



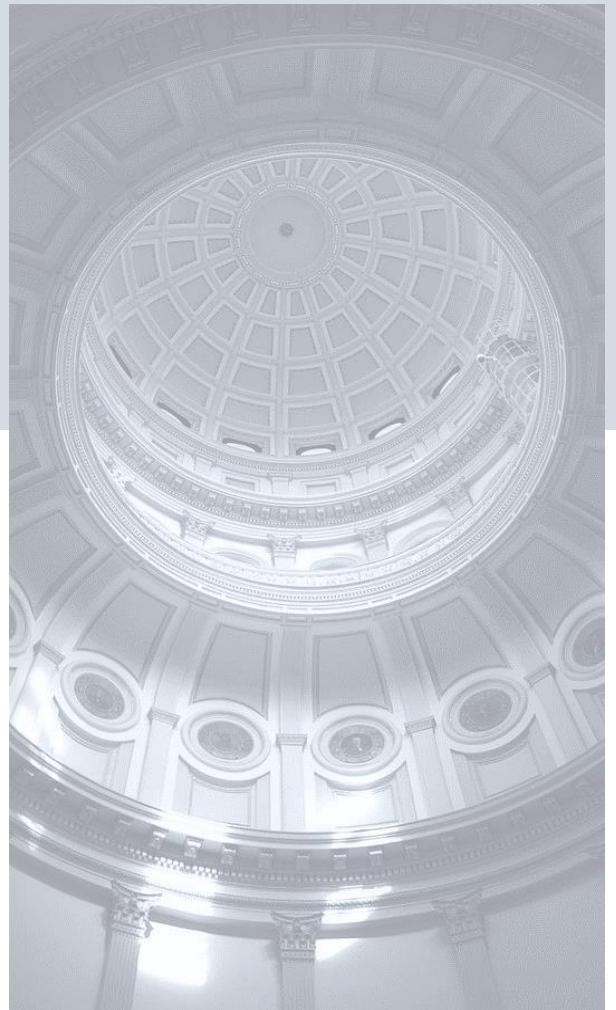
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2021 Sunrise Review

Community Association Managers



October 15, 2021



COLORADO

**Department of
Regulatory Agencies**

Executive Director's Office

October 15, 2021

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

Dear Members of the General Assembly:

The General Assembly established the sunrise review process in 1985 as a way to determine whether regulation of a certain profession or occupation is necessary before enacting laws for such regulation and to determine the least restrictive regulatory alternative consistent with the public interest. Pursuant to section 24-34-104.1, Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed its evaluation of the sunrise application for the regulation of community association managers and is pleased to submit this written report.

The report discusses the question of whether there is a need for regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and whether the public can be adequately protected by other means in a more cost-effective manner.

To learn more about the sunrise review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director



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Background

Sunrise Process

Colorado law, section 24-34-104.1, Colorado Revised Statutes (C.R.S.), requires that individuals or groups proposing legislation to regulate any occupation or profession first submit information to the Department of Regulatory Agencies (DORA) for the purposes of a sunrise review. The intent of the law is to impose regulation on occupations and professions only when it is necessary to protect the public health, safety or welfare. DORA's Colorado Office of Policy, Research and Regulatory Reform (COPRRR) must prepare a report evaluating the justification for regulation based upon the criteria contained in the sunrise statute:¹

- (I) Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;
- (II) Whether the public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional or occupational competence;
- (III) Whether the public can be adequately protected by other means in a more cost-effective manner; and
- (IV) Whether the imposition of any disqualifications on applicants for licensure, certification, relicensure, or recertification based on criminal history serves public safety or commercial or consumer protection interests.

Any professional or occupational group or organization, any individual, or any other interested party may submit an application for the regulation of an unregulated occupation or profession. Applications must be accompanied by supporting signatures and must include a description of the proposed regulation and justification for such regulation.

Methodology

During the sunrise review process, COPRRR staff performed a literature search, contacted and interviewed the sunrise applicant, reviewed licensure laws in other states and interviewed stakeholders. To determine the number and types of complaints filed against community association managers in Colorado, COPRRR staff contacted the Division of Real Estate and professional associations.

¹ § 24-34-104.1(4)(b), C.R.S.

Profile of the Profession

Common interest communities, which include homeowner associations (HOAs), are formed by communities with single-family homes or multiple-unit buildings, such as condominiums.² The primary purpose of common interest communities is, among other things, to maintain community standards to ensure stable property values. Homeowners automatically become members of common interest communities when they purchase property in a community governed by common interest.

According to the Colorado Division of Real Estate, as of December 2020, there were at least 10,486 active HOAs throughout Colorado.

Residents within the community are charged with running a common interest community. Common interest communities have a board of directors, comprised of community residents, which is responsible for creating, modifying and enforcing rules and governing documents related to the community. The rules are highlighted in documents typically referred to as the Declaration of Covenants, Conditions and Restrictions (CC&Rs).³

The CC&Rs establish certain conditions on property owners, such as structural restrictions. Examples of structural restrictions include the type of allowable fencing, landscaping or color of paint for houses.⁴ CC&Rs usually outline penalties for violations of the HOA rules, which may include fines, forced compliance or in some cases, litigation.⁵

The common interest community board of directors is also responsible for establishing fees. Fees are collected to, among other things, maintain common areas (e.g., parks) and amenities such as swimming pools within the community. Fees may also be utilized for trash collection and snow removal services. Further, fees are assessed for administrative matters, such as obtaining documents necessary to close on the sale or refinancing of a property.

Often, common interest communities contract with third parties, known as community association managers (CAMs), to manage the day-to-day operations of the community. CAMs are the subject of this sunrise review. CAMs perform a variety of duties on behalf common interest communities, including, but not limited to: collecting the fees imposed on homeowners by the common interest community, scheduling board meetings, administering board elections, contracting with vendors to provide

² Investopedia. *Homeowners Association - HOA*. Retrieved July 20, 2021, from <https://www.investopedia.com/terms/h/hoa.asp>

³ Investopedia. *Homeowners Association - HOA*. Retrieved July 20, 2021, from <https://www.investopedia.com/terms/h/hoa.asp>

⁴ Investopedia. *Homeowners Association - HOA*. Retrieved July 20, 2021, from <https://www.investopedia.com/terms/h/hoa.asp>

⁵ Investopedia. *Homeowners Association - HOA*. Retrieved July 20, 2021, from <https://www.investopedia.com/terms/h/hoa.asp>

landscaping and other services and scheduling required maintenance of common areas and amenities.

CAMs also, among other things, prepare financial statements and budgets, and negotiate with contractors.⁶

A community association's contract with a CAM is terminable for cause without penalty to the community association.⁷

Common interest communities and CAMS are often conflated, and understandably so. In many situations, it can be difficult to discern whether a particular action was taken by the common interest community or the CAM that it directs. Regardless, the two are distinct and separate entities, as highlighted in the Colorado Revised Statutes.

Currently, the Community Association Managers International Certification Board (CAMICB) and the Community Associations Institute (CAI) offer several credentials related to community management. The CAMICB was created by CAI to develop and administer the international Certified Manager of Community Associations (CMCA) certification program.⁸

According to the CAI website,

The CMCA is the first step for a professional community manager to demonstrate the fundamental knowledge required to manage a community association.⁹

To qualify for a CMCA credential, an applicant must satisfy the following requirements:¹⁰

- Successfully complete an in-depth comprehensive training course covering the essentials of community association management;
- Possess five years of experience of community association management; or
- Possess a license in either Arizona, California, Florida, Nevada or Illinois.

⁶ U.S. Bureau of Labor Statistics. *Property, Real Estate, and Community Association Managers*. Retrieved July 28, 2021, from <https://www.bls.gov/ooh/management/print/property-real-estate-and-community-association-managers.htm>

⁷ § 38-33.3-302(4)(a), C.R.S.

⁸ Community Association Managers International Certification Board. *Certified Manager of Community Associations Handbook*. Retrieved July 21, 2021, from <https://www.camicb.org/SiteCollectionDocuments/CMCAHandbook.pdf>

⁹ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

¹⁰ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

Applicants must also submit a CMCA application and comply with the CAMICB Standards of Professional Conduct.¹¹

In order to obtain the CMCA credential, a candidate must complete the aforementioned prerequisites and pass the CMCA examination, which is administered by the CAMICB. The CMCA examination is a computer-based examination consisting of 120 multiple-choice questions (100 questions are scored and 20 are unscored).¹² A candidate must complete the examination within two and one-half hours.¹³

The total cost for the CMCA examination is \$315.

CAMs who possess a CMCA credential must pay an annual service fee.¹⁴ To maintain a CMCA credential, a CAM must complete a minimum of 16 hours of continuing education (CE) every two years.¹⁵

In addition to the CMCA credential offered by CAMICB, CAI itself offers two additional credentials: Association Management Specialist (AMS) and Professional Community Association Manager (PCAM).

In order to qualify for the AMS credential, an applicant must satisfy the following requirements:¹⁶

- Possess two or more years of community association management experience;
- Successfully pass two CAI M-200 level courses, such as:¹⁷
 - Facilities management,
 - Association Communications,
 - Community Leadership,
 - Community Governance,
 - Risk Management, or
 - Financial Management.

