



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

**2016 Sunset Review:
Real Estate Brokers
and
Subdivision Developers**

October 14, 2016





COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 14, 2016

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:

This year, Colorado's sunset review process celebrates its 40th anniversary with the publication of the 2016 sunset reports. 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.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. To emphasize the statewide nature and impact of this endeavor, COPRRR recently launched a series of initiatives aimed at encouraging greater public participation in the regulatory reform process, including publication of a new "Citizen's Guide to Rulemaking" (available online at www.dora.colorado.gov/opr).

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.

Accordingly, COPRRR has completed the evaluation of the Colorado Real Estate Commission and the duties of the Colorado Division of Real Estate in association with the regulation of real estate brokers and subdivision developers. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2017 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Part 1, Part 2, and Part 4, of Article 61 of Title 12, C.R.S. The report also discusses the effectiveness of the Director and staff, in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joe Neguse
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2016 Sunset Review Real Estate Brokers and Subdivision Developers

SUMMARY

What Is Regulated?

There are two occupational pursuits covered in this sunset review: real estate brokers and subdivision developers.

A real estate broker assists with the sale, exchange, purchase, renting, or leasing of real property. Most often brokers enlist sellers who want to sell and/or buyers who want to buy properties. In exchange for his or her expertise, the broker typically receives a commission for his or her role in the transaction.

A subdivision developer is an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity which participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision.

Why Is It Regulated?

Considering the complexities involved in even a simple a real estate transaction and the degree of financial risk involved with the purchase of real estate, a broker or subdivision developer should possess minimal qualifications. A real estate transaction gone awry could cause severe financial hardship for consumers.

How Is It Regulated?

Real estate brokers must complete required education hours, acquire specified experience, pass two examinations (one national and one state), satisfactorily complete a criminal history check, acquire error and omissions insurance, and pay a fee to obtain a license. Once licensed, a broker must serve a two-year associate-level apprenticeship under a “high level of supervision” by an employing broker.

To be a registered subdivision developer, an entity must supply the names and addresses of the principals, criminal records (if any), and the property location, among other things.

What Does It Cost?

During fiscal year 14-15, the Colorado Division of Real Estate (Division) allotted 33.35 full-time equivalent employees and expended \$4,188,221 administering Colorado Real Estate Commission (Commission) activities, including the two programs under sunset review.

What Disciplinary Activity Is There?

During fiscal year 14-15, the Division received 1,180 complaints concerning real estate brokers and no complaints regarding subdivision developers. The complaints levied against brokers resulted in 623 disciplinary actions including 284 fines amounting to \$323,443.

KEY RECOMMENDATIONS

Continue Parts 1, 2, and 4, of Article 61, Title 12, Colorado Revised Statutes, for nine years until 2026.

When making a purchase or sale as major as buying or selling a home or other piece of real estate, most consumers enlist experts to protect them; 87 percent of all buyers nationwide use a real estate agent or broker. Because the risk of incurring harm during real estate transactions is prevalent and the results can be serious, the General Assembly should continue the regulation of real estate brokers and subdivision developers, and continue the Commission and the Division as the entities that administer regulation.

Create a property manager endorsement that requires prescribed education and financial surety as conditions for the endorsement.

If a person or business acts as a leasing agent for a landlord, he or she must be a licensed real estate broker. Property owners likely believe that because the broker is licensed, he or she has some requisite knowledge and experience. This is not necessarily the case. Property managers have the potential to cause great financial harm if they are incompetent or dishonest. Therefore, the General Assembly should create a property manager endorsement for those brokers who act as professional property managers.

Strengthen the requirements to become an employing broker by directing the Commission to establish, by rule, the number of transactions that must be completed in order to become an employing broker.

An employing broker is responsible for supervising all brokers in his or her employ, including a high level of supervision for new licensees. Currently, as soon as a broker is finished with his or her supervised, two-year apprenticeship, he or she can take a few classes and employ other brokers. At that point, he or she is responsible for all business undertakings and mentoring. The lack of experience has led to a number of complaints. The solution to this problem is to require that an employing broker have more experience.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended meetings of the Commission, the Commission's forms subcommittee, and the education task force; interviewed individual Commissioners, the Commission's counsel, the Director of the Division and staff; interviewed representatives of state professional associations, a Colorado-based consumer advocacy group, individual licensees, licensed mortgage loan originators, licensed appraisers, title insurers, and consumers; surveyed licensed real brokers; and reviewed program records, Colorado statutes and rules, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

American Resort Development Association
Building Owners and Managers Association
Colorado Association of Mortgage Professionals
Colorado Association of Realtors
Colorado Bar Association - Real Estate Section
Colorado Chapter of the Appraisal Institute
Colorado Coalition of Appraisers
Colorado Mortgage Lenders Association

Colorado Public Interest Research Group
Colorado Real Estate Commission Forms Committee
Institute of Real Estate Management
IRES-Multiple Listing Service
National Association of Residential Property Managers
(Denver)
National Association of Residential Property Managers
(Northern Colorado)

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.state.co.us/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 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:

- 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;
- 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;
- 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;
- 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;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- 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;
- 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, C.R.S.

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- Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (5) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification; and
 - Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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 via COPRRR's website at: www.dora.colorado.gov/opr.

The functions of the Colorado Real Estate Commission (Commission) and the associated duties of the Colorado Division of Real Estate (Division) as enumerated in Article 61 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2017, 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 administration of the Commission and the Division pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed program to regulate real estate brokers and subdivision developers should be continued and to evaluate the performance of the Commission and the Division. During this review, the Commission 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.

Methodology

As part of this review, COPRRR staff attended Commission, education task force, and forms subcommittee meetings; interviewed Commission members, the Division Director and staff, Commission counsel from the Office of the Colorado Attorney General, representatives with state professional associations, individual brokers, and other stakeholders; reviewed Commission records, Colorado statutes and rules and the laws of other states.

COPRRR also surveyed the brokers who have an email address on record with the Division. COPRRR emailed a link to the survey requesting each recipient take the survey as part of the sunset review. A total of 33,760 emails were sent to licensees and 4,709 individuals responded. This represents a 14 percent response rate. Survey questions and responses may be found in Appendix A.

Profile of the Industry

This sunset review covers two aspects of real estate licensure: the licensing of real estate brokers and the registering of subdivision developers.

Brokers

According to the National Association of Realtors, 5.25 million existing homes and 510,000 newly built homes were sold in the U.S. during 2015. Approximately one-third of home buyers are first-time buyers and 87 percent of all buyers use a real estate agent or broker.² In Colorado, the real estate industry accounted for 17.7 percent of the gross state product during 2012.³

A survey conducted for this sunset review found that 21.4 percent of Colorado's approximately 44,000 licensed brokers act as employing brokers; 56 percent are associate brokers who work under an employing broker; 21.3 percent are independent brokers; 4.6 percent primarily work as commercial brokers; and 7.2 percent primarily act as property managers. These percentages add up to more than 100 percent because some of the licensees act in more than one capacity. Additionally, roughly one of every five brokers work on a team with other brokers and real estate professionals within the brokerage.

A real estate broker assists with the sale, exchange, purchase, renting, or leasing of real property. Each state in the U.S. has laws defining what licenses and training are required, and the types of relationships that can exist between clients and brokers.

The majority of real estate transactions in which a broker is used involve the sale of residential real estate. Brokers enlist sellers who want to sell and/or buyers who want to buy properties. In exchange for his or her expertise, the broker typically receives a commission for his or her role in the deal. Usually there are different brokers who represent the buyer and the seller and the commission is split between the two.

² National Association of Realtors. Field Guide to Quick Real Estate Statistics. Retrieved August 2, 2016, from <http://www.realtor.org/field-guides/field-guide-to-quick-real-estate-statistics>

³ National Association of Realtors. State-by-State Economic Impact of Real Estate Activity. Retrieved August 2, 2016, from <http://www.realtor.org/sites/default/files/reports/2015/economic-impact/2015-08-economic-impact-real-estate-activity-colorado-2016-01-20.pdf>

The idea of employing a broker is based in the notion of “agency.” An agency relationship exists when two parties agree that one of the parties will represent the other as an agent. The agency designation carries fiduciary responsibilities. In many parts of the country, rather than working with a real estate broker, one works with a real estate agent. While the terms are used interchangeably, the meaning can be very different. In Colorado, “real estate broker” is a generic title, and a real estate broker may act in various capacities while a real estate agent has obligations to a client. In Colorado a broker may work for a seller or landlord as an agent, or a buyer or a tenant as an agent, but may not do both simultaneously.

Colorado has forbidden the practice of dual agency.⁴ Dual agency occurs when the same broker represents both the seller and the buyer under written agreements. States vary on their approach toward dual agency, but many do not allow the practice.

In the place of dual agency, Colorado created two options. Transaction brokers have no agency relationship with sellers or buyers. Transaction brokers assist buyers and/or sellers during a transaction without representing the interests of either. He or she facilitates the transaction. There is also the option of having two brokers, employed at the same business or brokerage, who represent clients on either side of a transaction. Using two different licensees acting as agents to their clients, allows the brokerage to proceed with a transaction without creating a dual agency for the brokers or the brokerage.

Subdivision developers

A subdivision developer is:

Any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, limited liability company, partnership, association, or other legal entity which participates as owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision or any part thereof.⁵

A subdivision is, “real property divided into 20 or more interests intended solely for residential use and offered for sale, lease, or transfer.” A subdivision also is the conversion of an existing structure into a common interest community, time shares intended for residential use, and leases in a cooperative housing corporation.⁶

Colorado currently has timeshares, raw ground, and condominium developers operating under this subdivision developer classification, with more than 85 percent in the timeshare category.

⁴ § 12-61-806(1), C.R.S.

⁵ § 12-61-401(2), C.R.S.

⁶ § 12-61-401(3)(b)(I), C.R.S.

Legal Framework

History of Regulation

The General Assembly created the Real Estate Brokers Board (Board) in 1925, and placed it in the Office of the Colorado Secretary of State. The Board initially regulated real estate brokers and real estate salespeople. The Board was renamed the Colorado Real Estate Commission (Commission) in 1963. Also in 1963, the General Assembly enacted legislation that placed subdivision developers under the Commission's jurisdiction.

When the Administrative Organization Act of 1968 was enacted, the Commission was transferred to the Department of Regulatory Agencies' (DORA) Division of Registrations as a Type I entity.

