

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 05-0134.01 Duane Gall

SENATE BILL 05-100

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Carroll M.,

Senate Committees
State, Veterans & Military Affairs

House Committees
Local Government

A BILL FOR AN ACT

101 **CONCERNING INCREASED PROTECTION FOR HOMEOWNERS.**

Bill Summary

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

Prohibits the homeowners' association (HOA) of a common interest community from adopting rules that prevent a homeowner from:
Displaying an American flag or political sign; or
Parking an emergency vehicle in the community, if the homeowner is employed by a fire department or other provider of emergency services and must have ready access to the vehicle as a condition of employment.

Invalidates any new or existing covenant or condition that prohibits xeriscape or requires landscaping to include turf grass.

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
3rd Reading Unamended
February 28, 2005

SENATE
Amended 2nd Reading
February 25, 2005

Limits the availability of foreclosure to an HOA seeking to enforce a lien for fines and other charges imposed under community covenants. Invalidates covenant provisions that purport to waive a homeowner's rights under homestead laws.

Requires the buyer of a home in a community subject to an HOA to receive notice and documentation regarding the ability of the HOA to place a lien on the property for unpaid assessments and an up-to-date accounting of the HOA's financial condition including any unpaid assessments, fines, or known covenant violations applicable to the property. Requires the HOA to furnish information on unpaid assessments to an escrow agent upon request. Makes any such disclosure to a licensed escrow agent binding on the HOA.

Requires the HOA to furnish to all homeowners in writing, at least once per year:

Current contact information for the HOA and its management company or agent; and

The results of its most recent annual financial audit, which must be conducted by a certified public accountant.

Supersedes any provision of the bylaws or corporation statutes that would require a specific number or percentage of homeowners to join in any lawsuit challenging corporate action by the HOA.

Enacts open meeting provisions for the executive board of the HOA. Requires the board to give homeowners a reasonable opportunity to speak before taking action on a community issue.

Enacts conflict-of-interest rules for board members. Invalidates any action taken, and any contract entered into, in which a board member has an undisclosed conflict of interest.

Requires 90 days' written notice to all homeowners before community assets may be sold or encumbered.

Enacts open records requirements for books and records of the HOA. Allows the HOA to charge a reasonable fee, not to exceed 25¢ per page, for copies. Requires that a records request be made in good faith, for a proper purpose, and adequately describe the records that are sought. Exempts privileged information such as that pertaining to pending litigation or personnel matters.

When a homeowner submits a claim concerning injury occurring on or damage to the owner's property:

Prohibits the insurance carrier from denying coverage on the basis that the injury or damage actually occurred on or to a third party's property;

Requires the insurance carrier to promptly settle the owner's claim without considering whether the responsibility for payment should be assumed by a third party; and

Allows the carrier to pursue a subrogation claim against

such a third party after making the settlement.

Specifies that if the carrier's subrogation claim is successful, the homeowner must pay the amount of the settlement to the proper beneficiary.

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

2 **SECTION 1.** 37-60-126 (11), Colorado Revised Statutes, is
3 amended to read:

4 **37-60-126. Water conservation and drought mitigation**
5 **planning - programs - relationship to state assistance for water**
6 **facilities - guidelines.** (11) (a) Any new restrictive covenant that
7 prohibits or limits XERISCAPE, PROHIBITS OR LIMITS the installation or use
8 of drought-tolerant vegetative landscapes, ~~is prohibited~~ OR REQUIRES
9 CULTIVATED VEGETATION TO CONSIST EXCLUSIVELY OR PRIMARILY OF
10 TURF GRASS IS HEREBY DECLARED CONTRARY TO PUBLIC POLICY AND ON
11 THAT BASIS SHALL BE VOID AND UNENFORCEABLE.

12 (b) As used in this subsection (11):

13 (I) "EXECUTIVE BOARD POLICY OR PRACTICE" INCLUDES ANY
14 ADDITIONAL PROCEDURAL STEP OR BURDEN, FINANCIAL OR OTHERWISE,
15 PLACED ON A UNIT OWNER WHO SEEKS APPROVAL FOR A LANDSCAPING
16 CHANGE BY THE EXECUTIVE BOARD OF A UNIT OWNERS' ASSOCIATION, AS
17 DEFINED IN SECTION 38-33.3-103, C.R.S., AND NOT INCLUDED IN THE
18 EXISTING DECLARATION OR BYLAWS OF THE ASSOCIATION. AN
19 "EXECUTIVE BOARD POLICY OR PRACTICE" INCLUDES, WITHOUT
20 LIMITATION, THE REQUIREMENT OF:

21 (A) AN ARCHITECT'S STAMP;

22 (B) PREAPPROVAL BY AN ARCHITECT OR LANDSCAPE ARCHITECT
23 RETAINED BY THE EXECUTIVE BOARD;

1 (C) AN ANALYSIS OF WATER USAGE UNDER THE PROPOSED NEW
2 LANDSCAPE PLAN OR A HISTORY OF WATER USAGE UNDER THE UNIT
3 OWNER'S EXISTING LANDSCAPE PLAN; AND

4 (D) THE ADOPTION OF A LANDSCAPING CHANGE FEE.

5 (II) "Restrictive covenant" means any covenant, restriction,
6 BYLAW, EXECUTIVE BOARD POLICY OR PRACTICE, or condition applicable
7 to real property for the purpose of controlling land use, but does not
8 include any covenant, restriction, or condition imposed on such real
9 property by any governmental entity.

10 (III) "TURF GRASS" MEANS CONTINUOUS PLANT COVERAGE
11 CONSISTING OF HYBRIDIZED GRASSES THAT, WHEN REGULARLY MOWED,
12 FORM A DENSE GROWTH OF LEAF BLADES AND ROOTS.

13 (IV) "XERISCAPE" MEANS THE APPLICATION OF THE PRINCIPLES OF
14 LANDSCAPE PLANNING AND DESIGN, SOIL ANALYSIS AND IMPROVEMENT,
15 APPROPRIATE PLANT SELECTION, LIMITATION OF TURF AREA, USE OF
16 MULCHES, IRRIGATION EFFICIENCY, AND APPROPRIATE MAINTENANCE THAT
17 RESULTS IN WATER USE EFFICIENCY AND WATER-SAVING PRACTICES.

18 (c) NOTHING IN THIS SUBSECTION (11) SHALL PRECLUDE THE
19 EXECUTIVE BOARD OF A COMMON INTEREST COMMUNITY FROM TAKING
20 ENFORCEMENT ACTION AGAINST A UNIT OWNER WHO ALLOWS HIS OR HER
21 EXISTING LANDSCAPING TO DIE; EXCEPT THAT:

22 (I) SUCH ENFORCEMENT ACTION SHALL BE SUSPENDED DURING A
23 DROUGHT EMERGENCY DECLARED BY THE JURISDICTION IN WHICH THE
24 COMMON INTEREST COMMUNITY IS LOCATED, IN WHICH CASE THE UNIT
25 OWNER SHALL COMPLY WITH ANY WATERING RESTRICTIONS IMPOSED BY
26 THE WATER PROVIDER FOR THE COMMON INTEREST COMMUNITY;

27 (II) ENFORCEMENT SHALL BE CONSISTENT WITHIN THE COMMUNITY

1 AND NOT ARBITRARY OR CAPRICIOUS; AND

2 (III) ONCE THE DROUGHT EMERGENCY IS LIFTED, THE UNIT OWNER
3 SHALL BE ALLOWED A REASONABLE OPPORTUNITY TO RE-SEED AND REVIVE
4 TURF GRASS BEFORE BEING REQUIRED TO REPLACE IT WITH NEW SOD.

