

HOA RECORDS BILL

House Bill 1237 ("HB 1237")

EFFECTIVE DATE OF NEW LAW

HB 1237 will become effective on January 1, 2013. Prior to that time, you should comply with the current law found at C.R.S. 38-33-3.317 and your current Records Inspection Policy.

HOA RECORDS WHICH MUST BE MAINTAINED AND PRODUCED

- Records specifically defined in the association's declaration or bylaws;
- Records the association is required to disclose within 90 days after the end of the fiscal year as required by CCIOA;
- Detailed records of receipts and expenditures affecting the operation and administration of the association;
- Records of claims for construction defects and amounts received pursuant to settlement of those claims;
- Minutes of all meetings of its owners and board, a record of all actions taken by the owners or board without a meeting, and a record of all actions taken by any committee of the board;
- Written communications among, and votes cast by, board members that are: (i) directly related to an action taken by the board without a meeting pursuant to the Colorado Revised Nonprofit Corporation Act; or (ii) directly related to an action taken by the board without a meeting pursuant to the association's bylaws;
- A list of the names of all owners and the physical mailing addresses at which the association communicates with them, showing the number of votes each owner is entitled to vote;
- The association's current declaration, covenants, bylaws, articles of incorporation, rules and regulations, responsible governance policies and other policies adopted by the board;

- Financial statements for the past 3 years and tax returns of the association for the past 7 years;
- A list of the names, email addresses and physical mailing addresses of the current board members and officers;
- The most recent annual report (if any) delivered to the Secretary of State;
- Financial records sufficiently detailed to enable the association to provide an owner with a written statement stating the amount of unpaid assessments currently levied against the owner's unit;
- The association's most current reserve study (if any);
- Current written contracts to which the association is a party and contracts for work performed within the past 2 years;
- Records of board or committee actions to approve or deny any requests for design or architectural approval from owners;
- Ballots, proxies and other records related to voting by owners for 1 year after the election, action or vote;
- Resolutions adopted by the board relating to the characteristics, qualifications, limitations, and obligations of members;
- All written communications within the past 3 years sent to all owners.

HOA RECORDS WHICH MAY BE WITHHELD FROM PRODUCTION

- Architectural drawings, plans, and designs, unless released upon the written consent of the legal owners of the drawings, plans, or designs;
- Contracts, leases, bids or records related to transactions to purchase or provide goods or services *that are currently in or under negotiations*;
- Communications with legal counsel that are otherwise protected by attorney-client privilege or the attorney work product doctrine;
- Disclosure of information in violation of law;

- Records of an executive session of an HOA board;
- Records relating to or concerning individual units other than those of the requesting owner;
- The names and physical mailing addresses of unit owners if the unit is a time-share unit.

HOA RECORDS WHICH *MUST BE WITHHELD* FROM PRODUCTION

- Personnel, salary, or medical records relating to specific individuals; or
- Personal identification and account information of members, including bank account information, telephone numbers, electronic mail addresses, driver's license numbers, and social security numbers.

USE OF MEMBERSHIP LISTS

- Without the consent of the board of directors, a membership list (or any part of that list) may not be obtained or used by any person for any purpose unrelated to a unit owner's interest as a unit owner.
- A membership list may not be used to solicit money or property from owners, *unless* that money or property is used solely to solicit the votes of the unit owners in an election to be held by the association.
- A membership list may not be used for any commercial purpose.
- A membership list may not be sold to or purchased by any person.

PROCEDURES FOR REQUESTING HOA RECORDS

- All of the records which must be produced to owners must be available for examination and copying by an owner *or* the owner's authorized agent. HOAs can require that anyone acting as an owner's authorized agent provide written proof that the owner has actually designated that individual as their authorized agent.
- HOAs are permitted to require owners to submit a written request for records which reasonably describes the records they are seeking to inspect and/or copy. HOAs can require that this written request for records be

submitted at least 10 days prior to the inspection or production of the records and may limit the inspection and copying of records to normal business hours *or* the next regularly scheduled meeting of the board – assuming that meeting occurs within 30 days after the request.

- Regardless of what the governing documents say, HOAs will not be permitted to require owners to submit a “proper purpose” to the association prior to being permitted to inspect or copy records.

