

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 06-0337.01 Duane Gall

SENATE BILL 06-089

SENATE SPONSORSHIP

Hagedorn,

HOUSE SPONSORSHIP

Carroll M.,

Senate Committees
Judiciary

House Committees

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
Amended 2nd Reading
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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. 38-33.3-103, Colorado Revised Statutes, is
2 amended BY THE ADDITION OF THE FOLLOWING NEW
3 SUBSECTIONS to read:

4 38-33.3-103. Definitions. As used in the declaration and bylaws
5 of an association, unless specifically provided otherwise or unless the
6 context otherwise requires, and in this article:

7 (20.5) "MIXED-USE DEVELOPMENT" MEANS A COMMON INTEREST
8 COMMUNITY THAT CONTAINS TWO OR MORE OF THE FOLLOWING
9 ELEMENTS: RESIDENTIAL, COMMERCIAL, BUSINESS, RETAIL, OFFICE,
10 AGRICULTURAL, RECREATIONAL, OR INDUSTRIAL.

11 (21.5) "PHASED COMMUNITY" MEANS A COMMON INTEREST
12 COMMUNITY IN WHICH THE DECLARANT RETAINS DEVELOPMENT RIGHTS.

13 SECTION 2. 38-33.3-106.5 (1) (c), (1) (d) (II), and (1) (d) (IV),
14 Colorado Revised Statutes, are amended to read:

15 38-33.3-106.5. Prohibitions contrary to public policy -
16 patriotic and political expression - emergency vehicles - fire
17 prevention - definitions. (1) Notwithstanding any provision in the
18 declaration, bylaws, or rules and regulations of the association to the
19 contrary, an association shall not prohibit any of the following:

20 (c) (I) The display of a political sign by a unit owner on that unit
21 owner's property or in a window of the unit owner's residence; except
22 that:

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

26 (B) An association may regulate the size and number of political
27 signs that may be placed on a unit owner's property if the association's

1 regulation is no more restrictive than any applicable city, town, or county
2 ordinance that regulates the size and number of political signs on
3 residential property. If the city, town, or county in which the property is
4 located does not regulate the size and number of political signs on
5 residential property IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS
6 PARAGRAPH (C).

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

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

14 (B) Thirty-six inches by forty-eight inches. on a unit owner's
15 property.

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

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

25 (II) The unit owner OCCUPANT is a bona fide member of a
26 volunteer fire department or is employed by an emergency service
27 provider, as defined in section 29-11-101 (1.6), C.R.S. A PRIMARY

1 PROVIDER OF EMERGENCY FIRE FIGHTING, LAW ENFORCEMENT,
2 AMBULANCE, OR EMERGENCY MEDICAL SERVICES;

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

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

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

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

15 (1.5) Except as provided in section 38-33.3-119, the following
16 sections shall apply to all common interest communities created within
17 this state before July 1, 1992, with respect to events and circumstances
18 occurring on or after January 1, 2006:

19 (a) 38-33.3-123 (1);

20 (e) 38-33.3-223;

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

23 38-33.3-123. Enforcement - limitation. (1) (c) For each claim
24 or defense, including but not limited to counterclaims, cross-claims, and
25 third-party claims, and except as otherwise provided in paragraph (d) of
26 this subsection (1), In any legal proceeding CIVIL ACTION to enforce or
27 defend the provisions of this article or of the declaration, bylaws, articles,

1 or rules and regulations, the court shall award ~~to the party prevailing on~~
2 ~~such claim the prevailing party's reasonable collection costs and attorney~~
3 ~~fees, and costs, incurred in asserting or defending the claim~~ AND COSTS
4 OF COLLECTION TO THE PREVAILING PARTY.

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

7 **38-33.3-124. Legislative declaration - alternative dispute**
8 **resolution encouraged - policy statement required.** (1) (a) The
9 general assembly finds and declares that the cost, complexity, and delay
10 inherent in court proceedings make litigation a particularly inefficient
11 means of resolving neighborhood disputes. Therefore, common interest
12 communities are encouraged to adopt protocols that make use of
13 mediation or arbitration as alternatives to, or preconditions upon, the
14 filing of a complaint between a unit owner and association in situations
15 that do not involve an imminent threat to the peace, health, or safety of
16 the community.

