



**COLORADO**

**Department of  
Regulatory Agencies**

Colorado Office of Policy, Research &  
Regulatory Reform

# 2025 Sunset Review

Division of Real Estate, including  
the Real Estate Commission,  
Subdivision Developers and Home  
Warranty Service Contracts



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October 15, 2025



**COLORADO**

**Department of  
Regulatory Agencies**

Executive Director's Office

October 15, 2025

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 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. Pursuant to section 24-34-104(5)(a), 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 an evaluation of the Colorado Division of Real Estate (Division) and the Real Estate Commission (Commission). I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2026 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Parts 2, 3, 5, and 9 of Article 10 of Title 12, C.R.S. The report also discusses the effectiveness of the Division in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit [coprrr.colorado.gov](http://coprrr.colorado.gov).

Sincerely,

Patty Salazar  
Executive Director





# Division of Real Estate, including the Real Estate Commission, Subdivision Developers and Home Warranty Service Contracts

## Background

### *What is regulated?*

Real estate brokers help clients purchase, sell, rent, or lease real property. A subdivision developer is a legal entity that participates as an owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision. Home warranty service contracts cover repair or replacement of a home's major systems, such as heating, air conditioning, electrical and plumbing.

### *Why is it regulated?*

The risk of harm in real estate transactions is high. If they are not handled properly, the consumer could face significant financial consequences. As such, a broker and subdivision developer should possess minimal qualifications. Although there is no regulatory program associated with home warranty service contracts, consumers can still be harmed by companies offering such contracts.

### *Who is regulated?*

In fiscal year 23-24, there were 17,935 licensed real estate brokers. There was a total of 55 subdivision developers that year. Most subdivision developers were associated with timeshares.

### *How is it regulated?*

The Real Estate Commission (Commission) approves applications from real estate brokers. Once licensed, a broker must complete continuing education and maintain insurance.

Subdivision developers must provide the names and criminal records of principals and the location of the property, among other items. Part 9 of Article 10 of Title 12, Colorado Revised Statutes (C.R.S.), creates statutory obligations for companies offering home warranty service contracts.

### *What does it cost?*

During fiscal year 23-24, the Division of Real Estate expended \$6,362,506 and 42 FTE on regulating real estate brokers and subdivision developers.

### *What disciplinary activity is there?*

In fiscal year 23-24, there were 484 complaints concerning real estate brokers and no complaints regarding subdivision developers. There were 61 disciplinary actions taken that year, and \$884,627 in fines imposed.

## Key Recommendations

- Continue the regulation of real estate brokers and subdivision developers, for 11 years until 2037, and continue the statutes pertaining to home warranty service contracts but remove them from the sunset review schedule.
- Give the Commission the ability to deny licenses for certain offenses laid out in the Act.
- Authorize the Commission to order restitution.

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## Background

### Sunset Criteria

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 (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether the program under review is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To address the second sunset criterion--whether conditions that led to the initial creation of the program have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the fifth sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency or the agency's board performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the fourteenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

**Table 1**  
**Application of Sunset Criteria**

| <b>Sunset Criteria</b>                                                                                                                                                                                                                            | <b>Where Applied</b>                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (I) Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.                                                                                                                    | <ul style="list-style-type: none"> <li>• Profile of the Profession</li> <li>• History of Regulation</li> <li>• Recommendations 1-3</li> <li>• Administrative Recommendation 1</li> </ul> |
| (II) Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight.                                    | <ul style="list-style-type: none"> <li>• History of Regulation</li> <li>• Recommendation 7</li> </ul>                                                                                    |
| (III) If the program is necessary, whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms.           | <ul style="list-style-type: none"> <li>• Legal Summary</li> <li>• Recommendation 5</li> <li>• Administrative Recommendation 1</li> </ul>                                                 |
| (IV) If the program is necessary, whether agency rules enhance the public interest and are within the scope of legislative intent.                                                                                                                | <ul style="list-style-type: none"> <li>• Legal Summary</li> </ul>                                                                                                                        |
| (V) 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. | <ul style="list-style-type: none"> <li>• Legal Summary</li> <li>• Program Description and Administration</li> <li>• Recommendations 2, 4, and 6-8</li> </ul>                             |
| (VI) Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.                                                                            | <ul style="list-style-type: none"> <li>• Program Description and Administration</li> <li>• Recommendations 4, 6, 7, and 9</li> </ul>                                                     |
| (VII) 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.    | <ul style="list-style-type: none"> <li>• Legal Summary</li> <li>• Program Description and Administration</li> </ul>                                                                      |
| (VIII) Whether regulatory oversight can be achieved through a director model.                                                                                                                                                                     | <ul style="list-style-type: none"> <li>• Program Description and Administration</li> </ul>                                                                                               |

| Sunset Criteria                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Where Applied                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| (IX) The economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <ul style="list-style-type: none"> <li>• Profile of the Profession</li> </ul>                                                            |
| (X) If reviewing a regulatory program, 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 or regulated entity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <ul style="list-style-type: none"> <li>• Complaints</li> <li>• Disciplinary Activity</li> <li>• Recommendations 2-4, 6, and 7</li> </ul> |
| (XI) If reviewing a regulatory program, whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>• Licensing</li> <li>• Examinations</li> </ul>                                                    |
| (XII) Whether entry requirements encourage equity, diversity, and inclusivity.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <ul style="list-style-type: none"> <li>• Licensing</li> <li>• Examinations</li> <li>• Recommendation 5</li> </ul>                        |
| (XIII) If reviewing a regulatory program, whether the agency, through its licensing, certification, or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses, certifications, or registrations that the agency denied based on the applicant's criminal history, the number of conditional licenses, certifications, or registrations issued based upon the applicant's criminal history, and the number of licenses, certifications, or registrations revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification. | <ul style="list-style-type: none"> <li>• Collateral Consequences</li> </ul>                                                              |
| (XIV) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <ul style="list-style-type: none"> <li>• Recommendations 1-10</li> <li>• Administrative Recommendation 1</li> </ul>                      |

## 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 on COPRRR's website at [coprrr.colorado.gov](http://coprrr.colorado.gov).

The functions of the Colorado Real Estate Commission (Commission) and the Division of Real Estate (Division), as enumerated in Parts 2, 3, 5, and 9 of Article 10 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2026, unless continued by the General Assembly. During the year prior to this date, it is the duty of

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COPRRR to conduct an analysis and evaluation of the Commission and Division pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of Commission and Division. During this review, the Commission and Division 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 interviewed Commissioners, members of subcommittees, Division staff, practitioners, and officials with state and national professional associations; and reviewed complaint file summaries, Colorado statutes and rules, and the laws of other states.

The major contacts made during this review include, but are not limited to:

- Building Owners and Managers Association
- Colorado Apartment Association
- Colorado Association of Realtors
- Colorado Bar Association - Real Estate Section
- Colorado Chapter of the Appraisal Institute
- Colorado Coalition of Appraisers
- Colorado Division of Real Estate
- Colorado Real Estate Commission
- Commission Education Task Force
- Commission Forms Committee
- Denver Board of Realtists
- Institute of Real Estate Management
- Office of the Colorado Attorney General
- National Association of Residential Property Managers (Colorado Springs)
- National Association of Residential Property Managers (Denver)
- National Association of Residential Property Managers (Northern Colorado)

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## Profile of the Profession

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.

To understand the need for regulation, it is first necessary to recognize what the profession does, where they work, who they serve and any necessary qualifications.

The ninth sunset criterion questions the economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition. One way this may be accomplished is to review the projected salary and growth of the profession.

It should be noted at the outset that this sunset review focuses solely on the regulation of real estate brokers, subdivision developers and home warranty service contracts. It is not the product of any type of review of homeowners' associations (HOAs) or the community association managers that manage them. Nor is it a review of the Colorado Common Interest Ownership Act or the regulation of real estate appraisers or mortgage loan originators.

### Real Estate Brokers

Often the single biggest asset a person will buy or sell in their lifetime involves real estate. To illustrate, the average value of a home in Colorado was \$541,198 in 2025.<sup>2</sup>

Real estate transactions can be complex, cumbersome, and intimidating. They involve multiple layers of legal, regulatory, and financial considerations not known to most individuals. Real estate brokers help the public navigate through the intricate process of purchasing, selling, or renting property.

Typically, there are generally two sides to a real estate transaction: a buyer and seller. Real estate brokers can act as an agent for buyers, and as such they will meet with clients to determine what they are looking for in a property and assess how much they are looking to spend. Agents for sellers meet with clients to help them find a qualified buyer and help decide on the asking price. To match properties to a client's needs, a broker will familiarize themselves with local communities and stay current on available financing options.<sup>3</sup>

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<sup>2</sup> Zillow. *Colorado Housing Market*. Retrieved September 29, 2025, from <https://www.zillow.com/home-values/10/co/>

<sup>3</sup> U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: What Real Estate Brokers and Sales Agents Do*. Retrieved September 8, 2025, from <https://www.bls.gov/ooh/sales/real-estate-brokers-and-sales-agents.htm#tab-2>

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Real estate brokers typically do the following:<sup>4</sup>

- Find clients to buy, sell, and rent properties;
- Inform clients on prices, mortgages, market conditions, and other financial-related information;
- Create lists of properties for sale or rent;
- Take prospective buyers or renters to see properties;
- Host open houses;
- Present purchase or selling offers for consideration;
- Help in negotiations between buyers and sellers;
- Prepare documents such as closing statements, contracts, leases, and other real estate documents; and
- Review relevant documents to ensure terms are met.

Real estate is generally classified into two separate categories: residential and commercial. Residential real estate refers to properties that are intended for living, such as single or multifamily homes and condominiums. Commercial real estate typically involves property used for business purposes such as offices, warehouses, and retail spaces.<sup>5</sup>

Real estate brokers typically have a fiduciary duty to their clients, including providing reasonable care, skill, and diligence to facilitate transactions. Brokers are also expected to have a duty of honesty and good faith and to disclose any issues that are material to a client's decision to lease, buy, or sell real estate.<sup>6</sup> The financial stakes are high in real estate transactions. Even small mistakes in pricing, contracting, or financing can result in substantial losses. Often, brokers will act as a fiduciary and hold their client's funds in trust accounts to facilitate a transaction. As such, a high level of competency and care is needed.

There were close to 369,000 real estate brokerage firms nationwide in 2022.<sup>7</sup> Many brokers choose to utilize franchise agreements with national or regional real estate companies. Under such arrangements, the broker may pay a fee to be able to use and advertise the affiliation of the more widely known organization.<sup>8</sup>

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<sup>4</sup> *Id.*

<sup>5</sup> Investopedia. *Commercial vs. Residential Real Estate Investing: A Comprehensive Comparison*. Retrieved September 8, 2025, from <https://www.investopedia.com/commercial-vs-residential-real-estate-investing-8414678>

<sup>6</sup> NASDAQ. *How Does Fiduciary Responsibility Apply to Real Estate?* Retrieved September 8, 2025, from <https://www.nasdaq.com/articles/how-does-fiduciary-responsibility-apply-real-estate>

<sup>7</sup> U.S. Census Bureau. *Real Estate and Rental and Leasing: Summary Statistics for the U.S., States, and Selected Geographies: 2022*. Retrieved October 1, 2025, from <https://data.census.gov/chart/ECNBASIC2022.EC2253BASIC?q=EC2253BASIC:+Real+Estate+and+Rental+and+Leasing:+Summary+Statistics+for+the+U.S.,+States,+and+Selected+Geographies:+2022>

<sup>8</sup> U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Work Environment*. Retrieved September 8, 2025, from <https://www.bls.gov/ooh/sales/real-estate-brokers-and-sales-agents.htm#tab-3>

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The median annual salary for real estate brokers was \$72,280 in 2024. Brokers earn most of their income based on commissions on sales.<sup>9</sup> The industry is projected to grow three percent between 2024 and 2034.<sup>10</sup> There will always be demand for brokers as they are needed when individuals look for a new home or purchase property for business.<sup>11</sup>

In addition to facilitating traditional real estate transactions, there are also brokers who work in property management. Property managers work with landlords to rent or manage properties for a fee. Depending on the agreement with their client, a property manager might also be responsible for day-to-day operations of the real estate, such as screening potential tenants or organizing repairs and maintenance. Similar to traditional real estate, property managers can work with residential or commercial clients. Residential property managers help clients manage properties such as apartments, rental homes, or vacation rentals. Commercial property management refers to managing properties such as hotels, office properties, and retail properties like malls, food establishments, and gas stations.<sup>12</sup>

## Subdivision Developers

A subdivision is defined in Colorado law as real property divided into 20 or more interests intended solely for residential use and offered for sale, lease, or transfer.<sup>13</sup> Subdivisions include time shares intended for residential use, conversions of an existing structure into a common interest community, and leases in a cooperative housing corporation.<sup>14</sup> Subdivision developers refer to entities that participate as an owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision.<sup>15</sup>

In Colorado, the majority of subdivision developers work with time shares intended for residential use. A time share colloquially refers to a real estate model where multiple buyers collectively own rights to use the same property at scheduled intervals.<sup>16</sup> They are prevalent in regions where owners may want repeated use of a property without having to cover the cost of full ownership. Depending on the contract, however, one is typically limited in how often they can use the time share.<sup>17</sup>

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<sup>9</sup> U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Pay*. Retrieved September 8, 2025, from <https://www.bls.gov/ooh/sales/real-estate-brokers-and-sales-agents.htm#tab-5>

<sup>10</sup> U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Job Outlook*. Retrieved October 10, 2025, from <https://www.bls.gov/ooh/sales/real-estate-brokers-and-sales-agents.htm#tab-6>

<sup>11</sup> U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook: Pay*. Retrieved September 8, 2025, from <https://www.bls.gov/ooh/sales/real-estate-brokers-and-sales-agents.htm#tab-5>

<sup>12</sup> Investopedia. *Comprehensive Guide to Property Management: Definition, Roles, Types, and Duties*. Retrieved September 8, 2025, from <https://www.investopedia.com/terms/p/property-management.asp>

<sup>13</sup> § 12-10-501(3)(a), C.R.S.

<sup>14</sup> § 12-10-501(3)(b), C.R.S.

<sup>15</sup> § 12-10-501(2), C.R.S.

