

**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**

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**SENATE SPONSORSHIP**

**Hagedorn,**

**HOUSE SPONSORSHIP**

**Carroll M.,**

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**Senate Committees**  
State, Veterans & Military Affairs

**House Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING INCREASED PROTECTION FOR HOMEOWNERS.**

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**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.*

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.

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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 INCLUDE TURF GRASS IS HEREBY DECLARED  
10 CONTRARY TO PUBLIC POLICY AND ON THAT BASIS SHALL BE VOID AND  
11 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;

25                 (II) ENFORCEMENT SHALL BE CONSISTENT WITHIN THE COMMUNITY  
26                 AND NOT ARBITRARY OR CAPRICIOUS; AND

27                 (III) ONCE THE DROUGHT EMERGENCY IS LIFTED, THE UNIT OWNER

1     SHALL BE ALLOWED A REASONABLE OPPORTUNITY TO RE-SEED AND REVIVE  
2     TURF GRASS BEFORE BEING REQUIRED TO REPLACE IT WITH NEW SOD.

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

6             **38-33.3-106.5. Prohibitions contrary to public policy - patriotic**  
7     **and political expression - emergency vehicles - definitions.**

8     (1) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION, BYLAWS,  
9     OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE CONTRARY, AN  
10    ASSOCIATION SHALL NOT PROHIBIT ANY OF THE FOLLOWING:

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

20            (b) (I) THE INDOOR OR OUTDOOR DISPLAY OF A POLITICAL SIGN BY  
21    A UNIT OWNER ON THAT UNIT OWNER'S PROPERTY, IN A WINDOW OF THE  
22    UNIT OWNER'S RESIDENCE, OR ON A COMMON WALL OR BALCONY  
23    ADJOINING THE UNIT OWNER'S PROPERTY; EXCEPT THAT AN ASSOCIATION  
24    MAY PROHIBIT THE DISPLAY OF POLITICAL SIGNS EARLIER THAN  
25    FORTY-FIVE DAYS BEFORE THE DAY OF AN ELECTION AND LATER THAN  
26    SEVEN DAYS AFTER AN ELECTION DAY. AN ASSOCIATION MAY REGULATE  
27    THE SIZE AND NUMBER OF POLITICAL SIGNS THAT MAY BE PLACED ON A

1 UNIT OWNER'S PROPERTY IF THE ASSOCIATION'S REGULATION IS NO MORE  
2 RESTRICTIVE THAN ANY APPLICABLE CITY, TOWN, OR COUNTY ORDINANCE  
3 THAT REGULATES THE SIZE AND NUMBER OF POLITICAL SIGNS ON  
4 RESIDENTIAL PROPERTY. IF THE CITY, TOWN, OR COUNTY IN WHICH THE  
5 PROPERTY IS LOCATED DOES NOT REGULATE THE SIZE AND NUMBER OF  
6 POLITICAL SIGNS ON RESIDENTIAL PROPERTY, THE ASSOCIATION SHALL  
7 PERMIT AT LEAST ONE POLITICAL SIGN WITH THE MAXIMUM DIMENSIONS OF  
8 THIRTY-SIX INCHES BY FORTY-EIGHT INCHES ON A UNIT OWNER'S  
9 PROPERTY.

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

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

21 (I) (A) THE VEHICLE HAS A GROSS VEHICLE WEIGHT RATING OF  
22 TWENTY THOUSAND POUNDS OR LESS;

23 (B) THE UNIT OWNER IS EMPLOYED BY A PUBLIC UTILITY THAT IS  
24 REGULATED BY THE COLORADO PUBLIC UTILITIES COMMISSION AND THAT  
25 IS REQUIRED TO PREPARE FOR EMERGENCY DEPLOYMENTS OF PERSONNEL  
26 AND EQUIPMENT FOR REPAIR OR MAINTENANCE OF ELECTRIC OR NATURAL  
27 GAS TRANSMISSION FACILITIES AND RELATED INFRASTRUCTURE; AND

1 (C) THE VEHICLE IS OWNED OR OPERATED BY THE PUBLIC UTILITY  
2 AND BEARS THE UTILITY'S OFFICIAL EMBLEM OR OTHER VISIBLE  
3 DESIGNATION; OR

4 (II)(A) THE VEHICLE HAS A GROSS VEHICLE WEIGHT RATING OF TEN  
5 THOUSAND POUNDS OR LESS;

6 (B) THE UNIT OWNER IS A BONA FIDE MEMBER OF A VOLUNTEER  
7 FIRE DEPARTMENT, IS EMPLOYED BY AN EMERGENCY SERVICE PROVIDER,  
8 AS DEFINED IN SECTION 29-11-101 (1.6), C.R.S., OR IS A PEACE OFFICER AS  
9 DESCRIBED IN SECTION 16-2.5-101, C.R.S.; AND

10 (C) THE VEHICLE BEARS AN OFFICIAL EMBLEM OR OTHER VISIBLE  
11 DESIGNATION OF THE FIRE DEPARTMENT, EMERGENCY SERVICE PROVIDER,  
12 OR OTHER PUBLIC AGENCY.

13 **SECTION 3.** 38-33.3-117 (1), Colorado Revised Statutes, is  
14 amended BY THE ADDITION OF THE FOLLOWING NEW  
15 PARAGRAPHS 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 (h.3) 38-33.3-205 (2);

22 (h.5) 38-33.3-209.4 AND 38-33.3-209.6;

23 (h.7) 38-33.3-223;

24 (i.3) 38-33.3-303 (4) (b) AND (8) (b);

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

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

27 (j.5) 38-33.3-312 (3) (a);

1           **SECTION 4.** 38-33.3-205 (2), Colorado Revised Statutes, is  
2 amended to read:

3           **38-33.3-205. Contents of declaration.** (2) The declaration may  
4 contain any other matters the declarant considers appropriate; EXCEPT  
5 THAT ANY PROVISION PURPORTING TO WAIVE A UNIT OWNER'S HOMESTEAD  
6 RIGHTS UNDER ARTICLE 41 OF THIS TITLE IN THE EVENT OF FORECLOSURE  
7 IS HEREBY DECLARED CONTRARY TO PUBLIC POLICY, VOID, AND  
8 UNENFORCEABLE.

9           **SECTION 5.** Part 2 of article 33.3 of title 38, Colorado Revised  
10 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW  
11 SECTIONS to read:

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

26           **38-33.3-209.6. Notice to escrow agent regarding unpaid**  
27 **assessments.** ON WRITTEN REQUEST, THE ASSOCIATION SHALL FURNISH TO



1 A LIENHOLDER, ESCROW AGENT, UNIT OWNER, OR PERSON DESIGNATED BY  
2 A UNIT OWNER A STATEMENT SETTING FORTH THE AMOUNT OF ANY UNPAID  
3 ASSESSMENT AGAINST THE UNIT. THE ASSOCIATION SHALL FURNISH THE  
4 STATEMENT WITHIN FIFTEEN DAYS AFTER RECEIPT OF THE REQUEST. SUCH  
5 STATEMENT SHALL BE BINDING ON THE ASSOCIATION, THE EXECUTIVE  
6 BOARD, AND EVERY UNIT OWNER IF THE STATEMENT IS REQUESTED BY A  
7 LICENSED ESCROW AGENT. FAILURE TO PROVIDE THE STATEMENT TO THE  
8 ESCROW AGENT WITHIN THE TIME REQUIRED BY THIS SECTION SHALL  
9 EXTINGUISH ANY LIEN FOR UNPAID ASSESSMENTS THEN DUE.

