

BUCK BAILEY
Speaking notes for February 28, 2018
Finance Hearing on HB18-1175

I. Introduction

A. Self: Thanks for the opportunity to speak with you today about sunsetting the Community Association Manager Licensing law CRS 12-61 Chapter 10.

1. My name is Buck Bailey. I am currently licensed as RM 1108 and DA 4071 under the CAM licensing program. Since 2011 when I was elected to the Board of Directors, I have been actively involved in managing and caring for Plaza de Monaco Towers Condominiums Association, Inc. At the beginning of Feb 2014, I resigned from the Board and took over as the General Manager for a 30-60 day transition while we found a suitable person to become the permanent General Manager. Needless to say, this is the beginning of the 5th year.

2. Experience 25 + years middle mgmt. USN CMC; Education AS, BS, MAM

3. Licensing has done nothing to change or improve the way I go about caring for Plaza de Monaco and our 213 units in 6 buildings on 7 acres in S. Denver.

B. Main Points

1) CAM licensing is an example of unnecessary, costly, and burdensome regulation. Its primary function appears to be enabling state regulators to issue Cease and Desist orders rather than investigating and prosecuting alleged crimes.

2) DORA's Sunset Review Report is completely inadequate to support continuing CAM Licensing Law. Failed to survey the primary stakeholders of CIC/HOA Boards.

3) If not sunset there are a number of things that could be done to make licensing tolerable.

II. Body

A. CAM Licensing is an example of unnecessary, costly, and burdensome regulation.

B. Licensing Law should be sunset

1) Sunset review is short on data and does not support continuing licensing (see paper #1).

2) The 2017 Annual report from the HOA Information and Resource Center is not yet available.

3) There appears to be quite a bit of controversy or 1175 could simply remove the sunset clause and make licensing permanent.

4) This law seems to be primarily directed at empowering DORA with the ability to impose sanctions on individuals and sometimes management companies for "unlicensed activities." It is easier to prove no license than it is to investigate and prove other violations of the law.

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- C. If not sunset, some things that should be done. (there may be others)
- 1) Exempt CIC and HOA direct employees. (See paper #2)
 - 2) Only extend sunset date by 1 year and redo report to include input from CIC/HOA Boards and members. (See paper #3)
 - 3) Restore Sunset Report Recommendation 2—Management companies should pay renewal fees. (See paper #4)
 - 4) Define Community Association Manager License. (See paper #5)
 - a. No clear definition in the law
 - b. E-license program has DA, RM, IM, ENT, and AM categories that aren't defined in the CRS or the implementing rules.
 - c. Apprentice added to the law in 2015. I'm not sure what the purpose is. There is no listing on e-license.
 - d. License should be more like a driver's license that is primarily a certification of a certain level of an individual's knowledge and proficiency.
 - e. Once issued, a license should not go inactive just because licensee is not currently managing any properties. It could expire, be revoked, be suspended, or even be surrendered. Automatic inactivation makes no sense.
 - 5) Clarify the insurance requirement.
 - a. HOAs carry Errors and omissions insurance for officers and directors.
 - b. There is No need for additional insurance as directed by 12-61-104
 - 6) Remove obsolete sections (example: 12-61-1003 (9) about Provisional licenses.)
 - 7) The list can go much longer.

III. Conclusion

- A. CAM licensing is an example of unnecessary, costly, and burdensome regulation. Its primary function appears to be enabling state regulators to issue Cease and Desist orders against anyone suspected of community association management without having a license.
- B. Licensing Law should be sunset
- C. If not sunset there are a number of things that could be done to make licensing tolerable.
- D. Thanks for allowing me to speak with you and participate in this process.

#1 From B. Bailey (2-28-2018)

Title: Sunset Community Association Manager Licensing

Problem: DORA's 2017 Sunset Review: Community Association Manager Practice Act; October 13, 2017 does not provide adequate supporting data in answer to the fundamental requirement of CRS 24-134-104 to continue the current licensing program.

- 1) The report identifies no public health concerns associated with Community Association Managers.
- 2) The report identifies no public safety concerns associated with Community Association Managers.
- 3) The report makes a weak case concerning public welfare by mentioning 2 managers and one management company as having been disciplined for cases associated with theft of association funds. Theft is already against the law. The licensing program did not (and will not) prevent theft from happening.
- 4) The report also implies that the types and levels of complaints received by the Division has not changed since the 2012 Sunrise Review. (see pg 32 2nd paragraph)
- 5) It is a glaring omission that there are no established "baselines" for meaningful comparisons before-after licensing established.
- 6) On page 32 first paragraph, the report states, "In fact, the majority of enforcement actions have been related to unlicensed activity, which is not, in and of itself, a compelling reason to regulate an occupation or industry."
- 7) The sole justification for recommendation 1 in the report appears to be found on page 33 fourth paragraph: "Since this program has only been operating for two years, it is difficult to assess how well it is working."

Solution: Postpone Indefinitely any further action on HB18-1175 and allow the "Community Association Manager Practice Act" to sunset.

#2 From B. Bailey (2-28-2018)

Title: Exempt direct HOA employees.

Problem: Although most CICs/HOAs are not engaging in "the business of community association management", the current law regarding licensing of community managers is being interpreted as requiring some direct (W-2) employees of a CIC or HOA to be licensed as a community manager. This requirement is burdensome, unreasonable, unnecessary, and often confusing for CIC/HOA Boards of Directors. This requirement limits the ability of a Board of Directors to govern in compliance with their governing documents.