<sup>16</sup> Investopedia. *Understanding Timeshares: Ownership, Models, and Benefits*. Retrieved September 8, 2025, from <https://www.investopedia.com/terms/t/timeshare.asp>

<sup>17</sup> Chase. *What is a timeshare and is it worth the cost?* Retrieved September 8, 2025, from <https://www.chase.com/personal/investments/learning-and-insights/article/what-is-a-timeshare-and-is-it-worth-the-cost>

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There are two common types of time share models. Shared-deeded ownership gives one a percentage of physical property corresponding to the period bought. Shared-lease timeshares give one the use of a specific property for a fixed or floating period each year for a set number of years.<sup>18</sup>

The time share market is projected to grow at a compound annual growth rate of seven percent internationally between 2025 and 2033.<sup>19</sup> While not inclusive of all time shares, a 2024 study found that 1,524 time share resorts existed throughout the country in the preceding year. These resorts offered a total of 200,530 units. A total of 38 percent of these resorts were mixed use properties such as hotels.<sup>20</sup>

The timeshare market suffered as a result of the COVID-19 pandemic, which caused a decrease in sales volume, average occupancy, and revenue. However, 2023 saw improvements compared to historical patterns. Occupancy decreased slightly, but sales volume and price per transaction both increased. Rental revenue increased significantly. The market now stands 20 percent above pre-pandemic levels for rental revenue.<sup>21</sup>

## Home Warranty Service Contracts

One issue that consumers may face after purchasing a home is whether any major repairs or improvements need to be made to the property. Sometimes unexpected repairs may be needed. However, a person might not have enough money set aside to cover them.<sup>22</sup>

To help pay for unexpected repairs, most homeowners purchase homeowners, or hazard, insurance, which typically covers loss due to sudden and unexpected events such as fire and natural disasters. They can also choose to purchase a home warranty service contract to cover other types of repairs.<sup>23</sup>

Home warranty service contracts are agreements with companies to cover repair or replacement of a home's major systems and appliances, usually due to wear and tear.<sup>24</sup> A contract will usually cover heating, air conditioning, plumbing, and electrical systems

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<sup>18</sup> Investopedia. *Understanding Timeshares: Ownership, Models, and Benefits*. Retrieved September 8, 2025, from <https://www.investopedia.com/terms/t/timeshare.asp>

<sup>19</sup> Business Research Insights. *Vacation Ownership (Timeshare) Market Overview*. Retrieved September 8, 2025, from <https://www.businessresearchinsights.com/market-reports/vacation-ownership-timeshare-market-100511>

<sup>20</sup> American Resort Development Association. *2024 State of the Vacation Timeshare Industry United States Study*. Retrieved September 8, 2025, from <https://www.arda.org/wp-content/uploads/2024/12/2024-state-of-industry-full-report.pdf>

<sup>21</sup> *Id.*

<sup>22</sup> Harvard Joint Center for Housing Studies. *Home Repairs Are Out of Reach for Many Lower-Income Homeowners*. Retrieved September 8, 2025, from <https://www.jchs.harvard.edu/blog/home-repairs-are-out-reach-many-lower-income-homeowners>

<sup>23</sup> National Home Service Contract Association. *Regulatory History of Home Service Contracts in United States*. Retrieved September 8, 2025, from <https://homeservicecontract.org/about-nhsca/regulatory-statement/>

<sup>24</sup> NerdWallet. *What Is a Home Warranty? What You Need to Know in 2025*. Retrieved September 8, 2025, from <https://www.nerdwallet.com/article/mortgages/pros-cons-home-warranties>

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as well as other major home appliances.<sup>25</sup> Home warranty service contracts do not substitute for insurance. Insurance typically does not pay for a breakdown of systems and appliances from normal wear and tear. In this sense, home service contracts can complement an insurance plan.<sup>26</sup> While most agreements are annual, companies can offer shorter plans and monthly terms.<sup>27</sup>

Contracts can be purchased for both new and existing homes. They are particularly popular when selling or buying a home.<sup>28</sup>

In 2025, the annual cost for contracts was \$605 across all plan types. There may also be service fees ranging from \$65 to \$150 with each repair call.<sup>29</sup> While coverage varies amongst companies, the following systems and appliances might be included:<sup>30</sup>

- Interior plumbing;
- Electrical system;
- Heating system;
- Water heater;
- Air conditioning;
- Ductwork;
- Oven, range, or cook-top;
- Dishwasher;
- Garbage disposal;
- Refrigerator; and
- Washer and dryer.

Some items that are typically not covered under home warranty service contracts include:<sup>31</sup>

- Preexisting conditions prior to the effective date of coverage;
- Items that fail due to a consequential occurrence, or something other than normal wear and tear; and
- Items that were improperly installed or modified.

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<sup>25</sup> Service Contact Industry Council. *Home Warranty Service Contracts*. Retrieved September 8, 2025, from <https://go-scic.com/service-contracts/homes/>

<sup>26</sup> National Home Service Contract Association. *Frequently Asked Questions*. Retrieved September 8, 2025, from <https://homeservicecontract.org/resource-center/faqs/>

<sup>27</sup> National Home Service Contract Association. *Frequently Asked Questions*. Retrieved September 8, 2025, from <https://homeservicecontract.org/resource-center/faqs/>

<sup>28</sup> Service Contact Industry Council. *Home Service Contracts*. Retrieved September 8, 2025, from <https://go-scic.com/service-contracts/homes/>

<sup>29</sup> MarketWatch. *How Much Does Home Warranty Cost?*. Retrieved October 3, 2025, from [https://www.marketwatch.com/insurance-services/home-warranty/home-warranty-cost/?gaa\\_at=eafs&gaa\\_n=ASWzDAjeKXXggqL0p9JK7pGzEbg4Cq\\_SnxX6ZmO-x7Uwrn-7gSNmyJ6kuOOdsXh5zg0%3D&gaa\\_ts=68e59856&gaa\\_sig=6ZOzac0tCGdfrlsM6Y997x0Ot6s0\\_sSWynqgEYM5crjevBBBDG CY8MwpUMlvn4RYUlq000J9X7jh-rrC\\_mhc2A%3D%3D](https://www.marketwatch.com/insurance-services/home-warranty/home-warranty-cost/?gaa_at=eafs&gaa_n=ASWzDAjeKXXggqL0p9JK7pGzEbg4Cq_SnxX6ZmO-x7Uwrn-7gSNmyJ6kuOOdsXh5zg0%3D&gaa_ts=68e59856&gaa_sig=6ZOzac0tCGdfrlsM6Y997x0Ot6s0_sSWynqgEYM5crjevBBBDG CY8MwpUMlvn4RYUlq000J9X7jh-rrC_mhc2A%3D%3D)

<sup>30</sup> National Home Service Contract Association. *Frequently Asked Questions*. Retrieved September 8, 2025, from <https://homeservicecontract.org/resource-center/faqs/>

<sup>31</sup> *Id.*

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In 2023, the average spent on home improvement, maintenance, and emergency repairs was \$13,667.<sup>32</sup> It is difficult to gauge the popularity of home service warranty contracts in Colorado as there is no regulatory program in place to register or track companies that offer them. However, according to a 2025 study of U.S. homeowners, 55 percent of respondents said they experienced a major, unexpected repair that greatly impacted their budget. In addition, 47 percent of the respondents admitted they were worried about facing a repair within the next year.<sup>33</sup>

The growth of the home warranty service market is tied to the home ownership market. If there is a rise in homeownership rates, for example, the home warranty service market can expect to see growth.<sup>34</sup>

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<sup>32</sup> Angi. *State of Home Spending*. Retrieved September 8, 2025, from <https://www.angi.com/research/reports/spending/>

<sup>33</sup> U.S. News. *Nearly Half of Homeowners Expect Repair Costs to Climb [2025 Survey Report]*. Retrieved September 8, 2025, from <https://www.usnews.com/360-reviews/services/home-warranty/home-repair-costs-survey>

<sup>34</sup> Research and Markets. *Home Warranty Service Market Report 2025*. Retrieved September 8, 2025, from <https://www.researchandmarkets.com/reports/6019982/home-warranty-service-market-report?srsId=AfmBOoqVr3IkIfQAwbFBTLok6n6kbEjMybJOP5qIWZMVxtM0lrwlmwl#>

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## Legal Framework

### History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first and second sunset criteria question:

Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare; and

Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less or the same degree of governmental oversight.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

It should be noted at the outset that this sunset review focuses solely on the regulation of real estate brokers, subdivision developers and home warranty service contracts. It is not the product of any type of review of homeowners' associations (HOAs) or the community association managers that manage them. Nor is it a review of the Colorado Common Interest Ownership Act or the regulation of real estate appraisers or mortgage loan originators.

### Real Estate Brokers and Subdivision Developers

The Real Estate Brokers Board (Board) was first created in 1925. Originally housed in the Office of the Colorado Secretary of State, it regulated real estate brokers and real estate sales agents. The Board then transitioned into the Colorado Real Estate Commission (Commission) in 1963. That year, the General Assembly also enacted legislation to place subdivision developers under the Commission's jurisdiction.

Under the Administrative Organization Act of 1968, the Commission was transferred to the Department of Regulatory Agencies (DORA).

In 1968, Congress passed the Fair Housing Act, which prohibits discrimination by real estate brokers due to race, religion, gender, national origin, familial status, or disability.<sup>35</sup>

Congress enacted the Real Estate Settlement Procedures Act (RESPA) in 1975. RESPA prohibits brokers from receiving kickbacks for making referrals to a settlement service

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<sup>35</sup> U.S. Department of Justice Civil Rights Division. *Fair Housing Act*. Retrieved September 10, 2025, from <https://www.justice.gov/crt/fair-housing-act-1>

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provider.<sup>36</sup> Per RESPA, a settlement service means any service provided in connection with a real estate settlement, such as loan originators, mortgage brokers, attorneys, title companies, and appraisers.<sup>37</sup> Payments for services that are actually performed typically do not violate the provisions of RESPA.<sup>38</sup>

In 1979, the Commission was transferred to the newly created Division of Real Estate (Division) within DORA.

The General Assembly passed legislation requiring licensed brokers to have errors and omissions insurance in 1998.

In 1999, the federal Department of Housing and Urban Development (HUD) created specific rules for brokers that seek to sell HUD-qualified homes and properties.<sup>39</sup> Brokers must send applications to HUD for certification prior to selling these properties.<sup>40</sup>

In 2007, a sunset review took place. One of the recommendations was to replace the Commission seat allotted to subdivision developers with a member who represents the general public. This recommendation was ultimately adopted by the General Assembly.

In 2016, another sunset review occurred. One recommendation was to modify the composition of the Commission to include a member that works in property management, which was accepted by the General Assembly.

During recodification of Title 12, C.R.S., in 2019, the statutes of the Division were moved from Article 61 to Article 10 of Title 12.

In 2020, the General Assembly approved House Bill 1332 which prohibited a person from refusing to rent, show for rent, or lease housing based on a person's source of income.

The General Assembly passed Senate Bill 293 in 2021, which created a new subclass of residential real property known as “multi-family residential real property.”

In 2023, the General Assembly passed Senate Bill 23-077 which created restrictions on broker engagement contracts, which are written agreements where a seller, buyer, landlord, or tenant of a residential property formally establishes a client relationship with a broker for future services. Brokers may not commit clients to agree to contracts that contain unfair or deceptive trade practices.

Additionally, the General Assembly passed Senate Bill 206 in 2023, which required sellers of property to make disclosures regarding:

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<sup>36</sup> 12 C.F.R. § 1024.14(b)

<sup>37</sup> 12 C.F.R. § 1024.2

<sup>38</sup> 12 C.F.R. § 1024.14(g)

<sup>39</sup> 24 C.F.R. § 291

<sup>40</sup> U.S. Department of Housing and Urban Development. *How To Sell HUD Homes*. Retrieved September 10, 2025, from <https://www.hud.gov/helping-americans/hudhomes-how-to-sell>

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- The dangers of radon and the need for testing,
  - Any knowledge of the residential property's radon concentrations and history, and
  - The most recent brochure published by the Colorado Department of Public Health and Environment regarding radon in real estate transactions.

In 2024, the General Assembly enacted House Bill 24-1094 regarding subdivision developers. It required time shares to hold in trust any earnest money received from a prospective buyer.

Also in 2024, new rules by the National Association of Realtors (NAR) went into effect following a legal settlement. Approximately 1.5 million Realtors throughout the country are members of NAR.<sup>41</sup> Following the settlement, brokers can no longer include compensation offers for buyer's agents on a listing service. Instead, buyers' agents are required to negotiate their commission directly with their client according to their agreement.<sup>42</sup>

### Home Warranty Service Contracts

The General Assembly enacted the Colorado Preowned Home Warranty Service Company Act in 1979. Among other things, the legislation was limited to preowned housing, required those offering the contracts to register with the Commission, required the posting of a bond of at least \$50,000, provided grounds for discipline of registered companies and prohibited lenders and those offering service contracts to require the purchase of such contracts.

After a sunset review of the Commission in 1988, the General Assembly implemented several recommendations, including the substantial deregulation of the preowned home warranty service company industry. The sunset bill repealed the registration and bonding requirements and instead delineated certain provisions that such home warranty service contracts must contain. Additional sunset reviews were conducted in 1998 and 2007, in conjunction with sunset reviews of the Commission, but no substantive statutory changes were recommended or implemented.

In 2015, the General Assembly passed House Bill 15-1223 (HB 1223) to clarify confusion raised by House Bill 14-1199, which pertained to appliance warranties. To resolve the confusion, HB 1223 amended the statute to clarify its applicability to service contracts, but excluded such contracts sold by public utilities and a builder's warranty provided in connection with the sale of a new home. House Bill 1223 also changed the sunset date of the statute such that it no longer coincided with the sunset date of the Commission.

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<sup>41</sup> National Association of Realtors. *Strength in Numbers*. Retrieved September 10, 2025, from <https://www.nar.realtor/magazine/real-estate-news/strength-in-numbers>

<sup>42</sup> National Association of Realtors. *NAR Settlement FAQs*. Retrieved September 10, 2025, from <https://www.nar.realtor/the-facts/nar-settlement-faqs>

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In 2019, with the passage of House Bill 19-1172, the statutes governing home warranty service contracts were moved from section 12-61-602, *et seq.*, C.R.S., into section 12-10-901, *et seq.*, C.R.S.

A sunset review of the statute took place in 2020, which recommended continuing statutes governing the contracts for six years and clarifying that home warranty service contracts are not insurance. Both of these recommendations were adopted by the General Assembly.

In 2023, the General Assembly passed House Bill 23-1134. Under this legislation, home warranty service contracts that cover gas-fueled appliances must give a homeowner the option to replace a gas-fueled appliance with a similar device that operates on electricity.

## Legal Summary

The third, fourth, fifth and seventh sunset criteria question:

Whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms;

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; and

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.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The Commission and Division are both created within Article 10 of Title 12, C.R.S. (Act).

The Commission is a type 1 entity consisting of five members appointed by the Governor. Three brokers with at least five years of experience in real estate sit on the Commission. At least one of these three brokers must have substantial experience in property management. The remaining two Commission seats are held by members of the public.<sup>43</sup>

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<sup>43</sup> § 12-10-206(1), C.R.S.

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Members can receive a per diem reimbursement for each day spent during Commission meetings, hearings, or examinations and are reimbursed for actual and necessary expenses incurred during the course of official duties.<sup>44</sup> 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.<sup>45</sup> No license can be denied, suspended, or revoked unless determined by a majority vote of the Commission.<sup>46</sup>

The Division is charged with prosecuting violations, auditing brokers, and acting on behalf of the Commission when directed by the Commission.<sup>47</sup> It hires attorneys, deputies, investigators, clerks, and assistants to carry out these duties.<sup>48</sup>

The Act creates a cash fund for the Division.<sup>49</sup> Fees are administratively set by the Division<sup>50</sup> and go into the cash fund.<sup>51</sup> Fees can be assessed for:<sup>52</sup>

- A candidate's original application and license;
- Renewals;
- An application to become the acting, responsible broker of a partnership, limited liability company, or a corporation;
- Broker examinations; and
- Any change of name, address, or employing broker requiring a change in records.

The General Assembly can make annual appropriations from the fund for expenditures of the Commission incurred in the performance of its duties. The Commission can request an appropriation specifically designated for educational and enforcement purposes.<sup>53</sup>

## **Real Estate Brokers**

Any person or entity seeking to engage in the business or capacity of a real estate broker must first obtain a license from the Commission.<sup>54</sup> Persons acting as a real estate broker without having obtained a license or acting as real estate broker after the broker's license has been revoked or suspended, commits a class 2 misdemeanor.<sup>55</sup>

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<sup>44</sup> § 12-10-206(2), C.R.S.

<sup>45</sup> § 12-10-206(3), C.R.S.

<sup>46</sup> § 12-10-206(4), C.R.S.

<sup>47</sup> § 12-10-207(2), C.R.S.

<sup>48</sup> § 12-10-207(1), C.R.S.

<sup>49</sup> § 12-10-215, C.R.S.

<sup>50</sup> § 12-10-215(2)(b), C.R.S.

