

Colorado 2022 End of Legislative Session Report

The Colorado General Assembly had a busy year, with 418 bills introduced in the House and 238 bills introduced in the Senate. While the Colorado Legislative Action Committee (CLAC) tracked many bills of interest, the piece of legislation of most consequence was HB 22-1137, which restricts an association's power related to fines and rule enforcement. While CLAC is disappointed that lawmakers chose to pass this bill, CLAC remains optimistic about the possibility of introducing amendments next legislative session and has already begun outreach to lawmakers.

H.B. 22-1137 Common interest communities - unit owners' associations - rights, responsibilities, and procedures related to an association's actions to recover delinquent payments - notice requirements - limitation on fines, attorney fees, and interest – repayment plans - limitations on foreclosure - availability of small claims court - civil action for violation of foreclosure law: CLAC opposed this bill, which curtails an HOA's ability to levy fines and enforce rules as listed in the governing documents. This bill establishes new notice requirements:

- Requires an HOA to first contact the unit owner regarding the delinquency by, in addition to sending a notice of delinquency to the unit owner by certified mail and by posting a copy of the notice on the unit owner's property, contacting the unit owner by at least one other method of communication, including first-class mail, an e-mail, or a text message. The HOA must keep records of its contacts to the unit owner regarding the delinquency. The unit owner may identify a language other than English in which the unit owner wants the HOA to send all correspondence and notices to the unit owner. The unit owner may also identify another person to serve as a designated contact for the unit owner.
- Prohibits an HOA, or a property management company acting on behalf of an HOA, from referring the delinquent account to a collection agency or attorney unless a majority of the HOA's board of directors vote to refer the matter on the record at a hearing.
- Prohibits an HOA to impose fines, fees, or charges for violations or delinquency unless policies for enforcement of covenants and collections of assessments have been updated with the required language

The bill also prohibits an HOA from imposing daily late fees or fines and for any violation that is not a threat to public safety or health, the HOA must provide the unit owner two (2) 30-day periods to cure the violation before the HOA may take legal action against the unit owner, and letters must be sent by certified, return receipt requested mail. Legal action for unpaid fines cannot include foreclosure, and fines are capped at \$500 per violation. A violation that the HOA reasonably determines is a threat to public safety or health requires only a 72-hour period to cure before the HOA may fine the unit owner. The bill requires that the HOA visually inspect or receive visual evidence of violations once cured or following the 30-day cure periods.



The bill prohibits an HOA from charging a rate of interest on unpaid assessments, fees, or fines in an amount greater than 8% per year. HOAs are also prohibited from assessing a fee or other charge for providing the unit owner a statement of the total amount that the unit owner owes the HOA. Before an HOA may initiate a foreclosure action against a unit owner, the bill requires that the HOA offer the unit owner a repayment plan to pay the debt in monthly installments in an amount determined by the unit owner so long as installments are in equal amounts of \$25 or greater, and the unit owner either declines the offer or, after accepting the offer, fails to make at least 3 monthly payments within 15 days after the installments were due.

An HOA board is able to conduct a disciplinary hearing or determine whether to refer a delinquency matter in executive session, but the unit owner who is the subject of the disciplinary hearing or referral of a delinquency matter may request and receive the results of the vote taken on the matter. The bill specifies that fees, charges, late fees, and attorney fees may be subject to a statutory lien but are not subject to foreclosure and places limitations on attorney fees.

There is also a prohibition on purchasing a unit on which the HOA has foreclosed by a member of an HOA's executive board, an employee of a community association management company representing the HOA, an employee of a law firm representing the HOA, or an immediate family member of an executive board member, a community association management employee, or a law firm employee.

Finally, a unit owner can file a civil action against an HOA if the HOA violates any foreclosure laws. The unit owner may seek damages in an amount up to \$25,000 plus costs and reasonable attorney fees.

Status: Approved by Governor Polis June 3, 2022. Effective August 10, 2022.

