



The Official Publication of the Colorado Division of Real Estate

# Real Estate news

## Conservation Easements Protect Nearly 40,000 Acres

Conservation easements donated to land trusts and government entities Certified by the Division of Real Estate (Division) protect 38,816 acres in 2011. Certified entities may accept conservation easement donations that generate state income tax credits for the land owner. Conservation easement tax credits often are combined with local, state and federal open space funding to maximize the amount of land conservation achieved. Land trusts and local governments leveraged Colorado's conservation easement tax credits to achieve \$3 of land conservation for every \$1 invested by the state.

Conservation easements permanently protect landscapes vital to Colorado's agricultural and tourism industries. In 2011, the Division issued tax credit certificates for conservation easements donated to 19 different organizations in 28 counties across Colorado. While you may not know a specific property protected by a conservation easement, you are likely benefiting from one every time you enjoy a scenic view while driving through the mountains, along the Front Range or on the Eastern Plains. Whether you are a farmer, rancher, outdoorsman or simply enjoy Colorado's spectacular views lands protected by conservation easements affect us all.

For more information on conservation easements visit [www.dora.state.co.us/real-estate/Conservation.htm](http://www.dora.state.co.us/real-estate/Conservation.htm).



## Director's Corner

By Marcia Waters, Division Director

In October, the Division of Real Estate started conducting continuing education audits of real estate brokers. These audits haven't taken place since the spring of 2005 because of the renewal fingerprinting issues from 2005 through 2007, and a looming investigative backlog. We have made significant strides in diminishing the backlog of public complaints

and are now in a position to ensure that our brokers are maintaining compliance with their continuing education requirements. Two hundred and fifty (250) licensees were audited in October and about 25% were noncompliant with the 24 hours of mandated continuing education. An additional concern that we have is that our licensees are not checking the

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## Is Your E&O Insurance Policy Up to Date?



January 1st doesn't just bring about the start of a new year, it also starts a new cycle for Errors & Omissions insurance policies for real estate brokers. All active real estate brokers are required to carry Errors & Omissions insurance at all times when performing real estate duties. The State of Colorado and the Division of Real Estate has negotiated with Rice Insurance Services Company (RISC) to offer policies that meet all of the state's requirements for active real estate brokers. Licensees are not required to purchase policies from RISC specifically, and may purchase a policy with any carrier that meets the requirements listed in Commission Rule D-14.

Licensees have until January 31, 2012 (or 30 days from the expiration date of the policy if different from January 1) to purchase updated policies showing coverage from January 1, 2012 through December 31, 2012 without penalty. On February 1, 2012, the Division will begin auditing all active real estate brokers and placing those with expired policies on inactive status in accordance with Colorado Real Estate Commission Rule D-14(d).

Three insurance carriers, Rice, Williams and CRES, download coverage information automatically into our database, so licensees who purchase policies with one these three will have their information automatically updated and will not need to submit further proof of coverage. Information is matched based on license number, so please be sure to provide the insurance carrier with accurate license number information. Licensees can locate license number information using our public search database at <http://eservices.psiexams.com/search.jsp>.

If you choose to purchase coverage with an independent carrier, you must certify that you have coverage by filling out the Certificate of Independent Coverage form and by sending that form to the Division via email or fax ([real-estate@dora.state.co.us](mailto:real-estate@dora.state.co.us) or (303) 894-2683) if you are renewing an expiring policy. Licensees who are currently inactive do not need to purchase Errors & Omissions insurance or provide proof of coverage, as it is not a requirement for maintaining your license on inactive status.

Please note that insurance coverage is also required for any corporation, partnership or LLC that is licensed with the Division of Real Estate, regardless of the number of employees within that entity. If your corporate entity has a license number with the Division of Real Estate, it must be covered with an additional E&O policy. Failure to obtain coverage on the entity license in addition to your individual license may also result in the inactivation of that entity and each individual licensed with that entity.

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### WANTED! Industry Contributors

The Division of Real Estate is looking for industry members who are interested in writing an article for the quarterly newsletter. All topics relating the real estate industry will be considered.

The newsletter is published four times each year and contributors must be able to meet deadlines, which will be made available in advance. Newsletter articles submitted for consideration will be subject to editing to ensure consistency and style. All articles must be original materials and can't contain any copyrighted information without proper attribution.

If this is something you're interested in, please contact Eric Turner, Manager of Education, Communications and Policy, at [eric.turner@dora.state.co.us](mailto:eric.turner@dora.state.co.us). Please write "Newsletter article contribution" in the subject line. There is no guarantee that articles submitted will appear in the newsletter.



THE HONORABLE JOHN W. HICKENLOOPER  
Governor of Colorado

Barbara Kelley  
Executive Director  
Department of Regulatory Agencies  
Marcia Waters  
Director, Division of Real Estate  
Cary Whitaker  
Deputy Director, Division of Real Estate

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COLORADO REAL ESTATE NEWS  
Colorado Division of Real Estate  
1560 Broadway, Suite 952  
Denver, CO 80202-4305  
Phone: (303) 894-2166  
V/TDD (303) 894-7880

[www.dora.state.co.us/real-estate](http://www.dora.state.co.us/real-estate)

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Division website to ascertain whether a course has been approved for continuing education credit. In an attempt to document compliance, numerous licensees have submitted certificates for courses that have never been approved by the Commission. We cannot encourage you enough to check the Division website and verify whether a course has or has not been approved for continuing education credit. The Commission cannot retroactively grant continuing education credit because an education provider failed to apply for continuing education credit. This will be increasingly more important in 2012 when the Division begins auditing ten percent of the active broker population on a quarterly basis.

