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HOA LEGAL UPDATE  
Lenard Rioth, Attorney  
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I. HOA Legal Documents.

A. Declaration of Covenants (the “Covenants” or “CCR’s”). Recorded document in real estate records. May include architectural review, use restrictions, creation of homeowners association, covenant enforcement, and assessments. May be amended to create an HOA or impose assessments.

B. Articles of Incorporation. Filed with Colorado Secretary of State. Creates HOA, usually as non-profit corporation. Private entity not governmental institution.

C. Bylaws. Establishes the procedures for operation of HOA including meetings and elections, powers and duties of board and officers, and rights and duties of homeowners (voting, records, etc.).

D. Rules. May not conflict with above documents, but may “interpret” or “supplement”. For example, imposing fines after notice and opportunity for hearing, setting architectural fees, forms and procedures.

II. Covenant Enforcement.

A. Communication. Owner communications by newsletters, meetings, new owner packets and real estate brokers. Annual meeting for education.

B. Consistency and Compliance. Complaint process and timing. Association communications by letters to violators. Imposing fines after notice and hearings. Keeping records for future.

C. Courts. Mediation/arbitration as remedies. Self-help in Small Claims Court. Use of attorneys in County and District Courts.

III. HOA Statutes.

A. Colorado Revised Nonprofit Corporation Act regulates most rights, duties, and procedures of HOA as a nonprofit entity.

B. Colorado Common Interest Ownership Act (CCIOA) applies fully to all “new” “CIC’s” created after July 1, 1992 and partially to “existing” CIC’s prior to that date.

1. “Common interest community” (“CIC”) is subdivision where owners are obligated by recorded Covenants to pay for real estate taxes, insurance, maintenance, or improvement of common property. --Excludes voluntary homeowners associations. Provides exemption for certain “small” HOA’s.

2. SB100/89 Changes - Requirements as to HOA Operations.

(a) Rules. Requires CIC’s to adopt “governance policies” – rules regarding assessments, conflicts of interest, meetings, enforcement, records, reserve funds, amending and adopting rules and dispute resolution.

(b) Disclosure. Requires annual notice to owners. Make certain records available to owners. Make certain records available for sellers to provide to buyers.

(c) Owner Rights. Meetings of owners require certain notices and owners may attend board meetings and right to speak. Contested elections may require secret ballots and counting by impartial parties. Maintain financial records and make audits as required.

(d) Board Duties. Board members must comply with duties under Nonprofit Act, including conflict of interest rules and duty to enforce covenants.

C. Statutory Overrides of Covenants

1. SB100 Overrides. Xeriscaping, flags and political signs, fire or emergency vehicle, landscaping for fire safety, and roofing materials. Also architectural decisions must not be "arbitrary or capricious".

2. Modifications for Disabled. HB1135 now states that CIC's cannot prohibit "reasonable modifications" to a unit or common element as are necessary to afford a person with disabilities full use and enjoyment of the unit in accordance with the Federal "Fair Housing Act of 1968."

3. Energy Devices/Efficiency.

(a) Prior Law. Covenants that "effectively prohibit or restrict the installation or use of solar energy devices" are void.

(b) New Law. HB 1270 states that an HOA shall not "effectively prohibit" "renewable energy generation devices" which are solar energy devices or wind electric generators (that is windmills which meet certain standards) or the installation or use of "energy efficient measures" which are awnings, shutters, trellis, ramada, or other shade structure, a garage or attic fan and vents, an evaporating cooler, energy efficient outdoor lighting device, or a retractable clothesline.

IV. New Requirements (2008) Regarding Fines.

A. Existing Law. CCIOA provides that an CIC may impose "reasonable fines" for violation of the declaration, bylaws, and rules "after notice and an opportunity to be heard."

B. New Law. HB1135 states that an CIC may not fine an owner unless (a) the CIC has adopted and follows a "written policy governing imposition of fines", and (b) the policy requires "a fair and impartial fact-finding process" as to whether the violation "actually occurred" and whether the owner is the "one who should be held responsible for the violation."

- The process may be informal, but must "guarantee" the owner notice and an opportunity to be heard before an "impartial decision-maker."
- An impartial decision-maker is a person or group of persons who have authority to make a decision and have no "direct personal or financial interest in the outcome" which means that the decision-maker "will not, as a result of the outcome, receive any greater benefit or detriment than the general membership" of the CIC.
- If the owner is held not responsible for the violation, the CIC may not allocate to such owner's account "any of the association's costs or attorneys fees incurred in asserting or hearing the claim." (Colorado Legislature "specifically endorses and encourages" CIC's to agree to use "all available public and private resources for alternative dispute resolution").