

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 24, 2005
Date

Committee on Local Government.

After consideration on the merits, the Committee recommends the following:

SB05-100 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend reengrossed bill, page 5, line 9, after "**vehicles**", insert " - **fire**
2 **prevention**".

3 Page 6, line 26, strike "DEPARTMENT," and substitute "DEPARTMENT OR";
4 line 27, strike "C.R.S., OR IS A PEACE OFFICER AS" and substitute
5 "C.R.S.;".

6 Page 7, strike line 1;

7 strike lines 3 and 4 and substitute the following:

8 "DESIGNATION OF THE EMERGENCY SERVICE PROVIDER; AND";

9 strike lines 9 through 23 and substitute the following:

10 "(d) THE REMOVAL BY A UNIT OWNER OF TREES, SHRUBS, OR
11 OTHER VEGETATION TO CREATE DEFENSIBLE SPACE AROUND A DWELLING
12 FOR FIRE MITIGATION PURPOSES, SO LONG AS SUCH REMOVAL COMPLIES
13 WITH A WRITTEN DEFENSIBLE SPACE PLAN CREATED FOR THE PROPERTY BY
14 THE COLORADO STATE FOREST SERVICE, AN INDIVIDUAL OR COMPANY
15 CERTIFIED BY A LOCAL GOVERNMENTAL ENTITY TO CREATE SUCH A PLAN,
16 OR THE FIRE CHIEF, FIRE MARSHAL, OR FIRE PROTECTION DISTRICT WITHIN
17 WHOSE JURISDICTION THE UNIT IS LOCATED, AND IS NO MORE EXTENSIVE
18 THAN NECESSARY TO COMPLY WITH SUCH PLAN. THE PLAN SHALL BE

1 REGISTERED WITH THE ASSOCIATION BEFORE THE COMMENCEMENT OF
2 WORK, AND THE WORK SHALL COMPLY WITH APPLICABLE ASSOCIATION
3 STANDARDS REGARDING SLASH REMOVAL, STUMP HEIGHT, REVEGETATION,
4 AND CONTRACTOR REGULATIONS.

5 (e) (I) THE REPLACEMENT BY A UNIT OWNER OF CEDAR SHAKES OR
6 OTHER FLAMMABLE ROOFING MATERIALS WITH NONFLAMMABLE ROOFING
7 MATERIALS FOR FIRE PREVENTION OR FIRE SUPPRESSION PURPOSES.

8 (II) THE DECLARATION OR BYLAWS MAY SPECIFY REASONABLE
9 STANDARDS FOR THE COLOR, APPEARANCE, AND GENERAL TYPE OF
10 NONFLAMMABLE ROOFING MATERIALS THAT ARE USED TO REPLACE
11 FLAMMABLE ROOFING MATERIALS, BUT MAY NOT REQUIRE THE USE OF
12 NONFLAMMABLE MATERIALS THAT EXCEED THE REPLACEMENT COST OF
13 THE FLAMMABLE MATERIALS FOR WHICH THEY ARE BEING SUBSTITUTED.

14 **SECTION 3.** 38-33.3-117 (1), Colorado Revised Statutes, is
15 amended to read:

16 **38-33.3-117. Applicability to preexisting common interest**
17 **communities.** (1) Except as provided in section 38-33.3-119, the
18 following sections shall apply to all common interest communities
19 created within this state before July 1, 1992, with respect to events and
20 circumstances occurring on or after July 1, 1992:

21 (a) 38-33.3-101 and 38-33.3-102;

22 (b) 38-33.3-103, to the extent necessary in construing any of the
23 other sections of this article;

24 (c) 38-33.3-104 to 38-33.3-111;

25 (d) 38-33.3-114;

26 (e) 38-33.3-118;

27 (f) 38-33.3-120;

28 (g) 38-33.3-122 and 38-33.3-123;

29 (g.5) 38-33.3-124;

- 1 (h) 38-33.3-203 and 38-33.3-217 (1) AND (7);
- 2 (h.3) 38-33.3-205 (2);
- 3 (h.5) 38-33.3-209.4 TO 38-33.3-209.7;
- 4 (h.6) 38-33.3-221.5;
- 5 (h.7) 38-33.3-223;
- 6 (h.8) 38-33.3-301;
- 7 (I) 38-33.3-302 (1) (a) to (1) (f), (1) (j) to (1) (m), and (1) (o) to
8 (1) (q), (2), (3), AND (4);
- 9 (i.3) 38-33.3-303 (4) (b);
- 10 (i.5) 38-33.3-308 (1), (2.5), AND (4.5);
- 11 (i.6) 38-33.3-310 (1) AND (2);
- 12 (i.7) 38-33.3-310.5;
- 13 (j) 38-33.3-311;
- 14 (j.6) 38-33.3-315 (7);
- 15 (k) 38-33.3-316;
- 16 (l) 38-33.3-317 to 38-33.3-319.

17 **SECTION 4.** 38-33.3-123 (1), Colorado Revised Statutes, is
18 amended to read:

19 **38-33.3-123. Enforcement - limitation.** (1) (a) If any person
20 subject to the provisions of this article fails to comply with any of its
21 provisions or any provision of the declaration, bylaws, articles, or rules
22 and regulations, any person or class of persons adversely affected by the
23 failure to comply may ~~require~~ SEEK reimbursement for collection costs
24 and reasonable attorney fees and costs incurred as a result of such failure
25 to comply. ~~without the necessity of commencing a legal proceeding.~~
26 NOTWITHSTANDING ANY PROVISION OF THE DECLARATION, BYLAWS,

1 ARTICLES, OR RULES AND REGULATIONS TO THE CONTRARY, A UNIT OWNER
2 SHALL NOT BE DEEMED TO HAVE CONFESSED JUDGMENT TO ATTORNEY
3 FEES OR COLLECTION COSTS.

4 (b) For each claim, including but not limited to counterclaims,
5 cross-claims, and third-party claims, in any legal proceeding to enforce
6 the provisions of this article or of the declaration, bylaws, articles, or
7 rules and regulations: ~~the court shall award to the party prevailing on
8 such claim the prevailing party's reasonable collection costs and attorney
9 fees and costs incurred in asserting or defending the claim.~~

10 (I) IF THE COURT FINDS A VIOLATION OF THIS ARTICLE OR OF THE
11 DECLARATION, BYLAWS, ARTICLES, OR RULES AND REGULATIONS, THE
12 COURT SHALL AWARD THE PREVAILING PARTY ITS COSTS AND REASONABLE
13 ATTORNEY FEES; AND

14 (II) IF THE COURT DOES NOT FIND A VIOLATION OF THIS SECTION,
15 IT SHALL AWARD COSTS AND REASONABLE ATTORNEY FEES TO THE
16 PREVAILING PARTY ONLY IF THE COURT FINDS THAT THE ACTION WAS
17 FRIVOLOUS, VEXATIOUS, OR GROUNDLESS."

18 Renumber succeeding sections accordingly.

19 Page 8, line 27, strike "**Identity**" and substitute "**Public disclosures**
20 **required - identity**".

21 Page 9, line 1, before "THE", insert "(1)";

22 strike lines 14 through 25 and substitute the following:

23 "(2) WITHIN NINETY DAYS AFTER ASSUMING CONTROL FROM THE
24 DECLARANT PURSUANT TO SECTION 38-33.3-303 (5), AND WITHIN NINETY
25 DAYS AFTER THE END OF EACH FISCAL YEAR THEREAFTER, THE
26 ASSOCIATION SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO
27 UNIT OWNERS UPON REASONABLE NOTICE IN ACCORDANCE WITH
28 SUBSECTION (3) OF THIS SECTION:

29 (a) THE DATE ON WHICH ITS FISCAL YEAR COMMENCES;

30 (b) ITS OPERATING BUDGET FOR THE CURRENT FISCAL YEAR;

31 (c) A LIST, BY UNIT TYPE, OF THE ASSOCIATION'S CURRENT

1 ASSESSMENTS, INCLUDING BOTH REGULAR AND SPECIAL ASSESSMENTS;

2 (d) ITS ANNUAL FINANCIAL STATEMENTS, INCLUDING ANY
3 AMOUNTS HELD IN RESERVE FOR THE FISCAL YEAR IMMEDIATELY
4 PRECEDING THE CURRENT ANNUAL DISCLOSURE;

5 (e) THE RESULTS OF ANY FINANCIAL AUDIT OR REVIEW FOR THE
6 FISCAL YEAR IMMEDIATELY PRECEDING THE CURRENT ANNUAL
7 DISCLOSURE;

8 (f) A LIST OF ALL ASSOCIATION INSURANCE POLICIES, INCLUDING,
9 BUT NOT LIMITED TO, PROPERTY, GENERAL LIABILITY, ASSOCIATION
10 DIRECTOR AND OFFICER PROFESSIONAL LIABILITY, AND FIDELITY POLICIES.
11 SUCH LIST SHALL INCLUDE THE COMPANY NAMES, POLICY LIMITS, POLICY
12 DEDUCTIBLES, ADDITIONAL NAMED INSUREDS, AND EXPIRATION DATES OF
13 THE POLICIES LISTED.

