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UNDERSTANDING YOUR RIGHTS AS A MEMBER OF AN HOA
(HOMEOWNERS ASSOCIATION)

WHAT IS A HOMEOWNERS ASSOCIATION (“HOA”) AND HOW IS IT FORMED?

A homeowners or condominium association (“HOA”) is a legal entity that is organized to oversee and manage certain responsibilities and regulations for a group of neighboring property owners. Each property owner in the HOA has certain rights as a member of the HOA, including the right to vote to elect a Board of Directors. In Colorado, most HOAs are governed by the Colorado Common Interest Ownership Act (C.R.S. § 38-33.3-101, *et. seq.*) (“Act”). While the Act provides the framework for the formation of HOAs and regulates their operation an HOA’s Bylaws and Declaration of Covenants, Conditions, and Restrictions (“Declaration”) typically provide a more comprehensive framework for the HOA’s rules and operation. Understanding your legal rights and the various provisions of an HOA’s Bylaws and Declaration as well as the Act is crucial to effectively resolving an HOA dispute.

WHAT LEGAL RIGHTS DOES AN HOA HAVE TO RESTRICT THE USE OF MY PROPERTY?

Colorado law does provide that HOAs can impose certain rules regarding its members use of their property as long as the HOA has complied with Colorado law, federal law and its governing documents (such as Bylaws and its Declaration) in adopting and enforcing its rules. It is not uncommon for HOAs to have extensive rules regarding your property and your ability to make changes to your property. Many HOAs have strict rules regarding the exterior appearance of your property, landscaping, parking and a variety of other issues. Some HOAs also restrict certain aspects of the interior of your property and the manner in which you may use your property. Typically, the Declaration and/or a separate set of Rules and Regulations will specify the various rules, regulations, and restrictions on your property imposed by the HOA. However, it is not uncommon for HOA management to attempt to disregard its own written rules or apply them unfairly. Therefore, if your HOA is attempting to enforce a rule or restriction against you, you should ensure that the HOA’s enforcement is consistent with the terms of your HOA’s governing documents. If you believe your HOA’s enforcement is inconsistent with the law, the its governing documents or the HOA’s enforcement against other members, you should retain an attorney to help protect your legal rights.

CAN AN HOA SELECTIVELY ENFORCE RULES AND RESTRICTIONS?

Under Colorado law, HOAs cannot selectively enforce their rules and restrictions against certain homeowners. Where an HOA attempts to selectively enforce rules against some owners while ignoring similar violations by other owners, the HOA’s disparate enforcement can be challenged.

WHAT ARE AN HOA’S RIGHTS TO COLLECT ASSESSMENTS AND DUES?

HOAs have the right to collect assessments (also known as dues) from their members; however, an HOA must follow its governing documents when collecting sums from members or changing the amounts of assessments. HOAs may also have the right to impose “special assessments” for large projects that go beyond normal operations, provided again that the HOA comply with its governing documents when approving a special assessment. Typically, increases in assessments or approval of special assessments requires a vote of the members of the HOA for approval. The Act also requires the HOA to maintain an

accurate accounting of each HOA member's account and to produce the accounting upon request. In certain instances, an HOA's failure to properly approve and account for amounts due from members can affect the HOA's right to collect such amounts from members.

DOES MY HOA HAVE THE RIGHT TO FINE ME?

Depending on the terms of your HOA's governing documents, an HOA may have the right to assess fines against a member for their failure to comply with certain HOA rules, regulations or restrictions. The governing documents of the HOA often set forth specific procedures an HOA must follow for a fine to be valid, and in many instances HOA fines can be invalidated as a result of the HOA's failure to follow its own procedures.

CAN AN HOA FORECLOSE ON MY HOME?

Under Colorado law, HOAs have the ability to file a lien against your property for unpaid assessments, fines or other fees and to foreclose upon your property to collect the amounts due. In addition, Colorado law also provides in certain circumstances an HOA lien can become a "super lien" and have senior lien priority over all other liens (such as a mortgage) on your property. If an HOA has filed or threatened an assessment lien, you should consider retaining an attorney to protect your rights and defend against the foreclosure.

