

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 09-0961.01 Duane Gall

HOUSE BILL 09-1359

HOUSE SPONSORSHIP

Kerr A.,

SENATE SPONSORSHIP

Boyd,

House Committees
Local Government

Senate Committees
Business, Labor and Technology

A BILL FOR AN ACT

101 **CONCERNING THE GOVERNANCE OF COMMON INTEREST COMMUNITIES**
102 **UNDER THE "COLORADO COMMON INTEREST OWNERSHIP**
103 **ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires all members of the executive board of a common interest community's unit owners' association (HOA) to receive relevant information related to the HOA's operation. Establishes the same standards for election or appointment as a chair of an HOA committee, to which authority may be delegated, as apply to the election or appointment of members on the executive board.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Am ended 2nd Reading
May 4, 2009

HOUSE
3rd Reading Unam ended
April 27, 2009

HOUSE
Am ended 2nd Reading
April 24, 2009

Requires an HOA to commission a reserve study at least every 3 years and to identify how it proposes to pay for scheduled repair or replacement of reserve assets.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 38-33.3-209.5 (1) (b), Colorado Revised Statutes,
3 is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to
4 read:

5 **38-33.3-209.5. Responsible governance policies - due process**
6 **for imposition of fines.** (1) To promote responsible governance,
7 associations shall:

8 (b) Adopt policies, procedures, and rules and regulations
9 concerning:

10 (IX) WHEN THE ASSOCIATION HAS A RESERVE STUDY PREPARED
11 FOR THE PORTIONS OF THE COMMUNITY MAINTAINED, REPAIRED,
12 REPLACED, AND IMPROVED BY THE ASSOCIATION; WHETHER THERE IS A
13 FUNDING PLAN FOR ANY WORK RECOMMENDED BY THE RESERVE STUDY
14 AND, IF SO, THE PROJECTED SOURCES OF FUNDING FOR THE WORK; AND
15 WHETHER THE RESERVE STUDY IS BASED ON A PHYSICAL ANALYSIS AND
16 FINANCIAL ANALYSIS. FOR THE PURPOSES OF THIS SUBPARAGRAPH (IX),
17 AN INTERNALLY CONDUCTED RESERVE STUDY SHALL BE SUFFICIENT.

18 **SECTION 2.** 38-33.3-303 (1) and (3), Colorado Revised Statutes,
19 are amended to read:

20 **38-33.3-303. Executive board members and officers - powers**
21 **and duties - reserve funds - reserve study - audit.** (1) (a) Except as
22 provided in the declaration, the bylaws, or subsection (3) of this section
23 or any other provisions of this article, the executive board may act in all
24 instances on behalf of the association.

1 (b) NOTWITHSTANDING ANY PROVISION OF THE
2 DECLARATION OR BYLAWS TO THE CONTRARY, ALL MEMBERS OF THE
3 EXECUTIVE BOARD SHALL HAVE AVAILABLE TO THEM ALL INFORMATION
4 RELATED TO THE RESPONSIBILITIES AND OPERATION OF THE ASSOCIATION
5 OBTAINED BY ANY OTHER MEMBER OF THE EXECUTIVE BOARD. THIS
6 INFORMATION SHALL INCLUDE, BUT IS NOT NECESSARILY LIMITED TO,
7 REPORTS OF DETAILED MONTHLY EXPENDITURES, CONTRACTS TO WHICH
8 THE ASSOCIATION IS A PARTY, AND COPIES OF COMMUNICATIONS, REPORTS,
9 AND OPINIONS TO AND FROM ANY MEMBER OF THE EXECUTIVE BOARD OR
10 ANY MANAGING AGENT, ATTORNEY, OR ACCOUNTANT EMPLOYED OR
11 ENGAGED BY THE EXECUTIVE BOARD TO WHOM THE EXECUTIVE BOARD
12 DELEGATES RESPONSIBILITIES UNDER THIS ARTICLE.

13 (3) (a) The executive board may not act on behalf of the
14 association to amend the declaration, to terminate the common interest
15 community, or to elect members of the executive board or determine the
16 qualifications, powers and duties, or terms of office of executive board
17 members, but the executive board may fill vacancies in its membership
18 for the unexpired portion of any term.

19 (b) COMMITTEES OF THE ASSOCIATION SHALL BE APPOINTED
20 PURSUANT TO THE GOVERNING DOCUMENTS OF THE ASSOCIATION OR, IF
21 THE GOVERNING DOCUMENTS CONTAIN NO APPLICABLE PROVISIONS,
22 PURSUANT TO SECTION 7-128-206, C.R.S. THE PERSON APPOINTED AFTER
23 AUGUST 15, 2009, TO PRESIDE OVER ANY SUCH COMMITTEE SHALL MEET
24 THE SAME QUALIFICATIONS AS ARE REQUIRED BY THE GOVERNING
25 DOCUMENTS OF THE ASSOCIATION FOR ELECTION OR APPOINTMENT TO THE
26 EXECUTIVE BOARD OF THE ASSOCIATION.

27 **SECTION 3.** 38-33.3-117 (1), Colorado Revised Statutes, is

1 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2 **38-33.3-117. Applicability to preexisting common interest**
3 **communities.** (1) Except as provided in section 38-33.3-119, the
4 following sections shall apply to all common interest communities created
5 within this state before July 1, 1992, with respect to events and
6 circumstances occurring on or after July 1, 1992:

7 (i.7) 38-33.3-303 (1) (b) AND (3) (b);

8 **SECTION 4.** 38-33.3-117 (1.5) (h), Colorado Revised Statutes,
9 is amended, and the said 38-33.3-117 is further amended BY THE
10 ADDITION OF A NEW SUBSECTION, to read:

11 **38-33.3-117. Applicability to preexisting common interest**
12 **communities.** (1.5) Except as provided in section 38-33.3-119, the
13 following sections shall apply to all common interest communities created
14 within this state before July 1, 1992, with respect to events and
15 circumstances occurring on or after January 1, 2006:

16 (h) ~~38-33.3-303 (4) (b)~~ 38-33.3-303 (1) (b), (3) (b), AND (4) (b);

17 (1.7) EXCEPT AS PROVIDED IN SECTION 38-33.3-119, SECTION
18 38-33.3-209.5 (1) (b) (IX) SHALL APPLY TO ALL COMMON INTEREST
19 COMMUNITIES CREATED WITHIN THIS STATE BEFORE JULY 1, 1992, WITH
20 RESPECT TO EVENTS AND CIRCUMSTANCES OCCURRING ON OR AFTER JULY
21 1, 2010.

22 **SECTION 5. Act subject to petition - effective date -**
23 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
24 following the expiration of the ninety-day period after final adjournment
25 of the general assembly that is allowed for submitting a referendum
26 petition pursuant to article V, section 1 (3) of the state constitution,
27 (August 5, 2009, if adjournment sine die is on May 6, 2009); except that,

1 if a referendum petition is filed against this act or an item, section, or part
2 of this act within such period, then the act, item, section, or part, if
3 approved by the people, shall take effect on the date of the official
4 declaration of the vote thereon by proclamation of the governor.

5 (2) The provisions of this act shall apply to acts occurring on or
6 after the applicable effective date of this act.