

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 21-0553.01 Duane Gall x4335

HOUSE BILL 21-1229

HOUSE SPONSORSHIP

Titone and Ricks, Bernett, Gonzales-Gutierrez, Hooton, Jackson, Lontine, Roberts, Valdez A., Weissman

SENATE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING INCREASED PROTECTIONS FOR UNIT OWNERS IN THE**
102 **GOVERNANCE OF UNIT OWNERS' ASSOCIATIONS UNDER THE**
103 **"COLORADO 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://leg.colorado.gov>.)

The bill increases requirements for disclosure and transparency in the operations of unit owners' associations (HOAs) in common interest communities, including:

- Posting on the HOA information and resource center's website the community's governing documents, and any

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

SENATE
Amended 2nd Reading
May 28, 2021

HOUSE
3rd Reading Unamended
May 26, 2021

HOUSE
Amended 2nd Reading
May 25, 2021

amendments to those documents, in addition to recording them in the county land records as required by current law (**sections 5 and 17** of the bill);

- Supplying a list of the HOA's current fees chargeable upon sale of a home in the community to the HOA information and resource center for posting on the center's own website (**sections 14 and 17**);
- Posting on a website, with the web address communicated annually to all unit owners, the contact information for the HOA and its management company, if any, as well as other information currently required to be disclosed (**section 6**);
- Specifically authorizing the state internet portal authority to coordinate with the HOA information and resource center to host HOA websites on behalf of registered HOAs (**sections 1 and 17**);
- Allowing unit owners to place items on a meeting agenda by petition, to record any portion of an open meeting, and to invite a registered parliamentarian to observe executive board elections (**sections 11 and 12**);
- Limiting the use of proxies by requiring express delegation of a unit owner's voting rights in a signed, dated writing (section 12);
- Prohibiting any action to be taken at an open meeting by written or secret ballot unless at least 20% of the unit owners in attendance or represented by proxy so request (section 12); and
- If access to association records required to be provided within 30 calendar days after a request was submitted by certified mail is withheld beyond that period, penalizing the HOA \$50 per day for not providing them (section 14).

The bill also requires:

- Members of an HOA's executive board to either certify that they know and fully understand the HOA's governing documents or complete a free, online basic training course offered or approved by the HOA information and resource center (**sections 8 and 17**);
- The executive board to commission a reserve study at least every 3 years and, at least annually, to adjust the HOA's finances accordingly (**sections 7 and 10**); and
- All contracts for goods or services over a specific dollar amount to be awarded based on a competitive bid process involving at least 3 bids if possible (**section 13**).

For purposes of the reserve study requirements, HOAs with fewer than 35 residential units that do not employ professional association managers may conduct an internal reserve study.

Under current law, the developer of a subdivision (declarant) is not required to transfer control of the HOA to executive board members representing the owners of units in the subdivision until specified percentages of the units are sold to initial purchasers. Section 10 places limits on the amount of time that may pass before the declarant must turn over control of the HOA to unit owners, regardless of the percentage of units that remain unsold, and requires the annual budget to detail proposed allocations to the reserve fund and a history of the prior year's expenditures from the reserve fund. Section 10 also requires any vacancy on the executive board that occurs more than 60 days before the next board election to be filled by a special election rather than by the remaining board members as allowed by current law.

Section 9 prohibits the HOA from closing off or limiting use of the common elements except for a finite period of time, with advance notice to unit owners and a statement of the reason for the closure, and prohibits the selective scheduling of maintenance on common elements to immediately benefit certain units in preference over others.

Upon the sale of a unit, current law requires disclosure to the buyer of certain HOA documents. **Section 14** requires the HOA to ensure that the documents provided to a buyer or posted online are correct and complete, and gives the buyer the right to sue for damages if they are not. **Section 15** requires the HOA to disclose whether a loss has occurred to common property that may result in a future assessment against unit owners, and **section 16** requires property and casualty insurers to pay claims for loss assessments based on when the assessment is made rather than when the loss occurred, thus avoiding a potential gap in coverage for the buyer of the unit.

Section 2 adds specificity to the requirement that HOAs allow installation of renewable energy generation devices (e.g., solar panels) subject to reasonable aesthetic guidelines by requiring approval or denial of a completed application within 60 days and requiring approval if imposition of the aesthetic guidelines would result in more than a 10% reduction in efficiency or a 10% increase in price.

Section 3:

- Amends current provisions regarding political yard signs to specify that the election season during which such signs must be permitted begins 45 days before the first mail-in ballots are sent to voters, rather than 45 days before the official date of the election; and
- Specifically includes nonvegetative turf grass (also known as artificial turf) among the types of drought-tolerant landscaping materials that the HOA may regulate but not prohibit.

Section 4 requires any dispute between the HOA and a unit owner to be submitted to mediation, either through the office of dispute

resolution within the Colorado judicial branch or through other available mediation services, prior to the commencement of any legal proceeding. The HOA's acceptance of a settlement proposed by the mediator does not preclude the HOA from enforcing covenants or rules in any future proceeding.

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

2 **SECTION 1.** In Colorado Revised Statutes, 37-60-126, **amend**
3 (11)(a) as follows:

4 **37-60-126. Water conservation and drought mitigation**
5 **planning - programs - relationship to state assistance for water**
6 **facilities - guidelines - water efficiency grant program - definitions -**
7 **repeal.** (11) (a) (I) Any section of a restrictive covenant or of the
8 declaration, bylaws, or rules and regulations of a common interest
9 community, all as defined in section 38-33.3-103, and any rule or policy
10 of a special district, as defined in section 32-1-103 (20), that prohibits or
11 limits xeriscape, prohibits or limits the installation or use of
12 drought-tolerant vegetative landscapes, ~~or~~ requires cultivated vegetation
13 to consist wholly or partially of turf grass, ~~OR PROHIBITS THE USE OF~~
14 ~~NONVEGETATIVE TURF GRASS IN THE BACKYARD OF A RESIDENTIAL~~
15 ~~PROPERTY~~ is hereby declared contrary to public policy and, on that basis,
16 is unenforceable. This subsection (11)(a) does not prohibit common
17 interest communities or special districts from adopting and enforcing
18 design or aesthetic guidelines or rules that ~~require~~ ~~APPLY TO~~
19 ~~drought-tolerant vegetative~~ ~~OR NONVEGETATIVE~~ landscapes or regulate
20 the type, number, and placement of drought-tolerant plantings and
21 hardscapes that may be installed on property that is subject to the
22 guidelines or rules; ~~EXCEPT THAT THE GUIDELINES OR RULES MUST NOT~~
23 ~~PROHIBIT THE USE OF NONVEGETATIVE TURF GRASS IN THE BACKYARD OF~~

1 A RESIDENTIAL PROPERTY.

2 (II) THIS SUBSECTION (11)(a), AS AMENDED BY HOUSE BILL
3 21-1229, ENACTED IN 2021, DOES NOT APPLY TO AN ASSOCIATION THAT
4 INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7).

5 **SECTION 2.** In Colorado Revised Statutes, 38-30-168, **amend**
6 (2) introductory portion and (2)(a) as follows:

7 **38-30-168. Unreasonable restrictions on renewable energy**
8 **generation devices - definitions.** (2) Subsection (1) of this section ~~shall~~
9 DOES not apply to:

10 (a) (I) Aesthetic provisions that impose reasonable restrictions on
11 the dimensions, placement, or external appearance of a renewable energy
12 generation device and that do not:

13 (A) ~~Significantly~~ Increase the cost of the device ~~or~~ BY MORE THAN
14 TEN PERCENT;

15 (B) ~~Significantly~~ Decrease ~~its~~ THE performance or efficiency OF
16 THE DEVICE BY MORE THAN TEN PERCENT; OR

17 (C) REQUIRE A PERIOD OF REVIEW AND APPROVAL THAT EXCEEDS
18 SIXTY DAYS AFTER THE DATE OF APPLICATION. IF AN APPLICATION FOR
19 INSTALLATION OF A RENEWABLE ENERGY GENERATION DEVICE IS NOT
20 DENIED OR RETURNED FOR MODIFICATIONS WITHIN SIXTY DAYS, IT IS
21 DEEMED APPROVED. THE REVIEW PROCESS MUST BE TRANSPARENT;
22 DENIAL OF APPROVAL MUST NOT BE ARBITRARY OR CAPRICIOUS; AND THE
23 BASIS FOR ANY DENIAL MUST BE DESCRIBED IN REASONABLE DETAIL.

24 (II) THIS SUBSECTION (2)(a), AS AMENDED BY HOUSE BILL
25 21-1229, ENACTED IN 2021, DOES NOT APPLY TO AN ASSOCIATION THAT
26 INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7).

27 **SECTION 3.** In Colorado Revised Statutes, 38-33.3-106.5,

1 **amend** (1)(i)(I) as follows:

2 **38-33.3-106.5. Prohibitions contrary to public policy -**
3 **patriotic, political, or religious expression - emergency vehicles - fire**
4 **prevention - renewable energy generation devices - affordable**
5 **housing - drought prevention measures - child care - definitions.**

6 (1) Notwithstanding any provision in the declaration, bylaws, or rules
7 and regulations of the association to the contrary, an association shall not
8 prohibit any of the following:

9 (i) (I) (A) The use of xeriscape, NONVEGETATIVE TURF GRASS, or
10 drought-tolerant vegetative landscapes to provide ground covering to
11 property for which a unit owner is responsible, including a limited
12 common element or property owned by the unit owner. Associations may
13 adopt and enforce design or aesthetic guidelines or rules that **require**
14 **APPLY TO NONVEGETATIVE TURF GRASS AND** drought-tolerant vegetative
15 landscapes or regulate the type, number, and placement of
16 drought-tolerant plantings and hardscapes that may be installed on a unit
17 owner's property or on a limited common element or other property for
18 which the unit owner is responsible. **AN ASSOCIATION MAY RESTRICT THE**
19 **INSTALLATION OF NONVEGETATIVE TURF GRASS TO REAR YARD LOCATIONS**
20 **ONLY.**

21 (B) THIS SUBSECTION (1)(i), AS AMENDED BY HOUSE BILL
22 21-1229, ENACTED IN 2021, DOES NOT APPLY TO AN ASSOCIATION THAT
23 INCLUDES TIME SHARE UNITS, AS DEFINED IN SECTION 38-33-110 (7).

24 **SECTION 4.** In Colorado Revised Statutes, 38-33.3-317, **amend**
25 **(4); and add** (1)(h.5), (1)(h.6), (4.5), and (8) as follows:

26 **38-33.3-317. Association records - rules.** (1) In addition to any
27 records specifically defined in the association's declaration or bylaws or

1 expressly required by section 38-33.3-209.4 (2), the association must
2 maintain the following, all of which shall be deemed to be the sole
3 records of the association for purposes of document retention and
4 production to owners:

5 (h.5) A LIST OF THE CURRENT AMOUNTS OF ALL UNIQUE AND
6 EXTRAORDINARY FEES, ASSESSMENTS, AND EXPENSES THAT ARE
7 CHARGEABLE BY THE ASSOCIATION IN CONNECTION WITH THE PURCHASE
8 OR SALE OF A UNIT AND ARE NOT PAID FOR THROUGH ASSESSMENTS,
9 INCLUDING TRANSFER FEES, RECORD CHANGE FEES, AND THE CHARGE FOR
10 A STATUS LETTER OR STATEMENT OF ASSESSMENTS DUE;

11 (h.6) ALL DOCUMENTS INCLUDED IN THE ASSOCIATION'S ANNUAL
12 DISCLOSURES MADE PURSUANT TO SECTION 38-33.3-209.4.

13 (4) The association may impose a reasonable charge, which may
14 be collected in advance and may cover the costs of labor and material, for
15 copies of association records. The charge may not exceed the estimated
16 cost of production and reproduction of the records, INCLUDING THE COSTS
17 OF COPYING, MAILING, AND ANY NECESSARY SPECIAL PROCESSING.

18 (4.5) IF THE ASSOCIATION FAILS TO ALLOW INSPECTION OR
19 COPYING OF RECORDS IN ACCORDANCE WITH THIS SECTION WITHIN THIRTY
20 CALENDAR DAYS AFTER RECEIPT OF A WRITTEN REQUEST SUBMITTED BY
21 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND PAYMENT OF ANY FEES
22 REQUIRED PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE
23 ASSOCIATION IS LIABLE FOR PENALTIES IN THE AMOUNT OF FIFTY DOLLARS
24 PER DAY, COMMENCING ON THE ELEVENTH BUSINESS DAY AFTER THE
25 ASSOCIATION RECEIVED THE WRITTEN REQUEST, UP TO A MAXIMUM OF
26 FIVE HUNDRED DOLLARS OR THE UNIT OWNER'S ACTUAL DAMAGES
27 SUSTAINED AS A RESULT OF THE REFUSAL, WHICHEVER IS GREATER.

1 (8) SUBSECTIONS (1)(h.5), (1)(h.6), AND (4.5) OF THIS SECTION, AS
2 ADDED BY HOUSE BILL 21-1229, ENACTED IN 2021, AND SUBSECTION (4)
3 OF THIS SECTION, AS AMENDED BY HOUSE BILL 21-1229, ENACTED IN
4 2021, DO NOT APPLY TO AN ASSOCIATION THAT INCLUDES TIME SHARE
5 UNITS, AS DEFINED IN SECTION 38-33-110 (7).

6 **SECTION 5. Act subject to petition - effective date -**
7 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
8 the expiration of the ninety-day period after final adjournment of the
9 general assembly; except that, if a referendum petition is filed pursuant
10 to section 1 (3) of article V of the state constitution against this act or an
11 item, section, or part of this act within such period, then the act, item,
12 section, or part will not take effect unless approved by the people at the
13 general election to be held in November 2022 and, in such case, will take
14 effect on the date of the official declaration of the vote thereon by the
15 governor.

16 (2) This act applies to conduct occurring on or after the applicable
17 effective date of this act.