

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

REVISED

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

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.

HOUSE
Amended 2nd Reading
May 2, 2006

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.** 38-33.3-103, Colorado Revised Statutes, is
2 amended BY THE ADDITION OF A NEW SUBSECTION to read:

3 **38-33.3-103. Definitions.** As used in the declaration and bylaws
4 of an association, unless specifically provided otherwise or unless the
5 context otherwise requires, and in this article:

6 (21.5) "PHASED COMMUNITY" MEANS A COMMON INTEREST
7 COMMUNITY IN WHICH THE DECLARANT RETAINS DEVELOPMENT RIGHTS.

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

13 **38-33.3-106.5. Prohibitions contrary to public policy -**
14 **patriotic and political expression - emergency vehicles - fire**
15 **prevention - definitions.** (1) Notwithstanding any provision in the
16 declaration, bylaws, or rules and regulations of the association to the
17 contrary, an association shall not prohibit any of the following:

18 (a) The display of the American flag ~~by a unit owner on that A~~
19 ~~unit owner's property, in a window of the unit, owner's residence, or on~~
20 ~~a balcony adjoining the unit owner's property~~ if the American flag is
21 displayed in a manner consistent with the federal flag code, P.L. 94-344;
22 90 stat. 810; 4 U.S.C. SECS. 4 to 10. The association may adopt
23 reasonable rules regarding the placement and manner of display of the
24 American flag. The association rules may regulate the location and size
25 of flags and flagpoles, but shall not prohibit the installation of a flag or
26 flagpole.

27 (b) The display ~~by a unit owner~~ of a service flag bearing a star

1 denoting the service of the OWNER OR OCCUPANT OF THE unit, owner or
2 OF a member of the unit owner's OR OCCUPANT'S immediate family, in the
3 active or reserve military service of the United States during a time of war
4 or armed conflict, on the inside of a window or door of the unit. owner's
5 residence. The association may adopt reasonable rules regarding the size
6 and manner of display of service flags; except that the maximum
7 dimensions allowed shall be not less than nine inches by sixteen inches.

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

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

14 (B) An association may regulate the size and number of political
15 signs that may be placed on a unit owner's property if the association's
16 regulation is no more restrictive than any applicable city, town, or county
17 ordinance that regulates the size and number of political signs on
18 residential property. If the city, town, or county in which the property is
19 located does not regulate the size and number of political signs on
20 residential property IN ACCORDANCE WITH SUBPARAGRAPH (II) OF THIS
21 PARAGRAPH (c).

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

26 (A) THE MAXIMUM SIZE ALLOWED BY ANY APPLICABLE CITY,
27 TOWN, OR COUNTY ORDINANCE THAT REGULATES THE SIZE OF POLITICAL

1 SIGNS ON RESIDENTIAL PROPERTY; OR

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

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

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

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

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

22 (f) ~~(I)~~ The replacement by a unit owner of cedar shakes or other
23 flammable roofing materials with nonflammable roofing materials for fire
24 prevention or fire suppression purposes.

25 ~~(H)~~ The declaration or bylaws may specify reasonable standards
26 for the color, appearance, and general type of nonflammable roofing
27 materials that are used to replace flammable roofing materials, but may

1 ~~not require the use of nonflammable materials that exceed the~~
2 ~~replacement cost of the flammable materials for which they are being~~
3 ~~substituted.~~

4 (2) NOTWITHSTANDING ANY PROVISION IN THE DECLARATION,
5 BYLAWS, OR RULES AND REGULATIONS OF THE ASSOCIATION TO THE
6 CONTRARY, AN ASSOCIATION SHALL NOT REQUIRE THE USE OF CEDAR
7 SHAKES OR OTHER FLAMMABLE ROOFING MATERIALS.

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

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

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

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

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

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

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

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

1 defend the provisions of this article or of the declaration, bylaws, articles,
2 or rules and regulations, the court shall award to the party prevailing on
3 such claim the prevailing party's reasonable collection costs and attorney
4 fees, and costs, incurred in asserting or defending the claim AND COSTS
5 OF COLLECTION TO THE PREVAILING PARTY.

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

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

18 (b) ON OR BEFORE JANUARY 1, 2007, EACH ASSOCIATION SHALL
19 ADOPT A WRITTEN POLICY SETTING FORTH ITS PROCEDURE FOR
20 ADDRESSING DISPUTES ARISING BETWEEN THE ASSOCIATION AND UNIT
21 OWNERS. THE ASSOCIATION SHALL MAKE A COPY OF THIS POLICY
22 AVAILABLE TO UNIT OWNERS UPON REQUEST.

23 **SECTION 6.** 38-33.3-209.4 (1) and (2) (e), Colorado Revised
24 Statutes, are amended to read:

25 **38-33.3-209.4. Public disclosures required - identity of**
26 **association - agent - manager - contact information.** (1) The
27 association shall provide to all unit owners, at least once per year, a

1 ~~written notice stating~~ WITHIN NINETY DAYS AFTER ASSUMING CONTROL
2 FROM THE DECLARANT PURSUANT TO SECTION 38-33.3-303 (5), THE
3 ASSOCIATION SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO
4 UNIT OWNERS UPON REASONABLE NOTICE IN ACCORDANCE WITH
5 SUBSECTION (3) OF THIS SECTION. IN ADDITION, IF THE ASSOCIATION'S
6 ADDRESS, DESIGNATED AGENT, OR MANAGEMENT COMPANY CHANGES, THE
7 ASSOCIATION SHALL MAKE UPDATED INFORMATION AVAILABLE WITHIN
8 NINETY DAYS AFTER THE CHANGE:

- 9 (a) The name of the association;
- 10 (b) The name of the association's designated agent or management
11 company, if any; ~~and~~
- 12 (c) A valid physical address and telephone number for both the
13 association and the designated agent or management company, if any;
- 14 (d) ~~The notice shall also include~~ The name of the common interest
15 community;
- 16 (e) The initial date of recording of the declaration; and
- 17 (f) The reception number or book and page for the main document
18 that constitutes the declaration. ~~If the association's address, designated~~
19 ~~agent, or management company changes, the association shall provide all~~
20 ~~unit owners with an amended notice within ninety days after the change.~~

21 (2) Within ninety days after assuming control from the declarant
22 pursuant to section 38-33.3-303 (5), and within ninety days after the end
23 of each fiscal year thereafter, the association shall make the following
24 information available to unit owners upon reasonable notice in
25 accordance with subsection (3) of this section:

- 26 (e) The results of ~~any~~ ITS MOST RECENT AVAILABLE financial audit
27 or review; ~~for the fiscal year immediately preceding the current annual~~

1 disclosure;

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 and~~

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

12 (VI) Investment of reserve funds; and

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

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

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

19 **38-33.3-217. Amendment of declaration.** (1) (a) (I) Except in
20 cases of amendments that may be 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, by an association under section 38-33.3-107, 38-33.3-206
23 (4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and
24 (12), or by the district court for any county that includes all or any portion
25 of a common interest community under subsection (7) of this section, and
26 except as limited by subsection (4) of this section, AS OTHERWISE
27 PROVIDED IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (a), the

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

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

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

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

22 (B) TO AMENDMENTS 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;

25 (C) TO AMENDMENTS EXECUTED BY AN ASSOCIATION UNDER
26 SECTION 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212,
27 38-33.3-213, OR 38-33.3-218 (11) AND (12);

1 (D) TO AMENDMENTS EXECUTED BY THE DISTRICT COURT FOR ANY
2 COUNTY THAT INCLUDES ALL OR ANY PORTION OF A COMMON INTEREST
3 COMMUNITY UNDER SUBSECTION (7) OF THIS SECTION; OR

4 (E) TO AMENDMENTS THAT AFFECT PHASED COMMUNITIES OR
5 DECLARANT-CONTROLLED COMMUNITIES.

