

Summer 2016

Colorado Association of REALTORS®
Recommendations regarding
the Sunset Review of the

**Colorado Real Estate Commission
and Division**



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Introduction

Colorado law requires the periodic review of the functions of state regulatory bodies to determine if the regulatory system should continue with or without modification. A regulatory agency is terminated unless the General Assembly acts to reestablish the agency. During this process, known as Sunset Review, the Department of Regulatory Agencies (DORA) conducts an evaluation of the performance of each agency subject to review. These findings include recommendations about whether the agency should be continued, or allowed to terminate, and recommendations for amendments to the agency's governing statutes.

The report is submitted to the Office of Legislative Legal Services which drafts legislation to implement the findings of the report. A legislative committee holds a public hearing to receive testimony from the public, the executive director of the department of regulatory agencies, and the agencies involved. At the hearing, DORA must demonstrate a public need for the continued regulation of the industry and the benefits of the changes it suggests. The committee then makes a recommendation to the full legislature about whether the agency should be continued, terminated, or changed in the form of a proposed bill. The bill may continue, reestablish or alter the functions of the agency.

The Colorado Real Estate Division/Commission is among those agencies subject to Sunset Review this year. The review, conducted by the Office of Policy and Research of the Department of Regulatory Agencies, typically includes interviews with the Division of Real Estate staff, members of the Real Estate Commission, industry groups, assistant attorneys general and other interested parties.

The purpose of the review is to determine if regulation is in the best interest of the public and if the present regulatory scheme is the least restrictive regulation consistent with the public interest. In determining whether or not an agency has established the need for continued existence, the following are among the factors considered:

- a. Whether regulation is necessary to protect public health, safety or welfare;
- b. Whether conditions which originally gave rise to regulation have changed;
- c. Whether other conditions now warrant more, less or the same degree of regulation;
- d. Whether the agency operates in the public interest and whether existing rules, procedures, practices, budget, resources and personnel practices impede or enhance operation;
- e. Whether the agency performs its statutory duties efficiently and effectively;
- f. Whether the composition of an agency's board or commission adequately represents public interest;
- g. Whether the agency or commission encourages public participation;
- h. The economic impact of regulation and whether the agency stimulates or restricts competition;
- i. Whether complaints, investigation and disciplinary procedures adequately protect the public interest;
- j. Whether disposition of complaints are in the public interest or self-serving to the regulated profession;
- k. Whether the scope of practice of the regulated occupation contributes to optimum utilization of personnel;
- l. Whether entry requirements encourage affirmative action.

Ultimately, a determination must be made as to whether administrative and statutory changes are necessary to improve agency operation and/or enhance the public interest. The Colorado Department of Regulatory Agencies is expected to release the official Sunset Report on the Real Estate Commission by October 15, 2016.

The Colorado Association of REALTORS®

The Colorado Association of REALTORS® (CAR) is the state's largest professional, voluntary, non-profit, real estate trade association representing nearly 24,000 REALTOR® members across the state. Through a statewide network of 34 local REALTOR® associations, and in cooperation with the National Association of REALTORS®, CAR seeks to enhance the ability and opportunity for REALTORS® to conduct their business activities ethically and successfully. Through programs, events and volunteer committees CAR promotes professionalism, offers opportunities for members to enhance skills and knowledge and encourages active community involvement.

Mission Statement:

Protecting the Real Estate Industry and Making REALTORS® More Successful™

The Division of Real Estate

CAR currently enjoys an outstanding working relationship with the Division of Real Estate (Division). The Division and its staff, under the guidance of its current Director, have done an outstanding job of building a competent, collaborative, informative and effective regulatory division. The consumer public and Colorado real estate, mortgage, and appraisal licensees are all exceptionally well served by the balanced and consistent regulatory approach that the current Director implemented.

For the foregoing reasons, CAR believes that maintaining an active, well-funded and efficient Division of Real Estate and Real Estate Commission is the least restrictive means to protect the public interest. The home buying and selling public is protected when the state establishes the minimum knowledge necessary to conduct a real estate transaction, assures the on-going competence of real estate licensees through continuing education, has a strong investigatory arm to quickly and efficiently investigate complaints and a disciplinary process that enforces existing laws and regulations in a timely manner consistent with due process.



Recommendations of the Colorado Association of REALTORS®

The Colorado Association of REALTORS® (CAR) makes the following specific recommendations:

1 The Division of Real Estate (“the Division”) and the Colorado Real Estate Commission (“the Commission”) be reauthorized by the Legislature to maintain responsible oversight and regulation of the real estate industry for the maximum period allowable under law; Continued licensing and regulation through an appointed Real Estate Commission is the preferred and most appropriate method to protect the public.

Licensing and regulation provide consumer protection against incompetent or fraudulent practices.

One of the most significant financial events in peoples’ lives is the purchase or sale of a home or investment property. Due to the financial significance, most people seek the help of a licensed real estate professional. In every state and the District of Columbia, real estate brokers and sales agents must be licensed and are required to complete specific education or training courses and pass a comprehensive examination.

Real estate has a significant impact on Colorado’s economy and continued regulation of the profession will protect it. Real estate and financial services activities account for nearly a fifth of Colorado GDP. In 2014, the largest industry in Colorado was financial services, including real estate sales and leasing. This industry accounted for 19.1 percent of Colorado GDP and had 3.5 percent real growth.

Approximately 103,712 jobs in Colorado are directly or indirectly attributable to the real estate sector of the State’s economy.

When a home is sold in Colorado, income generated from real estate related industries is \$24,165. Additional expenditures on consumer items such as furniture, appliances, and remodeling is \$4,494. The economic multiplier of spending at restaurants, sports games, and charity events is estimated to be \$13,756.

Property taxes are a significant revenue source for funding local public services in Colorado. In 2011, property tax collections comprised 68 percent of local government tax revenue in Colorado, totaling \$8.32 billion.

February 2016 Metro Denver Economic Development Corporation

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The Colorado Real Estate Commission membership should continue to consist of five members, to include three real estate licensees and two consumer/public representatives.

For many reasons, it is important to maintain diversity among the perspectives developing and enforcing Commission regulations. As such, it is critical that the Commission be comprised of both “licensee” and “public” representatives. The “licensee” members of the Commission are intended to bring a vital practical perspective to the regulatory oversight of licensees. The “public” members of the Commission are intended to bring the critical consumer experience perspective to their consideration in regulating real estate licensees.

Currently, the two consumer/public Commission seats are both filled by attorneys and active members of the Real Estate Section of the Colorado Bar Association. While the “attorney” perspective is often helpful, CAR believes the present composition of the Commission lacks a true “public” perspective. It is essential that members of the consumer public (buyers & sellers of real estate) be actively solicited for vacancies in the “public” Commission seats as they bring a true third-party perspective that is essential in balancing the Commission’s deliberations.

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New applicants for a real estate license in the State of Colorado should continue to be required to complete an education program whose curriculum and content are reviewed and approved by the Division of Real Estate and should be required to pass an examination which demonstrates competency.

The Commission and Division have the responsibility to assure the public that those receiving licenses have substantive knowledge appropriate to conduct complex real estate transactions. Mandatory minimal education requirements are essential to that assurance.

The Division should have the authority and responsibility to determine the content of those educational programs and should be charged with regularly reviewing and approving courses.

The Division should exercise its authority and responsibility for evaluating the licensing exam required of new applicants. Even where the administration of the exam is delegated to another body or organization, the Division should maintain close involvement in the testing process and the content of the exam.

Recommendations of the Colorado Association of REALTORS® Continued...

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That renewal of a real estate license in the State of Colorado require the completion of 15 hours of Continuing Education courses annually and such annual hours should include coursework whose subjects and content outlines have been approved by the Division. A significant portion of the annual required hours should be mandated to cover core brokerage competencies, including courses on contracts and legal matters.

Mandatory continuing education protects consumers by ensuring the on-going competency of licensees. Colorado real estate law is constantly evolving. The vast majority of complaints received by the Commission include competency matters, which begs the question: Are the State's continuing education requirements commensurate with adequately protecting consumers against incompetency? At least 14 other states require higher levels of continuing education, either on an annual basis or throughout a license cycle. Courses on legal and contract matters afford an opportunity for each licensee to renew knowledge and acquire updated information essential to providing accurate and reliable counsel to clients, including recent changes to statutes, forms and professional conduct requirements.

The Division must maintain regulatory oversight of continuing education in Colorado. Oversight will assure that the courses licensees take to complete their hours of elective coursework meet the statutory requirements.

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The Colorado Real Estate Commission should continue to maintain its own staff of qualified investigators and auditors at a level that reflects the number of pending consumer and licensee complaints and the need for faster resolution of such complaints. The unique nature of real estate transactions requires that investigators and auditors have industry-specific expertise.

The legislature must provide the necessary resources, labor and financial, to the Division for proper investigations and to allow for appropriate due process when investigating complaints against real estate licensees.

It is essential that the Division be properly staffed in order to provide the most thorough information to the Commissioners so they may make a fully educated decision and accord due process to both complainant and licensee.

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The State of Colorado should continue to mandate Errors and Omissions Insurance (E&O) and, through a partnership with a provider, continue to offer reasonably priced coverage to licensees. The current provision allowing licensees to obtain equivalent coverage from a provider other than the State contracted provider should be continued.

When mistakes occur, it is important that the public be protected. Mandatory E&O coverages provide a good backstop for consumers with valid complaints.

Individual premiums for E&O can vary wildly among carriers and potentially become out of the reasonable reach of many real estate licensees in Colorado. Without state negotiated affordable E&O coverage, licensees should not be required to carry the coverage independently.

In the event that a licensee determines that another carrier is preferred for equivalent coverage, they should be able to obtain such coverage from another qualified, independent source.

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The Colorado Real Estate Commission should require increased transactional fluency prior to a licensee becoming an Independent or Employing Broker. In order for a licensee to become an Independent Broker they should be licensed for either four years OR have completed at least 25 transactions. In order for a licensee to become an Employing Broker they should be licensed for four years AND have completed at least 75 transactions.

Increased broker supervision will protect consumers and licensees. Broker supervision is vital for new licensees to achieve professional competency, whether it's transactional or legal. Colorado real estate law is complicated and the industry continues to change. Increased and extended supervision will help ensure licensees are properly prepared to effectively represent and advocate for their clients.

Extended supervision will also better ensure that licensees who become either independent or supervisors themselves have the knowledge and experience necessary to adequately supervise other licensees. The Commission has seen a steady flow of competency-related complaints. Broker supervision requirements will help stem the tide of competency-related issues. The hands on, practitioner-based supervision provided to licensees often includes knowledge and experience that cannot be gleaned through education alone and serves to produce better, more competent future independent and employing brokers that can better protect consumers and the profession.

Increased broker supervision does not prevent or disrupt a licensee from conducting licensed activities. Increasing broker supervision also has the benefit of safeguarding the public interest while remaining consistent with DORA's goal of providing the least restrictive regulation consistent with the public interest.

Recommendations of the Colorado Association of REALTORS® Continued...



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The Colorado Real Estate Commission should maintain its diverse Forms Committee for the development of Commission-approved forms and should continue to adopt a reasonable moratorium on changes to said forms.

CAR believes the Forms Committee currently reflects a good, diverse spectrum of perspectives from licensees, attorneys, lenders and other interested parties. The result is a quality, well vetted and consistent form set for licensees and consumers to utilize. We recommend that the Forms Committee be retained for the purposes of reviewing, drafting and implementing forms for the Commission's approval.

Maintaining consistency in forms leads to better education and increased competency in a licensee's use of Commission-approved forms. A reasonable (2-3 year) moratorium on any changes to individual forms provides an opportunity for licensees to consult with their clients regarding the Commission-approved forms in a competent manner and better serves to protect the public.

Absent changes in law, regulation or legislation, the well-developed form set that is currently promulgated by the Commission withstands the test of reasonable time and licensees should be given the opportunity to thoroughly understand the nuances of the documents prior to making substantive modifications.

**Submitted on behalf of the Colorado Association of REALTORS® by:
The Colorado Real Estate Commission and Division Sunset Review
Chair Advisory Group (CAG)**

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