

REDLINE

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

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING
July 30, 2019**

F RULES - PROFESSIONAL STANDARDS - INVESTIGATIONS

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed 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 the Division of Real Estate ("Director") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules related to community association managers.

STATEMENT OF BASIS

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.

STATEMENT OF PURPOSE

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 As a result, the existing rules need to be repealed to be in compliance with the veto of House Bill 19-1212.

SPECIFIC PURPOSE OF THIS RULEMAKING

The specific purpose of these rules is to repeal key terms and regulations pertaining to the Community Association Managers Program, pursuant to veto of House Bill 19-1212.

PROPOSED NEW, AMENDED AND REPEALED RULES

Deleted material is showed by ~~struck through~~; new material is indicated by underline. Rules, or portions of rules, which are unaffected are reproduced. Readers are advised to obtain a copy of the complete rules of the Board at www.dora.colorado.gov/dre.

~~F RULES - PROFESSIONAL STANDARDS - INVESTIGATIONS~~

~~F-1) Maintenance and production of records-~~ Repealed (Effective September 30, 2019)

- ~~1) If a CAM or CAM company agrees to hold and maintain a common interest community's documents and association records, the CAM or CAM company must~~

~~maintain them in a safe and secure manner. Safe and secure manner means that reasonable measures must be taken to minimize the risk of loss, damage, or theft.~~

- ~~a) All such documents and association records are the property of the common interest community. The CAM or CAM company must also maintain copies of such documents and association records for their own files as set forth in Subsection 2 of this Rule F-1.~~
 - ~~b) If the CAM or CAM company agrees to hold and maintain documents and association records for the common interest community, the terms and conditions of such maintenance and retention must be set forth in a written agreement between the CAM or CAM company and the common interest community.~~
 - ~~c) While a management agreement is in effect between a common interest community and a CAM or CAM company, the CAM or CAM company acting as a manager for the common interest community must make available to the common interest community, at no cost or expense, all documents and association records related to the management services for the common interest community that are necessary for the common interest community to perform its duties and functions pursuant to Colorado law.~~
 - ~~d) Within 30 calendar days of the termination of a management agreement with the common interest community, a CAM or CAM company who acted as a manager for the common interest community must produce all documents and association records related to the management services to the common interest community at no cost or expense, unless otherwise agreed to in writing by both the common interest community and the CAM or CAM company.~~
 - ~~e) Except as otherwise set forth in Subsections (1)(c) and (1)(d) of this Rule F-1, a CAM or CAM company may impose a reasonable charge, which may be collected in advance and may cover the costs of labor and material, for copies of the common interest community's documents and association records being maintained by the CAM or CAM company. The charge may not exceed the estimated cost of production and reproduction of the records.~~
- ~~2) For investigation and enforcement purposes, a CAM or CAM company must keep and retain a copy of the common interest community's documents and association records maintained and produced during the management of the common interest community for a minimum period of 3 years following termination of the management agreement. This must be done at no cost or expense to the common interest community, unless otherwise agreed to in writing by both the common interest community and CAM or CAM company. A CAM and CAM company must produce for inspection by an authorized representative of the Director any document or record as may be reasonably necessary for investigation or audit in the enforcement of §§ 12-61-1010 and 12-61-1002(3)(c), C.R.S., and the Director rules. Failure to submit any such documents or records within the time set by the Director in its notification will be grounds for disciplinary action unless the Director has granted an extension of time for such production.~~
- ~~3) All required records may be maintained in an electronic format as permitted by §§ 24-71.3-101, et seq., C.R.S. An electronic record means any record generated, communicated, received, or stored by electronic means. Such electronic records must be produced upon request by the Director and must be in a format that has the continued capability to be retrieved and legibly printed. Electronic records must be printed and produced upon request of the Director, or by the common interest community, or their designee.~~

~~F-2) Advertising.~~ Repealed (Effective September 30, 2019)

- ~~— A CAM that advertises community association management services for a common interest community must do so in the name of the licensed CAM and the CAM company under which the licensee is licensed.~~

~~F-3) Licensee must respond to complaint or audit notice in writing.~~ Repealed (Effective September 30, 2019)

- ~~— When a licensee has received written notification from the Director, or a representative of the Director, that: (1) a complaint has been filed against the licensee, (2) the licensee has been selected for an audit, or (3) that an audit has identified record keeping or trust account deficiencies, such licensee must submit a written response to the Director. Failure to submit a written response within the time set by the Director in its notification will be grounds for disciplinary action unless the Director has granted an extension of time for the response in writing. This is true regardless of whether the underlying complaint warrants further investigation or subsequent action by the Director. The licensee's written response must contain the following:~~