5 **SECTION 2.** Part 1 of article 33.3 of title 38, Colorado Revised
6 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
7 read:

8 **38-33.3-106.5. Prohibitions contrary to public policy - patriotic**
9 **and political expression - emergency vehicles - fire prevention -**
10 **definitions.** (1) NOTWITHSTANDING ANY PROVISION IN THE
11 DECLARATION, BYLAWS, OR RULES AND REGULATIONS OF THE
12 ASSOCIATION TO THE CONTRARY, AN ASSOCIATION SHALL NOT PROHIBIT
13 ANY OF THE FOLLOWING:

14 (a) THE DISPLAY OF THE AMERICAN FLAG BY A UNIT OWNER
15 ON THAT UNIT OWNER'S PROPERTY, IN A WINDOW OF THE UNIT OWNER'S
16 RESIDENCE, OR ON A BALCONY ADJOINING THE UNIT OWNER'S PROPERTY IF
17 THE AMERICAN FLAG IS DISPLAYED IN A MANNER CONSISTENT WITH THE
18 FEDERAL FLAG CODE , P.L. 94-344; 90 STAT. 810; 4 U.S.C. 4 TO 10. THE
19 ASSOCIATION MAY ADOPT REASONABLE RULES REGARDING THE
20 PLACEMENT AND MANNER OF DISPLAY OF THE AMERICAN FLAG. THE
21 ASSOCIATION RULES MAY REGULATE THE LOCATION AND SIZE OF FLAGS
22 AND FLAGPOLES, BUT SHALL NOT PROHIBIT THE INSTALLATION OF A FLAG
23 OR FLAGPOLE.

24 (b) (I) THE DISPLAY OF A POLITICAL SIGN BY A UNIT OWNER ON
25 THAT UNIT OWNER'S PROPERTY OR IN A WINDOW OF THE UNIT OWNER'S
26 RESIDENCE; EXCEPT THAT AN ASSOCIATION MAY PROHIBIT THE DISPLAY OF
27 POLITICAL SIGNS EARLIER THAN FORTY-FIVE DAYS BEFORE THE DAY OF AN

1 ELECTION AND LATER THAN SEVEN DAYS AFTER AN ELECTION DAY. AN
2 ASSOCIATION MAY REGULATE THE SIZE AND NUMBER OF POLITICAL SIGNS
3 THAT MAY BE PLACED ON A UNIT OWNER'S PROPERTY IF THE ASSOCIATION'S
4 REGULATION IS NO MORE RESTRICTIVE THAN ANY APPLICABLE CITY, TOWN,
5 OR COUNTY ORDINANCE THAT REGULATES THE SIZE AND NUMBER OF
6 POLITICAL SIGNS ON RESIDENTIAL PROPERTY. IF THE CITY, TOWN, OR
7 COUNTY IN WHICH THE PROPERTY IS LOCATED DOES NOT REGULATE THE
8 SIZE AND NUMBER OF POLITICAL SIGNS ON RESIDENTIAL PROPERTY, THE
9 ASSOCIATION SHALL PERMIT AT LEAST ONE POLITICAL SIGN PER POLITICAL
10 OFFICE OR BALLOT ISSUE THAT IS CONTESTED IN A PENDING ELECTION,
11 WITH THE MAXIMUM DIMENSIONS OF THIRTY-SIX INCHES BY FORTY-EIGHT
12 INCHES, ON A UNIT OWNER'S PROPERTY.

13 (II) AS USED IN THIS PARAGRAPH (b), "POLITICAL SIGN" MEANS A
14 SIGN THAT CARRIES A MESSAGE INTENDED TO INFLUENCE THE OUTCOME OF
15 AN ELECTION, INCLUDING SUPPORTING OR OPPOSING THE ELECTION OF A
16 CANDIDATE, THE RECALL OF A PUBLIC OFFICIAL, OR THE PASSAGE OF A
17 BALLOT ISSUE.

18 (c) THE PARKING OF A MOTOR VEHICLE BY A UNIT OWNER ON A
19 STREET, DRIVEWAY, OR GUEST PARKING AREA IN THE COMMON INTEREST
20 COMMUNITY IF THE VEHICLE IS REQUIRED TO BE AVAILABLE AT
21 DESIGNATED PERIODS AT THE UNIT OWNER'S RESIDENCE AS A CONDITION
22 OF THE UNIT OWNER'S EMPLOYMENT AND ALL OF THE FOLLOWING CRITERIA
23 ARE MET:

24 (I) THE VEHICLE HAS A GROSS VEHICLE WEIGHT RATING OF TEN
25 THOUSAND POUNDS OR LESS;

26 (II) THE UNIT OWNER IS A BONA FIDE MEMBER OF A VOLUNTEER
27 FIRE DEPARTMENT OR IS EMPLOYED BY AN EMERGENCY SERVICE

1 PROVIDER, AS DEFINED IN SECTION 29-11-101 (1.6), C.R.S.;

2 (III) THE VEHICLE BEARS AN OFFICIAL EMBLEM OR OTHER VISIBLE
3 DESIGNATION OF THE EMERGENCY SERVICE PROVIDER; AND

4 (IV) PARKING OF THE VEHICLE CAN BE ACCOMPLISHED WITHOUT
5 OBSTRUCTING EMERGENCY ACCESS OR INTERFERING WITH THE
6 REASONABLE NEEDS OF OTHER UNIT OWNERS TO USE STREETS AND
7 DRIVEWAYS WITHIN THE COMMON INTEREST COMMUNITY.

8 (d) THE REMOVAL BY A UNIT OWNER OF TREES, SHRUBS, OR OTHER
9 VEGETATION TO CREATE DEFENSIBLE SPACE AROUND A DWELLING FOR FIRE
10 MITIGATION PURPOSES, SO LONG AS SUCH REMOVAL COMPLIES WITH A
11 WRITTEN DEFENSIBLE SPACE PLAN CREATED FOR THE PROPERTY BY THE
12 COLORADO STATE FOREST SERVICE, AN INDIVIDUAL OR COMPANY
13 CERTIFIED BY A LOCAL GOVERNMENTAL ENTITY TO CREATE SUCH A PLAN,
14 OR THE FIRE CHIEF, FIRE MARSHAL, OR FIRE PROTECTION DISTRICT WITHIN
15 WHOSE JURISDICTION THE UNIT IS LOCATED, AND IS NO MORE EXTENSIVE
16 THAN NECESSARY TO COMPLY WITH SUCH PLAN. THE PLAN SHALL BE
17 REGISTERED WITH THE ASSOCIATION BEFORE THE COMMENCEMENT OF
18 WORK, AND THE WORK SHALL COMPLY WITH APPLICABLE ASSOCIATION
19 STANDARDS REGARDING SLASH REMOVAL, STUMP HEIGHT, REVEGETATION,
20 AND CONTRACTOR REGULATIONS.

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

24 (II) THE DECLARATION OR BYLAWS MAY SPECIFY REASONABLE
25 STANDARDS FOR THE COLOR, APPEARANCE, AND GENERAL TYPE OF
26 NONFLAMMABLE ROOFING MATERIALS THAT ARE USED TO REPLACE
27 FLAMMABLE ROOFING MATERIALS, BUT MAY NOT REQUIRE THE USE OF

1 NONFLAMMABLE MATERIALS THAT EXCEED THE REPLACEMENT COST OF
2 THE FLAMMABLE MATERIALS FOR WHICH THEY ARE BEING SUBSTITUTED.