10 **38-33.3-221.5. Withdrawal from merged common interest**  
11 **community. (1) A COMMON INTEREST COMMUNITY THAT WAS MERGED**  
12 **OR CONSOLIDATED WITH ANOTHER COMMON INTEREST COMMUNITY, OR IS**  
13 **PARTY TO AN AGREEMENT TO DO SO PURSUANT TO SECTION 38-33.3-221,**  
14 **MAY WITHDRAW FROM THE MERGED OR CONSOLIDATED COMMON**  
15 **INTEREST COMMUNITY OR TERMINATE THE AGREEMENT TO MERGE OR**  
16 **CONSOLIDATE, WITHOUT THE CONSENT OF THE OTHER COMMON INTEREST**  
17 **COMMUNITY OR COMMUNITIES INVOLVED, IF THE COMMON INTEREST**  
18 **COMMUNITY WISHING TO WITHDRAW MEETS ALL OF THE FOLLOWING**  
19 **CRITERIA:**

20 **(a) IT IS A SEPARATE, PLATTED SUBDIVISION;**

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

23 **(c) IT IS OR HAS BEEN A SELF-OPERATING COMMON INTEREST**  
24 **COMMUNITY OR ASSOCIATION CONTINUOUSLY FOR AT LEAST TWENTY-FIVE**  
25 **YEARS;**

26 **(d) THE TOTAL NUMBER OF UNIT OWNERS COMPRISING IT IS FIFTEEN**  
27 **PERCENT OR LESS OF THE TOTAL NUMBER OF UNIT OWNERS IN THE MERGED**

1 OR CONSOLIDATED COMMON INTEREST COMMUNITY OR ASSOCIATION;

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

5 (f) ITS WITHDRAWAL WOULD NOT SEVERELY IMPACT THE  
6 REMAINDER OF THE MERGED COMMON INTEREST COMMUNITY OR  
7 ASSOCIATION.

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

12 \_\_\_\_\_  
13 **38-33.3-223. Sale of unit - disclosure to buyer.** (1) EXCEPT IN  
14 THE CASE OF A FORECLOSURE SALE, THE SELLER OF A UNIT IN A COMMON  
15 INTEREST COMMUNITY SHALL MAIL OR DELIVER TO THE PURCHASER, ON OR  
16 BEFORE THE TITLE OBJECTION DEADLINE, COPIES OF ALL OF THE  
17 FOLLOWING IN THE MOST CURRENT FORM AVAILABLE:

18 (a) THE BYLAWS AND THE RULES OF THE ASSOCIATION;

19 (b) THE DECLARATION;

20 (c) ANY PARTY WALL AGREEMENTS;

21 (d) MINUTES OF THE MOST RECENT ANNUAL UNIT OWNERS'  
22 MEETING AND OF ANY EXECUTIVE BOARD MEETINGS THAT OCCURRED  
23 WITHIN THE SIX MONTHS IMMEDIATELY PRECEDING THE TITLE DEADLINE;

24 (e) THE ASSOCIATION'S OPERATING BUDGET;

25 (f) THE ASSOCIATION'S ANNUAL INCOME AND EXPENDITURES  
26 STATEMENT; AND

27 (g) THE ASSOCIATION'S ANNUAL BALANCE SHEET.

1           (2) WRITTEN NOTICE OF ANY UNSATISFACTORY PROVISION IN ANY  
2           OF THE DOCUMENTS LISTED IN SUBSECTION (1) OF THIS SECTION, WHICH  
3           NOTICE IS SIGNED BY THE BUYER OR ON BEHALF OF THE BUYER AND GIVEN  
4           TO THE SELLER ON OR BEFORE THE TITLE OBJECTION DEADLINE, SHALL BE  
5           CAUSE FOR TERMINATION OF THE CONTRACT OF PURCHASE AND SALE OF  
6           THE UNIT. IF THE SELLER DOES NOT RECEIVE SUCH WRITTEN NOTICE OF  
7           OBJECTION ON OR BEFORE THE TITLE OBJECTION DEADLINE, THE BUYER  
8           SHALL BE DEEMED TO HAVE ACCEPTED THE TERMS OF SAID DOCUMENTS,  
9           AND THE BUYER'S RIGHT TO TERMINATE THE CONTRACT ON THIS BASIS IS  
10          WAIVED.

11           **SECTION 6.** 38-33.3-301, Colorado Revised Statutes, is  
12          amended to read:

13           **38-33.3-301. Organization of unit owners' association.** A unit  
14          owners' association shall be organized no later than the date the first unit  
15          in the common interest community is conveyed to a purchaser. The  
16          membership of the association at all times shall consist exclusively of all  
17          unit owners or, following termination of the common interest community,  
18          of all former unit owners entitled to distributions of proceeds under  
19          section 38-33.3-218, or their heirs, personal representatives, successors,  
20          or assigns. The association shall be organized as a nonprofit,  
21          not-for-profit, or for-profit corporation or as a limited liability company  
22          in accordance with the laws of the state of Colorado; except that the  
23          failure of the association to incorporate or organize as a limited liability  
24          company will not adversely affect either the existence of the common  
25          interest community for purposes of this article or the rights of persons  
26          acting in reliance upon such existence, other than as specifically provided  
27          in section 38-33.3-316. NEITHER THE CHOICE OF ENTITY NOR THE

1 ORGANIZATIONAL STRUCTURE OF THE ASSOCIATION SHALL BE DEEMED TO  
2 AFFECT ITS SUBSTANTIVE RIGHTS AND OBLIGATIONS UNDER THIS ARTICLE.

3 **SECTION 7.** The introductory portion to 38-33.3-302 (1),  
4 Colorado Revised Statutes, is amended, and the said 38-33.3-302 is  
5 further amended BY THE ADDITION OF THE FOLLOWING NEW  
6 SUBSECTIONS, to read:

7 **38-33.3-302. Powers of unit owners' association.** (1) Except as  
8 provided in ~~subsection (2)~~ SUBSECTIONS (2) AND (3) of this section, and  
9 subject to the provisions of the declaration, the association, without  
10 specific authorization in the declaration, may:

11 (3) ANY MANAGING AGENT, EMPLOYEE, INDEPENDENT  
12 CONTRACTOR, OR OTHER PERSON ACTING ON BEHALF OF THE ASSOCIATION  
13 SHALL BE SUBJECT TO THIS ARTICLE TO THE SAME EXTENT AS THE  
14 ASSOCIATION ITSELF WOULD BE.

15 (4) THE ASSOCIATION'S CONTRACT WITH A MANAGING AGENT  
16 SHALL BE TERMINABLE FOR CAUSE WITHOUT PENALTY TO THE  
17 ASSOCIATION. ANY SUCH CONTRACT SHALL BE SUBJECT TO  
18 RENEGOTIATION AND RENEWAL NO LESS FREQUENTLY THAN ONCE EVERY  
19 TWO YEARS.

20 **SECTION 8.** 38-33.3-303 (4), Colorado Revised Statutes, is  
21 amended to read:

22 **38-33.3-303. Executive board members and officers - powers**  
23 **and duties - \_\_\_\_\_ audit.** (4) (a) Within ninety days after adoption of  
24 any proposed budget for the common interest community, the executive  
25 board shall mail, by ordinary first-class mail, or otherwise deliver a  
26 summary of the budget to all the unit owners and shall set a date for a  
27 meeting of the unit owners to consider the budget. Such meeting shall

1 occur within a reasonable time after mailing or other delivery of the  
2 summary, or as allowed for in the bylaws. The executive board shall give  
3 notice to the unit owners of the meeting as allowed for in the bylaws.  
4 Unless the declaration requires otherwise, the budget proposed by the  
5 executive board does not require approval from the unit owners and it  
6 will be deemed approved by the unit owners in the absence of a veto at  
7 the noticed meeting by a majority of all unit owners, or if permitted in the  
8 declaration, a majority of a class of unit owners, or any larger percentage  
9 specified in the declaration, whether or not a quorum is present. In the  
10 event that the proposed budget is vetoed, the periodic budget last  
11 proposed by the executive board and not vetoed by the unit owners must  
12 be continued until a subsequent budget proposed by the executive board  
13 is not vetoed by the unit owners.

