

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 13-0477.01 Jennifer Berman x3286

HOUSE BILL 13-1134

HOUSE SPONSORSHIP

Ryden,

SENATE SPONSORSHIP

Carroll,

House Committees

Business, Labor, Economic, & Workforce Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING UNIT OWNERS' ASSOCIATIONS UNDER THE "COLORADO**
102 **COMMON INTEREST OWNERSHIP ACT".**

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 HOA information and resource center (center) was created in 2010 to track inquiries and complaints related to unit owners' associations (a/k/a homeowners' associations or HOAs) and report them to the director of the division of real estate (director). The center also serves as a clearinghouse for information concerning the rights and duties of unit

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.*

owners and associations. The center does not have regulatory or investigative power.

Section 1 of the bill empowers the center to perform certain regulatory and investigative actions, including:

- ! Reporting suspected violations of the "Colorado Common Interest Ownership Act" (act) and rules promulgated under the act;
- ! Assisting with resolving disputes by offering to mediate them or referring them to alternate dispute resolution services; and
- ! If sufficiently petitioned by enough members of an association, appointing an election monitor and conducting the election of the association's directors.

Section 2 of the bill directs the director to calculate the annual fee paid by associations to support the center's operation on a per-unit basis and provides a formula for the director to use to calculate each association's fee.

Section 3 of the bill amends the annual registration provisions by:

- ! Adding information that a unit owners' association is required to provide along with its annual registration, including the name of the association, contact information for the association, and the number of units in the association;
- ! Clarifying that if an association fails to register, then its right to pursue legal remedies will be suspended, without prejudice, and its rights will be restored upon validly registering;
- ! Clarifying the means by which an HOA may prove that it has validly registered;
- ! Specifying that a registration is not invalid merely because it contains technical or typographical errors; and
- ! Applying the registration requirements to common interest communities that were established before enactment of the act.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-61-406.5, **amend**

3 (3) as follows:

4 **12-61-406.5. HOA information and resource center - creation**

5 **- duties - rules - cash fund - repeal.** (3) (a) The HOA information

1 officer shall act as a clearing house for information concerning the basic
2 rights and duties of unit owners, declarants, and unit owners' associations
3 under the act BY:

4 (I) COMPILING A DATABASE ABOUT REGISTERED ASSOCIATIONS,
5 INCLUDING THE NAME; ADDRESS; EMAIL ADDRESS, IF ANY; WEB SITE, IF
6 ANY; AND TELEPHONE NUMBER OF EACH;

7 (II) COORDINATING AND ASSISTING IN THE PREPARATION OF
8 EDUCATIONAL AND REFERENCE MATERIALS, INCLUDING MATERIALS TO
9 ASSIST UNIT OWNERS, EXECUTIVE BOARDS, BOARD MEMBERS, AND
10 ASSOCIATION MANAGERS IN UNDERSTANDING THEIR RIGHTS AND
11 RESPONSIBILITIES WITH RESPECT TO:

12 (A) OPEN MEETINGS;

13 (B) PROPER USE OF EXECUTIVE SESSIONS;

14 (C) REMOVAL OF EXECUTIVE BOARD MEMBERS;

15 (D) UNIT OWNERS' RIGHT TO SPEAK AT MEETINGS OF THE
16 EXECUTIVE BOARD;

17 (E) UNIT OWNERS' OBLIGATION TO PAY ASSESSMENTS AND THE
18 ASSOCIATION'S RIGHTS AND RESPONSIBILITIES IN PURSUING COLLECTION
19 OF PAST-DUE AMOUNTS; AND

20 (F) OTHER EDUCATIONAL OR REFERENCE MATERIALS THAT THE
21 HOA INFORMATION OFFICER DEEMS NECESSARY OR APPROPRIATE;

22 (III) MONITORING CHANGES IN FEDERAL AND STATE LAWS
23 RELATING TO COMMON INTEREST COMMUNITIES AND PROVIDING
24 INFORMATION ABOUT THE CHANGES ON THE DIVISION OF REAL ESTATE'S
25 WEB SITE; AND

26 (IV) PROVIDING INFORMATION, INCLUDING A "FREQUENTLY ASKED
27 QUESTIONS" RESOURCE, ON THE DIVISION OF REAL ESTATE'S WEB SITE.

