

CHAPTER 163

**PROPERTY**

**HOUSE BILL 08-1135**

BY REPRESENTATIVE(S) Carroll M., Borodkin, Ferrandino, Frangas, Green, Hodge, Kerr A., Madden, Marshall, Merrifield, Peniston, Primavera, Solano, Soper, Stafford, Todd, and Labuda; also SENATOR(S) Hagedorn, Williams, Spence, Tochtrop, and Tupa.

**AN ACT**

**CONCERNING COMMON INTEREST COMMUNITIES, AND, IN CONNECTION THEREWITH, INVALIDATING COVENANTS THAT PROHIBIT BUILDING MODIFICATIONS TO ACCOMMODATE PERSONS WITH DISABILITIES, REQUIRING DUE PROCESS IN PENALTY ASSESSMENT PROCEDURES, AND PROVIDING FOR ALTERNATIVE DISPUTE RESOLUTION.**

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

**SECTION 1.** 38-33.3-106.5 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

**38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire prevention - definitions.**

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

(g) REASONABLE MODIFICATIONS TO A UNIT OR TO COMMON ELEMENTS AS NECESSARY TO AFFORD A PERSON WITH DISABILITIES FULL USE AND ENJOYMENT OF THE UNIT IN ACCORDANCE WITH THE FEDERAL "FAIR HOUSING ACT OF 1968", 42 U.S.C. SEC. 3604 (f) (3) (A).

**SECTION 2.** 38-33.3-209.5, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to read:

**38-33.3-209.5. Responsible governance policies - due process for imposition of fines.** (2) NOTWITHSTANDING ANY PROVISION OF THE DECLARATION, BYLAWS, ARTICLES, OR RULES AND REGULATIONS TO THE CONTRARY, THE ASSOCIATION MAY NOT FINE ANY UNIT OWNER FOR AN ALLEGED VIOLATION UNLESS:

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

(a) THE ASSOCIATION HAS ADOPTED, AND FOLLOWS, A WRITTEN POLICY GOVERNING THE IMPOSITION OF FINES; AND

(b) (I) THE POLICY INCLUDES A FAIR AND IMPARTIAL FACTFINDING PROCESS CONCERNING WHETHER THE ALLEGED VIOLATION ACTUALLY OCCURRED AND WHETHER THE UNIT OWNER IS THE ONE WHO SHOULD BE HELD RESPONSIBLE FOR THE VIOLATION. THIS PROCESS MAY BE INFORMAL BUT SHALL, AT A MINIMUM, GUARANTEE THE UNIT OWNER NOTICE AND AN OPPORTUNITY TO BE HEARD BEFORE AN IMPARTIAL DECISION MAKER.

(II) AS USED IN THIS PARAGRAPH (b), "IMPARTIAL DECISION MAKER" MEANS A PERSON OR GROUP OF PERSONS WHO HAVE THE AUTHORITY TO MAKE A DECISION REGARDING THE ENFORCEMENT OF THE ASSOCIATION'S COVENANTS, CONDITIONS, AND RESTRICTIONS, INCLUDING ITS ARCHITECTURAL REQUIREMENTS, AND THE OTHER RULES AND REGULATIONS OF THE ASSOCIATION AND DO NOT HAVE ANY DIRECT PERSONAL OR FINANCIAL INTEREST IN THE OUTCOME. A DECISION MAKER SHALL NOT BE DEEMED TO HAVE A DIRECT PERSONAL OR FINANCIAL INTEREST IN THE OUTCOME IF THE DECISION MAKER WILL NOT, AS A RESULT OF THE OUTCOME, RECEIVE ANY GREATER BENEFIT OR DETRIMENT THAN WILL THE GENERAL MEMBERSHIP OF THE ASSOCIATION.

(3) IF, AS A RESULT OF THE FACTFINDING PROCESS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, IT IS DETERMINED THAT THE UNIT OWNER SHOULD NOT BE HELD RESPONSIBLE FOR THE ALLEGED VIOLATION, THE ASSOCIATION SHALL NOT ALLOCATE TO THE UNIT OWNER'S ACCOUNT WITH THE ASSOCIATION ANY OF THE ASSOCIATION'S COSTS OR ATTORNEY FEES INCURRED IN ASSERTING OR HEARING THE CLAIM. NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, A UNIT OWNER SHALL NOT BE DEEMED TO HAVE CONSENTED TO PAY SUCH COSTS OR FEES.

**SECTION 3.** 38-33.3-124, Colorado Revised Statutes, is amended to read:

**38-33.3-124. Legislative declaration - alternative dispute resolution encouraged - policy statement required.** (1) (a) (I) The general assembly finds and declares that the cost, complexity, and delay inherent in court proceedings make litigation a particularly inefficient means of resolving neighborhood disputes. Therefore, common interest communities are encouraged to adopt protocols that make use of mediation or arbitration as alternatives to, or preconditions upon, the filing of a complaint between a unit owner and association in situations that do not involve an imminent threat to the peace, health, or safety of the community.

(II) THE GENERAL ASSEMBLY HEREBY SPECIFICALLY ENDORSES AND ENCOURAGES ASSOCIATIONS, UNIT OWNERS, MANAGERS, DECLARANTS, AND ALL OTHER PARTIES TO DISPUTES ARISING UNDER THIS ARTICLE TO AGREE TO MAKE USE OF ALL AVAILABLE PUBLIC OR PRIVATE RESOURCES FOR ALTERNATIVE DISPUTE RESOLUTION, INCLUDING, WITHOUT LIMITATION, THE RESOURCES OFFERED BY THE OFFICE OF DISPUTE RESOLUTION WITHIN THE COLORADO JUDICIAL BRANCH THROUGH ITS WEB SITE.

(b) On or before January 1, 2007, each association shall adopt a written policy

setting forth its procedure for addressing disputes arising between the association and unit owners. The association shall make a copy of this policy available to unit owners upon request.

(2) (a) Any controversy between an association and a unit owner arising out of the provisions of this article may be submitted to mediation by ~~either party to the controversy~~ AGREEMENT OF THE PARTIES prior to the commencement of any legal proceeding.

(b) The mediation agreement, if one is reached, may be presented to the court as a stipulation. Either party to the mediation may terminate the mediation process without prejudice.

(c) If either party subsequently violates the stipulation, the other party may apply immediately to the court for relief.

(3) The declaration, bylaws, or rules of the association may specify situations in which disputes shall be resolved by binding arbitration under the "Uniform Arbitration Act", part 2 of article 22 of title 13, C.R.S., OR BY ANOTHER MEANS OF ALTERNATIVE DISPUTE RESOLUTION UNDER THE "DISPUTE RESOLUTION ACT", PART 3 OF ARTICLE 22 OF TITLE 13, C.R.S.

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2008, and shall apply to acts occurring on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 21, 2008