In 1979, the Commission was transferred to the newly created Division of Real Estate (Division), also in DORA. That same year, the Commission and the Division became cash-funded.

The licensing of real estate salespeople ceased in 1996. Those previously licensed as such were required to become inactive or, if they desired to continue practicing, to become licensed real estate brokers.

In 1998, the General Assembly enacted legislation requiring licensed real estate brokers to obtain errors and omissions insurance and further provided that the Commission should contract with an insurance carrier for a group policy under which any licensee could obtain coverage.

In 2003, the General Assembly substantially rewrote the laws governing brokerage relationships between real estate brokers and their clients by defining the various roles that real estate brokers can and may play in various types of real estate transactions.

A 2007 sunset review recommended among other things that the Commission seat allotted to subdivision developers be replaced by a member who represents the general public, which was adopted.

Legal Summary

The statutes that manage the real estate industry are contained in Article 61 of Title 12, (Article 61) Colorado Revised Statutes (C.R.S.). Parts 1, 2, and 4 of Article 61 concern the regulation of real estate brokers and subdivision developers by the Commission and are the subjects of this sunset review.

The five-member, governor-appointed Commission is charged with licensing and regulating real estate professionals. The Commission consists of three real estate brokers, with at least five years of Colorado-based real estate experience, and two members of the public.⁷ Commission members, consultants, expert witnesses, and complainants have immunity in any civil action stemming from any official Commission act, when it is performed in good faith.⁸ Commission members receive a *per diem* of \$50 for each day spent in Commission meetings, hearings, or examinations and are reimbursed for actual and necessary expenses incurred in the course of official duties.⁹

The Division, which is housed in DORA, is the enforcement agency for regulating real estate brokers and subdivisions. It is charged with prosecuting violations, auditing businesses, and acting on behalf of the Commission when directed to do so by the Commission.¹⁰ Article 61 directs DORA's Executive Director to adopt a seal to authorize records and papers relating to the regulation of real estate.

Broker and Brokerage Licensing

INDIVIDUAL LICENSES

The real estate broker licensing statutes are contained in Part 1 of Article 61 (Part 1). Colorado has mandatory licensing for real estate brokers. It is a violation of Part 1 to perform as a real estate broker without a license¹¹ and each Colorado-resident licensed broker must maintain a place of business in Colorado.¹² In essence, a real estate broker is a person or business, who negotiates for another party, the control of real estate through lease or sale, and receives compensation. This is generally accomplished through a contract for the sale or lease of a property.¹³ The Commission is directed in statute to maintain a record of the names and addresses of all licensees.¹⁴

There are exceptions to mandatory licensing. These exceptions include individuals, and businesses, including a business's attorneys and employees negotiating and acting on its behalf, when trying to acquire or dispose of real property through lease or sale for that individual or business.¹⁵

If a broker was not licensed prior to 1997, he or she must work under an employing broker for two years before being allowed to practice independently. An independent broker cannot act as an employing broker without first completing 24 education hours in brokerage administration.¹⁶

⁷ § 12-61-105(1), C.R.S.

⁸ § 12-61-105(2.5), C.R.S.

⁹ § 12-61-105(2), C.R.S.

¹⁰ § 12-61-106, C.R.S.

¹¹ §§ 12-61-102, and 12-61-119, C.R.S.

¹² § 12-61-103(2), C.R.S.

¹³ § 12-61-101(2)(a), C.R.S.

¹⁴ § 12-61-108, C.R.S.

¹⁵ § 12-61-101(2)(b), C.R.S.

¹⁶ § 12-61-103(6)(c), CR.S.

There are several prerequisites to obtaining a license. Included among those are completed background investigations performed by the Colorado Bureau of Investigation and the Federal Bureau of Investigation.¹⁷ An applicant must also be at least 18 years old¹⁸ and prove that he or she is truthful, honest, and of good moral character.¹⁹ Each applicant must also fulfill education requirements and pass an examination.

An applicant must provide “proof satisfactory” that he or she completed a degree from an accredited degree-granting college or university with a major in real estate. If an applicant does not have a real estate degree, he or she must complete specific classwork at an accredited college or university or a state-approved school. The classwork includes:²⁰

- 48 hours of classroom instruction or equivalent correspondent hours in real estate law and real estate practice,
- 48 hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts, and
- 72 hours of instruction or equivalent correspondence hours in the following areas:
 - Trust accounts and record-keeping,
 - Real estate closings,
 - Current legal issues, and
 - Practical applications.

The Commission-approved examination is designed to determine the competency of an applicant. The Commission may contract with an independent testing service to develop, administer, or grade examinations, or administer licensee records but the Commission is directed to determine a passing score. An applicant must illustrate a minimal competency in: ethics; reading; spelling; basic mathematics; principles of land economics; appraisal; financing; knowledge of the statutes and law of Colorado relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, trust accounts, closings, and securities; as well as the requirements in Part 1 and Commission-promulgated rules.²¹ When a person passes an examination, if that person fails to file the appropriate broker's application within one year, it automatically cancels all rights to a passing score and the fee is not refundable.²²

The Commission has the authority to obtain the names and the number of applicants who pass the examination from each educational institution.²³ The Commission must publish compiled quarterly data for public scrutiny²⁴ concerning:²⁵

- The name of the educational institution,

¹⁷ § 12-61-103(1)(b)(I), C.R.S.

¹⁸ § 12-61-103(4)(a), C.R.S.

¹⁹ § 12-61-102, C.R.S.

²⁰ § 12-61-103(4)(a), C.R.S.

²¹ § 12-61-103(6)(a), C.R.S.

²² § 12-61-110(2), C.R.S.

²³ § 12-61-108.5(1), C.R.S.

²⁴ § 12-61-108.5(3), C.R.S.

²⁵ § 12-61-108.5(2)

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- The number of students who completed the necessary real estate course required for licensure,
 - The number and names of students who registered and sat for the license examination, and
 - The number of applicants who passed the license examination.

OTHER-STATE LICENSEES

An applicant who has been licensed in another state as a salesperson must provide “proof satisfactory” that he or she completed a degree from an accredited degree-granting college or university with a major in real estate. If an applicant does not have a real estate degree, he or she must complete specific classwork at an accredited college or university or a state-approved school. The classwork includes:

- 48 hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts, and
- 72 hours of instruction or equivalent correspondence hours from the following areas:
 - Trust accounts and record-keeping,
 - Real estate closings,
 - Current legal issues, and
 - Practical applications.²⁶

An applicant that has been licensed in another state as a broker is required to have completed:²⁷

- 48 hours of classroom instruction or equivalent correspondent hours in understanding and preparation of Colorado real estate contracts, and
- 72 hours of instruction or equivalent correspondence hours in real estate closings.

If the applicant has held a real estate license in a jurisdiction that administers a real estate broker's examination, and has been licensed for at least two years, he or she may be issued a license. However, the applicant must establish the qualifications are “substantively equivalent” to Colorado’s qualifications to do so.²⁸

A nonresident broker is not required to maintain a place of business within Colorado if he or she maintains a definite place of business in another state.²⁹

²⁶ § 12-61-103(4)(c), C.R.S.

²⁷ § 12-61-103(4)(b), C.R.S.

²⁸ § 12-61-103(6)(b), C.R.S.

²⁹ § 12-61-107(1), C.R.S.

BUSINESS LICENSES

A brokers' license can be issued to partnerships, limited liability companies, or corporations. In its application, the entity seeking a license must designate a qualified, active broker who is responsible for management and supervision of the actions of it and all of the licensees in its employ.³⁰ The designated broker or “employing broker” must pass an examination and may only conduct real estate business through the business to which he or she is tethered.³¹ A designated broker must be a qualified, active broker. Real estate business may only be promoted or conducted under the name of the licensed business.³²

No registered employee of a broker business may accept a commission or valuable consideration for the performance of any of the acts specified in Part 1 from any person except the broker's employer;³³ no broker employed by a brokerage can be the designated broker for another business;³⁴ and an employing broker has control and custody of an employed broker's license.³⁵

If a designated broker ceases to be tethered to the entity, the entity may designate another person or the Division Director (Director) may issue a temporary license for up to 90 days to allow the newly selected designated broker to become qualified. The Director may extend a temporary license for one additional 90-day period on occasion. However, if the Director refuses, only the Commission may extend a temporary license.³⁶

When a licensed company is found guilty of violating Part 1, the Commission may suspend or revoke the right of the company to operate under the license of the designated broker. This can occur whether or not the designated broker had “personal knowledge” of the violation or whether or not the Commission suspends or revokes that designated broker's license.³⁷

A licensed attorney may be licensed as a real estate broker after completing 12 hours of classroom instruction or equivalent correspondent hours in trust accounts, record-keeping, and real estate closings, and passing an examination.³⁸

Any suspension, expiration, or revocation of an employing broker's license automatically inactivates every employee's license.³⁹

³⁰ § 12-61-103(7)(a), C.R.S.

³¹ § 12-61-103(7)(b), C.R.S.

³² § 12-61-103(10), C.R.S.

³³ § 12-61-117, C.R.S.

³⁴ § 12-61-103(9), C.R.S.

³⁵ § 12-61-109(2), C.R.S.

³⁶ § 12-61-103(6)(c), C.R.S.

³⁷ § 12-61-113(2), C.R.S.

³⁸ § 12-61-103(12), C.R.S.

³⁹ 12-61-110(5), C.R.S.

Part 1 defines an affiliated business arrangement as:⁴⁰

- A provider of settlement services or an associate of a provider of settlement services that has either an affiliate relationship with or a direct beneficial ownership interest of more than one percent in another provider of settlement services; and
- A provider of settlement services or the associate of a provider that directly or indirectly refers settlement service business to another provider of settlement services or affirmatively influences the selection of another provider of settlement services.

A licensee must disclose in writing, to all involved parties, that it is part of an affiliated business arrangement when an offer to purchase real property is fully executed. The disclosure must be signed by all parties and comply with the federal “Real Estate Settlement Procedures Act of 1974” (RESPA), as amended.⁴¹ A licensee cannot require a client to use an affiliated business, or a settlement service, as a condition of real estate broker services.⁴²

An affiliated business arrangement is permitted only when the referring person/business receives payment as return on an investment and when there is no violation of Part 1.⁴³ No licensee may give or accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, for referring settlement service business.⁴⁴ Moreover, RESPA specifically prohibits kickbacks and unearned fees as part of a settlement service involving federally related mortgage transactions.

A licensee must disclose to the Commission when it enters into or changes an affiliated business arrangement. The disclosure must include the names and physical addresses of all affiliated business arrangements to which the licensee is a party.⁴⁵ An employing broker must make annual disclosures to the Commission.⁴⁶

The Commission may promulgate rules concerning the regulation of an affiliated business arrangement, including rules defining what constitutes a sham affiliated business arrangement. The Commission is instructed by Part 1 to adopt the,

[R]ules, policies, or guidelines issued by the United States Department of Housing and Urban Development concerning the federal “Real Estate Settlement Procedures Act of 1974”, as amended, 12 U.S.C. sec. 2601 et seq.

⁴⁰ § 12-61-113.2(1)(a), C.R.S.

⁴¹ § 12-61-113.2(2)(b), C.R.S.

⁴² § 12-61-113.2(2)(c), C.R.S.

⁴³ § 12-61-113.2(2)(a), C.R.S.

⁴⁴ § 12-61-113.2(2)(d), C.R.S.

⁴⁵ § 12-61-113.2(3), C.R.S.

⁴⁶ § 12-61-113.2(4), C.R.S.

Commission rules must be at least as stringent as the federal rules, and ensure that consumers are adequately informed about affiliated business arrangements. To prevent a regulatory conflict, the Commission must consult with the Colorado Commissioner of Insurance (Commissioner) concerning rules, policies, or guidelines the Commissioner adopts concerning affiliated business arrangements.⁴⁷

BROKERAGE RELATIONSHIPS

There are many types of real estate transactions and relationships between real estate brokers and sellers, landlords, buyers, and tenants in real estate matters. The statutes define the general duties, obligations, and responsibilities of a real estate broker engaged by a consumer.⁴⁸

For example the statutes define the role of a “dual agent” who is engaged as a limited agent for both parties in a sale or lease transaction.⁴⁹ Dual agency is prohibited in Colorado.⁵⁰ The statutes also define the role of a “transaction-broker” who assists one or more parties without being an agent or advocate for the interests of any party in a transaction.⁵¹ These are only two of multiple brokerage relationships governed in Part 1.

License Renewal

Licenses must be renewed every three years by the issue anniversary date. Active renewals require completing any needed continuing education. Unless there is a reason or condition that might warrant the refusal or revocation of a license, the Commission must issue a license upon timely receipt of the written renewal request and the fees.

A person who fails to renew a license before January 1 of the year succeeding the year of expiration may have the license reinstated if:

- Proper application is made within 31 days of expiration, by payment of the three-year renewal fee;⁵²
- Proper application is more than 31 days but within one year of expiration, by payment of the regular three-year renewal fee and a reinstatement fee equal to one-half the regular fee;⁵³ or
- Proper application is made more than one year but within three years after expiration, by payment of the regular three-year renewal fee and payment of a reinstatement fee equal to the regular renewal fee.⁵⁴

⁴⁷ § 12-61-113.2(5), C.R.S.

⁴⁸ § 12-61-801, C.R.S.

⁴⁹ § 12-61-802(2), C.R.S.

⁵⁰ § 12-61-806(1), C.R.S.

⁵¹ § 12-61-802(6), C.R.S.

⁵² § 12-61-110(4)(a)(I), C.R.S.

⁵³ § 12-61-110(4)(a)(II), C.R.S.

⁵⁴ § 12-61-110(4)(a)(III), C.R.S.

Reinstated licenses are effective only as of the date of reinstatement. When a person does not apply for reinstatement within three years of expiration, he or she is treated as a new applicant for licensure.⁵⁵ No license that has been revoked will be reconsidered for licensure for one year after revocation.⁵⁶

Unless a broker has passed the Colorado real estate examination within the proceeding three years, he or she must complete 24 hours of continuing education prior to renewal.⁵⁷ Of those hours, 12 must be concerning Commission-developed, Colorado-law-based hours, completed at an accredited college or university or a state-approved school.⁵⁸ All other courses must be Commission approved.⁵⁹

Commissions

A brokerage relationship occurs when a buyer, seller, landlord, or tenant and a licensed broker enter into a written agreement to perform regulated activities.⁶⁰ However, a broker is not due a commission until a transaction is either successfully completed or terminated due to the refusal or neglect of the seller.⁶¹

No commission is due to a broker when a prospective buyer backs out of a contract of purchase because of title defects, unless the owner has the defects corrected within a reasonable time.⁶² However, an owner is not required to perfect the title until an enforceable contract has secured the property for purchase.⁶³

A referral fee is not a commission. It is any fee paid by a licensee to any person or entity, other than the commission offered for completing a transaction.⁶⁴ A referral fee may be due to a broker when:⁶⁵

- An actual introduction of business has been made,
- A contractual referral fee relationship exists, or
- A contractual cooperative brokerage relationship exists.

⁵⁵ § 12-61-110(4)(b), C.R.S.

⁵⁶ § 12-13-113(8), C.R.S.

⁵⁷ § 12-61-110.5(1)(c), C.R.S.

⁵⁸ § 12-61-110.5(2), C.R.S.

⁵⁹ § 12-61-110.5(3), C.R.S.

⁶⁰ § 12-61-203.5(2)(b)(I), C.R.S.

⁶¹ § 12-61-201, C.R.S.

⁶² § 12-61-202, C.R.S.

⁶³ § 12-61-203, C.R.S.

⁶⁴ § 12-61-203.5(2)(b)(III), C.R.S.

⁶⁵ § 12-61-203.5(1), C.R.S.

Enforcement

Unless a broker is inactive, or is an attorney who maintains a malpractice insurance policy that provides coverage for errors and omissions for activities as a licensee, he or she must maintain errors and omissions insurance to cover all regulated activities.⁶⁶ The Division verifies the terms and conditions of coverage required under this section based on rules promulgated by the Commission. Each licensee must file a certificate of coverage showing compliance.⁶⁷

The Commission must be notified immediately of any changes in a licensee's location or employment. If the Commission is not notified, the license is automatically inactivated.⁶⁸ When a licensee is discharged or terminates employment, both the employer and employee must immediately notify the Commission.⁶⁹ A broker may only be employed at one entity at a time.⁷⁰

Part 1 establishes a cash fund for the administration of Parts 1 and 4 of Article 61 that consists of all fees collected under Parts 1 and 4.⁷¹ The Division is authorized to collect fees for:⁷²

- Each broker's examination;
- Each broker's original application and license;
- Each three-year renewal of a broker's license;
- Any change of name, address, or employing broker requiring a change in Division records; and
- Any new application submitted when a broker wishes to become a designated broker.

No person can be licensed as a real estate broker under more than one name⁷³ and no broker's license can be denied, suspended, or revoked unless agreed to by a majority vote of the Commission members.⁷⁴

⁶⁶ § 12-61-103.6(1), C.R.S.

⁶⁷ § 12-61-103.6(3), C.R.S.

⁶⁸ § 12-61-109(1), C.R.S.

⁶⁹ § 12-61-109(3), C.R.S.

⁷⁰ § 12-61-109(4), C.R.S.

⁷¹ §§ 12-61-111 and -111.5, C.R.S.

⁷² § 12-61-110(1), C.R.S.

⁷³ § 12-61-103(10), C.R.S.

⁷⁴ § 12-61-105(3), C.R.S.

The Commission is empowered to initiate complaints, investigate complaints, hold hearings, and discipline when necessary, concerning the activities of licensees.⁷⁵ However, the statutes also state that proceedings before the Commission concerning disciplinary actions and denial of a license must be conducted by an administrative law judge (ALJ).⁷⁶ The Commission is also empowered to apply in court for an order enjoining any act, or intention to commit an act, which violates Parts 1, 3, or 4 of Article 61. Any notice, hearing, or duration of any injunction or restraining order must conform with the provisions of the Colorado Rules of Civil Procedure.⁷⁷

The Commission also has the ability to impose an administrative fine up to \$2,500 for each separate offense, censure a licensee, place the licensee on probation and to set the terms of probation, and temporarily suspend or permanently revoke a license for several enumerated infractions. Section 12-61-113(1), C.R.S., lists many of those violations. The violations fall into one or more of six general categories: fraudulent behaviors, unethical behaviors, illegal actions, fiduciary responsibilities, administrative responsibilities, and competency-based issues.⁷⁸ Complaints and investigations are closed to public inspection. However, stipulations and final agency orders are public records and available for inspection.⁷⁹

Any person or entity that acts as a real estate broker in Colorado without first obtaining a license or after it has been suspended or revoked, commits a misdemeanor. If convicted, a person may be punished by a fine of up to \$500, imprisonment up to six months, or both. A second violation by a person is punishable by a fine up to \$1,000, imprisonment up to six months, or both.⁸⁰ A business may be punished by a fine up to \$5,000.

If the Division is made aware of facts or circumstances that fall within the jurisdiction of criminal law enforcement concerning a licensee, the Division, in addition to exercising its regulatory duties, must refer the information to the appropriate law enforcement authority(s).⁸¹

When a complaint against a licensee does not warrant formal action, the Commission may send a letter of admonition. Within 20 days of receipt, the licensee has the right to request that formal disciplinary proceedings commence. The letter of admonition is then vacated in lieu of the formal disciplinary proceedings.⁸²

When any broker is a party in any civil or criminal suit or proceeding as a licensed broker, it is the broker's affirmative obligation to supply the Commission a copy of all necessary information and inform it of the case's disposition.⁸³

⁷⁵ § 12-61-113(1), C.R.S.

⁷⁶ § 12-61-114(1), C.R.S.

⁷⁷ § 12-61-122, C.R.S.

⁷⁸ § 12-61-113(1), C.R.S.

⁷⁹ § 12-61-113(5), C.R.S.

⁸⁰ § 12-61-119, C.R.S.

⁸¹ § 12-61-113(9), C.R.S.

⁸² § 12-61-113(6), C.R.S.

⁸³ § 12-61-113(3), C.R.S.