14 (g) ALL THE ASSOCIATION'S BYLAWS, ARTICLES, AND RULES AND
15 REGULATIONS;

16 (h) THE MINUTES OF THE EXECUTIVE BOARD AND MEMBER
17 MEETINGS FOR THE FISCAL YEAR IMMEDIATELY PRECEDING THE CURRENT
18 ANNUAL DISCLOSURE; AND

19 (i) THE ASSOCIATION'S RESPONSIBLE GOVERNANCE POLICIES
20 ADOPTED UNDER SECTION 38-33.3-209.5.

21 (3) IT IS THE INTENT OF THIS SECTION TO ALLOW THE ASSOCIATION
22 THE WIDEST POSSIBLE LATITUDE IN METHODS AND MEANS OF DISCLOSURE,
23 WHILE REQUIRING THAT THE INFORMATION BE READILY AVAILABLE AT NO
24 COST TO UNIT OWNERS AT THEIR CONVENIENCE. DISCLOSURE SHALL BE
25 ACCOMPLISHED BY ONE OF THE FOLLOWING MEANS: POSTING ON AN
26 INTERNET WEB PAGE WITH ACCOMPANYING NOTICE OF THE WEB ADDRESS
27 VIA FIRST-CLASS MAIL OR E-MAIL; THE MAINTENANCE OF A LITERATURE
28 TABLE OR BINDER AT THE ASSOCIATION'S PRINCIPAL PLACE OF BUSINESS;
29 OR MAIL OR PERSONAL DELIVERY. THE COST OF SUCH DISTRIBUTION SHALL
30 BE ACCOUNTED FOR AS A COMMON EXPENSE LIABILITY.

31 **38-33.3-209.5. Responsible governance policies.** (1) To
32 PROMOTE RESPONSIBLE GOVERNANCE, ASSOCIATIONS SHALL:

33 (a) MAINTAIN ACCOUNTING RECORDS USING GENERALLY ACCEPTED
34 ACCOUNTING PRINCIPLES; AND

1 (b) ADOPT POLICIES, PROCEDURES, AND RULES AND REGULATIONS
2 CONCERNING:

3 (I) COLLECTION OF UNPAID ASSESSMENTS;

4 (II) HANDLING OF CONFLICTS OF INTEREST INVOLVING BOARD
5 MEMBERS;

6 (III) CONDUCT OF MEETINGS, WHICH MAY REFER TO APPLICABLE
7 PROVISIONS OF THE NONPROFIT CODE OR OTHER RECOGNIZED RULES AND
8 PRINCIPLES;

9 (IV) ENFORCEMENT OF COVENANTS AND RULES, INCLUDING
10 NOTICE AND HEARING PROCEDURES AND THE SCHEDULE OF FINES;

11 (V) INSPECTION AND COPYING OF ASSOCIATION RECORDS BY UNIT
12 OWNERS;

13 (VI) INVESTMENT OF RESERVE FUNDS; AND

14 (VII) PROCEDURES FOR THE ADOPTION AND AMENDMENT OF
15 POLICIES, PROCEDURES, AND RULES.

16 **38-33.3-209.6. Executive board member education.** THE BOARD
17 MAY AUTHORIZE, AND ACCOUNT FOR AS A COMMON EXPENSE,
18 REIMBURSEMENT OF BOARD MEMBERS FOR THEIR ACTUAL AND NECESSARY
19 EXPENSES INCURRED IN ATTENDING EDUCATIONAL MEETINGS AND
20 SEMINARS ON RESPONSIBLE GOVERNANCE OF UNIT OWNERS' ASSOCIATIONS.