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

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

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

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

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

1 (4) (a) Except to the extent expressly permitted or required by
2 other provisions of this article, no amendment may create or increase
3 special declarant rights, increase the number of units, or change the
4 boundaries of any unit or the allocated interests of a unit in the absence
5 of a vote or agreement of unit owners of units to which at least
6 sixty-seven percent of the votes in the association, including sixty-seven
7 percent of the votes allocated to units not owned by a declarant, are
8 allocated or any larger percentage the declaration specifies. The
9 declaration may specify a smaller percentage only if all of the units are
10 restricted exclusively to nonresidential use.

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

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

20 **38-33.3-303. Executive board members and officers - powers**
21 **and duties - audit.** (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
22 (2.5) OF THIS SECTION:

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

26 (b) If not appointed by the declarant, no member of the executive
27 board and no officer shall be liable for actions taken or omissions made

1 in the performance of such member's duties except for wanton and
2 willful acts or omissions.

3 (2.5) WITH REGARD TO THE INVESTMENT OF RESERVE FUNDS OF
4 THE ASSOCIATION, THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD
5 SHALL BE SUBJECT TO THE STANDARDS SET FORTH IN SECTION 7-128-401,
6 C.R.S.; EXCEPT THAT, AS USED IN THAT SECTION:

7 (a) "CORPORATION" OR "NONPROFIT CORPORATION" MEANS THE
8 ASSOCIATION.

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

11 (c) "OFFICER" MEANS ANY PERSON DESIGNATED AS AN OFFICER OF
12 THE ASSOCIATION AND ANY PERSON TO WHOM THE EXECUTIVE BOARD
13 DELEGATES RESPONSIBILITIES UNDER THIS ARTICLE, INCLUDING, WITHOUT
14 LIMITATION, A MANAGING AGENT, ATTORNEY, OR ACCOUNTANT EMPLOYED
15 BY THE EXECUTIVE BOARD.

16 (4) (b) (I) AT THE DISCRETION OF THE EXECUTIVE BOARD OR UPON
17 REQUEST PURSUANT TO SUBPARAGRAPH (II) OR (III) OF THIS PARAGRAPH
18 (b) AS APPLICABLE, the books and records of the association shall be
19 subject to an audit, using generally accepted auditing standards, or a
20 review, using statements on standards for accounting and review services,
21 ~~at least once every two years~~ by a AN INDEPENDENT AND QUALIFIED
22 person selected by the executive board. Such person need not be a
23 certified public accountant except in the case of an audit. A PERSON
24 SELECTED TO CONDUCT A REVIEW SHALL HAVE AT LEAST A BASIC
25 UNDERSTANDING OF THE PRINCIPLES OF ACCOUNTING AS A RESULT OF
26 PRIOR BUSINESS EXPERIENCE, EDUCATION ABOVE THE HIGH SCHOOL LEVEL,
27 OR BONA FIDE HOME STUDY. THE AUDIT OR REVIEW REPORT SHALL COVER

1 THE ASSOCIATION'S FINANCIAL STATEMENTS, WHICH SHALL BE PREPARED
2 USING GENERALLY ACCEPTED ACCOUNTING PRINCIPLES OR THE CASH OR
3 TAX BASIS OF ACCOUNTING.

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

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

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

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

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

16 ~~(HV)~~ (V) Notwithstanding section 38-33.3-117 (1.5) (h), this
17 paragraph (b) shall not apply to an association that includes time-share
18 units, as defined in section 38-33-110 (7).

