

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 20, 2006
Date

Committee on Judiciary.

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

SB06-089 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 2, after line 1, insert the following:

2 "SECTION 1. 38-33.3-103, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF THE FOLLOWING NEW
4 SUBSECTIONS to read:

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

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

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

14 Renumber succeeding sections accordingly.

15 Page 3, line 1, strike "(1) (c) (I)," and substitute "(1) (c),";

16 strike lines 8 through 27 and substitute the following:

17 "(c) (I) The display of a political sign by a unit owner on that unit

1 owner's property or in a window of the unit owner's residence; except
2 that:

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

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

14 (II) The association shall permit at least one political sign per
15 political office or ballot issue that is contested in a pending election. ~~with~~
16 The maximum dimensions of each sign may be limited to the lesser of the
17 following:

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

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

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

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

33 Page 4, line 1, strike "unit owner" and substitute "~~unit owner~~ OCCUPANT";

1 line 8, after "owners", insert "OR OCCUPANTS";

2 after line 9, insert the following:

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

5 **38-33.3-117. Applicability to preexisting common interest**
6 **communities.** (1) Except as provided in section 38-33.3-119, the
7 following sections shall apply to all common interest communities created
8 within this state before July 1, 1992, with respect to events and
9 circumstances occurring on or after July 1, 1992:

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

11 (1.5) Except as provided in section 38-33.3-119, the following
12 sections shall apply to all common interest communities created within
13 this state before July 1, 1992, with respect to events and circumstances
14 occurring on or after January 1, 2006:

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

16 (e) ~~38-33.3-223~~;"

17 Renumber succeeding sections accordingly.

18 Page 5, strike lines 23 through 27.

19 Page 6, strike lines 1 through 3 and substitute the following:

20 "(j) A LIST OF THE ASSOCIATION'S MAINTENANCE RESPONSIBILITIES
21 AS PROVIDED FOR IN THE COMMON INTEREST COMMUNITY'S DECLARATION
22 RELATED TO THE COMMON ELEMENTS AND UNITS.

23 **SECTION 7.** 38-33.3-209.4, Colorado Revised Statutes, is
24 amended BY THE ADDITION OF A NEW SUBSECTION to read:

25 **38-33.3-209.4. Public disclosures required - identity of**
26 **association - agent - manager - contact information.** (2.5) IN
27 ADDITION TO THE DISCLOSURES REQUIRED IN PARAGRAPHS (a) TO (j) OF
28 SUBSECTION (2) OF THIS SECTION, EACH ASSOCIATION IS ENCOURAGED,
29 BUT NOT REQUIRED, TO DISCLOSE A LIST OF THE ASSOCIATION'S INSURANCE

1 RESPONSIBILITIES AS PROVIDED FOR IN THE COMMON INTEREST
2 COMMUNITY'S DECLARATION RELATED TO THE COMMON ELEMENTS, UNITS,
3 OWNER'S PROPERTY, AND OWNER'S LIABILITY WITHIN UNITS. SUCH LIST
4 SHALL STATE THAT UNIT OWNERS ARE RESPONSIBLE FOR DETERMINING
5 WHAT ADDITIONAL INDIVIDUAL INSURANCE COVERAGE MUST BE CARRIED
6 TO COVER INSURANCE RESPONSIBILITIES NOT ALLOCATED TO THE
7 ASSOCIATION IN THE DECLARATION. IT SHALL BE IN THE EXECUTIVE
8 BOARD'S SOLE DISCRETION TO DETERMINE THE SCOPE OF THE LIST, IF
9 PROVIDED. NEITHER THE ASSOCIATION NOR ANY EXECUTIVE BOARD
10 MEMBER SHALL BE LIABLE FOR THE CONTENTS OF THE LIST SO LONG AS
11 PREPARATION OF THE LIST WAS NOT WILLFULLY OR GROSSLY NEGLIGENT."

12 Renumber succeeding sections accordingly.

13 Page 6, line 11, strike "A CASH" and substitute "AN ACCRUAL, CASH,";

14 strike line 12 and substitute "ACCRUAL BASIS OF ACCOUNTING; and";

15 strike lines 22 through 27.

16 Page 7, strike lines 1 and 2 and substitute the following:

17 **"38-33.3-217. Amendment of declaration.** (1) (a) (I) Except in
18 ~~cases of amendments that may be executed by a declarant under section~~
19 ~~38-33.3-205 (4) and (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,~~
20 ~~or 38-33.3-222, by an association under section 38-33.3-107, 38-33.3-206~~
21 ~~(4), 38-33.3-208 (2), 38-33.3-212, 38-33.3-213, or 38-33.3-218 (11) and~~
22 ~~(12), or by the district court for any county that includes all or any portion~~
23 ~~of a common interest community under subsection (7) of this section, and~~
24 ~~except as limited by subsection (4) of this section, AS OTHERWISE~~
25 PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), the
26 declaration,";

27 after line 16, insert the following:

28 "(II) THIS PARAGRAPH (a) SHALL NOT APPLY:

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

31 (B) TO AMENDMENTS EXECUTED BY A DECLARANT UNDER SECTION
32 38-33.3-205 (4) AND (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,

1 OR 38-33.3-222;

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

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

8 (E) TO AMENDMENTS THAT AFFECT MIXED-USE DEVELOPMENTS,
9 PHASED COMMUNITIES, OR DECLARANT-CONTROLLED COMMUNITIES."

