



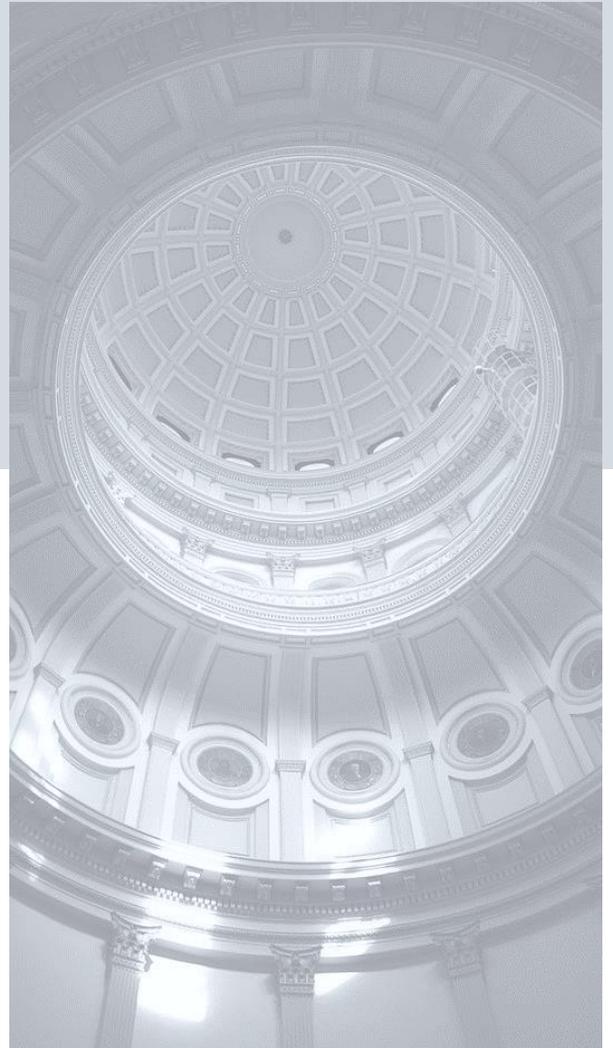
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

HOA Information and Resource Center



October 15, 2019



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2019

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the Office of Legislative Legal Services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the HOA Information and Resource Center. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the program provided under Section 406.5 of Article 61 of Title 12, C.R.S. The report also discusses the effectiveness of the Division of Real Estate in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

HOA Information and Resource Center

SUMMARY

What is regulated?

The HOA Information and Resource Center (Center), which is housed in the Division of Real Estate (Division), is responsible for serving as a repository for complaints against HOAs. The Center also is charged with providing general information to the public concerning HOAs, such as assisting homeowners, associations, managers and declarants in understanding their rights and responsibilities under the Colorado Common Interest Ownership Act (CCIOA), as well as other relevant laws.

Why is it regulated?

There are currently 7,881 active HOAs throughout Colorado, with more than 60 percent of the state's population living under HOA governance. The Center receives approximately 1,543 complaints related to HOAs per calendar year. Also, the Center receives a large number of requests for information. For example, the Center received 5,161 requests for information in the 2017 calendar year.

Who is regulated?

The Center does not provide direct regulatory oversight of HOAs. Instead it serves as a repository for complaints against HOAs. The Center compiles the complaints and provides an annual report to the Director of the Division, which details the types and geographic location of the complaints.

How is it regulated?

The Center is comprised of one individual, the Officer, who is responsible for, among other things, compiling HOA-related complaints.

What does it cost?

In fiscal year 17-18, the total expenditures for the Center were \$165,596, and there were 2.0 full-time equivalent employees associated with the program.

What disciplinary activity is there?

The Center does not have the statutory authority to investigate or impose discipline on HOAs. As such, there were zero disciplinary actions taken.

KEY RECOMMENDATIONS

Continue the Center for five years, until 2025.

The Center is charged with two duties: serve as the central repository for complaints related to HOAs and report the complaints in an annual report, and serve as an information resource related to HOAs. The Center receives an average of approximately 1,543 complaints per calendar year. However, it lacks the authority to act on those complaints. It also receives numerous requests for information. For example, in calendar year 2017, the Center received 5,161 requests for information. All of this illustrates that the Center serves as a useful resource for consumers. Therefore, the General Assembly should continue the Center for five years, until 2025.

Direct the Center to implement a dispute resolution process for HOA complaints.

Currently, the statute does not authorize the Center to investigate or impose discipline on HOAs. The original purpose for the creation of the Center was to track the number and types of complaints against HOAs. As highlighted above, the Center receives an average of more than 1,500 complaints per calendar year. The large volume of complaints against HOAs suggests that there may be many instances where consumers are experiencing harm. It is difficult to quantify the number of complaints that have merit since the Center lacks authority to investigate them. So, the potential for consumer harm exists, but the statute does nothing to address it.

Since many complaints against HOAs exist and consumers are perhaps being harmed, a more equitable avenue to effectively address complaints would be to authorize the Center to investigate complaints. If, after an investigation, Center staff determines that a violation of CCIOA could have occurred, the Center should have the authority to enforce the CCIOA statute to correct violations. This may be accomplished by creating a dispute resolution process where the Center could act as a mediator to resolve issues between an HOA and a consumer.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff interviewed Division staff and other stakeholders, reviewed complaints, interviewed officials with state and national professional associations, reviewed Colorado statutes and rules.

MAJOR CONTACTS MADE DURING THIS REVIEW

City of Boulder
Colorado Association of Realtors
Community Associations Institute
Colorado HOA Forum
Division of Real Estate

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104(6)(b), C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the HOA Information and Resource Center enumerated in Section 406.5 of Article 61 of Title 12, Colorado Revised Statutes (C.R.S.),² shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the HOA Information and Resource Center pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program should be continued and to evaluate the performance of the HOA Information and Resource Center and the Division of Real Estate (Division). During this review, Division staff must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

² House Bill 19-1172 re-codified § 12-61-406.5, C.R.S., and moved it to § 12-10-801, C.R.S. In order to avoid confusion and erroneous citations and references, this sunset report consistently refers to this statutory provision as if it remained in § 12-61-406.5, C.R.S. A comparison table may be found in Appendix A.

Methodology

As part of this review, COPRRR staff interviewed Division staff and other stakeholders, reviewed complaints, interviewed officials with state and national professional associations, reviewed Colorado statutes and rules.

Profile of the Industry

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the industry does, how it works, who it serves and any necessary qualifications.

“Home owner associations (HOAs) are formed by communities with single-family homes or multiple-unit buildings, such as condominiums.”³ The primary purpose of HOAs is to maintain community standards to ensure stable property values. Homeowners automatically become members of an HOA when they purchase property in a community governed by an HOA.

There are currently 7,881 active HOAs throughout Colorado, with more than 60 percent of the state’s population living under HOA governance.⁴

Residents within the community are charged with running an HOA. HOAs have a board of directors, comprised of community residents, which is responsible for creating, modifying and enforcing established rules and governing documents related to the community. The rules are highlighted in documents typically referred to as the Declaration of Covenants, Conditions and Restrictions (CC&Rs).⁵

The CC&Rs establish certain conditions on property owners, such as structural restrictions. Examples of structural restrictions include the type of allowable fencing, landscaping or color of paint for houses.⁶ CC&Rs usually outline penalties for

³ Investopedia. *Homeowners Association - HOA*. Retrieved June 20, 2019, from <https://www.investopedia.com/terms/h/hoa.asp>

⁴ Denverpost.com. *Understanding HOA Governance, Property Rights, State HOA Law*. Retrieved June 25, 2019, from <https://yourhub.denverpost.com/blog/2018/03/understanding-hoa-governance-property-rights-state-hoa-law/211474/>

⁵ Investopedia. *Homeowners Association - HOA*. Retrieved June 20, 2019, from <https://www.investopedia.com/terms/h/hoa.asp>

⁶ Investopedia. *Homeowners Association - HOA*. Retrieved June 20, 2019, from <https://www.investopedia.com/terms/h/hoa.asp>

violations of the HOA rules, which may include fines, forced compliance or in some cases, litigation.⁷

The HOA board of directors is also responsible for establishing fees. Fees are collected to, among other things, maintain common areas (e.g., parks) and amenities such as swimming pools within the community. Fees may also be utilized for trash collection and snow removal services.

Often, HOAs are managed by community association managers (CAMs). CAMs perform a variety of duties on behalf HOAs, including, but not limited to: collecting the fees imposed on homeowners by the HOA and scheduling required maintenance of common areas and amenities. Although HOAs and CAMS are often conflated, they are distinct and separate entities, as highlighted in the Colorado Revised Statutes.

The focus of this sunset review is the HOA Information and Resource Center (Center), which is located in the Division of Real Estate. The main purpose of the Center is to serve as the central repository for complaints against HOAs throughout Colorado. Importantly, the Center does not possess investigative or enforcement authority of complaints filed against HOAs; rather it compiles complaints and subsequently provides a comprehensive report highlighting the types of complaints received.

The Center also is charged with providing general information to the public concerning HOAs. Specifically, the Center assists homeowners, associations, managers, and declarants in understanding their rights and responsibilities under the Colorado Common Interest Ownership Act, as well as other relevant laws.⁸

⁷ Investopedia. *Homeowners Association - HOA*. Retrieved June 20, 2019, from <https://www.investopedia.com/terms/h/hoa.asp>

⁸ Division of Real Estate. *HOA Information & Resource Center*. Retrieved June 24, 2019, from <https://drive.google.com/file/d/0B1VD36mBqe1EbmdXb1BUZDE4bnVhWThTNVZpdERxT0VfYXQw/view>

Legal Framework

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

History of Regulation

The HOA Information and Resource Center (Center) was created by the General Assembly in 2010 via House Bill 10-1278 (HB 1278). HB 1278 established the Center as a central repository for complaints related to HOAs throughout Colorado.

The purpose of the establishment of the Center was to determine and report the number and types of complaints received concerning HOAs. The Center was also created to provide information to consumers and HOA members concerning, among other things, the operations and duties and responsibilities of HOAs.

The Center assists homeowners, associations, managers, and declarants in understanding their rights and responsibilities under the Colorado Common Interest Ownership Act (CCIOA), as well as other relevant laws.⁹

Finally, effective October 1, 2019, the statute governing the Center were moved from section 12-61-406.5, C.R.S., into section 12-10-801, C.R.S., with the passage of House Bill 19-1172. Notwithstanding this recodification, in order to avoid confusion and erroneous citations and references, this sunset report consistently refers to statutory provision as if it remained in section 12-61-406.5, C.R.S. A comparison table may be found in Appendix A.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest,

⁹ Division of Real Estate. *HOA Information & Resource Center*. Retrieved June 24, 2019, from <https://drive.google.com/file/d/0B1VD36mBqe1EbmdXb1BUZDE4bnVhWThTNVZpdERxT0VfYXQw/view>

considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The Center is created in section 12-61-406.5, C.R.S. The Center is housed in the Division of Real Estate (Division) within the Department of Regulatory Agencies, and the head of the Center is the HOA Information Officer (Officer).¹⁰

The Officer is responsible for acting as a clearinghouse for information related to basic rights and duties of unit owners, declarants, and unit owners' associations by:

- Compiling a database about registered associations, including the name, address, email address, if any, website, if any, and telephone number of each;
- Coordinating and assisting in the preparation of educational and reference materials to assist owners, executive boards, board members, and association managers in understanding the rights and responsibilities of:¹¹
 - Open meetings;
 - Proper use of executive sessions;
 - Removal of executive board members;
 - Unit owners' right to speak at meetings of the executive board;
 - Unit owners' obligation to pay assessments and the association's rights and responsibilities in pursuing collection of past due amounts; and
 - Other educational or reference materials that the officer deems necessary.

The Officer is required to possess familiarity with CCIOA.¹² Generally, CCIOA applies to common interest communities that require assessments of their residents. CCIOA, among other things, specifies quorum requirements and other basic standards for meetings and voting. It also details powers and duties of the HOA board, including, but not limited to reserve funds and audits.¹³

¹⁰ § 12-61-406.5(1), C.R.S.

¹¹ § 12-61-406.5(3)(a), C.R.S.

¹² § 12-61-406.5(2), C.R.S.

¹³ Office of Legislative Legal Services. *Application of the Colorado Common Interest Ownership Act (CCIOA) in Subdivisions and Condominium Communities*. Retrieved August 13, 2019, from <https://leg.colorado.gov/sites/default/files/application-of-ccioa-in-subdivisions-and-condos.pdf>

The Officer is also responsible for tracking inquiries and complaints submitted to the Center and reporting them to the Director of the Division, including the number and types of inquiries and complaints.¹⁴

HOAs are required to register with the Center annually. The current fee for the initial registration is \$22, and the renewal fee is \$25. Importantly, HOAs that have annual revenues of less than \$5,000 or are not authorized to make assessments and do not have revenues are exempt from the registration fee, but they are still required to register.¹⁵

¹⁴ § 12-61-406.5(3)(c), C.R.S.

¹⁵ § 38-33.3-401(2)(b), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The HOA Information and Resource Center (Center) is created in section 12-61-406.5, C.R.S. The Center is housed in the Division of Real Estate (Division) within the Department of Regulatory Agencies, and the head of the Center is the HOA Information Officer (Officer).¹⁶

The Center, among other things, serves as a repository for complaints concerning HOAs.

The Officer also assists homeowners, associations, managers, and declarants in understanding their rights and responsibilities under the Colorado Common Interest Ownership Act, as well as other relevant laws.¹⁷ In fact, the Center coordinates monthly forums, which provide general information related to HOAs. Additionally, the Officer convenes informational meetings concerning HOAs to a variety of audiences such as, various real estate boards and HOAs throughout the state. In calendar year 2018, the Center facilitated more than 26 informational outreach activities.

The Center is responsible for providing an annual report to the Director of the Division (Director) regarding the number and types of inquiries and complaints received.¹⁸

¹⁶ § 12-61-406.5(1), C.R.S.

¹⁷ Division of Real Estate. *HOA Information & Resource Center*. Retrieved June 24, 2019, from <https://drive.google.com/file/d/0B1VD36mBqe1EbmdXb1BUZDE4bnVhWThTNVZpdERxT0VfYXQw/view>

¹⁸ §12-61-406.5(3)(c), C.R.S.

Table 1 shows the Division’s expenditures and full-time equivalent (FTE) employees associated with the Center in the past five calendar years.

Table 1
Total Program Expenditures in Calendar Years 2014 through 2018

Calendar Year	Total Program Expenditure	FTE
2014	\$93,734 (January to June 2014)	2.0
2015	\$220,458	2.0
2016	\$230,688	2.0
2017	\$150,514	2.0
2018	\$165,596	2.0

For calendar year 2014, Division staff was able to provide partial year expenditure information only. In July 2014, the Division began utilizing a new financial tracking system, and financial data for the previous months were unable to be recovered.

Expenditures in calendar years 2015 and 2016 were the highest due to the implementation of the Division’s e-licensing system, which is utilized to register HOAs.

In calendar year 2018, the Center devoted 2.0 FTE to the program. The FTE are as follows:

- Administrator IV (Officer)—1.0 FTE is responsible for acting as a clearinghouse for information related to basic rights and duties of unit owners, declarants, and unit owners’ associations, and serving as a repository for HOA complaints.
- Program Assistant I—1.0 FTE is responsible for, among other things, addressing general questions concerning HOAs and responding to questions related to the HOA registration system.

Registration

HOAs are required to secure a registration from the Center annually. The current fee for an initial registration is \$22, and the renewal fee is \$25. HOAs that have revenues of \$5,000 or less or are not authorized to make assessments and do not have revenue are exempt from paying the registration fee, but are still required to register.

Table 2 delineates the total number of registered HOAs in calendar years 2014 through 2018.

Table 2
HOA Registration Information

Calendar Year	Registered HOAs
2014	8,597
2015	8,015
2016	7,753
2017	7,815
2018	7,881

As highlighted in Table 2, the total number of registered HOAs has decreased from 8,597 in calendar year 2014, to 7,881 in calendar year 2018. Generally, the reason for the decrease is attributable to HOAs lacking the knowledge that an annual registration is required.

If an HOA fails to renew its registration, it may not impose or enforce certain liens and is limited in the actions it may pursue or specific means of enforcement it may utilize.¹⁹

The Center provides renewal notices to HOAs prior to the expiration of their registrations. If an HOA allows its registration to expire, the Division also provides notices to it to renew the registration.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

One of the main duties of the Center is to serve as a repository for complaints concerning HOAs. In fact, the Center is required to compile complaints and issue an annual report detailing those complaints. However, the Center has no authority to investigate or otherwise become involved in those complaints.

Table 3 highlights the nature and total number of complaints filed with the Center in calendar years 2014 through 2018.

¹⁹ Colorado Division of Real Estate, 2018 Annual Report - HOA Information and Resource Center, p4.

Table 3
Number of Complaints Submitted to the Center
in Calendar Years 2014 through 2018

Nature of Complaints	2014	2015	2016	2017	2018
Not Following Governing Documents	191	177	193	120	175
Failing to Maintain/Repair	183	237	187	153	185
Failing to Communicate	165	193	184	129	105
Failure to Produce	91	131	141	101	129
Accounting	100	165	178	90	55
Harassment	78	101	121	71	106
Meetings	51	88	104	68	58
Elections/Voting	55	78	98	59	67
Fraud/Misappropriation	39	53	77	45	25
Excessive Assessments/Fees/Fines	87	108	127	84	84
Conflict of Interest	66	63	48	20	25
Insurance	25	22	33	13	12
Parking	14	17	24	16	17
Landscaping	0	0	0	3	4
Liens	0	0	6	0	2
Nuisance	0	0	1	0	4
Discrimination	22	19	31	15	13
Enforcement of Covenants or Rules	170	177	205	139	150
Reserves	18	19	30	16	19
Regulatory Compliance	61	130	159	74	41
Declarant Transfer/Control	4	16	4	6	5
Other - Green Energy, Pets, Pools, Satellite Dishes	14	13	6	13	2
Total	1,434	1,807	1,957	1,235	1,283

Importantly, the data in Table 3 for calendar year 2014 and January through June 30, 2015 include complaints related to HOAs and community association managers (CAMs). On July 1, 2015, the CAM licensing program was implemented, and complaints related to CAMs were no longer captured in the Center’s complaint data.

