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An Act

SENATE BILL 06-089

BY SENATOR(S) Hagedorn, McElhany, and Williams;
also REPRESENTATIVE(S) Carroll M., and Larson.

CONCERNING COMMON INTEREST COMMUNITIES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 38-33.3-103, Colorado Revised Statutes, is amended
BY THE ADDITION OF A NEW SUBSECTION to read:

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(H) The declaration or bylaws may specify reasonable standards for the color, appearance, and general type of nonflammable roofing materials~~

~~that are used to replace flammable roofing materials, but may not require the use of nonflammable materials that exceed the replacement cost of the flammable materials for which they are being substituted.~~

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

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

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

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

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

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

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

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

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

COLLECTION TO THE PREVAILING PARTY.

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

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

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

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

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

(a) The name of the association;

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

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

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

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

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

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

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

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

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

(a) Maintain ACCURATE AND COMPLETE accounting records; ~~using generally accepted accounting principles and~~

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

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

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

procedures, and rules; AND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(III) THE NOTIFICATION PROCEDURE SET FORTH IN THIS PARAGRAPH (b) IS NOT MANDATORY. IF THE CONSENT OF FIRST MORTGAGEES IS OBTAINED WITHOUT RESORT TO THIS PARAGRAPH (b), AND OTHERWISE IN ACCORDANCE WITH THE DECLARATION, THE NOTICE TO FIRST MORTGAGEES

SHALL BE CONSIDERED SUFFICIENT.

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

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

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

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

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

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

(2.5) WITH REGARD TO THE INVESTMENT OF RESERVE FUNDS OF THE ASSOCIATION, THE OFFICERS AND MEMBERS OF THE EXECUTIVE BOARD SHALL BE SUBJECT TO THE STANDARDS SET FORTH IN SECTION 7-128-401, C.R.S.;

EXCEPT THAT, AS USED IN THAT SECTION:

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

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

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

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

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

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

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

(III) A REVIEW SHALL BE REQUIRED UNDER THIS PARAGRAPH (b) ONLY WHEN REQUESTED BY THE OWNERS OF AT LEAST ONE-THIRD OF THE

UNITS REPRESENTED BY THE ASSOCIATION.

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

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

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

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

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

~~by a vote of the majority of a quorum of the board.~~

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

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

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

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

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

(D) The results of ~~the~~ A vote TAKEN BY SECRET BALLOT shall be reported without reference to THE names, addresses, or other identifying

information OF UNIT OWNERS PARTICIPATING IN SUCH VOTE.

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

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

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

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

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

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

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

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

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

(A) USED TO SOLICIT MONEY OR PROPERTY UNLESS SUCH MONEY OR PROPERTY WILL BE USED SOLELY TO SOLICIT THE VOTES OF THE UNIT

OWNERS IN AN ELECTION TO BE HELD BY THE ASSOCIATION;

(B) USED FOR ANY COMMERCIAL PURPOSE; OR

(C) SOLD TO OR PURCHASED BY ANY PERSON.

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

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

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

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

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

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

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

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

38-35.7-102. Disclosure - common interest community - obligation to pay assessments - requirement for architectural approval.

(1) ON AND AFTER JANUARY 1, 2007, EVERY CONTRACT FOR THE PURCHASE AND SALE OF RESIDENTIAL REAL PROPERTY IN A COMMON INTEREST

COMMUNITY SHALL CONTAIN A DISCLOSURE STATEMENT IN BOLD-FACED TYPE THAT IS CLEARLY LEGIBLE AND IN SUBSTANTIALLY THE FOLLOWING FORM:

THE PROPERTY IS LOCATED WITHIN A COMMON INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR SUCH COMMUNITY. THE OWNER OF THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNER'S ASSOCIATION FOR THE COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS, AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE ASSOCIATION.

(2) (a) THE OBLIGATION TO PROVIDE THE DISCLOSURE SET FORTH IN SUBSECTION (1) OF THIS SECTION SHALL BE UPON THE SELLER, AND, IN THE EVENT OF THE FAILURE BY THE SELLER TO PROVIDE THE WRITTEN DISCLOSURE DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE PURCHASER SHALL HAVE A CLAIM FOR RELIEF AGAINST THE SELLER FOR

ACTUAL DAMAGES DIRECTLY AND PROXIMATELY CAUSED BY SUCH FAILURE PLUS COURT COSTS. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CLAIM FOR DAMAGES BROUGHT UNDER THIS SECTION THAT THE PURCHASER HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE FACTS AND INFORMATION REQUIRED TO BE DISCLOSED.

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

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

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

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

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

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

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

ASSOCIATION'S INSURANCE RESPONSIBILITIES.

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

SECTION 17. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO