

SENATE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

February 15, 2005  
Date

Committee on State, Veterans & Military Affairs.

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

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

1 Amend printed bill, page 3, line 6, strike "~~new~~" and substitute "new";

2 after line 12, insert the following:

3           "(I) "EXECUTIVE BOARD POLICY OR PRACTICE" INCLUDES ANY  
4 ADDITIONAL PROCEDURAL STEP OR BURDEN, FINANCIAL OR OTHERWISE,  
5 PLACED ON A UNIT OWNER WHO SEEKS APPROVAL FOR A LANDSCAPING  
6 CHANGE BY THE EXECUTIVE BOARD OF A UNIT OWNERS' ASSOCIATION, AS  
7 DEFINED IN SECTION 38-33.3-103, C.R.S., AND NOT INCLUDED IN THE  
8 EXISTING DECLARATION OR BYLAWS OF THE ASSOCIATION. AN  
9 "EXECUTIVE BOARD POLICY OR PRACTICE" INCLUDES, WITHOUT  
10 LIMITATION, THE REQUIREMENT OF:

11           (A) AN ARCHITECT'S STAMP;

12           (B) PREAPPROVAL BY AN ARCHITECT OR LANDSCAPE ARCHITECT  
13 RETAINED BY THE EXECUTIVE BOARD;

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

17           (D) THE ADOPTION OF A LANDSCAPING CHANGE FEE.";

1 strike line 13 and substitute the following:

2 "(II) "Restrictive covenant" means any covenant, restriction, BYLAW,  
3 EXECUTIVE BOARD POLICY OR PRACTICE, or ".

4 Renumber succeeding subparagraphs accordingly.

5 Page 4, after line 1, insert the following:

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

10 (I) SUCH ENFORCEMENT ACTION SHALL BE SUSPENDED DURING A  
11 DROUGHT EMERGENCY DECLARED BY THE JURISDICTION IN WHICH THE  
12 COMMON INTEREST COMMUNITY IS LOCATED;

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

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

18 line 10, strike "OUTDOOR";

19 line 11, after "PROPERTY", insert "OR IN A WINDOW OF THE UNIT OWNER'S  
20 RESIDENCE";

21 line 19, after "PROPERTY,", insert "IN A WINDOW OF THE UNIT OWNER'S  
22 RESIDENCE,".

23 Page 8, after line 6, insert the following:

24 **"38-33.3-221.5. Withdrawal from merged common interest**  
25 **community.** (1) A COMMON INTEREST COMMUNITY THAT WAS MERGED  
26 OR CONSOLIDATED WITH ANOTHER COMMON INTEREST COMMUNITY, OR IS  
27 PARTY TO AN AGREEMENT TO DO SO PURSUANT TO SECTION 38-33.3-221,  
28 MAY WITHDRAW FROM THE MERGED OR CONSOLIDATED COMMON  
29 INTEREST COMMUNITY OR TERMINATE THE AGREEMENT TO MERGE OR  
30 CONSOLIDATE, WITHOUT THE CONSENT OF THE OTHER COMMON INTEREST

1 COMMUNITY OR COMMUNITIES INVOLVED, IF THE COMMON INTEREST  
2 COMMUNITY WISHING TO WITHDRAW MEETS ALL OF THE FOLLOWING  
3 CRITERIA:

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

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

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

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

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

16 (f) ITS WITHDRAWAL WOULD NOT SEVERELY IMPACT THE  
17 REMAINDER OF THE MERGED COMMON INTEREST COMMUNITY OR  
18 ASSOCIATION.

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 strike lines 7 through 27.

