

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0387.01 Duane Gall x4335

HOUSE BILL 18-1175

HOUSE SPONSORSHIP

Kraft-Tharp and Thurlow,

SENATE SPONSORSHIP

Gardner,

House Committees
Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION UNDER THE SUNSET LAW OF THE
102 REGULATION OF COMMUNITY ASSOCIATION MANAGERS BY THE
103 DIRECTOR OF THE DIVISION OF REAL ESTATE, AND, IN
104 CONNECTION THEREWITH, IMPLEMENTING THE
105 RECOMMENDATIONS CONTAINED IN THE 2017 SUNSET REPORT
106 OF THE DEPARTMENT OF REGULATORY AGENCIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Sunset Process - House Business Affairs and Labor

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Committee. Sections 1 and 2 of the bill continue the licensing of community association managers and management companies, subject to regulation by the director of the division of real estate, for an additional 5 years, until September 1, 2023. *(Recommendation 1)*

Section 3 allows certain ministerial functions to be delegated to unlicensed persons while maintaining the license requirement for higher-level management functions such as the conduct of board meetings, handling of money, and negotiation of maintenance contracts. The director is authorized to adopt rules further clarifying these distinctions if necessary. *(Recommendation 3)*

Sections 4 and 6 through 8 scale back the amount of, and circumstances in which, direct supervision of an apprentice is required and specify that a supervising manager is accountable for the actions of an apprentice. **Section 5** gives the director authority to adopt rules governing supervision of apprentices. *(Recommendation 4)*

Section 9 removes the automatic acceptance of certain private credentials as qualifications for licensure and substitutes a requirement that the director specify the acceptable credentials by rule. *(Recommendation 5)*

Sections 10 and 11 add due-process protections and specific procedural requirements to the director's authority to issue cease-and-desist orders. The director also has the option to issue an order to show cause and to hold a hearing before, rather than after, ordering a respondent to cease and desist from suspected unauthorized practices. *(Recommendation 6)*

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 12-61-1014
3 as follows:

4 **12-61-1014. Repeal of part.** This part 10 is repealed, effective
5 ~~July 1, 2018. Prior to the~~ SEPTEMBER 1, 2023. BEFORE ITS repeal, the
6 functions of the director under this part 10 are ~~subject to~~ SCHEDULED FOR
7 review ~~as provided~~ in ACCORDANCE WITH section 24-34-104 (5). ~~C.R.S.~~

8 **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **repeal**
9 (15)(a)(VII); and **add** (24)(a)(V) as follows:

10 **24-34-104. General assembly review of regulatory agencies**
11 **and functions for repeal, continuation, or reestablishment - legislative**

1 **declaration - repeal.** (15) (a) The following agencies, functions, or both,
2 will repeal on September 1, 2018:

3 (VII) ~~The licensing of community association managers and~~
4 ~~apprentices by the director of the division of real estate in accordance~~
5 ~~with part 10 of article 61 of title 12, C.R.S.;~~

6 (24) (a) The following agencies, functions, or both, are scheduled
7 for repeal on September 1, 2023:

8 (V) THE LICENSING OF COMMUNITY ASSOCIATION MANAGERS AND
9 APPRENTICES BY THE DIRECTOR OF THE DIVISION OF REAL ESTATE IN
10 ACCORDANCE WITH PART 10 OF ARTICLE 61 OF TITLE 12.

11 **SECTION 3.** In Colorado Revised Statutes, 12-61-1001, **amend**
12 (4)(a)(I), (4)(a)(VI), (4)(b), and (5)(b)(I) as follows:

13 **12-61-1001. Definitions.** As used in this part 10, unless the
14 context otherwise requires:

15 (4) (a) "Community association management" means any of the
16 following practices relating to the management of a common interest
17 community, at the direction or on behalf of its executive board:

18 (I) ~~In interactions with members or nonmembers of the common~~
19 ~~interest community,~~ Acting with the authority of the common interest
20 community with respect to its business, legal, financial, or other
21 transactions;

22 (VI) ~~Arranging,~~ Conducting ~~or coordinating~~ meetings of the
23 common interest community's membership or executive board;

24 (b) "Community association management" does not mean the
25 performance of any clerical, ministerial, accounting, or maintenance
26 function. THE DIRECTOR MAY ADOPT RULES TO FURTHER DEFINE OR
27 CLARIFY WHETHER A SPECIFIC FUNCTION FALLS WITHIN THIS SUBSECTION

1 (4)(b) AND REQUIREMENTS APPLY FOR SUPERVISION OF SUPPORT STAFF BY
2 LICENSED MANAGERS.

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

5 (I) A person who, under the ~~direct~~ supervision of a manager,
6 performs any clerical, ministerial, accounting, or maintenance function;

7 **SECTION 4.** In Colorado Revised Statutes, 12-61-1001, **amend**
8 (1)(b) and (5)(b)(VIII) as follows:

9 **12-61-1001. Definitions.** As used in this part 10, unless the
10 context otherwise requires:

11 (1) "Apprentice" means a person who:

12 (b) Is under the control and ~~direct~~ supervision of a licensed
13 community association manager; and

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

16 (VIII) An apprentice working under the ~~direct~~ supervision of a
17 licensed manager.

18 **SECTION 5.** In Colorado Revised Statutes, 12-61-1002, **add** (4)
19 as follows:

20 **12-61-1002. License required - rule-making authority of**
21 **director - violations - administrative and legal remedies.** (4) THE
22 DIRECTOR SHALL, BY RULE, DEFINE THE APPROPRIATE LEVEL OF
23 SUPERVISION FOR SPECIFIC DUTIES PERFORMED BY AN APPRENTICE.

24 **SECTION 6.** In Colorado Revised Statutes, 12-61-1003, **amend**
25 (10) as follows:

26 **12-61-1003. Application for license - criminal history record**
27 **check - examination - rules.** (10) An apprentice shall not perform an act

1 that otherwise requires a community association manager license except:

2 (a) When under the ~~direct~~ supervision of a licensed community
3 association manager; AND

4 (b) IN ACCORDANCE WITH ANY APPLICABLE RULES OF THE
5 DIRECTOR ADOPTED PURSUANT TO SECTION 12-61-1002 (4).

6 **SECTION 7.** In Colorado Revised Statutes, **add** 12-61-1003.5 as
7 follows:

8 **12-61-1003.5. Supervision of apprentices - limitation on**
9 **permissible functions.** (1) A SUPERVISING MANAGER, DESIGNATED
10 MANAGER, OR LICENSED ENTITY UNDER WHOSE SUPERVISION AN
11 APPRENTICE PERFORMS MANAGEMENT DUTIES IS ACCOUNTABLE FOR THE
12 APPRENTICE'S ACTIONS.

13 (2) AN APPRENTICE SHALL NOT CONDUCT OR ASSIST IN THE
14 CONDUCT OF AN EXECUTIVE BOARD MEETING WITHOUT THE PRESENCE OF
15 A LICENSED MANAGER.

16 **SECTION 8.** In Colorado Revised Statutes, 12-61-1010, **amend**
17 (1) introductory portion and (1)(l) as follows:

18 **12-61-1010. Investigation - revocation - actions against**
19 **licensee.** (1) The director, upon the director's own motion, may, and,
20 upon the complaint in writing of any person, shall, investigate the
21 activities of any licensee or any person who assumes to act in the capacity
22 of a licensee within the state. The director, after holding a hearing in
23 accordance with the "State Administrative Procedure Act", article 4 of
24 title 24, ~~C.R.S.~~, may impose an administrative fine not to exceed two
25 thousand five hundred dollars for each separate offense, censure a
26 licensee, place the licensee on probation and set the terms of probation,
27 or temporarily suspend or permanently revoke a license when the licensee

1 has performed, is performing, or is attempting to perform any of the
2 following acts and is guilty of:

3 (I) In the case of a manager who employs others or is designated
4 to act on behalf of a licensed entity, failing to exercise reasonable
5 supervision over the activities of employees OR APPRENTICES;

6 **SECTION 9.** In Colorado Revised Statutes, 12-61-1003, **amend**
7 (5)(a) and (5)(b) introductory portion; and **add** (5)(a.5) as follows:

8 **12-61-1003. Application for license - criminal history record**
9 **check - examination - rules.** (5) (a) An applicant for a manager's license
10 must:

11 (I) (A) Hold one or more ~~of the following~~ PRIVATE credentials
12 IDENTIFIED BY THE DIRECTOR IN RULES; OR

13 ~~(A) The "certified manager of community associations" or~~
14 ~~"CMCA" certification awarded by the community association managers~~
15 ~~international certification board, previously known as the national board~~
16 ~~of certification for community association managers;~~

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

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

21 or

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

23 ~~(H)~~ (B) Certify completion of any educational or continuing
24 educational requirements as determined by the director in rules and
25 published on the division's website; AND

26 ~~(HH)~~ (II) Submit to and pass an examination with two separate
27 portions, which may be administered separately. The examination must

1 measure the competency of the applicant in carrying out the core
2 functions of community association management, referred to as the
3 "general portion" of the examination, and in understanding the basic
4 provisions of legal documents and Colorado law with which managers are
5 required to comply, referred to as the "Colorado law portion" of the
6 examination. The examination ~~shall~~ MUST be prepared by or under the
7 supervision of the director or the director's designated contractor or
8 contractors. The director may contract with one or more independent
9 testing services to develop, administer, or grade examinations or to
10 administer licensee records. The contracts may allow the testing service
11 to recover from the applicant the costs of the examination and the costs
12 of administering the examination and license records. The director may
13 contract separately for these functions and allow recovered costs to be
14 collected and retained by a single contractor for distribution to other
15 contractors. The director may set the separate minimum passing scores for
16 the general portion and the Colorado law portion of the examination. The
17 director shall prescribe the times and places at which the examination as
18 a whole is given or at which the separate portions of the examination are
19 given.

20 ~~(IV) An applicant who is credentialed pursuant to~~
21 ~~sub-subparagraph (A), (B), or (C) of subparagraph (I) of this paragraph~~
22 ~~(a) and has maintained the credential in good standing, including having~~
23 ~~completed all ongoing education required to maintain the credential, must~~
24 ~~complete the Colorado law portion, but need not complete the general~~
25 ~~portion, of the examination described in subparagraph (III) of this~~
26 ~~paragraph (a).~~

27 (a.5) AN APPLICANT WHO HOLDS A CREDENTIAL APPROVED BY THE

1 DIRECTOR PURSUANT TO SUBSECTION (5)(a)(I) OF THIS SECTION AND HAS
2 MAINTAINED THE CREDENTIAL IN GOOD STANDING, INCLUDING HAVING
3 COMPLETED ALL ONGOING EDUCATION REQUIRED TO MAINTAIN THE
4 CREDENTIAL, MUST COMPLETE THE COLORADO LAW PORTION, BUT MAY BE
5 EXEMPTED FROM THE REQUIREMENT TO COMPLETE THE GENERAL PORTION,
6 OF THE EXAMINATION DESCRIBED IN SUBSECTION (5)(a)(II) OF THIS
7 SECTION.

8 (b) The separate portions of the examination developed under
9 ~~subparagraph (III) of paragraph (a) of this subsection (5)~~ SUBSECTION
10 (5)(a)(II) OF THIS SECTION must assess an applicant's competency in the
11 following subject matter areas:

12 **SECTION 10.** In Colorado Revised Statutes, **amend** 12-61-1002
13 (3)(a) as follows:

14 **12-61-1002. License required - rule-making authority of**
15 **director - violations - administrative and legal remedies.** (3) In
16 addition to conducting hearings as provided in section 12-61-1011, the
17 director may enforce this part 10 and rules adopted under this part 10 by
18 taking one or more of the following actions:

19 (a) If the director has reasonable cause to believe that a person is
20 violating this part 10 or a rule adopted under this part 10, the director may
21 ~~enter an order requiring the person to cease and desist the violation~~ A
22 CEASE-AND-DESIST ORDER OR AN ORDER TO SHOW CAUSE AS PROVIDED IN
23 SECTION 12-61-1002.5.

24 **SECTION 11.** In Colorado Revised Statutes, **add** 12-61-1002.5
25 as follows:

26 **12-61-1002.5. Authority of director - cease-and-desist orders**
27 **- rules.** (1) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE

1 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
2 A MANAGER OR APPRENTICE IS VIOLATING THIS PART 10 OR RULES
3 ADOPTED PURSUANT TO THIS PART 10 OR THAT A PERSON IS ACTING OR HAS
4 ACTED WITHOUT THE REQUIRED LICENSE, THE DIRECTOR MAY ISSUE AN
5 ORDER TO CEASE AND DESIST THE ACTIVITY. THE ORDER MUST SET FORTH
6 THE STATUTES AND RULES THE MANAGER, APPRENTICE, OR PERSON
7 ALLEGEDLY VIOLATED, THE FACTS THAT ALLEGEDLY CONSTITUTED THE
8 VIOLATION, AND THE REQUIREMENT THAT ALL UNLAWFUL ACTS OR
9 UNLICENSED PRACTICES IMMEDIATELY CEASE.

10 (b) WITHIN TEN DAYS AFTER SERVICE OF THE ORDER TO CEASE AND
11 DESIST PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION, THE
12 RESPONDENT MAY REQUEST A HEARING ON THE QUESTION OF WHETHER
13 ACTS OR PRACTICES IN VIOLATION OF THIS PART 10 HAVE OCCURRED. THE
14 HEARING MUST BE CONDUCTED PURSUANT TO SECTIONS 24-4-104 AND
15 24-4-105.

16 (2) (a) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
17 EVIDENCE AS PRESENTED IN A WRITTEN COMPLAINT BY ANY PERSON, THAT
18 A MANAGER OR APPRENTICE IS VIOLATING THIS PART 10 OR RULES
19 ADOPTED PURSUANT TO THIS PART 10 OR THAT A PERSON IS ACTING OR HAS
20 ACTED WITHOUT THE REQUIRED LICENSE, THEN, IN ADDITION TO ANY
21 SPECIFIC POWERS GRANTED PURSUANT TO THIS PART 10, THE DIRECTOR
22 MAY ISSUE TO THE PERSON AN ORDER TO SHOW CAUSE AS TO WHY THE
23 DIRECTOR SHOULD NOT ISSUE A FINAL ORDER DIRECTING THE PERSON TO
24 CEASE AND DESIST FROM THE UNLAWFUL ACT OR UNLICENSED PRACTICE.

25 (b) IF THE DIRECTOR HAS ISSUED AN ORDER TO SHOW CAUSE
26 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION TO ANY PERSON, THE
27 DIRECTOR SHALL PROMPTLY GIVE THE PERSON NOTICE OF THE ISSUANCE

1 OF THE ORDER TOGETHER WITH A COPY OF THE ORDER, THE FACTUAL AND
2 LEGAL BASIS FOR THE ORDER, AND THE DATE SET BY THE DIRECTOR FOR A
3 HEARING ON THE ORDER. THE NOTICE MAY BE SERVED BY PERSONAL
4 SERVICE, BY FIRST-CLASS UNITED STATES MAIL, POSTAGE PREPAID, OR AS
5 MAY BE PRACTICABLE UPON ANY PERSON AGAINST WHOM THE ORDER IS
6 ISSUED. PERSONAL SERVICE OR MAILING OF AN ORDER OR DOCUMENT
7 PURSUANT TO THIS SUBSECTION (2) CONSTITUTES NOTICE THEREOF TO THE
8 PERSON.

9 (c) (I) THE HEARING ON AN ORDER TO SHOW CAUSE MUST BE
10 COMMENCED NO SOONER THAN TEN AND NO LATER THAN FORTY-FIVE
11 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE
12 NOTICE BY THE DIRECTOR AS PROVIDED IN SUBSECTION (2)(b) OF THIS
13 SECTION. THE HEARING MAY BE CONTINUED BY AGREEMENT OF ALL
14 PARTIES BASED UPON THE COMPLEXITY OF THE MATTER, NUMBER OF
15 PARTIES TO THE MATTER, AND LEGAL ISSUES PRESENTED IN THE MATTER,
16 BUT IN NO EVENT MAY THE HEARING COMMENCE LATER THAN SIXTY
17 CALENDAR DAYS AFTER THE DATE OF TRANSMISSION OR SERVICE OF THE
18 NOTICE.