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

21 **SECTION 6.** 38-33.3-209.4 (2) (e) and (2) (f), Colorado Revised
22 **Statutes, are amended to read:**

23 **38-33.3-209.4. Public disclosures required - identity of**
24 **association - agent - manager - contact information.** (2) Within ninety
25 days after assuming control from the declarant pursuant to section
26 38-33.3-303 (5), and within ninety days after the end of each fiscal year
27 thereafter, the association shall make the following information available

1 to unit owners upon reasonable notice in accordance with subsection (3)
2 of this section:

3 (e) The results of ~~any~~ ITS MOST RECENT AVAILABLE financial audit
4 or review; ~~for the fiscal year immediately preceding the current annual~~
5 ~~disclosure;~~

6
7 (f) A list of all association insurance policies, including, but not
8 limited to, property, general liability, association director and officer
9 professional liability, and fidelity policies. Such list shall include the
10 company names, policy limits, policy deductibles, additional named
11 insureds, and expiration dates of the policies listed AND SHALL BE
12 ACCOMPANIED BY A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT
13 IS CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

14 "THE ASSOCIATION MAY OBTAIN PROPERTY INSURANCE
15 COVERING CERTAIN PORTIONS OF THE COMMON
16 INTEREST COMMUNITY. ANY PROPERTY INSURANCE
17 MAINTAINED BY THE ASSOCIATION MAY NOT COVER YOUR
18 UNIT (OR PORTIONS OF YOUR UNIT) AND MAY NOT COVER
19 THE PERSONAL BELONGINGS AND OTHER CONTENTS OF
20 YOUR UNIT. YOU SHOULD NOT ASSUME THAT ANY
21 PROPERTY INSURANCE MAINTAINED BY THE ASSOCIATION
22 WILL PROTECT YOU AGAINST DAMAGE TO OR LOSS OF
23 YOUR UNIT AND ITS CONTENTS. YOU SHOULD DETERMINE
24 WHAT INSURANCE COVERAGE MAY BE REQUIRED TO
25 PROTECT YOU AGAINST DAMAGE TO OR LOSS OF YOUR
26 UNIT AND ITS CONTENTS. YOU SHOULD OBTAIN
27 PROFESSIONAL ADVICE REGARDING INSURANCE

1 **COVERAGE OF YOUR UNIT AND ITS CONTENTS.**"

2 **SECTION 7.** 38-33.3-209.5 (1) (a), (1) (b) (VI), and (1) (b) (VII),
3 Colorado Revised Statutes, are amended, and the said 38-33.3-209.5 (1)
4 (b) is further amended BY THE ADDITION OF A NEW
5 SUBPARAGRAPH, to read:

6 **38-33.3-209.5. Responsible governance policies.** (1) To
7 promote responsible governance, associations shall:

8 (a) Maintain ACCURATE AND COMPLETE accounting records ~~using~~
9 ~~generally accepted accounting principles~~ ON AN ACCRUAL, CASH, OR
10 MODIFIED ACCRUAL BASIS OF ACCOUNTING; and

11 (b) Adopt policies, procedures, and rules and regulations
12 concerning:

13 (VI) Investment of reserve funds; ~~and~~

14 (VII) Procedures for the adoption and amendment of policies,
15 procedures, and rules; AND

16 (VIII) PROCEDURES FOR ADDRESSING DISPUTES ARISING BETWEEN
17 THE ASSOCIATION AND UNIT OWNERS.

