

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0782.01 Duane Gall

HOUSE BILL 10-1278

HOUSE SPONSORSHIP

Ryden,

SENATE SPONSORSHIP

Carroll M.,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

State, Veterans & Military Affairs
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF AN INFORMATION OFFICER FOR**
102 **MATTERS ARISING UNDER THE "COLORADO COMMON INTEREST**
103 **OWNERSHIP ACT", AND MAKING AN APPROPRIATION THEREFOR.**

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.*

HOUSE
3rd Reading Unamended
March 26, 2010

HOUSE
Amended 2nd Reading
March 25, 2010

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 AN
7 ASSOCIATION OR UNIT OWNERS' ASSOCIATION FORMED BEFORE, ON, OR
8 AFTER JULY 1, 1992, AS PART OF A COMMON INTEREST COMMUNITY AS
9 DEFINED IN SECTION 38-33.3-103, C.R.S.

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

12 **12-61-111.5. Fee adjustments.** (2) (a) (I) The division shall
13 propose, as part of its annual budget request, an adjustment in the amount
14 of each fee ~~which~~ THAT it is authorized by law to collect under parts 1, 3,
15 4, and 7 of this article. The budget request and the adjusted fees for the
16 division shall reflect direct and indirect costs.

17 (II) THE COSTS OF THE HOA INFORMATION AND RESOURCE
18 CENTER, CREATED IN SECTION 12-61-406.5, SHALL BE PAID FROM THE
19 HOA INFORMATION AND RESOURCE CENTER CASH FUND CREATED IN

1 SECTION 12-61-406.5. THE DIVISION OF REAL ESTATE SHALL ESTIMATE
2 THE DIRECT AND INDIRECT COSTS OF OPERATING THE HOA INFORMATION
3 AND RESOURCE CENTER AND SHALL ESTABLISH THE AMOUNT OF THE
4 ANNUAL REGISTRATION FEE TO BE COLLECTED UNDER SECTION
5 38-33.3-401, C.R.S. THE AMOUNT OF THE REGISTRATION FEE SHALL BE
6 SUFFICIENT TO RECOVER SUCH COSTS, SUBJECT TO A MAXIMUM LIMIT OF
7 FIFTY DOLLARS.

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

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

12 (2.5) "HOA" OR "HOMEOWNERS' ASSOCIATION" MEANS AN
13 ASSOCIATION OR UNIT OWNERS' ASSOCIATION FORMED BEFORE, ON, OR
14 AFTER JULY 1, 1992, AS PART OF A COMMON INTEREST COMMUNITY AS
15 DEFINED IN SECTION 38-33.3-103, C.R.S.

16 SECTION 4. Part 4 of article 61 of title 12, Colorado Revised
17 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
18 read:

19 12-61-406.5. **HOA information and resource center - creation**
20 **- duties - rules - cash fund - repeal.** (1) THERE IS HEREBY CREATED,
21 WITHIN THE DIVISION OF REAL ESTATE, THE HOA INFORMATION AND
22 RESOURCE CENTER, THE HEAD OF WHICH SHALL BE THE HOA
23 INFORMATION OFFICER. THE HOA INFORMATION OFFICER SHALL BE
24 APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
25 REGULATORY AGENCIES PURSUANT TO SECTION 13 OF ARTICLE XII OF THE
26 STATE CONSTITUTION.

