

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

PREAMENDED

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

LLS NO. 12-0749.01 Duane Gall x4335

HOUSE BILL 12-1237

HOUSE SPONSORSHIP

Williams A.,

SENATE SPONSORSHIP

(None),

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RECORDS KEPT BY THE UNIT OWNERS' ASSOCIATION**
102 **OF A COMMON INTEREST COMMUNITY.**

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>.)

The bill adopts, with some revisions, suggested language from the commission on uniform state laws concerning the records required to be kept by a unit owners' association concerning the finances, board meeting minutes, and other affairs of a common interest community under the "Colorado Common Interest Ownership Act".

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.*

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

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** 38-33.3-317 as follows:

4 **38-33.3-317. Association records.** (1) IN ADDITION TO ANY
5 RECORDS SPECIFICALLY DEFINED IN THE ASSOCIATION'S DECLARATION OR
6 BYLAWS OR EXPRESSLY REQUIRED BY SECTION 38-33.3-209.4 (2), THE
7 ASSOCIATION MUST MAINTAIN THE FOLLOWING, ALL OF WHICH SHALL BE
8 DEEMED TO BE THE SOLE RECORDS OF THE ASSOCIATION FOR PURPOSES OF
9 DOCUMENT RETENTION AND PRODUCTION TO OWNERS:

10 (a) DETAILED RECORDS OF RECEIPTS AND EXPENDITURES
11 AFFECTING THE OPERATION AND ADMINISTRATION OF THE ASSOCIATION,
12 INCLUDING SETTLEMENTS OF CLAIMS FOR CONSTRUCTION DEFECTS UNLESS
13 THOSE SETTLEMENTS ARE, BY THEIR TERMS, REQUIRED TO BE KEPT
14 CONFIDENTIAL;

15 (b) MINUTES OF ALL MEETINGS OF ITS UNIT OWNERS AND
16 EXECUTIVE BOARD, A RECORD OF ALL ACTIONS TAKEN BY THE UNIT
17 OWNERS OR EXECUTIVE BOARD WITHOUT A MEETING, AND A RECORD OF
18 ALL ACTIONS TAKEN BY ANY COMMITTEE OF THE EXECUTIVE BOARD;

19 (c) WRITTEN COMMUNICATIONS AMONG, AND THE VOTES CAST BY,
20 EXECUTIVE BOARD MEMBERS THAT ARE DIRECTLY RELATED TO AN ACTION
21 TAKEN BY THE BOARD PURSUANT TO SECTION 7-128-202, C.R.S., OR THE
22 ASSOCIATION'S BYLAWS;

23 (d) THE NAMES OF UNIT OWNERS IN A FORM THAT PERMITS
24 PREPARATION OF A LIST OF THE NAMES OF ALL UNIT OWNERS AND THE
25 PHYSICAL MAILING ADDRESSES AT WHICH THE ASSOCIATION
26 COMMUNICATES WITH THEM, SHOWING THE NUMBER OF VOTES EACH UNIT

1 OWNER IS ENTITLED TO VOTE; EXCEPT THAT THIS PARAGRAPH (d) DOES NOT
2 APPLY TO A UNIT, OR THE OWNER THEREOF, IF THE UNIT IS A TIME-SHARE
3 UNIT, AS DEFINED IN SECTION 38-33-110 (7);

4 (e) ITS CURRENT DECLARATION, COVENANTS, BYLAWS, ARTICLES
5 OF INCORPORATION, IF IT IS A CORPORATION, OR THE CORRESPONDING
6 ORGANIZATIONAL DOCUMENTS IF IT IS ANOTHER FORM OF ENTITY, RULES
7 AND REGULATIONS, RESPONSIBLE GOVERNANCE POLICIES ADOPTED
8 PURSUANT TO SECTION 38-33.3-209.5, AND OTHER POLICIES ADOPTED BY
9 THE EXECUTIVE BOARD;

10 (f) FINANCIAL STATEMENTS AS DESCRIBED IN SECTION 7-136-106,
11 C.R.S., FOR THE PAST THREE YEARS AND TAX RETURNS OF THE
12 ASSOCIATION FOR THE PAST SEVEN YEARS, TO THE EXTENT AVAILABLE;

13 (g) A LIST OF THE NAMES AND PHYSICAL MAILING ADDRESSES OF
14 ITS CURRENT EXECUTIVE BOARD MEMBERS AND OFFICERS;

15 (h) ITS MOST RECENT ANNUAL REPORT DELIVERED TO THE
16 SECRETARY OF STATE, IF ANY;

17 (i) FINANCIAL RECORDS SUFFICIENTLY DETAILED TO ENABLE THE
18 ASSOCIATION TO COMPLY WITH SECTION 38-33.3-316 (8) CONCERNING
19 STATEMENTS OF UNPAID ASSESSMENTS;