24 Strike page 9.

25 Page 10, strike lines 1 through 21 and substitute the following:

26 **"38-33.3-223. Sale of unit - disclosure to buyer.** (1) EXCEPT IN  
27 THE CASE OF A FORECLOSURE SALE, THE SELLER OF A UNIT IN A COMMON  
28 INTEREST COMMUNITY SHALL MAIL OR DELIVER TO THE PURCHASER, ON OR  
29 BEFORE THE TITLE OBJECTION DEADLINE, COPIES OF ALL OF THE  
30 FOLLOWING IN THE MOST CURRENT FORM AVAILABLE:

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

- 1 (b) THE DECLARATION;
- 2 (c) ANY PARTY WALL AGREEMENTS;
- 3 (d) MINUTES OF THE MOST RECENT ANNUAL UNIT OWNERS'  
4 MEETING AND OF ANY EXECUTIVE BOARD MEETINGS THAT OCCURRED  
5 WITHIN THE SIX MONTHS IMMEDIATELY PRECEDING THE TITLE DEADLINE;
- 6 (e) THE ASSOCIATION'S OPERATING BUDGET;
- 7 (f) THE ASSOCIATION'S ANNUAL INCOME AND EXPENDITURES  
8 STATEMENT; AND
- 9 (g) THE ASSOCIATION'S ANNUAL BALANCE SHEET.

10 (2) WRITTEN NOTICE OF ANY UNSATISFACTORY PROVISION IN ANY  
11 OF THE DOCUMENTS LISTED IN SUBSECTION (1) OF THIS SECTION, WHICH  
12 NOTICE IS SIGNED BY THE BUYER OR ON BEHALF OF THE BUYER AND GIVEN  
13 TO THE SELLER ON OR BEFORE THE TITLE OBJECTION DEADLINE, SHALL BE  
14 CAUSE FOR TERMINATION OF THE CONTRACT OF PURCHASE AND SALE OF  
15 THE UNIT. IF THE SELLER DOES NOT RECEIVE SUCH WRITTEN NOTICE OF  
16 OBJECTION ON OR BEFORE THE TITLE OBJECTION DEADLINE, THE BUYER  
17 SHALL BE DEEMED TO HAVE ACCEPTED THE TERMS OF SAID DOCUMENTS,  
18 AND THE BUYER'S RIGHT TO TERMINATE THE CONTRACT ON THIS BASIS IS  
19 WAIVED.

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

22 **38-33.3-301. Organization of unit owners' association.** A unit  
23 owners' association shall be organized no later than the date the first unit  
24 in the common interest community is conveyed to a purchaser. The  
25 membership of the association at all times shall consist exclusively of all  
26 unit owners or, following termination of the common interest community,  
27 of all former unit owners entitled to distributions of proceeds under  
28 section 38-33.3-218, or their heirs, personal representatives, successors,  
29 or assigns. The association shall be organized as a nonprofit,  
30 not-for-profit, or for-profit corporation or as a limited liability company  
31 in accordance with the laws of the state of Colorado; except that the  
32 failure of the association to incorporate or organize as a limited liability  
33 company will not adversely affect either the existence of the common  
34 interest community for purposes of this article or the rights of persons

1 acting in reliance upon such existence, other than as specifically provided  
2 in section 38-33.3-316. NEITHER THE CHOICE OF ENTITY NOR THE  
3 ORGANIZATIONAL STRUCTURE OF THE ASSOCIATION SHALL BE DEEMED TO  
4 AFFECT ITS SUBSTANTIVE RIGHTS AND OBLIGATIONS UNDER THIS ARTICLE.

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

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

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

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

22 Renumber succeeding sections accordingly.

23 Page 10, line 22, strike "38-33.3-303 (4) and (8)," and substitute  
24 "38-33.3-303 (4),";

25 line 23, strike "are" and substitute "is";

26 line 25, strike "**annual**".

27 Page 11, strike lines 17 through 19 and substitute the following:

28 "SUBJECT TO AN AUDIT OR REVIEW AT LEAST ONCE EVERY TWO YEARS BY  
29 A PERSON SELECTED BY THE EXECUTIVE BOARD. SUCH PERSON NEEDS NOT  
30 BE A CERTIFIED PUBLIC ACCOUNTANT EXCEPT IN THE CASE OF A FULL  
31 AUDIT. A FULL AUDIT SHALL NOT BE REQUIRED EXCEPT UPON THE REQUEST  
32 OF THE OWNERS OF AT LEAST ONE-THIRD OF THE UNITS. SUCH AUDIT OR

1 REVIEW SHALL BE COMPLETED BY THE";

2 strike lines 24 through 27.

3 Page 12, strike lines 1 through 12 and substitute the following:

4 "SECTION 9. 38-33.3-308 (1) and (2), Colorado Revised  
5 Statutes, are amended, and the said 38-33.3-308 is further amended BY  
6 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to  
7 read:

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

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

30 (b) THE ASSOCIATION IS ENCOURAGED TO PROVIDE ALL NOTICES  
31 AND AGENDAS REQUIRED BY THIS ARTICLE IN ELECTRONIC FORM, BY  
32 POSTING ON A WEB SITE OR OTHERWISE, IN ADDITION TO PRINTED FORM.  
33 IF SUCH ELECTRONIC MEANS ARE AVAILABLE, THE ASSOCIATION SHALL  
34 PROVIDE NOTICE OF ALL REGULAR AND SPECIAL MEETINGS BY ELECTRONIC  
35 MAIL TO ALL UNIT OWNERS WHO SO REQUEST AND WHO FURNISH THE  
36 ASSOCIATION WITH THEIR ELECTRONIC MAIL ADDRESSES. ELECTRONIC

1 NOTICE OF A SPECIAL MEETING SHALL BE GIVEN AS SOON AS POSSIBLE BUT  
2 AT LEAST TWENTY-FOUR HOURS BEFORE THE MEETING.

3 (2.5) (a) NOTWITHSTANDING ANY".

4 Page 13, after line 9, insert the following:

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

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

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

22 (2) Votes allocated to a unit may be cast pursuant to a proxy duly  
23 executed by a unit owner; EXCEPT THAT NO PERSON SHALL HOLD THE  
24 PROXY OF MORE THAN ONE UNIT OWNER OR, IF A UNIT IS OWNED BY MORE  
25 THAN ONE PERSON, THE PROXIES OF ONE OR MORE OWNERS OF THAT UNIT.  
26 If a unit is owned by more than one person, each owner of the unit may  
27 vote or register protest to the casting of votes by the other owners of the  
28 unit through a duly executed proxy. A unit owner may not revoke a  
29 proxy given pursuant to this section except by actual notice of revocation  
30 to the person presiding over a meeting of the association. A proxy is void  
31 if it is not dated or purports to be revocable without notice. A proxy  
32 terminates eleven months after its date, unless it provides otherwise."

33 Renumber succeeding sections accordingly.

34 Page 13, line 23, strike "AND MAY" and substitute "BUT SHALL NOT".

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

2 "SECTION 13. 38-33.3-315, Colorado Revised Statutes, is  
3 amended BY THE ADDITION OF A NEW SUBSECTION to read:

4 **38-33.3-315. Assessments for common expenses.** (7) UNLESS  
5 OTHERWISE SPECIFICALLY PROVIDED IN THE DECLARATION OR BYLAWS,  
6 THE ASSOCIATION MAY ENTER INTO AN ESCROW AGREEMENT WITH THE  
7 HOLDER OF A UNIT OWNER'S MORTGAGE SO THAT ASSESSMENTS MAY BE  
8 COMBINED WITH THE UNIT OWNER'S MORTGAGE PAYMENTS AND PAID AT  
9 THE SAME TIME AND IN THE SAME MANNER."

10 Renumber succeeding sections accordingly.

11 Page 14, strike lines 14 through 27.

12 Page 15, strike line 1.

13 Renumber succeeding sections accordingly.

14 Page 18, strike lines 16 through 25.

15 Renumber succeeding sections accordingly.

16 Page 19, strike lines 11 through 27.

17 Page 20, strike lines 1 through 7 and substitute the following:

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

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