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

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

- 10 (a) 38-33.3-101 and 38-33.3-102;
- 11 (b) 38-33.3-103, to the extent necessary in construing any of the
12 other sections of this article;
- 13 (c) 38-33.3-104 to 38-33.3-111;
- 14 (d) 38-33.3-114;
- 15 (e) 38-33.3-118;
- 16 (f) 38-33.3-120;
- 17 (g) 38-33.3-122 and 38-33.3-123;
- 18 (g.5) 38-33.3-124;
- 19 (h) 38-33.3-203 and 38-33.3-217 (1) AND (7);
- 20 (h.3) 38-33.3-205 (2);
- 21 (h.5) 38-33.3-209.4 TO 38-33.3-209.7;
- 22 (h.6) 38-33.3-221.5;
- 23 (h.7) 38-33.3-223;
- 24 (h.8) 38-33.3-301;
- 25 (I) 38-33.3-302 (1) (a) to (1) (f), (1) (j) to (1) (m), and (1) (o) to
26 (1) (q), (2), (3), AND (4);
- 27 (i.3) 38-33.3-303 (4) (b);

1 (i.5) 38-33.3-308 (1), (2.5), AND (4.5);

2 (i.6) 38-33.3-310 (1) AND (2);

3 (i.7) 38-33.3-310.5;

4 (j) 38-33.3-311;

5 (j.6) 38-33.3-315 (7);

6 (k) 38-33.3-316;

7 (l) 38-33.3-317 to 38-33.3-319.

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

10 **38-33.3-123. Enforcement - limitation.** (1) (a) If any person
11 subject to the provisions of this article fails to comply with any of its
12 provisions or any provision of the declaration, bylaws, articles, or rules
13 and regulations, any person or class of persons adversely affected by the
14 failure to comply may ~~require~~ SEEK reimbursement for collection costs
15 and reasonable attorney fees and costs incurred as a result of such failure
16 to comply. ~~without the necessity of commencing a legal proceeding.~~
17 NOTWITHSTANDING ANY PROVISION OF THE DECLARATION, BYLAWS,
18 ARTICLES, OR RULES AND REGULATIONS TO THE CONTRARY, A UNIT OWNER
19 SHALL NOT BE DEEMED TO HAVE CONFESSED JUDGMENT TO ATTORNEY
20 FEES OR COLLECTION COSTS.

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

27 (I) IF THE COURT FINDS A VIOLATION OF THIS ARTICLE OR OF THE

1 DECLARATION, BYLAWS, ARTICLES, OR RULES AND REGULATIONS, THE
2 COURT SHALL AWARD THE PREVAILING PARTY ITS COSTS AND REASONABLE
3 ATTORNEY FEES; AND

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

8 **SECTION 5. 38-33.3-124, Colorado Revised Statutes, is**
9 **amended to read:**

10 **38-33.3-124. Legislative declaration - alternative dispute**
11 **resolution encouraged. (1) THE GENERAL ASSEMBLY FINDS AND**
12 **DECLARES THAT THE COST, COMPLEXITY, AND DELAY INHERENT IN COURT**
13 **PROCEEDINGS MAKE LITIGATION A PARTICULARLY INEFFICIENT MEANS OF**
14 **RESOLVING NEIGHBORHOOD DISPUTES. THEREFORE, COMMON INTEREST**
15 **COMMUNITIES ARE ENCOURAGED TO ADOPT PROTOCOLS THAT MAKE USE**
16 **OF MEDIATION OR ARBITRATION AS ALTERNATIVES TO, OR PRECONDITIONS**
17 **UPON, THE FILING OF A COMPLAINT BETWEEN A UNIT OWNER AND**
18 **ASSOCIATION IN SITUATIONS THAT DO NOT INVOLVE AN IMMINENT THREAT**
19 **TO THE PEACE, HEALTH, OR SAFETY OF THE COMMUNITY.**

20 ~~(1)~~ **(2) (a) Any controversy between an association and a unit**
21 **owner arising out of the provisions of this article may be submitted to**
22 **mediation by either party to the controversy prior to the commencement**
23 **of any legal proceeding.**

24 ~~(2)~~ **(b) The mediation agreement, if one is reached, may be**
25 **presented to the court as a stipulation. Either party to the mediation may**
26 **terminate the mediation process without prejudice.**

27 ~~(3)~~ **(c) If either party subsequently violates the stipulation, the**

1 other party may apply immediately to the court for relief.

2 (3) THE DECLARATION, BYLAWS, OR RULES OF THE ASSOCIATION
3 MAY SPECIFY SITUATIONS IN WHICH DISPUTES SHALL BE RESOLVED BY
4 BINDING ARBITRATION UNDER THE "UNIFORM ARBITRATION ACT", PART
5 2 OF ARTICLE 22 OF TITLE 13, C.R.S.

6 _____

7 _____

8 **SECTION 6.** Part 2 of article 33.3 of title 38, Colorado Revised
9 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
10 SECTIONS to read:

11 **38-33.3-209.4. Public disclosures required - identity of**
12 **association - agent - manager - contact information.** (1) THE
13 ASSOCIATION SHALL PROVIDE TO ALL UNIT OWNERS, AT LEAST ONCE PER
14 YEAR, A WRITTEN NOTICE STATING THE NAME OF THE ASSOCIATION; THE
15 NAME OF THE ASSOCIATION'S DESIGNATED AGENT OR MANAGEMENT
16 COMPANY, IF ANY; AND A VALID PHYSICAL ADDRESS AND TELEPHONE
17 NUMBER FOR BOTH THE ASSOCIATION AND THE DESIGNATED AGENT OR
18 MANAGEMENT COMPANY, IF ANY. THE NOTICE SHALL ALSO INCLUDE THE
19 NAME OF THE COMMON INTEREST COMMUNITY, THE INITIAL DATE OF
20 RECORDING OF THE DECLARATION, AND THE RECEPTION NUMBER OR BOOK
21 AND PAGE FOR THE MAIN DOCUMENT THAT CONSTITUTES THE
22 DECLARATION. IF THE ASSOCIATION'S ADDRESS, DESIGNATED AGENT, OR
23 MANAGEMENT COMPANY CHANGES, THE ASSOCIATION SHALL PROVIDE ALL
24 UNIT OWNERS WITH AN AMENDED NOTICE WITHIN NINETY DAYS AFTER THE
25 CHANGE.

26 (2) WITHIN NINETY DAYS AFTER ASSUMING CONTROL FROM THE
27 DECLARANT PURSUANT TO SECTION 38-33.3-303 (5), AND WITHIN NINETY

1 DAYS AFTER THE END OF EACH FISCAL YEAR THEREAFTER, THE
2 ASSOCIATION SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO
3 UNIT OWNERS UPON REASONABLE NOTICE IN ACCORDANCE WITH
4 SUBSECTION (3) OF THIS SECTION:

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

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

7 (c) A LIST, BY UNIT TYPE, OF THE ASSOCIATION'S CURRENT
8 ASSESSMENTS, INCLUDING BOTH REGULAR AND SPECIAL ASSESSMENTS;

9 (d) ITS ANNUAL FINANCIAL STATEMENTS, INCLUDING ANY
10 AMOUNTS HELD IN RESERVE FOR THE FISCAL YEAR IMMEDIATELY
11 PRECEDING THE CURRENT ANNUAL DISCLOSURE;

12 (e) THE RESULTS OF ANY FINANCIAL AUDIT OR REVIEW FOR THE
13 FISCAL YEAR IMMEDIATELY PRECEDING THE CURRENT ANNUAL
14 DISCLOSURE;

15 (f) A LIST OF ALL ASSOCIATION INSURANCE POLICIES, INCLUDING,
16 BUT NOT LIMITED TO, PROPERTY, GENERAL LIABILITY, ASSOCIATION
17 DIRECTOR AND OFFICER PROFESSIONAL LIABILITY, AND FIDELITY POLICIES.
18 SUCH LIST SHALL INCLUDE THE COMPANY NAMES, POLICY LIMITS, POLICY
19 DEDUCTIBLES, ADDITIONAL NAMED INSUREDS, AND EXPIRATION DATES OF
20 THE POLICIES LISTED.