21 **SECTION 7.** 38-33.3-217 (1), Colorado Revised Statutes, is
22 amended to read:

23 **38-33.3-217. Amendment of declaration.** (1) (a) Except in
24 cases of amendments that may be executed by a declarant under section
25 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,
26 or 38-33.3-222, by an association under section 38-33.3-107, 38-33.3-206
27 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and
28 (12), or by the district court for any county that includes all or any
29 portion of a common interest community under subsection (7) of this
30 section, and except as limited by subsection (4) of this section, the
31 declaration, including the plats and maps, may be amended only by THE
32 AFFIRMATIVE vote or agreement of unit owners of units to which more

1 than fifty percent of the votes in the association are allocated or any
2 larger percentage, NOT TO EXCEED SIXTY-SEVEN PERCENT, THAT the
3 declaration specifies. ANY PROVISION IN THE DECLARATION THAT
4 PURPORTS TO SPECIFY A PERCENTAGE LARGER THAN SIXTY-SEVEN PERCENT
5 IS HEREBY DECLARED VOID AS CONTRARY TO PUBLIC POLICY, AND UNTIL
6 AMENDED, SUCH PROVISION SHALL BE DEEMED TO SPECIFY A PERCENTAGE
7 OF SIXTY-SEVEN PERCENT. The declaration may specify a smaller
8 percentage THAN A SIMPLE MAJORITY only if all of the units are restricted
9 exclusively to nonresidential use.

10 (b) IF THE DECLARATION REQUIRES FIRST MORTGAGEES TO
11 APPROVE OR CONSENT TO AMENDMENTS, THE ASSOCIATION SHALL SEND A
12 DATED, WRITTEN NOTICE AND A COPY OF ANY PROPOSED AMENDMENT BY
13 CERTIFIED MAIL TO EACH FIRST MORTGAGEE AT ITS MOST RECENT ADDRESS
14 AS SHOWN ON THE RECORDED DEED OF TRUST OR RECORDED ASSIGNMENT
15 THEREOF. IN ADDITION, THE ASSOCIATION SHALL CAUSE THE DATED
16 NOTICE AND THE PROPOSED AMENDMENT TO BE PRINTED IN FULL AT LEAST
17 TWICE, ON SEPARATE OCCASIONS AT LEAST ONE WEEK APART, IN A
18 NEWSPAPER OF GENERAL CIRCULATION IN THE COUNTY IN WHICH THE
19 COMMON INTEREST COMMUNITY IS LOCATED. A FIRST MORTGAGEE THAT
20 DOES NOT DELIVER TO THE ASSOCIATION A NEGATIVE RESPONSE WITHIN
21 SIXTY DAYS AFTER THE DATE OF THE NOTICE SHALL BE DEEMED TO HAVE
22 APPROVED THE PROPOSED AMENDMENT.

23 **SECTION 8.** Part 2 of article 33.3 of title 38, Colorado Revised
24 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
25 SECTIONS to read:".

26 Renumber succeeding sections accordingly.

27 Page 10, line 21, strike "SEVERELY IMPACT" and substitute
28 "SUBSTANTIALLY IMPAIR THE ABILITY OF";

29 strike line 23 and substitute the following:

30 "ASSOCIATION TO:

31 (I) ENFORCE EXISTING COVENANTS;

32 (II) MAINTAIN EXISTING FACILITIES; OR

33 (III) CONTINUE TO EXIST."

1 Page 11, line 5, strike "OBJECTION";

2 after line 16, insert the following:

3 "(2) THE ASSOCIATION SHALL USE ITS BEST EFFORTS TO
4 ACCOMMODATE A REQUEST BY THE SELLER FOR DOCUMENTS THAT ARE
5 WITHIN THE ASSOCIATION'S CONTROL, IN ACCORDANCE WITH SECTION
6 38-33.3-317.";

7 line 17, strike "(2)" and substitute "(3)";

8 line 20, strike "TITLE" and substitute "GOVERNING DOCUMENTS";

9 line 23, strike "TITLE" and substitute "GOVERNING DOCUMENTS";

10 after line 26, insert the following:

11 "(4) THE TIME PERIODS SPECIFIED IN THIS SECTION MAY BE
12 ALTERED BY MUTUAL AGREEMENT OF THE PARTIES."

13 Page 12, line 27, after "(3)", insert "(a)".

14 Page 13, after line 3, insert the following:

15 "(b) DECISIONS CONCERNING THE APPROVAL OR DENIAL OF A UNIT
16 OWNER'S APPLICATION FOR ARCHITECTURAL OR LANDSCAPING CHANGES
17 SHALL BE MADE IN ACCORDANCE WITH STANDARDS AND PROCEDURES SET
18 FORTH IN DULY ADOPTED BYLAWS OF THE ASSOCIATION, AND SHALL NOT
19 BE MADE ARBITRARILY OR CAPRICIOUSLY."

