

## **Why Colorado Builders and Developers May Want to Support State Licensure for Common Interest Community Association Managers**

On November 4, 2011, the Colorado Legislative Action Committee (“CLAC”) Licensing Task Force of the Community Association Institute (“CAI”) submitted a Sunrise Review Application for Licensure of Common Interest Community Association Managers. You can view a copy of the application [here](#).

This blog entry will briefly describe the application, and then discuss why developers and general contractors in Colorado may wish to support this application, with some revisions.

### **The Application**

To me, the most interesting parts of the application are the following:

5. Describe the functions performed by members of this occupational group. Note which functions are unsupervised or supervised and by whom. In addition, indicate functions which are similar to those performed by other groups and identify those groups. How do the functions performed by this group vary from the other groups’ functions?

### **Background**

Common Interest Community Associations are created under Colorado law to govern and operate common interest communities (commonly referred to as “Community Association” and “Homeowners’ Association”). The vast majority of Common Interest Communities are created as nonprofit corporations under Colorado law and are comprised of the owners of units located in these communities who are the members of these nonprofit corporations.

Volunteer Board Members are members of their Community Associations by virtue of owning a home in that Association. Election to these volunteer Boards of Directors generally requires no experience or knowledge; just an interest in serving on the volunteer Board of Directors. The natural legal and business structures of Community Associations place these institutions, and the people who serve them, in control of hundreds of thousands to millions of dollars of assets; often without consistent education or expertise. Directors serving on these volunteer Boards have a fiduciary duty to protect and preserve the common property in these communities and the property values of their fellow individual homeowners within the association. Directors often rely upon the expertise of their Community Managers for advice and assistance in carrying out their fiduciary duty, making decisions of significance, managing the finances of the Association and implementing policies and decisions of the Board.

\* \* \*

Detailed tasks are outlined below, but in general the Manager is frequently responsible for . . . providing guidance and expertise to the Board to assist the Directors in fulfilling their fiduciary duty to the Association.

The Community Manager typically provides advice to the volunteer Board on when to seek legal counsel or the guidance from other experts.

\* \* \*

What is unique about this occupation is that the volunteer Board Members who hire, supervise and are responsible for the actions of Community Association Managers are often inexperienced and lacking knowledge regarding the governance and operations of Community Associations and the applicable laws in Colorado.

Application, pgs. 5-6.

8. Does the applicant propose licensure, certification, registration, or another type of regulation? Why? (Under licensure, it is illegal for anyone to engage in an occupation without a license, and only persons who possess certain qualifications are licensed. Certification protects specific occupational titles of persons who have met certain educational and experiential standards. Only persons certified in that occupation may use the protected title, although anyone may practice the occupation. Under registration, any person may engage in an occupation, but he or she is required to submit information concerning the location, nature, and operation of the practice.)

It is in the best interest of the citizens of this state, of Common Interest Communities located in this state and the individuals who reside and/or own property in them, to provide for the licensure of Managers of Common Interest Communities to insure that persons who hold themselves out as possessing professional qualifications as Managers of Common Interest Communities, also commonly known as Community Associations, are, in fact, qualified to render management services of a professional nature. Licensure will ensure such individuals provide for the maintenance of high standards of professional conduct by those licensed as Managers of Common Interest Communities.

We seek licensure of Community Managers because:

- . . . Without licensure; there are no assurances that the Community Managers have the specialized knowledge necessary to provide this assistance and advice to the Boards and communities they serve. In addition, without licensure, there is no mandatory system of checks and

balances and no standards with which a Community Association Manager is required to comply. . .

- This occupational group is hired by volunteer Boards of Directors who are not required to have any prior knowledge of the industry, any experience, any education or any business knowledge.

Application, pgs. 9-10.

16. Describe the minimum competencies necessary to enter this occupation.

Proposed minimum competencies would be:

- Must be at least 18 years old;
- Hold at least a High School diploma;
- Shall not have been convicted of a felony within the past 10 years; Shall have demonstrated knowledge of the fundamentals of Common Interest Community (CIC) management as evidenced by passage of the CMCA exam;
- Shall have demonstrated knowledge of the laws of Colorado that govern CIC's specifically: CCIOA and the Nonprofit Act as evidenced by passage of an exam;
- ***Shall agree in writing to abide by a standard of professional conduct***, and
- Shall not have failed to cooperate with any law enforcement or regulatory agency in any investigation of any law enforcement or regulatory investigation.

Application, pg. 18 (emphasis added).

The National Board of Certification for Community Association Managers (NBC-CAM) develops and enforces the CMCA Standards of Professional Conduct.

CMCA Standards of Professional Conduct: A Certified Manager of Community Associations (CMCA<sup>®</sup>) shall:

*Be knowledgeable, act, and encourage clients to act in accordance with any and all federal, state, and local laws applicable to community association management and operations.*

*Be knowledgeable, comply and encourage clients to comply with the applicable governing documents, policies and procedures of the Client Association(s) to the extent permitted by that Client.*

*Not knowingly misrepresent materials facts, make inaccurate statements or act in any fraudulent manner while representing Client Association(s) or acting as a CMCA.*

*Not provide legal advice to Client Association(s) or any of its members, or otherwise engage in the unlicensed practice of law.*

*Promptly disclose to Client Association(s) any actual or potential conflicts of interest that may involve the manager.*

*Refuse to accept any form of gratuity or other remuneration from individuals or companies that could be viewed as an improper inducement to influence the manager.*

*Participate in continuing professional education and satisfy all requirements to maintain the CMCA.*

*Act in a manner consistent with his/her fiduciary duty.*

*Conduct themselves in a professional manner at all times when acting in the scope of their employment in accordance with the terms and conditions of their contractual agreement and in accordance with local, state and federal laws.*

*Recognize the original records, files and books held by the manager are the property of the Client Associations to be returned to the Client at the end of the manager's engagement and maintain the duty of confidentiality to all current and former clients.*

Application, pg. 30.

### **Why Developers and General Contractors in Colorado May Wish to Support This Application**

While there is no reason to believe that there is any fraud or corruption in Colorado regarding the prevalence of construction defect litigation, it is undeniable that Colorado's plaintiffs' construction defect attorneys are extremely entrenched in the Community Associations Institute - Rocky Mountain Chapter - Colorado. By looking at its [website](#), one can see that all of the major plaintiffs' construction defect attorneys sponsor the CAI and at least one member of such a firm sits on the CAI's 2011 [Board of Directors](#). It is my belief that the plaintiffs' construction defect attorneys are so closely associated with the CAI because they naturally derive some benefit from the association. In other words, involvement in the association results in referrals and recommendations from property managers, which results in new retentions and new construction defect lawsuits.

To read about extreme examples of how the alliance between property managers and plaintiffs' attorneys can be abused, one needs look no further than Nevada. In Las Vegas, the FBI has recently investigated a schemes employed by property management companies and plaintiffs' construction defect attorneys to take control of homeowners association boards with members who pushed for construction defect lawsuits against builders. If you have not yet heard or read about this story, you can follow it [here](#).

Again, even though there is no reason to believe that similar schemes are in the works in Colorado, it would not hurt to shed some light onto the role of property managers in evaluating the need for a homeowners association to retain a lawyer to investigate alleged construction defects, in recommending certain plaintiffs' construction defect attorneys, or in recommending certain courses of action with respect to pursuing construction defect actions.

This is certainly true in light of the fact that the CAI has acknowledged in its application that members of homeowners associations boards of directors may have no experience, knowledge, education or expertise in managing the affairs of a homeowners association and that they "often rely upon the expertise of their Community Managers for advice and assistance in carrying out their fiduciary duty, making decisions of significance, managing the finances of the Association and implementing policies and decisions of the Board."

I wrote an article for Mountain Builder Magazine, Aspen and Vail Edition on the topic of construction defect lawsuits and why they are not always in the homeowners' best interest. You can read that article [here](#). In that construction defects lawsuits are often avoidable and should be a decision of last resort, perhaps the Colorado Department of Regulatory Agencies should include requirements or guidelines for property managers who recommend this course of action.

I do not yet know what those requirements or guidelines would look like, but if this sunrise review process gets legs, it might be something to look into. If nothing else, making it crystal clear that property managers cannot accept any form of gratuity or other remuneration from individuals or companies that could be viewed as an improper inducement to influence the manager, or to recommend a certain course of action to a homeowners association board of directors, would be a good start. Stay tuned and we will see where this goes.

-- David M. McLain