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

21 **38-33.3-308. Meetings.** (1) Meetings of the unit owners, as the
22 members of the association, shall be held at least once each year. Special
23 meetings of the unit owners may be called by the president, by a majority
24 of the executive board, or by unit owners having twenty percent, or any
25 lower percentage specified in the bylaws, of the votes in the association.
26 Not less than ten nor more than fifty days in advance of any meeting of
27 the unit owners, the secretary or other officer specified in the bylaws shall

1 cause notice to be hand delivered or sent prepaid by United States mail to
2 the mailing address of each unit or to any other mailing address
3 designated in writing by the unit owner. The notice of any meeting OF
4 THE UNIT OWNERS shall be physically posted in a conspicuous place, to
5 the extent that such posting is feasible and practicable, in addition to any
6 electronic posting or electronic mail notices that may be given pursuant
7 to paragraph (b) of subsection (2) of this section. The notice shall state
8 the time and place of the meeting and the items on the agenda, including
9 the general nature of any proposed amendment to the declaration or
10 bylaws, any budget changes, and any proposal to remove an officer or
11 member of the executive board.

12 (2.5) (a) Notwithstanding any provision in the declaration, bylaws,
13 or other documents to the contrary, all meetings of the association and
14 board of directors are open to every unit owner of the association, or to
15 any person designated by a unit owner in writing as the unit owner's
16 representative. ~~and all unit owners or designated representatives so~~
17 ~~desiring shall be permitted to attend, listen, and speak at an appropriate~~
18 ~~time during the deliberations and proceedings; except that, for regular and~~
19 ~~special meetings of the board, unit owners who are not board members~~
20 ~~may not participate in any deliberation or discussion unless expressly so~~
21 ~~authorized by a vote of the majority of a quorum of the board.~~

22 (b) AT AN APPROPRIATE TIME DETERMINED BY THE BOARD, BUT
23 BEFORE THE BOARD VOTES ON AN ISSUE UNDER DISCUSSION, UNIT OWNERS
24 OR THEIR DESIGNATED REPRESENTATIVES SHALL BE PERMITTED TO SPEAK
25 REGARDING THAT ISSUE. The board may place reasonable time
26 restrictions on those persons speaking during the meeting. ~~but shall~~
27 ~~permit a unit owner or a unit owner's designated representative to speak~~

1 ~~before the board takes formal action on an item under discussion, in~~
2 ~~addition to any other opportunities to speak.~~ IF MORE THAN ONE PERSON
3 DESIRES TO ADDRESS AN ISSUE AND THERE ARE OPPOSING VIEWS, the board
4 shall provide for a reasonable number of persons to speak on each side of
5 ~~an~~ THE issue.

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

8 **38-33.3-310. Voting - proxies.** (1) (b) (I) (A) Votes for
9 CONTESTED positions on the executive board shall be taken by secret
10 ballot. ~~and,~~ THIS SUBPARAGRAPH (A) SHALL NOT APPLY TO AN
11 ASSOCIATION WHOSE GOVERNING DOCUMENTS PROVIDE FOR ELECTION OF
12 POSITIONS ON THE EXECUTIVE BOARD BY DELEGATES ON BEHALF OF THE
13 UNIT OWNERS.

14 (B) AT THE DISCRETION OF THE BOARD OR upon the request of ~~one~~
15 ~~or more~~ TWENTY PERCENT OF THE unit owners WHO ARE PRESENT AT THE
16 MEETING OR REPRESENTED BY PROXY, IF A QUORUM HAS BEEN ACHIEVED,
17 a vote on any ~~other~~ matter affecting the common interest community on
18 which all unit owners are entitled to vote shall be by secret ballot.

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

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

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

6 **38-33.3-310.5. Executive board - conflicts of interest -**
7 **definitions.** (1) SECTION 7-128-501, C.R.S., SHALL APPLY TO MEMBERS
8 OF THE EXECUTIVE BOARD; EXCEPT THAT, AS USED IN THAT SECTION:

9 (a) "CORPORATION" OR "NONPROFIT CORPORATION" MEANS THE
10 ASSOCIATION.