14 (b) THE BOOKS AND RECORDS OF THE ASSOCIATION SHALL BE  
15 SUBJECT TO AN AUDIT OR REVIEW AT LEAST ONCE EVERY TWO YEARS BY  
16 A PERSON SELECTED BY THE EXECUTIVE BOARD. SUCH PERSON NEEDS NOT  
17 BE A CERTIFIED PUBLIC ACCOUNTANT EXCEPT IN THE CASE OF A FULL  
18 AUDIT. A FULL AUDIT SHALL NOT BE REQUIRED EXCEPT UPON THE REQUEST  
19 OF THE OWNERS OF AT LEAST ONE-THIRD OF THE UNITS. SUCH AUDIT OR  
20 REVIEW SHALL BE COMPLETED BY THE DATE SPECIFIED IN THE  
21 DECLARATION OR BYLAWS, BUT NO LATER THAN ONE HUNDRED EIGHTY  
22 DAYS AFTER THE END OF THE ASSOCIATION'S FISCAL YEAR, AND SHALL BE  
23 MADE AVAILABLE UPON REQUEST TO ANY UNIT OWNER BEGINNING NO  
24 LATER THAN THIRTY DAYS AFTER ITS COMPLETION.

25 \_\_\_\_\_  
26 **SECTION 9.** 38-33.3-308 (1) and (2), Colorado Revised Statutes,  
27 are amended, and the said 38-33.3-308 is further amended BY THE

1     ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

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

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

24            (b) THE ASSOCIATION IS ENCOURAGED TO PROVIDE ALL NOTICES  
25    AND AGENDAS REQUIRED BY THIS ARTICLE IN ELECTRONIC FORM, BY  
26    POSTING ON A WEB SITE OR OTHERWISE, IN ADDITION TO PRINTED FORM.  
27    IF SUCH ELECTRONIC MEANS ARE AVAILABLE, THE ASSOCIATION SHALL

1 PROVIDE NOTICE OF ALL REGULAR AND SPECIAL MEETINGS BY ELECTRONIC  
2 MAIL TO ALL UNIT OWNERS WHO SO REQUEST AND WHO FURNISH THE  
3 ASSOCIATION WITH THEIR ELECTRONIC MAIL ADDRESSES. ELECTRONIC  
4 NOTICE OF A SPECIAL MEETING SHALL BE GIVEN AS SOON AS POSSIBLE BUT  
5 AT LEAST TWENTY-FOUR HOURS BEFORE THE MEETING.

6 (2.5) (a) NOTWITHSTANDING ANY PROVISION IN THE  
7 DECLARATION, BYLAWS, OR OTHER DOCUMENTS TO THE CONTRARY, ALL  
8 MEETINGS OF THE ASSOCIATION AND BOARD OF DIRECTORS ARE OPEN TO  
9 EVERY UNIT OWNER OF THE ASSOCIATION, OR TO ANY PERSON DESIGNATED  
10 BY A UNIT OWNER IN WRITING AS THE UNIT OWNER'S REPRESENTATIVE, AND  
11 ALL UNIT OWNERS OR DESIGNATED REPRESENTATIVES SO DESIRING SHALL  
12 BE PERMITTED TO ATTEND, LISTEN, AND SPEAK AT AN APPROPRIATE TIME  
13 DURING THE DELIBERATIONS AND PROCEEDINGS; EXCEPT THAT, FOR  
14 REGULAR AND SPECIAL MEETINGS OF THE BOARD, UNIT OWNERS WHO ARE  
15 NOT BOARD MEMBERS MAY NOT PARTICIPATE IN ANY DELIBERATION OR  
16 DISCUSSION UNLESS EXPRESSLY SO AUTHORIZED BY A VOTE OF THE  
17 MAJORITY OF A QUORUM OF THE BOARD.

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

25 (4.5) UPON FINAL RESOLUTION OF ANY MATTER FOR WHICH THE  
26 BOARD RECEIVED LEGAL ADVICE OR THAT CONCERNED PENDING OR  
27 CONTEMPLATED LITIGATION, THE BOARD MAY DISCLOSE INFORMATION

1 ABOUT THAT MATTER IN AN OPEN MEETING EXCEPT FOR INFORMATION  
2 THAT IS REQUIRED TO REMAIN CONFIDENTIAL BY THE TERMS OF A  
3 SETTLEMENT AGREEMENT OR JUDGMENT.