27 (2) THE HOA INFORMATION OFFICER SHALL BE FAMILIAR WITH THE

1 "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE
2 38, C.R.S., ALSO REFERRED TO IN THIS SECTION AS THE "ACT". NO
3 PERSON WHO IS OR, WITHIN THE IMMEDIATELY PRECEDING TEN YEARS, HAS
4 BEEN LICENSED BY OR REGISTERED WITH THE DIVISION OF REAL ESTATE OR
5 WHO OWNS STOCKS, BONDS, OR ANY PECUNIARY INTEREST IN A
6 CORPORATION SUBJECT IN WHOLE OR IN PART TO REGULATION BY THE
7 DIVISION OF REAL ESTATE SHALL BE APPOINTED AS HOA INFORMATION
8 OFFICER. IN ADDITION, IN CONDUCTING THE SEARCH FOR AN APPOINTEE,
9 THE EXECUTIVE DIRECTOR OF THE DIVISION OF REAL ESTATE SHALL PLACE
10 A HIGH PREMIUM ON CANDIDATES WHO ARE BALANCED, INDEPENDENT,
11 UNBIASED, AND WITHOUT ANY CURRENT FINANCIAL TIES TO AN HOA
12 BOARD OR BOARD MEMBER OR TO ANY PERSON OR ENTITY THAT PROVIDES
13 HOA MANAGEMENT SERVICES. AFTER BEING APPOINTED, THE HOA
14 INFORMATION OFFICER SHALL REFRAIN FROM ENGAGING IN ANY CONDUCT
15 OR RELATIONSHIP THAT WOULD CREATE A CONFLICT OF INTEREST OR THE
16 APPEARANCE OF A CONFLICT OF INTEREST.

17 (3) (a) THE HOA INFORMATION OFFICER SHALL ACT AS A
18 CLEARING HOUSE FOR INFORMATION CONCERNING THE BASIC RIGHTS AND
19 DUTIES OF UNIT OWNERS, DECLARANTS, AND UNIT OWNERS' ASSOCIATIONS
20 UNDER THE ACT.

21 (b) THE HOA INFORMATION OFFICER:

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

25 (II) SHALL TRACK INQUIRIES AND COMPLAINTS AND REPORT
26 ANNUALLY TO THE DIRECTOR OF THE DIVISION OF REAL ESTATE
27 REGARDING THE NUMBER AND TYPES OF INQUIRIES AND COMPLAINTS

1 RECEIVED.

2 (4) THE OPERATING EXPENSES OF THE HOA INFORMATION AND
3 RESOURCE CENTER SHALL BE PAID FROM THE HOA INFORMATION AND
4 RESOURCE CENTER CASH FUND, WHICH FUND IS HEREBY CREATED IN THE
5 STATE TREASURY. THE FUND SHALL CONSIST OF ANNUAL REGISTRATION
6 FEES PAID BY UNIT OWNERS' ASSOCIATIONS AND COLLECTED BY THE
7 DIVISION OF REAL ESTATE PURSUANT TO SECTION 38-33.3-401, C.R.S.
8 INTEREST EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND,
9 AND ANY UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND AT THE
10 END OF ANY FISCAL YEAR SHALL NOT REVERT TO THE GENERAL FUND OR
11 ANY OTHER FUND. PAYMENTS FROM THE FUND SHALL BE SUBJECT TO
12 ANNUAL APPROPRIATION.

13 (5) THE DIRECTOR OF THE DIVISION OF REAL ESTATE MAY ADOPT
14 RULES AS NECESSARY TO IMPLEMENT THIS SECTION. THIS SUBSECTION (5)
15 SHALL NOT BE CONSTRUED TO CONFER ADDITIONAL RULE-MAKING
16 AUTHORITY UPON THE DIRECTOR FOR ANY OTHER PURPOSE.

17 (6) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2020.
18 PRIOR TO SUCH REPEAL, THE HOA INFORMATION AND RESOURCE CENTER
19 AND THE HOA INFORMATION OFFICER'S POWERS AND DUTIES UNDER THIS
20 SECTION SHALL BE REVIEWED IN ACCORDANCE WITH SECTION 24-34-104,
21 C.R.S.

22 **SECTION 5.** Article 33.3 of title 38, Colorado Revised Statutes,
23 is amended BY THE ADDITION OF A NEW PART to read:

24 PART 4

25 REGISTRATION

26 **38-33.3-401. Registration - annual fees.** (1) EVERY UNIT
27 OWNERS' ASSOCIATION ORGANIZED UNDER SECTION 38-33.3-301 SHALL

1 REGISTER ANNUALLY WITH THE DIRECTOR OF THE DIVISION OF REAL
2 ESTATE, IN THE FORM AND MANNER SPECIFIED BY THE DIRECTOR.