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

13 (c) "OFFICER" MEANS ANY PERSON DESIGNATED AS AN OFFICER OF
14 THE ASSOCIATION AND ANY PERSON TO WHOM THE BOARD DELEGATES
15 RESPONSIBILITIES UNDER THIS ARTICLE, INCLUDING, WITHOUT LIMITATION,
16 A MANAGING AGENT, ATTORNEY, OR ACCOUNTANT EMPLOYED BY THE
17 BOARD.

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

20 **38-33.3-317. Association records.** (2) (a) EXCEPT AS
21 OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), all
22 financial and other records shall be made reasonably available for
23 examination and copying by any unit owner and such owner's authorized
24 agents.

25 (b) (I) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION
26 (2), A MEMBERSHIP LIST OR ANY PART THEREOF MAY NOT BE OBTAINED OR
27 USED BY ANY PERSON FOR ANY PURPOSE UNRELATED TO A UNIT OWNER'S

1 INTEREST AS A UNIT OWNER WITHOUT CONSENT OF THE EXECUTIVE BOARD.

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

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

8 (B) USED FOR ANY COMMERCIAL PURPOSE; OR

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

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

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

17 (a) The request is made in good faith and for a proper purpose;

18 (b) The request describes with reasonable particularity the records
19 sought and the purpose of the request; and

20 (c) The records are relevant to the purpose of the request.

21 (7) This section shall not be construed to invalidate any provision
22 of the declaration, bylaws, the corporate law under which the association
23 is organized, or other documents that more broadly defines records of the
24 association that are subject to inspection and copying by unit owners, or
25 that grants unit owners freer access to such records; EXCEPT THAT THE
26 PRIVACY PROTECTIONS CONTAINED IN PARAGRAPH (b) OF SUBSECTION (2)
27 OF THIS SECTION SHALL SUPERSEDE ANY SUCH PROVISION.

1 **SECTION 14. Repeal.** 38-33.3-223, Colorado Revised Statutes,
2 is repealed.

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

5 **38-35.7-102. Disclosure - common interest community -**
6 **obligation to pay assessments - requirement for architectural**
7 **approval.** (1) ON AND AFTER JANUARY 1, 2007, EVERY CONTRACT FOR
8 THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON
9 INTEREST COMMUNITY SHALL CONTAIN A DISCLOSURE STATEMENT IN
10 BOLD-FACED TYPE THAT IS CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE
11 FOLLOWING FORM:

12 **"THE PROPERTY IS LOCATED WITHIN A**
13 **COMMON INTEREST COMMUNITY AND IS**
14 **SUBJECT TO THE DECLARATION FOR SUCH**
15 **COMMUNITY. THE OWNER OF THE PROPERTY**
16 **WILL BE REQUIRED TO BE A MEMBER OF THE**
17 **OWNER'S ASSOCIATION FOR THE COMMUNITY**
18 **AND WILL BE SUBJECT TO THE BYLAWS AND**
19 **RULES AND REGULATIONS OF THE**
20 **ASSOCIATION. THE DECLARATION, BYLAWS,**
21 **AND RULES AND REGULATIONS WILL IMPOSE**
22 **FINANCIAL OBLIGATIONS UPON THE OWNER**
23 **OF THE PROPERTY, INCLUDING AN**
24 **OBLIGATION TO PAY ASSESSMENTS OF THE**
25 **ASSOCIATION. IF THE OWNER DOES NOT PAY**
26 **THESE ASSESSMENTS, THE ASSOCIATION**
27 **COULD PLACE A LIEN ON THE PROPERTY AND**