H.B. 22-1040 Common interest communities - owner's associations - access to common elements of the community: CLAC opposed this bill. This bill states that, in regulating the use of common elements, an association shall preserve and protect unit owners' ability to use and enjoy common elements and shall not unreasonably restrict or prohibit unit owners' access to, or enjoyment of, any common element.

During maintenance, repair, replacement, or modification of a common element, an association may restrict or prohibit unit owners' access to, and enjoyment of, a common element only to the extent and for the length of time necessary to: Protect the safety of any individuals, including unit owners and individuals performing the maintenance, repair, replacement, or modification of the common element; or preserve the structural integrity or condition of a repair, replacement, or modification.

If an association must restrict or prohibit unit owners' access to one or more common elements for more than 72 hours, the association shall provide an electronic or written notice to each unit owner and post a visible, clearly legible notice at each physical access point to the common element.

Status: Approved by Governor Polis April 12, 2022. Effective 10, 2022.

H.B. 22-1314 Towing carriers - nonconsensual tows from private property – appropriation: CLAC wished to see this bill amended. Among other provisions, the act requires that carriers towing a vehicle from private property without the owner's consent must



- Obtain authorization from the property owner, leaseholder, or common interest community within 24 hours before towing a vehicle from private property;
- With certain exceptions, give 24 hours' written notice before removing a vehicle from a parking spot or the common areas of a condominium, cooperative, apartment, or mobile home park. Towing carriers cannot be an authorized agent of the property owner to give notice – certain exceptions apply;
- Post adequate signs that a vehicle may be towed if parked inappropriately;
- Before connecting to a vehicle, photographically document the vehicle's condition and the reason for the tow. Failure to produce documentation of the vehicle's condition or the reason for the tow creates a rebuttable presumption that any damages to the vehicle were caused by the carrier or that the tow was not authorized.
- For a carrier to perform a nonconsensual tow, other than for an abandoned motor vehicle, from private property normally used for parking, the property owner or carrier must have provided adequate signs communicating the parking regulations that subject a vehicle to being towed
- Unless ordered by a peace officer, not tow a vehicle from private property because the rear license plate shows the vehicle registration is expired.

Status: Approved by Governor Polis June 7, 2022. Effective August 10, 2022.

S.B. 22-86 Assets exempt from seizure in certain proceedings - homestead exemption - exemptions from levy and sale: CLAC opposed this bill, which increases the amount of the homestead exemption: From \$75,000 to \$250,000 if the homestead is occupied as a home by an owner of the home or an owner's family; and From \$105,000 to \$350,000 if the homestead is occupied as a home by an owner who is elderly or disabled, an owner's spouse who is elderly or disabled, or an owner's dependent who is elderly or disabled.

The bill also expands the meaning of "homestead" to expressly include a "dwelling", and defines a dwelling as conventional housing and personal property that is actually used as a residence, including any vehicle, trailer, vessel, camper coach, mounted equipment, railway car, shipping or cargo container, shed, yurt, or tiny home. Proceeds from a sale under this bill are exempt for 3 years and extends the exemption to apply to proceeds from insurance covering destruction of homestead property, which proceeds are held for use in restoring or replacing the homestead property. The bill also increases the maximum amounts of existing exemptions from levy and sale under a writ of attachment or execution for certain types of property and creates new exemptions.

Status: Approved by Governor Polis April 7, 2022. Effective April 7, 2022.

H.B. 22-1082 Enforcement of state housing laws - expansion of list of state statutes for which attorney general may bring enforcement actions to include various housing-related laws - creation of fair housing unit within the department of law: The bill expands the statutory list of state laws for which the attorney general may bring civil and criminal enforcement actions to include various statutory provisions relating to housing. The bill also creates the fair housing unit within the Department of Law.



