

HOA COMMUNICATOR

HOA INFORMATION CENTER- BE INFORMED OF THE IMPACT ON YOUR ASSOCIATION

Colorado is moving closer to regulating Homeowner's Associations. Recent legislation, HB 10-1278, has given the Colorado Department of Regulatory Agencies (DORA) oversight of Associations, albeit in a limited role. In this article, we will address the possible impact of the new legislation, answer some of



the most common questions we have received about the new legislation, and provide projections regarding future changes. You can view the new law in its entirety on our website at <http://www.htspc.com>.

What is the HOA Information Center?

The information center will be the place for anyone to go to find out information concerning basic rights and duties of owners that are subject to CCIOA. It is also intended to provide tracking of inquiries and complaints regarding Associations.

Why should the Association care?

An Association's failure to register with the Division of Real Estate will lead to problems with an Association trying to enforce their covenants.

When and how does an Association have to register?

The registration requirement will go into effect by the beginning of 2011. All Associations that fall under CCIOA will need to register with the State. At this time, the exact requirements have not been finalized, as the law requires the Director of Real Estate specify the form and manner of registration. Registration requirements have yet to be established, and we will not know exactly how this process will work until the Director of Real Estate issues his directive on the new requirements.

There will be a fee to register. This fee will be based on the cost of operating the resource center and is not to exceed \$50. Most Associations will be required to register. If your Association does not fall under CCIOA or has annual revenue of less than \$5,000, then the Association may not have to register with the State.

What will Associations register?

Although the exact method of registering is unclear as to whether

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Collection Policy Reminder

Did your Association ever finalize SB89 or SB100 policies? Those governing policies that the State of Colorado requires of CCIO-compliant Associations to maintain in their governing rules.

This is a reminder that if your Association does not have a Collection Policy then your Association may have trouble trying to pursue delinquent homeowners in court.

While the law (Colorado Revised Statutes §33-3-209.5) does not spell out the penalty for failing to have a collection policy, the law does require that an Association have a collection policy. Even without an explicit penalty for

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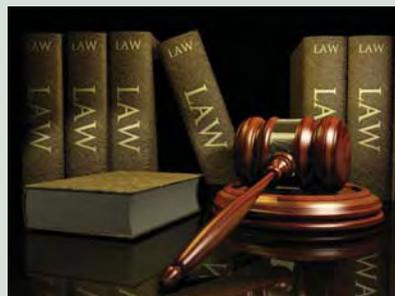
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it will be on-line or a paper form of registration, Associations will have to provide the following information:

- (1) Association name
- (2) Name of Association's designated agent
- (3) A valid physical address and telephone number
- (4) The initial recording date of the declaration along with the recording information details

Failure to register can affect an Association's ability to enforce policies, but the law is somewhat vague on exactly how Courts should enact this prohibition on enforcement. Since there is no precedent in Colorado, the exact treatment by the courts is unknown. The new law is clear that the Association

will not be able to enforce their statutory lien rights. This will be a problem for Associations waiting for a superlien pay off. We can assure you that banks that have foreclosed on



a property will now add the step of verifying an Association's registration before cutting the check to the Association for the super lien.

- ✓ Failure to register raises other concerns. There could be challenges to the validity of all enforcement actions by the Association.
- ✓ A delinquent homeowner could potentially argue that there is no duty to pay the dues during the Association's delinquency.
- ✓ All collection cases could be delayed due to the Association's failure to register.

At this point, there is no way to know the exact consequences of failing to register, but there is an easy way for Associations to avoid the unknown consequences of failing to register with the government. Pay the fee and register.

