

## House Business Affairs &amp; Labor

04/29/2021 01:30 PM

## HB21-1229 HOA Governance Funding Record Keeping

## Typed Text of Testimony Submitted

Name, Position, Representing	Typed Text of Testimony
<p>Lisa Birnbaum Against Self</p>	<p>I just read a breakdown on the bill introduced just a few weeks ago. I can not support the passage of this bill. It really does not take into account that many HOAs (especially here in Lafayette, CO) are small associations that are self-managed.</p> <p>Here are parts of the overview that will add an added burden to an already overwhelming position to our small six unit community.</p> <ul style="list-style-type: none"> <li>* Having to upload all of our governing documents in another location.</li> <li>* Making us create, monitor and update a website.</li> <li>* Requiring the use of an alternative dispute resolution in all disputes.</li> </ul> <p>Does this mean we can not work out disputes in a neighborly fashion? I really don't understand having to do this unless there is some legal action that would need to be taken.</p> <ul style="list-style-type: none"> <li>* Adding requirements for meetings will increase the burden of our small association to do things correctly. Also, who would like to be on a board if someone can record the meeting?</li> <li>* I believe board education is important and have participated in quite a few as I serve on the board. However, I believe it should not be mandatory by the state. Could a rogue owner use it against an association in a lawsuit? It seems to cause more problems than solutions.</li> </ul> <p>Thanks for your time, Lisa Birnbaum Secretary Baseline Cottages HOA Lafayette, CO</p>
<p>EdieMarie Kellogg Against East Hatchet Ranch Home Owners Association, Inc.</p>	<p>It would appear that this bill is trying to address many situations that are not applicable to ALL HOAs. Not only are several of the proposals non-applicable, many of them could completely usurp our entire annual budget.</p> <p>I am in agreement with the comments from David Firmin from Altitude Community Law.</p> <p>I am available for further information of needed.</p> <p>Edie M. Kellogg Secretary East Hatchet Ranch HOA 719.676.2443</p>

Andrew P. Mowery  
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Support for HB 21-1229

I strongly support passage of HB 21-1229, not because it solves all HOA problems, but because it is a first step in defending homeowner rights after decades of abuse without recourse or relief. It is also responsive to Gov. Polis's mandate in his veto of the 2019 legislation that didn't go far enough to protect these rights. Rights do not defend themselves. And, those initially defending rights are often in the minority. This isn't about profits, it's about justice.

Robert's Rules of Order state that the majority may decide, but that the minority shall be heard to defend against "Tyranny of the Majority". This Committee is faced with deciding whether the well-funded and well-organized majority led by CAI is ignoring the evidence of tyranny against homeowner rights. Their only defense of this tyranny is that a majority of homeowners are profiting from real estate in Colorado when irrational exuberance is driving a valuation bubble!

The central issue is COMPLIANCE, and whose job it is to act as the Compliance Officer for Non-Profit Corporations. At this point in time, if a Board is not following its governing documents or laws, the burden falls solely, squarely, and unfairly on homeowners. Homeowners are consumers of a service, and the state should provide protections for consumers who are damaged or abused. Instead, it merely tallies the incidents – and tells homeowners to document their cases for mediation or litigation, which results in unrestrained retaliation against such whistleblowers.

I know, because I have spent 2 years preparing extensive documentation, have endured strong retaliation, and have exhausted all means within the HOA prior to filing litigation and bringing the case to the Colorado Civil Rights Division. All at great personal financial and emotional expense. This is amplified by my disability – PTSD. I believe I have a right to my health and welfare, and that this right trumps any entitlement to pecuniary gain or profit.

You can see the tip of my documentation iceberg at [www.poudreoverlook.com](http://www.poudreoverlook.com)

Unlike our HOA and Insurance Company Attorneys or CAM, I've actually read and understand the governing documents and applicable state and federal laws. And, our Articles of Incorporation and CCRs state the purpose in very clear terms that requires no attorney to understand:

**"The Association *does not contemplate pecuniary gain or profit to the Members* thereof, and the specific purposes for which it is formed are as follows: (a) to operate the Common Interest Community known as POUFRE OVERLOOK located in Larimer County, Colorado, in accordance with the Act, as amended,**

and the Colorado Nonprofit Corporation Act, as amended; (b) ***to promote the health, safety, welfare, and common benefit of the residents in the Common Interest Community;***”

CAI published opposition to this bill saying “most associations are getting things right”. Most is not all. And citing 74% positive feedback is advocating mediocrity, at best. Any Amazon Seller with that would be thrown off the platform with that rating. CAI is admitting failure and spinning it as success.

