

2009 LEGISLATION RELATED TO COLORADO OWNER ASSOCIATIONS

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Orten Cavanagh Richmond & Holmes, LLC
Community Association Attorneys

Denver • Phone 720.221.9780 • Fax 720.221.9781
Colorado Springs • Phone 719.457.8420 • Fax 719.457.8419 • Toll Free • 888.841.5149
Email: info@ocrhlaw.com • Web: www.ocrhlaw.com

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I. AMENDMENTS TO CCIOA IN 2009.

A. HB-09-1359 – Summary of the Bill. This bill does three things:

- i. New Required Policy on Reserve Studies/Reserve Funding. The bill adds a ninth policy to the list of policies associations are required to have. The bill does not require an association to have a reserve study, and the bill does not require reserve studies to be done on a periodic basis (i.e., once every 3 years).
 - (1) Required Components of New Policy on Reserves. The policy to be adopted must identify and disclose the following:
 - When the association plans to have a reserve study
 - Whether the study is based on a physical analysis and a financial analysis
 - Whether there is a funding plan
 - Any projected sources of funding
 - (2) Application - Dates by Which Associations Must Have the New Required Policy.
 - Post CCIOA CIC's. Post-CCIOA communities that are not exempt from CCIOA must adopt their policy by August 5, 2009.
 - Pre-CCIOA CIC's. Associations in pre-CCIOA communities must adopt their policy by July 1, 2010.
- ii. Required Sharing of Information by Board Members. The bill also requires board members to share information with each other. The information required to be shared is “related to the responsibilities and operation of the association obtained by any other member of the board.”
 - (1) Application. This requirement becomes effective August 5, 2009.

iii. Committee Chair Required to Meet Qualifications of Board Members.
The bill also requires committee chairs, appointed after August 15, 2009, to meet the same qualifications as are applicable to board members. Some associations have a requirement that board members be owners.

(1) Application. Any requirement or qualification to be a board member will apply to committee chairs appointed after August 15, 2009.

B. HB 09-1220/Affordable Housing Allowed in Certain Ski Counties. This bill allows for “affordable housing” sales price restrictions and rental rate/restriction, despite restrictions in governing documents. This prohibition on restrictions of affordable housing only applies to:

- i. Counties with less than a population of less than 100,000
- ii. Counties that have a ski area (ski lift) in the county

(1) Application. This bill became effective May 14, 2009.

C. SB 08-249 - Limitations on Certain Covenants Extended to Previously Exempt Small or Limited Expense Communities. The bill extends the limitations on enforcement of certain covenants to:

- i. Post-CCIOA small and limited expense communities;
- ii. Post-CCIOA small cooperatives;
- iii. Pre-CCIOA small planned communities; and
- iv. Pre-CCIOA small cooperatives.

(1) The Limitations Extended. The limitations extended are to covenants restricting the following:

- U.S. Flags
- Service star/service flags
- Political signs
- Emergency vehicles and parking
- Cedar shake shingles not being required
- Energy generating and energy savings devices reasonably allowed and affordable housing allowed (in certain counties).

(2) Application. This bill became effective May 14, 2009.

II. OTHER NEW LAWS ADOPTED IN 2009

A. HB 09-1091 – Carbon Monoxide Alarms Required After July 1, 2009.

i. Summary of the Bill/Carbon Monoxide Alarms Required. On and after July 1, 2009, carbon monoxide alarms are required in:

- Homes for sale;
- Homes for rent; and
- Certain remodels of single-family and multi-family residences.
 - Multi-family residences include condominiums and townhomes or other attached homes.

ii. Installation Locations.

Carbon monoxide alarms must be installed within fifteen feet of the entrance to each room legally used for sleeping purposes or in a location specified by any applicable building code.

iii. Application to Condominiums, Townhomes and Attached Homes Used for Rental Purposes.

Generally, condominiums, townhomes and attached homes used for rental purposes are subject to the same carbon monoxide alarm installation requirements as other homes, including installation requirements upon changes in rental occupants and remodels (as defined above) after July 1, 2009.

There is, however, an exception regarding installation location of the carbon monoxide alarms in any multi-family residence used for rental purposes. In such cases, as long as there is a centralized alarm system or other mechanism for a responsible person to hear the alarm at all times, in a multi-family residence used for rental purposes, such multi-family residence may have an operational carbon monoxide alarm installed within twenty-five feet of the fuel-fired heater or appliance, fireplace or garage in a location specified by the applicable building code.

iv. Responsibility for Maintenance and Backup Power.

- a. This new law requires that alarms have back-up power.
- b. Owners of rental property must replace any alarm that is stolen, removed, or found not operational after the previous occupancy

and ensure that batteries necessary to make the alarm operational are provided to the tenant at the time the tenant takes residence.

- c. Owners of rental property must also replace any alarm if notified by the tenant that the alarm was stolen, removed, found missing or found not operational, and fix any deficiency of which the owner receives notice.
- d. Except as provided above, owners of single-family dwellings or units in multi-family dwellings used for rental purposes are not responsible for the maintenance, repair or replacement of an alarm or the care and replacement of batteries for such alarm.
- e. The tenant of any rental property is required to keep, test and maintain all alarms in good repair and notify the owner, in writing, if the alarm needs to be replaced or if there is any deficiency in the alarm that the tenant cannot correct.

v. Liability Limitations for Proper Installations.