¹¹ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

¹² Community Association Managers International Certification Board. *Certified Manager of Community Associations Handbook*. Retrieved July 21, 2021, from <https://www.camibc.org/SiteCollectionDocuments/CMCAHandbook.pdf>

¹³ Community Association Managers International Certification Board. *Certified Manager of Community Associations Handbook*. Retrieved July 21, 2021, from <https://www.camibc.org/SiteCollectionDocuments/CMCAHandbook.pdf>

¹⁴ Community Association Managers International Certification Board. *Certified Manager of Community Associations Handbook*. Retrieved July 21, 2021, from <https://www.camibc.org/SiteCollectionDocuments/CMCAHandbook.pdf>

¹⁵ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

¹⁶ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

¹⁷ Community Associations Institute. *M-200 Courses*. Retrieved August 2, 2021, from <https://www.caionline.org/LearningCenter/Education-for-Managers/Documents/Continuing%20Education%20Course%20Matrix.pdf>

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- Comply with the CAI Professional Manager Code of Ethics; and
 - Pass the CMCA examination.

CAMs who possess an AMS credential must pay an annual maintenance fee, which is \$85 for members of CAI and \$310 for non-members.¹⁸ To maintain an AMS credential, a CAM must complete a minimum of one CAI course and an additional eight CE hours every three years.¹⁹

According to CAI, the PCAM is the highest level of community association management credentials.²⁰ To qualify for a PCAM credential, an applicant must satisfy the following requirements:²¹

- Pass the CMCA examination,
- Successfully pass all six CAI M-200 level courses plus complete a case study,
- Complete five years or more of community association management experience (including AMS experience), and
- Comply with the CAI Professional Manager Code of Ethics.

CAMs who possess a PCAM credential must pay an annual maintenance fee, which is \$160 for members of CAI and \$385 for non-members.²² To maintain a PCAM credential, a CAM must complete either a 300 or 400 level CAI course or attend the CAI Annual Headquarters Conference, Law Seminar or the Chief Executive Officer Retreat every three years.²³

The CAI also offers the Accredited Association Management Company (AAMC) credential for companies. According to CAI, “The AAMC accreditation demonstrates a company’s commitment to providing the unique and diverse services community associations need.”²⁴

¹⁸ Community Associations Institute. *Association Management Specialist*. Retrieved August 2, 2021, from <https://www.caionline.org/LearningCenter/credentials/Pages/AMS.aspx>

¹⁹ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

²⁰ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

²¹ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

²² Community Associations Institute. *Professional Community Association Manager (PCAM)*. Retrieved August 3, 2021, from <https://www.caionline.org/LearningCenter/credentialQs/Pages/PCAM.aspx>

²³ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

²⁴ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

To qualify for an AAMC credential, an applicant must satisfy the following requirements:²⁵

- Possess a minimum of three years of experience providing community association management services;
- Employ at least three full-time employees, one of whom is a manager;
- Designate a PCAM as the company's senior manager;
- Employ a staff of which 50 percent of managers hold a CAI or CAMICB credential;
- Maintain fidelity, general liability and worker's compensation insurance in addition to adhering to applicable federal, state and local laws; and
- Be in compliance with the CAI Professional Manager Code of Ethics.

The initial application fee for an AAMC certification is \$300 for CAI members and \$550 for non-members.²⁶

²⁵ Community Associations Institute. *Community Associations Institute (CAI), Community Association Managers International Certification Board (CAMICB) Credentials*. Retrieved July 21, 2021, from <https://www.caionline.org/LearningCenter/credentials/Documents/Credentials%20One%20Sheet.pdf>

²⁶ Community Associations Institute. *Accredited Association Management Company (AAMC)*. Retrieved August 15, 2021, from <https://www.caionline.org/LearningCenter/credentials/Pages/AAMC.aspx>

Proposal for Regulation

The Colorado HOA Forum (Applicant) submitted a sunrise application to the Colorado Office of Policy, Research and Regulatory Reform within the Department of Regulatory Agencies for review in accordance with the provisions of section 24-34-104.1, Colorado Revised Statutes. The application identifies licensure of community association managers (CAMs) as the appropriate level of regulation.

The Applicant asserts that licensing CAMs would:

- Protect homeowner associations against improper accounting practices by defining rules on accounting for funds and recordkeeping and conflicts of interest in the competitive bidding process.
- Provide information to the public on property management companies that have been penalized for violations of law.
- Provide an accessible, affordable and non-litigious dispute resolution process for homeowners who file complaints with their property managers.

The Applicant's proposal would require that candidates for licensure meet the following requirements:

- Be at least 18 years of age;
- Hold at least a high school diploma;
- Demonstrate knowledge of the laws of Colorado that govern common interest communities, such as the Nonprofit Act and the Colorado Common Interest Ownership Act;
- Agree, in writing, to abide by a standard of professional conduct; and
- Submit evidence of insurance and evidence of satisfying bonding requirements to be established by the Department of Regulatory Agencies.²⁷

The Applicant also proposes excluding applicants for licensure who have been convicted of a felony within the past five years. Applicants for licensure who have failed to cooperate with any law enforcement or regulatory agency in any investigation of any law enforcement or regulatory investigation would also be excluded from licensure.

Summary of Current Regulation

Federal Laws and Regulations

Currently, there are no federal laws requiring community association managers to be licensed, certified or registered.