21 (g) ALL THE ASSOCIATION'S BYLAWS, ARTICLES, AND RULES AND
22 REGULATIONS;

23 (h) THE MINUTES OF THE EXECUTIVE BOARD AND MEMBER
24 MEETINGS FOR THE FISCAL YEAR IMMEDIATELY PRECEDING THE CURRENT
25 ANNUAL DISCLOSURE; AND

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

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

11 **38-33.3-209.5. Responsible governance policies.** (1) TO
12 PROMOTE RESPONSIBLE GOVERNANCE, ASSOCIATIONS SHALL:

13 (a) MAINTAIN ACCOUNTING RECORDS USING GENERALLY ACCEPTED
14 ACCOUNTING PRINCIPLES; AND

15 (b) ADOPT POLICIES, PROCEDURES, AND RULES AND REGULATIONS
16 CONCERNING:

17 (I) COLLECTION OF UNPAID ASSESSMENTS;

18 (II) HANDLING OF CONFLICTS OF INTEREST INVOLVING BOARD
19 MEMBERS;

20 (III) CONDUCT OF MEETINGS, WHICH MAY REFER TO APPLICABLE
21 PROVISIONS OF THE NONPROFIT CODE OR OTHER RECOGNIZED RULES AND
22 PRINCIPLES;

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

25 (V) INSPECTION AND COPYING OF ASSOCIATION RECORDS BY UNIT
26 OWNERS;

27 (VI) INVESTMENT OF RESERVE FUNDS; AND

1 (VII) PROCEDURES FOR THE ADOPTION AND AMENDMENT OF
2 POLICIES, PROCEDURES, AND RULES.

3 **38-33.3-209.6. Executive board member education.** THE BOARD
4 MAY AUTHORIZE, AND ACCOUNT FOR AS A COMMON EXPENSE,
5 REIMBURSEMENT OF BOARD MEMBERS FOR THEIR ACTUAL AND NECESSARY
6 EXPENSES INCURRED IN ATTENDING EDUCATIONAL MEETINGS AND
7 SEMINARS ON RESPONSIBLE GOVERNANCE OF UNIT OWNERS' ASSOCIATIONS.

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

10 **38-33.3-217. Amendment of declaration.** (1) (a) Except in
11 cases of amendments that may be executed by a declarant under section
12 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,
13 or 38-33.3-222, by an association under section 38-33.3-107, 38-33.3-206
14 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and
15 (12), or by the district court for any county that includes all or any
16 portion of a common interest community under subsection (7) of this
17 section, and except as limited by subsection (4) of this section, the
18 declaration, including the plats and maps, may be amended only by THE
19 AFFIRMATIVE vote or agreement of unit owners of units to which more
20 than fifty percent of the votes in the association are allocated or any
21 larger percentage, NOT TO EXCEED SIXTY-SEVEN PERCENT, THAT the
22 declaration specifies. ANY PROVISION IN THE DECLARATION THAT
23 PURPORTS TO SPECIFY A PERCENTAGE LARGER THAN SIXTY-SEVEN PERCENT
24 IS HEREBY DECLARED VOID AS CONTRARY TO PUBLIC POLICY, AND UNTIL
25 AMENDED, SUCH PROVISION SHALL BE DEEMED TO SPECIFY A PERCENTAGE
26 OF SIXTY-SEVEN PERCENT. The declaration may specify a smaller
27 percentage THAN A SIMPLE MAJORITY only if all of the units are restricted

1 exclusively to nonresidential use.

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

15 **SECTION 8.** Part 2 of article 33.3 of title 38, Colorado Revised
16 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
17 SECTIONS to read:

18 **38-33.3-221.5. Withdrawal from merged common interest**
19 **community.** (1) A COMMON INTEREST COMMUNITY THAT WAS MERGED
20 OR CONSOLIDATED WITH ANOTHER COMMON INTEREST COMMUNITY, OR IS
21 PARTY TO AN AGREEMENT TO DO SO PURSUANT TO SECTION 38-33.3-221,
22 MAY WITHDRAW FROM THE MERGED OR CONSOLIDATED COMMON
23 INTEREST COMMUNITY OR TERMINATE THE AGREEMENT TO MERGE OR
24 CONSOLIDATE, WITHOUT THE CONSENT OF THE OTHER COMMON INTEREST
25 COMMUNITY OR COMMUNITIES INVOLVED, IF THE COMMON INTEREST
26 COMMUNITY WISHING TO WITHDRAW MEETS ALL OF THE FOLLOWING
27 CRITERIA:

1 (a) IT IS A SEPARATE, PLATTED SUBDIVISION;

2 (b) ITS UNIT OWNERS ARE REQUIRED TO PAY INTO TWO COMMON
3 INTEREST COMMUNITIES OR SEPARATE UNIT OWNERS' ASSOCIATIONS;

4 (c) IT IS OR HAS BEEN A SELF-OPERATING COMMON INTEREST
5 COMMUNITY OR ASSOCIATION CONTINUOUSLY FOR AT LEAST TWENTY-FIVE
6 YEARS;

7 (d) THE TOTAL NUMBER OF UNIT OWNERS COMPRISING IT IS FIFTEEN
8 PERCENT OR LESS OF THE TOTAL NUMBER OF UNIT OWNERS IN THE MERGED
9 OR CONSOLIDATED COMMON INTEREST COMMUNITY OR ASSOCIATION;

10 (e) ITS UNIT OWNERS HAVE APPROVED THE WITHDRAWAL BY A
11 MAJORITY VOTE AND AT LEAST SEVENTY-FIVE PERCENT OF SUCH UNIT
12 OWNERS PARTICIPATED IN THE VOTE; AND

13 (f) ITS WITHDRAWAL WOULD NOT SUBSTANTIALLY IMPAIR THE
14 ABILITY OF THE REMAINDER OF THE MERGED COMMON INTEREST
15 COMMUNITY OR ASSOCIATION TO:

16 (I) ENFORCE EXISTING COVENANTS;

17 (II) MAINTAIN EXISTING FACILITIES; OR

18 (III) CONTINUE TO EXIST.

19 (2) IF AN ASSOCIATION HAS MET THE REQUIREMENTS SET FORTH IN
20 SUBSECTION (1) OF THIS SECTION, IT SHALL BE CONSIDERED WITHDRAWN
21 AS OF THE DATE OF THE ELECTION AT WHICH ITS UNIT OWNERS VOTED TO
22 WITHDRAW.

23 _____

24 **38-33.3-223. Sale of unit - disclosure to buyer.** (1) EXCEPT IN
25 THE CASE OF A FORECLOSURE SALE, THE SELLER OF A UNIT IN A COMMON
26 INTEREST COMMUNITY SHALL MAIL OR DELIVER TO THE PURCHASER, ON OR
27 BEFORE THE TITLE _____ DEADLINE, COPIES OF ALL OF THE FOLLOWING IN