When there is reason to believe that there is a potential violation of law that risks harm to a consumer, public health, or public safety that is based on a substantiated complaint, the act permits the attorney general to investigate any person or organization that is otherwise subject to the attorney general's existing statutory authority. A complaint is not necessary if the information is provided by an agency of the federal, state, or a local government. The attorney general may direct or subpoena any person whose testimony may be required about potential violations of law and may direct or subpoena the person to produce records the attorney general considers relevant to the inquiry. Nothing in the bill impacts or affects banking examinations and regulations promulgated by primary federal and state banking authorities, notwithstanding the attorney general's existing legal authority. When the attorney general has reasonable cause to believe that any person, whether in this state or elsewhere, has engaged in or is engaging in a violation of certain housing-related statutes, the attorney general may take various steps to investigate the possible violation. The act specifies requirements concerning the venue in which enforcement actions may be brought, the issuance of subpoenas and the production of documents, admissibility of testimony, remedies for failure to cooperate or to obey a subpoena, injunctive authority and assurances of discontinuances, penalties, and the limitations period governing the filing of an action alleging violations of housing-related statutes.

[Status: Approved by Governor Polis May 17, 2022. Effective August 10, 2022.](#)

H.B. 22-1139 Common interest communities - unit owners' associations – prohibition against regulating public rights-of-way: This bill prohibits a common interest community's unit owners' association from regulating the use of a public right-of-way.

[Status: Approved by Governor Polis May 6, 2022. Effective August 10, 2022.](#)

S.B. 22-59 Common interest communities - unit owners' association meetings – proxy voting: The act limits the maximum duration of a proxy to 11 months.

[Status: Approved by Governor March 21, 2022. Effective August 10, 2022.](#)

H.B. 22-1387 Common interest communities - reserve study requirements for major shared components - funding for emergent life circumstances - application to preexisting communities: CLAC supported this bill, which requires mandatory reserve studies for common interest communities that have major shared components, including common elements or property that the unit owners' association (association) is responsible for maintaining, repairing, or replacing. The bill specifies the level of reserve study required and the necessary components of the reserve study at each level and requires a declarant to obtain reserve studies commencing with the development of the common interest community and to provide reserve studies to potential purchasers of units in the common interest community in the seller's disclosures. The bill also requires the declarant to provide a reserve study at the time the declarant turns the common interest community property over to the association, along with reserve funds recommended by the reserve study. The term "emergent life circumstances" is defined in the bill, and it authorizes an association's executive board to obtain additional funding from unit owners to address dangerous conditions if the reserve funds are not sufficient to address the conditions. The bill limits the



investment of reserve funds in financial instruments that are not insured by a federal agency. The bill clarifies that certain reserve study requirements in the act apply to preexisting common interest communities with respect to events and circumstances occurring on or after July 1, 2024.

Status: Vetoed by Governor Polis May 27, 2022.

S.B. 22-60 Limit Home Owners' Association Fee Increases For Common Elements: CLAC was opposed to this bill, which prohibits the unit owners' association of a common interest community from increasing by more than 10% in any 12-month period the amount of any fee that is charged on a regular and ongoing basis for the use, rental, or operation of one or more common elements unless a majority of the unit owners of the common interest community approve the fee increase.

Status: Died in Senate Committee.

H.B. 22-1020 Customer Right to Use Energy: The bill prohibits a state agency, local government, and common interest community from limiting or prohibiting the use of natural gas, propane, solar photovoltaics, micro wind turbines, or small hydroelectric power for electricity generation, cooking, hot water, or space heating in residences, units, or businesses.

Status: Died in House Committee.

H.B. 22-1239 Regulate Community Association Managers: The bill establishes licensure requirements for business entities that perform community association management for common interest communities in the state. The Division of Real Estate in the Department of Regulatory Agencies is tasked with administering the regulatory program for community association managers (CAMs). To be licensed, a business entity must:

- Demonstrate compliance with insurance requirements specified by the Director of the Division by rule;
- Designate an individual as the business entity's controlling manager who is responsible for the community association management activities of the business entity and its employees;
- Pay a fee based on the number of individuals who perform community association management on behalf of the business entity; and
- Obtain criminal history record checks for its controlling manager and each individual that performs community association management on behalf of the business entity.

