RESPONSE TO OPPOSITION TO HOUSE BILL 1290

ISSUE	RESPONSE
There already exists in CCIOA an exemption for small communities (<10) created prior to 1992 (38-33.3-119)	Pre-1992 small communities should have the same exemption as post-1992.
There already exists in CCIOA an exemption for small communities (<10) and limited expense communities (<300/year per unit) created between 1992 and 1998 (38-33.3-116)	Pre-1992 small communities should have the same exemption as post-1992.
There already exists in CCIOA an exemption for small communities (<20) and limited expense communities (<400/year per unit) created after July 1,1998 (38-33.3-116)	Pre-1992 small communities should have the same exemption as post-1992.
There is not a current exemption to CCIOA for communities having less than $250,000 in annual revenue or expenditures	Misleading because current Section 38-33.3-303(4)(b) exempts small associations with less than $250,000 from certain financial and audit requirements.
After exemption vote, bill only makes communities subject to 38-33.3-105-107	False. Small communities remain subject to the provisions of their Covenants, Articles of Incorporation, Bylaws and rules/policies as well as the provisions of the Colorado Revised Nonprofit Corporation Act.
The bill would eliminate protections to residents in exempt communities in the area of maps and plats of the community, disclosure of the community specifics & the manager, eliminate required adoption of collection, fining and other significant policies, eliminate due process in the imposition of fines, and eliminate provisions for owner and Board member education.	False. Small communities remain subject to the provisions of their Covenants, Articles of Incorporation, Bylaws and rules/policies as well as the provisions of the Nonprofit Act. HB 1290 continues the Association documents including policies and rules as to these matters.
Under this bill, owners in small communities would not have assurances of knowledge of Association Policies	False. Nonprofit Act requires books and records to be available.
Small Association owners would not have protections regarding political free speech (political signs) and flag displays	False. The current protections of Sections 105-107 continue to apply – so the provisions as to flags, signs, fire mitigation, ADA, roofing materials, and solar energy continue to apply.
Under this bill, owners in small associations and potential purchasers would not be aware of the Association's policies regarding Capital Reserves	False. Nonprofit Act requires financial records to be available to members.
The bill would eliminate protections regarding the alteration of units, relocation of boundaries between units and subdivision of units	False to the extent that association's current documents (Covenants, etc.) provide for this and questionable value to small associations.
The protections in CCIOA relative to voting, proxies and executive session content would be eliminated.	False. Small communities remain subject to the provisions of their Covenants, Articles of Incorporation, Bylaws and rules/policies which provide for voting, proxies, etc. Also, Nonprofit Act includes requirements for notice of meetings, voting, proxies and board conduct.
No one has been able to offer specific information where the requirements of CCIOA are burdensome.	Burden on small associations described in testimony. No small association can afford $1/2 million in attorneys fees under CCIOA over a $5,000 dispute.

HB 1290 applies current small HOA to pre 1992 HOA →

38-33.3-116. Exception for new small cooperatives and small and limited expense planned communities. (1) If a cooperative created in this state on or after July 1, 1992, but prior to July 1, 1998, contains only units restricted to nonresidential use or contains no more than ten units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable. If a planned community created in this state on or after July 1, 1992, but prior to July 1, 1998, contains no more than ten units and is not subject to any development rights or if a planned community provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed three hundred dollars, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.

(2) If a cooperative or planned community created in this state on or after July 1, 1998, contains only units restricted to nonresidential use, or contains no more than twenty units and is not subject to any development rights, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable. If a planned community created in this state after July 1, 1998, provides, in its declaration, that the annual average common expense liability of each unit restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed four hundred dollars, as adjusted pursuant to subsection (3) of this section, it is subject only to sections 38-33.3-105 to 38-33.3-107, unless the declaration provides that this entire article is applicable.

(3) The four-hundred-dollar limitation set forth in subsection (2) of this section shall be increased annually on July 1, 1999, and on July 1 of each succeeding year in accordance with any increase in the United States department of labor bureau of labor statistics final consumer price index for the Denver-Boulder consolidated metropolitan statistical area for the preceding calendar year. The limitation shall not be increased if the final consumer price index for the preceding calendar year did not increase and shall not be decreased if the final consumer price index for the preceding calendar year decreased.

