

Saturday, January 26, 2013 HOA Legislative Reform to Begin with HB 13-1134

HB 13-1134 will be submitted to the State legislature to expand the authority and responsibilities of the Colorado HOA Information Office and Resource Center. This office, created in 2011, has been primarily responsible for recording and reporting on complaints of HOA homeowners, registering HOA's, and providing high level advice to homeowners on pursuing their rights under current HOA law. HB 13-1134 is meant to expand the responsibilities of this Office in response to the very high number of written and verbal complaints received and a recognition that enforcement of current HOA law is very weak from the homeowner's perspective. The Bill would expand on the Office's reporting and educational duties, requirements for HOA's to register with the state: be more involved in the dispute resolution process, becoming involved in recommending changes to HOA law; and involvement in HOA election procedures and monitoring when irregularities have been identified. The Bill is a very good first step in reforming, strengthening, and correcting the problems with HOA governance. In fact, regardless of the expected additional HOA legislative proposals to be made this session, it appears this Bill alone would position the HOA Office to get more involved in the enforcement of HOA law vs only oversight and administrative functions. This could fill the main hole in all HOA related legislation by allowing homeowners to pursue their complaints in an out of court binding medi-arb (mediation with decision making authority) dispute resolution process. Our Group, the Colorado HOA Forum ([www.coloradohoaforum.com](http://www.coloradohoaforum.com)) commends this initial effort to strengthen Colorado HOA law without interfering with the local governance of HOA's; doing so in a cost effective manner by funding the Office with low cost registration fees and not taxpayer funds; and continuing and expanding the work and authority of the HOA Office that has productively and fairly surfaced the need for reform in HOA governance and accountability.

Wednesday, January 9, 2013 Movement on Legislative Reform May Come this Year Hopefully some good news! <http://sidestreets.freedomblogging.com/2013/01/07/hoa-czar-on-agenda-for-2013-general-assembly/17710/> also check out: <http://www.cohoalaw.com/from-capitol-hill/legislation-speaker-of-the-house-not-a-fan-of-hoas.html> Finally, we may get some movement and material changes in HOA legislative reform and licensing property management companies (PMC). Check out the articles on the links above concerning Sen. Morgan Carroll (and Rep Mark Ferrandino). She has been on these issues for years and the timing to get something productive completed (we will have to see what is in the details of her efforts and proposals) is now with the change in leadership in our State legislature. Note, we do see support from both political parties on these issues as HOA's don't require a pledge to a political party as a condition of occupancy. There are several other key legislators involved in HOA legislative reform and licensing PMC's that we will point out as things progress. In forthcoming emails I'll update you on what we know and the leadership role of representatives. I truly believe your efforts in writing State representatives and the Colorado Information Office and Resource Center over the past two years has made a difference and documented the need for change. Thank you all! Also, the impressive turnout at the HOA Town Hall Meeting in Oct 2012 helped gain attention and highlighted the critical need for meaningful change and "real" solutions for homeowners in ensuring compliance with the law. Reading this article there appears to be movement for some type of sound, affordable, and accessible means of dispute resolution from the homeowner's perspective: 95% of homeowner complaints and disputes don't belong in our courts; wastes the courts resources; adds

unnecessary workload to the Courts; wastes HOA funds and homeowner financial resources on (most) cases that can be settled quickly and affordably by a med-arbi (mediator person with decision authority) out of court (as opposed to optional/mandatory mediation that doesn't bring closure but adds costs and time to all concerned); and HOA disputes of compliance with the law and HOA governing documents should be settled in a timely and affordable manner out of court before they fester into the HOA horror stories. Please continue to file your complaints and concerns with your State Representatives and the Colo Information Office and Resource Center through our web site: THIS DOES HELP. &nbsp;Get your friends to join our effort. &nbsp;I will be requesting your help to get the attention of your local State Representatives on HOA issues as we know more about what actually is being proposed related to our goals and objectives. &nbsp;Let's hope that all the good work to date on HOA legislation is retained and improved.

7:08 pm mst Monday, November 19, 2012

HOA Enforcement and Fines for Speeding and Parking Issues concerning an HOA's authority to regulate and enforce speeding and parking restrictions can be problematic and costly for both the HOA and homeowner. &nbsp;&nbsp;Specifically, can an HOA include and enforce such restrictions in their CCR's (covenants, controls, and restrictions)?

&nbsp;&nbsp;We recently sent questionnaires on this topic to a few law enforcement agencies. &nbsp;The focus was on whether an HOA that has a gated and controlled access and maintains the streets within the neighborhood can develop and enforce speeding limits and parking restrictions. &nbsp;Responses support an HOA's authority to develop and enforce their own speeding and parking restrictions (see below). Note, they are enforcing their CCR's and not the local government's law. &nbsp;So if you receive a fine from the HOA for such a violation and you want to avoid that \$25 fine morphing into a \$200 debt, we suggest pay it now and fight it later. The Courts, in our opinion, will back the HOA on this issue and not you. An issue to be addressed by the HOA in implementing restrictions is to ensure such policy is included in the CCR's, notify homeowners of the specifics on who, how, when, why, and where enforcement will take place, and publish the fee/fine schedule. &nbsp;The letter to homeowners should indicate that the policy has been reviewed by legal counsel and local law enforcement and is considered valid. &nbsp;This will help implement the policy, gain homeowner support, and hopefully keep the HOA and homeowners out of court to avoid legal costs. &nbsp;There are other issues such as the competency and training of any person using speed enforcement equipment, calibration of speed detection equipment, and frequency of testing speed detection equipment that should be considered by the HOA when implementing restrictions. &nbsp;Evidence of speeding from speed detection equipment and/or pictures of parking violations appear to be acceptable legal evidence for enforcement. &nbsp;We are not legal experts and don't advocate or challenge an HOA's right to develop and enforce speeding and parking restrictions. &nbsp;We do encourage any HOA to solicit homeowner involvement in developing and implementing restrictions and to ensure plans and policy are very comprehensive and detailed to avoid legal complications and homeowner push back. &nbsp;A summary of questions sent to local law enforcement and their responses:

**\*\*Will police enforce speed limits and/or parking restrictions in a gated HOA?** It depends upon whether the streets are dedicated to the county - or privately owned. &nbsp;If they are privately owned the police (police and sheriff's office are used interchangeably) can't enforce speeding or parking violations. &nbsp;Deputies (deputies and police are used interchangeably) can only enforce careless driving, reckless driving, & driving under the influence of drugs or alcohol on private property. If the streets are dedicated to the county (county, city, and local governmental entity are used

Interchangeably), the county would set the speed limits and parking restrictions and then provide police enforcement. How should a gated HOA enforce their own speeding and parking restrictions? First, the HOA should include speeding and parking restrictions enforcement in the CCR's including a fee/fine schedule, prior to enacting any enforcement. HOA's should send notices to all residents and mention at a Board Meeting and include in minutes of meetings that such restrictions are in the CCR's and will be enforced, how to be enforced, and the fees/fines to be levied.

Homeowner involvement in developing restrictions and a plan for implementation is critical to the success of implementing any new CCR. Are there limits on posting and enforcing speeding and parking restrictions if they don't meet county standards? An attorney would be the best person to answer this question. Traffic regulations are designed for community safety - to minimize or eliminate traffic accidents, injuries, property damage, and/or death - therefore, if the restrictions an HOA implements are not designed with safety in mind, i.e. 80 mph speed limits on neighborhood streets, the HOA may incur legal liability. AGAIN - you should speak to an attorney regarding this issue and work with local enforcement. Restrictions reflective of the community surrounding the HOA would seem to serve as a good guideline in developing HOA policy. Will the county pay for and post speed limit signs within a gated HOA? First, it depends upon whether the streets are dedicated to the county - or privately owned. If the streets are privately owned the county will not pay for, or post the signs. If the streets are dedicated to the county the county will pay for, and post the signs. Is it proper for an HOA security officer to stop and hold a person for the arrival of law enforcement? This is a really tricky question with many answers, depending upon specific circumstances. Holding a person for law enforcement against their will is considered an arrest. A private citizen (security officer) may make an arrest according to Colorado Revised Statutes 16-3-201 "A person who is not a peace officer may arrest another person when any crime has been, or is being committed by the arrested person in the presence of the person making the arrest". The most important part of the answer to this question is: Even though the security officer can make the arrest, SHOULD THEY? - The general answer is no, they should not. HOA's should consult local law enforcement on this topic. The action of an HOA representative detaining a homeowner related to a driving violation seems inappropriate and opens the HOA to legal complications and should be avoided. The use of speed detection equipment will avoid the need to deal directly with a driver and thus this issue can be avoided. What enforcement activities will law enforcement perform in a gated HOA? Generally, all law enforcement activities that are performed anywhere else (with the exceptions noted above if the streets are privately owned).

**\*\*When developing and implementing speed limit and parking policies within a gated HOA, the Board should seek legal counsel and work with local law enforcement. The HOA CCR's should be properly amended with approval of homeowners before implementing restrictions.**

7:27 pm mst  
Thursday, November 15, 2012  
8:35 pm mst  
Tuesday, October 23, 2012

Homeowners Labeled by Interest Group and Not Complimentary

This is a lengthy article but some people's attitude towards us homeowners deserves a pointed response. If you attended the HOA Town Hall Meeting you will remember the panel members. Well, one was Ms. Molly, a lawyer who represents property management companies (CAI). She has now put in writing on her web site what she thinks of the overflow crowd. I've heard much about the CAI and problems with property management companies (PMC's) from homeowners. I believed we had a good chance of building a workable and cooperative relationship with this group. I think I now understand why this may be more difficult after I read her