If a carbon monoxide alarm is installed according to the manufacturer's instructions and the new law, then the owner of the home, their agents, persons in possession and the installer are immune from liability for damages resulting from operation, maintenance or effectiveness of the alarm.

- vi. Application. This bill became effective May 14, 2009, with the alarm required after July 1, 2009.

B. SB 09-51 – Facilitating the Financing of Energy Efficient Structures.

i. Summary of the Bill.

- Declares energy efficient improvements a wise investment for individuals and businesses.
- Seeks to create/improve financing of energy-efficient improvements.
- Encourages investigation of financing options for these sorts of improvements.
- Amended the "Colorado Clean Energy Finance Program Act" and created the "Renewable Energy Financing Act of 2009.
- Allows credit unions among the lenders that may make loans under the program.

- Renewable energy developers and installers (of solar panels and other renewable energy generation equipment) among the contractors that may be certified under the program.
- Authorizes the governor's energy office, as administrator of the Colorado clean energy finance program, to develop and license the use of a "Clean & Green Colorado" logo and marketing materials for use by lenders and certified contractors under the program.
- Clarifies that funding under the "Colorado Clean Energy Development Authority Act" is available for energy efficiency improvements to apartment buildings.
- Increases the cap on the amount of loans guaranteed by the state treasurer by \$10 million, from a maximum of \$30 million to a maximum of \$40 million.
- Authorizes and encourages the installation of renewable energy generation equipment on property owned by others with some limitations.

(1) Application. This bill became effective July 1, 2009.

ii. HB 2008-1270. Note as to Energy Generating Devices and Energy Efficiency Bill approved in 2008.

a. Energy Generating Devices and Energy Efficiency Measures Allowed Despite Express or ACC Covenants.

(1) State Statutes Changed by this Legislation. This legislation has a part wholly within CCIOA (on energy efficiency) and has the other part in general real estate statutes, Title 38, Article 30 (as to renewable energy generation devices). Under a section of the bill the new law on renewable energy generation devices is also brought within CCIOA.

b. Application of the Energy Efficiency and Renewable Energy Generation Devices of this Statute.

(1) Planned Communities. These parts of the statute apply to all planned communities subject to CCIOA (the so called pre-CCIOA communities and also the post-CCIOA communities that are not exempt from CCIOA). For example, the statutory protections will apply in communities where the footprint of the structure is the lot line and property outside the building footprint is either a general or limited common element. The statute will be

effective only as to those measures that involve the structure and not property (general or limited common elements) outside the building structure.

- (2) Condominiums. This statute has no impact on condominium communities.

c. Application of Just the Renewable Energy Generation Devices Provisions of the Statute (and not the Energy Efficiency Provisions).

- (1) Reasonable limitations are enforceable. Specifically, five factors must be considered:

- Documents/Aesthetic Provisions. Whether the rights of owners to generate solar or wind energy are subject to reasonable architectural controls – in a Declaration of a Planned Community OR in any covenant, restriction, or condition in a deed, contract, security instrument, or other instrument. Aesthetic provisions that impose reasonable restrictions are permitted on:
 1. Dimensions
 2. Placement or
 3. External appearance
- Reasonable Cost. The cost to the owners is not significantly increased.
- No Decreased Performance or Efficiency.
- Bona fide Safety Factors.
- Sound – as to wind generators - may be reasonably regulated.

- (1) The statute became effective August 6, 2008.

d. So, what is the new law?

- (1) More Owner Rights. Owners in the properties that this new statute applies to have more rights to generate and save energy.
- (2) Absolute Prohibitions are Void and Unenforceable. Under this bill, restrictions, covenants and guidelines that effectively preclude the use of renewable energy generation devices and/or energy efficiency devices are void and unenforceable. Despite restrictive covenants to the contrary, owners can install solar energy or wind-electric energy generating devices, subject to factors, reviewed below.

e. What Prohibitions are enforceable

- (1) Specific Energy Saving Devices Items Allowed For. A list of specific energy saving devices items is allowed for in the bill, subject to the factors above. The items that are given this elevated status are as follows:
 - Awnings
 - Shutters
 - Trellises
 - Ramadas
 - Other shade structures marketed for the purpose of reducing energy consumption.
 - Garage or attic fans and associated vents or louvers.
 - Evaporative coolers.
 - Energy efficient outdoor lighting devices.
 - Retractable clotheslines.
- (2) Areas Where These Devices CANNOT be Placed. This statute does not allow an owner in the properties that this new statute applies to placement of renewable energy devices or energy efficiency measures on:
 - Property owned by someone else.
 - Leased property (except with permission of the landlord).

- Collateral for a commercial loan, without the consent of the lender.
 - General or limited common elements of a condominium or of a Planned Community (assuming the Planned Community is subject to CCIOA).
- (3) In addition to the application to Planned Communities subject to CCIOA, above, the provisions on energy generation devices apply to ‘any covenant, restriction, or condition in a deed, contract, security instrument, or other instrument.
- f. Recommended Actions to Owners and Owners Associations That Have Architectural Covenants. Owners and owner associations with architectural covenants in the properties that this new statute applies to should consider reviewing and revising architectural guidelines and/or their covenants, to be consistent with this statute, if the votes or action for those revisions can be obtained.