

## MINUTES

**CBA Real Estate Section Council**  
**Date: March 15, 2016 – 3:00 p.m.**

**Colorado Bar Association Offices**  
**1900 Grant Street, 9<sup>th</sup> Floor**  
**Denver, Colorado**

### **I. Call to Order**

Mr. Sweetser called the meeting to order at 3:03 p.m.

### **II. Introduction of Guests**

Mr. Sweetser welcomed guests Eric Snyder, Alex Pankonin, Miro Kovacevic and (by telephone) Mike Shea.

### **III. Approval of Minutes**

The minutes of the February 16, 2016 RESC meeting were approved, subject to corrections noted by Mr. Alt and Mr. Sweetser.

### **IV. Financial Report**

Mr. Calvin reported that the Real Estate Section officially had \$41,938.64 in its account as of February 29, 2016, but noted that this figure was approximately \$13,000 lower than it should have been, due to an error in booking travel expenses incurred by a different CBA program. The error is expected to be corrected before next month's meeting.

### **V. Action Items**

#### **A. Nominating Committee.**

Mr. Sweetser noted that under the Bylaws of the Real Estate Section, the Chair is to appoint the members of the committee, subject to approval by the RESC. He had appointed Ms. Leff, Ms. Dunn, and Mr. Lubinski as the committee members. They will work with Mr. Calvin, as chair of the committee, and Ms. Collier Smith, who will be compiling applications for seats on the Council. Mr. Alt moved approval of the Chair's appointments. The motion was seconded and adopted on a voice vote.

### **VI. Reports**

#### **A. Eben Clark.** Mr. Sweetser reported that Mr. Clark was absent from the meeting due to the death of his father, and added that the Real Estate Section is donating

\$250 to the Michael J. Fox Foundation for Parkinson's Research in memory of Eben's father.

B. Mortgage Loan Originator Legislation

Mr. Killean reported that the task force had had a conference call with representatives of the Colorado Mortgage Lenders Association, and CMLA had made it clear that it would not include the exemption language drafted by the RESC group in the CMLA bill. In fact, CMLA reported that Marcia Waters, Director of the Division of Real Estate in the Colorado Department of Regulatory Agencies, had expressed a negative view of the proposed language. Messrs. Killean, Clark and Sweetser had subsequently met with Ms. Waters and had shown her two alternative approaches to protecting intra-family and other non-commercial mortgage lenders from the mortgage loan originator licensing requirements. One approach tracked the language of the federal SAFE Act closely; the other approach modified the existing exemption for up to three carryback loans per year by expanding the number to five and eliminating the carryback limitation. Ms. Waters had not been impressed with the SAFE Act approach, but had agreed to submit the second alternative to the CFPB for comment. Shortly before today's meeting, Ms. Waters had reported that the her CFPB contact had expressed concern that the proposed expansion of the MLO exemption would violate the SAFE Act, and that Ms. Waters would not support the proposed amendment if there was a risk that the CFPB would treat the Colorado MLO system as noncompliant.

Mr. Killean reported on a survey of the approaches taken by several surrounding states to the MLO issue. There was no uniformity of approach, though most other states provided more protection to "casual" lenders than Colorado does. Mr. Schupbach commented that it was unrealistic to pursue the proposed amendment further in the current session, and that the Section should plan to work with CMLA and Ms. Waters over the summer to arrive at a consensus approach that could gain approval from the CFPB.

C. HB16-1005 (Rain barrel bill)

Mr. Schupbach reported that the bill had been amended as requested by the Community Association Institute and was working its way through the legislature, with a good chance of passage.

D. Supreme Court Rules Committee (C.A.R. 8(d))

Mr. Sweetser reported on a committee proposal to move Colorado Appellate Rule 8(d) to C.R.C.P. 121. The rule permits an appellant who is a judgment debtor to post a bond to remove a judgment lien from the appellant's property pending appeal. The proposed change does not seem to affect real estate lawyers, but after some discussion as to whether the rule permits recourse against the bond, and

whether having the rule relocated to C.R.C.P. would make the bonding procedure unavailable for appeals from the Court of Appeals to the Supreme Court, Mr. Sweetser asked Ms. Arnold and Mr. Anderson to meet with him to consider the issues in more depth.

E. HELOC Release Proposal

Mr. Schupbach reported that the bill was making its way through the legislature. He noted that this bill, like many others, was being delayed pending resolution of the political logjam surrounding appropriations issues.

F. Spring Meeting

Mr. Sweetser reported that the spring meeting will be held April 8, 2016 at the Inverness Hotel, followed by dinner at the Chinook Restaurant. Both the hotel and the restaurant have submitted proposed contracts, which Ms. Collier Smith will review. The RESC meeting will run from 3:00 to 5:00 p.m., followed by a reception for members of the Arapahoe and Douglas County Bars. Dinner will be served around 6:30. Spouses are invited. Ms. Collier Smith will circulate a questionnaire regarding menu choices and information as to which invitees will stay overnight at the Inverness Hotel.

G. Budget Committee

Mr. Sweetser reported that the budget committee consists of the Chair, Vice Chair, Secretary, and immediate Past Chair of the Section, plus the CBA staff liaison. Meeting dates are being arranged. The committee will distribute a proposed budget for discussion at the May RESC meeting, with a vote planned for the June RESC meeting.

H. 2016 Symposium Update

Ms. Nies reported that everything was on track – all speakers' slots have been filled.

I. Beneficial Ownership Tracking

Mr. Sweetser reminded the members of Mr. Toft's report in January, regarding the Treasury Department's announcement that it would require title companies to report on the ultimate beneficial owners of entities that made all-cash purchases of high-end residential properties in Miami-Dade and Manhattan. He noted that federal legislation in the form of H.R. 4550 had now been introduced in Congress. The bill refers to persons who serve as "licensed formation agents" in creating new corporations, limited liability companies and other entities, and while it does not single out lawyers for special responsibilities, the language is clearly broad enough to extend to lawyers involved in entity formation as well as to professional registered agents.

J. Torrens System Repeal

Mr. Sweetser reported on the memorandum by Mike Shea, counsel to the Colorado County Clerks Association, that had been distributed before the meeting, and Mr. Shea expanded on those remarks. The county clerks find maintaining Torrens system records to be burdensome. No property has been newly registered under the Torrens system for more than 10 years, and in most counties the only people with any experience with the system have retired or are about to do so. Mr. Shea added that Pam Anderson, the executive director of the Clerks Association, is setting up a working group of Clerks to consider the possible abolition of the Torrens system in Colorado. Ms. Dunn observed that lenders needed to be involved to address any issues affecting Torrens property that is still subject to a mortgage. Mr. Shea suggested that the Council should contact Ms. Anderson directly. Mr. Sweetser will select a couple of volunteers to work on this project.

K. Disputed Access to Land Records

Mr. Anderson reported on the article that had been circulated at his request, describing litigation between two private vendors over whether one of them had the right to control access to land title records by the public. The case had been resolved in favor of broader access, but the decision did not reflect a strong affirmation of the public nature of the records or of the public interest in having open access to them. The decision probably foreshadows other disputes over public access to public records that have commercial value.

L. Legislative Policy Committee

Mr. Schupbach reported that this has been a quiet year compared to some. There have not been many real estate-related bills, apart from the rain barrel bill, the TD 1000 bill and the technology fund bill. Ms. Leff noted that the rain barrel bill had been amended to provide for supervision by the State Engineer and reporting of possible impacts on senior water rights. Mr. Schupbach said that after the appropriation or “long bill” passes, there may be additional legislation, including a construction defects bill. If there is such a bill, it will probably not have been pre-negotiated, but will reflect the interests of developers only, so the RESC may find it necessary to take a position.

M. Membership and Practice Development Committee

Mr. Starritt, Mr. Payne and Mr. Osborn reported. They are proposing a happy hour this spring, involving a Q&A session for possible new members. Mr. Osborn and Mr. Starritt are coordinating these efforts.

N. Publications/Newsletter, Website, Discussion Group

Mr. Lubinski reported that the next newsletter was still on track to be published in late March or early April. There will be a new article on “friendly” foreclosures. There will also be a reminder of the deadline for submission of applications for membership on the Real Estate Section Council, though this reminder will come late in the process.

O. Education/CLE

Mr. Mayo reported that the Spring 2016 CLE program will be held on March 17. Ms. Leff has agreed to take over the moderator’s role. Ms. Ray reported that 83 attendees had signed up, and that she’d noticed there were no brochures for the program left in the 3<sup>rd</sup> Floor lobby, another indication of strong interest.

Mr. Anderson reported that he will be teaching a quiet title seminar on May 20, also at the CLE classroom on the 3<sup>rd</sup> Floor of 1900 Grant Street.

P. Education/Topical Lunches

Ms. Alderman reported that the next topical lunch will be April 7, at Maggiano’s southeast location; Corey Zurbuch will speak on friendly foreclosures. The May 5 topical lunch will be downtown, and will feature Jamie Baker Roskie on creative solutions for the affordable housing crisis. The June topical lunch, on an ethics topic, will be southeast again.

Q. Business Law Section Liaison

Mr. Bergstrom said the Business Law Section would be meeting the next day, so there was nothing to report at this time.

R. Interprofessional Committee

Ms. Leff reported that there had been discussion of a need for a new deed form – a special warranty deed by a different name – but that the committee was only beginning to discuss the legal implications of using a different form for residential conveyances. Mr. Sweetser commented that the present approach followed by some title companies, using a general warranty deed with exceptions by reference to an unrecorded contract, did not protect either buyers or sellers. Ms. Decker asked for a concise statement of legal concerns that she could present at the next meeting, and Mr. Sweetser said he would provide some comments. Ms. Decker also noted that she had submitted a written report, *attached*.

S. Publications/Colorado Lawyer

Mr. Lubinski reported that a new article had been received. It was too long for the newsletter and too informal for the Colorado Lawyer, but the author is revising it for the Colorado Lawyer.

T. Community Service/Charitable Committee

Mr. Mayo reported that the LawLine 9 event on February 24 had been very successful. This had been the best turnout from volunteers, and the telephones had rung nonstop.

U. Colorado Housing Council

Ms. Wendel submitted a written report, *attached*. She added that the last meeting had been focused on the lack of affordable housing in many parts of the state. Ms. Decker mentioned in that connection that HB16-1334 would allow, but not require, counties to adopt regulations concerning micro housing in an effort to increase the supply of affordable housing.

V. Trust & Estate Section Liaison

Mr. Kirch indicated that there were no new developments involving the Trust & Estate Section. Mr. Schupbach noted that the Land Title Association was concerned with the language changes in SB16-132, one of the Trust & Estate Section's omnibus bills, dealing with supplementary affidavits, and Mr. Sweetser responded that this issue would be addressed after the meeting.

W. Young Lawyers Division Liaison

Mr. Osborn reported that the planned social event with young brokers had taken place on February 18, and had been well attended by both brokers and lawyers.

X. Cannabis Law Committee Liaison

Ms. Dunn reported that the committee is beginning to focus on legislative matters, but was still learning about the process; the committee had wanted to comment on one bill, but didn't realize that the bill had been amended in crucial ways before their comments were finalized and submitted.

Y. Tax Section Liaison

Mr. Murray reported that the section was working to assemble expense numbers to support their proposal that costs and revenues of the annual legislative update event be shared among tax, real estate, business law, and trust & estate sections.

Z. Forms Sub-Committee Liaison

Mr. Anderson reported that there had been a two-hour discussion with brokers regarding unauthorized practice of law. Brokers would like to give notice of title objections, but recognized that this might be the unauthorized practice of law. They hope to develop a form that would allow them to object to an appraisal, but not to matters of survey or title. Ms. Waggener suggested that the next newsletter include an invitation to Section members, to send comments on Real Estate Commission-approved forms to Mr. Anderson. Mr. Anderson noted that the Commission's self-imposed moratorium on changing forms applied on a form-by-form basis, so in any given year it was likely that a number of forms could be considered for modification despite the moratorium.

AA. Supreme Court Civil Rules Committee Liaison

No report this month.

BB. Title Standards Committee

No report this month.

CC. Board of Governors

No report this month.

DD. CBA Ethics Committee Liaison

No report this month.

EE. Eminent Domain Committee

No report this month.

**VII. Adjournment**

The meeting was adjourned at 4:49 p.m.

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Charles D. Calvin, Secretary

**Date:** March 24, 2016  
**To:** Real Estate Law Section Council  
**From:** Kristin Decker, Suzanne Leff and Katy Dunn  
**Re:** Interprofessional Committee Meeting – March 17, 2016

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Colorado Association of Realtors (Scott Peterson and Ted Leighty)

1. CAR is opposing the majority of changes to the definition of standard form in Rule F-7.
2. CAR is supporting the affordable housing bills (first-time homebuyer bill, low income housing tax credit bill and construction defect bill).

Land Title Association of Colorado (Margaret Cook)

1. Legislative Issues: LTAC is in support of the TD 1000 bill (HB16-1145), the Clerk's fee bill (HB16-115) and the newest version of the HELOC bill (HB16-1356).
2. Title Insurance: LTAC is working with the Division of Insurance on Regulation 8-1-4, fiduciary duties, which primarily will focus on misuse of escrow funds.
3. LTAC is supportive of the use of a residential grant deed form, but only if an existing form is used.

Forms Committee

There was discussion regarding inspection objections and that five of the six objections do not have a form. One proposal is to have a checkbox for each of the six on one form; however, there is concern that allowing a realtor to check a box would constitute the improper practice of law. A proposed solution is to split the inspection objections into two categories: (1) broker objections and (2) other objections that should be reviewed by an attorney.

Colorado Coalition of Appraisers (Lee Ormiston)

There will be an all-day seminar on August 18<sup>th</sup> hosted by the Denver Internal Revenue Service office and the Northern Coalition of Appraisers on conservation easements.

Colorado Mortgage Lenders Association (Terry Jones)

1. Legislative Issues: Governor signed the disclosure bill (SB16-14). The SAFE Act (HB16-1306) has not been introduced in the Senate yet. CMLA is willing to support revised exemption language, but only if it is consistent with CFPB regulations.
2. Proposed Changes to Rule 120 of the Rules of Civil Procedure: CMLA believes the changes are an end-around and will be commenting.

Division of Insurance (Neil Derr)

1. Regulation 8-1-3: The notice of the public hearing will be given by the end of March.
2. Regulation 8-1-4: Three to four more working group meetings will be held.
3. Market Conduct: The final draft will be circulated by the end of the week.

Colorado Division of Real Estate (Gary Kujawski)

SEE ATTACHMENTS



**DEPARTMENT OF REGULATORY AGENCIES  
DIVISION OF REAL ESTATE  
REAL ESTATE COMMISSION  
4 CCR 725-1**

**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING  
April 5, 2016**

**RULE F. USE OF COMMISSION APPROVED FORMS**

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Commission.

**STATEMENT OF BASIS**

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Parts 1 and 8 of Title 12, Article 61, Colorado Revised Statutes, as amended. The specific rulemaking provisions contained therein are sections 12-61-114.5 and 12-61-803(4), C.R.S.

**STATEMENT OF PURPOSE**

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

**SPECIFIC PURPOSE OF THIS RULEMAKING**

The specific purpose of this rule is to amend or repeal existing rules with respect to the proper use of standard and Commission approved forms and ensures compliance with the Colorado Supreme Court Conway-Bogue decision.

**PROPOSED NEW, AMENDED AND REPEALED RULES**

Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced.

**Proposed New, Amended and Repealed Rules**

**Rule F. USE OF COMMISSION APPROVED FORMS**

**F-1. Permitted and prohibited form modifications**

- (a) No modifications shall be made to a Commission-approved form by a broker except as provided in rules promulgated by the Commission and as set forth in this Rule F-1 through F-7. For purposes of Rule F-1 through F-7, the term "Commission-approved form" means any form promulgated by the Commission; the term "broker" shall also include brokerage firm.
- (b) A broker may add its firm name, address, telephone, e-mail, trademark or other identifying information on a Commission-approved form.
- (c) A broker may add initial lines at the bottom of a page of any Commission-approved form.

- (d) Any deletion to the printed body of a Commission-approved form, or any “Additional Provision” or “Addenda” which by its terms serves to ~~amend or delete~~ portions of the approved language, must result from negotiations or the instruction(s) of a party to the transaction and must be made directly on the printed body of the form by striking through the ~~amended or deleted~~ portion in a legible manner that does not obscure the deletion that has been made.
- (e) Blank spaces on a Commission-approved form may be lengthened or shortened to accommodate the applicable data or information.
- (f) Provisions that are inserted into blank spaces must be printed in a style or type that clearly differentiates such insertions from the style or type used for the Commission-approved form language.
- (g) A broker may ~~omit~~DELETE part or all of the following provisions of a Commission-approved ~~(changed font)~~ “Contract to Buy and Sell Real Estate” (even if the provision is identified by a different Section number), or corresponding provisions in other Commission-approved forms, if such provisions do not apply to the transaction. In the event any provision is ~~omitted~~DELETED, the provision’s caption or heading must remain unaltered on the form followed by the word “OMITTED-NOT APPLICABLE”.
1. Section 2.5 Inclusions in its entirety or any of its subsections
  2. Section 2.6 Exclusions
  3. Section 4.4 4.2 Seller Concessions
  4. Section 4.5 New Loan in its entirety or any of its subsections
  5. Section 4.6 Assumption
  6. Section 4.7 Seller or Private Financing
  7. Section 5 Financing Conditions and Obligations in its entirety or any of its sections
  8. Section 6 Appraisal Provisions in its entirety or any of its subsections
  9. Section ~~7.3 Homeowners’ Association Documents~~ 7 OWNERS’ ASSOCIATION in its entirety or any of its subsections
  10. Section ~~8.4 8.5~~ Special Taxing Districts
  11. Section ~~8.5 8.6~~Right of First Refusal or Contract Approval
  12. Section 10.6 Due Diligence Documents IN ITS ENTIRETY OR ANY OF ITS SUBSECTIONS
  13. ~~Section 10.7 Due Diligence Documents Conditions in its entirety or any of its subsections~~SECTION 10.8 SOURCE OF POTABLE WATER (CBS1, CBS2, CBS4, CBSF1)
  14. ~~Section 10.8 Due Diligence Environmental, ADA (CBS2, CBS3, CBS4)~~
  15. ~~Section 10.7.3 Source of Potable Water (CBS4)~~
  - 16.14. Section ~~10.9~~10.8 Existing Leases; Modification of Existing Leases; New Leases (CBS3, CBS4)
  - 17.15. Section ~~10.15~~10.9 Existing Leases; Modification of Existing Leases; New Leases (CBS2 CBS4)
  16. SECTION 10.12 EXISTING LEASES; MODIFICATION OF EXISTING LEASES; NEW LEASES (CBS2)
  - 18.17. Section 11 Tenant Estoppel Statements in its entirety or any of its subsections (CBS2, CBS3, CBS4)

~~19-18. Section 15.3 Status LETTER AND RECORD CHANGE and Transfer Letter Fees~~

~~20-19. Section 15.4 Local Transfer Tax~~

~~21-20. Section 15.6 Sales and Use Tax~~ SECTION 15.5 PRIVATE TRANSFER FEE

~~22-21. Section 16.2 Rents~~ SECTION 15.7 SALES AND USE TAX

22. SECTION 16.2 RENTS

23. Section 16.3 Association Assessments

- (h) A broker may add an additional page to the “Contract to Buy and Sell Real Estate”, “Counterproposal” and the “Agreement to Amend/Extend Contract”, following such document, that contains the dates and deadlines information set forth in § 3, arranged in chronological date sequence.
- (i) A broker may ~~omit~~DELETE part or all of the following provisions of the “Counterproposal” and the “Agreement to Amend/Extend Contract” if such provisions do not apply to the transaction. In the event any provision is ~~omitted~~DELETED, the provision’s caption or heading must remain unaltered on the form followed by the words “OMITTED-NOT APPLICABLE”.
  - 1. Section 3 Dates and Deadlines table
  - 2. Section 4 Purchase Price and Terms [in the Counterproposal only]
- (j) A broker may substitute the term “Landlord” for the term “Seller” and the term “Tenant” for the term “Buyer” in the Brokerage Disclosure to Buyer form, in the Brokerage Disclosure to Seller and Definitions of Working Relationships form when making disclosures in a lease transaction (or use the separate Brokerage Disclosure To Tenant form).
- (k) A broker may add signature lines and identifying labels for the parties signatures on a Commission-approved form.
- (l) A broker may modify, strike or delete such language on a Commission-approved form as the Commission may from time to time authorize to be modified, stricken or deleted.

**A hearing on the above subject matter will be held on Tuesday, April 5, 2016 at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 9:00 a.m.**

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

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**Proposed New, Amended and Repealed Rules**

**Rule F. USE OF COMMISSION APPROVED FORMS**

F-2. Additional Provisions

- (a) The "Additional Provisions" section of a Commission-approved form must contain only those transaction-specific terms or acknowledgments that result from negotiations or the instruction(s) of the party(ies) to the transaction.
- (b) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in the "Additional Provisions" section of a Commission-approved form. A BROKER MAY, AT THE DIRECTION OF A PRINCIPAL PARTY, INCLUDE LANGUAGE REGARDING PAYMENT OF THE BROKER'S OR BROKERAGE'S COMMISSION IF THIS IS A TERM OF NEGOTIATION BETWEEN THE PRINCIPAL PARTIES OF THE CONTRACT TO BUY AND SELL.

- (C) A BROKER WHO USES A CLAUSE OR CLAUSES, DRAFTED BY THE BROKER'S ATTORNEY, MUST ENSURE THAT THE BROKER UNDERSTANDS THE CLAUSE, AND THE CLAUSE IS USED AND COMPLETED APPROPRIATELY. THE BROKER MUST RETAIN THE CLAUSE(S) PREPARED BY THE BROKER'S ATTORNEY FOR FOUR (4) YEARS FROM THE DATE THAT THE FORM WAS LAST USED BY THE BROKER. THE BROKER MUST PROVIDE SAID CLAUSE(S) AND THE NAME OF THE ATTORNEY OR LAW FIRM THAT PREPARED THE CLAUSE(S) UPON REQUEST BY THE COMMISSION.

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**Proposed New, Amended and Repealed Rules**

**Rule F. USE OF COMMISSION APPROVED FORMS**

F-3. Addenda

- (a) If a broker originates or initiates the use of a preprinted or prepared addendum that modifies or adds to the terms of a Commission-approved contract form which does not result from the negotiations of the parties, such addendum must be prepared by:
  - (1) an attorney representing the broker or brokerage firm; or
  - (2) a principal party to the transaction; or
  - (3) an attorney representing a principal party.
- (b) An addendum permitted by this Rule F- 3 (a), shall not be included within the body of, or in the "Additional Provisions" section of, a Commission-approved form.

- (c) A broker who is not a principal party to the contract may not insert personal provisions, personal disclaimers or exculpatory language in favor of the broker in an addendum. A BROKER MAY, AT THE DIRECTION OF A PRINCIPAL, INCLUDE LANGUAGE REGARDING PAYMENT OF THE BROKER'S OR BROKERAGE'S COMMISSION IF THIS IS A TERM OF NEGOTIATION BETWEEN THE PRINCIPAL PARTIES OF THE CONTRACT TO BUY AND SELL.
- (d) If an addendum is prepared by a broker's attorney, the following disclosure must appear on the first page of the addendum in the same sized type as the size of type used in the addendum: "This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm's) legal counsel, INSERT NAME OF ATTORNEY OR LAW FIRM." Broker must retain the document prepared by broker's attorney for FOUR (4) years from the date such addendum was last used by the Broker and provide said document and the name of the attorney or law firm that prepared the addendum to the Commission upon request,
- ~~(e) If an addendum to a listing, tenant or right to buy contract, is prepared by a broker or brokerage firm, the following disclosure must appear on the first page of the addendum in the same sized type as the size of type used in the addendum: "This addendum has not been approved by the Colorado Real Estate Commission. It was prepared by (insert licensed name of broker or brokerage firm)."~~

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**NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING  
April 5, 2016**

**RULE F. USE OF COMMISSION APPROVED FORMS**

Pursuant to and in compliance with Title 12, Article 61 and Title 24, Article 4, C.R.S. as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Colorado Real Estate Commission (the "Commission") to promulgate rules, or to amend, repeal or repeal and re-enact the present rules of the Commission.

**STATEMENT OF BASIS**

The statutory basis for the rules titled Rules of the Colorado Real Estate Commission is Parts 1 and 8 of Title 12, Article 61, Colorado Revised Statutes, as amended. The specific rulemaking provisions contained therein are sections 12-61-114.5 and 12-61-803(4), C.R.S.

**STATEMENT OF PURPOSE**

The purpose of this rule is to effectuate the legislative directive to promulgate necessary and appropriate rules in conformity with the state statutes of the real estate practice act.

**SPECIFIC PURPOSE OF THIS RULEMAKING**

The specific purpose of this rule is to amend or repeal existing rules with respect to the proper use of standard and Commission approved forms and ensures compliance with the Colorado Supreme Court Conway-Bogue decision.

**PROPOSED NEW, AMENDED AND REPEALED RULES**

Deleted material shown ~~struck through~~, new material shown ALL CAPS. Rules, or portions of rules, which are unaffected are reproduced.

**Proposed New, Amended and Repealed Rules**

**Rule F. USE OF COMMISSION APPROVED FORMS**

~~F-7. Commission Approved Forms~~ **USE OF FORMS**

PURSUANT TO SECTION 12-61-803(4), C.R.S., A BROKER IS AUTHORIZED ONLY TO COMPLETE FORMS AND TO COMPLETE ONLY TWO TYPES OF FORMS: (i) FORMS PROMULGATED BY THE COMMISSION ("COMMISSION-APPROVED FORM(S)"), AND (ii) STANDARD FORMS ("STANDARD FORM(S)") PREPARED FOR USE BY A LICENSEE IN MULTIPLE TRANSACTIONS AS DESCRIBED IN (B) THROUGH (D) BELOW.

(A) IF THERE IS A COMMISSION-APPROVED FORM APPLICABLE TO THE TRANSACTION OR CIRCUMSTANCES, THE BROKER MUST USE THE COMMISSION-APPROVED FORM. BROKERS CAN SEE THE CURRENT LIST OF COMMISSION-APPROVED FORMS AT THE



DIVISION OF REAL ESTATE'S WEBSITE ONLINE. THE ONLY EXCEPTION TO THE REQUIRED USE OF AN APPLICABLE COMMISSION-APPROVED FORM IS A BROKER'S USE OF A LISTING CONTRACT DRAFTED BY AN ACTIVELY LICENSED COLORADO ATTORNEY IN LIEU OF THE COMMISSION-APPROVED LISTING CONTRACT.

(B) A STANDARD FORM MEANS A DOCUMENT THAT:

- 1) CONTAINS FIXED WORDING WITH SPACES AND/OR BLANKS TO BE FILLED IN BY THE BROKER; AND
- 2) IS INTENDED TO BE USED REPEATEDLY BY A BROKER IN THE PERFORMANCE OF THE BROKER'S LICENSED DUTIES; AND
- 3) IS VISIBLY DISTINGUISHABLE FROM COMMISSION-APPROVED FORMS; AND
- 4) IS DRAFTED BY ONE OF THE FOLLOWING:
  - i. THE BROKER'S OR BROKERAGE FIRM'S ATTORNEY (EXAMPLES INCLUDE DISCLOSURES, ADDENDA, LEASES AND PROPERTY MANAGEMENT AGREEMENTS); OR
  - ii. THE ATTORNEY FOR THE BROKER'S PRINCIPAL IF THE BROKER IS THE AGENT FOR A PARTY TO A TRANSACTION, OR THE ATTORNEY FOR A PARTY ASSISTED BY THE BROKER IF THE BROKER IS A TRANSACTION BROKER IN THE TRANSACTION, AND IN EITHER CASE FOR THE BROKER TO USE IN A SERIES OF TRANSACTIONS IN WHICH THE BROKER REPRESENTS THAT PRINCIPAL OR ASSISTS THAT PARTY; OR
  - iii. A GOVERNMENTAL AGENCY OR A LENDER REGULATED BY STATE OR FEDERAL LAW.
- 5) IF COVERED BY (4)(i) OR (4)(ii), CONTAINS AT THE TOP OF THE DOCUMENT THE LANGUAGE IN (D)(2) BELOW.

(C) A STANDARD FORM COVERED BY (4)(i) OR (4)(ii) *CANNOT*:

- 1) CONTAIN THE SAME FONT OR FORMATTING AS THE COMMISSION-APPROVED FORMS; OR
- 2) HAVE ANY OF ITS FIXED OR PRE-PRINTED LANGUAGE DELETED OR OTHERWISE MODIFIED FOR ANY USE OF THE FORM UNLESS THE BROKER OR BROKERAGE FIRM HAS CONSULTED WITH THE BROKER'S OR BROKERAGE FIRM'S ATTORNEY AS TO THAT SPECIFIC USE OF THE FORM REGARDING THE PROPOSED CHANGE(S) AND RESULTING CONSEQUENCES; OR
- 3) BE SPECIFICALLY DRAFTED OR TAILORED TO SUIT ONLY A SPECIFIC TRANSACTION IN WHICH IT WILL BE USED; OR
- 4) BE USED WHEN A COMMISSION-APPROVED FORM EXISTS FOR THE SAME PURPOSE, EXCEPT AS STATED IN (A) ABOVE.

(D) BROKERS AND BROKERAGE FIRMS ARE REQUIRED TO DO ALL OF THE FOLLOWING IN ORDER TO COMPLETE A STANDARD FORM COVERED BY (4)(i) OR (4)(ii):

- 1) CONSULT WITH AN ACTIVELY LICENSED COLORADO ATTORNEY CONCERNING THAT STANDARD FORM ON AT LEAST AN ANNUAL BASIS CONCERNING THE

- APPROPRIATE USE OF THE STANDARD FORM AND ITS EFFECTIVENESS AND COMPLIANCE WITH CURRENT LAW AND COMMISSION REGULATIONS; AND
- 2) INCLUDE THE FOLLOWING LANGUAGE AT THE TOP OF THE FIRST PAGE OF THE STANDARD FORM IN CAPITALIZED FONT AT LEAST AS LARGE AS THE LARGER OF THE TITLE OR BODY OF THE DOCUMENT:

"THIS FORM HAS NOT BEEN APPROVED BY THE COLORADO REAL ESTATE COMMISSION. IT WAS PREPARED BY (INSERT NAME OF ATTORNEY OR LAW FIRM) AS LEGAL COUNSEL FOR (INSERT LICENSED NAME OF BROKER OR BROKERAGE FIRM OR NAME OF SELLER/BUYER/LANDLORD/TENANT)."

THE ATTORNEY OR LAW FIRM NAMED MUST BE THE ONE MOST RECENTLY CONSULTED CONCERNING THAT STANDARD FORM UNDER PARAGRAPH (1) ABOVE.

- 3) PROVIDE TRAINING ON USE OF THE STANDARD FORM TO THEIR BROKERAGE ASSOCIATES ON AT LEAST AN ANNUAL BASIS CONCERNING APPROPRIATE USE OF THE STANDARD FORM AND ITS EFFECTIVENESS AND COMPLIANCE WITH CURRENT LAW AND COMMISSION RULES, POSITION STATEMENTS AND REGULATIONS (TOGETHER "COMMISSION REGULATIONS").

(E) DESPITE ANYTHING TO THE CONTRARY STATED IN THIS RULE F-7, ANY FORM USED BY A BROKER MUST:

- 1) NOT BE USED TO VIOLATE STATE OR FEDERAL LAW OR COMMISSION REGULATIONS; AND
- 2) BE APPROPRIATE TO THE TRANSACTION OR CIRCUMSTANCE IN WHICH IT IS USED; AND
- 3) BE UNDERSTOOD BY THE BROKER; AND
- 4) BE COMPLETED AND USED CORRECTLY AND IN COMPLIANCE WITH THEN CURRENT LAW AND COMMISSION REGULATIONS; AND
- 5) BE A COMMISSION-APPROVED FORM IF IT IS APPROPRIATE TO THE TRANSACTION OR CIRCUMSTANCE IN WHICH SUCH A FORM IS TO BE USED, EXCEPT AS STATED IN (B) ABOVE.

~~Real estate brokers are required to use Commission-approved forms as appropriate to a transaction or circumstance to which a relevant form is applicable. Commission-approved forms are posted on the Division of Real Estate's website. Effective June 2009, the Commission will no longer post forms in the Code of Colorado Regulations. The Commission hereby withdraws all forms from the Code of Colorado Regulations. In instances when the Commission has not developed an approved form within the purview of this rule, and other forms are used, they are not governed by Rule F. Other forms used by a broker shall not be prepared by a broker, unless otherwise permitted by law.~~

To obtain the forms promulgated by the real estate commission that are within the purview of Rule F, visit the Division of Real Estate'S website at: ~~http://www.dora.state.co.us/dre~~ or the Division of Real Estate's offices at 1560 Broadway, Suite 925, Denver, Colorado 80202.

**A hearing on the above subject matter will be held on Tuesday, April 5, 2016 at the Colorado Division of Real Estate, 1560 Broadway, Suite 1250C, Denver, Colorado 80202 beginning at 9:00 a.m.**

Any interested person may participate in the rule making through submission of written data, views and arguments to the Division of Real Estate. Persons are requested to submit data, views and arguments to the Division of Real Estate in writing no less than ten (10) days prior to the hearing date and time set forth above. However, all data, views and arguments submitted prior to or at the rulemaking hearing or prior to the closure of the rulemaking record (if different from the date and time of hearing), shall be considered.

Please be advised that the rule being considered is subject to further changes and modifications after public comment and formal hearing.

## **Colorado Housing Council Meeting, February 17, 2016**

**Speaker:** Alison George, Director, Division of Housing, Colorado Department of Local Affairs presented on the Issues Facing the Division of Housing

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### **Issues Facing the Division of Housing**

- a. The Division manages over 7000 vouchers around the city and provides gap funding for people in need. There are a lot of disabled participants. Disabilities include addictions, physical disabilities and mental disabilities.
- b. The Division works with the Building Department in manufactured housing. The average income is \$11,409/yr. for voucher recipients.
- c. Household growth is growing faster than housing supply. There are six times more households than units. However there are more housing units than households.
- d. There are many families that are severely burdened by housing cost, meaning spending more than 50% of income on housing expenses.
- e. We need more affordable units so people can move out of rental units.
- f. We need more housing for folks at 30% ami.

See attached summary report.



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Department of Local Affairs

Division of Housing

**Alison George, Director**

# **Colorado Housing Coalition**

*February 17, 2016*



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*DOH was created to improve the access of all Coloradans to decent, affordable housing*



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Division of Housing

- Funding for operating subsidies
- Funding to acquire, rehabilitate and construct affordable housing
- Fort Lyon supportive housing program
- Regulatory role as building department
  
- **2015 Accomplishments**
  - DOH served >31,000 households
  - Created >3,000 new affordable housing opportunities
  - Avg voucher recipient income: \$11,400
  - >80% of vouchers serve people with disabilities



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Division of Housing

## Division of Housing Reports

### o Rent and Vacancy Reports

- Colorado Statewide Multifamily Survey - Includes areas other than the Denver Metro Area. The full state report is updated 1st and 3rd quarters.
- Colorado Springs Multifamily Survey - This information is included within the statewide survey and provided as a separate PDF.
- Denver Metro Area Multifamily Survey - Updated quarterly with summary data. Current data may be obtained by contacting the Apartment Association of Metro Denver.

### o Foreclosure Reports

- Filings and Sales at Auction lowest since reporting in 2003



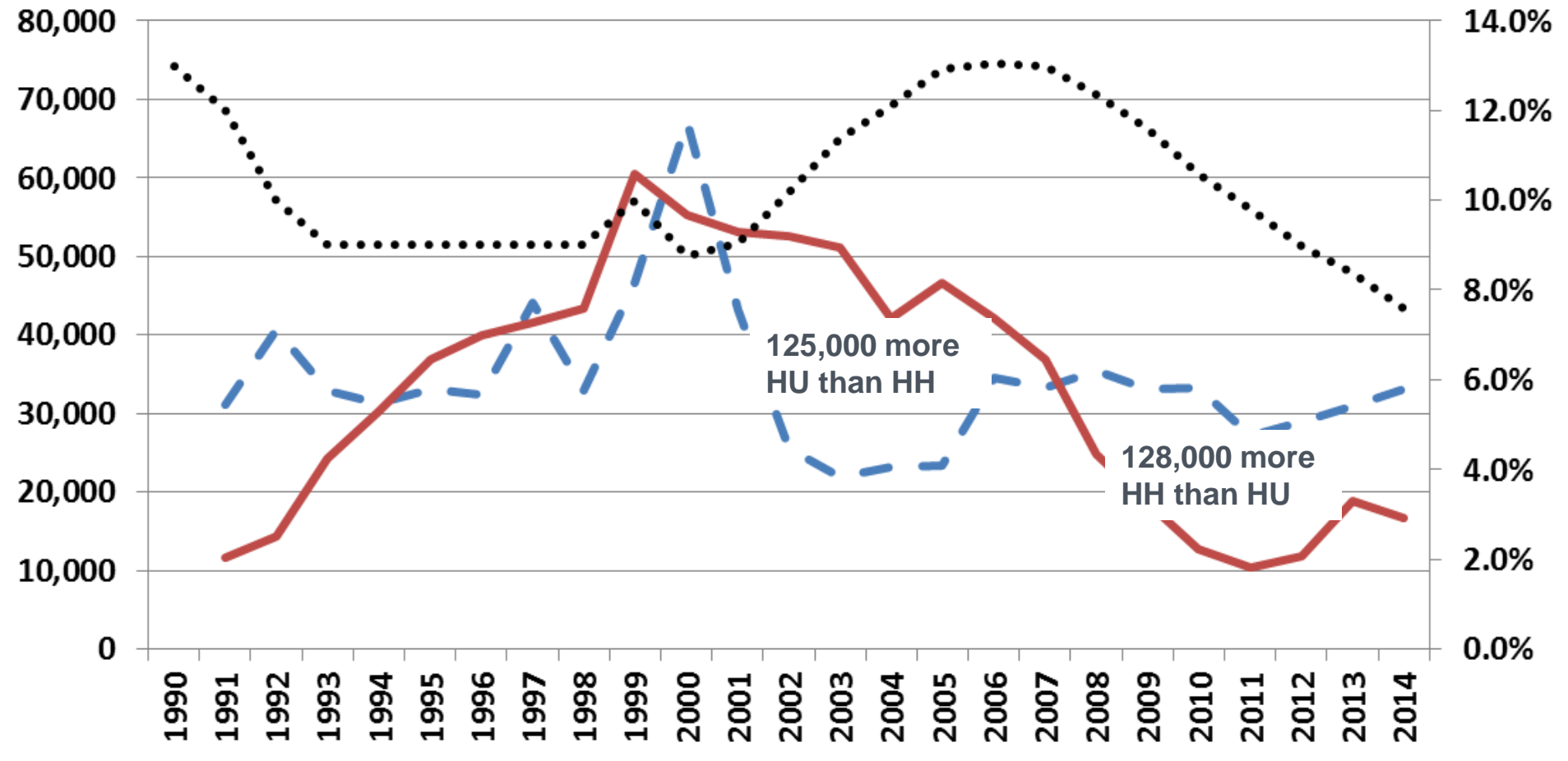
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# Housing Unit and Household Growth and Vacancy Rates

Source: State Demography Office

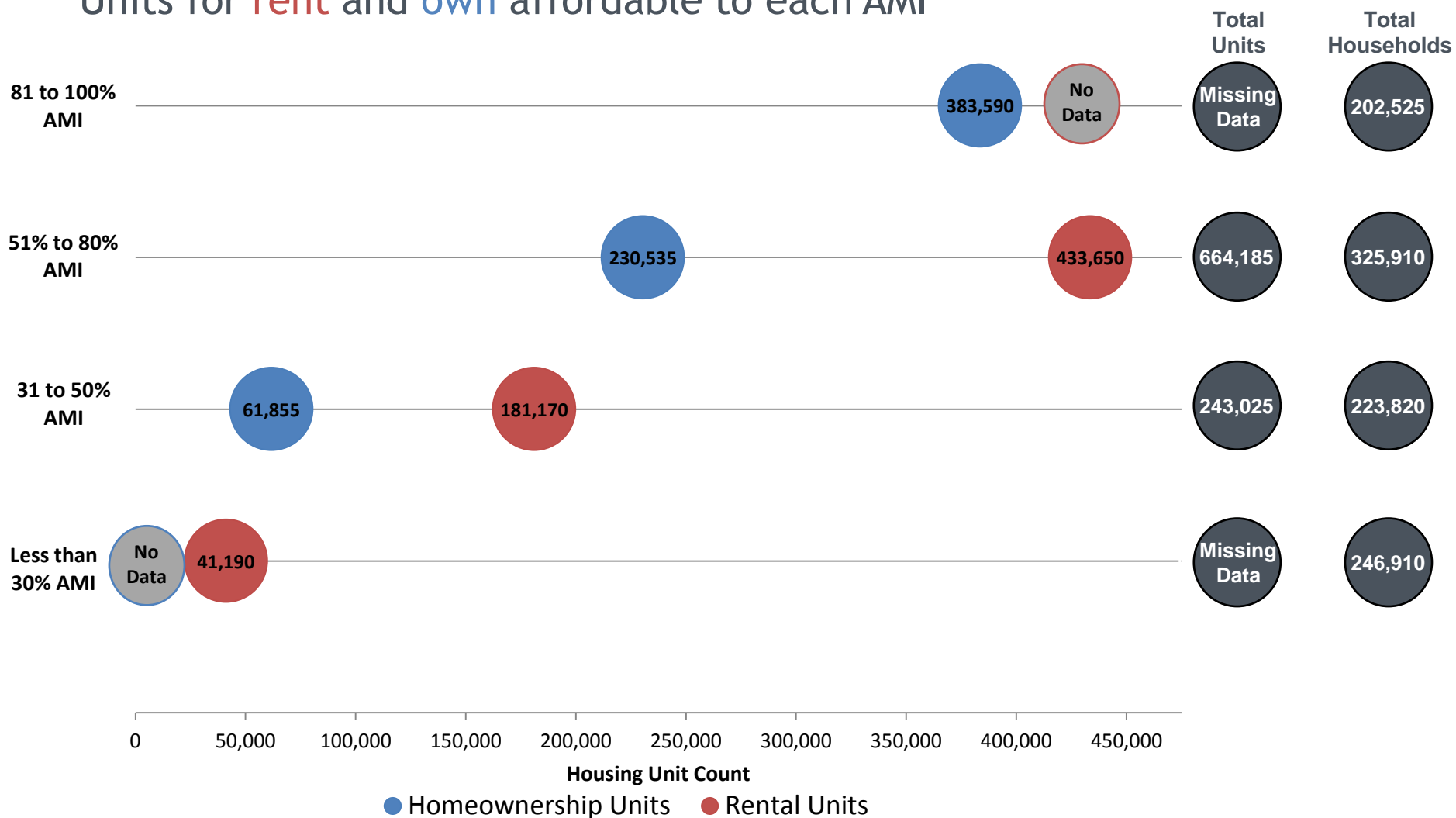
Household Growth    Housing Unit Growth    Vacancy Rate





# Affordability of Colorado Housing Stock

Units for **rent** and **own** affordable to each AMI



Note: These represent all type of housing units, not just income restricted. The 2015 Colorado Housing Database lists 82,818 income restricted units, which are partially included in the above chart.

Source: HUD CHAS data, based on 2008-2012 ACS



# Statewide Housing Stock Picture



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- 6X the HOUSEHOLDS (30% AMI) as housing rental units
  - \$16,800 one person household Denver Metro
  - \$23,950 four person household
- 2X the UNITS as households (51% to 80% AMI)
- There are actually more housing units than there are households for all categories except 30% of the Area Median Income

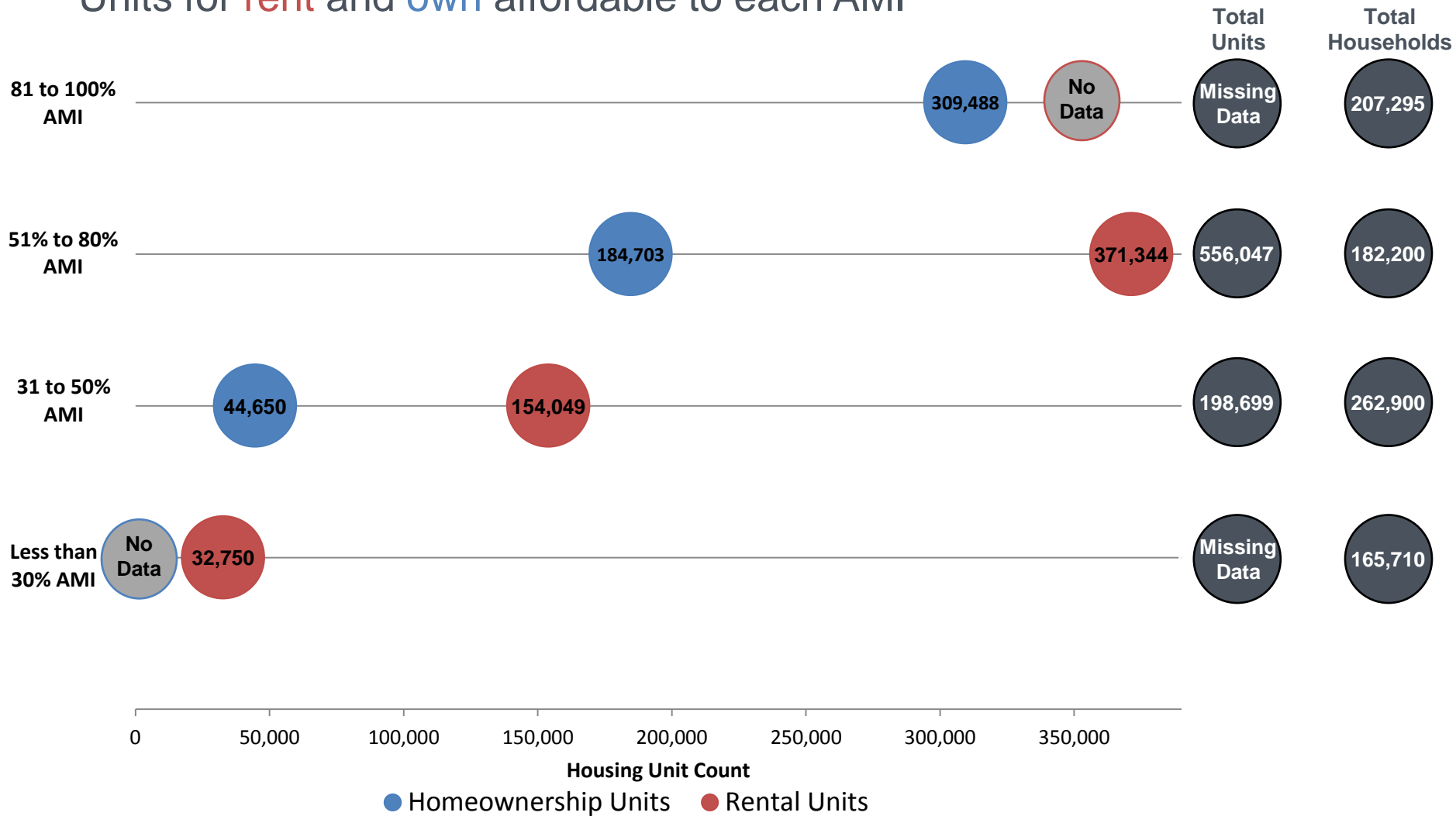


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# Affordability of Front Range Housing Stock

Units for **rent** and **own** affordable to each AMI



Note: These represent all type of housing units, not just income restricted.

Counties Included: Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Pueblo, Teller, Weld

Source: HUD CHAS data, based on 2008-2012 ACS



# Front Range Housing Stock Picture



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- 5X the HOUSEHOLDS (30% AMI) as housing rental units
  - \$16,800 one person household Denver Metro
  - \$23,950 four person household
- 3X the UNITS as households (51% to 80% AMI)
- More housing units than there are households for people making above 51% of the Area Median Income



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# Why are people 51-80% AMI still having trouble finding affordable housing?



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- Rentals affordable between 51-80 percent AMI are often close to free-market rents. For example, in the Denver Metro area, a 4-person household earning 80 percent AMI can afford to spend almost \$1,600 on housing (including utilities). A similar household earning 50 percent AMI can afford to spend almost \$1,000. The average free-market rent for a 2-bed, 2-bath apartment was \$1,493 in the 2nd Quarter of 2015, and it was \$1,788 for a 3-bedroom.
- Households making more than 80 percent AMI are also renting and buying homes in this range because this is the market. Because these units are not income-restricted, many are occupied by people of higher income which pushes low-income families out, causing a mismatch of housing stock affordability and tenant income.
- As Class A apartments age, the properties often become affordable to this income range. On the other hand, with the recent high rental market demand, many units are being lost on the affordable market as owners choose to rehabilitate, upgrade and increase rents.
- Housing Choice Voucher holders rent homes in this range. Due to the recent pressures on rental markets and historic low vacancy rates, landlords can demand higher rents exceeding current HUD rents, pushing Voucher holders out.



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# People who earn less than 30% AMI have the fewest housing options



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- There are only 41,190 rental units serving households making less than 30 percent AMI although there are a total of 246,910 households at this income level in Colorado.
- No data was reported for homeownership units because these units are rare due to the low valuation that would make it affordable at this income bracket.
- Households making less than 30 percent AMI are also served by Housing Vouchers which allows them to rent housing stock affordable up to the fair market.

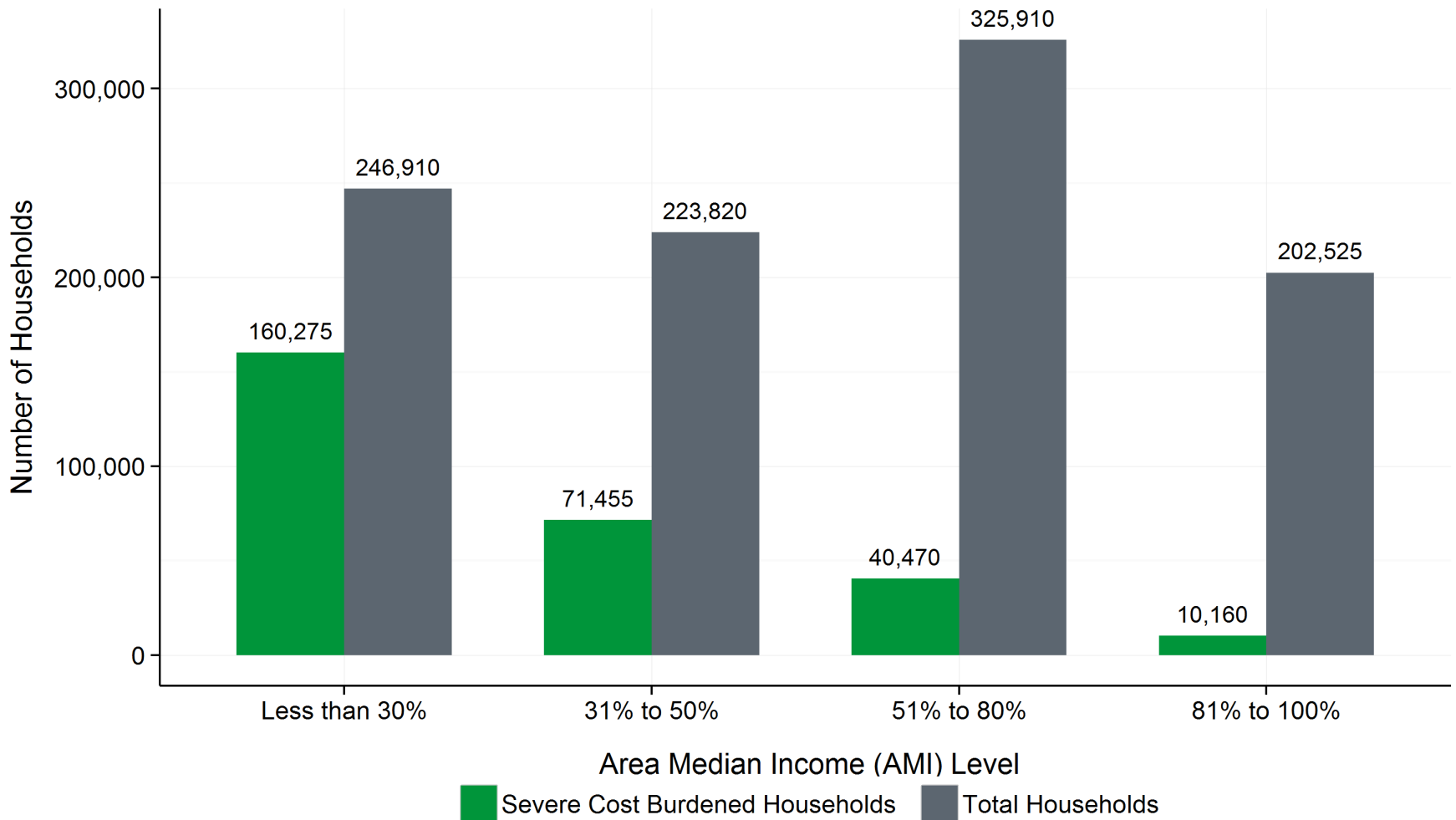


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# Colorado Severe Cost Burdened Households

Renter and Owner-occupied



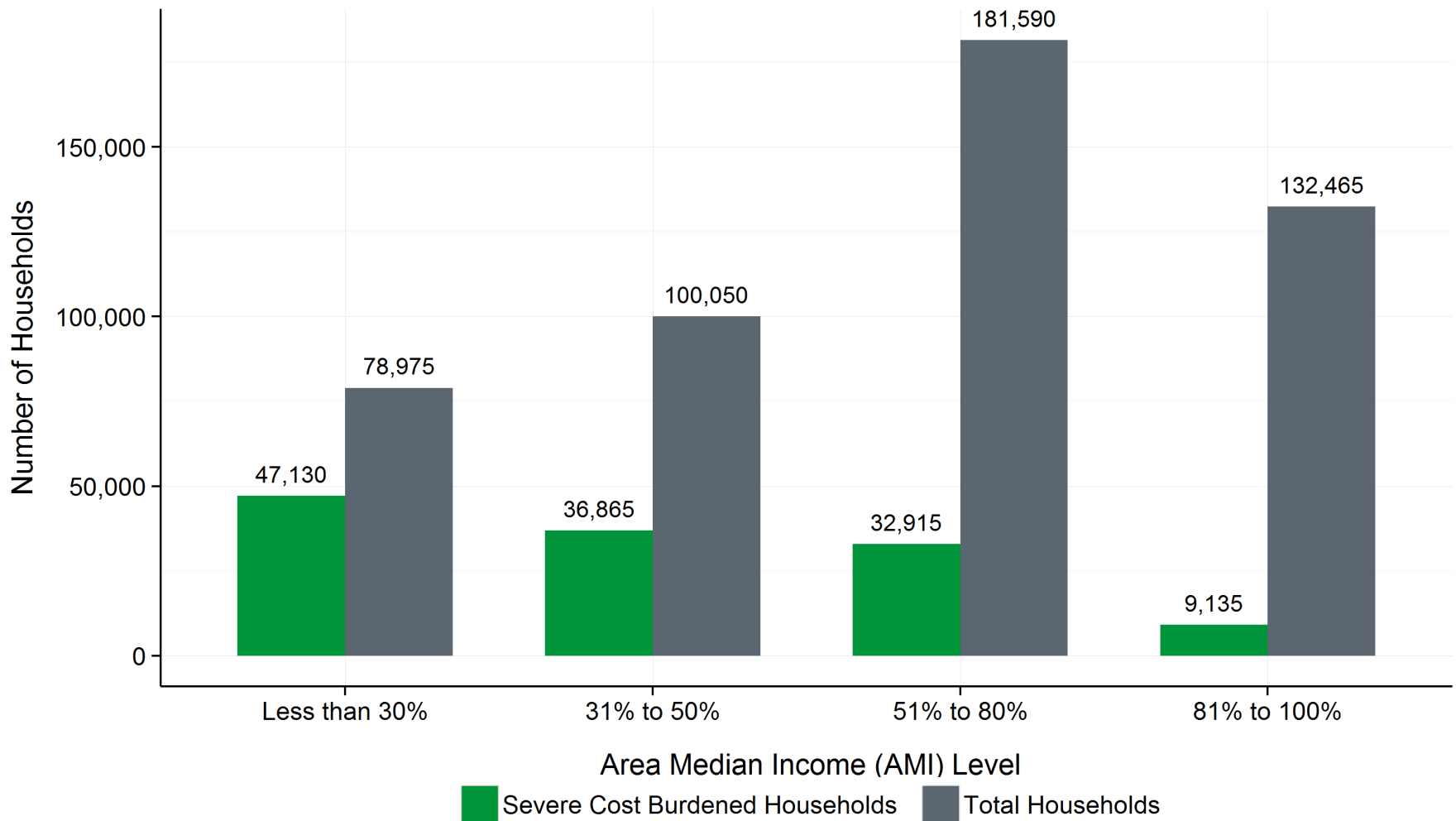
Note: Severe cost burdened households spend 50% of income or more on housing.

Source: HUD CHAS data, based on 2008-2012 ACS



# Colorado Severe Cost Burdened Households

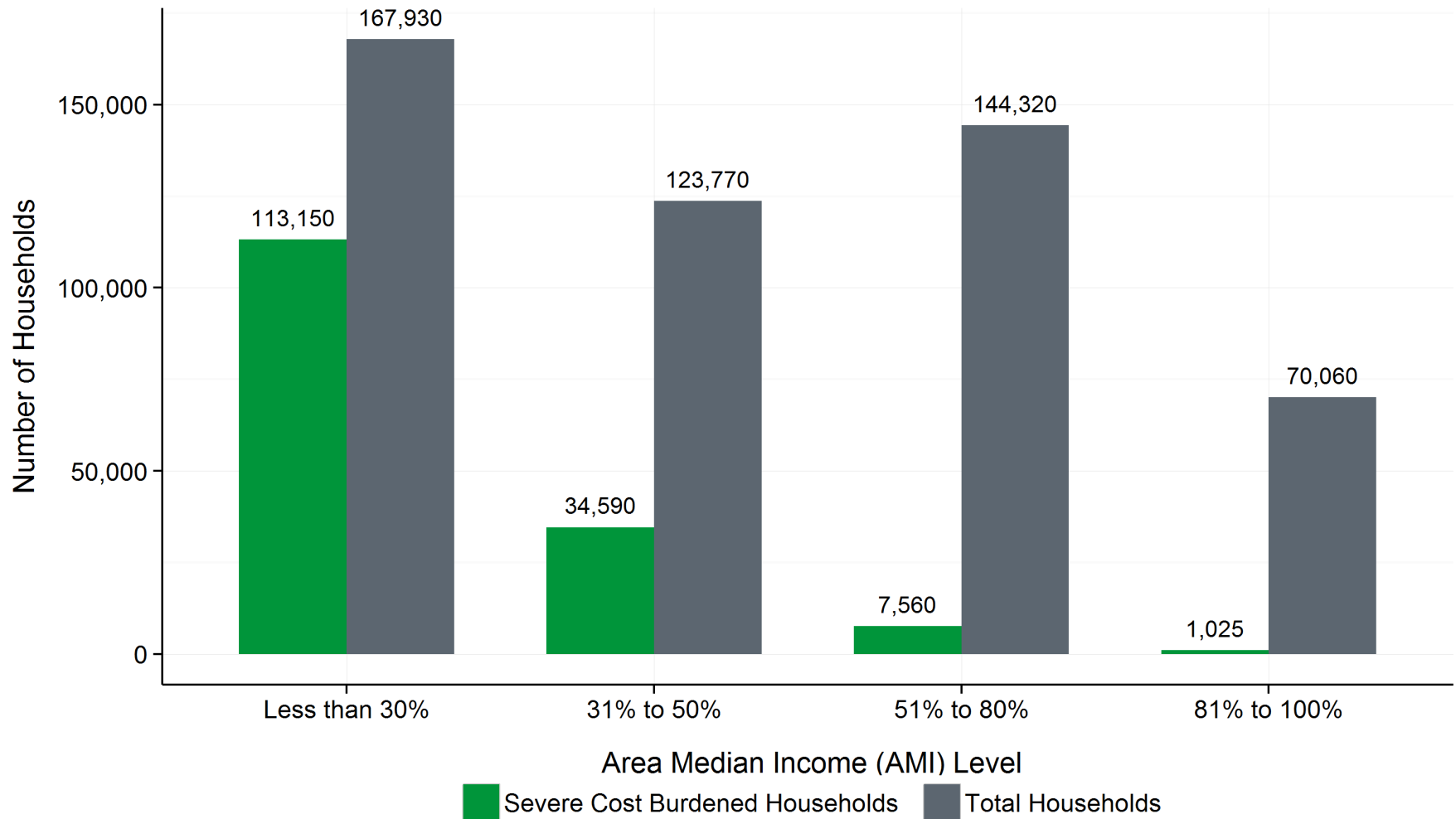
## Owner-occupied Housing Only





# Colorado Severe Cost Burdened Households

## Renters Only



# Housing Stock vs Housing Need



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- Regardless of the amount of housing stock in the 51-80% AMI range, there are still 40,470 renter and homeowner households that pay more than 50 percent of their income in housing costs.
- With the very limited amount of housing stock affordable below 30% AMI, there are 160,275 renter and homeowner households in this range that pay more than 50% of their income in housing costs.
- More affordable homeownership options are needed to take pressure off the cost burdened homeowners and offer more renters opportunities to purchase a home.
- More affordable rental housing is needed for people making less than 30% AMI.

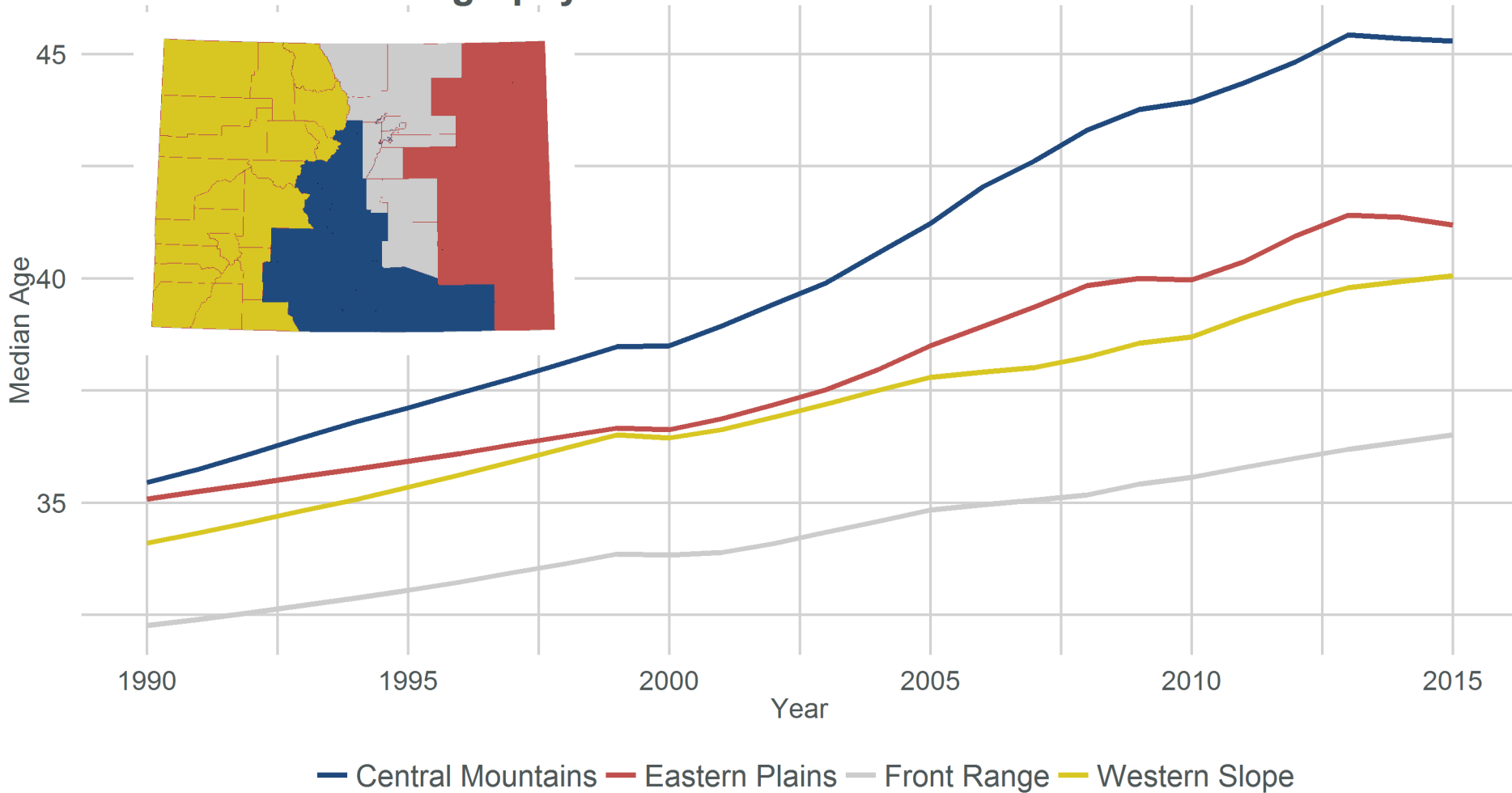


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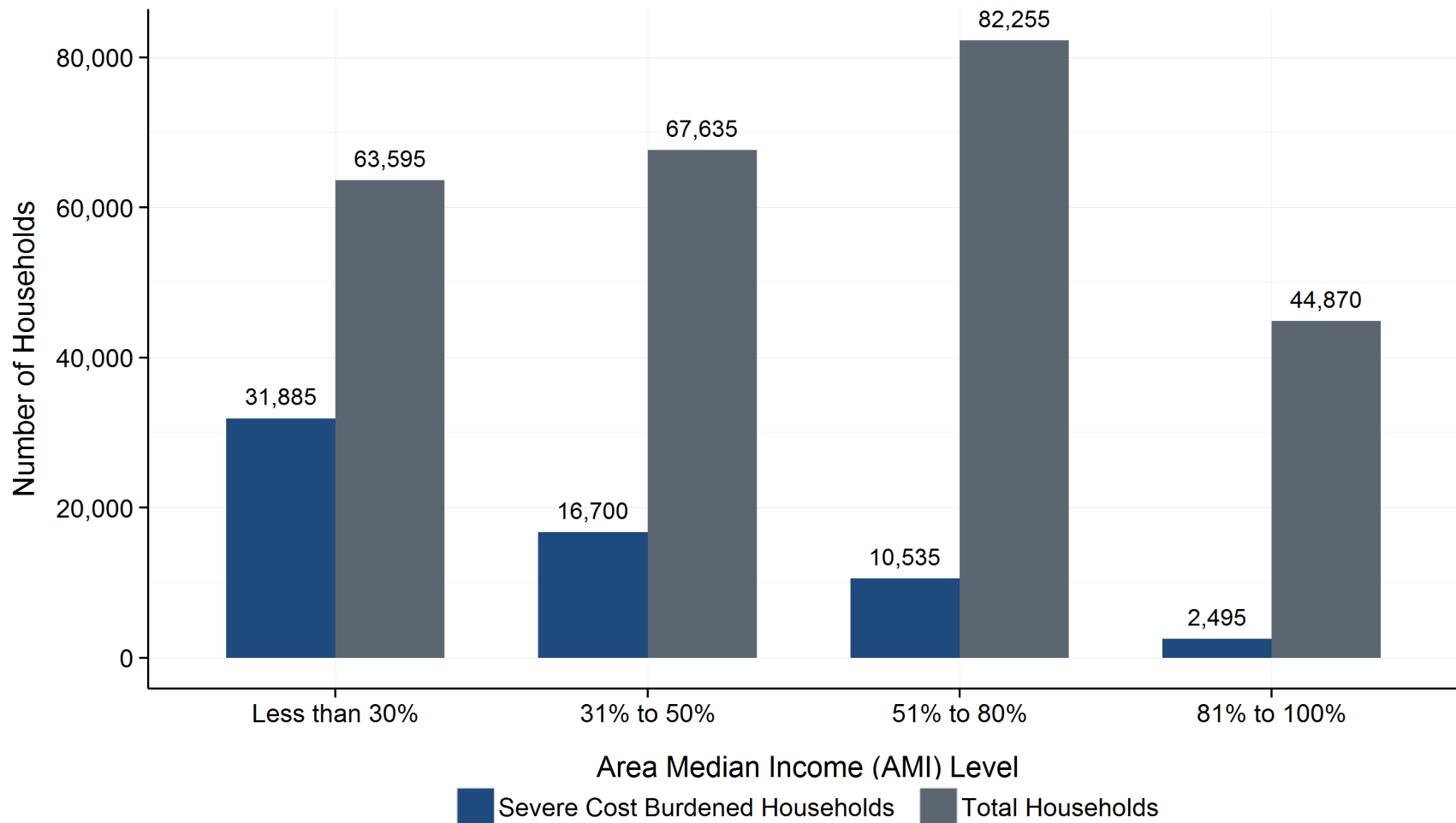
# Median Age by Region 1990 to 2015

Source: State Demography Office



# Colorado Severe Cost Burdened Households

## Elderly Renter and Owner-occupied



Note: Severe cost burdened households spend 50% of income or more on housing.

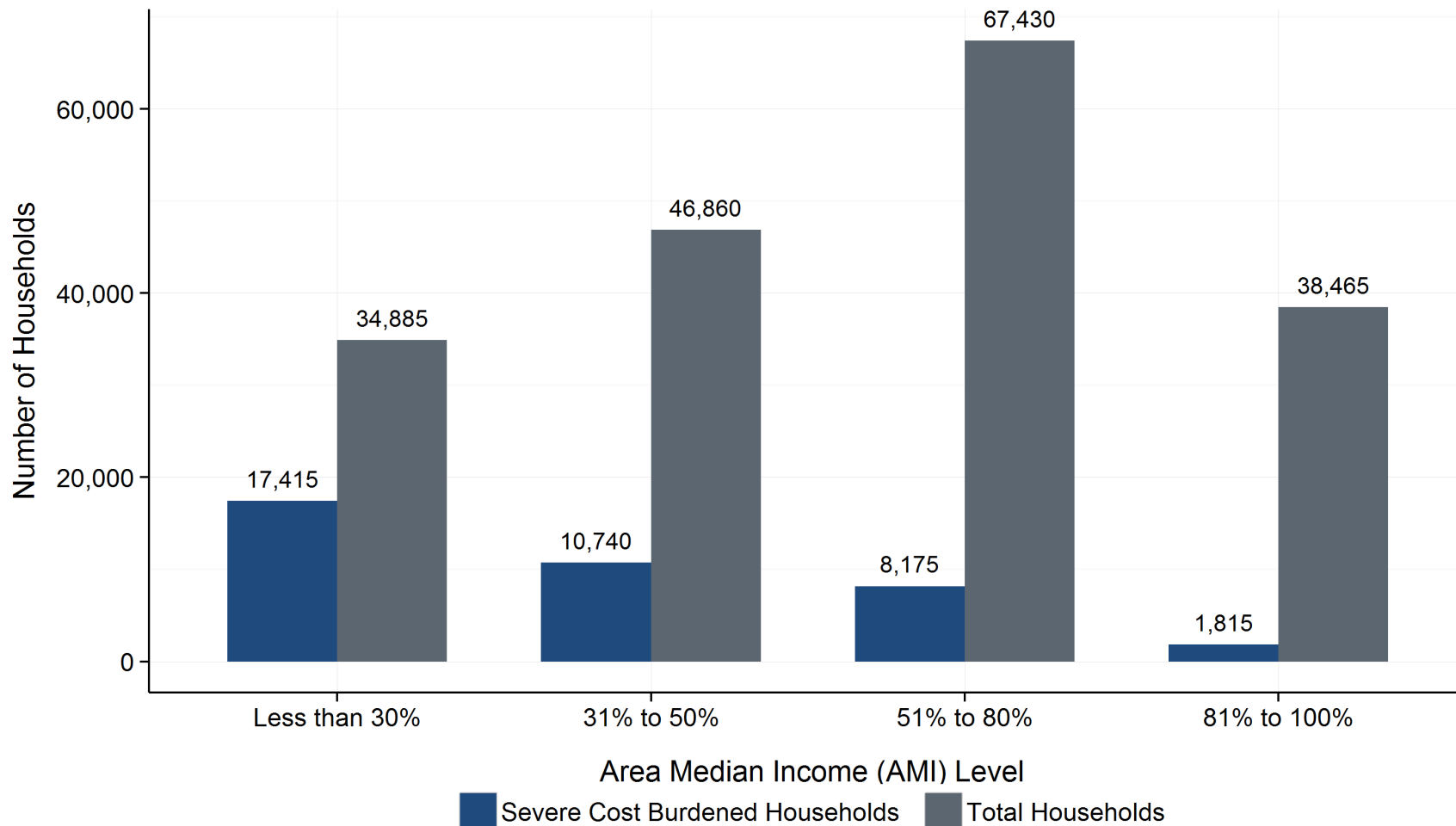
Elderly is defined as a household of size 2 or less where at least one member is over age 62.

Source: HUD CHAS data, based on 2008-2012 ACS



# Colorado Severe Cost Burdened Households

## Elderly Owner-occupied



*Note: Severe cost burdened households spend 50% of income or more on housing.*

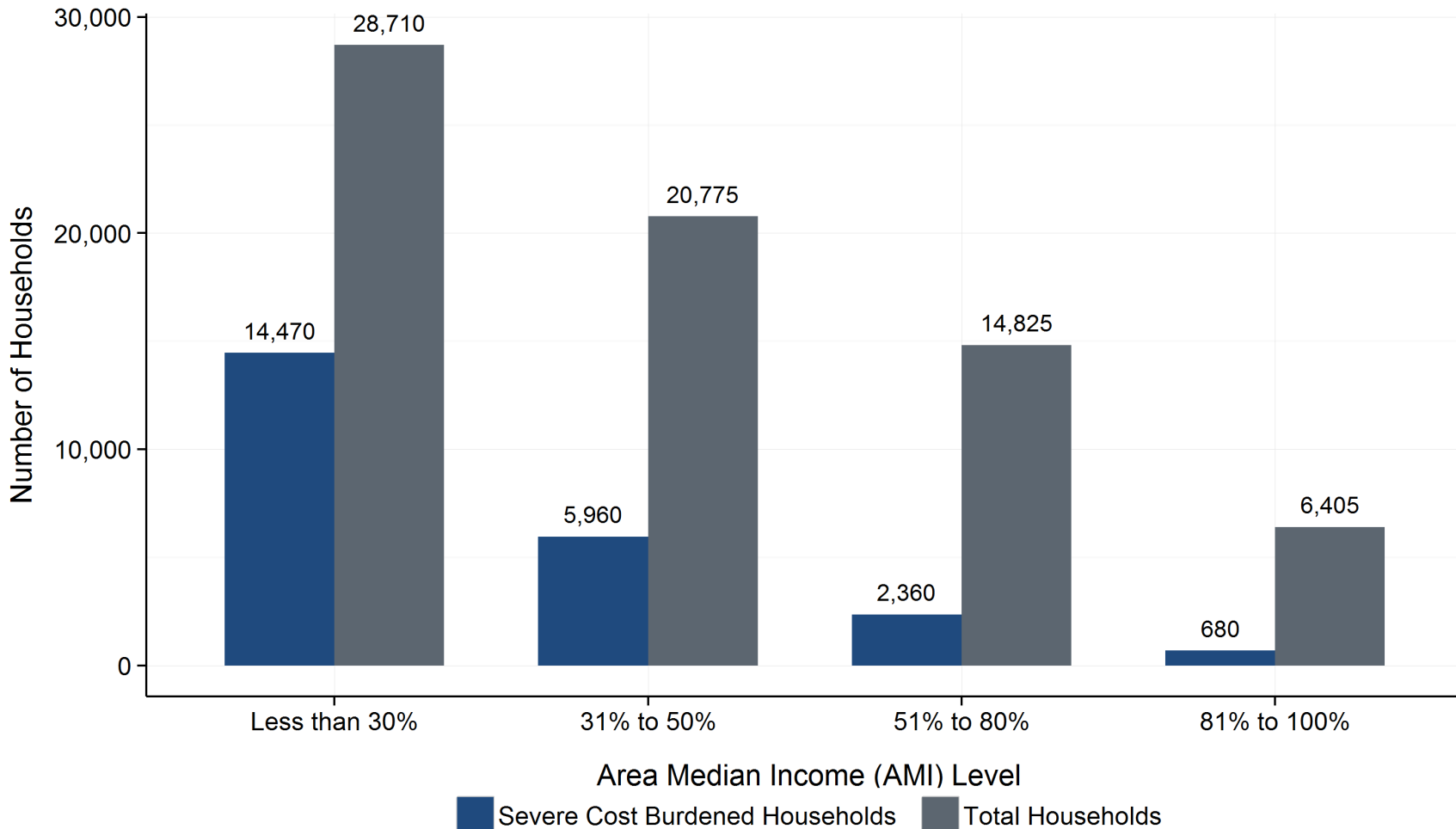
*Elderly is defined as a household of size 2 or less where at least one member is over age 62.*

*Source: HUD CHAS data, based on 2008-2012 ACS*



# Colorado Severe Cost Burdened Households

## Elderly Renters Only



*Note: Severe cost burdened households spend 50% of income or more on housing.*

*Elderly is defined as a household of size 2 or less where at least one member is over age 62.*

*Source: HUD CHAS data, based on 2008-2012 ACS*



# Aging Adult Housing Need



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- 31% of the all severely cost burdened low income homeowners are aging adults
- 15% of the all severely cost burdened low income renters are aging adults



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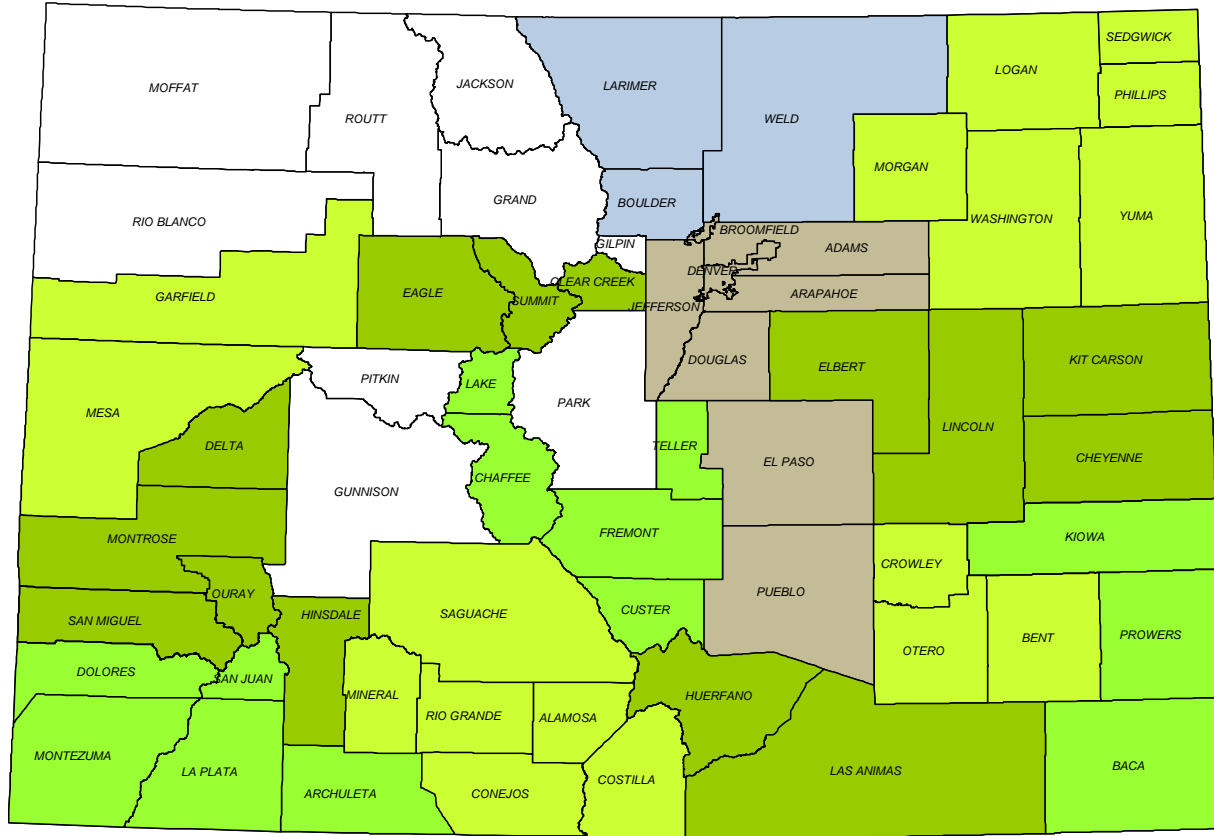


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## Housing Rehabilitation Programs Map



No Rehabilitation Programs	DOH Rehabilitation Programs (different shades represent different regional programs)	Entitlement Rehabilitation Programs	Both DOH & Entitlement Rehabilitation Programs
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# TOP TEN HOME MODIFICATIONS

## Simple to Complex

The term 'home modifications' encompasses a broad range of alterations made to one's home in order to create a more usable and comfortable environment in which to carry out daily activities.



- Furniture
- Portable Assistive Devices
- Installed Assistive Devices
- Surfaces
- Cabinets and Storage
- Assistance with Hygiene
- Accessible Routes
- Structural Changes
- Environmental Controls
- Appliances



# Washington County Green House Project: AKRON

- Replaces 1950 County-owned nursing home
- Four (4) Green House homes for the elderly and disabled
- Payer mix of Medicaid, Medicare, and private pay



- The Green House model is a non-institutional, intentional community model for long-term, skilled nursing care for the elderly and disabled.
- Each Green House will contain 10 private bedrooms and bathrooms, a common area hearth room, kitchen/dining area.
- Each home will be approx. 7,400 SF, fully accessible and will achieve Energy Star certification.



# Mirasol: Senior Living Community *Loveland, CO*



## Independent Living:

- Homeownership (Existing and Lots)
- Rental Options (Affordable and market-rate)

Green House Homes: long-term skilled nursing and short-term rehabilitation care in a small house environment.



# Questions?

Colorado Department of Local Affairs, Division of Housing

Director, Alison George

303.864.7818

[www.colorado.gov/pacific/dola/division-housing](http://www.colorado.gov/pacific/dola/division-housing)



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