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Dear Clients and Friends,

In Colorado, if you own a townhome, condominium or home contained within a homeowners association (“HOA”), we have important information for you. Also, if you are a real estate broker, property manager or if you serve as an officer or board member of an HOA, this letter is important.

The Colorado legislature recently amended its laws (Colorado Common Interest Ownership Act or “CCIOA”) that govern the kinds of properties mentioned above. These kinds of properties are sometimes referred to as Common Interest Communities. These amendments do not apply to a timeshare, and CCIOA does not apply if your home is not in a subdivision with an HOA. Some of the amendments became effective immediately (i.e., as of June 6, 2005), and others do not become effective until January 1, 2006. At the risk of oversimplifying, the amendments are summarized below.

Certain terms used in this letter, while familiar to real estate brokers (i.e., Title Deadline and Governing Documents Objection Deadline), warrant some definition. Title Deadline means a date by which the seller of a property must provide the buyer with a report (i.e., commitment for title insurance) about the ownership of the seller’s property. Governing Documents Objection Deadline means a date by which the buyer of a property must give notice of any objection to the HOA governing documents (i.e., declaration, bylaws, other rules).

The following amendments became effective immediately as of June 6, 2005:

1. **DISPLAYS OF PATRIOTIC FLAGS:** HOA’s can no longer prohibit displays of the American flag, military service flags or political signs;
2. **EMERGENCY SERVICE PROVIDERS:** HOA’s cannot prohibit property owner firefighters or other emergency service providers from parking their vehicles on streets or sidewalks;
3. **AMENDMENT OF DECLARATION:** Any declaration that requires the affirmative vote of more than 67% of the ownership interests to amend is automatically reduced to 67%. There is a

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procedure to obtain a first mortgagee's approval to any amendment by mailing and publication. The failure of the mortgagee to timely provide a negative response constitutes an approval;

4. WILDFIRE MITIGATION: Regardless of any HOA rules, an owner can remove trees, shrubs and other plantings around a home for wildfire mitigation purposes and can replace any cedar shakes or other flammable roofing materials with non-flammable roofing materials; and

5. DROUGHT-TOLERANT LANDSCAPING. Any provision of a governing document that limits or prohibits xeriscape (i.e., water-saving practices), drought-tolerant landscaping or requires cultivated vegetation to consist primarily of turf grass is unenforceable.

The remaining amendments summarized below do not take effect until January 1, 2006:

A. ATTORNEYS' FEES: The HOA can recover attorneys' fees incurred in collecting delinquent assessments or enforcement of other provisions of the declaration even where no lawsuit was needed to achieve the result. If the HOA sues a unit owner for allegedly violating the governing documents and the court finds in favor of the unit owner, the unit owner will recover its attorneys' fees from the HOA, and the HOA cannot recover any of its attorneys' fees from that unit owner nor charge that unit owner any assessments that would cover such attorneys' fees;

B. ALTERNATIVE DISPUTE RESOLUTION: The HOA is encouraged, but not required, to adopt alternative dispute resolution mechanisms, such as arbitration or mediation;

C. ANNUAL DISCLOSURES: At least once per year, the HOA must make certain disclosures to all its members, including, but not limited to, information about its management company and recording data for its declaration. If the HOA's address, designated agent or management company changes, the HOA must give all unit owners notice within ninety (90) days of the change. The amendments also clarify the records an HOA is required to keep, as well as procedures that must be followed by an HOA where any member requests copies;

D. YEAR END DISCLOSURES: Within ninety (90) days after the developer gives up control of the HOA and within ninety (90) days after the end of each fiscal year, the HOA must make available to all owners certain information, including the operating budget, current assessments by unit and a list of all insurance policies. There are several ways to make this information available, including posting on a website, provided written notice is provided to all owners of the website posting;

E. CONFLICTS OF INTEREST, INVESTMENT POLICIES: The HOA must adopt responsible governing policies, including, but not limited to, policies as to the handling of conflicts of interest and investment of reserve funds. If any decision of the executive board may financially benefit a board member or his or her family, that member must disclose the conflict of interest and can participate in discussions but cannot vote. Any HOA can adopt more restrictive conflict of interest rules;

F. GOVERNING DOCUMENTS OBJECTION DEADLINE: When a home, townhome or condominium governed by CCIOA goes under a contract to sell, the seller must provide the buyer with eight items on or before the Title Deadline. Examples of these items include minutes of the

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most recent annual meeting and any executive board meetings that occurred within the past six (6) months. If the buyer is unsatisfied with any of these items, the buyer can terminate the contract on or before the Governing Documents Objection Deadline. It is likely that the Colorado Real Estate Commission approved form of contract will timely incorporate this language;

G. AUDITS: If your HOA has annual revenues or expenditures in excess of \$250,000.00 and at least 1/3 of the units request an audit, the HOA's books and records shall be subject to audit by a certified public accountant at least once every two years. Regardless of the owners' desires, every two (2) years, the HOA must cause its books and records to be reviewed (but not audited) by a person selected by the executive board (who need not be a certified public accountant except in the case of an audit);

H. WEBSITE: If your HOA has a website, the notice of annual meeting (in addition to mailing) must be posted on the website. The notice of annual meeting must also be posted in a conspicuous place if feasible;

I. SECRET BALLOT: Voting for the executive board must be by secret ballot and any other matter (where all unit owners are entitled to vote) shall be by secret ballot if any owner requests. All ballots must be counted by a neutral third party or owner (not running for office) selected randomly from a pool;

J. COLLECTION OF ASSESSMENTS: The HOA can enter into agreements with a lender on the home or unit to collect HOA assessments as part of regular monthly mortgage payments;

K. CONTINUING EDUCATION: Unless prohibited by the governing documents, the HOA board must provide to owners at no cost to them, at least on an annual basis, education as to the general obligations of the HOA and rights and responsibilities of owners, the HOA and its board under Colorado law. Further, and as long as it is specific to Colorado, board members, at the expense of the HOA, can attend educational meetings or seminars designed to teach responsible HOA governance.

L. MANAGEMENT COMPANIES: Property management companies (or any employee or independent contractor of the HOA) acting on behalf of the HOA are subject to CCIOA to the same extent as the HOA would be. One result of this amendment may be that management companies will be joined more often in litigation against the HOA. Management companies would be well advised to be fully indemnified in their HOA contracts.

M. HOMEOWNERS INSURANCE: This amendment imposes additional responsibilities on insurers issuing homeowner's policies and allows owners to file a claim under the HOA policy as if such owner were an additional named insured. This clarifies that if your condominium or townhome is damaged or destroyed by fire or some other casualty that is covered by the HOA insurance, you can file claims against the HOA's insurance company, even if you were not a named additional insured under the policy.

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N. ARCHITECTURAL APPROVALS: Every HOA must have in place standards and procedures for the approval or denial of an architectural or landscaping application. These standards and procedures are sometimes called design guidelines; and

O. MANDATORY DISCLOSURE ON SALE: On or before the Title Deadline, a seller of property must provide the buyer with a statement, in boldface type, wherein the buyer acknowledges: (i) receipt of certain HOA documents; (ii) that the buyer is obligated to pay assessments and (iii) that any exterior changes to the home are subject to prior architectural review and approval. It is likely that the Colorado Real Estate Commission approved form of contract will timely incorporate this language.

This letter provides only a general summary of the aforementioned legislation, and these laws are more complicated in their applicability, implementation and enforcement. If you have specific questions, please feel free to contact one of the attorneys in our real estate practice group identified below. Further, we will be happy to provide your HOA with amendments to its governing documents to bring it into compliance with these amendments to CCIOA.

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Sincerely,

GARFIELD & HECHT, P.C.