

Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO

**ENGROSSED**

*This Version Includes All Amendments Adopted  
on Second Reading in the House of Introduction*

LLS NO. 10-0782.01 Duane Gall

**HOUSE BILL 10-1278**

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**HOUSE SPONSORSHIP**

**Ryden,**

**SENATE SPONSORSHIP**

**Carroll M.,**

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**House Committees**

Business Affairs and Labor  
Appropriations

**Senate Committees**

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**A BILL FOR AN ACT**

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

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**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  
Am ended 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.

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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.

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

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

18 12-61-406.5. **HOA information and resource center - creation**  
19 **- duties - rules - cash fund - repeal.** (1) THERE IS HEREBY CREATED,  
20 WITHIN THE DIVISION OF REAL ESTATE, THE HOA INFORMATION AND  
21 RESOURCE CENTER, THE HEAD OF WHICH SHALL BE THE HOA  
22 OMBUDSMAN. THE HOA OMBUDSMAN SHALL BE APPOINTED BY THE  
23 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES  
24 PURSUANT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION.

25 (2) THE HOA OMBUDSMAN SHALL HAVE AT LEAST FIVE YEARS OF  
26 EXPERIENCE IN WORKING WITH ISSUES ARISING UNDER THE "COLORADO  
27 COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3 OF TITLE 38, C.R.S.,

1 ALSO REFERRED TO IN THIS SECTION AS THE "ACT", OR IN THE OPERATION  
2 OR MANAGEMENT OF A UNIT OWNERS' ASSOCIATION AS EITHER AN  
3 ATTORNEY, AN ACCOUNTANT, A MEMBER OF THE EXECUTIVE BOARD, OR  
4 ANY COMBINATION THEREOF. NO PERSON WHO IS OR, WITHIN THE  
5 IMMEDIATELY PRECEDING TEN YEARS, HAS BEEN LICENSED BY OR  
6 REGISTERED WITH THE DIVISION OF REAL ESTATE OR WHO OWNS STOCKS,  
7 BONDS, OR ANY PECUNIARY INTEREST IN A CORPORATION SUBJECT IN  
8 WHOLE OR IN PART TO REGULATION BY THE DIVISION OF REAL ESTATE  
9 SHALL BE APPOINTED AS HOA OMBUDSMAN.

10 (3) (a) THE HOA OMBUDSMAN SHALL ACT AS A CLEARING HOUSE  
11 FOR INFORMATION CONCERNING THE RIGHTS AND DUTIES OF UNIT OWNERS,  
12 DECLARANTS, AND UNIT OWNERS' ASSOCIATIONS UNDER THE ACT.

13 (b) THE HOA OMBUDSMAN MAY:

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

16 (II) TRACK INQUIRIES AND COMPLAINTS AND REPORT ANNUALLY  
17 TO THE DIRECTOR OF THE DIVISION OF REAL ESTATE REGARDING THE  
18 NUMBER AND TYPES OF INQUIRIES AND COMPLAINTS RECEIVED.

19 (4) THE OPERATING EXPENSES OF THE HOA INFORMATION AND  
20 RESOURCE CENTER SHALL BE PAID FROM THE HOA INFORMATION AND  
21 RESOURCE CENTER CASH FUND, WHICH FUND IS HEREBY CREATED IN THE  
22 STATE TREASURY. THE FUND SHALL CONSIST OF ANNUAL REGISTRATION  
23 FEES PAID BY UNIT OWNERS' ASSOCIATIONS AND COLLECTED BY THE  
24 DIVISION OF REAL ESTATE PURSUANT TO SECTION 38-33.3-401, C.R.S.  
25 INTEREST EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND,  
26 AND ANY UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND AT THE  
27 END OF ANY FISCAL YEAR SHALL NOT REVERT TO THE GENERAL FUND OR

1 ANY OTHER FUND. PAYMENTS FROM THE FUND SHALL BE SUBJECT TO  
2 ANNUAL APPROPRIATION.

3 (5) THE DIRECTOR OF THE DIVISION OF REAL ESTATE MAY ADOPT  
4 RULES AS NECESSARY TO IMPLEMENT THIS SECTION.

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

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

11 **PART 4**

12 **REGISTRATION**

13 **38-33.3-401. Registration - annual fees.** (1) EVERY UNIT  
14 OWNERS' ASSOCIATION ORGANIZED UNDER SECTION 38-33.3-301 SHALL  
15 REGISTER ANNUALLY WITH THE DIRECTOR OF THE DIVISION OF REAL  
16 ESTATE, IN THE FORM AND MANNER SPECIFIED BY THE DIRECTOR.

17 (2) THE ANNUAL REGISTRATION SHALL BE ACCOMPANIED BY A FEE  
18 IN THE AMOUNT SET BY THE DIRECTOR IN ACCORDANCE WITH SECTION  
19 12-61-111.5, C.R.S., AND SHALL INCLUDE THE INFORMATION REQUIRED TO  
20 BE DISCLOSED UNDER SECTION 38-33.3-209.4 (1). THE INFORMATION  
21 SHALL BE UPDATED WITHIN NINETY DAYS OF ANY CHANGE, IN  
22 ACCORDANCE WITH SECTION 38-33.3-209.4 (1).

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

1 UNDER SECTION 38-33.3-123 UNTIL IT IS AGAIN VALIDLY REGISTERED  
2 PURSUANT TO THIS SECTION.

3 (4) ADMINISTRATIVELY FINAL DETERMINATIONS BY THE DIRECTOR  
4 OF THE DIVISION OF REAL ESTATE CONCERNING THE VALIDITY OR  
5 TIMELINESS OF REGISTRATIONS UNDER THIS SECTION ARE SUBJECT TO  
6 JUDICIAL REVIEW PURSUANT TO SECTION 24-4-106 (11), C.R.S.

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

9 **24-34-104. General assembly review of regulatory agencies**  
10 **and functions for termination, continuation, or reestablishment.**

11 (51.5) The following agencies, functions, or both, shall terminate on  
12 September 1, 2020:

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

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

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

26 (2) In addition to any other appropriation, there is hereby  
27 appropriated to the department of law, for the fiscal year beginning July

1 1, 2010, the sum of fifteen thousand six hundred seventy-nine dollars  
2 (\$15,679) and 0.1 FTE, or so much thereof as may be necessary, for the  
3 provision of legal services to the department of regulatory agencies  
4 related to the implementation of this act. Said sum shall be from  
5 reappropriated funds received from the department of regulatory agencies  
6 out of the appropriation made in subsection (1) of this section.

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