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

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21 **38-33.3-217. Amendment of declaration.** (1) (a) (I) Except in
22 cases of amendments that may be executed by a declarant under section
23 38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,
24 or 38-33.3-222, by an association under section 38-33.3-107, 38-33.3-206
25 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and
26 (12), or by the district court for any county that includes all or any portion
27 of a common interest community under subsection (7) of this section, and

1 ~~except as limited by subsection (4) of this section, AS OTHERWISE~~
2 ~~PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), the declaration,~~
3 including the plats and maps, may be amended only by the affirmative
4 vote or agreement of unit owners of units to which more than fifty percent
5 of the votes in the association are allocated or any larger percentage, not
6 to exceed sixty-seven percent, that the declaration specifies. Any
7 provision in the declaration that purports to specify a percentage larger
8 than sixty-seven percent is hereby declared void as contrary to public
9 policy, and until amended, such provision shall be deemed to specify a
10 percentage of sixty-seven percent. The declaration may specify a smaller
11 percentage than a simple majority only if all of the units are restricted
12 exclusively to nonresidential use. NOTHING IN THIS PARAGRAPH (a)
13 SHALL BE CONSTRUED TO PROHIBIT THE ASSOCIATION FROM SEEKING A
14 COURT ORDER, IN ACCORDANCE WITH SUBSECTION (7) OF THIS SECTION, TO
15 REDUCE THE REQUIRED PERCENTAGE TO LESS THAN SIXTY-SEVEN
16 PERCENT.

17 (II) THIS PARAGRAPH (a) SHALL NOT APPLY:

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

20 (B) TO AMENDMENTS EXECUTED BY A DECLARANT UNDER SECTION
21 38-33.3-205 (4) AND (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,
22 OR 38-33.3-222;

23 (C) TO AMENDMENTS EXECUTED BY AN ASSOCIATION UNDER
24 SECTION 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212,
25 38-33.3-213, OR 38-33.3-218 (11) AND (12);

26 (D) TO AMENDMENTS EXECUTED BY THE DISTRICT COURT FOR ANY
27 COUNTY THAT INCLUDES ALL OR ANY PORTION OF A COMMON INTEREST

1 COMMUNITY UNDER SUBSECTION (7) OF THIS SECTION; OR

2 (E) TO AMENDMENTS THAT AFFECT MIXED-USE DEVELOPMENTS,
3 PHASED COMMUNITIES, OR DECLARANT-CONTROLLED COMMUNITIES.

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

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

12 (B) ~~In addition, the association shall~~ Cause the dated notice,
13 together with information on how to obtain a copy of the proposed
14 amendment, to be printed in full at least twice, on separate occasions at
15 least one week apart, in a newspaper of general circulation in the county
16 in which the common interest community is located.

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

21 (III) THE NOTIFICATION PROCEDURE SET FORTH IN THIS
22 PARAGRAPH (b) IS NOT MANDATORY. IF THE CONSENT OF FIRST
23 MORTGAGEES IS OBTAINED WITHOUT RESORT TO THIS PARAGRAPH (b), AND
24 OTHERWISE IN ACCORDANCE WITH THE DECLARATION, THE NOTICE TO
25 FIRST MORTGAGEES SHALL BE CONSIDERED SUFFICIENT.

26 (4) (a) Except to the extent expressly permitted or required by
27 other provisions of this article, no amendment may create or increase

1 special declarant rights, increase the number of units, or change the
2 boundaries of any unit or the allocated interests of a unit in the absence
3 of a vote or agreement of unit owners of units to which at least
4 sixty-seven percent of the votes in the association, including sixty-seven
5 percent of the votes allocated to units not owned by a declarant, are
6 allocated or any larger percentage the declaration specifies. The
7 declaration may specify a smaller percentage only if all of the units are
8 restricted exclusively to nonresidential use.

9 (b) THE SIXTY-SEVEN-PERCENT MAXIMUM PERCENTAGE STATED IN
10 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION SHALL NOT APPLY TO
11 ANY COMMON INTEREST COMMUNITY IN WHICH ONE UNIT OWNER, BY
12 VIRTUE OF THE DECLARATION, BYLAWS, OR OTHER GOVERNING
13 DOCUMENTS OF THE ASSOCIATION, IS ALLOCATED MORE THAN
14 SIXTY-SEVEN PERCENT OF THE VOTES IN THE ASSOCIATION.