While we view this as the initial step in greater state regulation of Associations, there is a positive side

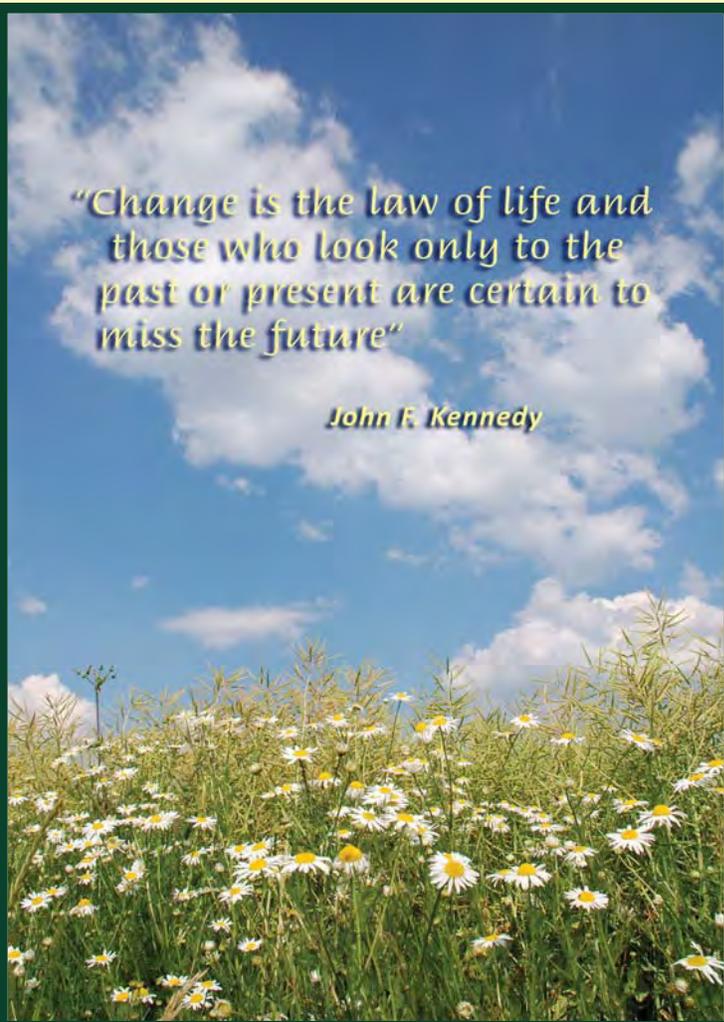
for Associations. The resource center will make it easier for people to contact Associations. This will be helpful for pursuing lien information for Associations dealing with delinquencies. This will also make it easier for potential purchasers to get more information about the particulars of a specific

community. Associations should register, and they should come up with a plan for dealing with the increased inquiries that may occur as a result of the Association's contact information becoming more readily available. At this point, it is difficult to determine the full extent to which this legislation will affect Associations, but as more information becomes available regarding additional requirements, we will continue to provide updates in the HOA Communicator.



"Change is the law of life and those who look only to the past or present are certain to miss the future"

John F. Kennedy



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Collection Policy Reminder

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non-compliance, there are some practical consequences for not complying with the state mandated policy requirement:

(1) Owners' attorneys have disputed the legality of an Association's actions if an Association fails to have the governing policies.

(2) Some County Court judges have indicated that they will refuse to award an Association past due dues if there is no collection policy.

While none of our clients have dealt with this, some courts have made it very clear that if an Association does not have the policy, they would not award dues.

One very valuable piece of strategy that any litigant should keep in mind is that it is usually in a party's best interest to leave little to interpretation. An Association that does not have a collection policy in place opens itself up to the opportunity for a court to interpret that the lack of a collection policy means the Association is not entitled to their dues in the collection lawsuit.



In addition, to ensuring that your collection policy is enforceable, many Associations have revised their policies to deal with the current economic climate. Some Associations are adding flexibility to their policies in encouraging delinquent owners to cooperate with payment plans before handing the file off to an attorney for collection. The concept is that the owner who cooperates can save themselves and the Association costs by communicating their situation to the Association.