<sup>51</sup> § 12-10-214, C.R.S.

<sup>52</sup> § 12-10-212(1), C.R.S.

<sup>53</sup> § 12-10-214, C.R.S.

<sup>54</sup> § 12-10-202, C.R.S.

<sup>55</sup> § 12-10-223, C.R.S.

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A real estate broker is defined as any person or business entity that, for compensation, engages in any of the following acts:<sup>56</sup>

- Offering to or actually selling, exchanging, buying, renting, or leasing real estate;
- Selling or offering to sell or exchange an existing lease of real estate;
- Negotiating the purchase, sale, or exchange of real estate;
- Listing, offering, attempting, or agreeing to list real estate;
- Auctioning or offering, attempting, or agreeing to auction real estate;
- Buying, selling, offering to buy or sell, or otherwise dealing in options on real estate, or acting as an option dealer;
- Negotiating or attempting or offering to negotiate the listing, sale, purchase, exchange, or lease of a business or business opportunity or the goodwill thereof; and
- Soliciting a fee or valuable consideration from a prospective tenant for furnishing information concerning the availability of real property.

The Act's definition of a real estate broker specifically does not include the following:<sup>57</sup>

- Any attorney acting without compensation in a real estate transaction;
- Any entity engaged in the act of negotiating, acquiring, purchasing, assigning, exchanging, selling, leasing, or dealing in oil and gas or other mineral leases;
- An entity acting on property on which has been or will be erected a shopping center, office building, or industrial park when such shopping center, office building, or industrial park is sold, leased, or otherwise offered for sale;
- A regularly salaried employee of an owner of an apartment building or complex who acts as an on-site manager of such an apartment building or complex;
- A regularly salaried employee of a condominium unit owner acting as an on-site manager;
- A real estate broker licensed in another state who receives a share of a commission or finder's fee on a cooperative transaction from a licensed Colorado real estate broker;
- Land developers; and
- An entity engaged in the act of negotiating, purchasing, assigning, exchanging, selling, leasing, or acquiring rights-of-way, permits, licenses, and any other interests in real property for certain public utilities.

The Commission is required to keep a record of the names and addresses of all licensees.<sup>58</sup> Real estate broker licenses may be granted to individuals, partnerships, limited liability companies, or corporations. Entities must designate a qualified, active broker to be responsible for the management and supervision of the licensed actions of the entity. Once the designated broker successfully passes an examination, the

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<sup>56</sup> § 12-10-201(6)(a), C.R.S.

<sup>57</sup> § 12-10-201(6)(b), C.R.S.

<sup>58</sup> § 12-10-209, C.R.S.

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Commission can issue a license to the entity, which is required to use the name of the designated broker.<sup>59</sup> The designated broker is personally responsible for the handling of any and all earnest money deposits or escrow or trust funds received or disbursed by the entity.<sup>60</sup> No licenses will be issued to partnerships, limited liability companies, or corporations that work under a designated broker.<sup>61</sup>

An applicant for a license must be at least 18 years of age.<sup>62</sup> Prior to submitting an application, each candidate must provide fingerprints to the Colorado Bureau of Investigation (CBI) for the purpose of conducting a criminal history background check.<sup>63</sup> The Commission is allowed to require and procure any such proof as to the truthfulness, honesty, and good moral character of any applicant for a real estate broker's license. This applies to any person with a substantial interest in the applicant prior to the issuance of the license if the applicant is a business partnership, limited liability company, or corporation.<sup>64</sup>

The applicant must provide proof that they either received a degree from an accredited degree-granting college or university, or any private occupational real estate school with a major course of study in real estate. This coursework must include:<sup>65</sup>

- A total of 48 hours of classroom instruction in real estate law and real estate practice;
- A total of 48 hours of classroom instruction in understanding and preparation of Colorado real estate contracts; and
- A total of 72 hours of instruction related to the following areas of study: trust accounts and record keeping, real estate closings, legal issues, and practical applications.

Applicants must also pass an examination prepared by or under the supervision of the Commission or its designated contractor. The examination must cover the following topics:<sup>66</sup>

- Ethics;
- Reading, spelling, and mathematics;
- Principles of land economics;
- Appraisals;
- Financing; and
- A knowledge of state statutes and the rules of the Commission.

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<sup>59</sup> § 12-10-203(6), C.R.S.

<sup>60</sup> § 12-10-203(7), C.R.S.

<sup>61</sup> § 12-10-203(8), C.R.S.

<sup>62</sup> § 12-10-203(4) (a), C.R.S.

<sup>63</sup> § 12-10-203(1)(b)(I), C.R.S.

<sup>64</sup> § 12-10-203(3), C.R.S.

<sup>65</sup> § 12-10-203(4)(a), C.R.S.

<sup>66</sup> § 12-10-203(5)(a), C.R.S.

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The examination for a broker's license must also include the preparation of a real estate closing statement.<sup>67</sup>

The Commission is authorized to contract with an independent testing service to develop, administer, or grade examinations or to administer licensee records. The contract may allow the testing service to recover from the applicant costs of administering the examination and license records.<sup>68</sup>

Attorney candidates must take and pass the examination and complete 12 hours of classroom instruction in trust accounts, record keeping, and real estate closings.<sup>69</sup>

If a candidate has held a real estate license in another state for two or more years prior to applying for a Colorado license, they may be issued a broker's license if they can establish that they have qualifications that are substantially equivalent to the requirements for licensure in Colorado.<sup>70</sup> They must also pass the state's broker examination.

No person may be licensed as a broker under more than one name.<sup>71</sup> The Act additionally states that:<sup>72</sup>

No license for a broker registered as being in the employ of another broker shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a married woman may elect to use her birth name.

Once approved, a broker's initial license expires on December 31 of the year that it was issued. Subsequently, licenses expire on December 31 of every third year after issuance. Renewals can be made so long as the candidate can demonstrate they met the continuing education requirements.<sup>73</sup> A total of 24 hours of continuing education is required prior to renewal.<sup>74</sup> Of those hours, 12 must consist of the Commission's Annual Update Course.<sup>75</sup> All courses must be Commission approved.<sup>76</sup> Courses must also be related to real estate practice in some form.<sup>77</sup>

Licensees are also required to maintain errors and omissions insurance. The Division makes the errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after a competitive bid process. Licensees also have the option to obtain errors and omissions insurance independently if the coverage complies

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> § 12-10-203(10), C.R.S.

<sup>70</sup> § 12-10-203(5)(b), C.R.S.

<sup>71</sup> § 12-10-203(9), C.R.S.

<sup>72</sup> § 12-10-203(8), C.R.S.

<sup>73</sup> § 12-10-212(4)(a), C.R.S.

<sup>74</sup> § 12-10-213(1)(a), C.R.S.

<sup>75</sup> *Id.*

<sup>76</sup> § 12-10-213(3), C.R.S.

<sup>77</sup> 4 CCR § 725-1-4.4, Rules Regarding Real Estate Brokers.

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with the minimum requirements established by the Commission.<sup>78</sup> Each licensee must file a certificate of coverage with the Commission by the annual premium renewal date.<sup>79</sup> Currently, there must be enough coverage for \$100,00 per claim, with an aggregate limit of \$300,000.<sup>80</sup>

## Real Estate Practice

With regards to commissions, 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.<sup>81</sup> No commission is owed to the broker when a prospective buyer backs out of a contract due to title defects, unless the owner corrects the defects within a reasonable time through legal action or other means.<sup>82</sup> An owner must wait for a broker to obtain a fully enforceable contract from a buyer before the owner takes any legal action to correct any defects in the property's title.<sup>83</sup>

A licensee must annually disclose to the Commission when it enters into or changes an affiliated business arrangement, which includes disclosure of names and physical addresses of all affiliated business arrangements.<sup>84</sup> A licensee must disclose, to all parties, that it is part of an affiliated business arrangement when an offer to purchase real property is fully executed.<sup>85</sup>

The disclosure must be signed by all parties and comply with the federal “Real Estate Settlement Procedures Act of 1974” (RESPA).<sup>86</sup> A licensee cannot require a party to use an affiliated business, or a settlement service, as a condition of services.<sup>87</sup> While there are exceptions, a licensee generally may not give or accept fees, kickbacks, or other returns pursuant to any agreement or understanding for referring settlement service business.<sup>88</sup> The Commission has the authority to promulgate rules concerning the regulation of affiliated business arrangements, including rules defining what constitutes a sham affiliated business arrangement.<sup>89</sup>

Referral fees are not allowed unless reasonable cause for payment of the referral fee exists. Reasonable cause is defined as situations where:<sup>90</sup>

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

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<sup>78</sup> § 12-10-204(1), C.R.S.

<sup>79</sup> § 12-10-204(3), C.R.S.

<sup>80</sup> 4 CCR § 725-1-3.9(B), Rules Regarding Real Estate Brokers.

<sup>81</sup> § 12-10-301, C.R.S.

<sup>82</sup> § 12-10-302, C.R.S.

<sup>83</sup> § 12-10-303, C.R.S.

<sup>84</sup> § 12-10-218, C.R.S.

<sup>85</sup> § 12-10-218(2)(b), C.R.S.

<sup>86</sup> *Id.*

<sup>87</sup> § 12-10-218(2)(c), C.R.S.

<sup>88</sup> § 12-10-218(2)(d), C.R.S.

<sup>89</sup> § 12-10-218(5), C.R.S.

<sup>90</sup> § 12-10-304(1), C.R.S.

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- A contractual cooperative brokerage relationship exists.

Any broker who receives money belonging to others must establish written accounting control policies and procedures, which must include adequate checks and balances over the financial activities of the broker while managing the risk of fraud or illegal acts.<sup>91</sup>

There are multiple classifications of brokers:

- Independent Brokers,
- Associate Brokers,
- Supervising Brokers,
- Employing Brokers, and
- Brokerage Firms.

Independent Brokers act as their own brokerage firms or sole proprietors, and do not employ or supervise any Associate Broker.<sup>92</sup> An Associate Broker is an Individual Broker that works under the supervision of an Employing Broker.<sup>93</sup> Employing Brokers are those who have the option to employ or engage other brokers.<sup>94</sup> An Employing Broker can delegate duties to Supervisory Brokers.<sup>95</sup> Finally, a Brokerage Firm refers to any business entity authorized by the Commission to perform real estate services. All Brokerage Firms must have an active Employing Broker if they choose to employ other licensees.<sup>96</sup>

A broker cannot act as a Brokerage Firm without first having served actively as a real estate broker for at least two years.<sup>97</sup> No such broker shall employ another broker without also first having completed 24 clock hours of instruction in brokerage administration.<sup>98</sup> They need to also demonstrate experience and knowledge sufficient to enable the broker to employ and adequately supervise others. The Commission must adopt rules by which the broker may demonstrate such experience, either by documenting a specified number of transactions that the broker has completed or by other methods.<sup>99</sup> These rules can be found in 4 CCR 725-1-2.5.

A real estate broker that is under the employ of another broker must inform the Commission of the relationship. The employing broker has the control and custody of the employed broker's license.<sup>100</sup> Compensation for services must be made by the employing broker.<sup>101</sup> A broker may not have more than one place of employment for

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<sup>91</sup> 4 CCR § 725-1-5.1, Rules Regarding Real Estate Brokers.

<sup>92</sup> 4 CCR § 725-1-1.29, Rules Regarding Real Estate Brokers.

<sup>93</sup> 4 CCR § 725-1-1.6, Rules Regarding Real Estate Brokers.

<sup>94</sup> 4 CCR § 725-1-1.24, Rules Regarding Real Estate Brokers.

<sup>95</sup> 4 CCR § 725-1-1.51, Rules Regarding Real Estate Brokers.

<sup>96</sup> 4 CCR § 725-1-1.8, Rules Regarding Real Estate Brokers.

<sup>97</sup> § 12-10-203(5)(c)(I), C.R.S.

<sup>98</sup> § 12-10-203(5)(c)(II), C.R.S.

<sup>99</sup> § 12-10-203(5)(c)(III), C.R.S.

<sup>100</sup> § 12-10-211(2), C.R.S.

<sup>101</sup> § 12-10-221, C.R.S.

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the same period of time.<sup>102</sup> In the event that a licensee terminates employment with another broker, both parties must immediately notify the Commission.<sup>103</sup> A broker is not held responsible for the unlawful acts of individuals they supervise unless the Commission finds the broker had direct knowledge of the act or was negligent in supervision.<sup>104</sup>

In addition to the Act, brokers are also governed by rules promulgated by the Commission. 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. Some topics under the rules include:

- License Qualifications, Applications and Examinations;
- Continuing Education;
- Renewal, Transfer, Inactive License, Errors and Omissions Insurance;
- Use of Commission-Approved Forms;
- Brokers Acting as Landlords;
- Declaratory Orders; and
- Commission Review of Initial Decisions.

The Commission has also produced 30 position statements that provide guidance on more nuanced topics related to real estate practice and transactions.

### **Enforcement and Discipline**

The Act lists numerous, specific violations for which brokers may be disciplined, such as:<sup>105</sup>

- Practicing as a real estate broker without a license;
- Knowingly making misrepresentations or knowingly making use of any false or misleading advertising or promises;
- Making any promise of a character that influences, persuades, or induces another person when they could not or did not intend to keep the promise;
- Failing to keep records documenting proof of completion of the continuing education requirements;
- Acting for more than one party in a transaction without the knowledge of all parties;
- Representing or attempting to represent a real estate broker other than the licensee's employer without the express knowledge and consent of that employer;
- Revocation of a license in Colorado or another state within the preceding five years;

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<sup>102</sup> § 12-10-211(4), C.R.S.

<sup>103</sup> § 12-10-211(3), C.R.S.

<sup>104</sup> § 12-10-222, C.R.S.

<sup>105</sup> § 12-10-217(1), C.R.S.

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- Failing to provide the purchaser and seller of real estate with a closing statement of the transaction;
  - Using any provision allowing the licensee an option to purchase in any agreement authorizing or employing the licensee to sell, buy, or exchange real estate for compensation or commission;
  - Violating any provision of the “Colorado Consumer Protection Act”, Colorado fair housing laws, or federal fair housing laws;
  - Being convicted of certain violent crimes, financial crimes, and drug crimes; and
  - Violating any lawful Commission order or aiding and abetting a violation of any rule or Commission order.

There are also financial-related violations such as:<sup>106</sup>

- Failure by the broker to promptly give a client’s deposit money to their brokerage firm;
- Failing to account for or to remit, within a reasonable time, any money coming into the licensee’s possession that belongs to others, and failing to keep records related to the money;
- Converting funds of others, diverting funds of others without proper authorization, commingling funds of others with the broker’s own funds, or failing to keep the funds of others in an escrow or a trust account; and
- Claiming, arranging for, or taking any secret or undisclosed amount of compensation, commission, or profit or failing to reveal to the licensee’s principal or employer the full amount of the licensee’s compensation.

The Commission can impose an administrative fine up to \$2,500 for each separate offense, issue letters of admonition, censure a licensee, place the licensee on probation, and temporarily suspend a license for violations.<sup>107</sup> All administrative fines are credited directly into the Division’s cash fund.<sup>108</sup> The Commission also has the ability to apply to a court for an injunction to cease actions that are violations.<sup>109</sup>

While the Act states that the Commission may permanently revoke a license,<sup>110</sup> it also states that licensees can reapply after one year of the revocation.<sup>111</sup>

While the Commission is empowered to investigate complaints and hold hearings concerning the activities of licensees,<sup>112</sup> proceedings before the Commission concerning disciplinary actions and denial of a license are conducted by an administrative law judge (ALJ).<sup>113</sup> The Commission or an ALJ has the authority to issue a subpoena to compel the

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<sup>106</sup> § 12-10-217(1), C.R.S.