The Colorado Regulatory Environment

Many common interest community associations (community associations) contract with community association managers (CAMs), and they are subject to a variety of Colorado laws, including, but not limited to:

- The Colorado Revised Nonprofit Corporation Act (CRNCA),
- The Condominium Ownership Act (COA), and
- The Colorado Common Interest Ownership Act (CCIOA).

Most community associations are nonprofit corporations, and as such, are subject to the provisions of the CRNCA. In general, CRNCA addresses topics such as:

- Incorporation;²⁸
- Purposes and powers;²⁹
- Members and memberships;³⁰
- Members' meetings and voting;³¹
- Directors and officers;³² and
- Records, information and reports.³³

COA's applicability is limited to condominiums, and, in general, enumerates the required contents of a condominium association's declarations and bylaws.³⁴ However, COA's applicability is further limited to those condominium associations created prior to July 1, 1992.³⁵ Condominium associations created after this date are subject to the provisions of CCIOA.³⁶

CCIOA is a complex law, the applicability of which can be difficult to determine. Applicability is, in most cases, predicated on the date upon which a community association was created, with July 1, 1992 being a key date.

²⁸ § 7-122-101, *et seq.*, C.R.S.

²⁹ § 7-123-101, *et seq.*, C.R.S.

³⁰ § 7-126-101, *et seq.*, C.R.S.

³¹ § 7-127-101, *et seq.*, C.R.S.

³² § 7-128-101, *et seq.*, C.R.S.

³³ § 7-136-101, *et seq.*, C.R.S.

³⁴ §§ 38-33-105.5 and 38-33-106, C.R.S.

³⁵ § 38-33.3-115, C.R.S.

³⁶ Orten, Cavanaugh, Richmond & Holmes, L.L.C. - Attorneys at Law. *Introduction to the Colorado Condominium Ownership Act*. Retrieved August 3, from https://5150communitymanagement.com/hoa/wp-content/uploads/2014/03/The_Colorado_Condominium_Ownership_Act.pdf

CCIOA applies to homeowner associations (HOAs) that govern and operate as common interest communities (CICs). For purposes of CCIOA, CICs are communities that require mandatory assessments. Generally, CCIOA applies to a CIC if it was created after 1992.³⁷

Importantly, communities with voluntary assessments are generally not subject to the provisions of CCIOA.

CCIOA, among other things, specifies quorum requirements and other basic standards for meetings and voting. It also details powers and duties of the community association board, including, but not limited to reserve funds and audits.³⁸

CAMs are subject to CCIOA to the same extent as their community association clients.

CCIOA also requires community associations organized under CCIOA to register annually with the Colorado Division of Real Estate.³⁹

None of these laws are enforced by any state entity. Rather, community members who desire to enforce a provision of any of them must bring suit in civil court.

Regulation in Other States

According to the sunrise application, eight states currently regulate CAMs. In an attempt to understand the regulatory environment in other states, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) staff contacted several states: California, Florida, Illinois, Kentucky and Nevada.

Information obtained for this sunrise review indicated that each of these states requires CAMs to possess a certification or license to practice.

COPRRR requested information related to complaints and disciplinary actions imposed on CAMs in each of the states referenced above, but with limited success. COPRRR staff was able to find complaints filed against CAMs in Florida and Illinois only. In Florida, during fiscal year 18-19, there were 85 cases where probable cause was found that a CAM may have violated the statute. In Illinois, in January 2020 through June 2020, there were 86 complaints filed against CAMs. Of those complaints, 20 were dismissed at intake, and 66 were referred for additional investigation.

³⁷ Orten, Cavanaugh, Richmond & Holmes, L.L.C. - Attorneys at Law. *Understanding Colorado "Common Interest Communities."* Retrieved August 4, 2021, from

[https://www.ochhoalaw.com/media/documents/Understanding_Common_Interest_Communities_\(00565192\).PDF](https://www.ochhoalaw.com/media/documents/Understanding_Common_Interest_Communities_(00565192).PDF)

³⁸ Office of Legislative Legal Services. *Application of the Colorado Common Interest Ownership Act (CCIOA) in Subdivisions and Condominium Communities.* Retrieved August 4, 2021, from

<https://leg.colorado.gov/sites/default/files/application-of-ccioa-in-subdivisions-and-condos.pdf>

³⁹ § 38-33.3-401(1), C.R.S.

Analysis and Recommendations

Public Harm

Before moving forward in the analysis of harm concerning community association managers (CAMs), it is important to provide context related to past regulation of CAMs.

In 2012, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) conducted a sunrise review of CAMs. The sunrise report determined that community association management companies should be regulated.

The General Assembly enacted House Bill 13-1277, which required all CAMs, individuals and entities, to obtain a license from the Director of the Division of Real Estate (Division) by July 1, 2015. The General Assembly also required that a sunset review be completed in 2017.

The sunset report determined that regulation was necessary to protect the public; the report recommended the continuation of the Community Association Management Practice Act for five years.