10 Page 9, strike lines 1 through 12 and substitute the following:

11 **"SECTION 10. Repeal.** 38-33.3-223, Colorado Revised Statutes,
12 is repealed.

13 **SECTION 11.** 38-33.3-303 (2), Colorado Revised Statutes, is
14 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15 **38-33.3-303. Executive board members and officers - powers**
16 **and duties - audit.** (2) (c) NOTWITHSTANDING ANY PROVISION OF THIS
17 ARTICLE TO THE CONTRARY, THE OFFICERS AND MEMBERS OF THE
18 EXECUTIVE BOARD SHALL NOT BE LIABLE FOR THE FINANCIAL RESULTS OF
19 ANY INVESTMENT OF RESERVE FUNDS IF THE CONDUCT OF SUCH OFFICERS
20 AND MEMBERS IN MAKING SUCH INVESTMENT WAS PERMISSIBLE UNDER
21 THE PRINCIPLE OF LAW GENERALLY KNOWN AS THE BUSINESS JUDGMENT
22 RULE."

23 Renumber succeeding sections accordingly.

24 Page 9, line 21, strike "a" and substitute "a AN INDEPENDENT";

25 line 23, strike "IS TO BE PREPARED";

26 strike lines 24 through 27 and substitute the following:

27 "REPORT SHALL COVER THE ASSOCIATION'S FINANCIAL STATEMENTS,
28 WHICH SHALL BE PREPARED USING GENERALLY ACCEPTED ACCOUNTING
29 PRINCIPLES ON THE ACCRUAL BASIS OF ACCOUNTING OR USING ANOTHER
30 COMPREHENSIVE BASIS OF ACCOUNTING."

1 Page 12, line 18, strike "THE MEETING," and substitute "AN OPEN
2 MEETING,".

3 Page 14, after line 23, insert the following:

4 "SECTION 16. 38-35.7-102, Colorado Revised Statutes, is
5 REPEALED AND REENACTED, WITH AMENDMENTS, to read:

6 **38-35.7-102. Disclosure - common interest community -**
7 **obligation to pay assessments - requirement for architectural**
8 **approval.** (1) EVERY CONTRACT FOR THE PURCHASE AND SALE OF
9 RESIDENTIAL REAL PROPERTY IN A COMMON INTEREST COMMUNITY SHALL
10 CONTAIN A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT IS
11 CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE 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
28 POSSIBLY SELL IT TO PAY THE DEBT. THE
29 DECLARATION, BYLAWS, AND RULES AND
30 REGULATIONS OF THE COMMUNITY MAY
31 PROHIBIT THE OWNER FROM MAKING
32 CHANGES TO THE PROPERTY WITHOUT AN
33 ARCHITECTURAL REVIEW BY THE
34 ASSOCIATION (OR A COMMITTEE OF THE
35 ASSOCIATION) AND THE APPROVAL OF THE
36 ASSOCIATION. PURCHASERS OF PROPERTY
37 WITHIN THE COMMON INTEREST COMMUNITY
38 SHOULD INVESTIGATE THE FINANCIAL

1 **OBLIGATIONS OF MEMBERS OF THE**
2 **ASSOCIATION. PURCHASERS SHOULD**
3 **CAREFULLY READ THE DECLARATION FOR**
4 **THE COMMUNITY AND THE BYLAWS AND**
5 **RULES AND REGULATIONS OF THE**
6 **ASSOCIATION."**

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

17 (b) NOTWITHSTANDING PARAGRAPH (a) OF THIS SUBSECTION (2),
18 CONTRACTS FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL
19 PROPERTY PREPARED BY A LICENSED REAL ESTATE BROKER SHALL NOT BE
20 REQUIRED TO CONTAIN THE DISCLOSURE SET FORTH IN SUBSECTION (1) OF
21 THIS SECTION UNTIL THE REAL ESTATE COMMISSION HAS PROMULGATED A
22 FORM OF PURCHASE AND SALE CONTRACT, OR ADDENDUM THERETO, THAT
23 CONTAINS SUCH DISCLOSURE, AND, UNTIL SUCH FORM HAS BEEN
24 PROMULGATED, SELLERS REPRESENTED BY A LICENSED REAL ESTATE
25 BROKER SHALL NOT BE LIABLE FOR FAILING TO PROVIDE SUCH DISCLOSURE.

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

28 Renumber succeeding sections accordingly.

29 Page 15, line 16, strike "(2) (j)," and substitute "(2.5),".

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