3 (2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
4 THIS SUBSECTION (2), THE ANNUAL REGISTRATION SHALL BE
5 ACCOMPANIED BY A FEE IN THE AMOUNT SET BY THE DIRECTOR IN
6 ACCORDANCE WITH SECTION 12-61-111.5, C.R.S., AND SHALL INCLUDE
7 THE INFORMATION REQUIRED TO BE DISCLOSED UNDER SECTION
8 38-33.3-209.4 (1). THE INFORMATION SHALL BE UPDATED WITHIN NINETY
9 DAYS OF ANY CHANGE, IN ACCORDANCE WITH SECTION 38-33.3-209.4 (1).

10 (b) A UNIT OWNERS' ASSOCIATION SHALL BE EXEMPT FROM THE
11 FEE, BUT NOT THE REGISTRATION REQUIREMENT, IF THE DECLARATION FOR
12 THE COMMON INTEREST COMMUNITY:

13 (I) DOES NOT GIVE THE ASSOCIATION AUTHORITY TO MAKE
14 ASSESSMENTS FOR COMMON EXPENSES; OR

15 (II) PROVIDES THAT THE ANNUAL AVERAGE COMMON EXPENSE
16 LIABILITY OF EACH UNIT RESTRICTED TO RESIDENTIAL PURPOSES,
17 EXCLUSIVE OF OPTIONAL USER FEES AND ANY INSURANCE PREMIUMS PAID
18 BY THE ASSOCIATION, MAY NOT EXCEED FOUR HUNDRED DOLLARS, AS
19 ADJUSTED USING THE METHOD SET FORTH IN SECTION 38-33.3-116 (3).

20 (3) A REGISTRATION SHALL BE VALID FOR ONE YEAR. AN
21 ASSOCIATION THAT FAILS TO REGISTER, OR WHOSE ANNUAL REGISTRATION
22 HAS EXPIRED, IS INELIGIBLE TO IMPOSE OR ENFORCE A LIEN FOR
23 ASSESSMENTS UNDER SECTION 38-33.3-316 OR TO PURSUE ANY ACTION OR
24 EMPLOY ANY ENFORCEMENT MECHANISM OTHERWISE AVAILABLE TO IT
25 UNDER SECTION 38-33.3-123 UNTIL IT IS AGAIN VALIDLY REGISTERED
26 PURSUANT TO THIS SECTION.

27 (4) ADMINISTRATIVELY FINAL DETERMINATIONS BY THE DIRECTOR

1 OF THE DIVISION OF REAL ESTATE CONCERNING THE VALIDITY OR
2 TIMELINESS OF REGISTRATIONS UNDER THIS SECTION ARE SUBJECT TO
3 JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106 (11), C.R.S.

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

6 **24-34-104. General assembly review of regulatory agencies**
7 **and functions for termination, continuation, or reestablishment.**

8 (51.5) The following agencies, functions, or both, shall terminate on
9 September 1, 2020:

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

12 (b) THE HOA INFORMATION AND RESOURCE CENTER, CREATED IN
13 SECTION 12-61-406.5, C.R.S.

14 **SECTION 7. Appropriation.** (1) In addition to any other
15 appropriation, there is hereby appropriated, out of any moneys in the
16 HOA information officer cash fund created in section 12-61-406.5 (4),
17 Colorado Revised Statutes, not otherwise appropriated, to the department
18 of regulatory agencies, for allocation to the division of real estate, for the
19 fiscal year beginning July 1, 2010, the sum of one hundred thirty thousand
20 eight hundred twenty-eight dollars (\$130,828) cash funds and 2.0 FTE,
21 or so much thereof as may be necessary, for the implementation of this
22 act.

23 (2) In addition to any other appropriation, there is hereby
24 appropriated to the department of law, for the fiscal year beginning July
25 1, 2010, the sum of fifteen thousand six hundred seventy-nine dollars
26 (\$15,679) and 0.1 FTE, or so much thereof as may be necessary, for the
27 provision of legal services to the department of regulatory agencies

1 related to the implementation of this act. Said sum shall be from
2 reappropriated funds received from the department of regulatory agencies
3 out of the appropriation made in subsection (1) of this section.

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