



Hindman Sanchez

House Bill 1359

House Bill 1359 (HB 1359) was introduced by Representative Andy Kerr on April 20, 2009. This bill was granted late bill status and was introduced to address constituent concerns relating to the governance practices of an association board located in Representative Kerr's District. On May 15, 2009, HB 1359 was sent to Governor Ritter who signed the bill into law that day.

HB 1359 regulates reserve studies, dissemination of information to board members and qualification of committee chairs as follows:

Reserve Studies: Associations are required to adopt a Responsible Governance Policy (i.e. an additional SB 100 Policy) addressing:

1. When the association has a reserve study prepared for the portions of the community maintained, repaired, replaced and improved by the association;
2. Whether the reserve study is based on a physical analysis and financial analysis;
3. Whether there is a funding plan for any work recommended by the reserve study and, if so;
4. The projected sources of funding for the work.

Note: For purposes of complying with HB 1359, internally conducted reserve studies are sufficient.

Effective Date of the Reserve Study Provision:

Pre-CCIOA Communities: Associations created before July 1, 1992, must adopt a reserve policy by July 1, 2010.

Post-CCIOA Communities: Associations created on or after July 1, 1992, must adopt a reserve policy by August 5, 2009.

Recommendations Regarding the Reserve Study Provision:

- Every association with any maintenance, repair or replacement responsibility should have a full reserve study conducted by a professional specializing in reserve studies.
- Reserve studies should include a physical and financial analysis.
- Reserve studies should also include a component inventory, a condition assessment (based upon on-site visual observations) and life valuation estimates to determine fund status and a funding plan.
- Reserve studies should be updated on an annual basis. This update should include a visual inspection by a reserve study professional if maintenance has been deferred, there has been a significant deterioration in the components beyond what would normally be expected or there has been significant weather impact on the components (unusually cold weather, abnormally severe wind, hail, etc.).

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- Based upon the results of the reserve study, associations should develop a funding plan which should be reviewed and revised as necessary on an annual basis.

Dissemination of Information to Board Members: Any information obtained by a board member relating to the "responsibilities and operation of the association" must be provided to all members of the board. This information includes, but is not limited to, reports of detailed monthly expenditures, contracts to which the association is a party, and copies of communications, reports, and opinions to and from any member of the executive board or any managing agent, attorney, or accountant employed or engaged by the executive board to whom the executive board delegates responsibilities.

Effective Date of Dissemination of Information Provision:

Association boards must begin complying with this provision on August 5, 2009.

Recommendations Regarding Dissemination of Information Provision:

- Review your management contract to determine if the responsible party for dissemination of information is addressed.
- Adopt a policy addressing dissemination of information to all board members which should include:
- Designating a "primary contact" who is responsible for obtaining and disseminating information;
- Procedure to be utilized if information is received by someone other than the primary contact;
- Procedure to be utilized if the primary contact or another board member withholds information.

Qualifications of Committee Chairs: Any individual appointed to serve as the chair of a committee after August 15, 2009, must meet the requirements of the governing documents to be eligible to be elected or appointed to a position on the board of the association. This requirement does not apply to any other individuals appointed to serve on a committee.

Effective Date of Qualification of Committee Chairs Provision:

This new requirement applies to any committee chair appointed after August 15, 2009.

Recommendations Regarding Qualifications of Committee Chairs Provision:

- Review the governing documents of your association, particularly the bylaws, to determine the qualifications an individual must meet to serve on the board of your association.
- If your governing documents require individuals to be a "member in good standing" of the association, review the criteria for "member in good standing" and work with your manager to ensure that an individual meets the criteria prior to appointing him/her as a committee chair.

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House Bill 1091

House Bill 1091 (HB 1091) was introduced on January 12, 2009, in response to the tragic deaths of the Lofgren family resulting from carbon monoxide poisoning. HB 1091 proceeded quickly through the legislative process and was signed into law by Governor Ritter on March 24, 2009. The new law became effective on July 1, 2009 and regulates the installation of carbon monoxide detectors in single family homes and multi-family dwellings.

Units Offered for Sale or Transfer On or After July 1, 2009

On or after July 1, 2009, every owner of a single family dwelling or a unit in a multi-family dwelling (e.g. condominiums, townhomes, and attached homes) with a fuel-fired heater or appliance, a fireplace or attached garage, who offers the unit for sale or transfer must ensure that an operational carbon monoxide detector is installed within 15 feet of the entrance of each room used for sleeping or as specified by an applicable building code.