- 1 THE MOST CURRENT FORM AVAILABLE:
- 2 (a) THE BYLAWS AND THE RULES OF THE ASSOCIATION;
- 3 (b) THE DECLARATION;
- 4 (c) ANY PARTY WALL AGREEMENTS;
- 5 (d) MINUTES OF THE MOST RECENT ANNUAL UNIT OWNERS'
- 6 MEETING AND OF ANY EXECUTIVE BOARD MEETINGS THAT OCCURRED
- 7 WITHIN THE SIX MONTHS IMMEDIATELY PRECEDING THE TITLE DEADLINE;
- 8 (e) THE ASSOCIATION'S OPERATING BUDGET;
- 9 (f) THE ASSOCIATION'S ANNUAL INCOME AND EXPENDITURES
- 10 STATEMENT; AND
- 11 (g) THE ASSOCIATION'S ANNUAL BALANCE SHEET.
- 12 (2) THE ASSOCIATION SHALL USE ITS BEST EFFORTS TO
- 13 ACCOMMODATE A REQUEST BY THE SELLER FOR DOCUMENTS THAT ARE
- 14 WITHIN THE ASSOCIATION'S CONTROL, IN ACCORDANCE WITH SECTION
- 15 38-33.3-317.
- 16 (3) WRITTEN NOTICE OF ANY UNSATISFACTORY PROVISION IN ANY
- 17 OF THE DOCUMENTS LISTED IN SUBSECTION (1) OF THIS SECTION, WHICH
- 18 NOTICE IS SIGNED BY THE BUYER OR ON BEHALF OF THE BUYER AND GIVEN
- 19 TO THE SELLER ON OR BEFORE THE GOVERNING DOCUMENTS OBJECTION
- 20 DEADLINE, SHALL BE CAUSE FOR TERMINATION OF THE CONTRACT OF
- 21 PURCHASE AND SALE OF THE UNIT. IF THE SELLER DOES NOT RECEIVE SUCH
- 22 WRITTEN NOTICE OF OBJECTION ON OR BEFORE THE GOVERNING
- 23 DOCUMENTS OBJECTION DEADLINE, THE BUYER SHALL BE DEEMED TO HAVE
- 24 ACCEPTED THE TERMS OF SAID DOCUMENTS, AND THE BUYER'S RIGHT TO
- 25 TERMINATE THE CONTRACT ON THIS BASIS IS WAIVED.
- 26 (4) THE TIME PERIODS SPECIFIED IN THIS SECTION MAY BE ALTERED
- 27 BY MUTUAL AGREEMENT OF THE PARTIES.

1 **SECTION 9.** 38-33.3-301, Colorado Revised Statutes, is
2 amended to read:

3 **38-33.3-301. Organization of unit owners' association.** A unit
4 owners' association shall be organized no later than the date the first unit
5 in the common interest community is conveyed to a purchaser. The
6 membership of the association at all times shall consist exclusively of all
7 unit owners or, following termination of the common interest community,
8 of all former unit owners entitled to distributions of proceeds under
9 section 38-33.3-218, or their heirs, personal representatives, successors,
10 or assigns. The association shall be organized as a nonprofit,
11 not-for-profit, or for-profit corporation or as a limited liability company
12 in accordance with the laws of the state of Colorado; except that the
13 failure of the association to incorporate or organize as a limited liability
14 company will not adversely affect either the existence of the common
15 interest community for purposes of this article or the rights of persons
16 acting in reliance upon such existence, other than as specifically provided
17 in section 38-33.3-316. NEITHER THE CHOICE OF ENTITY NOR THE
18 ORGANIZATIONAL STRUCTURE OF THE ASSOCIATION SHALL BE DEEMED TO
19 AFFECT ITS SUBSTANTIVE RIGHTS AND OBLIGATIONS UNDER THIS ARTICLE.

20 **SECTION 10.** The introductory portion to 38-33.3-302 (1),
21 Colorado Revised Statutes, is amended, and the said 38-33.3-302 is
22 further amended BY THE ADDITION OF THE FOLLOWING NEW
23 SUBSECTIONS, to read:

24 **38-33.3-302. Powers of unit owners' association.** (1) Except as
25 provided in ~~subsection (2)~~ SUBSECTIONS (2) AND (3) of this section, and
26 subject to the provisions of the declaration, the association, without
27 specific authorization in the declaration, may:

1 (3) (a) ANY MANAGING AGENT, EMPLOYEE, INDEPENDENT
2 CONTRACTOR, OR OTHER PERSON ACTING ON BEHALF OF THE ASSOCIATION
3 SHALL BE SUBJECT TO THIS ARTICLE TO THE SAME EXTENT AS THE
4 ASSOCIATION ITSELF WOULD BE.

5 (b) DECISIONS CONCERNING THE APPROVAL OR DENIAL OF A UNIT
6 OWNER'S APPLICATION FOR ARCHITECTURAL OR LANDSCAPING CHANGES
7 SHALL BE MADE IN ACCORDANCE WITH STANDARDS AND PROCEDURES SET
8 FORTH IN DULY ADOPTED BYLAWS OF THE ASSOCIATION, AND SHALL NOT
9 BE MADE ARBITRARILY OR CAPRICIOUSLY.

10 (4) THE ASSOCIATION'S CONTRACT WITH A MANAGING AGENT
11 SHALL BE TERMINABLE FOR CAUSE WITHOUT PENALTY TO THE
12 ASSOCIATION. ANY SUCH CONTRACT SHALL BE SUBJECT TO
13 RENEGOTIATION AND RENEWAL NO LESS FREQUENTLY THAN ONCE EVERY
14 TWO YEARS.

15 **SECTION 11.** 38-33.3-303 (4), Colorado Revised Statutes, is
16 amended to read:

17 **38-33.3-303. Executive board members and officers - powers**
18 **and duties - _____ audit.** (4) (a) Within ninety days after adoption of
19 any proposed budget for the common interest community, the executive
20 board shall mail, by ordinary first-class mail, or otherwise deliver a
21 summary of the budget to all the unit owners and shall set a date for a
22 meeting of the unit owners to consider the budget. Such meeting shall
23 occur within a reasonable time after mailing or other delivery of the
24 summary, or as allowed for in the bylaws. The executive board shall give
25 notice to the unit owners of the meeting as allowed for in the bylaws.
26 Unless the declaration requires otherwise, the budget proposed by the
27 executive board does not require approval from the unit owners and it

1 will be deemed approved by the unit owners in the absence of a veto at
2 the noticed meeting by a majority of all unit owners, or if permitted in the
3 declaration, a majority of a class of unit owners, or any larger percentage
4 specified in the declaration, whether or not a quorum is present. In the
5 event that the proposed budget is vetoed, the periodic budget last
6 proposed by the executive board and not vetoed by the unit owners must
7 be continued until a subsequent budget proposed by the executive board
8 is not vetoed by the unit owners.

9 (b) (I) THE BOOKS AND RECORDS OF THE ASSOCIATION SHALL BE
10 SUBJECT TO AN AUDIT, USING GENERALLY ACCEPTED AUDITING
11 STANDARDS, OR A REVIEW, USING STATEMENTS ON STANDARDS FOR
12 ACCOUNTING AND REVIEW SERVICES, AT LEAST ONCE EVERY TWO YEARS
13 BY A PERSON SELECTED BY THE EXECUTIVE BOARD. SUCH PERSON NEED
14 NOT BE A CERTIFIED PUBLIC ACCOUNTANT EXCEPT IN THE CASE OF AN
15 AUDIT.

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

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

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

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

25
26 SECTION 12. 38-33.3-308 (1) and (2), Colorado Revised
27 Statutes, are amended, and the said 38-33.3-308 is further amended BY

1 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
2 read:

3 **38-33.3-308. Meetings.** (1) Meetings of the unit owners, as the
4 members of the association, shall be held at least once each year. Special
5 meetings of the unit owners may be called by the president, by a majority
6 of the executive board, or by unit owners having twenty percent, or any
7 lower percentage specified in the bylaws, of the votes in the association.
8 Not less than ten nor more than fifty days in advance of any meeting of
9 the unit owners, the secretary or other officer specified in the bylaws
10 shall cause notice to be hand delivered or sent prepaid by United States
11 mail to the mailing address of each unit or to any other mailing address
12 designated in writing by the unit owner. The notice of any meeting must
13 SHALL BE PHYSICALLY POSTED IN A CONSPICUOUS PLACE, TO THE EXTENT
14 THAT SUCH POSTING IS FEASIBLE AND PRACTICABLE, IN ADDITION TO ANY
15 ELECTRONIC POSTING OR ELECTRONIC MAIL NOTICES THAT MAY BE GIVEN
16 PURSUANT TO PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION. THE
17 NOTICE SHALL state the time and place of the meeting and the items on the
18 agenda, including the general nature of any proposed amendment to the
19 declaration or bylaws, any budget changes, and any proposal to remove
20 an officer or member of the executive board.

