

Colorado HOAs

At a Legislative and Regulatory Crossroads

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Chair, Colorado Legislative Action Committee (CLAC)

Back in 2005, as Senate Bill 100 ("SB 100") was being fast and furiously debated and amended in the Colorado General Assembly, I was Senior Vice President and General Counsel for CAI National. Along with tracking and working issues in the traditional HOA battleground states, I was avidly following what was happening in Colorado. At the time, compared with Florida, California, Texas, Arizona and Nevada, SB 100 seemed like an anomaly and Colorado was still not considered a hotbed for HOA legislation.

As I look back on 2005, it has become abundantly clear that was the year Colorado joined the HOA legislative big leagues. SB 100 was all about responsible governance and "homeowner bill of rights" types of issues. These are the very issues that traditionally kick start legislative and regulatory activity in highly regulated states.

Since that fateful year, the introduction and passage of HOA focused legislation has been quietly gaining momentum in Colorado. Here's just a sampling of the bills that have been signed into law: (1) a clean-up and tune-up of SB 100 – more commonly referred to as Senate Bill 89; (2) a prohibition on HOAs banning the installation of energy efficiency measures and energy generation devices; (3) the requirement that pertinent information be shared with all members of an HOA board; (4) the requirement that HOAs adopt a policy addressing reserves; (5) the fleshing out of the SB 100 Policy addressing board member conflicts of interest; and (6) the creation of the HOA Information & Resource Center and the HOA Information Officer housed within the Colorado Division of Real Estate.

The last item I mentioned above was the result of a negotiated compromise to an ombudsman bill that had been introduced by Senator Morgan Carroll in 2010. As originally

introduced, the bill would have created an ombudsman to advocate for homeowners against their HOAs. While this bill was clearly introduced as a one-sided "solution" to perceived abuses against homeowners, CAI's Colorado Legislative Action Committee ("CLAC") was successful in negotiating a more balanced compromise that focused on providing information to those living in and governing associations. The bottom line is CLAC knew we could not outright defeat the bill in the then Democrat-controlled General Assembly. While creation of the HOA Information Officer

and Information and Resource Center was a middle ground, we knew introduction of an ombudsman bill signaled that HOAs in Colorado had crossed a legislative and regulatory line that is nearly impossible to step back from.

Fast forward to 2011. The HOA Information and Resource Center implemented a statutorily mandated registration program for HOAs and the Information Officer began taking complaints from homeowners about their HOA boards, managers and management companies. The first annual report summarizing these complaints will be published by the Division of Real Estate in December of this year. This report is being eagerly anticipated by legislators concerned with perceived abuses of homeowners by their HOAs. We anticipate this and future reports will

facilitate an ongoing examination of the impact of HOAs on homeowners and will ultimately result in tighter regulation of associations through legislative and even regulatory initiatives.

This summer at a Colorado Bar Association function, we were given a preview of the most common types of complaints that had been lodged to date by homeowners. Aaron Acker, the HOA Information Officer, reported the disturbing trend that many of the complaints relate to

issues addressed in SB 100. For example, associations have not adopted or fail to follow the required Responsible Governance Policies (commonly referred to as "SB 100 Policies"). In addition, HOAs and managers/management companies have refused to produce records for examination by homeowners or charge exorbitant fees for copies of the records. In particular, Mr. Acker reported a seeming unwillingness by some to produce financial records of their associations.

In addition, Mr. Acker reported that other frequent categories of complaints include: (1) homeowners not being permitted to speak at meetings; (2) intimidation of homeowners by board members and employees of management companies; (3) failure of boards and management to follow bylaws relating to meeting issues; (4) excessive fines; and (5) arbitrary assessments. There have also been consistent complaints relating to actions by managers and management companies.

While these complaints are disturbing at first glance, it's important to remember they reflect only one-side of the story. Mr. Acker and his office do not have the statutory authority to investigate these complaints. As a result, we have no way of knowing whether the report will accurately reflect what's really going on in associations. In addition, it will be imperative to determine whether these reported complaints are anecdotal in nature or truly reflect trends which merit legislative consideration.

CLAC is holding a series of in-depth strategic planning sessions to discuss these issues and plan for what promises to be the most significant legislative session to date for HOAs in Colorado. While we have traditionally taken

a defensive and reactive position in dealing with HOA legislation, we are reviewing whether it makes more sense to be the proponents of legislation. This course of action may ultimately make it easier to ensure HOA legislation is balanced and effective.

While it may be hard to hear, the fact is Colorado is closely mirroring other states that highly regulate HOAs. These trends are characterized by a legislative focus on governance issues, manager licensure, and even the creation of a regulatory authority for associations. How will things ultimately unfold in Colorado? Only time will tell. However, in order to shape the destiny of our body of law, we must face these issues head-on in a constructive, thoughtful and strategic manner. This will include a coordinated legislative, public relations and grassroots effort. ⬆

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