

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 11, 2006
Date

Committee on Local Government.

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 reengrossed bill, strike everything below the enacting clause and
2 substitute the following:

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

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

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

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

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

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

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

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

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

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

32 ~~(H)~~ (III) As used in this paragraph (c), "political sign" means a
33 sign that carries a message intended to influence the outcome of an
34 election, including supporting or opposing the election of a candidate, the
35 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.

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

30 **38-33.3-116. Exception for new small cooperatives and small**
31 **and limited expense planned communities.** (2) (a) If a cooperative or
32 planned community created in this state on or after July 1, 1998, contains
33 only units restricted to nonresidential use, or contains no more than
34 twenty units and is not subject to any development rights, it is subject
35 only to sections 38-33.3-105, 38-33.3-106, and 38-33.3-107, unless the

1 declaration provides that this entire article is applicable.

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

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

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

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

22 (1.5) Except as provided in section 38-33.3-119, the following
23 sections shall apply to all common interest communities created within
24 this state before July 1, 1992, with respect to events and circumstances
25 occurring on or after January 1, 2006:

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

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

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

30 **38-33.3-123. Enforcement - limitation.** (1) (c) ~~For each claim~~
31 ~~or defense, including but not limited to counterclaims, cross-claims, and~~
32 ~~third-party claims, and except as otherwise provided in paragraph (d) of~~
33 ~~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) EACH ASSOCIATION SHALL ADOPT A WRITTEN POLICY SETTING
19 FORTH ITS PROCEDURE FOR ADDRESSING DISPUTES ARISING BETWEEN THE
20 ASSOCIATION AND UNIT OWNERS. THE ASSOCIATION SHALL MAKE A COPY
21 OF THIS POLICY AVAILABLE TO UNIT OWNERS UPON REQUEST.

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

24 **38-33.3-209.4. Public disclosures required - identity of**
25 **association - agent - manager - contact information.** (1) ~~The~~
26 ~~association shall provide to all unit owners, at least once per year, a~~
27 ~~written notice stating~~ WITHIN NINETY DAYS AFTER ASSUMING CONTROL
28 FROM THE DECLARANT PURSUANT TO SECTION 38-33.3-303 (5), THE
29 ASSOCIATION SHALL MAKE THE FOLLOWING INFORMATION AVAILABLE TO
30 UNIT OWNERS UPON REASONABLE NOTICE IN ACCORDANCE WITH
31 SUBSECTION (3) OF THIS SECTION. IN ADDITION, IF THE ASSOCIATION'S
32 ADDRESS, DESIGNATED AGENT, OR MANAGEMENT COMPANY CHANGES, THE
33 ASSOCIATION SHALL MAKE UPDATED INFORMATION AVAILABLE WITHIN
34 NINETY DAYS AFTER THE CHANGE:

35 (a) The name of the association;

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

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

5 (d) ~~The notice shall also include~~ The name of the common interest
6 community;

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

8 (f) The reception number or book and page for the main document
9 that constitutes the declaration. ~~If the association's address, designated~~
10 ~~agent, or management company changes, the association shall provide all~~
11 ~~unit owners with an amended notice within ninety days after the change.~~

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

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

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

24 **38-33.3-209.5. Responsible governance policies.** (1) To
25 promote responsible governance, associations shall:

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

29 (b) Adopt policies, procedures, and rules and regulations
30 concerning:

31 (VI) Investment of reserve funds; and

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

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

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

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

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

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

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

1 (B) TO AMENDMENTS EXECUTED BY A DECLARANT UNDER SECTION
2 38-33.3-205 (4) AND (5), 38-33.3-208 (3), 38-33.3-209 (6), 38-33.3-210,
3 OR 38-33.3-222;

4 (C) TO AMENDMENTS EXECUTED BY AN ASSOCIATION UNDER
5 SECTION 38-33.3-107, 38-33.3-206 (4), 38-33.3-208 (2), 38-33.3-212,
6 38-33.3-213, OR 38-33.3-218 (11) AND (12); OR

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

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

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

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

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

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

32 (4) (a) Except to the extent expressly permitted or required by
33 other provisions of this article, no amendment may create or increase
34 special declarant rights, increase the number of units, or change the

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

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

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

17 **38-33.3-303. Executive board members and officers - powers**
18 **and duties - audit.** (2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
19 (2.5) OF THIS SECTION:

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

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

27 (2.5) WITH REGARD TO THE INVESTMENT OF RESERVE FUNDS OF
28 THE ASSOCIATION, THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD
29 SHALL BE SUBJECT TO THE STANDARDS SET FORTH IN SECTION 7-128-401,
30 C.R.S.; EXCEPT THAT, AS USED IN THAT SECTION:

31 (a) "CORPORATION" OR "NONPROFIT CORPORATION" MEANS THE
32 ASSOCIATION.

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

1 (c) "OFFICER" MEANS ANY PERSON DESIGNATED AS AN OFFICER OF
2 THE ASSOCIATION AND ANY PERSON TO WHOM THE EXECUTIVE BOARD
3 DELEGATES RESPONSIBILITIES UNDER THIS ARTICLE, INCLUDING, WITHOUT
4 LIMITATION, A MANAGING AGENT, ATTORNEY, OR ACCOUNTANT EMPLOYED
5 BY THE EXECUTIVE BOARD.

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

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

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

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

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

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

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

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

3 **38-33.3-308. Meetings.** (1) Meetings of the unit owners, as the
4 members of the association, shall be held at least once each year. Special
5 meetings of the unit owners may be called by the president, by a majority
6 of the executive board, or by unit owners having twenty percent, or any
7 lower percentage specified in the bylaws, of the votes in the association.
8 Not less than ten nor more than fifty days in advance of any meeting of
9 the unit owners, the secretary or other officer specified in the bylaws shall
10 cause notice to be hand delivered or sent prepaid by United States mail to
11 the mailing address of each unit or to any other mailing address
12 designated in writing by the unit owner. The notice of any meeting OF
13 THE UNIT OWNERS shall be physically posted in a conspicuous place, to
14 the extent that such posting is feasible and practicable, in addition to any
15 electronic posting or electronic mail notices that may be given pursuant
16 to paragraph (b) of subsection (2) of this section. The notice shall state
17 the time and place of the meeting and the items on the agenda, including
18 the general nature of any proposed amendment to the declaration or
19 bylaws, any budget changes, and any proposal to remove an officer or
20 member of the executive board.

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

31 (b) AT AN APPROPRIATE TIME DETERMINED BY THE BOARD, BUT
32 BEFORE THE BOARD VOTES ON AN ISSUE UNDER DISCUSSION, UNIT OWNERS
33 OR THEIR DESIGNATED REPRESENTATIVES SHALL BE PERMITTED TO SPEAK
34 REGARDING THAT ISSUE. The board may place reasonable time
35 restrictions on those persons speaking during the meeting. ~~but shall~~
36 ~~permit a unit owner or a unit owner's designated representative to speak~~
37 ~~before the board takes formal action on an item under discussion, in~~
38 ~~addition to any other opportunities to speak.~~ IF MORE THAN ONE PERSON
39 DESIRES TO ADDRESS AN ISSUE AND THERE ARE OPPOSING VIEWS, the board

1 shall provide for a reasonable number of persons to speak on each side of
2 ~~an~~ THE issue.

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

5 **38-33.3-310. Voting - proxies.** (1) (b) (I) (A) Votes for
6 CONTESTED positions on the executive board shall be taken by secret
7 ballot. ~~and~~; THIS SUBPARAGRAPH (A) SHALL NOT APPLY TO AN
8 ASSOCIATION WHOSE GOVERNING DOCUMENTS PROVIDE FOR ELECTION OF
9 POSITIONS ON THE EXECUTIVE BOARD BY DELEGATES ON BEHALF OF THE
10 UNIT OWNERS.

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

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

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

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

30 **38-33.3-310.5. Executive board - conflicts of interest -**
31 **definitions.** (1) SECTION 7-128-501, C.R.S., SHALL APPLY TO MEMBERS
32 OF THE EXECUTIVE BOARD; EXCEPT THAT, AS USED IN THAT SECTION:

33 (a) "CORPORATION" OR "NONPROFIT CORPORATION" MEANS THE
34 ASSOCIATION.