- 1 (b) The HOA information officer may:
- 2 (I) Employ one or more assistants up to a maximum of 1.0 FTE,
- 3 as may be necessary to carry out his or her duties; and
- 4 (II) REQUEST CERTAIN RECORDS FROM ASSOCIATIONS AS
- 5 NECESSARY TO CARRY OUT THE HOA INFORMATION OFFICER'S DUTIES AS
- 6 SET FORTH IN THIS SECTION.
- 7 (c) THE HOA INFORMATION OFFICER shall track inquiries and
- 8 complaints and report annually to the director of the division of real estate
- 9 regarding the number and types of inquiries and complaints received.

10 **SECTION 2.** In Colorado Revised Statutes, add 12-61-406.7 as

11 follows:

12 **12-61-406.7. Study of comparable HOA information and**

13 **resource centers - recommendations - report - repeal.** (1) (a) THE

14 DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE

15 SHALL CONDUCT A STUDY OF THE FUNCTIONS AND DUTIES OF OTHER

16 STATES' HOA OFFICES, INCLUDING:

- 17 (I) THE NEVADA OFFICE OF THE OMBUDSMAN FOR OWNERS IN
- 18 COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS, OR ITS
- 19 SUCCESSOR OFFICE;
- 20 (II) THE VIRGINIA OFFICE OF THE COMMON INTEREST COMMUNITY
- 21 OMBUDSMAN, OR ITS SUCCESSOR OFFICE; AND
- 22 (III) THE FLORIDA OFFICE OF THE CONDOMINIUM OMBUDSMAN, OR
- 23 ITS SUCCESSOR OFFICE.

24 (b) THE STUDY OF OTHER STATES' HOA OFFICES MUST INCLUDE AN

25 ASSESSMENT OF THE STRUCTURE, COSTS, FUNDING, AND SUCCESS OF THE

26 FOLLOWING FUNCTIONS AND DUTIES IF PERFORMED BY ANY OF THE OTHER

27 STATES' HOA OFFICES:

- 1 (I) FILING, INVESTIGATION, VERIFICATION, AND RESOLUTION OF
2 COMPLAINTS;
- 3 (II) OFFERING TO MEDIATE COMPLAINTS;
- 4 (III) MANDATING MEDIATION OF COMPLAINTS;
- 5 (IV) REFERRING DISPUTES ARISING BETWEEN OR AMONG UNIT
6 OWNERS, EXECUTIVE BOARDS OR BOARDS OF DIRECTORS, BOARD
7 MEMBERS, AND ASSOCIATION MANAGERS TO ALTERNATIVE DISPUTE
8 RESOLUTION SERVICES;
- 9 (V) PROVIDING UNIT OWNERS WITH AN EXPEDITED AND
10 INEXPENSIVE ADMINISTRATIVE HEARING PROCESS SPECIFIC TO
11 HOA-RELATED DISPUTES;
- 12 (VI) WITH REGARD TO HOA ELECTIONS:
- 13 (A) MONITORING AND REVIEWING OF AN HOA'S PROCEDURES AND
14 ANY ELECTION-RELATED DISPUTES THAT ARISE;
- 15 (B) REPORTING OF ALLEGED ELECTION-RELATED MISCONDUCT;
16 AND
- 17 (C) WHEN REQUESTED BY A THRESHOLD NUMBER OF VOTING
18 INTERESTS IN AN HOA, APPOINTING AN ELECTION MONITOR TO CONDUCT
19 THE HOA'S ELECTION;
- 20 (VII) DETERMINING A PER-UNIT FEE UPON WHICH TO CALCULATE
21 HOA REGISTRATION FEES;
- 22 (VIII) PROVIDING REGULATORY OVERSIGHT OVER
23 DECLARANT-CONTROLLED BOARDS TO ENSURE THAT THE BOARDS ARE
24 COMPLYING WITH:
- 25 (A) THEIR FIDUCIARY DUTIES TO THE ASSOCIATION;
- 26 (B) THE REQUIREMENTS OF THE "COLORADO COMMON INTEREST
27 OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., RELATING TO

1 TRANSITION;

2 (IX) PROVIDING REGULATORY OVERSIGHT TO PROTECT EXECUTIVE

3 BOARDS, DIRECTORS, HOMEOWNERS, AND RESIDENTS FROM THREATS OR

4 DEFAMATORY CONDUCT ARISING IN RELATION TO HOA MATTERS; AND

5 (X) ANY OTHER RELEVANT HOA FUNCTION OR DUTY THAT THE

6 DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE

7 DEEMS NECESSARY TO STUDY.

8 (c) WITH RESPECT TO ANY FUNCTIONS LISTED IN PARAGRAPH (b)

