

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 06-0337.01 Duane Gall

SENATE BILL 06-089

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Carroll M.,

Senate Committees
Judiciary

House Committees
Local Government

A BILL FOR AN ACT

101 **CONCERNING COMMON INTEREST COMMUNITIES.**

Bill Summary

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

Clarifies provisions of S.B. 05-100 regarding regulation of political signs in common interest community associations (associations). Allows an association to prohibit the parking of commercial vehicles other than police, fire, and paramedic vehicles on community property and to limit the parking of police, fire, and paramedic vehicles so as to preserve adequate guest parking.

Simplifies provisions allowing a court to award attorney fees and costs to the prevailing party in litigation, eliminating the requirement of a claim-by-claim analysis of which party prevailed. Requires an

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
March 1, 2006

SENATE
Amended 2nd Reading
February 28, 2006

association to adopt a written policy for dealing with disputes between the association and unit owners, and to make the policy available to unit owners upon request.

Modifies the requirement imposed by S.B. 05-100 that a financial audit or review be completed within 90 days after the close of the association's fiscal year. In place of the requirement that the association's accounting records employ generally accepted accounting principles, requires that the records be kept on a cash or modified accrual basis and be accurate and complete. Replaces the current requirement for a biennial audit or review with an optional procedure whereby a review is only required if requested by 1/3 of the unit owners, and an audit is required only if requested by 1/3 of the unit owners and the association's budget exceeds \$250,000.

To the list of annual disclosures the association must make available to unit owners, adds a statement of the association's insurance and maintenance responsibilities. Requires recording of the declaration and any covenants in the county land records, if not already so recorded.

In provisions specifying notice by mail and publication to first mortgagees regarding proposed changes to a common interest community's governing declaration, clarifies that a preexisting process, under which amendments may be authorized by court order, is still available.

Allows supermajority provisions exceeding 67% for the amendment of covenants to continue to apply in communities where 67% or more of the votes are allocated to a single owner.

Clarifies provisions relating to notice of meetings and the opportunity for unit owners to offer their views on agenda items prior to action by the executive board. Modifies requirements for the taking of votes by secret ballot and the counting of ballots. Exempts associations whose board members are selected by delegates from secret-ballot requirements.

Replaces S.B. 05-100 provisions on board member conflicts of interest with provisions imported from the "Colorado Revised Nonprofit Corporation Act".

In provisions allowing a unit owner to file a claim against the association's property insurance policy to the same extent as a named insured, places conditions on the exercise of that right by requiring the unit owner first to contact the association and to give the association a reasonable opportunity to respond and inspect the damage. Prohibits an insurer from considering a clarification-of-coverage inquiry by a unit owner when setting premiums to be charged to the association.

1 **SECTION 1.** 38-33.3-106.5 (1) (a), (1) (b), (1) (c), the
2 introductory portion to 38-33.3-106.5 (1) (d), and 38-33.3-106.5 (1) (d)
3 (II), (1) (d) (IV), and (1) (f), Colorado Revised Statutes, are amended, and
4 the said 38-33.3-106.5 is further amended BY THE ADDITION OF A
5 NEW SUBSECTION, to read:

6 **38-33.3-106.5. Prohibitions contrary to public policy -**
7 **patriotic and political expression - emergency vehicles - fire**
8 **prevention - definitions.** (1) Notwithstanding any provision in the
9 declaration, bylaws, or rules and regulations of the association to the
10 contrary, an association shall not prohibit any of the following:

11 (a) The display of the American flag ~~by a unit owner on that A~~
12 ~~unit owner's property, in a window of the unit, owner's residence, or on~~
13 ~~a balcony adjoining the unit owner's property~~ if the American flag is
14 displayed in a manner consistent with the federal flag code, P.L. 94-344;
15 90 stat. 810; 4 U.S.C. SECS. 4 to 10. The association may adopt
16 reasonable rules regarding the placement and manner of display of the
17 American flag. The association rules may regulate the location and size
18 of flags and flagpoles, but shall not prohibit the installation of a flag or
19 flagpole.

20 (b) The display ~~by a unit owner~~ of a service flag bearing a star
21 denoting the service of the OWNER OR OCCUPANT OF THE unit, ~~owner or~~
22 ~~OF a member of the unit owner's OR OCCUPANT'S immediate family, in the~~
23 ~~active or reserve military service of the United States during a time of war~~
24 ~~or armed conflict, on the inside of a window or door of the unit. owner's~~
25 ~~residence.~~ The association may adopt reasonable rules regarding the size
26 and manner of display of service flags; except that the maximum
27 dimensions allowed shall be not less than nine inches by sixteen inches.

