

Suggested changes to HB 20 -1333 Provided by the Colorado HOA Forum

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In the Bill Summary Section Suggest the following changes: CHANGES IN BLUE

Top Page 2 change verbiage Change line beginning with Supplying to: "Supplying to the State HOA Information and resource center for posting on their web site for access by the public the governing documents and those identified under Section 7 of the Contract to Buy and Sell Real Estate along with a list of all fees assessed to home sellers by the property management company upon the sale of a home that are unique and extraordinary to the sale of a home that are not paid for with HOA dues. Section 11 (I'm replacing "HOA's" fees with "property management company" as this fee is not assessed, determined by or retained by the HOA and delete "current fees chargeable upon sale of a home in the community, to the HOA information and resource center for posting on the center's own website"). Section 1 not required as covered with verbiage bottom of page 1 but include in 11)

Add a paragraph on page 2: The HOA is responsible for ensuring that all documentation posted on community and other official web sites and provided to the HOA information and resource center are the most current versions and considered the official documents of the HOA. Section 10 and 11

Bottom of Page 2:: Change: "Upon the sale of a unit, current law requires disclosure to the buyer of certain HOA documents Section 10 requires the seller to certify that the documents are correct and complete and gives the buyer the right to sue for damages if they are not" Modify to: **Upon the sale of a unit, current law requires disclosure to the buyer of certain HOA documents. Section 10 requires the seller to certify that the documents are correct, complete, current, the source from which documentation was obtained and the date on which documentation was compiled and that such documents posted on the State HOA information and resource center's web site, HOA web site or other web site maintained by the HOA are considered a valid and certified source for such information and gives the buyer the right to sue for damages if they are not. Section 10**

Add paragraph: Defines costs to home owners to acquire HOA documentation and billing statements and requires invoices to support all fees, fines and assessments other than HOA dues. Section 10

Requires educational requirements for HOA Boards Section 11

Changes to the Bill

38-35.7-102. SECTION 10. In Colorado Revised Statutes, 38-35.7-102,

amend (2)(b) as follows:

Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval.

(2) (b) (I) Upon request, the seller **or their authorized agent** shall either provide to the buyer or authorize the unit owners' association to provide to the buyer , ~~upon payment of the association's usual fee pursuant to section 11-38-33.3-317 (4),~~ A CERTIFIED COPY OF all of the common interest community's governing documents and financial documents as listed in the most recent available version of the contract to buy and sell real estate promulgated by the real estate commission. **The seller will also**

provide the buyer with a copy of a their account statement with the HOA that indicates all amounts owed including HOA dues, fees, fines and assessments. Upon request this information will be provided to a Title Company with the same restrictions and requirements as described in Section 10. ~~as of the date of the contract.~~ (NOTE, I'VE DELETED "as of the date of contract" BECAUSE THE DATE ON THE DOCUMENTATION WILL NORMALLY BE PRIOR TO THE CONTRACT DATE/CLOSING DATE but requirements below indicate an as of date on documentation).

The seller may be assessed a fee by the association or its' agent for extraordinary and unique charges related to the sale of the home and/or in providing such documentation that have not been compensated for by the home seller through their HOA dues such as copying and mailing and any special handling charges or specific service requests by the home seller. All fees will be documented on an invoice to the seller what work was completed to earn the fee, when completed with line item cost.

The HOA will be responsible for ensuring that the associations governing and financial documentation posted on their web site or other authorized web site or forwarded to the HOA Information and Resource Center are current. Failure to do so will expose the HOA to damages in the event a buyer is suing the seller or HOA for damages related to inaccurate documentation.

The seller or their authorized agent can rely upon documentation posted on the HOA web site or on the State HOA Information and Resource Center web site or other HOA maintained and authorized source as the official and most current HOA documents.

The seller or their authorized agent or the association through their agent will provide Title Companies upon request with documentation identified in the Contract to Buy and Sell Real Estate. The association or its' agent can only charge the Title Company for postage, special handling, reproduction costs or other costs incurred that have not been paid for by the seller with HOA dues and are considered unique and extraordinary and caused by the sale of the home.

(II) THE CERTIFICATION REQUIRED BY SUBSECTION (2)(b)(I) OF THIS SECTION MUST:

(A) STATE THAT THE DOCUMENTS HAVE BEEN OBTAINED AND PROVIDED BY THE SELLER DIRECTLY AND PERSONALLY OR BY NAMING A PRIVATE BUSINESS CONTRACTED TO COMPLETE THE WORK OR BY THE UNIT OWNERS' ASSOCIATION OR THE ASSOCIATION'S DULY AUTHORIZED REPRESENTATIVE, IN FURTHERANCE OF THE SALE OF THE SELLER'S UNIT TO THE BUYER; AND

B) INCLUDE A STATEMENT THAT ALL DOCUMENTS ARE CURRENT, COMPLETE, AND SPECIFICALLY APPLICABLE TO THE SELLER'S UNIT AND TO EVERY APPLICABLE UNIT OWNERS' ASSOCIATION AS OF THE DATE OBTAINED/PRODUCED ~~OF TRANSMITTAL TO THE BUYER.~~ (I MARKED THIS OUT BECAUSE THERE COULD BE A DELAY BETWEEN WHEN OBTAINED AND TRANSMITTED)

C) INDICATE THE SOURCE FROM WHICH THE DOCUMENTATION WAS OBTAINED SUCH AS THE HOA WEB SITE OR STATE INFORMATION AND RESOURCE CENTER AND THAT THE SOURCE IS CONSIDERED TO BE THE OFFICIAL AND LATEST COPY OF ALL SUCH DOCUMENTATION UNDER THIS STATUTE AND DATE DOCUMENTATION WAS OBTAINED.

D) THE SELLERS ACCOUNT STATEMENT WILL INDICATE THE DATE OF THE STATEMENT, CURRENT BALANCE OF HOA DUES AND IF CURRENT OR IN ARREARS AND ANY OUTSTANDING FINES, FEES, AND

ASSESSMENTS OR OTHER FINANCIAL OBLIGATIONS AND AS APPLICABLE INFORMATION ON ANY PENDING OR IN PROCESS OBLIGATIONS.

(III) A SELLER'S FAILURE TO PROVIDE THE CERTIFICATION REQUIRED BY SUBSECTION (2)(b)(I) OF THIS SECTION CREATES A CLAIM -14- HB20-1333 FOR RELIEF BY THE BUYER AGAINST THE SELLER FOR ACTUAL DAMAGES DIRECTLY AND PROXIMATELY CAUSED BY THE FAILURE PLUS COURT COSTS.

SECTION 11

12-10-801. HOA information and resource center - creation - duties - rules - subject to review - repeal.

(3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the act by:

(I) ~~Collecting and~~ compiling a database about registered ~~associations as part of the HOA registration process accessible to the public~~ including:

(A) The name; address; e-mail address, if any; website, if any; and telephone number of each; AND

~~B) THE MOST RECENT AVAILABLE INFORMATION ABOUT FEES AND CHARGES UPON TRANSFER OF THE SALE OF A UNIT, PROVIDED IN ACCORDANCE WITH 16 SECTION 38-33.3-317 (2)(c); THAT ARE PAID BY THE SELLER AND SUCH FEES ARE UNIQUE AND EXTRAORDINARY TO THE SALE OF THE HOME AND NOT PAID FOR WITH HOA DUES.~~

~~CHANGE PARAGRAPH TO ITEM "C") 1.5) MAINTAINING A WEB PAGE ON THE DIVISION'S WEBSITE CONTAINING COPIES OF THE CURRENT VERSIONS OF THE DECLARATIONS, PLATS, AND MAPS OF ALL COMMON INTEREST COMMUNITIES FORMED IN COLORADO, AS RECORDED IN COUNTY LAND RECORDS, PURSUANT TO SECTION 38-33.3-201 (1)(b);~~

~~D) HOA DOCUMENTATION LISTED IN THE CONTRACT TO BUY AND SELL REAL ESTATE~~

~~E) THE NAME AND ADDRESS AND TELEPHONE NUMBER OF THE PROPERTY MANAGEMENT COMPANY OR INDICATE ASSOCIATION IS SELF-MANAGED~~

~~F) HOAs are required to maintain and update all of the aforementioned information upon registration and throughout the year~~

~~G) All data collected by the HOA Information and Resource Center will be available to the public except for privacy data and the Center will maintain a web site that allows for users to easily access and download HOA information by HOA name or other identifier and to complete reports and analysis.~~

~~(V) DEVELOPING AN ONLINE BASIC KNOWLEDGE COURSE FOR 2 EXECUTIVE BOARD MEMBERS TO COMPLETE, FREE OF CHARGE, IN 3 ACCORDANCE WITH SECTION 38-33.3-209.6 (2) AND PROVIDING THROUGH THE HOA REGISTRATION PROCESS AN ACKNOWLEDGEMENT THAT SUCH BOARD MEMBERS HAVE COMPLETED THE COURSES WITHIN THREE MONTHS OF SERVING ON THE BOARD AND THAT SUCH BOARD MEMBER HAS READ THE HOA GOVERNING DOCUMENTS.~~

SECTION 9. In Colorado Revised Statutes, 38-33.3-317, add 22 (1)(h.5), (2)(c), and (4.5) as follows: 23 38-33.3-317. Association records.

