

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

ENGROSSED

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

LLS NO. 11-0327.01 Duane Gall

HOUSE BILL 11-1110

HOUSE SPONSORSHIP

Acree, Balmer, Holbert, Massey, Murray, Solano

SENATE SPONSORSHIP

Harvey, Carroll, Renfro

House Committees

Economic and Business Development

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE RIGHTS OF MEMBERS OF NONPROFIT CORPORATIONS**
102 **IN WHICH RESIDENCY IS A QUALIFICATION FOR MEMBERSHIP.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current laws governing common interest communities give homeowners the right to attend meetings of the executive board, to receive notice of such meetings, and to have a reasonable opportunity to speak concerning matters that the board will take action on. However, these provisions do not currently apply to nonprofit corporations that

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.

HOUSE
Amended 2nd Reading
February 7, 2011

operate residential housing developments, including retirement communities, in which membership is offered to persons who reside in the development.

Section 1 of the bill defines terms. **Section 3** adopts provisions similar to those governing common interest communities, requiring all residential members of a residential nonprofit corporation to be given notice of board of directors meetings, to attend, and to have a reasonable opportunity to speak concerning matters that the board will take action on. The bill allows the board to go into executive session to discuss specific topics such as personnel matters, pending litigation, and matters involving the personal privacy of individuals. The board is prohibited from making changes to the articles of incorporation or bylaws in an executive session.

Section 2 of the bill requires a residential nonprofit corporation to refund the entrance fee to a residential member or his or her estate within 90 days after the member ceases to be a residential member, and absolves the member and his or her heirs of liability for periodic payments after 30 days if the termination of the membership was due to the member's death or other reasons beyond his or her control.

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

2 **SECTION 1.** 7-121-401, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS to
4 read:

5 **7-121-401. General definitions.** As used in articles 121 to 137
6 of this title, unless the context otherwise requires:

7 (16.5) "ENTRANCE FEE" MEANS ANY FEE OR CHARGE, INCLUDING
8 A DAMAGE DEPOSIT, PAID BY A PERSON TO A RESIDENTIAL NONPROFIT
9 CORPORATION IN ORDER TO BECOME A RESIDENT MEMBER. "ENTRANCE
10 FEE" DOES NOT INCLUDE REGULAR PERIODIC PAYMENTS FOR THE
11 PURCHASE OR LEASE OF RESIDENTIAL REAL ESTATE OR FOR THE
12 DAY-TO-DAY USE OF FACILITIES OR SERVICES.

13 (32.5) "RESIDENTIAL MEMBER" MEANS A MEMBER OF A
14 RESIDENTIAL NONPROFIT CORPORATION WHOSE STATUS AS A MEMBER IS

1 DEPENDENT UPON, OR WHOSE MEMBERSHIP IS ACCORDED VOTING RIGHTS
2 AS A RESULT OF, OWNING OR LEASING SPECIFIED RESIDENTIAL REAL
3 ESTATE.

4 (33.5) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF
5 THIS SUBSECTION (33.5), "RESIDENTIAL NONPROFIT CORPORATION" MEANS
6 A NONPROFIT CORPORATION THAT HAS RESIDENTIAL MEMBERS.

7 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION
8 (33.5), "RESIDENTIAL NONPROFIT CORPORATION" DOES NOT INCLUDE:

9 (I) A UNIT OWNERS' ASSOCIATION OR ANY OTHER ENTITY SUBJECT
10 TO THE "COLORADO COMMON INTEREST OWNERSHIP ACT", ARTICLE 33.3
11 OF TITLE 38, C.R.S., REGARDLESS OF WHETHER IT WAS FORMED BEFORE,
12 ON, OR AFTER JULY 1, 1992;

13 (II) A NURSING CARE FACILITY LICENSED BY THE DEPARTMENT OF
14 PUBLIC HEALTH AND ENVIRONMENT UNDER SECTION 25-3-101, C.R.S.;

15 (III) AN ASSISTED LIVING RESIDENCE LICENSED UNDER SECTION
16 25-3-101, C.R.S.;

17 (IV) A LIFE CARE INSTITUTION REGULATED UNDER ARTICLE 13 OF
18 TITLE 12, C.R.S.; OR

19 (V) A CONTINUING CARE RETIREMENT COMMUNITY REGULATED
20 UNDER ____.

21 **SECTION 2.** Part 3 of article 126 of title 7, Colorado Revised
22 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
23 read:

24 **7-126-304. Residential membership - return of consideration**
25 **- cessation of periodic payments - time limits.** (1) NOTWITHSTANDING
26 ANY PROVISION OF THE ARTICLES OF INCORPORATION OR BYLAWS TO THE
27 CONTRARY:

1 (a) A RESIDENTIAL NONPROFIT CORPORATION SHALL REFUND THE
2 ENTRANCE FEE OF A RESIDENTIAL MEMBER TO THE MEMBER OR HIS OR HER
3 HEIRS WITHIN NINETY DAYS AFTER THE MEMBER'S RESIGNATION,
4 TERMINATION, EXPULSION, OR SUSPENSION FROM THE CORPORATION OR
5 THE TRANSFER OF THE RESIDENTIAL MEMBERSHIP.

6 (b) IF THE MEMBERSHIP OF A RESIDENTIAL MEMBER IS TERMINATED
7 DUE TO THE MEMBER'S DEATH OR FOR ANY OTHER REASON BEYOND THE
8 MEMBER'S CONTROL, THE MEMBER OR HIS OR HER HEIRS ARE NOT LIABLE
9 FOR ANY PERIODIC PAYMENTS COMING DUE MORE THAN THIRTY DAYS
10 AFTER THE EFFECTIVE DATE OF THE TERMINATION.

11 **SECTION 3.** 7-128-203, Colorado Revised Statutes, is amended
12 BY THE ADDITION OF A NEW SUBSECTION to read:

13 **7-128-203. Notice of meeting - rights of residential members.**

14 (3) NOTWITHSTANDING SUBSECTIONS (1) AND (2) OF THIS SECTION, AND
15 NOTWITHSTANDING ANY PROVISION OF THE ARTICLES OF INCORPORATION
16 OR BYLAWS TO THE CONTRARY, THE FOLLOWING RULES AND PROCEDURES
17 APPLY TO MEETINGS OF THE BOARD OF DIRECTORS OF A RESIDENTIAL
18 NONPROFIT CORPORATION OR ANY COMMITTEE OF THE BOARD:

19 (a) (I) ALL REGULAR AND SPECIAL MEETINGS OF THE RESIDENTIAL
20 NONPROFIT CORPORATION'S BOARD OF DIRECTORS, OR ANY COMMITTEE OF
21 THE BOARD, MUST BE OPEN TO ATTENDANCE BY ALL RESIDENTIAL
22 MEMBERS OR THEIR REPRESENTATIVES. THE BOARD SHALL MAKE
23 AGENDAS FOR MEETINGS OF THE BOARD REASONABLY AVAILABLE FOR
24 EXAMINATION BY ALL RESIDENTIAL MEMBERS OR THEIR
25 REPRESENTATIVES.

26 (II) THE RESIDENTIAL NONPROFIT CORPORATION IS ENCOURAGED
27 TO PROVIDE ALL NOTICES AND AGENDAS REQUIRED BY THIS ARTICLE IN

1 ELECTRONIC FORM, BY POSTING ON A WEB SITE OR OTHERWISE, IN
2 ADDITION TO PRINTED FORM. IF SUCH ELECTRONIC MEANS ARE
3 AVAILABLE, THE CORPORATION SHALL PROVIDE NOTICE OF ALL REGULAR
4 AND SPECIAL MEETINGS OF RESIDENTIAL MEMBERS BY ELECTRONIC MAIL
5 TO ALL RESIDENTIAL MEMBERS WHO SO REQUEST AND WHO FURNISH THE
6 CORPORATION WITH THEIR ELECTRONIC MAIL ADDRESSES. ELECTRONIC
7 NOTICE OF A SPECIAL MEETING MUST BE GIVEN AS SOON AS POSSIBLE BUT
8 AT LEAST TWENTY-FOUR HOURS BEFORE THE MEETING.

9 (b) AT AN APPROPRIATE TIME DETERMINED BY THE BOARD OF
10 DIRECTORS, BUT BEFORE THE BOARD VOTES ON AN ISSUE UNDER
11 DISCUSSION, THE BOARD SHALL PERMIT RESIDENTIAL MEMBERS OR THEIR
12 DESIGNATED REPRESENTATIVES TO SPEAK REGARDING THE ISSUE. THE
13 BOARD MAY PLACE REASONABLE TIME RESTRICTIONS ON PERSONS
14 SPEAKING DURING THE MEETING. IF MORE THAN ONE PERSON DESIRES TO
15 ADDRESS AN ISSUE AND THERE ARE OPPOSING VIEWS, THE BOARD SHALL
16 PROVIDE FOR A REASONABLE NUMBER OF PERSONS TO SPEAK ON EACH SIDE
17 OF THE ISSUE.

18 (c) THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE BOARD
19 MAY HOLD AN EXECUTIVE OR CLOSED-DOOR SESSION AND MAY RESTRICT
20 ATTENDANCE TO BOARD MEMBERS AND SUCH OTHER PERSONS REQUESTED
21 BY THE BOARD DURING A REGULAR OR SPECIALLY ANNOUNCED MEETING
22 OR A PART THEREOF. THE MATTERS TO BE DISCUSSED AT SUCH AN
23 EXECUTIVE SESSION MAY INCLUDE ONLY MATTERS ENUMERATED IN
24 PARAGRAPH (d) OF THIS SUBSECTION (3).

25 (d) MATTERS FOR DISCUSSION BY AN EXECUTIVE OR CLOSED
26 SESSION ARE LIMITED TO:

27 (I) MATTERS PERTAINING TO EMPLOYEES OF THE RESIDENTIAL

1 NONPROFIT CORPORATION OR THE MANAGING AGENT'S CONTRACT OR
2 INVOLVING THE EMPLOYMENT, PROMOTION, DISCIPLINE, OR DISMISSAL OF
3 AN OFFICER, AGENT, OR EMPLOYEE OF THE CORPORATION;

4 (II) CONSULTATION WITH LEGAL COUNSEL CONCERNING DISPUTES
5 THAT ARE THE SUBJECT OF PENDING OR IMMINENT COURT PROCEEDINGS OR
6 MATTERS THAT ARE PRIVILEGED OR CONFIDENTIAL BETWEEN ATTORNEY
7 AND CLIENT;

8 (III) INVESTIGATIVE PROCEEDINGS CONCERNING POSSIBLE OR
9 ACTUAL CRIMINAL MISCONDUCT;

10 (IV) MATTERS SUBJECT TO SPECIFIC CONSTITUTIONAL,
11 STATUTORY, OR JUDICIALLY IMPOSED REQUIREMENTS PROTECTING
12 PARTICULAR PROCEEDINGS OR MATTERS FROM PUBLIC DISCLOSURE;

13 (V) ANY MATTER THE DISCLOSURE OF WHICH WOULD CONSTITUTE
14 AN UNWARRANTED INVASION OF INDIVIDUAL PRIVACY;

15 (VI) REVIEW OF OR DISCUSSION RELATING TO ANY WRITTEN OR
16 ORAL COMMUNICATION FROM LEGAL COUNSEL.

17 (e) UPON THE FINAL RESOLUTION OF ANY MATTER FOR WHICH THE
18 BOARD OF DIRECTORS RECEIVED LEGAL ADVICE OR THAT CONCERNED
19 PENDING OR CONTEMPLATED LITIGATION, THE BOARD MAY ELECT TO
20 PRESERVE THE ATTORNEY-CLIENT PRIVILEGE IN ANY APPROPRIATE
21 MANNER, OR IT MAY ELECT TO DISCLOSE SUCH INFORMATION, AS IT DEEMS
22 APPROPRIATE, ABOUT SUCH MATTER IN AN OPEN MEETING.

23 (f) BEFORE THE BOARD OF DIRECTORS OR ANY COMMITTEE OF THE
24 BOARD CONVENES IN EXECUTIVE SESSION, THE CHAIR OF THE BODY SHALL
25 ANNOUNCE THE GENERAL MATTER OF DISCUSSION AS ENUMERATED IN
26 PARAGRAPH (d) OF THIS SUBSECTION (3).

27 (g) THE BOARD OF DIRECTORS SHALL NOT ADOPT ANY CHANGE TO

1 THE RESIDENTIAL NONPROFIT CORPORATION'S ARTICLES OF
2 INCORPORATION OR BYLAWS DURING AN EXECUTIVE SESSION. AN
3 ARTICLES OF INCORPORATION OR BYLAW CHANGE MAY BE VALIDLY
4 ADOPTED ONLY DURING A REGULAR OR SPECIAL MEETING OR AFTER THE
5 BOARD OF DIRECTORS GOES BACK INTO REGULAR SESSION FOLLOWING AN
6 EXECUTIVE SESSION.

7 (h) THE MINUTES OF ALL MEETINGS AT WHICH AN EXECUTIVE
8 SESSION WAS HELD MUST INDICATE THAT AN EXECUTIVE SESSION WAS
9 HELD AND THE GENERAL SUBJECT MATTER OF THE EXECUTIVE SESSION.

10 **SECTION 4. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.