Even if a majority are turning a profit, it does not justify trampling people’s rights. This is the Tyranny of the Majority Robert’s Rules worries about. Many HOAs go farther than CAI, and pretend that it’s not just a majority, but unanimity – that no problem exists at all. They create policies to prevent documentation of meetings, access to documents, or any meeting with the Board to resolve disputes before litigation. And, they aren’t just willfully ignorant, they are often advised by HOA Attorneys and CAMs who have a financial conflict of interest to identify or act when they see non-compliance. In some cases, their entitlement to profit results in advising ignorant Board owners to act outside the law.

I am currently in litigation where such attorneys saw fit to submit false sworn Affidavits. Would any of you care to bet your house on whether they are even held accountable by anyone?

No? Then why are you asking people like me to do the same in pursuit of justice for violation of my rights?

We aren’t asking you for new rights, we just want enhanced abilities to defend them ourselves since you won’t provide an administrative agency where we turn in complaints, and then you do the job of keeping HOAs compliant with their own governing documents and law.

While HB 21-1229 does not go as far as I would like, it gives us a few more tools to do the job of Compliance Officer ourselves. If you reject this, you are enabling the abusers who deserve no such qualified immunity from accountability.

Let’s be real: HOAs are enjoying the benefits of a real estate boom as though HOAs deliver this value, when non-HOA homes are rising too. Even if the purpose of an HOA was pecuniary gain and profit, which is contrary to my HOA documents, they would also have to take credit when the market goes bust – and you know that’s not going to happen.

But here is the most obvious flaw in CAI’s argument – if things are so good in HOAs, and “most” people are satisfied, how is it that this legislation would create some flood of complaints or litigation? If everyone is so happy with HOAs, why would this legislation make satisfied homeowners unsatisfied?

Either you recognize that a problem truly exists for a sufficient number of Coloradoans for SOME action, or you table this for more years or decades while more homeowners suffer

injustices and violations of their rights. If you want us to do the job of Compliance Officer for you, then we must have the tools necessary to investigate, document, and prosecute non-compliance without fear of retaliation, just as any other participant in the public or private sector would enjoy doing the same job.

Telling us we are either imagining or exaggerating the problem is insulting, dismissive, and amounts to joining the abusers in the abuse. Please hear the urgent pleas from the minority and protect our rights from further degradation. If this bill isn't perfect, fix it.

But, always remember, justice delayed is justice denied. It's been far too long already.

Sincerely,

Andrew P. Mowery  
Homeowner at Poudre Overlook HOA of Fort Collins  
Former Board Member, Secretary, and Web Administrator  
Plaintiff in Larimer County District Court and Complainant before CCRD

THANKS FOR GIVING ME THE OPPORTUNITY TO CONVEY MY THOUGHTS AS TO WHY THIS BILL SHOULD BE APPROVED. MY NAME IS TOM PUTNAM AND I HAVE LIVED IN SEVERAL HOA COMMUNITIES AND SERVED ON VARIOUS BOARDS. I CAN WITHOUT A DOUBT STATE THAT ALL HOA BOARDS AND MANAGEMENT COMPANIES ARE NOT EQUAL. SOME ARE GOOD AND OTHERS ARE BAD.

MOST HOA MEMBERS WANTING TO BE ON BOARDS DO IT FOR ONE REASON: POWER ! AT FIRST THEY TRY TO DO GOOD FOR THE HOA BUT THEN THE POWER CONTROL TAKES OVER AND THEY ONLY WANT TO CONTROL THE MEMBERS. THIS IS DONE BY BEING NON-TRANSPARENT OR SIMPLE IGNORING THE MEMBERS AND VIOLATING THE GOVERNING DOCS. MOST HOA MEMBERS HAVE NO IDEA WHAT THEIR GOVERNING DOCS SAY SO IT BECOMES VERY EASY FOR BOARDS TO CONTROL THE MEMBERS THRU LIES SUCH AS PROVIDING WRONG RESERVE ACCOUNT INFORMATION, WHICH THEY DID TO ME WHEN I WAS REFINANCING, PROVIDING MISLEADING MONTHLY FINANCIALS, OR FALSIFYING AND THEN APPROVING BOARD MEETING MINUTES TO COVER-UP AND CONCEAL THE BOARDS ILLEGAL ACTIONS. I HAVE SEEN IT ALL.

I HAVE WITNESSED BOARDS THAT VIOLATE THE GOVERNING DOCS, THE HOA RULES, THE ARCHITECTURE GUIDELINES, ELECTION RULES, EVEN CIVIL CODES AND THEN TELL MEMBERS IF THEY DON'T LIKE IT ...SUE US. MOST BOARD MEMBERS DON'T KNOW OR UNDERSTAND THE GOVERNING DOCS AND JUST RELIE ON THE MANAGEMENT COMPANY FOR ADVISE. SOME BOARD MEMBERS JUST SIT ON THE BOARD, ACT IMPORTANT AND VOTE ON ISSUES THEY ARE NOT EVEN AWARE OF AND HAVE NO IDEA WHAT THE

CONSEQUENCES OF THEIR VOTE MIGHT BE.

MOST HOA MEMBERS CANNOT AFFORD TO SUE BOARDS FOR THEIR ACTIONS NOR FILE LEGITIMATE CLAIMS WITH THE HOA'S D&O INSURANCE CARRIER FOR THE WRONGFUL ACTS OF THE BOARD AS THEN THE MEMBER WILL HAVE TO FIGHT AGAINST THE D&O INSURANCE COMPANY ATTORNEYS IN COURT. THIS BILL ALLOWS FOR MANDATORY ARBITRATION BEFORE GOING TO COURT THUS TRYING TO SOLVE PROBLEMS BEFORE SPENDING THOUSANDS OF DOLLARS ON ATTORNEY FEES AND COURT COSTS. NO WONDER THE ATTORNEYS ARE AGAINST THIS BILL. ALSO, AS AN HOA MEMBER, TRY TO FIND LEGAL COUNSEL TO TAKE YOUR CASE OR DEFEND YOU AGAINST AN HOA. ALMOST IMPOSSIBLE. BELIEVE ME, I HAVE TRIED.

BOARDS DON'T WANT THIS BILL BECAUSE IT WOULD REQUIRE THAT BOARDS UNDERSTAND THE GOVERNING DOCS OF THE HOA THEY REPRESENT. MANAGEMENT COMPANIES DON'T WANT THIS BILL BECAUSE IT WOULD DIMINISH SOME OF THEIR CONTROL OVER BOARDS.

HOA'S ARE FOR THE HOA MEMBERS. IT IS IMPORTANT THAT MEMBERS HAVE ACCESS TO THE HOA'S GOVERNING DOCS, HOA RULES, BUDGETS, FINANCIALS, RESERVE STUDIES, BOARD MEETING MINUTES, AGENDAS, RESERVE ACCOUNT SPENDING AND ELECTION RULES. THIS BILL REQUIRES THAT MEMBERS HAVE ACCESS TO THESE IMPORTANT DOCUMENTS.

LOSS ASSESSMENTS, PROXIES ESPECIALLY PROXY FORGERIES, AND OVERSIGHT OF BOARDS ARE OTHER MATTERS THAT NEED ADDRESSING AS ARE FINES AND CRIMINAL PENALTIES FOR ABUSES BY BOARDS, BUT THAT IS FOR ANOTHER TIME.

IT IS MY OPINION THIS BILL DOES NOT GO FAR ENOUGH TO PROTECT HOA MEMBERS FROM BOARDS AND MANAGEMENT COMPANIES THAT WISH TO CONCEAL IMPORTANT INFORMATION THAT EVERY HOA MEMBER SHOULD HAVE ACCESS TOO. THAT BEING SAID, AT LEAST THIS BILL IS A GOOD START AND SHOULD BE PASSED. REMEMBER, IT IS THE HOA MEMBERS MONEY THAT IS AT RISK AND IT IS THE MEMBERS WHO OWN THE ASSOCIATION.

SHOULD ANY OF YOU WISH TO ASK ME QUESTIONS REGARDING HOA'S, PLEASE CONTACT COLORADO HOMEOWNERS AND THEY WILL BE ABLE TO GET IN TOUCH WITH ME.

AGAIN, THANK YOU FOR YOUR TIME.

THANKS FOR GIVING ME THE OPPORTUNITY TO CONVEY MY THOUGHTS AS TO WHY THIS BILL SHOULD BE APPROVED. MY NAME IS TOM PUTNAM. I HAVE LIVED IN SEVERAL HOA COMMUNITIES AND SERVED ON VARIOUS HOA BOARDS INCLUDING SERVING AS BOARD PRESIDENT FOR SEVERAL YEARS AT THE LARGEST HOA IN LOS ANGELES COUNTY. I CAN, WITHOUT A DOUBT, STATE THAT ALL HOA BOARDS AND MANAGEMENT COMPANIES ARE NOT EQUAL. SOME ARE GOOD AND OTHERS ARE BAD.