(1) In addition to any records specifically defined in the association's declaration or bylaws or expressly required by section 38-33.3-209.4 (2), the association must maintain the following, all of which shall be deemed to be the sole records of the association for purposes of document retention and production to owners: -12- HB20-1333 1

(h.5) A LIST OF THE CURRENT AMOUNTS OF ALL UNIQUE AND EXTRAORDINARY FEES, ASSESSMENTS AND EXPENSES CHARGEABLE BY THE ASSOCIATION OR ITS' AGENT IN CONNECTION WITH THE PURCHASE OR SALE OF A UNIT THAT ARE INCURRED DUE TO EXTRAORDINARY AND UNIQUE WORK AND NOT PAID FOR THROUGH HOA DUES INCLUDING TRANSFER FEES, RECORD CHANGE FEES, AND THE CHARGE FOR A STATUS LETTER OR STATEMENT OF ASSESSMENTS DUE;

ADD (h.6) ALL DOCUMENTATION IDENTIFIED BY THE DEPARTMENT OF REGULATORY AGENCIES IN THE CONTRACT TO BUY AND SELL REAL ESTATE.

(2) (c) THE ASSOCIATION SHALL PROVIDE AN ELECTRONIC COPY OF THE INFORMATION DESCRIBED IN SUBSECTION (1)(h.5) AND (h.6) OF THIS SECTION TO THE HOA INFORMATION AND RESOURCE CENTER CREATED IN SECTION 9 12-10-801 ON OR BEFORE JANUARY 1, 2021, AND THEREAFTER WITHIN THIRTY DAYS AFTER ANY CHANGE AND DURING INITIAL HOA REGISTRATION AND UPON ANY CHANGE

(4.5) (a) AN ASSOCIATION'S FAILURE TO ALLOW INSPECTION OR COPYING OF RECORDS IN ACCORDANCE WITH THIS SECTION WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF A WRITTEN REQUEST SUBMITTED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND PAYMENT OF ANY FEES REQUIRED PURSUANT TO SUBSECTION (4) OF THIS SECTION, CREATES A REBUTTABLE PRESUMPTION THAT THE ASSOCIATION WILLFULLY REFUSED TO COMPLY WITH THIS SECTION. TO DETERMINE WHETHER THE ASSOCIATION WILLFULLY REFUSED TO COMPLY WITH THIS SECTION, A COURT OF LAW OR ARBITRATOR MAY TAKE INTO ACCOUNT WHETHER OR NOT THE ASSOCIATION FAILED TO PRODUCE THE RECORDS AFTER THE REQUESTOR MADE A GOOD-FAITH EFFORT TO FOLLOW UP WITH THE ASSOCIATION ABOUT THE PRODUCTION OF THE RECORDS.

b) A UNIT OWNER IS ENTITLED TO DAMAGES FOR AN ASSOCIATION'S WILLFUL REFUSAL TO ALLOW INSPECTION OR COPYING AS DESCRIBED IN SUBSECTION (4.5)(a) OF THIS SECTION IN THE AMOUNT OF FIFTY DOLLARS PER DAY, COMMENCING ON THE ELEVENTH BUSINESS DAY AFTER THE ASSOCIATION RECEIVED THE WRITTEN REQUEST, UP TO A -13- HB20-1333 1 MAXIMUM OF FIVE HUNDRED DOLLARS OR THE UNIT OWNER'S ACTUAL DAMAGES SUSTAINED AS A RESULT OF THE REFUSAL, WHICHEVER IS GREATER.

ADD: c) ALL DOCUMENTATION IN SECTION 9 POSTED ON THE ASSOCIATION'S OR OTHER ASSOCIATION WEB SITE AND DOCUMENTATION PROVIDED TO THE STATE HOA INFORMATION AND RESOURCE CENTER WILL BE MAINTAINED AND KEPT CURRENT BY THE ASSOCIATION AND CAN BE CONSIDERED THE OFFICIAL DOCUMENTATION OF THE ASSOCIATION. THE ASSOCIATION CAN BE HELD LIABLE FOR ANY DAMAGES SUSTAINED BY USERS IN THEIR USE OF SUCH DOCUMENTATION.

ADD: A UNIT OWNER IS ENTITLED TO ACCESS AND RECEIVE COPIES OF ALL ASSOCIATION DOCUMENTATION AND THEIR ACCOUNT RECORDS AT NO CHARGE EXCEPT FOR COSTS INCURRED AND NOT PAID FOR WITH HOA DUES TO REPRODUCE, COPY, MAIL OR TO COMPLETE SPECIAL PROCESSING TO PRODUCE SUCH DOCUMENTATION.