9 OF THIS SUBSECTION (1) THAT WOULD BE PROVIDED ON AN INDIVIDUAL

10 BASIS, INCLUDING MEDIATION SERVICES, ALTERNATIVE DISPUTE

11 RESOLUTION REFERRALS, AND ELECTIONS MONITORING, THE DIRECTOR OF

12 THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE SHALL

13 DETERMINE:

14 (I) THE NUMBER OF TIMES PER YEAR THAT THE FUNCTION IS

15 PROVIDED IN EACH OTHER STATE PROVIDING THE FUNCTION;

16 (II) WHETHER THE OTHER STATES PROVIDING THE FUNCTION:

17 (A) DIRECTLY CHARGE THE PARTIES UTILIZING THE FUNCTION AND,

18 IF SO, HOW THE OTHER STATES DETERMINE THE AMOUNT TO CHARGE THE

19 PARTIES AND THE APPORTIONMENT OF THE AMOUNT BETWEEN THE

20 PARTIES; AND

21 (B) INCLUDE THE COST OF THE FUNCTION IN THE HOA

22 REGISTRATION FEES CHARGED TO ALL HOAs PAYING A REGISTRATION FEE

23 AND, IF SO, HOW THE OTHER STATES DETERMINE THE AMOUNT TO CHARGE

24 EACH HOA FOR THE FUNCTION.

25 (d) IF ANY OF THE DUTIES AND FUNCTIONS LISTED IN PARAGRAPH

26 (b) OF THIS SUBSECTION (1) ARE NOT PERFORMED BY ANY OTHER STATE'S

27 HOA OFFICE, THE DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR

1 HER DESIGNEE SHALL PRESENT A PLAN THAT INCLUDES:

- 2 (I) AN ASSESSMENT OF THE NEED FOR THE DUTY OR FUNCTION;
- 3 (II) A PLAN FOR IMPLEMENTING THE DUTY OR FUNCTION; AND
- 4 (III) A PROJECTION OF THE COSTS TO PERFORM THE DUTY OR
- 5 FUNCTION.

6 (e) ON OR BEFORE DECEMBER 31, 2013, THE DIRECTOR OF THE
7 DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE SHALL PREPARE A
8 REPORT OF THE FINDINGS AND CONCLUSIONS OF THE STUDY AND SHALL
9 PRESENT THE REPORT, INCLUDING HIS OR HER RECOMMENDATIONS BASED
10 ON THE STUDY AND A REVIEW OF COLORADO'S EXPERIENCE, TO THE
11 BUSINESS, LABOR, ECONOMIC, AND WORKFORCE DEVELOPMENT
12 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE LOCAL
13 GOVERNMENT COMMITTEE OF THE SENATE, OR THEIR SUCCESSOR
14 COMMITTEES, DURING THE SECOND REGULAR SESSION OF THE SIXTY-NINTH
15 GENERAL ASSEMBLY.

16 (2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2014.

17 **SECTION 3.** In Colorado Revised Statutes, **amend** 38-33.3-401
18 as follows:

19 **38-33.3-401. Registration - annual fees.** (1) Every unit owners'
20 association ~~organized under section 38-33.3-301~~ shall register annually
21 with the director of the division of real estate, in the form and manner
22 specified by the director.

23 (2) (a) Except as otherwise provided in paragraph (b) of this
24 subsection (2), the UNIT OWNERS' ASSOCIATION SHALL SUBMIT WITH ITS
25 annual registration ~~shall be accompanied by~~ a fee in the amount set by the
26 director in accordance with section 12-61-111.5, C.R.S., and shall include
27 the FOLLOWING information, ~~required to be disclosed under section~~

1 ~~38-33.3-209.4 (1). The information shall be updated within ninety days~~
2 ~~of AFTER any change: in accordance with section 38-33.3-209.4 (1).~~

3 (I) THE NAME OF THE ASSOCIATION, AS SHOWN IN THE COLORADO
4 SECRETARY OF STATE'S RECORDS;