15 **SECTION 9. Repeal. 38-33.3-223, Colorado Revised Statutes,**
16 **is repealed.**

17 **SECTION 10. 38-33.3-303 (2), Colorado Revised Statutes, is**
18 **amended BY THE ADDITION OF A NEW PARAGRAPH to read:**

19 **38-33.3-303. Executive board members and officers - powers**
20 **and duties - audit. (2) (c) NOTWITHSTANDING ANY PROVISION OF THIS**
21 **ARTICLE TO THE CONTRARY, THE OFFICERS AND MEMBERS OF THE**
22 **EXECUTIVE BOARD SHALL NOT BE LIABLE FOR THE FINANCIAL RESULTS OF**
23 **ANY INVESTMENT OF RESERVE FUNDS IF THE CONDUCT OF SUCH OFFICERS**
24 **AND MEMBERS IN MAKING SUCH INVESTMENT WAS PERMISSIBLE UNDER**
25 **THE PRINCIPLE OF LAW GENERALLY KNOWN AS THE BUSINESS JUDGMENT**
26 **RULE.**

27 **SECTION 11. 38-33.3-303 (4) (b), Colorado Revised Statutes,**

1 is amended to read:

2 **38-33.3-303. Executive board members and officers - powers**
3 **and duties - audit.** (4) (b) (I) AT THE DISCRETION OF THE EXECUTIVE
4 BOARD OR UPON REQUEST PURSUANT TO SUBPARAGRAPH (II) OR (III) OF
5 THIS PARAGRAPH (b) AS APPLICABLE, the books and records of the
6 association shall be subject to an audit, using generally accepted auditing
7 standards, or a review, using statements on standards for accounting and
8 review services, ~~at least once every two years by a~~ AN INDEPENDENT
9 person selected by the ~~executive~~ board. Such person need not be a
10 certified public accountant except in the case of an audit. THE AUDIT OR
11 REVIEW REPORT SHALL COVER THE ASSOCIATION'S FINANCIAL
12 STATEMENTS, WHICH SHALL BE PREPARED USING GENERALLY ACCEPTED
13 ACCOUNTING PRINCIPLES ON THE ACCRUAL BASIS OF ACCOUNTING OR
14 USING ANOTHER COMPREHENSIVE BASIS 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 12.** 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 13.** 38-33.3-310 (1) (b) (I), Colorado Revised Statutes,
18 is amended, and the said 38-33.3-310 (1) (b) is further amended BY THE
19 ADDITION OF A NEW SUBPARAGRAPH, to read:

20 **38-33.3-310. Voting - proxies.** (1) (b) (I) Votes for CONTESTED
21 positions on the executive board shall be taken by secret ballot. ~~and~~ AT
22 THE DISCRETION OF THE BOARD OR upon the request of ~~one or more~~
23 TWENTY PERCENT OF THE unit owners WHO ARE PRESENT AT THE MEETING
24 OR REPRESENTED BY PROXY, IF A QUORUM HAS BEEN ACHIEVED, a vote on
25 any other matter affecting the common interest community on which all
26 unit owners are entitled to vote shall be by secret ballot. Ballots shall be
27 counted by a ~~neutral third party or by a unit owner who is not a candidate,~~

1 ~~who attends the meeting at which the vote is held, and who is selected at~~
2 ~~random from a pool of two or more such unit owners~~ COMMITTEE OF UNIT
3 OWNERS WHO ARE NOT CANDIDATES AND NOT BOARD MEMBERS. THE
4 COMMITTEE SHALL CONSIST OF VOLUNTEERS SELECTED OR APPOINTED AT
5 AN OPEN MEETING, IN A FAIR MANNER, BY THE CHAIR OF THE BOARD OR
6 ANOTHER PERSON PRESIDING DURING THAT PORTION OF THE MEETING.
7 The results of ~~the~~ A vote TAKEN BY SECRET BALLOT shall be reported
8 without reference to names, addresses, or other identifying information.

9 (III) THIS PARAGRAPH (b) SHALL NOT APPLY TO AN ASSOCIATION
10 WHOSE GOVERNING DOCUMENTS PROVIDE FOR ELECTION OF POSITIONS ON
11 THE EXECUTIVE BOARD BY DELEGATES ON BEHALF OF THE UNIT OWNERS.

12 **SECTION 14.** 38-33.3-310.5, Colorado Revised Statutes, is
13 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

14 **38-33.3-310.5. Executive board - definitions - conflicting**
15 **interest transactions.** (1) AS USED IN THIS SECTION:

16 (a) "CONFLICTING INTEREST TRANSACTION" MEANS A CONTRACT,
17 TRANSACTION, OR OTHER FINANCIAL RELATIONSHIP BETWEEN THE
18 ASSOCIATION AND A DIRECTOR, OR BETWEEN THE ASSOCIATION AND A
19 PARTY RELATED TO A DIRECTOR, OR BETWEEN THE ASSOCIATION AND AN
20 ENTITY IN WHICH A DIRECTOR OF THE ASSOCIATION IS A DIRECTOR OR
21 OFFICER OR HAS A FINANCIAL INTEREST.

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

24 (c) "PARTY RELATED TO A DIRECTOR" SHALL MEAN A SPOUSE, A
25 DESCENDANT, AN ANCESTOR, A SIBLING, THE SPOUSE OR DESCENDANT OF
26 A SIBLING, AN ESTATE OR TRUST IN WHICH THE DIRECTOR OR A PARTY
27 RELATED TO A DIRECTOR HAS A BENEFICIAL INTEREST, OR AN ENTITY IN

1 WHICH A PARTY RELATED TO A DIRECTOR IS A DIRECTOR OR OFFICER OR
2 HAS A FINANCIAL INTEREST.

3 (2) NO LOANS SHALL BE MADE BY THE ASSOCIATION TO ITS
4 DIRECTORS OR OFFICERS. ANY DIRECTOR OR OFFICER WHO ASSENTS TO OR
5 PARTICIPATES IN THE MAKING OF ANY SUCH LOAN SHALL BE LIABLE TO THE
6 ASSOCIATION FOR THE AMOUNT OF THE LOAN UNTIL THE LOAN IS REPAYED.

7 (3) NO CONFLICTING INTEREST TRANSACTION SHALL BE VOID OR
8 VOIDABLE OR BE ENJOINED, SET ASIDE, OR GIVE RISE TO AN AWARD OF
9 DAMAGES OR OTHER SANCTIONS IN A PROCEEDING BY A UNIT OWNER OR
10 BY OR IN THE RIGHT OF THE ASSOCIATION SOLELY BECAUSE THE
11 CONFLICTING INTEREST TRANSACTION INVOLVES A DIRECTOR, A PARTY
12 RELATED TO A DIRECTOR, OR AN ENTITY IN WHICH A DIRECTOR OF THE
13 ASSOCIATION IS A DIRECTOR OR OFFICER OR HAS A FINANCIAL INTEREST;
14 SOLELY BECAUSE THE DIRECTOR IS PRESENT AT OR PARTICIPATES IN THE
15 MEETING OF THE EXECUTIVE BOARD OR OF THE COMMITTEE OF THE BOARD
16 THAT AUTHORIZES, APPROVES, OR RATIFIES THE CONFLICTING INTEREST
17 TRANSACTION; OR SOLELY BECAUSE THE DIRECTOR'S VOTE IS COUNTED
18 FOR SUCH PURPOSE, IF:

19 (a) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR
20 INTEREST AND AS TO THE CONFLICTING INTEREST TRANSACTION ARE
21 DISCLOSED OR ARE KNOWN TO THE EXECUTIVE BOARD OR THE COMMITTEE,
22 AND THE EXECUTIVE BOARD OR COMMITTEE IN GOOD FAITH AUTHORIZES,
23 APPROVES, OR RATIFIES THE CONFLICTING INTEREST TRANSACTION BY THE
24 AFFIRMATIVE VOTE OF A MAJORITY OF THE DISINTERESTED DIRECTORS,
25 EVEN THOUGH THE DISINTERESTED DIRECTORS ARE LESS THAN A QUORUM;

26 (b) THE MATERIAL FACTS AS TO THE DIRECTOR'S RELATIONSHIP OR
27 INTEREST AND AS TO THE CONFLICTING INTEREST TRANSACTION ARE

1 DISCLOSED OR ARE KNOWN TO THE UNIT OWNERS ENTITLED TO VOTE ON
2 THE ISSUE, AND THE CONFLICTING INTEREST TRANSACTION IS
3 SPECIFICALLY AUTHORIZED, APPROVED, OR RATIFIED IN GOOD FAITH BY A
4 VOTE OF THE UNIT OWNERS ENTITLED TO VOTE ON THE ISSUE; OR

5 (c) THE CONFLICTING INTEREST TRANSACTION IS FAIR AS TO THE
6 ASSOCIATION.

