COMMENTS FOR SUPPORTING HOUSE BILL 10-1290

The latest law impacting the Colorado Common Interest Act SB-05-100 and SB-89 must be reconsidered if small HOA's are to survive with volunteer management boards. My qualifications to put forth this position are:

I am, Charles E. Pugh, a thirty-year resident of Colorado Springs. For the past thirty years I have been associated with Neighborhood Organizations and Residential Homeowners Associations. I presently am President of The Highland Terrace HOA in southwest Colorado Springs, a private community that has a management board of resident volunteers, responsible for all Operations and Maintenance activities.

Prior to this I was from 1983 – 1999 President of Discovery HOA, a Rockrimmon Residential Community of 383 families, with a Management Board of resident volunteers. In 1994, nine HOA's in the Rockrimmon area joined forces to form the Rockrimmon Coalition. I served as President. This Body is still active, interfacing with the Regional Building Department, the County Planning Commission, and The Colorado Springs City Council. I progressed from there to President of the Council of Neighbors and Organizations (CONO), a city wide association with a membership of approximately 104 neighborhood associations. Those Volunteer management boards are involved in the daily protection and enhancement of their association's assets and control the provisions and directives contained in the existing law.

Now with that said, the small association's disagreements are vested in the principle of management for all residential neighborhood associations. The HOA includes all residents that elect to abide by the Declaration of Covenants, Conditions, and Restrictions. The closing agent makes a full disclosure, and the buyer bears a responsibility to research, ask questions, and be satisfied with the "Rules of the Road" when consummating the purchase. With this being true, any association is only as good as its members. They have control; to comply with the rules, to change the rules, to elect their board, and to replace the board at any time. That's been the way of life and those associations that have the strength and the courage have been able to change the rules or replace their Board of Managers but now we have a law that requires them to enter in to investigation, mitigation, and litigation that only adds to the aguish and the expense of the HOA member that is totally satisfied with their way of life. Granted some members will not get involved, but instead get energized by the new laws changing the CCIOA. The disgruntled association members that testified before the legislature in the development of these new rules were actually the minority of those residents residing in a HOA. The passage of these new laws are forcing volunteers out of association activities, creating avenues for resident to resident conflicts, destroying neighborhood integrity, and building a platform for professional management intervention and the legal profession to litigate at will. This may be appropriate for large professional condominium complexes but they should be considered separately and the small HOAs should be granted the permission to opt out of those CCIOA provisions that have created the existing friction and questionable acceptance of the law that is now in effect.

These new additions to CCIOA adversely affect a Planned Community Residential Association in numerous ways:

Volunteer Boards made up of fully employed members are not able to satisfy the added requirements that are now included in enforceable law and the workload is overwhelming.

Individual Liability has greatly increased; members are not willing to be subjected to litigation for the challenges built into this law.

The Notification and Education requirements are not feasible, it takes full time paid staff and increased budget requirements to accomplish, and this burden is not feasible or productive in a small Neighborhood Association. They have been very successful in their management, so the old adage "don't fix it if it ain't broke" is extremely pertinent here.

Most Associations do not have designated meeting or gathering space available to them; therefore, the reading materials, meeting minutes, announcements etc. are usually handled neighbor to neighbor or memo door to door. It has worked so far, why direct increased requirements to achieve what is all ready in place for small associations.

The new procedures that must be implemented to resolve covenant violations requires special boards of independent volunteer members. The Board of Managers cannot influence the investigation or the recommendation to justify the complaint. This creates a situation that independent investigation and hearings by members other than the governing board is impossible to accomplish, because there are too few members that can actually be stated as independent as they are each other's neighbor that all haves a vested interest in maintaining their property values through the compliance with the Association's directive documents. What has really been accomplished by the implementation of this Law is forcing volunteers out of association activities, creating avenues for resident to resident conflicts, destroying neighborhood integrity, building a platform for professional management intervention and the legal profession to litigate at will.

See attachment regarding the CAI legal brief.

This case involved the mandatory attorney provision of the new CCIOA laws. I doubt that there is an association that could afford such litigation. Even if your insurance coverage was helpful your policy would most likely be canceled; therefore, the small voluntarily managed associations are at an unmanageable risk created by the implications of SB-5-100 and SB-89.

Let us not destroy what is working because of the few disgruntled people.. The Neighborhood Associations are working, satisfying the majority of their members, and it most cases have decided that they would like an option to opt out of this Law. Their members are not willing to increase the fees to adequately comply with all the new directive provisions of the new CCIOA. This condition can only subvert the attempts of all small associations to satisfy the requirements they cannot financially support. I strongly believe that these concerns are the basis for the discontent of the planned community associations of Colorado Springs. I ask for your support for introducing and co-sponsoring, with Amy Stevens, our new bill HB 10-1290.

Charles E. Pugh, 02.21.2010

CAI Legal Brief Supports Homeowner Against Association

10/17/2008 - Alexandria , VA

Community Associations Institute (CAI) has weighed in on the side of a Vail, Colo., condominium owner who won a costly and contentious, seven-year court battle with his association over who was responsible for resolving a water-intrusion issue.

CAI filed a friend-of-the-court brief Sept. 30 in support of a ruling by the Eagle County District Court, which concluded that the association should pay $550,000 in attorney fees and related costs in light of what the trial judge called the association's "stubborn refusal" to address the problem.

Noting that the association did its "best to increase the cost of this litigation to the maximum," the court ordered the association to pay the $550,000 pursuant to the Colorado Common Interest Ownership Act.

Although the association accepted the August 2007 judgment pertaining to the repairs, it has appealed the award of attorney fees other related costs. According to court records, the original repair would have cost Booth Creek Townhouse Association about $5,000—$545,000 less than the ultimate judgment against the association.

"The association could have mitigated the damages to the owner's unit and in the end avoided escalating costs for both the owner and the association," said John D. Goodman of Goodman and Wallace, P.C., the firm representing homeowner E. Webb Bassisk IV. "The association just refused to do anything at all. They chose to be obstinate and downright litigious, filing a counterclaim and blaming the owner. Now they object to the costs as unreasonable. We would not still be in court if they had just fulfilled their fiduciary obligation to the owner."

The CAI brief called the association's actions "extremely egregious," concluding that it's unheard of "for an owner to be forced to take several legal actions year after year for the sole purpose of forcing the association to honor its obligations and perform its duties...." Written by Denver attorney Lynn S. Jordan of Jordan Law LLC, the brief was formally submitted by attorney Gary H. Tobey of Tobey & Toro, P.C., of Centennial, Colo.

The case between Bassick and Booth Creek lasted more than seven years, in large part because the association filed more than 27 motions, including two unsuccessful attempts to dismiss the case.

Bassick filed a lawsuit after trying repeatedly—and unsuccessfully—to get the association to investigate moisture intrusion in his unit. According to court documents, Bassick first asked the association to address the problem in September 2001. Bassick sent 10 letters asking the association to investigate the source of the intrusion and make the necessary external repairs, Goodman said.

On two occasions, Bassick repaired interior damage caused by the moisture. However, he refused to make external repairs to the rotten wood window frame,