CAN AN HOA CHANGE RULES OR ASSESSMENTS WITHOUT MY CONSENT?

This depends on your HOA's governing documents. In most situations, changes to HOA rules or assessments require a vote by the HOA's members. However, in certain circumstances, an HOA's Bylaws may allow the elected HOA Board of Directors to make certain changes without a vote of the members.

CAN I FORCE AN HOA OR OTHER MEMBERS OF AN HOA TO FOLLOW THE ACT OR HOA RULES?

Both an HOA and an HOA's Board of Directors are fiduciaries for the HOA's members, meaning that the HOA and its Board of Directors are placed in a position of trust by the HOA members and are required to act for and on behalf of the HOA members. HOAs, their Board of Directors and other members of the HOA are required to follow all provisions of the HOA's Declaration, Bylaws, other governing documents and the Act. Should an HOA, an HOA Board Member or other members of an HOA fail to follow these regulations and laws, HOA members can go to court to force compliance and recover damages. In many instances, persistent demands and written communication from an attorney can help to encourage an HOA or its members to follow the required laws and rules by alerting them to their failure to follow the Act or its governing documents. In other instances, certain issues can be appealed to the HOA Board of Directors or other HOA bodies. Also, HOA members have the legal right to file litigation to obtain a court order to force compliance and recover damages.

WHAT CAN I DO IF AN HOA IS CHARGING ME INCORRECT AMOUNTS FOR ASSESSMENTS, DUES OR FINES?

The Act requires the HOA to maintain and provide you with an accurate accounting of assessments, fines or other amounts charged. If your HOA refuses to correct mistakes or provide an accounting, an attorney can attempt to encourage the HOA to correct accounting mistakes, file litigation to force your HOA to comply, or defend an HOA's litigation to collect incorrect amounts.

WHAT CAN I DO ABOUT VOTING IRREGULARITIES OR FRAUD IN HOA ELECTIONS?

HOAs are required to conduct votes of its members to elect a Board of Directors at intervals specified in the Bylaws and often required to conduct votes of members on certain issues, such as changes to the governing documents or to approve budgets. An HOA's Governing Documents, along with the Act, provide specific procedures for an HOA to conduct votes of its members, such as requiring a certain amount of written notice of a vote and proper voting procedure to prevent fraud. If your HOA is failing

to properly conduct elections, you have the right to force your HOA to comply with its own governing documents and Colorado law by demanding compliance or filing litigation to force compliance. You may want to consult with an attorney to best understand how to protect and enforce your legal rights.

CAN AN ATTORNEY REPRESENT MULTIPLE MEMBERS OF AN HOA IN AN HOA DISPUTE?

In many situations, an attorney can represent a group of HOA members to address problems with an HOA provided that there is no conflict of interest between members of the group. Such an arrangement can often help minimize the cost of legal representation associated with resolving problems with your HOA.

HOW CAN I DEAL WITH PROBLEM HOAs, HOA BOARD MEMBERS, OR PROPERTY MANAGEMENT COMPANIES?

The best way to deal with problem HOAs, Board Members of HOA property management companies is to fully understand your legal rights as a member of the HOA, fully understand your HOA's Declaration and Bylaws, document your communications with your HOA in writing, and if necessary, engage an attorney to assist you with understanding, protecting and enforcing your legal rights. In many situations, an HOA's failure to follow its own Bylaws and Declarations can render an HOA unable to continue to pursue an issue or amounts due. HOAs, HOA boards and property management companies often assume that homeowners lack an understanding of their legal rights under the HOA's governing documents and the Act and use this position to pressure homeowners to back down. Therefore, ensure you understand your legal rights when dealing with your HOA and consider retaining an attorney to help you understand, protect and enforce your legal rights.

HOW CAN I RESOLVE AN HOA DISPUTE?

If you have further questions about an HOA's rights or your rights as a member of an HOA, or need representation on an HOA matter, please contact The Law Firm of Jessica H. Miller, LLC at (303) 443-0568 or jessica@jhmillerlaw.com.

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