<sup>107</sup> § 12-10-217, C.R.S.

<sup>108</sup> § 12-10-217(8), C.R.S.

<sup>109</sup> § 12-10-226, C.R.S.

<sup>110</sup> § 12-10-217(1), C.R.S.

<sup>111</sup> § 12-10-217(9), C.R.S.

<sup>112</sup> § 12-10-217(1), C.R.S.

<sup>113</sup> § 12-10-219(1), C.R.S.

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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.<sup>114</sup> Any person who refuses to obey a subpoena commits a petty offense for each day they are out of compliance. If a person fails or refuses to obey a subpoena, the Commission may petition the district court to issue one.<sup>115</sup>

## Brokerage Relationships

Part 4 of the Act is not subject to this sunset review. However, given its importance to the practice of real estate, a summary of key provisions is provided. It creates requirements regarding the legal and working relationships with real estate brokers and the public, including clients and other brokers. The Commission can investigate and take administrative action against any such broker for violations of Part 4.<sup>116</sup>

For example, Part 4 defines the role of a “dual agent” who is engaged as a limited agent for both parties in a sale or lease transaction with informed consent.<sup>117</sup> Dual agency is prohibited in Colorado.<sup>118</sup> However, a broker can act as a “transaction-broker.”<sup>119</sup> These brokers assist one or more parties without being an agent or advocate for the interests of any party in a transaction.<sup>120</sup>

Part 4 also contains requirements surrounding the contents of “broker engagement contracts,” which are written agreements where a seller, buyer, landlord, or tenant of a residential property formally establishes a client relationship with a broker for future services.<sup>121</sup>

Part 4 provides for the handling of confidential information amongst brokers. Confidential information may not be disclosed to any other broker unless:<sup>122</sup>

- There is informed, written consent from the engaging party;
- Disclosure of the information is required by law; or
- The information is made public or becomes public by the words or conduct of the engaging party or from a source other than the broker.

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<sup>114</sup> § 12-10-224, C.R.S.

<sup>115</sup> § 12-10-225, C.R.S.

<sup>116</sup> § 12-10-411, C.R.S.

<sup>117</sup> § 12-10-402(4), C.R.S.

<sup>118</sup> § 12-10-406, C.R.S.

<sup>119</sup> § 12-10-403(1), C.R.S.

<sup>120</sup> § 12-10-402(8), C.R.S.

<sup>121</sup> § 12-10-403.5(1), C.R.S.

<sup>122</sup> § 12-10-409(2)(b), C.R.S.

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## Subdivision Developers

Subdivision developers refer to persons or entities who participate as an owner, promoter, or sales agent in the promotion, sale, or lease of a subdivision.<sup>123</sup> A subdivision is defined as real property divided into 20 or more interests intended for residential use and offered for sale, lease, or transfer.<sup>124</sup> It may also refer to:<sup>125</sup>

- The conversion of an existing structure into a common interest community,
- Time shares intended for residential use, and
- Leases in a cooperative housing corporation.

Subdivision developers must register with the Commission before negotiating, selling, leasing, or transferring subdivision properties. Information required for registration includes:<sup>126</sup>

- 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 individuals that would violate subdivision developer regulation;
- If applicable, the states in which the applicant has had a similar registration granted, refused, suspended, or revoked;
- If applicable, whether the developer or any person financially interested in the business has engaged in an activity that violates statutes governing subdivision developers; and
- If a corporation, a copy of a certificate of authority to conduct business in Colorado.

The registration also requires information on the property, such as:<sup>127</sup>

- Property location;
- Subdivision name;
- Evidence that the subdivision has or will be registered per local requirements;
- Title documents and other evidence of interest;
- A statement attesting that standard Commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents used in the transaction;
- A statement regarding the availability of legal access to water, sewage disposal, gas, electricity, and telephone services in the subdivision;

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<sup>123</sup> § 12-10-501(2), C.R.S.

<sup>124</sup> § 12-10-501(3)(a), C.R.S.

<sup>125</sup> § 12-10-501(3)(b), C.R.S.

<sup>126</sup> § 12-10-503(2), C.R.S.

<sup>127</sup> § 12-10-503(3), C.R.S.

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- A statement attesting that a survey of the property has taken place; and
  - A statement as to whether a common interest community will be created and who will control its finances.

Applicants must provide a statement that Commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents, unless the forms were prepared by an attorney representing the developer. The Commission may deny an application until the applicant submits these documents in a satisfactory manner.<sup>128</sup>

The Commission must issue or deny a registration within 60 days from the date of receipt of an application. If the Commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within 60 days.<sup>129</sup>

If the applicant satisfactorily meets the requirements, they may be issued a Development Certificate by the Commission.<sup>130</sup> The Development Certificate also entitles all sales agents and employees to act as an agent for the developer.<sup>131</sup>

Any person who fails to register as a developer commits a Class 6 felony. Any agreement or contract for the sale or lease of the subdivision is voidable by the purchaser and unenforceable by the developer unless a developer was registered when the agreement or contract was made.<sup>132</sup>

Certificates expire on December 31 following the date of issuance. A registration that has expired may be reinstated within two years after the expiration upon payment of the appropriate renewal fee and if the applicant complies with registration requirements.<sup>133</sup> In addition to renewals, subdivision developers must file supplemental applications with the Commission whenever they would like to construct new property or add new subdivision listings.<sup>134</sup>

The Commission has the authority to require any subdivision developer to make any written disclosures within their contracts if the Commission finds that such disclosures are required for the protection of the buyers.<sup>135</sup>

The subdivision developer is responsible for all actions of its sales agents and employees.<sup>136</sup> The Commission has the authority to impose administrative fines up to \$2,500 per violation.<sup>137</sup> It may also place a subdivision developer's registration on probation, refuse to issue a registration, and suspend or revoke a subdivision developer

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<sup>128</sup> § 12-10-503, C.R.S.

<sup>129</sup> § 12-10-506(3), C.R.S.

<sup>130</sup> 4 CCR § 725-6-1.9, Rules Governing Subdivisions And Timeshares Of The Real Estate Commission.

<sup>131</sup> § 12-10-504(1), C.R.S.

<sup>132</sup> § 12-10-507, C.R.S.

<sup>133</sup> § 12-10-504(2), C.R.S.

<sup>134</sup> 4 CCR § 725-6-2.2, Rules Governing Subdivisions And Timeshares Of The Real Estate Commission.

<sup>135</sup> § 12-10-506(7), C.R.S.

<sup>136</sup> § 12-10-504(1), C.R.S.

<sup>137</sup> § 12-10-505(1), C.R.S.

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registration.<sup>138</sup> For complaints that do not warrant formal action, the Commission may send a letter of admonition. Within 20 days of receipt, the subdivision developer has the right to request that formal disciplinary proceedings commence. The letter of admonition is then vacated in lieu of the formal disciplinary proceedings.<sup>139</sup>

Explicit violations in the Act include:<sup>140</sup>

- Engaging in false or misleading advertising;
- Being convicted of, or pleading guilty or *nolo contendere* to a crime involving fraud, theft, deceit, misrepresentation, false advertising, or dishonest dealing;
- Disposing of, concealing, diverting, converting, or failing to properly account for the funds of any purchaser;
- Failing to comply with any stipulation or agreement made with the Commission;
- Refusing to honor a buyer's request to cancel a contract when the request was made within five days after execution;
- Violating the Colorado Consumer Protection Act;
- Using forms not approved by the Commission; and
- Failing to disclose encumbrances to prospective purchasers.

The Commission may apply to a court for an injunction, made in accordance with the Colorado Rules of Civil Procedure, to cease actions that are violations.<sup>141</sup>

If the development is related to a time share, any earnest money received by the developer from a prospective buyer must be held in trust.<sup>142</sup> A developer may receive earnest money deposits from an accredited investor toward development of a time share, but only if the purchase contract or other written disclosure contains a clear statement setting forth:<sup>143</sup>

- To whom the funds will be delivered,
- When the delivery of the funds will occur,
- How such funds will be used, and
- Any restriction on the use of the funds.

Additional rules touch on, among other topics, how required disclosures should be made, the form and content of registration documents, and disciplinary procedures.<sup>144</sup>

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<sup>138</sup> § 12-10-505(1), C.R.S.

<sup>139</sup> § 12-10-505(4), C.R.S.

<sup>140</sup> § 12-10-505(1), C.R.S.

<sup>141</sup> § 12-10-506(1), C.R.S.

<sup>142</sup> § 12-10-502(3)(a), C.R.S.

<sup>143</sup> § 12-10-502(3)(b), C.R.S.

<sup>144</sup> 4 CCR § 725-6, Rules Governing Subdivisions And Timeshares Of The Real Estate Commission.

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## Home Warranty Service Contracts

Part 9 of Article 10 of Title 12, C.R.S., governs home warranty service contracts. However, it does not create a program. Companies that offer home warranty service contracts are not registered or licensed, and they are not subject to disciplinary action.

Instead, the statutes describe home warranty service contracts, prescribe requirements for such contracts, and prohibit certain sales practices by companies. A home warranty service contract is defined as,<sup>145</sup>

any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified new or preowned home: (I) Structural components, such as the roof, foundation, basement, walls, ceilings, or floors; (II) Utility systems, such as electrical, air conditioning, plumbing, HVAC, and heating systems, including furnaces; and (III) Appliances, such as stoves, washers, dryers, and dishwashers.

Home warranty service contracts are required to contain the following information:<sup>146</sup>

- A listing of all items or elements excluded from coverage;
- The process required to be followed in order to obtain repairs or replacements;
- A statement as to the time period of coverage;
- A statement as to whether the contract is transferable;
- A statement that actions may be covered by the provisions of the Colorado Consumer Protection Act or the Unfair Practices Act, and that a party to such a contract may have a right of civil action under those laws.

If a home warranty service contract covers gas-fueled appliances, it must include terms giving the homeowner the option to replace a gas-fueled appliance with a similar device that operates on electricity.<sup>147</sup> The company is responsible for providing a replacement appliance to the homeowner.<sup>148</sup>

Purchasing a home warranty service contract is not compulsory in the purchase or sale of a home.<sup>149</sup> It is also unlawful for any lending institution to require the purchase of a contract as a condition for financing for the purchase of the home.<sup>150</sup>

Any person who knowingly violates any provision of Part 9 commits a class 2 misdemeanor. Each instance of violation is counted as a separate offense.<sup>151</sup>

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<sup>145</sup> § 12-10-901(4)(a), C.R.S.

<sup>146</sup> § 12-10-903(1), C.R.S.

<sup>147</sup> § 12-10-903(2), C.R.S.

<sup>148</sup> *Id.*

<sup>149</sup> § 12-10-902, C.R.S.

<sup>150</sup> § 12-10-905, C.R.S.

<sup>151</sup> § 12-10-904, C.R.S.

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## Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The fifth, sixth and seventh sunset criteria question:

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 or the agency's board or commission performs its statutory duties efficiently and effectively; and

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.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

It should be noted at the outset that this sunset review focuses solely on the regulation of real estate brokers, subdivision developers and home warranty service contracts. It is not the product of any type of review of homeowners' associations (HOAs) or the community association managers that manage them. Nor is it a review of the Colorado Common Interest Ownership Act or the regulation of real estate appraisers or mortgage loan originators.

The Colorado Real Estate Commission (Commission) and the Colorado Division of Real Estate (Division) regulate real estate brokers and subdivision developers. The Commission and Division are both created in Article 10 of Title 12 of the Colorado Revised Statutes (Act).

The Commission is a type 1 entity consisting of five members appointed by the Governor:<sup>152</sup>

- Three brokers with at least five years of experience, at least one of whom has substantial experience in property management; and
- Two members of the public.

The Commission meets every other month. Meetings are virtual and can be attended by any member of the public, including brokers, who are often in attendance. Meetings

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<sup>152</sup> § 12-10-206(1), C.R.S.

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are archived on YouTube. During meetings, Commissioners conduct rulemaking hearings, consider licensing matters, review complaints and decide on disciplinary actions.

The Division is part of the Department of Regulatory Agencies and acts on behalf of the Commission when directed by the Commission.<sup>153</sup> It hires attorneys, deputies, investigators, clerks, and assistants to carry out these duties.<sup>154</sup> With regards to subdivision registrants, the Division currently handles most duties including registration.

Table 2, below, demonstrates the costs and full-time equivalent (FTE) employees associated with implementing the Act. These numbers relate only to the regulation of brokers and subdivision developers.

**Table 2**  
**Agency Fiscal Information**

| <b>Fiscal Year</b> | <b>Total Program Expenditure</b> | <b>FTE</b> |
|--------------------|----------------------------------|------------|
| 19-20              | \$5,453,110                      | 40         |
| 20-21              | \$5,636,079                      | 40         |
| 21-22              | \$5,728,552                      | 41         |
| 22-23              | \$5,669,109                      | 42         |
| 23-24              | \$6,362,506                      | 42         |

Expenditures remained relatively stable over the course of the review period, with an uptick in fiscal year 23-24. The cause is difficult to determine. In fiscal year 22-23, the Division took efforts to update its automated systems with regards to licensing and auditing of continuing education requirements.

The Division is cash funded through the collection of fees and fines.<sup>155</sup> Fees are administratively set by the Division<sup>156</sup> and are remitted to the State Treasurer for direct remittance into the cash fund.<sup>157</sup> Fees can be set for multiple items, such as:<sup>158</sup>

- A candidate's original application and license;
- Renewals;
- Broker examinations; and
- Any change of name, address, or employing broker requiring a change in records.

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<sup>153</sup> § 12-10-207(2), C.R.S.

<sup>154</sup> § 12-10-207(1), C.R.S.

<sup>155</sup> § 12-10-215, C.R.S.

<sup>156</sup> § 12-10-215(2)(b), C.R.S.

<sup>157</sup> § 12-10-214, C.R.S.

<sup>158</sup> § 12-10-212(1), C.R.S.

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Table 3 indicates the fees for real estate brokers.

**Table 3**  
**Real Estate Broker Fees**

| <b>Fiscal Year</b> | <b>Initial</b> | <b>Renewal</b> |
|--------------------|----------------|----------------|
| 19-20              | \$485          | \$378          |
| 20-21              | \$200          | \$183          |
| 21-22              | \$5            | \$8            |
| 22-23              | \$485          | \$387          |
| 23-24              | \$485          | \$387          |

Table 4 indicates the fees for subdivision developers.

**Table 4**  
**Subdivision Developer Fees**

| <b>Fiscal Year</b> | <b>Initial Applications</b> | <b>Supplemental Applications</b> | <b>Renewals</b> |
|--------------------|-----------------------------|----------------------------------|-----------------|
| 19-20              | \$3,000                     | \$1,500                          | \$980           |
| 20-21              | \$1,450                     | \$725                            | \$476           |
| 21-22              | \$5                         | \$5                              | \$8             |
| 22-23              | \$3,000                     | \$1,500                          | \$980           |
| 23-24              | \$3,000                     | \$1,500                          | \$980           |

Fees for both license types were drastically reduced during fiscal years 20-21 and 21-22 to account for hardship during the COVID-19 pandemic. There was a “fee holiday” in fiscal year 21-22 because, with the large increase in the number of licenses, the Division received more funds than projections anticipated in the preceding year. Subsequently, the cost went back to pre-pandemic levels.

With regards to subdivision developers, there may be supplemental applications filed with their renewals. Supplemental applications are required when the subdivision developer decides to add or list a new subdivision for sale.<sup>159</sup> Because subdivision developers are often adding properties, these are commonly submitted. However, if a subdivision developer does not need to include supplemental applications, they may be eligible for a courtesy renewal.

