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UNFINISHED BUSINESS: HB22-1137 Policy Updates

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To: Poudre Overlook at FtC <atftcpoudreoverlook@gmail.com>

Cc: Lora B 4POHOA <lb4pohoa@gmail.com>, Clay Jones <joneswv66@gmail.com>, John M Tunna <j.tunna@icloud.com>, "Walker G. Flanary" <wgflanary@gmail.com>

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Lora,

Pursuant to the purpose and effort to make our Policies compliant with HB22-1137, the review of your draft Policy (attached Policy to Notify Homeowners and Legal Action Policy) at the 9/13/22 meeting resulted in a tabling of the matter. Key elements of the discussion were:

- A dispute about the inclusion of a 7-day notice period in the policy
- Whether a stand-alone policy was appropriate
- Whether existing CCIOA-required Policies needed amending

At the 9/13/22 meeting, you asserted that the policy you drafted was "straight from the statute", but when asked to verify the 7-day notice period citation, you deferred. After several months, the matter never received a response either as an agenda item, verbal or written report, or in any email response from you or the Board/Association.

I have reviewed the final signed act, and do not find any applicable 7-day notice period. There are two sequential 30-day periods for regular notice prior to fines and legal action (whether delinquency collection, or court orders for compliance) which is substantially greater than 7 days. There is also an exception for "health and safety", but that is 72 hours, not 7 days. And, finally, while the Association has 7-days to respond to a notice by the homeowner that the violation is cured, this is a separate matter.

Please review the final signed act and let me know if you have located the citation since September. I am also attaching two flow charts used during the HB22-1137 stakeholding process to help legislators visualize the process - perhaps this will help you in your review.

https://leg.colorado.gov/sites/default/files/2022a_1137_signed.pdf

It is my opinion that we should strike the 7-day notice period language from your proposed draft Policy to Notify Homeowners and Legal Action Policy, if that Policy is to go forward at all.

I believe that it would be worthwhile to consider, instead of your draft policy, a comprehensive review of the following policies for compliance as it would be far less confusing for homeowners than to have to compare and contrast the policy you have written with conflicting language in the remaining policies if left unamended. Homeowners commented at the meeting that adding your proposed Policy would make our governing documents confusing and conflicting leading to disputes.

I believe that we also need to revisit the Architectural Control Guidelines in spite of the passage of the Policies passed on 9/13/22. HB22-1139 (HOA Regulation of Streets) and HB21-1310 (HOA Regulation of Signs) affect CCR Articles IX and X. Article IX Section 3 specifically calls for an ACC that authors the Architectural Control Guidelines, choosing from a non-exhaustive list of suggestions enumerated in Section 3 (paragraphs a through cc) and enumerated in Article X. These Guidelines are intended to be updated, and while including Use Restrictions, it is clear that in order to avoid confusion on the part of homeowners, the Guidelines should address explicitly what is and is not allowed due to these two recent statutory changes.

Finally, I also believe pursuant to HB21-1229, the Policy Regarding Inspection and Copying of Association Records needs to be amended specifically regarding the new requirements for timely response and associated penalties for the Association if non-compliant. Since Directors are not required to sign off or acknowledge reading or understanding the governing documents, let alone CCIOA (by any statute or governing document requirement), the association should have clear policies for the Board of Directors regarding compliance with Document requests. There is no such thing as a "Board Policy", and the zig-zagging from the declarations and assertions of various boards exposes us to liability due to varying interpretations.

We should have a clear policy that all boards follow all the time, including a published schedule of costs (required to charge for documents) if we do not intend to provide all documents for free (particularly digital documents, which should suffice 99.9% of the time). And, since we now have specific documents that we MUST provide at NO COST (due to HB22-1137), this policy must be amended to avoid confusion and accidental non-compliance.

Therefore, I believe we should and may need to amend the following (to be verified by Policy Revision Committee):

1. POLICY FOR CONDUCTING ASSOCIATION MEETINGS (Amend Executive Session requirements regarding delinquency and legal action matters)
2. POLICY FOR COLLECTION OF UNPAID ASSESSMENTS (Amend Interest rate, notice periods, payment allocation sequence, collection remedies, payment plan periods and minimums, requirements for production of invoice/ledger, revisit voting rights of owner facing disputed lien based upon fines, definition of assessments, and bankruptcy/foreclosure boundaries).
3. POLICY FOR ENFORCEMENT OF COVENANTS AND RULES (Amend for Notice Periods, fix missing CCIOA requirement for impartial fact-finding, develop functional dispute resolution process that is binding upon the Board/Directors/Officers, and define rights to hearings, including inclusion in Executive Session regarding delinquency and legal actions related)
4. RESOLUTION FOR COLLECTION OF DELINQUENT ASSESSMENTS (Amend to include instruction on notice periods, required Board votes and legal record of votes before legal action is taken, limits on interest rates, the barring of foreclosure on liens, as well as consideration of striking confusing or conflicting language)
5. MISCELLANEOUS POLICIES (Section D Signs)
6. ARCHITECTURAL CONTROL GUIDELINES (Amend regarding signs and parking - both street and driveways)
7. POLICY REGARDING INSPECTION AND COPYING OF ASSOCIATION RECORDS (Amend for timely response times per CCIOA, potential for penalties if non-compliant specifying when Directors are not to be held liable, and clear instructions for compliance in providing documents pursuant to HB22-1137 changes).

As you are aware, in order to make changes to policy, we would need to give 10 days notice by USPS. If there is any intention to amend policies at a 1/10/23 meeting, notice would need to be mailed out no later than 12/31/22. That seems unlikely and practically impossible.

I would recommend, instead, that we add ***the scheduling of a such a policy revision meeting*** to the Agenda for 1/10/23, and vote on a Special Meeting Date for that purpose, and give homeowners 30-days notice in advance of that meeting, including relevant information regarding the policies we intend to amend, along with the reasons.

I would also recommend that we form a Committee chaired by Director Tunna to lead the effort, and that the Committee be chartered to have worksessions in advance of the meeting. I am prepared to make a Motion to that effect - either in advance using AWAM, or at the meeting.

The purpose of the Committee would be to generate the language for each policy, and to develop the presentation to homeowners and Directors at the meeting where the changes are presented prior to an informed vote. The purpose would also include educating homeowners about our existing documents, and why these policies should or need to be changed. Use of Bulletins or Emails may be useful in that effort.


I think it would be reasonable to target the end of February for the resulting meeting where the amended policies would receive a vote. We are, after all, a bit tardy on compliance - with both 1229 and 1310 compliance being due in mid-2021.

Thank you for your consideration in advance of preparing the 1/10/23 agenda.

Sincerely,

Andy

3 attachments

 **Simple Flow for 1137 v2.1 Alternative View v2.pdf**
20K

 **A Walk Through 1137-2.pdf**
49K

 **Procedures to Notify Homeowners and Legal Action Policy.docx**
22K