4 **SECTION 10. 38-33.3-310 (1) and (2), Colorado Revised**  
5 **Statutes, are amended to read:**

6 **38-33.3-310. Voting - proxies. (1) (a) If only one of the multiple**  
7 **owners of a unit is present at a meeting of the association, such owner is**  
8 **entitled to cast all the votes allocated to that unit. If more than one of the**  
9 **multiple owners are present, the votes allocated to that unit may be cast**  
10 **only in accordance with the agreement of a majority in interest of the**  
11 **owners, unless the declaration expressly provides otherwise. There is**  
12 **majority agreement if any one of the multiple owners casts the votes**  
13 **allocated to that unit without protest being made promptly to the person**  
14 **presiding over the meeting by any of the other owners of the unit.**

15 **(b) VOTES FOR POSITIONS ON THE EXECUTIVE BOARD AND ON ALL**  
16 **OTHER MATTERS AFFECTING THE COMMON INTEREST COMMUNITY ON**  
17 **WHICH ALL UNIT OWNERS ARE ENTITLED TO VOTE SHALL BE BY SECRET**  
18 **BALLOT. BALLOTS SHALL BE COUNTED BY A NEUTRAL THIRD PARTY AND**  
19 **THE RESULTS OF THE VOTE REPORTED WITHOUT REFERENCE TO NAMES,**  
20 **ADDRESSES, OR OTHER IDENTIFYING INFORMATION.**

21 **(2) Votes allocated to a unit may be cast pursuant to a proxy duly**  
22 **executed by a unit owner; EXCEPT THAT NO PERSON SHALL HOLD THE**  
23 **PROXY OF MORE THAN ONE UNIT OWNER OR, IF A UNIT IS OWNED BY MORE**  
24 **THAN ONE PERSON, THE PROXIES OF ONE OR MORE OWNERS OF THAT UNIT.**  
25 **If a unit is owned by more than one person, each owner of the unit may**  
26 **vote or register protest to the casting of votes by the other owners of the**  
27 **unit through a duly executed proxy. A unit owner may not revoke a**



1 proxy given pursuant to this section except by actual notice of revocation  
2 to the person presiding over a meeting of the association. A proxy is void  
3 if it is not dated or purports to be revocable without notice. A proxy  
4 terminates eleven months after its date, unless it provides otherwise.

5 **SECTION 11.** Part 3 of article 33.3 of title 38, Colorado Revised  
6 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
7 read:

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

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

21 **SECTION 12.** 38-33.3-312 (3), Colorado Revised Statutes, is  
22 amended to read:

23 **38-33.3-312. Conveyance or encumbrance of common**  
24 **elements.** (3) (a) An agreement to convey, or subject to a security  
25 interest, common elements in a condominium or planned community, or,  
26 in a cooperative, an agreement to convey, or subject to a security interest,  
27 any part of a cooperative, must be evidenced by the execution of an

1 agreement, in the same manner as a deed, by the association. The  
2 agreement must specify a date, NOT LESS THAN NINETY DAYS AFTER THE  
3 MAILING OF NOTICE OF THE AGREEMENT BY FIRST-CLASS MAIL TO ALL  
4 OWNERS, after which the agreement will be void unless approved by the  
5 requisite percentage of owners.

6 (b) Any grant, conveyance, or deed executed by the association  
7 must be recorded in every county in which a portion of the common  
8 interest community is situated and is effective only upon recordation.

9 **SECTION 13.** 38-33.3-315, Colorado Revised Statutes, is  
10 amended BY THE ADDITION OF A NEW SUBSECTION to read:

11 **38-33.3-315. Assessments for common expenses. (7) UNLESS**  
12 OTHERWISE SPECIFICALLY PROVIDED IN THE DECLARATION OR BYLAWS,  
13 THE ASSOCIATION MAY ENTER INTO AN ESCROW AGREEMENT WITH THE  
14 HOLDER OF A UNIT OWNER'S MORTGAGE SO THAT ASSESSMENTS MAY BE  
15 COMBINED WITH THE UNIT OWNER'S MORTGAGE PAYMENTS AND PAID AT  
16 THE SAME TIME AND IN THE SAME MANNER.