- ~~1) A complete and specific response to the factual recitations, allegations or claims made in the complaint filed against the licensee, whether made by a member of the public, on the Director's own motion or by an authorized representative of the Director;~~
- ~~2) A complete and specific response to any additional questions, allegations or claims presented in the notification letter;~~
- ~~3) Any documents or records requested in the notification letter; and~~
- ~~4) Any further information relative to the complaint that the licensee believes to be relevant or material to the matters addressed in the notification letter.~~

~~F-4) Immediate notification of conviction, plea or violation required.~~ Repealed (Effective September 30, 2019)

- ~~— A licensee must notify the Director in writing pursuant to § 12-61-1010(1)(j), C.R.S., within 30 calendar days of any of the following:~~

- ~~1) A plea of guilty, a plea of nolo contendere or a conviction of any crime identified in § 12-61-1010(1)(i), C.R.S.~~
- ~~2) A violation or aiding and abetting in the violation of the Colorado or Federal Fair Housing Laws.~~
- ~~3) Any disciplinary action taken against the CAM in any other jurisdiction, if the CAM's action(s) would constitute a violation of the community association manager licensing law in Colorado.~~
- ~~4) Any practice restrictions as set forth in § 12-61-1010(1)(e) and (p), C.R.S.~~

~~F-5) Community association manager maintaining current contact information and all information required for licensing.~~ Repealed (Effective September 30, 2019)

- ~~— Each licensee must maintain all current contact information and all information required for licensing, in a manner acceptable to the Director, which will be included in the Division of Real Estate database.~~

- ~~1) Licensee contact information must include, but is not limited to:~~
 - ~~a) E-mail address, if applicable;~~
 - ~~b) Legal first, middle and last names;~~
 - ~~c) Physical home address;~~
 - ~~d) Home phone number;~~
 - ~~e) Physical business address;~~

- ~~f) Business phone number; and~~
 - ~~g) Business name.~~
 - ~~2) Information required for licensing includes, but is not limited to:~~
 - ~~a) Errors and omissions insurance provider;~~
 - ~~b) Errors and omissions policy number;~~
 - ~~c) Errors and omissions effective and expiration dates;~~
 - ~~d) Crime fidelity insurance provider;~~
 - ~~e) Crime fidelity policy number; and~~
 - ~~f) Crime fidelity insurance effective and expiration dates.~~
 - ~~3) Within 30 calendar days of any changes, individuals required to be licensed must update the Director with any changes to the information defined in this rule in a manner prescribed by the Director.~~
- ~~F-6) Contracts, agreements, authorizations and disclosures must be in writing. Repealed (Effective September 30, 2019)~~
- ~~1) All contracts, agreements, authorizations and disclosures between a CAM or CAM company and a common interest community must be in writing and must contain the entire agreement of the parties.~~
 - ~~2) The written agreement between the parties must be legible and clearly specify the terms and conditions of the management services to be performed by the CAM or CAM company. The agreement must include, but is not limited to, the following:~~
 - ~~a) Beginning and ending dates 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) Crime fidelity insurance coverage;~~
 - ~~g) A general description of the records to be kept and the accounting or bookkeeping system to be used; and~~
 - ~~h) The designated manager's license number.~~
 - ~~3) A CAM or CAM company must disclose in writing and at no charge, within 3 business days after a request by an owner in a common interest community, or by a buyer or seller who is under contract for the purchase of real property or a unit in a common interest community, or their respective agent, all fees and charges that the CAM or CAM company will charge in connection with the sale, transfer and closing of the real estate or unit in a common interest community.~~
- ~~F-7) Designated manager responsibilities. Repealed (Effective September 30, 2019)~~
- ~~Designated managers' responsibilities include, but are not limited to, the following:~~
- ~~1) Maintaining all bank accounts and accounting records for any managed common interest communities.~~
 - ~~2) Providing reasonable supervision over the licensed activities of all employees.~~
 - ~~3) Taking reasonable steps to ensure that violations of statutes and the Director rules do not occur or reoccur.~~
 - ~~4) Taking reasonable steps to ensure a licensee responds to any notices from the Director or its designee.~~

- 5) ~~Providing supervision of licensed activities for all offices operated by the CAM company.~~

~~F-8) Reasonable supervision.~~ Repealed (Effective September 30, 2019)

