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April 9, 2018

Senator Robert S. Gardner
Colorado State Senate
200 E. Colfax
Denver, CO 80203

Re: Opposition to House Bill 18-1175

Dear Senator Gardner:

I am writing to you in opposition to House Bill 18-1175. As you may be aware, I have represented homeowners' associations for more than 40 years in the Colorado Springs area. Currently, my law firm represents more than 200 homeowners' associations. I have considerable experience with the Community Association Manager ("CAM") Licensing program of the Colorado Division of Real Estate.

I am attaching a copy of the Sunset Report from DORA, which recommended continuation of the CAM Licensing program, but based upon my experience, I would recommend that the CAM Licensing program be discontinued and that the Bill be postponed indefinitely. My conclusions are based upon the following:

1. Increased Tax on Homeowners. Based upon the Sunset Report, the CAM Licensing program cost \$172,000 in 2016 and \$279,000 in 2017. Those direct costs were paid by the HOA managers or management companies, but the real parties paying those costs were the homeowners in associations which were paying the fees of managers or management company; in effect, the "tax" was passed on to the ultimate consumer/homeowner. Moreover, the total cost/tax to the consumer/homeowner is much higher because there are the indirect costs/taxes to take the courses, the renewal licenses, and more expensively, the increased insurance necessary to respond to frivolous complaints from homeowners (see below); all of those indirect costs/taxes are passed on to the consumers/homeowners. I would estimate that the total tax burden on consumers/homeowners is quadruple the amount of the cost of the DORA fees, so upwards to \$1,000,000 per year.
2. Decreased Competition. The CAM Licensing program has put various small management companies out of business; those managers cannot afford the fees, or more especially the education programs (fees and time spent). I think that the line of Table 8 on Page 27 shows the use of CAM complaints to drive managers out of business. Less and less competition has resulted in higher management fees to consumers/homeowners.

The original CAM Licensing program included educational requirements with specific entities (such as CAI). The proposed HB 18-1175 allows the DORA Director to pick the “private credentials” to be required. In my opinion, the State should not pick winners and losers – and so that requirement should be removed.

Also, Tables 8 and 9 of the Sunset Report show that one of DORA’s main areas of complaints/investigation is “demonstrating unworthiness or incompetency”; such a vague standard probably would not survive judicial challenge, and based upon my forty years of experience, the marketplace, rather than State bureaucracy, is better to determine these qualities.

3. Increased State Bureaucracy. The enforcement costs have already increased from \$58,000 (the first year) to \$179,000 and now to \$279,000 (a fivefold increase). A likely proposal, which is not in HB 18-1175 but is likely to be advanced in the future, is that DORA needs additional funds because of the increasing number of complaints and the increasing number of investigations. The cycle of increasing investigations, which requires increased employees, will soon create an ever-increasing cycle of bureaucracy.
4. Increased Frivolous Complaints by Homeowners. As shown by Tables 8, 9 and 10 on Pages 28-29 of the Sunset Report, the total number of disciplinary actions is very small compared to the number of complaints and the total dismissals. Basically, in 2017, there were 31 disciplinary actions out of a total of 261 complaints in 2016-2017. That result is less than 12% of the number of complaints (it is even lower for management companies – only 2 disciplinary actions on Table 10 out of 132 complaints on Table 9). Those percentages demonstrate that frivolous complaints are increasing. Furthermore, if you divide 31 disciplinary actions into the \$279,000 cost, each disciplinary action is costing approximately \$9,000, which is an expensive administrative cost.

In my experience, the frivolous complaints by homeowners will only grow in future years, especially if homeowners realize that it costs them nothing to complain and that DORA encourages homeowners to complain. The result of rising complaints will result in further demands by DORA for increased fees and employees, which will increase the cost to managers (and consumers/homeowners) not only as to fees, but also for insurance costs and time of managers to defend themselves against such frivolous complaints, and the emotional/financial toll on managers possibly losing their license to work.

5. Lack of Public Benefit. The Sunset Report makes a major argument that the licensing and education program for managers, including testing and regulation and reviewing complaints, is necessary for public safety, especially involving theft or misuse of funds. However, in my experience, the only instance of theft of funds was by a Colorado Springs licensed real estate broker who had passed the real estate broker’s exam and had been audited by DORA various times, without discovery of the theft. He was finally arrested by Colorado Springs Police, and so I think that these types of investigations should be handled by the local law enforcement officers rather than DORA, and if new legislation were needed to identify specifically this type of theft or misuse of funds as

criminal activity, that should be the focus of any new legislation, rather than creating a bureaucracy to do testing and reviewing and handling of frivolous complaints.

Furthermore, based upon my experience, the Colorado Civil Courts are always ready to decide these kinds of complaints and under the Colorado Common Interest Ownership Act ("CCIOA"), prevailing parties can recover their attorneys' fees, in contrast to the CAM Licensing program, under which the managers cannot recover their attorneys' fees.

6. Defective Provisions in HB 18-1175. As mentioned above, the proposal allows the DORA Director to require "private credentials". As shown by the survey of managers in Question #8 on Page 44 of the Sunset Report, approximately 30% went to CAI and approximately 20% to the Colorado Real Estate School. There is a major concentration among five entities. I am uncertain whether that Director's selection of private "winners" would withstand a judicial challenge. Certainly, it would be anti-competitive and hostile to a free and open market.

As stated above, and as shown on Tables 8 and 9, a major area of complaint is "demonstrating unworthiness or incompetency"; that is so vague that it is almost laughable. The proposed law asserts that it increases "due process" but the provisions appear to put the financial future of managers at risk under the "discretion" of the DORA Director. Various other provisions in HB 18-1175 are also very questionable under Colorado and United States statutes and constitutions.

Finally, I think that it is important for you to review the surveys of managers in Question #1 on Pages 43 and 46 of the Sunset Report showing that there is almost a majority of managers who do not think that the program is serving the public benefit, and the courses and other aspects are not "excellent" or even "very good". Admittedly, the program has only recently started in the last few years, based upon Sen. Morgan Carroll's desire to regulate HOAs by regulating their managers and management companies. However, reviewing the framework of this program, I would strongly recommend that it be sunsetted. I think that the Legislature needs to consider more carefully the effects of the CAM program and possible alternatives; for example, if audits or criminal investigations are necessary, those should be handled by the appropriate law enforcement entities, and legislation could be proposed and drafted for that purpose.

Unfortunately, I will be unable to attend the Finance Committee hearing tomorrow, but if the Bill is postponed, I would try to attend. However, I would appreciate greatly if you could submit this letter for the Committee's consideration. If you wish to discuss it, please contact me.

Sincerely,

Lenard Rieth

Enclosures