Community Association Management Insider®

SPECIAL ISSUE

INSIDE THIS ISSUE

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RECENT LEGISLATIVE TRENDS:

States Create Ombudsmen and Raise Manager Licensing Requirements

In recent years, it seems as though the number of disgruntled members has risen. These members might complain of lack of transparency or failures by association boards to follow basic governance principles, such as: adopting an annual budget with notice to the members, holding fair elections for the board of directors, providing key financial information about the association, and fairly imposing association fines. Oftentimes, these complaints are resolved in court or directed to the offices of the states' attorney generals.

As a result, in the past year, two states—Connecticut and Colorado—have made attempts or passed legislation to create an ombudsman office to handle complaints by association members and to disseminate information regarding the state's community association laws. By definition, an ombudsman is an appointed official whose duty is to investigate complaints, generally on behalf of individuals such as consumers or taxpayers, against institutions such as companies and government departments.

In the case of community associations, an ombudsman might investigate complaints filed by members against an association. In 1997, Nevada became the first state to create an ombudsman office to help regulate community associations. Florida and Virginia also use ombudsmen to help regulate associations.

Given the increase in member complaints nationwide, recent discussions and laws may be a bellwether of future legislative efforts to protect association member interests and minimize disputes. Along with ombudsman efforts, we may also see increased regulatory efforts to minimize association disputes by holding association managers to high standards through manager licensing requirements.

We will take a deeper look into the recent attempts to create ombudsman offices, provide the language of the ombudsman laws for reference, and summarize the current law and pending legislation with regard to association manager licensing.

Connecticut's Attempt

In February of this year, Connecticut Attorney General Richard Blumenthal proposed creating an Office of Condominium Ombudsman.

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This proposal was fueled by a string of complaints filed by condominium owners. In testimony at a legislative hearing in February, Attorney General Blumenthal said his office had received 264 complaints from condo owners in 81 communities over the previous two years. With no authority to act, however, his office could provide little in the way of assistance.

He suggested forming a self-funded commission to review complaints over accused violations by condominium associations, and would then conduct hearings if necessary in order to resolve the issues and to ensure that condo bylaws and Connecticut state laws were upheld. Initially though, the condo unit owner and association should first attempt to resolve the issue privately, without support from the ombudsman. The proposal was based on similar models in Florida and Nevada. If the proposal had passed into law, the ombudsman would be allowed to levy monetary penalties to the maximum of $200 for any deliberate violations.

The bill won support from several legislative committees, but was ultimately abandoned because of cost concerns. According to Blumenthal's plan, funding for the proposal would have come from a $4 annual assessment per condo unit, which would have yielded about $960,000 for the 240,000 condo units throughout the state. Additionally, similar to the fee required when a complaint is filed in a small claims court, a $35 filing fee would have been required by the complainant, plus another $35 filing fee to be paid to the association, per complaint. In the case of 500 complaints filed, for example, $35,000 would have been yielded. The plan would have also increased the filing fee for condo managers to $400 biennially, instead of the already existing $100 annual fee.

Colorado's Ombudsman Bill

The Colorado bill was revised before it was passed. The original Colorado bill, introduced by Representatives Ryden and M. Carroll, was "more of what one would traditionally view as an ombudsman bill. The intent was that an ombudsman would advocate on behalf of members in dealing with associations and developers and provide mediation services," says Colorado attorney Loura Sanchez.

However, in the revised bill, instead of creating an ombudsman to advocate, a Homeowner Association Information and Resource Center, headed by a Homeowner Association Information Officer, was created. Also, as a result of the revised bill, Sanchez says associations are now required to register with the state, which was not something that had ever been done in Colorado before.

According to the bill, the information officer's role is primarily to act as a clearing house for information concerning the basic rights and duties of owners, declarants, and associations under the Colorado Common Interest Ownership Act (CCIOA). The bill does not specify what type of information the office will provide, but Sanchez guesses that it will be a resource for members, provide pamphlets informing members of their responsibilities of living in an association, and

refer people to organizations such as the Community Associations Institute.

The officer's duty also is to track complaints and inquiries and report annually to the Director of the Division of Real Estate regarding the number and types of such complaints and inquiries received.

"I believe that ultimately the legislature will use the data provided by the information officer either to move toward a true ombudsman bill in the future or certainly to introduce new types of legislation," says Sanchez.

According to Sanchez, Colorado was ripe for this bill. It was drawn up in response to stories of meetings violations, arbitrary covenant enforcement, and dues thefts by homeowners associations. She noticed substantial legislation introduced in the last five years from the kinds of complaints that prompted this bill, and she sees this bill as a culmination of the sentiment among state legislators that they had to do something more than merely revising the CCIOA. They felt compelled to take a bigger step.

The law goes into effect Jan. 1, 2011, at which time, associations will be required to register with the Division of Real Estate.

Further Regulation Through Manager Licensing

Interestingly, there seems to be a correlation between the establishment of ombudsman offices and manager licensing. In instances in which an ombudsman office has been established, the creation of the office has been a precursor to association manager licensing or certification of some type.

In these states, legislators have used the data generated from complaints filed at the ombudsman offices to justify the regulation of managers because they play such an integral role in how associations operate and how disputes are handled.

The following states currently have some type of manager licensing requirements:

Alaska. Under Chapter 88 of the Alaska Real Estate Commission's regulation entitled "Real Estate Statutes and Regulations' Real Estate Brokers and Other Licensees," a person may not collect fees for community association management or practice or negotiate for a contract to practice community association management unless licensed as a real estate broker, association real estate broker, or real estate salesperson in the state [Chapter 88, Article 02, Section 08.88.161.(5) and (6)]. A person can qualify for a limited license to practice community association management by obtaining an associate broker license if, at the time of issuance, the person is employed by a broker [Sec. 08.88.171.(e-f)].

California. In September 2007, California lawmakers reauthorized for another five years the state's voluntary Manager Certification Titling Act, modifying the requirements needed to be called a "certified common interest development manager" [AB 691 (Chapter 236)]. Additionally, under the amended Business and Professions Code, the continuing education courses required for a manager to call himself a "Certified CID Manager" are preserved [SEC. 4., Section 11502]. This law will remain in effect until Jan. 1, 2012.

Connecticut. The Connecticut Legislature amended a number of provisions of the state's Condominium and the Common Interest Ownership Acts, as well as the provisions of the Connecticut statutes governing the registration of managers, effective on Oct. 1, 2007. Among other provisions, SB 1089 (Public Act No. 07-243) amended the provisions that govern the registration of property managers and broadened the range of people who must register with the Department of Consumer Protection.

Prior to Oct. 1, 2007, a management company was required to register with the Department of Consumer Protection, but the individual managers or other employees of that company were not required to register. However, due to amendments enacted by SB 1089, anyone who provides management services as defined by Section 20-450, including any partner, director, officer, or employee of a management company, must register individually.

Section 20-450 defines a provider of management services as anyone who: collects, controls, or disburses funds of the association or has the authority to do so; prepares budgets or other financial documents for the association; assists in the conduct of or conducts association meetings; advises or assists the association in obtaining insurance; or advises the association in the overall operations of the association. Section 20-450 states that professionals who are licensed by the state, such as attorneys, are exempt from having to register. An officer or director is also exempt, as long as he or she does not control more than two-thirds of the voting power in the association. However, under the department's broad interpreta-

tion, anyone else who provides any of the listed management services must register.

District of Columbia. The Real Estate Board of the District of Columbia's Department of Consumer and Regulatory Affairs regulates community association managers as commercial "property managers." Unless licensed as such by the District of Columbia, no person may use the term or words "property manager" to imply that he or she is licensed as a property manager in the District.

Florida. Florida's Department of Business and Professional Regulation, through the Regulatory Council of Community Association Managers, regulates the licensure of community association managers under Chapter 468, Part VIII of the Florida Statutes and Chapter 61-20 of the Florida Administrative Code. In most circumstances, community association managers in Florida are required to be licensed in order to carry out their duties as a manager.

If an individual provides management services for an association with more than 10 units, or with a budget of $100,000 or greater, and receives compensation for those services, a Community Association Manager license is required. The threshold from 50 units to 10 units is a recent change that became effective Oct. 1, 2008, when Governor Charlie Crist signed into law House Bill 995, which sets forth this requirement.

Effective Jan. 1, 2009, all community association management firms responsible for the management of more than 10 units or a budget of $100,000 or greater must be licensed by the department to provide association management services.