The Commission or an ALJ may issue a subpoena compelling the attendance and testimony of witnesses and the production of documents pursuant to an investigation or hearing. The subpoenas must be served in the same manner as subpoenas issued by district courts. If a person fails or refuses to obey a subpoena, the Commission may petition the district court to issue a subpoena.⁸⁴ Any person who refuses to obey a subpoena commits a misdemeanor for each day out of compliance. Conviction is punishable by a \$25 fine, imprisonment up to 30 days for each such offense, or both.⁸⁵

Rules

In addition to the statutes, brokers are also governed by rules promulgated by the Commission. In a broad sense, the rules add detail and perspective to the more general statutes to aid in implementation. These rules also provide a scope of practice for real estate brokers and the transactions that they broker. The rules cover:

- License Qualifications, Applications and Examinations;
 - These rules cover the licensing of individuals.
- Continuing Education;
- Licensing - Office;
 - These rules cover the licensing of businesses.
- Renewal, Transfer, Inactive License, Errors and Omissions Insurance;
- Separate Accounts - Records - Accountings - Investigations;
- Use of Commission-Approved Forms;
- Brokers Acting Under 12-61-101(2)(a)(X), C.R.S., (Rental Referrals);
 - This statute refers to a broker acting as a landlord.
- Declaratory Orders; and
 - These rules cover the circumstances when a person requests from the Commission a specific opinion on a statute or rule.
- Exceptions and Commission Review of Initial Decisions.
 - These rules cover the process for the Commission reconsidering a previous Commission or ALJ decision.

Subdivision Developers

The statutes that govern subdivision developer registration are contained in Part 4, of Article 61, Title 12, C.R.S.

Prior to selling, leasing or transferring, or agreeing or negotiating to sell, lease or transfer, any subdivision or any part thereof, the developer of the subdivision must register with the Commission.⁸⁶ Registration does not exempt developers from real estate broker licensing.⁸⁷ The statutes that cover the registration, in a general sense, are fashioned toward protecting consumers from fraud.

⁸⁴ § 12-61-120, C.R.S.

⁸⁵ § 12-61-121, C.R.S.

⁸⁶ § 12-61-402(1), C.R.S.

⁸⁷ 4 CCR 725-6, Real Estate Commission Rules Ch.1: 1.1

A subdivision is any property divided into 20 or more separate pieces, exclusively for residential use, and offered for sale, lease or transfer.⁸⁸ This includes coop-type properties, building conversions, and time shares.⁸⁹ Not included are:⁹⁰

- Memberships in campgrounds;
- Bulk sales and transfers between developers;
- Property where the sales price includes the cost of constructing a residential building;
- Property that, at the time of closing, does not have improvements such as adequate roads, sewage and potable water systems, or utilities; or
- Property sales by public officials acting in that capacity.

To register, an individual must supply information to the Commission including but not limited to:⁹¹

- The names and addresses of all natural persons possessing a 24-percent or more interest in the business;
- The length of time and the locations where the subdivision developer has developed subdivisions;
- The felony convictions over the last 10 years and actions of any partners that would violate subdivision developer regulation; and
- If a corporation, a copy of a certificate of authority to conduct business in Colorado.

Registration information must also contain information about the property that is to be developed. This information includes:⁹²

- Property location;
- Subdivision name;
- Evidence that the subdivision has or will be registered according to local requirements;
- Title documents or other evidence of interest;
- A statement that standard Commission-approved or property-specific forms will be used for contracts of sale, notes, deeds, and other legal documents;
- A statement regarding the availability of legal access to sewage disposal, water, electricity, gas and telephone in the subdivision;
- A statement attesting that a survey has taken place; and
- A statement as to whether a common interest community has been or will be created and who will control its finances.

⁸⁸ § 12-61-401(3)(a), C.R.S.

⁸⁹ § 12-61-401(3)(b)(I), C.R.S.

⁹⁰ § 12-61-401(3)(b)(II), C.R.S.

⁹¹ § 12-61-403(2), C.R.S.

⁹² § 12-61-403(3), C.R.S.

Any person who fails to register as a developer commits a Class 6 felony. Any agreement or contract for the sale or lease is voidable by the purchaser and unenforceable by the developer unless a developer was registered when the agreement or contract was made.⁹³ However, if the process is approved by the Commission, a developer who has applied for registration may offer reservations in a subdivision prior to the application being granted. In these cases the fees for reservations must be held in trust by an independent third party and are fully refundable.⁹⁴

The Commission must issue or deny a registration within 60 days from the date of receipt of the application. If, after an application has been submitted, the Commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within the 60 days. If an inspection is not completed in a timely manner, the right of inspection is waived and its absence may not be used as grounds for denial of a registration.⁹⁵

Developer registrations expire on December 31st of each year. A registration is renewed after payment of a renewal fee. If a registration has expired it may be reinstated within two years upon payment of the appropriate renewal fee. However, the applicant must meet all other requirements.⁹⁶

The Commission is empowered to discipline subdivision developers for statute violations. It has the ability to apply to a court for an injunction, made in accordance with the provisions of the Colorado Rules of Civil Procedure, to cease actions that are violations of the statutes.⁹⁷ The Commission may also impose a fine of up to \$2,500 per violation, issue letters of admonition, place a subdivision developer registrant on probation, refuse to issue a registration and suspend or revoke a subdivision developer registration, after finding that a violation of the statutes or Commission rules has occurred. Grounds for discipline include:⁹⁸

- Engaging in fraud, deceit, or misrepresentation;
- Being convicted of, or pleading guilty or *nolo contendere* to a crime involving fraud, deceit, false pretense, theft, misrepresentation, false advertising, or dishonest dealing;
- Disposing of, concealing, diverting, converting or failing to properly account for any funds or assets of any purchaser or any homeowners' association under the control of the subdivision developer;
- Failing to comply with any stipulation or agreement made with the Commission;
- Failing to comply with or violating Colorado law pertaining to subdivisions or any rule of the Commission;
- Refusing to honor a buyer's request to cancel a contract for purchase when the request was made within five days after execution of the contract;

⁹³ § 12-61-407, C.R.S.

⁹⁴ § 12-61-402(2), C.R.S.

⁹⁵ § 12-61-406(1.5), C.R.S.

⁹⁶ § 12-61-404(2), C.R.S.

⁹⁷ § 12-61-406(1), C.R.S.

⁹⁸ § 12-61-405(1), C.R.S.

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- Violating the Colorado Consumer Protection Act;
 - Using documents not approved by the Commission; and
 - Failing to disclose encumbrances to prospective buyers.

As with brokers, if a complaint against a licensee does not warrant formal action, the Commission may send a letter of admonition. Within 20 days of receipt, the licensee has the right to request that formal disciplinary proceedings commence. The letter of admonition is then vacated in lieu of the formal disciplinary proceedings.⁹⁹

No subdivision developer is expected to know all local planning laws, regulations, ordinances, and zoning requirements. The Colorado Real Estate Manual directs that if a licensee is unaware of local regulatory provisions, then information should be pursued prior to making a suggestion or statement to a client. Alternatively, a licensee may refer the client to the proper resource.¹⁰⁰

⁹⁹ § 12-61-405(2.5), C.R.S.

¹⁰⁰ Colorado Department of Regulatory Agencies, *Division of Real Estate Manual and Rules*, Real Estate Manual, Subdivisions, p.4-20. Retrieved February 9, 2016, from <https://drive.google.com/folderview?id=0B1VD36mBqe1EfnpNZGw2WjFyU2szVFBLyk9Reno2SHBUSEIcElSaWxmUm5xSDZ1S1RyWVE&usp=sharing>

Program Description and Administration

The Colorado Real Estate Commission (Commission) and the Colorado Division of Real Estate regulate real estate brokers, employing brokers, and subdivision developers. The Commission is a five-member, governor-appointed regulatory body charged with licensing brokers and registering subdivision developers. The Commission consists of three real estate brokers and two members of the public.¹⁰¹ It typically holds meetings every other month and the meetings generally last approximately four hours.

Regulation is financed through the Division Cash Fund established in Part 1 of Article 61, Colorado Revised Statutes (Part 1). Table 1 enumerates the monetary expenditures and the full-time equivalent (FTE) employees dedicated to implementing regulation during the period under review.

Table 1
Program Expenditures
Fiscal Years 10-11 through 14-15

Fiscal Year	Monetary Expenditures	FTE
10-11	\$2,909,161	26.25
11-12	\$3,337,614	26.0
12-13	\$3,022,559	23.0
13-14	\$3,117,371	27.5
14-15	\$4,188,221	33.35

Division staff are allocated among six work units:

Director's Office

The Director's Office provides administrative oversight of the Division.

Education, Communication and Policy Section

This section manages continuing education approvals, development and audits; manages Division communications and outreach; manages Colorado Open Records Act requests; develops and manages the Division's website; houses the Home Owners Association Information and Resource Center; processes subdivision applications and renewals; prepares materials for newsletter publication and coordinates rule-making.

Licensing Section

This section processes license applications and provides system support for eLicense.

¹⁰¹ § 12-61-105(1), C.R.S.

Operations Section

This section manages the Division's budget; provides procurement, accounting and contract management services and operates the Division's call center.

Investigations Section

This section conducts real estate brokerage financial and transactional audits; conducts background investigations of applicants; investigates complaints; makes disciplinary decisions on delegated cases and provides disciplinary recommendations to the Commission.

Expedited Settlement Program

This section negotiates case settlements; serves as the Division representative at disciplinary proceedings; manages cases assigned to the Colorado Attorney General's Office; manages enforcement records; provides support to the Commission; schedules Commission meetings; tracks policy and disciplinary decisions; prepares meeting minutes; tracks compliance with disciplinary decisions and refers respondents to collections as necessary.

Licensing

Brokers

To obtain an initial broker's license, an individual must complete the requisite education, acquire specified experience, pass two examinations (one national and one state), satisfactorily complete a criminal history check, acquire error and omissions insurance, and pay a fee.

EXAMINATIONS

Colorado requires that brokers pass both a general or national examination and a Colorado-based examination. The general or national examination tests the individual's broad knowledge of the real estate industry, transactions, and common law. The Colorado examination is specific to Colorado laws and practices, and Commission rules and policies. If an applicant fails one or both, he or she may retake the failed portion(s). A passing score is valid for one year. A license application must be accompanied by the fee, proof of completion of the required education and experience requirements, and proof of successful completion of the examinations within the year of the application.¹⁰²

Table 2 enumerates the number of individuals who took the licensing examinations, as well as the percentage who passed the examinations during the period under sunset review.

¹⁰² 4 CCR 725-1, Real Estate Commission Rules A-5.