20 (j) THE ASSOCIATION'S MOST RECENT RESERVE STUDY, IF ANY;

21 (k) CURRENT WRITTEN CONTRACTS TO WHICH THE ASSOCIATION IS
22 A PARTY;

23 (l) RECORDS OF EXECUTIVE BOARD OR COMMITTEE ACTIONS TO
24 APPROVE OR DENY ANY REQUESTS FOR DESIGN OR ARCHITECTURAL
25 APPROVAL FROM UNIT OWNERS; EXCEPT THAT DESIGNS AND
26 ARCHITECTURAL DRAWINGS AND PLANS ARE PROPRIETARY AND SHALL NOT
27 BE RELEASED WITHOUT THE WRITTEN CONSENT OF THE LEGAL OWNER OF

1 THE DESIGNS, DRAWINGS, OR PLANS;

2 (m) BALLOTS, PROXIES, AND OTHER RECORDS RELATED TO VOTING
3 BY UNIT OWNERS FOR ONE YEAR AFTER THE ELECTION, ACTION, OR VOTE
4 TO WHICH THEY RELATE;

5 (n) RESOLUTIONS ADOPTED BY ITS BOARD OF DIRECTORS RELATING
6 TO THE CHARACTERISTICS, QUALIFICATIONS, RIGHTS, LIMITATIONS, AND
7 OBLIGATIONS OF MEMBERS OR ANY CLASS OR CATEGORY OF MEMBERS; AND

8 (o) ALL WRITTEN COMMUNICATIONS WITHIN THE PAST THREE
9 YEARS TO ALL UNIT OWNERS GENERALLY AS UNIT OWNERS.

10 (2) (a) SUBJECT TO SUBSECTIONS (3), (3.5), AND (4) OF THIS
11 SECTION, ALL RECORDS MAINTAINED BY THE ASSOCIATION MUST BE
12 AVAILABLE FOR EXAMINATION AND COPYING BY A UNIT OWNER OR THE
13 OWNER'S AUTHORIZED AGENT. THE ASSOCIATION MAY REQUIRE UNIT
14 OWNERS TO SUBMIT A WRITTEN REQUEST, DESCRIBING WITH REASONABLE
15 PARTICULARITY THE RECORDS SOUGHT, AT LEAST TEN DAYS PRIOR TO
16 INSPECTION OR PRODUCTION OF THE DOCUMENTS, AND MAY LIMIT
17 EXAMINATION AND COPYING TIMES TO NORMAL BUSINESS HOURS OR THE
18 NEXT REGULARLY SCHEDULED EXECUTIVE BOARD MEETING IF THE MEETING
19 OCCURS WITHIN THIRTY DAYS AFTER THE REQUEST. NOTWITHSTANDING
20 ANY PROVISION OF THE DECLARATION, BYLAWS, ARTICLES, OR RULES AND
21 REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, THE ASSOCIATION
22 MAY NOT CONDITION THE PRODUCTION OF RECORDS UPON THE STATEMENT
23 OF A PROPER PURPOSE.

24 (b) (I) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION
25 (2), A MEMBERSHIP LIST OR ANY PART THEREOF MAY NOT BE OBTAINED OR
26 USED BY ANY PERSON FOR ANY PURPOSE UNRELATED TO A UNIT OWNER'S
27 INTEREST AS A UNIT OWNER WITHOUT CONSENT OF THE EXECUTIVE BOARD.

1 (II) WITHOUT LIMITING THE GENERALITY OF SUBPARAGRAPH (I) OF
2 THIS PARAGRAPH (b), WITHOUT THE CONSENT OF THE EXECUTIVE BOARD,
3 A MEMBERSHIP LIST OR ANY PART THEREOF MAY NOT BE:

4 (A) USED TO SOLICIT MONEY OR PROPERTY UNLESS SUCH MONEY
5 OR PROPERTY WILL BE USED SOLELY TO SOLICIT THE VOTES OF THE UNIT
6 OWNERS IN AN ELECTION TO BE HELD BY THE ASSOCIATION;

7 (B) USED FOR ANY COMMERCIAL PURPOSE; OR

8 (C) SOLD TO OR PURCHASED BY ANY PERSON.

