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HOUSE BILL 10-1278

BY REPRESENTATIVE(S) Ryden, Casso, Tyler, Peniston;
also SENATOR(S) Carroll M., Williams.

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

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

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

(II) THE COSTS OF THE HOA INFORMATION AND RESOURCE CENTER, CREATED IN SECTION 12-61-406.5, SHALL BE PAID FROM THE HOA INFORMATION AND RESOURCE CENTER CASH FUND CREATED IN SECTION 12-61-406.5. THE DIVISION OF REAL ESTATE SHALL ESTIMATE THE DIRECT AND INDIRECT COSTS OF OPERATING THE HOA INFORMATION AND RESOURCE CENTER AND SHALL ESTABLISH THE AMOUNT OF THE ANNUAL REGISTRATION FEE TO BE COLLECTED UNDER SECTION 38-33.3-401, C.R.S. THE AMOUNT OF THE REGISTRATION FEE SHALL BE SUFFICIENT TO RECOVER SUCH COSTS, SUBJECT TO A MAXIMUM LIMIT OF FIFTY DOLLARS AND SUBJECT TO ADJUSTMENT TO REFLECT THE ACTUAL DIRECT AND INDIRECT COSTS OF OPERATING THE HOA INFORMATION AND RESOURCE CENTER PURSUANT TO THE GENERAL DIRECTIVE TO ADJUST FEES TO AVOID EXCEEDING THE STATUTORY LIMIT ON UNCOMMITTED RESERVES IN ADMINISTRATIVE AGENCY CASH FUNDS AS SET FORTH IN SECTION 24-75-401 (3), C.R.S.

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

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

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

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

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

EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES PURSUANT TO SECTION 13 OF ARTICLE XII OF THE STATE CONSTITUTION.

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

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

(b) THE HOA INFORMATION OFFICER:

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

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

(4) THE OPERATING EXPENSES OF THE HOA INFORMATION AND RESOURCE CENTER SHALL BE PAID FROM THE HOA INFORMATION AND RESOURCE CENTER CASH FUND, WHICH FUND IS HEREBY CREATED IN THE STATE TREASURY. THE FUND SHALL CONSIST OF ANNUAL REGISTRATION FEES PAID BY UNIT OWNERS' ASSOCIATIONS AND COLLECTED BY THE DIVISION OF REAL ESTATE PURSUANT TO SECTION 38-33.3-401, C.R.S. INTEREST

EARNED ON MONEYS IN THE FUND SHALL REMAIN IN THE FUND, AND ANY UNEXPENDED AND UNENCUMBERED MONEYS IN THE FUND AT THE END OF ANY FISCAL YEAR SHALL NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND. PAYMENTS FROM THE FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION.

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

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

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

PART 4 REGISTRATION

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

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

(b) A UNIT OWNERS' ASSOCIATION SHALL BE EXEMPT FROM THE FEE, BUT NOT THE REGISTRATION REQUIREMENT, IF THE ASSOCIATION:

(I) HAS ANNUAL REVENUES OF FIVE THOUSAND DOLLARS OR LESS; OR

(II) IS NOT AUTHORIZED TO MAKE ASSESSMENTS AND DOES NOT HAVE ANY REVENUE.

(3) A REGISTRATION SHALL BE VALID FOR ONE YEAR. AN ASSOCIATION THAT FAILS TO REGISTER, OR WHOSE ANNUAL REGISTRATION HAS EXPIRED, IS INELIGIBLE TO IMPOSE OR ENFORCE A LIEN FOR ASSESSMENTS UNDER SECTION 38-33.3-316 OR TO PURSUE ANY ACTION OR EMPLOY ANY ENFORCEMENT MECHANISM OTHERWISE AVAILABLE TO IT UNDER SECTION 38-33.3-123 UNTIL IT IS AGAIN VALIDLY REGISTERED PURSUANT TO THIS SECTION. A LIEN FOR ASSESSMENTS PREVIOUSLY FILED DURING A PERIOD IN WHICH THE ASSOCIATION WAS VALIDLY REGISTERED OR BEFORE REGISTRATION WAS REQUIRED PURSUANT TO THIS SECTION SHALL NOT BE EXTINGUISHED BY A LAPSE IN THE ASSOCIATION'S REGISTRATION, BUT ANY PENDING ENFORCEMENT PROCEEDINGS RELATED TO SUCH LIEN SHALL BE SUSPENDED, AND ANY APPLICABLE TIME LIMITS TOLLED, UNTIL THE ASSOCIATION IS AGAIN VALIDLY REGISTERED PURSUANT TO THIS SECTION.

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

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

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (51.5) The following agencies, functions, or both, shall terminate on September 1, 2020:

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

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

SECTION 7. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the HOA

information and resource center cash fund created in section 12-61-406.5 (4), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of real estate, for the fiscal year beginning July 1, 2010, the sum of two hundred five thousand eight hundred twenty-eight dollars (\$205,828) cash funds and 2.0 FTE, or so much thereof as may be necessary, for the implementation of this act.

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

SECTION 8. Act subject to petition - specified effective date.

This act shall take effect January 1, 2011; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2010 and shall take effect on

January 1, 2011, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Terrance D. Carroll
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO