

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0305.01 Duane Gall x4335

SENATE BILL 17-215

SENATE SPONSORSHIP

Priola,

HOUSE SPONSORSHIP

Gray,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CONTINUATION UNDER THE SUNSET LAW OF THE**
102 **DIVISION OF REAL ESTATE, AND, IN CONNECTION THEREWITH,**
103 **IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE**
104 **SUNSET REPORT PREPARED BY THE DEPARTMENT OF**
105 **REGULATORY AGENCIES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Sunset Process - Senate Business, Labor, and Technology Committee. Sections 1 through 4 of the bill continue the division of real

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
March 27, 2017

estate, the real estate commission, and the regulation of real estate brokers and subdivision developers for 9 years, until 2026.

Sections 5 and 6 specifically identify, and create a license endorsement for, brokers who act as property managers, including prescribed education and financial surety as conditions for the endorsement.

Section 7 directs the real estate commission (commission) to establish, by rule, the number of transactions that a broker must have completed before becoming an employing broker.

Section 12 amends the current provisions on referral fees to conform to the requirements of federal law.

Sections 10 and 13 through 20 consolidate the various cash funds used for several licensing functions and programs administered by the division of real estate into a single cash fund.

Section 9 makes broker licenses expire uniformly on December 31 rather than requiring licensees to apply for renewal at various times throughout the year on their individual anniversary dates.

Section 11 defines "conviction" to include deferred judgments and deferred sentences, in provisions listing factors the commission may consider when determining whether to discipline a licensee.

Section 8 modifies the composition of the commission to require that one of the 3 broker members be a broker with experience and an active practice in property management.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 12-61-123 as
3 follows:

4 **12-61-123. Repeal of part.** This part 1 is repealed, effective July
5 ~~1, 2017.~~ Prior to such SEPTEMBER 1, 2026. BEFORE ITS repeal, the real
6 estate division, including the real estate commission, shall be reviewed as
7 ~~provided for~~ in ACCORDANCE WITH section 24-34-104. ~~C.R.S.~~

8 **SECTION 2.** In Colorado Revised Statutes, **amend** 12-61-204 as
9 follows:

10 **12-61-204. Repeal of part.** This part 2 is repealed, effective July
11 ~~1, 2017.~~ Prior to such repeal, the provisions in this part 2 shall be
12 ~~reviewed as provided for in section 24-34-104, C.R.S.~~ SEPTEMBER 1,

1 2026. BEFORE ITS REPEAL, THIS PART 2 IS SCHEDULED FOR REVIEW IN
2 ACCORDANCE WITH SECTION 24-34-104.

3 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-61-408 as
4 follows:

5 **12-61-408. Repeal of part.** This part 4 is repealed, effective July
6 1, 2017. ~~Prior to such repeal, the provisions in this part 4 shall be~~
7 ~~reviewed as provided for in section 24-34-104, C.R.S.~~ SEPTEMBER 1,
8 2026. BEFORE ITS REPEAL, THIS PART 4 IS SCHEDULED FOR REVIEW IN
9 ACCORDANCE WITH SECTION 24-34-104.

10 **SECTION 4.** In Colorado Revised Statutes, 24-34-104, **amend**
11 (27)(a) introductory portion; **repeal** (12)(a)(VI); and **add** (27)(a)(V) as
12 follows:

13 **24-34-104. General assembly review of regulatory agencies**
14 **and functions for repeal, continuation, or reestablishment - legislative**
15 **declaration - repeal.** (12) (a) The following agencies, functions, or both,
16 will repeal on July 1, 2017:

17 (VI) ~~The division of real estate including the real estate~~
18 ~~commission created in part 1 of article 61 of title 12, C.R.S.;~~

19 (27) (a) The following agencies, functions, or both, ~~will~~ ARE
20 SCHEDULED FOR repeal on September 1, 2026:

21 (V) THE DIVISION OF REAL ESTATE, INCLUDING THE REAL ESTATE
22 COMMISSION, CREATED IN PART 1 OF ARTICLE 61 OF TITLE 12, AND ITS
23 FUNCTIONS UNDER PARTS 1, 2, AND 4 OF ARTICLE 61 OF TITLE 12.

24 =====

25 **SECTION 5.** In Colorado Revised Statutes, 12-61-103, **add**
26 (6)(c)(III) as follows:

27 **12-61-103. Application for license - rules.** (6) (c) In addition to

1 all other applicable requirements, the following provisions apply to
2 brokers that did not hold a current and valid broker's license on December
3 31, 1996:

4 (III) EFFECTIVE JANUARY 1, 2019, A BROKER SHALL NOT ACT AS
5 AN EMPLOYING BROKER WITHOUT FIRST OBTAINING APPROPRIATE
6 EXPERIENCE IN ACCORDANCE WITH RULES OF THE COMMISSION. THE
7 COMMISSION'S RULES MUST SPECIFY THE NUMBER OF TRANSACTIONS THAT
8 THE BROKER MUST HAVE COMPLETED, AS APPROPRIATE TO THE BROKER'S
9 AREA OF SUPERVISION, AND MAY SPECIFY OTHER WAYS IN WHICH THE
10 BROKER IS REQUIRED TO DEMONSTRATE KNOWLEDGE SUFFICIENT TO
11 ENABLE THE BROKER TO EMPLOY AND ADEQUATELY SUPERVISE OTHER
12 BROKERS.

13 **SECTION 6.** In Colorado Revised Statutes, 12-61-105, **amend**
14 (1) as follows:

15 **12-61-105. Commission - compensation - immunity - subject**
16 **to termination.** (1) There ~~shall be~~ IS HEREBY CREATED a commission of
17 five members, appointed by the governor, which shall administer parts 1
18 3, and 4 of this ~~article~~ ARTICLE 61. This commission ~~shall be~~ IS known as
19 the real estate commission, also referred to in this part 1 as the
20 "commission", and ~~shall consist~~ CONSISTS of three real estate brokers who
21 have had not less than five years' experience in the real estate business in
22 Colorado, ONE OF WHOM HAS SUBSTANTIAL EXPERIENCE IN PROPERTY
23 MANAGEMENT, and two representatives of the public at large. Members
24 of the commission ~~shall~~ hold office for a period of three years. Upon the
25 death, resignation, removal, or otherwise of any member of the
26 commission, the governor shall appoint a member to fill out the unexpired
27 term. The governor may remove any member for misconduct, neglect of

1 duty, or incompetence.

2 **SECTION 7.** In Colorado Revised Statutes, 12-61-110, **amend**
3 (4)(a) introductory portion as follows:

4 **12-61-110. License fees - partnership, limited liability**
5 **company, and corporation licenses - rules.** (4) (a) The commission
6 shall require that any person licensed under this part 1, whether on an
7 active or inactive basis, renew ~~said~~ THE license ~~on an anniversary date~~
8 ~~every three years~~ ON OR BEFORE DECEMBER 31 OF EVERY THIRD YEAR
9 AFTER ISSUANCE. Renewal ~~shall be~~ IS conditioned upon fulfillment of the
10 continuing education requirements set forth in section 12-61-110.5. ~~and~~
11 ~~submission of fingerprints as required in section 12-61-110.8; except that~~
12 ~~any person licensed under this part 1 who maintains an inactive license~~
13 ~~and wants to renew to an active status shall only submit fingerprints as~~
14 ~~required in section 12-61-110.8 upon application to an active status and,~~
15 ~~except that, the real estate commission may acquire a name-based~~
16 ~~criminal history record check for an applicant who has twice submitted~~
17 ~~to a fingerprint-based criminal history record check and whose~~
18 ~~fingerprints are unclassifiable.~~ For persons renewing or reinstating an
19 active license, written certification verifying completion for the previous
20 three-year licensing period of the continuing education requirements set
21 forth in ~~said section~~ SECTION 12-61-110.5 shall accompany and be
22 submitted to the commission with the application for renewal or
23 reinstatement. For persons who did not submit certification verifying
24 compliance with section 12-61-110.5 at the time a license was renewed
25 or reinstated on an inactive status, written certification verifying
26 completion for the previous three-year licensing period of the continuing
27 education requirements set forth in said section shall accompany and be

1 submitted with any future application to reactivate the license. The
2 commission may, by rule, establish procedures to facilitate such a
3 renewal. ~~Until such procedures are established, every license issued under~~
4 ~~the provisions of this part 1 shall expire at 12 midnight on December 31~~
5 ~~of the year in which issued; except that each renewal of such license shall~~
6 ~~be for three years and shall expire at 12 midnight on December 31 of the~~
7 ~~third year.~~ In the absence of any reason or condition that might warrant
8 the refusal of the granting of a license or the revocation thereof, the
9 commission shall issue a new license upon receipt by the commission of
10 the written request of the applicant and the fees therefor, as required by
11 this section. Applications for renewal will be accepted thirty days prior
12 to January 1. A person who fails to renew a license before January 1 of
13 the year succeeding the year of the expiration of such license may
14 reinstate the license as follows:

15

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16 **SECTION 8.** In Colorado Revised Statutes, 12-61-111.5, **amend**
17 (1), (2)(a), and (2)(b) as follows:

18 **12-61-111.5. Fee adjustments - cash fund created - repeal.**

19 (1) This section ~~shall apply~~ APPLIES to all activities of the division under
20 parts 1, 3, 4, 7, ~~and 10 of this article~~ 9, AND 10 OF THIS ARTICLE 61.

21 (2) (a) (I) The division shall propose, as part of its annual budget
22 request, an adjustment in the amount of each fee that it is authorized by
23 law to collect under parts 1, 3, 4, 7, ~~and 10 of this article~~ 9, AND 10 OF
24 THIS ARTICLE 61. The budget request and the adjusted fees for the division
25 shall reflect direct and indirect costs.

26 (II) The costs of the HOA information and resource center,
27 created in section 12-61-406.5, shall be paid from the ~~HOA information~~

1 ~~and resource center~~ DIVISION OF REAL ESTATE cash fund created in THIS
2 section. ~~12-61-406.5~~. The division of real estate shall estimate the direct
3 and indirect costs of operating the HOA information and resource center
4 and shall establish the amount of the annual registration fee to be
5 collected under section 38-33.3-401. ~~C.R.S.~~ The amount of the
6 registration fee shall be sufficient to recover ~~such~~ THESE costs, subject to
7 a maximum limit of fifty dollars. ~~and subject to adjustment to reflect the~~
8 ~~actual direct and indirect costs of operating the HOA information and~~
9 ~~resource center pursuant to the general directive to adjust fees to avoid~~
10 ~~exceeding the statutory limit on uncommitted reserves in administrative~~
11 ~~agency cash funds as set forth in section 24-75-402 (3), C.R.S.~~

12 (b) (I) Based upon the appropriation made and subject to the
13 approval of the executive director of the department of regulatory
14 agencies, the division of real estate shall adjust its fees so that the revenue
15 generated from ~~said~~ THE fees approximates its direct and indirect costs
16 ~~Such~~ INCURRED IN ADMINISTERING THE PROGRAMS AND ACTIVITIES FROM
17 WHICH THE FEES ARE DERIVED. THE fees shall remain in effect for the
18 fiscal year for which the budget request applies. All fees collected by the
19 division, not including fees retained by contractors pursuant to contracts
20 entered into in accordance with section 12-61-103 or 24-34-101, ~~C.R.S.~~;
21 shall be transmitted to the state treasurer, who shall credit the same to the
22 division of real estate cash fund, which fund is hereby created. All
23 ~~moneys~~ MONEY credited to the division of real estate cash fund shall be
24 used as provided in this section OR IN SECTION 12-61-111 and shall not be
25 deposited in or transferred to the general fund of this state or any other
26 fund.

27 (II) (A) ON JULY 1, 2017, THE STATE TREASURER SHALL TRANSFER

1 TO THE DIVISION OF REAL ESTATE CASH FUND ALL UNEXPENDED AND
2 UNENCUMBERED MONEY THAT REMAINED IN THE HOA INFORMATION AND
3 RESOURCE CENTER CASH FUND CREATED IN SECTION 12-61-406.5, THE
4 CONSERVATION EASEMENT HOLDER CERTIFICATION FUND CREATED IN
5 SECTION 12-61-724, THE CONSERVATION EASEMENT TAX CREDIT
6 CERTIFICATE REVIEW FUND CREATED IN SECTION 12-61-727, AND THE
7 MORTGAGE COMPANY AND LOAN ORIGINATOR LICENSING CASH FUND
8 CREATED IN SECTION 12-61-908 IMMEDIATELY PRIOR TO THE REPEAL OF
9 THOSE FUNDS.

10 (B) THIS SUBSECTION (2)(b)(II) IS REPEALED, EFFECTIVE JULY 1,
11 2018.

12 **SECTION 9.** In Colorado Revised Statutes, 12-61-113, **amend**
13 (1) introductory portion and (1)(m) as follows:

14 **12-61-113. Investigation - revocation - actions against licensee**
15 **or applicant - repeal.** (1) The commission, upon its own motion, may,
16 and, upon the complaint in writing of any person, shall, investigate the
17 activities of any licensee or any person who assumes to act in ~~such~~ THE
18 capacity OF A LICENSEE within the state, and the commission, after ~~the~~
19 holding of a hearing pursuant to section 12-61-114, has the power to
20 impose an administrative fine not to exceed two thousand five hundred
21 dollars for each separate offense and to censure a licensee, to place the
22 licensee on probation and to set the terms of probation, or to temporarily
23 suspend A LICENSE, or permanently revoke a license, when the licensee
24 has performed, is performing, or is attempting to perform any of the
25 following acts and is guilty of:

26 (m) (I) Conviction of, entering a plea of guilty to, or entering a
27 plea of nolo contendere to any crime in article 3 of title 18; ~~C.R.S.~~; parts

1 1, 2, 3, and 4 of article 4 of title 18; ~~C.R.S.~~; part 1, 2, 3, 4, 5, 7, 8, or 9 of
2 article 5 of title 18; ~~C.R.S.~~; article 5.5 of title 18; ~~C.R.S.~~; parts 3, 4, 6, 7,
3 and 8 of article 6 of title 18; ~~C.R.S.~~; parts 1, 3, 4, 5, 6, 7, and 8 of article
4 7 of title 18; ~~C.R.S.~~; part 3 of article 8 of title 18; ~~C.R.S.~~; article 15 of
5 title 18; ~~C.R.S.~~; article 17 of title 18; ~~C.R.S.~~; section 18-18-404,
6 18-18-405, 18-18-406, 18-18-411, 18-18-412.5, 18-18-412.7,
7 18-18-412.8, 18-18-415, 18-18-416, 18-18-422, or 18-18-423; ~~C.R.S.~~; or
8 any other like crime under Colorado law, federal law, or the laws of other
9 states. A certified copy of the judgment of a court of competent
10 jurisdiction of such conviction or other official record indicating that such
11 plea was entered shall be conclusive evidence of such conviction or plea
12 in any hearing under this part 1.

13 (II) AS USED IN THIS SUBSECTION (1)(m), "CONVICTION" INCLUDES
14 THE IMPOSITION OF A DEFERRED JUDGMENT OR DEFERRED SENTENCE.

15 **SECTION 10.** In Colorado Revised Statutes, 12-61-203.5,
16 amend (1) introductory portion as follows:

17 **12-61-203.5. Referral fees - conformity with federal law**
18 **required - remedies for violation.** (1) ~~No licensee~~ A PERSON LICENSED
19 under parts 1 to 4 of this article shall NOT pay OR RECEIVE a referral fee
20 EXCEPT IN ACCORDANCE WITH THE FEDERAL "REAL ESTATE SETTLEMENT
21 PROCEDURES ACT OF 1974", AS AMENDED, 12 U.S.C. SEC. 2601 ET SEQ.,
22 AND unless reasonable cause for payment of the referral fee exists. A
23 reasonable cause for payment means:

24 **SECTION 11.** In Colorado Revised Statutes, 12-61-406.5,
25 **amend (4) as follows:**

26 **12-61-406.5. HOA information and resource center - creation**
27 **- duties - rules - repeal.** (4) The operating expenses of the HOA

1 information and resource center shall be paid from the HOA information
2 and resource center DIVISION OF REAL ESTATE cash fund, which fund is
3 hereby created in the state treasury. The fund shall consist of annual
4 registration fees paid by unit owners' associations and collected by the
5 division of real estate pursuant to section 38-33.3-401, C.R.S. Interest
6 earned on moneys in the fund shall remain in the fund, and any
7 unexpended and unencumbered moneys in the fund at the end of any
8 fiscal year shall not revert to the general fund or any other fund. Payments
9 from the fund shall be SECTION 12-61-111.5, subject to annual
10 appropriation.

11 **SECTION 12.** In Colorado Revised Statutes, 12-61-724, **amend**
12 (3) as follows:

13 **12-61-724. Certification of conservation easement holders -**
14 **rules - repeal - definition.** (3) At the time of submission of an
15 application, and each year the entity is certified pursuant to this section,
16 the applicant shall pay the division a fee, as prescribed by the division, to
17 cover the costs of the division and the commission in administering the
18 certification program for entities that hold conservation easements for
19 which tax credits are claimed pursuant to section 39-22-522. C.R.S. The
20 division shall have the authority to accept and expend gifts, grants, and
21 donations for the purposes of this section. The state treasurer shall credit
22 fees, gifts, grants, and donations collected pursuant to this subsection (3)
23 to the ~~conservation easement holder certification~~ DIVISION OF REAL
24 ESTATE CASH fund which fund is hereby created in the state treasury.
25 Moneys in the fund are subject to annual appropriation to the division for
26 the purposes of implementing and administering this section and do not
27 revert to the general fund at the end of any fiscal year. The fund shall be

1 ~~maintained in accordance with section 24-75-402, C.R.S.~~ SECTION
2 12-61-111.5. On or before each January 1, the division shall certify to the
3 general assembly the amount of the fee prescribed by the division
4 pursuant to this subsection (3).

5 **SECTION 13.** In Colorado Revised Statutes, 12-61-727, **amend**
6 (6) as follows:

7 **12-61-727. Conservation easement tax credit certificate**
8 **application process - definitions - rules.** (6) A landowner submitting an
9 application for a tax credit certificate pursuant to this section or an
10 application for an optional preliminary advisory opinion pursuant to
11 subsection (14) of this section shall pay the division a fee as prescribed
12 by the division. The application fee for an optional preliminary advisory
13 opinion may be a different dollar amount than the application fee for a tax
14 credit certificate. The fees must cover the costs of the division and the
15 commission in administering the requirements of this section. The state
16 treasurer shall credit the fees collected pursuant to this subsection (6) to
17 the ~~conservation easement tax credit certificate review~~ DIVISION OF REAL
18 ESTATE CASH fund which fund is hereby created in the state treasury. The
19 ~~general assembly shall annually appropriate moneys in the fund to the~~
20 ~~division for the purposes of implementing and administering this section.~~
21 ~~The moneys shall not revert to the general fund at the end of any fiscal~~
22 ~~year. The fund shall be maintained in accordance with section 24-75-402,~~
23 ~~C.R.S.~~ SECTION 12-61-111.5. On or before January 1, 2014, and on or
24 before each January 1 thereafter, the division shall certify to the general
25 assembly the amount of any fees prescribed by the division pursuant to
26 this subsection (6).

27 **SECTION 14.** In Colorado Revised Statutes, 12-61-902.5,

1 **amend** (3) as follows:

2 **12-61-902.5. Board of mortgage loan originators - creation -**
3 **compensation - enforcement of part after board creation - immunity.**

4 (3) Each member of the board shall receive the same compensation and
5 reimbursement of expenses as those provided for members of boards and
6 commissions in the division of professions and occupations pursuant to
7 section 24-34-102 (13). ~~C.R.S.~~ Payment for all per diem compensation
8 and expenses shall be made out of annual appropriations from the
9 ~~mortgage loan originator licensing~~ DIVISION OF REAL ESTATE cash fund
10 created in section ~~12-61-908~~ 12-61-111.5.

11 **SECTION 15.** In Colorado Revised Statutes, 12-61-905, **amend**
12 (7)(c) as follows:

13 **12-61-905. Powers and duties of the board.** (7) (c) All fines
14 collected pursuant to this subsection (7) shall be transferred to the state
15 treasurer, who shall credit ~~such moneys~~ THEM to the ~~mortgage company~~
16 ~~and loan originator licensing~~ DIVISION OF REAL ESTATE cash fund created
17 in section ~~12-61-908~~ 12-61-111.5.

18 **SECTION 16.** In Colorado Revised Statutes, 12-61-905.1,
19 **amend** (2)(c) as follows:

20 **12-61-905.1. Powers and duties of the board over mortgage**
21 **companies - fines - rules.** (2) (c) All fines collected pursuant to this
22 section shall be transmitted to the state treasurer, who shall credit ~~such~~
23 ~~moneys~~ THEM to the ~~mortgage company and loan originator licensing~~
24 DIVISION OF REAL ESTATE cash fund created in section ~~12-61-908~~
25 12-61-111.5.

26 **SECTION 17.** In Colorado Revised Statutes, 12-61-905.5,
27 **amend** (7) as follows:

1 **12-61-905.5. Disciplinary actions - grounds - procedures -**
2 **rules.** (7) All administrative fines collected pursuant to this section shall
3 be transmitted to the state treasurer, who shall credit ~~the same~~ THEM to the
4 ~~mortgage company and loan originator licensing~~ DIVISION OF REAL
5 ESTATE cash fund created in section ~~12-61-908~~ 12-61-111.5.

6 **SECTION 18.** In Colorado Revised Statutes, **amend** 12-61-908
7 as follows:

8 **12-61-908. Fees.** (1) The board may set the fees for issuance and
9 renewal of licenses and registrations under this part 9. The fees shall be
10 set in amounts that offset the direct and indirect costs of implementing
11 this part 9 and section 38-40-105. ~~C.R.S.~~ The ~~moneys~~ MONEY collected
12 pursuant to this section shall be transferred to the state treasurer, who
13 shall credit them to the ~~mortgage company and loan originator licensing~~
14 DIVISION OF REAL ESTATE cash fund ~~CREATED IN SECTION 12-61-111.5.~~

15 (2) ~~There is hereby created in the state treasury the mortgage~~
16 ~~company and loan originator licensing cash fund. Moneys in the fund~~
17 ~~shall be spent only to implement this part 9 and section 38-40-105,~~
18 ~~C.R.S., and shall not revert to the general fund at the end of the fiscal~~
19 ~~year. The fund shall be subject to annual appropriation by the general~~
20 ~~assembly.~~

21 (3) ~~For the 2009-10 fiscal year, the division is authorized to~~
22 ~~expend up to one hundred twelve thousand dollars or such other amount~~
23 ~~as may be appropriated by the general assembly from the mortgage~~
24 ~~company and loan originator licensing cash fund for purposes of paying~~
25 ~~the development costs assessed by the conference of state bank~~
26 ~~supervisors, or its successor organization, for participating in the~~
27 ~~nationwide mortgage licensing system and registry. However, the board~~

1 ~~shall use its discretion in determining whether expenditure of these~~
2 ~~moneys is necessary for compliance with the federal "Secure and Fair~~
3 ~~Enforcement for Mortgage Licensing Act of 2008" or participation in the~~
4 ~~nationwide mortgage licensing system and registry.~~

5 **SECTION 19. Effective date.** This act takes effect June 30,
6 2017.

7 **SECTION 20. Safety clause.** The general assembly hereby finds,
8 determines, and declares that this act is necessary for the immediate
9 preservation of the public peace, health, and safety.