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<sup>159</sup> 4 CCR § 725-6-2.2, Rules Governing Subdivisions And Timeshares Of The Real Estate Commission.

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## Licensing

The eleventh and twelfth sunset criteria question whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage equity, diversity and inclusivity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

An applicant for a broker license must be at least 18 years of age.<sup>160</sup> They must also demonstrate that they meet education requirements.<sup>161</sup> Prior to submitting an application, each candidate must provide fingerprints to the Colorado Bureau of Investigation (CBI) to conduct a criminal history background check.<sup>162</sup> Licensees are also required to maintain errors and omissions insurance. There must be enough coverage for \$100,00 per claim, with an aggregate of \$300,000.<sup>163</sup>

The rules contemplate multiple types of brokers. Independent Brokers act as their own brokerage firms or sole proprietors, and do not employ or supervise any Associate Broker.<sup>164</sup> An Associate Broker is an Individual Broker that works under the supervision of an Employing Broker.<sup>165</sup> An Employing Broker employs or engages other brokers.<sup>166</sup> An Employing Broker can delegate duties to Supervisory Brokers.<sup>167</sup> Finally, a Brokerage Firm refers to any business entity authorized by the Commission to perform real estate services. All Brokerage Firms must have an active Employing Broker if they choose to employ other licensees.<sup>168</sup> A real estate broker that is under the employ of another broker must inform the Commission of the relationship. The Employing Broker has the control and custody of the employed broker's license.<sup>169</sup> In the event that a licensee terminates employment with another broker, both parties must immediately notify the Commission.<sup>170</sup>

To apply for licenses, there are four initial steps to be completed. The first step is to provide proof of education completion from a real estate school. To meet this prerequisite, educational coursework must include:<sup>171</sup>

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<sup>160</sup> § 12-10-203(4)(a), C.R.S.

<sup>161</sup> *Id.*

<sup>162</sup> § 12-10-203(1)(b)(I), C.R.S.

<sup>163</sup> 4 CCR § 725-1-3.9(B), Rules Regarding Real Estate Brokers.

<sup>164</sup> 4 CCR § 725-1-1.29, Rules Regarding Real Estate Brokers.

<sup>165</sup> 4 CCR § 725-1-1.6, Rules Regarding Real Estate Brokers.

<sup>166</sup> 4 CCR § 725-1-1.24, Rules Regarding Real Estate Brokers.

<sup>167</sup> 4 CCR § 725-1-1.51, Rules Regarding Real Estate Brokers.

<sup>168</sup> 4 CCR § 725-1-1.8, Rules Regarding Real Estate Brokers.

<sup>169</sup> § 12-10-211(2), C.R.S.

<sup>170</sup> § 12-10-211(3), C.R.S.

<sup>171</sup> § 12-10-203(4)(a), C.R.S.

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- A total of 48 hours of classroom instruction regarding real estate law and real estate practice;
  - A total of 48 hours of classroom instruction in understanding and preparing Colorado real estate contracts; and
  - A total of 72 hours of instruction in the following areas of study: trust accounts and record keeping, real estate closings, legal issues, and practical applications.

An individual may also submit an official transcript from an accredited college or university if they have a degree based on real estate.

Second, one must schedule an examination with the Division's vendor, which is currently PSI. Once they complete the examination with PSI, the information will be sent to the Division.

The third step for initial licensure is to complete the background check requirements and submit fingerprints to a CBI-approved vendor. Fingerprints must be submitted two to three weeks prior to submission of the application. If an application is received more than 60 days after CBI receives a candidate's fingerprint record, they will be required to resubmit the fingerprints for review.

The fourth step requires a candidate to obtain errors and omissions insurance (EO Insurance) to cover all acts requiring a license. The Division contracts with Rice Insurance Services, LLC, to administer group EO Insurance for licensed real estate brokers.

Licensees can also be covered under their company's umbrella EO Insurance policy if one exists. Some licensed brokerage firms also carry a group EO Insurance that provides coverage to all brokers associated with the brokerage. However, if a licensee ends their employment with a company or brokerage firm, they will need to purchase individual EO Insurance.

If a candidate has held a real estate license in another state for two or more years, they can be issued a license in Colorado. Such candidates must provide evidence that their qualifications are substantially equivalent to the requirements for licensure in Colorado.<sup>172</sup> They must also pass the state's broker examination.

Table 5 illustrates the number of new, endorsement and renewal licenses for the fiscal years indicated.

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<sup>172</sup> § 12-10-203(5)(b), C.R.S.

**Table 5**  
**Real Estate Broker Licenses**

| Fiscal Year | New/Exam | Endorsement | Renewal | Total  |
|-------------|----------|-------------|---------|--------|
| 19-20       | 3,019    | 370         | 16,831  | 20,220 |
| 20-21       | 5,162    | 612         | 19,288  | 25,062 |
| 21-22       | 3,959    | 549         | 18,941  | 23,449 |
| 22-23       | 2,872    | 519         | 16,846  | 20,237 |
| 23-24       | 2,584    | 441         | 14,910  | 17,935 |

During the COVID-19 pandemic, there was a surge in the number of new licenses. This could be due to an increase in interest to practice real estate during those years. The pandemic caused many economic shifts which led to numerous individuals losing their jobs. Unemployed individuals began exploring new careers, including real estate. Additionally, there was a rise in demand for housing as individuals turned to remote work.<sup>173</sup> Because of these factors, there was a nationwide increase in real estate agents during the COVID-19 pandemic.<sup>174</sup>

New licenses are only valid until December 31st of the year in which they are issued. Subsequently, licenses will expire on December 31 of every third year after issuance. Renewals are allowed so long as the candidate can demonstrate they met the continuing education requirements.<sup>175</sup> Candidates must also provide proof of errors and omissions insurance.<sup>176</sup>

A total of 24 continuing education hours is required prior to renewal.<sup>177</sup> Of those hours, 12 must consist of the Commission's annual update course.<sup>178</sup> All courses must be Commission approved.<sup>179</sup> Courses must also be related to real estate practice in some form.<sup>180</sup> Attending Commission meetings, so long as they are two hours long, can count towards the continuing education requirement.

Subdivision developers must register with the Commission before negotiating, selling, leasing, or transferring subdivision properties.<sup>181</sup> The registration also requires information on the property that must be updated yearly.

<sup>173</sup> Investopedia. *Homeowners Who Bought During COVID Boom Face 7 Key Realities in Today's Housing Market*. Retrieved September 8, 2025, from <https://www.investopedia.com/homeowners-who-bought-during-covid-boom-face-7-key-realities-in-todays-housing-market-11798142>

<sup>174</sup> The New York Times. *Why So Many People Became Real Estate Agents in the Pandemic*. Retrieved September 8, 2025, from <https://www.nytimes.com/2022/03/04/realestate/real-estate-agents-pandemic.html>

<sup>175</sup> § 12-10-212(4)(a), C.R.S.

<sup>176</sup> § 12-10-204, C.R.S.

<sup>177</sup> § 12-10-213(1)(a), C.R.S.

<sup>178</sup> §§ 12-10-213(1)(a) and (2), C.R.S.

<sup>179</sup> § 12-10-213(3), C.R.S.

<sup>180</sup> 4 CCR § 725-1-4.4, Rules Regarding Real Estate Brokers.

<sup>181</sup> § 12-10-503(2), C.R.S.

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Information required for registration includes:<sup>182</sup>

- Name, location, title documents, and other information regarding the property;
- 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 individuals that would violate subdivision developer regulation;
- If applicable, the states in which the applicant has had a similar registration granted, refused, suspended, or revoked;
- If applicable, whether the developer or any person financially interested in the business has engaged in an activity that violates statutes governing subdivision developers; and
- If a corporation, a copy of a certificate of authority to conduct business in Colorado.

Applicants must also provide a statement that Commission-approved forms will be used for contracts of sale, notes, deeds, and other legal documents, unless the forms to be used were prepared by an attorney representing the developer. The Commission may deny an application for registration until the applicant submits these documents in a form that is satisfactory.<sup>183</sup> A certificate also entitles all sales agents and employees to act as an agent for the developer.<sup>184</sup>

The Commission must issue or deny a certificate within 60 days from the date of receipt of an application. If the Commission determines that an inspection of a subdivision is necessary, it shall complete the inspection within the 60 days.<sup>185</sup> The Commission has the authority require any subdivision developer to make any written disclosures within their contracts if the Commission finds that such disclosures are required for the protection of the buyers.<sup>186</sup>

The table below shows the number of registrations for the subdivision developer program.

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<sup>182</sup> *Id.*

<sup>183</sup> § 12-10-503(4), C.R.S.

<sup>184</sup> § 12-10-504(1), C.R.S.

<sup>185</sup> § 12-10-506(3), C.R.S.

<sup>186</sup> § 12-10-506(7), C.R.S.

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**Table 6**  
**Subdivision Developers**

| <b>Fiscal Year</b> | <b>Initial</b> | <b>Renewals</b> | <b>Total</b> |
|--------------------|----------------|-----------------|--------------|
| 19-20              | 5              | 60              | 65           |
| 20-21              | 4              | 58              | 62           |
| 21-22              | 4              | 53              | 57           |
| 22-23              | 2              | 53              | 55           |
| 23-24              | 0              | 55              | 55           |

The slight decrease in total registrations could be related to a slowdown in the Colorado timeshare market following the COVID-19 pandemic.

In addition to renewals, subdivision developers must file supplemental applications with the Commission whenever they would like to construct new property or add new subdivision listings.<sup>187</sup>

The table below shows the number of supplemental applications made by subdivision registrants for the fiscal years examined.

**Table 7**  
**Supplemental Applications**

| <b>Fiscal Year</b> | <b>Supplemental Applications<br/>by Subdivision Developers</b> |
|--------------------|----------------------------------------------------------------|
| 19-20              | 311                                                            |
| 20-21              | 203                                                            |
| 21-22              | 308                                                            |
| 22-23              | 184                                                            |
| 23-24              | 187                                                            |

The decrease in applications in fiscal year 20-21 may be related to a slowdown in the Colorado timeshare market following the COVID-19 pandemic. Construction, along with sales of timeshares, halted and slowed down. In fiscal year 21-22, following the end of the pandemic, development resumed and companies began increasing efforts to market timeshares. However, applications went down again in fiscal year 22-23 and fiscal year 23-24.

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<sup>187</sup> 4 CCR § 725-6-2.2, Rules Governing Subdivisions And Timeshares Of The Real Estate Commission.

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## Audits

The Commission conducts audits upon complaints, upon its own motion, and on a random basis. The Division handles audits for the Commission and conducts two types of audits: continuing education audits, and practice audits. Recipients are usually given two weeks to respond to a continuing education audit, and three weeks for a practice audit.

Table 8 shows the number of brokers audited for compliance with continuing education requirements in the period examined, along with their noncompliance percentage and whether any cases were referred to the Attorney General's (AG's) Office.

**Table 8**  
**Continuing Education Audits**

| <b>Fiscal Year</b> | <b>Total<br/>Number of<br/>Brokers<br/>Audited</b> | <b>Noncompliance<br/>Percentage</b> | <b>Cases<br/>referred to<br/>AG's Office</b> |
|--------------------|----------------------------------------------------|-------------------------------------|----------------------------------------------|
| 19-20              | 1616                                               | 28.8                                | 1                                            |
| 20-21              | 1691                                               | 28.9                                | 0                                            |
| 21-22              | 1478                                               | 34.9                                | 3                                            |
| 22-23              | 1995                                               | 39.4                                | 3                                            |
| 23-24              | 2484                                               | 33.8                                | 7                                            |

Because the Division implemented a new system to conduct continuing education audits in fiscal year 22-23, there was an increase in audits in the final two years. The noncompliance percentage rose as the Division began to detect more violations with the increased number of audits. Sometimes, a case needs to be referred to the AG's Office if a licensee continuously fails to respond to multiple audit notifications. The average cost of these cases through the court process is \$1,850. However, the Commission did have one continuing education case that went through the hearing process and cost approximately \$22,000.

Practice audits typically involve a real estate brokerage. Auditors will examine a transaction to determine whether the brokerage complied with statutes and regulations.

The table below shows the number of practice audits that took place during the period examined.

**Table 9**  
**Practice Audits**

|                           | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 |
|---------------------------|----------|----------|----------|----------|----------|
| Number of Practice Audits | 108      | 132      | 161      | 202      | 128      |

The Division tries to conduct 15 of these audits monthly. These are mostly for brokerages. The rise in audits in fiscal year 22-23 is tied to the Division receiving more complaints related to brokers who managed their own rentals or had broker-owned properties. The Division conducted more audits on such brokers, but was not finding significant issues, hence audits stabilized in the subsequent year.

## Examinations

The eleventh and twelfth sunset criteria question whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage equity, diversity and inclusivity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

Real estate broker applicants need to pass an examination prepared by or under the supervision of the Commission or its designated contractor. The examination includes the following topics:<sup>188</sup>

- Ethics;
- Reading, spelling, and mathematics;
- Principles of land economics;
- Appraisals;
- Financing; and
- A knowledge of state statutes and the rules of the Commission.

The Commission is authorized to contract with an independent testing service to develop, administer, and grade examinations or to administer licensee records. The contract may allow the testing service to recover costs from the applicant.<sup>189</sup>

The current vendor is PSI. PSI specializes in developing, preparing, and proctoring tests for certification and licensure programs throughout the country. PSI currently has seven locations in Colorado. Examinations can also be taken online with a proctor.

The test has two portions: a national portion that must be completed in 120 minutes, and a state portion that must be completed in 110 minutes. The fee for the examination

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<sup>188</sup> § 12-10-203(5)(a), C.R.S.

<sup>189</sup> *Id.*

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is \$49, and the fee to retake it is \$48.<sup>190</sup> Scores are valid for one year following passage of the examination.<sup>191</sup>

Table 10 illustrates, for the fiscal years indicated, the number of examinations administered and the pass rate.

**Table 10**  
**Real Estate Broker Examination**

| Fiscal Year | Number of Written Examinations Given | Pass Rate (%) |
|-------------|--------------------------------------|---------------|
| 19-20       | 6,238                                | 62            |
| 20-21       | 13,301                               | 58            |
| 21-22       | 10,917                               | 56            |
| 22-23       | 8,922                                | 53            |
| 23-24       | 8,281                                | 53            |

The rise in the number of examinations during fiscal years 20-21 and 21-22 took place during the COVID-19 pandemic, which saw a surge in interest of the real estate sector.<sup>192</sup>

## Complaints

The eighth and tenth sunset criteria require COPRRR to examine whether regulatory oversight can be achieved through a director model, and 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 or regulated entity.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

The Act lists numerous, specific violations that could subject brokers to discipline. The violations can be thought of as practice violations and financial related violations,<sup>193</sup> as brokers are often handling money of their clients. The table below indicates the number and types of complaints received between fiscal years 19-20 and 23-24.

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<sup>190</sup> PSI. *Real Estate Candidate Information Bulletin*. Retrieved October 10, 2025, from <https://test-takers.psiexams.com/api/content/bulletin/649>

<sup>191</sup> 4 CCR § 725-1-2.2(F), Rules Regarding Real Estate Brokers.

<sup>192</sup> The New York Times. *Why So Many People Became Real Estate Agents in the Pandemic*. Retrieved September 8, 2025, from <https://www.nytimes.com/2022/03/04/realestate/real-estate-agents-pandemic.html>

<sup>193</sup> § 12-10-217(1), C.R.S.

**Table 11**  
**Complaint Information**

| <b>Nature of Complaints</b>                  | <b>FY 19-20</b> | <b>FY 20-21</b> | <b>FY 21-22</b> | <b>FY 22-23</b> | <b>FY 23-24</b> |
|----------------------------------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| Practicing w/o a License                     | 8               | 5               | 5               | 2               | 4               |
| Trust Account Violations                     | 56              | 34              | 47              | 33              | 57              |
| Unworthiness/<br>Incompetence                | 72              | 70              | 86              | 90              | 45              |
| Dishonest Dealing                            | 22              | 9               | 13              | 16              | 25              |
| Criminal<br>Convictions/Failure to<br>Report | 67              | 28              | 61              | 43              | 54              |
| Commission Rule Violation                    | 108             | 96              | 112             | 138             | 113             |
| Advertising                                  | 22              | 7               | 13              | 18              | 9               |
| False Promises/<br>Misrepresentations        | 17              | 3               | 12              | 5               | 4               |
| Failure to Supervise                         | 16              | 10              | 14              | 12              | 12              |
| Forms Violations                             | 22              | 19              | 20              | 49              | 32              |
| Failure to Disclose                          | 42              | 39              | 49              | 60              | 52              |
| Recordkeeping Violations                     | 17              | 21              | 29              | 61              | 42              |
| Brokerage Duties - failure<br>to perform     | 35              | 26              | 35              | 52              | 22              |
| Errors and Omissions<br>Insurance Violation  | 4               | 1               | 0               | 0               | 2               |
| Compensation                                 | 2               | 1               | 8               | 5               | 11              |
| <b>Total</b>                                 | <b>510</b>      | <b>369</b>      | <b>504</b>      | <b>590</b>      | <b>484</b>      |

There were 459 complaints regarding Commission rule violations, which made up the largest number of complaints. There were also numerous complaints received for the following topics:

- Unworthiness/Incompetence, with 291 complaints;
- Failure to disclose, with 200 complaints;
- Criminal Convictions/Failure to report criminal convictions, with 186 complaints;
- Trust Account Violations, with 171 complaints; and
- Brokerage Duties, with 135 complaints.

Complaints alleging a lack of error and omissions insurance had the lowest number of complaints, with only six in the five fiscal years examined.

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The Commission can investigate complaints and hold hearings concerning the activities of licensees.<sup>194</sup> However, proceedings concerning disciplinary actions and denial of a license are conducted by an administrative law judge (ALJ).<sup>195</sup> The Commission or an ALJ has the authority to issue a subpoena to compel the attendance and testimony of witnesses and the production of documents pursuant to an investigation or hearing.<sup>196</sup> Any person who refuses to obey a subpoena commits a petty offense for each day they are out of compliance.<sup>197</sup> If a person fails or refuses to obey a subpoena, the Commission may petition the district court to issue one.<sup>198</sup> Licensees also have the option to go through an expedited settlement process with the Division. As an alternative to a hearing, Division staff works directly with licensees to settle a matter in a manner agreeable to both parties.<sup>199</sup>

Table 12, below, shows the average time it takes for the Commission to investigate complaints.

**Table 12**  
**Complaint Investigation Time**

| Fiscal Year | Average Number of Days |
|-------------|------------------------|
| 19-20       | 155                    |
| 20-21       | 106                    |
| 21-22       | 170                    |
| 22-23       | 165                    |
| 23-24       | 133                    |

The number of days varies based on the number and nature of complaints before the Commission at any given time. These numbers do not include the time it takes to settle a complaint through the Division's expedited settlement program.

There were no complaints regarding subdivision developers during the five years examined.

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<sup>194</sup> § 12-10-217(1), C.R.S.

<sup>195</sup> § 12-10-219(1), C.R.S.

<sup>196</sup> § 12-10-224, C.R.S.

<sup>197</sup> § 12-10-225, C.R.S.

<sup>198</sup> § 12-10-224, C.R.S.

<sup>199</sup> Division of Real Estate. *Investigations & Expedited Settlement Program*. Retrieved October 3, 2025, from <https://dre.colorado.gov/division-of-real-estate/investigations-expedited-settlement-program>

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## Disciplinary Activity

The tenth sunset criterion requires COPRRR to examine 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 or regulated entity.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Commission can issue letters of admonition, place a licensee on probation, and suspend or revoke a license for violations.<sup>200</sup>

The table below indicates final agency actions that occurred in the years examined.

**Table 13**  
**Final Agency Actions**

| Type of Action                                    | FY 19-20  | FY 20-21  | FY 21-22  | FY 22-23  | FY 23-24  |
|---------------------------------------------------|-----------|-----------|-----------|-----------|-----------|
| Revocation / Surrender / Voluntary Relinquishment | 13        | 12        | 17        | 12        | 18        |
| Suspension                                        | 5         | 3         | 5         | 4         | 6         |
| Probation / Practice Limitation/Downgrade         | 19        | 21        | 16        | 24        | 29        |
| Letter of Admonition                              | 1         | 0         | 0         | 0         | 0         |
| License Denied                                    | 17        | 6         | 11        | 7         | 8         |
| <b>Total Disciplinary Actions</b>                 | <b>55</b> | <b>42</b> | <b>49</b> | <b>47</b> | <b>61</b> |

The most frequent type of disciplinary action was “Probation/Practice Limitation/Downgrade,” with 90 actions. A downgrade occurs when a broker goes from being an Independent Broker down to being an Associate Broker, or goes from being an Employing Broker down to being either an Independent Broker or an Associate Broker. It limits the broker’s independence or their ability to supervise others.

The Division rarely issues letters of admonition, with only one being issued in the five years examined.

The Commission may also impose fines of up to \$2,500 for each separate offense.<sup>201</sup> Table 14, below, shows the total number of fines imposed, the value of those fines and the dollars actually collected.

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<sup>200</sup> § 12-10-217, C.R.S.

<sup>201</sup> § 12-10-217(1), C.R.S.

**Table 14**  
**Fines**

| <b>Fiscal Year</b> | <b>Number of Fines Imposed</b> | <b>Total Value of Fines Imposed</b> | <b>Total Value of Fines Collected</b> |
|--------------------|--------------------------------|-------------------------------------|---------------------------------------|
| 19-20              | 481                            | \$436,092                           | \$435,787.40                          |
| 20-21              | 466                            | \$415,697                           | \$336,628.29                          |
| 21-22              | 385                            | \$306,068                           | \$340,233.16                          |
| 22-23              | 643                            | \$557,010                           | \$432,316.67                          |
| 23-24              | 980                            | \$884,627                           | \$536,619                             |

The imposed and collected dates vary and cross over fiscal years, hence the difference in the value of fines imposed and the value of fines that are collected each year. During fiscal year 23-24, about 61 percent of fines imposed by the Commission were collected. In fiscal year 22-24, the Division began to increase its continuing education audits with the implementation of a new system, which may explain the increase in the number of fines imposed that year and in the subsequent year. As shown in Table 8, there was an increase in continuing education noncompliance audits made in the final two years.

There was no disciplinary activity taken with respect to subdivision developers in the five years examined.

### **Collateral Consequences - Criminal Convictions**

The thirteenth sunset criterion requires COPRRR to examine whether the agency, through its licensing, certification or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests.

COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Applicants can face discipline if they are convicted of certain, serious violent, financial, or drug offenses under the state's criminal code.<sup>202</sup> This is enshrined into the Act as licensees are often alone with clients, handle client's money, and may have access to a large number of properties.

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<sup>202</sup> § 12-10-217(1)(n), C.R.S.

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The table below demonstrates the number of conditional licenses issued to real estate brokers based on criminal history, as well as the number of denials and revocations based on criminal history.

**Table 15**  
**Collateral Consequences of Criminal Activity Licensing**

| Nature of Sanction or Disqualification | FY 19-20 | FY 20-21 | FY 21-22 | FY 22-23 | FY 23-24 |
|----------------------------------------|----------|----------|----------|----------|----------|
| Conditional Licenses                   | 6        | 10       | 3        | 2        | 0        |
| Denials                                | 13       | 2        | 6        | 2        | 3        |
| Revocations                            | 1        | 1        | 0        | 3        | 1        |
| Total                                  | 20       | 13       | 9        | 7        | 4        |

The violations made by the licensees who were issued conditional licenses varied. However, many had convictions such as possession of firearms and substances with the intent to distribute. There were also violent offenses, such as battery or assault, that often took place years prior to application.

Fiscal year 19-20 saw the most denials of all years examined. The vast majority of denials were made for applicants that committed financial-related crimes, such as forgery and impersonation, sometimes while practicing as a real estate broker in other states. Licenses were also denied because applicants had numerous instances of repeat offenses for drug possession with the intent to distribute.

During the years under review, the Commission did not suspend any broker licenses as the result of criminal convictions.

Subdivision developers must also disclose any felony convictions over the 10 years prior to their applications.<sup>203</sup> However, no conditional licenses or disqualifications based on criminal history were issued related to subdivision developers.

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<sup>203</sup> § 12-10-503(2), C.R.S.

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## Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

**Recommendation 1 – Continue Parts 2, 3 and 5 of Article 10, Title 12 of the Colorado Revised Statutes for 11 years, until 2037, and continue Part 9 (Home Warranty Service Contracts) but remove it from the sunset review schedule.**

This Sunset Review covers the following parts of Article 10, Title 12 of the Colorado Revised Statutes (C.R.S.) (Act):

- Part 2: Brokers and Salespersons
- Part 3: Brokers' Commissions
- Part 5: Subdivisions
- Part 9: Home Warranty Service Contracts

Three of the four generally relate to the area of real estate practice.

The purchasing of property is typically a large, serious endeavor for consumers. Sometimes it is the single, most costly purchase a person will make in their lifetime. Real estate brokers, to put it simply, assist buyers and sellers in completing real estate sales or lease transactions. They may work independently or be affiliated with a larger brokerage.

Both sides benefit from having a broker involved in the transaction. An experienced broker assists buyers by:

- Helping find property suitable for their needs, price range, and regional preferences;
- Helping the client find purchasing options;
- Negotiating the transaction; and
- Reviewing and preparing sales contracts.

Brokers help sellers by:

- Conducting market analysis to determine a reasonable asking price,
- Listing and marketing the property for the seller,
- Negotiating the transaction, and
- Reviewing and preparing sales contracts.

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Subdivisions refer to any real property divided into 20 or more interests intended solely for residential use and offered for sale, lease, or transfer.<sup>204</sup> Before selling, leasing, or negotiating property belonging to a subdivision, the developer of the subdivision must be registered.<sup>205</sup> The vast majority of registrants are entities who sell timeshare properties. Such registrants may be required to make specific disclosures such that prospective buyers can make informed decisions regarding whether to purchase these properties in the first place.<sup>206</sup>

Virtually every state in the U.S. has laws defining what licenses and training are required to practice in real estate. In Colorado, both brokers and subdivision are regulated by the Division of Real Estate (Division) and the Colorado Real Estate Commission (Commission).<sup>207</sup> This is a five-member commission appointed by the Governor consisting of three experienced real estate brokers and two members of the public.<sup>208</sup>

The Commission licenses brokers,<sup>209</sup> registers subdivisions,<sup>210</sup> accepts complaints,<sup>211</sup> and investigate brokers upon its own motion or upon a received complaint.<sup>212</sup> It is also empowered to issue discipline in the form of administrative sanctions and the removal of business licensing.<sup>213</sup>

Regulation of brokers, particularly by the Commission, is necessary. Incompetent or bad-faith brokers have multiple opportunities to harm clients not only financially, but physically as well.

Brokers often hold money for their clients, whether in earnest money deposits, security deposits, or in rents. Holding money creates the opportunity to commit direct embezzlement or misuse of funds. The broker could also be negligent by moving monies around to improper accounts. Other financial harms can result if the broker did not negotiate a reasonable asking or offering price, or if the broker fails to perform required duties causing the other party to walk away from a deal altogether.

Physical instances of harm can occur short-term or in the long-term. Brokers are often alone with clients, such as when giving tours of property to members of the public. This presents an easy opportunity for a perpetrator to commit violent crimes.

Given the complexity of real estate, and the multiple avenues through which a broker can negligently or intentionally harm their clients, regulation is necessary to maintain a minimum standard of competence. State regulation currently ensures that brokers

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<sup>204</sup> § 12-10-501(3)(a), C.R.S.

<sup>205</sup> § 12-10-504, C.R.S.

<sup>206</sup> § 12-10-506(7), C.R.S.

<sup>207</sup> §§ 12-10-206 and 12-10-502, C.R.S.

<sup>208</sup> § 12-10-206(1), C.R.S.

<sup>209</sup> § 12-10-202, C.R.S.

<sup>210</sup> § 12-10-502, C.R.S.

<sup>211</sup> § 12-10-217, C.R.S.

<sup>212</sup> *Id.*

<sup>213</sup> §§ 12-10-217 and 12-10-505, C.R.S.

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undergo a criminal history background check,<sup>214</sup> take training,<sup>215</sup> pass an examination,<sup>216</sup> and maintain errors and omissions insurance (EO Insurance).<sup>217</sup> In addition, the Act ensures that brokers are providing certain disclosures, such as affiliated business relationships, to clients who work with them.<sup>218</sup>

The Commission's regulation also focuses heavily on continuing education. It develops an Annual Commission Update (ACU) course to keep licensees up to date on any changes in state regulation,<sup>219</sup> and it approves applications for those seeking to offer mandatory continuing education classes.<sup>220</sup> All active brokers must complete 24 hours of continuing education for each three-year license period.<sup>221</sup>

The Commission regulated close to 18,000 brokers and 55 subdivision developers in fiscal year 23-24. Despite their low numbers, regulation of subdivision developers is crucial. The Commission's authority over subdivision developers mostly pertains to ensuring that subdivision developers make the proper disclosures to purchasers.

Without such regulation, it is possible that these disclosures would not be made or would be incomplete, thereby potentially harming the public. Timeshares often have a unique temporal and ownership nature, and if clients lack the requisite disclosures, they will not be properly informed about the transaction they are entering. As part of the registration process, each subdivision developer application is carefully reviewed by the Commission's staff and each principal of the timeshare submits criminal history information. This also provides protections for potential purchasers of the timeshare. The first sunset criterion asks whether regulation is necessary to protect the public.

Because the risk of harm during nuanced real estate transactions is high, and the results can be severe, the General Assembly should continue the regulation of real estate brokers and subdivision developers. It should also continue the Commission and the Division as the entities that administer regulation. All should be continued for 11 years. This sunset report does not recommend any changes that will substantially alter the practice of real estate as a whole in Colorado. Thus an 11-year period is justified. In addition, Part 9 of Article 10, Title 12, C.R.S., covers Home Warranty Service Contracts. A home warranty service contract is defined as,

any contract or agreement whereby a person undertakes for a predetermined fee, with respect to a specified period of time, to maintain, repair, or replace any or all of the following elements of a specified new or preowned home: (I) Structural components, such as the roof, foundation, basement, walls, ceilings or floors; (II) Utility systems,

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<sup>214</sup> § 12-10-203(1)(b)(I), C.R.S.

<sup>215</sup> § 12-10-203(4), C.R.S.

<sup>216</sup> § 12-10-203(5)(b), C.R.S.

<sup>217</sup> § 12-10-204, C.R.S.

<sup>218</sup> § 12-10-218, C.R.S.

<sup>219</sup> § 12-10-213(2), C.R.S.

<sup>220</sup> § 12-10-213(3), C.R.S.

<sup>221</sup> § 12-10-213(1)(a), C.R.S.

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such as electrical, air conditioning, plumbing, and heating systems, including furnaces; and (III) Appliances, such as stoves, washers, dryers, and dishwashers.

Neither the Commission nor the Division receives complaints or handles discipline regarding such contracts. Home Warranty Service Contracts are not regulated by either entity. Rather, statutes dictate what home warranty service contracts must contain and prohibit certain sales practices.