However, since the program had only been in existence for two years prior to the sunset review, there was not a great deal of data to analyze related to complaints. As a result, the sunset report recommended continuation of the program to allow for additional time to gather relevant data.

Ultimately, the sunset bill (House Bill 18-1175) was postponed indefinitely in the Senate Finance Committee, sending the program into windup.

In 2019, the General Assembly passed House Bill 19-1212 (HB 1212), which would have reenacted the licensing program for CAMs. Also, HB 1212, among other things, set a sunset date of September 1, 2020, and created a seven-member advisory committee to advise the Director of the Division on issues such as rule changes, the adoption of guidelines and establishing a process for handling complaints.

The Governor ultimately vetoed HB 1212 because the bill, among other things, did not include the recommendations in the 2017 CAM sunset review. Consequently, the regulation of CAMs ended on June 30, 2019.

That same year, the Governor issued Executive Order D 2019 006 (Executive Order) that directed the Executive Director of the Department of Regulatory Agencies (DORA) and the Director of the Division to conduct a comprehensive review of how to better protect consumers and community and homeowner associations (HOAs).

Specifically, the Executive Order directed the Executive Director of DORA and the Director of the Division to develop and make recommendations on the following:

- Licensure of CAMs, considering recommendations from the 2017 sunset report, and whether licensure is cost-effective and necessary;
- Approaches to improve transparency among HOAs;
- Methods to reduce costs and improve the transparency of HOA fees and fee schedules; and
- Strategies to promote homeowner rights and consumer protections through the evaluation of the Colorado Common Interest Ownership Act and other related acts and rules.

On December 31, 2019, the Executive Director of DORA submitted a report to the Governor pursuant to the Executive Order. The Director of the Division, among other things, engaged in stakeholder meetings and conducted a survey to ascertain whether the public, including CAMs, were in favor of regulation. The Division held four stakeholder meetings where there were approximately 40 to 50 attendees, both homeowners and members of the CAM industry. At the stakeholder meetings, many issues were discussed, including whether CAMs should be regulated again in Colorado.

Additionally, the Division sent a survey to approximately 70,000 stakeholders, and received more than 500 responses. The survey asked, among other things, whether CAMs should be regulated. Seventy-five percent of the respondents agreed that regulatory oversight was necessary to protect the public. More specifically, 64 percent of respondents who identified as CAMs believed that regulation was necessary, and 82 percent of respondents who were homeowners were in favor of regulation.

In 2020, COPRRR received a sunrise application, once again, to conduct a sunrise review of CAMs to determine whether a regulatory program should be reenacted. This sunrise report is the result of that sunrise application.

The first sunrise criterion asks:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety, or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument.

CAMs perform a variety of duties on behalf common interest communities, including HOAs. For instance, CAMs collect the fees imposed on homeowners by common interest communities and schedule required maintenance of common areas and amenities.

CAMs also prepare financial statements and budgets, and they negotiate with contractors.⁴⁰

There are a variety of situations where CAMs could harm consumers, such as theft of funds and mismanagement.

In order to determine whether the regulation of CAMs is necessary in Colorado, COPRRR staff requested that the sunrise applicant (Applicant) and other stakeholders provide specific examples of harm.

It is important to note that the Applicant submitted the exact same examples of harm that were included in the 2011 sunrise application. The 2012 sunrise review of CAMs stated,

the application breaks harm into four somewhat overlapping categories: mismanagement/bad practices, failure to perform, missing funds and accounting failures. The level of detail provided is minimal.⁴¹

The examples of harm that were provided by the Applicant are as follows:

Mismanagement

- A manager worked with the board on a contract to replace roofs at a condominium community with approximately 175 homes. The contract was for approximately \$750,000 and was signed by the manager. At no time was the financial condition of the association reviewed to ensure that the association was adequately funded so payment for the work could be made, which it was not. The manager ignored the situation while work continued until a lawsuit was threatened. The asserted inadequate financial review on the part of the manager put the association at financial risk, and also threatened the viability of a company that was not being paid for the work done.
- The management company steered an association, and their attorney, down an overly aggressive path for foreclosure against a property regarding late fees associated with a trash can violation, despite the fact that the owner was paying monthly dues. The property was eventually sold in foreclosure, the owner lost the tenants who were in the property and the case settled. The entire situation could have been avoided had the manager directed the attorney to communicate with the owner.

⁴⁰ U.S. Bureau of Labor Statistics. *Property, Real Estate, and Community Association Managers*. Retrieved July 28, 2021, from <https://www.bls.gov/ooh/management/print/property-real-estate-and-community-association-managers.htm>

⁴¹ Department of Regulatory Agencies. *2012 Sunrise Review: Common Interest Community Association Managers*. P.17.