9 (3) RECORDS MAINTAINED BY AN ASSOCIATION MAY BE WITHHELD
10 FROM INSPECTION AND COPYING TO THE EXTENT THAT THEY ARE OR
11 CONCERN:

12 [REDACTED]
13 (a) CONTRACTS, LEASES, BIDS, OR RECORDS RELATED TO OTHER
14 SIMILAR COMMERCIAL TRANSACTIONS TO PURCHASE OR PROVIDE GOODS OR
15 SERVICES THAT ARE CURRENTLY IN OR UNDER NEGOTIATION;

16 (b) PENDING, POTENTIAL, OR THREATENED LITIGATION, MEDIATION,
17 OR ARBITRATION;

18 (c) PENDING OR POTENTIAL MATTERS INVOLVING FEDERAL, STATE,
19 OR LOCAL ADMINISTRATIVE OR OTHER FORMAL PROCEEDINGS BEFORE A
20 GOVERNMENTAL TRIBUNAL FOR ENFORCEMENT OF THE DECLARATION,
21 BYLAWS, OR RULES;

22 (d) COMMUNICATIONS WITH LEGAL COUNSEL THAT ARE OTHERWISE
23 PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE OR THE ATTORNEY WORK
24 PRODUCT DOCTRINE;

25 (e) DISCLOSURE OF INFORMATION IN VIOLATION OF LAW;

26 (f) RECORDS OF AN EXECUTIVE SESSION OF AN EXECUTIVE BOARD,
27 INCLUDING RECORDS THAT MAY GIVE RISE TO AN EXECUTIVE SESSION

1 UNDER SECTION 38-33.3-308;

2 (g) INDIVIDUAL UNITS OTHER THAN THOSE OF THE REQUESTING
3 OWNER; OR

4 (h) THE NAMES AND PHYSICAL MAILING ADDRESSES OF UNIT
5 OWNERS IF THE UNIT IS A TIME-SHARE UNIT, AS DEFINED IN SECTION
6 38-33-110 (7), C.R.S.

7 (3.5) RECORDS MAINTAINED BY AN ASSOCIATION ARE NOT SUBJECT
8 TO INSPECTION AND COPYING, AND MUST BE WITHHELD, TO THE EXTENT
9 THAT THEY ARE OR CONCERN:

10 (a) PERSONNEL, SALARY, OR MEDICAL RECORDS RELATING TO
11 SPECIFIC INDIVIDUALS; OR

12 (b) PERSONAL IDENTIFICATION AND ACCOUNT INFORMATION OF
13 MEMBERS, INCLUDING BANK ACCOUNT INFORMATION, TELEPHONE
14 NUMBERS, ELECTRONIC MAIL ADDRESSES, DRIVER'S LICENSE NUMBERS, AND
15 SOCIAL SECURITY NUMBERS.

16 (4) THE ASSOCIATION MAY IMPOSE A REASONABLE CHARGE, WHICH
17 MAY BE COLLECTED IN ADVANCE AND MAY COVER THE COSTS OF LABOR
18 AND MATERIAL, FOR COPIES OF ASSOCIATION RECORDS. THE CHARGE MAY
19 NOT EXCEED THE ESTIMATED COST OF PRODUCTION AND REPRODUCTION OF
20 THE RECORDS.

21 (5) A RIGHT TO COPY RECORDS UNDER THIS SECTION INCLUDES THE
22 RIGHT TO RECEIVE COPIES BY PHOTOCOPYING OR OTHER MEANS, INCLUDING
23 THE RECEIPT OF COPIES THROUGH AN ELECTRONIC TRANSMISSION IF
24 AVAILABLE, UPON REQUEST BY THE UNIT OWNER.

25 (6) AN ASSOCIATION IS NOT OBLIGATED TO COMPILE OR
26 SYNTHESIZE INFORMATION.

27 (7) ASSOCIATION RECORDS AND THE INFORMATION CONTAINED

1 WITHIN THOSE RECORDS SHALL NOT BE USED FOR COMMERCIAL PURPOSES.

2 **SECTION 2.** In Colorado Revised Statutes, 38-35.7-102, **amend**
3 (2) (b) as follows:

4 **38-35.7-102. Disclosure - common interest community -**
5 **obligation to pay assessments - requirement for architectural**
6 **approval.** (2) (b) Upon request, the seller shall either provide to the buyer
7 or authorize the unit owners' association to provide to the buyer, upon
8 payment of the association's usual fee pursuant to section 38-33.3-317 (~~3~~)
9 (4), all of the common interest community's governing documents and
10 financial documents, as listed in the most recent available version of the
11 contract to buy and sell real estate promulgated by the real estate
12 commission as of the date of the contract.

13 **SECTION 3. Act subject to petition - effective date.** This act
14 takes effect January 1, 2013; except that, if a referendum petition is filed
15 pursuant to section 1 (3) of article V of the state constitution against this
16 act or an item, section, or part of this act within the ninety-day period after
17 final adjournment of the general assembly, then the act, item, section, or
18 part will not take effect unless approved by the people at the general
19 election to be held in November 2012 and, in such case, will take effect
20 on January 1, 2013, or on the date of the official declaration of the vote
21 thereon by the governor, whichever is later.