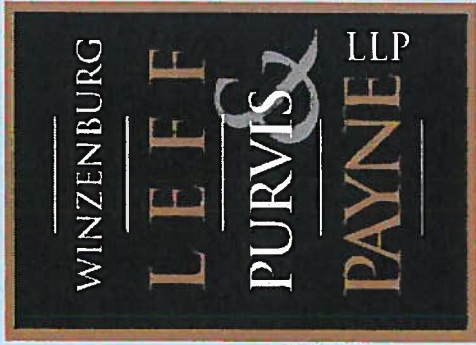




HOA RECORDS BILL House Bill 1237 (“HB 1237”)

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HB 1237 – Why do we need it?

- Current law on HOA records is unclear
- Biggest category of complaints to HOA Information Office
- *Enforcement, Enforcement, Enforcement!*

Is HB 1237 A Good Thing?

Effective Date of HB 1237

January 1, 2013

HOA RECORDS WHICH *MUST BE* MAINTAINED AND PRODUCED

- Sole records of the Association for Retention and Production
- 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;

HOA RECORDS WHICH *MUST BE* MAINTAINED AND PRODUCED

- 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;

HOA RECORDS WHICH *MUST BE* MAINTAINED AND PRODUCED

- 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);

HOA RECORDS WHICH *MUST BE* MAINTAINED AND PRODUCED

- 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;

HOA RECORDS WHICH *MAY BE* *WITHHELD* FROM PRODUCTION

- 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.

PROCEDURES FOR REQUESTING HOA RECORDS

- 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.
- HOAs 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.

GOODBYE “PROPER PURPOSE”

- 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.

CHARGES FOR ASSEMBLING, PRODUCING AND COPYING RECORDS

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, permits HOAs to charge the costs of labor associated with assembling, producing and copying the records.

These charges must be “reasonable.”

HOA To Do List

- Update Records Inspection Policy
- Consider Adopting a Policy Regarding Board Email Communications
- Consider Adopting a Records Retention Policy
- Consider Whether to Post Records on Website

What's Coming Legislatively Next Year?

How do we prepare?

- Adopt and Comply with the Responsible Governance Policies (SB 100 Policies)
- Become familiar with and comply with “Homeowner Bill of Rights” Provisions in CCIOA
- Ask questions before you get into trouble
- Work with your legal counsel in a preventative manner



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