

## HOA Reform

### Recommendations to improve on the enforcement of home owner's rights, transparency in fees assessments and strengthen and improve upon licensing requirements for HOA property management companies

Comments presented by the Colorado HOA Forum [www.coloradohoaforum.com](http://www.coloradohoaforum.com) email: [coloradohoaforum@gmail.com](mailto:coloradohoaforum@gmail.com)

The Colorado 2020 legislative session will see two Bills introduced: 1) an HOA Property Manager (PM) Licensing Bill which is a revision to the previously vetoed Bill by the Governor due to his observation on the lack of accountability, weak consumer protections, and perceived impediments to those attempting to enter the profession 2) a Bill in response to the State's Sunset Review of the State HOA Office that was required by statute to evaluate the past effectiveness of this Office and what role this Office should assume in the future.

**Proposals:** Below proposals can be implemented with no cost to the taxpayer or place any financial burden on HOAs, property management companies, or home owners. Part I suggests the basic requirements for inclusion in each Bill and contains the most critical, minimal elements for reform in a concise manner. Part II suggests additional and important changes to each Bill that are comprehensive and detailed and previously not addressed and/or improve further upon consumer protections. These Part II suggestions should be included in the Bills and not left to future actions and/or left to be implemented in part or in whole at the discretion of DORA that has in the past refused to include strong and concise consumer protections.

#### **Part I**

**PM licensing:** (see below for additional comments on issues in Bill vetoed by Governor) Suggested changes/additions to any Bill submitted on renewing the licensing program 1) a requirement for PMs to provide a home owner with a detailed receipt to support any fee assessment including what was completed, when, and line item cost to earn the fee 2) a statement in a PMs contract with the HOA and on an any invoice including assessments/fees pertaining to HOA home sale transfer fees that all charges have not previously been reimbursed to the PM through HOA dues and that all such charges are unique and extraordinary to the sale of the home 3) it is a violation of PM licensing rules if a PM is a) involved in or b) observes violations of HOA governing documents or State law by an HOA Board and fails to notify the Board of such conduct and/or recommend corrective action. 4) reduced fees and educational requirements for small PM companies serving less than 30 homes in total to promote entry into the profession and lesson the financial burden on small rural PMs 5) a statement in the PM contract with the HOA that HOA Home Sale Transfer Fee services (providing HOA documentation for home closing, a final billing and settlement statement (aka Status Letter) and similar services to the Title Company) will automatically be charged to the home seller and Title Company unless the home owner notifies the PM that such services will be completed by the home owner, Realtor, or a private sector company. The PM will be required to apprise home owners of this option for completing Transfer Fee services and the process to obtain HOA documentation and a Status Letter no less than four times a year.

**HOA Office Sunset Review on continuing the State's HOA Office:** Suggested changes include:

1) implement the dispute resolution process within the State HOA Office as recommended in the Sunset Review Report 2) the dispute resolution process would include receiving complaints, investigating, rendering decisions and assigning punitive actions 3) the dispute resolution process would only address

violations of an HOA's governing documents and State HOA laws 4) expand the HOA registration process to include a download to the Office of all HOA governing documents required for a home closing and such documents made available to the public, Realtors and others (no privacy information involved) and a certification that all Board members have read their HOAs governing documents and educational materials identified and posted on the DORA website.

\*\*Timeshare developments should be included in Property Manager Licensing and the complaint resolution process within the State HOA Office. Timeshare property owners contribute conservatively \$1 billion to the property management industry and the people managing these fees have no legal requirements for bonding, background checks or credentials.

**Part II: Additional comments concerning HOA Property Manager (aka Community Association Manager (CAM)) Licensing law HB 13-1277, that are of concern in consumer protections:**

The Governor justified veto of HB 1212, continuation of the property manager licensing law, for several reasons among which were lack of consumer protections and transparency in operations and lack of addressing barriers to aspiring entrepreneurs, small businesses and others for entry into the profession: we agree. Below are suggestions to satisfy the Governor's concerns to make any licensing Bill justified:

Any credential or certification accepted by DORA in lieu of educational requirements should not be mentioned in the Bill but only that DORA will develop a list of acceptable credentials and publicly post such information on its' web site. Any "list" that is subject to change should not be in legislation as this presents a tacit endorsement of a private profit-making company giving an advantage and tacit endorsement to competitors not mentioned in the Bill. 12-61-1003 5.a.I

Why does an applicant have to have a high school education or GED? If they complete the educational requirements and pass the tests why should one be required to have completed high school? This requirement locks out those seeking employment or business start-up that otherwise have met all other relevant criteria for licensing. 12-61-1003.4

The criteria for licensing award indicate DORA will determine if the licensee has the moral character to be licensed? This is a highly subjective determinant and opens the pathway to discriminate. This limits the ability to enter the profession. 12-61-1003 3.a

Why is it that an owner of a business or senior level person in a company is exempted from licensing? How can competently they manage and be accountable without understanding the intricacies and responsibilities of a CAM. The licensing requirement for these folks is not an overly burdensome task but an effort to complete educational courses and pass an exam. Delete these items and include verbiage to require chief executives, senior level employees, and anyone supervising management services to be licensed: (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. Also, small business CAMs with the owner/operator/chief executive being of the same person(s) must be licensed as they complete CAM tasks mandating licensing but for larger companies such persons holding similar offices are excluded from having to obtain a license? 12-61-1001. 5(a) Definitions

The law requires a criminal background check but there is no statement as to whether someone with a criminal history can obtain a license and/or if one has such a history which crimes preclude licensing. Additionally, if someone has paid their debt to society should they be punished further by barring them from licensing?

Concerning transparency, accountability, and small business

PM licensing: 1) a requirement for PMs to provide a home owner with a detailed receipt to support any fee assessment (what was completed, when, and line item cost) 2) a statement in a PMs contract with the HOA and on an invoice pertaining to HOA home sale transfer fees that all charges have not been previously reimbursed to the PM by the HOA and that all such charges are unique and extraordinary to the sale of the home 3) it is a violation of PM licensing rules if a PM is a) involved in or b) observes violations of HOA governing documents or State law by an HOA Board and fails to notify the Board of such conduct and recommend corrective action. 4) reduced fees and educational requirements for small PM companies serving less than 30 homes in total to promote entry into the profession and lessen the financial burden on small rural PMs.

[Studies on the implementation of dispute resolution with the State HOA Office.](#)