

For Senate Finance Committee Hearing
April 30, 2019
Buck Bailey

Dear Senators on the Finance Committee,

I ask that you vote to halt any further work on HB19-1212 as it has multiple flaws that should be corrected and there is simply no time to properly consider the bill. Today at the hearing you will likely hear something along the lines that, "Any kind of licensing is better than no licensing." I strongly disagree. Passing a bad law is much worse than not having a law. Below is a partial listing of important flaws in the bill:

1. Nowhere in HB19-1212 does it refer to direct employees of a CIC/HOA. Yet most, if not all, employees of a CIC/HOA routinely meet the definitions in 1001(4) and (5). 1002(1) now has the added phrase "or to act as a community association manager" in it. This makes it clear that virtually all CIC/HOA employees will have to be licensed if HB19-1212 as currently passed by the House of Representatives becomes law. Surely this is not the intent of the licensing program.
2. The procedures of CRS "24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration – repeal" have not been used for the introduction and processing of HB19-1212. Most notably there were no public hearings held following last year's repeal and prior to introduction of HB19-1212. Nor has the Sunset Report been updated with additional information from July 1, 2017 to June 30 2018 and to present.
3. The 12-10-1001 Definition section is incomplete:
 - a. The term "Entity" is used inconsistently throughout the proposed law and is not defined in the 1001 section. "Entity" apparently is used at times to mean a firm, partnership, LLC, association, or corporation. It is also used to refer to CAM companies.
 - b. The term "Person" is not defined in the 1001 section. However, 38-33.3-103(21) CRS does define "Person." Since "Person" is also used frequently in HB19-1212 and often in places where it can cause confusion, it should be included similarly to the way "Executive Board" is.
4. There are no clear definitions and standards for the many different licensing/registration designations used in the licensing laws, licensing rules, e-licensing tracking system, HOA registration requirements, and Secretary of State registration requirements:
 - a. 1001(5) defines only 1 level of "Community Association Manager."
 - b. Designated Manager as defined in 1001(6) section is not a separate license classification. Rather it requires: "...a person who is currently licensed as a manager..."
 - c. Director rules A-1 define CAM and CAM company. These terms are used throughout the rules with no distinction about different licensing levels or types.
 - d. E-license system has multiple "levels" of CAM licenses

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- i. IM-for individual proprietor as a business
 - ii. AM for Associate Manager- an individual who is employed by a CAM company
 - iii. RM for the single individual employed by a CAM company as the Designated Manager defined in 1001(6)
 - iv. ENT for a CAM company. Currently there are at least 17 CICs/HOAs with ENT licenses. It is entirely unclear in the law whether or not a CIC/HOA with employees must itself be licensed as a management company.
 - v. DA for a Designated Agent registered with the Colorado Secretary of State
5. Insurance requirements are not clear concerning CIC/HOA direct employees and the D&O and Crime and Fidelity insurances that most CICs/HOAs already carry.
6. The recent amendments to the bill concerning apprentices make it clear that an “apprentice license” confers no authority to do anything that might remotely be considered to be “Community Association Management.” There is no reason for including the apprentice references or licensing in this law. All of these should be removed.
7. HB19-1212 ren has numerous technical errors that will require amendment. I only used pages 37-70 for the below. Corresponding notes for pages 2-36 would need to be noted. (HB19-1172 has been signed by Gov.)
- a. Technical errors with HB19-1212
 - i. On page 39 line 24: “12-10-1013” should be “12-10-1014”
 - ii. On Page 41 line 25: “12-10-1013” should be “12-10-1014”
 - iii. On Page 42 line 6: “12-10-1014” should be “12-10-1013”
 - iv. On Page 58 Line 10 “12-10-1015” should be “12-10-1014”
 - v. On Page 70 Lines 10-11: “only if House Bill 19-1172 becomes law, in which case section 3 takes effect” should be removed as the Governor signed 1172 on 4/25/2019.
 - vi. Further proofreading will likely reveal additional needed corrections.

Frankly, HB19-1212 requires extensive revision to be a good law. Passing this bad law is much worse than not having the law at all.

Next, in the 2017 Sunset report from COPRRR; the sole justification for continuing the manager licensing program was contained on page 33:

The period under review represents the entire life of the program. Since this program has only been operating for two years, it is difficult to assess how well it is working. For this reason, the

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program should be continued for at least five years in order to provide sufficient data from which the effectiveness of the program may be evaluated.

