

**WHAT COLORADO OWNER ASSOCIATIONS NEED  
TO KNOW ABOUT  
2008 LEGISLATIVE CHANGES**

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**WHAT COLORADO OWNER ASSOCIATIONS NEED  
TO KNOW ABOUT  
RECENT CHANGES IN COMMON INTEREST COMMUNITY LAWS**

In 2008, the Legislature addressed *6 topics* affecting Colorado Common Interest Communities and properties subject to any covenant, restriction, or condition in a deed, contract, security instrument, or other instrument.

**1. Energy Generating Devices and Energy Efficiency Measures Allowed Despite Express or ACC Covenants—HB 2008-1270**

- 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.
- Application of the Energy Efficiency and Renewable Energy Generation Devices of this Statute.
  - i. 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.
  - ii. Condominiums. This statute has no impact on condominium communities.
- Application of Just the Renewable Energy Generation Devices Provisions of the Statute (and not the Energy Efficiency Provisions). 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.’
- Effective Date. The statute became effective August 6, 2008.

- So, what is the new law?
  - i. More Owner Rights. Owners in the properties that this new statute applies to have more rights to generate and save energy.
  - ii. 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.
  - iii. What Prohibitions are enforceable? Reasonable limitations are enforceable. Specifically, five factors must be considered:
    - a. 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:
      - i. Dimensions
      - ii. Placement or
      - iii. External appearance
    - b. Reasonable Cost. The cost to the owners is not significantly increased.
    - c. No Decreased Performance or Efficiency.
    - d. Bona fide Safety Factors.
    - e. Sound – as to wind generators - may be reasonably regulated.
  - iv. 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:
    - a. Awnings
    - b. Shutters
    - c. Trellises
    - d. Ramadas

- e. Other shade structures marketed for the purpose of reducing energy consumption.
  - f. Garage or attic fans and associated vents or louvers.
  - g. Evaporative coolers.
  - h. Energy efficient outdoor lighting devices.
  - i. Retractable clotheslines.
- v. 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:
- a. Property owned by someone else.
  - b. Leased property (except with permission of the lessor).
  - c. Collateral for a commercial loan, without the consent of the lender.
  - d. General or limited common elements of a condominium or of a Planned Community (assuming the Planned Community is subject to CCIOA).
- 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.

## 2. **Due Process Required Before an Association May Fine—HB 2008-1135**

- State Statutes Changed by This Legislation. This legislation is wholly within CCIOA.
- Application of this Statute to Common Interest Communities. This new statute applies to all common interest communities subject to CCIOA (the so called pre-CCIOA communities and also the post-CCIOA communities that are not exempt from CCIOA).
- Effective Date. The statute became effective July 1, 2008.
- So, what is the new law?
  - i. Specific Due Process. This statute requires owner associations subject to CCIOA to follow specific due process before fining an owner.

ii. Specific Requirements of the Due Process Required:

- a. Associations must adopt and follow a written policy on fines. (Many associations already have these policies in their ‘enforcement’ policies, adopted under SB 2005-100 and SB 2006-89.)
  - b. The Association’s policy must include a ‘fair and impartial fact finding process.’ For example:
    - ✓ Did the violation occur?
    - ✓ If so, should the owner be held responsible?
    - ✓ Is the fine consistent with Association’s policies?
  - c. The fair and impartial fact finding process may be informal.
  - d. Notice and opportunity to be heard must be guaranteed in the policy.
  - e. The hearing allowed for, if held, must be by an ‘impartial decision maker’ (persons with authority to make a decision on a claimed covenant, rule or architectural violation and without a direct personal or financial interest in the outcome of the hearing).
- Recommended Actions for Owner Associations. Check for compliance with these new standards in the Association’s governing documents and/or governance policies. If needed, add provisions and revise existing provisions.

3. **Disabled Persons Enforcement Rights Within State Law - HB 2008-1135**

- State Statutes Changed by this Legislation. This legislation is wholly within CCIOA.
- Application of this Statute to Common Interest Communities. This new statute applies to all common interest communities subject to CCIOA (the so called pre-CCIOA communities and also the post-CCIOA communities that are not exempt from CCIOA).
- Effective Date. The statute became effective July 1, 2008.