As illustrated in Table 3, there were numerous complaints filed with the Center in the past five calendar years. The three largest categories, in sequential order, were:

HOAs failing to perform maintenance and repairs, HOAs not following governing documents, and HOAs failing to communicate.

Common complaints for HOAs failing to perform maintenance and repairs included instances where building structures and amenities did not undergo timely routine maintenance, or it took an excessive amount of time to complete maintenance and repairs.²⁰ Often, these complaints allege that the neglected maintenance resulted in higher repair bills, a large increase in assessments, or a large special assessment for homeowners for underfunded reserves.²¹

Many complaints were related to HOAs not following governing documents. Specifically, some complaints alleged that board members intentionally failed to follow certain governing document provisions.²² There were also complaints associated with HOA governing documents not being updated in a timely fashion in order to comply with the Colorado Common Interest Ownership Act.²³

Additionally, many complaints were related to communication issues. For example, many complaints highlighted the absence of communication with homeowners concerning community events, board meetings and other community information issues.²⁴

The Center is responsible for gathering and reporting complaints associated with HOAs. It does not have investigative or enforcement authority over complaints. As such, it is impossible to discern which complaints have merit, and which complaints are frivolous.

The Officer is responsible for providing an annual report to the Director on the number and types of complaints filed against HOAs. The Officer has regularly fulfilled this requirement.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Since the purpose of the Center is to serve as a repository for HOA complaints and provide information related to HOAs, this criterion is not applicable.

²⁰ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

²¹ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

²² Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

²³ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

²⁴ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the HOA Information and Resource Center for five years, until 2025.

The HOA Information and Resource Center (Center) was created by the General Assembly via House Bill 10-1111, and is housed in the Division of Real Estate (Division). The Center was charged with two duties: serve as the central repository for complaints related to HOAs and report the complaints in an annual report, and serve as an information resource related to HOAs.

The Center receives an average of approximately 1,543 complaints per calendar year. Information obtained during this sunset review indicates that homeowners, at times, conflate HOAs and community association managers (CAMs). Some complaints received by the Center were related to the actions of a CAM rather than the HOA itself. Perhaps the confusion stems from the fact that the majority of HOAs in Colorado utilize CAMs for the day-to-day operations of the HOA and it is understandably difficult to properly attribute responsibility for a particular act.

HOAs and CAMs are distinct, separate entities. Often, HOAs are managed by CAMs. CAMs perform a variety of duties on behalf HOAs, including, but not limited to: collecting the fees imposed on homeowners by the HOA and scheduling required maintenance of common areas and amenities.

Importantly, there were numerous complaints filed with the Center that did, in fact, relate to the actions of HOAs. Common complaints for HOAs failing to perform maintenance and repairs included instances where building structures and amenities did not undergo timely routine maintenance, or it took an excessive amount of time to complete maintenance and repairs.²⁵ In fact, in calendar years 2014 through 2018, there were 945 complaints filed with the Center related to maintenance and repair issues. Often, these complaints allege that the neglected maintenance resulted in higher repair bills, a large increase in assessments, or a large special assessment for homeowners for underfunded reserves.²⁶

Many complaints were related to HOAs not following governing documents. In fact, the Center received 856 complaints related to HOAs not following governing documents in calendar years 2014 through 2018. Some complaints alleged that board

²⁵ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

²⁶ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

members intentionally failed to follow certain governing document provisions.²⁷ There were also complaints associated with HOA governing documents not being updated in a timely manner in order to comply with the Colorado Common Interest Ownership Act (CCIOA).²⁸

Additionally, many complaints were related to communication issues. For example, many complaints highlighted the absence of communication with homeowners concerning community events, board meetings and other community information issues.²⁹ In calendar years 2014 through 2018, there were 776 complaints filed with the Center related to communication issues.

The first sunset criterion asks whether regulation, in this case the collection of complaints and the resulting reports created by the Center, is necessary to protect the public. The complaints highlighted in the annual reports illustrate a potential for consumer harm; however, the Center is unable to investigate complaints for validity, and it is currently unable to act, via regulatory oversight, on any complaints related to HOAs. Thus, Recommendation 2 in this report recommends the implementation of a dispute resolution process for HOA complaints.

Additionally, the Center serves as an information source related to HOAs. Specifically, the Center assists homeowners, associations, managers, and declarants in understanding their rights and responsibilities under CCIOA, as well as other relevant laws.³⁰

The Center receives a large number of requests for information. For example, during the 2017 calendar year, the Center received 5,161 requests for information. The types of requests varied and included categories such as:³¹

- Meeting issues, including quorums, meeting notices, meeting minutes, owner's meetings, board meetings and executive sessions, as well as meeting procedures and best practices running a meeting;
- Harassment, intimidation and retaliation concerns in the community; and
- Maintenance of records by the HOA, and the disclosure and production of HOA records to homeowners.

