Short Summary of Bill HB 21-1229
Excerpt from Orton, Cavanagh, Holmes and Hunt article

- Aesthetic requirements for solar panel installation cannot increase the cost or reduce the productivity or efficiency of the panels by more than 10%.
- An application for installation of solar panels is deemed approved if not denied within 60 days.
- Associations cannot prohibit the installation of nonvegetative turf grass in rear yards.
- A list of all current unique and extraordinary fees that are charged in connection with the sale of a unit is now considered an "Association Record" and must be produced on request as required by state law.
- An association can be charged up to $500.00 (or the owner's actual damages if greater) for its failure to produce records within 30 calendar days after receipt of a written request under C.R.S. § 38-33.3-317.

Restrictions on Approval of Solar Panels

This section of the Bill is not really a new restriction, but more clearly defines an existing statute. The Bill doesn't modify the Common Interest Ownership Act ("CCIOA"), but clarifies C.R.S § 38-30-168, which more broadly regulated and voided restrictions and covenants affecting any real property that effectively prohibited or restricted the installation and use of solar panels (and other renewable energy generation devices). This means the statute prohibitions also apply to declarations and other governing documents for all common interest communities.

C.R.S § 38-30-168 previously allowed an owners association to impose reasonable restrictions on dimensions, placement, and appearance of the solar panels if it did not "significantly increase the costs" or "significantly decrease performance of efficiency" of the panels. HB21-1229 removes the "significantly" language and replaces it with a more concrete standard, that is, the aesthetic restrictions imposed by an association cannot increase the cost or reduce the efficiency of the solar panels by "more than ten percent."

This concrete number may be helpful to associations as it could reduce the likelihood of litigation where the parties disagree on whether an increase in cost or decrease in performance is “significant.” However, with such a low number, many aesthetic rules may not be enforceable.

The final addition to this section is a timing requirement. The architectural review process for solar panel installation cannot take more than 60 days. This includes a “deemed approved” clause, which means, the owner can begin installation without approval if an association does not deny the application within 60 days. This section also requires the association to give a reason for the denial, which is generally a best practice.

New Restrictions on Prohibiting Nonvegetative Turf Grass

HB21-1229 amends section 106.5 of CCIOA, which is the Prohibitions Contrary to Public Policy section. Basically, this is a list of declaration provisions and rules associations are barred from enforcing. The Bill adds installation of nonvegetative turf grass to the list of previously allowed drought prevention measures, including xeriscape and drought-tolerant vegetative landscapes. The Association can still adopt design guidelines or rules addressing installation of xeriscape, drought-tolerant plantings and nonvegetative turf grass. The guidelines and rules for nonvegetative turf grass can limit installation to backyards only.

For instance, if design guidelines require 50% of the square footage of a backyard must be grass, an owner could instead install nonvegetative turf grass. An association could likely require the nonvegetative turf grass to be a certain color, quality, and be kept in good condition.

An association can still prohibit nonvegetative turf grass in front yards. Additionally, this section applies only to nonvegetative turf grass, not all non-vegetative landscaping, which means an association can still prohibit an owner from installing

plastic Christmas trees in their backyard or using other plastic foliage in their landscaping.