21 (2) (a) All regular and special meetings of the association's
22 executive board, or any committee thereof, shall be open to attendance by
23 all members of the association or their representatives. Agendas for
24 meetings of the executive board shall be made reasonably available for
25 examination by all members of the association or their representatives.

26 (b) THE ASSOCIATION IS ENCOURAGED TO PROVIDE ALL NOTICES
27 AND AGENDAS REQUIRED BY THIS ARTICLE IN ELECTRONIC FORM, BY

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

8 (2.5) (a) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION,
9 BYLAWS, OR OTHER DOCUMENTS TO THE CONTRARY, ALL MEETINGS OF THE
10 ASSOCIATION AND BOARD OF DIRECTORS ARE OPEN TO EVERY UNIT OWNER
11 OF THE ASSOCIATION, OR TO ANY PERSON DESIGNATED BY A UNIT OWNER
12 IN WRITING AS THE UNIT OWNER'S REPRESENTATIVE, AND ALL UNIT
13 OWNERS OR DESIGNATED REPRESENTATIVES SO DESIRING SHALL BE
14 PERMITTED TO ATTEND, LISTEN, AND SPEAK AT AN APPROPRIATE TIME
15 DURING THE DELIBERATIONS AND PROCEEDINGS; EXCEPT THAT, FOR
16 REGULAR AND SPECIAL MEETINGS OF THE BOARD, UNIT OWNERS WHO ARE
17 NOT BOARD MEMBERS MAY NOT PARTICIPATE IN ANY DELIBERATION OR
18 DISCUSSION UNLESS EXPRESSLY SO AUTHORIZED BY A VOTE OF THE
19 MAJORITY OF A QUORUM OF THE BOARD.

20 (b) THE BOARD MAY PLACE REASONABLE TIME RESTRICTIONS ON
21 THOSE PERSONS SPEAKING DURING THE MEETING BUT SHALL PERMIT A UNIT
22 OWNER OR A UNIT OWNER'S DESIGNATED REPRESENTATIVE TO SPEAK
23 BEFORE THE BOARD TAKES FORMAL ACTION ON AN ITEM UNDER
24 DISCUSSION, IN ADDITION TO ANY OTHER OPPORTUNITIES TO SPEAK. THE
25 BOARD SHALL PROVIDE FOR A REASONABLE NUMBER OF PERSONS TO SPEAK
26 ON EACH SIDE OF AN ISSUE.

27 (4.5) UPON THE FINAL RESOLUTION OF ANY MATTER FOR WHICH

1 THE BOARD RECEIVED LEGAL ADVICE OR THAT CONCERNED PENDING OR
2 CONTEMPLATED LITIGATION, THE BOARD MAY ELECT TO PRESERVE THE
3 ATTORNEY-CLIENT PRIVILEGE IN ANY APPROPRIATE MANNER, OR IT MAY
4 ELECT TO DISCLOSE SUCH INFORMATION, AS IT DEEMS APPROPRIATE,
5 ABOUT SUCH MATTER IN AN OPEN MEETING.

6 **SECTION 13.** 38-33.3-310 (1) and (2), Colorado Revised
7 Statutes, are amended to read:

8 **38-33.3-310. Voting - proxies.** (1) (a) If only one of the multiple
9 owners of a unit is present at a meeting of the association, such owner is
10 entitled to cast all the votes allocated to that unit. If more than one of the
11 multiple owners are present, the votes allocated to that unit may be cast
12 only in accordance with the agreement of a majority in interest of the
13 owners, unless the declaration expressly provides otherwise. There is
14 majority agreement if any one of the multiple owners casts the votes
15 allocated to that unit without protest being made promptly to the person
16 presiding over the meeting by any of the other owners of the unit.

17 (b) VOTES FOR POSITIONS ON THE EXECUTIVE BOARD SHALL BE
18 TAKEN BY SECRET BALLOT AND, UPON THE REQUEST OF ONE OR MORE UNIT
19 OWNERS, A VOTE ON ANY OTHER MATTER AFFECTING THE COMMON
20 INTEREST COMMUNITY ON WHICH ALL UNIT OWNERS ARE ENTITLED TO
21 VOTE SHALL BE BY SECRET BALLOT. BALLOTS SHALL BE COUNTED BY A
22 NEUTRAL THIRD PARTY OR BY A UNIT OWNER WHO IS NOT A CANDIDATE,
23 WHO ATTENDS THE MEETING AT WHICH THE VOTE IS HELD, AND WHO IS
24 SELECTED AT RANDOM FROM A POOL OF TWO OR MORE SUCH UNIT OWNERS.
25 THE RESULTS OF THE VOTE SHALL BE REPORTED WITHOUT REFERENCE TO
26 NAMES, ADDRESSES, OR OTHER IDENTIFYING INFORMATION.

27 (2) (a) Votes allocated to a unit may be cast pursuant to a proxy

1 duly executed by a unit owner. A PROXY SHALL NOT BE VALID IF
2 OBTAINED THROUGH FRAUD OR MISREPRESENTATION. UNLESS OTHERWISE
3 PROVIDED IN THE DECLARATION, BYLAWS, OR RULES OF THE ASSOCIATION,
4 APPOINTMENT OF PROXIES MAY BE MADE SUBSTANTIALLY AS PROVIDED IN
5 SECTION 7-127-203, C.R.S.

6 (b) If a unit is owned by more than one person, each owner of the
7 unit may vote or register protest to the casting of votes by the other
8 owners of the unit through a duly executed proxy. A unit owner may not
9 revoke a proxy given pursuant to this section except by actual notice of
10 revocation to the person presiding over a meeting of the association. A
11 proxy is void if it is not dated or purports to be revocable without notice.
12 A proxy terminates eleven months after its date, unless it provides
13 otherwise.

14 (c) THE ASSOCIATION IS ENTITLED TO REJECT A VOTE, CONSENT,
15 WRITTEN BALLOT, WAIVER, PROXY APPOINTMENT, OR PROXY APPOINTMENT
16 REVOCATION IF THE SECRETARY OR OTHER OFFICER OR AGENT AUTHORIZED
17 TO TABULATE VOTES, ACTING IN GOOD FAITH, HAS REASONABLE BASIS FOR
18 DOUBT ABOUT THE VALIDITY OF THE SIGNATURE ON IT OR ABOUT THE
19 SIGNATORY'S AUTHORITY TO SIGN FOR THE UNIT OWNER.

20 (d) THE ASSOCIATION AND ITS OFFICER OR AGENT WHO ACCEPTS OR
21 REJECTS A VOTE, CONSENT, WRITTEN BALLOT, WAIVER, PROXY
22 APPOINTMENT, OR PROXY APPOINTMENT REVOCATION IN GOOD FAITH AND
23 IN ACCORDANCE WITH THE STANDARDS OF THIS SECTION ARE NOT LIABLE
24 IN DAMAGES FOR THE CONSEQUENCES OF THE ACCEPTANCE OR REJECTION.