The aforementioned information illustrates that the Center serves as a useful resource for consumers regarding issues associated with HOAs, and it serves as a repository for complaints. Therefore, the General Assembly should continue the Center for five years, until 2025. The current statute, however, does nothing to protect consumers from harm. Although the Center should be continued, it should be

²⁷ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

²⁸ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

²⁹ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

³⁰ Division of Real Estate. *HOA Information & Resource Center*. Retrieved June 24, 2019, from <https://drive.google.com/file/d/0B1VD36mBqe1EbmdXb1BUZDE4bnVhWThTNVZpdERxT0VfYXQw/view>

³¹ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P10.

continued if it is authorized to actively investigate consumer complaints, and provide adequate protections to consumers.

Recommendation 2 - Direct the Center to implement a dispute resolution process for HOA complaints.

Currently, the statute does not authorize the Center to investigate or impose discipline on HOAs. The original purpose for the creation of the Center by the General Assembly was to track the number and types of complaints against HOAs throughout Colorado. As highlighted in Recommendation 1, the Center receives an average of more than 1,500 complaints per calendar year. Importantly, some complaints in calendar year 2014 and until July 1, 2015, were related to the actions of CAMs, which are utilized for day-to-day operations of HOAs. The Center compiled data concerning HOA complaints and issues an annual report to the Director detailing the number and types of complaints. In the past five calendar years, there were 7,716 complaints filed.

The current practice, as outlined in the statute, requires the Center to serve as a repository for HOA complaints and publish an annual report highlighting those complaints. In calendar years 2014 through 2018, the Center received 7,716 complaints. Although receiving complaints and reporting those complaints in an annual report may provide useful information, it does nothing to protect consumers.

As highlighted earlier, common complaints for HOAs failing to perform maintenance and repairs included instances where building structures and amenities did not undergo timely routine maintenance, or it took an excessive amount of time to complete maintenance and repairs.³² In fact, in calendar years 2014 through 2018, there were 945 complaints filed with the Center related to maintenance and repair issues. Often, these complaints allege that the neglected maintenance resulted in higher repair bills, a large increase in assessments, or a large special assessment for homeowners for underfunded reserves.³³

Since the Center does not have the statutory authority to investigate complaints filed against HOAs, it is impossible to determine whether those complaints have merit. However, the large number of complaints in each calendar year (approximately 1,500) suggests that violations of CCIOA may be occurring, which could result in consumer harm. For example, failing to perform timely maintenance and repairs on building structures could result in additional costs to fix any issues. The additional cost could result in additional fees assessed to residents of the HOA.

At present, if a violation of the CCIOA by the HOA is alleged, the only avenue consumers have is to take the HOA to court to hear the grievance. The current

³² Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

³³ Colorado Division of Real Estate, 2017 Annual Report - HOA Information and resource Center. P12.

process is both expensive and time consuming for consumers. According to Division staff, very few complaints against HOAs are actually brought before the courts.

The first sunset criterion asks whether regulation, in this case the collection of complaints and the resulting reports created by the Center, is necessary to protect consumers. The large volume of complaints against HOAs (more than 7,700 in the past five calendar years) suggests that there may be many instances where consumers are experiencing harm. It is difficult to quantify the number of complaints that have merit since the charge of the Center is to simply compile complaints, not investigate them. So, the potential for consumer harm exists, but the statute does nothing to address it.

Since many complaints against HOAs exist and consumers are perhaps being harmed, a more equitable avenue to effectively address complaints would be to authorize the Center to investigate complaints. If, after an investigation, Center staff determines that a violation of CCIOA could have occurred, the Center should have the authority to enforce of the CCIOA statute to correct violations. This may be accomplished by creating a dispute resolution process where the Center could act as a mediator to resolve issues between an HOA and a consumer. If the Center is unable to resolve the issue via mediation, the Center could issue a written decision to all parties.

If the parties do not concur with the Center's written decision, one or both parties could request that the complaint be heard by an administrative law judge (ALJ). The ALJ could determine whether a violation of CCOIA occurred, then he or she could determine the correct action to rectify the situation.

Establishing a dispute resolution process for HOAs is a reasonable alternative to "traditional" regulation, such as a licensing program. Licensing programs are more suitable for individuals, such as mental health professionals. HOAs are comprised of volunteers from the community, not professionals; thus the implementation of a licensing program is not necessarily applicable. Further, licensing, and other types of regulation are most commonly geared toward professional occupations or professions.