Table 2
Examination Information
Fiscal Years 10-11 through 14-15

Fiscal Year	General/National Examinations	Pass Rate	Colorado Examinations	Pass Rate
10-11	1,606	79%	1,770	74%
11-12	1,696	81%	1,780	71%
12-13	2,520	82%	2,563	72%
13-14	3,722	74%	3,705	70%
14-15	4,245	64%	4,228	70%

The number of individuals examining during the review period increased substantially, 164 percent for the general/national examination and 139 percent for the Colorado examination. The increase in the number of examinees coincides with an upswing in the real estate sector of the Colorado economy prompting more people wanting to become real estate brokers. The slight decrease in the percentage passing the Colorado examination is also likely due to the increase in the number of people wanting to become real estate brokers. However, more are unprepared to test into the profession. The decrease in the percentage passing the national examination is likely due to a change in the examination itself during 2013.

LICENSE LEVELS AND RENEWAL

An initial license is issued for three years from the issuance date.¹⁰³ The Commission issues licenses at multiple levels: associate broker, independent broker, and employing broker. The basic licensing requirements for each license are the same.

The base level, associate broker, must work under an employing broker for two years in an apprentice-like role under high supervision.

An independent broker may work on his or her own after the initial two-year associate term.

An employing broker may employ and be responsible for brokers after their initial two-year associate term and completion of a 24-hour Broker Administrative Course. Among other responsibilities, employing brokers must provide “reasonable supervision”¹⁰⁴ of employees with more than two years’ experience and a “high level of supervision”¹⁰⁵ to those with less than two years’ experience.

¹⁰³ 4 CCR 725-1, Real Estate Commission Rules D-11.

¹⁰⁴ 4 CCR 725-1, Real Estate Commission Rules E-31.

¹⁰⁵ 4 CCR 725-1, Real Estate Commission Rules E-32.

Brokers must complete continuing education requirements prior to applying to renew an active license, to activate an inactive license, or to reinstate an expired license. Unless he or she passes the Colorado-based examination during the three-year license cycle, a broker must complete a four-hour Annual Commission Update course each year and complete an additional 12 hours of continuing education prior to each three-year renewal.¹⁰⁶ The licensee must also pass an examination, with a score of 70 percent or better, to illustrate proficiency in the Annual Commission Update material.¹⁰⁷

Additionally, if a licensee chooses to take and passes the Colorado-based examination annually, he or she may forgo the 24 hours of continuing education required for a license renewal.¹⁰⁸

If a person holds a valid license in another state, he or she may acquire a license via endorsement. To obtain a license, an individual must provide a certified license history from each jurisdiction in which he or she holds a license. The history enables a license to be issued with narrowed examination and or pre-licensing education requirements. The examination and education requirements are determined based on the level of licensure held in the qualifying state(s), the status of the license held, and the length of time licensed.

Table 3 enumerates the active licenses granted by the Commission for each fiscal year examined by this sunset review.

Table 3
License Information
Fiscal Years 10-11 through 14-15

Fiscal Year	Examination	Endorsement	Renewal	TOTAL
10-11	1,403	231	10,467	29,353
11-12	1,348	242	10,777	28,647
12-13	1,728	570	9,950	29,553
13-14	2,602	750	10,519	31,194
14-15	2,461	1,147	10,352	32,511

The “Total” licenses do not reflect the number of licenses placed on inactive status. A license may be placed on inactive status at the request of the licensee or for various reasons such as not completing all necessary requirements for renewal. Table 3 also indicates that the number of new licenses issued via examination increased substantially, more than 75 percent. This too tracks the significant improvement in the real estate sector of the Colorado economy during the review period. The number of licenses issued by endorsement increased nearly 400 percent. This increase also most likely is due to the Colorado real estate sector improving at a greater rate than other states during the period under review.

¹⁰⁶ 4 CCR 725-1, Real Estate Commission Rules B-2(a).

¹⁰⁷ 4 CCR 725-1, Real Estate Commission Rules B-3(c).

¹⁰⁸ 4 CCR 725-1, Real Estate Commission Rules B-2(c).

Subdivision Developer Registration

An individual must register as a Subdivision Developer before selling, leasing, transferring, or negotiating to sell, lease, or transfer, any subdivision or any part of a subdivision. The following are the subdivision types where the developer and project must register with the Commission:¹⁰⁹

- Raw Ground Subdivisions
 - Any division of real property into 20 or more interests intended solely for residential use, with each interest comprising 35 or more acres of land offered for sale, lease or transfer.
- Timeshare
 - Subdivisions consisting of 20 or more timeshare interests (a timeshare interest includes a deeded or non-deeded interest, including but not limited to a fee simple interest, a leasehold, a contract to use, a membership or club agreement, or an interest in common).
- Condo Conversions
 - Subdivisions consisting of 20 or more residential units created by converting an existing structure.
- Cooperative Condos
 - Subdivisions created by cooperative housing corporations with 20 or more shareholders with proprietary leases, whether the project is completed or not.

Table 4 enumerates the Subdivision Developers registered with the Commission each fiscal year considered for this sunset review.

Table 4
Registration Information
Fiscal Years 10-11 through 14-15

Fiscal Year	Subdivision Developers
10-11	133
11-12	118
12-13	103
13-14	95
14-15	87

Staff in the Colorado Office of Policy, Research and Regulatory Reform did not ascertain any explanation for the decline in registrations over the period under review other than speculation that it is the result of market forces.

¹⁰⁹ Colorado Department of Regulatory Agencies. *Subdivision Developer Program*. Retrieved May 31, 2016, from <https://www.colorado.gov/pacific/dora/node/91521>

Complaints/Disciplinary Actions

The Commission is empowered to initiate complaints, investigate complaints, hold hearings, and issue discipline to licensees when necessary.¹¹⁰ Table 5 enumerates the activity involving complaints against brokers during fiscal years 10-11 through 14-15.

**Table 5
Complaint Information
Fiscal Years 10-11 through 14-15**

Complaints	FY 10-11	FY 11-12	FY 12-13	FY 13-14	FY 14-15
Advertising	11	19	28	24	34
Affiliated Business Disclosure	1	1	2	0	1
Continuing Education Non-Compliance	Not applicable	144 (9 months)*	244	219	212
Competency	38	157	207	165	217
Criminal Convictions	5	35	23	35	52
Deposit Disputes	10	31	35	8	1
Disclosure	18	27	26	42	35
Dishonest Dealing	24	62	28	63	59
Misrepresentation	10	40	40	57	65
Non-Compliance	10	16	10	69	128
Pre-license Investigation	0	3	15	29	82
Record-keeping	27	33	10	14	4
Subdivisions	0	4	0	1	0
Trust Accounts	24	27	33	16	7
Unlicensed Activity	13	39	26	36	34
Other	8	89	135	28	3
Unknown	766	499	1,170	926	1,055
No Jurisdiction	0	18	35	8	0
TOTAL ALLEGATIONS	965	1,244	2,067	1,740	1,989
TOTAL COMPLAINTS	645	744	1,051	954	1,180

* Compliance auditing on the continuing education requirement was not tracked prior to October 2011.

¹¹⁰ § 12-61-113(1), C.R.S.

The complaints come into the Division as allegations and are given a preliminary designation into one of several categories listed above. Table 5 illustrates that initially most of the complaints are not categorized in a substantive manner but placed in the “Unknown” category. These complaints are analyzed based on content and then categorized by staff. The difference in the number of “Total Allegations” and “Total Complaints” are issues that are not pursued typically because the issue is not within the jurisdiction of the Commission.

Subsequent to receiving a complaint and investigating the case, the Commission may issue discipline for violations of the statutes. Table 6 enumerates the disciplinary actions taken by the Commission during the period examined for this sunset review.

Table 6
Discipline Issued
Fiscal Years 10-11 through 14-15

Type of Action	FY 10-11	FY11-12	FY 12-13	FY 13-14	FY 14-15
Revocation / Surrender / Voluntary Relinquishment	34	38	24	30	24
Suspension	19	8	9	5	5
Probation / Practice Limitation	11	13	19	13	8
Letter of Admonition	0	4	24	10	7
Fine	106	165	343	238	284
Diversion Stipulation	35	98	292	226	252
Discipline Stipulation/Public Censure	27	19	17	10	17
Restricted Licenses Issued	7	9	6	10	19
Summary Suspensions	2	2	0	0	4
Permanent Injunctions	1	2	0	0	0
Restitution cases	3	2	7	3	3
Restitution, dollar amount	\$2,633	\$83,666	\$63,408	\$20,012	\$4,902
Total	245	360	741	545	623

Table 6 illustrates that the most common modes of disciplining licensees are issuing fines and diversion stipulations. Note the increase in both of these forms of discipline as the number of newly licensed brokers increased during fiscal year 12-13 (*see Table 3, page 23*). Oftentimes fines are stayed or reduced, assuming the conditions of the stipulated practice are completed. Likewise, a diversion stipulation is employed on a lower level violation. If the conditions stipulated by the Commission are met, the discipline is not noted publicly. However, in these cases, the discipline is a matter of record and can be accessed by the public when requested. Discipline of this nature is geared toward allowing the licensee to continue to practice but allows the Commission to communicate to a licensee the conduct that is expected from a license holder.

Table 7 lists the value of the fines imposed by the Commission and the amount actually collected during the period under review.

Table 7
Fines Imposed and Collected
Fiscal Years 10-11 through 14-15

Fiscal Year	Total Value of Fines Imposed	Total Value of Fines Collected
10-11	\$357,898	\$240,418
11-12	\$204,707	\$143,107
12-13	\$362,195	\$234,095
13-14	\$251,870	\$136,030
14-15	\$323,443	\$156,063

During the review period, approximately 60 percent of the fines imposed by the Commission were collected. The remaining funds were stayed or the licensee was put on a payment plan.

Audits

In conjunction with the mandate that the Commission approve pre-license education and continuing education,¹¹¹ it conducts audits of new and existing classes/curricula. Table 8 lists the number of audits performed by the Division during the period examined for this sunset review.

Table 8
Audits Performed
Fiscal Years 10-11 through 14-15

Fiscal Year	Number of Audits
10-11	1
11-12	15
12-13	82
13-14	132
14-15	140
TOTAL	230

Table 8 illustrates that because of the added emphasis being placed on continuing education during fiscal year 11-12, the subsequent number of audits increased substantially.

¹¹¹ § 12-61-103(4)(a), C.R.S.

