

First Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

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

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.

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 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) "Restrictive covenant" means any covenant, restriction, or
14 condition applicable to real property for the purpose of controlling land
15 use, but does not include any covenant, restriction, or condition imposed
16 on such real property by any governmental entity.

17 (II) "TURF GRASS" MEANS CONTINUOUS PLANT COVERAGE
18 CONSISTING OF HYBRIDIZED GRASSES THAT, WHEN REGULARLY MOWED,
19 FORM A DENSE GROWTH OF LEAF BLADES AND ROOTS.

20 (III) "XERISCAPE" MEANS THE APPLICATION OF THE PRINCIPLES OF
21 LANDSCAPE PLANNING AND DESIGN, SOIL ANALYSIS AND IMPROVEMENT,
22 APPROPRIATE PLANT SELECTION, LIMITATION OF TURF AREA, USE OF
23 MULCHES, IRRIGATION EFFICIENCY, AND APPROPRIATE MAINTENANCE THAT

1 RESULTS IN WATER USE EFFICIENCY AND WATER-SAVING PRACTICES.

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

5 **38-33.3-106.5. Prohibitions contrary to public policy - patriotic**
6 **and political expression - emergency vehicles - definitions.**

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

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

18 (b) (I) THE INDOOR OR OUTDOOR DISPLAY OF A POLITICAL SIGN BY
19 A UNIT OWNER ON THAT UNIT OWNER'S PROPERTY, OR ON A COMMON WALL
20 OR BALCONY ADJOINING THE UNIT OWNER'S PROPERTY; EXCEPT THAT AN
21 ASSOCIATION MAY PROHIBIT THE DISPLAY OF POLITICAL SIGNS EARLIER
22 THAN FORTY-FIVE DAYS BEFORE THE DAY OF AN ELECTION AND LATER
23 THAN SEVEN DAYS AFTER AN ELECTION DAY. AN ASSOCIATION MAY
24 REGULATE THE SIZE AND NUMBER OF POLITICAL SIGNS THAT MAY BE
25 PLACED ON A UNIT OWNER'S PROPERTY IF THE ASSOCIATION'S REGULATION
26 IS NO MORE RESTRICTIVE THAN ANY APPLICABLE CITY, TOWN, OR COUNTY
27 ORDINANCE THAT REGULATES THE SIZE AND NUMBER OF POLITICAL SIGNS

1 ON RESIDENTIAL PROPERTY. IF THE CITY, TOWN, OR COUNTY IN WHICH THE
2 PROPERTY IS LOCATED DOES NOT REGULATE THE SIZE AND NUMBER OF
3 POLITICAL SIGNS ON RESIDENTIAL PROPERTY, THE ASSOCIATION SHALL
4 PERMIT AT LEAST ONE POLITICAL SIGN WITH THE MAXIMUM DIMENSIONS OF
5 THIRTY-SIX INCHES BY FORTY-EIGHT INCHES ON A UNIT OWNER'S
6 PROPERTY.

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

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

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

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

25 (C) THE VEHICLE IS OWNED OR OPERATED BY THE PUBLIC UTILITY
26 AND BEARS THE UTILITY'S OFFICIAL EMBLEM OR OTHER VISIBLE
27 DESIGNATION; OR

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

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

7 (C) THE VEHICLE BEARS AN OFFICIAL EMBLEM OR OTHER VISIBLE
8 DESIGNATION OF THE FIRE DEPARTMENT, EMERGENCY SERVICE PROVIDER,
9 OR OTHER PUBLIC AGENCY.

10 **SECTION 3.** 38-33.3-117 (1), Colorado Revised Statutes, is
11 amended BY THE ADDITION OF THE FOLLOWING NEW
12 PARAGRAPHS to read:

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

18 (h.3) 38-33.3-205 (2);

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

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

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

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

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

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

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

27 **38-33.3-205. Contents of declaration.** (2) The declaration may

1 contain any other matters the declarant considers appropriate; EXCEPT
2 THAT ANY PROVISION PURPORTING TO WAIVE A UNIT OWNER'S HOMESTEAD
3 RIGHTS UNDER ARTICLE 41 OF THIS TITLE IN THE EVENT OF FORECLOSURE
4 IS HEREBY DECLARED CONTRARY TO PUBLIC POLICY, VOID, AND
5 UNENFORCEABLE.

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

9 **38-33.3-209.4. Identity of association - agent - manager -**
10 **contact information.** THE ASSOCIATION SHALL PROVIDE TO ALL UNIT
11 OWNERS, AT LEAST ONCE PER YEAR, A WRITTEN NOTICE STATING THE NAME
12 OF THE ASSOCIATION; THE NAME OF THE ASSOCIATION'S DESIGNATED
13 AGENT OR MANAGEMENT COMPANY, IF ANY; AND A VALID PHYSICAL
14 ADDRESS AND TELEPHONE NUMBER FOR BOTH THE ASSOCIATION AND THE
15 DESIGNATED AGENT OR MANAGEMENT COMPANY, IF ANY. THE NOTICE
16 SHALL ALSO INCLUDE THE NAME OF THE COMMON INTEREST COMMUNITY,
17 THE INITIAL DATE OF RECORDING OF THE DECLARATION, AND THE
18 RECEPTION NUMBER OR BOOK AND PAGE FOR THE MAIN DOCUMENT THAT
19 CONSTITUTES THE DECLARATION. IF THE ASSOCIATION'S ADDRESS,
20 DESIGNATED AGENT, OR MANAGEMENT COMPANY CHANGES, THE
21 ASSOCIATION SHALL PROVIDE ALL UNIT OWNERS WITH AN AMENDED
22 NOTICE WITHIN NINETY DAYS AFTER THE CHANGE.

23 **38-33.3-209.6. Notice to escrow agent regarding unpaid**
24 **assessments.** ON WRITTEN REQUEST, THE ASSOCIATION SHALL FURNISH TO
25 A LIENHOLDER, ESCROW AGENT, UNIT OWNER, OR PERSON DESIGNATED BY
26 A UNIT OWNER A STATEMENT SETTING FORTH THE AMOUNT OF ANY UNPAID
27 ASSESSMENT AGAINST THE UNIT. THE ASSOCIATION SHALL FURNISH THE

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

7 **38-33.3-223. Sale of unit - disclosure to buyer.** (1) EXCEPT IN
8 THE CASE OF A FORECLOSURE SALE, A UNIT OWNER SHALL MAIL OR
9 DELIVER TO A PURCHASER, OR SHALL ARRANGE FOR THE ASSOCIATION TO
10 MAIL OR DELIVER TO THE PURCHASER, NO LESS THAN TEN DAYS PRIOR TO
11 CLOSING, ALL OF THE FOLLOWING:

12 (a) A COPY OF THE BYLAWS AND THE RULES OF THE ASSOCIATION;

13 (b) A COPY OF THE DECLARATION;

14 (c) A DATED STATEMENT CONTAINING:

15 (I) THE TELEPHONE NUMBER AND ADDRESS OF A PRINCIPAL
16 CONTACT FOR THE ASSOCIATION, WHICH MAY BE A MEMBER OF THE
17 ASSOCIATION'S EXECUTIVE BOARD, AN AGENT OF A MANAGEMENT
18 COMPANY RETAINED BY THE ASSOCIATION, AN OFFICER OF THE
19 ASSOCIATION, OR ANY OTHER PERSON DESIGNATED BY THE EXECUTIVE
20 BOARD;

21 (II) THE AMOUNT OF THE COMMON EXPENSE ASSESSMENT FOR THE
22 UNIT AND ANY UNPAID COMMON EXPENSE ASSESSMENT, SPECIAL
23 ASSESSMENT, OR OTHER ASSESSMENT, FEE, OR CHARGE CURRENTLY DUE
24 AND PAYABLE FROM THE SELLING UNIT OWNER;

25 (III) A STATEMENT AS TO WHETHER A PORTION OF THE UNIT IS
26 COVERED BY INSURANCE MAINTAINED BY THE ASSOCIATION;

27 (IV) THE TOTAL AMOUNT OF MONEY HELD BY THE ASSOCIATION AS

1 RESERVES;

2 (V) A COPY OF THE CURRENT OPERATING BUDGET OF THE
3 ASSOCIATION;

4 (VI) A COPY OF THE MOST RECENT ANNUAL FINANCIAL REPORT OF
5 THE ASSOCIATION; EXCEPT THAT, IF THE REPORT IS MORE THAN TEN PAGES,
6 THE ASSOCIATION MAY PROVIDE A SUMMARY OF THE REPORT IN LIEU OF
7 THE ENTIRE REPORT;

8 (VII) A COPY OF THE MOST RECENT RESERVE STUDY OF THE
9 ASSOCIATION, IF ANY;

10 (VIII) CASE NAMES AND CASE NUMBERS FOR PENDING LITIGATION
11 WITH RESPECT TO THE UNIT FILED BY THE ASSOCIATION AGAINST THE UNIT
12 OWNER OR FILED BY THE UNIT OWNER AGAINST THE ASSOCIATION; EXCEPT
13 THAT THE UNIT OWNER OR THE ASSOCIATION SHALL NOT BE REQUIRED TO
14 DISCLOSE INFORMATION CONCERNING THE PENDING LITIGATION THAT
15 WOULD VIOLATE ANY APPLICABLE RULE OF ATTORNEY-CLIENT PRIVILEGE
16 UNDER COLORADO LAW; AND

17 (IX) WHETHER THE RECORDS OF THE ASSOCIATION REFLECT ANY
18 ALTERATIONS OR IMPROVEMENTS TO THE UNIT, MADE WITHIN THE
19 ONE-YEAR LIMITATION PERIOD STATED IN SECTION 38-33.3-123 (2), THAT
20 VIOLATE THE DECLARATION. NOTHING IN THIS SUBPARAGRAPH (IX)
21 RELIEVES THE SELLER OF A UNIT FROM THE OBLIGATION TO DISCLOSE
22 ALTERATIONS OR IMPROVEMENTS TO THE UNIT THAT VIOLATE THE
23 DECLARATION, NOR PRECLUDES THE ASSOCIATION FROM TAKING ACTION
24 AGAINST THE PURCHASER OF A UNIT FOR VIOLATIONS THAT ARE APPARENT
25 AT THE TIME OF PURCHASE AND THAT ARE NOT REFLECTED IN THE
26 ASSOCIATION'S RECORDS.

27 (d) A STATEMENT ABOUT WHETHER THE UNIT OWNER HAS ANY

1 KNOWLEDGE OF ANY ALTERATIONS OR IMPROVEMENTS TO THE UNIT THAT
2 VIOLATE THE DECLARATION.

3 (2) THE ASSOCIATION MAY CHARGE THE UNIT OWNER A
4 REASONABLE FEE TO COMPENSATE THE ASSOCIATION FOR THE COSTS
5 INCURRED IN THE PREPARATION OF A STATEMENT FURNISHED BY THE
6 ASSOCIATION PURSUANT TO THIS SECTION. THE ASSOCIATION SHALL MAKE
7 AVAILABLE TO ANY INTERESTED PARTY THE AMOUNT OF ANY FEE FOR SUCH
8 SERVICE THAT IS ESTABLISHED FROM TIME TO TIME BY THE ASSOCIATION.

9 (3) A PURCHASER OR SELLER WHO IS DAMAGED BY THE FAILURE OF
10 THE UNIT OWNER OR THE ASSOCIATION TO DISCLOSE THE INFORMATION
11 REQUIRED BY SUBSECTION (1) OF THIS SECTION MAY PURSUE ANY AND ALL
12 REMEDIES AT LAW OR IN EQUITY AGAINST THE UNIT OWNER OR THE
13 ASSOCIATION, AS APPROPRIATE, INCLUDING THE RECOVERY OF
14 REASONABLE ATTORNEY FEES. IN ADDITION, A PURCHASER WHO IS
15 DAMAGED BY THE FAILURE OF THE UNIT OWNER TO PROVIDE THE
16 DISCLOSURE STATEMENT REQUIRED BY SECTION 38-35.7-102 (1) MAY
17 PURSUE THE REMEDIES PROVIDED IN SECTION 38-35.7-102 (2).

18 (4) FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT
19 OTHERWISE REQUIRES, "UNIT OWNER" MEANS THE SELLER OF THE UNIT
20 TITLE AND EXCLUDES ANY REAL ESTATE SALESPERSON OR REAL ESTATE
21 BROKER ACTING ON THE UNIT OWNER'S BEHALF.

22 **SECTION 6.** 38-33.3-303 (4) and (8), Colorado Revised Statutes,
23 are amended to read:

24 **38-33.3-303. Executive board members and officers - powers**
25 **and duties - annual audit.** (4) (a) Within ninety days after adoption of
26 any proposed budget for the common interest community, the executive
27 board shall mail, by ordinary first-class mail, or otherwise deliver a

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

16 (b) THE BOOKS AND RECORDS OF THE ASSOCIATION SHALL BE
17 SUBJECT TO AN ANNUAL FINANCIAL AUDIT, REVIEW, OR COMPILATION BY
18 A CERTIFIED PUBLIC ACCOUNTANT SELECTED BY THE EXECUTIVE BOARD.
19 SUCH AUDIT, REVIEW, OR COMPILATION SHALL BE COMPLETED BY THE
20 DATE SPECIFIED IN THE DECLARATION OR BYLAWS, BUT NO LATER THAN
21 ONE HUNDRED EIGHTY DAYS AFTER THE END OF THE ASSOCIATION'S FISCAL
22 YEAR, AND SHALL BE MADE AVAILABLE UPON REQUEST TO ANY UNIT
23 OWNER BEGINNING NO LATER THAN THIRTY DAYS AFTER ITS COMPLETION.

24 (8) (a) Notwithstanding any provision of the declaration or bylaws
25 to the contrary, the unit owners, by a vote of sixty-seven percent of all
26 persons present and entitled to vote at any meeting of the unit owners at
27 which a quorum is present, may remove any member of the executive

1 board with or without cause, other than a member appointed by the
2 declarant or a member elected pursuant to a class vote under section
3 38-33.3-207 (4).

4 (b) NOTWITHSTANDING ANY PROVISION OF THE DECLARATION,
5 BYLAWS, OR CORPORATION LAW TO THE CONTRARY, ANY UNIT OWNER
6 MAY SUE TO RESTRAIN OR ENJOIN CORPORATE ACTION BY THE
7 ASSOCIATION WITHOUT FIRST OBTAINING THE SUPPORT OF A SPECIFIED
8 NUMBER OR PERCENTAGE OF UNIT OWNERS.

9 **SECTION 7.** 38-33.3-308, Colorado Revised Statutes, is
10 amended BY THE ADDITION OF THE FOLLOWING NEW
11 SUBSECTIONS to read:

12 **38-33.3-308. Meetings.** (2.5) (a) NOTWITHSTANDING ANY
13 PROVISION IN THE DECLARATION, BYLAWS, OR OTHER DOCUMENTS TO THE
14 CONTRARY, ALL MEETINGS OF THE ASSOCIATION AND BOARD OF DIRECTORS
15 ARE OPEN TO EVERY UNIT OWNER OF THE ASSOCIATION, OR TO ANY PERSON
16 DESIGNATED BY A UNIT OWNER IN WRITING AS THE UNIT OWNER'S
17 REPRESENTATIVE, AND ALL UNIT OWNERS OR DESIGNATED
18 REPRESENTATIVES SO DESIRING SHALL BE PERMITTED TO ATTEND, LISTEN,
19 AND SPEAK AT AN APPROPRIATE TIME DURING THE DELIBERATIONS AND
20 PROCEEDINGS; EXCEPT THAT, FOR REGULAR AND SPECIAL MEETINGS OF THE
21 BOARD, UNIT OWNERS WHO ARE NOT BOARD MEMBERS MAY NOT
22 PARTICIPATE IN ANY DELIBERATION OR DISCUSSION UNLESS EXPRESSLY SO
23 AUTHORIZED BY A VOTE OF THE MAJORITY OF A QUORUM OF THE BOARD.

24 (b) THE BOARD MAY PLACE REASONABLE TIME RESTRICTIONS ON
25 THOSE PERSONS SPEAKING DURING THE MEETING BUT SHALL PERMIT A UNIT
26 OWNER OR A UNIT OWNER'S DESIGNATED REPRESENTATIVE TO SPEAK
27 BEFORE THE BOARD TAKES FORMAL ACTION ON AN ITEM UNDER

1 DISCUSSION, IN ADDITION TO ANY OTHER OPPORTUNITIES TO SPEAK. THE
2 BOARD SHALL PROVIDE FOR A REASONABLE NUMBER OF PERSONS TO SPEAK
3 ON EACH SIDE OF AN ISSUE.

4 (4.5) UPON FINAL RESOLUTION OF ANY MATTER FOR WHICH THE
5 BOARD RECEIVED LEGAL ADVICE OR THAT CONCERNED PENDING OR
6 CONTEMPLATED LITIGATION, THE BOARD MAY DISCLOSE INFORMATION
7 ABOUT THAT MATTER IN AN OPEN MEETING EXCEPT FOR INFORMATION
8 THAT IS REQUIRED TO REMAIN CONFIDENTIAL BY THE TERMS OF A
9 SETTLEMENT AGREEMENT OR JUDGMENT.

10 **SECTION 8.** Part 3 of article 33.3 of title 38, Colorado Revised
11 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
12 read:

13 **38-33.3-310.5. Executive board - conflicts of interest.** (1) IF
14 ANY CONTRACT, DECISION, OR OTHER ACTION TAKEN BY OR ON BEHALF OF
15 THE EXECUTIVE BOARD WOULD FINANCIALLY BENEFIT ANY MEMBER OF
16 THE EXECUTIVE BOARD OR ANY PERSON WHO IS A PARENT, GRANDPARENT,
17 SPOUSE, CHILD, OR SIBLING OF A MEMBER OF THE EXECUTIVE BOARD OR A
18 PARENT OR SPOUSE OF ANY OF THOSE PERSONS, THAT MEMBER OF THE
19 EXECUTIVE BOARD SHALL DECLARE A CONFLICT OF INTEREST FOR THAT
20 ISSUE. THE MEMBER SHALL DECLARE THE CONFLICT IN AN OPEN MEETING,
21 PRIOR TO ANY DISCUSSION OR ACTION ON THAT ISSUE. AFTER MAKING
22 SUCH DECLARATION, THE MEMBER MAY PARTICIPATE IN THE DISCUSSION
23 AND MAY VOTE ON THAT ISSUE.

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

26 **SECTION 9.** 38-33.3-312 (3), Colorado Revised Statutes, is
27 amended to read:

1 **38-33.3-312. Conveyance or encumbrance of common**
2 **elements.** (3) (a) An agreement to convey, or subject to a security
3 interest, common elements in a condominium or planned community, or,
4 in a cooperative, an agreement to convey, or subject to a security interest,
5 any part of a cooperative, must be evidenced by the execution of an
6 agreement, in the same manner as a deed, by the association. The
7 agreement must specify a date, NOT LESS THAN NINETY DAYS AFTER THE
8 MAILING OF NOTICE OF THE AGREEMENT BY FIRST-CLASS MAIL TO ALL
9 OWNERS, after which the agreement will be void unless approved by the
10 requisite percentage of owners.

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

14 **SECTION 10.** 38-33.3-316 (1), Colorado Revised Statutes, is
15 amended to read:

16 **38-33.3-316. Lien for assessments.** (1) The association, if such
17 association is incorporated or organized as a limited liability company,
18 has a statutory lien on a unit for any assessment levied against that unit
19 or fines imposed against its unit owner. Unless the declaration otherwise
20 provides, AND EXCEPT AS OTHERWISE PROVIDED IN SECTION 38-38-101
21 (1.3), fees, charges, late charges, attorney fees, fines, and interest charged
22 pursuant to section 38-33.3-302 (1) (j), (1) (k), and (1) (l), section
23 38-33.3-313 (6), and section 38-33.3-315 (2) are enforceable as
24 assessments under this article. The amount of the lien shall include all
25 those items set forth in this section from the time such items become due.
26 If an assessment is payable in installments, each installment is a lien from
27 the time it becomes due, including the due date set by any valid

1 association's acceleration of installment obligations.

2 **SECTION 11.** 38-33.3-317, Colorado Revised Statutes, is
3 amended to read:

4 **38-33.3-317. Association records.** (1) The association shall
5 keep financial records sufficiently detailed to enable the association to
6 comply with section 38-33.3-316 (8) concerning statements of unpaid
7 assessments.

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

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

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

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

20 (b) THE REQUEST DESCRIBES WITH REASONABLE PARTICULARITY
21 THE RECORDS SOUGHT AND THE PURPOSE OF THE REQUEST; AND

22 (c) THE RECORDS ARE RELEVANT TO THE PURPOSE OF THE
23 REQUEST.

24 (5) RECORDS SUBJECT TO THIS SECTION INCLUDE, WITHOUT
25 LIMITATION:

26 (a) THE DECLARATION;

27 (b) ANY RECORDS REQUIRED TO BE KEPT IN ACCORDANCE WITH

1 THE "COLORADO BUSINESS CORPORATION ACT", ARTICLES 101 TO 117 OF
2 TITLE 7, C.R.S., OR OTHER STATUTES GOVERNING THE ASSOCIATION AS AN
3 ENTITY;

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

6 (d) ACCOUNTING RECORDS OF THE ASSOCIATION;

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

10 (f) THE CORPORATION'S MOST RECENT FINANCIAL STATEMENTS,
11 SHOWING IN REASONABLE DETAIL ITS ASSETS AND LIABILITIES AND THE
12 RESULTS OF ITS OPERATIONS; AND

13 (g) THE ANNUAL AUDIT, REVIEW, OR COMPILATION PREPARED IN
14 ACCORDANCE WITH SECTION 38-33.3-303 (4) (b).

15 (6) UPON REASONABLE GROUNDS STATED CLEARLY IN WRITING,
16 THE ASSOCIATION MAY DECLINE TO MAKE AVAILABLE RECORDS
17 PERTAINING TO:

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

19 (b) COMMUNICATIONS BETWEEN THE ASSOCIATION AND ITS
20 ATTORNEY;

21 (c) PENDING OR CONTEMPLATED LITIGATION;

22 (d) PENDING OR CONTEMPLATED MATTERS RELATING TO
23 ENFORCEMENT OF THE ASSOCIATION'S DECLARATIONS, BYLAWS, OR RULES
24 AND REGULATIONS EXCEPT AS PERTAIN TO THE UNIT OWNER ON WHOSE
25 BEHALF THE REQUEST IS MADE; OR

26 (e) MEETING MINUTES OR OTHER RECORDS OF AN EXECUTIVE OR
27 CLOSED SESSION AS DESCRIBED IN SECTION 38-33.3-308 (3) AND (4).

- 1 (7) THIS SECTION SHALL NOT BE CONSTRUED TO AFFECT:
2 (a) THE RIGHT OF A UNIT OWNER TO INSPECT RECORDS:
3 (I) UNDER CORPORATION STATUTES GOVERNING THE INSPECTION
4 OF LISTS OF SHAREHOLDERS OR MEMBERS PRIOR TO AN ANNUAL MEETING;
5 OR
6 (II) IF THE UNIT OWNER IS IN LITIGATION WITH THE ASSOCIATION,
7 TO THE SAME EXTENT AS ANY OTHER LITIGANT; OR
8 (b) THE POWER OF A COURT, INDEPENDENTLY OF THIS ARTICLE, TO
9 COMPEL THE PRODUCTION OF ASSOCIATION RECORDS FOR EXAMINATION
10 ON PROOF BY A UNIT OWNER OF PROPER PURPOSE.

11 **SECTION 12.** Article 35.7 of title 38, Colorado Revised Statutes,
12 is amended BY THE ADDITION OF A NEW SECTION to read:

13 **38-35.7-102. Disclosure - common interest community -**
14 **assessments and other charges.** (1) EVERY CONTRACT FOR THE
15 PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON
16 INTEREST COMMUNITY SHALL COMPLY WITH SECTION 38-33.3-223 AND
17 SHALL CONTAIN A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT IS
18 CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

19 **"I HEREBY ACKNOWLEDGE THAT THE**
20 **DECLARATION, BYLAWS, AND RULES OF THE**
21 **HOMEOWNERS' ASSOCIATION OF THE [NAME**
22 **OF COMMON INTEREST COMMUNITY], IN**
23 **WHICH MY NEW HOME IS LOCATED,**
24 **CONSTITUTE A CONTRACT BETWEEN THE**
25 **ASSOCIATION AND ME (THE PURCHASER). BY**
26 **SIGNING THIS STATEMENT, I ACKNOWLEDGE**
27 **THAT I HAVE READ AND UNDERSTAND THE**

1 ASSOCIATION'S CONTRACT WITH ME (THE
2 PURCHASER). I ALSO UNDERSTAND THAT BY
3 ACCEPTING THIS CONTRACT, I AM
4 RESPONSIBLE FOR PAYING ASSESSMENTS TO
5 THE ASSOCIATION. IF I DO NOT PAY THESE
6 ASSESSMENTS, THE ASSOCIATION COULD
7 PLACE A LIEN ON MY HOME AND POSSIBLY
8 SELL IT TO COLLECT THE DEBT."

9 (2) THE OBLIGATION TO PROVIDE THE INFORMATION REQUIRED BY
10 SECTION 38-33.3-223 AND THE DISCLOSURE STATEMENT SET FORTH IN
11 SUBSECTION (1) OF THIS SECTION SHALL BE UPON THE SELLER, AND, IN THE
12 EVENT OF THE FAILURE BY THE SELLER TO PROVIDE SUCH INFORMATION
13 AND DISCLOSURE STATEMENT, THE PURCHASER SHALL HAVE A CLAIM FOR
14 RELIEF AGAINST THE SELLER FOR ALL DAMAGES TO THE PURCHASER
15 RESULTING FROM SUCH FAILURE PLUS COURT COSTS.

16 **SECTION 13.** 38-38-101, Colorado Revised Statutes, is amended
17 BY THE ADDITION OF A NEW SUBSECTION to read:

18 **38-38-101. Owner of evidence of debt may elect to foreclose -**
19 **notice - record of sale - withdrawal.** (1.3) FORECLOSURE SHALL NOT BE
20 AVAILABLE TO ENFORCE A LIEN FOR FINES IMPOSED BY A UNIT OWNERS'
21 ASSOCIATION, AS DEFINED IN SECTION 38-33.3-103 AS A RESULT OF A UNIT
22 OWNER'S VIOLATION OF THE DECLARATION, BYLAWS, OR RULES AND
23 REGULATIONS OF THE ASSOCIATION OR FOR ANY ATTORNEY FEES, LATE
24 FEES, COLLECTION EXPENSES, OR OTHER CHARGES IMPOSED IN
25 CONNECTION WITH SUCH FINES.

26 **SECTION 14.** 10-4-110.8 (3) and (4), Colorado Revised Statutes,
27 are amended to read:

1 **10-4-110.8. Homeowner's insurance - prohibited practices -**
2 **definitions.** (3) For the purposes of this section, unless the context
3 otherwise requires:

4 (a) "Claim" includes a demand for payment of a benefit by the
5 insured, the payment of a covered benefit by an insurer, a loss reserve
6 established by the insurer, a loss adjustment expense incurred by the
7 insurer, or a payment made to the insured.

8 (b) "INQUIRY" MEANS A REQUEST FOR INFORMATION REGARDING
9 THE TERMS, CONDITIONS, OR COVERAGES AFFORDED UNDER AN INSURANCE
10 CONTRACT.

11 (c) THE DEFINITIONS CONTAINED IN SECTION 38-33.3-103, C.R.S.,
12 APPLY.

13 (4) (a) ~~For the purposes of this section, "inquiry" means a request~~
14 ~~for information regarding the terms, conditions, or coverages afforded~~
15 ~~under an insurance contract.~~ WHEN AN INSURED WHO IS A UNIT OWNER OR
16 OTHER OWNER OF A RESIDENCE SUBMITS A CLAIM CONCERNING INJURY OR
17 DAMAGE THAT HAS OCCURRED AT A CONDOMINIUM OR RESIDENCE AND THE
18 OWNER ALLEGES THAT THE INJURY OR DAMAGE OCCURRED ON OR TO THE
19 OWNER'S PROPERTY, THE OWNER'S CARRIER SHALL:

20 (I) NOT DENY COVERAGE ON THE BASIS THAT THE INJURY OR
21 DAMAGE ACTUALLY OCCURRED ON OR TO A COMMON ELEMENT OR OTHER
22 PROPERTY OTHER THAN THE OWNER'S RESIDENCE AND IS THEREFORE
23 COVERED, IF AT ALL, PURSUANT TO THE CONDOMINIUM'S OR OTHER THIRD
24 PARTY'S INSURANCE COVERAGE; AND

25 (II) PROMPTLY SETTLE THE OWNER'S CLAIM WITHOUT CONSIDERING
26 WHETHER THE RESPONSIBILITY FOR PAYMENT SHOULD BE ASSUMED BY A
27 THIRD PARTY. THE CARRIER MAY PURSUE A SUBROGATION CLAIM AGAINST

1 SUCH A THIRD PARTY AFTER MAKING THE SETTLEMENT REQUIRED BY THIS
2 SUBSECTION (4).

3 (b) TO THE EXTENT THAT THE OWNER'S CARRIER'S SUBROGATION
4 CLAIM AGAINST A THIRD PARTY IS SUCCESSFUL, THE THIRD PARTY SHALL
5 BE LIABLE TO THE OWNER'S CARRIER FOR THE AMOUNT OF THE
6 SETTLEMENT AND ANY ATTENDANT EXPENSES OF COLLECTION, INCLUDING
7 ANY COSTS AND ATTORNEY FEES AWARDED BY A COURT OR ARBITRATOR.

8 **SECTION 15. Safety clause.** The general assembly hereby
9 finds, determines, and declares that this act is necessary for the immediate
10 preservation of the public peace, health, and safety.