Since COPRRR has not done a follow up report, I made CORA requests for the data from the additional year and a half since July 1, 2017. I hoped to be able to easily update Tables 8, 9, and 10. On March 13th this year, while I was testifying at the House TLG committee hearing on this bill, I finally received access to the public records of 85 completed disciplinary actions against CAMs for the period from July 1, 2015 through March 2019. Over the following weekend, I reviewed each of those and put together the attached summary. Some important facts emerge from my efforts:

- At least 59% of the records of completed actions are not easily accessible by the public for review in making informed decisions about hiring a particular "licensed" CAM.
- 33.7% of the completed disciplinary actions are for failures to properly complete and maintain records of "continuing education" requirements.
- 29.3% of the completed actions are for not having a proper license and offering services as a CAM.
- The above numbers are actually significantly higher. At least 791 complaints have been resolved with no publicly available record of the complaint or its resolution.
- The data is clear that Licensing of Community Association Managers is a failed experiment that should be ended as soon as possible.

Lastly, and certainly not the least; as I write this there is not a publicly available update to the fiscal notes for HB19-1212 following the House amendments to the introduced bill.

Again, I ask you to not expend any more of your critical time on HB19-1212. Postpone it and move on to other things on your agenda.

Thanks for your consideration of my input for this very difficult issue.

Respectfully,

Buck Bailey

Condominium Owner and the General Manager for Plaza de Monaco Towers Condominiums Association, Inc.

Community Association Manager (CAM)
 Program Discipline Data Summaries
 As of March 20, 2019

1Continuing Ed Failure	31	33.7%
2Unlicensed/Improper/Expired	27	29.3%
3Failed Supervision	9	9.8%
4Mishandling Funds and/or Improper Record keeping	7	7.6%
5No Insurance	4	4.3%
6Demonstrated Unworthiness	3	3.3%
Criminal Offense	2	2.2%
Fraud, Lying	1	1.1%
Failed to Disclose Fees	1	1.1%
Unknown--LOAs	7	7.6%
Totals	92	

Stipulation-Diversion	47	51.1%
Stipulation-FAO	12	13.0%
Cease and Desist Orders	25	27.2%
ALJ-FAO	1	1.1%
LOAs(not public record)	7	7.6%
Totals	92	

Typical statements in Stipulation for Diversion

The Division's license history records may reflect that Respondent and the Director have executed this Stipulation for Diversion. However, the Division's license history records shall not reflect that formal disciplinary action has been taken against Respondent's community association manager license in this matter.

The Director shall not publish the terms of this Stipulation for Diversion, or a summary thereof, in the "Real Estate News" or any other Division publication. However, Respondent and the Director stipulate and agree that this Stipulation for Diversion shall remain a public record in the custody of the Division and shall be treated as such, unless otherwise provided by the Colorado Open Records Act, the community association manager licensing law statutory provisions or the rules and regulations of the Director.

Community Association Manager (CAM)
 Program Discipline Data Summaries
 As of March 20, 2019

Total \$ Collected by DORA for fines	\$ 37,431.50
Total \$ Stayed by DORA for fines	\$ 51,947.50
Total Fines	<u>\$ 89,379.00</u>
Total complaints received	1173
Total complaints closed by discipline	107
Complaints dismissed at intake	228
# Complaints remain open	47
# Complaints closed other	<u>791</u>
Following Discipline Action	
Total number of orders issued	92
Expired or Inactive licenses	11
Revoked Licenses	7
Suspended Licenses	1

Roster Name	Results	Active	Inactive
AM - Community Association Manager - Associate - Active	711 records found	711	
AM - Community Association Manager - Associate - Inactive	122 records found		122
ENT - Community Association Manager - Entity - Active	426 records found	426	
IM - Community Association Manager - Individual Proprietor - Active	176 records found	176	
IM - Community Association Manager - Individual Proprietor - Inactive	19 records found		19
RM - Community Association Manager - Responsible - Active	463 records found	483	
RM - Community Association Manager - Responsible - Inactive	43 records found		43
CAM License Totals	1980	1796	184
HOA - Home Owner's Association - Active	7634 records found		
DA - HOA Designated Agent - Active	4078 records found		
DA - HOA Designated Agent - Inactive	6 records found		
e-license info as of 4-6-2019			