

The Community Association Manager Licensing and Disciplinary Act

(Effective July 1, 2010)

Section 1. Short title.

This Act may be cited as the Community Association Manager Licensing and Disciplinary Act.

Section 5. Legislative intent.

It is the intent of the General Assembly that this Act provide for the regulation of managers of community associations, ensure that those who hold themselves out as possessing professional qualifications to engage in the provision of community association management services are, in fact, qualified to render management services of a professional nature, and provide for the maintenance of high standards of professional conduct by those licensed as community association managers.

Section 10. Definitions.

As used in this Act:

"Address of record" means the designated address recorded by the Department in the applicant's or licensee's application file or license file maintained by the Department's licensure maintenance unit. It is the duty of the applicant or licensee to inform the Department of any change of address, and such changes must be made either through the Department's website or by contacting the Department's licensure maintenance unit.

"Advertise" means, but is not limited to, issuing or causing to be distributed any card, sign or device to any person; or causing, permitting or allowing any sign or marking on or in any building, structure, newspaper, magazine or directory, or on radio or television; or advertising by any other means designed to secure public attention.

"Board" means the Illinois Community Association Manager Licensing and Disciplinary Board.

"Community association" means an association in which membership is a condition of ownership or shareholder interest of a unit in a condominium, cooperative, townhouse, villa, or other residential unit which is part of a residential development plan and that is authorized to impose an assessment, rents, or other costs that may become a lien on the unit or lot.

"Community Association Management Agency" means a company, firm, corporation, limited liability company, or other entity that engages in the community association management business and employs, in addition to the licensee-in-charge, at least one other person in conducting such business.

"Community association manager" means an individual who administers for remuneration the financial, administrative, maintenance, or other duties for the community association, including the following services: (A) collecting, controlling or disbursing funds of the community association or having the authority to do so; (B) preparing budgets or other financial documents for the community association; (C) assisting in the conduct of community association meetings; (D) maintaining association records; and (E) administering association contracts, as stated in the declaration, bylaws, proprietary lease, declaration of covenants, or other governing document of the community association. "Community association manager" does not mean support staff, including, but not limited to bookkeepers, administrative assistants, secretaries, property inspectors, or customer service representatives.

"Department" means the Department of Financial and Professional Regulation.

"License" means the license issued to a person to act as a community association manager under this Act or other authority to practice issued under this Act.

"Person" means any individual, firm, corporation, partnership, organization, or body politic.

"Licensee-in-charge" means a person licensed as a community association manager who has been designated by a Community Association Management Agency as the full-time management employee or owner who assumes sole responsibility for maintaining all records required by this Act and who assumes sole responsibility for assuring the licensed agency's compliance with its responsibilities as stated in the Act.

"Secretary" means the Secretary of Financial and Professional Regulation.

Section 15.

License required. Beginning 12 months after the adoption of rules providing for the licensure of a community association manager in Illinois under this Act, it shall be unlawful for any person, entity, or other business to provide community association management services or provide services as community association manager to any community association in this State, unless he or she holds a current and valid license issued licensed by the Department or is otherwise exempt from licensure under this Act.

Section 20. Exemptions.

(a) This Act does not apply to any of the following:

- (1) Any director, officer, or member of a community association providing one or more of the services of a community association manager without compensation for such services to the association.
- (2) Any person providing one or more of the services of a community association manager to a community association of 10 units or less.
- (3) A licensed attorney acting solely as an incident to the practice of law.
- (4) A person acting as a receiver, trustee in bankruptcy, administrator, executor, or guardian acting under a court order or under the authority of a will or of a trust instrument.
- (5) A person licensed in this State under any other Act from engaging the practice for which he or she is licensed.

(b) A licensed community association manager may not perform or engage in any activities for which a real estate broker or real estate salesperson's license is required under the Real Estate License Act of 2000, unless he or she also possesses a current license under the Real Estate License Act of 2000 and is providing those services as provided for in the Act and the applicable rules.

(c) A person may act as, or provide services as, a community association manager without being licensed under this Act if the person (i) is a community association manager regulated under the laws of another state or territory of the United States or another country and (ii) has applied in writing to the Department, on forms prepared and furnished by the Department, for licensure under this Act, but only until the expiration of 6 months after the filing of his or her written application to the Department, his or her withdrawal of the application, he or she has received a notice of intent to deny the application from the Department, or the denial of the application by the Department.

Section 25. Community Association Manager Licensing and Disciplinary Board.

