



## Senate Bill 100: Sweeping Revisions to the Laws Governing Homeowner's Associations

When former Governor Bill Owens signed into effect Senate Bill 100, sweeping revisions were made to the Colorado Common Interest Ownership Act, the statute governing Homeowner's Associations (HOAs) in Colorado. The purpose of this article is to provide a brief overview of the new law.

The act's purpose is to provide increased protection for homeowners and to provide guidance in the operation of HOAs to its members and managers. It applies to most HOAs in Colorado, regardless of size and regardless of when formed. All provisions of the new law were effective on or before January 1, 2006.

The most significant changes to the prior law are in the area of required disclosures. The Act provides that the HOA must provide an annual written disclosure to all owners of the following: the name of the HOA and the community, the HOA's agent or manager, the address of the HOA and its agent or manager, and the recording information for the HOA's Declaration. The HOA is required to notify owners in writing of any changes within 90 days from the effective date of any change.

HOAs are required to disclose to the owners certain financial information concerning the association. Within 90 days after the HOA assumes control from the developer, and within 90 days after the end of each fiscal year thereafter, the HOA is required to provide to the unit owners a disclosure of following: the date of the start of the fiscal year, the operating budget for the fiscal year, a disclosure of regular and special assessments, annual financial statements, audit or review information, insurance information, information concerning the HOA's governing documents, and minutes of board and member meetings. The law sets forth the permissible ways for the HOA to provide these disclosures.

The Bill provides that all covered HOAs must adopt "responsible governance policies and procedures" and it provides that these policies/procedures must be disclosed to the owners. To promote responsible governance, the Act requires that HOAs maintain accounting records using generally accepted accounting principles and that HOAs adopt polices regarding: the collection of unpaid assessments, the handling of conflicts of interest involving board members, the conduct of meetings, the enforcement of covenants and rules, the inspection and copying of records, the investment of reserve funds, the review of architectural submissions, and the adoption and amendment of policies, procedures, and rules.

The Act also addresses the disclosures required to be made to a prospective purchaser by a seller of a unit. It provides that the seller must mail or deliver to the purchaser before the title deadline copies of the governing documents, rules, the declaration and covenants, minutes of the most recent annual owner's meeting, minutes of board meetings for the 6 months preceding the title deadline, the budget, the income and expense statements, and the annual balance sheet. The Bill mandates that the seller provide a special form of a written Disclosure Statement, and that the seller obtain a signed receipt from the buyer of the disclosures and the Disclosure Statement. The Bill sets forth when and how a buyer may terminate a contract based upon disclosed matters.

The Bill also contains provisions concerning: legal actions by HOAs and by owners, the recovery of attorney fees and costs, alternative dispute resolution, the creation of an association, the powers and duties of the HOA and its board, when audits or reviews of the HOA's books and records are required, meetings of owners and the board, voting and proxies, conflicts of interest, assessments, required records and

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W I N T E R 2 0 0 7

What do you remember about the last twenty years? If you're like me, you'll need help from news archives. Since 1987, we have elected 3 Presidents, one in spite of dimpled, pregnant and hanging chads. The fall of the Berlin Wall brought us to our feet, acquittals of O.J. and Michael appalled us and we launched a War on Terror. We drove SUV's, surfed the net, landed on Mars and put picture phones (remember Dick Tracy?) into the hands of every teenager. We survived fires, blizzards, hurricanes, earthquakes, tsunamis, politics, and scandals. We celebrated births and marriages and buried brave children carried out of schools and other war zones. Instead of a chicken in every pot we put a Starbucks on every corner. In Colorado sports we launched new teams, built stadiums, cheered Stanley Cups and Super Bowl rings, and bought lots of cars from John Elway. Y2K failed to summon Gabriel's horn and fad diets made Americans poorer, if not thinner.

One thing I recall clearly of these last 20 years is the daily privilege of serving clients like you. In 1987, a couple of enterprising young attorneys decided to chisel their names into the same sign and build this law firm; back then I was their crack young Associate. The years have brought many changes to our firm family and to yours. Thank you for trusting us with so many of the most important decisions in your life.

This year, celebrate our 20th Anniversary with us; we will look forward to reminiscing with you in person. Until then, we wish you a happy, healthy and prosperous year.

Best regards,

*Barry Rothman*

This publication provides general information and should not be used or taken as legal advice for specific situations which depend on the evaluation of precise factual circumstances. Use of any information herein does not create an attorney-client relationship. The law is constantly changing and there are exceptions to almost every rule of law. You should not rely on the information provided in this newsletter without seeking legal counsel.

## Do You Still Need Estate Planning?

With the fate of the estate taxes recently in the news, you may be wondering whether these taxes will continue to exist. The answer is “probably”. The next logical question is whether you still need estate planning. The answer is “absolutely”.

Under the current law, you may leave up to \$2 million pursuant to the unified credit to non-spouse beneficiaries without incurring any estate tax. In 2009, you may leave up to \$3.5 million. The estate tax is abolished altogether in 2010, but without further legislation, the unified credit will return and fall back to \$1 million in 2011. While abolition of the estate tax was a popular talking point of political campaigns, it is the most unlikely scenario. According to one source, a complete repeal of the estate tax would deprive the federal government of one trillion dollars in the decade beginning 2011, which may be more politically dangerous than taxing the estates of our wealthier citizens.

Today’s safest prediction is that the estate tax is here to stay, and the unified credit will land at a number palatable to both sides of the aisle. With that in mind, it is important to plan for today, not just for the years 2011 and beyond. Some things to be aware of include 401(k) plans that continue to compound, life insurance that may be includible in your estate at your death and equity in your home. These three sources of wealth alone, while somewhat “out of reach” during much of your lifetime, may easily cause your estate to become significantly taxable. Currently, the estate tax rate is a flat forty-five percent on the amount above \$2 million.

Regardless of whether your estate is potentially subject to the estate taxes, there are several non-tax reasons to plan your estate. For example, if you die without a will, the Colorado intestacy statute will dictate which of your heirs inherit your property. With a will or revocable trust, you direct the disposition of your property. Additional areas of estate planning that will not be affected by tax law changes, but remain vital to any estate plan, include asset protection; designation of a guardian for your minor children; Powers of Attorney allowing you to designate an agent to make medical and financial decisions for you if you are alive but incapacitated;

and prenuptial and postnuptial agreements. In addition to these tools, there are many other estate planning techniques that can be implemented to give you peace of mind and ensure that your life’s work goes where you wish.

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(CONTINUED FROM FRONT) record keeping, access to records, and concerning the amendment of a declaration. The law also addresses water conservation, drought mitigation, xeriscaping, patriotic and political expression, and the parking of emergency vehicles. Lastly, the Act contains a requirement that the HOA provide education to owners, annually, concerning the operations of the HOA and the rights and responsibilities of the owners, the association, and its governing board.

The attorneys at Stewart, Shortridge and Rothman have experience in all aspects of HOA law. If you or your association might be affected by these changes in the law, please feel free to give us a call.

About the author: Scott Fitzke is Special Counsel to the firm and his practice areas include Civil Litigation (Trials and Appeals), Defense Litigation, Real Property, HOAs, Professional Liability and Malpractice, Entertainment Law, Business Law and Business Associations, Wills, Trusts and Estates, Probate.