

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0782.01 Duane Gall

HOUSE BILL 10-1278

HOUSE SPONSORSHIP

Ryden,

SENATE SPONSORSHIP

Carroll M.,

House Committees

Business Affairs and Labor

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF AN OMBUDSMAN FOR MATTERS
102 ARISING UNDER THE "COLORADO COMMON INTEREST
103 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://www.leg.state.co.us/billsummaries>.)

Current law provides for the creation of common interest communities (usually residential subdivisions), governed by unit owners' associations (HOAs). Such entities are created by contract, through recorded documents containing mutually binding covenants that

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

homeowners and HOAs must enforce, if at all, through private legal action. There is no state agency supervising the operation of HOAs or enforcing compliance by either individual homeowners or HOAs with the requirements of state law.

The bill creates the office of the HOA ombudsman to advocate on behalf of unit owners, mediate disputes, and act as a clearing house for information on the governing law. **Sections 2 and 5** of the bill direct the secretary of state to collect a surcharge on registration fees of HOAs that are organized as nonprofit corporations to pay the direct and indirect costs of the ombudsman's office. **Section 4** outlines the ombudsman's powers, duties, and qualifications and creates a cash fund. **Section 6** provides for sunset review of the ombudsman's office after 10 years.

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

2 **SECTION 1.** 12-61-101, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **12-61-101. Definitions.** As used in this part 1, unless the context
5 otherwise requires:

6 (1.2) "HOA" OR "HOMEOWNERS' ASSOCIATION" MEANS A UNIT
7 OWNERS' ASSOCIATION AS DEFINED IN SECTION 38-33.3-103, C.R.S.

8 **SECTION 2.** 12-61-111.5 (2) (a), Colorado Revised Statutes, is
9 amended to read:

10 **12-61-111.5. Fee adjustments.** (2) (a) (I) The division shall
11 propose, as part of its annual budget request, an adjustment in the amount
12 of each fee ~~which~~ THAT it is authorized by law to collect under parts 1, 3,
13 4, and 7 of this article. The budget request and the adjusted fees for the
14 division shall reflect direct and indirect costs.

15 (II) THE COSTS OF THE OFFICE OF THE HOA OMBUDSMAN,
16 CREATED IN SECTION 12-61-406.5, SHALL BE PAID FROM THE HOA
17 OMBUDSMAN CASH FUND CREATED IN SECTION 12-61-406.5. THE DIVISION
18 OF REAL ESTATE SHALL ESTIMATE THE DIRECT AND INDIRECT COSTS OF
19 OPERATING THE OFFICE OF THE HOA OMBUDSMAN AND, IN CONSULTATION

1 WITH THE SECRETARY OF STATE, SHALL ESTABLISH THE SURCHARGE TO BE
2 COLLECTED BY THE SECRETARY OF STATE PURSUANT TO SECTION
3 24-21-104 (1) (c), C.R.S., ON CORPORATE FILINGS BY UNIT OWNERS'
4 ASSOCIATIONS THAT FILE ARTICLES OF INCORPORATION OR ARTICLES OF
5 ORGANIZATION. THE AMOUNT OF THE SURCHARGE SHALL BE SUFFICIENT
6 TO RECOVER SUCH COSTS.

7 **SECTION 3.** 12-61-401, Colorado Revised Statutes, is amended
8 BY THE ADDITION OF A NEW SUBSECTION to read:

9 **12-61-401. Definitions.** As used in this part 4, unless the context
10 otherwise requires:

11 (2.5) "HOA" OR "HOMEOWNERS' ASSOCIATION" MEANS A UNIT
12 OWNERS' ASSOCIATION AS DEFINED IN SECTION 38-33.3-103, C.R.S.

13 **SECTION 4.** Part 4 of article 61 of title 12, Colorado Revised
14 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
15 read:

16 **12-61-406.5. Office of the HOA ombudsman - creation - duties**
17 **- cash fund - repeal.** (1) THERE IS HEREBY CREATED, WITHIN THE
18 DIVISION OF REAL ESTATE, THE OFFICE OF THE HOA OMBUDSMAN, THE
19 HEAD OF WHICH SHALL BE THE HOA OMBUDSMAN. THE HOA
20 OMBUDSMAN SHALL BE APPOINTED BY THE EXECUTIVE DIRECTOR OF THE
21 DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO SECTION 13 OF
22 ARTICLE XII OF THE STATE CONSTITUTION.

23 (2) THE HOA OMBUDSMAN SHALL HAVE AT LEAST FIVE YEARS OF
24 EXPERIENCE IN WORKING WITH ISSUES ARISING UNDER THE "COLORADO
25 COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S.,
26 ALSO REFERRED TO IN THIS SECTION AS THE "ACT", OR IN THE OPERATION
27 OR MANAGEMENT OF A UNIT OWNERS' ASSOCIATION AS EITHER AN

1 ATTORNEY, AN ACCOUNTANT, A MEMBER OF THE EXECUTIVE BOARD, OR
2 ANY COMBINATION THEREOF. NO PERSON WHO IS OR, WITHIN THE
3 IMMEDIATELY PRECEDING TEN YEARS, HAS BEEN LICENSED BY OR
4 REGISTERED WITH THE DIVISION OF REAL ESTATE OR WHO OWNS STOCKS,
5 BONDS, OR ANY PECUNIARY INTEREST IN A CORPORATION SUBJECT IN
6 WHOLE OR IN PART TO REGULATION BY THE DIVISION OF REAL ESTATE
7 SHALL BE APPOINTED AS HOA OMBUDSMAN.

8 (3) (a) THE HOA OMBUDSMAN SHALL:

9 (I) ADVOCATE FOR THE RIGHTS OF UNIT OWNERS IN THE
10 GOVERNANCE OF UNIT OWNERS' ASSOCIATIONS AND OFFER TO MEDIATE
11 DISPUTES, BUT SHALL NOT PURPORT TO GIVE LEGAL ADVICE TO ANY
12 PARTY;

13 (II) ACT AS A CLEARING HOUSE FOR INFORMATION CONCERNING
14 THE RIGHTS AND DUTIES OF UNIT OWNERS, DECLARANTS, AND UNIT
15 OWNERS' ASSOCIATIONS UNDER THE ACT;

16 (III) REPORT SUSPECTED VIOLATIONS OF THIS ARTICLE OR OF THE
17 DIVISION'S RULES TO THE DIVISION; AND

18 (IV) REPORT OTHER SUSPECTED VIOLATIONS OF LAW TO THE
19 APPROPRIATE AUTHORITIES.

20 (b) THE HOA OMBUDSMAN MAY:

21 (I) EMPLOY ONE OR MORE ASSISTANTS, UP TO A MAXIMUM OF 1.0
22 FTE, AS MAY BE NECESSARY TO CARRY OUT HIS OR HER DUTIES; AND

23 (II) HAVE ACCESS TO THE FILES OF THE DIVISION WHEN
24 CONDUCTING RESEARCH.

25 (4) THE OPERATING EXPENSES OF THE OFFICE OF THE HOA
26 OMBUDSMAN SHALL BE PAID FROM THE HOA OMBUDSMAN CASH FUND,
27 WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND

1 SHALL CONSIST OF SURCHARGES ON FILING FEES PAID BY UNIT OWNERS'
2 ASSOCIATIONS AND COLLECTED BY THE SECRETARY OF STATE PURSUANT
3 TO SECTION 24-21-104 (1) (c), C.R.S. INTEREST EARNED ON MONEYS IN
4 THE FUND SHALL REMAIN IN THE FUND, AND ANY UNEXPENDED AND
5 UNENCUMBERED MONEYS IN THE FUND AT THE END OF ANY FISCAL YEAR
6 SHALL NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND.
7 PAYMENTS FROM THE FUND SHALL BE SUBJECT TO ANNUAL
8 APPROPRIATION.

9 (5) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2020.
10 PRIOR TO SUCH REPEAL, THE OFFICE OF THE HOA OMBUDSMAN AND THE
11 HOA OMBUDSMAN'S POWERS AND DUTIES UNDER THIS SECTION SHALL BE
12 REVIEWED IN ACCORDANCE WITH SECTION 24-34-104, C.R.S.

13 **SECTION 5.** 24-21-104 (1), Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15 **24-21-104. Fees of secretary of state.** (1) (c) IN ADDITION TO
16 OTHER FEES SPECIFIED IN THIS SECTION, THE SECRETARY OF STATE SHALL
17 COLLECT A SURCHARGE ON THE FILING FEES OF UNIT OWNERS'
18 ASSOCIATIONS, AS DEFINED IN SECTION 38-33.3-103, C.R.S., THAT FILE
19 ARTICLES OF INCORPORATION OR ARTICLES OF ORGANIZATION WITH THE
20 SECRETARY OF STATE. THE AMOUNT OF THE SURCHARGE SHALL BE
21 DETERMINED PURSUANT TO SECTION 12-61-111.5 (2) (a) (II), C.R.S.

22 **SECTION 6.** 24-34-104 (51.5), Colorado Revised Statutes, is
23 amended to read:

24 **24-34-104. General assembly review of regulatory agencies
25 and functions for termination, continuation, or reestablishment.**

26 (51.5) The following agencies, functions, or both, shall terminate on
27 September 1, 2020:

1 (a) The certification of nurse aides by the state board of nursing
2 in accordance with article 38.1 of title 12, C.R.S.;

3 (b) THE OFFICE OF THE HOA OMBUDSMAN, CREATED IN SECTION
4 12-61-406.5, C.R.S.

5 **SECTION 7. Act subject to petition - effective date.** This act
6 shall take effect at 12:01 a.m. on the day following the expiration of the
7 ninety-day period after final adjournment of the general assembly (August
8 11, 2010, if adjournment sine die is on May 12, 2010); except that, if a
9 referendum petition is filed pursuant to section 1 (3) of article V of the
10 state constitution against this act or an item, section, or part of this act
11 within such period, then the act, item, section, or part shall not take effect
12 unless approved by the people at the general election to be held in
13 November 2010 and shall take effect on the date of the official
14 declaration of the vote thereon by the governor.