Collateral Consequences – Criminal Convictions

Section 24-34-104(6)(b)(IX), Colorado Revised Statutes, requires the Colorado Office of Policy, Research and Regulatory Reform to determine whether the agency under review, through its licensing processes, imposes any disqualifications on applicants or licensees based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

The Commission does not keep records of the number of individuals that are refused a license or registration based on a criminal record. However, the licensing criteria above explain that an individual must undergo a criminal history check prior to initial licensing.

There are multiple sections of the statutes that allow for a license or registration to be denied or revoked because of a conviction of fraud, deceit, material misrepresentation, theft, the breach of a fiduciary duty, and felony convictions. However, the number of cases is not tracked at present.

A criminal record does not automatically disqualify a person from obtaining a license. The Commission evaluates the cases and circumstances, and decides on an individual basis if a candidate should be disqualified.

While there are no records of any disqualifications, staff indicated that it does occur on occasion.

Analysis and Recommendations

Recommendation 1 – Continue Parts 1, 2, and 4, of Article 61, Title 12 Colorado Revised Statutes, for nine years until 2026.

The fundamental question a sunset review is directed to answer is: If a profession was unregulated, would it pose a threat to the public health, safety or welfare? In this case the answer is, yes.

Most people will be involved in very few real estate transactions in their lifetime. The goal for many is to lease a property until they are able to purchase a home of their own. Consumers tend not to develop much expertise in such matters and are often ill-informed of the many details involved in a real estate transaction. When making a purchase or sale as major as buying or selling a home or other piece of real estate, most consumers enlist experts to protect them; 87 percent of all buyers use a real estate agent or broker.¹¹²

The Colorado Real Estate Commission (Commission) licenses real estate brokers and registers subdivision developers. These are the people who provide the skill needed to help most consumers navigate through real estate transactions. For most people, purchasing a home(s) is the largest purchase(s) they are likely to make in their lives. Considering the complexities involved in even a simple real estate transaction and the degree of financial risk, it makes sense that if a person chooses to avail him or herself of a real estate broker's expertise, that the broker should possess minimal skills. A real estate transaction gone awry or an incompetent real estate broker could cause financial hardship to not only his or her own clients, but to any other parties involved in the transaction. Unfortunately for consumers, real estate transactions have become so complex that a person does not know what he or she does not know, until things go wrong. One consumer interviewed by the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) referred to the relationship as one of blind trust. The consumer must proceed with faith that the expert he or she retained is a competent advocate for him or her.

To prevent theft, fraud, negligence or any other number of calamities, the General Assembly decided that the Commission should ensure brokers undergo background checks, training, and an examination prior to being able to practice as a broker in the real estate industry. Once licensed, a broker must carry error and omissions insurance to protect consumers. The General Assembly also appointed the Colorado Division of Real Estate (Division) to aid the Commission in enforcing the regulatory scheme. All 50 states regulate real estate brokers and/or real estate salespeople in some manner.

¹¹² National Association of Realtors. Field Guide to Quick Real Estate Statistics. Retrieved August 2, 2016, from <http://www.realtor.org/field-guides/field-guide-to-quick-real-estate-statistics>

The Commission approves licenses, pre-license education classes and curricula; it develops an Annual Commission Update course to keep licensees apprised of any changes in regulation; and it approves post-license mandatory continuing education classes. It holds hearings to determine if a licensee has violated the conditions of licensure when a complaint is filed.

Additionally, the Commission registers subdivision developers. Subdivision developers must register before selling, leasing, transferring, or negotiating to sell, lease, or transfer any part of a subdivision. Currently, most of the registrants are timeshare developers which are defined as:

Subdivisions consisting of 20 or more timeshare interests (a timeshare interest includes a deeded or non-deeded interest, including but not limited to a fee simple interest, a leasehold, a contract to use, a membership or club agreement, or an interest in common).¹¹³

Raw ground subdivision, condominium conversion, and cooperative developers must also be registered under these statutes.

The processes of confirming a clean background check of project principals, recording the names of entities that own more than a 24 percent interest in a development or development company, recording development site-specific information, and ensuring that the developments are properly indemnified, protect consumers from harm.

Directing that real estate brokers be licensed and that subdivision developers be registered makes those individuals and businesses accountable for their actions. If a licensee or registrant fails to comply with the conditions of regulation then it can be disciplined or lose the ability to transact business.

Because the risk of incurring harm during real estate transactions is prevalent and the results can be serious, the General Assembly should continue the regulation of real estate brokers and subdivision developers, and continue the Commission and the Division as the entities that administer regulation. Still, the issues uncovered in this sunset review do not require the General Assembly to reconsider the program soon, so a nine-year renewal is appropriate.

Therefore, the General Assembly should continue Parts 1, 2, and 4, of Article 61, Title 12 Colorado Revised Statutes (C.R.S.), for nine years until 2026.

¹¹³ Colorado Department of Regulatory Agencies. *Subdivision Developer Program*. Retrieved May 31, 2016, from <https://www.colorado.gov/pacific/dora/node/91521>

Recommendation 2 - Delete the words “standard” and “including those” from section 12-61-803(4), C.R.S.

Section 12-61-803(4), C.R.S., reads in part,

A broker licensed pursuant to Part 1 of this article, whether acting as a single agent or transaction-broker, may complete *standard* forms *including those* promulgated by the Colorado real estate commission and may advise the parties as to effects thereof ... (emphasis added)

These highlighted words have caused problems because there is no definition of the word “standard” in either case law or statute.

Historic and current policy interpretation by the Commission and the Division is that the term “standard” means forms approved by the Commission or drafted by a Colorado-licensed attorney. That is what should be codified.

The major problem with a generic word like “standard” is that a person can obtain a form from a friend, from an office supply store, the internet, or other places and believe that he or she is using a standard form. Problems arise when the forms used run counter to Colorado law or Commission policy.

The Commission has heard cases where brokers used forms copied from the internet and when the transactions fell apart, the principals ended up in court to sort out the disorder. In another case, because a broker obtained a form off the internet and used it incorrectly, the sale of a contracted commercial property failed to occur. The failure of the transaction to close cost the seller both time and money. These issues occurred because the word “standard” is far too vague and leaves brokers leeway to act beyond their capabilities.

The law should be changed to read that a licensee,

...[M]ay complete ~~standard~~ forms ~~including those~~ promulgated by the Colorado real estate commission or drafted by a licensed attorney, when an attorney-client relationship has been established and may advise the parties as to effects thereof ...

The Commission has rules in place that address the use of forms, what modifications are allowed, and circumstances when a Commission-approved form does not exist for the specific transaction.

The sunset criteria ask whether statutes impede or enhance agency operations. In this case because the statute is unclear, it impedes operations and should be changed. Therefore, the General Assembly should delete the words “standard” and “and including those” from section 12-61-803(4), C.R.S.

Recommendation 3 - Create a license endorsement for property managers that requires prescribed education and financial surety as conditions for the endorsement.

If a person or business acts as a leasing agent for a landlord, he or she must be a licensed real estate broker.¹¹⁴ There are no statistics concerning the number of property managers practicing in Colorado because there is no separate regulatory category for them. Based on a survey of licensees conducted for this sunset review, COPRRR estimates that roughly seven percent of the current licensees, approximately 2,300 individuals, act as property managers to some degree.

Property owners likely believe that because the broker they hire to manage their rental property(s) is licensed, he or she has some requisite knowledge and experience. This is not necessarily the case. Residential real estate sales, what most brokers concentrate on, is very different from commercial real estate or rental property management. The majority of education required to obtain a broker's license relates to residential sales. Rental property management is a minimal portion of broker curriculum required for a real estate broker license. The license creates a false sense of credibility for the property management industry. Property managers have the potential to cause great financial harm if they are incompetent or dishonest.

According to records examined by COPRRR, the Division often grapples with cases where funds belonging to tenants, in the form of security deposits, and property owners, in the form of rent, were misappropriated by the broker/rental property manager. Often the brokers are unaware of the Commission rules concerning record-keeping requirements, trust account management, and security deposits. When there is a problem, the Division's auditors may spend days sorting out the disorder where funds are comingled between operating and trust accounts or diverted from trust accounts and paid back, when necessary, from personal funds. Records indicate mismanaged funds range from \$35,000 at the low end, to well over \$100,000 at the high end of that spectrum. However, problems at the high end occur more often.

There are also issues that are not quite as serious but are still problems. Issues like using an unregistered business name, designated brokers operating multiple businesses, or using unlicensed office personnel for activities that require a license. These are issues that could be easily corrected and may be caused through a degree of legal unfamiliarity. These types of issues often occur when there is a slowing in the real estate sales market and more brokers turn to property management.

The solution to these problems is for the General Assembly to direct the Commission to create a required property manager endorsement for brokers who professionally lease and manage rental properties. Commercial real estate brokers will commonly negotiate leases but not manage the property after the transaction. The endorsement ought to be only for those who lease and manage and exempt those transaction-only brokers.

¹¹⁴ §§ 12-61-101(2)(a) and 12-61-102, C.R.S.

The Commission should determine by rule the minimum number of hours of approved property management classes, including record keeping and trust management classes, necessary for an endorsement. Additionally, to renew a broker's license currently, all brokers must complete 12 elective hours of continuing education every three years. For property managers, those 12 hours should be in approved property management classes.

Because the property management issues that are brought to the Commission typically involve the mishandling of funds, the General Assembly should also require that a licensee have a surety bond, payable to the Director of the Division (Director). A surety bond will protect both Colorado landlords and tenants by providing financial recourse to those consumers should an issue involving money arise. Based on the records reviewed by COPRRR, the minimum surety amount should be \$100,000. Moreover, the property manager should also be required to keep the bond sufficient to indemnify owner accounts payable. The Director should be able to audit a licensee to ensure the correct amount is in place and any consumer ought to be able to access the surety after a decision by the Commission.

The first sunset criterion asks whether conditions that led to initial regulation have changed that warrant more, less, or the same degree of regulation. In this case initial regulation did not consider such serious problems associated with property management. The least restrictive solution to the problems is to require specialized training within the current educational guidelines and require surety in an amount to cover money owed to tenants and property owners.

Therefore, the General Assembly should create a property manager endorsement that requires prescribed education and financial surety as conditions for the endorsement.

Recommendation 4 - Strengthen the requirements to become an employing broker by directing the Commission to establish, by rule, the number of transactions that must be completed in order to become an employing broker.

