing other financial documents~~ IN INTERACTIONS WITH MEMBERS OR NONMEMBERS OF THE COMMON INTEREST COMMUNITY, ACTING WITH THE AUTHORITY OF THE COMMON INTEREST COMMUNITY WITH RESPECT TO ITS BUSINESS, LEGAL, FINANCIAL, OR OTHER TRANSACTIONS;

(II) ~~Assisting in the creation and implementation of a reserve program for the replacement of capital assets~~ EXECUTING THE RESOLUTIONS AND DECISIONS OF THE EXECUTIVE BOARD;

(III) ~~Assisting in the provision of notice or conduct of meetings of board members or unit owners~~ ENFORCING THE RIGHTS OF THE COMMON INTEREST COMMUNITY SECURED BY STATUTE, CONTRACT, COVENANT, RULE, OR BYLAW;

(IV) ~~Contracting for~~ ADMINISTERING or coordinating maintenance of property and OR facilities of the common interest community;

(V) ~~Conducting property inspections; Administering applications for architectural review; and keeping records of violations of the governing documents of the common interest community; and~~

~~(VI) Performing other services relating to the day-to-day operation of the common interest community~~ ARRANGING, CONDUCTING, OR COORDINATING MEETINGS OF THE COMMON INTEREST COMMUNITY'S MEMBERSHIP OR EXECUTIVE BOARD;

(VII) MAINTAINING THE COMMON INTEREST COMMUNITY'S RECORDS PURSUANT TO ITS GOVERNING DOCUMENTS AND APPLICABLE PROVISIONS OF THE CCIOA; OR

(VIII) ADMINISTERING, OR OTHERWISE EXERCISING CONTROL OF, A COMMON INTEREST COMMUNITY'S FUNDS, INCLUDING THE ADMINISTRATION OF A RESERVE PROGRAM FOR THE MAJOR REPAIR OR REPLACEMENT OF CAPITAL ASSETS.

(b) "COMMUNITY ASSOCIATION MANAGEMENT" DOES NOT MEAN THE PERFORMANCE OF ANY CLERICAL, MINISTERIAL, ACCOUNTING, OR MAINTENANCE FUNCTION.

~~(4)~~ (5) (a) "Community association manager" or "manager" means any person, firm, partnership, limited liability company, association, or corporation that, in consideration of compensation by fee, commission, salary, or anything else of value or with the intention of receiving or collecting such compensation, WHETHER OR NOT THE COMPENSATION IS RECEIVED BY THE LICENSED MANAGER DIRECTLY OR BY THE LICENSED ENTITY THAT EMPLOYS THE LICENSED MANAGER, engages in or offers or attempts to engage in community ASSOCIATION management in Colorado. The term includes:

~~(i) The chief executive officer of a business entity that employs individuals or contracts with other business entities to perform community association management services; and~~

~~(ii) Any executive of a business entity who has direct supervision or oversight of an individual who performs community association management services.~~

(b) "Community association manager" or "manager" does not include:

(I) A person who, UNDER THE DIRECT SUPERVISION OF A MANAGER,

~~performs not more than one of the practices listed in paragraphs (a) to (g) of subsection (3) of this section, or any clerical, ministerial, accounting, or maintenance function; not requiring substantially specialized knowledge, judgment, or managerial skill, under the direct supervision and control of a licensed community association manager or of a contractor employed by a licensed community association manager or by the common interest community's executive board;~~

(II) Any public official in the conduct of his or her official duties;

(III) A receiver, trustee, administrator, conservator, executor, or guardian acting under proper authorization;

(IV) A person, firm, partnership, limited liability company, or association acting personally or a corporation acting through its officers or regular salaried employees, on behalf of that person or on its own behalf as principal in acquiring or in negotiating to acquire any interest in real estate;

(V) An attorney-at-law in connection with his or her representation of clients in the practice of law;

(VI) A corporation with respect to property owned or leased by it, acting through its officers or regular salaried employees, when such acts are incidental and necessary in the ordinary course of the corporation's business activities of a non-property management nature. For the purposes of this paragraph (b), the term "officers or regular salaried employees" means persons regularly employed who derive not less than seventy-five percent of their compensation from the corporation in the form of salaries;

(VII) AN INDEPENDENT CONTRACTOR WHO:

(A) PERFORMS ANY CLERICAL, MINISTERIAL, ACCOUNTING, OR MAINTENANCE FUNCTION; OR

(B) IS NOT OTHERWISE ENGAGED IN THE PERFORMANCE OF COMMUNITY ASSOCIATION MANAGEMENT; OR

(VIII) AN APPRENTICE WORKING UNDER THE DIRECT SUPERVISION OF A LICENSED MANAGER.

(5.5) "DESIGNATED MANAGER" MEANS A PERSON WHO IS CURRENTLY LICENSED AS A MANAGER AND WHO, ON BEHALF OF A LICENSED ENTITY, IS RESPONSIBLE FOR PERFORMING COMMUNITY ASSOCIATION MANAGEMENT PRACTICES AND SUPERVISING COMMUNITY ASSOCIATION MANAGEMENT PRACTICES PERFORMED BY PERSONS EMPLOYED BY, OR ACTING ON BEHALF OF, THE LICENSED ENTITY.

~~(5)~~ (6) "Director" means the director of the division.

~~(6)~~ (7) "Division" means the division of real estate in the department of regulatory agencies.

~~(7)~~ (8) "Executive board" has the meaning set forth in section 38-33.3-103 (16), C.R.S.

~~(8)~~ (9) "HOA" or "homeowners' association" means an association or unit owners' association, as defined in section 38-33.3-103 (3), C.R.S., whether organized before, on, or after July 1, 1992.

~~(9)~~ (10) "Limited liability company" has the meaning set forth in section 7-80-102 (7), C.R.S.

SECTION 2. In Colorado Revised Statutes, 12-61-1003, **amend** (1) (a), (3) (a), (4), (5) (a), (5) (b), and (6) (b); and **add** (9) and (10) as follows:

12-61-1003. Application for license - criminal history record check - examination - rules. (1) (a) A person desiring to become a community association manager OR APPRENTICE must apply to the director for a license in the form and manner prescribed by the director.

(3) (a) The director may require and procure any proof necessary in reference to the truthfulness, honesty, and good moral character of any applicant for a ~~community association manager's~~ license or, if the applicant is a partnership, limited liability company, or corporation, of any partner, manager, director, officer, member, or stockholder if such person has, either directly or indirectly, a substantial interest in the applicant prior to the issuance of the license.

(4) An applicant for a ~~manager's~~ license must be at least eighteen

years of age and must furnish proof satisfactory to the director that the applicant has received either a high school diploma or the equivalent general education development certification.

(5) (a) An applicant for a manager's license must:

(I) Hold one or more of the following credentials:

(A) The "certified manager of community associations" or "CMCA" ~~designation~~ CERTIFICATION awarded by the COMMUNITY ASSOCIATION MANAGERS INTERNATIONAL CERTIFICATION BOARD, PREVIOUSLY KNOWN AS THE national board of certification for community association managers;

(B) The "association management specialist" or "AMS" designation awarded by the community associations institute;

(C) The "professional community association manager" or "PCAM" designation awarded by the community associations institute; or

(D) Another credential identified by the director in rules; ~~and~~

(II) Certify completion of any educational or continuing educational requirements as determined by the director in rules and published on the division's web site; ~~and~~