The establishment of a dispute resolution process addresses the second sunset criterion, which asks whether the current regulation is the least restrictive form of regulation consistent with public protection.

Some alternatives to a dispute resolution process include licensing HOA board members or requiring a minimum level of training to serve on an HOA. However, these alternatives could be overly restrictive for HOA board members who are volunteers providing a service to the community in which they live. Typically, governmental licensing programs are meant for professions, such as physicians and pharmacists. These professionals undergo extensive training and are required to complete a minimum level of education in order to practice in Colorado. Again, HOA board members are volunteers, so it is impractical to require volunteers to obtain a license when they are performing volunteer services. Implementing a licensing

requirement for HOA board members would be unnecessarily restrictive and could dissuade members of the community from serving as board members, which is not a practical alternative to the dispute resolution process for consumer protection. Such an approach may not even get at the heart of the matter - resolution of complaints.

In this instance, a dispute resolution process would be the least restrictive form of governmental intervention because it would not require additional regulatory requirements of the HOA. That is, HOAs that do not have any complaints against them would not be required to comply with any additional regulatory requirements. If, however, a complaint is filed, the HOA could be required to defend its actions (or inaction) related to the complaint.

Additionally, the seventh sunset criterion asks whether complaint, investigation and disciplinary procedures adequately protect the public. Currently, the statute requires the Center to serve as a repository for HOA-related complaints only. It does not authorize the Center to investigate complaints nor does it allow the Center to take action for any violations. As such, the Center, with its current statutory authority, is not providing protection to consumers.

Creating a dispute resolution process would assist consumers who have valid complaints against HOAs and ensure that their concerns are adequately addressed in a formal, binding forum. Implementation of a dispute resolution process could assist consumers with unscrupulous actions of HOAs and ultimately provide protections to consumers.

Also, the creation of a dispute resolution process is not without precedent. The General Assembly created a similar process via House Bill 19-1309 (HB 1309), the Mobile Home Park Act Dispute Resolution and Enforcement Program. This bill authorizes the Department of Local Affairs (DOLA) to investigate complaints concerning mobile home parks, serve as a mediator to resolve complaints, provide written determination regarding whether a violation occurred and if any action is necessary, including refunding improper fees.

House Bill 1309 also implements a dispute resolution process between consumers and mobile home park operators when one or both parties disputes the DOLA's conclusion concerning a violation of the Mobile Home Park Act.

In order to ensure that consumers who live in HOA communities are adequately protected, the General Assembly should implement a formal process to provide oversight of HOAs. Specifically, a process similar to the Mobile Home Park Act Dispute Resolution and Enforcement Program should be created. Doing so will enable consumers to have a regulatory process to address and resolve complaints against HOAs.

Appendix A - Title 12 Recodification Table

This table shows provisions of Part 4 of Article 61 of Title 12 of the Colorado Revised Statutes that were relocated as a result of the passage of House Bill 19-1172, concerning an organizational recodification of Title 12.