CHARGES FOR ASSEMBLING, PRODUCING AND COPYING RECORDS

Under the *current law*, which will be in effect through December 31, 2012, HOAs are limited to charging “the association's actual cost per page, for copies of association records.” This provision makes it difficult for associations to recover the costs associated with locating the records which have been requested, assembling the records for inspection and providing copies to the requesting owner.

The *new law permits HOAs to* “impose a reasonable charge, which may be collected in advance, and which may cover the costs of *labor and material*, for copies of association records. *The charge may not exceed the estimated cost of production and reproduction of the records.*”

This new provision, which mirrors language in the Colorado Revised Nonprofit Corporation Act, permits HOAs to charge the costs of labor associated with assembling, producing records for inspection and copying the records. However, it is essential to point out that these charges must be “reasonable.”

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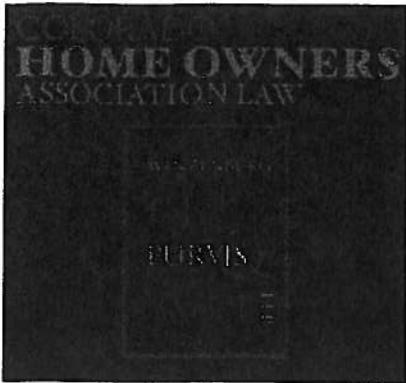
11 | 28 | 2011 Posted By Molly Foley-Healy

Planning Ahead for Annual Disclosures

As we enter the homestretch for 2012, it doesn't hurt for managers and boards to put on their radar screens the "annual disclosures" homeowners' associations ("HOAs") are required to make pursuant to the Colorado Common Interest Ownership Act ("CCIOA"). C.R.S. 38-33.3-209.4(2) provides that *within 90 days of the end of each fiscal year*, HOAs must make the following information readily available at *no cost* to unit owners:

- The date on which the fiscal year commences;
- The HOA's operating budget for the current fiscal year;
- A list, by unit type, of the HOA's current assessments – including regular and special assessments;
- The annual financial statements, including any amounts held in reserve for the fiscal year immediately preceding the current annual disclosure;
- The results of the HOA's most recent financial audit or review;
- A list of all association insurance policies which must include company names, policy limits, policy deductibles, additional named insureds, and expiration dates of policies listed;
- The HOA's bylaws, articles of incorporation and rules and regulations;
- The minutes for board and member meetings for the fiscal year immediately preceding the current annual disclosure; and
- The HOA's Responsible Governance Policies - which are also commonly referred to as "SB 100 Policies."

Disclosure of these items may be made by: (1) posting the documents on the HOA's webpage with an accompanying notice of the web address being sent to the unit owners by first class mail or email; (2) the maintenance of a literature table or binder at the HOA's principal place of business; or (3) by mail or personal delivery. The costs associated with this annual disclosure must be accounted for as a common expense liability.



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Document Retention and Your Association: What You Need To Know

Associations are obligated by Colorado law, and often their governing documents, to retain certain documents and make them available to owners upon request. A formal document retention policy can also assist an association that finds itself engaged in litigation. With more and more associations conducting some business and discussions over e-mail, the requirements of electronic discovery can create additional document retention burdens.

Failure to properly retain documents may result in fines or other penalties if the matter goes to court. Courts expect retention policies to be reasonable; however, what is reasonable depends on the surrounding circumstances. Some factors to keep in mind include the type of document, statutory requirements, and the likelihood of litigation.

Many associations have placed certain association documents online. These documents may be available to all members with a password, or they may even be available to anyone with the ability to [Google](#). While there are several advantages of online documents, including greater transparency for members, they also create a number of questions regarding what documents should be retained, where they should be stored, and for how long.

The following is a small sample of documents that should be maintained and their recommended retention periods:

- Assessment Information: 7 years
- Budgets: Permanently
- Contracts: 7 years
- Election Ballots: 4 years
- Governing Documents: Permanently
- Insurance claims (settled): 7 years
- Meeting Minutes: Permanently
- Newsletters: 3 years
- Tax Returns: Permanently

If you place association documents beyond the typical governing documents online, consider the wisdom of redacting personally identifiable information, or limiting access to association members only. A significant portion of association governance is recognizing that treating members with dignity and respect will go a long way to resolving personality conflicts.

If litigation is ongoing or imminent, it is important to speak to an attorney prior to destroying association documents, changing the association's policy, or even deleting e-mails. Send me an e-mail at lsmith@wpplaw.com if you have questions about your association's records retention policy and activities.