(III) Submit to and pass an examination ~~designed to determine~~ WITH TWO SEPARATE PORTIONS, WHICH MAY BE ADMINISTERED SEPARATELY. THE EXAMINATION MUST MEASURE the competency of the applicant ~~and~~ IN CARRYING OUT THE CORE FUNCTIONS OF COMMUNITY ASSOCIATION MANAGEMENT, REFERRED TO AS THE "GENERAL PORTION" OF THE EXAMINATION, AND IN UNDERSTANDING THE BASIC PROVISIONS OF LEGAL DOCUMENTS AND COLORADO LAW WITH WHICH MANAGERS ARE REQUIRED TO COMPLY, REFERRED TO AS THE "COLORADO LAW PORTION" OF THE EXAMINATION. THE EXAMINATION SHALL BE prepared by or under the supervision of the director or the director's designated contractor OR CONTRACTORS. The director may contract with ~~an~~ ONE OR MORE independent testing ~~service~~ SERVICES to develop, administer, or grade examinations or to administer licensee records. The ~~contract~~ CONTRACTS may allow the testing service to recover from the applicant the costs of the examination and the costs of administering the examination and license

records. The director may contract separately for these functions and allow recovered costs to be collected and retained by a single contractor for distribution to other contractors. The director ~~shall have the authority to~~ MAY set the SEPARATE minimum passing score ~~that an applicant must receive on the examination, which score must reflect the minimum level of competency required to be a community association manager~~ SCORES FOR THE GENERAL PORTION AND THE COLORADO LAW PORTION OF THE EXAMINATION. The director shall prescribe the times and places at which the examination AS A WHOLE is given OR AT WHICH THE SEPARATE PORTIONS OF THE EXAMINATION ARE GIVEN.

(IV) AN APPLICANT WHO IS CREDENTIALLED PURSUANT TO SUB-SUBPARAGRAPH (A), (B), OR (C) OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) AND HAS MAINTAINED THE CREDENTIAL IN GOOD STANDING, INCLUDING HAVING COMPLETED ALL ONGOING EDUCATION REQUIRED TO MAINTAIN THE CREDENTIAL, MUST COMPLETE THE COLORADO LAW PORTION, BUT NEED NOT COMPLETE THE GENERAL PORTION, OF THE EXAMINATION DESCRIBED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a).

(b) The SEPARATE PORTIONS OF THE examination developed under subparagraph (III) of paragraph (a) of this subsection (5) must assess an applicant's competency in the following subject matter areas:

(I) ~~The~~ FOR THE COLORADO LAW PORTION OF THE EXAMINATION, legal documents; ~~and~~ statutes, ~~that enable a community association to operate~~; including the "Colorado Common Interest Ownership Act"; and other applicable provisions of Colorado law; and

(II) FOR THE GENERAL PORTION OF THE EXAMINATION, other core competencies OF COMMUNITY ASSOCIATION MANAGEMENT, as specified by the director.

(6) (b) A partnership, limited liability company, or corporation, in its application for a license, shall designate a qualified, active manager to be responsible for management and supervision of the licensed actions of the entity and all persons employed by, or acting at any time on behalf of, the entity. A license may not be issued to the entity unless the manager so designated ~~and all persons that the entity employs to perform community association management duties on behalf of the entity, take~~ TAKES and ~~pass~~ PASSES the examination required by this part 10. Upon ~~these persons'~~ THE

MANAGER successfully passing the examination and upon compliance with all other requirements of law by the entity as well as by the ~~designated~~ manager, the director shall issue a designated manager's license to the ~~designated~~ manager.

(9) THE DIRECTOR MAY GRANT A PROVISIONAL LICENSE TO AN APPLICANT FOR A COMMUNITY ASSOCIATION MANAGER LICENSE IF THE APPLICANT HAS NOT PASSED THE EXAMINATION DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION. A PROVISIONAL LICENSE EXPIRES ON DECEMBER 31, 2015.

(10) AN APPRENTICE SHALL NOT PERFORM AN ACT THAT OTHERWISE REQUIRES A COMMUNITY ASSOCIATION MANAGER LICENSE EXCEPT WHEN UNDER THE DIRECT SUPERVISION OF A LICENSED COMMUNITY ASSOCIATION MANAGER.