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- A manager charged fees against an owner's account, which are excessive for transferring files for collection to an attorney. This places a larger financial burden on the owner in addition to the past due account.
 - Assessing fees in an association not built out against unoccupied units. The management charged their regular fee based on the number of homes in the community, which is standard practice. When it was discovered that an entire building that was bank owned was part of the community, management demanded that the association pay for increased fees based on the number of homes in the unoccupied building.
 - A management company advocates their associations pursue foreclosure for every delinquency, regardless of the amount owed.

Failure to Perform

- A management company did not conduct background checks and hired someone who had been in jail for embezzlement.
- A manager did not secure a background check when retaining a controller, and the controller for the association had a record of embezzlement.
- A board fired a manager. A resident then forms a management company and takes on the responsibility of management. The manager fails to follow the corporate formalities. For example, the manager uses association funds to provide for restaurant meals of the board at nearly every meeting. Homeowners eventually stand up to the actions of the manager, and the board hires a different manager. The association was in litigation with the former manager regarding payment of fees and monies owed. The manager believed that he was owed money, and the association claimed they were owed a substantial sum of money.
- A management company failed to do much of anything while a developer was in control of the community. Board meetings were not held, and reserves were not created. The management company was fired and transitioned very few documents. The developer who was in control of the association allegedly mismanaged funds, left the association with little resources and left the state. The association wrote off the monies taken, as the cost of collection was too great, and the chance of collection was small.

Missing Funds

- The board gave an onsite manager a debit card, and she spent \$308,000 at Black Hawk.
- A management company accountant stole \$720,000 over a three-year period from various associations.
- A Vail management company was infiltrated by the Russian Mafia and significant dollars were stolen. Three associations insured by an insurance company lost about \$100,000 each. Three other associations insured by an insurance company suffered the same fate. Of the six associations, only

two had insurance coverage for computer and wire transfers. The remaining four were uncovered in these areas.

Accounting Failures

- Checking or savings accounts with only one signature necessary to open, close, transfer, freeze or empty an association's checking or savings account with board member signature authority.
- Checking or savings accounts with only one signature necessary to open, close, transfer, freeze or empty an association's checking or savings account with an HOA property manager signature authority.
- Accounts payable with no supporting documentation (invoices, contract), (etc.) explaining what the expenditure was for. Payees that are not traceable.
- Invoices that do not match the disbursement amount.
- Unrecorded and undocumented expenses (expenses not shown on the financial statement but reflected in the bank statement).
- Unreconciled financial statements. Financial statements that do not include the bank statement.
- Accounts receivable ledgers (owner payment ledgers) with undocumented miscellaneous charges or unsubstantiated charges.
- In instances where an association purchases preprinted checks, missing groups of undocumented checks.
- Payment from reserves for operating costs.
- Unreconciled petty cash funds.

Although many of the examples highlighted above are concerning, they lack sufficient detail to perform an analysis. Instead, many of the examples are generalizations. Importantly, the examples of harm are at least 10 years old.

The lack of detailed examples of harm concerning CAMs, submitted by the Applicant, calls into question the need to reenact a regulatory program.

Stakeholders provided additional examples of harm to COPRRR staff for this sunrise review. One stakeholder provided several instances where there were assertions that the CAM acted inappropriately. Some of the examples include:

- Allegations of a CAM manipulating HOA board meeting minutes, such as removing negative information concerning the CAM from the meeting minutes;
- Not posting meeting minutes;
- Increased insurance premiums;
- Increase in HOA dues;
- Not responding to requests for financial statements;
- Excessive reserve fund balance;
- Minimal interest earning on reserve funds;

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- Lack of transparency in spending funds;
 - Improperly handling elections; and
 - Intimidation.

The examples highlighted above, if true, are concerning and could compromise consumer protection. COPRRR staff interviewed other stakeholders concerning these assertions. According to information gleaned through interviews, the CAM does not take the meeting minutes or edit them. Instead, the board elects a secretary whose duty, among other things, is to accurately take minutes at the board meetings. Conversations with stakeholders indicate that meeting minutes are posted promptly.

The insurance premiums were, in fact, increased fairly substantially due to a variety of circumstances including wind damage and hail loss.

The increase in monthly dues is not the purview of the CAM. Instead, the board establishes the fee schedule based on the needs of the HOA community, such as fence repair, community center maintenance and the addition of a community garden.

Interviews with stakeholders indicated that information requests from HOA members are responded to in a timely manner.

Interviews also indicated that the large fund balance was due to the fact that the previous board membership moved forward, after surveying HOA residents, with installation of a pool. The decision was made based on survey results, which indicated that residents wanted a pool installed. Soon after, the board membership changed, and the new board decided to install a community garden instead of a pool. It is important to note, that the board, not the CAM, decided to install the community garden instead of the pool.

Ultimately, the decision to invest reserve funds at a specific business is vested with the board. The CAM, while acting as an agent of the board, deposits the funds at the business determined by the board.

Interviews with stakeholders indicate that the CAM willingly provides information such as financial statements to residents who request them.

Interviews with stakeholders asserted that there was an attempt to solicit and include additional votes for a board election after the election was closed. Consequently, the additional votes were disallowed.

The assertions referenced above, as well as the comments provided by other stakeholders who were interviewed, indicate that there appear to be issues related to communication and trust between community members and the CAM. It is difficult to ascertain if improper actions actually occurred, since the responses to the concerns were vastly different from the complaints.

The information referenced above was not indented to be a formal investigation; instead, it was information gleaned from stakeholder interviews.

As such, the need to re-establish a regulatory program concerning CAMs is called into question.

Additionally, in an attempt to identify harm to consumers related to the actions of CAMs, COPRRR staff reviewed the 2017 sunset review of the Community Association Management Practice Act, and contacted the Division of Real Estate (Division) staff. Recall that regulation of CAMs was sunsetted in 2018, and the program ended on June 30, 2019.

The 2017 sunset review, among addressing other issues, identified instances where the Director of the Division revoked the licenses of two individuals for theft of funds from an association. The Director also revoked the license of a management company for theft of an association's funds.

As a result, the sunset report determined that regulation was necessary to protect the public; the report recommended the continuation of the Community Association Management Practice Act for five years. Specifically, the report highlighted the three instances in two years where two individuals and one management company's licenses were revoked due to theft of funds as justification to continue regulatory oversight of CAMs.

The sunset review's recommendation to continue regulatory oversight is a compelling argument to re-establish regulatory oversight. The Director of the Division identified specific instances where licensees stole an association's funds, which harmed consumers financially. Importantly, the three instances where the Director of the Division revoked the licenses occurred within a short timeframe - two years.

COPRRR staff contacted the Division and requested information concerning complaints filed against CAMs since regulation was sunsetted. Division staff stated that per their record retention policy, they destroy all of the complaints received in February each year. Therefore, Division staff were unable to provide any complaint information related to CAMs.

Although some of the examples of harm provided for this sunrise report appear to have been recycled from the 2011 sunrise application, the assertions presented, are concerning. Issues such as mismanagement, failure to perform, missing funds and accounting failures, could compromise the protection of the HOA community members. However, because the examples lacked sufficient, detailed information in order to conduct an analysis, along with the fact that they were at least 10 years old, it is unclear whether those issues are currently occurring in Colorado.

Also, the examples provided by stakeholders, as well as other stakeholders' assertions to the allegations, appear to be related to communication and trust issues concerning

certain HOA community members and the CAM. Therefore, these examples do not provide a clear indication that the re-enactment of the CAM regulatory program is necessary.

However, the 2017 sunset review detailed instances where CAM licensees stole funds from the associations for which they worked. Although theft is a crime and could be punishable via the courts, a regulatory program could prevent the practitioners from practicing in the future, which may serve to enhance consumer protection.

Additionally, in 2019, as part of its activities to comply with Executive Order D 2019 006 (Executive Order), the Division sent a survey to approximately 70,000 stakeholders, and received more than 500 responses. The survey asked, among other things, whether CAMs should be regulated. Seventy-five percent of the respondents agreed that regulatory oversight was necessary to protect the public. More specifically, 64 percent of respondents who identified as CAMs believed that regulation was necessary, and 82 percent of respondents who were homeowners were in favor of regulation.

Although the survey does not highlight direct evidence of harm, it is an indication that harm may be prevalent enough for this many respondents to see a need for regulation.

Finally, during the course of this sunrise review, COPRRR staff reviewed the complaint and disciplinary data from other states. In Florida, during fiscal year 18-19, there were 85 cases where probable cause was found that a CAM may have violated the statute. Although these potential violations did not occur in Colorado, they demonstrate that CAMs may have harmed consumers in other states.

Thus, examining all of the evidence in its entirety, there is some evidence to suggest that CAMs are at least in a position to cause harm to Colorado consumers.

Need for Regulation

The second sunrise criterion asks:

Whether the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional or occupational competence.

This criterion addresses the proposition of whether the state should require a certain level of education and/or impose a requirement that CAMs acquire a certain level of education and/or pass an examination before practicing in Colorado.

This sunrise review did not identify competency-related issues related to consumer harm. Instead, the harm that was identified was financial harm (theft of funds), which would not be averted by an initial assurance of competency. As such, there is insufficient evidence to justify requiring CAMs to possess a minimum level of education

or pass an examination in order to practice in Colorado. The implementation of minimum competency requirements could potentially impose an unnecessary barrier to entry for professionals.

Alternatives to Regulation

The third sunrise criterion asks:

Whether the public can be adequately protected by other means in a more cost-effective manner.

Public protection for consumers who live in common interest communities could be realized in a cost-effective manner by requiring CAMs to obtain a credential from the Community Association Managers International Certification Board (CAMICB) or the Community Associations Institute (CAI).

Generally, to obtain a credential with CAMICB or CAI, candidates are required to pass the Certified Manager of Community Associations (CMCA) examination, pay an annual service fee and complete continuing education.

