

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

REVISED

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

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.*

SENATE
Am ended 2nd Reading
May 7, 2010

HOUSE
3rd Reading Unam ended
March 26, 2010

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.

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 AND SUBJECT TO ADJUSTMENT TO REFLECT THE ACTUAL
8 DIRECT AND INDIRECT COSTS OF OPERATING THE HOA INFORMATION AND
9 RESOURCE CENTER PURSUANT TO THE GENERAL DIRECTIVE TO ADJUST FEES
10 TO AVOID EXCEEDING THE STATUTORY LIMIT ON UNCOMMITTED RESERVES
11 IN ADMINISTRATIVE AGENCY CASH FUNDS AS SET FORTH IN SECTION
12 24-75-401 (3), C.R.S.

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

15 12-61-401. **Definitions.** As used in this part 4, unless the context
16 otherwise requires:

17 (2.5) "HOA" OR "HOMEOWNERS' ASSOCIATION" MEANS AN
18 ASSOCIATION OR UNIT OWNERS' ASSOCIATION FORMED BEFORE, ON, OR
19 AFTER JULY 1, 1992, AS PART OF A COMMON INTEREST COMMUNITY AS
20 DEFINED IN SECTION 38-33.3-103, C.R.S.

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

24 12-61-406.5. **HOA information and resource center - creation**
25 **- duties - rules - cash fund - repeal.** (1) THERE IS HEREBY CREATED,
26 WITHIN THE DIVISION OF REAL ESTATE, THE HOA INFORMATION AND
27 RESOURCE CENTER, THE HEAD OF WHICH SHALL BE THE HOA

1 INFORMATION OFFICER. THE HOA INFORMATION OFFICER SHALL BE
2 APPOINTED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
3 REGULATORY AGENCIES PURSUANT TO SECTION 13 OF ARTICLE XII OF THE
4 STATE CONSTITUTION.

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

22 (3) (a) THE HOA INFORMATION OFFICER SHALL ACT AS A
23 CLEARING HOUSE FOR INFORMATION CONCERNING THE BASIC RIGHTS AND
24 DUTIES OF UNIT OWNERS, DECLARANTS, AND UNIT OWNERS' ASSOCIATIONS
25 UNDER THE ACT.

26 (b) THE HOA INFORMATION OFFICER:

27 (I) MAY EMPLOY ONE OR MORE ASSISTANTS, UP TO A MAXIMUM

1 OF 1.0 FTE, AS MAY BE NECESSARY TO CARRY OUT HIS OR HER DUTIES;
2 AND

3 (II) SHALL TRACK INQUIRIES AND COMPLAINTS AND REPORT
4 ANNUALLY TO THE DIRECTOR OF THE DIVISION OF REAL ESTATE
5 REGARDING THE NUMBER AND TYPES OF INQUIRIES AND COMPLAINTS
6 RECEIVED.

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

18 (5) THE DIRECTOR OF THE DIVISION OF REAL ESTATE MAY ADOPT
19 RULES AS NECESSARY TO IMPLEMENT THIS SECTION AND SECTION
20 38-33.3-401, C.R.S. THIS SUBSECTION (5) SHALL NOT BE CONSTRUED TO
21 CONFER ADDITIONAL RULE-MAKING AUTHORITY UPON THE DIRECTOR FOR
22 ANY OTHER PURPOSE.

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

1 PURSUANT TO THIS SECTION. ALIEN FOR ASSESSMENTS PREVIOUSLY FILED
2 DURING A PERIOD IN WHICH THE ASSOCIATION WAS VALIDLY REGISTERED
3 OR BEFORE REGISTRATION WAS REQUIRED PURSUANT TO THIS SECTION
4 SHALL NOT BE EXTINGUISHED BY A LAPSE IN THE ASSOCIATION'S
5 REGISTRATION, BUT ANY PENDING ENFORCEMENT PROCEEDINGS RELATED
6 TO SUCH LIEN SHALL BE SUSPENDED, AND ANY APPLICABLE TIME LIMITS
7 TOLLED, UNTIL THE ASSOCIATION IS AGAIN VALIDLY REGISTERED
8 PURSUANT TO THIS SECTION.

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

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

15 **24-34-104. General assembly review of regulatory agencies**
16 **and functions for termination, continuation, or reestablishment.**

17 (51.5) The following agencies, functions, or both, shall terminate on
18 September 1, 2020:

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

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

23 **SECTION 7. Appropriation.** (1) In addition to any other
24 appropriation, there is hereby appropriated, out of any moneys in the
25 HOA information and resource center cash fund created in section
26 12-61-406.5 (4), Colorado Revised Statutes, not otherwise appropriated,
27 to the department of regulatory agencies, for allocation to the division of

1 real estate, for the fiscal year beginning July 1, 2010, the sum of two
2 hundred five thousand eight hundred twenty-eight dollars (\$205,828) ___
3 cash funds and 2.0 FTE, or so much thereof as may be necessary, for the
4 implementation of this act.

5 (2) In addition to any other appropriation, there is hereby
6 appropriated to the department of law, for the fiscal year beginning July
7 1, 2010, the sum of fifteen thousand six hundred seventy-nine dollars
8 (\$15,679) and 0.1 FTE, or so much thereof as may be necessary, for the
9 provision of legal services to the department of regulatory agencies
10 related to the implementation of this act. Said sum shall be from
11 reappropriated funds received from the department of regulatory agencies
12 out of the appropriation made in subsection (1) of this section.

13 **SECTION 8. Act subject to petition - specified effective date.**
14 This act shall take effect January 1, 2011; except that, if a referendum
15 petition is filed pursuant to section 1 (3) of article V of the state
16 constitution against this act or an item, section, or part of this act within
17 the ninety-day period after final adjournment of the general assembly,
18 then the act, item, section, or part shall not take effect unless approved by
19 the people at the general election to be held in November 2010 and shall
20 take effect on January 1, 2011, or on the date of the official declaration
21 of the vote thereon by the governor, whichever is later.