SECTION 3. In Colorado Revised Statutes, **amend** 12-61-1004 as follows:

12-61-1004. Insurance required - rules. Every licensee under this part 10, except an inactive manager or an attorney licensee who maintains a policy of professional malpractice insurance that provides coverage for his or her activities under this part 10, ~~shall maintain~~ MUST BE INSURED UNDER insurance necessary to cover all activities contemplated under this part 10 in an amount and under terms and conditions specified by the director by rule. In promulgating rules under this section, the director shall solicit and consider information and comments from interested persons.

SECTION 4. In Colorado Revised Statutes, 12-61-1006, **amend** (1) as follows:

12-61-1006. Resident licensee - nonresident licensee - consent to service. (1) A nonresident of the state may become a community association manager OR APPRENTICE in this state by conforming to all the conditions of this part 10; except that THE nonresident manager ~~shall~~ IS not be required to maintain a place of business within this state if that manager maintains a definite place of business in another state.

SECTION 5. In Colorado Revised Statutes, **amend** 12-61-1009 as follows:

12-61-1009. License fees - partnership, limited liability company, and corporation licenses - rules. (1) The director shall establish, collect, and periodically adjust, in accordance with section 12-61-111.5, fees for:

- (a) Each ~~manager's~~ examination;
- (b) Each manager's OR ENTITY'S original application and license;
- (c) Each renewal or reinstatement of a manager's license; ~~and~~
- (d) Any change of name, address, or employment status requiring a change in director records;
- (e) EACH PROVISIONAL LICENSE APPLICATION; AND
- (f) EACH APPRENTICE'S ORIGINAL APPLICATION AND LICENSE.

(2) The director shall transmit all fees to the state treasurer, who shall credit them to the ~~community association manager licensing~~ DIVISION OF REAL ESTATE cash fund, created in section ~~12-61-1012~~ 12-61-111.5 (2) (b). Fees collected under paragraphs (b), (c), ~~and~~ (d), (e), AND (f) of subsection (1) of this section are nonrefundable.

(3) EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, licenses are valid for up to three years, subject to expiration and renewal on a schedule determined by the director. The director shall establish, by rule, the requirements for continuing education, reexamination, and subsequent criminal history record checks; except that these requirements must not be more stringent than the equivalent requirements for real estate brokers under part 1 of this article.

(4) AN APPRENTICE LICENSE IS VALID FOR ONE YEAR AND IS NOT SUBJECT TO RENEWAL.

SECTION 6. In Colorado Revised Statutes, 12-61-1010, **amend** (1) introductory portion, (1) (f), (1) (m), (1) (o), (1) (p) (IX), and (6); and **add** (1) (p.5) as follows:

12-61-1010. Investigation - revocation - actions against licensee.

(1) The director, upon the director's own motion, may, and, upon the complaint in writing of any person, shall, investigate the activities of any ~~community association manager~~ LICENSEE or any person who assumes to act in ~~such~~ THE capacity OF A LICENSEE within the state. The director, after holding a hearing in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., may impose an administrative fine not to exceed two thousand five hundred dollars for each separate offense, censure a licensee, place the licensee on probation and set the terms of probation, or temporarily suspend or permanently revoke a license when the licensee has performed, is performing, or is attempting to perform any of the following acts and is guilty of:

(f) Failing to account for or to remit, within a reasonable time, any moneys coming into the licensee's possession that belong to others, whether acting as a community association manager, APPRENTICE, or otherwise, and failing to keep records relative to said moneys, which records must contain any information required by rules of the director and are subject to audit by the director;

(m) Procuring, or attempting to procure, a ~~community association manager's~~ license or renewing, reinstating, or reactivating, or attempting to renew, reinstate, or reactivate, a ~~community association manager's~~ license by fraud, misrepresentation, or deceit or by making a material misstatement of fact in an application for ~~such~~ A license;

(o) Having had a ~~community association manager's~~ LICENSE or a subdivision developer's ~~license~~ REGISTRATION suspended or revoked in any jurisdiction, or having had any disciplinary action taken against the manager or subdivision developer in any other jurisdiction if the ~~manager's~~ LICENSEE'S or subdivision developer's action would constitute a violation of this subsection (1). A certified copy of the order of disciplinary action is prima facie evidence of such disciplinary action.

