



# COLORADO REAL ESTATE JOURNAL

THE COMMUNICATION CHANNEL OF THE COMMERCIAL REAL ESTATE COMMUNITY

JUNE 4, 2014 – JUNE 17, 2014

## New HOA manager licensing: Commission proposes new rules

According to the Colorado Real Estate Commission, property management is one of the leading sources of complaints received by the commission. Pursuant to C.R.S. § 12-61-101(2)(a)&(b), the leasing and subsequent management for a fee or compensation is included among the activities for which a license is required. *Commission Position Statement 27.* Hence, it is already the case that if a property manager is responsible for negotiating leases with tenants, Colorado law requires the manager to be licensed by the Colorado Division of Real Estate.

To help ensure the competency of community association managers and management company executives responsible for supervising community association managers, in 2013 new statutory provisions were enacted by the Colorado Legislature aimed at regulating persons who manage the affairs of common ownership communities under the Colorado Common Interest Ownership Act. Starting July 1, 2015, community association managers, management company CEOs and executives of management companies who directly supervise managers will be required to be licensed by the division of real estate.

Under the new statutory provisions, community association managers, including any person, firm, partnership, limited liability company association or corporation that engages in any of the following activities for a fee or compensation must be licensed: (a) receiving, depositing, controlling or disbursing funds of the common interest community, preparing budgets, or preparing other financial documents; (b)



**William H. Eikenberry, Esq.**  
Attorney, Darling Milligan Smith & Leech PC, Denver

contracting for or coordinating maintenance or property and facilities of the common interest community; (c) conducting property inspections, administering applications for architectural review, and keeping records of violations of the governing documents of the common interest community; and (f) performing other services relating to the day-to-day operation of the common interest community.

(Common interest community means real estate described in a declaration – a declaration is any recorded instruments however denominated, that create a common interest community, including any amendments to those instruments and also including, but not limited to, plats and maps – with respect to which a person, by virtue of such person's ownership of a unit, is obligated to pay for real estate taxes, insurance premiums, maintenance, or improvement of other real estate described in a declaration).

Among other things, the statute specifically prohibits (and subjects the licensee to fines and permanent license revocation) a licensee from (i) knowingly

assisting in the creation and implementation of a reserve program for the replacement of capital assets; (c) assisting in the provision of notice or conduct of meetings of board members or unit owners; (d)

misrepresenting or making false promises through agents, advertising or otherwise; (ii) violating directly or indirectly, any provision of Colorado or federal housing laws; (iii) knowingly violating or knowingly directing others to violate CCIOA; (iv) failing to account for or remit, within a reasonable time, any moneys coming into the licensee's possession that belong to others, and failing to keep records relative to such monies; and (v) in the case of a manager who employs others or is designated to act on behalf of a licensed entity, failing to exercise reasonable supervision over the activities of employees.

The commission is in the process of developing rules for licensing and enforcement, and the public comment period just ended. Rules proposed by the commission include provisions for maintenance and production of records, advertising, maintaining contact information, contracts, designated manager responsibilities and disclosure of conflicts. Notably, it is proposed that if the community association manager or community association management company agrees to hold and maintain records for the common interest community, the terms and conditions of such record maintenance and retention must be in a written agreement between the association manager/management company and the common interest community. Additionally, it is proposed that all contracts, agreements, authorizations and disclosures between the association manager/management company and a common interest community must be in writing and must contain the entire

agreement of the parties. The agreement must include, but not be limited to, the following: (a) beginning and ending date of the contract; (b) details of all compensation, fees and charges; (c) cancellation rights of the parties; (d) record retention and distribution policy; (e) errors and omissions insurance coverage; (f) fidelity bond coverage; (g) a general description of the records to be kept and the accounting or bookkeeping system to be used; and (h) the common interest community manager's license number.

The proposed rules also provide that any common interest community association that employs individuals who perform activities requiring an association manager's license must designate a qualified active manager. Responsibilities of designated managers include maintaining all trust accounts and trust account records, providing for a *reasonable level of supervision* over the licensed activities of all employees and providing adequate supervision of licensed activities for all offices operated by the community association management company. As further set forth in the proposed rules, among other things, reasonable supervision of licensees includes, but is not limited to, maintaining a written policy describing the duties and responsibilities of licensees employed, reviewing all common interest community contracts, agreements and authorizations to ensure compliance with all applicable commission rules, and ensuring that licensed individuals comply with insurance requirements.▲