Because there is no regulatory program in place, it is difficult to ascertain the degree to which home warranty service companies comply with the statutes. As such, home warranty service contracts should be removed from the sunset review schedule altogether.

For all these reasons, the General Assembly should continue Parts 2, 3 and 5 of Article 10, Title 12, C.R.S., for 11 years until 2037, and continue Part 9, but remove it from the sunset review schedule.

### **Recommendation 2 – Give the Commission the ability to deny licenses for certain, enumerated offenses laid out in the Act.**

One core function of the Commission is to accept, review, and issue broker licenses to candidates.<sup>222</sup> Another central role is to discipline such licensees when applicable.<sup>223</sup> Currently, the Commission has the authority to impose administrative fines, to place licensees on probation, to temporarily suspend a license, or revoke a license, when a licensee is guilty of certain criminal acts.<sup>224</sup>

Table 16, below, provides a breakdown of the enumerated criminal statutes, to provide a clearer picture of what this provision entails.

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<sup>222</sup> § 12-10-203(1), C.R.S.

<sup>223</sup> § 12-10-217, C.R.S.

<sup>224</sup> § 12-10-217(1)(n), C.R.S.

**Table 16**  
**Criminal Convictions Subject to Discipline under Section 12-10-217(1)(n), C.R.S.**

| Title 18 Articles Referenced                 | Offenses                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Any crime of Article 3                       | <u>Offenses Against the Person</u>                                                                                                                                                                                                                                                                                                                                                 |
| Parts 1, 2, 3, and 4 of Article 4 -          | <u>Offenses Against Property</u> <ul style="list-style-type: none"> <li>• Arson</li> <li>• Burglary</li> <li>• Robbery</li> <li>• Theft</li> </ul>                                                                                                                                                                                                                                 |
| Parts 1, 2, 3, 4, 5, 7, 8, or 9 of Article 5 | <u>Offenses Involving Fraud</u> <ul style="list-style-type: none"> <li>• Bribery</li> <li>• Equity Skimming</li> <li>• Financial Transaction Device Crime Act</li> <li>• Forgery</li> <li>• Fraud in Obtaining Property or Services</li> <li>• Fraudulent and Deceptive Sales</li> <li>• Identity Theft</li> <li>• Offenses relating to UCC</li> </ul>                             |
| Any crime of Article 5.5                     | <u>Computer Crime</u>                                                                                                                                                                                                                                                                                                                                                              |
| Parts 3, 4, 6, 7, and 8 of Article 6         | <u>Offenses Involving the Family Relations</u> <ul style="list-style-type: none"> <li>• Domestic Violence</li> <li>• Harboring a Minor</li> <li>• Incest</li> <li>• Wrongs to Children</li> <li>• Contributing To Delinquency</li> </ul>                                                                                                                                           |
| Parts 1, 3, 4, 5, 6, 7, and 8 of Article 7   | <u>Offenses Relating to Morals</u> <ul style="list-style-type: none"> <li>• Child Prostitution</li> <li>• Criminal Invasion of Privacy</li> <li>• Obscenity</li> <li>• Public Indecency</li> <li>• Sexual Conduct in a Correctional Institution</li> <li>• Sexually Explicit Materials Harmful to Children</li> <li>• Visual Representations containing Actual Violence</li> </ul> |
| Part 3 of Article 8                          | <u>Governmental Operations</u> <ul style="list-style-type: none"> <li>• Bribery</li> </ul>                                                                                                                                                                                                                                                                                         |
| Any crime of Article 15                      | <u>Offenses - Making, Financing, or Collection of Loans</u>                                                                                                                                                                                                                                                                                                                        |
| Any crime of Article 17                      | <u>Colorado Organized Crime Control Act</u>                                                                                                                                                                                                                                                                                                                                        |

| Title 18 Articles<br>Referenced                                                                                                                                                                                                     | Offenses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sections <u>18-18-404</u> , <u>18-18-405</u> , <u>18-18-406</u> , <u>18-18-411</u> , <u>18-18-412.5</u> , <u>18-18-412.7</u> , <u>18-18-412.8</u> , <u>18-18-415</u> , <u>18-18-416</u> , <u>18-18-422</u> , and <u>18-18-423</u> . | <u>Uniform Controlled Substances Act</u> <ul style="list-style-type: none"> <li>• Counterfeit substances;</li> <li>• Fraud and deceit;</li> <li>• Imitation controlled substances;</li> <li>• Inducing controlled substances;</li> <li>• Keeping, maintaining, controlling, renting, or making available property for unlawful distribution or manufacture of controlled substances;</li> <li>• Offenses related to marijuana and marijuana concentrate;</li> <li>• Retail sale of methamphetamine precursor drugs;</li> <li>• Sale or distribution of materials to manufacture controlled substances;</li> <li>• Unlawful distribution, manufacturing, dispensing, or sale;</li> <li>• Unlawful possession of materials to make methamphetamine and amphetamine; and</li> <li>• Unlawful use of a controlled substance.</li> </ul> |

As illustrated above, the statutes in this provision vary. They range from financial crimes to violent crimes. Because real estate transactions are complex and often involve large sums of money, and because brokers typically handle other people's money, the Commission considers whether conviction of these crimes should result in discipline. Having access to property also presents the opportunity for committing certain crimes. Often, brokers might be alone with the person they represent, or they might be alone with prospective clients who are touring their properties. As such, the Commission should be able to discipline licensees who are found guilty of the enumerated crimes.

Individuals are not automatically disciplined once they are guilty of one of these offenses. However, the Commission retains the ability to discipline if it determines that discipline is warranted. This is an important tool for the Commission to help mitigate the ability of brokers from harming consumers in the future.

However, the Act is currently silent on whether the Commission can deny applications for licensure if a candidate has already been convicted of one of these offenses prior to licensure. So, while the Commission can discipline a current licensee who has been convicted of one of the enumerated offenses, it cannot deny a license to such an individual in the first place. Since the General Assembly has already determined that conviction of one of the enumerated crimes may serve as grounds for discipline, the General Assembly should authorize the Commission to deny applications if an applicant is already guilty of one of the same enumerated offenses.

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Creating this option will allow the Commission to better protect the public by being able to deny a license to an individual who has a history of committing serious crimes that would affect their ability to practice real estate. As with discipline, the Commission will not automatically deny all applicants that have these convictions. However, this change would create the option to deny the license if it is deemed necessary, based on the circumstances of the case and based on whether the applicant has had an opportunity to undergo reformation and rehabilitation.

The first sunset criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare. The fifth sunset criterion asks 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. The tenth criterion asks 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 or regulated entity. The fourteenth criterion asks whether changes are necessary to improve agency operations.

Since the Commission has the ability to discipline licensees for these egregious crimes once licensed but not to deny an application for the same reasons, the Commission should be authorized to also deny candidates if they already were found guilty of those same crimes before applying for a license. The General Assembly should thus allow the Commission the ability to deny licenses for offenses in section 12-10-217(1)(n), C.R.S.

### **Recommendation 3 – Authorize the Commission to order restitution.**

A central duty of the Commission, as with any licensing agency, is to enforce the statutes it is tasked with administering, which often entails the imposition of discipline.<sup>225</sup> Discipline can take several forms, from the imposition of fines up to \$2,500 to censure, suspension, or revocation of a license.<sup>226</sup> Disciplinary duties are common to many regulated professions and licensing programs. However, the field of real estate is unique. Because the handling of others' money is directly involved, the Commission should be able to discipline brokers when it is clear that they directly misappropriated or mishandled such funds.

Brokers often hold money in trust accounts for other individuals, whether they are their clients, or other parties associated with a transaction. Common instances requiring the use of trust accounts include:

- Earnest money deposits,
- Security deposits, and
- Rent.

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<sup>225</sup> § 12-10-217, C.R.S.

<sup>226</sup> § 12-10-217(1), C.R.S.

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Earnest money is a deposit typically made by a home buyer to a seller to demonstrate good faith and intent to purchase property.<sup>227</sup> In Colorado, brokers are personally responsible for the handling of earnest money received in a transaction.<sup>228</sup> Contingencies in real estate refer to the events and conditions that protect a buyer's earnest money in a transaction. If a contingency is not met, the buyer has the ability to “walk away” from the deal and receive their earnest money back. Because of the complex nature of real estate transactions, it is up to the seller's broker to pay attention to contingencies and their required due dates. If the seller's broker does not meet a deadline or fails to otherwise meet the contingency in the contract, the buyer might be able to walk away from a deal altogether. The seller loses out not only on the deal, but they suffer a direct loss of the earnest money made in the deal. This can also apply to the broker on the other side of the transaction. Depending on the terms of the deal, if the buyer's broker does not monitor dates and deadlines, their actions might result in losing the buyer's earnest money deposit.

A security deposit is a deposit of money with the primary purpose of securing a rental agreement for residential property.<sup>229</sup> Rent refers to any money paid to a landlord for the right of use, possession, and occupation of a dwelling unit.<sup>230</sup> With regards to security deposits and rents, monies are at risk of being comingled, or worse, embezzled.

Given the numerous circumstances under which a broker might hold money for others, it is crucial that the Commission be able to discipline brokers in instances where they directly misappropriate client funds. One way to accomplish this is to order the licensee to pay restitution to the injured party.

The ordering of monies directly to consumers is not a novel idea to the Commission. In 1971, the General Assembly created the Real Estate Recovery Fund (Recovery Fund), which allowed injured clients who won civil claims against licensees to be made whole. The Recovery Fund was repealed by the General Assembly in 2005. However, in recent years, the Commission has seen a rise in complaints related to misappropriation or mismanagement of funds.

In fiscal year 23-24, such issues made up the second largest category of complaints. There were 57 complaints related to potential Trust Account Violations that year. The Commission recently received two “companion” cases, or instances where a broker worked directly with a Mortgage Loan Originator (MLO), and both committed a violation in the same transaction. Notably, Colorado's MLO Board has the authority to order direct restitution to the person who suffered financial loss as a result of a violation.<sup>231</sup> In one of these cases, the administrative law judge ordered restitution against the broker as well, but the decision was ultimately overturned because the Act does not explicitly authorize restitution as a specific sanction. Complainants inquired as to why

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<sup>227</sup> Colorado Division of Real Estate. *Frequently Asked Questions On The Home Buying Process*. Retrieved September 8, 2025, from <https://dre.colorado.gov/colorado-home-buying-process#money>

<sup>228</sup> § 12-10-203(7), C.R.S.

<sup>229</sup> § 38-12-102(6), C.R.S.

<sup>230</sup> § 38-12-801(7), C.R.S.

<sup>231</sup> § 12-10-713(1), C.R.S.

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restitution could be ordered for the MLO licensee, and not the broker, who was potentially more culpable.

Given the serious nature of these issues and the number of opportunities a broker has to misappropriate money belonging to others, the Commission should be given the authority to order restitution similar to how the MLO Board does.

With regards to orders on MLO licensees, the Division does not collect any money for the recipient, nor does it get involved in collections. It is up to the licensee to make payment directly to the recipient. To follow up, the Division communicates with the licensee and recipient to obtain documentation that payment was made. In these instances, the licensee can still practice despite the restitution order. However, if the licensee does not make payment, such actions might be deemed a violation of an order,<sup>232</sup> which could lead to further discipline, such as prohibiting one from practicing. In instances where an MLO had their license revoked and owes restitution to a recipient as ordered by the MLO Board, they may not apply for a new license until they make the recipient whole.<sup>233</sup>

The first sunset criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare. The tenth criterion asks 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 or regulated entity. The fourteenth criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

The General Assembly should authorize the Commission to order restitution. This will allow consumers who win judgments against brokers to receive funds and be made whole. Complaints related to mishandling of trust accounts are one of the Commission's most common complaints, underscoring the need for this measure.

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<sup>232</sup> § 12-10-713(1)(m), C.R.S.

<sup>233</sup> § 12-10-713(7), C.R.S.

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#### **Recommendation 4 – Authorize the Commission to inactivate licenses for noncompliance with continuing education requirements.**

One of the main requirements for a broker to renew their license is to stay compliant with continuing education requirements.<sup>234</sup> All active brokers must complete 24 hours of continuing education for each three-year license period.<sup>235</sup> Twelve of the 24 hours must be comprised of the ACU.<sup>236</sup> The remaining 12 hours can be any combination of elective credit hours approved by the Commission.<sup>237</sup> There exist a number of organizations and associations that provide continuing education courses specifically designed for those in real estate.

Continuing education ensures that licensees possess the minimum skills and knowledge required to stay competent and provide adequate services to the public. Real estate regulation, transactions, and contracts change regularly. Neglecting continuing education over time will lead to one having outdated knowledge, which means reduced service effectiveness and potentially poor outcomes for consumers.

Courses can teach brokers about real estate topics, including the following content:<sup>238</sup>

- Real estate law and contracts,
- Real estate finance,
- Real estate appraisal,
- Real estate ethics,
- Property management,
- Construction and land development,
- Energy and geology concerns in real estate,
- Condominiums and cooperatives,
- Timeshares, and
- Any other subject matter as approved by the Commission.

The ACU additionally apprises brokers of changes made by the General Assembly, along with new rules and changes to approved forms, made in the prior year.<sup>239</sup> This is crucial to ensure that brokers are up to date with new laws and using the right contracts to represent their clients whether they are buyers, sellers, landlords, or tenants.

The Division conducts audits of brokers to ensure they are completing their mandatory hours of continuing education during each period. These audits reveal that the rate of noncompliance is relatively high. In fiscal year 23-24, a total of 2,484 brokers were audited, and 35 percent of them were not in compliance.

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<sup>234</sup> §§ 12-10-213(1), C.R.S. and 4 CCR 725-1-4.1, Rules Regarding Real Estate Brokers.

<sup>235</sup> § 12-10-213(1), C.R.S.

<sup>236</sup> *Id.* and 4 CCR § 725-1-4.2, Rules Regarding Real Estate Brokers.

<sup>237</sup> *Id.*

<sup>238</sup> 4 CCR § 725-1-4.4, Rules Regarding Real Estate Brokers.

<sup>239</sup> § 12-10-213(2), C.R.S.

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In some instances, a licensee may not respond to an education audit at all. In instances where multiple attempts at correspondence are made to no avail, cases are forwarded to the Office of the Attorney General for litigation through the administrative courts. The cases are predominately resolved by an “Initial Decision Upon Default”, as the licensee is subsequently unresponsive through the hearing process. The average cost to the Division to take one of these cases through the administrative court process is \$1,850. The Commission had one continuing education case that went through the hearing process and cost the Division approximately \$22,000.

Rather than expending resources to litigate these cases, the Commission should be granted the authority to inactivate a license when a broker does not comply with continuing education requirements. The Commission can use this option in egregious cases of compliance rather than litigating them through the court process. This might also allow the Commission to dedicate legal resources on other practice violations while making it easier for the Commission to ensure that licensees are keeping up to date with continuing education requirements.

The other main requirement for renewal of licensure is to keep EO Insurance.<sup>240</sup> Failure to provide a certificate of insurance with an application will convert one’s license to “inactive” status.<sup>241</sup> Some stakeholders expressed surprise that the Commission can inactivate those who are noncompliant with the periodic insurance requirement, but it is not able to use that option when it comes to continuing education. Insurance and continuing education are the two main aspects of one’s continual licensure, and the Commission should be able to effectively tackle both issues equally.

The fifth sunset criterion looks at whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, or procedures. The sixth sunset criterion questions whether an analysis of agency operations indicates that the agency or the agency’s board or commission performs its statutory duties efficiently and effectively. The tenth criterion asks whether complaint, investigation, and disciplinary procedures adequately protect the public. The fourteenth criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

For all these reasons, the General Assembly should authorize the Commission to inactivate licenses for not complying with continuing education requirements.

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<sup>240</sup> § 12-10-204, C.R.S.

<sup>241</sup> 4 CCR § 725-1-3.9(D), Rules Regarding Real Estate Brokers.

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### **Recommendation 5 – Clarify that any licensed broker can elect to have their license issued in a previously used legal name.**

Individual broker licenses are issued to practitioners in their name. No person may be licensed as a broker under more than one name.<sup>242</sup> However, issues may arise when an individual changes their legal name. For the operations of a broker, it might be beneficial to retain their previous name for business reasons, such as maintaining one's reputation or not interfering with current property listings that may belong to the broker. If a broker had been using their previous name for a long period of time, they might be known in their community by that particular name.

The Act allows brokers to elect to use a previous name. However, it is not currently clear whether this option can be afforded to all brokers. The Act states that,<sup>243</sup>

No license for a broker registered as being in the employ of another broker shall be issued to a partnership, a limited liability company, or a corporation or under a fictitious name or trade name; except that a married woman may elect to use her birth name.

This language is unnecessarily restrictive. It is unclear whether this option can be afforded to all brokers who have legally changed their name for any reason. The Commission has received an increased number of inquiries from brokers regarding the application of this language.

The General Assembly should eliminate this restriction to prevent any confusion altogether. Any person who has legally changed their name should be able to retain their previous name on a license, so long as it is not being used in a fraudulent manner. The language in its current writing is outdated and restrictive by not allowing the option to be used by all brokers.

The third sunset criterion asks whether the existing rules and regulations establish the least restrictive form of governmental oversight consistent with public interest. The twelfth sunset criterion asks whether entry requirements encourage equity, diversity, and inclusivity. The fourteenth criterion questions if statutory changes are necessary to improve agency operations to enhance the public interest.

For all these reasons, the General Assembly should clarify that any licensed broker can have their license issued in a previously used legal name.

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<sup>242</sup> § 12-10-203(9), C.R.S.

<sup>243</sup> § 12-10-203(8), C.R.S.

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**Recommendation 6 – Clarify language regarding revocations and extend the waiting period to apply for a new license from one year to two years.**

The Act is currently unclear with regards to broker license revocations.

The Act states:<sup>244</sup>

The Commission, after holding a hearing pursuant to section 12-10-219, has the power to... *permanently* revoke a license. . .

The same provision later clouds the issue by stating:<sup>245</sup>

Any application for licensure from a person whose license has been revoked shall not be considered until the passage of one year from the date of revocation.

These two provisions, taken together, tend to cause confusion. While a revocation, by its very nature is permanent, the second provision allows one to apply for a new license after waiting one year. Thus, the second provision seems to contradict the first.

When this language is brought up during Commission discussions, it creates confusion and hinders the decision-making process during deliberations. This language could be clarified to prevent further confusion before such inquiries are presented in front of the Commission.

Additionally, the one-year period may be problematic for the protection of public welfare. It is standard among many regulatory programs, including that of real estate appraisers,<sup>246</sup> in Colorado to require a two-year waiting period prior to the issuance of a new license following a revocation. Given the seriousness of a violation that would lead to revocation, a two-year waiting period may be appropriate in order for a practitioner to correct behaviors that led to the initial action. As such, in clarifying the revocation language, the General Assembly should also extend the waiting period to apply for a new license following revocation from one year to two years.

The fifth criterion looks at whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, or procedures. The sixth sunset criterion questions whether an analysis of agency operations indicates that the agency or the agency's commission performs its statutory duties efficiently and effectively. The tenth criterion questions 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 or regulated entity. The fourteenth criterion asks if administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>244</sup> § 12-10-217(1), C.R.S.

<sup>245</sup> § 12-10-217(9), C.R.S.

<sup>246</sup> § 12-10-613(6)(a), C.R.S.

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As such, the General Assembly should repeal the word “permanent” within the discipline provision of section 12-10-217(1), C.R.S., to eliminate confusing language for the public and for the Commission. It should also establish a two-year waiting period to apply for a new license following revocation.

**Recommendation 7 – Repeal the requirement that subpoenas for brokers and subdivision developers must be served in the same manner as those in district court and model the process after the Division’s Real Estate Appraiser program.**

As part of the licensing and investigative processes, the Division frequently compels witnesses or obtain information from applicants, licensees and third parties. However, an improvement could be made to the Act regarding the manner in which administrative subpoenas are issued.

The Commission or an ALJ has the authority to issue a subpoena to compel the attendance and testimony of witnesses and the production of documents pursuant to an investigation or hearing. For both brokers and subdivision developers, the Act states that subpoenas must be served in “the same manner as... subpoenas issued by district courts.”<sup>247</sup>

To comply with the Act, the Division uses in-person service to deliver subpoenas. Applicants and licensees are likely to provide the requested information. However, given the high volume of disciplinary actions, in-person service can be costly and time-consuming. It can also be difficult for the Division to hire process servers near brokers who have their principal place of business in a less populated region of the state.

This language to mirror the district court is outdated and not commonly used by regulatory programs. It seems to be unique to the Division. Part 7 of Article 10 of Title 12, C.R.S., which created the Mortgage Loan Originator Program, also administered by the Division, has virtually identical language when it comes to subpoenas.<sup>248</sup>

However, the Division’s Real Estate Appraiser program does not have such language. Its subpoena language states,<sup>249</sup>

In addition to all other powers and duties imposed upon it by law, the [Real Estate Appraiser Board] has the following powers and duties... subpoena persons and documents, which subpoenas may be enforced by a court of competent jurisdiction if not obeyed.

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<sup>247</sup> §§ 12-10-224 and 12-10-506(4), C.R.S.

<sup>248</sup> § 12-10-715(1), C.R.S.

<sup>249</sup> § 12-10-604(1)(h), C.R.S.

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The Division notes that the language in the appraiser act is easier to comply with. The General Assembly should therefore update the Act to remove the requirement that subpoenas be served in the same manner as is required by district courts for brokers and subdivision developers. Instead, the language should be modeled after the Division's appraisal program. Having at least three of its regulatory programs retain the same process will increase the Division's efficiency overall when it comes to administering subpoenas.

The second criterion asks whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight. The fifth criterion looks at 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. The sixth criterion asks whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively. And the tenth criterion asks whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest.

The General Assembly should repeal the outdated requirement that subpoenas for brokers and subdivision developers be issued in the same manner as district courts and mirror its procedures from the Real Estate Appraiser program. Making the language more consistent across programs helps the Division stay efficient, while being able to compel subpoenaed persons and documents more effectively.

### **Recommendation 8 – Allow the Division to establish fees for applications to approve continuing education courses.**

Brokers must satisfy continuing education requirements prior to applying to renew their licenses. All active licensees must complete 24 hours of continuing education for each three-year license cycle.<sup>250</sup> Courses are not directly taught by the Commission. Rather, they are reviewed and approved by the Commission for an educator to offer the course for continuing education credit.<sup>251</sup> In practice, the approval of continuing education applications is delegated to Division staff.

Twelve of the 24 hours must be comprised of the Annual Commission Update Course. The remaining 12 hours can be any combination of elective credit hours approved by the Commission.<sup>252</sup> There exist a number of organizations and associations that provide continuing education courses specifically designed for those in real estate. Any brokerage firm may also provide continuing education so long as it meets guidelines in the Act and in the Commission's rules.

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<sup>250</sup> §§ 12-10-213(1), C.R.S. and 4 CCR 725-1-4.1, Rules Regarding Real Estate Brokers.

<sup>251</sup> § 12-10-213(3), C.R.S.

<sup>252</sup> §§ 12-10-213, C.R.S. and 4 CCR 725-1-4.1, Rules Regarding Real Estate Brokers.

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Courses for continuing education must be current and developed by persons qualified in the subject matter. Staff will approve courses that relate to real estate, legal issues related to property, contracts, finance, appraisals, ethics, property management, land development, and more topics as established in rule. The Commission will not approve:<sup>253</sup>

- Sales or marketing meetings conducted in the general course of a real estate brokerage practice;
- Personal growth, motivation, or self-improvement, seminars; or
- Examination preparation or technique courses.

There is no prohibition on continuing education providers charging for their courses.

The Commission receives numerous applications for continuing education courses, as enumerated in Table 17, below.

**Table 17**  
**Applications for Continuing Education Courses**

| Fiscal Year | Application Submissions |
|-------------|-------------------------|
| 19-20       | 931                     |
| 20-21       | 602                     |
| 21-22       | 886                     |
| 22-23       | 1,005                   |
| 23-24       | 1,019                   |

With each application it receives, Division staff tries to carefully examine the contents and determine whether it meets the criteria outlined in the Act and rules. It takes an estimated average of at least 20 minutes to one hour to review courses. More complex submissions tend to take staff longer to review and approve.

Additionally, the Division may receive applications that clearly go against the criteria in the Act or rules. However, staff must take their time to complete their due diligence and review each application. In fiscal year 23-24, Division staff spent approximately 340 hours on course approvals.

While course providers may charge for their classes, Division staff spends a considerable amount of time reviewing and approving such courses, and there is no application fee to cover the cost of performing the course reviews. Stakeholders indicate that Colorado is unique in this feature. Compared to other states that also require their commissions or programs to approve continuing education applications, many charge application fees for approvals of courses.

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<sup>253</sup> 4 CCR § 725-1-4.4, Rules Regarding Real Estate Brokers.

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If continuing education providers were required to submit an application fee, it would help improve agency operations from a budgetary perspective. Reviewing continuing education applications utilizes Division resources, which are largely derived from broker license fees. As such, the cost burden is currently placed on broker licensees, rather than education providers themselves. By authorizing the Division to charge an application fee, the cost burden shift from the broader pool of licensees to the education providers, who are already permitted to charge for courses.

The fifth sunset criterion asks 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. The fourteenth criterion asks whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

The General Assembly should allow the Division to collect application fees for the review and approval of continuing education course applications. This will improve operations from a budgetary standpoint and shift the cost burden to education providers, who have a clearer nexus to the application, rather than all licensees themselves.

**Recommendation 9 – Authorize the Commission to send correspondence to licensees electronically and direct that it develop protocols to ensure security and to address when it will be used.**

The Commission has modernized many of its communication processes with regulated professionals. The vast majority of communication between Commission staff and regulated professionals occurs with electronic correspondence. However, there is still language in the statute that requires the Commission to communicate with regulated professionals via mail.

Since email correspondence is widely utilized between the Division and regulated professionals, the statute should be updated to allow electronic correspondence in all areas of the statute.

Importantly, authorizing the utilization of electronic correspondence should be permissive, not mandatory. The Division may utilize first-class mail delivery if, for example, staff are unable to identify a current email address for an individual. Even so, the Division should establish protocols addressing security of electronic correspondence as well as when electronic correspondence may be used.

The sixth sunset criterion asks whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively. Authorizing electronic correspondence for all communication between the Division and regulated professionals will allow an additional option for communication and facilitate enhanced efficiency.

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As such, the General Assembly should authorize electronic communication for all correspondence between the Division and regulated professionals and direct the Division to develop protocols regarding security and when it will be used.

### **Recommendation 10 – Make Technical Changes**

The Act contains outdated language that should be revised to reflect current terminology and administrative practices. Therefore, the General Assembly should amend the Act to address the following technical issue:

- Amend the Act to make it gender neutral by replacing terms such as “him”, “her”, “himself”, “herself”, “he”, and “she” with gender-neutral terms.

### **Administrative Recommendation 1 – The Commission should change the required due date of the Annual Commission Update course to July 1 each year, and utilize the Education Task Force to implement such changes.**

Each year the Commission annually develops the ACU.<sup>254</sup> The course contains an update of the current statutes and the rules promulgated by the Commission that affect the practice of real estate.<sup>255</sup> Each broker must complete the examination at the end of the ACU with a passing score of 70 percent.<sup>256</sup> Course completion, along with passage of the ACU’s examination, is required for all licensed brokers to maintain their license status.<sup>257</sup>

The class is available for brokers beginning January 1 every year. For each three-year license cycle, brokers must complete 24 hours of continuing education.<sup>258</sup> Twelve of these 24 hours must be comprised of three different versions of ACU.<sup>259</sup> Effectively, this means that brokers must complete a four-hour ACU each year before December 31. Once the year has passed, that ACU cannot be made up by the broker.

The content of the ACU varies from year to year. If there are not many changes in the preceding year, the ACU will not cover as many topics. However, this is rarely the case. The real estate sector is very complex and rapidly changing. In 2024, for example, the General Assembly passed 18 bills that were discussed during the ACU. The ACU was vital to ensure each licensee knew about the changes in state law.

In addition to General Assembly updates, the Commission often conducts rulemaking throughout the year, and it usually releases updated versions of approved forms in July for use in the subsequent year. Real estate brokers are required to use Commission

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<sup>254</sup> § 12-10-213(2), C.R.S.

<sup>255</sup> *Id.*

<sup>256</sup> 4 CCR § 725-1-4.3, Rules Regarding Real Estate Brokers.

<sup>257</sup> 4 CCR § 725-1-4.2(A), Rules Regarding Real Estate Brokers.

<sup>258</sup> §§ 12-10-213, C.R.S. and 4 CCR 725-1-4.1, Rules Regarding Real Estate Brokers.

<sup>259</sup> *Id.*

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approved contracts and forms as appropriate to a transaction or circumstance. Not using the correct form or contract could have dire consequences for the represented party. Hence, the ACU is critical to help to ensure Brokers are knowledgeable about new rules and using the correct version of contracts to service their clients.

The real estate sector is constantly evolving at the national level, too. There is new technology used to list properties, updates to rules by credentialing bodies, changes to the federal property tax code, or important legal cases that alter the practice of real estate in a substantive manner. The ACU can be utilized to apprise brokers of these changes as well. Licensees have depended on the ACU for at least a decade. In its 2016 sunset review, COPRRR surveyed licensed brokers and found that more than 42 percent of respondents strongly agreed that the ACU was necessary to keep up with changes. Clearly, the ACU has been necessary to help professionals keep up with real estate changes and to properly serve their clients.

However, the ACU must be completed by December 31.<sup>260</sup> If a broker does not take the ACU until late in the year, they risk having more than a year of not knowing vital new changes that may have occurred nationwide or statewide. They may be negligently using old methods of practice or using outdated forms and not realize these errors until they take the ACU at the last minute. This would be a disservice to Coloradans. Real estate is a complex area to navigate for clients, and they rely on their brokers to be up to date with relevant laws as much as possible.

It is difficult to estimate the total number of brokers that take the course near the deadline as the ACU is taught by independent education providers. Such information is not directly shared with the Division. However, the Division does conduct continuing education audits and notes that they do see a considerable number of licensees that indeed take the course towards the very end of the year.

Due to the important and timely nature of the class content, the Commission should require every licensee to complete the class not later than July 1 of any calendar year. While it is not a complete solution, requiring completion by July 1, rather than December 31, reduces by six months the amount of time that a broker may be practicing with outdated knowledge. That amount of time is crucial given the amount of interactions a broker may have with clients on a daily basis.

The first sunset criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare. The third criterion looks at whether the existing rules and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms. The fourteenth criterion questions if administrative changes are necessary to improve agency operations to enhance the public interest.

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<sup>260</sup> §§ 12-10-213, C.R.S. and 4 CCR 725-1-4.1, Rules Regarding Real Estate Brokers.

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The ACU is a crucial mechanism that keeps brokers up to date with the industry's multitude of changes and best practices. More importantly, it informs brokers of any changes made by the General Assembly in the year prior. Changing the date will have more brokers be apprised of changes as early as possible so they can better serve Coloradans and reduce the possibility of harm.

For all these reasons, the Commission should change the required completion date of the ACU from December 31 to July 1.