SOME HOA MEMBERS WISHING TO BE ON BOARDS DO IT FOR ONE REASON: POWER ! AT FIRST THEY TRY TO DO GOOD FOR THE HOA BUT THEN THE POWER CONTROL TAKES OVER AND THEY ONLY WANT TO CONTROL THE MEMBERS. THIS IS DONE BY BEING NON-TRANSPARENT OR SIMPLE IGNORING THE MEMBERS AND VIOLATING THE GOVERNING DOCS. MOST HOA MEMBERS HAVE NO IDEA WHAT THEIR GOVERNING DOCS SAY SO IT BECOMES VERY EASY FOR BOARDS TO CONTROL THE MEMBERS THRU LIES SUCH AS PROVIDING INACCURATE FINANCIAL INFORMATION, WHICH THEY DID TO ME WHEN I WAS REFINANCING, OR PROVIDING MISLEADING MONTHLY FINANCIALS, OR FALSIFYING AND THEN APPROVING BOARD MEETING MINUTES TO COVER-UP AND CONCEAL THE BOARDS ILLEGAL ACTIONS. I HAVE SEEN IT ALL.

I HAVE WITNESSED BOARDS THAT VIOLATE THE GOVERNING DOCS, THE HOA RULES, THE ARCHITECTURAL GUIDELINES, ELECTION RULES, EVEN CIVIL & CRIMINAL CODES & THEN TELL MEMBERS IF THEY DON'T LIKE IT ...SUE US. MOST BOARD MEMBERS DON'T KNOW OR UNDERSTAND THE GOVERNING DOCS AND JUST RELIE ON THE MANAGEMENT COMPANY FOR ADVICE. SOME BOARD MEMBERS JUST SIT ON THE BOARD, ACT IMPORTANT AND

VOTE ON ISSUES THEY ARE NOT EVEN AWARE OF AND HAVE NO IDEA WHAT THE CONSEQUENCES OF THEIR VOTE MIGHT BE.

MOST HOA MEMBERS CANNOT AFFORD TO SUE BOARDS FOR THEIR ACTIONS NOR FILE LEGITIMATE CLAIMS WITH THE HOA'S D&O LIABILITY INSURANCE CARRIER FOR THE WRONGFULL ACTS OF THE BOARD AS THEN THE MEMBER WILL HAVE TO FIGHT THE D&O INSURANCE COMPANY ATTORNIES IN COURT. THIS BILL ALLOWS FOR MANDATORY ARBITRATION BEFORE GOING TO COURT THUS TRYING TO SOLVE PROBLEMS BEFORE HAVING TO SPEND THOUSANDS OF DOLLARS ON ATTORNEY FEES AND COURT COSTS. IT IS NO WONDER THAT ATTORNIES ARE AGAINST THIS BILL. ALSO, AS AN HOA MEMBER, TRY TO FIND LEGAL COUNSEL TO TAKE YOUR CASE OR DEFEND YOU AGAINST AN HOA HERE IN COLORADO. ALMOST IMPOSSIBLE. BELIEVE ME, I HAVE BEEN DOWN THAT ROAD.

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IT IS MY OPINION THIS BILL DOES NOT GO FAR ENOUGH TO PROTECT HOA MEMBERS FROM BOARDS AND MANAGEMENT COMPANIES THAT WISH TO CONCEAL IMPORTANT INFORMATION THAT EVERY HOA MEMBER SHOULD HAVE ACCESS TOO.

THAT BEING SAID, AT LEAST THIS BILL IS A GOOD START AND SHOULD BE PASSED.

REMEMBER, IT IS THE HOA MEMBERS MONEY THAT IS AT RISK AND IT IS THE HOA MEMBERS WHO OWN THE ASSOCIATION. PLEASE PROTECT THEM FROM CORRUPT AND ABUSIVE BOARDS AND MANAGEMENT COMPANIES.

SHOULD ANY OF YOU WISH TO ASK ME QUESTIONS REGARDING HOA'S, PLEASE CONTACT COLORADO HOMEOWNERS AND THEY WILL BE ABLE TO GET IN TOUCH WITH ME.

AGAIN, THANK YOU FOR YOUR TIME.