1 (c) (I) The display of a political sign by THE OWNER OR OCCUPANT
2 OF a unit owner on that unit owner's property WITHIN THE BOUNDARIES OF
3 THE UNIT or in a window of the unit; ~~owner's residence~~; except that:

4 (A) An association may prohibit the display of political signs
5 earlier than forty-five days before the day of an election and later than
6 seven days after an election day; AND

7 (B) An association may regulate the size and number of political
8 signs ~~that may be placed on a unit owner's property if the association's~~
9 ~~regulation is no more restrictive than any applicable city, town, or county~~
10 ~~ordinance that regulates the size and number of political signs on~~
11 ~~residential property. If the city, town, or county in which the property is~~
12 ~~located does not regulate the size and number of political signs on~~
13 ~~residential property~~ IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS
14 PARAGRAPH (c).

15 (II) The association shall permit at least one political sign per
16 political office or ballot issue that is contested in a pending election. ~~with~~
17 The maximum dimensions of EACH SIGN MAY BE LIMITED TO THE LESSER
18 OF THE FOLLOWING:

19 (A) THE MAXIMUM SIZE ALLOWED BY ANY APPLICABLE CITY,
20 TOWN, OR COUNTY ORDINANCE THAT REGULATES THE SIZE OF POLITICAL
21 SIGNS ON RESIDENTIAL PROPERTY; OR

22 (B) Thirty-six inches by forty-eight inches. ~~on a unit owner's~~
23 ~~property.~~

24 (H) (III) As used in this paragraph (c), "political sign" means a
25 sign that carries a message intended to influence the outcome of an
26 election, including supporting or opposing the election of a candidate, the
27 recall of a public official, or the passage of a ballot issue.

1 (d) The parking of a motor vehicle by THE OCCUPANT OF a unit
2 owner on a street, driveway, or guest parking area in the common interest
3 community if the vehicle is required to be available at designated periods
4 at the unit owner's SUCH OCCUPANT'S residence as a condition of the unit
5 owner's OCCUPANT'S employment and all of the following criteria are met:

6 (II) The unit owner OCCUPANT is a bona fide member of a
7 volunteer fire department or is employed by an emergency service
8 provider, as defined in section 29-11-101 (1.6), C.R.S. A PRIMARY
9 PROVIDER OF EMERGENCY FIRE FIGHTING, LAW ENFORCEMENT,
10 AMBULANCE, OR EMERGENCY MEDICAL SERVICES;

11 (IV) Parking of the vehicle can be accomplished without
12 obstructing emergency access or interfering with the reasonable needs of
13 other unit owners OR OCCUPANTS to use streets, and driveways, AND
14 GUEST PARKING SPACES within the common interest community.

15 (f) ~~(f) The replacement by a unit owner of cedar shakes or other~~
16 ~~flammable roofing materials with nonflammable roofing materials for fire~~
17 ~~prevention or fire suppression purposes.~~

18 ~~(H) The declaration or bylaws may specify reasonable standards~~
19 ~~for the color, appearance, and general type of nonflammable roofing~~
20 ~~materials that are used to replace flammable roofing materials, but may~~
21 ~~not require the use of nonflammable materials that exceed the~~
22 ~~replacement cost of the flammable materials for which they are being~~
23 ~~substituted.~~

24 (2) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION,
25 BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE
26 CONTRARY, AN ASSOCIATION SHALL NOT REQUIRE THE USE OF CEDAR
27 SHAKES OR OTHER FLAMMABLE ROOFING MATERIALS.

1 **SECTION 2.** 38-33.3-116 (2), Colorado Revised Statutes, is
2 amended to read:

3 **38-33.3-116. Exception for new small cooperatives and small**
4 **and limited expense planned communities.** (2) (a) If a cooperative or
5 planned community created in this state on or after July 1, 1998, contains
6 only units restricted to nonresidential use, or contains no more than
7 twenty units and is not subject to any development rights, it is subject
8 only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the
9 declaration provides that this entire article is applicable.

10 (b) If a planned community created in this state after July 1, 1998,
11 provides, in its declaration, that the annual average common expense
12 liability of each unit restricted to residential purposes, exclusive of
13 optional user fees and any insurance premiums paid by the association,
14 may not exceed four hundred dollars, as adjusted pursuant to subsection
15 (3) of this section, it is subject only to sections 38-33.3-105, 38-33.3-106,
16 and 38-33.3-107, unless the declaration provides that this entire article is
17 applicable. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE
18 CONTRARY, A PLANNED COMMUNITY MAY AMEND ITS DECLARATION TO
19 INCLUDE THE LIMITATION ON ANNUAL AVERAGE COMMON EXPENSE
20 LIABILITY SET FORTH IN THIS PARAGRAPH (b) OR MAY PROCEED UNDER THE
21 ELECTION PROCESS SET FORTH IN SECTION 38-33.3-118.

