



OTTEN JOHNSON ALERT

Legislative Round-Up: Bills Passed in Colorado's 2022 Legislative Session

July 2022 • [Allison Altaras](#)

Colorado's 2022 legislative session wrapped up on May 11, 2022. A number of bills impacting business regulation, local government, housing, and other real estate matters passed and were signed into law by Governor Polis. This alert provides summaries of bills that may be of interest to business and property owners and developers in the state.

Real Property and Property Taxation

[SB22-115](#) Concerning clarifying certain terms related to a landowner's liability.

This bill amends the landowner liability statute to make clear the Colorado Court of Appeals and Supreme Court decisions in *Rocky Mountain Planned Parenthood, Inc. v. Wagner* should not be relied upon to the extent that those opinions determined: (1) the foreseeability of third-party criminal conduct based upon whether the goods or services offered by a landowner are controversial; and (2) that a landowner could be held liable as a substantial factor in causing harm without considering whether a third-party criminal act was the predominant cause of that harm.

[HB22-1111](#) Concerning insurance coverage for insured losses incurred as a result of a declared fire disaster, and, in connection therewith, making an appropriation. This bill establishes new coverage requirements for homeowners insurance policies issued or renewed in Colorado, which apply in the event of a loss of

a residence as a result of a declared fire disaster. It also establishes new requirements for insurers that issue or renew homeowners' insurance policies, which concern an insurer's handling of policy claims after such a loss occurs.

[SB22-019](#) Concerning access to automatically suppressed court records of eviction proceedings. This bill allows an attorney to access a suppressed court record related to an eviction proceeding with permission of a party included in the record. Access must be for the purpose of providing legal advice or evaluating whether to enter an appearance on behalf of the party, or to evaluate whether the matter is suitable for mediation or to prepare for mediation between the parties.

[SB22-238](#) Concerning reductions in real property taxation for only the 2023 and 2024 property tax years and in connection reducing certain assessment rates. This bill (1) reduces the assessment rates for nonresidential property, excluding agricultural and renewable energy production property, to 27.9% of the actual value of the property for 2023; (2) reduces the assessment rates for residential property, including multi-family residential, to 6.765% of the actual value of the property for 2023, and 6.8% for 2024; and (3) for 2023, reduces the actual value used for assessment rates of commercial real property by \$30,000 and for residential real property by \$15,000, but no less than \$1,000 for either. It also reduces the assessment rates for all residential real property other than multi-family residential real property for 2024 by an amount determined by the property tax administrator to, cumulatively with other provisions of the bill, reduce statewide property tax revenue from 2023 and 2024 by \$700 million. For 2023 and 2024, the assessment rate of real and personal property classified as agricultural property or renewable energy production property is reduced to 26.4% of the actual value. Last, this bill requires the state to reimburse local governments, excluding school districts, in 2024 for 2023 reductions in property tax revenue resulting from this bill.

[HB22-1416](#) Concerning procedural requirements for the administration of property tax. This bill, among other things, implements new requirements for the administrator of property tax to conduct a public hearing and publish notice on proposed changes to property tax materials. For taxpayers protesting the valuation of their taxable real property, this bill extends the deadline by one week—now June 8th—to file a protest. During the appeals process, the board of assessment appeals is now authorized to charge a fee to the taxpayer whose appeal is advanced. This bill also places a 5% cap on the amount the property valuation can be increased upon appeal.

[SB22-092](#) Concerning changes to the Colorado Probate Code. This bill prescribes how property passes when a decedent dies intestate and the estate does not pass to a surviving spouse or designated beneficiary under existing law. The bill also clarifies how the estate passes to surviving descendants of a deceased parent or grandparent and replaces outdated as well as gender-specific language with modern terminology.

[SB22-229](#) **Concerning the conditions under which a public trustee shall release a deed of trust.** This bill adds an exception to the original evidence of debt requirement. The new exception states that a holder of the original evidence of debt may request the release of a deed of trust without producing or exhibiting the original evidence of debt, so long as the debt holder: (1) indemnifies and defends the public trustee against claims resulting from public trustee actions in accordance with the request; (2) provides a current address to the public trustee or the original grantor, assuming party, or current owner, when requesting the release of the deed of trust; and (3) files the request electronically on the county's electronic recording system. This bill removes language requiring a title insurance company to be "qualified" and licensed in Colorado for certain purposes related to the release of a deed of trust. It also makes change to the statutory form used to request a deed of trust without producing the evidence of debt. Once updated, the statutory release request form can be found at § 38-39-108 of the Colorado Revised Statutes.

Housing and Housing Affordability

[HB22-1223](#) **Concerning property taxation of mobile homes.** This bill creates a property tax exemption for mobile homes, including manufactured homes, with an actual value of \$28,000 or less. This bill also modifies the notice requirement for mobile home sales due to delinquent taxes. The county treasurer is no longer required to publish a notice of sale in a newspaper if a distraint warrant has been delivered to the mobile home owner or their agent, and the notice of sale is published on the treasurer's website.

[HB22-1287](#) **Concerning protections for mobile home park residents.** This bill makes a number of changes to the Mobile Home Park Act and the Mobile Home Park Act Dispute Resolution and Enforcement Program. Landlords must now (1) attend two public meetings for park residents at the residents' request; (2) bear the cost of repairing any damage to a mobile home or lot resulting from the landlord's failure to maintain the park premises; (3) provide homeowners with notice of the terms and conditions of an offer to purchase the park that the landlord would accept and negotiate in good faith; and (4) compensate mobile home owners displaced by a change in use of the land. Landlords are prohibited from harassing or coercing mobile home owners to purchase a park and from interfering with the mobile home owner's right to sell a mobile home to a buyer of their choosing, except in limited circumstances. The bill clarifies events that demonstrate a park owner's intent to sell, triggering notice requirements. The period of time when a group or association of mobile home owners can make a purchase offer for the park is increased to 180 day, with tolling in certain circumstances. A public entity that accepts an assignment of a group or association of mobile home owners' opportunity to purchase has a right of first refusal. Finally, the bill assigns government entities to enforce these statutory provisions and establishes penalties and remedies available in private actions.

[HB22-1242](#) **Concerning the regulation of structures manufactured at a location other than the site where the structure is occupied.** This bill adds tiny homes to current law regulating manufacturers, sellers, and installers of manufactured homes. These regulations include but are not limited to contract and disclosure requirements, registration, escrow, reimbursement, bonding, and inspections. The bill also establishes a process to approve tiny homes for utility connection. Tiny homes are added to current mobile home park regulations, including but not limited to the regulation of lease termination limits and requirements, security deposits, various fee prohibitions, and compliance provisions. Tiny homes are added to current sales and use tax exemptions for manufactured homes. Finally, selling or installing a tiny home in violation of this bill is declared a deceptive trade practice subject to damages, a class 1 misdemeanor, and civil penalties.

[SB22-159](#) **Concerning the creation of a revolving loan fund to make investments in transformational affordable housing, and, in connection, making an appropriation.** For a detailed analysis of this bill, see [this article](#) by Otten Johnson Director and Shareholder, [Brian Connolly](#).

[SB22-232](#) **Concerning the provision of workforce housing through the creation of the middle-income housing authority, and, in connection therewith, making an appropriation.** This bill creates the middle-income housing authority (authority) to acquire, construct, rehabilitate, own, operate, and finance affordable rental housing projects for middle-income workforce housing. The board, as the governing body of the authority, must solicit project proposals by October 1, 2022. The powers of the authority include but are not limited to issuing bonds in connection with affordable rental housing projects, and entering into public-private partnerships and contracting with real estate professionals to develop and operate affordable rental housing projects.