(a) There is hereby created the Community Association Manager Board, which shall consist of 7 members appointed by the Secretary. All members must be residents of the State and must have resided in the State for at least 5 years immediately preceding the date of appointment. Five members of the Board must be licensees under this Act, except that, initially, these members must meet the qualifications for licensure and have obtained a license within 6 months after the effective date of this Act. Two members

of the Board shall be owners or shareholders of a unit in a community association at the time of appointment who are not licensees under this Act and have no direct affiliation or work experience with the community association manager. This Board shall act in an advisory capacity to the Department.

- (b) Board members shall serve for terms of 5 years, except that, initially, 4 members shall serve for 5 years and 3 members shall serve for 4 years. All members shall serve until his or her successor is appointed and qualified. All vacancies shall be filled in like manner for the unexpired term. No member shall serve for more than 2 successive terms. The Secretary shall remove from the Board any member whose license has become void or has been revoked or suspended and may remove any member of the Board for neglect of duty, misconduct, or incompetence. A member subject to formal disciplinary proceedings shall disqualify himself or herself from all Board business until the charge is resolved. A member also shall disqualify himself or herself from any matter on which the member cannot act objectively.
- (c) Four Board members shall constitute a quorum. A quorum is required for all Board decisions.
- (d) The Board may elect a chairperson and vice chairperson.
- (e) Each member shall receive reimbursement as set by the Governor's Travel Control Board for expenses incurred in carrying out the duties as a Board member. The Board shall be compensated as determined by the Secretary.
- (f) The Board may recommend policies, procedures, and rules relevant to the administration and enforcement of this Act.

Section 27. Immunity from Liability.

Any member of the Board, any attorney providing advice to the Board or Department, any person acting as a consultant to the Board or Department, and any witness testifying in a proceeding authorized under this Act, excluding the party making the complaint, shall be immune from liability in any civil action brought against him or her for acts occurring while acting in his or her capacity as a Board member, consultant, or witness, respectively, unless the conduct that gave rise to the action was willful or wanton misconduct.

Section 30. Powers and duties of the Department.

The Department may exercise the following functions, powers and duties:

- (a) formulate rules for the administration and enforcement of this Act;
- (b) prescribe forms to be issued for the administration and enforcement of this Act;
- (c) conduct hearings or proceedings to refuse to issue, renew, suspend, revoke, place on probation, reprimand, or take disciplinary or non-disciplinary action as the Department may deem appropriate under this Act;
- (d) maintain a roster of the names and addresses of all licensees in a manner as deemed appropriate by the Department; and
- (e) seek the advice and expert knowledge of the Board on any matter relating to the administration and enforcement of this Act.

Section 32. Social Security Number on license application.

In addition to any other information required to be contained in the application, every application for an original, renewal, or restored license under this Act shall include the applicant's Social Security Number.

Section 35. Functions and powers of the Board.

Subject to the provisions of this Act, the Board shall exercise, in an advisory capacity, the following functions and powers:

- (1) make recommendations regarding rules for the administration and enforcement of this Act, including, but not limited to, experience, education, licensure, disciplinary standards and procedures, renewal and restoration requirements;
- (2) make recommendations regarding subjects, topics and areas needed for the examination in order to fairly ascertain the fitness and qualifications of applicants for licensure; and “
- (3) make recommendations regarding discipline as provided for in this Act.

Section 40. Qualifications for licensure as a community association manager.

(a) No person shall be qualified for licensure under this Act, unless he or she has applied in writing on the prescribed forms and has paid the required, nonrefundable fees and meets all of the following qualifications:

- (1) He or she is at least 21 years of age.
 - (2) He or she provides satisfactory evidence of having completed at least 20 classroom hours in community association management courses approved by the Board.
 - (3) He or she has passed an examination authorized by the Department.
 - (4) He or she has not committed an act or acts, in this or any other jurisdiction, that would be a violation of this Act.
 - (5) He or she is of good moral character. Good moral character is a continuing requirement of licensure. Conviction of crimes other than felonies may be used in determining moral character, but shall not constitute an absolute bar to licensure.
 - (6) He or she has not been declared by any court of competent jurisdiction to be incompetent by reason of mental or physical defect or disease, unless a court has subsequently declared him or her to be competent.
 - (7) He or she complies with any additional qualifications for licensure as determined by rule of the Department.
- (b) The education requirement set forth in item (2) of subsection (a) of this Section shall not apply to persons holding a real estate broker or real estate salesperson license in good standing issued under the Real Estate License Act of 2000.
- (c) The examination and initial education requirement of items (2) and (3) of subsection (a) of this Section shall not apply to any person who within 6 months from the effective date of the requirement for licensure, as set forth in Section 170 of this Act, applies for a license by providing satisfactory evidence to the Department of qualifying experience or education, as may be set forth by rule, including without limitation evidence that he or she has (i) practiced community association management for a period of 5 years or (ii) achieved a designation awarded by recognized community association management organizations in the State.
- (d) Applicants have 3 years from the date of application to complete the application process. If the process has not been completed within the 3 years, the application shall be denied, the fee shall be forfeited, and the applicant must reapply and meet the requirements in effect at the time of re-application.

Section 45. Examinations.

- (a) The Department shall authorize examinations of applicants for licensure as a community association manager at such times and places as it may determine. The examination of applicants shall be of a character to give a fair test of the qualifications of the applicant to practice as a community association manager.
- (b) Applicants for examination shall be required to pay, either to the Department or the designated testing service, a fee covering the cost of providing the examination. (c) The Department may employ consultants for the purpose of preparing and conducting examinations.
- (c) An applicant shall be eligible to take the examination only after successfully completing the education requirements set forth in this Act and attaining the minimum age required under this Act.
- (d) The examination approved by the Department should utilize the basic principles of professional testing standards utilizing psychometric measurement. The examination shall use standards set forth by the National Organization for Competency Assurances and shall be approved by the Department.

Section 50. Community Association Management Agency.

- (a) No firm, corporation, limited liability company, or other legal entity shall provide or offer to provide community association management services, unless such services are provided through:
 - (1) an employee or independent contractor who is licensed under this Act;
 - (2) a natural person who is acting under the direct supervision of an employee of such firm, corporation, limited liability company, or other legal entity that is licensed under this Act; or
 - (3) a natural person who is legally authorized to provide such services.
- (b) Any firm, corporation, limited liability company, or other legal entity that is providing, or offering to provide, community association management services and is not in compliance with Section 50 and the provisions of this Act shall be subject to the fines, injunctions, cease and desist provisions, and penalties provided for in Sections 90, 92, and 155 of this Act.
- (c) No community association manager may be the licensee-in-charge for more than one firm, corporation, limited liability company, or other legal entity.

Section 55. Fidelity insurance; segregation of accounts.

- (a) A community association manager or the Community Association Management Agency with which he or she is employed shall not have access to and disburse funds of a community association unless each of the following conditions occur:
 - (1) There is fidelity insurance in place to insure against loss for theft of community association funds.
 - (2) The fidelity insurance is not less than all moneys under the control of the community association manager or the employing Community Association Management Agency for the association.
 - (3) The fidelity insurance covers the community association manager and all partners, officers, and employees of the Community Association Management Agency with whom he or she is employed during the term of the insurance coverage, as well as the association officers, directors, and employees.
 - (4) The insurance company issuing the fidelity insurance may not cancel or refuse to renew the bond without giving at least 10 days' prior written notice.
 - (5) Unless an agreement between the community association and the community association manager or the Community Association Management Agency provides to the contrary, the Association

secures and pays for the fidelity insurance. The community association manager and the Community Association Management Agency must be named as additional insured parties on the association policy.

- (b) A community association manager or Community Association Management Agency that provides community association management services for more than one community association shall maintain separate, segregated accounts for each community association or, with the consent of the association, combine the accounts of one or more associations, but in that event, separately account for the funds of each association. The funds shall not, in any event, be commingled with the community association manager's or Community Association Management Agency's funds. The maintenance of such accounts shall be custodial, and such accounts shall be in the name of the respective community association or community association manager or Community Association Management Agency as the agent for the association.
- (c) The community association manager or Community Association Management Agency shall obtain the appropriate general liability and errors and omissions insurance, as determined by the Department, to cover any losses or claims against community association clients.
- (d) The Department shall have authority to promulgate additional rules regarding insurance, fidelity insurance and all accounts maintained and to be maintained by a community association manager or Community Association Management Agency.

Section 60. Licenses; renewals; restoration; person in military service.

- (a) The expiration date and renewal period for each license issued under this Act shall be set by rule. The Department may promulgate rules requiring continuing education and set all necessary requirements for such, including but not limited to fees, approved coursework, number of hours, and waivers of continuing education.
- (b) Any licensee who has permitted his or her license to expire may have the license restored by making application to the Department and filing proof acceptable to the Department of fitness to have his or her license restored, by which may include sworn evidence certifying to active practice in another jurisdiction satisfactory to the Department, complying with any continuing education requirements, and paying the required restoration fee.
- (c) If the person has not maintained an active practice in another jurisdiction satisfactory to the Department, the Department shall determine, by an evaluation program established by rule, the person's fitness to resume active status and may require the person to complete a period of evaluated clinical experience and successful completion of a practical examination. However, any person whose license expired while (i) in federal service on active duty with the Armed Forces of the United States or called into service or training with the State Militia or (ii) in training or education under the supervision of the United States preliminary to induction into the military service may have his or her license renewed or restored without paying any lapsed renewal fees if, within 2 years after honorable termination of the service, training or education, except under condition other than honorable, he or she furnishes the Department with satisfactory evidence to the effect that he or she has been so engaged and that the service, training, or education has been so terminated.
- (d) A community association manager who notifies the Department, in writing on forms prescribed by the Department, may place his or her license on inactive status and shall be excused from the payment of renewal fees until the person notifies the Department in writing of the intention to resume active practice.
- (e) A community association manager requesting his or her license be changed from inactive to active status shall be required to pay the current renewal fee and shall also demonstrate compliance with the continuing education requirements.

- (f) Any license nonrenewed or on inactive status shall provide community association management services or provide services as community association manager as set forth in this Act.
- (g) Any person violating subsection (f) of this Section shall be considered to be practicing without a license and will be subject to the disciplinary provisions of this Act.

Section 65. Fees; Community Association Manager Licensing and Disciplinary Fund.

- (a) The fees for the administration and enforcement of this Act, including, but not limited to, initial licensure, renewal, and restoration, shall be set by rule of the Department. The fees shall be nonrefundable.
- (b) In addition to the application fee, applicants for the examination are required to pay, either to the Department or the designated testing service, a fee covering the cost of determining an applicant's eligibility and providing the examination. Failure to appear for the examination on the scheduled date, at the time and place specified, after the applicant's application and fee for examination have been received and acknowledged by the Department or the designated testing service, shall result in the forfeiture of the fee.
- (c) To support the costs of administering this Act, all community associations that have 10 or more units and are registered in this State as not-for-profit corporations shall pay to the Department an annual fee of \$50 plus an additional \$1 per unit. The Department may establish forms and promulgate any rules for the effective collection of such fees under this subsection (c). Any not-for-profit corporation in this State that fails to pay in full to the Department all fees owed under this subsection (c) shall be subject to the penalties and procedures provided for under Section 92 of this Act.
- (d) All fees, fines, penalties, or other monies received or collected pursuant to this Act shall be deposited in the Community Association Manager Licensing and Disciplinary Fund.

Section 70. Penalty for insufficient funds; payments.

Any person who delivers a check or other payment to the Department that is returned to the Department unpaid by the financial institution upon which it is drawn shall pay to the Department, in addition to the amount already owed to the Department, a fine of \$50. The Department shall notify the person that payment of fees and fines shall be paid to the Department by certified check or money order within 30 calendar days after notification. If, after the expiration of 30 days from the date of the notification, the person has failed to submit the necessary remittance, the Department shall automatically terminate the license or deny the application, without hearing. If, after termination or denial, the person seeks a license, he or she shall apply to the Department for restoration or issuance of the license and pay all fees and fines due to the Department. The Department may establish a fee for the processing of an application for restoration of a license to pay all expenses of processing this application. The Secretary may waive the fines due under this Section in individual cases where the Secretary finds that the fines would be unreasonable or unnecessarily burdensome.

Section 75. Endorsement.

The Department may issue a license as a licensed community association manager, without the required examination, to an applicant licensed under the laws of another state if the requirements for licensure in that state are, on the date of licensure, substantially equal to the requirements of this Act or to a person who, at the time of his or her application for licensure, possessed individual qualifications that were substantially equivalent to the requirements then in force in this State. An applicant under this Section shall pay all of the required fees. Applicants have 3 years from the date of application to complete the application process. If the process has not been completed within the 3 years, the application shall be denied, the fee shall be forfeited, and the applicant must reapply and meet the requirements in effect at the time of reapplication.

Section 80. Roster.

The Department shall maintain a roster of names and addresses of all persons who hold valid licenses and all persons whose licenses have been suspended, revoked or otherwise disciplined. This roster shall be available upon request and payment of the required fee as determined by the Department.

Section 85. Grounds for discipline; refusal, revocation, or suspension.

- (a) The Department may refuse to issue or renew, or may revoke a license, or may suspend, place on probation, fine, or take any disciplinary or non-disciplinary action as the Department may deem proper, including fines not to exceed \$10,000 for each violation, with regard to any licensee for any one or combination of the following causes:
- (1) Material misstatement in furnishing information to the Department.
 - (2) Violations of this Act or its rules.
 - (3) Conviction of or entry of a plea of guilty or nolo contendere to any crime that is a felony under the laws of the United States or any state or territory thereof or a misdemeanor of which an essential element is dishonesty or that is directly related to the practice of the profession.
 - (4) Making any misrepresentation for the purpose of obtaining a license or violating any provision of this Act or its rules.
 - (5) Professional incompetence.
 - (6) Gross negligence.
 - (7) Aiding or assisting another person in violating any provision of this Act or its rules.
 - (8) Failing, within 30 days, to provide information in response to a request made by the Department.
 - (9) Engaging in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud or harm the public as defined by the rules of the Department, or violating the rules of professional conduct adopted by the Department.
 - (10) Habitual or excessive use or addiction to alcohol, narcotics, stimulants, or any other chemical agent or drug that results in the inability to practice with reasonable judgment, skill, or safety.
 - (11) Discipline by another state, territory, or country if at least one of the grounds for the discipline is the same or substantially equivalent to those set forth in this Act.
 - (12) Directly or indirectly giving to or receiving from any person, firm, corporation, partnership or association any fee, commission, rebate, or other form of compensation for any professional services not actually or personally rendered.
 - (13) A finding by the Department that the licensee, after having his or her license placed on probationary status, has violated the terms of probation.
 - (14) Willfully making or filing false records or reports relating to a licensee's practice, including but not limited to false records filed any State or federal agencies or departments.
 - (15) Being named as a perpetrator in an indicated report by the Department of Children and Family Services under the Abused and Neglected Child Reporting Act and upon proof by clear and convincing evidence that the licensee has caused a child to be an abused child or neglected child as defined in the Abused and Neglected Child Reporting Act.
 - (16) Physical illness or mental illness or impairment, including, but not limited to, deterioration through the aging process or loss of motor skill that results in the inability to practice the profession with reasonable judgment, skill, or safety.
 - (17) Solicitation of professional services by using false or misleading advertising.

- (18) A finding that licensure has been applied for or obtained by fraudulent means.
 - (19) Practicing or attempting to practice under a name other than the full name as shown on the license or any other legally authorized name.
 - (20) Gross overcharging for professional services including, but not limited to, (i) collection of fees or moneys for services that are not rendered; and (ii) charging for services that are not in accordance with the contract between the licensee and the community association.
 - (21) Improper commingling of personal and client funds in violation of this Act or any rules promulgated thereto.
 - (22) Failing to account for or remit any moneys or documents coming into the licensee's possession that belong to another person or entity.
 - (23) Giving differential treatment to a person that is to that person's detriment because of race, color, creed, sex, religion, or national origin.
 - (24) Performing and charging for services without reasonable authorization to do so from the person or entity for whom service is being provided.
 - (25) Failing to make available to the Department, upon request, any books, records, or forms required by this Act.
 - (26) Purporting to be a licensee-in-charge of an agency without active participation in the agency.
 - (27) Failing to make available to the Department at the time of the request any indicia of licensure or registration issued under this Act.
- (b) In accordance with subdivision (a)(5) of Section 15 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois (20 ILCS 2105/2105-15), the Department shall deny a license or renewal authorized by this Act to a person who has defaulted on an educational loan or scholarship provided or guaranteed by the Illinois Student Assistance Commission or any governmental agency of this State.
 - (c) The determination by a circuit court that a licensee is subject to involuntary admission or judicial admission, as provided in the Mental Health and Developmental Disabilities Code, operates as an automatic suspension. The suspension will terminate only upon a finding by a court that the patient is no longer subject to involuntary admission or judicial admission and the issuance of an order so finding and discharging the patient, and upon the recommendation of the Board to the Secretary that the licensee be allowed to resume his or her practice as a licensed community association manager.
 - (d) In accordance with subsection (g) of Section 15 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois (20 ILCS 2105/2105-15), the Department may refuse to issue or renew or may suspend the license of any person who fails to file a return, to pay the tax, penalty, or interest shown in a filed return, or to pay any final assessment of tax, penalty, or interest, as required by any tax Act administered by the Department of Revenue, until such time as the requirements of that tax Act are satisfied.
 - (e) In accordance with subdivision (a)(5) of Section 15 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois (20 ILCS 2105/2105-15) and in cases where the Department of Healthcare and Family Services (formerly Department of Public Aid) has previously determined that a licensee or a potential licensee is more than 30 days delinquent in the payment of child support and has subsequently certified the delinquency to the Department may refuse to issue or renew or may revoke

or suspend that person's license or may take other disciplinary action against that person based solely upon the certification of delinquency made by the Department of Healthcare and Family Services.

- (f) In enforcing this Section, the Department or Board upon a showing of a possible violation may compel an individual licensed to practice under this Act, or who has applied for licensure under this Act, to submit to a mental or physical examination, or both, as required by and at the expense of the Department. The Department or Board may order the examining physician to present testimony concerning the mental or physical examination of the licensee or applicant. No information shall be excluded by reason of any common law or statutory privilege relating to communications between the licensee or applicant and the examining physician. The examining physicians shall be specifically designated by the Board or Department. The individual to be examined may have, at his or her own expense, another physician of his or her choice present during all aspects of this examination. Failure of an individual to submit to a mental or physical examination, when directed, shall be grounds for suspension of his or her license or denial of his or her application or renewal until the individual submits to the examination if the Department finds, after notice and hearing, that the refusal to submit to the examination was without reasonable cause. If the Department or Board finds an individual unable to practice because of the reasons set forth in this Section, the Department or Board may require that individual to submit to care, counseling, or treatment by physicians approved or designated by the Department or Board, as a condition, term, or restriction for continued, reinstated, or renewed licensure to practice; or, in lieu of care, counseling, or treatment, the Department may file, or the Board may recommend to the Department to file, a complaint to immediately suspend, revoke, deny, or otherwise discipline the license of the individual. An individual whose license was granted, continued, reinstated, renewed, disciplined or supervised subject to such terms, conditions, or restrictions, and who fails to comply with such terms, conditions, or restrictions, shall be referred to the Secretary for a determination as to whether the individual shall have his or her license suspended immediately, pending a hearing by the Department. In instances in which the Secretary immediately suspends a person's license under this Section, a hearing on that person's license must be convened by the Department within 30 days after the suspension and completed without appreciable delay. The Department and Board shall have the authority to review the subject individual's record of treatment and counseling regarding the impairment to the extent permitted by applicable federal statutes and regulations safeguarding the confidentiality of medical records. An individual licensed under this Act and affected under this Section shall be afforded an opportunity to demonstrate to the Department or Board that he or she can resume practice in compliance with acceptable and prevailing standards under the provisions of his or her license.

Section 87. Suspension of license for failure to pay restitution.

The Department, without further process or hearing, shall suspend the license or other authorization to practice of any person issued under this Act who has been certified by court order as not having paid restitution to a person under Section 8A-3.5 of the Illinois Public Aid Code or under Section 46-1 of the Criminal Code of 1961. A person whose license or other authorization to practice is suspended under this Section is prohibited from practicing until the restitution is made in full.

Section 90. Violations; injunctions; cease and desist orders.

- (a) If any person violates a provision of this Act, the Secretary may, in the name of the People of the State of Illinois, through the Attorney General of the State of Illinois, petition for an order enjoining the violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in court, the court may issue a temporary restraining order, without notice or bond, and may preliminarily and permanently enjoin the violation. If it is established that the person has violated or is violating the injunction, the Court may punish the offender for contempt of court. Proceedings under this Section are in addition to, and not in lieu of, all other remedies and penalties provided by this Act.
- (b) If any person, entity or other business may provide community association management services or provide services as community association manager to any community association in this State without having a valid license under this Act, then any licensee, any interested party or any person injured thereby may, in addition to the Secretary, petition for relief as provided in subsection (a) of this Section.

- (c) Whenever in the opinion of the Department any person, entity or other business violates any provision of this Act, the Department may issue a rule to show cause why an order to cease and desist should not be entered against such person, firm or other entity. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of at least 7 days from the date of the rule to file an answer to the satisfaction of the Department. If the person, firm or other entity fails to file an answer satisfactory to the Department, the matter shall be considered as a default and the Department may cause an order to cease and desist to be issued immediately.

Section 92. Unlicensed practice; violation; civil penalty.

- (a) Any person, entity or other business who practices, offers to practice, attempts to practice, or holds himself, herself or itself out to practice as a community association management service or provide services as community association manager to any community association in this State without being licensed under this Act shall, in addition to any other penalty provided by law, pay a civil penalty to the Department in an amount not to exceed \$10,000 for each offense, as determined by the Department. The civil penalty shall be assessed by the Department after a hearing is held in accordance with the provisions set forth in this Act regarding the provision of a hearing for the discipline of a licensee.
- (b) The Department may investigate any and all unlicensed activity.
- (c) The civil penalty shall be paid within 60 days after the effective date of the order imposing the civil penalty. The order shall constitute a judgment and may be filed and execution had thereon in the same manner as any judgment from any court of record. Section 95. Investigation; notice and hearing. The Department may investigate the actions or qualifications of a person, entity or other business holding or claiming to hold a license. Before suspending, revoking, placing on probationary status, or taking any other disciplinary action as the Department may deem proper with regard to any license, at least 30 days before the date set for the hearing, the Department shall (i) notify the accused in writing of any charges made and the time and place for a hearing on the charges before the Board, (ii) direct the individual or entity to file a written answer to the charges with the Board under oath within 20 days after the service on him or her of such notice, and (iii) inform the person, entity or other business that if the person, entity, or other business fails to file an answer, default will be taken against such person, entity, or other business and the license of such person, entity, or other business may be suspended, revoked, placed on probationary status, or other disciplinary action taken with regard to the license, including limiting the scope, nature, or extent of his or her practice, as the Department may deem proper. In case the person, after receiving notice, fails to file an answer, his or her license may, in the discretion of the Department, be suspended, revoked, placed on probationary status, or the Department may take whatever disciplinary action deemed proper, including limiting the scope, nature, or extent of the person's practice or the imposition of a fine, without a hearing, if the act or acts charged constitute sufficient grounds for such action under this Act. Written notice may be served by personal delivery or by registered or certified mail to the applicant or licensee at his or her last address of record with the Department. In case the person fails to file an answer after receiving notice, his or her license may, in the discretion of the Department, be suspended, revoked, or placed on probationary status, or the Department may take whatever disciplinary action deemed proper, including limiting the scope, nature, or extent of the person's practice or the imposition of a fine, without a hearing, if the act or acts charged constitute sufficient grounds for such action under this Act. The written answer shall be served by personal delivery, certified delivery, or certified or registered mail to the Department. At the time and place fixed in the notice, the Department shall proceed to hear the charges and the parties or their counsel shall be accorded ample opportunity to present such statements, testimony, evidence, and argument as may be pertinent to the charges or to the defense thereto. The Department may continue such hearing from time to time. At the discretion of the Secretary after having first received the recommendation of the Board, the accused person's license may be suspended or revoked, if the evidence constitutes sufficient grounds for such action under this Act.

Section 100. Record of proceeding.

The Department, at its expense, shall preserve a record of all proceedings at the formal hearing of any case involving the refusal to restore, issue or renew a license, or the discipline of a licensee. The notice of hearing, complaint and all other documents in the nature of pleadings and written motions filed in the proceedings,

the transcript of testimony, the report of the Board and the orders of the Department shall be the record of the proceedings.

Section 105. Subpoenas; oaths; attendance of witnesses.

The Department has the power to subpoena documents, books, records, or other materials and to bring before it any person and to take testimony either orally, by deposition, by written interrogatory, or any combination thereof, with the same fees and mileage and in the same manner as prescribed in civil cases in the courts of this State. The Secretary, the designated hearing officer, and every member of the Board has the power to administer oaths to witnesses at any hearing that the Department is authorized to conduct and any other oaths authorized in any Act administered by the Department. Any circuit court may, upon application of the Department or its designee, or of the applicant or licensee against whom proceedings under this Act are pending, enter an order requiring the attendance of witnesses and their testimony, and the production of documents, papers, files, books, records or testimony in connection with any hearing or investigation. The court may compel obedience to its order by proceedings for contempt.

Section 110. Recommendations for disciplinary action.

At the conclusion of the hearing, the Board shall present to the Secretary a written report of its findings and recommendations. The report shall contain a finding whether or not the accused person violated this Act or failed to comply with the conditions required in this Act. The Board shall specify the nature of the violation or failure to comply, and shall make its recommendations to the Secretary. The report of findings and recommendations of the Board shall be the basis for the Department's order for refusal or for the granting of a license, or for any disciplinary action, unless the Secretary shall determine that the Board's report is contrary to the manifest weight of the evidence, in which case the Secretary may issue an order in contravention of the Board's report. The finding is not admissible in evidence against the person in a criminal prosecution brought for the violation of this Act, but the hearing and finding are not a bar to a criminal prosecution brought for the violation of this Act.

Section 115. Rehearing.

In any hearing involving disciplinary action against a licensee, a copy of the Board's report shall be served upon the respondent by the Department, either personally or as provided in this Act for the service of the notice of hearing. Within 20 calendar days after service, the respondent may present to the Department a motion in writing for a rehearing that shall specify the particular grounds for rehearing. If no motion for rehearing is filed, then upon the expiration of the time specified for filing a motion, or if a motion for rehearing is denied, then upon denial, the Secretary may enter an order in accordance with recommendations of the Board, except as provided in this Act. If the respondent orders from the reporting service, and pays for, a transcript of the record within the time for filing a motion for rehearing, the 20 calendar day period within which a motion may be filed shall commence upon the delivery of the transcript to the respondent.

Section 120. Appointment of a hearing officer.

The Secretary has the authority to appoint any attorney duly licensed to practice law in the State of Illinois to serve as the hearing officer in any action for refusal to issue or renew a license, or to discipline a licensee. The hearing officer has full authority to conduct the hearing. The hearing officer shall report his findings and recommendations to the Board and the Secretary. The Board has 60 calendar days from receipt of the report to review the report of the hearing officer and present its findings of fact, conclusions of law and recommendations to the Secretary. If the Board fails to present its report within the 60 calendar day period, the respondent may request in writing a direct appeal to the Secretary, in which case the Secretary shall, within 7 calendar days after the request, issue an order directing the Board to issue its findings of fact, conclusions of law, and recommendations to the Secretary within 30 calendar days after such order. If the Board fails to issue its findings of fact, conclusions of law, and recommendations within that time frame to the Secretary after the entry of such order, the Secretary shall, within 30 calendar days thereafter, issue an order based upon the report of the hearing officer and the record of the proceedings or issue an order remanding the matter back to the hearing officer for additional proceedings in accordance with the order. If (i) a direct appeal is requested, (ii) the Board fails to issue its findings of fact, conclusions of law, and recommendations within the 30-day mandate from the Secretary or the Secretary fails to order the Board to do so, and (iii) the Secretary fails to issue an order within 30 calendar days thereafter, then the hearing

officer's report is deemed accepted and a final decision of the Secretary. Notwithstanding any other provision of this Section, if the Secretary, upon review, determines that substantial justice has not been done in the revocation, suspension, or refusal to issue or renew a license or other disciplinary action taken as the result of the entry of the hearing officer's report, the Secretary may order a rehearing by the same or other examiners. If the Secretary disagrees with the recommendation of the Board or the hearing officer, the Secretary may issue an order in contravention of either recommendation.

Section 125. Order; certified copy.

An order or a certified copy thereof, over the seal of the Department and purporting to be signed by the Secretary, shall be prima facie proof:

- (a) that the signature is the genuine signature of the Secretary;
- (b) that the Secretary is duly appointed and qualified; and
- (c) that the Board and its members are qualified to act.

Section 130. Restoration of suspended or revoked license.

At any time after the successful completion of a term of suspension or revocation of a license, the Department may restore it to the licensee, upon the written recommendation of the Board, unless after an investigation and a hearing the Board determines that restoration is not in the public interest.

Section 135. License surrender.

Upon the revocation or suspension of any license, the licensee shall immediately surrender the license or licenses to the Department. If the licensee fails to do so, the Department has the right to seize the license or licenses.

Section 140. Summary suspension.

The Secretary may summarily suspend a license without a hearing, simultaneously with the institution of proceedings for a hearing provided for in this Act, if the Secretary finds that evidence in his or her possession indicates that a continuation in practice would constitute an imminent danger to the public. In the event that the Secretary summarily suspends a license without a hearing, a hearing by the Department must be held within 30 calendar days after the suspension has occurred.

Section 145. Judicial review.

All final administrative decisions of the Department are subject to judicial review under the Administrative Review Law and its rules. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure. Proceedings for judicial review shall be commenced in the circuit court of the county in which the party applying for review resides; but if the party is not a resident of this State, the venue shall be in Sangamon County.

Section 150. Certification of records.

The Department shall not be required to certify any record to the Court or file any answer in court or otherwise appear in any court in a judicial review proceeding, unless there is filed in the court, with the complaint, a receipt from the Department acknowledging payment of the costs of furnishing and certifying the record. Failure on the part of the plaintiff to file such receipt in Court shall be grounds for dismissal of the action.

Section 155. Violations; penalties.

- (a) A person who violates any of the following provisions shall be guilty of a Class A misdemeanor; a person who commits a second or subsequent violation of these provisions is guilty of a Class 4 felony:
 - (1) The practice of or attempted practice of or holding out as available to practice as a community association manager without a license.
 - (2) Operation of or attempt to operate a Community Association Management Agency without an agency license.

- (3) The obtaining of or the attempt to obtain any license or authorization issued under this Act by fraudulent misrepresentation.
- (b) Whenever a licensee is convicted of a felony related to the violations set forth in this Section, the clerk of the court in any jurisdiction shall promptly report the conviction to the Department and the Department shall immediately revoke any license as a community association manager held by that licensee. The individual shall not be eligible for licensure under this Act until at least 10 years have elapsed since the time of full discharge from any sentence imposed for a felony conviction. If any person in making any oath or affidavit required by this Act swears falsely, the person is guilty of perjury and may be punished accordingly.

Section 160. Illinois Administrative Procedure Act.

The Illinois Administrative Procedure Act is expressly adopted and incorporated in this Act as if all of the provisions of that Act were included in this Act, except that the provision of paragraph (d) of Section 10-65 of the Illinois Administrative Procedure Act, which provides that at hearings the license holder has the right to show compliance with all lawful requirements for retention, continuation or renewal of the certificate, is specifically excluded. For the purpose of this Act the notice required under Section 10-25 of the Illinois Administrative Procedure Act is deemed sufficient when mailed to the last known address of record maintained for a party by the Department.

Section 165. Home rule.

The regulation and licensing of community association managers and Community Association Management Agencies are exclusive powers and functions of the State. A home rule unit may not regulate or license community association managers and Community Association Management Agencies. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

Section 170. Enforcement. The licensure requirements of this Act shall not be enforced until 12 months after the adoption of final administrative rules for this Act.