22 **SECTION 3.** 38-33.3-117 (1) (g), (1.5) (a), and (1.5) (e),
23 Colorado Revised Statutes, are amended to read:

24 **38-33.3-117. Applicability to preexisting common interest**
25 **communities.** (1) Except as provided in section 38-33.3-119, the
26 following sections shall apply to all common interest communities created
27 within this state before July 1, 1992, with respect to events and

1 circumstances occurring on or after July 1, 1992:

2 (g) 38-33.3-122 and 38-33.3-123; ~~(2)~~;

3 (1.5) Except as provided in section 38-33.3-119, the following
4 sections shall apply to all common interest communities created within
5 this state before July 1, 1992, with respect to events and circumstances
6 occurring on or after January 1, 2006:

7 (a) ~~38-33.3-123 (1)~~;

8 (e) ~~38-33.3-223~~;

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

11 **38-33.3-123. Enforcement - limitation.** (1) (c) ~~For each claim~~
12 ~~or defense, including but not limited to counterclaims, cross-claims, and~~
13 ~~third-party claims, and except as otherwise provided in paragraph (d) of~~
14 ~~this subsection (1), In any legal proceeding CIVIL ACTION to enforce or~~
15 defend the provisions of this article or of the declaration, bylaws, articles,
16 or rules and regulations, the court shall award ~~to the party prevailing on~~
17 ~~such claim the prevailing party's reasonable collection costs and attorney~~
18 ~~fees, and costs, incurred in asserting or defending the claim AND COSTS~~
19 ~~OF COLLECTION TO THE PREVAILING PARTY.~~

20 **SECTION 5.** 38-33.3-124 (1), Colorado Revised Statutes, is
21 amended to read:

22 **38-33.3-124. Legislative declaration - alternative dispute**
23 **resolution encouraged - policy statement required.** (1) (a) The
24 general assembly finds and declares that the cost, complexity, and delay
25 inherent in court proceedings make litigation a particularly inefficient
26 means of resolving neighborhood disputes. Therefore, common interest
27 communities are encouraged to adopt protocols that make use of

1 mediation or arbitration as alternatives to, or preconditions upon, the
2 filing of a complaint between a unit owner and association in situations
3 that do not involve an imminent threat to the peace, health, or safety of
4 the community.

5 (b) EACH ASSOCIATION SHALL ADOPT A WRITTEN POLICY SETTING
6 FORTH ITS PROCEDURE FOR ADDRESSING DISPUTES ARISING BETWEEN THE
7 ASSOCIATION AND UNIT OWNERS. THE ASSOCIATION SHALL MAKE A COPY
8 OF THIS POLICY AVAILABLE TO UNIT OWNERS UPON REQUEST.

9 **SECTION 6.** 38-33.3-209.4 (1) and (2) (e), Colorado Revised
10 Statutes, are amended 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 year, a~~
14 ~~written notice stating~~ WITHIN NINETY DAYS AFTER ASSUMING CONTROL
15 FROM THE DECLARANT PURSUANT TO SECTION 38-33.3-303 (5), THE
16 ASSOCIATION SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO
17 UNIT OWNERS UPON REASONABLE NOTICE IN ACCORDANCE WITH
18 SUBSECTION (3) OF THIS SECTION. IN ADDITION, IF THE ASSOCIATION'S
19 ADDRESS, DESIGNATED AGENT, OR MANAGEMENT COMPANY CHANGES, THE
20 ASSOCIATION SHALL MAKE UPDATED INFORMATION AVAILABLE WITHIN
21 NINETY DAYS AFTER THE CHANGE:

22 (a) The name of the association;

23 (b) The name of the association's designated agent or management
24 company, if any; ~~and~~

25 (c) A valid physical address and telephone number for both the
26 association and the designated agent or management company, if any;

27 (d) ~~The notice shall also include~~ The name of the common interest

1 community;

2 (e) The initial date of recording of the declaration; and

3 (f) The reception number or book and page for the main document

4 that constitutes the declaration. ~~If the association's address, designated~~

5 ~~agent, or management company changes, the association shall provide all~~

6 ~~unit owners with an amended notice within ninety days after the change.~~

7 (2) Within ninety days after assuming control from the declarant

8 pursuant to section 38-33.3-303 (5), and within ninety days after the end

9 of each fiscal year thereafter, the association shall make the following

10 information available to unit owners upon reasonable notice in

11 accordance with subsection (3) of this section:

12 (e) The results of ~~any~~ ITS MOST RECENT AVAILABLE financial audit

13 or review; ~~for the fiscal year immediately preceding the current annual~~

14 ~~disclosure;~~

15 **SECTION 7.** 38-33.3-209.5 (1) (a), (1) (b) (VI), and (1) (b) (VII),

16 Colorado Revised Statutes, are amended, and the said 38-33.3-209.5 (1)

17 (b) is further amended BY THE ADDITION OF A NEW

18 SUBPARAGRAPH, to read:

19 **38-33.3-209.5. Responsible governance policies.** (1) To

20 promote responsible governance, associations shall:

21 (a) Maintain ACCURATE AND COMPLETE accounting records ~~using~~

22 ~~generally accepted accounting principles~~ ON AN ACCRUAL, CASH, OR

23 MODIFIED ACCRUAL BASIS OF ACCOUNTING; and

24 (b) Adopt policies, procedures, and rules and regulations

25 concerning:

26 (VI) Investment of reserve funds; and

27 (VII) Procedures for the adoption and amendment of policies,

1 procedures, and rules; AND

2 (VIII) PROCEDURES FOR ADDRESSING DISPUTES ARISING BETWEEN
3 THE ASSOCIATION AND UNIT OWNERS.