17 \_\_\_\_\_  
18 **SECTION 14.** 38-33.3-317, Colorado Revised Statutes, is  
19 amended to read:

20 **38-33.3-317. Association records.** (1) The association shall  
21 keep financial records sufficiently detailed to enable the association to  
22 comply with section 38-33.3-316 (8) concerning statements of unpaid  
23 assessments.

24 (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (6) OF THIS  
25 SECTION, all financial and other records shall be made reasonably  
26 available for examination AND COPYING by any unit owner and such  
27 owner's authorized agents.

1           (3) THE ASSOCIATION MAY CHARGE A REASONABLE FEE, NOT TO  
2 EXCEED TWENTY-FIVE CENTS PER PAGE, FOR COPIES OF ASSOCIATION  
3 RECORDS.

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

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

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

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

13           (5) RECORDS SUBJECT TO THIS SECTION INCLUDE, WITHOUT  
14 LIMITATION:

15           (a) THE DECLARATION;

16           (b) ANY RECORDS REQUIRED TO BE KEPT IN ACCORDANCE WITH  
17 THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF  
18 TITLE 7, C.R.S., OR OTHER STATUTES GOVERNING THE ASSOCIATION AS AN  
19 ENTITY;

20           (c) ANY RECORDS REQUIRED TO BE KEPT IN ACCORDANCE WITH  
21 THE ASSOCIATION'S BYLAWS;

22           (d) ACCOUNTING RECORDS OF THE ASSOCIATION;

23           (e) A CURRENT LIST OF ALL UNIT OWNERS AND ANY OTHER  
24 PERSONS OR ENTITIES WITH LEGAL INTERESTS IN, OR SUBJECT TO CONTROL  
25 BY, THE ASSOCIATION;

26           (f) THE CORPORATION'S MOST RECENT FINANCIAL STATEMENTS,  
27 SHOWING IN REASONABLE DETAIL ITS ASSETS AND LIABILITIES AND THE

1 RESULTS OF ITS OPERATIONS; AND

2 (g) THE ANNUAL AUDIT, REVIEW, OR COMPILATION PREPARED IN

3 ACCORDANCE WITH SECTION 38-33.3-303 (4) (b).

4 (6) UPON REASONABLE GROUNDS STATED CLEARLY IN WRITING,

5 THE ASSOCIATION MAY DECLINE TO MAKE AVAILABLE RECORDS

6 PERTAINING TO:

7 (a) PERSONNEL MATTERS OR A PERSON'S MEDICAL RECORDS;

8 (b) COMMUNICATIONS BETWEEN THE ASSOCIATION AND ITS

9 ATTORNEY;

10 (c) PENDING OR CONTEMPLATED LITIGATION;

11 (d) PENDING OR CONTEMPLATED MATTERS RELATING TO

12 ENFORCEMENT OF THE ASSOCIATION'S DECLARATIONS, BYLAWS, OR RULES

13 AND REGULATIONS EXCEPT AS PERTAIN TO THE UNIT OWNER ON WHOSE

14 BEHALF THE REQUEST IS MADE; OR

15 (e) MEETING MINUTES OR OTHER RECORDS OF AN EXECUTIVE OR

16 CLOSED SESSION AS DESCRIBED IN SECTION 38-33.3-308 (3) AND (4).

17 (7) THIS SECTION SHALL NOT BE CONSTRUED TO AFFECT:

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

19 (I) UNDER CORPORATION STATUTES GOVERNING THE INSPECTION

20 OF LISTS OF SHAREHOLDERS OR MEMBERS PRIOR TO AN ANNUAL MEETING;

21 OR

22 (II) IF THE UNIT OWNER IS IN LITIGATION WITH THE ASSOCIATION,

23 TO THE SAME EXTENT AS ANY OTHER LITIGANT; OR

24 (b) THE POWER OF A COURT, INDEPENDENTLY OF THIS ARTICLE, TO

25 COMPEL THE PRODUCTION OF ASSOCIATION RECORDS FOR EXAMINATION

26 ON PROOF BY A UNIT OWNER OF PROPER PURPOSE.

27 **SECTION 15.** Article 35.7 of title 38, Colorado Revised Statutes,

1 is amended BY THE ADDITION OF A NEW SECTION to read:

2           **38-35.7-102. Disclosure - common interest community -**  
3           **assessments and other charges.** (1) EVERY CONTRACT FOR THE  
4 PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON  
5 INTEREST COMMUNITY SHALL COMPLY WITH SECTION 38-33.3-223 AND  
6 SHALL CONTAIN A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT IS  
7 CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

8           **"I HEREBY ACKNOWLEDGE THAT THE**  
9           **DECLARATION, BYLAWS, AND RULES OF THE**  
10           **HOMEOWNERS' ASSOCIATION OF THE [NAME**  
11           **OF COMMON INTEREST COMMUNITY], IN**  
12           **WHICH MY NEW HOME IS LOCATED,**  
13           **CONSTITUTE A CONTRACT BETWEEN THE**  
14           **ASSOCIATION AND ME (THE PURCHASER). BY**  
15           **SIGNING THIS STATEMENT, I ACKNOWLEDGE**  
16           **THAT I HAVE READ AND UNDERSTAND THE**  
17           **ASSOCIATION'S CONTRACT WITH ME (THE**  
18           **PURCHASER). I ALSO UNDERSTAND THAT BY**  
19           **ACCEPTING THIS CONTRACT, I AM**  
20           **RESPONSIBLE FOR PAYING ASSESSMENTS TO**  
21           **THE ASSOCIATION. IF I DO NOT PAY THESE**  
22           **ASSESSMENTS, THE ASSOCIATION COULD**  
23           **PLACE A LIEN ON MY HOME AND POSSIBLY**  
24           **SELL IT TO COLLECT THE DEBT."**

25           (2) THE OBLIGATION TO PROVIDE THE INFORMATION REQUIRED BY  
26 SECTION 38-33.3-223 AND THE DISCLOSURE STATEMENT SET FORTH IN  
27 SUBSECTION (1) OF THIS SECTION SHALL BE UPON THE SELLER, AND, IN THE

1 EVENT OF THE FAILURE BY THE SELLER TO PROVIDE SUCH INFORMATION  
2 AND DISCLOSURE STATEMENT, THE PURCHASER SHALL HAVE A CLAIM FOR  
3 RELIEF AGAINST THE SELLER FOR ALL DAMAGES TO THE PURCHASER  
4 RESULTING FROM SUCH FAILURE PLUS COURT COSTS.

5  
6 SECTION 16. 10-4-110.8 (3) and (4), Colorado Revised Statutes,  
7 are amended to read:

8 **10-4-110.8. Homeowner's insurance - prohibited practices -**  
9 **definitions.** (3) For the purposes of this section, unless the context  
10 otherwise requires:

11 (a) "Claim" includes a demand for payment of a benefit by the  
12 insured, the payment of a covered benefit by an insurer, a loss reserve  
13 established by the insurer, a loss adjustment expense incurred by the  
14 insurer, or a payment made to the insured.

15 (b) "INQUIRY" MEANS A REQUEST FOR INFORMATION REGARDING  
16 THE TERMS, CONDITIONS, OR COVERAGES AFFORDED UNDER AN INSURANCE  
17 CONTRACT.

18  
19 ~~(4) (a) For the purposes of this section, "inquiry" means a request~~  
20 ~~for information regarding the terms, conditions, or coverages afforded~~  
21 ~~under an insurance contract. EVERY INSURER ISSUING A POLICY OF~~  
22 ~~HOMEOWNER'S INSURANCE SHALL COMPLY WITH SECTION 10-3-1104 (1)~~  
23 ~~(H) AND ALL OTHER PROVISIONS OF PART 11 OF ARTICLE 3 OF THIS TITLE.~~

24 **SECTION 17. Safety clause.** The general assembly hereby  
25 finds, determines, and declares that this act is necessary for the immediate  
26 preservation of the public peace, health, and safety.