20 Page 14, strike lines 3 through 14 and substitute the following:

21 "(b) (I) THE BOOKS AND RECORDS OF THE ASSOCIATION SHALL BE
22 SUBJECT TO AN AUDIT, USING GENERALLY ACCEPTED AUDITING
23 STANDARDS, OR A REVIEW, USING STATEMENTS ON STANDARDS FOR
24 ACCOUNTING AND REVIEW SERVICES, AT LEAST ONCE EVERY TWO YEARS
25 BY A PERSON SELECTED BY THE EXECUTIVE BOARD. SUCH PERSON NEED
26 NOT BE A CERTIFIED PUBLIC ACCOUNTANT EXCEPT IN THE CASE OF AN
27 AUDIT.

28 (II) AN AUDIT SHALL BE REQUIRED UNDER THIS PARAGRAPH (b)
29 ONLY WHEN BOTH OF THE FOLLOWING CONDITIONS ARE MET:

1 (A) THE ASSOCIATION HAS ANNUAL REVENUES OR EXPENDITURES
2 OF AT LEAST TWO HUNDRED FIFTY THOUSAND DOLLARS; AND

3 (B) AN AUDIT IS REQUESTED BY THE OWNERS OF AT LEAST
4 ONE-THIRD OF THE UNITS REPRESENTED BY THE ASSOCIATION.

5 (III) COPIES OF AN AUDIT OR REVIEW UNDER THIS PARAGRAPH (b)
6 SHALL BE MADE AVAILABLE UPON REQUEST TO ANY UNIT OWNER
7 BEGINNING NO LATER THAN THIRTY DAYS AFTER ITS COMPLETION."

8 Page 16, strike lines 16 through 21 and substitute the following:

9 "(4.5) UPON THE FINAL RESOLUTION OF ANY MATTER FOR WHICH
10 THE BOARD RECEIVED LEGAL ADVICE OR THAT CONCERNED PENDING OR
11 CONTEMPLATED LITIGATION, THE BOARD MAY ELECT TO PRESERVE THE
12 ATTORNEY-CLIENT PRIVILEGE IN ANY APPROPRIATE MANNER, OR IT MAY
13 ELECT TO DISCLOSE SUCH INFORMATION, AS IT DEEMS APPROPRIATE,
14 ABOUT SUCH MATTER IN AN OPEN MEETING."

15 Page 19, after line 26, insert the following:

16 "SECTION 16. 38-33.3-316 (8), Colorado Revised Statutes, is
17 amended to read:

18 **38-33.3-316. Lien for assessments.** (8) The association shall
19 furnish to a unit owner, ~~or such~~ THE unit owner's designee, AN ESCROW
20 AGENT, A TITLE INSURANCE AGENT, ~~or to~~ a holder of a security interest or
21 its designee upon written request, delivered personally or by certified
22 mail, first-class postage prepaid, return receipt, to the association's
23 registered agent, a written statement setting forth the amount of unpaid
24 assessments currently levied against such owner's unit. The statement
25 shall be furnished within fourteen calendar days after receipt of the
26 request and is binding on the association, the executive board, and every
27 unit owner. If no statement is furnished to the ~~unit owner or holder of a~~
28 ~~security interest or his or her designee~~ INQUIRING PARTY, delivered
29 personally or by certified mail, first-class postage prepaid, return receipt
30 requested, ~~to the inquiring party~~, then the association shall have no right
31 to assert a lien upon the unit for unpaid assessments which were due as
32 of the date of the request."

33 Renumber succeeding sections accordingly.

1 Page 20, line 26, strike "REASONABLE";
2 line 27, strike "TWENTY-FIVE CENTS" and substitute "THE ASSOCIATION'S
3 ACTUAL COST".
4 Page 21, line 4, strike "DAYS OR LESS," and substitute "DAYS,".
5 Page 22, strike lines 26 and 27.
6 Page 23, strike lines 1 through 24 and substitute the following:

7 **"38-35.7-102. Disclosure - common interest community -**
8 **requirement for architectural approval.** (1) IN EVERY PURCHASE AND
9 SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON INTEREST
10 COMMUNITY:

11 (a) THE SELLER SHALL CAUSE TO BE FURNISHED TO THE BUYER, AT
12 THE SELLER'S EXPENSE, ALL DOCUMENTS REQUIRED BY SECTION
13 38-33.3-223 AT LEAST TEN DAYS BEFORE CLOSING IN THE CASE OF A SALE
14 BY OWNER OR WITHIN THE TIME LIMITS SET FORTH IN SECTION 38-33.3-223
15 IN THE CASE OF A BROKERED TRANSACTION.