Along with continuing education audits, the Commission will be conducting brokerage audits in 2012. Trust account issues are a leading consumer protection concern and we have

seen deficiencies burgeon to the amount of hundreds of thousands of dollars. Our financial examiners will be auditing to ensure that trust accounts are properly maintained, the appropriate method of accounting is occurring and that funds are not being diverted or commingled. In addition to the financial audits, the financial examiners will also audit transaction files to ensure that current, mandatory forms are being completed.

During the investigation of public complaints, we regularly see transaction files that have outdated contract documents and are missing disclosure forms, including brokerage relationship and lead-based paint disclosures. One issue that the financial examiners will be monitoring is the imposition of brokerage administration fees. As a result of the 2009 decision in *Busby v. JRHBW Realty Inc.*, brokers need to be aware that there may be potential issues in charging a separate fee for services that would appear to be included in the overall fee for real estate services. HUD issued guidance in 2010 indicating that a broker may have to justify that a separate and distinct service is being provided for the separate fee. If a broker is charging duplicative fees, the broker could be subject to the penalties under RESPA. If our financial examiners observe potential violations of RESPA, the Commission is required to refer such information to the Consumer Finance Protection Bureau, which is the agency for enforcing RESPA.



# Green Buildings: What's the Difference and Does It Matter?

By Taylor Watkins, Certified Residential Appraiser

*DORA Note: In this and subsequent newsletters, the Division will be focusing on challenges facing appraisers now and in the near future. The valuation of "green buildings" is one of those challenges. This article is based on information provided by the author, and does not necessarily represent the opinions of the Division of Real Estate or members of its staff.*

This article will introduce some of the elements of green building and the ways in which they may relate to appraisal practice. This is a very large field, so the list is not exhaustive, but it does provide a place to start understanding green buildings.

There has been a lot of talk recently about the popularity of residential, industrial, and commercial "green", or environmentally responsible and resource-efficient, building structures. There have also been many published articles in which builders, brokers, and owners claim that appraisers undervalue green properties. As appraisers know, we don't create the market for specific property types; we analyze available, appropriate market data to reflect the actions of the market. In the case of green buildings, however, perhaps some green building advocates may not clearly understand the systematic appraisal valuation procedure an appraiser follows to answer a client's questions about real property value, and some appraisers don't clearly understand valuation issues involved with green buildings.

Green building is relatively new in many parts of the country, but it has been around for decades. There are several different reasons for the recent interest in green building. Rising energy costs have made green building more attractive, but as we will see, energy efficiency is only one aspect of green building. Increased awareness of the principles of sustainability is another reason. Governmental support of green building measures, from storm water management codes to energy efficient appliance incentives, has also helped move green building into the mainstream.

## What is Green Building?

One of the difficulties in understanding green building is the lack of a complete and accurate definition that is commonly accepted among the varied professions and organizations that deal with green buildings. One example of a green building definition comes from the US Environmental Protection Agency:

"Green building is the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building's life-cycle from siting to design, construction, operation, maintenance, renovation and deconstruction. This practice expands and complements the classical building design concerns of economy, utility, durability, and comfort. Green building is also known as a sustainable or high performance building."

Green building can generally be thought of as a building practice that focuses on the building structure's resource efficiency (i.e., high performance) and the health of its occupants and the environmental impact throughout the structure's entire life cycle from its design through its occupancy and eventual deconstruction.

Viewing a building through its entire life cycle is not a new idea, but it can lead to different choices in the way it is constructed, and this is part of what distinguishes green buildings. These choices tend to gravitate to the following basic elements of green building: site, water, energy, materials, and indoor air quality. Although these elements are not exclusive to green building, the way in which green buildings address them is different from conventional buildings. By understanding these elements and how they differentiate green buildings, appraisers will attain the necessary competence in the valuation of green buildings and will also be able to participate in the growing conversation surrounding them. Recall that USPAP requires competency and being competent requires knowledge and experience to produce credible assignment results.

## Site Element

Overriding site concerns are the preservation of open space and habitat protection when possible. In



addition, green site planning and development focuses on the site's proximity to transportation and other linkages, access to sun and/or shade as the climate dictates, and building placement on the site to take advantage of solar, water, or wind-oriented resources.

*Appraisal Practice:* The traditional view of location applies here in terms of access to amenities, but with additional emphasis on proximity to mass transportation, increased density, and open, or green spaces. This is because proximity to mass transit improves air quality due to lower vehicle emissions, and lowers fuel and energy consumption during occupancy of the building. Additionally, increased density can help protect open space.

### Water Element

Water is a resource that is actively managed and conserved in many green buildings. Water that comes to the property from the local provider is conserved as much as possible inside and outside the building. Storm water is all the water that falls on the site as precipitation. In some cases, storm water is captured and retained for reuse, either inside or outside the building. Drought tolerant landscaping is also encouraged.

*Appraisal Practice:* In theory, water consumption and cost can be measured and thus quantified in most cases. Especially in arid portions of the country or areas with high sewage disposal costs, savings from reducing and reusing water in some cases can lead to operational savings.



### Energy Element

Energy comes to most buildings in the form of natural gas or electricity. While it is only one of the elements of green building, it gets a lot of attention. This is because it is measurable, both in terms of consumption and cost, and because there are many incentives available for energy efficient materials, systems, and appliances. Unlike some of the other elements of green building, energy efficiency and related cost savings are important to cost conscious buyers in some areas of the country.

*Appraisal Practice:* Like water, energy consumption is measurable, so if less energy is consumed by a property, that savings may be a benefit that accrues to the property. It is also a benefit that will keep paying forward throughout the life of that building or that particular energy efficient system or appliance.

### Materials Element

Green building materials have entered the mainstream in many areas of the country over the past several years. These materials again focus on resource efficiency in their composition, like being made of recycled materials; in their production, such as being locally made or minimally processed; or in their use, meaning that they can lead to less energy consumption while in place in a building.

*Appraisal Practice:* Some green materials may be more durable than their conventional counterparts, leading to less maintenance over time. This can lead to lower operational costs and also perhaps to a longer physical life. The proper material to use, green or not, depends on the application.

### Indoor Air Quality Element

Indoor Air Quality ("IAQ") has been getting a lot more attention lately, but it has always been an integral part of green building. Particularly with commercial and governmental buildings, landlords, tenants, and owners have become interested in the effects of good IAQ on workers. Studies are also looking into the effects on student performance in school buildings with superior IAQ.

*Appraisal Practice:* If IAQ becomes measurable in some way, then its positive effects on occupants may enter into the appraisal process using paired sales or statistical analysis. Pending the availability of that type of measurable data, it is still possible, indeed appropriate, to consider a qualitative technique known as "relative comparison analysis" when using the sales comparison approach.



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## What Actions Require a Mortgage Loan Originator License?

The licensure of mortgage loan originators is still one of the newest regulatory programs in the Division of Real Estate. What continues to make this program so new are the nine (9) laws that have been passed regarding this program since 2006. Furthermore, laws passed by Congress, specifically the S.A.F.E. Act and the Dodd-Frank Act, have made interpreting existing law challenging at times. Not only have these numerous revisions been challenging for the mortgage lending industry, but they have also created confusion for professions that work closing with or within the mortgage lending industry.

As a result, the Division of Real Estate has received inquiries regarding what actions or conduct requires a mortgage loan originator license. The Division has learned that real estate brokers and loan processors are unsure about what they can discuss with their clients. Real estate brokers work closely with clients to provide the best service possible. Many times, this leads them down the path of providing ancillary guidance on topics that involve mortgage financing.

Often the lines are blurred in the practice of day to day transactions. Specifically, real estate brokers need to be aware of some of the underwriting guidelines and constraints of various mortgage products. For example, many real estate brokers are aware of the mortgage insurance premiums that are required on FHA loans. It is also important for real estate brokers to be aware of how

much down payment may be required on different mortgage products in the market. These examples highlight how general knowledge about mortgage lending is often provided as a service to clients from real estate brokers or other related professions. Loan processors work closely with consumers that are seeking mortgage financing. The Division often answers questions about what duties they can perform without being considered a mortgage loan originator. It may be even more difficult for these individual since they are working closely with consumers that are actively seeking mortgage financing.



Naturally, consumers ask questions or want to know information that could be construed as loan originator activities. Because these professions are closely aligned, this can often create confusion for consumers as well. Consumers are generally unaware

of what conduct specifically requires a real estate broker license, an appraiser license, or a mortgage loan originators license.

Rather, consumers often ask a wide variety of questions to whatever real estate professional may be in their presence. As a result, it is important for all real estate professionals to understand what advice, discussions, and actions may constitute a license in a parallel profession.

Can real estate brokers offer consumers advice on their mortgage financing? What ancillary services can real estate brokers provide without the requirement for a mortgage loan originators license? When does a loan processor become a mortgage loan originator? How can real estate brokers and loan processors continue to perform

their jobs at a high level without crossing the threshold that requires a loan originator license? The aforementioned questions are being asked by many members of these respective industries.

Rather than attempting to describe all of the behavior that real estate brokers and loan processors are able to do, without being considered a mortgage loan originator, it is much simpler to describe conduct and actions that warrant licensure as a loan originator.

As a result, it is important to note the three actions that require a license from any individual in the community. Individuals that



partake in the following acts are required to be licensed as loan originators:

1. Taking a residential loan application;
2. Offering terms of a residential mortgage loan; or
3. Negotiating terms of a residential mortgage loan.

The above requirements establish the requirement for licensure, but still leave room for interpretation regarding what is meant by taking an application, offering, or negotiating terms of a loan. Thankfully, the Department of Housing and Urban Development (the "HUD") clarified some of these terms in a regulation adopted in June of 2011. Pursuant to this new regulation, "taking a residential mortgage loan application" occurs if the individual receives a residential mortgage loan application for the purpose of facilitating a decision whether to extend an offer of residential mortgage loan terms to a borrower or prospective borrower (or to accept the terms offered by a borrower or prospective borrower in response to a solicitation), whether the application is received directly or indirectly from the borrower or prospective borrower.

"Offers or negotiates terms of a residential mortgage loan" occurs if the individual:

1. Presents for consideration by a borrower or prospective borrower particular residential mortgage loan terms;
2. Communicates directly or indirectly with a borrower, or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or
3. Recommends, refers, or steers a borrower or prospective

borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower.

Furthermore, what is the definition of a residential mortgage loan? According to Colorado law, a residential mortgage loan is defined as meaning a loan that is primarily for personal, family, or household use and that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate which is constructed or intended to be constructed a single-family dwelling or multiple-family dwelling of four or fewer units. This definition was updated in 2009 due to the passage of the S.A.F.E. Act. As a result, this definition expanded and now includes financing on mobile and manufactured housing, loan assumptions, seller financing loans, etc..in addition to traditional transactions that were included in the definition of a residential mortgage loan.

As a result, real estate brokers, loan processors or other individuals are not considered mortgage loan originators if they perform duties, have discussions, or provide

information to their clients if such client services are not specifically outlined in the definition of a mortgage loan originator or within the regulation promulgated by the Department of Housing and Urban Development.

It is important to note, however, that while loan processing and underwriting duties do not directly fall within the definition of a mortgage loan originator, the S.A.F.E Act requires individuals who are performing loan processing and underwriting duties to be licensed unless they meet both of the following criteria: 1. The individual is directly supervised by an individual that is licensed as a state-licensed loan originator; and 2. The individual is a W-2 employee. Specific exemptions to the Colorado Mortgage Loan Originator Licensing and Mortgage Company Registration Act are listed in section 12-61-904, C.R.S. The Mortgage Loan Originator Licensing and Mortgage Company Registration Act may be viewed on the Division of Real Estate website found at: Real Estate Manual.



# 2012 Mandatory Update Courses Available

The 2012 Annual Commission Update Course for real estate brokers has been distributed to approved providers and is currently being offered to licensees. Starting in mid-January, the 2012 Colorado Two (2) Hour Annual Update Course for mortgage loan originators will be available. Both courses are mandatory each year for the respective licenses.



The courses were developed to provide licensees with pertinent information they will need to know in order to conduct compliant business 2012. The Division of Real Estate highly recommends that licensees take the course relevant to their license early in the calendar year in order to receive the most benefits. Providers have attended training and are able to facilitate the courses either in person or through their approved distance education programs.

Materials covered in the real estate broker course includes changes to the mandatory Commission approved real estate contracts, trends in the real estate broker industry, guidance on social media, property management information, and various other topics that Commission wanted to address. The mortgage loan originator course covers rule changes, loan values, complaint statistics and important information on loan fraud.

To see which provider is offering the 2012 Annual Commission Update Course for real estate brokers or the 2012 Colorado Two (2) Hour Annual Update Course for mortgage loan originators, visit [www.dora.state.co.us/real-estate](http://www.dora.state.co.us/real-estate). From there, select your license type and look for information on continuing education.



## 2012 Real Estate Manual Coming Soon

The Division of Real Estate and Bradford Publishing have updated the Colorado Real Estate Manual to include new Commission Position Statements, changes in Colorado statutes

and Rule changes affecting real estate brokers. The 2012 edition is set to be available starting February 1.

The manual is available directly from Bradford Publishing. The Division of Real Estate will again publish portions of the manual on its website, but in

order to view the entire contents, you will need to purchase a copy.

To purchase your copy of the manual, visit [www.bradfordpublishing.com](http://www.bradfordpublishing.com) and search "2012 Colorado Real Estate Manual."



## Information About The Colorado Group E&O Insurance Program

**Rice** Insurance Services Company, LLC (RISC) is the program administrator for the 2012 group errors and omissions (E&O) program issued to the Colorado Real Estate Commission (CREC) on behalf of its licensees. RISC has administered Colorado's group E&O program since January 1, 2004. During this time, Continental Casualty Company, a CNA company (CNA), has been the insurance carrier for the program and has paid over \$16 Million in damages and defense costs on behalf of Colorado licensees. RISC and CNA have partnered to provide real estate E&O programs in mandatory states for more than 10 years. RISC currently administers programs insuring nearly 100,000 licensees in 11 of the 13 states that have group programs and require real estate licensees to maintain E&O coverage. In addition to Colorado, RISC administers the state's group program in Idaho, Iowa, Kentucky, Louisiana, Nebraska, New Mexico, North Dakota, Rhode Island, South Dakota, and Tennessee.

The Rice family and their colleagues have specialized in mandated real estate E&O programs since 1989. Real estate E&O is RISC's only line of business, so RISC has developed specialized knowledge in this field. RISC staff members collectively have more than 150 years of experience in this business, providing a valuable resource to its insureds. RISC administers all aspects of the program, including policy issuance, policy administration, customer service, and claims handling. RISC supports insureds through the entire process, from purchasing a policy to resolving claims. CNA has more than 50 years of experience in E&O programs, including over 20 years in real estate E&O. CNA is the top provider of real estate professional liability insurance, and delivers the industry knowledge and financial strength to manage even the most complex risks.

It is easy to enroll in the Colorado group program on RISC's website, [www.risceo.com](http://www.risceo.com). The website also provides information about the state group program and group policy; helpful forms, including brochures, enrollment forms, notice of claim forms, a sample policy, and sample endorsements; and informative articles about coverages, common claims, and risk reduction.

The 2012 premium is \$243 per licensee, which has been the same since 2008. Colorado's group program offers affordable real estate E&O insurance to each and every licensee. This low premium is only possible because a large number of licensees enroll in the state group program, which spreads the risk over a large number of insureds. Without the state group program's low premium, other carriers have no incentive to offer real estate E&O policies at affordable prices. In states without a group program, real estate E&O insurance premiums may cost thousands of dollars and some licensees report being unable to obtain insurance at any price. For these reasons, your support of the state group program is vital.



The state group policy is designed to insure licensees against claims that arise from negligent acts, errors, or omissions relating to professional services as a real estate licensee. Since many claims are brought when the real estate licensee did nothing wrong, legal defense of covered claims is a significant benefit of the state group policy. There is no limit to the amount of claim expenses (attorney fees and defense costs) paid on claims covered under the basic policy, except for fair housing/discrimination and earnest/escrow money claims. This is important, because it often costs tens of thousands of dollars or more to defend claims, even if they are frivolous. Another valuable feature of the state group policy is that the insurance carrier and the insured must mutually agree on the attorney who is hired to represent the insured.

The limits of liability are \$100,000 per claim and \$300,000 in the aggregate. The aggregate is the most the insurance carrier will pay for all claims per policy period for each licensee. Individual licensees who desire higher limits may purchase an endorsement to increase their limits to \$250,000 per claim with a \$750,000 aggregate or \$500,000 per claim with a \$1,000,000 aggregate when they enroll online or by mail. Licensees whose real estate activity is at least 75% residential sales and who have had no claims in the past 5 years may

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**Dora**  
Department of Regulatory Agencies  
Division of Real Estate

# HOA Information Office and Resource Center: Year in Review

The HOA Information Office ("Office") has been in existence for about a year and we have been working on compiling data and writing our annual report. Throughout the year we have been compiling both statistical data on HOAs; including the number of the HOAs and an estimate of the number of persons in HOAs as well as information on the types of issues people living in HOAs are having. We have spoken with more than 2,000 people who have had questions pertaining to their HOA, HOA registration, or who have lodged complaints against HOAs and/or management companies. The Office has helped many homeowners to work through their issues with their HOAs and has also provided information on living in common-interest communities.

The Office has taken some time to compile some statistics that shed light on the state of HOAs in Colorado. As of December 1, 2011 we have registered 8,019 HOAs which comprise 837,622 units. While we can't speculate, we still believe that there are many HOAs who have not registered with the Division of Real Estate. Considering that the average household size in America is 2.59 persons per home, we imagine that over two million people in Colorado live in HOAs; a significant percentage of the overall population of Colorado.

One of the major tasks of the HOA Information Office is to collect data on HOA issues and to report that data to the Director of the Division of Real Estate. As of December 9, 2011 the Division of Real Estate had received 477 complaints. The HOAs status as a registered entity was not considered in logging a complaint.

Furthermore, while at times we did log information regarding the name of the HOA and whether there was a management company, many complainants did not provide such information and from our office's perspective the name of the HOA and management company were not germane to our research. The complaint types were varied but the largest subset of complaints related to transparency of the HOA, particularly in regards to the HOA releasing financial records.

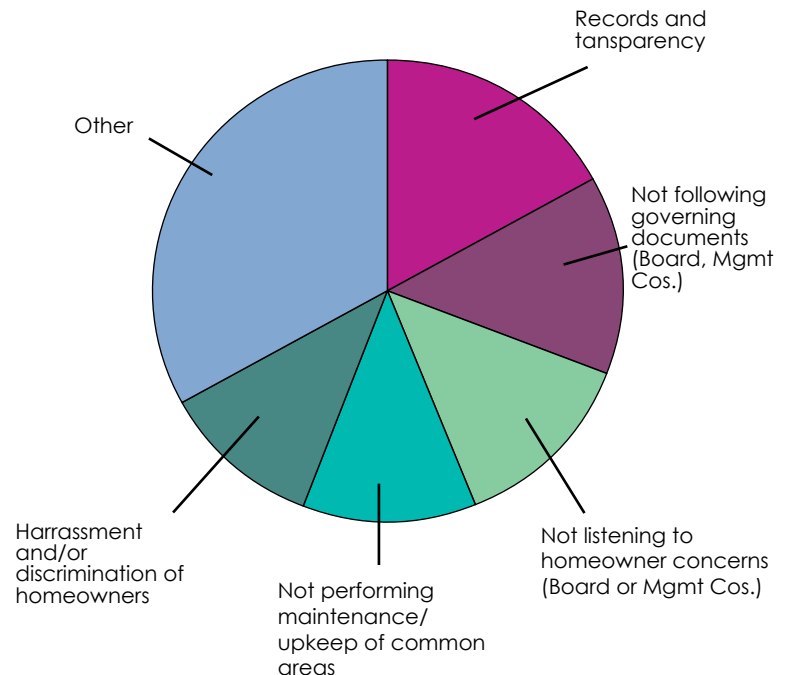
The following are some of the major types of complaints the HOA Information Office received (it is important to note that many complaints involved several complaint types):

- Records and transparency issues (17% of

complaints)

- Boards and/or management companies failing to follow governing documents (14% of complaints)
- Boards and/or management companies not addressing or listening to homeowner concerns (13% of complaints)
- Boards and/or management companies not performing maintenance/upkeep of common areas (12% of complaints)
- Harassment and/or discrimination of homeowners (11% of complaints)

## Types of complaints by percentage



The majority of the complaints came from the Front Range, but Colorado Springs and Aurora had the most complaints. We also noticed a trend that most of the complaints came from low income mid-rise condominium associations and was surprised to see that large single-family home communities did not have many complaints. The following is a breakdown of the percentage of complaints per region (note that not all complainants provided information to determine the area and the data considered was that available):



- Colorado Springs/El Paso County (21% of complaints)
- Aurora and Parker/Adams County and East Arapahoe Counties (20% of complaints)
- City and County of Denver (12% of complaints)
- South Suburbs/Arapahoe and Douglas County/ (11% of complaints)
- West Suburbs and Foothills/Jefferson County (8% of complaints)
- Boulder and Longmont/Boulder County (6% of complaints)
- North Suburbs/Adams, North Jefferson and Broomfield Counties (6% of complaints)
- Western Slope/Grand Junction and Durango (6% of complaints)
- Resort Communities/Summit, Eagle, Pitkin, Garfield, Routt, Grand, San Miguel Counties (5% of complaints)
- Fort Collins, Loveland, Greeley/Larimer and Weld Counties (3% of complaints)
- Southern Colorado/Pueblo, Trinidad, San Luis Valley (2% of complaints)

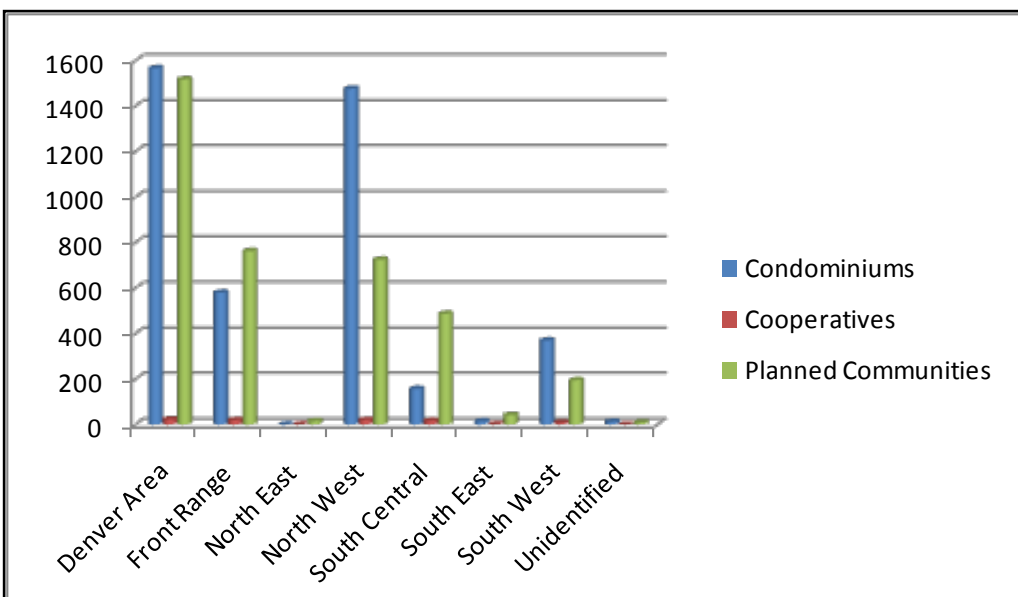
Legislatively, 2011 was a quite year for HOAs. The only significant legal changes related to the addition of a new conflict of interest provision into the Colorado Common Interest Ownership Act ("CCIOA") through House Bill 11-1124 (codified at § 38-33.3-209.5(1)(b)(II), C.R.S.). This new law prohibits HOA board members from simultaneously sitting on a Special District board and requiring HOA board members to disclose conflicts of interest for a matter before the board that would financially benefit the member or any of his immediate family and that after making such a disclosure may participate in the discussion on that issue but must abstain from voting

on the issue.

The other piece of legislation in 2011 that affected HOAs was Senate Bill 11-234 (codified at §38-35-127, C.R.S.), the Residential Transfer Fee Bill which prohibited and invalidated transfer fee covenants that didn't "touch and concern" the land but provided for an exclusion for management companies that allowed them to charge a one-time fee for services rendered in connection with the conveyance for which the fee is earned.

The legislative initiatives in 2012 are unclear, but as the Community Associations Institute ("CAI") has recently submitted a sunrise application to the Office of Policy, Research and Regulatory Reform ("OPRRR") for the licensure and regulation of Community Association Managers, there very well could be major changes to the HOA industry in the near future. A sunrise application is one of the first steps in the process of individual licensing for an industry. At the beginning of 2012 the OPRRR will be making a recommendation whether Community Association Managers should be licensed and regulated by the Department of Regulatory Agencies ("DORA"). If there is a recommendation from the OPRRR that regulation is necessary for consumer protection, a bill will be drafted and presented in the 2012 legislative session.

Stay tuned for upcoming changes in the HOA landscape and with the HOA Information Office, it should be an exciting year. In the upcoming year, HOAs previously registered will be required to renew their registration with the Division. Information pertaining to our office; resource material; as well as contact information for homeowners can be found at our website at [www.dora.state.co.us/real-estate/index.htm](http://www.dora.state.co.us/real-estate/index.htm).



## Total Number of HOAs By Region



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purchase the \$250,000/\$750,000 option for an additional premium of \$170 or the \$500,000/\$1,000,000 option for \$279. Licensees whose real estate activity is less than 75% residential sales or who have had a claim in the past 5 years may purchase the \$250,000/\$750,000 option for \$203 or the \$500,000/\$1,000,000 option for \$321. The group policy automatically includes the following coverages at no additional cost:

Primary Residence Coverage: Coverage for the sale or listing of the licensee's primary residence up to policy limits;

- Fair Housing/Discrimination Coverage: Sublimits of \$30,000 per claim for damages and claim expenses, up to a \$30,000 aggregate, for fair housing/discrimination claims;
- Earnest/Escrow Money Disputes Coverage: Sublimits of \$10,000 per claim for damages and claim expenses, up to a \$25,000 aggregate, for earnest/escrow money claims under certain conditions; and
- Lock Box: Sublimits of \$100,000 per claim for damages, up to a \$300,000 aggregate, for lock box property damage claims.

Additionally, the following new features will be provided at no additional cost for the 2012 state group program:

- Regulatory Complaints Endorsement: Sublimits of \$2,500 for claim expenses, up to \$5,000 aggregate for regulatory complaints and
- Subpoena Assistance Endorsement: Provides representation by legal counsel if the insured receives a covered subpoena in a lawsuit related to a transaction in which the insured provided professional services.

Exciting changes have also been made to the optional coverages that will be offered under the 2012 state group program:

- The property management endorsement is being offered at a new, reduced premium of \$25. As always, the group policy includes coverage for activity that requires a real estate broker's license, including renting or leasing real property. However, many activities performed by property managers do not require a license and are, therefore, outside of the basic policy's coverage. The property management endorsement broadens the services to which the policy applies to include specific services that are incident to property management but do not require a real estate license, such as oversight of physical maintenance of property.
- The environmental endorsement will be offered at the same affordable premium of \$20, but with increased limits of liability of \$10,000 per claim for claim expenses, up to a \$20,000 aggregate, for covered claims alleging failure to detect, report, or assess the effects of or advise of the existence of pollutants, fungi, or microbes.

The state group policy is a claims-made and reported policy. As a claims-made policy, the policy in effect when the claim is first made applies to the claim. Further, the policy only provides coverage for claims first made after the beginning or before the end of your individual policy period or an applicable extended reporting period. Additionally, the policy only provides coverage if, prior to the inception of the policy, you had no basis to believe that any act, error, or omission might reasonably be expected to be the basis of a claim. For a claim to be covered under the policy, the insured must have coverage on the date the claim is made, have had coverage on the date of the professional services, have continuously maintained coverage between the date of the professional services and the date of the claim, and timely report the claim to the insurance company.

A Notice of Claim form is located on the RISC website. You may call the RISC Claims Department at (800) 637-7319 (ext. 2) for instructions on reporting a claim. If you have notice of a claim or potential claim, report it immediately to your current carrier or risk not having coverage for the claim.

For more information regarding the Colorado group policy, see the RISC website, [www.risceo.com](http://www.risceo.com), or call RISC at (800) 637-7319 (ext. 1 for Enrollment & Payment Information, ext. 2 for Claims Department, or ext. 3 for Firm Excess Coverage).



From p. 5

Relative comparison analysis is defined as:

"A qualitative technique for analyzing comparable sales; used to determine whether the characteristics of a comparable property are inferior, superior, or similar to those of the subject property." (Source: Appraisal Institute, *The Dictionary of Real Estate Appraisal*, 5th ed. [Chicago: Appraisal Institute, 2010]).

### Benefits versus Market Reaction

When integrated effectively in a structure, the elements of green building may lead to several benefits which include a lower impact on the environment than conventional buildings, benefits to society, and lower occupancy costs. Currently, however, not all of the benefits of green building are quantifiable or are recognized by market participants to accrue to a particular property. Because of this, and because green building remains in its infancy in many areas of the country, in some cases it is difficult to determine market reaction to these buildings and to apply appropriate methods and techniques in appraisal practice to address the differences in the valuation process between them and traditional buildings.

### Challenges for Appraisers

The emergence and development of green building in many parts of the country has led to more attention being paid to it by appraisers than ever before. This in turn has led to some interesting appraisal practice questions that are worthy of attention, including:

- How will mandates such as local code changes for energy efficient buildings be reflected in the market?
- How do incentives for green buildings affect builder costs, and how do appraisers reflect this in the appraisal process?
- To what extent do green building elements contribute to the value of the whole property and to what extent does the absence of green building elements detract from the value of the whole?
- What are the regional and local buying trends for green buildings on improved and proposed properties, and how do appraisers best access and analyze this information?

The key to answering these questions and arriving at credible and accurate value opinions for real property improved with green buildings lies in the appraiser's competence. Competency requires being able to first identify the salient differences between green and conventional buildings and how those differences relate to possible benefits. As is the case with any other appraisal problem, USPAP's Competency Rule requires an appraiser to have the ability to fully understand the particular issues related to the problem (i.e., properly identify the problem) and the local market reaction to those issues (i.e., the knowledge and experience to complete the assignment competently).

It is an exciting time to be interested in green buildings. Their benefits are leading to changes in buyer attitudes in many areas as well as to legislative and building code changes that specifically address green building issues. Further, it is likely that green building will represent an increasing share of the construction market in the near future. It is thus incumbent upon professional appraisers to recognize this trend in the market areas in which they practice and to acquire competency to perform assignments appraising these complex properties.

*Taylor Watkins is a Certified Residential Appraiser, and is a member of the Appraisal Institute, the United States Green Building Council, and the Northwest EcoBuilding Guild. Watkins & Associates specializes in data collection on and appraisal of green properties in the Portland area and provides valuations for individual properties as well as appraisal consulting services. Taylor has developed a series of continuing education courses on appraising green residential properties, and he is also the developer of the Appraisal Institute's new "Introduction to Green Building" course. Watkins is also the President of [www.GreensightValue.com](http://www.GreensightValue.com), an online education and data resource center on green valuation for real estate industry professionals. For more information contact Taylor at [taylor.watkins@comcast.net](mailto:taylor.watkins@comcast.net).*



## Disciplinary Action Taken by the Board of Real Estate Appraisers

Alphabetical by last name, appraisers only. [Click here to search the licensee database and download a copy of the order.](#)

**Blumer, William**-Relinquishment

**Buss, Katie**-Relinquishment

**Chandler, Summer**-Fine, Course Work, Supervision

**Clubine, Linda**-Relinquishment

**Earle, David**-Relinquishment

**Floyd, Edmund**-Fine, Course Work, Work Product Review

**Heriford, Harold**-Relinquishment

**Pines, Sara**-Relinquishment

**Sarnella, Laurie**-Relinquishment

**Schickler, Robert**-Fine, Course Work, Work Product Review

**Underwood, Deborah**-Cease & Desist

**Wood, Steve**-Revocation

*Note: Each name and disciplinary action noted does not necessarily mean that this is the only action taken against a license. Search our licensee page for a complete history.*

## Disciplinary Action Taken by the Board of Mortgage Loan Originators

Alphabetical by last name, mortgage loan originators. [Click here to search the licensee database and download a copy of the order.](#)

**Abraham, Jeffrey**—Cease & Desist, Public Censure, Stayed Fine and Restitution

**Acevez, Miguel**—Cease & Desist Order

**Acevedo, Ramiro**—Cease & Desist Order

**Allmon, Demitri**—Final Agency Order for Revocation

**Alvarado, Abner**—Cease & Desist Order

**Bathje, Daniel**—Public Censure, Fine and Probation

**Brown, Marinella**—Cease & Desist Order

**Calderon, Arcely**—Cease & Desist Order

**Camacho, Yuri**—Cease & Desist Order

**Cardenas, Sandra**—Cease & Desist Order

**Casillas, Angelica**—Cease & Desist Order

**Chavez, Martha**—Cease & Desist Order

**Cheek, Randy**—Cease & Desist Order

**Dieffenbach, Jeremy**—Voluntary Relinquishment, Stayed Fine and Public Censure

**Evans, Jill M.**—Voluntary Surrender, Fine, Restitution and Public Censure

**Garcia, Alba**—Cease & Desist Order

**Lepe, Maria Consuelo**—Cease & Desist Order

**Pineda, Renilk**—Cease & Desist Order

**Ramirez, Juan**—Cease & Desist Order

**Reed, Brent**—Cease & Desist Order

**Rodriguez, Michele**—Cease & Desist

**Salazar, Dora**—Cease & Desist Order

**Sessner, Amy**—Public Censure, Cease & Desist and Stayed Fine

**Shenkar, Avi**—Cease & Desist Order

**Taylor, Becke**—Cease & Desist Order

**Valley, Nicole**—Cease & Desist Order

**Weiss, Susan H.**—Final Agency Order for Revocation

**Willis, Latoya**—Cease & Desist Order

*Note: Each name and disciplinary action noted does not necessarily mean that this is the only action taken against a license. Search our licensee page for a complete history.*



## Disciplinary Action Taken by the Colorado Real Estate Commission

Alphabetical by last name, real estate brokers only. [Click here to search the licensee database and download a copy of the order.](#)

**Arce, Francia**—Permanent Surrender, Stayed Fine and Public Censure

**Auhll, Nanette M.**—Permanent Surrender and Public Censure

**Barkman, Kurt**—Public Censure, Voluntary Relinquishment and Stayed Fine

**Bippus, Matthew**—Final Agency Order for Revocation and Fine

**Bishop, Penelope**—Voluntary Relinquishment, Fine, Stayed Coursework, and Public Censure

**Cheever, Rick**—Voluntary Relinquishment, Stayed Fine, Stayed Coursework, Public Censure, and Probation upon Relicensing

**Dingman, Cindy**—Relinquished and Public Censure

**Elterman, James H.**—Public Censure, Suspension and a Fine

**Hennerty, Thomas S.**—Public Censure and Fine

**Kueker, Shelly**—Public Censure, Fine and Coursework

**LaTurner, Rachael**—Final Agency Order for Revocation and Civil Penalty

**Lovedahl, Sandy**—Voluntary Surrender, Stayed Fine and Public Censure

**Marshall, Yvette D.**—Public Censure, Revoked and Stayed Fine

**Murray, Donald**—Public Censure, Fine and Coursework

**Shoemaker, Carmen**—Final Agency Order for Revocation

**Smola, A. Paul**—Public Censure, Fine, Coursework, Probation requiring Supervision

**Starks, William C.**—Public Censure, Fine and Probation

**Stauffer, Gary**—Final Agency Order for Revocation

**Sysum, Matthew**—Public Censure, Fine, Coursework, Probation requiring Supervision

**Turner, Amber**—Final Agency Order for Revocation

**Watkins, Mino**—Public Censure and Fine

*Note: Each name and disciplinary action noted does not necessarily mean that this is the only action taken against a license. Search our licensee page for a complete history.*