HB 1290 follows "Opt In" process →

38-33.3-118. Procedure to elect treatment under the "Colorado Common Interest Ownership Act". (1) Any organization created prior to July 1, 1992, may elect to have the common interest community be treated as if it were created after June 30, 1992, and thereby subject the common interest community to all of the provisions contained in this article, in the following manner:

(a) If there are members or stockholders entitled to vote thereon, the board of directors may adopt a resolution recommending that such association accept this article and directing that the question of acceptance be submitted to a vote at a meeting of the members or stockholders entitled to vote thereon, which may be either an annual or special meeting. The question shall also be submitted whenever one-twentieth, or, in the case of an association with over one thousand members, one-fortieth, of the members or stockholders entitled to vote thereon so request. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider electing to be treated as a common interest community organized after June 30, 1992, and thereby accepting the provisions of this article, together with a copy of this article, shall be given to each person entitled to vote at the meeting within the time and in the manner provided in the articles of incorporation, declaration, bylaws, or other governing documents for such association for the giving of notice of meetings to members. Such election to accept the provisions of this article shall require for adoption at least sixty-seven percent of the votes that the persons present at such meeting in person or by proxy are entitled to cast.

(b) If there are no persons entitled to vote thereon, the election to be treated as a common interest community under this article may be made at a meeting of the board of directors pursuant to a majority vote of the directors in office.

(2) A statement of election to accept the provisions of this article shall be executed and acknowledged by the president or vice-president and by the secretary or an assistant secretary of such association and shall set forth:

(a) The name of the common interest community and association;

(b) That the association has elected to accept the provisions of this article;

(c) That there were persons entitled to vote thereon, the date of the meeting of such persons at which the election was made to be treated as a common interest community under this article, that a quorum was present at the meeting, and that such acceptance was authorized by at least sixty-seven percent of the votes that the members or stockholders present at such meeting in person or by proxy were entitled to cast;

(d) That there were no members or stockholders entitled to vote thereon, the date of the meeting of the board of directors at which election to accept this article was made, that a quorum was present at the meeting, and that such acceptance was authorized by a majority vote of the directors present at such meeting;

(e) (Deleted by amendment, L. 93, p. 645, § 7, effective April 30, 1993.)

(f) The names and respective addresses of its officers and directors; and

(g) If there were no persons entitled to vote thereon but a common interest community has been created by virtue of compliance with section 38-33.3-103 (8), that the declarant desires for the common interest community to be subject to all the terms and provisions of this article.

(3) The original statement of election to be treated as a common interest community subject to the terms and conditions of this article shall be duly recorded in the office of the clerk and recorder for the county in which the common interest community is located.

(4) Upon the recording of the original statement of election to be treated as a common interest community subject to the provisions of this article, said common interest community shall be subject to all provisions of this article. Upon recording of the statement of election, such common interest community shall have the same powers and privileges and be subject to the same duties, restrictions, penalties, and liabilities as though it had been created after June 30, 1992.

(5) Notwithstanding any other provision of this section, and with respect to a common interest community making the election permitted by this section, this article shall apply only with respect to events and circumstances occurring on or after July 1, 1992, and does not invalidate provisions of any declaration, bylaws, or plats or maps in existence on June 30, 1992.

38-33.3-106.5. Prohibitions contrary to public policy - patriotic and political expression - emergency vehicles - fire prevention - renewable energy generation devices - affordable housing - definitions. (1) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not prohibit any of the following:

(a) The display of the American flag on a unit owner's property, in a window of the unit, or on a balcony adjoining the unit if the American flag is displayed in a manner consistent with the federal flag code, Pub.L. 94-344; 90 stat. 810; 4 U.S.C. secs. 4 to 10. The association may adopt reasonable rules regarding the placement and manner of display of the American flag. The association rules may regulate the location and size of flags and flagpoles, but shall not prohibit the installation of a flag or flagpole.

(b) The display of a service flag bearing a star denoting the service of the owner or occupant of the unit, or of a member of the owner's or occupant's immediate family, in the active or reserve military service of the United States during a time of war or armed conflict, on the inside of a window or door of the unit. The association may adopt reasonable rules regarding the size and manner of display of service flags; except that the maximum dimensions allowed shall be not less than nine inches by sixteen inches.

(c) (I) The display of a political sign by the owner or occupant of a unit on property within the boundaries of the unit or in a window of the unit; except that:

(A) An association may prohibit the display of political signs earlier than forty-five days before the day of an election and later than seven days after an election day; and

(B) An association may regulate the size and number of political signs in accordance with subparagraph (II) of this paragraph (c).

(II) The association shall permit at least one political sign per political office or ballot issue that is contested in a pending election. The maximum dimensions of each sign may be limited to the lesser of the following:

(A) The maximum size allowed by any applicable city, town, or county ordinance that regulates the size of political signs on residential property; or

(B) Thirty-six inches by forty-eight inches.

(III) As used in this paragraph (c), "political sign" means a sign that carries a message intended to influence the outcome of an election, including supporting or opposing the election of a candidate, the recall of a public official, or the passage of a ballot issue.