Homeowner Associations

[HB22-1137](#) **Concerning practices of unit owners' associations, and authorizing the enforcement of certain matters regarding unit owners' associations in small claims court and limiting the conduct of unit owners' associations in collecting unpaid assessments, fees, and fines.** This bill requires a HOA to contact a unit owner regarding delinquency in paying their HOA assessments, fines, or fees by, in addition to certified mail and posting the notice on the unit owner's property, contacting the unit owner by at least one additional method of communication, including first-class mail, e-mail, or text message. The bill prohibits a HOA from referring the delinquent account to a collection agency or attorney unless voted on by a majority of the HOA board of directors at a hearing. It further prohibits a HOA from imposing daily fines and requires that the unit owner be given two 30-day cure periods for any violations before the HOA can take legal action. In addition, the HOA (1) cannot charge interest greater than 8% per year on unpaid assessments, fees, or fines; (2) must on a monthly basis

send unit owners an itemized outstanding balance statement of what is owed to the HOA; and (3) cannot charge a fee for providing unit holders with this statement. The HOA is required to adopt a notice policy for all of the above procedural steps.

Prior to initiating a foreclosure action against a unit owner, a HOA is required to offer a repayment plan with monthly installment amounts determined by the unit owner, so long as they are \$25 or greater. If the unit owner declines the repayment plan offer, or fails to make at least three monthly payments within 15 days after they are due, then the HOA may initiate a foreclosure action. A HOA may file a claim in small claims court in relation to a unit owner's delinquency if the amount at issue does not exceed \$7,500, exclusive of interest and costs. If a HOA has foreclosed its assessment lien on a unit, members of the HOA executive board, an employee of a community association management company representing the HOA, an employee of a law firm representing the HOA, or an immediate family member of such executive board member, community association management company employee, or law firm employee, cannot purchase the foreclosed unit. Finally, a unit owner can file a civil suit against a HOA if the HOA violates any foreclosure laws and seek damages up to \$25,000 plus costs and reasonable attorney fees.

[HB22-1240](#) **Concerning the right of unit owners in common interest communities to have reasonable access to common elements of such communities.** This bill eliminates certain rights for guests of units owners and provides that if a HOA must restrict or prohibit unit owners' access to common elements for more than 72 hours, it must provide an electronic or written notice to each unit owner and post a visible, clearly legible notice in a prescribed form at each physical access point to the common element.

[HB22-1139](#) **Concerning prohibiting a unit owners' association of a common interest community from regulating the use of a public right-of-way.** This bill prohibits a HOA from regulating the use of a public right-of-way in accordance with local government's ordinance, resolution, rule, franchise, license, or charter provision; and further prohibiting a HOA from requiring that public right-of-way be used in a certain manner.

[SB22-059](#) **Concerning limitations regarding a proxy that a unit owner in a common interest community obtains from another unit owner in that community to vote on behalf of the other unit owner at a meeting of the unit owners' association.** This bill limits the maximum duration of a proxy to 11 months.

[HB22-1387](#) **[VETOED] Concerning measure to ensure a common interest community has adequate reserve funds.** This bill would have required HOAs to conduct studies of their reserve funds. Governor Polis vetoed this bill on May 27, 2022. In his [veto letter](#), the Governor stated that the bill would lead to higher HOA fees, by way of increased administrative burdens, when homeowners are already faced with

higher costs elsewhere.

Business and Taxation

[SB22-034](#) Concerning measures to counteract the filing of fraudulent business documents with the secretary of state. This bill creates a complaint process for those whose business or personal identity has been used without authority or for fraudulent activity to file documents that concern the creation, organization, and operation of an entity. The process now begins by submitting the complaint to the Secretary of State, who may forward it to the Attorney General. The Attorney General may investigate the complaint and refer it to an administrative law judge. The bill also provides that fraudulent filings are unfair and deceptive trade practices under the Colorado Consumer Protection Act, which enables a district attorney to bring an action against a person who engaged in a deceptive trade practice, in the course of their business, vocation, or occupation, if the person violates § 7-90-314 of this bill (prohibiting fraudulent filings).

[SB22-086](#) Concerning the homestead exemption, whereby if a person owns a home, a portion of that person's equity in the home cannot be taken by the person's creditors. This bill makes a number of significant changes to the homestead exemption, including but not limited to: (1) increasing the amount of the homestead exemption from \$75,000.00 to \$250,000.00 (or \$350,000.00 if the homeowner or the homeowner's spouse is elderly or disabled); (2) revising the types of homes covered by the homestead exemption to include not only conventional homes, but vehicles and other types of personal property that a person uses as a residence, including trailers, camper coaches, railway cars, shipping containers, yurts, or "tiny homes"; (3) increasing the general exemption for household goods from \$3,000.00 to \$6,000.00; (4) increasing the exemption for personal property used in a person's primary gainful occupation from \$30,000.00 to \$60,000.00; (5) increasing the exemption for up to two motor vehicles from \$7,500.00 to \$15,000.00 (or \$25,000.00 for an elderly or disabled person); (6) expanding the existing exemption for funds in pension or retirement accounts to include funds in a health savings account; and (7) creating an exemption for "economic impact payments," such as payments to persons under the federal CARES Act.

[HB22-1406](#) Concerning a temporary deduction from state net taxable sales for certain retailers in the state. This bill renews, for July, August, and September 2022, a temporary deduction from state taxable sales, for qualifying retailers, equal to the lesser of state net taxable sales or \$70,000 for each month in the specified sales tax period. Qualifying retailers are those in the alcoholic beverages drinking places industry, the catering industry, the food service contractors industry, the mobile food services industry, the restaurant and other eating places industry, and retailers operating a hotel-operated restaurant, bar, or catering service in the state.

[SB22-032](#) Concerning simplification of local sales and use tax compliance and administration for retailers that make retail sales in local taxing jurisdictions where they have limited physical presence. This bill prohibits local taxing jurisdictions, on or after July 1, 2022, from charging a fee for a local general business license to a retailer with a state standard retail license and either no physical presence or only incidental physical presence within the local taxing jurisdiction. By July 1, 2023, the department of revenue must streamline the application process for and eliminate the expense of general business licenses for such retailers. On or after July 1, 2023, local taxing jurisdictions are prohibited from requiring these retailers to apply separately to the local taxing jurisdiction for a general business license. Local taxing jurisdictions must automatically issue a general business license to such retailers unless the retailer's general business license has been revoked for a local code violation.

Miscellaneous

[SB22-208](#) Concerning just compensation for the condemnation of property encumbered by a conservation easement in gross. For a detailed analysis of this bill, see [this article](#) by Otten Johnson Director and Shareholder, [Melinda Beck](#).

[HB22-1261](#) Concerning the continuation of the board of real estate appraisers. This bill requires the board of real estate appraisers to adopt an exemption from compliance with the uniform standards of professional appraisal practice to allow an appraiser to perform an evaluation, in accordance with the board's rules, instead of a full appraisal for a federally regulated financial institution. The bill also amends the statute to comport with federal law, including but not limited to, updating the qualifications for licensure to require the minimum appraisal experience required by the Appraiser Qualifications Board of the Appraisal Foundation or its successor organization.

[HB22-1362](#) Concerning the reduction of building greenhouse gas emissions. This bill requires the Colorado energy office to adopt: (1) model electric and solar ready code language; (2) model low energy and carbon code language; and (3) model green code language, and requires an advisory board, appointed by the director of the energy office, to adopt: (A) model electric and solar ready code language; and (B) model low energy and carbon code language. On or after July 1, 2023 and before July 1, 2026, municipalities and counties that update a building code must adopt and enforce an energy code that achieves equivalent or better energy performance than the 2021 international energy conservation code and the model electric and solar ready code adopted by the advisory board. On or before January 1, 2025 the office of the state architect, the division of housing, and the division of fire prevention and control must adopt and enforce an energy code that achieves equivalent or better energy performance than the 2021 international energy conservation code and the model electric and solar ready code language identified for adoption by the energy code advisory board. On or after July 1, 2026, municipalities and counties that update a

building code must adopt and enforce an energy code that achieves equivalent or better energy performance than the model low energy and carbon code language adopted by the energy code advisory board. On or before January 1, 2030, the office of the state architect, the division of housing, and the division of fire prevention and control must adopt and enforce an energy code that achieves equivalent or better energy and carbon emissions performance than the model low energy and carbon code language adopted by the energy code advisory board.

Grace Jimenez, a third year law student at the University of Colorado Law School and law clerk with Otten Johnson, co-authored this alert.

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