5 (II) THE NAME OF THE ASSOCIATION'S MANAGEMENT COMPANY,
6 MANAGING AGENT, OR DESIGNATED AGENT, WHICH MAY BE THE
7 ASSOCIATION'S REGISTERED AGENT, AS SHOWN IN THE COLORADO
8 SECRETARY OF STATE'S RECORDS, OR ANY OTHER AGENT THAT THE
9 EXECUTIVE BOARD HAS DESIGNATED FOR PURPOSES OF REGISTRATION
10 UNDER THIS SECTION;

11 (III) THE PHYSICAL ADDRESS OF THE HOA;

12 (IV) A VALID ADDRESS; EMAIL ADDRESS, IF ANY; WEB SITE, IF ANY;
13 AND TELEPHONE NUMBER FOR THE ASSOCIATION OR ITS MANAGEMENT
14 COMPANY, MANAGING AGENT, OR DESIGNATED AGENT; AND

15 (V) THE NUMBER OF UNITS IN THE ASSOCIATION.

16 (b) A unit owners' association ~~shall be~~ IS exempt from the fee, but
17 not the registration requirement, if the association:

18 (I) Has annual revenues of five thousand dollars or less; or

19 (II) Is not authorized to make assessments and does not have ~~any~~
20 revenue.

21 (3) A registration ~~shall be~~ IS valid for one year. THE RIGHT OF AN
22 association that fails to register, or whose annual registration has expired,
23 ~~is ineligible~~ to impose or enforce a lien for assessments under section
24 38-33.3-316 or to pursue ~~any~~ AN action or employ ~~any~~ AN enforcement
25 mechanism otherwise available to it under section 38-33.3-123 IS
26 SUSPENDED until it THE ASSOCIATION is ~~again~~ validly registered pursuant
27 to this section. A lien for assessments previously ~~filed~~ RECORDED during

1 a period in which the association was validly registered or before
2 registration was required pursuant to this section shall IS not be
3 extinguished by a lapse in the association's registration, but any A pending
4 enforcement proceedings PROCEEDING related to such THE lien shall be IS
5 suspended, and any AN applicable time limits LIMIT IS tolled, until the
6 association is again validly registered pursuant to this section. AN
7 ASSOCIATION'S REGISTRATION IN COMPLIANCE WITH THIS SECTION REVIVES
8 A PREVIOUSLY SUSPENDED RIGHT WITHOUT PENALTY TO THE ASSOCIATION.

9 (4) (a) A REGISTRATION IS VALID UPON THE DIVISION OF REAL
10 ESTATE'S ACCEPTANCE OF THE INFORMATION REQUIRED BY PARAGRAPH (a)
11 OF SUBSECTION (2) OF THIS SECTION AND THE PAYMENT OF APPLICABLE
12 FEES.

13 (b) AN ASSOCIATION'S REGISTRATION NUMBER, AND AN
14 ELECTRONIC OR PAPER CONFIRMATION ISSUED BY THE DIVISION OF REAL
15 ESTATE, ARE PRIMA FACIE EVIDENCE OF VALID REGISTRATION.

16 (c) ~~Administratively~~ THE DIRECTOR OF THE DIVISION OF REAL
17 ESTATE'S final determinations by the director of the division of real estate
18 concerning the validity or timeliness of registrations under this section are
19 subject to judicial review pursuant to section 24-4-106 (11), C.R.S.;
20 EXCEPT THAT THE COURT SHALL NOT FIND A REGISTRATION INVALID BASED
21 SOLELY ON TECHNICAL OR TYPOGRAPHICAL ERRORS.

22 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-117, amend
23 (1.5) (l) and (1.5) (m); and add (1.5) (n) as follows:

24 **38-33.3-117. Applicability to preexisting common interest**
25 **communities.** (1.5) Except as provided in section 38-33.3-119, the
26 following sections shall apply to all common interest communities created
27 within this state before July 1, 1992, with respect to events and

1 circumstances occurring on or after January 1, 2006:

2 (l) 38-33.3-315 (7); and

3 (m) 38-33.3-317; AND

4 (n) 38-33.3-401.

5 **SECTION 5. Act subject to petition - effective date.** This act
6 takes effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly (August
8 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
9 referendum petition is filed pursuant to section 1 (3) of article V of the
10 state constitution against this act or an item, section, or part of this act
11 within such period, then the act, item, section, or part will not take effect
12 unless approved by the people at the general election to be held in
13 November 2014 and, in such case, will take effect on the date of the
14 official declaration of the vote thereon by the governor.