



HindmanSanchez

CLIENT ALERT

HB 1278: Mandatory HOA Registry and HOA Information & Resource Center

Effective Date: January 1, 2011

On June 6, 2010, Governor Ritter signed House Bill 1278 into law. As originally introduced, HB 1278 would have created an ombudsman to advocate for the rights of unit owners to the detriment of their associations.

After lengthy negotiations, HB 1278 was completely rewritten and all references to an ombudsman and any advocacy role for homeowners were discarded. Instead, HB 1278 will attempt to prevent and resolve disputes in homeowner associations through the dissemination of information.

HOA Information & Resource Center

HB 1278 creates an HOA Information & Resource Center which will be housed within the Colorado Division of Real Estate ("Division") to provide information on the rights and duties of unit owners, developers and associations under the Colorado Common Interest Ownership Act ("CCIOA"). The HOA Information & Resource Center will be run by an HOA Information Officer and it is currently anticipated that the Division will create a webpage to house the required information for consumers.

The HOA Information Officer is also tasked with providing a report each year to the Director of the Division of Real Estate tracking the inquiries and complaints received relating to homeowner associations. This information will be useful during the legislative process in determining whether further regulation of particular aspects of the governance and operations of associations is necessary.

HOA Registry

The costs associated with the HOA Information & Resource Center and the HOA Information Officer will be paid for through a mandatory registration for associations. With the exception of voluntary associations, all associations in Colorado will be required to register. The effective date of the registration process is January 1, 2011. However, it is unclear whether the Division will have the registration apparatus and procedures in place by the first of the year to begin the registration process.

During the legislative process, a fiscal note was produced estimating the cost of the registration at \$20.00 for the first year and around \$15.00 for subsequent years. These figures were based upon an estimate that there are approximately 12,000 associations in Colorado. Since there is currently no reliable data to support this estimate, the cost of the yearly registration for associations is an open question. However, there is a statutory cap of \$50.00 for the yearly registration fee.

While every association, except voluntary associations, will be required to register on a yearly basis, the following categories of associations will not be required to pay the registration fee:

- Associations with annual revenue of \$5,000 or less; and
- Associations not authorized to levy assessments and do not have any revenue.

Penalties for Failure to Register

Associations that fail to register or keep a registration current will face the following significant penalties:

- Associations will not be permitted to foreclose upon the association's statutory lien unless the association holds a current registration. If an association has commenced a judicial foreclosure and the association's registration lapses, the association cannot proceed with the foreclosure until the registration is brought current. However, any applicable statutes of limitation will be tolled during the timeframe an association is not registered.
- Associations will not be permitted to take steps to enforce a superlien unless the association holds a current registration.
- Associations will be permitted to bring a lawsuit to obtain a personal judgment against a delinquent owner, but cannot be awarded reasonable costs and attorney fees as part of the judgment unless the registration is current.
- Associations that are determined to be a prevailing party in litigation will not be permitted to recover reasonable costs and attorney fees associated with the litigation unless the registration is current.
- Associations will not be permitted to enforce building restrictions contained in the declaration or rules unless the registration is current.

As a reminder, the registration requirement does not go into effect until January 1, 2011. We will provide you with an update as soon as the Division publishes the procedures and requirements associated with the HOA Registry. We also anticipate that a grace period will be given for the initial registration period.

For periodic updates on HB 1278 and other issues of interest, please visit www.hoalegislature.com and www.hindmansanchez.com.