



## **Memorandum**

**To: Community Associations Institute - CLAC**  
**From: Aponte & Busam, Public Affairs Consultants**  
**Date: June 15, 2007**  
**RE: 2007 Legislative Summary**

### **Political Climate**

As predicted in the months preceding the start of the 2007 legislative session, the Democratic leadership in the House, Senate and the Governor's office took advantage of their position of strength to promote broad reform bills on a wide array of issues of long-standing concern to the party. Following is a summary of meaningful HOA issues to emerge from the 2007 legislative session.

### **Foreclosure: Notice of Lien**

In 2006 session, the General Assembly passed a comprehensive reform to the foreclosure process. That law goes into effect July 1, 2007. Buried within this 150 page bill was a provision that will eliminate the current requirement that foreclosing lenders, as a matter of course, give Community Associations notice of a foreclosure on a property in the common interest community.

In reversal of current practice, the 2006 law requires the foreclosing lender only give notice if the association has recorded a lien or other document with an address versus taking the time to identify the association through the Secretary of State and send a notice as matter of course. ***Of most concern, if notice is not received by the Association, any interest in the property is extinguished under the declaration for the common interest community, i.e., the Association will be unable to collect on any dues and fines related to the foreclosed property.***

Early in the session, CLAC aggressively put a plan of action into motion to correct and change the provision put in place by the 2006 legislation.

Thank you to the CLAC membership (especially Gary Tobey, Jerry Orten and James Wilder) for their tireless efforts as CLAC worked diligently towards resolution. After two very challenging attempts (HB 1157 & SB 85) to bring compromise and understanding to restore the status quo with respect to foreclosure notification to community associations, CLAC came-up empty handed at the close of the session. However, CLAC was able to bring awareness and build pockets of support and concern from several legislators (freshmen included) and interest groups (CO Ski Country USA, Hindman Sanchez). Given the criticality of this issue from an HOA financial and operational perspective

and recognizing the stiff opposition from the lending community, land title and the Bar Association, CLAC is now in a position of review and planning for the next legislative session. Moving forward, CLAC will be discussing two strategy/action plans with the end-goal to correct and avoid further adverse financial impacts on homeowners and associations when lenders foreclose on property.

In an attempt to rectify the ramification of the 2006 actions, CLAC raised the following concerns:

- Adverse financial impacts on homeowners and associations when lenders foreclose on property. Due to lack of notice, the association right to collect on the lien is extinguished.
- Significant new administrative requirements placed on Associations to put processes in place to ensure proper notice is given on any foreclosed property. Associations would need to record a document on all of the property located within the association. This would result in a cost of hundreds or even thousands of dollars for every association. In addition, Association would need to file “Notices of Lien” on all delinquent accounts as soon as they became delinquent, increasing the amounts owed even earlier in the collection process.
- Because there is no address in the recorded declaration, Associations would no longer be entitled to notice of the bank’s foreclosure. At the end of that bank foreclosure, “any interest” the association had in the property will be **EXTINGUISHED. This loss will increase the obligations of the remaining owners.**
- Potential increase in legal action

### **HB 1338 – Homeowner Protection Act**

The passage of HB 1338 reinstated a Common Interest Community (CIC) and homeowner’s right to file a claim as promised under the Construction Defect Action Reform Act of 2003 (CDARA). Now, contract waivers and association declarations have the ability to give owners or associations the right to receive redress or remedy as it pertains to their property rights.

Thank you to the many CLAC members who reached out to their elected officials and testified (Gary Tobey, Rogene Howe, Jesse Witt) on this critical homeowner protection issue! The Governor signed HB 1338 into law on April 20, 2007.

CLAC’s early support of this measure was incredibly helpful to the consumer protection coalition (Vanatta Sullan Sandgrund & Sullan, Colorado Home Alliance) which initiated the legislation. By calling out issues of concern around the creation and operation of CICs, CLAC served as a fresh voice and perspective as to why current industry practice needed to change.

In summary, HB 1338 clarified the following measures:

- Makes contractual waivers of legal rights and remedies provided by CDARA void and unenforceable.
- Provides a very narrow solution to a major consumer protection problem.
- Does **not** change or alter any provisions whatsoever in CDARA --- it keeps intact the builder's right to notice and cure procedures, keeps intact the
- limitations on actual damages available to homeowners, and keeps intact caps on treble damages and attorney fees.
- Does **not** change arbitration requirements.
- Does **not** interfere with limitations on homeowner remedies for claims made specifically under the builder express warranty programs.
- Does **not** interfere with waivers and releases in settlements between builders and homeowners.

### **HB 1362 – Map & Plat Clarification in CIC Formation**

HB 1362 was needed to provide clarification to a Colorado Court of appeals decision on a July 2006 case, *Snowmass Land Company vs. Two Creeks Homeowner's Association*.

CLAC supported the bill which had no opposition and was signed by Governor Ritter on June 1, 2007. Brought before the legislature by the Colorado Bar Association's Real Estate section, the bill clarifies the use of plats and maps in Common Interest Communities (CIC) under CCIOA.

At issue was whether a description of the areas reserved by the developer for future development in the declaration and a general description of the reserved rights on the survey plat was sufficient to reserve those development rights. The Court's decision relied in part on a version of CCIOA that was replaced by amendments in 1998. Further, their decision required information that was included in recorded declarations also to be set forth in detail on the plat. It also required a map even when there were no horizontal boundaries in the CIC. This interpretation of the law was inconsistent with the 1998 amendments and the prevailing practice based on them.

HB 1362 did four things to clarify CCIOA and prevent CIC documents created in reliance on the 1998 amendments from being rendered ineffective:

- Specified what documents must be filed and recorded to create a CIC in Colorado;
- Stated that a map is required only for a CIC with units having a horizontal boundary;
- Stated that the requirements of CCIOA shall be deemed satisfied so long as all of the information required by CCIOA is contained in the declaration, a map or plat or combination of any two or all three;
- Clarified that information contained in a declaration or on a plat is not required to be included on a map and further specifies what information must be included on a map.



### **Legislative Outreach**

Amendment 41 (The “ethics in government” amendment passed by voters in November 2006 which aimed to curtail private influence over government employees.) required CLAC to adjust this year’s legislative outreach program. The normal and customary legislative luncheon was changed to reflect a day of outreach and education. On February 16<sup>th</sup>, CLAC hosted a Capitol visit for all CAI and CLAC members. Senator Nancy Spence and Representative Morgan Carroll presented a floor introduction of the membership and each read a brief statement about CAI, CLAC and the benefits of community associations. Placed on each legislator desk was a letter from CLAC along with the FAQ booklet. CLAC received positive feedback and the information was greatly appreciated. Moving forward, CLAC is reassessing the best way to reach out to legislators; especially in light of the recent court injunction which lifted the requirements put in place by Amendment 41.