25 (e) ANY ACTION OF THE ASSOCIATION BASED ON THE ACCEPTANCE
26 OR REJECTION OF A VOTE, CONSENT, WRITTEN BALLOT, WAIVER, PROXY
27 APPOINTMENT, OR PROXY APPOINTMENT REVOCATION UNDER THIS SECTION

1 IS VALID UNLESS A COURT OF COMPETENT JURISDICTION DETERMINES
2 OTHERWISE.

3 **SECTION 14.** Part 3 of article 33.3 of title 38, Colorado Revised
4 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
5 read:

6 **38-33.3-310.5. Executive board - conflicts of interest.** (1) IF
7 ANY CONTRACT, DECISION, OR OTHER ACTION TAKEN BY OR ON BEHALF OF
8 THE EXECUTIVE BOARD WOULD FINANCIALLY BENEFIT ANY MEMBER OF
9 THE EXECUTIVE BOARD OR ANY PERSON WHO IS A PARENT, GRANDPARENT,
10 SPOUSE, CHILD, OR SIBLING OF A MEMBER OF THE EXECUTIVE BOARD OR A
11 PARENT OR SPOUSE OF ANY OF THOSE PERSONS, THAT MEMBER OF THE
12 EXECUTIVE BOARD SHALL DECLARE A CONFLICT OF INTEREST FOR THAT
13 ISSUE. THE MEMBER SHALL DECLARE THE CONFLICT IN AN OPEN MEETING,
14 PRIOR TO ANY DISCUSSION OR ACTION ON THAT ISSUE. AFTER MAKING
15 SUCH DECLARATION, THE MEMBER MAY PARTICIPATE IN THE DISCUSSION
16 BUT SHALL NOT VOTE ON THAT ISSUE.

17 (2) ANY CONTRACT ENTERED INTO IN VIOLATION OF THIS SECTION
18 IS VOID AND UNENFORCEABLE.

19 (3) THIS SECTION SHALL NOT BE CONSTRUED TO INVALIDATE ANY
20 PROVISION OF THE DECLARATION, BYLAWS, OR OTHER DOCUMENTS THAT
21 MORE STRICTLY DEFINES CONFLICTS OF INTEREST OR CONTAINS FURTHER
22 LIMITS ON THE PARTICIPATION OF EXECUTIVE BOARD MEMBERS WHO MAY
23 HAVE CONFLICTS OF INTEREST.

24 _____
25 _____

26 **SECTION 15.** 38-33.3-315, Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW SUBSECTION to read:

1 **38-33.3-315. Assessments for common expenses. (7) UNLESS**
2 OTHERWISE SPECIFICALLY PROVIDED IN THE DECLARATION OR BYLAWS,
3 THE ASSOCIATION MAY ENTER INTO AN ESCROW AGREEMENT WITH THE
4 HOLDER OF A UNIT OWNER'S MORTGAGE SO THAT ASSESSMENTS MAY BE
5 COMBINED WITH THE UNIT OWNER'S MORTGAGE PAYMENTS AND PAID AT
6 THE SAME TIME AND IN THE SAME MANNER; EXCEPT THAT ANY SUCH
7 ESCROW AGREEMENT SHALL COMPLY WITH ANY APPLICABLE RULES OF THE
8 FEDERAL HOUSING ADMINISTRATION, DEPARTMENT OF HOUSING AND
9 URBAN DEVELOPMENT, VETERANS' ADMINISTRATION, OR OTHER
10 GOVERNMENT AGENCY.

11 **SECTION 16.** 38-33.3-316 (8), Colorado Revised Statutes, is
12 amended to read:

13 **38-33.3-316. Lien for assessments.** (8) The association shall
14 furnish to a unit owner, ~~or such~~ THE unit owner's designee, AN ESCROW
15 AGENT, A TITLE INSURANCE AGENT, or ~~to~~ a holder of a security interest or
16 its designee upon written request, delivered personally or by certified
17 mail, first-class postage prepaid, return receipt, to the association's
18 registered agent, a written statement setting forth the amount of unpaid
19 assessments currently levied against such owner's unit. The statement
20 shall be furnished within fourteen calendar days after receipt of the
21 request and is binding on the association, the executive board, and every
22 unit owner. If no statement is furnished to the ~~unit owner or holder of a~~
23 ~~security interest or his or her designee~~ INQUIRING PARTY, delivered
24 personally or by certified mail, first-class postage prepaid, return receipt
25 requested, ~~to the inquiring party,~~ then the association shall have no right
26 to assert a lien upon the unit for unpaid assessments which were due as
27 of the date of the request.

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SECTION 17. 38-33.3-317, Colorado Revised Statutes, is amended to read:

38-33.3-317. Association records. (1) (a) The association shall keep financial records sufficiently detailed to enable the association to comply with section 38-33.3-316 (8) concerning statements of unpaid assessments.

(b) THE ASSOCIATION SHALL KEEP AS PERMANENT RECORDS MINUTES OF ALL MEETINGS OF UNIT OWNERS AND THE EXECUTIVE BOARD, A RECORD OF ALL ACTIONS TAKEN BY THE UNIT OWNERS OR EXECUTIVE BOARD WITHOUT A MEETING, A RECORD OF ALL ACTIONS TAKEN BY A COMMITTEE OF THE EXECUTIVE BOARD IN PLACE OF THE EXECUTIVE BOARD ON BEHALF OF THE ASSOCIATION, AND A RECORD OF ALL WAIVERS OF NOTICES OF MEETINGS OF UNIT OWNERS AND OF THE EXECUTIVE BOARD OR ANY COMMITTEE OF THE EXECUTIVE BOARD.

(c) THE ASSOCIATION OR ITS AGENT SHALL MAINTAIN A RECORD OF UNIT OWNERS IN A FORM THAT PERMITS PREPARATION OF A LIST OF THE NAMES AND ADDRESSES OF ALL UNIT OWNERS, SHOWING THE NUMBER OF VOTES EACH UNIT OWNER IS ENTITLED TO VOTE.

(d) THE ASSOCIATION SHALL MAINTAIN ITS RECORDS IN WRITTEN FORM OR IN ANOTHER FORM CAPABLE OF CONVERSION INTO WRITTEN FORM WITHIN A REASONABLE TIME.

=====

(2) All financial and other records shall be made reasonably available for examination AND COPYING by any unit owner and such owner's authorized agents.

(3) THE ASSOCIATION MAY CHARGE A █ FEE, NOT TO EXCEED █ THE

1 ASSOCIATION'S ACTUAL COST PER PAGE, FOR COPIES OF ASSOCIATION
2 RECORDS.

3 (4) AS USED IN THIS SECTION, "REASONABLY AVAILABLE" MEANS
4 AVAILABLE DURING NORMAL BUSINESS HOURS, UPON NOTICE OF FIVE
5 BUSINESS DAYS, TO THE EXTENT THAT:

6 (a) THE REQUEST IS MADE IN GOOD FAITH AND FOR A PROPER
7 PURPOSE;

8 (b) THE REQUEST DESCRIBES WITH REASONABLE PARTICULARITY
9 THE RECORDS SOUGHT AND THE PURPOSE OF THE REQUEST; AND

10 (c) THE RECORDS ARE RELEVANT TO THE PURPOSE OF THE
11 REQUEST.