An employing broker is on record with the Commission as employing another broker. An employing broker is responsible for providing supervision to all brokers in his or her employ and a high level of supervision for new licensees.

In the current licensing scheme, to become an employing broker one must complete the two-year associate broker period under a "high level of supervision" by his or her employing broker.¹¹⁵ This period is like an apprenticeship and is required of every licensee. Beyond the initial, universal, high level of supervision requirement, to become an employing broker a licensee must complete 24 Commission-approved hours of education in brokerage administration.¹¹⁶

¹¹⁵ 4 CCR 725-1, Real Estate Commission Rules E-32

¹¹⁶ § 12-61-103(6)(c), C.R.S.

Once a person is an employing broker he or she is on record with the Commission and must:¹¹⁷

- Maintain all trust accounts and trust account records;
- Maintain all transaction records;
- Develop an office policy manual and periodically review office policies with all employees;
- Provide for a high level of supervision of newly licensed persons;
- Provide for a reasonable level of supervision for experienced licensees;
- Take reasonable steps to ensure that violations of statutes, rules and office policies do not occur or reoccur; and
- Provide for adequate supervision of all offices operated by the broker, whether managed by licensed or unlicensed persons.

Based on this list of responsibilities, an employing broker acts as a mentor, a manager, and a superior in a complicated industry and sophisticated workplace environment. This is the type of position that requires a wide range of experience.

The current system allows that as soon as a broker is finished with his or her supervised apprenticeship, he or she can take the classes and employ other brokers. At that point, he or she is responsible for all undertakings and mentoring. The lack of experience has led to a number of complaints before the Commission concerning employing brokers being deficient in one or more of their supervisory responsibilities.

The problems the Commission sees with employing brokers vary. The cases involve employing brokers not only hurting consumers, they also hurt the other brokers in the brokerage. A brokerage business cannot operate without a designated employing broker. Often problems arise from a lack of experience with the nuances of the industry and familiarity with the laws.

In one case before the Commission, an employing broker allowed an associate broker to represent one party in a transaction as their agent and the other as a transaction broker rather than as a customer. This is a clear violation of the law.

In another case, an employing broker had no brokerage relationship policy in her office policy manual defining the different types of relationships and what disclosures are necessary in transactions. This broker allowed associate brokers to deviate from what is allowable in those relationships. This caused problems with the Commission for the employing broker and all of her employees.

These are but two of several issues the Commission, contends with in an ongoing manner.

¹¹⁷ 4 CCR 725-1, Real Estate Commission Rules E-30

The solution to this problem is to require that an employing broker have more experience. For example, in addition to the required education in brokerage administration, the Commission could require a broker to complete at least 20 sales transactions during a two-year period of active, post-associate level licensure. If a broker wants to be an employing broker specializing in residential property management, the Commission could require the broker to complete a specified number of leases, perhaps 100. If a broker wants to be an employing broker in commercial real estate, then perhaps the Commission could require 20 transactions in be either commercial leases or sales. The key is that the transactions must be completed, which will require the broker to confront multiple issues, be a creative problem solver, and be better able to manage and mentor. This experience will protect the consumers who patronize the services of an employing broker's employees to a far greater extent than the current system provides.

Therefore, to protect consumers, the General Assembly should strengthen the requirements to become an employing broker by directing the Commission to establish, by rule, the number of transactions that must be completed in order to become an employing broker.

Recommendation 5 - Amend the statutes to conform to the Real Estate Settlement Procedures Act of 1974 concerning referral fees.

Section 12-61-203.5(2)(b)(III), C.R.S., defines a referral fee as, "any fee paid by a licensee to any person or entity, other than a cooperative commission offered by a listing broker to a selling broker or vice versa." The statute allows referral fees to take place in real estate transactions under certain circumstances. Those are circumstances when:¹¹⁸

- An actual introduction of business has been made,
- A contractual referral fee relationship exists, or
- A contractual cooperative brokerage relationship exists.

However, section 12-61-113.2(2)(b), C.R.S., states that all affiliated business arrangements must comply with the Real Estate Settlement Procedures Act of 1974 (RESPA). Affiliated business arrangements are arrangements with providers of settlement services.

Section 8 of RESPA prohibits a person from giving or accepting anything of value for referrals of settlement services business related to a federally related mortgage loan. It also prohibits a person from giving or accepting any part of a charge for services that are not performed. These are also known as kickbacks, fee-splitting and unearned fees.¹¹⁹

Violations of RESPA are subject to fines up to \$10,000 and one year in jail. Individuals are also open to civil liability for three times the amount of the settlement charges.

¹¹⁸ § 12-61-203.5(1), C.R.S.

¹¹⁹ RESPA News. Prohibited Practices. Retrieved August 2, 2016, from <http://www.respanews.com/RN/ProhibitedPractices.aspx>

With very limited exceptions, RESPA does not allow referral fees. Colorado law appears to contradict itself in allowing referral fees in one statute but stating the laws must conform to RESPA in another. Therefore, the General Assembly should amend the statutes to conform to RESPA concerning referral fees.

Recommendation 6 - Create one cash fund for all Division programs.

The Division administers the regulatory programs for real estate brokers and subdivision developers which are the subjects of this sunset review. The Division also administers the programs that regulate mortgage loan originators, real estate appraisers, community association managers, and appraisal management companies. It also operates the Home Owners Association Information and Resource Center and the Conservation Easement Program. Some of these programs are board-regulated and some are Director-regulated.

The Division staff is basically organized by task not by license type. There are teams that perform licensing, investigations, financial and education audits, and other administrative tasks that are common among all of the programs. A major problem is that each program has its own cash fund.

Cash-fund budgeting approximates the direct and indirect costs of a program's operations. The General Assembly approves the budget based on the estimates of future operations and projected cash revenues. The Division must allot personnel, supplies, and other expenditures based on the budget approved for each individual program. Other large cash-funded organizations administer multiple programs with one division-wide cash fund rather than one cash fund for each program. This allows for more efficient management of the centralized tasks, personnel, and services that are shared among programs. The concept is more like charging an administrative fee for centralized services rather than having to work with a fixed budget. Doing so makes shifting personnel among the programs based on workload and capabilities much easier. A centralized cash fund does not change the dollars needed, only the manner in which resources are accounted for given the complexities of state government operations.

Therefore, to create more fluidity and efficiency in Division centralized services, the General Assembly should create one cash fund for all Division programs.

Recommendation 7 - Revise the license renewal laws such that all licenses expire on December 31.

The present laws have broker licenses expiring three years from the date of issuance. There is also a 30-day grace period if the license is not renewed on time. This system has caused inefficiencies with Division administration.

There are more than 30,000 active broker licenses for the Division to track. Each licensee is required to complete annual continuing education. In theory, anniversary licensing means that the staff will verify the compliance of- and renew approximately 40 licenses each day. The reality is that licenses are not issued or do not expire at such evenly distributed intervals. The workload fluctuates which does not allow the staff to make it through the workload in a well-organized, efficient manner.

The system will be more efficient if there is one renewal date each year for those licenses that are scheduled for renewal, on December 31. The staff can allot its resources in a more predictable, efficient manner.

To create a more efficient licensing system, the General Assembly should revise the license renewal laws such that all licenses expire on December 31.

Recommendation 8 - Authorize the Commission to consider deferred judgments as a condition for licensure.

The Commission is directed to consider whether a license should be issued to a person who has a, “Conviction of, entering a plea of guilty to, or entering a plea of *nolo contendere* to any crime...”¹²⁰ The section then lists certain criminal offenses that should be considered. The General Assembly has charged the Commission members to discuss, deliberate, and decide whether a potential or current licensee’s criminal history poses a threat to the public if he or she is awarded a license to practice real estate in Colorado. In that vein, the Commission should also have to consider the circumstances surrounding any deferred judgments the licensee or applicant has entered into.

In general, licensing laws that direct a regulator to consider criminal history as a condition for licensure include a deferred judgment in the list of considerations. A deferred judgment could pose as much of a threat to the public as a conviction, guilty plea, or a plea of no contest. Consideration does not mean that the Commission should disqualify the person; it means that the Commission, as the public’s guardian, needs to be aware of- and discuss past criminal activity on the part of the individuals it licenses. This should include official agreements with the courts concerning criminal charges such as a deferred judgment.

Therefore, to protect the public safety, the General Assembly should instruct the Commission to consider deferred judgments as a condition for licensure.

¹²⁰ § 12-61-113(1)(m), C.R.S.

Recommendation 9 - Require the Commission to develop guidelines for the Annual Commission Update course rather than developing the course itself.

The Commission is directed to develop an Annual Commission Update course relating to the statutes and Commission rules for licensees.¹²¹ Licensees must take four hours of this Annual Commission Update annually, pass an examination, and have completed 12 hours prior to the three-year renewal of their licenses. In conjunction with this sunset review, COPRRR surveyed more than 4,000 licensees. More than 82 percent of the respondents agreed that, “The Annual Commission Updates Course is necessary for me to keep up with changes.” More than 42 percent strongly agreed.

This process of developing the curriculum is very labor intensive. It takes the Division several months of collaboration and public meetings to develop the class. The class is then sent out to instructors who teach it and examine the licensees.

Beyond the Annual Commission Update, the Commission audits education providers’ pre- and post-license curricula. The audit is to ensure that any curriculum being taught by a provider meets Commission pre-license and continuing education standards. In those cases the Commission does not develop the classes but it analyzes content to ensure compliance.

Having the Commission develop guidelines for the Annual Commission Update that will inform the education providers of what to teach in a class rather than developing a class is a more productive use of both staff and education provider resources. The professional education provider can cater the instruction to his or her audience and Division staff can then assess this class content just as it does with the other real estate educational requirements. Making the Annual Commission Update process match the larger education compliance process will create administrative efficiencies and eliminate a labor-intensive outlier.

Because it is a more efficient use of public and private resources, the General Assembly should require the Commission to develop guidelines for the Annual Commission Update course rather than developing the course itself.

Recommendation 10 – Modify the Commission’s composition to include a licensee who mainly works as a property manager.

The Commission is comprised of three real estate brokers who have at least five years' experience in Colorado real estate and two representatives of the public at large.¹²² Presently, the broker members are all individuals that specialize in residential real estate sales and the two public representatives are both attorneys who practice real estate law. This recommendation encourages slight changes to the Commission’s makeup.

¹²¹ § 12-61-110.5(2), C.R.S.

