

CHAPTER 198

PROPERTY

HOUSE BILL 13-1134

BY REPRESENTATIVE(S) Ryden, Buckner, Fields, Fischer, Hullinghorst, Melton, Peniston, Primavera, Williams;
also SENATOR(S) Carroll, Aguilar, Kefalas, Kerr, Newell, Nicholson, Schwartz, Tochtrop, Todd.

AN ACT

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

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

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

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

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

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

- (A) OPEN MEETINGS;
- (B) PROPER USE OF EXECUTIVE SESSIONS;
- (C) REMOVAL OF EXECUTIVE BOARD MEMBERS;
- (D) UNIT OWNERS' RIGHT TO SPEAK AT MEETINGS OF THE EXECUTIVE BOARD;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

(b) The HOA information officer may:

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

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

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

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

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

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

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

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

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

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

(II) OFFERING TO MEDIATE COMPLAINTS;

(III) MANDATING MEDIATION OF COMPLAINTS;

(IV) REFERRING DISPUTES ARISING BETWEEN OR AMONG UNIT OWNERS, EXECUTIVE BOARDS OR BOARDS OF DIRECTORS, BOARD MEMBERS, AND ASSOCIATION MANAGERS TO ALTERNATIVE DISPUTE RESOLUTION SERVICES;

(V) PROVIDING UNIT OWNERS WITH AN EXPEDITED AND INEXPENSIVE ADMINISTRATIVE HEARING PROCESS SPECIFIC TO HOA-RELATED DISPUTES;

(VI) WITH REGARD TO HOA ELECTIONS:

(A) MONITORING AND REVIEWING OF AN HOA'S PROCEDURES AND ANY ELECTION-RELATED DISPUTES THAT ARISE;

(B) REPORTING OF ALLEGED ELECTION-RELATED MISCONDUCT; AND

(C) WHEN REQUESTED BY A THRESHOLD NUMBER OF VOTING INTERESTS IN AN HOA, APPOINTING AN ELECTION MONITOR TO CONDUCT THE HOA'S ELECTION;

(VII) DETERMINING A PER-UNIT FEE UPON WHICH TO CALCULATE HOA REGISTRATION FEES;

(VIII) PROVIDING REGULATORY OVERSIGHT OVER DECLARANT-CONTROLLED BOARDS TO ENSURE THAT THE BOARDS ARE COMPLYING WITH:

(A) THEIR FIDUCIARY DUTIES TO THE ASSOCIATION;

(B) THE REQUIREMENTS OF THE "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S., RELATING TO TRANSITION;

(IX) PROVIDING REGULATORY OVERSIGHT TO PROTECT EXECUTIVE BOARDS, DIRECTORS, HOMEOWNERS, AND RESIDENTS FROM THREATS OR DEFAMATORY CONDUCT ARISING IN RELATION TO HOA MATTERS; AND

(X) ANY OTHER RELEVANT HOA FUNCTION OR DUTY THAT THE DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE DEEMS NECESSARY TO STUDY.

(c) WITH RESPECT TO ANY FUNCTIONS LISTED IN PARAGRAPH (b) OF THIS SUBSECTION (1) THAT WOULD BE PROVIDED ON AN INDIVIDUAL BASIS, INCLUDING MEDIATION SERVICES, ALTERNATIVE DISPUTE RESOLUTION REFERRALS, AND ELECTIONS MONITORING, THE DIRECTOR OF THE DIVISION OF REAL ESTATE OR HIS OR HER DESIGNEE SHALL DETERMINE:

(I) THE NUMBER OF TIMES PER YEAR THAT THE FUNCTION IS PROVIDED IN EACH OTHER STATE PROVIDING THE FUNCTION;

(II) WHETHER THE OTHER STATES PROVIDING THE FUNCTION:

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

(B) INCLUDE THE COST OF THE FUNCTION IN THE HOA REGISTRATION FEES

CHARGED TO ALL HOAs PAYING A REGISTRATION FEE AND, IF SO, HOW THE OTHER STATES DETERMINE THE AMOUNT TO CHARGE EACH HOA FOR THE FUNCTION.

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

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

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

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

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

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

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

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

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

(III) THE PHYSICAL ADDRESS OF THE HOA;

(IV) A VALID ADDRESS; EMAIL ADDRESS, IF ANY; WEB SITE, IF ANY; AND TELEPHONE NUMBER FOR THE ASSOCIATION OR ITS MANAGEMENT COMPANY,

MANAGING AGENT, OR DESIGNATED AGENT; AND

(V) THE NUMBER OF UNITS IN THE ASSOCIATION.

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

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

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

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

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

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

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

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

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

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

(m) 38-33.3-317; AND

(n) 38-33.3-401.

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

Approved: May 11, 2013