4 **SECTION 8.** 38-33.3-217 (1) and (4), Colorado Revised Statutes,
5 are amended to read:

6 **38-33.3-217. Amendment of declaration.** (1) (a) (I) Except in
7 cases of amendments that may be executed by a declarant under section
8 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,
9 or 38-33.3-222, by an association under section 38-33.3-107, 38-33.3-206
10 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and
11 (12), or by the district court for any county that includes all or any portion
12 of a common interest community under subsection (7) of this section, and
13 except as limited by subsection (4) of this section, AS OTHERWISE
14 PROVIDED IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (a), the
15 declaration, including the plats and maps, may be amended only by the
16 affirmative vote or agreement of unit owners of units to which more than
17 fifty percent of the votes in the association are allocated or any larger
18 percentage, not to exceed sixty-seven percent, that the declaration
19 specifies. Any provision in the declaration that purports to specify a
20 percentage larger than sixty-seven percent is hereby declared void as
21 contrary to public policy, and until amended, such provision shall be
22 deemed to specify a percentage of sixty-seven percent. The declaration
23 may specify a smaller percentage than a simple majority only if all of the
24 units are restricted exclusively to nonresidential use. NOTHING IN THIS
25 PARAGRAPH (a) SHALL BE CONSTRUED TO PROHIBIT THE ASSOCIATION
26 FROM SEEKING A COURT ORDER, IN ACCORDANCE WITH SUBSECTION (7) OF
27 THIS SECTION, TO REDUCE THE REQUIRED PERCENTAGE TO LESS THAN

1 SIXTY-SEVEN PERCENT.

2 (II) IF THE DECLARATION PROVIDES FOR AN INITIAL PERIOD OF
3 APPLICABILITY TO BE FOLLOWED BY AUTOMATIC EXTENSION PERIODS, THE
4 DECLARATION MAY BE AMENDED AT ANY TIME IN ACCORDANCE WITH
5 SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

6 (III) THIS PARAGRAPH (a) SHALL NOT APPLY:

7 (A) TO THE EXTENT THAT ITS APPLICATION IS LIMITED BY
8 SUBSECTION (4) OF THIS SECTION;

9 (B) TO AMENDMENTS EXECUTED BY A DECLARANT UNDER SECTION
10 38-33.3-205 (4) AND (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,
11 OR 38-33.3-222;

12 (C) TO AMENDMENTS EXECUTED BY AN ASSOCIATION UNDER
13 SECTION 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212,
14 38-33.3-213, OR 38-33.3-218 (11) AND (12); OR

15 (D) TO AMENDMENTS EXECUTED BY THE DISTRICT COURT FOR ANY
16 COUNTY THAT INCLUDES ALL OR ANY PORTION OF A COMMON INTEREST
17 COMMUNITY UNDER SUBSECTION (7) OF THIS SECTION.

18 (b) (I) If the declaration requires first mortgagees to approve or
19 consent to amendments, BUT DOES NOT SET FORTH A PROCEDURE FOR
20 REGISTRATION OR NOTIFICATION OF FIRST MORTGAGEES, the association
21 ~~shall~~ MAY:

22 (A) Send a dated, written notice and a copy of any proposed
23 amendment by certified mail to each first mortgagee at its most recent
24 address as shown on the recorded deed of trust or recorded assignment
25 thereof; AND

26 (B) ~~In addition, the association shall~~ Cause the dated notice,
27 together with information on how to obtain a copy of the proposed

1 amendment, to be printed in full at least twice, on separate occasions at
2 least one week apart, in a newspaper of general circulation in the county
3 in which the common interest community is located.

4 (II) A first mortgagee that does not deliver to the association a
5 negative response within sixty days after the date of the notice SPECIFIED
6 IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) shall be deemed to have
7 approved the proposed amendment.

8 (III) THE NOTIFICATION PROCEDURE SET FORTH IN THIS
9 PARAGRAPH (b) IS NOT MANDATORY. IF THE CONSENT OF FIRST
10 MORTGAGEES IS OBTAINED WITHOUT RESORT TO THIS PARAGRAPH (b), AND
11 OTHERWISE IN ACCORDANCE WITH THE DECLARATION, THE NOTICE TO
12 FIRST MORTGAGEES SHALL BE CONSIDERED SUFFICIENT.

13 (4) (a) Except to the extent expressly permitted or required by
14 other provisions of this article, no amendment may create or increase
15 special declarant rights, increase the number of units, or change the
16 boundaries of any unit or the allocated interests of a unit in the absence
17 of a vote or agreement of unit owners of units to which at least
18 sixty-seven percent of the votes in the association, including sixty-seven
19 percent of the votes allocated to units not owned by a declarant, are
20 allocated or any larger percentage the declaration specifies. The
21 declaration may specify a smaller percentage only if all of the units are
22 restricted exclusively to nonresidential use.

