

HOA Disclosure Legislation

New disclosure obligations for sellers effective January 1, 2006

Effective January 1, 2006, Colorado homeowners will have new rights and responsibilities regarding disclosure of HOA information under SB100, the new Homeowners Property Rights bill that was signed into law on June 6, 2005.

Homeowners Associations will be required to provide HOA information to property owners on an annual basis, and home sellers will be responsible for disclosing HOA information to potential buyers.

HOA Disclosure to Homeowners

With the passage of SB100, Colorado statutes now require that every Colorado Homeowners Association deliver at least annually, within 90 days after the end of each fiscal year, the following information to all unit owners upon reasonable notice:

- 1) the date on which the fiscal year commences and the operating budget for the current fiscal year;
- 2) a list, by unit type of the owner's current assessment, including both regular and special assessments;
- 3) its annual financial statements, the results of any financial audits, and a list of all Association insurance policies;
- 4) the Association's bylaws, articles, and rules and regulations;
- 5) the minutes of the executive board and member meetings for the fiscal year preceding the current annual disclosure; and
- 6) the Association's responsible governance policies.

This information is to be readily available at no cost to the owners at their convenience. This means that it can be posted on an internet web page with an accompanying notice sent via first class or email; it can be maintained as part of a literature table or binder at the Association's place of business; or it can be mailed or personally delivered to the homeowners. The cost of distribution is to be accounted for as a common expense liability.

Seller Disclosure to Home Buyer

C.R.S. Section 38-33.3-223 states that, except in the case of a foreclosure sale, the seller of property in a common-interest community must mail or deliver to the purchaser the most current copies of the following documents:

- 1) the bylaws and rules of the Association;
- 2) the declaration;
- 3) the covenants;
- 4) any party-wall agreements;
- 5) minutes from the most recent annual unit owners' meeting and of any executive board meetings that occurred within the six months immediately preceding the title deadline;
- 6) the Association's operating budget;
- 7) the Association's annual income and expenditures statement; and
- 8) the Association's balance sheet.

The new law makes it incumbent upon the seller to provide the required HOA informa-

Corporate Office

3033 E. First Ave.
Suite 600
Denver, CO 80206
303-321-1880
Fax 303-322-7603
www.LTGC.com

tion to the buyer by the title deadline, or, in the case of a For Sale By Owner, no later than ten days before closing.

The new law also states that “written notice of any unsatisfactory provision in any of the documents listed above shall be cause for the termination of the contract, if signed by the buyer or on the buyer’s behalf and given to the seller on or before the governing documents objection deadline.” If the seller does not receive a written objection before the deadline, it is assumed that the buyer has accepted the terms of and waived the right to terminate the contract on the basis of the documents.

The time periods specified for delivery and acceptance of the HOA documents may be altered by mutual agreement of the parties. Time share units are not subject to these regulations.

Disclosure Statement and Receipt of Documents

Additionally, the seller must provide the buyer with a disclosure statement in bold-faced type. It is the seller’s responsibility to obtain from the purchaser a signed acknowledgement of receipt of this information and disclosure statement at closing. This signed form must then be sent to the HOA within a reasonable amount of time.

This form may be signed anytime between contract and closing. By signing the receipt and disclosure statement, the buyer acknowledges that he “has read and understands the Association’s declaration, covenants, bylaws, rules, and regulations,” and also that he is responsible for paying assessments to the Association upon completion of the purchase.

Copies of the CIC Documents Receipt and Disclosure to Buyer form can be downloaded from the Department of Regulatory Agencies website at www.dora.state.co.us/.

Seller Responsibility

As an agent for the seller, the listing agent is in the best position to assist his or her clients in their obligation to provide this information to the home buyer. The listing

agent can also work with the buyer’s agent to obtain the required disclosure statement upon receipt of the documents, and to ensure that it is returned to the HOA in a timely manner.

Homeowners Association Responsibility

The Association must use its best efforts to accommodate a request by the seller for documents that are within an Association’s control, in accordance with C.R.S. Section 38-33.3-317.

The Association may charge a reasonable fee, not to exceed the Association’s actual cost per page, and must make documents available within 5 days of receipt of notice. (In the event of a short title deadline, the listing agent may need to draft an amend-extend agreement in order to allow extra time to provide the HOA documents.)

Complimentary Request Forms

In an effort to assist sellers in their obligation to provide this information, Land Title will provide, upon request, complimentary postcards or fax forms, which can be completed by the seller and sent to the HOA. This form requests that the required documents be delivered back to the seller within 5 days of receipt. If you would like copies of these postcard or fax forms for your sellers, please contact your Land Title sales representative.

Land Title will also provide the HOA document disclosure receipt form for the purchaser to sign at the closing table and will send the signed forms to the HOA after closing.

For more information, or to obtain a copy of SB100, contact your Land Title sales representative.

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