16 (b) (I) THE SELLER SHALL PROVIDE THE BUYER WITH A DISCLOSURE
17 STATEMENT IN BOLD-FACED TYPE THAT IS CLEARLY LEGIBLE AND IN
18 SUBSTANTIALLY THE FOLLOWING FORM:

19 **"THE BUYER UNDERSTANDS THAT ANY**
20 **CHANGES OR ADDITIONS TO THE PROPERTY**
21 **MAY BE SUBJECT TO ARCHITECTURAL**
22 **REVIEW AND APPROVAL BY THE COMMON**
23 **INTEREST COMMUNITY. THE BUYER**
24 **UNDERSTANDS THAT FAILURE TO SECURE**
25 **SUCH REVIEW AND APPROVAL MAY BE**
26 **DEEMED A VIOLATION OF THE GOVERNING**
27 **DECLARATIONS AND RESULT IN REMEDIAL**
28 **ACTION BEING TAKEN AGAINST THE BUYER BY**
29 **THE COMMON INTEREST COMMUNITY."**

30 (II) IT SHALL BE THE RESPONSIBILITY OF THE SELLER TO OBTAIN
31 FROM THE PURCHASER A SIGNED ACKNOWLEDGMENT OF RECEIPT OF THE
32 INFORMATION AND DISCLOSURE STATEMENT DESCRIBED IN THIS SECTION,
33 WHETHER SUCH ACKNOWLEDGMENT IS INCORPORATED IN THE CONTRACT

1 OF PURCHASE AND SALE OR OTHERWISE, AT THE TIME OF CLOSING AND TO
2 DELIVER SUCH SIGNED ACKNOWLEDGMENT TO THE ASSOCIATION AS SOON
3 AS IS PRACTICABLE THEREAFTER. IN THE".

4 Page 24, strike line 4 and substitute the following:

5 "are amended, and the said 10-4-110.8 is further amended BY THE
6 ADDITION OF A NEW SUBSECTION, to read:";

7 after line 11, insert the following:

8 "(b) "CLEAN CLAIM" MEANS A CLAIM FOR DAMAGE IN WHICH THE
9 INSURED HAS PROVIDED A STREET ADDRESS AND A GENERAL DESCRIPTION
10 OF THE TYPE OF DAMAGE AND, IF AN ADEQUATE INSPECTION OF THE
11 DAMAGE CANNOT BE COMPLETED WITHOUT ACCESS TO THE INTERIOR OF A
12 STRUCTURE, THE INSURED HAS MADE REASONABLE EFFORTS TO PROVIDE
13 THE INSURER ACCESS TO THE INTERIOR OF THE STRUCTURE.";

14 line 12, strike "(b)" and substitute "(c)";

15 strike lines 16 through 20 and substitute the following:

16 "~~(4) (a) For the purposes of this section, "inquiry" means a request~~
17 ~~for information regarding the terms, conditions, or coverages afforded~~
18 ~~under an insurance contract.~~ CLEAN CLAIMS FOR DAMAGE TO PROPERTY
19 LOCATED IN A COMMON INTEREST COMMUNITY, AS DEFINED IN SECTION
20 38-33.3-103 (8), C.R.S., SHALL BE PAID, DENIED, OR SETTLED WITHIN
21 THIRTY CALENDAR DAYS AFTER RECEIPT BY THE INSURER OR, IF THE
22 INSURER REQUIRES ACCESS TO THE INTERIOR OF THE STRUCTURE TO
23 CONDUCT AN INSPECTION, WITHIN THIRTY CALENDAR DAYS AFTER THE
24 INSURED HAS MADE REASONABLE EFFORTS TO PROVIDE THE INSURER
25 ACCESS TO THE INTERIOR OF THE STRUCTURE.