23 (b) THE SIXTY-SEVEN-PERCENT MAXIMUM PERCENTAGE STATED IN
24 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO
25 ANY COMMON INTEREST COMMUNITY IN WHICH ONE UNIT OWNER, BY
26 VIRTUE OF THE DECLARATION, BYLAWS, OR OTHER GOVERNING
27 DOCUMENTS OF THE ASSOCIATION, IS ALLOCATED MORE THAN

1 SIXTY-SEVEN PERCENT OF THE VOTES IN THE ASSOCIATION.

2 **SECTION 9.** 38-33.3-303 (2) and (4) (b), Colorado Revised
3 Statutes, are amended, and the said 38-33.3-303 is further amended BY
4 THE ADDITION OF A NEW SUBSECTION, to read:

5 **38-33.3-303. Executive board members and officers - powers**
6 **and duties - audit.** (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
7 (2.5) OF THIS SECTION:

8 (a) If appointed by the declarant, in the performance of their
9 duties, the officers and members of the executive board are required to
10 exercise the care required of fiduciaries of the unit owners.

11 (b) If not appointed by the declarant, no member of the executive
12 board and no officer shall be liable for actions taken or omissions made
13 in the performance of such member's duties except for wanton and
14 willful acts or omissions.

15 (2.5) WITH REGARD TO THE INVESTMENT OF RESERVE FUNDS OF
16 THE ASSOCIATION, THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD
17 SHALL BE SUBJECT TO THE STANDARDS SET FORTH IN SECTION 7-128-401,
18 C.R.S.; EXCEPT THAT, AS USED IN THAT SECTION:

19 (a) "CORPORATION" OR "NONPROFIT CORPORATION" MEANS THE
20 ASSOCIATION.

21 (b) "DIRECTOR" MEANS A MEMBER OF THE ASSOCIATION'S
22 EXECUTIVE BOARD.

23 (c) "OFFICER" MEANS ANY PERSON DESIGNATED AS AN OFFICER OF
24 THE ASSOCIATION AND ANY PERSON TO WHOM THE EXECUTIVE BOARD
25 DELEGATES RESPONSIBILITIES UNDER THIS ARTICLE, INCLUDING, WITHOUT
26 LIMITATION, A MANAGING AGENT, ATTORNEY, OR ACCOUNTANT EMPLOYED
27 BY THE EXECUTIVE BOARD.

1 (4) (b) (I) AT THE DISCRETION OF THE EXECUTIVE BOARD OR UPON
2 REQUEST PURSUANT TO SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH
3 (b) AS APPLICABLE, the books and records of the association shall be
4 subject to an audit, using generally accepted auditing standards, or a
5 review, using statements on standards for accounting and review services,
6 ~~at least once every two years~~ by a AN INDEPENDENT AND QUALIFIED
7 person selected by the ~~executive~~ board. Such person need not be a
8 certified public accountant except in the case of an audit, OR SHALL HAVE
9 AT LEAST A BASIC UNDERSTANDING OF THE PRINCIPLES OF ACCOUNTING AS
10 A RESULT OF PRIOR BUSINESS EXPERIENCE, EDUCATION ABOVE THE HIGH
11 SCHOOL LEVEL, OR BONA FIDE HOME STUDY. THE AUDIT OR REVIEW
12 REPORT SHALL COVER THE ASSOCIATION'S FINANCIAL STATEMENTS, WHICH
13 SHALL BE PREPARED ON AN ACCRUAL, CASH, OR MODIFIED ACCRUAL BASIS
14 OF ACCOUNTING.

15 (II) An audit shall be required under this paragraph (b) only when
16 both of the following conditions are met:

17 (A) The association has annual revenues or expenditures of at
18 least two hundred fifty thousand dollars; and

19 (B) An audit is requested by the owners of at least one-third of the
20 units represented by the association.

21 (III) A REVIEW SHALL BE REQUIRED UNDER THIS PARAGRAPH (b)
22 ONLY WHEN REQUESTED BY THE OWNERS OF AT LEAST ONE-THIRD OF THE
23 UNITS REPRESENTED BY THE ASSOCIATION.

24 ~~(HH)~~ (IV) Copies of an audit or review under this paragraph (b)
25 shall be made available upon request to any unit owner beginning no later
26 than thirty days after its completion.

27 ~~(HV)~~ (V) Notwithstanding section 38-33.3-117 (1.5) (h), this

1 paragraph (b) shall not apply to an association that includes time-share
2 units, as defined in section 38-33-110 (7).