19 (II) IF A PERSON AGAINST WHOM AN ORDER TO SHOW CAUSE HAS
20 BEEN ISSUED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION DOES NOT
21 APPEAR AT THE HEARING, THE DIRECTOR MAY PRESENT EVIDENCE THAT
22 NOTICE WAS PROPERLY SENT OR SERVED UPON THE PERSON PURSUANT TO
23 SUBSECTION (2)(b) OF THIS SECTION AND ANY OTHER EVIDENCE RELATED
24 TO THE MATTER AS THE DIRECTOR DEEMS APPROPRIATE. THE DIRECTOR
25 SHALL ISSUE THE ORDER WITHIN TEN DAYS AFTER THE DIRECTOR'S
26 DETERMINATION RELATED TO REASONABLE ATTEMPTS TO NOTIFY THE
27 RESPONDENT, AND THE ORDER BECOMES FINAL AS TO THE RESPONDENT BY

1 OPERATION OF LAW. THE HEARING SHALL BE CONDUCTED PURSUANT TO
2 SECTIONS 24-4-104 AND 24-4-105.

3 (III) IF THE DIRECTOR REASONABLY FINDS THAT THE PERSON
4 AGAINST WHOM THE ORDER TO SHOW CAUSE WAS ISSUED IS ACTING OR
5 HAS ACTED WITHOUT THE REQUIRED LICENSE, OR HAS OR IS ABOUT TO
6 ENGAGE IN ACTS OR PRACTICES CONSTITUTING VIOLATIONS OF THIS PART
7 10 OR RULES ADOPTED PURSUANT TO THIS PART 10, A FINAL
8 CEASE-AND-DESIST ORDER MAY BE ISSUED, DIRECTING THE PERSON TO
9 CEASE AND DESIST FROM FURTHER UNLAWFUL ACTS OR UNLICENSED
10 PRACTICES.

11 (IV) THE DIRECTOR SHALL PROVIDE NOTICE, IN THE MANNER SET
12 FORTH IN SUBSECTION (2)(b) OF THIS SECTION, OF THE FINAL
13 CEASE-AND-DESIST ORDER WITHIN TEN CALENDAR DAYS AFTER THE
14 HEARING CONDUCTED PURSUANT TO THIS SUBSECTION (2)(c) TO EACH
15 PERSON AGAINST WHOM THE FINAL ORDER HAS BEEN ISSUED. THE FINAL
16 ORDER ISSUED PURSUANT TO SUBSECTION (2)(c)(III) OF THIS SECTION IS
17 EFFECTIVE WHEN ISSUED AND CONSTITUTES A FINAL ORDER FOR PURPOSES
18 OF JUDICIAL REVIEW.

19 (3) IF IT APPEARS TO THE DIRECTOR, BASED UPON CREDIBLE
20 EVIDENCE PRESENTED TO THE DIRECTOR, THAT A PERSON HAS ENGAGED IN
21 OR IS ABOUT TO ENGAGE IN ANY UNLICENSED ACT OR PRACTICE, ANY ACT
22 OR PRACTICE CONSTITUTING A VIOLATION OF THIS PART 10, ANY RULE
23 PROMULGATED PURSUANT TO THIS PART 10, ANY ORDER ISSUED PURSUANT
24 TO THIS PART 10, OR ANY ACT OR PRACTICE CONSTITUTING GROUNDS FOR
25 ADMINISTRATIVE SANCTION PURSUANT TO THIS PART 10, THE DIRECTOR
26 MAY ENTER INTO A STIPULATION WITH THE PERSON.

27 (4) IF A PERSON FAILS TO COMPLY WITH A FINAL

1 CEASE-AND-DESIST ORDER OR A STIPULATION, THE DIRECTOR MAY
2 REQUEST THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY FOR THE
3 JUDICIAL DISTRICT IN WHICH THE ALLEGED VIOLATION EXISTS TO BRING,
4 AND IF SO REQUESTED THE ATTORNEY SHALL BRING, SUIT FOR A
5 TEMPORARY RESTRAINING ORDER AND FOR INJUNCTIVE RELIEF TO
6 PREVENT ANY FURTHER OR CONTINUED VIOLATION OF THE FINAL ORDER.

7 (5) A PERSON AGGRIEVED BY THE FINAL CEASE-AND-DESIST ORDER
8 MAY SEEK JUDICIAL REVIEW OF THE DIRECTOR'S DETERMINATION OR OF
9 THE DIRECTOR'S FINAL ORDER AS PROVIDED IN SECTION 12-61-1011.

10 **SECTION 12. Effective date.** This act takes effect July 1, 2018.

11 **SECTION 13. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.