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-61-401 IP	12-10-501 IP	12-61-405(1)(a)	12-10-505(1)(a)
12-61-401(1)	12-10-501(1)	12-61-405(1)(b)	12-10-505(1)(b)
12-61-401(2)	12-10-501(2)	12-61-405(1)(c)	12-10-505(1)(c)
12-61-401(2.5)	12-10-101(3) [similar]	12-61-405(1)(d)	12-10-505(1)(d)
12-61-401(3)(a)	12-10-501(3)(a)	12-61-405(1)(e)	12-10-505(1)(e)
12-61-401 IP(3)(b)(I)	12-10-501 IP(3)(b)(I)	12-61-405(1)(f)	12-10-505(1)(f)
12-61-401(3)(b)(I)(A)	12-10-501(3)(b)(I)(A)	12-61-405(1)(g)	12-10-505(1)(g)
12-61-401(3)(b)(I)(B)	12-10-501(3)(b)(I)(B)	12-61-405(1)(i)	12-10-505(1)(h)
12-61-401(3)(b)(I)(C)	12-10-501(3)(b)(I)(C)	12-61-405(1)(j)	12-10-505(1)(i)
12-61-401 IP(3)(b)(II)	12-10-501 IP(3)(b)(II)	12-61-405(1)(k)	12-10-505(1)(j)
12-61-401(3)(b)(II)(A)	12-10-501(3)(b)(II)(A)	12-61-405(1)(l)	12-10-505(1)(k)
12-61-401(3)(b)(II)(B)	12-10-501(3)(b)(II)(B)	12-61-405(1)(m)	12-10-505(1)(l)
12-61-401(3)(b)(II)(C)	12-10-501(3)(b)(II)(C)	12-61-405(1.5)	12-10-505(2)
12-61-401(3)(b)(II)(D)	12-10-501(3)(b)(II)(D)	12-61-405(2)	12-10-505(3)
12-61-401(3)(b)(II)(E)	12-10-501(3)(b)(II)(E)	12-61-405(2.5)	12-10-505(4)
12-61-401(4)	12-10-501(4)	12-61-405(3)	12-10-505(5)
12-61-402	12-10-502	12-61-406	12-10-506
12-61-402(1)	12-10-502(1)	12-61-406(1)	12-10-506(1)
12-61-402(2)	12-10-502(2)	12-61-406(1.2)	12-10-506(2)
12-61-403	12-10-503	12-61-406(1.5)	12-10-506(3)
12-61-403(1)	12-10-503(1)	12-61-406(1.6)	12-10-506(4)
12-61-403 IP(2)(a)	12-10-503 IP(2)(a)	12-61-406(2)	12-10-506(5)
12-61-403(2)(a)(I)	12-10-503(2)(a)(I)	12-61-406 IP(2.5)	12-10-506 IP(6)
12-61-403(2)(a)(II)	12-10-503(2)(a)(II)	12-61-406(2.5)(a)	12-10-506(6)(a)
12-61-403(2)(a)(IV)	12-10-503(2)(a)(III)	12-61-406(2.5)(b)	12-10-506(6)(b)
12-61-403(2)(a)(V)	12-10-503(2)(a)(IV)	12-61-406(3)	12-10-506(7)
12-61-403(2)(a)(VI)	12-10-503(2)(a)(V)	12-61-406(4)	12-10-506(8)
12-61-403(2)(a)(VII)	12-10-503(2)(a)(VI)	12-61-406.5	12-10-801
12-61-403(2)(a)(VIII)	12-10-503(2)(a)(VII)	12-61-406.5(1)	12-10-801(1)
12-61-403(2)(b)	12-10-503(2)(b)	12-61-406.5(2)	12-10-801(2)
12-61-403 IP(3)	12-10-503 IP(3)	12-61-406.5 IP(3)(a)	12-10-801 IP(3)(a)
12-61-403(3)(a)	12-10-503(3)(a)	12-61-406.5(3)(a)(I)	12-10-801(3)(a)(I)
12-61-403(3)(b)	12-10-503(3)(b)	12-61-406.5 IP(3)(a)(II)	12-10-801 IP(3)(a)(II)
12-61-403(3)(c)	12-10-503(3)(c)	12-61-406.5(3)(a)(II)(A)	12-10-801(3)(a)(II)(A)
12-61-403(3)(d)	12-10-503(3)(d)	12-61-406.5(3)(a)(II)(B)	12-10-801(3)(a)(II)(B)
12-61-403(3)(e)	12-10-503(3)(e)	12-61-406.5(3)(a)(II)(C)	12-10-801(3)(a)(II)(C)
12-61-403(3)(f)	12-10-503(3)(f)	12-61-406.5(3)(a)(II)(D)	12-10-801(3)(a)(II)(D)

Prior to October 1, 2019	October 1, 2019 and Thereafter	Prior to October 1, 2019	October 1, 2019 and Thereafter
12-61-403(3)(g)	12-10-503(3)(g)	12-61-406.5(3)(a)(II)(E)	12-10-801(3)(a)(II)(E)
12-61-403(3)(h)	12-10-503(3)(h)	12-61-406.5(3)(a)(II)(F)	12-10-801(3)(a)(II)(F)
12-61-403(3)(i)	12-10-503(3)(i)	12-61-406.5(3)(a)(III)	12-10-801(3)(a)(III)
12-61-403(3)(i.5)	12-10-503(3)(j)	12-61-406.5(3)(a)(IV)	12-10-801(3)(a)(IV)
12-61-403(3)(j)	12-10-503(3)(k)	12-61-406.5 IP(3)(b)	12-10-801 IP(3)(b)
12-61-403(3.5)	12-10-503(4)	12-61-406.5(3)(b)(I)	12-10-801(3)(b)(I)
12-61-403(5)	12-10-503(5)	12-61-406.5(3)(b)(II)	12-10-801(3)(b)(II)
12-61-404	12-10-504	12-61-406.5(3)(c)	12-10-801(3)(c)
12-61-404(1)	12-10-504(1)	12-61-406.5(4)	12-10-801(4)
12-61-404(2)	12-10-504(2)	12-61-406.5(5)	12-10-801(5)
12-61-404(3)	12-10-504(3)	12-61-406.5(6)	12-10-801(6)
12-61-404(4)	12-10-504(4)	12-61-407	12-10-507
12-61-405	12-10-505	12-61-408	12-10-508
12-61-405 IP(1)	12-10-505 IP(1)		