- This provision applies to developers who are selling units on or after July 1, 2009.
- This provision applies to associations who have purchased a unit in foreclosure and sell or transfer ownership of the unit on or after July 1, 2009.

Modifications Made to Units after July 1, 2009

HB 1091 requires that carbon monoxide detectors be installed within 15 feet of any sleeping room, or as specified by an applicable building code, in any single family dwelling, multi-dwelling unit or rental unit with a fuel-fire appliance or attached garage when on or after July 1, 2009, one of the following events occurs:

1. One or more sleeping rooms are added to the unit;
2. Interior alterations are made to the unit which require a building permit;
3. Repairs are made to the unit which require a building permit;
4. Fuel-fired appliances are replaced or added.

Units Offered for Rent On or After July 1, 2009

The owner of any single family dwelling or unit in a multi-family dwelling that is utilized as a rental property with a change in tenant occupancy on or after July 1, 2009, is required to do the following:

1. Replace any carbon monoxide detector that was stolen, removed, found missing, or not operational prior to the new tenants taking occupancy of the unit;
2. Ensure that appropriate batteries for the carbon monoxide detectors are provided to the tenant at the time the tenant takes occupancy of the unit;
3. If notified by the tenant in writing, replace any carbon-monoxide detector as needed.
4. If notified by the tenant in writing, repair any carbon-monoxide detector as needed.

Note: In a multi-family dwelling where there is a centralized alarm system or other mechanism where a responsible person may hear the alarm, an operational carbon monoxide detector may be installed within 25 feet of any fuel-fired heater or appliance, fireplace or garage (or installed according to any applicable building code) and the owner is not required to install carbon-monoxide detectors within 15 feet of each sleeping room.

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Recommendations for Condominium Associations Regarding HB 1091:

- If your association has purchased a unit in the association as the result of a foreclosure sale, the association is responsible for complying with the provisions of HB 1091 prior to the sale, transfer or rental of the unit as outlined above.
- If your association has had a receiver appointed as the result of collections efforts, the association is not an "owner" of the unit and is not required under HB 1091 to comply with the provisions pertaining to rental units.
- If carbon-monoxide detectors are hard-wired into a condominium unit; check the Declaration of Covenants, Conditions & Restrictions of your association to determine whether the association has any maintenance responsibilities for these devices. If the Declaration is unclear, consider passing a resolution clarifying association and homeowner responsibilities for maintenance.

House Bill 1248

House Bill 1248 (HB 1248) was signed into law by Governor Ritter on May 14, 2009. HB 1248 amends the Revised Colorado Nonprofit Corporation Act and addresses the ability to utilize this scheme and procedures that boards of associations must follow when taking action outside of a board meeting. However, if the governing documents of your association regulate action without a meeting – the governing documents control and HB 1248 should be disregarded.

HB 1248 provides that boards may take action outside of a meeting if the following requirements are met:

1. Notice of the action to be taken must be transmitted in writing to each director on the board.
2. The written notice of the action to be taken must contain the following information:
 - a. The action to be taken;
 - b. The time (date and time) by which a director must respond to the written notice;
 - c. That failure by a director to respond, by the time stated in the notice, will have the same effect as abstaining in writing or failing to demand in writing that the action be taken **at a meeting**.
3. By the time stated in the written notice, each Director may:
 - a. Vote in writing for the action;
 - b. Vote in writing against the action;
 - c. Fail to respond or vote; or
 - d. Demand in writing that the action be taken **at a meeting**. If a director makes this demand in a timely manner, the action without a meeting is no longer a valid course of action and the board must take action on the matter at an actual meeting.
4. Once the time has elapsed in the written notice - and assuming no written demand from a director is received requiring that the action be taken at a meeting - the action of the board is deemed effective if the number of affirmative votes required in the bylaws for the board to act at a meeting are received

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Recommendations Regarding HB 1248:

- If your board utilizes the action without meeting option in making a decision, place that item on the agenda to be ratified at your next board meeting. Consistent with the requirement in CCIOA, this will provide an opportunity for an equal number of homeowners to speak for and against the motion prior to the board voting to ratify.
- Utilize the action without meeting option only when absolutely necessary. This option should not be utilized as a routine method for decision-making since it makes a thorough discussion of important issues by all members of a board more difficult and inhibits transparency in the governance process.
- All written communications utilized in the action without meeting process are records of the association. As a result, steps should be taken to preserve all of the communications.

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