

2021 LEGISLATIVE SUMMARY

Recapping the most
challenging legislative
session for housing
providers in Colorado
history

Authored by Drew
Hamrick, Senior
Vice President of
Government
Affairs for the
Colorado
Apartment
Association

COLORADO
APARTMENT ASSOCIATION

AASC
APARTMENT ASSOCIATION
OF SOUTHERN COLORADO

The most challenging legislative session for housing providers in Colorado history has now ended. **This was the Year of The Crisis.** The sheer number of anti-landlord bills, coupled with the erratic nature of the Governor's executive orders and the uncertainty surrounding potential or actual eviction moratoriums at both the state and federal level impacted support, opposition and talking points for all proposed housing legislation. Our industry's unprecedented victories can be measured in the vast number of anti-housing provisions defeated, eliminated and amended.

Nevertheless, the legislation that survived the battles still included flawed policies. A prudent housing provider should make operational changes to mitigate the impact of the new legislation. The following are summaries of the Apartment Association's priority bills as well as bullet points (where applicable) on prudent Member action to adjust to those requirements.

HB 21-1121

RESIDENTIAL TENANCY PROCEDURES

Effective date: Upon signature of Governor

This bill was designed to permanently break the eviction process by making it dramatically longer, more expensive and subjecting the housing provider to greater liability. The primary issues that remain after its passage was a requirement that landlords only raise rent once per 12-month period (regardless of the length of the lease contract) and provide 60 day termination notice if there's no written lease.

- All rentals should be documented with a written lease.
- Pricing policies should be reviewed so that an offered rent rate is one the Member would be comfortable with for a year, even for shorter termed leases. This is particularly important for Members utilizing computerized pricing programs.

HB 21-1167

PRIVATE CONSTRUCTION CONTRACT PAYMENTS

Effective date: September 7, 2021 (90 days following final adjournment)

For construction, repair and remodel projects over \$150,000, property owners are prohibited from withholding more than 5% of total payment following full completion of the work. The bill leaves full completion of the work only vaguely defined.

- Members should modify their construction and repair contracts to define acceptable "completion" to include all work required of the contractor to make the Member comfortable paying at least 95% of the contract price to the vendor.

HB 21-1117

LOCAL GOV AUTHORITY PROMOTE AFFORDABLE HOUSING

Effective date: September 7, 2021

The bill allows local governments to require affordable housing units in new housing development, provided the local government offers the alternative of a development fee and also demonstrates that it has taken one or more actions to increase the overall number and density of housing units or to create incentives to the construction of affordable housing units. While there is a long list of pro-development options listed in the bill, local governments will still have greater ability to impose costs and restrictions on future development.

SB 21-091

CREDIT TRANSACTION CHARGE LIMITATIONS

Effective date: July 1, 2022

Under current law, a business accepting a credit card payment is prohibited from imposing a surcharge on cardholder. This bill repeals the prohibition and limits the maximum surcharge to the cardholder of 2%.

- Many Members do not accept credit card payments because of the prohibition against passing on transaction cost to the resident. With the ability to pass on up to a 2% surcharge, some Members may now find credit cards an acceptable payment option.

SB 21-173

RIGHTS IN RESIDENTIAL LEASE AGREEMENTS

Effective date: October 1, 2021

This bill was another sweeping attempt to permanently delay and disrupt the eviction process and prohibit most fees associated with delinquency or early lease termination. As amended, it limits late fees to the greater of \$50 or 5% of the past due rent, mandates a 7-day grace period before the fee is imposed, requires acceptance of payment of all amounts due from a tenant up until the judgment for possession and limits how late fees may be recouped. It prohibits unreasonable liquidated damages.

- Review and potentially change late fee provisions in the lease.
- Review and potentially change grace period in the lease.
- Consider changing due dates in the lease.
- Review lease break provisions and other liquidated damages for reasonableness.
- Develop policies on acceptance of late payments.

SB 21-293

PROPERTY TAX CLASSIFICATION & ASSESSMENT RATES

Effective date: Upon signature of Governor

This bill temporarily (for tax years 2022 and 2023) lowers the residential property tax assessment rate from 7.15% to 6.80% for multifamily residential property and to 6.95% for all other residential property. Even though the assessment rate for our industry is below other residential property, the creation of these subclasses within the definition of residential property creates risk of future tax increases aimed at our industry alone.

HB 21-1083

STATE BOARD ASSESSMENT APPEALS VALUATION ADJUSTMENT

Effective date: April 7, 2021

When appealing the property valuation set by a county board of equalization, the State Board of Assessment Appeals may now decrease or increase the valuation. The Apartment Association opposed the bill out of principal, as we oppose any legislation that can potentially increase costs for housing providers. However, this bill will likely have little practical effect on the outcome of property tax valuation appeals.

- Prepare a quality defensible appraisal of the property prior to initiating an Assessment Appeal or hiring a third-party to appeal on a contingency basis.

HB 21-1286

ENERGY BENCHMARKING PERFORMANCE STANDARDS

Effective date: September 7, 2021

Requires owners of covered buildings (50,000+ square feet) to submit annual information on energy usage to the Colorado Energy Office (CEO) and utilities companies to provide most of that information to the building owner. The bill authorizes the Air Quality Control Commission (AQCC) to promulgate rules creating performance standards and setting penalty amounts and creates a task force to develop and provide consensus recommendations to the AQCC and the Governor performance standards that would achieve a 7 percent reduction in GHG emissions by 2026 and a 20 percent reduction by 2030. Owners that violate reporting requirements are subject to a penalty of up to \$500 (first violation) and up to \$2,000 (subsequent violation). Owners in violation of performance standard requirements are subject to a penalty of up to \$2,000 (first violation) and up to \$5,000 (subsequent violation).

As introduced, this bill contained performance standards that would have caused 75% of buildings to fail and imposed minimum fines of \$370,000 per year for failing.