26 (b) IF AN INSURER REFUSES TO PAY ALL OR PART OF A CLAIM ON
27 THE BASIS THAT THE DAMAGE IS THE RESPONSIBILITY OF ANOTHER
28 PROPERTY OWNER IN THE COMMON INTEREST COMMUNITY, INCLUDING,
29 WITHOUT LIMITATION, THE UNIT OWNERS' ASSOCIATION, THE INSURER
30 SHALL, WITHIN FOURTEEN CALENDAR DAYS AFTER SUCH REFUSAL, USE ITS
31 BEST EFFORTS TO CONTACT SUCH OTHER PROPERTY OWNER OR THE
32 PROPERTY OWNER'S INSURER, OR BOTH, AND RELAY TO SUCH OTHER
33 PROPERTY OWNER OR INSURER ALL RELEVANT FACTS CONCERNING THE
34 CLAIM.

1 (c) THIS SUBSECTION (4) SHALL NOT BE CONSTRUED TO LIMIT OR
2 ALTER AN INSURER'S SUBSTANTIVE RIGHTS UNDER AN INSURANCE POLICY
3 OR OTHERWISE, INCLUDING, WITHOUT LIMITATION:

4 (I) THE INSURER'S ULTIMATE RESPONSIBILITY TO COVER ANY
5 SPECIFIC ITEM OR TYPE OF DAMAGE;

6 (II) DEDUCTIBLES;

7 (III) THE INSURER'S RIGHTS OF SUBROGATION; OR

8 (IV) ANY ALLOCATION OR APPORTIONMENT OF DAMAGES.

9 (5) (a) AN INSURER THAT FAILS TO PAY, DENY, OR SETTLE A CLEAN
10 CLAIM IN ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (4) OF THIS
11 SECTION OR TAKE OTHER REQUIRED ACTION WITHIN THE TIME PERIOD SET
12 FORTH IN PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION SHALL BE
13 LIABLE FOR PAYMENT IN ACCORDANCE WITH THE POLICY AND, IN
14 ADDITION, SHALL PAY TO THE INSURED INTEREST AT THE RATE OF TEN
15 PERCENT ANNUALLY ON THE TOTAL AMOUNT ULTIMATELY ALLOWED ON
16 THE CLAIM, ACCRUING FROM THE DATE PAYMENT WAS DUE PURSUANT TO
17 SUBSECTION (4) OF THIS SECTION.

18 (b) AN INSURER THAT FAILS TO PAY, DENY, OR SETTLE A CLAIM IN
19 ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION WITHIN NINETY DAYS
20 AFTER RECEIVING THE CLAIM SHALL PAY TO THE INSURED A PENALTY IN AN
21 AMOUNT EQUAL TO TEN PERCENT OF THE TOTAL AMOUNT ULTIMATELY
22 ALLOWED ON THE CLAIM. SUCH PENALTY SHALL BE IMPOSED ON THE
23 NINETY-FIRST DAY AFTER RECEIPT OF THE CLAIM BY THE INSURER.

24 (c) IF AN INSURER DELEGATES ITS CLAIMS PROCESSING FUNCTIONS
25 TO A THIRD PARTY, THE DELEGATION AGREEMENT SHALL PROVIDE THAT
26 THE CLAIMS PROCESSING ENTITY SHALL COMPLY WITH THE REQUIREMENTS
27 OF THIS SECTION. ANY DELEGATION BY THE INSURER SHALL NOT BE
28 CONSTRUED TO LIMIT THE INSURER'S RESPONSIBILITY TO COMPLY WITH
29 THIS SECTION OR ANY OTHER APPLICABLE SECTION OF THIS ARTICLE.

30
31 (d) THE COMMISSIONER MAY INVESTIGATE COMPLAINTS AGAINST
32 AN INSURER RELATED TO VIOLATIONS OF THIS SECTION.

33 **SECTION 20. Effective date - applicability.** (1) Sections 1 and
34 2 of this act shall take effect upon passage, and the remainder of this act
35 shall take effect January 1, 2006.

1 (2) This act shall apply to acts, occurrences, events, and
2 circumstances arising on or after the applicable effective date of this act;
3 except that this act shall not apply to common interest communities:

4 (a) In which no more than twenty-five percent of the units are
5 occupied on a full-time basis as the unit owners' primary residences; or

6 (b) That consist of time-share units, as defined in section
7 38-33-110 (7), Colorado Revised Statutes.

8 (3) Except as otherwise provided in paragraphs (a) and (b) of
9 subsection (2) of this section, and notwithstanding any provision of
10 sections 38-33.3-115 to 38-33.3-120.5, Colorado Revised Statutes, to the
11 contrary, this act shall apply to all common interest communities
12 regardless of when they were created."

13 Renumber succeeding section accordingly.

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