

**DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF REAL ESTATE
COMMUNITY ASSOCIATION MANAGERS
4 CCR 725-7**

**EMERGENCY RULES
June 19, 2019**

G RULES – DECLARATORY ORDERS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of emergency rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Director of Real Estate to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

- Section 1. Statement of Basis and Authority
- Section 2. Scope and Purpose
- Section 3. Applicability
- Section 4. G Rules - Declaratory Orders
- Section 5. Effective Date

Section 1. Statement of Basis and Authority

The statutory basis for the rules titled Rules Regarding Community Association Managers is Part 10 of Title 12, Article 61, Colorado Revised Statutes, as amended.

Section 2. Scope and Purpose

The Director of the Division of Real Estate finds that immediate adoption of these emergency rules is imperatively necessary to comply with state law, including §§ 12-61-1001, et seq., C.R.S. (the “Act”) and that compliance with the rulemaking requirements of § 24-4-103, C.R.S., applicable to non-emergency rules, would be contrary to the public interest.

Veto of House Bill 19-1212 repeals the authority of the Division of Real Estate (“Division”) and the Division Director in the oversight and administration of the Community Association Managers Program. As a result, the existing rules need to be repealed effective June 30, 2019 to be in compliance with the veto of House Bill 19-1212.

Without the immediate adoption of these emergency rules, the public’s interest is not served. Wherefore, the Director, pursuant to § 24-4-103(6), C.R.S. has an obvious and stated need to adopt these rules.

Section 3. Applicability

The emergency rules govern community association managers who are subject to the requirements of Part 10 of Title 12, Article 61 of the Colorado Revised Statutes.

Section 4. G Rules – Declaratory Orders

~~G RULES – DECLARATORY ORDERS~~

~~G-1) Any person may petition for a declaratory order. REPEALED (Effective June 30, 2019)~~

~~Any person may petition the Director for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions of the Act, the Director rules, or of any order of the Director.~~

~~G-2) Director determines whether to rule. REPEALED (Effective June 30, 2019)~~

~~The Director will determine, in his or her discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Director determines he or she will not rule upon such a petition, the Director will issue a written order disposing of the same, stating therein his or her reasons for such action. A copy of such order will be provided to the petitioner.~~

~~G-3) Director considerations. REPEALED (Effective June 30, 2019)~~

~~In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:~~

- ~~1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision of the Act, the Director rules, or order of the Director;~~
- ~~2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision of the Act, the Director rules, or order of the Director, which matter or investigation will be specified by the Director;~~
- ~~3) Whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Director or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision of the Act, the Director rules, or order of the Director, which matter or investigation will be specified by the Director and in which petitioner may intervene;~~
- ~~4) Whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion; and~~
- ~~5) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statutory provision of the Act, the Director rules, or order of the Director in question.~~

~~G-4) Petition contents. REPEALED (Effective June 30, 2019)~~

~~Any petition filed pursuant to this rule will set forth the following:~~

- ~~1) The name and address of the petitioner and whether the petitioner holds a license issued pursuant to §§ 12-61-1001, et seq., C.R.S.~~
- ~~2) The statute, rule or order to which the petition relates.~~
- ~~3) A concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.~~
- ~~4) A concise statement of the legal authorities, if any, and such other reasons upon which the petitioner relies.~~
- ~~5) A concise statement of the declaratory order sought by the petitioner.~~

~~G-5) Procedures if the Director will rule. REPEALED (Effective June 30, 2019)~~

~~If the Director determines that he or she will rule on the petition, the following procedures will apply:~~

- 1) ~~The Director may, in his or her discretion, rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a) ~~Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition;~~
 - b) ~~The Director may order the petitioner to file a written brief, memorandum or statement of position;~~
 - c) ~~The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;~~
 - d) ~~The Director may dispose of the petition on the sole basis of the matters set forth in the petition;~~
 - e) ~~The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;~~
 - f) ~~The Director may take administrative notice of facts pursuant to the Administrative Procedure Act, § 24-4-105(8), C.R.S., and utilize his or her experience, technical competence and specialized knowledge in the disposition of the petition;~~
 - g) ~~If the Director rules upon the petition without a hearing, he or she will issue a written order, stating therein his or her basis for the order. A copy of such order will promptly be transmitted to the petitioner.~~~~
- 2) ~~The Director may, in his or her discretion, set the petition for hearing upon due notice to the petitioner for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing will set forth, to the extent known, the factual or other matters into which the Director intends to inquire. For the purpose of such a hearing the petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Director to consider.~~

~~G-6) Parties to proceedings. REPEALED (Effective June 30, 2019)~~

~~The parties to any proceeding pursuant to this rule will be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene will set forth the same matters as required by Rule G-4. In such a case, any reference to a "petitioner" in this rule also refers to any person who has been granted leave to intervene by the Director.~~

~~G-7) Orders subject to judicial review. REPEALED (Effective June 30, 2019)~~

~~Any declaratory order or other order disposing of a petition pursuant to this Rule G will constitute agency action subject to judicial review pursuant to § 24-4-106, C.R.S.~~

Section 5. Effective Date

These emergency rules shall be effective June 30, 2019.