Obtaining certification from either the CAMICB or CAI ensures that CAMs are qualified to practice in Colorado.

Consequently, the certifications offered by CAMICB and CAI might insulate consumers from incompetent practitioners.

The voluntary credentials offered by CAMICB and CAI are utilized by many practitioners throughout the country, including Colorado. In Colorado, the credentials are voluntary. Therefore, certification by one of the aforementioned organizations may be a viable option and an alternative to state regulation.

However, an individual may continue to practice if his or her certification is revoked.

Collateral Consequences

The fourth sunrise criterion asks:

Whether the imposition of any disqualifications on applicants for licensure, certification, re-licensure, or re-certification based on criminal history serves public safety or commercial or consumer protection interests.

The sunrise application asserts that one of the minimum requirements for CAM licensure is that an applicant must not have been convicted of a felony in the past five years.

During this sunrise review, there were three instances identified where CAMs who were formally regulated by the Division, were disciplined for theft of funds. As such, the implementation of a background check could serve to enhance consumer protection by prohibiting practitioners with a criminal history from practicing.

Conclusion

The sunrise application requested licensure of CAMs in Colorado. The Applicant asserts that licensing CAMs would:

- Protect HOAs against improper accounting practices by defining rules on accounting for funds and recordkeeping and conflicts of interest in the competitive bidding process.
- Provide information to the public on property management companies that have been penalized for violations of law.
- Provide an accessible, affordable and non-litigious dispute resolution process for homeowners who file complaints with their property managers.

Often, HOAs and other common interest communities are managed by CAMs. CAMs perform a variety of duties on behalf common interest communities, including, but not limited to: collecting the fees imposed on homeowners by the HOA and scheduling required maintenance of common areas and amenities. CAMs also prepare financial statements and budgets, and they negotiate with contractors.⁴²

In order to determine whether the regulation of CAMs is necessary, the sunrise application requires the sunrise applicant to submit specific, verifiable examples of harm. The sunrise application for this sunrise review contained the same examples of harm that were included in the 2011 sunrise application. The examples lack sufficient detail to conduct an analysis.

The absence of updated, more recent examples of harm related to CAMs calls into question the need to re-establish a regulatory program.

Additionally, the stakeholder feedback information provided for this sunrise review related to CAMs suggests that there may be communication and trust issues with assertions provided. It is difficult to ascertain if improper actions actually occurred, since the responses to the concerns were vastly different from the complaints.

Additionally, COPRRR staff reviewed the 2017 sunset review of the Community Association Managers Practice Act. The salient information contained in that report included the fact that three CAM licenses (one management company and two individuals) were revoked for theft of association funds. Importantly, theft is a crime and potentially punishable through the courts.

⁴² U.S. Bureau of Labor Statistics. *Property, Real Estate, and Community Association Managers*. Retrieved July 28, 2021, from <https://www.bls.gov/ooh/management/print/property-real-estate-and-community-association-managers.htm>

The revocations are compelling because there was only a two-year sunset period for the program. That is, the regulatory program was only in existence for two years and there were three revocations. This seems to support the notion that CAMs are in a position to harm the members of the community associations they manage.

Additionally, the Division sent a survey to approximately 70,000 stakeholders, and received more than 500 responses. The survey asked, among other things, whether CAMs should be regulated. Seventy-five percent of the respondents agreed that regulatory oversight was necessary to protect the public. More specifically, 64 percent of respondents who identified as CAMs believed that regulation was necessary, and 82 percent of respondents who were homeowners were in favor of regulation.

Although the survey does not highlight direct evidence of harm, it is an indication that harm may be prevalent enough for this many respondents to see a need for regulation.

During the course of this sunrise review, COPRRR staff reviewed the complaint and disciplinary data from other states. In Florida, during fiscal year 18-19, there were 85 cases where probable cause was found that a CAM may have violated the statute. Although the potential violations did not occur in Colorado, they demonstrate that CAMs may have harmed consumers.

Requiring the credentialing of CAMs prior to practicing in Colorado is an option. The examples of harm provided for this sunrise review as well as the harm identified in the 2017 sunset review included issues such as theft, which is not a competency-related issue. Therefore, requiring that CAMs obtain a competency-based credential to practice would be overly restrictive and would not serve to protect consumers.

Instead, a minimal regulatory program should be enacted to ensure that CAMs who commit acts such as theft are held accountable through regulatory oversight. Although regulation may not prevent thefts from occurring in the future, it would potentially prevent a practitioner from practicing again in Colorado, possibly placing HOA communities in financial danger. Importantly, the implementation of a regulatory program for CAMs should be responsible and cognizant of any additional costs that HOAs could incur.

Also, the sunrise application asserts that one of the minimum requirements for CAM licensure is that an applicant must not have been convicted of a felony in the past five years. Since there were instances of theft, the implementation of a criminal history background check should be established.

Recommendation - Regulate community association managers.