(d) The parking of a motor vehicle by the occupant of a unit on a street, driveway, or guest parking area in the common interest community if the vehicle is required to be available at designated periods at such occupant's residence as a condition of the occupant's employment and all of the following criteria are met:

(I) The vehicle has a gross vehicle weight rating of ten thousand pounds or less;

(II) The occupant is a bona fide member of a volunteer fire department or is employed by a primary provider of emergency fire fighting, law enforcement, ambulance, or emergency medical services;

(III) The vehicle bears an official emblem or other visible designation of the emergency service provider; and

(IV) Parking of the vehicle can be accomplished without obstructing emergency access or interfering with the reasonable needs of other unit owners or occupants to use streets, driveways, and guest parking spaces within the common interest community.

(e) The removal by a unit owner of trees, shrubs, or other vegetation to create defensible space around a dwelling for fire mitigation purposes, so long as such removal complies with a written defensible space plan created for the property by the Colorado state forest service, an individual or company certified by a local governmental entity to create such a plan, or the fire chief, fire marshal, or fire protection district within whose jurisdiction the unit is located, and is no more extensive than necessary to comply with such plan. The plan shall be registered with the association before the commencement of work. The association may require changes to the plan if the association obtains the consent of the person, official, or agency that originally created the plan. The work shall comply with applicable association standards regarding slash removal, stump height, revegetation, and contractor regulations.

(f) (Deleted by amendment, L. 2006, p. 1215, § 2, effective May 26, 2006.)

(g) Reasonable modifications to a unit or to common elements as necessary to afford a person with disabilities full use and enjoyment of the unit in accordance with the federal "Fair Housing Act of 1968", 42 U.S.C. sec. 3604 (f) (3) (A).

(h) (I) The right of a unit owner, public or private, to restrict or specify by deed, covenant, or other document:

(A) The permissible sale price, rental rate, or lease rate of the unit; or

(B) Occupancy or other requirements designed to promote affordable or workforce housing as such terms may be defined by the local housing authority.

(II) (A) Notwithstanding any other provision of law, the provisions of this paragraph (h) shall only apply to a county the population of which is less than one hundred thousand persons and that contains a ski lift licensed by the passenger tramway safety board created in section 25-5-703 (1), C.R.S.

(B) The provisions of this paragraph (h) shall not apply to a declarant-controlled community.

(III) Nothing in subparagraph (I) of this paragraph (h) shall be construed to prohibit the future owner of a unit against which a restriction or specification described in such subparagraph has been placed from lifting such restriction or specification on such unit as long as any unit so released is replaced by another unit in the same common interest community on which the restriction or specification applies and the unit subject to the restriction or specification is reasonably equivalent to the unit being released in the determination of the beneficiary of the restriction or specification.

(IV) Except as otherwise provided in the declaration of the common interest community, any unit subject to the provisions of this paragraph (h) shall only be occupied by the owner of the unit.

(1.5) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit renewable energy generation devices, as defined in section 38-30-168.

(2) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not require the use of cedar shakes or other flammable roofing materials.

38-33.3-106.7. Unreasonable restrictions on energy efficiency measures - definitions. (1) (a) Notwithstanding any provision in the declaration, bylaws, or rules and regulations of the association to the contrary, an association shall not effectively prohibit the installation or use of an energy efficiency measure.

(b) As used in this section, "energy efficiency measure" means a device or structure that reduces the amount of energy derived from fossil fuels that is consumed by a residence or business located on the real property. "Energy efficiency measure" is further limited to include only the following types of devices or structures:

(I) An awning, shutter, trellis, ramada, or other shade structure that is marketed for the purpose of reducing energy consumption;

(II) A garage or attic fan and any associated vents or louvers;

(III) An evaporative cooler;

(IV) An 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

(V) A retractable clothesline.

(2) Subsection (1) of this section shall not apply to:

(a) Reasonable aesthetic provisions that govern the dimensions, placement, or external appearance of an energy efficiency measure. In creating reasonable aesthetic provisions, common interest communities shall consider:

(I) The impact on the purchase price and operating costs of the energy efficien-

Under HB 1290 — Current Protections Continue Sections 105 — 107

HOMEOWNER ASSOCIATION CHOICE ACT OF 2010
BACKGROUND ON PROPOSED BILL HB 1290

In 1992, Colorado adopted the CCIOA on the basis of the Uniform Act but Colorado's version also contained some unique provisions. Those unique provisions include certain exemptions of small expense associations (Section 116) and a procedure by which existing associations could "elect" into all of the provisions of CCIOA (Section 118). From 1992 until 2005, very few small associations ever opted into CCIOA, but CCIOA imposed very few burdens on small associations. It should be noted that the Colorado Legislature did expand the exemption for small associations by a law enacted in 1998 (HB 98-1337), so there is precedent for expanding the protection of small associations. However, with Senate Bill 100 in 2005, even after amendments in 2006 with Senate Bill 89 and amendments in following years, small associations have now found themselves burdened by procedural requirements more applicable to large condominium and townhouse associations.

