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Aspen Pitkin County Housing Authority
2013 Legislative Update

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Overview of 2013 Legislative Session

- House of Representatives and Senate Controlled by Democrats
- Governor is a Democrat
- Last Year: House Republic Leadership Would Kill Bills
- This Year: Focus on "Consumer Protections"

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Perception of HOAs

- HOAs: Unfair Advantage Over Homeowners and Residents
- Legislators Becoming a Bit More Moderate – "*Most* HOAs Are Not Bad"
- Legislators Listening to Constituent Complaints
- Rationalize Numbers in 2012 Report of HOA Information and Resource Center
- Willing to Balance Interests of Individual Owners and Association as a Whole

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HOA Reform Package of Bills

- HB 1134; Expansion of Regulatory Authority Over HOAs
- HB 1276; HOA Debt Collection Bill
- HB 1277; Licensure of Community Association Managers & Management Company Executives
- SB 183; Xeriscape Bill

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House Bill 1134

- Signed Into Law on May 11th; Effective August 7, 2013
- As originally introduced, broadly expanded regulatory authority
- The expansion of powers were overhauled and Division of Real Estate will conduct a study to assess options, costs and the need for the Division to:
  - Offer to Mediate HOA Disputes;
  - Mandate the Mediation of Complaints;
  - Refer Disputes to Alternate Dispute Resolution Services;
  - Provide Owners with an Expedited and Inexpensive Administrative Hearing Process Specific to HOA Disputes;

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House Bill 1134 Continued…

- Report Alleged Election-Related Misconduct to the Director of the Division of Real Estate;
- When Requested, Appoint an Election Monitor to Conduct HOA Elections;
- Provide Regulatory Oversight Over Declarant-Controlled Boards to Ensure Compliance with Fiduciary Duties to the Association and Comply with Transition Requirements in CCIOA;
- Provide Regulatory Oversight to Protect Executive Boards, Directors, Homeowners and Residents from Threats or Defamatory Conduct Arising in HOA Matters

Note: This Study must be completed by December 31, 2013.

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House Bill 1134 Continued…

- Bill Specifies Exactly What Educational Information the HOA Information Office Must Provide on Their Website
- Bill Requires All Associations (Including Pre-CCIOA Communities) to Register
- Bill Simplifies What Information HOAs Need to Register
  - Name of Association in Secretary of State Records;
  - Name of the Association's Management Company, Managing Agent, or Designated Agent for Purposes of Registration;
  - The Physical Address of the Association;
  - A Valid Address, Email Address (if any), Website (if any) and Telephone Number for the Association or Its Management Company, Managing Agent or Designated Agent; and
  - The Number of Units in the Association

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House Bill 1276

- HOA Debt Collections Bill
- To Prevent “Scorched Earth” Tactics of Some Associations
- Bill Addresses:
  - One Time Payment Plan Option
  - Specifies Provisions of Collections Policy
  - Establishes Minimum Arrearage for Foreclosure

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One-Time Payment Plan Option

- Delinquent Owners Have a One-Shot Opportunity at a Payment Plan
- Minimum Length of Payment Plan: 6 months
- Must Pay Current Month Assessments & Amount Required by Payment Plan
- If Owner Defaults – Proceed with Collections

Note: This payment plan option doesn't apply to lender who take ownership subject to a public trustee foreclosure or flippers.

Note: 3rd party purchasers of the Association's debt must also comply with the payment plan requirements.

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Requirements for Collection Policy

HB 1276 requires that the Collection Policy *must include at a minimum*:

- The date on which assessments must be paid to the association and when an assessment is considered past due;
- Any late fees and interest the association is entitled to charge on a delinquent account;
- Any returned-check charges the association is entitled to charge;
- The circumstances under which a delinquent owner is entitled to enter into a payment plan and the minimum terms of the payment plan; and

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Requirements for Collection Policy Continued...

- Before the association turns over a delinquent account to an attorney or collections agency, the association must send the delinquent owner a written notice specifying:
  - The total amount of the arrearage, with an accounting of how the total arrearage is determined;
  - Whether the opportunity to enter into a payment plan exists and instructions for contacting the association to enter into the payment plan;
  - The name and contact information for the individual the owner may contact to request a copy of the owner's ledger to verify the amount of the debt; and

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Requirements for Collection Policy Continued…

- That action is required to cure the delinquency and failure to do so within 30 days may result in the account being turned over to a collection agency, a lawsuit being filed against the owner, the filing and foreclosure of a lien against the owner's property and other remedies available under Colorado law.

Note: 3rd party purchasers of the Association's debt must also adopt and comply with the Collections Policy.