12 _____

13 (5) IN ADDITION TO THE RECORDS SPECIFIED IN SUBSECTION (1) OF
14 THIS SECTION, THE ASSOCIATION SHALL KEEP A COPY OF EACH OF THE
15 FOLLOWING RECORDS AT ITS PRINCIPAL OFFICE:

16 (a) ITS ARTICLES OF INCORPORATION, IF IT IS A CORPORATION, OR
17 THE CORRESPONDING ORGANIZATIONAL DOCUMENTS IF IT IS ANOTHER
18 FORM OF ENTITY;

19 (b) THE DECLARATION;

20 (c) ITS BYLAWS;

21 (d) RESOLUTIONS ADOPTED BY ITS EXECUTIVE BOARD RELATING TO
22 THE CHARACTERISTICS, QUALIFICATIONS, RIGHTS, LIMITATIONS, AND
23 OBLIGATIONS OF UNIT OWNERS OR ANY CLASS OR CATEGORY OF UNIT
24 OWNERS;

25 (e) THE MINUTES OF ALL UNIT OWNERS' MEETINGS, AND RECORDS
26 OF ALL ACTION TAKEN BY UNIT OWNERS WITHOUT A MEETING, FOR THE
27 PAST THREE YEARS;

1 (f) ALL WRITTEN COMMUNICATIONS WITHIN THE PAST THREE
2 YEARS TO UNIT OWNERS GENERALLY AS UNIT OWNERS;

3 (g) A LIST OF THE NAMES AND BUSINESS OR HOME ADDRESSES OF
4 ITS CURRENT DIRECTORS AND OFFICERS;

5 (h) ITS MOST RECENT ANNUAL REPORT, IF ANY; AND

6 (i) ALL FINANCIAL AUDITS OR REVIEWS CONDUCTED PURSUANT TO
7 SECTION 38-33.3-303(4) (b) DURING THE IMMEDIATELY PRECEDING THREE
8 YEARS.

9 (6) THIS SECTION SHALL NOT BE CONSTRUED TO AFFECT:

10 (a) THE RIGHT OF A UNIT OWNER TO INSPECT RECORDS:

11 (I) UNDER CORPORATION STATUTES GOVERNING THE INSPECTION
12 OF LISTS OF SHAREHOLDERS OR MEMBERS PRIOR TO AN ANNUAL MEETING;
13 OR

14 (II) IF THE UNIT OWNER IS IN LITIGATION WITH THE ASSOCIATION,
15 TO THE SAME EXTENT AS ANY OTHER LITIGANT; OR

16 (b) THE POWER OF A COURT, INDEPENDENTLY OF THIS ARTICLE, TO
17 COMPEL THE PRODUCTION OF ASSOCIATION RECORDS FOR EXAMINATION
18 ON PROOF BY A UNIT OWNER OF PROPER PURPOSE.

19 (7) THIS SECTION SHALL NOT BE CONSTRUED TO INVALIDATE ANY
20 PROVISION OF THE DECLARATION, BYLAWS, THE CORPORATE LAW UNDER
21 WHICH THE ASSOCIATION IS ORGANIZED, OR OTHER DOCUMENTS THAT
22 MORE BROADLY DEFINES RECORDS OF THE ASSOCIATION THAT ARE
23 SUBJECT TO INSPECTION AND COPYING BY UNIT OWNERS, OR THAT GRANTS
24 UNIT OWNERS FREER ACCESS TO SUCH RECORDS.

25 **SECTION 18.** Article 35.7 of title 38, Colorado Revised Statutes,
26 is amended BY THE ADDITION OF A NEW SECTION to read:

27

1 **38-35.7-102. Disclosure - common interest community -**
2 **requirement for architectural approval.** (1) IN EVERY PURCHASE AND
3 SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON INTEREST
4 COMMUNITY:

5 (a) THE SELLER SHALL CAUSE TO BE FURNISHED TO THE BUYER, AT
6 THE SELLER'S EXPENSE, ALL DOCUMENTS REQUIRED BY SECTION
7 38-33.3-223 AT LEAST TEN DAYS BEFORE CLOSING IN THE CASE OF A SALE
8 BY OWNER OR WITHIN THE TIME LIMITS SET FORTH IN SECTION 38-33.3-223
9 IN THE CASE OF A BROKERED TRANSACTION.

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

13 **"THE BUYER UNDERSTANDS THAT ANY**
14 **CHANGES OR ADDITIONS TO THE PROPERTY**
15 **MAY BE SUBJECT TO ARCHITECTURAL**
16 **REVIEW AND APPROVAL BY THE COMMON**
17 **INTEREST COMMUNITY. THE BUYER**
18 **UNDERSTANDS THAT FAILURE TO SECURE**
19 **SUCH REVIEW AND APPROVAL MAY BE**
20 **DEEMED A VIOLATION OF THE GOVERNING**
21 **DECLARATIONS AND RESULT IN REMEDIAL**
22 **ACTION BEING TAKEN AGAINST THE BUYER BY**
23 **THE COMMON INTEREST COMMUNITY."**

24 (II) IT SHALL BE THE RESPONSIBILITY OF THE SELLER TO OBTAIN
25 FROM THE PURCHASER A SIGNED ACKNOWLEDGMENT OF RECEIPT OF THE
26 INFORMATION AND DISCLOSURE STATEMENT DESCRIBED IN THIS SECTION,
27 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 EVENT OF THE FAILURE BY THE
4 SELLER TO PROVIDE SUCH INFORMATION AND DISCLOSURE STATEMENT,
5 THE PURCHASER SHALL HAVE A CLAIM FOR RELIEF AGAINST THE SELLER
6 FOR ALL DAMAGES TO THE PURCHASER RESULTING FROM SUCH FAILURE
7 PLUS COURT COSTS.

8
9 SECTION 19. 10-4-110.8 (3) and (4), Colorado Revised Statutes,
10 are amended, and the said 10-4-110.8 is further amended BY THE
11 ADDITION OF A NEW SUBSECTION, to read:

12 **10-4-110.8. Homeowner's insurance - prohibited practices -**
13 **definitions.** (3) For the purposes of this section, unless the context
14 otherwise requires:

15 (a) "Claim" includes a demand for payment of a benefit by the
16 insured, the payment of a covered benefit by an insurer, a loss reserve
17 established by the insurer, a loss adjustment expense incurred by the
18 insurer, or a payment made to the insured.

19 (b) "CLEAN CLAIM" MEANS A CLAIM FOR DAMAGE IN WHICH THE
20 INSURED HAS PROVIDED A STREET ADDRESS AND A GENERAL DESCRIPTION
21 OF THE TYPE OF DAMAGE AND, IF AN ADEQUATE INSPECTION OF THE
22 DAMAGE CANNOT BE COMPLETED WITHOUT ACCESS TO THE INTERIOR OF A
23 STRUCTURE, THE INSURED HAS MADE REASONABLE EFFORTS TO PROVIDE
24 THE INSURER ACCESS TO THE INTERIOR OF THE STRUCTURE.

25 (c) "INQUIRY" MEANS A REQUEST FOR INFORMATION REGARDING
26 THE TERMS, CONDITIONS, OR COVERAGES AFFORDED UNDER AN INSURANCE
27 CONTRACT.

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

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

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

- (I) THE INSURER'S ULTIMATE RESPONSIBILITY TO COVER ANY SPECIFIC ITEM OR TYPE OF DAMAGE;
- (II) DEDUCTIBLES;
- (III) THE INSURER'S RIGHTS OF SUBROGATION; OR

1 (IV) ANY ALLOCATION OR APPORTIONMENT OF DAMAGES.

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

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

17 (c) IF AN INSURER DELEGATES ITS CLAIMS PROCESSING FUNCTIONS
18 TO A THIRD PARTY, THE DELEGATION AGREEMENT SHALL PROVIDE THAT
19 THE CLAIMS PROCESSING ENTITY SHALL COMPLY WITH THE REQUIREMENTS
20 OF THIS SECTION. ANY DELEGATION BY THE INSURER SHALL NOT BE
21 CONSTRUED TO LIMIT THE INSURER'S RESPONSIBILITY TO COMPLY WITH
22 THIS SECTION OR ANY OTHER APPLICABLE SECTION OF THIS ARTICLE.

23 (d) THE COMMISSIONER MAY INVESTIGATE COMPLAINTS AGAINST
24 AN INSURER RELATED TO VIOLATIONS OF THIS SECTION.

25 **SECTION 20. Effective date - applicability.** (1) Sections 1 and
26 2 of this act shall take effect upon passage, and the remainder of this act
27 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 **SECTION 21. Safety clause.** The general assembly hereby
14 finds, determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.