- So, what is the new law?
  - i. State Law Right in CCIOA for Disabled Persons and their Full Use and Enjoyment of their Unit. In addition to the right of disabled persons under federal law to reasonable modifications to their unit or common elements so that they can have ‘full use and enjoyment of their unit.’
  - ii. This is not new law; it is just now in CCIOA.
- Recommended Actions for Owner Associations. None.

4. **Mediation Preference of the State – To Resolve Covenant Enforcement Issues—HB 2008-1135**

- State Statutes Changed by This Legislation. This legislation is wholly within CCIOA.
- Application of This Statute to Common Interest Communities. This new statute applies to all common interest communities subject to CCIOA (the so called pre-CCIOA communities and also the post-CCIOA communities that are not exempt from CCIOA).
- Effective Date. The statute became effective July 1, 2008.
- So, what is the new law?
  - i. Mediation Preference. The State has, again, expressed its interest in and encouragement to use mediation. This statute stresses the availability of the Statewide Office of Dispute Resolution, within the Colorado Judicial Branch.
- Recommended Actions for Owner Associations. Consider mediation of disputes between the owner association and the owners, and, between owners and the association. Review and revise existing governance policies or governing documents, if needed, and if the votes or action for those revisions can be obtained.

5. **Actions of Boards Without a Meeting - HB 2008-1089**

- State Statutes Changed by This Legislation. This legislation is wholly within the Colorado Revised Nonprofit Corporation Act.

- Application of This Statute to Common Interest Communities. This new statute applies to Colorado nonprofit corporations that are subject to the Colorado Revised Nonprofit Corporation Act.
- Effective Date. The statute became effective August 6, 2008.
- So, what is the new law?
- Board Action Without a Meeting. This statute allows for action without a board meeting. The new process, unless restricted or limited in the bylaws (as is the case with most existing bylaws), allows for action without a meeting, if:
  - i. A written notice is sent to all board members of the action proposed to be taken.
  - ii. The notice states the time by which a director must respond.
  - iii. Each board member votes, in writing ‘for’ or ‘against’ or ‘abstains’ OR fails to respond.
  - iv. No board member demands a meeting for the proposed action.
- How is this different from the old law?
  - i. The primary distinction between the new language and existing language in the Colorado Revised Nonprofit Code is to shift the burden to a board member to demand a meeting rather than requiring the board member to affirmatively waive the right to have the action taken at a meeting.
  - ii. Many association bylaws include the statutory language in effect prior to this new statute.
  - iii. If your association has the old language, the association would need to amend its bylaws to take advantage of the new statutory requirements.
- Recommended Actions for Owner Associations. Review the existing bylaws and consider pursuing amendments to take advantage of this new statute, if the votes or action for those revisions can be obtained.

6. **Bundling of Multiple Association Judicial Foreclosures in Timeshare Communities— HB 2008-1365**

- State Statutes Changed by This Legislation. This legislation is wholly within CCIOA.
- Application of This Statute to Common Interest Communities. This new statute applies only to timeshare estates in common interest communities that are subject to all of CCIOA (post-CCIOA communities that are not exempt from CCIOA).
- Effective Date. The statute became effective August 6, 2008.
- So, what is the new law?
  - i. Bundling of Timeshare Judicial Foreclosures. This statute allows more than one owner and more than one timeshare to be included in a timeshare association's judicial foreclosure lawsuit.
  - ii. The Following Factors Must be Met:
    - a. All timeshare estates involve just one common interest community.
    - b. The association remedies must be substantially the same, not differentiated based on owners included in the lawsuit (i.e., of the same class).
    - c. The lawsuit is limited to judicial foreclosure.
    - d. No superlien or limited priority lien can be claimed.
  - iii. Severance. The court can sever the bundled claims.
  - iv. Service by Publication. Can be accomplished on the bundled owners/junior lienors.
  - v. Separate Sheriff Sales are Required.
  - vi. Separate Cure is Allowed.
  - vii. Deficiency Claims are Waived.

- Recommended Actions for Post-CCIOA Communities That Include a Timeshare Owner Association. Review the statute and consider bundling the timeshare foreclosures in one lawsuit, seeking an order allowing for separate sheriff sales.

**7. Copies of these new Statutes.**

To obtain copies of these new statutes, contact one of our attorneys or staff members or visit the state's website at <http://leg.state.co.us>.

**8. Questions on Colorado Law?**

For questions on Colorado law affecting owner associations, contact an attorney at Orten Cavanagh Richmond & Holmes.