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

3 (c) "OFFICER" MEANS ANY PERSON DESIGNATED AS AN OFFICER OF
4 THE ASSOCIATION AND ANY PERSON TO WHOM THE BOARD DELEGATES
5 RESPONSIBILITIES UNDER THIS ARTICLE, INCLUDING, WITHOUT LIMITATION,
6 A MANAGING AGENT, ATTORNEY, OR ACCOUNTANT EMPLOYED BY THE
7 BOARD.

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

10 **38-33.3-317. Association records.** (2) (a) EXCEPT AS
11 OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (2), all
12 financial and other records shall be made reasonably available for
13 examination and copying by any unit owner and such owner's authorized
14 agents.

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

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

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

25 (B) USED FOR ANY COMMERCIAL PURPOSE; OR

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

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

30 (4) As used in this section, "reasonably available" means available
31 during normal business hours, upon notice of five business days, OR AT
32 THE NEXT REGULARLY SCHEDULED MEETING IF SUCH MEETING OCCURS

1 WITHIN THIRTY DAYS AFTER THE REQUEST, to the extent that:

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

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

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

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

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

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

17 **38-35.7-102. Disclosure - common interest community -**
18 **obligation to pay assessments - requirement for architectural**
19 **approval.** (1) ON AND AFTER JANUARY 1, 2007, EVERY CONTRACT FOR
20 THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON
21 INTEREST COMMUNITY SHALL CONTAIN A DISCLOSURE STATEMENT IN
22 BOLD-FACED TYPE THAT IS CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE
23 FOLLOWING FORM:

24 **"THE PROPERTY IS LOCATED WITHIN A**
25 **COMMON INTEREST COMMUNITY AND IS**
26 **SUBJECT TO THE DECLARATION FOR SUCH**
27 **COMMUNITY. THE OWNER OF THE PROPERTY**
28 **WILL BE REQUIRED TO BE A MEMBER OF THE**
29 **OWNER'S ASSOCIATION FOR THE COMMUNITY**
30 **AND WILL BE SUBJECT TO THE BYLAWS AND**
31 **RULES AND REGULATIONS OF THE**
32 **ASSOCIATION. THE DECLARATION, BYLAWS,**
33 **AND RULES AND REGULATIONS WILL IMPOSE**
34 **FINANCIAL OBLIGATIONS UPON THE OWNER**

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

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

32 (b) UPON REQUEST, THE SELLER SHALL EITHER PROVIDE TO THE
33 BUYER OR AUTHORIZE THE UNIT OWNERS' ASSOCIATION TO PROVIDE TO
34 THE BUYER, UPON PAYMENT OF THE ASSOCIATION'S USUAL FEE PURSUANT
35 TO SECTION 38-33.3-317 (3), ALL OF THE COMMON INTEREST COMMUNITY'S
36 GOVERNING DOCUMENTS AND FINANCIAL DOCUMENTS, AS LISTED IN THE
37 MOST RECENT AVAILABLE VERSION OF THE CONTRACT TO BUY AND SELL
38 REAL ESTATE PROMULGATED BY THE REAL ESTATE COMMISSION AS OF THE
39 DATE OF THE CONTRACT.

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

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

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

11 (I) THE UNIT OWNER HAS CONTACTED THE EXECUTIVE BOARD OR
12 THE ASSOCIATION'S MANAGING AGENT IN WRITING, AND IN ACCORDANCE
13 WITH ANY APPLICABLE ASSOCIATION POLICIES OR PROCEDURES FOR
14 OWNER-INITIATED INSURANCE CLAIMS, REGARDING THE SUBJECT MATTER
15 OF THE CLAIM;

16 (II) THE UNIT OWNER HAS GIVEN THE ASSOCIATION AT LEAST
17 FIFTEEN DAYS TO RESPOND IN WRITING, AND, IF SO REQUESTED, HAS GIVEN
18 THE ASSOCIATION'S AGENT A REASONABLE OPPORTUNITY TO INSPECT THE
19 DAMAGE; AND

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

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

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

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