3 **SECTION 10.** 38-33.3-308 (1), (2.5) (a), and (2.5) (b), Colorado
4 Revised Statutes, are amended to read:

5 **38-33.3-308. Meetings.** (1) Meetings of the unit owners, as the
6 members of the association, shall be held at least once each year. Special
7 meetings of the unit owners may be called by the president, by a majority
8 of the executive board, or by unit owners having twenty percent, or any
9 lower percentage specified in the bylaws, of the votes in the association.
10 Not less than ten nor more than fifty days in advance of any meeting of
11 the unit owners, the secretary or other officer specified in the bylaws shall
12 cause notice to be hand delivered or sent prepaid by United States mail to
13 the mailing address of each unit or to any other mailing address
14 designated in writing by the unit owner. The notice of any meeting OF
15 THE UNIT OWNERS shall be physically posted in a conspicuous place, to
16 the extent that such posting is feasible and practicable, in addition to any
17 electronic posting or electronic mail notices that may be given pursuant
18 to paragraph (b) of subsection (2) of this section. The notice shall state
19 the time and place of the meeting and the items on the agenda, including
20 the general nature of any proposed amendment to the declaration or
21 bylaws, any budget changes, and any proposal to remove an officer or
22 member of the executive board.

23 (2.5) (a) Notwithstanding any provision in the declaration, bylaws,
24 or other documents to the contrary, all meetings of the association and
25 board of directors are open to every unit owner of the association, or to
26 any person designated by a unit owner in writing as the unit owner's
27 representative. ~~and all unit owners or designated representatives so~~

1 ~~desiring shall be permitted to attend, listen, and speak at an appropriate~~
2 ~~time during the deliberations and proceedings; except that, for regular and~~
3 ~~special meetings of the board, unit owners who are not board members~~
4 ~~may not participate in any deliberation or discussion unless expressly so~~
5 ~~authorized by a vote of the majority of a quorum of the board.~~

6 (b) AT AN APPROPRIATE TIME DETERMINED BY THE BOARD, BUT
7 BEFORE THE BOARD VOTES ON AN ISSUE UNDER DISCUSSION, UNIT OWNERS
8 OR THEIR DESIGNATED REPRESENTATIVES SHALL BE PERMITTED TO SPEAK
9 REGARDING THAT ISSUE. The board may place reasonable time
10 restrictions on those persons speaking during the meeting. ~~but shall~~
11 ~~permit a unit owner or a unit owner's designated representative to speak~~
12 ~~before the board takes formal action on an item under discussion, in~~
13 ~~addition to any other opportunities to speak.~~ IF MORE THAN ONE PERSON
14 DESIRES TO ADDRESS AN ISSUE AND THERE ARE OPPOSING VIEWS, the board
15 shall provide for a reasonable number of persons to speak on each side of
16 ~~an~~ THE issue.

17 **SECTION 11.** 38-33.3-310 (1) (b) (I), Colorado Revised Statutes,
18 is amended to read:

19 **38-33.3-310. Voting - proxies.** (1) (b) (I) (A) Votes for
20 CONTESTED positions on the executive board shall be taken by secret
21 ballot. ~~and,~~ THIS SUBPARAGRAPH (A) SHALL NOT APPLY TO AN
22 ASSOCIATION WHOSE GOVERNING DOCUMENTS PROVIDE FOR ELECTION OF
23 POSITIONS ON THE EXECUTIVE BOARD BY DELEGATES ON BEHALF OF THE
24 UNIT OWNERS.

25 (B) AT THE DISCRETION OF THE BOARD OR upon the request of ~~one~~
26 ~~or more~~ TWENTY PERCENT OF THE unit owners WHO ARE PRESENT AT THE
27 MEETING OR REPRESENTED BY PROXY, IF A QUORUM HAS BEEN ACHIEVED,

1 a vote on any other matter affecting the common interest community on
2 which all unit owners are entitled to vote shall be by secret ballot.

3 (C) Ballots shall be counted by a neutral third party or by a unit
4 owner who is not a candidate, who attends the meeting at which the vote
5 is held, and who is selected at random from a pool of two or more such
6 unit owners COMMITTEE OF VOLUNTEERS. SUCH VOLUNTEERS SHALL BE
7 UNIT OWNERS WHO ARE SELECTED OR APPOINTED AT AN OPEN MEETING, IN
8 A FAIR MANNER, BY THE CHAIR OF THE BOARD OR ANOTHER PERSON
9 PRESIDING DURING THAT PORTION OF THE MEETING. THE VOLUNTEERS
10 SHALL NOT BE BOARD MEMBERS AND, IN THE CASE OF A CONTESTED
11 ELECTION FOR A BOARD POSITION, SHALL NOT BE CANDIDATES.

12 (D) The results of the A vote TAKEN BY SECRET BALLOT shall be
13 reported without reference to THE names, addresses, or other identifying
14 information OF UNIT OWNERS PARTICIPATING IN SUCH VOTE.

15 **SECTION 12.** 38-33.3-310.5, Colorado Revised Statutes, is
16 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

17 **38-33.3-310.5. Executive board - conflicts of interest -**
18 **definitions.** (1) SECTION 7-128-501, C.R.S., SHALL APPLY TO MEMBERS
19 OF THE EXECUTIVE BOARD; EXCEPT THAT, AS USED IN THAT SECTION:

20 (a) "CORPORATION" OR "NONPROFIT CORPORATION" MEANS THE
21 ASSOCIATION.