¹²² § 12-61-105(1), C.R.S.

There are unofficial specializations in the real estate industry. There are those who concentrate solely on residential sales, those who work in commercial sales and leasing, and those who work as property managers. Those who work in property management often work in all three areas. While the majority of real estate sales transactions fall into the residential category, the majority of real estate transactions are leases. Many of those leases are completed by licensees.

Colorado does not license real estate brokers by specialty but all brokers must be licensed by the Commission. Nonetheless, COPRRR heard quite often over the course of this sunset review from individuals who work in the property management area that they are underrepresented in policy decisions that affect both real estate professionals and the real estate profession in Colorado. They point to the continuing education requirements and the Annual Commission Update as two areas where that occurs. Many stated that for them the Annual Commission Update had no value because they are not involved in residential real estate sales. Others complained about the lack of options in mandatory continuing education, again, because they do not practice residential real estate

It is justifiable to provide property management brokers a voice on the Commission. The General Assembly has allotted three seats on the Commission to real estate brokers. This recommendation seeks to parcel out one to a broker who concentrates on property management. This issue becomes more salient if the General Assembly adopts Recommendation 3 and directs the Commission to develop a property management endorsement for brokers.

Therefore, the General Assembly should modify the Commission's composition to include a licensee who mainly works as a property manager.

Administrative Recommendation 1 – The Director should track license disqualifications based on criminal history.

During the 2013 legislative session, the General Assembly added a criterion to those that govern the research and reporting in sunset reviews. Criterion IX asks,

Whether the agency through its licensing or certification process imposes any disqualifications on applicants based on past criminal history and, if so, whether the disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subparagraph (i) of paragraph (a) of subsection (5) of this section shall include data on the number of licenses or certifications that were denied, revoked, or suspended based on a disqualification and the basis for the disqualification.¹²³

¹²³ § 24-34-104(6)(b)(IX), C.R.S.

Because it is a newer reporting requirement, some programs and organizations do not track this information. Because the General Assembly finds this information to be an important function of a sunset review, the Director should track disqualifications for licenses based on past criminal history.

Administrative Recommendation 2 – The Commission should develop rules concerning the use of the transaction broker designation.

In Colorado, when a real estate broker acts as a real estate agent he or she is legally bound to assist only one party in a real estate transaction as an agent. Recall from the *Profile of the Industry* section of this sunset report that an agency relationship exists when two parties agree that one of the parties will represent the other. The agency designation carries fiduciary responsibilities. For providing expertise, the real estate broker is paid a commission from the proceeds of the real estate transaction.

A transaction broker performs the administrative tasks associated with completing the transaction without interest rather than acting as an agent for the buyer or seller. Because transaction brokers have no fiduciary responsibility in the transaction, they also have less liability, since more responsibility rests with the seller and the buyer.

The General Assembly initiated real estate broker licensing to protect consumers by ensuring that licensees are knowledgeable and capable professionals. When a person decides that he or she will pay a fee or commission for a real estate broker, then that person expects certain benefits and protections.

Some will argue that working with a transaction broker is a consumer choice that should not be taken away. Given that most people and many brokers are unaware of the level of jeopardy presented in a real estate transaction, the liabilities outweigh the benefits when compared to the customary agency-based fiduciary responsibilities. In fact, transaction brokerage is not allowed in many states because of the legal vulnerability it exposes.

A purpose of licensing real estate brokers is to protect consumers from harm.

The transaction broker designation does little to protect consumers from harm. It should be a choice made with thoughtful consideration and clear understanding of the ramifications.

Therefore, the Commission should develop rules concerning the use of the transaction broker designation, specifically:

- If there is a change in the brokerage relationship, the broker must, verbally and in writing, explain the ramifications of changing, including the possible pitfalls;
- If there is a change in the brokerage relationship, the broker must, verbally and in writing, explain that the agreed upon commission may be renegotiated; and

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- The listing agreement should eliminate the transaction broker designation as the default relationship and the consumer must specifically designate a relationship.

Administrative Recommendation 3 – The Director should develop a webinar to help consumers understand their rights and responsibilities during real estate transactions.

This sunset review has pointed out several times that purchasing a home is likely the most costly transaction consumers will experience. Many consumers are not aware of what happens during most real estate transactions. Consumers are unlikely to gain much knowledge from going through the experience, because they do not experience too many real estate transactions in a lifetime.

An important component to consumer protection by a public agency is consumer education. Some regulatory programs, including the Division, educate consumers on a variety of topics. Given that the stakes for consumers in a real estate transaction are so consequential, the Division should also develop a short informational webinar explaining transaction basics. The webinar should be accessible on the Division’s website. The Division could explain the steps one can expect in a basic transaction, what is expected of the consumer, what is expected of the real estate broker, and what is expected from the other professionals that will be involved, as well as any other important transactional components.

The internet has presented regulators an efficient, inexpensive way of reaching large populations of individuals. Consumer outreach will aid in the collaboration between consumers and professionals, as well as equip consumers with some basic knowledge to help them protect themselves. Consequently, the Director should develop a webinar to help consumers understand their rights and responsibilities during real estate transactions.

Appendix A - Survey Response Data

In conjunction with this sunset review the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) surveyed the real estate brokers who have an email address on record with the Division. COPRRR emailed a link to the survey requesting each recipient take the survey as part of the sunset review. A total of 33,760 emails were sent to licensees and 4,709 individuals responded. This represents a 14 percent response rate. The following is the survey response data.

In what capacity do you generally transact business?

Broker in Charge/Employing Broker	1003	21.4%
Independent Broker	998	21.3%
Associate Broker	2622	56%
Property Manager	336	7.2%
Commercial Realtor	217	4.6%

I am a member of the Colorado Association of Realtors.

Yes	3493	75%
No	1167	25%

I am a member of a sales "team" within my brokerage.

Yes	889	19.1%
No	3754	80.9%

I believe the Colorado Real Estate Commission operates in the best interest of the real estate industry.

Strongly Agree	1592	34.1%
Agree	1998	42.8%
Neutral	777	16.7%
Disagree	219	4.7%
Strongly Disagree	78	1.7%

I believe the Colorado Real Estate Commission operates in the best interest of consumers.

4Strongly Agree	2097	44.9%
Agree	1974	42.2%
Neutral	462	9.9%
Disagree	90	1.9%
Strongly Disagree	50	1.1%

I believe that the Colorado Real Estate Commission operates as a neutral body.

Strongly Agree	858	18.5%
Agree	1598	34.5%
Neutral	1346	29%
Disagree	665	14.4%
Strongly Disagree	167	3.6%

The Colorado Real Estate Commission is helpful in answering any questions that I need answered.

Strongly Agree	955	20.5%
Agree	1864	40.1%
Neutral	1294	27.8%
Disagree	391	8.4%
Strongly Disagree	145	3.1%

I understand my rights as a licensed broker.

Strongly Agree	1681	36.1%
Agree	2521	54.1%
Neutral	343	7.4%
Disagree	96	2.1%
Strongly Disagree	20	0.4%

I understand my responsibilities as a licensed broker.

Strongly Agree	2781	59.6%
Agree	1819	39%
Neutral	51	1.1%
Disagree	14	0.3%
Strongly Disagree	5	0.1%

The pre-license education curriculum is valuable for a new broker to understand the real estate business.

Strongly Agree	1937	41.6%
Agree	1538	33%
Neutral	617	13.2%
Disagree	430	9.2%
Strongly Disagree	138	3%

The Annual Commission Updates Course is necessary for me to keep up with changes.

Strongly Agree	1963	42.1%
Agree	1891	40.5%
Neutral	442	9.5%
Disagree	267	5.7%
Strongly Disagree	102	2.2%

The 12-hour continuing education elective requirement is important in keeping me proficient as a real estate professional.

Strongly Agree	1858	39.9%
Agree	1760	37.8%
Neutral	567	12.2%
Disagree	354	7.6%
Strongly Disagree	122	2.6%

The continuing education classes necessary to fulfill my license requirement are readily available.

Strongly Agree	2137	45.9%
Agree	2044	43.9%
Neutral	305	6.6%
Disagree	138	3%
Strongly Disagree	30	0.6%

I would take profession-oriented continuing education classes if they were not required to renew my license.

Strongly Agree	1601	34.3%
Agree	2191	47%
Neutral	580	12.4%
Disagree	247	5.3%
Strongly Disagree	47	1%

All real estate transactions are complicated.

Strongly Agree	684	14.6%
Agree	1689	36.1%
Neutral	1078	23.1%
Disagree	1098	23.5%
Strongly Disagree	127	2.7%

More than half of the real estate transactions with which I am involved are not complicated.

Strongly Agree	250	5.4%
Agree	1370	29.5%
Neutral	974	21%
Disagree	1630	35.1%
Strongly Disagree	425	9.1%

More than half of the real estate transactions with which I am involved are complicated.

Strongly Agree	715	15.3%
Agree	1809	38.8%
Neutral	969	20.8%
Disagree	1026	22%
Strongly Disagree	141	3%

There are too many forms to keep track of in a basic real estate, buy/sell, transaction.

Strongly Agree	565	12.1%
Agree	1177	25.3%
Neutral	1214	26.1%
Disagree	1456	31.3%
Strongly Disagree	241	5.2%

I consider it good customer service to advise my clients as much as possible concerning transactions and contracts.

Strongly Agree	2852	61.2%
Agree	1405	30.1%
Neutral	320	6.9%
Disagree	68	1.5%
Strongly Disagree	17	0.4%

Even if I have never used a form I can usually explain what it means to my clients.

Strongly Agree	1007	21.6%
Agree	2397	51.4%
Neutral	816	17.5%
Disagree	386	8.3%
Strongly Disagree	56	1.2%

Most of the brokers I work with are competent and professional.

Strongly Agree	438	9.4%
Agree	2363	50.7%
Neutral	1015	21.8%
Disagree	688	14.8%
Strongly Disagree	157	3.4%

If I have a question I can always get a correct answer from my employing broker.

Strongly Agree	2029	44.4%
Agree	1469	32.1%
Neutral	938	20.5%
Disagree	106	2.3%
Strongly Disagree	30	0.7%

My employing broker is diligent in ensuring that all phases of transactions are covered.

Strongly Agree	2255	49.2%
Agree	1382	30.2%
Neutral	827	18.1%
Disagree	85	1.9%
Strongly Disagree	32	0.7%