The law is always open to interpretation. So often people assume that the law deals only with the right and wrong, but many times, it is the gray areas that lead to the largest disputes. Review your policies with your attorney to minimize the



gray areas your Association may face when going to court, and make sure that you have an effective collection policy that the Association is following.



IT TAKES A VILLAGE - TO SCOOP THE POOP

Controlling dog poop is the number one topic of discussion at community board meetings across the country; dogs don't pick up after themselves and sometimes their owners don't either.

Woof-woof waste does not a good fertilizer make. It is actually toxic to lawns, causing burns and unsightly discoloring. More importantly, it has been estimated that a single gram of dog feces can contain 23 million fecal coliform bacteria, which are known to cause cramps, diarrhea, intestinal illness, and serious kidney disorders in humans.



In the dog-eat-dog world of real estate, an area is only as good as its steadily increasing property values. And for areas overrun by smelly piles of dog poop, the "feces factor" could prove the weakest link to many homeowners and rental property managers. So let's admit to begin with that it's very hard to be taken seriously when you're talking about poop—but it's a serious issue for those who live in Shared Ownership Communities and like to live a dog-doo-free lifestyle. And lest you assume that this issue is trivial, it is a fact that a lot of neighbor battles, even violent ones, can be traced back to disagreements over picking up poop.

Every HOA that allows pets has some kind of clause in their documents that requires owners to clean up after their pets. However, as we have found--- having a rule in place is only a tiny fraction of the enforcement conundrum, as a number of people will simply

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ignore the rule. We are frankly not sure why this is because we would assume that everyone prefers walking their dog in an area without crap on the ground, but apparently that's not a universal opinion. Some people are physically unable to pick up after their pets, so choose not to; some people honestly believe that it's not their responsibility; some are non-owners who simply don't care enough about the community to comply; some are just lazy and don't like to bend over.

Whatever the reason, it's a disgusting problem that exists in every single pet-friendly Association in one way or another, so managing the problem is a paramount, universal issue that's going to come down

to enforcement. First you have to catch the violator, then you need to decide on an appropriate punishment.

It seems silly to be talking about punishing people who won't



pick up after their pets—you'd assume that all people would be willing to comply with this simple, neighborly step of pet ownership. Unfortunately, in the real world that's often not the case. Even after reminding people to pick up after their dogs, even after catching them in the act, a number of people will simply not pick up poop, thinking that the job is beneath them or that it's not their responsibility. So your association may have to resort to punishing them to get the point across.

There are three main threats that can be used against owners:

EMBARASSMENT: For some reason, condos and HOAs have no problem using embarrassment as a tool against non-paying owners (publishing a list of delinquents for everyone to view), but embarrassing people about violating other rules is often viewed as unreasonable.

FINES: The main enforcement tool available to Associations is fining owners for rules violations. A typical fine is \$100 per occurrence. But what are you going to do when they don't pay the fine? Are you go-

ing to put a lien on their property for a dog poop fine, or even foreclose on the property?

DOGGIE EXILE: This is certainly the most extreme remedy, but for repeat offenders you



may have no choice. Most pet-friendly documents have a provision that allows the association to expel the dog from the community if it becomes a constant nuisance (usually due to violent behavior or constant noise and barking).

Still, a board could easily argue that a pet who is never picked up after is a nuisance, and may not live in the neighborhood.

Dog poop may be a silly topic, but it can be a serious problem in many communities. Unfortunately, the only real way to deal with the problem is the way you deal with any other rules violation—make sure a clear rule is in place, enforce the rule, and punish accordingly. Hopefully your association can convince the majority of your neighbors to keep dog-walking areas neat and clean, because it's never fun to deal with dog poop—especially from someone else's dog.



Homeowners need to be reminded that compliance with the rules is just a simple issue of courtesy and consideration for all of the residents who live in "their village".

Something To Think About

Men forget everything; women remember everything. That's why men need instant replays in sports. They've already forgotten what happened. -- Rita Rudner