1 POSSIBLY SELL IT TO PAY THE DEBT. THE
2 DECLARATION, BYLAWS, AND RULES AND
3 REGULATIONS OF THE COMMUNITY MAY
4 PROHIBIT THE OWNER FROM MAKING
5 CHANGES TO THE PROPERTY WITHOUT AN
6 ARCHITECTURAL REVIEW BY THE
7 ASSOCIATION (OR A COMMITTEE OF THE
8 ASSOCIATION) AND THE APPROVAL OF THE
9 ASSOCIATION. PURCHASERS OF PROPERTY
10 WITHIN THE COMMON INTEREST COMMUNITY
11 SHOULD INVESTIGATE THE FINANCIAL
12 OBLIGATIONS OF MEMBERS OF THE
13 ASSOCIATION. PURCHASERS SHOULD
14 CAREFULLY READ THE DECLARATION FOR THE
15 COMMUNITY AND THE BYLAWS AND RULES
16 AND REGULATIONS OF THE ASSOCIATION."

17 (2) (a) THE OBLIGATION TO PROVIDE THE DISCLOSURE SET FORTH
18 IN SUBSECTION (1) OF THIS SECTION SHALL BE UPON THE SELLER, AND, IN
19 THE EVENT OF THE FAILURE BY THE SELLER TO PROVIDE THE WRITTEN
20 DISCLOSURE DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE
21 PURCHASER SHALL HAVE A CLAIM FOR RELIEF AGAINST THE SELLER FOR
22 ACTUAL DAMAGES DIRECTLY AND PROXIMATELY CAUSED BY SUCH
23 FAILURE PLUS COURT COSTS. IT SHALL BE AN AFFIRMATIVE DEFENSE TO
24 ANY CLAIM FOR DAMAGES BROUGHT UNDER THIS SECTION THAT THE
25 PURCHASER HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE FACTS
26 AND INFORMATION REQUIRED TO BE DISCLOSED.

27 (b) UPON REQUEST, THE SELLER SHALL EITHER PROVIDE TO THE

1 BUYER OR AUTHORIZE THE UNIT OWNERS' ASSOCIATION TO PROVIDE TO
2 THE BUYER, UPON PAYMENT OF THE ASSOCIATION'S USUAL FEE PURSUANT
3 TO SECTION 38-33.3-317 (3), ALL OF THE COMMON INTEREST COMMUNITY'S
4 GOVERNING DOCUMENTS AND FINANCIAL DOCUMENTS, AS LISTED IN THE
5 MOST RECENT AVAILABLE VERSION OF THE CONTRACT TO BUY AND SELL
6 REAL ESTATE PROMULGATED BY THE REAL ESTATE COMMISSION AS OF THE
7 DATE OF THE CONTRACT.

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

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

12 **10-4-110.8. Homeowner's insurance - prohibited practices -**
13 **definitions.** (5) (a) In a common interest community, as defined in
14 section 38-33.3-103 (8), C.R.S., a unit owner may file a claim against the
15 policy of the unit owner's association to the same extent, and with the
16 same effect, as if the unit owner were ~~an additional~~ A named insured IF
17 THE FOLLOWING CONDITIONS ARE MET:

18 (I) THE UNIT OWNER HAS CONTACTED THE EXECUTIVE BOARD OR
19 THE ASSOCIATION'S MANAGING AGENT IN WRITING, AND IN ACCORDANCE
20 WITH ANY APPLICABLE ASSOCIATION POLICIES OR PROCEDURES FOR
21 OWNER-INITIATED INSURANCE CLAIMS, REGARDING THE SUBJECT MATTER
22 OF THE CLAIM;

23 (II) THE UNIT OWNER HAS GIVEN THE ASSOCIATION AT LEAST
24 FIFTEEN DAYS TO RESPOND IN WRITING, AND, IF SO REQUESTED, HAS GIVEN
25 THE ASSOCIATION'S AGENT A REASONABLE OPPORTUNITY TO INSPECT THE
26 DAMAGE; AND

27 (III) THE SUBJECT MATTER OF THE CLAIM FALLS WITHIN THE

1 ASSOCIATION'S INSURANCE RESPONSIBILITIES.

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

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