REASONS FOR PROPOSED BILL

The Proposed Bill HB 1290 provides a simple procedure by which small homeowner associations can make a decision whether or not to be covered under the Act. The reasons for the Proposed Bill are:

1. Homeowner Freedom to Choose-A Fair Election – Fair Choice. The proposal allows homeowners in planned communities to vote to "opt out" in a manner parallel to "opting in". Because the policy of CCIOA supports homeowner choice in fair elections, the Proposed Bill is entirely consistent with that policy. The Proposed Bill allows homeowners the fair choice how to protect their property values and operate their associations and promote their lifestyles. The Proposed Bill is consistent not only with property rights, but also with free, open, democratic elections. The proposal follows basic constitutional premises which began with the Mayflower Compact and continue through the U.S. Constitution that individuals should be able to promote life, liberty, property values and the pursuit of happiness by free, fair elections. Existing associations can vote to be in CCIOA so it is only logical and fair that they should be able to vote out of CCIOA. If homeowners see a benefit in CCIOA, it is expected that they will note to remain in CCIOA; if not, they will vote to opt out.

2. Fairness and Equality. Section 118 of the current Act allows associations to opt into CCIOA and so the proposal simply repeats those provisions to allow homeowners to make a similar choice as to exemption from CCIOA. The proposal is based upon the current exemption amounts (Twenty units OR $400.00+ per unit per year annual assessments OR $250,000 of annual receipts or expenditures) which are already set forth in the current CCIOA statute. However, those exemptions apply only to post-1992 associations; that means that the current CCIOA exemptions discriminate against "old" (pre-1992) associations. The Proposed Bill would level the playing field by treating equally "old" and "new" associations, and "opting in" with "option out". It should be noted that the Proposed Bill would apply only to "planned communities" which are not condominiums or cooperatives, but rather are single family detached homes, patio homes or townhomes. It should also be noted that the Proposed Bill also parallels the current CCIOA exemption for audits (which is $250,000 in gross revenues). Finally, it should be noted that the Proposed Bill protects and does not change the provision of existing documents (i.e., declaration, bylaws, etc.) of associations and does not affect the applicable requirements of the Nonprofit Act as to meetings, records, conflicts of interest, etc.

3. Removal of Financial Burdens. Small associations depend upon their unpaid volunteers to operate their associations. Those volunteers are elected by the owners usually from the homeowners themselves. The current lengthy provisions of CCIOA, especially with Senate Bill 100/89, impose great burdens upon those voluntary officers; such burdens, including record keeping, record availability, creating "governance" rules and specific procedures for meetings. Those requirements impose not only time and financial burdens but also the risk of lawsuits. Even though CCIOA encourages mediation or arbitration, the current statute has resulted in considerably more litigation. As shown by a pending case involving a Colorado homeowners association, any association may face attorneys fees exceeding one-half million dollars. Small associations and the volunteers in such associations should not be burdened by the threat of lawsuits and attorneys fees. Small associations and the homeowners should not be burdened by the costs of audits, attorneys fees and other expenses. Increased litigation will ultimately result in increased insurance costs. All of these increase the costs of living in homeowner associations, which burdens homeowners especially in hard times; funds should be going for landscaping and community improvements rather than attorneys fees and records costs.

4. HB 1290 Will Benefit CCIOA.
   a. Homeowners will be given an opportunity to consider the benefits and burdens of CCIOA and make their choices after notice and meeting. If CCIOA is a benefit to them, they may choose to remain subject to its provisions.
   b. HB 1290 will provide that associations remain subject to certain provisions of CCIOA regarding American flags, patriotic and political signs, fire prevention, roof materials, and renewable energy provisions as set forth in CRS 38-33.3-106.
   c. HB 1290 will reduce confusion among associations as to CCIOA's applicability. Many small pre-1992 associations do not believe that they are subject to CCIOA. One court has even ruled that an association which does not own common property but makes assessments for common expenses is subject to CCIOA. HB 1290 provides a process to determine the status of small associations. It requires a recorded document in the real estate records so notifies title companies and real estate professionals of that status. However, such choice cannot be made more often two years so it prevents frequent switching.
   d. Even if an association "opts out" of CCIOA under HB 1290, the association remains subject to the Colorado Revised Nonprofit Corporation Act which requires notice of meetings, the availability of corporate records and financial documents, elections of directors and certain "no conflict of interest" standards.
   e. HB 1290 will encourage homeowners to continue to volunteer to serve as unpaid officers, directors and committee people on small associations without fear of violating the statutory requirements of CCIOA and possibly being subjected to lawsuits.
   f. HB 1290 removes the current discrimination against pre-1992 small associations vs. post 1992 small associations and provides for equality of "opting out" in the same manner as "opting in". It allows a choice to homeowners and offers small associations the opportunity of reduced expenses and liability in tough economic times.