(p) Within the last five years, having a license, registration, or certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

(IX) An investment advisor representative, as defined by section 11-51-201 (9.6), C.R.S.; ~~or~~

(p.5) ACTING OUTSIDE THE SCOPE OF AUTHORITY GRANTED BY THE ISSUANCE OF A LICENSE; OR

(6) All administrative fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the ~~community association manager licensing~~ DIVISION OF REAL ESTATE cash fund, created in section ~~12-61-1012~~ 12-61-111.5 (2) (b).

SECTION 7. In Colorado Revised Statutes, **amend** 12-61-1012 as follows:

12-61-1012. Community association manager licensing cash fund - creation - repeal. (1) (a) The direct and indirect costs incurred by the director in administering this part 10 are payable from the community association manager licensing cash fund, which fund is hereby created in the state treasury. The fund consists of fees paid by community association managers and applicants for licensure under section 12-61-1009. Interest earned on moneys in the fund remain in the fund, and any unexpended and unencumbered moneys in the fund at the end of any fiscal year do not revert to the general fund or any other fund. Payments from the fund are subject to annual appropriation by the general assembly.

(b) THIS SUBSECTION (1) IS REPEALED, EFFECTIVE JULY 1, 2015.

(2) ON JULY 1, 2015, THE STATE TREASURER SHALL TRANSFER ANY MONEY REMAINING IN THE COMMUNITY ASSOCIATION MANAGER LICENSING CASH FUND TO THE DIVISION OF REAL ESTATE CASH FUND CREATED IN SECTION 12-61-111.5 (2) (b).

SECTION 8. In Colorado Revised Statutes, 12-61-1013, **amend** (1) introductory portion as follows:

12-61-1013. Review and report by director - report - repeal. (1) The director shall review the operation of this part 10 during the first year of its implementation and shall report to the COMMITTEES IN THE senate ~~committee on business, labor, and technology~~ and the house ~~committee on~~ OF REPRESENTATIVES THAT HEAR MATTERS PERTAINING TO business, ~~labor, and economic and workforce development, or their successor committees~~, on or before February 15, 2016, concerning the director's findings and recommendations for legislative changes, if any. The

matters included in the director's report may include:

SECTION 9. In Colorado Revised Statutes, 24-34-104, **amend** (49.5) (g) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (49.5) The following agencies, functions, or both, terminate on September 1, 2018:

(g) The licensing of community association managers AND APPRENTICES by the director of the division of real estate in accordance with part 10 of article 61 of title 12, C.R.S.;

SECTION 10. In Colorado Revised Statutes, **amend** 38-33.3-402 as follows:

38-33.3-402. Manager licensing - condition precedent for enforcement of contract terms. A person that is subject to licensure ~~as a community association manager~~ under part 10 of article 61 of title 12, C.R.S., shall at all times have and maintain a valid license when acting or purporting to act on behalf of the association. The association's agreement to pay a fee for the services of a community manager or to hold harmless or indemnify the community manager for any act or omission in the course of providing those services is void and unenforceable for any period in which the MANAGER'S license is expired, suspended, or revoked.

SECTION 11. Appropriation. For the 2015-16 state fiscal year, \$47,250 is appropriated to the department of regulatory agencies for use by the division of real estate. This appropriation is from the division of real estate cash fund created in section 12-61-111.5 (2) (b), C.R.S. To implement this act, the division may use this appropriation for operating expenses.

SECTION 12. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO