

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0782.01 Duane Gall

HOUSE BILL 10-1278

HOUSE SPONSORSHIP

Ryden,

SENATE SPONSORSHIP

Carroll M.,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF AN OMBUDSMAN FOR MATTERS**
102 **ARISING UNDER THE "COLORADO COMMON INTEREST**
103 **OWNERSHIP ACT", AND MAKING AN APPROPRIATION THEREFOR.**

Bill Summary

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

Current law provides for the creation of common interest communities (usually residential subdivisions), governed by unit owners' associations (HOAs). Such entities are created by contract, through recorded documents containing mutually binding covenants that

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

homeowners and HOAs must enforce, if at all, through private legal action. There is no state agency supervising the operation of HOAs or enforcing compliance by either individual homeowners or HOAs with the requirements of state law.

The bill creates the office of the HOA ombudsman to advocate on behalf of unit owners, mediate disputes, and act as a clearing house for information on the governing law. **Sections 2 and 5** of the bill direct the secretary of state to collect a surcharge on registration fees of HOAs that are organized as nonprofit corporations to pay the direct and indirect costs of the ombudsman's office. **Section 4** outlines the ombudsman's powers, duties, and qualifications and creates a cash fund. **Section 6** provides for sunset review of the ombudsman's office after 10 years.

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

2 **SECTION 1.** 12-61-101, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **12-61-101. Definitions.** As used in this part 1, unless the context
5 otherwise requires:

6 (1.2) "HOA" OR "HOMEOWNERS' ASSOCIATION" MEANS A UNIT
7 OWNERS' ASSOCIATION AS DEFINED IN SECTION 38-33.3-103, C.R.S.

8 **SECTION 2.** 12-61-111.5 (2) (a), Colorado Revised Statutes, is
9 amended to read:

10 **12-61-111.5. Fee adjustments.** (2) (a) (I) The division shall
11 propose, as part of its annual budget request, an adjustment in the amount
12 of each fee ~~which~~ THAT it is authorized by law to collect under parts 1, 3,
13 4, and 7 of this article. The budget request and the adjusted fees for the
14 division shall reflect direct and indirect costs.

15 (II) THE COSTS OF THE OFFICE OF THE HOA OMBUDSMAN,
16 CREATED IN SECTION 12-61-406.5, SHALL BE PAID FROM THE HOA
17 OMBUDSMAN CASH FUND CREATED IN SECTION 12-61-406.5. THE DIVISION
18 OF REAL ESTATE SHALL ESTIMATE THE DIRECT AND INDIRECT COSTS OF
19 OPERATING THE OFFICE OF THE HOA OMBUDSMAN AND SHALL ESTABLISH

1 THE AMOUNT OF THE ANNUAL REGISTRATION FEE TO BE COLLECTED UNDER
2 SECTION 38-33.3-401, C.R.S. THE AMOUNT OF THE REGISTRATION FEE
3 SHALL BE SUFFICIENT TO RECOVER SUCH COSTS.

4 SECTION 3. 12-61-401, Colorado Revised Statutes, is amended
5 BY THE ADDITION OF A NEW SUBSECTION to read:

6 12-61-401. Definitions. As used in this part 4, unless the context
7 otherwise requires:

8 (2.5) "HOA" OR "HOMEOWNERS' ASSOCIATION" MEANS A UNIT
9 OWNERS' ASSOCIATION AS DEFINED IN SECTION 38-33.3-103, C.R.S.

10 SECTION 4. Part 4 of article 61 of title 12, Colorado Revised
11 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
12 read:

13 12-61-406.5. Office of the HOA ombudsman - creation - duties
14 - rules - cash fund - repeal. (1) THERE IS HEREBY CREATED, WITHIN THE
15 DIVISION OF REAL ESTATE, THE OFFICE OF THE HOA OMBUDSMAN, THE
16 HEAD OF WHICH SHALL BE THE HOA OMBUDSMAN. THE HOA
17 OMBUDSMAN SHALL BE APPOINTED BY THE EXECUTIVE DIRECTOR OF THE
18 DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO SECTION 13 OF
19 ARTICLE XII OF THE STATE CONSTITUTION.

20 (2) THE HOA OMBUDSMAN SHALL HAVE AT LEAST FIVE YEARS OF
21 EXPERIENCE IN WORKING WITH ISSUES ARISING UNDER THE "COLORADO
22 COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S.,
23 ALSO REFERRED TO IN THIS SECTION AS THE "ACT", OR IN THE OPERATION
24 OR MANAGEMENT OF A UNIT OWNERS' ASSOCIATION AS EITHER AN
25 ATTORNEY, AN ACCOUNTANT, A MEMBER OF THE EXECUTIVE BOARD, OR
26 ANY COMBINATION THEREOF. NO PERSON WHO IS OR, WITHIN THE
27 IMMEDIATELY PRECEDING TEN YEARS, HAS BEEN LICENSED BY OR

1 REGISTERED WITH THE DIVISION OF REAL ESTATE OR WHO OWNS STOCKS,
2 BONDS, OR ANY PECUNIARY INTEREST IN A CORPORATION SUBJECT IN
3 WHOLE OR IN PART TO REGULATION BY THE DIVISION OF REAL ESTATE
4 SHALL BE APPOINTED AS HOA OMBUDSMAN.

5 (3) (a) THE HOA OMBUDSMAN SHALL ACT AS A CLEARING HOUSE
6 FOR INFORMATION CONCERNING THE RIGHTS AND DUTIES OF UNIT OWNERS,
7 DECLARANTS, AND UNIT OWNERS' ASSOCIATIONS UNDER THE ACT.

8 (b) THE HOA OMBUDSMAN MAY:

9 (I) EMPLOY ONE OR MORE ASSISTANTS, UP TO A MAXIMUM OF 1.0
10 FTE, AS MAY BE NECESSARY TO CARRY OUT HIS OR HER DUTIES; AND

11 (II) TRACK INQUIRIES AND COMPLAINTS AND REPORT ANNUALLY
12 TO THE DIRECTOR OF THE DIVISION OF REAL ESTATE REGARDING THE
13 NUMBER AND TYPES OF INQUIRIES AND COMPLAINTS RECEIVED.

14 (4) THE OPERATING EXPENSES OF THE OFFICE OF THE HOA
15 OMBUDSMAN SHALL BE PAID FROM THE HOA OMBUDSMAN CASH FUND,
16 WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND
17 SHALL CONSIST OF ANNUAL REGISTRATION FEES PAID BY UNIT OWNERS'
18 ASSOCIATIONS AND COLLECTED BY THE DIVISION OF REAL ESTATE
19 PURSUANT TO SECTION 38-33.3-401, C.R.S. INTEREST EARNED ON
20 MONEYS IN THE FUND SHALL REMAIN IN THE FUND, AND ANY UNEXPENDED
21 AND UNENCUMBERED MONEYS IN THE FUND AT THE END OF ANY FISCAL
22 YEAR SHALL NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND.
23 PAYMENTS FROM THE FUND SHALL BE SUBJECT TO ANNUAL
24 APPROPRIATION.

25 (5) THE DIRECTOR OF THE DIVISION OF REAL ESTATE MAY ADOPT
26 RULES AS NECESSARY TO IMPLEMENT THIS SECTION.

27 (6) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2020.

1 PRIOR TO SUCH REPEAL, THE OFFICE OF THE HOA OMBUDSMAN AND THE
2 HOA OMBUDSMAN'S POWERS AND DUTIES UNDER THIS SECTION SHALL BE
3 REVIEWED IN ACCORDANCE WITH SECTION 24-34-104, C.R.S.

4 **SECTION 5.** Article 33.3 of title 38, Colorado Revised Statutes,
5 is amended BY THE ADDITION OF A NEW PART to read:

6 **PART 4**

7 **REGISTRATION**

8 **38-33.3-401. Registration - annual fees.** (1) EVERY UNIT
9 OWNERS' ASSOCIATION ORGANIZED UNDER SECTION 38-33.3-301 SHALL
10 REGISTER ANNUALLY WITH THE DIRECTOR OF THE DIVISION OF REAL
11 ESTATE, IN THE FORM AND MANNER SPECIFIED BY THE DIRECTOR.

12 (2) THE ANNUAL REGISTRATION SHALL BE ACCOMPANIED BY A FEE
13 IN THE AMOUNT SET BY THE DIRECTOR IN ACCORDANCE WITH SECTION
14 12-61-111.5, C.R.S., AND SHALL INCLUDE THE INFORMATION REQUIRED TO
15 BE DISCLOSED UNDER SECTION 38-33.3-209.4 (1). THE INFORMATION
16 SHALL BE UPDATED WITHIN NINETY DAYS OF ANY CHANGE, IN
17 ACCORDANCE WITH SECTION 38-33.3-209.4 (1).

18 (3) A REGISTRATION SHALL BE VALID FOR ONE YEAR. AN
19 ASSOCIATION THAT FAILS TO REGISTER, OR WHOSE ANNUAL REGISTRATION
20 HAS EXPIRED, IS INELIGIBLE TO IMPOSE OR ENFORCE A LIEN FOR
21 ASSESSMENTS UNDER SECTION 38-33.3-316 OR TO PURSUE ANY ACTION OR
22 EMPLOY ANY ENFORCEMENT MECHANISM OTHERWISE AVAILABLE TO IT
23 UNDER SECTION 38-33.3-123 UNTIL IT IS AGAIN VALIDLY REGISTERED
24 PURSUANT TO THIS SECTION.

25 (4) ADMINISTRATIVELY FINAL DETERMINATIONS BY THE DIRECTOR
26 OF THE DIVISION OF REAL ESTATE CONCERNING THE VALIDITY OR
27 TIMELINESS OF REGISTRATIONS UNDER THIS SECTION ARE SUBJECT TO

1 JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106 (11), C.R.S.

2 SECTION 6. 24-34-104 (51.5), Colorado Revised Statutes, is
3 amended to read:

4 **24-34-104. General assembly review of regulatory agencies**
5 **and functions for termination, continuation, or reestablishment.**

6 (51.5) The following agencies, functions, or both, shall terminate on
7 September 1, 2020:

8 (a) The certification of nurse aides by the state board of nursing
9 in accordance with article 38.1 of title 12, C.R.S.;

10 (b) THE OFFICE OF THE HOA OMBUDSMAN, CREATED IN SECTION
11 12-61-406.5, C.R.S.

12 SECTION 7. **Appropriation.** (1) In addition to any other
13 appropriation, there is hereby appropriated, out of any moneys in the
14 HOA ombudsman cash fund created in section 12-61-406.5 (4), Colorado
15 Revised Statutes, not otherwise appropriated, to the department of
16 regulatory agencies, for allocation to the division of real estate, for the
17 fiscal year beginning July 1, 2010, the sum of one hundred thirty thousand
18 eight hundred twenty-eight dollars (\$130,828) cash funds and 2.0 FTE,
19 or so much thereof as may be necessary, for the implementation of this
20 act.

21 (2) In addition to any other appropriation, there is hereby
22 appropriated to the department of law, for the fiscal year beginning July
23 1, 2010, the sum of fifteen thousand six hundred seventy-nine dollars
24 (\$15,679) and 0.1 FTE, or so much thereof as may be necessary, for the
25 provision of legal services to the department of regulatory agencies
26 related to the implementation of this act. Said sum shall be from
27 reappropriated funds received from the department of regulatory agencies

1 out of the appropriation made in subsection (1) of this section.

2 **SECTION 8. Act subject to petition - effective date.** This act
3 shall take effect at 12:01 a.m. on the day following the expiration of the
4 ninety-day period after final adjournment of the general assembly (August
5 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
6 referendum petition is filed pursuant to section 1 (3) of article V of the
7 state constitution against this act or an item, section, or part of this act
8 within such period, then the act, item, section, or part shall not take effect
9 unless approved by the people at the general election to be held in
10 November 2010 and shall take effect on the date of the official
11 declaration of the vote thereon by the governor.