~~Pursuant to §§ 12-61-1010(1)(l), and 12-61-1003(2), C.R.S., and in addition to the requirements of Rule F-7, reasonable supervision of licensees includes, but is not limited to, compliance with the following:~~

- 1) ~~Maintaining a written policy describing the duties and responsibilities of licensees employed by the CAM or CAM company. A copy of the written policy must:~~
 - a) ~~Be given to, read and signed by each licensee, and~~
 - b) ~~Be available for inspection, upon request, by any authorized representative of the Director.~~
- 2) ~~Review of all common interest community contracts, agreements, and authorizations to ensure compliance with all applicable Director rules.~~
- 3) ~~Ensure all licensed individuals comply with insurance requirements as set forth in Rule D-9 and Rule D-10.~~
- 4) ~~Nothing in this rule prohibits a designated manager from delegating supervisory authority to other experienced licensees.~~
 - a) ~~Any CAM who accepts supervisory authority from a designated manager will bear responsibility with the designated manager for ensuring compliance with all statutes and the Director rules by all supervised licensees. A designated manager who delegates supervisory authority to another licensee remains responsible for ensuring compliance with all statutes and the Director rules by all supervised licensees.~~
 - b) ~~Any such delegation of authority must be in writing and signed by the licensed CAM to whom such authority is delegated. A copy of such delegation must be maintained by the designated manager for inspection, upon request, by any authorized representative of the Director.~~

~~F-9) Disclose any conflict of interest.~~ Repealed (Effective September 30, 2019)

~~When acting in a licensed capacity, a licensee has a continuing duty to disclose to a common interest community any actual or potential conflicts of interest that may arise in the course of any activity with regard to the management duties and functions of the common interest community and its executive board. A CAM must avoid any perceived favoritism or impropriety in carrying out all the duties and obligations with regard to the management of the common interest community and its executive board. A licensee acting as a CAM has a duty to immediately disclose, in writing, any known conflict of interest that may arise in the selection or use of a business, third party or vendor that provides services pertaining to the management of a common interest community and its executive board. In addition, the CAM must not accept, directly or indirectly any commission, fee, rebate, discount, any other remuneration, benefit or any other thing of value that could be reasonably perceived as a conflict with the interests of the common interest community and its executive board, unless it is first disclosed to and consented to in writing by the common interest community and its executive board.~~

~~F-10) License revoked, expired, suspended or inactivated.~~ Repealed (Effective September 30, 2019)

~~Upon suspension, revocation, expiration or inactivation of a license, the licensee is responsible for immediate compliance with the following:~~

- 1) ~~Cease any activities requiring a license.~~

- ~~2) Return the license to the Director. If the individual is a designated manager, inform all employed licensees of the change in license status and the effect of such change on the license status of those licensees.~~
- ~~3) Cease all advertising, including, but not limited to, the use of signage, newspapers, magazines, internet, and direct mailings.~~
- ~~4) Inform all common interest communities they are managing that their license has expired, or has been suspended, revoked or inactivated, pursuant to § 38-33.3-402, C.R.S., not later than 5 business days after any such expiration, suspension, revocation or inactivation.~~
- ~~5) Inform the common interest community and its executive board of the action taken and the impact that the change in license status will have on the common interest community, if any.~~
- ~~6) In the case of a designated manager who is being replaced by a new designated manager, the departing designated manager must properly account for and transfer all entrusted funds to the new designated manager, and provide all records and documents related to management services to the new designated manager.~~
- ~~7) In the case of a designated manager who will not be replaced and the licensed CAM company will be dissolved, the designated manager is responsible for an accounting of all funds and for making all final disbursements. The CAM company is responsible for maintaining all records for 3 years.~~
- ~~8) Fees earned prior to the suspension, revocation, expiration or inactivation may be retained by the licensee.~~
- ~~9) Pursuant to § 38-33.3-402, C.R.S., any agreement by a common interest community to pay a fee for the services of a CAM or to hold harmless or indemnify the CAM for any act or omission in the course of providing those services is void and unenforceable for any period in which the CAM's license is expired, suspended, revoked or inactivated. This would not apply, however, if a CAM company had a licensed designated manager or additional licensed CAM within its company, whose license is in full force and effect, and who is providing the management services for the common interest community pursuant to a management agreement.~~

A hearing on the above subject matter will be held on July 30, 2019, at the Colorado Division of Real Estate, 1560 Broadway, Suite 100-A, Denver, Colorado 80202 beginning at 9:00 a.m.

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rules being considered are subject to further changes and modifications after public comment and formal hearing.