Solution: Exempt all direct W-2 employees of CICs and HOAs

Details in HB18-1175:

Page 3 line 17. Change to read: community, ~~at the direction of or on behalf of its executive board:~~

Page 3 lines 24-27 and page 4 lines 1-2. Replace with new wording to read as follows:

(b) "Community association management" does not mean:

(I) the performance of any clerical, ministerial, accounting, or maintenance function.

(II) THE PERFORMANCE OF ANY ACTION BY A DIRECT "W-2" EMPLOYEE OF A CIC OR HOA OR ITS BOARD OF DIRECTORS.

(III) THE DIRECTOR MAY ADOPT RULES TO FURTHER DEFINE OR CLARIFY WHETHER A SPECIFIC FUNCTION FALLS WITHIN THIS SUBSECTION 4(b) AND REQUIREMENTS THAT APPLY FOR SUPERVISION OF SUPPORT STAFF BY LICENSED MANAGERS.

Page 4 line 16-17. Replace with new wording to read as follows:

(VII) (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; OR

(IX) ANY DIRECT "W-2" EMPLOYEE OF A CIC, HOA, OR ITS BOARD OF DIRECTORS.

#3 From B. Bailey (2-28-2018)

Title: Include results of CIC and HOA surveys in Sunset Review.

Problem: DORA's 2017 Sunset Review of the Community Association Management Practice Act did not adequately survey or account for input from CIC members, HOA members, or the associated Boards of Directors.

Solution: Change sunset date to July 1, 2019. Direct DORA to redo the Sunset Review to include all stakeholders' input.

Details in HB18-1175:

Page 2 line 5. Change to read: July 1, 20182019. ~~Prior to~~ the BEFORE ITS repeal, the

Page 2 lines 7-8. Add new wording to read as follows: THE DIRECTOR SHALL ENSURE THAT THE SUNSET REVIEW INCLUDES THE RESULTS OF SURVEYS SENT TO ALL CURRENTLY ACTIVE REGISTERED CICS, HOAS, AND THEIR ASSOCIATED BOARDS OF DIRECTORS.

Section 2 of the Bill. Will have to be appropriately revised by the bill drafter.

Obviously, there will need to be provisions made for the expenditure of funds by DORA.

#4 From B. Bailey (2-28-2018)

Title: Fees for management company license renewal

Problem: Recommendation 2 from the 2017 Sunset Review (not currently included in HB18-1175) states, "According to section 12-61-1009(1), C.R.S., the Director does not have the authority to establish renewal fees for Management Companies."

No explanation was given for this theory. The theory must be that since 12-61-1009(1)(b) includes the undefined term "entity's" but 12-61-1009(1)(c) does not; then there is no authorization.

12-61-1009(1)(c) clearly states: "Each renewal or reinstatement of a manager's license;"

12-61-1001(5)(a) clearly defines "Community association manger" or "manager" as including management companies.

While the inclusion of "entities" in one line but not another serves to confuse, it is clear that the Director does actually have authority to establish renewal fees for all "managers."

Solution:

- 1) Amend HB18-1175 to include deleting "or entity's" from 12-61-1009(1)(b)

#5 From B. Bailey (2-28-2018)

Title: Define Community Association Manager License

Problem: Community Association Manager(CAM) License is not defined in 12-61-1001. On the Division of Real Estate's e-license program there are multiple different license types for Community Association Manager licenses (RM, ENT, IM, AM) and for CIC or HOA registered agents (DA). None of these license types are clearly defined in the CRS or the implementation rules. Additionally, there is no listing of Apprentice licenses on the e-license website.

Solution:

- 1) Specify in the CRS that there is only one level of CAM license. Or
- 2) Clearly define in the CRS the various levels of CAM license that the Director is allowed to establish. Ensure that implementing rules do not establish levels not defined in the CRS.

Details in HB18-1175:

- 1) Make the following amendments to 1175:
 - a. Page 4 following line 6. Insert the following new language:
(5.4) COMMUNITY ASSOCIATION MANAGER(CAM) LICENSE MEANS THE LICENSE ISSUED IN COMPLIANCE WITH THE RULES ESTABLISHED BY THE DIRECTOR. THERE SHALL BE ONLY ONE LEVEL OF CAM LICENSE.
 - b. Add a new section 11 to the bill. In this section delete all current references to Apprentice License and apprentice licensing.

OR

- 2) Implementation of this solution would require addition of additional sections to 1175 and may very well be beyond what is allowed in title. In any case there is a significant amount of work to be done to identify the various levels of licensing desired by the Director.

HOA related complaints						
Data compiled from Annual Reports and e-mail contact to DRE by Buck Bailey						
Year	# of Complainants	Total # Complaints	# Complaint involving managers	# Mgr Cases Resolved	# Resolved w/ no merit/no disciplinary action	# Cease and Desist (limited info avail)
2013	327	1248	504	N/A	N/A	N/A
2014	409	1440	548	N/A	N/A	N/A
(overlap data?) 2015	?	2027	667	93	?	0
2016	?	1953	329	263	?	7
2017	389	1226	278	210	234	13
2018						2 so far
Active licenses from e-license						
	No. of HoAs	7638				
	No. of DAs	3694				
	No. of RMs	482				
	No. of ENTs	442				
	No. of IMs	193				
	No. of AMs	711				
Roster of Apprentices not available						