

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 9, 2013
Date

Committee on Business, Labor, Economic, & Workforce Development.

After consideration on the merits, the Committee recommends the following:

HB13-1134 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 12-61-406.5, amend
4 (3) as follows:

5 **12-61-406.5. HOA information and resource center - creation**
6 **- duties - rules - cash fund - repeal.** (3) (a) The HOA information
7 officer shall act as a clearing house for information concerning the basic
8 rights and duties of unit owners, declarants, and unit owners' associations
9 under the act BY:

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

13 (II) COORDINATING AND ASSISTING IN THE PREPARATION OF
14 EDUCATIONAL AND REFERENCE MATERIALS, INCLUDING MATERIALS TO
15 ASSIST UNIT OWNERS, EXECUTIVE BOARDS, BOARD MEMBERS, AND
16 ASSOCIATION MANAGERS IN UNDERSTANDING THEIR RIGHTS AND
17 RESPONSIBILITIES WITH RESPECT TO:

18 (A) OPEN MEETINGS;

19 (B) PROPER USE OF EXECUTIVE SESSIONS;

20 (C) REMOVAL OF EXECUTIVE BOARD MEMBERS;

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

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

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

6 (III) MONITORING CHANGES IN FEDERAL AND STATE LAWS
7 RELATING TO COMMON INTEREST COMMUNITIES AND PROVIDING
8 INFORMATION ABOUT THE CHANGES ON THE DIVISION OF REAL ESTATE'S
9 WEB SITE; AND

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

12 (b) The HOA information officer may:

13 (I) Employ one or more assistants ~~up to a maximum of 1.0 FTE,~~
14 as may be necessary to carry out his or her duties; and

15 (II) REQUEST CERTAIN RECORDS FROM ASSOCIATIONS AS
16 NECESSARY TO CARRY OUT THE HOA INFORMATION OFFICER'S DUTIES AS
17 SET FORTH IN THIS SECTION.

18 (c) THE HOA INFORMATION OFFICER shall track inquiries and
19 complaints and report annually to the director of the division of real estate
20 regarding the number and types of inquiries and complaints received.

21 **SECTION 2.** In Colorado Revised Statutes, **add** 12-61-406.7 as
22 follows:

23 **12-61-406.7. Study of comparable HOA information and**
24 **resource centers - recommendations - report - repeal.** (1) (a) THE
25 DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE
26 SHALL CONDUCT A STUDY OF THE FUNCTIONS AND DUTIES OF OTHER
27 STATES' HOA OFFICES, INCLUDING:

28 (I) THE NEVADA OFFICE OF THE OMBUDSMAN FOR OWNERS IN
29 COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS, OR ITS
30 SUCCESSOR OFFICE;

31 (II) THE VIRGINIA OFFICE OF THE COMMON INTEREST COMMUNITY
32 OMBUDSMAN, OR ITS SUCCESSOR OFFICE; AND

33 (III) THE FLORIDA OFFICE OF THE CONDOMINIUM OMBUDSMAN, OR
34 ITS SUCCESSOR OFFICE.

35 (b) THE STUDY OF OTHER STATES' HOA OFFICES MUST INCLUDE AN
36 ASSESSMENT OF THE STRUCTURE, COSTS, FUNDING, AND SUCCESS OF THE
37 FOLLOWING FUNCTIONS AND DUTIES IF PERFORMED BY ANY OF THE OTHER
38 STATES' HOA OFFICES:

39 (I) FILING, INVESTIGATION, VERIFICATION, AND RESOLUTION OF
40 COMPLAINTS;

- 1 (II) OFFERING TO MEDIATE COMPLAINTS;
2 (III) MANDATING MEDIATION OF COMPLAINTS;
3 (IV) REFERRING DISPUTES ARISING BETWEEN OR AMONG UNIT
4 OWNERS, EXECUTIVE BOARDS OR BOARDS OF DIRECTORS, BOARD
5 MEMBERS, AND ASSOCIATION MANAGERS TO ALTERNATIVE DISPUTE
6 RESOLUTION SERVICES;
7 (V) PROVIDING UNIT OWNERS WITH AN EXPEDITED AND
8 INEXPENSIVE ADMINISTRATIVE HEARING PROCESS SPECIFIC TO
9 HOA-RELATED DISPUTES;
10 (VI) WITH REGARD TO HOA ELECTIONS:
11 (A) MONITORING AND REVIEWING OF AN HOA'S PROCEDURES AND
12 ANY ELECTION-RELATED DISPUTES THAT ARISE;
13 (B) REPORTING OF ALLEGED ELECTION-RELATED MISCONDUCT;
14 AND
15 (C) WHEN REQUESTED BY A THRESHOLD NUMBER OF VOTING
16 INTERESTS IN AN HOA, APPOINTING AN ELECTION MONITOR TO CONDUCT
17 THE HOA'S ELECTION;
18 (VII) DETERMINING A PER-UNIT FEE UPON WHICH TO CALCULATE
19 HOA REGISTRATION FEES;
20 (VIII) PROVIDING REGULATORY OVERSIGHT OVER
21 DECLARANT-CONTROLLED BOARDS TO ENSURE THAT THE BOARDS ARE
22 COMPLYING WITH:
23 (A) THEIR FIDUCIARY DUTIES TO THE ASSOCIATION;
24 (B) THE REQUIREMENTS OF THE "COLORADO COMMON INTEREST
25 OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., RELATING TO
26 TRANSITION;
27 (IX) PROVIDING REGULATORY OVERSIGHT TO PROTECT EXECUTIVE
28 BOARDS, DIRECTORS, HOMEOWNERS, AND RESIDENTS FROM THREATS OR
29 DEFAMATORY CONDUCT ARISING IN RELATION TO HOA MATTERS; AND
30 (X) ANY OTHER RELEVANT HOA FUNCTION OR DUTY THAT THE
31 DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE
32 DEEMS NECESSARY TO STUDY.
33 (c) WITH RESPECT TO ANY FUNCTIONS LISTED IN PARAGRAPH (b)
34 OF THIS SUBSECTION (1) THAT WOULD BE PROVIDED ON AN INDIVIDUAL
35 BASIS, INCLUDING MEDIATION SERVICES, ALTERNATIVE DISPUTE
36 RESOLUTION REFERRALS, AND ELECTIONS MONITORING, THE DIRECTOR OF
37 THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE SHALL
38 DETERMINE:
39 (I) THE NUMBER OF TIMES PER YEAR THAT THE FUNCTION IS
40 PROVIDED IN EACH OTHER STATE PROVIDING THE FUNCTION;
41 (II) WHETHER THE OTHER STATES PROVIDING THE FUNCTION:

1 (A) DIRECTLY CHARGE THE PARTIES UTILIZING THE FUNCTION AND,
2 IF SO, HOW THE OTHER STATES DETERMINE THE AMOUNT TO CHARGE THE
3 PARTIES AND THE APPORTIONMENT OF THE AMOUNT BETWEEN THE
4 PARTIES; AND

5 (B) INCLUDE THE COST OF THE FUNCTION IN THE HOA
6 REGISTRATION FEES CHARGED TO ALL HOAs PAYING A REGISTRATION FEE
7 AND, IF SO, HOW THE OTHER STATES DETERMINE THE AMOUNT TO CHARGE
8 EACH HOA FOR THE FUNCTION.

9 (d) IF ANY OF THE DUTIES AND FUNCTIONS LISTED IN PARAGRAPH
10 (b) OF THIS SUBSECTION (1) ARE NOT PERFORMED BY ANY OTHER STATE'S
11 HOA OFFICE, THE DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR
12 HER DESIGNEE SHALL PRESENT A PLAN THAT INCLUDES:

13 (I) AN ASSESSMENT OF THE NEED FOR THE DUTY OR FUNCTION;

14 (II) A PLAN FOR IMPLEMENTING THE DUTY OR FUNCTION; AND

15 (III) A PROJECTION OF THE COSTS TO PERFORM THE DUTY OR
16 FUNCTION.

17 (e) ON OR BEFORE DECEMBER 31, 2013, THE DIRECTOR OF THE
18 DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE SHALL PREPARE A
19 REPORT OF THE FINDINGS AND CONCLUSIONS OF THE STUDY AND SHALL
20 PRESENT THE REPORT, INCLUDING HIS OR HER RECOMMENDATIONS BASED
21 ON THE STUDY AND A REVIEW OF COLORADO'S EXPERIENCE, TO THE
22 BUSINESS, LABOR, ECONOMIC, AND WORKFORCE DEVELOPMENT
23 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE LOCAL
24 GOVERNMENT COMMITTEE OF THE SENATE, OR THEIR SUCCESSOR
25 COMMITTEES, DURING THE SECOND REGULAR SESSION OF THE SIXTY-NINTH
26 GENERAL ASSEMBLY.

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

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

30 **38-33.3-401. Registration - annual fees.** (1) Every unit owners'
31 association ~~organized under section 38-33.3-301~~ shall register annually
32 with the director of the division of real estate, in the form and manner
33 specified by the director.

34 (2) (a) Except as otherwise provided in paragraph (b) of this
35 subsection (2), the UNIT OWNERS' ASSOCIATION SHALL SUBMIT WITH ITS
36 annual registration ~~shall be accompanied by~~ a fee in the amount set by the
37 director in accordance with section 12-61-111.5, C.R.S., and shall include
38 the FOLLOWING information, ~~required to be disclosed under section~~
39 ~~38-33.3-209.4 (1). The information shall be updated within ninety days~~
40 ~~of AFTER any change: in accordance with section 38-33.3-209.4 (1).~~

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

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

9 (III) THE PHYSICAL ADDRESS OF THE HOA;

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

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

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

16 (I) Has annual revenues of five thousand dollars or less; or
17 (II) Is not authorized to make assessments and does not have ~~any~~
18 revenue.

19 (3) A registration ~~shall be~~ IS valid for one year. THE RIGHT OF an
20 association that fails to register, or whose annual registration has expired,
21 ~~is ineligible~~ to impose or enforce a lien for assessments under section
22 38-33.3-316 or to pursue ~~any~~ AN action or employ ~~any~~ AN enforcement
23 mechanism otherwise available to it under section 38-33.3-123 IS
24 SUSPENDED until it THE ASSOCIATION is ~~again~~ validly registered pursuant
25 to this section. A lien for assessments previously ~~filed~~ RECORDED during
26 a period in which the association was validly registered or before
27 registration was required pursuant to this section ~~shall~~ IS not ~~be~~
28 extinguished by a lapse in the association's registration, but ~~any~~ A pending
29 enforcement ~~proceedings~~ PROCEEDING related to ~~such~~ THE lien ~~shall be~~ IS
30 suspended, and ~~any~~ AN applicable time ~~limits~~ LIMIT IS tolled, until the
31 association is ~~again~~ validly registered pursuant to this section. AN
32 ASSOCIATION'S REGISTRATION IN COMPLIANCE WITH THIS SECTION REVIVES
33 A PREVIOUSLY SUSPENDED RIGHT WITHOUT PENALTY TO THE ASSOCIATION.

34 (4) (a) A REGISTRATION IS VALID UPON THE DIVISION OF REAL
35 ESTATE'S ACCEPTANCE OF THE INFORMATION REQUIRED BY PARAGRAPH (a)
36 OF SUBSECTION (2) OF THIS SECTION AND THE PAYMENT OF APPLICABLE
37 FEES.

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

41 (c) ~~Administratively~~ THE DIRECTOR OF THE DIVISION OF REAL
42 ESTATE'S final determinations ~~by the director of the division of real estate~~

1 concerning the validity or timeliness of registrations under this section are
2 subject to judicial review pursuant to section 24-4-106 (11), C.R.S.;
3 EXCEPT THAT THE COURT SHALL NOT FIND A REGISTRATION INVALID BASED
4 SOLELY ON TECHNICAL OR TYPOGRAPHICAL ERRORS.

5 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-117, **amend**
6 (1.5) (l) and (1.5) (m); and **add** (1.5) (n) as follows:

7 **38-33.3-117. Applicability to preexisting common interest**
8 **communities.** (1.5) Except as provided in section 38-33.3-119, the
9 following sections shall apply to all common interest communities created
10 within this state before July 1, 1992, with respect to events and
11 circumstances occurring on or after January 1, 2006:

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

13 (m) 38-33.3-317; AND

14 (n) 38-33.3-401.

15 **SECTION 5. Act subject to petition - effective date.** This act
16 takes effect at 12:01 a.m. on the day following the expiration of the
17 ninety-day period after final adjournment of the general assembly (August
18 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
19 referendum petition is filed pursuant to section 1 (3) of article V of the
20 state constitution against this act or an item, section, or part of this act
21 within such period, then the act, item, section, or part will not take effect
22 unless approved by the people at the general election to be held in
23 November 2014 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor."

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