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Community E-ssentials

The Essential Community Association Law Newsletter

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On January 31, 2008, [Representative Andy Kerr](#) introduced in the Colorado General Assembly [House Bill 08-1270](#) regulating the installation of energy efficiency measures in homeowners associations. The bill, in its current form, expands the existing statute relating to the installation of solar energy devices in common interest communities. The bill, as introduced, provides the following:

1. A covenant, restriction or condition contained in any association document that effectively prohibits or restricts the use of an energy efficiency measure in a common interest community is void and unenforceable. However, associations are permitted to institute rules and guidelines relating to aesthetics that impose reasonable restrictions on the dimensions, placement, or the external appearance of an energy efficiency measure so long as they do not: (a) significantly increase the purchase price or operating costs; or (b) significantly decrease the performance or efficiency of the energy efficiency measure.

2. An "Energy Efficiency Measure" is broadly defined in the legislation as:

- Solar Energy Device as currently defined by Colorado law;
- Wind-Electric Generator with a generating capacity that does not exceed

the average daily energy requirements of the residence or business located on the real property;

- Awning, Shutter, Trellis, Ramada or other shade structure that is marketed for the purpose of reducing energy consumption;
- Garage or Attic Fan and any associated vents or louvers;
- Evaporative Cooler;
- Energy-Efficient Outdoor Lighting Device, including without limitation a light fixture containing a coiled or straight fluorescent light bulb, and any solar recharging panel, motion detector, or other equipment connected to the lighting device; and
- A Retractable Clothesline

3. Associations are permitted to institute bona fide safety requirements, consistent with an applicable building code or recognized electrical safety standard, for the protection of persons and property.

4. The bill provides that individuals do not have a right to place an energy efficiency measure on "property of another or upon common property of a common interest community."

5. The legislation also adds a section to the Colorado Common Interest Ownership Act ("CCIOA") that provides: "The Association may adopt a policy governing the installation of energy efficiency measures *on common property* for the benefit of unit owners and requiring unit owners to participate in the commonly owned system rather than install individual systems of the same kind, but only if the benefit to a unit owner from participating in the commonly owned system equals or exceeds the benefit the unit owner would realize from installing a system of the same kind on his or her own property."

We are concerned that HB 08-1270 does not strike an adequate balance between environmental concerns and the right of associations to protect the aesthetic appeal and property values of individuals living in the communities by permitting appropriate regulation of aesthetics. With the ever-increasing number of energy conservation options available to homeowners to decrease their consumption of fossil fuels, associations should be able to regulate the types of

energy efficiency measures homeowners are permitted to install *outside* of their homes. It is possible to conserve energy, protect the environment and protect the aesthetic appeal of homeowners associations. This bill has not yet reached that balance and a dialogue with Representative Kerr is ongoing on this legislation.

For updates on the status of HB 08-1270, and other legislation introduced affecting homeowners associations, we invite you to visit [HOA Legi-Slate](#).

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Additional Resources: The Community Associations Institute (CAI) is a nonprofit organization that provides education and resources to community associations. To find out more about CAI visit www.caionline.org

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