22 (b) "DIRECTOR" MEANS A MEMBER OF THE ASSOCIATION'S
23 EXECUTIVE BOARD.

24 (c) "OFFICER" MEANS ANY PERSON DESIGNATED AS AN OFFICER OF
25 THE ASSOCIATION AND ANY PERSON TO WHOM THE BOARD DELEGATES
26 RESPONSIBILITIES UNDER THIS ARTICLE, INCLUDING, WITHOUT LIMITATION,
27 A MANAGING AGENT, ATTORNEY, OR ACCOUNTANT EMPLOYED BY THE

1 BOARD.

2 SECTION 13. 38-33.3-317 (2), (3), (4), and (7), Colorado
3 Revised Statutes, are amended to read:

4 38-33.3-317. Association records. (2) (a) EXCEPT AS
5 OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), all
6 financial and other records shall be made reasonably available for
7 examination and copying by any unit owner and such owner's authorized
8 agents.

9 (b) (I) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION
10 (2), A MEMBERSHIP LIST OR ANY PART THEREOF MAY NOT BE OBTAINED OR
11 USED BY ANY PERSON FOR ANY PURPOSE UNRELATED TO A UNIT OWNER'S
12 INTEREST AS A UNIT OWNER WITHOUT CONSENT OF THE EXECUTIVE BOARD.

13 (II) WITHOUT LIMITING THE GENERALITY OF SUBPARAGRAPH (I) OF
14 THIS PARAGRAPH (b), WITHOUT THE CONSENT OF THE EXECUTIVE BOARD,
15 A MEMBERSHIP LIST OR ANY PART THEREOF MAY NOT BE:

16 (A) USED TO SOLICIT MONEY OR PROPERTY UNLESS SUCH MONEY
17 OR PROPERTY WILL BE USED SOLELY TO SOLICIT THE VOTES OF THE UNIT
18 OWNERS IN AN ELECTION TO BE HELD BY THE ASSOCIATION;

19 (B) USED FOR ANY COMMERCIAL PURPOSE; OR

20 (C) SOLD TO OR PURCHASED BY ANY PERSON.

21 (3) The association may charge a fee, ~~not to~~ WHICH MAY BE
22 COLLECTED IN ADVANCE BUT WHICH SHALL NOT exceed the association's
23 actual cost per page, for copies of association records.

24 (4) As used in this section, "reasonably available" means available
25 during normal business hours, upon notice of five business days, OR AT
26 THE NEXT REGULARLY SCHEDULED MEETING IF SUCH MEETING OCCURS
27 WITHIN THIRTY DAYS AFTER THE REQUEST, to the extent that:

- 1 (a) The request is made in good faith and for a proper purpose;
- 2 (b) The request describes with reasonable particularity the records
- 3 sought and the purpose of the request; and
- 4 (c) The records are relevant to the purpose of the request.
- 5 (7) This section shall not be construed to invalidate any provision
- 6 of the declaration, bylaws, the corporate law under which the association
- 7 is organized, or other documents that more broadly defines records of the
- 8 association that are subject to inspection and copying by unit owners, or
- 9 that grants unit owners freer access to such records; EXCEPT THAT THE
- 10 PRIVACY PROTECTIONS CONTAINED IN PARAGRAPH (b) OF SUBSECTION (2)
- 11 OF THIS SECTION SHALL SUPERSEDE ANY SUCH PROVISION.

12 **SECTION 14. Repeal.** 38-33.3-223, Colorado Revised Statutes,

13 is repealed.

14 **SECTION 15.** 38-35.7-102, Colorado Revised Statutes, is

15 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

16 **38-35.7-102. Disclosure - common interest community -**

17 **obligation to pay assessments - requirement for architectural**

18 **approval.** (1) ON AND AFTER JANUARY 1, 2007, EVERY CONTRACT FOR

19 THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON

20 INTEREST COMMUNITY SHALL CONTAIN A DISCLOSURE STATEMENT IN

21 BOLD-FACED TYPE THAT IS CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE

22 FOLLOWING FORM:

23 **"THE PROPERTY IS LOCATED WITHIN A**

24 **COMMON INTEREST COMMUNITY AND IS**

25 **SUBJECT TO THE DECLARATION FOR SUCH**

26 **COMMUNITY. THE OWNER OF THE PROPERTY**

27 **WILL BE REQUIRED TO BE A MEMBER OF THE**

1 **OWNER'S ASSOCIATION FOR THE COMMUNITY**
2 **AND WILL BE SUBJECT TO THE BYLAWS AND**
3 **RULES AND REGULATIONS OF THE**
4 **ASSOCIATION. THE DECLARATION, BYLAWS,**
5 **AND RULES AND REGULATIONS WILL IMPOSE**
6 **FINANCIAL OBLIGATIONS UPON THE OWNER**
7 **OF THE PROPERTY, INCLUDING AN**
8 **OBLIGATION TO PAY ASSESSMENTS OF THE**
9 **ASSOCIATION. IF THE OWNER DOES NOT PAY**
10 **THESE ASSESSMENTS, THE ASSOCIATION**
11 **COULD PLACE A LIEN ON THE PROPERTY AND**
12 **POSSIBLY SELL IT TO PAY THE DEBT. THE**
13 **DECLARATION, BYLAWS, AND RULES AND**
14 **REGULATIONS OF THE COMMUNITY MAY**
15 **PROHIBIT THE OWNER FROM MAKING**
16 **CHANGES TO THE PROPERTY WITHOUT AN**
17 **ARCHITECTURAL REVIEW BY THE**
18 **ASSOCIATION (OR A COMMITTEE OF THE**
19 **ASSOCIATION) AND THE APPROVAL OF THE**
20 **ASSOCIATION. PURCHASERS OF PROPERTY**
21 **WITHIN THE COMMON INTEREST COMMUNITY**
22 **SHOULD INVESTIGATE THE FINANCIAL**
23 **OBLIGATIONS OF MEMBERS OF THE**
24 **ASSOCIATION. PURCHASERS SHOULD**
25 **CAREFULLY READ THE DECLARATION FOR THE**
26 **COMMUNITY AND THE BYLAWS AND RULES**
27 **AND REGULATIONS OF THE ASSOCIATION."**

1 (2) (a) THE OBLIGATION TO PROVIDE THE DISCLOSURE SET FORTH
2 IN SUBSECTION (1) OF THIS SECTION SHALL BE UPON THE SELLER, AND, IN
3 THE EVENT OF THE FAILURE BY THE SELLER TO PROVIDE THE WRITTEN
4 DISCLOSURE DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE
5 PURCHASER SHALL HAVE A CLAIM FOR RELIEF AGAINST THE SELLER FOR
6 ACTUAL DAMAGES DIRECTLY AND PROXIMATELY CAUSED BY SUCH
7 FAILURE PLUS COURT COSTS. IT SHALL BE AN AFFIRMATIVE DEFENSE TO
8 ANY CLAIM FOR DAMAGES BROUGHT UNDER THIS SECTION THAT THE
9 PURCHASER HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE FACTS
10 AND INFORMATION REQUIRED TO BE DISCLOSED.

11 (b) UPON REQUEST, THE SELLER SHALL EITHER PROVIDE TO THE
12 BUYER OR AUTHORIZE THE UNIT OWNERS' ASSOCIATION TO PROVIDE TO
13 THE BUYER, UPON PAYMENT OF THE ASSOCIATION'S USUAL FEE PURSUANT
14 TO SECTION 38-33.3-317 (3), ALL OF THE COMMON INTEREST COMMUNITY'S
15 GOVERNING DOCUMENTS AND FINANCIAL DOCUMENTS, AS LISTED IN THE
16 MOST RECENT AVAILABLE VERSION OF THE CONTRACT TO BUY AND SELL
17 REAL ESTATE PROMULGATED BY THE REAL ESTATE COMMISSION AS OF THE
18 DATE OF THE CONTRACT.

19 (3) THIS SECTION SHALL NOT APPLY TO THE SALE OF A UNIT THAT
20 IS A TIME SHARE UNIT, AS DEFINED IN SECTION 38-33-110 (7).

21 **SECTION 16.** 10-4-110.8 (5), Colorado Revised Statutes, is
22 amended to read:

23 **10-4-110.8. Homeowner's insurance - prohibited practices -**
24 **definitions.** (5) (a) In a common interest community, as defined in
25 section 38-33.3-103 (8), C.R.S., a unit owner may file a claim against the
26 policy of the unit owner's association to the same extent, and with the
27 same effect, as if the unit owner were ~~an additional~~ A named insured IF

1 THE FOLLOWING CONDITIONS ARE MET:

2 (I) THE UNIT OWNER HAS CONTACTED THE EXECUTIVE BOARD OR
3 THE ASSOCIATION'S MANAGING AGENT IN WRITING, AND IN ACCORDANCE
4 WITH ANY APPLICABLE ASSOCIATION POLICIES OR PROCEDURES FOR
5 OWNER-INITIATED INSURANCE CLAIMS, REGARDING THE SUBJECT MATTER
6 OF THE CLAIM;

7 (II) THE UNIT OWNER HAS GIVEN THE ASSOCIATION AT LEAST
8 FIFTEEN DAYS TO RESPOND IN WRITING, AND, IF SO REQUESTED, HAS GIVEN
9 THE ASSOCIATION'S AGENT A REASONABLE OPPORTUNITY TO INSPECT THE
10 DAMAGE; AND

11 (III) THE SUBJECT MATTER OF THE CLAIM FALLS WITHIN THE
12 ASSOCIATION'S INSURANCE RESPONSIBILITIES.

13 (b) THE ASSOCIATION'S INSURER, WHEN DETERMINING PREMIUMS
14 TO BE CHARGED TO THE ASSOCIATION, SHALL NOT TAKE INTO ACCOUNT
15 ANY REQUEST BY A UNIT OWNER FOR A CLARIFICATION OF COVERAGE.

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