

# HOUSING AND PROPERTY

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The General Assembly considered several bills concerning local governments and housing. Specifically, the legislation addressed affordable housing, assessed values, energy efficiency, foreclosures, manufactured homes, and renter's rights.

## Affordable Housing

Under current law, rent control is considered a matter of statewide concern, and a county or municipality is prohibited from enacting any ordinance that would control the price of rent on private

residential property. While this language remains in state law, **House Bill 10-1017** authorizes agreements between local entities and property developers to preserve affordable housing. Specifically, the bill provides that a local ordinance or resolution to control rent on a private residential housing does *not* include:

- an individualized negotiated agreement to limit rent on the unit or to otherwise preserve affordable housing stock; or
- the placement on the title to the unit of a deed restriction that limits rent on the unit or that is otherwise designed to preserve affordable housing stock.

The authorized agreements can specify how long a private residential housing unit is subject to its terms, whether a subsequent property owner is subject to the agreement, and remedies for early termination. The law takes effect on September 1, 2010.

## **Renewable Energy And Property**

*Efficient homes.* Two separate bills addressed homes that are more water efficient or equipped with solar panel systems. This issue of water conservation in new homes was addressed by **House Bill 10-1358**. The bill requires the builder of a new single-family detached residence, for which a buyer is under contract, to offer the buyer a selection of certain water-smart home options, including:

- installation of water-efficient toilets, lavatory faucets, and showerheads;
- dishwashers and clothes washers that meet federal Environmental Protection Agency Energy Star Program standards;
- front yard landscaping with an average water use of no more than ten gallons per square foot per year or turf grass that does not exceed 40 percent of the landscaped area; and
- installation of a pressure-reducing valve that limits static service pressure in the residence to a maximum of 60 pounds per square inch.

The law applies to contracts for new single-family detached residences occurring on or after August 11, 2010.

**House Bill 10-1267** exempts leased residential solar systems from property tax by defining these facilities as household furnishings. To qualify for the exemption, the bill specifies that solar electric generation facilities may not be owned by the residential property owner, may not have a production capacity in excess of 100 kilowatts, and may not produce income for the homeowner.

*Renewable energy and property value.* The General Assembly considered several bills concerning property taxation and the value of renewable energy facilities. **House Bill 10-1431** codifies the methodology that the property tax administrator uses to determine the actual value of renewable energy facilities for purposes of property taxation. Current law requires that the administrator not include the incremental cost of a renewable energy facility relative to a nonrenewable facility in the valuation of the facility. The bill specifies that for renewable facilities that begin generating energy before January 1, 2012, the property tax administrator must include only the cost of all property required to generate and deliver renewable energy to the interconnection

meter that does not exceed the cost of the property required to generate nonrenewable energy. For renewable energy facilities that begin generating energy on or after January 1, 2012, the administrator can only include the cost of all property required to generate and deliver renewable energy to the interconnection meter that does not exceed the cost of property required to generate and deliver nonrenewable energy to the interconnection meter.

Under current law, assessors are allowed to use either the cost approach, the market approach, or the income approach for purposes of property taxation of energy facilities. While the cost approach is generally used, **Senate Bill 10-019** specifies that for purposes of property taxation, new hydroelectric energy facilities will be valued using an income approach if energy production begins on or after January 1, 2010, and generation capacity is more than 5 megawatts. Under this bill, the actual value will be based on the projected gross revenue of such facilities, measured in nominal dollars.

**House Bill 10-1331**, which was postponed indefinitely, would have created the Green Building Incentive Pilot Program to be developed and administered by the Governor's Energy Office (GEO). Under the program, GEO would have awarded grants to qualified applicants who were preparing to sell their current homes with energy efficiency ratings below minimum standards and purchase highly efficient new residential construction. Grants would have been awarded for the purpose of allowing applicants to make energy efficiency improvements to their current residences to increase their marketability.

## **Foreclosures**

The General Assembly considered a number of bills during the 2010 legislative session related to home foreclosures, the safety and upkeep of foreclosed homes, and the foreclosure process.

**House Bill 10-1240** clarifies House Bill 09-1276, passed in the 2009 legislative session, which established a 90-day foreclosure deferment period for eligible borrowers. The bill makes several modifications to general provisions of the foreclosure deferment process and requires the Division of Housing in the Department of Local Affairs to establish and update uniform standards related to the deferment process.

**House Bill 10-1249** creates a process for expedited sales of foreclosed properties that reduces the number of calendar days to sale from between 110–125 days to between 45–65 days. Days to sale are counted following the beginning of foreclosure proceedings. To initiate an expedited sale, the seller must file either a court order or a separate document that notifies the public trustee of the expedited sale.

The bill provides details about the following:

- procedures and criteria for obtaining a court order;
- notification and filing requirements; and
- circumstances under which the expedited proceedings are withdrawn.

The expedited sales process is available for properties for which a foreclosure proceeding begins between August 1, 2010, and August 1, 2013. The law is repealed July 1, 2014.

The Colorado Foreclosure Protection Act requires equity purchasers to follow specific requirements when taking an equity interest in a residential home that is in default.

**House Bill 10-1133** amends the bill in the following ways:

- exempts from the definition of "equity purchaser" a person who acquires title to a residence in foreclosure as a result of a short sale when an appropriate addendum to the contract is included and all statutorily required disclosures are made;
- defines a "residence in foreclosure," for purposes of equity purchase, as a residence that is the homeowner's principal residence, is encumbered by a mortgage loan, and the equity purchaser knows or should know that the loan is at least 30 days in default;
- defines "short sale" as a transaction in which a residence in foreclosure is sold for less than the amount due under the recorded lien and the lien is released;
- removes the requirement that a sales contract be in bold-faced type and instead requires that the contract be legible;
- specifies that, if the equity purchaser knows or should know that the homeowner's principal language is not English, a separate disclosure form in the homeowner's principal language be provided along with the contract;
- states that, in a short sale transaction in which the equity purchaser intends to sell the property to another purchaser within 14 days, the equity purchaser must disclose to the seller and the seller's lender and to any subsequent purchasers and their lenders, the terms of the intended resale, including the amount to be paid.

Two bills addressed the safety and upkeep of foreclosed property. **House Bill 10-1118** authorizes a board of county commissioners to regulate distressed real property through the adoption of an ordinance as a matter of purely local concern. The bill defines "distressed real property" to mean any vacant, foreclosed, or abandoned real property. At a minimum, a board may require that real property be secured, maintained, and insured. Counties may also require owners of distressed real property or foreclosing lenders to provide contact information for persons responsible for management of property. **House Bill 10-1084**, which was postponed indefinitely, would have specified that persons who go onto unoccupied property on an unpaid basis to clean up trash, remove weeds, or water the lawn would be presumed to have the landowner's implied consent. The bill also would have amended the civil and criminal trespassing laws to exempt persons who engage in such activity, but only to the extent of that activity and so long as they do no actual damage to the property.

Other bills related to foreclosure were considered by the General Assembly, but were postponed indefinitely. As introduced, **Senate Bill 10-103** clarified the rights, requirements, and priority of lien redemption on foreclosed homes, specifically addressing the duties of a certificate of purchase holder as they relate to junior liens. The holder of a COP of property at a public trustee's sale or sheriff's sale is entitled to pay off junior lienors during the redemption period for the amount of the lien plus allowable fees and costs. The bill required a junior lienor to accept the tendered payment and to execute a release of the lien. In addition, the bill clarified the right of litigants to claim damages for misstatements of the amount due on a lien or of the lienor's entitlement to use the redemption process. The bill was postponed indefinitely. Finally, **Senate Bill 10-127**, which was

postponed indefinitely, would have required that a creditor first attempt to collect on collateral when a secured loan is in default. If the proceeds from the collateral are insufficient to fully repay the loan balance and allowable costs, it would have allowed the loan holder to attempt to collect from the debtor's other assets.

## **Homeowner Associations**

***Common interest communities.*** The General Assembly considered two bills addressing common interest communities. Current law authorizes the creation of common interest communities to be governed by unit owners' or homeowners' associations (HOAs). Currently, there are approximately 12,000 common interest communities or HOAs in Colorado. **House Bill 10-1278** creates an HOA information officer and HOA Information and Resource Center in the Division of Real Estate, under the Department of Regulatory Agencies. The center will serve as a clearinghouse for information concerning the rights and duties of unit owners, declarants, and unit owners' associations. The office may also track inquiries and complaints concerning HOAs.

Under the new law, every HOA in the state must register with the director of the Division of Real Estate on an annual basis, and an annual registration fee will be established and distributed to the HOA Information and Resource Center Cash Fund, to cover the operating expenses of the HOA Information and Resource Center. An HOA that fails to register with the division, or whose annual registration has expired, is ineligible to impose or enforce a lien for assessments, pursue any action, or employ any enforcement mechanism until it obtains a valid registration. The bill also requires a sunset review of the HOA Information and Resource Center by September 1, 2020.

**House Bill 10-1290**, which was lost on third reading in the House of Representatives, would have allowed a small common interest community to be exempt from most of the provisions of the Colorado Common Interest Ownership Act (CCIOA), upon a vote of its members or shareholders. The bill would have applied to common interest communities that have 20 units or less, do not impose expense assessments of over \$400 per year, or have annual revenue or expenses of less than \$250,000.

## **Manufactured Homes**

One piece of legislation addressed the rights of mobile home owners. **Senate Bill 10-156** provides additional protections from eviction without cause and from eviction with short notice to mobile home owners who lease space in mobile home parks. Additionally, the bill requires a mobile home park owner to notify the municipality or county where the park is located if it intends to change the land use of the mobile home park one year before the change in use. A mobile home park landlord must allow a county or municipal officers access to the park for the purposes of investigating or conducting any studies relating to the sufficiency of utility infrastructure.

## **Renter's Rights**

A piece of legislation addressing rights of renters, **Senate Bill 10-185**, was postponed indefinitely. This bill would have made certain modifications to the residential warranty of habitability for the purpose of protecting renters. Specifically, it would have made the following changes:

- written notice would no longer have been required prior to a breach of the warranty, and the condition of the premises that constituted a breach would have been modified;
- a county court, including a small claims court, could have provided injunctive relief related to a breach;
- a local government need not have been notified prior to an injunction; and
- the prohibition on retaliation for a tenant's alleging a breach would have been modified to specify damages and to eliminate presumptions.