A business entity licensed as a CAM must ensure that its controlling manager and each individual performing community association management on behalf of the licensed entity is credentialed by the Community Association Managers International Certification Board or the Community Associations Institute and complies with periodic continuing education requirements.

The bill sets forth various grounds for disciplining a licensed entity and directs the director to establish a points-based disciplinary system for determining the appropriate level of discipline to impose on a



licensed entity based on the level of violation. The bill repeals the licensure of CAMs on September 1, 2029, and directs the department to conduct a sunset review of the licensure program before that date.

Status: Died in House Committee.

H.B. 22-1363 Accountability to Taxpayers Special Districts: The bill would make modifications to statutory provisions governing special districts with the goal of increasing the accountability of special districts to taxpayers. Changes include:

- If a separate legal entity established by contract includes one or more special districts, requires the separate legal entity to file with the division of local government in the department of local affairs certain financial information pertaining to the special district. In such circumstances, the directors of the special district are also required to comply with oath and bond requirements for directors of special districts.
- Expands the applicability of statutory provisions governing the approval and oversight of special districts to specify that these provisions do not apply when a special district that was originally approved at any time thereafter becomes wholly included within the boundaries of one or more municipalities;
- Specifies information to be included in the financial plan that a new district submits along with its service plan;
- Removes an existing cap on the amount of the fee that a special district must pay the board of county commissioners for processing review of a service plan;
- For any proposed special district that has any property within its boundaries that is zoned or valued for assessment as residential, enumerates certain acts that are disallowed for any service plan required to be filed by the district. A local government acting on a service plan is prohibited from approving a service plan for a special district that permits any of these same acts.

Additionally, under current law, under specified circumstances, the board of county commissioners or the governing body of the municipality that has adopted a resolution of approval of the special district may require the board of the special district to file an application for a finding of reasonable diligence every 5 years. The bill would make this an annual requirement.

The bill would also make proof of the commission of such act by a preponderance of the evidence proof that the director has breached the director's fiduciary duty and the public trust.

Status: Died in Senate Committee.

S.B. 22- 63 Property Ownership Fairness Act: The bill enacts the Property Ownership Fairness Act. The bill entitles a property owner to seek just compensation from a governmental entity that enacts a land use law reducing the right of a property owner to use, divide, sell, or possess their property and reducing the fair market value of the property. The bill sets forth the procedure by which a property owner can demand just compensation and sets forth exceptions where a property owner is not entitled to seek just compensation for a land use law. Additionally, the bill prohibits a governmental entity from enacting a



land use law that caps residential building permits issued in a single or multiyear period with the intent of limiting growth or development.

Status: Died in Senate Committee.

Special District Governance: This bill extends the powers of the initiative and referendum reserved to the people in the state constitution to the electors of special districts. It also requires each developer-affiliated board of a special district to issue an agenda and board packet for each board meeting. The board must send the agenda and board packet by regular mail and by e-mail to each resident of the district along with a separate statement that expressly discloses to each resident the fact that the board has a conflict of interest with the residents and that residents of the district may serve on the board. The bill also requires each board to send a self-nomination form to each resident of the district with each agenda and board packet with instructions that a resident may follow for completing the form and delivering the completed form to the manager and legal counsel of the district. Immediately upon receiving a self-nomination form from a resident for a position on the board, the board must identify the board position to be terminated and immediately appoint the resident who submitted the self-nomination form to fill the position. A developer-affiliated position is immediately terminated upon receipt by the board of a self-nomination form from a resident. If self-nomination forms are received from residents in an amount that exceeds the positions on the board, the board is required to immediately call a special election to fill all of the developer-affiliated positions.

Status: Died in Senate Committee.

Your Assistance is Needed

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