



HOA LEGI-SLATE STRENGTH IN ASSOCIATION

[Home](#) > [Legislative Miscellaneous](#) > Significant Bill for Homeowners Associations Introduced by Representative Kerr >

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Significant Bill for Homeowners Associations Introduced by Representative Kerr

On Monday, April 20, 2009, Representative Andy Kerr introduced [House Bill 09-1359 \("HB 1359"\)](#) titled "Concerning the Governance of Common Interest Communities Under the Colorado Common Interest Ownership Act." HB 1359 was granted late bill status and is the result of lengthy negotiations between interested parties. The legislation has been assigned to the House Local Government Committee and is scheduled for hearing today. Since the legislature is slated to adjourn on May 6, 2009, this bill is expected to proceed quickly through the legislative process with very little opportunity for revision.

HB 1359 is the most significant bill to be introduced during this legislative session for homeowners associations and as currently written would require the following:

Reserve Studies: As of July 1, 2010, at least once every three years, associations will be required to perform a reserve study "of the common elements and, based upon the reserve study, shall create or update a funding plan for repair or replacement of the association's reserve assets." The reserve study must consist of a physical and financial analysis and contain a description of how each analysis was conducted. HB 1359 also requires the funding plan to include a list of all projected costs and outline what percentage of the costs will be funded through regular assessments, special assessments or other funding methods. There is nothing currently in the bill that requires the reserve studies be conducted by a reserve study professional.

There is a great deal of debate in the association community regarding whether associations should be required to have reserve studies conducted and to what extent associations should be required to fund reserves - if at all. Many state statutes currently require that associations have reserve studies conducted and updated on a routine basis. Some states also require association reserves be "adequately funded." However "adequate funding" has not been defined by statute in those states and association professionals working in those jurisdictions will tell you the definition is unclear.

Tell us what you think about the reserve study provision of HB 1359 by clicking on "Comments" at the end of this posting.

Appointment of Committee Chairs: HB 1359 currently requires that committee chairs be individuals eligible to run for or be appointed to a position on the board of an association as outlined in the association's governing documents.

Information Necessary to Carry Out Fiduciary Duty: This provision of the legislation requires that board members shall have available to them "all relevant information related to the association's operation." This information includes, but is not limited to, the following:

1. Reports of detailed monthly expenditures;
2. Contracts to which the association is a party;
3. Copies of communications, reports, and opinions to and from "officers" of the association.

"Officers" are defined in the bill as "any person designated as an officer of the association and any person to whom the executive board delegates responsibilities under this article, including, without limitation, a managing agent, attorney, or accountant employed by the executive board."

As noted above, this bill is expected to proceed extremely quickly through the legislative process. We will provide you with updates on the status of HB 1359 as they become available.