Georgia. Community association managers (CAMs) must be licensed under the Georgia Real Estate Commission (Chapter 40 of *Real Estate Brokers and Salespersons*) in order to function as a community association manager in the state. "Community association management services" means the provision, for a valuable consideration, to others of management or administrative services on, in, or to the operation of the affairs of a community association, including, but not limited to: collecting, controlling, or disbursing the funds; obtaining insurance; arranging for and coordinating maintenance of the association property; and otherwise overseeing the day-to-day operations of the association.

Individuals must be at least 18 to be licensed as a community association manager, and applicants for the CAM exam must complete educational course hours; there are no experience requirements for a CAM license. The commission may require that each broker who provides community association management services and who collects, controls, has access to, or disburses community association funds must at all times provide or be covered by a fidelity bond or fidelity insurance coverage protecting the community associations being managed by the broker against the loss of any funds belonging to those community associations being held or controlled by the broker.

Illinois. The Illinois Community Association Manager Act (SB 1579) was approved by Governor Patrick Quinn and became law on Aug. 25, 2009, as Public Act 96-0726. This law became effective July 1, 2010. The state has appointed a Community Association Manager Licensing and Disciplinary Board to develop regulations to fully implement the requirements of the act. Twelve months after the regulations are adopted, individuals will be unable to provide services as association managers without a state license. At this time, the earliest this requirement is likely to be effective will be July 2011.

This law creates minimum qualifications for licensure, provides financial security to associations, imposes discipline for manager misconduct, and requires continuing education to renew a license.

Nevada. The Commission for Common-Interest Communities adopts regulations governing the practice of community association managers; the commission is within the Real Estate Division of the Nevada Department of Business and Industry. Chapter 116A, Regulation of Community Managers and Other Personnel, prohibits a person from acting as a community manager without certification.

"Community manager" is defined as a person who provides for or otherwise engages in the management of a common-interest community or the management of an association of a condominium hotel [NRS 116A.070, effective Jan. 1, 2008].

"Management of a common-interest community" means the physical, administrative, or financial maintenance and management of a common-interest community, or the supervision of those activities, for a fee, commission, or other valuable consideration [NRS 116A.110].

Applicants seeking certification as a community association manager must:

■ Have successfully completed at least 60 hours of instruction in courses in the management of a common-interest community that has been approved by the commission;

■ Have engaged in the management of a common-interest community or have held a management position in a related area for at least 12 months preceding the date of application;

■ Pass an examination with a minimum score of 75 percent; and

■ Submit two fingerprint cards completed at an authorized law enforcement facility.

Virginia. In 2008, Virginia implemented a statutory-based management company licensure program. By June 30, 2011, all management companies will need to follow all of the community manager regulations.

To qualify, applicants/licensees must hold an active Accredited Association Management Company (AAMC) designation granted by the Community Associations Institute (CAI) or have at least one supervisory employee or officer with five years of community association management experience who has successfully completed a comprehensive training program as approved by the board. In addition, at least 50 percent of management company persons who have principal responsibility for management services to a common-interest community must meet one of the following:

■ Hold an active designation as a Professional Community Association Manager (PCAM) and certify having provided management services for a period of 12 months immediately preceding application;

■ Hold an active designation as a Certified Manager of Community Associations (CMCA) by the National Board of Certification for Community Association Managers (NBC-CAM) and certify having two years of experience in providing management services. Of the required two years' experience, a minimum of two years of experience must have been gained immediately preceding application;

■ Hold an active designation as an Association Management Specialist (AMS) and certify having two years of experience in providing management services. Of the required two years' experience, a minimum of 12 months of experience must have been gained immediately preceding application; or

■ Have completed an introductory training program, as set forth in state law, and have passed a certifying examination approved by the board and certify having two years' experience in providing management services. Of the required two years' experience, a minimum of 12 months of experience must have been gained immediately preceding application.

The management company must also submit evidence of a blanket fidelity bond or employee dishonesty insurance policy. The applicant must submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with Section 54.1-2346 D of the Code of Virginia. The policy must provide coverage in an amount equal to the lesser of $2 million or the highest aggregate amount of the operating and reserve balances of all associations under control. Minimum coverage is $10,000. Proof of a current bond or insurance policy must be submitted in order to obtain or renew the license. The bond or insurance policy must be in force no later than the effective date of the license and must remain in effect through the date of the license's expiration.

The law also requires the establishment of a code of conduct. The management company must establish and distribute to its employees, principals, and agents a written code of conduct to address business practices, including the appropriateness of giving and accepting gifts, bonuses, or other remuneration to and from common-interest communities or providers of services to common-interest communities. In accordance with clause (ii) of Section 54.1-2346 E of the Code of Virginia, the code of conduct for officers, directors, and employees must also address the disclosure of relationships with other firms that provide services to common-interest communities and that may give rise to a conflict of interest.

The management company seeking a license must also establish internal accounting controls to provide adequate checks and balances over the financial activities and to manage the risk of fraud and illegal acts. The internal accounting controls must be in accordance with generally accepted accounting practices.

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Insider Source

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CURRENT OMBUDSMAN ACTS

FLORIDA: 2004

Created by an act of the Florida Legislature in 2004, the Office of the Condominium Ombudsman was established to be a resource for unit owners, board members, condominium associations, and others. The ombudsman's duties are described in Section 718.5012, Florida Statutes, as follows:

(3) To prepare and issue reports and recommendations to the Governor, the department, the division, the Advisory Council on Condominiums, the President of the Senate, and the Speaker of the House of Representatives on any matter or subject within the jurisdiction of the division. The ombudsman shall make recommendations he or she deems appropriate for legislation relative to division procedures, rules, jurisdiction, personnel, and functions.

(4) To act as liaison between the division, unit owners, boards of directors, board members, community association managers, and other affected parties. The ombudsman shall develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities as set forth in this chapter and the condominium documents governing their respective association. The ombudsman shall coordinate and assist in the preparation and adoption of educational and reference material, and shall endeavor to coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to the largest possible audience.

(5) To monitor and review procedures and disputes concerning condominium elections or meetings, including, but not limited to, recommending that the division pursue enforcement action in any manner where there is reasonable cause to believe that election misconduct has occurred.

(6) To make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints filed by unit owners, associations, and managers.

(7) To provide resources to assist members of boards of directors and officers of associations to carry out their powers and duties consistent with this chapter, division rules, and the condominium documents governing the association.

(8) To encourage and facilitate voluntary meetings with and between unit owners, boards of directors, board members, community association managers, and other affected parties when the meetings may assist in resolving a dispute within a community association before a person submits a dispute for a formal or administrative remedy. It is the intent of the Legislature that the ombudsman act as a neutral resource for both the rights and responsibilities of unit owners, associations, and board members.

(9) Fifteen percent of the total voting interests in a condominium association, or six unit owners, whichever is greater, may petition the ombudsman to appoint an election monitor to attend the annual meeting of the unit owners and conduct the election of directors. The ombudsman shall appoint a division employee, a person or persons specializing in condominium election monitoring, or an attorney licensed to practice in this state as the election monitor. All costs associated with the election monitoring process shall be paid by the association. The division shall adopt a rule establishing procedures for the appointment of election monitors and the scope and extent of the monitor's role in the election process.

VIRGINIA: 2008

The Virginia Ombudsman Act states:

§55-530. Powers of the Board; Common interest community ombudsman; complaints.

A. The Board shall administer the provisions of this chapter pursuant to the powers conferred by § 54.1-2349 and this chapter.

B. The Director in accordance with § 54.1-303 shall appoint a Common Interest Community Ombudsman (the Ombudsman) and shall establish the Office of the Common Interest Community Ombudsman. The Ombudsman shall be a member in good standing in the Virginia State Bar. All state agencies shall assist and cooperate with the Office of the Common Interest Community Ombudsman in the performance of its duties under this chapter. The expenses for the operations of the Office of the Common Interest Community Ombudsman, including the compensation paid to the Ombudsman, shall be paid first from interest earned on deposits constituting the fund and the balance from the moneys collected annually in the fund.