7 (4) COMMON OR INTERESTED DIRECTORS MAY BE COUNTED IN
8 DETERMINING THE PRESENCE OF A QUORUM AT A MEETING OF THE
9 EXECUTIVE BOARD OR OF A COMMITTEE THAT AUTHORIZES, APPROVES, OR
10 RATIFIES THE CONFLICTING INTEREST TRANSACTION.

11 SECTION 15. 38-35.7-102, Colorado Revised Statutes, is
12 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

13 38-35.7-102. Disclosure - common interest community -
14 obligation to pay assessments - requirement for architectural
15 approval. (1) EVERY CONTRACT FOR THE PURCHASE AND SALE OF
16 RESIDENTIAL REAL PROPERTY IN A COMMON INTEREST COMMUNITY SHALL
17 CONTAIN A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT IS
18 CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

19 "THE PROPERTY IS LOCATED WITHIN A
20 COMMON INTEREST COMMUNITY AND IS
21 SUBJECT TO THE DECLARATION FOR SUCH
22 COMMUNITY. THE OWNER OF THE PROPERTY
23 WILL BE REQUIRED TO BE A MEMBER OF THE
24 OWNER'S ASSOCIATION FOR THE COMMUNITY
25 AND WILL BE SUBJECT TO THE BYLAWS AND
26 RULES AND REGULATIONS OF THE
27 ASSOCIATION. THE DECLARATION, BYLAWS,

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

25 (2) (a) THE OBLIGATION TO PROVIDE THE DISCLOSURE SET FORTH
26 IN SUBSECTION (1) OF THIS SECTION SHALL BE UPON THE SELLER, AND, IN
27 THE EVENT OF THE FAILURE BY THE SELLER TO PROVIDE THE WRITTEN

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

8 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (2),
9 CONTRACTS FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL
10 PROPERTY PREPARED BY A LICENSED REAL ESTATE BROKER SHALL NOT BE
11 REQUIRED TO CONTAIN THE DISCLOSURE SET FORTH IN SUBSECTION (1) OF
12 THIS SECTION UNTIL THE REAL ESTATE COMMISSION HAS PROMULGATED A
13 FORM OF PURCHASE AND SALE CONTRACT, OR ADDENDUM THERETO, THAT
14 CONTAINS SUCH DISCLOSURE, AND, UNTIL SUCH FORM HAS BEEN
15 PROMULGATED, SELLERS REPRESENTED BY A LICENSED REAL ESTATE
16 BROKER SHALL NOT BE LIABLE FOR FAILING TO PROVIDE SUCH DISCLOSURE.

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

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

21 **10-4-110.8. Homeowner's insurance - prohibited practices -**
22 **definitions.** (5) (a) In a common interest community, as defined in
23 section 38-33.3-103 (8), C.R.S., a unit owner may file a claim against the
24 policy of the unit owner's association to the same extent, and with the
25 same effect, as if the unit owner were ~~an additional~~ A named insured IF
26 THE FOLLOWING CONDITIONS ARE MET:

27 (I) THE UNIT OWNER HAS CONTACTED THE EXECUTIVE BOARD OR

1 THE ASSOCIATION'S MANAGING AGENT IN WRITING, AND IN ACCORDANCE
2 WITH ANY APPLICABLE ASSOCIATION POLICIES OR PROCEDURES FOR
3 OWNER-INITIATED INSURANCE CLAIMS, REGARDING THE SUBJECT MATTER
4 OF THE CLAIM;

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

9 (III) THE SUBJECT MATTER OF THE CLAIM FALLS WITHIN THE
10 ASSOCIATION'S INSURANCE RESPONSIBILITIES AS DEFINED BY THE
11 DECLARATION OR IN AN INSURANCE POLICY LISTED PURSUANT TO SECTION
12 38-33.3-209.4 (2) (f), C.R.S.

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.