Foreclosure

- Delinquency Secured by the Association's Lien Must Be Equal to At Least 6 Months of Past Due Assessments in order to Foreclose
- Boards of HOAs Must Vote to Proceed with Foreclosure
- Boards Cannot Delegate the Responsibility to Approve a Foreclosure to an Attorney, Insurer, Manager or Other. Person

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House Bill 1277

- Community Association Manager & Management Company Executive Licensure Bill
- Purpose: To ensure the competency of Community Association Managers
- Community Association Managers Are the Most Important Professional Resource for HOA Boards!
- Slated to Be Signed Into Law on May 22nd

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Managers Required to be Licensed

By *July 1, 2015*, the following folks must be licensed by the Colorado Division of Real Estate:

- Community Association Managers
- CEOs of Management Companies
- Executives of Management Companies Who Directly Supervise Community Association Managers

Requirements for Licensure

To obtain a license, managers must hold one or more of the following credentials:

- the Certified Manager of Community Associations (CMCA) certification awarded by the National Board of Certification for Community Association Managers;
- the Association Management Specialist (AMS) designation awarded by Community Associations Institute;
- the Professional Community Association Manager (PCAM) designation awarded by Community Associations Institute; or
- any other credential identified by the Director of the Division of Real Estate.

The Manager must also take a course and pass an examination on applicable Colorado law.

Criminal Background Check

- Applicants Must Pass a Criminal Background Check
- Applicants Aren't Eligible for a License if Within 10 Years of Appling for a License They Were Convicted of an Offense Involving:
  - Unlawful Sexual Behavior
  - Burglary
  - Any Felony Involving Fraud, Theft, Larceny, Embezzlement, Fraudulent Conversion or Misappropriation of Property

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Managers Subject to Discipline

- Licensed Community Association Manager May be Subject to Discipline for a Variety of Offenses
- Depending Upon the Severity of the Offense, the Discipline May Include:
  - Administrative Fine Not to Exceed $2,500;
  - Censure;
  - Probation;
  - Temporarily Suspend a License; or
  - Revoke a License

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Senate Bill 183

- Addresses Installation of Water Guzzling Turf Grass in Associations
- Purpose: To Address Drought Conditions
- Signed Into Law May 10th; Effective Immediately

What is Turf Grass?

Turf Grass is defined as:

"... continuous plant coverage consisting of nonnative grasses or grasses that have not been hybridized for arid conditions which, when regularly mowed, form a dense growth of leaf blades and roots."

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Associations Cannot Require the Installation of Any Amount of Turf Grass On:

- New landscapes; or
- When Receiving Requests to Modify Existing Landscapes

Note: This prohibition is not retroactively applied.

Associations *Can Permit* Owners to Install Turf Grass if They Request Permission

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Associations Cannot Enforce Over Water Restrictions

- Associations are not permitted to require owners to water their landscapes in violation of water use restrictions.
- Associations may require proof from owners that they are watering their landscape or vegetation in a manner that is consistent with the maximum water permitted by the watering restrictions which are in place.

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Associations Can Adopt Design/Aesthetic Guidelines That:

- Require the Installation of Drought-Tolerant Vegetative Landscapes;
- Regulate the Type, Number and Placement of Drought-Tolerant Plantings; and
- Regulate the Hardscapes Which May be Installed

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SB13-126 ELECTRIC VEHICLE CHARGING STATIONS

TYPE 2 CHARGING STATION

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LEGISLATIVE DECLARATION

"The primary purpose of this section is to ensure that common interest communities provide their residents with at least a meaningful opportunity to take advantage of the availability of plug-in electric vehicles rather than create artificial restrictions on the adoption of this promising technology."

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WHAT SB 126 DOES

- Requires community associations to permit owner installation of Type 1 and Type 2 electric vehicle charging stations on their lots and on limited common elements designated for an individual owner's use
- Establishes parameters for association regulation of charging stations on limited common elements
- Encourages associations to apply for grants to assist with funding electric vehicle charging stations on common elements
- Takes effect immediately

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WHAT SB 126 *DOES NOT DO*

- Mandate that associations allow charging stations on general common elements
- Require associations to incur expenses related to the installation or use of these stations

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ASSOCIATIONS CAN REQUIRE THE FOLLOWING:

- Adherence to bona fide safety requirements
- Registration of the charging station with the association within thirty days of installation
- Compliance with the association's governing documents, reasonable aesthetic provisions concerning dimensions, placement and external appearance, and design specifications

ASSOCIATIONS CAN REQUIRE THE FOLLOWING: CONTINUED …

- That the owner engage the services of a licensed and registered electrical contractor familiar with the installation and code requirements for electric vehicle charging stations
- Proof of insurance or payment of the association's increased insurance premium costs related to the charging station
- Removal of the system if necessary to maintain the common elements

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NEXT STEPS

Adopt a policy concerning the installation and administration of electric vehicle charging stations

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