Good Afternoon members of the House Finance committee. I'm Liz Peetz and I'm here on behalf of the 27,000 REALTORS across the state of Colorado. Today we are here in an **AMEND position** for HB-1229.

We agree that it is very important to focus on transparency in housing purchase situations involving an HOA status letter and the fees so consumers are not surprised at the closing table

**But we are still very concerned with a few sections still in the bill:**

- 1) "Current & Complete" as of the date of transmittal is impractical. Many of the items delivered under the contract are inherently fluid and modifications that can be depend on frequency of HOA meetings, passive/active nature of HOA, size of HOA, professional vs. self-managed nature of HOA, etc. The administration, oversight & record keeping of an HOA is very often a volunteer homeowner(s) who have 1 or more other actual jobs. Attributing what is essentially a certification that delivered docs are current & complete as of the moment they are sent to a buyer just doesn't work.
  
- 2) Moreover, "OR ANOTHER PERSON" could easily include the REALTOR who transmits documents reasonably believing they are current & complete, but are not. Our entire contract & broker license law confines disclosure (which is what this essentially is) to ACTUAL KNOWLEDGE of the Seller and the Broker. I believe that "any error or omission" expands that standard unreasonably.



April 29, 2021

Representative Ms. Brianna Titone  
Representative Ms. Naquetta Ricks  
Senator Ms. Rhonda Fields

Re: HB21-1229: Home Owners' Associations Governance Funding Record Keeping

Dear Ladies:

Thank you for advancing the interest of Unit Owners with Home Owner's Associations by sponsoring this bill.

We would like to see this bill amended to include:

- Affordable, accessible out-of-court dispute resolution process. We believe the bill should require mediation via DORA and/or, at the option of the Unit Owner, binding arbitration.

Why?

Since July 5, 2018, I have spent \$151,547 in trying to seek resolution with the Orofino HOA, a sub-Association within the Master HOA: Village of Castle Pines. Mr. Joseph Gschwendtner, President, and Mr. William Calhoun, Vice-President of the Orofino HOA, objected to the flowers (Appendix A – Picture) my wife planted that they deemed were not sufficiently "muted and subtle" though the flowers were consistent with the guidelines of the Master HOA. We also repaired a stone-stacked wall and loose electric wires in our private use area.

The matter, regarding 4406 Orofino Place, Castle Rock, CO, is currently scheduled for a five-day trial on July 12, 2021, in which an additional \$75,000 in legal fees to our attorney, Robinson, and Henry, will be incurred by us. The Orofino's legal fees are covered by an insurance policy. The playing field is not equal.

The Orofino HOA has violated one Federal Law, eight state laws, and numerous of their covenants and policies in taking this enforcement action. To wit, the Orofino HOA refused to:

- Enter into mediation as required by their policies and procedures.
- Filed a lawsuit to dismiss our request for mediation.
- Filed a lien against our house (March 2019). When Douglas County Court #5 Judge Stevens ordered that the lien be removed (September 6, 2019), the Orofino HOA filed multiple briefs that the Court did not have jurisdiction. It required us to spend \$22,000 in legal fees before the Orofino HOA removed the lien on November 16, 2019.

- Engaged in and encouraged other homeowners to harass and verbally abuse my wife.
- Forced us to reallocate, resulting in a loss on the sale of the home and moving costs.

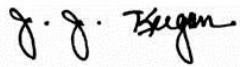
The Orofino HOA is functionally bankrupt and retained Stephane Dupont, Esq. on a contingency basis to handle the matter. They continue to fail to disclose the contingent liability they face in the HOA financials should we be awarded our legal fees pursuant to CCOIA. They don't have the resources to settle the case as their insurance doesn't cover damages as the Orofino HOA is Plaintiff in this litigation.

If an HOA fails to comply with its covenants, policies, and procedures, or files liens without justification, homeowners have no recourse except for expensive litigation. Further, a Court awards the prevailing party only 60% of the legal fees incurred. Thus, the homeowner incurs a substantial expense even when they prevail.

Lawyers and lobbyists will oppose the "affordable, accessible out-of-court dispute resolution process" as the inequity in the law produce significant financial windfalls for them at the expense of homeowners who have few remedies to resolve these matters economically.

Thank you for your kind consideration in protecting and advancing the interests of Unit owners against nefarious Home Owner Associations.

Sincerely,



J. J. Keegan  
Envisioning Strategist and Reality Mentor

Cc: Chris Maciejewski <chris@robinsonandhenry.com>

Appendix A  
4406 Orofino Place