articles below. Did you know if you darn homeowners would just take the CAI educational courses, get off your butts and read your governing documents, and get some knowledge and education about your rights all would be well (read below). This would instantly make a dysfunctional Board or PMC act responsibly, talk to you, and reason with you. We don't disagree with education and knowledge but this is not the root of the problem. How simplistic and removed from the real world? Sounds like someone who hears homeowner problems but doesn't listen: yes, there is a difference. I won't even go into HOA elections as she seems to believe that they are easy for recalls, fair, and expeditious: part two of her magic solution to HOA problems. Most of you already can understand your rights by reading your governing documents and State law (and you have). She has indicated that State laws and your governing documents are just too complicated and litigious for you to understand (even though they are written at a 9th grade level and I can't recall one of you indicating you needed a lawyer to understand and interpret such law). The laws are posted on our web site. The legislators did a good job when writing the law to keep it simple and understandable. Read them if you don't believe me. It is plain language and not all legalese. Blame the victim, or find reason to, seems to be the theme of some. Next, see below, Ms. Molly says this about the several hundred that attended the HOA Town Hall Meeting: "constantly complain and pass judgment on their board and management without providing any constructive input"; her article on her web site. Wow, she really knows how to build bridges and works well to build a team spirit for solutions. A wonderful representative from her industry. Full definition of a homeowner from our friends at the CAI: Complainers, illiterates, and too lazy to read and become educated on HOA law? She considers herself part of the solution? Wow! Anyone now wonder why there is a problem between homeowners and property managers/Boards when one of the PMC leader's has such a condescending and disrespect for homeowners. I must admit the below article(s) has awakened me as to what all of you have been saying about the problems to building bridges between PMC's (not all of course) and homeowners. Really, if you have this disdain for a group (homeowners) who pay your wages and who are your customer, how on earth can a property management company (guided by these words from one of their leaders) serve their customer (homeowners) well? You know the answer. As we attempt HOA legislative reform and cooperation of all involved in improving the HOA environment, it will be very difficult when one of the parties enters with an arrogant and air of disdain for homeowners. Thankfully, I have met many from the PMC industry that don't reflect an attitude of "them and us". My current HOA's PMC is exemplary. Many PMC professionals understand and proudly serve their customers. They also voice ideas to improve the HOA living environment and a willingness to work with homeowner groups to improve HOA legislation and communication. They agree with us that there are good and dysfunctional HOA Boards and most on Boards effectively and honestly serve the community. Most are aware of and comply with HOA law. Please read the below articles for yourself. Your feedback is appreciated. At our next HOA Town Hall Meeting I will openly read/distribute these articles. Our organization has sat down with diverse parties, offered solutions, tried to build a consensus among diverse groups for promoting legislative reform, took the justified blame for some of the HOA problem, and above all have remained very civil and open to ideas from all interested in promoting the HOA living environment. Now we have this negativity towards homeowners from a leader of the PMC industry. These articles have truly been an eye opener for me. See the link below for Molly's complete story on her web site. Then also check out this article <http://www.denverrealestatenews.info/main.asp?SectionID=2&SubSectionID=27&ArticleID=1>

08 featuring Molly (completed by a reporter who attended the Town Hall):<http://www.cohoalaw.com/from-capitol-hill/legislation-knowledge-participation-and-solutions-empower-homeowners.html> Knowledge, Participation and Solutions Empower Homeowners Last Thursday, as Chair of CAI's Colorado Legislative Action Committee, I served on a panel for a Town Hall Meeting hosted by State Representatives Angela Williams, Su Ryden, Rhonda Fields, Nancy Todd and State Senator Morgan Carroll. The topic of the evening revolved around HOAs, the problems folks living in them sometimes experience and whether Colorado law needs to be revised to address these problems. As I listened to homeowner advocates and folks who have experienced real problems with their HOAs, three important principles for empowerment came to mind: (1) homeowners are empowered when they are knowledgeable; (2) homeowners are empowered when they participate in the governance of their HOAs; and (3) homeowners are empowered when they focus upon and are part of real and reasonable solutions.

**Knowledge is Power:** It's not all that unusual for homeowners to feel like they are adrift when issues or disputes arise in their HOA. However, before you feel overwhelmed or react prematurely, take the time to get educated. Check out the governing documents of your association to see what those documents have to say about the issue at hand. Governing documents include the: (1) articles of incorporation; (2) bylaws; (3) declaration of covenants, conditions and restrictions (sometimes called the condominium declaration); (4) architectural or design guidelines; (5) rules and regulations; and (6) policies and resolutions of the association. Also, make sure to attend meetings of the board of your association to listen to the discussions and action taken on issues that are important to you and your community. If you are confused, ask questions at the appropriate time and in a constructive manner.

**Participation is Power:** Meetings of HOAs are open to the members in Colorado. Like I mentioned earlier - attend meetings, provide constructive input to the board and management, volunteer to serve on committees and run for the board! If you want to have a positive impact on the direction of your community, there's no better way to make a difference than to get involved.

**Solutions are Power:** One of the biggest mistakes that I see homeowners make when they have an issue with their HOA, is to constantly complain and pass judgment on their board and management without providing any constructive input on how to resolve the problem. If you have a problem with your HOA, come to the table in a constructive way with recommendations on how to resolve the situation. Don't sling mud - instead sling positive solutions! Before giving up or getting bitter about a dispute - gather information, participate in the process and work with your HOA to craft positive solutions. You will likely find that these three steps will empower you, your board and management to navigate through some tough waters while creating a true sense of community.

9:02 pm mst