C. The Office of the Common Interest Community Ombudsman shall:

1. Assist members in understanding their rights and the processes available to them according to the declaration and bylaws of the association;
2. Answer inquiries from members and other citizens by telephone, mail, electronic mail, and in person;
3. Provide to members and other citizens information concerning common interest communities upon request;
4. Make available, either separately or through an existing Internet website utilized by the Director, information as set forth in subdivision 3 and such additional information as may be deemed appropriate;
5. Receive the notices of complaint filed;
6. In conjunction with complaint and inquiry data maintained by the Director, maintain data on inquiries received, the types of assistance requested,

CURRENT OMBUDSMAN ACTS

notices of complaint received, any actions taken, and the disposition of each such matter;

7. Upon request, assist members in using the procedures and processes available to them in the association, including nonbinding explanations of laws or regulations governing common interest communities or interpretations thereof by the Board, and referrals to public and private agencies offering alternative dispute resolution services, with a goal of reducing and resolving conflicts among associations and their members. Such assistance may require the review of the declaration and other records of an association and the procedures for resolving complaints required to be established by the association pursuant to subsection E. An association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time upon request;
8. Ensure that members have access to the services provided through the Office of the Common Interest Community Ombudsman and that the members receive timely responses from the representatives of the Office of the Common Interest Community Ombudsman to the inquiries;
9. Upon request to the Director by (i) any of the standing committees of the General Assembly having jurisdiction over common interest communities or (ii) the Housing Commission, provide to the Director for dissemination to the requesting parties assessments of proposed and existing common interest community laws and other studies of common interest community issues;
10. Monitor changes in federal and state laws relating to common interest communities;
11. Provide information to the Director that will permit the Director to report annually on the activities of the Office of the Common Interest Community Ombudsman to the standing committees of the General Assembly having jurisdiction over common interest communities and to the Housing Commission. The Director's report shall be filed by December 1 of each year, and shall include a summary of significant new developments in federal and state laws relating to common interest communities each year; and
12. Carry out activities as the Board determines to be appropriate.

COLORADO: 2010

The Colorado law states:

SECTION 4. Part 4 of article 61 of title 12, Colorado Revised Statutes, is amended by the addition of a new section to read:

12-61-406.5. HOA information and resource center – creation – duties – rules – cash fund – repeal.

(1) There is hereby created, within the Division of Real Estate, the HOA Information and Resource Center, the head of which shall be the HOA Information Officer. The HOA Information Officer shall be appointed by the executive director of the Department of Regulatory Agencies pursuant to Section 13 of Article XII of the State Constitution.

(2) The HOA Information Officer shall be familiar with the "Colorado Common Interest Ownership Act", Article 33.3 of Title 38, C.R.S., also referred to in this section as the "Act". No person who is or, within the immediately preceding ten years, has been licensed by or registered with the Division of Real Estate or who owns stocks, bonds, or any pecuniary interest in a corporation subject in whole or in part to regulation by the Division of Real Estate shall be appointed as HOA Information Officer. In addition, in conducting the search for an appointee, the executive director of the Division of Real Estate shall place a high premium on candidates who are balanced, independent, unbiased, and without any current financial ties to an HOA board or board member or to any person or entity that provides HOA management services. After being appointed, the HOA Information Officer shall refrain from engaging in any conduct or relationship that would create a conflict of interest or the appearance of a conflict of interest.

(3) (a) The HOA information officer shall act as a clearing house for information concerning the basic rights and duties of unit owners, declarants, and unit owners' associations under the Act.

(b) The HOA Information Officer:

(I) May employ one or more assistants, as may be necessary to carry out his or her duties; and

(II) Shall track inquiries and complaints and report annually to the Director of the Division of Real Estate regarding the number and types of inquiries and complaints received.

(4) The operating expenses of the HOA Information and Resource Center shall be paid from the HOA Information and Recourse Center cash fund, which fund is hereby created in the state treasury. The fund shall consist of annual registration fees paid by unit owners' associations and collected by the Division of Real Estate pursuant to Section 38-33.3-401, C.R.S.

(5) The Director of the Division of Real Estate may adopt rules as necessary to implement this section and section 38-33.3-401, C.R.S. This subsection (5) shall not be construed to confer additional rule-making authority upon the director for any other purpose.

(6) This section is repealed, effective September 1, 2020. Prior to such repeal, the HOA Information and Resource Center and the HOA Information Officer's Powers and duties under this section shall be reviewed in accordance with Section 24-34-104, C.R.S.

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